
DRAFT STATUTORY INSTRUMENTS

1998 No.

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

PART X

APPLICATION TO THE CROWN, THE POLICE AND PUBLIC AUTHORITIES

Application to the Crown

- 91.**—(1) Subject to the following provisions of this Part, this Order (except Part VII) applies—
- (a) to an act done by or for purposes of a Minister of the Crown or a government department; or
 - (b) to an act done on behalf of the Crown by a statutory body or a person holding a statutory office; or
 - (c) to an act done by a member of Her Majesty's forces acting as such,
- as it applies to an act done by a private person.
- (2) For the purposes of paragraph (1), in this Order (except Part VII)—
- (a) references to employment include references to—
 - (i) service for purposes of a Minister of the Crown or government department, other than service of a person holding a statutory office; and
 - (ii) service on behalf of the Crown for purposes of a person holding a statutory office or purposes of a statutory body; and
 - (iii) service as a member of Her Majesty's forces;
 - (b) references to a contract of employment include references to the terms of such service;
 - (c) references to an employee include references to a person who is seeking to become engaged in such service, who is in such service or who has ceased to be in such service; and
 - (d) references to an employer, in relation to an employee, include references to (as the case requires) the authority with power to appoint him, to fix his terms of service, to afford him any benefit, to dismiss him or to subject him to any detriment.
- (3) Paragraph (2) of Article 6 (or that paragraph as it has effect by virtue of an order under paragraph (3) of that Article) and paragraph (4) of Article 33—
- (a) shall have effect in relation to any ship, aircraft or hovercraft belonging to or possessed by Her Majesty in right of the Government of Northern Ireland as they have effect in relation to a ship, aircraft or hovercraft mentioned in sub-paragraph (a) or (b) of the paragraph in question; but
 - (b) shall not have effect in relation to any ship, aircraft or hovercraft belonging to or possessed by Her Majesty in right of the Government of the United Kingdom.
- (4) In this Part—

- (a) references to Her Majesty's forces are references to the naval, military or air forces of the Crown, but do not include references to any cadet training corps for the time being administered by the Ministry of Defence; and
- (b) service "for purposes of" a Minister of the Crown or government department does not include service in any office in Schedule 2 (Ministerial offices) to the House of Commons Disqualification Act 1975.

Proceedings against the Crown

92. The provisions of Parts II to IV of the Crown Proceedings Act 1947 shall apply to proceedings against the Crown under this Order as they apply to proceedings in Northern Ireland which by virtue of section 23 of that Act are treated for the purposes of Part II of that Act as civil proceedings by or against the Crown, except that—

- (a) section 20 of that Act (removal of proceedings from county court to High Court) shall not apply; and
- (b) section 28 of that Act (discovery) shall have effect subject to Article 93(3).

Disclosure of information by Crown for purposes of investigation or proceedings

93.—(1) Subject to paragraph (3), any obligation to maintain secrecy or other restriction upon the disclosure of information obtained by or furnished to persons in the service of the Crown, whether imposed by any statutory provision or by any rule of law, shall not apply to the disclosure of information for the purposes of any investigation, appeal or proceedings under this Order; and the Crown shall not be entitled in relation to any such investigation, appeal or proceedings to any such privilege in respect of the production of documents or the giving of evidence as is allowed to the Crown alone by law in legal proceedings.

(2) A Minister of the Crown or a Northern Ireland Minister may by a certificate in writing, with respect to any document or information specified in the certificate, or documents or information of any class so specified, certify that in his opinion the disclosure of that document or information or of documents or information of that class would be prejudicial to the safety of the United Kingdom or any part of it or otherwise contrary to the public interest.

(3) Where a certificate is given under paragraph (2) nothing in this Order shall be construed as authorising or requiring the communication to any person or for any purpose of any document or information specified in the certificate, or any document or information of a class so specified.

(4) A document purporting to be a certificate such as is mentioned in paragraph (2) shall be received in evidence and, unless the contrary is proved, shall be deemed to be such a certificate.

