
DRAFT STATUTORY INSTRUMENTS

1998 No.

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

PART VII

DUTIES OF EMPLOYERS IN RESPECT OF THEIR WORKFORCES

General

Additional powers of Commission to obtain information

67.—(1) In connection with its functions under this Part, the Commission may require any person to give the Commission such information as it may specify for the purpose of determining—

- (a) whether a person is an employer or whether a concern has satisfied the condition for registration at the end of any week;
- (b) whether a body corporate is controlled by an employer or associated with him or whether any person is connected with him; and
- (c) whether a contract of either of the following kinds has been made or is likely to be made—
 - (i) a contract made by a public authority accepting an offer to execute any work or supply any goods or services where the offer is made by any person in response to an invitation by the public authority to submit offers; or
 - (ii) a contract 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 whether any person has executed any work or supplied any goods or services for the purposes of any such contract, or is likely to do so.

(2) A requirement under this Article to give any information—

- (a) shall be made by notice served on the person concerned; and
- (b) shall specify the time by which the information is to be given.

(3) A person required to give any information under this Article who fails to comply with the requirement by the specified time shall be guilty of an offence.

(4) A person guilty of an offence under paragraph (3)—

- (a) shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale; and
- (b) if the failure continues after conviction, shall be liable on a second or subsequent summary conviction to a fine not exceeding one-tenth of level 5 on the standard scale for each day on which the failure continues.

(5) It is a defence for a person charged with an offence under paragraph (3) to show that he had a reasonable excuse (which may include unreasonable expense or inconvenience) for failing to

comply with the requirement by the specified time and, in a case where it was reasonably practicable for him to comply with it after that time, to show that either—

- (a) he complied with it as soon as was reasonably practicable; or
- (b) it was not reasonably practicable for him to comply with it before the proceedings were commenced,

and for the purposes of this paragraph the making of a complaint is to be treated as the commencement of the proceedings.

(6) A person required to give any information under this Article who knowingly gives any false or misleading information shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(7) A notice under this Article may not require any person to give any information which he could not be compelled to give in evidence in civil proceedings before the High Court.

Procedure in case of default by Crown bodies

68.—(1) This Article applies where—

- (a) the Commission asks a public authority acting on behalf of the Crown for an undertaking under Article 57 and the undertaking is not given;
- (b) an undertaking is given under that Article by such a public authority, but is not complied with; or
- (c) such a public authority is, or is in the opinion of the Commission, in breach of any duty under Article 52, 55, 56, 60, 64 or 67 or under regulations under Article 53 or 54,

and, accordingly, Articles 57(3), 58 and 65 do not apply in relation to such a public authority.

(2) The Commission shall send a report of the circumstances of the failure to comply with the Commission’s request or with the undertaking or other breach of duty—

- (a) where a Minister of the Crown is the public authority or is generally responsible for matters falling within the scope of the functions of the public authority, to the Minister; and
- (b) in any other case, to the Northern Ireland Minister generally responsible for matters falling within the scope of the functions of the public authority.

(3) Where a report is sent to a Minister of the Crown he shall lay it before Parliament, and where a report is sent to a Northern Ireland Minister he shall lay it before the Assembly.

Interpretation of this Part

69.—(1) In this Part—

“employee” means—

- (a) an individual employed under a contract of service or of apprenticeship; or
- (b) an individual employed under a contract personally to execute any work or labour;

and includes a person in the service of the Crown, but only to the extent provided by Article 51; and “employment” and “employed” shall be interpreted accordingly;

“employer”, in relation to a concern, means the person entitled to the benefit of the contracts of those employed in the concern and includes a public authority, but only to the extent provided by Article 51;

“register” means the register kept under Article 47;

“registered concern” means a concern a description of which is for the time being included in the register; but where, by reason of a disposal of a part of a registered concern, there has

been a change of employer in relation to that part, that part is not to be treated as a registered concern unless registered since the disposal; and

“week” means a week ending on a Saturday.

(2) For the purposes of this Part—

- (a) where people are employed by a body corporate, references to the name of the employer are to the name of the body and of its secretary and references to the address of the employer are to the address of the body’s registered or principal office, or its principal office in Northern Ireland;
- (b) where people are employed by the members of a partnership, references to the employer are to the firm and references to the employer’s address are to the principal office of the partnership, or its principal office in Northern Ireland, but each member of the partnership may exercise any function, under this Part, of the employer;
- (c) where people are employed by any other body, references to the employer are to the secretary or other executive officer charged with the conduct of the general affairs of the body.

(3) For the purposes of this Part—

- (a) bodies corporate are associated if they are members of the same group, and for this purpose any two bodies corporate are to be treated as members of the same group if one of them is a body corporate of which the other is a subsidiary (within the meaning of Article 4 of the Companies (Northern Ireland) Order 1986) or if both of them are subsidiaries (within the meaning of that Article) of one and the same body corporate;
- (b) a body corporate (call it “A”) is controlled by a person (call him “B”) if B has the power to secure, by means of the holding of shares or the possession of voting power in or in relation to A or any other body corporate, or by virtue of any powers conferred by the articles of association or other document regulating A or any other body corporate, that the affairs of A are conducted in accordance with the wishes of B;
- (c) a person is connected with an individual if that person is the individual’s wife or husband, or is a relative, or the wife or husband of a relative, of the individual or of the individual’s wife or husband, and for this purpose “relative” means brother, sister, ancestor or lineal descendant; and
- (d) a person is connected with a body corporate if he is a director or officer of that body.

(4) References in this Part to a person in the service of the Crown do not include the holder of any office in Schedule 2 to the House of Commons Disqualification Act 1975.