

1989 No. 436

FAIR EMPLOYMENT

Fair Employment (Monitoring) Regulations
(Northern Ireland) 1989

Made 20th November 1989

Coming into operation 1st January 1990

*To be laid before Parliament under paragraph 3(3) of
Schedule 1 to the Northern Ireland Act 1974*

The Department of Economic Development, in exercise of the powers conferred on it by sections 27(10), 28, 29 and 47(5)(a) of the Fair Employment (Northern Ireland) Act 1989(b), and of every other power enabling it in that behalf, after consultation with the Fair Employment Agency for Northern Ireland(c), hereby makes the following Regulations:—

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(a) See the definition of "the Department" as read with section 57(1) of the Fair Employment (Northern Ireland) Act 1976 (c. 25); the Department of Manpower Services was renamed the Department of Economic Development by S.I. 1982/846 (N.I. 11) Article 3

(b) 1989 c. 32

(c) See section 1(3)

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PART I

INTRODUCTION AND THE SCHOOLS LIST

Citation and commencement

1. These Regulations may be cited as the Fair Employment (Monitoring) Regulations (Northern Ireland) 1989 and shall come into operation on 1st January 1990.

Interpretation

2.—(1) The Interpretation Act (Northern Ireland) 1954(a) shall apply to these Regulations as it applies to a Measure of the Northern Ireland Assembly.

(a) 1954 c. 33 (N.I.)

(2) Any reference in these Regulations to a numbered section shall be construed as a reference to the section bearing that number in the Fair Employment (Northern Ireland) Act 1989.

(3) In these Regulations expressions which are also used in Part II of the Fair Employment (Northern Ireland) Act 1989 shall, unless the contrary intention appears, have the same meaning as in that Part.

(4) In these Regulations—

“classify” in relation to a school, means classify that school as Protestant or Roman Catholic for the purposes of the Schools List;

“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(a), is treated for the purposes of sections 27 to 37 as an employee of the authority; and “employment” and “employed” shall be interpreted accordingly;

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

“primary education” and “secondary education” have the same meaning as in Article 2(2) of the Education and Libraries (Northern Ireland) Order 1986(b);

“primary school” means a school in Northern Ireland providing only primary education;

“principal method” means the method prescribed by Part I, the method prescribed by Part II or the method prescribed by Part III, of Schedule 2 for making a determination in respect of employees;

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

“Public authority” means a person who, by virtue of the Fair Employment (Specification of Public Authorities) Order (Northern Ireland) 1989 is such an authority for the purposes of sections 27 to 37;

“recognized award” has the meaning assigned to it by Article 3(2) of the Education (Unrecognised Degrees) (Northern Ireland) Order 1988(c);

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

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

“Schools List” has the meaning assigned to it by regulation 3(1) and any reference to the Schools List shall be construed as a reference to that List as published for the time being; and

“secondary school” means a school in Northern Ireland providing only secondary education or both primary and secondary education.

(a) S.R. 1989 No. 475

(b) S.I. 1986/594 (N.I. 3)

(c) S.I. 1988/89 (N.I. 22)

Schools list

3.—(1) The Commission shall maintain a list (in these Regulations referred to as “the Schools List”) of every primary school and every secondary school and shall publish the list from time to time.

(2) The Schools List shall, for the purposes of monitoring, classify each school as—

(a) Protestant, where in the opinion of the Commission it is attended wholly or mainly by those who are Protestant; or

(b) Roman Catholic, where in the opinion of the Commission it is attended wholly or mainly by those who are Roman Catholic,

and shall list any other school as unclassified.

4. For the purposes of these Regulations “The Classification of Schools for Monitoring Purposes” published by the Department in September 1987 (as amended by Addendum No. 1 published in September 1988) shall be the first Schools List.

PART II

MONITORING RETURNS

Prescribed information

5.—(1) For the purposes of section 27(1) a monitoring return shall contain the information prescribed by Part I of Schedule 1.

(2) Without prejudice to the generality of paragraph (1), a monitoring return in respect of a registered concern to which section 27(3) or (4) applies shall, for the purposes of those sub-sections, include the information prescribed by Part II of Schedule 1.

