
STATUTORY RULES OF NORTHERN IRELAND

1999 No. 148

FAIR EMPLOYMENT

**Fair Employment (Monitoring)
Regulations (Northern Ireland) 1999**

*Made - - - - 25th March 1999
To be laid before Parliament under paragraph 3(3) of
Schedule 1 to the Northern Ireland Act 1974*

Coming into operation 1st January 2001

The Department of Economic Development, in exercise of the powers conferred on it by Articles 52(2) to (4), 53 and 54 of the Fair Employment and Treatment (Northern Ireland) Order 1998(1) and of every other power enabling it in that behalf, after consultation with the Fair Employment Commission for Northern Ireland, hereby makes the following Regulations:

**PART I
INTRODUCTION**

Citation and commencement

1. These Regulations may be cited as the Fair Employment (Monitoring) Regulations (Northern Ireland) 1999 and shall come into operation on 1st January 2001.

Interpretation

2.—(1) In these Regulations—

“determination” means a determination of the community to which a person is to be treated as belonging for the purposes of monitoring;

“employee” in relation to the concern of a public authority includes any person who, by virtue of the Fair Employment (Specification of Public Authorities) Order (Northern Ireland) 1989(2), is treated for the purposes of Articles 52 to 61 as an employee of the authority;

(1) [S.I. 1998/3162 \(N.I. 21\)](#); for definition of “Department” see Article 2(2) and for definition of “prescribed” see Articles 52(10) and 54(3)
(2) [S.R. 1989 No. 475](#) as last amended by [S.R. 1998 No. 424](#); see also [S.R. 1999 No. 82](#)

“prescribed information” means the information which an employer is required by virtue of regulation 5 to give in a monitoring return;

“Protestant” means belonging to the Protestant community in Northern Ireland;

“public authority” means a person who, by virtue of Fair Employment (Specification of Public Authorities) Order (Northern Ireland) 1989 is such an authority for the purposes of Articles 52 to 61;

“registered concern” includes the concern of a public authority; and

“Roman Catholic” means belonging to the Roman Catholic community in Northern Ireland.

(2) Any reference in these Regulations to a numbered Article shall be construed as a reference to the Article so numbered in the Fair Employment and Treatment (Northern Ireland) Order 1998⁽³⁾.

(3) For the purposes of these Regulations “promotion” in relation to an employee in a registered concern means that—

- (a) the employee has moved from one situation to another within the concern;
- (b) in doing so he did not fill a vacancy in the concern for which persons not already employed in the concern could apply; and
- (c) as a direct result of his move there was, for the calendar year in which the move took place, an increase in the remuneration (excluding expenses) to which he was entitled from the concern,

and “promotee” shall be construed accordingly.

Revocation

3.—(1) Subject to paragraph (2), the Fair Employment (Monitoring) Regulations (Northern Ireland) 1989⁽⁴⁾ and the Fair Employment (Monitoring) (Amendment) Regulations (Northern Ireland) 1991⁽⁵⁾ are hereby revoked.

(2) The Regulations referred to in paragraph (1) shall continue to apply in relation to any monitoring return prepared for any year beginning before 1st January 2001 as if these Regulations had not been made.

Application

4. These Regulations shall apply in relation to any monitoring return prepared for any year beginning on or after 1st January 2001.

PART II

MONITORING RETURNS

Prescribed information

5.—(1) For the purposes of Article 52(1)(a) a monitoring return shall, subject to paragraph (4), contain the information about employees prescribed by—

- (a) Part I of Schedule 1; and

(3) [S.I. 1998/3162 \(N.I. 21\)](#)

(4) [S.R. 1989 No. 436](#); *see also* [S.R. 1999 No. 82](#)

(5) [S.R. 1991 No. 324](#)

(b) in the case of a return in respect of a registered concern to which Article 52(3) or (4) applies, Part II of Schedule 1.

(2) For the purposes of Article 52(1)(b) a monitoring return shall, subject to paragraph (4), contain the information about applicants for employment prescribed by Part III of Schedule 1.

(3) A monitoring return in respect of a registered concern to which Article 52(3) or (4) applies shall, for the purposes of those paragraphs, subject to paragraph (4), contain the information about former employees prescribed by Part IV of Schedule 1.

(4) Paragraphs (1)(b), (2) and (3) shall not have effect in relation to the first monitoring return prepared in respect of any registered concern.

Date or period to which prescribed information relates

6.—(1) The prescribed information about employees in a registered concern shall relate to the first day of the year for which the monitoring return containing the information is to be prepared.

(2) Without prejudice to paragraph (1), the information about employees which is prescribed by paragraph 2 of Part I of Schedule 1 and by Part II of Schedule 1 shall relate to the twelve months ending on the first day of the year for which the monitoring return containing that information is to be prepared.

(3) The prescribed information about applicants for employment in a registered concern shall relate to the twelve months ending on the first day of the year for which the monitoring return containing that information is to be prepared.

(4) The prescribed information about former employees in a registered concern to which Article 52(3) or (4) applies shall relate to the twelve months ending on the first day of the year for which the monitoring return containing that information is to be prepared and that shall be the period prescribed for the purposes of determining under Article 52(4) whether that paragraph applies to a registered concern.

