



# Fair Employment (Northern Ireland) Act 1976

## 1976 CHAPTER 25

### PART II

#### EQUALITY OF OPPORTUNITY

##### *General*

### **3 Meaning of " equality of opportunity "**

- (1) In this Act " equality of opportunity " means equality of opportunity between persons of different religious beliefs.
- (2) For the purposes of this Act a person of any religious belief has equality of opportunity with a person of any other religious belief if, being—
  - (a) a person who is seeking employment or in employment, or
  - (b) a person who is seeking to become engaged in, or is engaged in, any occupation,he has in any circumstances the same opportunity of a kind mentioned in subsection (3) as that other person has or would have in those circumstances, due allowance being made for any material difference in their suitability.
- (3) The kinds of opportunity referred to in subsection (2) are—
  - (a) in relation to an employment, the opportunity to be considered, and to be submitted for consideration, for the employment, and to have and hold it on any terms, with access to all benefits connected with it and without being subjected to any detriment; and
  - (b) in relation to an employment or an occupation.—
    - (i) the opportunity to become, and be, on any terms a member of any vocational organisation which exists for purposes of the employment or the occupation (or for purposes of employments or occupations of any class which includes the employment or occupation), with access

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to all the benefits of membership and without being subjected to any detriment, and

- (ii) where services in connection with training for the employment are provided by a person other than the employer, or where services in connection with training for the occupation are provided by any person, the opportunity to have those services on any terms, with access to all benefits connected with them, and
- (iii) the opportunity to have conferred on him, and to hold, on any terms any qualification which is needed for, or facilitates, his engagement in the employment or the occupation.

#### **4 The Fair Employment Appeals Board**

- (1) There shall be a body named the Fair Employment Appeals Board (" the Appeals Board "), consisting of a chairman and two other members all appointed by the head of the Department, which shall have the functions of hearing and determining the appeals which are authorised by this Part to be made to the Appeals Board.
- (2) At least one of the members of the Appeals Board shall be a barrister or solicitor of not less than seven years' standing.
- (3) Schedule 2 shall have effect with respect to the Appeals Board and its affairs.

*Encouragement of commitment to standards and principle of equality of opportunity*

#### **5 Guide to manpower policy and practice**

- (1) The Department, after consultation with the Standing Advisory Commission on Human Rights and the Agency, with such organisations appearing to it to be representative of employers, of organisations of workers, and of persons engaged in occupations in Northern Ireland as it thinks fit, and with such other persons as it thinks fit, shall prepare and cause to be published a guide to good manpower policy and practice containing recommendations as to policies and practices which, if adopted by employers and vocational organisations, would, in the opinion of the Department, promote equality of opportunity.
- (2) The Department shall take such steps as it considers necessary to publicise the guide and to encourage employers and vocational organisations in Northern Ireland to adopt the policies and practices recommended in it.
- (3) The Department shall keep the contents of the guide under review and, when necessary, revise it and cause it to be published in its revised form.
- (4) In carrying out its functions under this Act, the Agency, when considering whether equality of opportunity is or is not being afforded, shall have such regard to the recommendations contained in the guide as it considers proper in all the circumstances.

#### **6 Declaration of commitment to, and intent to implement, principle of equality of opportunity**

- (1) As soon as reasonably practicable after the commencement of this Act the Agency shall invite such organisations as appear to it to be representative of employers, of organisations of workers, and of persons engaged in occupations in Northern Ireland to

subscribe to a declaration of commitment to the principle of equality of opportunity, to be known as " the Declaration of Principle and Intent", and to encourage their members to subscribe to it.

- (2) The Agency shall also use its best endeavours to encourage all employers and all vocational organisations to subscribe to the Declaration.
- (3) The Declaration shall be in the form set out in Schedule 3 or in such other form to the like effect as the Agency specifies as being appropriate for any particular declarant.