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 that information is to be prepared.

(2) The prescribed information about applicants for employment in a registered concern to which section 27(3) or (4) applies shall relate to—

(a) in the case of the first year for which a monitoring return is to be prepared in respect of that concern, the first 2 months of that year; and

(b) in the case of any subsequent year, the 12 months ending on the first day of that year,

and in relation to each year those shall be the periods respectively prescribed for the purposes of determining under section 27(4) whether that sub-section applies to a registered concern.

Period within which prescribed information shall be obtained

7.—(1) Subject to regulation 12, 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 3 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 in a registered concern to which section 27(3) or (4) applies shall (unless otherwise required by Part II of Schedule 1) be obtained—
- (a) in the case of the first year for which a monitoring return is to be prepared in respect of that concern, within the first 3 months of that year; and
 - (b) in the case of any subsequent year, within the first 2 months after the date of his application.
- (3) In this regulation “obtain” means obtain in accordance with these Regulations.

Principal methods of making a determination

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

- (a) make a determination in respect of the employees in the concern by choosing one of the principal methods and applying it to all of them; or
 - (b) where that method does not enable him to make a determination in the case of any employee and the employer does not treat him as belonging to a community under regulation 10(1), treat him as if the community to which he belongs cannot be determined.
- (2) Where—
- (a) for the purpose of preparing any monitoring return in respect of a registered concern, an employer under and in accordance with paragraph (1) treats an employee as belonging to a particular community; and
 - (b) that information is contained in a monitoring return served on the Commission under section 27(1),

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

9. For the purpose of preparing a monitoring return in respect of a registered concern to which section 27(3) or (4) applies, an employer shall—

- (a) make a determination in respect of applicants for employment in the concern by choosing the method prescribed by Part I, the method prescribed by Part II or the method prescribed by Part III, of Schedule 3 for the purpose and applying it to all of them; or
- (b) where that method does not enable him to make a determination in the case of any such applicant and the employer does not treat him as belonging to a community under regulation 10(2), treat him as if the community to which he belongs cannot be determined.

Residuary methods of making a determination

10.—(1) Where an employee in a registered concern who falls within regulation 8(1)(b) has provided the 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—

- (a) treat that employee as belonging to the community with which the information tends to show he has a connection; or
- (b) if the information tends to show 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, in the case of a registered concern to which section 27(3) or (4) applies, an applicant for employment in that concern who falls within regulation 9(b) has provided the employer, in writing, with any relevant information about himself then, notwithstanding that sub-paragraph, the employer may for the purpose of preparing a monitoring return—

- (a) treat that applicant as belonging to the community with which the information tends to show he has a connection; or
- (b) if the information tends to show 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 paragraphs (1) and (2) 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 recognised award or any examination conducted by the Department of Education for Northern Ireland under Article 110 of the Education and Libraries (Northern Ireland) Order 1986;
- (e) his sporting or other leisure pursuits or interests;
- (f) the clubs, societies or other organizations to which he belongs; or
- (g) the occupation as a clergyman or minister of a particular religious denomination or as a teacher in a particular school, of any referee nominated by him when he applied for his employment,

if that information tends to show that he has a connection with a particular community.

(4) Schedule 4 shall have effect for the purposes of paragraphs (1) to (3).

Disclosure to employees

11.—(1) An employer shall, not less than 2 weeks before serving a monitoring return on the Commission, give to each employee to whom this regulation applies a notice in writing which—

- (a) discloses to the employee—
 - (i) the community to which he is to be treated as belonging for the purposes of that return; or

(ii) that he is to be treated as if that community cannot be determined for those purposes,

as the case may be; and

(b) contains an explanation of that treatment which fulfils the requirements of paragraph (2).

(2) The explanation referred to in paragraph (1)(b) shall include—

(a) a description of the principal method applied in order to make a determination in the case of the employee concerned; and

(b) all the information about the employee which was used in applying that method.

(3) 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 and in accordance with one of the principal methods; or

(b) under regulation 8(1)(b) as if the community to which he belongs cannot be determined.