(5) For the avoidance of doubt, it is hereby declared that nothing in paragraph (2) shall require an employer to include in any monitoring return information about a person who was not an employee on the day prescribed by paragraph (1) in relation to that return.

Period within which prescribed information shall be obtained

7.—(1) The prescribed information insofar as it relates to each employee in a registered concern shall be obtained—

(a) in the case of the first year for which a monitoring return is to be prepared in respect of the concern, within the first three months of that year; and

(b) in the case of any subsequent year, within the first month of that year.

(2) The prescribed information insofar as it relates to each applicant for employment or former employee in a registered concern shall be obtained within the first two months after the date of his application, or the date on which he ceased to be employed, as the case may be.

(3) In this regulation, “obtain” means obtain in accordance with these Regulations.

Principal method of making a determination in respect of employees

8.—(1) For the purposes of preparing a monitoring return in respect of a registered concern, an employer shall, subject to paragraph (2)—

(a) determine the community to which he will treat each employee as belonging by using the principal method prescribed by Part I of Schedule 2; and

- (b) subject to regulation 11(1), where the use of that method does not enable him to treat any employee as belonging to a particular community, treat him as if the community to which he belongs cannot be determined.
- (2) Where for the purpose of preparing any monitoring return in respect of a registered concern—
 - (a) an employer under and in accordance with paragraph (1) or regulation 8(1) of the Fair Employment (Monitoring) Regulations (Northern Ireland) 1989 treats an employee as belonging to a particular community; and
 - (b) that information is contained in a monitoring return served under Article 52(1) or section 27(1) of the Fair Employment (Northern Ireland) Act 1989(6),

he shall continue to treat the employee as belonging to that community for the purposes of preparing any subsequent monitoring return in respect of the concern and, accordingly, paragraph (1) shall not apply to such an employee in relation to that subsequent return.

Principal method of making a determination in respect of applicants

9. For the purposes of preparing a monitoring return in respect of a registered concern an employer shall—

- (a) determine the community to which he will treat each applicant for employment in the concern as belonging by using the principal method prescribed by Part II of Schedule 2; and
- (b) subject to regulation 11(2), where the use of that method does not enable him to treat any such applicant as belonging to a particular community, treat him as if the community to which he belongs cannot be determined.

Determinations in respect of former employees

10.—(1) For the purposes of preparing a monitoring return in respect of a registered concern to which Article 52(3) or (4) applies, an employer shall treat—

- (a) each former employee of the concern to whom paragraph (2) or (3) applies as belonging to a community in accordance with the paragraph which applies to him; and
- (b) any other former employee in the concern as if the community to which he belongs cannot be determined.
- (2) Where—
 - (a) for the purpose of preparing a monitoring return the employer in a registered concern treated an employee in that concern as belonging to a particular community (“the relevant community”);
 - (b) that information is contained in the return when it was served under Article 52(1); and
 - (c) the employer is required to include in the next monitoring return information about the same person as a former employee,

then the employer shall, for that purpose, treat the former employee as belonging to the relevant community.

- (3) Where—
 - (a) for the purpose of preparing a monitoring return the employer in a registered concern treated an applicant for employment in that concern as belonging to a particular community (“the relevant community”);

(b) the employer is required to include in a subsequent return information about the same person as a former employee; and

(c) paragraph (2) does not apply in the case of that former employee,

then the employer shall, for that purpose, treat the former employee as belonging to the relevant community.

Residuary methods of making a determination

11.—(1) Where an employee in a registered concern who, but for this paragraph, would fall within regulation 8(1)(b) has provided his employer, in writing, with any relevant information about himself then, notwithstanding that sub-paragraph, the employer may for the purposes of preparing a monitoring return in relation to that concern—

(a) treat that employee as belonging to the community with which the information shows that he has a connection; and

(b) if the information tends to show that he has a connection with both communities, treat him as belonging to the community with which, in general, it tends to show he has the stronger connection.

(2) Where an applicant for employment in a registered concern who, but for this paragraph, would fall within regulation 9(b) has provided his employer, in writing, with any relevant information about himself then, notwithstanding that paragraph, the employer may for the purposes of preparing a monitoring return in relation to that concern—

(a) treat the applicant as belonging to the community with which the information shows he has a connection; and

(b) if the information tends to show that he has a connection with both communities, treat him as belonging to the community with which, in general, it tends to show he has the stronger connection.

(3) For the purposes of this regulation, the following is relevant information about a person, that is to say—

(a) his surname and other names;

(b) his address;

(c) the schools attended by him (whether in Northern Ireland or elsewhere);

(d) any course that he has undertaken in preparation for any recognized award or any examination conducted by the Department of Education under Article 110 of the Education and Libraries (Northern Ireland) Order 1986(7);

(e) his sporting or other leisure pursuits or interests;

(f) the clubs, societies or other organisations to which he belongs;

(g) the occupation as a clergyman or minister of a particular religious denomination or as a teacher in any particular school, of any referee nominated by him when he applied for his employment.

(4) Schedule 3 shall have effect for the purposes of this regulation.

Disclosure to employees

12.—(1) An employer shall, not less than two weeks before serving a monitoring return on the Commission, give to each employee to whom this regulation applies a notice in writing which discloses to the employee—

(a) the community to which he is to be treated as belonging for the purposes of that return; or
(b) that he is to be treated as if that community cannot be determined for those purposes,
as the case may be.