## **7 The Register of Equal Opportunity Employers and Organisations**

- (1) The Agency shall keep a register of those who have subscribed to the Declaration of Principle and Intent; and each employer or organisation whose name is for the time being on the register shall be entitled to receive from the Agency, and to hold, a certificate describing him or it as an " Equal Opportunity Employer" or, as the case may be, an " Equal Opportunity Organisation ", and so to describe himself or itself.
- (2) The power of the Agency to keep the register includes power to fix its form and to rectify it; and in particular the Agency may—
  - (a) require a declarant, as a condition of remaining on the register, to reaffirm, at such intervals and in such manner as the Agency may determine, his intention to adhere to the Declaration ;
  - (b) remove from the register the name of any declarant who—
    - (i) fails to comply with a requirement imposed under paragraph (a), or
    - (ii) has declared that he no longer adheres to the Declaration, or
    - (iii) is found by the Agency in consequence of an investigation under section 12 or section 24 to have acted in a manner inconsistent with adhering to the Declaration; and
  - (c) restore to the register the name of any declarant which has been removed, where the declarant reaffirms his intention to adhere to the Declaration and it appears to the Agency that he is likely to do so.
- (3) When the Agency removes the name of any declarant from the register for any of the reasons mentioned in subsection (2)(b), it shall serve on him notice of the fact, stating the reason and requiring him to return to the Agency the certificate issued under subsection (1).
- (4) Where a name is removed from the register under subsection (2)(b)(i) or (iii), the notice under subsection (3) shall inform the declarant of the right of appeal conferred by section 8.
- (5) The register shall be open to public inspection during normal office hours free of charge; and any person shall be entitled to obtain from the Agency a copy of the register, or of any entry in it, upon payment of such reasonable fee as the Agency may fix.

## **8 Appeal against removal of name from, or refusal to restore name to, the register in certain circumstances**

- (1) A declarant aggrieved—
  - (a) by the removal of his name from the register under section 7(2)(b)(i) or (iii), or

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- (b) by the Agency's refusal to restore his name to the register upon his reaffirming the intention mentioned in section 7(2)(c),  
may appeal to the Appeals Board against the removal or refusal.
- (2) An appeal against the removal of a declarant's name from the register under section 7(2)(M(i)) may be made on the ground that in all the circumstances it was unreasonable of the Agency to require the declarant to reaffirm his intention to adhere to the Declaration of Principle and Intent, or to do so after any particular interval or in any particular manner.
- (3) Schedule 4 shall have effect with respect to the conduct of an appeal under this section.
- (4) Where, on an appeal under this section, the question arises whether a person has acted in a manner inconsistent with adhering to the Declaration of Principle and Intent, the Appeals Board shall have such regard as it considers proper in all the circumstances to the recommendations contained in the guide to good manpower policy and practice prepared by the Department under section 5.
- (5) The Appeals Board may give such directions for the rectification of the register as it considers necessary for giving effect to its decision.

## **9 Publication of names of Equal Opportunity Employers and Organisations**

- (1) The Agency shall take such steps as it considers necessary to publicise the names of employers and organisations on the register, and in particular the Agency shall, within six months from the commencement of this Act and thereafter at yearly intervals, notify the public authorities mentioned in subsection (2) of the names of employers' currently on the register.
- (2) The public authorities referred to in subsection (1) are—
- (a) every authority and body listed in the following enactments (as for the time being in force)—
    - (i) the Parliamentary Commissioner Act (Northern Ireland) 1969, Schedule 1, and
    - (ii) the Commissioner for Complaints Act (Northern Ireland) 1969, Schedule 1 ;
  - (b) such of the authorities or bodies listed in the Parliamentary Commissioner Act 1967, Schedule 2, (as for the time being in force) as the Agency considers appropriate;
  - (c) the Police Authority for Northern Ireland ; and
  - (d) the Post Office.
- (3) When any employer's name is removed from the register, the Agency shall, as soon as reasonably practicable, notify each of those public authorities of the fact.
- (4) Where a public authority notified of an employer's name under subsection (1) is of the opinion that the employer has acted in the course of performing a contract entered into with the authority in a manner inconsistent with the terms of the Declaration of Principle and Intent and his name has not already been removed from the register, the authority shall forthwith inform the Agency of the opinion, stating the reasons for it.

