
DRAFT STATUTORY INSTRUMENTS

1998 No.

**The Fair Employment and Treatment
(Northern Ireland) Order 1998**

PART VII

DUTIES OF EMPLOYERS IN RESPECT OF THEIR WORKFORCES

*Employers in default and connected persons: restrictions
on dealing with them or giving them financial assistance*

Employers in default: notice stating they are not qualified

62.—(1) For the purposes of this Article, an employer is in default in any of the following circumstances—

- (a) in the case of any concern that is not a registered concern but has satisfied the condition for registration at the end of any week, the employer stands convicted of an offence under Article 48(7);
- (b) in the case of a registered concern—
 - (i) the employer's name is not entered in the register; and
 - (ii) he stands convicted of an offence under Article 49(2);
- (c) the employer—
 - (i) has failed within the time allowed under Article 52 to serve on the Commission a monitoring return for any period or has failed to serve a return for that period that complies with the requirements of that Article or regulations under Article 53; and
 - (ii) stands convicted of an offence under Article 52(5) or regulations made by virtue of Article 53(2)(f)(i), in respect of that failure; and
- (d) the employer has failed to comply with an order of the Tribunal and a penalty has been imposed under Article 17(3)(b), or the High Court has exercised its jurisdiction by virtue of Article 17(4), in respect of that failure.

(2) Where an employer is in default, the Commission may serve notice on him stating that he is not qualified for the purposes of Articles 64 to 66; and references in those Articles to an unqualified person are to a person on whom a notice has been served under this paragraph or Article 63(1) which has not been cancelled.

(3) The Commission shall take all such steps as it considers reasonable to bring the fact that a person is an unqualified person, or has ceased to be an unqualified person, to the attention of public authorities and other interested persons.

(4) Where notice has been served on a person under paragraph (2) by virtue of paragraph (1) (a) or (b) and he has ceased to be in default, the Commission shall serve notice on him cancelling the notice under paragraph (2).

(5) Where notice has been served on a person under paragraph (2), the Commission shall, if it is at any time satisfied, whether on an application under paragraph (6) or otherwise—

- (a) in the case of a notice served by virtue of paragraph (1)(c), that he has served on it a monitoring return for the period concerned that complies, so far as is reasonably practicable, with the requirements of Article 52 and regulations under Article 53; or
- (b) in the case of a notice served by virtue of paragraph (1)(d), that he is complying, or has fully complied, with the order concerned,

serve notice on him cancelling the notice under paragraph (2).

(6) An application under this paragraph may be made by the person on whom the notice under paragraph (2) was served but may not be made before the expiry of the period of 6 months beginning with—

- (a) the date of the notice under paragraph (2); or
- (b) if he has previously applied under this paragraph, the latest date on which he so applied.

(7) Where the Commission refuses to grant an application under paragraph (6), it shall serve notice of that fact on the applicant and the applicant may, within 21 days from the date of the notice, appeal to the Tribunal against the refusal.

(8) If, on the appeal, the Tribunal is satisfied—

- (a) in the case of a notice served by virtue of paragraph (1)(c), that the appellant has served on the Commission a monitoring return for the period concerned that complies, so far as is reasonably practicable, with the requirements of Article 52 and regulations under Article 53, or
- (b) in the case of a notice served by virtue of paragraph (1)(d), that the appellant is complying, or has fully complied, with the order concerned,

the Commission shall serve on him a notice cancelling the notice under paragraph (2).

(9) No action shall lie in respect of any loss or damage that may be suffered in consequence of a notice or purported notice under this Article or Article 63 or any failure to give such a notice.

Notice stating that connected and other persons are not qualified

63.—(1) Where notice has been served on any employer under Article 62(2) and has not been cancelled, the Commission may serve notice on any of the following persons—

- (a) any body corporate controlled by him and, if he is a body corporate, any associated body corporate; and
- (b) any person connected with him,

stating that the person on whom the notice is served is not qualified for the purposes of Articles 64 to 66.