(2) This regulation applies to any employee who, for the purposes of the monitoring return concerned, was treated—

- (a) as belonging to a particular community under regulation 8(1)(a); or
- (b) under regulation 8(1)(b) as if the community to which he belongs cannot be determined.

Correcting inaccuracies

13.—(1) Where it appears to an employee in a registered concern to whom a notice has been given under regulation 12(1) that, from the terms of that notice, the employer in the concern has incorrectly treated the employee under regulation 8(1)—

- (a) as belonging to a particular community; or
- (b) as if the community to which he belongs cannot be determined,

for the purposes of any monitoring return, the employee may, within seven days of the date of that notice, inform the employer of the fact.

(2) Where an employer has been given information under paragraph (1) and from that information it appears to the employer that he has incorrectly treated the employee under regulation 8(1)—

- (a) as belonging to a particular community; or
- (b) as if the community to which he belongs cannot be determined,

for the purposes of any monitoring return, the employer shall, for the purposes of preparing that return, treat the employee in the way he would have treated him if he had treated the employee correctly under that paragraph.

(3) Under this regulation a reference to the way in which an employee was treated for the purposes of any monitoring return under regulation 8(1) includes a reference to such treatment by the methods prescribed in that regulation as applied in compliance with any direction given under regulation 14.

Directions by the Commission

14. Where the Commission directs the employer of a registered concern to apply the methods prescribed by regulation 8(1) or 11(1) for making a determination in the case of an employee in a manner different from that authorized or required by those regulations, then so long as the direction remains in force—

- (a) the employer shall comply with it; and
- (b) in the case of any employee to whom the direction relates—
 - (i) regulation 8(2) shall not have effect; and
 - (ii) regulations 8(1) and 11(1) shall have effect subject to the direction,for the purposes of preparing any monitoring return.

Interpretation of Part II

15. In this Part—

- (a) any reference to an employee in a registered concern, in relation to any monitoring return prepared in respect of that concern, shall be construed as a reference to a person who was employed in that concern on the date to which the prescribed information in that return about employees must relate by virtue of regulation 6(1);

- (b) any reference to an appointee in a registered concern, in relation to any monitoring return prepared in respect of that concern, shall be construed as a reference to an employee in the concern who filled a vacancy for employment in the period to which the prescribed information in that return about employees must relate by virtue of regulation 6(2);
- (c) any reference to a promotee in a registered concern, in relation to any monitoring return prepared in respect of that concern, shall be construed as a reference to an employee who was promoted within that concern in the period to which the prescribed information in that return about employees must relate by virtue of regulation 6(2);
- (d) any reference to an applicant for employment in a registered concern, in relation to any monitoring return prepared in respect of that concern, shall be construed as a reference to a person who applied to fill a vacancy for employment in that concern in the period to which the prescribed information in that return about such applicants must relate by virtue of regulation 6(3);
- (e) any reference to a former employee in a registered concern to which Article 52(3) or (4) applies, in relation to any monitoring return prepared in respect of that concern, shall be construed as a reference to a person who ceased to be employed in that concern in the period to which the prescribed information in that return about such persons must relate by virtue of regulation 6(4).

PART III

OBTAINING AND RETAINING MONITORING INFORMATION AND OFFENCES

Confidentiality of monitoring information

16.—(1) This regulation applies to—

- (a) information about an employee in a registered concern which is obtained in response to a question asked in pursuance of paragraph 2 of Part I of Schedule 2;
- (b) information about an applicant for employment in a registered concern which is obtained in response to a question asked in pursuance of paragraph 5 of Part II of Schedule 2;
- (c) the determination by an employer of the community to which any employee or applicant for employment or former employee in a registered concern is to be treated as belonging for the purposes of monitoring; and
- (d) information obtained in pursuance of regulation 18(1).

(2) Any person who discloses information which—

- (a) he holds or has held in his capacity as a person who is employed in a registered concern or as the employer; and
- (b) is information to which this regulation applies or has applied,

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

(3) Nothing in this regulation applies to the disclosure of information—

- (a) to the Commission or the Labour Relations Agency; or
- (b) to any person—
 - (i) who is employed in the registered concern in question;
 - (ii) whose services have been made available for the purposes of the concern; or

- (iii) is an official of a trade union, members of which are employed in the concern, if the nature of his duties renders it reasonable for the disclosure to be made to him; or
- (c) for the purposes 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; or
- (d) to the person to whom it relates, whether under regulation 12 or otherwise; or
- (e) where an employee or applicant for employment or former employee to whom the information relates has given his consent in writing to the disclosure.

(4) In paragraph (3)(b) “official” has the same meaning as in the Trade Union and Labour Relations (Northern Ireland) Order 1995⁽⁸⁾ and “trade union” has the same meaning as in the Industrial Relations (Northern Ireland) Order 1992⁽⁹⁾.

(5) It is a defence for a person charged with an offence under paragraph (2) to show that before the disclosure in question was made he had also obtained the information otherwise than in his capacity as an employee in the concern of the employer.

Records about employees and offences in respect of those records

17.—(1) An employer in a registered concern shall retain—

- (a) written information obtained by him (whether in pursuance of these Regulations or otherwise) about an employee in the concern which might be used if any of the methods prescribed by these Regulations for making a determination were applied to that person; and
- (b) a record of the determination made by him in respect of any such person,

until the expiration of three years from the date on which the person to whom the information or determination relates ceases to be employed in the concern.

