



Fair Employment (Northern Ireland) Act 1989

1989 CHAPTER 32

PART II

NEW DUTIES OF EMPLOYERS IN RESPECT OF THEIR WORKFORCES

General

44 Offences by bodies corporate and partnerships

- (1) Where an offence under this Part of this Act committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate, or any person who was purporting to act in any such capacity, he as well as the body corporate is guilty of that offence and liable to be proceeded against and punished accordingly.
- (2) Where the affairs of a body corporate are managed by the members, subsection (1) above shall apply in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate.
- (3) Where a partnership is guilty of an offence under this Part of this Act, every partner, other than a partner who is proved to have been ignorant of or to have attempted to prevent the commission of the offence, shall also be guilty of that offence and be liable to be proceeded against and punished accordingly.

45 Additional powers of Commission to obtain information

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

Status: This is the original version (as it was originally enacted).

- (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 section 41(3) of this Act 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 section 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 section who fails to comply with the requirement by the specified time is guilty of an offence.
- (4) A person guilty of an offence under subsection (3) above—
 - (a) is liable on summary conviction to a fine not exceeding level 5 on the standard scale, and
 - (b) if the failure continues after conviction, is 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 subsection (3) above 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 subsection 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 section who knowingly gives any false or misleading information is 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 section 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.

46 Procedure in case of default by Crown bodies

- (1) This section applies where—

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

- (a) the Commission asks a public authority acting on behalf of the Crown for an undertaking under section 33 of this Act and the undertaking is not given,
 - (b) an undertaking is given under that section 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 section 27, 31, 32, 36, 41 or 45 of this Act or under regulations under section 28 or 29 of this Act,
- and, accordingly, sections 33(3), 34 and 42 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 head of the Northern Ireland department generally responsible for matters falling within the scope of the functions of the public authority or, if no such head stands appointed, to the Secretary of State.
 - (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 the head of a Northern Ireland department he shall lay it before the Northern Ireland Assembly.
 - (4) Section 41(3) of the Interpretation Act (Northern Ireland) 1954 (laying of statutory documents) shall have effect as if a report required to be laid before the Assembly were a statutory document (within the meaning of that Act) required under a Measure of the Assembly to be so laid.

47 Interpretation of Part II

- (1) In this Part of this Act—
 - “employee” means—
 - (a) an individual employed under a contract of service or of apprenticeship, other than a contract which normally involves employment for less than sixteen hours weekly, 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 section 26 of this Act; 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 section 26 of this Act,
 - “register” means the register kept under section 22 of this Act,
 - “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.

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- (2) The Department may by order amend the definition of “employee” in subsection (1) above by substituting for the number of hours for the time being specified in paragraph (a) such other number as is specified in the order.
- (3) For the purposes of this Part of this Act—
- (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 or by virtue of this Part of this Act, 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.
- (4) For the purposes of this Part of this Act—
- (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.
- (5) In this Part of this Act the following expressions have the same meaning as in the Fair Employment (Northern Ireland) Act 1976—
- “contract”,
 - “the Department”,
 - “employment in Northern Ireland”,
 - “Northern Ireland”,
 - “notice”, and
 - “practices”.
- (6) Part I of Schedule 2 to the Industrial Relations (Northern Ireland) Order 1976 (normal working hours) shall have effect to determine the normal working hours for the purposes of the definition of employee in subsection (1) above.

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

- (7) References in this Part of this Act to the Crown are to the Crown in right of the Government of the United Kingdom and in right of the Government of Northern Ireland.
- (8) References in this Part of this Act 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 (Ministerial offices) as for the time being in force.

48 Index to Part II

The expressions listed in the left-hand column below are respectively defined or (as the case may be) fall to be construed in accordance with the provisions of this Act listed in the right-hand column in relation to those expressions.

<i>Expression</i>	<i>Relevant provision</i>
Affirmative action	Section 58
Associated body corporate	Section 47(4)
Code of practice	Section 7
Commission	Section 1
Community	Section 27(11)
Composition	Section 27(11)
Concern	Section 22(2)
Connected, in relation to a person	Section 47(4)
Contract	Section 47(5)
Control, in relation to a body corporate	Section 47(4)
Department	Section 47(5)
Employer	Section 47(1)
Employee and related expressions	Sections 23(8) and 47(1)
Employment in Northern Ireland	Section 47(5)
Employment practice	Section 31(6)
Monitoring return	Section 27(1)
Northern Ireland	Section 47(5)
Notice	Section 47(5)
Practices	Section 47(5)
Public authority	Section 25
Register	Section 47(1)
Registered concern	Sections 26(3) and 47(1)
Review	Section 31(6)
Satisfies the condition for registration	Section 23(2)

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<i>Expression</i>	<i>Relevant provision</i>
Tribunal	Section 2
Unqualified person	Section 38(2)
Week	Section 47(1)