(4) In this regulation and regulation 12 “principal method” includes such a method which was applied in a manner which was different to that required by these Regulations but which complied with a direction of the Commission.

Correcting inaccuracies

12.—(1) Where it appears to an employee to whom a notice was given under regulation 11(1) that, from the explanation contained in that notice, a piece of materially inaccurate information about him was used in applying the principal method used for making a determination in his case, he may within 7 days from that explanation being given to him inform the employer of that inaccuracy.

(2) Where an employee notifies an employer under paragraph (1) of any inaccuracy such as is mentioned in that paragraph, the employer shall, for the purposes of the monitoring return concerned, treat him in the way he would have been treated if, in applying the principal method in question, the employer had—

(a) disregarded the inaccurate piece of information; and

(b) if available, used accurate information instead thereof.

Directions by the Commission

13.—(1) Where the Commission directs an employer to apply to any employee any of the methods prescribed by regulations 8(1) or 10(1) for making a determination in a manner different to that authorized or required by those regulations, then so long as that direction remains in force—

(a) the employer shall comply with it; and

(b) in the case of any employee to whom that direction relates—

(i) regulation 8(2) shall not have effect; and

(ii) regulations 8(1) and 10(1) shall have effect subject to the direction,

for the purposes of preparing any monitoring return.

*Interpretation of Part II***14.** 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 a date to which the prescribed information about such persons contained in that return must relate by virtue of regulation 6(1); and
- (b) any reference to an applicant for employment in a registered concern to which section 27(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 applied to fill a vacancy for employment in the concern during a period to which the prescribed information about such persons included in that return must relate by virtue of regulation 6(2).

PART III

OBTAINING AND RETAINING MONITORING INFORMATION AND OFFENCES

Records about employees and offences in respect of those records

15.—(1) Where an employer has obtained written information about any person employed in the registered concern—

- (a) which (whether it was obtained in pursuance of these Regulations or otherwise) might be used if any of the methods prescribed by these Regulations for making a determination in the case of such a person were applied to him; or
- (b) as to the community to which that person is to be treated as belonging for the purposes of any monitoring return,

the employer shall retain that information for the period prescribed by paragraph (2).

(2) The information referred to in paragraph (1) shall be retained by the employer until the expiration of 3 years from the date when the person to whom it relates ceased to be employed in the concern.

(3) 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 £2,000.

Information about applicants and offences in respect of that information

16.—(1) In the case of any registered concern, the employer shall, for the purposes of section 29(1), seek to obtain—

- (a) from each person applying to fill vacancies for employment in the concern (whether or not section 27(3) or (4) has effect in respect of his application), his surname and other names and his address; and
- (b) from each person applying to fill vacancies for employment in the concern where neither section 27(3) nor (4) has effect in respect of his application—

- (i) the name and address of all the primary and secondary schools attended by him;
- (ii) the name and address of the primary school attended by him for the longest period of time; or
- (iii) a statement as to whether he was Protestant or Roman Catholic or belonged to neither community.

(2) An employer shall retain any information—

- (a) which he obtained in pursuance of paragraph (1);
- (b) which he used in applying any of the methods prescribed by these Regulations for making a determination in the case of any person applying to fill a vacancy for employment in the concern;
- (c) as to the community to which that person was treated as belonging for the purposes of any monitoring return,

until the expiration of 3 years from the date of the application of the person to whom the information relates.

(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 £2,000.

(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 £2,000.

General offences

17. 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.

18. 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 £2,000.

Sealed with the Official Seal of the Department of Economic Development on 20th November 1989.

(L.S.)

D. C. Gowdy

Under Secretary

Prescribed Information

PART I

INFORMATION ABOUT EMPLOYEES

1. In respect of each registered concern, the following information is prescribed, that is to say—

- (a) whether the concern is one to which section 27(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 he or she belongs 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 10(1);
- (f) the number of male employees and the number of female employees in the concern who are employed under a contract of apprenticeship and whom the employer has treated—
 - (i) as Protestant;
 - (ii) as Roman Catholic;
 - (iii) as if the community to which he or she belongs 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 as specified in the Index for Classifying Job Titles published by the Department in December 1989, that is to say—
 - managers and administrators
 - professional occupations
 - associate professional and technical occupations
 - clerical and secretarial occupations
 - crafts and skilled manual 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 as 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 he or she belongs 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 as referred to in sub-paragraph (g).