(2) Any person who, without reasonable excuse, fails to comply with the requirements of this regulation shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.

Information about applicants and offences in respect of that information

18.—(1) An employer in a registered concern shall, for the purposes of Article 54(1), seek to obtain from each applicant for employment in the concern, his surname and other names and his address.

(2) An employer in a registered concern shall retain—

- (a) any information—
 - (i) which he has obtained in pursuance of paragraph (1); or
 - (ii) which he used in applying any of the methods prescribed by these Regulations for making a determination in the case of any applicant for employment in the concern; and
- (b) a record of the determination made by him in respect of any such person as is mentioned in sub-paragraph (a)(ii),

until the expiration of three years from the date of the application of the person to whom the information or determination relates.

⁽⁸⁾ S.I. 1995/1980 (N.I. 12)

⁽⁹⁾ S.I. 1992/807 (N.I. 5)

(3) Any person who without reasonable excuse fails to comply with paragraph (2) shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(4) Any person who—

- (a) knowingly gives false information to another who is seeking to obtain information in pursuance of paragraph (1); or
- (b) knowingly includes any false information in any records kept in pursuance of paragraph (2) (a),

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

Offence of employer serving a return not in accordance with Regulations

19. An employer who, without reasonable excuse, serves on the Commission a monitoring return which is not prepared in accordance with these Regulations or does not contain the prescribed information shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding £10,000.

Offence of giving and including in returns false information

20. If a person—

- (a) knowingly gives any false information to another who, with a view to including any information on a monitoring return to be served on the Commission, is seeking information; or
- (b) without reasonable excuse, knowingly includes any false information in such a monitoring return,

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

Interpretation of Part III

21. In this Part—

- (a) any reference to an applicant for employment in relation to any registered concern means a person who applied to fill a vacancy for employment in that concern whether or not that person is already an employee in that concern; and
- (b) any reference to a former employee in relation to any registered concern means a person who has ceased to be employed in that concern.

Sealed with the Official Seal of the Department of Economic Development on 25th March 1999.

L.S.

G. I. O'Doherty
Assistant Secretary

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SCHEDULE 1

Regulation 5

Prescribed Information

PART I

INFORMATION ABOUT EMPLOYEES

1. In respect of each registered concern, the following information about employees is prescribed—

- (a) whether the concern is one to which Article 52(3) or (4) has applied at any time since the start of the year;
- (b) the address of each premises on or from which, on the date of the monitoring return in question, the activities of the employees of the concern were carried on;
- (c) the number of employees who are—
 - (i) male;
 - (ii) female;
- (d) the number of male employees and the number of female employees whom the employer has treated—
 - (i) as Protestant;
 - (ii) as Roman Catholic;
 - (iii) as if the community to which they belong cannot be determined, under and in accordance with these Regulations;
- (e) the number of male employees and the number of female employees whom the employer has treated—
 - (i) as Protestant;
 - (ii) as Roman Catholic,under and in accordance with regulation 11(1);
- (f) the number of male employees and the number of female employees in the concern who are employed under a contract of apprenticeship whom the employer has treated—
 - (i) as Protestant;
 - (ii) as Roman Catholic;
 - (iii) as if the community to which they belong cannot be determined, under and in accordance with these Regulations;
- (g) the number of male employees and the number of female employees whom the employer has treated as Protestant under and in accordance with these Regulations and whose employment is classified under each of the following major groups of the Standard Occupational Classification published from time to time by the Office of Population Censuses and Surveys that is to say—
 - Managers and Administrators,
 - Professional Occupations,
 - Associate Professional and Technical Occupations,
 - Clerical and Secretarial Occupations,
 - Craft and Related Occupations,

Personal and Protective Service Occupations,
Sales Occupations,
Plant and Machine Operatives,
Other Occupations;

- (h) the number of male employees and the number of female employees whom the employer has treated as Roman Catholic under and in accordance with these Regulations and whose employment is classified under each of the major groups of the Standard Occupational Classification referred to in sub-paragraph (g);
- (i) the number of male employees and the number of female employees whom the employer has treated as if the community to which they belong cannot be determined under and in accordance with these Regulations and whose employment is classified under each of the major groups of the Standard Occupational Classification referred to in sub-paragraph (g);
- (j) the number of employees who work sixteen or more hours weekly (hereinafter referred to as “full-time employees”) who are—
 - (i) male;
 - (ii) female;
- (k) the number of male full-time employees and the number of female full-time employees whom the employer has treated—
 - (i) as Protestant;
 - (ii) as Roman Catholic;
 - (iii) as if the community to which they belong cannot be determined,under and in accordance with these Regulations;
- (l) the number of male full-time employees and the number of female full-time employees whom the employer has treated—
 - (i) as Protestant;
 - (ii) as Roman Catholic,under and in accordance with regulation 11(1);
- (m) the number of male full-time employees and the number of female full-time employees who are employed under a contract of apprenticeship whom the employer has treated—
 - (i) as Protestant;
 - (ii) as Roman Catholic;
 - (iii) as if the community to which they belong cannot be determined,under and in accordance with these Regulations;
- (n) the number of male full-time employees and the number of female full-time employees whom the employer has treated as Protestant under and in accordance with these Regulations and whose employment is classified under each of the major groups of the Standard Occupational Classification referred to in sub-paragraph (g);
- (o) the number of male full-time employees and the number of female full-time employees whom the employer has treated as Roman Catholic under and in accordance with these Regulations and whose employment is classified under each of the major groups of the Standard Occupational Classification referred to in sub-paragraph (g);
- (p) the number of male full-time employees and the number of female full-time employees whom the employer has treated as if the community to which they belong cannot be determined under and in accordance with these Regulations and whose employment is

