
STATUTORY INSTRUMENTS

1998 No. 3162

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

PART II

FUNCTIONS OF THE EQUALITY COMMISSION

Appeals and legal proceedings in relation to undertakings and directions

Appeal to Tribunal against directions under Article 12 or 13

15.—(1) Where under Article 12(3) or 13(3)(a), the Commission serves on a person a notice containing directions (not being directions substituted for others in accordance with an application made by him under Article 14(4)), he may within 21 days from the date of service appeal to the Tribunal 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 taking any appropriate action to promote equality of opportunity and the directions are, therefore, unnecessary.

(3) On hearing the appeal the Tribunal 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 Commission could have given) as the Tribunal considers reasonable and appropriate in all the circumstances.

(4) Directions substituted under paragraph (3)(c) are binding on the appellant and are enforceable only in accordance with Article 16.

Order of Tribunal to enforce undertaking or directions

16.—(1) Where—

- (a) an undertaking to take action for promoting equality of opportunity—
 - (i) which has been given to the Commission under Article 12(2) or 13 and has not been superseded by directions given by the Commission; or
 - (ii) which has been given to the Commission under Article 14(4),has not been complied with within such period as the Commission considers reasonable;

(b) directions given by the Commission or substituted by the Tribunal under Article 15 for directions given by the Commission have not been complied with within such period as the Commission considers reasonable; or

(c) steps have not been taken to the Commission's satisfaction within such period as the Commission considers reasonable to comply with the undertaking or directions,

the Commission may, subject to paragraph (2), make an application to the Tribunal under this Article for enforcement of the undertaking or directions.

(2) An application for the enforcement of directions shall not be made—

- (a) until the end of the period of 21 days within which an appeal may be brought to the Tribunal under Article 15; or
- (b) if such an appeal is brought, until—
 - (i) the appeal is abandoned; or
 - (ii) the appeal is determined and the period within which notice of an appeal to the Court of Appeal under Article 90 may be given has expired; or
- (c) if notice of an appeal to the Court of Appeal under that Article is given within that period, until the appeal is abandoned or determined.

(3) On an application under paragraph (1) the Tribunal—

- (a) may make such order as it thinks fit for the purpose of giving effect to the undertaking or directions; and
- (b) whether or not it makes such an order, may order that the whole or part of the undertaking or directions shall cease to have effect.

(4) An order under paragraph (3)(a)—

- (a) shall specify the steps to be taken by the person by whom the undertaking was given or to whom the directions were given;
- (b) may specify the time within which each step is to be taken; and
- (c) may require a specified person to attend before the Tribunal at a specified time to report to the Tribunal on the extent to which those steps have been taken.

(5) The terms of an order under paragraph (3)(a) (except so far as it requires attendance before the Tribunal) shall be such as, in the opinion of the Tribunal, are not substantially more onerous than the terms of the undertaking or directions.

(6) An order under paragraph (3)(a) shall not require any person—

- (a) to apply a requirement or condition described in paragraph (1) of Article 75; or
- (b) to do any act described in Article 76(1).

(7) The Commission—

- (a) is entitled to appear and be heard when a person attends before the Tribunal in pursuance of an order under paragraph (3)(a); and
- (b) may itself apply to the Tribunal for the enforcement of such an order.

(8) Subject to paragraphs (5) and (6), the Tribunal may at any time revoke or vary the terms of an order under paragraph (3)—

- (a) on an application by the Commission or by the person in relation to whom the order was made; or
- (b) where a person attends before the Tribunal in pursuance of an order under paragraph (3) (a) or on an application by the Commission under paragraph (7)(b).

Failure to comply with order of Tribunal

17.—(1) Paragraph (3) applies where the Tribunal determines that a person (in this Article referred to as “the respondent”)—

- (a) has failed to comply with a requirement to attend before the Tribunal included in an order under Article 16(3)(a); or
- (b) has failed to comply to the satisfaction of the Tribunal with any term included in such an order by virtue of Article 16(4)(a) or (b).

(2) The Tribunal shall not make a determination under paragraph (1) until the end of the period within which notice of an appeal to the Court of Appeal under Article 90 against the order in question may be given or, if notice of such an appeal is given within that period, until the appeal is abandoned or determined.

(3) Where this paragraph applies, the President or Vice-President may—

- (a) certify the failure to the High Court; or
- (b) require the respondent to pay to the Department a pecuniary penalty of an amount not exceeding £40,000.

(4) Where the President or Vice-President has certified a failure under paragraph (3)(a), the High Court may deal with the respondent as if the relevant order of the Tribunal had been an order of the High Court.

(5) The Judgments Enforcement (Northern Ireland) Order 1981 shall apply with the necessary modifications in relation to a penalty imposed under paragraph (3)(b) as it applies to a sum due to the Crown under a money judgment (within the meaning of that Order).

(6) If it appears to the Department that there has been a change in the value of money since the relevant date, it may by order substitute for the sum for the time being specified in paragraph (3)(b) such other sum as appears to it to be justified by the change.

(7) In paragraph (6) “the relevant date” means—

- (a) in relation to the first order under that paragraph, the coming into operation of this Article; and
- (b) in relation to each subsequent order, the last occasion when the sum specified in paragraph (3)(b) was altered.

(8) The Department shall pay into the Consolidated Fund any sums received in respect of penalties under this Article.