PART II

INFORMATION ABOUT APPLICANTS FOR EMPLOYMENT

2. In respect of each registered concern to which section 27(3) or (4) applies, the following information is prescribed, that is to say—

- (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 he or she belongs 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 10(2);
- (e) the number of applicants for employment who, on or before the date of the monitoring return in question, commenced employment in the concern other than those who so commenced employment under a contract of apprenticeship;
- (f) the number of those persons referred to in sub-paragraph (e) (hereinafter referred to as “appointees”) who are—
 - (i) male;
 - (ii) female;
- (g) the number of male appointees and the number of female appointees whom (as applicants for employment in the concern) the employer has treated—
 - (i) as Protestant;
 - (ii) as Roman Catholic;

- (iii) as if the community to which he or she belongs cannot be determined, under and in accordance with these Regulations;
- (h) the number of applicants for employment who, on or before the date of the monitoring return in question, commenced employment in the concern under a contract of apprenticeship (hereinafter referred to as "apprentices");
- (i) the number of apprentices who are—
 - (i) male;
 - (ii) female;
- (j) the number of male apprentices and the number of female apprentices whom (as applicants for employment in the concern) the employer has treated—
 - (i) as Protestant;
 - (ii) as Roman Catholic;
 - (iii) as if the community to which he or she belongs cannot be determined, under and in accordance with these Regulations;
- (k) the number of male appointees and apprentices and the number of female appointees and apprentices whom (as applicants for employment in the concern) the employer 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 as referred to in paragraph 1(g) of Part I;
- (l) the number of male appointees and apprentices and the number of female appointees and apprentices whom (as applicants for employment in the concern) the employer 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 as referred to in paragraph 1(g) of Part I;
- (m) the number of male appointees and apprentices and the number of female appointees and apprentices whom (as applicants for employment in the concern) the employer has treated as if the community to which he or she belongs 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 as referred to in paragraph 1(g) of Part I.

3. For the purposes of paragraphs 2(k) to (m) a person's employment shall be taken to be that in which he commenced employment in the concern.

Principal Methods of Determining the Community to which Employees belong**PART I****THE FIRST SCHOOLS LIST METHOD**

1. The employer shall seek to discover the primary school which each employee attended for the longest period of time by—

- (a) consulting any records retained by him (whether in pursuance of these Regulations or otherwise) relating to that employee; or
- (b) asking him in writing to disclose that school in writing.

2. Where in accordance with paragraph 1 the employer discovers the primary school attended by an employee for the longest period of time, he shall determine that that employee—

- (a) is to be treated as Protestant, where the school is classified as Protestant; and
- (b) is to be treated as Roman Catholic, where the school is classified as Roman Catholic.

3. Subject to paragraph 2, the employer shall not make a determination in respect of an employee under the method prescribed by this Part.

PART II**THE SECOND SCHOOLS LIST METHOD**

1. The employer shall seek to discover all the primary and secondary schools attended by each employee by—

- (a) consulting any records retained by him (whether in pursuance of these Regulations or otherwise) relating to that employee; or
- (b) asking him in writing to disclose in writing each such school attended by him.

2. Where the employer discovers the primary school attended by an employee, he shall determine that that employee—

- (a) is to be treated as Protestant, where the school is classified as Protestant; or
- (b) is to be treated as Roman Catholic, where the school is classified as Roman Catholic.

3. Where the employer discovers that an employee attended more than one primary school and at least one of those schools is classified as Protestant and none as Roman Catholic, he shall treat that employee for the purposes of this Part as if he attended a school classified as Protestant.

4. Where the employer discovers that an employee attended more than one primary school and at least one of those schools is classified as Roman Catholic and none as Protestant, he shall treat that employee for the purposes of this Part as if he attended a school classified as Roman Catholic.