## **10 Offences in relation to s. 7**

- (1) If—
- (a) any employer who is not the holder of a certificate under section 7(1) for the time being in force describes himself or causes or permits himself to be described,
  - (b) any person acting on behalf of—
    - (i) such an employer, or
    - (ii) an organisation which is not the holder of such a certificate,describes that employer or organisation, or causes or permits him or it to be described,
- as an Equal Opportunity Employer or an Equal Opportunity Organisation or by any other words calculated to give the impression that the employer or organisation has subscribed to the Declaration of Principle and Intent or is registered under section 7, that employer or, as the case may be, that person shall be guilty of an offence.
- (2) Where an individual or a body corporate is required by a notice under section 7(3) to return a certificate to the Agency and fails without reasonable excuse to do so, he or it shall be guilty of an offence.
- (3) Where an unincorporated body is required by a notice under section 7(3) to return a certificate to the Agency, the proper officer of the body shall be under a duty to ensure that the certificate is duly returned, and, if he fails without reasonable excuse to do so, he shall be guilty of an offence.
- (4) An offence under subsection (1), (2) or (3) shall be punishable on summary conviction by a fine not exceeding £100.
- (5) In any proceedings for any offence under this section a document purporting to be a certificate or other document issued by the Agency and to be signed by a duly authorised officer of the Agency which states—
- (a) that a particular name was removed from the register on a particular day, or
  - (b) that a particular name was not for the time being registered in the register on a particular day,
- shall, until the contrary is proved, be deemed to be such a certificate or document and to be properly issued and shall be evidence of the facts stated in it.

*Identification of patterns and trends of employment, etc.*

## **11 Survey of employment, etc., patterns**

It shall be the duty of the Agency to identify and keep under review patterns and trends of employment in Northern Ireland and of occupations in Northern Ireland for the purposes of—

- (a) considering whether they reveal the existence or absence of equality of opportunity ; and
- (b) assisting the Agency in forming an opinion about—
  - (i) the manner in which equality of opportunity can best be achieved, or
  - (ii) where such equality is absent, the reasons for its absence.

*Investigation and remedying of practices which fail to afford equality of opportunity***12 Investigation of employment, etc., practices**

(1) For the purpose of assisting the Agency in—

- (a) ascertaining the existence, nature and extent of failures to afford equality of opportunity ; and
- (b) considering what action, if any, for promoting equality of opportunity ought to be taken by any of the following persons (" the person concerned "), that is to say.—
  - (i) any employer, or
  - (ii) any person who is empowered by virtue of an enactment to select or nominate another person for employment by a third person, or
  - (iii) any employment agency, or
  - (iv) any vocational organisation, or
  - (v) any person who provides services in connection with training for employment in any capacity, or for any particular employment, (not being services provided by the employer of a person who is seeking to obtain or is receiving those services) or any person who provides services in connection with training for a particular occupation, or
  - (vi) any person who has power to confer a qualification which is needed for, or facilitates, engagement in employment in any capacity, or in a particular employment or occupation,

the Agency may conduct the investigations mentioned in subsection (2).

(2) Those investigations are investigations—

- (a) into the composition, by reference to religious beliefs, of any of the following classes of person (or of any class of person within such a class), that is to say.—
  - (i) the employees of, or other persons who have applied for employment by, any employer or employers of any class, or
  - (ii) the persons who have applied for or obtained the services of any employment agency, or
  - (iii) the members of, or other persons who have applied for membership of, any vocational organisation or the members of such organisations of any class, or
  - (iv) the persons who have sought (or on whose behalf there have been sought) or who have obtained the services of a person such as is mentioned in subsection (1)(b)(v), or
  - (v) the persons who have applied to have, or have had, conferred on them any qualification such as is mentioned in subsection (1)(b)(vi); and
- (b) into practices—
  - (i) affecting the recruitment, admission to membership or access to benefits or services of persons belonging to any class referred to in paragraph (a), or the terms of employment or membership or provision of services applicable to such persons, or
  - (ii) involving any detriment to such persons, or
  - (iii) affecting the conferring or holding of any qualification such as is mentioned in subsection (1)(b)(vi). including practices discontinued

before the time of the investigation so far as relevant for explaining the composition of the class of person in question at that time.

- (3) Schedule 5 shall have effect with respect to the conduct of investigations under this section.

### **13 Undertaking or directions for remedying of certain practices**

- (1) Where, following an investigation under section 12, the Agency is of the opinion that the person concerned has failed to afford equality of opportunity, either generally or in relation to any class of person, the Agency shall use its best endeavours—
- (a) to ensure that he takes such action for promoting equality of opportunity as is, in all the circumstances, reasonable and appropriate; and
  - (b) where appropriate, to secure a satisfactory written undertaking by him that such action will be taken.

- (2) Where the Agency asks the person concerned for an undertaking such as is mentioned in subsection (1)(b), but—

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

the Agency, unless it decides that no further action by it is appropriate.—

- (i) where paragraph (a) applies, shall serve on the person concerned a notice containing directions such as are mentioned in subsection (3), or
- (ii) where paragraph (b) applies, shall either serve on him such a notice (whose directions shall supersede the undertaking) or make an application to the county court under section 15 for enforcement of the undertaking.

