



Fair Employment (Northern Ireland) Act 1989

1989 CHAPTER 32

PART II

NEW DUTIES OF EMPLOYERS IN RESPECT OF THEIR WORKFORCES

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

38 Employers in default: notice stating they are not qualified

- (1) For the purposes of this section and section 39 of this Act, 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 section 23(5) of this Act,
 - (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 section 24(2) of this Act,
 - (c) the employer—
 - (i) has failed within the time allowed under section 27 of this Act 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 section or regulations under section 28 of this Act, and
 - (ii) stands convicted of an offence under section 27(5) of this Act, or regulations made by virtue of section 28(2)(f)(i) of this Act, 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 section 17(3)(b) of this Act, or the High Court has exercised its jurisdiction by virtue of subsection (4) of that section, in respect of that failure.

Status: This is the original version (as it was originally enacted).

- (2) Where an employer is in default, the Commission may serve notice on him stating that he is not qualified for the purposes of sections 41 to 43 of this Act; and references in those sections to an unqualified person are to a person on whom a notice has been served under this subsection or section 39(1) of this Act 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 subsection (2) above by virtue of subsection (1)(a) or (b) above and he has ceased to be in default, the Commission shall serve notice on him cancelling the notice under subsection (2) above.
- (5) Where notice has been served on a person under subsection (2) above, the Commission shall, if it is at any time satisfied, whether on an application under subsection (6) below or otherwise—
 - (a) in the case of a notice served by virtue of subsection (1)(c) above, 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 section 27 of this Act and regulations under section 28 of this Act, or
 - (b) in the case of a notice served by virtue of subsection (1)(d) above, that he is complying, or has fully complied, with the order concerned,serve notice on him cancelling the notice under subsection (2) above.
- (6) An application under this subsection may be made by the person on whom the notice under subsection (2) above was served but may not be made before the expiry of the period of six months beginning with—
 - (a) the date of the notice under subsection (2) above, or
 - (b) if he has previously applied under this subsection, the latest date on which he so applied.
- (7) Where the Commission refuses to grant an application under subsection (6) above, 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 subsection (1)(c) above, 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 section 27 of this Act and regulations under section 28 of this Act, or
 - (b) in the case of a notice served by virtue of subsection (1)(d) above, 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 subsection (2) above.
- (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 section or section 39 of this Act or any failure to give such a notice.

39 Notice stating that connected and other persons are not qualified

- (1) Where notice has been served on any employer under section 38(2) of this Act 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 sections 41 to 43 of this Act.
- (2) No notice shall be served on any person under subsection (1) above 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 section 41(3) of this Act 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 section 38(2) of this Act will benefit, directly or indirectly.
- (3) Where notice has been served on any person under subsection (1) above, the Commission shall serve notice on him cancelling the notice—
 - (a) if the notice served on the employer under section 38(2) of this Act is cancelled, or
 - (b) if it appears to the Commission, whether on an application under subsection (4) below or otherwise, that (apart from section 41(1) of this Act) subsection (2)(a) or (b) above is satisfied in his case.
- (4) An application under this subsection may be made by the person on whom the notice under subsection (1) above was served, but if he has previously made an application under this subsection may not be made before the expiry of the period of six months beginning with the latest date on which he so applied.
- (5) Where the Commission refuses to grant an application under subsection (4) above, 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 section 41(1) of this Act) subsection (2)(a) or (b) above is satisfied in the appellant's case, the Commission shall serve notice on him cancelling the notice under subsection (1) above.

40 Appeals against decisions of Tribunal under sections 38 and 39

- (1) A person who is dissatisfied in point of law with a decision of the Tribunal on an appeal brought by him under section 38 or 39 of this Act may, according as rules of court may provide, either appeal from it to the Court of Appeal or require the Tribunal to state and sign a case for the opinion of the Court of Appeal.

Status: This is the original version (as it was originally enacted).

- (2) Rules of court may provide for authorising or requiring the Tribunal to state, in the form of a special case for the decision of the Court of Appeal, any question of law arising in the proceedings.

41 Restriction on execution of works, etc. by unqualified persons

- (1) A public authority shall not enter into any contract to which subsection (2) or (3) below applies.
- (2) This subsection 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 subsection 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 subsection (3) above,
- 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 subsection (3) above 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 section affects the validity of any contract.
- (7) This section 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 to be necessary or desirable—
- (a) by the Secretary of State for the purpose of safeguarding national security or protecting public safety or public order, or
 - (b) by the Secretary of State, by the Department or, after consultation with the Department, by any other Northern Ireland department—
 - (i) for the purpose of securing works, goods or services which could not otherwise be secured without disproportionate expense, or
 - (ii) in the public interest.
- (8) This section applies to any contract, whether or not it is governed by the law of Northern Ireland.

42 Enforcement at instance of Commission and actions for breach of duty

- (1) If it appears to the Commission—
 - (a) that any public authority has taken any action in contravention of section 41 of this Act or has, in neglecting to take any action, failed to comply with that section and that, unless an injunction is granted, the authority is likely again to contravene or fail to comply with that section, or
 - (b) that any public authority proposes to take any action in contravention of that section,

the Commission may apply to the High Court for an injunction restraining him from contravening that section and, where paragraph (a) above applies, requiring him to comply with that section.
- (2) Any contravention of or failure to comply with that section 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 or failure in question.

43 Denial of financial assistance to unqualified persons

- (1) A Northern Ireland department may refuse to give to any unqualified person any financial assistance to which this section 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 section 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 of Northern Ireland or may be appropriated by Measure of the Northern Ireland Assembly.