5. Where the employer is unable to discover any primary school attended by an employee which is classified as either Protestant or Roman Catholic or where he has discovered that an employee attended both primary schools classified as Protestant and primary schools classified as Roman Catholic but he has, in either case, discovered the secondary school attended by the employee, he shall determine that that employee—

- (a) is to be treated as Protestant where the secondary school is classified as Protestant; or
- (b) is to be treated as Roman Catholic, where the secondary school is classified as Roman Catholic.

6. In a case to which paragraph 5 applies and—

- (a) the employer discovers that the employee attended more than one secondary school and at least one of those schools is classified as Protestant and none as Roman Catholic, he shall treat that employee for the purposes of this Part as if he attended a secondary school classified as Protestant; or
- (b) the employer discovers that the employee attended more than one secondary school and at least one of those schools is classified as Roman Catholic and none as Protestant, he shall treat that employee for the purposes of this Part as if he attended a secondary school classified as Roman Catholic.

7. Subject to paragraphs 2 to 6, the employer shall not make a determination in respect of an employee under the method prescribed by this Part.

8. In this Part “discover” means discover in accordance with paragraph 1.

PART III

THE DIRECT QUESTION METHOD

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 nor Roman Catholic, he shall make no determination in respect of that employee under the method prescribed by this Part.

Principal Methods of Determining the Community to which Applicants for Employment belong

PART I

THE FIRST SCHOOLS LIST METHOD

- 1.—(1) The employer shall, in writing, ask each applicant for employment to disclose the primary school that he attended for the longest period of time.
 - (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 purposes of the application; or
 - (b) sent to the applicant separately by post and accompanied by a pre-paid envelope addressed to the employer.
2. Where, in accordance with paragraph 1 the employer discovers the primary school attended by an applicant for employment for the longest period of time, he shall determine that that applicant—
 - (a) is to be treated as Protestant, where the school is classified as Protestant; and
 - (b) is to be treated as Roman Catholic, where the school is classified as Roman Catholic.
3. Subject to paragraph 2, the employer shall not make a determination in respect of an applicant for employment under the method prescribed by this Part.

PART II

THE SECOND SCHOOLS LIST METHOD

- 1.—(1) The employer shall, in writing, ask each applicant for employment to disclose all the primary and secondary schools that he attended.
 - (2) The request referred to in sub-paragraph (1) shall be—
 - (a) included on or sent with any application form supplied by the employer for the purposes of the application; or
 - (b) sent to the applicant separately by post and accompanied by a pre-paid envelope addressed to the employer.
2. For the purposes of this Part, paragraphs 2 to 8 of Part II of Schedule 2 shall apply to an applicant for employment as they apply to an employee as if in paragraph 8 for a reference to paragraph 1 of that Part there were substituted a reference to paragraph 1 of this Part.

PART III

THE DIRECT QUESTION METHOD

- 1.—(1) The employer shall, in writing, ask each applicant for employment 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.

2. Where in response to the question sent to him under paragraph 1, the applicant for employment sends 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.

3. Where in response to the question asked under paragraph 1 the applicant for employment—

- (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 Part.

The Residuary Methods of Determining the Community to which Persons belong

1. For the purposes of regulation 10(1) to (3)—

- (a) a person's surname or other names will tend to show 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 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 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;
- (d) a school that a person attended will tend to show 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;
- (e) a course such as is mentioned in regulation 10(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 he has a connection with a particular community if it is considerably more likely that a 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 organization 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 organization 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—
 - (i) has a connection with the Roman Catholic community in Northern Ireland if the referee so nominated is a clergyman of the Roman Catholic church; or
 - (ii) has a connection with the Protestant community in Northern Ireland if the referee so nominated is a clergyman or minister of any Protestant denomination;
- (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 10(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 actually belong to that community, the stronger shall that connection be regarded.

EXPLANATORY NOTE

(This note is not part of the Regulations.)

