
STATUTORY RULES OF NORTHERN IRELAND

1999 No. 148

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

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
- (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(1),

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(2);
 - (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).