(2) No notice shall be served on any person under paragraph (1) if it appears to the Commission—

- (a) that it is unlikely that he will execute any work or supply any goods or services for the purposes of any contract—
 - (i) made by a public authority accepting any offer made in response to an invitation by the public authority to submit offers; or
 - (ii) falling within a class or description for the time being specified for the purposes of Article 64(3) to which a public authority is a party; or
- (b) that, if he executes any work or supplies any goods or services for the purposes of any such contract, it is unlikely that the employer on whom the notice was served under Article 62(2) will benefit, directly or indirectly.

(3) Where notice has been served on any person under paragraph (1), the Commission shall serve notice on him cancelling the notice—

- (a) if the notice served on the employer under Article 62(2) is cancelled; or
- (b) if it appears to the Commission, whether on an application under paragraph (4) or otherwise, that (apart from Article 64(1)) paragraph (2)(a) or (b) is satisfied in his case.

(4) An application under this paragraph may be made by the person on whom the notice under paragraph (1) was served, but if he has previously made an application under this paragraph may not be made before the expiry of the period of 6 months beginning with the latest date on which he so applied.

(5) Where the Commission refuses to grant an application under paragraph (4), it shall serve notice of that fact on the applicant and the applicant may, within 21 days from the date of the notice, appeal to the Tribunal against the refusal.

(6) If, on the appeal, it appears to the Tribunal that (apart from Article 64(1)) paragraph (2)(a) or (b) is satisfied in the appellant's case, the Commission shall serve notice on him cancelling the notice under paragraph (1).

Restriction on execution of works, etc. by unqualified persons

64.—(1) A public authority shall not enter into any contract to which paragraph (2) or (3) applies.

(2) This paragraph applies to a contract made by the public authority accepting an offer to execute any work or supply any goods or services where the offer is made—

- (a) by an unqualified person; and
- (b) in response to an invitation by the public authority to submit offers.

(3) This paragraph applies to a contract falling within a class or description for the time being specified in an order made by the Department, where work is to be executed or goods or services supplied by any unqualified person.

(4) Where a public authority enters into a contract—

- (a) made by the public authority accepting an offer made by any person, being an offer made in response to an invitation by the public authority to submit offers; or
- (b) falling within a class or description for the time being specified for the purposes of paragraph (3),

the public authority shall take all such steps as are reasonable to secure that no work is executed or goods or services supplied for the purposes of the contract by any unqualified person.

(5) An order under paragraph (3) may frame any class or description of contract by reference to—

- (a) any work to be executed or goods or services to be supplied under the contract;
- (b) any amounts to be paid under or in connection with the contract;
- (c) any terms of the contract; and
- (d) any surrounding circumstances,

and by reference to such other factors as the Department thinks fit.

(6) Nothing in this Article affects the validity of any contract.

(7) This Article does not apply to the execution of any work, or the provision of any goods or services, by any person which is certified in writing by the Secretary of State to be necessary or desirable for the purpose of safeguarding national security or protecting public safety or public order.

Enforcement at instance of Commission and actions for breach of duty

65.—(1) If it appears to the Commission—

(a) that any public authority has taken any action in contravention of Article 64 or has, in neglecting to take any action, failed to comply with that Article and that, unless an injunction is granted, the authority is likely again to contravene or fail to comply with that Article; or

(b) that any public authority proposes to take any action in contravention of that Article,

the Commission may apply to the High Court for an injunction restraining him from contravening that Article and, where sub-paragraph (a) applies, requiring him to comply with that Article.

(2) Any contravention of that Article is actionable by any person who, in consequence, suffers loss or damage, but the amount recoverable in any such action shall not exceed any expenditure reasonably incurred by him before the date of the contravention in question.

Denial of financial assistance to unqualified persons

66.—(1) A Northern Ireland department may refuse to give to any unqualified person any financial assistance to which this Article applies or, where it has given or agreed to give such assistance to any unqualified person, refuse or cease to make any payments to him in pursuance of the assistance.

(2) This Article applies to any financial assistance by way of grant or otherwise which may be given at the discretion of a Northern Ireland department, if the moneys required for giving the assistance are payable out of the Consolidated Fund or may be appropriated by Act of the Northern Ireland Assembly.