Part II of the Fair Employment (Northern Ireland) Act 1989 (“the Act”) imposes new duties on certain employers in Northern Ireland in respect of their workforce. Section 22 of the Act provides for the Fair Employment Commission (“the 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 these concerns is required to apply for registration at the end of any week, if in that week he employs—

- (a) in the first 2 years after the Act comes into force, more than 25 people;
- or
- (b) after that, more than 10 people.

This duty does not, however, apply to any person specified in the Fair Employment (Specification of Public Authorities) Order (Northern Ireland) 1989 as a “public authority” for the purposes of sections 27 to 37 of the Act or to any Minister of the Crown, head of a Northern Ireland department, a body created by a statutory provision or the holder of any office so created.

Sections 27 to 30 of the Act make provision for monitoring the workforce of those employers whose concerns are registered under section 22 and those employers who are “public authorities” for the purposes of those sections. Under section 27(1) of the Act such employers are required to prepare and serve for each year on the Commission a return (referred to as a “monitoring return”) to enable the composition of the workforce to be ascertained, that is to say the number who belong to the Protestant community and the number who belong to the Roman Catholic community. In addition each public authority and the employer of each registered concern in which more than 250 employees are employed is required to serve a monitoring return to enable the composition of applicants for employment to be ascertained.

These regulations are made for, inter alia, the purposes of section 27. Part I contains certain introductory provisions. In addition it requires the Commission to maintain a list classifying schools in Northern Ireland as either belonging to the Protestant community or the Roman Catholic community in Northern Ireland or listing them as belonging to neither.

In Part II of the Regulations—

1. Regulation 5 and Schedule 1 prescribe the information which is to be contained in a monitoring return.

2. Regulation 6 prescribes the date (in the case of employees) and the period (in the case of applicants for employment) to which the prescribed information must relate.
3. Regulation 7 prescribes the period during which the information is to be obtained.
4. Regulations 8 to 10 and Schedules 2 to 4 deal with the methods by which an employer can determine the community to which an employee or applicant for employment belongs—
 - (a) In both cases an employer is required to choose one of the principal methods and apply it to all employees or applicants for employment, as the case may be. These principal methods are set out in Schedules 2 and 3. They provide for the community to which a person is treated as belonging to be determined either by reference to the school he attended or by reference to his answer to a direct question.
 - (b) When the method so chosen does not produce a determination in any case the employer has the option of applying the residuary method (prescribed by regulation 10 and Schedule 4) 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 a determination in respect of an employee only is made under one of the principal methods, that determination shall apply to him for all future monitoring returns unless the Commission gives the direction mentioned in regulation 13.
5. Regulations 11 and 12, again in the case of employees only, deal with disclosure of information to the person to whom it relates and the correction of factual errors.
6. Regulation 13 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 to that required by these Regulations.

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

7. Regulation 15 requires an employer to retain certain information that he has obtained about his employees for a period of 3 years from the date when the person to whom the information relates ceased to be employed by him. Failure to comply with those requirements is an offence for which the maximum penalty is a fine not exceeding £2,000.

8. Regulation 16(1) requires an employer to seek to obtain certain information from certain applicants for employment in his concern, even if he is not required to monitor such applicants. Giving false information to an employer seeking to obtain such information is an offence for which the maximum penalty is a fine not exceeding £2,000.
9. Regulation 16(2) requires an employer to retain that information, and other information which the employer has obtained about applicants for employment whom he has monitored, for a period of 3 years from the date of their application. Failure to comply with these requirements or the inclusion of false information in the records of information obtained under regulation 16(1) is an offence for which the maximum penalty is a fine not exceeding £2,000.
10. Service, by an employer, on the Commission of a monitoring return which is not prepared in accordance with these Regulations or does not contain the prescribed information is an offence for which the maximum penalty is a fine not exceeding £10,000 (regulation 17).
11. 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 £2,000 (regulation 18).

Under section 27(5) of the Act it is an offence, for which the maximum penalty is a fine not exceeding £2,000, 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 £200 for each day on which the failure continues.

“The Classification of Schools for Monitoring Purposes” and the “Index for Classifying Job Titles” are both available from the Department of Economic Development at Netherleigh, Massey Avenue, Belfast BT4 2JP.