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- classified under each of the major groups of the Standard Occupational Classification referred to in sub-paragraph (g);
- (q) the number of employees who work less than sixteen hours weekly (hereinafter referred to as “part-time employees”) who are—
 - (i) male;
 - (ii) female;
 - (r) the number of male part-time employees and the number of female part-time employees whom the employer has treated—
 - (i) as Protestant;
 - (ii) as Roman Catholic;
 - (iii) as if the community to which they belong cannot be determined,under and in accordance with these Regulations;
 - (s) the number of male part-time employees and the number of female part-time employees whom the employer has treated—
 - (i) as Protestant;
 - (ii) as Roman Catholic,under and in accordance with regulation 11(1);
 - (t) the number of male part-time employees and the number of female part-time employees in the concern who are employed under a contract of apprenticeship whom the employer has treated—
 - (i) as Protestant;
 - (ii) as Roman Catholic;
 - (iii) as if the community to which they belong cannot be determined,under and in accordance with these Regulations;
 - (u) the number of male part-time employees and the number of female part-time employees whom the employer has treated as Protestant under and in accordance with these Regulations and whose employment is classified under each of the major groups of the Standard Occupational Classification referred to in sub-paragraph (g);
 - (v) the number of male part-time employees and the number of female part-time employees whom the employer has treated as Roman Catholic under and in accordance with these Regulations and whose employment is classified under each of the major groups of the Standard Occupational Classification referred to in sub-paragraph (g); and
 - (w) the number of male part-time employees and the number of female part-time employees whom the employer has treated as if the community to which they belong cannot be determined under and in accordance with these Regulations and whose employment is classified under each of the major groups of the Standard Occupational Classification referred to in sub-paragraph (g).
- (2) In respect of each registered concern the following information about appointees is prescribed—
- (a) the number of appointees who are—
 - (i) male;
 - (ii) female;
 - (b) the number of male appointees and the number of female appointees whom the employer has treated—

- (i) as Protestant;
 - (ii) as Roman Catholic;
 - (iii) as if the community to which they belong cannot be determined, under and in accordance with these Regulations;
- (c) the number of appointees who commenced employment in the concern under contracts of apprenticeship (hereinafter referred to as “apprentices”);
- (d) the number of apprentices who are—
- (i) male;
 - (ii) female;
- (e) the number of male apprentices and the number of female apprentices whom the employer has treated—
- (i) as Protestant;
 - (ii) as Roman Catholic;
 - (iii) as if the community to which they belong cannot be determined, under and in accordance with these Regulations;
- (f) the number of male appointees (other than apprentices), the number of male apprentices, the number of female appointees (other than apprentices) and the number of female apprentices whom the employer has treated as Protestant under and in accordance with these Regulations and whose employment is classified under each of the major groups of the Standard Occupational Classification referred to in paragraph 1(g);
- (g) the number of male appointees (other than apprentices), the number of male apprentices, the number of female appointees (other than apprentices) and the number of female apprentices whom the employer has treated as Roman Catholic under and in accordance with these Regulations and whose employment is classified under each of the major groups of the Standard Occupational Classification referred to in paragraph 1(g); and
- (h) the number of male appointees (other than apprentices), the number of male apprentices, the number of female appointees (other than apprentices) and the number of female apprentices whom the employer has treated as if the community to which they belong cannot be determined under and in accordance with these Regulations and whose employment is classified under each of the major groups of the Standard Occupational Classification referred to in paragraph 1(g).
3. For the purposes of paragraph 2(f) to (h) a person’s employment shall be taken to be that in which he commenced employment in the concern.

PART II

INFORMATION ABOUT PROMOTEEES

4. In respect of each registered concern to which Article 52(3) or (4) applies, the following information about promotees is prescribed—
- (a) the total number of promotees;
 - (b) the number of promotees who are—
 - (i) male;
 - (ii) female;

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- (c) the number of male promotees and the number of female promotees whom the employer has treated—
 - (i) as Protestant;
 - (ii) as Roman Catholic;
 - (iii) as if the community to which they belong cannot be determined, under and in accordance with these Regulations;
- (d) the number of male promotees and the number of female promotees whom the employer has treated—
 - (i) as Protestant;
 - (ii) as Roman Catholic;under and in accordance with regulation 11(1);
- (e) the number of male promotees and the number of female promotees whom the employer has treated as Protestant under and in accordance with these Regulations and whose employment immediately following promotion is classified under each of the major groups of the Standard Occupational Classification referred to in paragraph 1(g);
- (f) the number of male promotees and the number of female promotees whom the employer has treated as Roman Catholic under and in accordance with these Regulations and whose employment immediately following promotion is classified under each of the major groups of the Standard Occupational Classification referred to in paragraph 1(g); and
- (g) the number of male promotees and the number of female promotees whom the employer has treated as if the community to which they belong cannot be determined under and in accordance with these Regulations and whose employment immediately following promotion is classified under each of the major groups of the Standard Occupational Classification referred to in paragraph 1(g).