(5) Where, in consequence of paragraph (1), any information is disclosed to persons not in the service of the Crown, those persons shall, without prejudice to paragraphs (1) and (3), be subject to the same restrictions on the disclosure of the information as if they were in that service and, in particular, the Official Secrets Act 1989 shall have effect in relation to them as if they were Crown servants within the meaning of that Act.

(6) Any reference in paragraph (2) to a Minister of the Crown includes a reference to the Commissioners of Customs and Excise and the Commissioners of Inland Revenue.

Application to the police

94.—(1) For the purposes of this Order (except Part VII) the holding of the office of constable shall be treated as employment—

- (a) by the chief officer of police as respects any act done by him in relation to a constable or that office;

- (b) by the police authority as respects any act done by it in relation to a constable or that office.
- (2) There shall be defrayed as expenses of the police authority—
 - (a) any damages or costs awarded against a chief officer of police in any proceedings under Part VI, any costs incurred by him in any such proceedings so far as not recovered by him in the proceedings, and any costs incurred by him in connection with any investigation under Part II so far as not defrayed by sums paid by the Commission under paragraph 10 of Schedule 2; and
 - (b) any sum required by a chief officer of police in connection with the settlement of any complaint made or action brought against him under Part VI, if the settlement is approved by the police authority.
- (3) Any proceedings under Part VI which, by virtue of paragraph (1), would lie against a chief officer of police shall be brought against the chief officer of police for the time being or, in the case of a vacancy in that office, against the person for the time being performing the functions of that office; and references in paragraphs (2) and (4) to the chief officer of police shall be construed accordingly.
- (4) The police authority may make arrangements for the legal representation of the chief officer of police in any proceedings under Part VI.
- (5) In the application of this Article to the police force—
 - (a) in paragraph (2) for the words “as expenses of the police authority” there shall be substituted the words “out of funds put at the disposal of the Chief Constable under section 10(5) of the Police (Northern Ireland) Act 1998”; and
 - (b) paragraph (4) shall be omitted.
- (6) In this Article—
 - “chief officer of police”—
 - (a) in relation to a person appointed, or an appointment falling to be made, to the police force, means the Chief Constable of the Royal Ulster Constabulary;
 - (b) in relation to any other person or appointment means the officer who has the direction and control of the body of constables in question;
 - “police authority”—
 - (a) in relation to a person appointed, or an appointment falling to be made, to the police force, means the Police Authority for Northern Ireland;
 - (b) in relation to any other person or appointment, means the authority by which the person in question is, or on appointment would be, paid;
 - “police force” has the same meaning as in the Police (Northern Ireland) Act 1998.

Procedure following investigation under Article 11 in relation to certain public authorities

95.—(1) This Article applies where, following an investigation under Article 11, the Commission is of the opinion that action for promoting equality of opportunity ought to be taken by any of the following authorities, namely—

- (a) a Minister of the Crown or a government department or a person acting for purposes of such a Minister or department; or
- (b) a member of Her Majesty’s forces acting as such; or
- (c) any other person acting on behalf of the Crown, being a statutory body or a person holding a statutory office; or
- (d) the Police Authority for Northern Ireland or the Chief Constable of the Royal Ulster Constabulary;

and, accordingly, Articles 12(3), 14, 15 and 16 shall not have effect in relation to any such authority.

(2) Where the Commission asks for an undertaking such as is mentioned in Article 12(2)(b), but—

(a) the undertaking is not given; or

(b) the undertaking, although given, is not complied with,

the Commission shall send a report of the results of its investigation and of the opinion it has formed in relation to the subject-matter of the investigation (including any recommendations the Commission considers appropriate for action on the part of the authority concerned)—

(i) where the investigation related to a Minister of the Crown, to that Minister;

(ii) where the investigation related to a government department, to the Minister of the Crown in charge of the department, or in the case of a Northern Ireland department to the Northern Ireland Minister in charge of the department; or

(iii) where the investigation related to any other authority, to the Minister of the Crown or the Northern Ireland Minister generally responsible for matters falling within the scope of the functions of that authority.

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

(4) A person who is not in the service of the Crown shall not be regarded as within paragraph (1)

(a) by reason only of his acting in pursuance of a contract entered into with a Minister of the Crown or a government department.