- (3) The directions contained in a notice served under subsection (2) (i) or (ii) shall be those which the Agency considers to be, in all the circumstances, reasonable and appropriate for promoting equality of opportunity, and the directions may in particular include—

- (a) directions for the abandonment, or for the modification in accordance with any instructions given in the directions, of any practice which results or may result in failure to afford equality of opportunity, or for the substitution or adoption of new practices specified by the Agency; and
- (b) such directions as the Agency considers necessary to ensure that other directions are duly carried out;

but the terms of directions contained in a notice served under subsection (2)(ii) which supersede an undertaking shall be such as, in the opinion of the Agency, are not more onerous than the terms of the undertaking.

- (4) A notice served under subsection (2)(i) or (ii) shall inform the person concerned of the right of appeal against the directions which is conferred by section 14.

- (5) The Agency, on the written application of the person concerned, may—

- (a) revoke all of the directions; or
- (b) modify the directions in accordance with the application—
  - (i) by revoking any of them, or
  - (ii) by substituting new directions for all or any of them;

and, in substitution for any directions which are revoked under paragraph (a), may accept from that person an undertaking such as is mentioned in subsection (1)(b).

- (6) The Agency shall serve notice of the revocation or modification on the person concerned.
- (7) Any reference in the succeeding provisions of this Act to directions given by the Agency—
  - (a) does not include directions revoked under subsection (5) (a); and
  - (b) where the directions have been modified under subsection (5)(b), is to them as so modified.
- (8) The directions shall be binding on the person concerned (except to the extent that they are quashed, or other directions are substituted for them, by the Appeals Board under section 14) and shall be enforceable only in accordance with section 15.

*Appeals and legal proceedings in relation to the remedying of practices*

**14 Appeal to Appeals Board against directions under s. 13**

- (1) Where, under section 13, the Agency serves on the person concerned a notice containing directions (not being directions substituted for others in accordance with an application made by him under section 13(5)), he may, within 21 days from the date of service, appeal to the Appeals Board against the directions.
- (2) The appeal may be brought on any of the following grounds—
  - (a) that in all the circumstances it is unreasonable to expect the appellant to comply with the directions;
  - (b) that in all the circumstances the directions are not appropriate for promoting equality of opportunity; or
  - (c) that the appellant is already affording equality of opportunity, and the directions are, therefore, unnecessary.
- (3) Schedule 4 shall have effect with respect to the conduct of the appeal.
- (4) On hearing the appeal the Appeals Board may—
  - (a) dismiss the appeal; or
  - (b) quash the directions or any of them ; or
  - (c) substitute for the directions or any of them such other directions (of a kind that the Agency could have given) as the Appeals Board considers reasonable and appropriate in all the circumstances.
- (5) Directions substituted under subsection (4)(c) shall be binding on the person concerned and shall be enforceable only in accordance with section 15.
- (6) In coming to its decision the Appeals Board shall have such regard as it considers proper in all the circumstances to the recommendations contained in the guide to good manpower policy and practice prepared by the Department under section 5.

**15 Enforcement by county court of undertaking or directions**

- (1) Where, within such period as the Agency considers reasonable.—
  - (a) an undertaking to take action for promoting equality of opportunity—
    - (i) which has been given to the Agency under section 13(1) and has not been superseded by directions given by the Agency, or



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- (ii) which has been given to the Agency under section 13(5),  
has not been complied with ; or
  - (b) directions given by the Agency have not been complied with,  
or steps have not been taken to the Agency's satisfaction to comply with it or them, the  
Agency may, subject to subsection (2), make an application to the county court under  
this section for enforcement of the undertaking or the directions.
- (2) Notice of an application for the enforcement of directions shall not be given—
  - (a) until the expiration of the period allowed by section 14(1) for an appeal to the  
Appeals Board against the directions; or
  - (b) if notice of such an appeal is served within that period—
    - (i) unless the appeal is abandoned or dismissed, or
    - (ii) where the Appeals Board quashes, or makes substitutions for, some  
only of the directions, except in relation to directions which have not  
been quashed or for which no substitution has been made.
- (3) On such an application the court shall have power to make an order (to which  
section 46 shall apply) directing the person concerned to do any act which he ought  
to do in order to fulfil all or any of his commitments under the undertaking or comply  
with all or any of his obligations under the directions.
- (4) This section (except subsection (2)) applies also to directions substituted by the  
Appeals Board under section 14(4)(c) for directions given by the Agency.