PART III

INFORMATION ABOUT APPLICANTS FOR EMPLOYMENT

5. In respect of each registered concern the following information about applicants for employment is prescribed—
- (a) the total number of applicants for employment in the concern;
 - (b) the number of applicants for employment who are—
 - (i) male;
 - (ii) female;
 - (c) the number of male applicants for employment and the number of female applicants for employment whom the employer has treated—
 - (i) as Protestant;
 - (ii) as Roman Catholic;
 - (iii) as if the community to which they belong cannot be determined, under and in accordance with these Regulations;
 - (d) the number of male applicants for employment and the number of female applicants for employment whom the employer has treated—
 - (i) as Protestant;
 - (ii) as Roman Catholic,

- under and in accordance with regulation 11(2);
- (e) the number of male applicants for employment and the number of female applicants for employment whom the employer has treated as Protestant under and in accordance with these Regulations and who have applied for vacancies classified under each of the major groups of the Standard Occupational Classification referred to in paragraph 1(g);
 - (f) the number of male applicants for employment and the number of female applicants for employment whom the employer has treated as Roman Catholic under and in accordance with these Regulations and who have applied for vacancies classified under each of the major groups of the Standard Occupational Classification referred to in paragraph 1(g); and
 - (g) the number of male applicants for employment and the number of female applicants for employment whom the employer has treated as if the community to which they belong cannot be determined under and in accordance with these Regulations and who have applied for vacancies classified under each of the major groups of the Standard Occupational Classification referred to in paragraph 1(g).
6. For the purposes of paragraph 5(e) to (g), where an applicant for employment applies for more than one vacancy in a registered concern, the vacancy for which he applied shall be taken to be the first vacancy for which he applied in the period to which information about such an applicant must relate by virtue of regulation 6(3).

PART IV

INFORMATION ABOUT FORMER EMPLOYEES

7. In respect of each registered concern to which Article 52(3) or (4) applies, the following information about former employees is prescribed—
- (a) the total number of former employees of the concern;
 - (b) the number of former employees who are—
 - (i) male;
 - (ii) female;
 - (c) the number of male former employees and the number of female former employees whom the employer has treated—
 - (i) as Protestant;
 - (ii) as Roman Catholic;
 - (iii) as if the community to which they belong cannot be determined, under and in accordance with these Regulations;
 - (d) the number of former employees who immediately before they ceased to be employed in the concern, were employed under a contract of apprenticeship. (hereinafter referred to as “former apprentices”);
 - (e) the number of former apprentices who were—
 - (i) male;
 - (ii) female;
 - (f) the number of male former employees (other than former apprentices), the number of male former apprentices, the number of female former employees (other than former apprentices) and the number of female former apprentices whom the employer has treated—

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- (i) as Protestant;
 - (ii) as Roman Catholic;
 - (iii) as if the community to which they belong cannot be determined, under and in accordance with these Regulations;
 - (g) the number of male former employees (other than former apprentices), the number of male former apprentices, the number of female former employees (other than former apprentices) and the number of female former apprentices whom the employer has treated as Protestant under and in accordance with these Regulations and whose employment is classified under each of the major groups of the Standard Occupational Classification referred to in paragraph 1(g);
 - (h) the number of male former employees (other than former apprentices), the number of male former apprentices, the number of female former employees (other than former apprentices) and the number of female former apprentices whom the employer has treated as Roman Catholic under and in accordance with these Regulations and whose employment is classified under each of the major groups of the Standard Occupational Classification referred to in paragraph 1(g); and
 - (i) the number of male former employees (other than former apprentices), the number of male former apprentices, the number of female former employees (other than former apprentices) and the number of female former apprentices whom the employer has treated as if the community to which they belong cannot be determined under and in accordance with these Regulations and whose employment is classified under each of the major groups of the Standard Occupational Classification referred to in paragraph 1(g).
8. For the purposes of paragraph 7(g) to (i) a person's employment shall be taken to be that on his last day of employment in the concern.

SCHEDULE 2

Regulation 8(1) and 9(a)

PART I

PRINCIPAL METHOD OF DETERMINING THE COMMUNITY TO WHICH EMPLOYEES BELONG

1. Where the employer has a written statement made by an employee that he is Protestant or that he is Roman Catholic, the employer shall treat him as belonging to that community.
2. Where the employer does not have such a statement from an employee he shall ask that employee in writing whether he is Protestant or Roman Catholic or whether he is neither Protestant nor Roman Catholic.
3. Where in response to such a question, the employee makes a statement in writing that he is Protestant or that he is Roman Catholic, the employer shall treat him as belonging to that community.
4. Where the employer has no such statement from the employee as is mentioned in paragraph 1 and the employee, in response to the question asked under paragraph 2—
 - (a) fails to make a written statement; or
 - (b) states in writing that he is neither Protestant or Roman Catholic;

he shall make no determination in respect of that employee under the method prescribed by this Schedule.

