

1991 No. 324

FAIR EMPLOYMENT

Fair Employment (Monitoring) (Amendment) Regulations
(Northern Ireland) 1991

Made 24th July 1991

Coming into operation 25th August 1991

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(a), 29(a) and 47(5)(b) of the Fair Employment (Northern Ireland) Act 1989(c), 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:—

Citation and commencement

1. These Regulations may be cited as the Fair Employment (Monitoring) (Amendment) Regulations (Northern Ireland) 1991 and shall come into operation on 25th August 1991.

Interpretation

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

(2) In these Regulations “the 1989 Regulations” means the Fair Employment (Monitoring) Regulations (Northern Ireland) 1989(e).

Confidentiality of monitoring information

3.—(1) In the 1989 Regulations at the beginning of Part III there shall be inserted the following regulation—

“Confidentiality of monitoring information

14A.—(1) This regulation applies to—

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- (a) Sections 28 and 29 were amended by Article 3 of the Fair Employment (Amendment) (Northern Ireland) Order 1991 (S.I. 1991/1713 (N.I. 18))
- (b) 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
- (c) 1989 c. 32
- (d) 1954 c. 33 (N.I.)
- (e) S.R. 1989 No. 436

- (a) information about a person employed in a registered concern which is obtained in response to a question asked—
 - (i) in pursuance of paragraph 1(b) of Part I of Schedule 2; or
 - (ii) in pursuance of paragraph 1(b) of Part II of Schedule 2; or
 - (iii) in pursuance of paragraph 2 of Part III of Schedule 2; or
 - (iv) otherwise than as mentioned in heads (i) to (iii), if the information has been used by the employer in applying any of the principal methods to make a determination in respect of that person;
 - (b) information about a person applying for employment in a registered concern which is obtained in response to a question asked in pursuance of—
 - (i) paragraph 1(1) of Part I of Schedule 3; or
 - (ii) paragraph 1(1) of Part II of Schedule 3; or
 - (iii) paragraph 1(1) of Part III of Schedule 3;
 - (c) information as to the determination by an employer of the community to which a person employed or applying for employment in a registered concern is to be treated as belonging for the purposes of monitoring; and
 - (d) information obtained in pursuance of regulation 16(1)(b).
- (2) Any person who discloses any information which—
- (a) he holds or has held in his capacity as an employee in a 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 £2,000.
- (3) Nothing in this regulation applies to the disclosure of information—
- (a) to the Commission, the Labour Relations Agency or the Equal Opportunities Commission for Northern Ireland; or
 - (b) to any person—
 - (i) who is employed in the concern; or
 - (ii) whose services have been made available for the purposes of the concern; or
 - (iii) who 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 purpose 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) under regulation 11 or where the employee or applicant to whom the disclosure relates has given his consent in writing.

(4) In paragraph 3(b) “official” and “trade union” have the same meanings as in the Industrial Relations (Northern Ireland) Order 1976(a).

(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 or the employer.”.

(2) In regulation 14A of the 1989 Regulations (as inserted by paragraph (1))—

(a) paragraph (1)(a)(iv) applies to information obtained at any time, whether before or after 1st January 1990;

(b) the remaining provisions of paragraph (1)(a) and paragraph (1)(b) and (d) apply to information obtained on or after that date;

(c) paragraph (1)(c) applies to information held on or after that date.

Retention of monitoring information

4.—(1) In regulation 15 of the 1989 Regulations for paragraphs (1) and (2) there shall be substituted the following paragraph—

“(1) An employer shall retain—

(a) written information obtained by him (whether in pursuance of these Regulations or otherwise) about a person employed in a registered 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 3 years from the date on which the person to whom the information or determination relates ceases to be employed in the concern.”.

(2) In regulation 16 of the 1989 Regulations for paragraph (2) there shall be substituted the following paragraph—

“(2) An employer shall retain—

(a) any information—

(i) which he 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 person applying to fill a vacancy 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 3 years from the date of the application of the person to whom the information or determination relates.”.

Sealed with the Official Seal of the Department of Economic
Development on 24th July 1991.

(L.S.)

J. E. Wolstencroft

Assistant Secretary

EXPLANATORY NOTE

(This note is not part of the Regulations.)

These Regulations make amendments to the Fair Employment (Monitoring) Regulations (Northern Ireland) 1989 which are consequential on Article 3 of the Fair Employment (Amendment) (Northern Ireland) Order 1991. That Article repealed section 30 of the Fair Employment (Northern Ireland) Act 1989 which safeguarded the confidentiality of monitoring information and provided for that confidentiality to be safeguarded instead by monitoring regulations.

Regulation 3 makes provision, in place of section 30 of the 1989 Act, for safeguarding the confidentiality of monitoring information. The regulation protects from disclosure, subject to certain exceptions—

- (a) information given by employees and applicants for employment in response to a question asked by their employer if the information is obtained or used for the purpose of monitoring; 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.

Regulation 4 makes consequential amendments to provisions of the 1989 Regulations requiring monitoring information to be retained by an employer.