

**EXPLANATORY MEMORANDUM TO
THE FAIR EMPLOYMENT (SPECIFICATION OF PUBLIC AUTHORITIES)
(AMENDMENT) ORDER (NORTHERN IRELAND) 2009**

SR No.- 405

1. Introduction

- 1.1. This Explanatory Memorandum has been prepared by the Office of the First Minister and Deputy First Minister to accompany the Statutory Rule (details above) which is laid before the Northern Ireland Assembly.
- 1.2. The Statutory Rule is made under Articles 50 and 51 of the Fair Employment and Treatment (Northern Ireland) Order 1998 (the "1998 Order") and is subject to the negative resolution procedure.

2. Purpose

- 2.1. The Order amends the Schedule to the Fair Employment (Specification of Public Authorities) Order (Northern Ireland) 2004 (SR No. 494). The Schedule lists those public bodies who are to be regarded as public authorities for the purposes of the 1998 Order.

3. Background

- 3.1. Under the 1998 Order, all private sector employers with 11 or more employees are required to register with the Equality Commission for Northern Ireland (ECNI) and to submit annually information regarding their workforces. Public authorities do not have to register with the ECNI – they are automatically deemed to be registered. However, because there is no standard legal definition of what constitutes a public authority, Article 50 of 1998 Order provides that the Office of the First Minister and Deputy First Minister (OFMDFM) may specify, by order, various persons as public authorities.
- 3.2. To be specified as a public authority, a person must be: a Minister of the Crown or a Northern Ireland Minister; a statutory body or the holder of a statutory office; or a person appearing to OFMDFM to exercise functions of a public nature.
- 3.3. The Schedule which is being substituted is split into two parts. Part I lists the bodies that are specified as public authorities for the purposes of Articles 52 to 65 of the 1998 Order. Part II lists the bodies that are specified as public authorities for the purposes of Articles 62 to 65 of the 1998 Order.
- 3.4. The duties imposed by Articles 52 to 61 of the 1998 Order are: the preparation and submission of monitoring returns to ECNI; the periodic review of recruitment, training and promotion practices; dealing with enquiries from ECNI; complying with directions from ECNI or providing written undertakings to ECNI; and setting goals and timetables for the achievement of fair participation in employment.

- 3.5. All registered (private sector) employers and all public sector employers identified in the Fair Employment (Specification of Public Authorities) Order are required to monitor the composition of their workforces giving details of the community background and sex of employees, applicants, appointees, promotees and leavers. Community background means being a member of the Protestant or Roman Catholic community.
- 3.6. Where a public authority is specified for the purposes of Articles 62 to 65 of the 1998 Order, it is prohibited from entering into any contract with a person who is not qualified for the purposes of Articles 64 to 66 of that Order (i.e. eligibility for public contracts and government assistance). ECNI is under an obligation to inform public authorities of the fact of any employer being unqualified.
- 3.7. The first Fair Employment (Specification of Public Authorities) Order was made in 1989. Since then, the list of public authorities has been updated on an annual basis to take account of bodies which have been established, wound-up or whose name may have changed. Specification Orders are timed so that public authorities are deemed to be registered on 1 January. This then becomes their monitoring date.

4. Consultation

- 4.1. OFMDFM wrote to all Northern Ireland Departments and ECNI asking them for information on any public bodies established, wound up or whose name may have changed during the course of 2009.

5. Equality Impact

- 5.1. The Order is a technical piece of subordinate legislation simply updating the list of bodies that are to be regarded as public authorities. It can be regarded as “housekeeping” legislation. It does not alter or amend current fair employment policy and consequently does not raise any equality issues.

6. Regulatory Impact

- 6.1. The Order is a purely technical device and does not, of itself, impose any burdens on business. If a body were not specified in the Order, it would be required to register with the Equality Commission anyway if the number of employees exceeds 10.

7. Financial Implications

- 7.1. There are no associated financial implications associated with this Order.

8. Section 24 of the Northern Ireland Act 1998

- 8.1. The Department is satisfied that this legislation is compliant with section 24 of the Northern Ireland Act 1998.

9. EU Implications

- 9.1. Not applicable.

10. Parity or Replicatory Measure

- 10.1. Not applicable.

11. Additional Information

11.1. Not applicable.