PART II

PRINCIPAL METHOD OF DETERMINING THE COMMUNITY TO WHICH APPLICANTS BELONG

5.—(1) The employer shall, in writing, ask each applicant whether he is Protestant or Roman Catholic or whether he is neither Protestant nor Roman Catholic.

(2) The question referred to in sub-paragraph (1) shall be—

- (a) included on or sent with any application form supplied by the employer for the purpose of the application; or
- (b) sent to the applicant separately by post and accompanied by a pre-paid envelope addressed to the employer.

6. Where in response to the question put to him under paragraph 5, the applicant sends to the employer a statement in writing that he is Protestant or that he is Roman Catholic, the employer shall treat him as belonging to that community.

7. Where in response to the question asked under paragraph 5, the applicant—

- (a) fails to send the employer a written statement; or
- (b) sends him a written statement that he is neither Protestant nor Roman Catholic,

the employer shall make no determination in respect of that applicant under the method prescribed by this Schedule.

SCHEDULE 3

Regulation 11(4)

Residuary Methods of Determining the Community to which Persons belong

1. For the purposes of regulation 11(1) to (3)—

- (a) a person's surname or other names will tend to show that he has a connection with a particular community if it is considerably more likely that a person belonging to that community would have such names than a person belonging to the other community;
- (b) a person's address will tend to show that he has a connection with a particular community if it is considerably more likely that a person belonging to that community would reside at that address than a person belonging to the other community;
- (c) a school that a person attended will tend to show that he has a connection with the Protestant community in Northern Ireland if (whether it was in Northern Ireland or elsewhere) it was, at the time he attended it, more likely to be attended by persons who belonged to Protestant denominations than by persons who did not;
- (d) a school that a person attended will tend to show that he has a connection with the Roman Catholic community in Northern Ireland if (whether it was in Northern Ireland or elsewhere) it was, at the time he attended it, more likely to be attended by persons of the Roman Catholic faith than by persons who were not;
- (e) a course such as is mentioned in regulation 11(3)(d) will tend to show that the person undertaking it has a connection with a particular community if it is considerably more likely that it would be undertaken by a person belonging to that community than a person belonging to the other community;
- (f) any sporting or other leisure pursuit or interest of a person will tend to show that he has a connection with a particular community if it is considerably more likely that a

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- person belonging to that community would have those pursuits or interests than a person belonging to the other community;
- (g) any club, society or other organisation to which a person belongs will tend to show that he has a connection with a particular community if it is considerably more likely that a person belonging to that community would belong to such a club, society or organisation than a person belonging to the other community;
 - (h) the occupation as a clergyman or minister of any religious denomination will tend to show that the person nominating him as a referee—
 - (i) has a connection with the Protestant community in Northern Ireland if the referee so nominated is a clergyman or minister of any Protestant denomination; or
 - (ii) has a connection with the Roman Catholic community in Northern Ireland if the referee so nominated is a clergyman of the Roman Catholic Church;
 - (i) the occupation as a teacher in a particular school of a referee nominated by any person will tend to show that the person nominating him has a connection with a particular community if it is considerably more likely that a person belonging to that community would nominate a referee who was a teacher in that school than a person belonging to the other community.

2. For the purposes of regulation 11(1)(b) and (2)(b), where any of the relevant information about a person tends to show a connection between that person and a particular community, the less probable it is that that information would tend to show that connection in the case of a person who does not belong to that community, the stronger shall that connection be regarded.

EXPLANATORY NOTE

(This note is not part of the Regulations.)

These Regulations revoke and remake with amendments the provisions of the Fair Employment (Monitoring) Regulations (Northern Ireland) 1989 as amended.

Part VII of the Fair Employment and Treatment (Northern Ireland) Order 1998 (“the Order”) imposes duties on certain employers in Northern Ireland in respect of their workforces. The Order repealed and replaced the Fair Employment (Northern Ireland) Acts 1979 to 1995 (“the former legislation”). Article 47 of the Order requires the Equality Commission (formerly the Fair Employment Commission) to keep a register of trades, businesses and other activities (whether carried on for profit or not) in which people are employed. The employer in any of those concerns is required to apply for registration at the end of any week if in that week he employs more than ten people working more than sixteen hours a week (“full-time employees”).

This duty does not apply to any person specified in the Fair Employment (Specification of Public Authorities) Order (Northern Ireland) 1989 (as amended) as a “public authority” for the purposes of Articles 52 to 61 of the Order or to any Minister of the Crown, Northern Ireland Minister, a body created by a statutory provision or the holder of any office so created.

Articles 52 to 54 of the Order make provision for monitoring the workforce of those employers whose concerns are registered under Article 47 of the Order and those authorities who are “public authorities” for the purposes of those Articles. Under Article 52(1) of the Order such employers are required to prepare and serve for each year on the Commission a monitoring return to enable the composition of the workforce to be ascertained, that is the number of employees who belong to the

Protestant community and the number of employees who belong to the Roman Catholic community. In addition, such employers are required to serve a monitoring return to enable the composition of applicants for employment to be ascertained. Article 52(3) and (4) of the Order requires a monitoring return from each public authority and the employer in each registered concern with more than 250 employees to enable the composition of those ceasing to be employed in the concern to be ascertained. The definition of “employee” in Article 69(1) of the Order includes for this purpose all employees including those working less than 16 hours a week (“part-time employees”).

Under the former legislation, only employers in public authorities and in registered concerns with more than 250 full-time employees were required to include in the monitoring return information about applicants for employment. There was no requirement for any employer to include in a monitoring return information about former employees. In addition the definition of “employee” for the purposes of the former legislation excluded those working less than sixteen hours weekly.

Part I of the Regulations contains introductory provisions.

1. *Regulation 3* revokes the Fair Employment (Monitoring) Regulations (Northern Ireland) 1989 and the Fair Employment (Monitoring) (Amendment) Regulations (Northern Ireland) 1991 but provides that those Regulations shall continue to apply to any monitoring return prepared for a monitoring year which begins before 1st January 2001.

2. *Regulation 4* applies these Regulations to any monitoring return to be prepared for any monitoring year beginning on or after 1st January 2001.

Part II relates to the contents and serving of monitoring returns.

3. *Regulation 5 and Schedule 1* prescribe the information which is to be contained in a monitoring return. Monitoring returns must identify part- and full-time workers separately. Returns from each public authority and the employer in each registered concern with more than 250 employees must also include details of promotees. For the purposes of monitoring, a promotee is a person who has moved from one situation to another within a concern as a result of which he has received an increase in pay but a person who was appointed to a situation for which persons not already employed in the concern could apply is not included.

4. *Regulation 6* prescribes the date (in the case of employees) and the period (in the case of applicants, leavers and promotees) to which the prescribed information must relate.

5. *Regulation 7* prescribes the period during which the information is to be obtained.

6. *Regulations 8, 9 and 11 and Schedules 2 and 3* deal with the methods by which an employer can determine the community to which an employee or applicant belongs.

- (a) In both cases an employer is required to apply the principal method to all employees and applicants. This method is set out in Part I of Schedule 2 for employees and Part II of Schedule 2 for applicants. It provides for the community to which a person is treated as belonging to be determined by reference to his answer to a direct question.
- (b) When the principal method produces no determination in any case, the employer has the option of applying the residuary methods (prescribed by regulation 11 and Schedule 3) in individual cases.
- (c) Where he chooses not to do so or where this method produces no determination, the employee or applicant is to be treated as if the community to which he belongs cannot be determined.
- (d) Where, in the case of employees only, a determination in respect of an employee is made under the principal method, that determination shall apply to him for all future monitoring returns unless the Commission gives the direction mentioned in regulation 14.

7. *Regulation 10* deals with the determination of the community to which a former employee belongs.

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8. *Regulation 12*, in the case of employees only, deals with disclosure of information to the person to whom it relates.

9. *Regulation 13* provides a means for an employee to have corrected any inaccurate determination of the community to which he belongs.

10. *Regulation 14* makes provision for the Commission to direct the employer to apply any of the methods prescribed by the Regulations for making a determination in the case of an employee in a manner different from that required by these Regulations.

Part III of the Regulations relates to the obtaining and retaining of information and creates various offences.

11. *Regulation 16* protects from disclosure, subject to certain exceptions—

- (a) information given by employees and applicants in response to a question asked by their employers, or prospective employers, if the information is obtained and used for monitoring purposes; and
- (b) any determination made by an employer of the community to which a person is to be treated as belonging for the purposes of monitoring.

12. *Regulation 17* requires an employer to retain certain information that he has obtained about his employees and a record of his determination in respect of each employee for a period of three years from the date when the person to whom the information relates ceased to be employed by him. Failure to comply with these requirements is an offence for which the maximum penalty is a fine not exceeding level 5 on the standard scale (currently £5,000).

13. *Regulation 18(1)* requires an employer in a registered concern to seek to obtain certain information from an applicant to his concern. Giving false information to an employer seeking such information is an offence for which the maximum penalty is a fine not exceeding level 5 on the standard scale.

14. *Regulation 18(2) to (4)* requires an employer to retain information which he has obtained about an applicant whom he has monitored and a record of his determination in respect of each applicant for a period of three years from the date of the application. Failure to comply with these requirements or the inclusion of false information in the records of information obtained under regulation 18(1) is an offence for which the maximum penalty is a fine not exceeding level 5 on the standard scale.

15. Service, by an employer, on the Commission of a monitoring return which is not prepared in accordance with these Regulation or does not contain the prescribed information is an offence for which the maximum penalty is a fine not exceeding £10,000 (regulation 19).

16. The giving of false information to another, who with a view to including any information on a monitoring return to be served on the Commission, is seeking information or the inclusion of any false information in such a monitoring return, is an offence for which the maximum penalty is a fine not exceeding level 5 on the standard scale (regulation 20).

Under Article 52(5) of the Order it is an offence, for which the maximum penalty is a fine not exceeding level 5 on the standard scale, if a monitoring return for a year in respect of any registered concern is not served on the Commission before the time for serving the return expires and, if the failure to submit the return continues after conviction, it is a further offence for which the penalty is a fine not exceeding one tenth of level 5 on the standard scale for each day on which the failure continues.

The Standard Occupational Classification mentioned in paragraph 1(g) of Schedule 1 as published from time to time by the Office of Population Censuses and Surveys is obtainable from the Stationery Office Bookshop, 16 Arthur Street, Belfast BT1 4GD and through good booksellers.

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