
EXPLANATORY NOTE

(This note is not part of the Regulations.)

These Regulations revoke and remake with amendments the provisions of the Fair Employment (Monitoring) Regulations (Northern Ireland) 1989 as amended.

Part VII of the Fair Employment and Treatment (Northern Ireland) Order 1998 (“the Order”) imposes duties on certain employers in Northern Ireland in respect of their workforces. The Order repealed and replaced the Fair Employment (Northern Ireland) Acts 1979 to 1995 (“the former legislation”). Article 47 of the Order requires the Equality Commission (formerly the Fair Employment Commission) to keep a register of trades, businesses and other activities (whether carried on for profit or not) in which people are employed. The employer in any of those concerns is required to apply for registration at the end of any week if in that week he employs more than ten people working more than sixteen hours a week (“full-time employees”).

This duty does not apply to any person specified in the Fair Employment (Specification of Public Authorities) Order (Northern Ireland) 1989 (as amended) as a “public authority” for the purposes of Articles 52 to 61 of the Order or to any Minister of the Crown, Northern Ireland Minister, a body created by a statutory provision or the holder of any office so created.

Articles 52 to 54 of the Order make provision for monitoring the workforce of those employers whose concerns are registered under Article 47 of the Order and those authorities who are “public authorities” for the purposes of those Articles. Under Article 52(1) of the Order such employers are required to prepare and serve for each year on the Commission a monitoring return to enable the composition of the workforce to be ascertained, that is the number of employees who belong to the Protestant community and the number of employees who belong to the Roman Catholic community. In addition, such employers are required to serve a monitoring return to enable the composition of applicants for employment to be ascertained. Article 52(3) and (4) of the Order requires a monitoring return from each public authority and the employer in each registered concern with more than 250 employees to enable the composition of those ceasing to be employed in the concern to be ascertained. The definition of “employee” in Article 69(1) of the Order includes for this purpose all employees including those working less than 16 hours a week (“part-time employees”).

Under the former legislation, only employers in public authorities and in registered concerns with more than 250 full-time employees were required to include in the monitoring return information about applicants for employment. There was no requirement for any employer to include in a monitoring return information about former employees. In addition the definition of “employee” for the purposes of the former legislation excluded those working less than sixteen hours weekly.

Part I of the Regulations contains introductory provisions.

1. *Regulation 3* revokes the Fair Employment (Monitoring) Regulations (Northern Ireland) 1989 and the Fair Employment (Monitoring) (Amendment) Regulations (Northern Ireland) 1991 but provides that those Regulations shall continue to apply to any monitoring return prepared for a monitoring year which begins before 1st January 2001.

2. *Regulation 4* applies these Regulations to any monitoring return to be prepared for any monitoring year beginning on or after 1st January 2001.

Part II relates to the contents and serving of monitoring returns.

3. *Regulation 5 and Schedule 1* prescribe the information which is to be contained in a monitoring return. Monitoring returns must identify part- and full-time workers separately. Returns from each

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

public authority and the employer in each registered concern with more than 250 employees must also include details of promotees. For the purposes of monitoring, a promotee is a person who has moved from one situation to another within a concern as a result of which he has received an increase in pay but a person who was appointed to a situation for which persons not already employed in the concern could apply is not included.

4. *Regulation 6* prescribes the date (in the case of employees) and the period (in the case of applicants, leavers and promotees) to which the prescribed information must relate.

5. *Regulation 7* prescribes the period during which the information is to be obtained.

6. *Regulations 8, 9 and 11 and Schedules 2 and 3* deal with the methods by which an employer can determine the community to which an employee or applicant belongs.

- (a) In both cases an employer is required to apply the principal method to all employees and applicants. This method is set out in Part I of Schedule 2 for employees and Part II of Schedule 2 for applicants. It provides for the community to which a person is treated as belonging to be determined by reference to his answer to a direct question.
- (b) When the principal method reduces no determination in any case, the employer has the option of applying the residuary methods (prescribed by regulation 11 and Schedule 3) in individual cases.
- (c) Where he chooses not to do so or where this method produces no determination, the employee or applicant is to be treated as if the community to which he belongs cannot be determined.
- (d) Where, in the case of employees only, a determination in respect of an employee is made under the principal method, that determination shall apply to him for all future monitoring returns unless the Commission gives the direction mentioned in regulation 14.

7. *Regulation 10* deals with the determination of the community to which a former employee belongs.

8. *Regulation 12*, in the case of employees only, deals with disclosure of information to the person to whom it relates.

9. *Regulation 13* provides a means for an employee to have corrected any inaccurate determination of the community to which he belongs.

10. *Regulation 14* makes provision for the Commission to direct the employer to apply any of the methods prescribed by the Regulations for making a determination in the case of an employee in a manner different from that required by these Regulations.

Part III of the Regulations relates to the obtaining and retaining of information and creates various offences.

11. *Regulation 16* protects from disclosure, subject to certain exceptions—

- (a) information given by employees and applicants in response to a question asked by their employers, or prospective employers, if the information is obtained and used for monitoring purposes; and
- (b) any determination made by an employer of the community to which a person is to be treated as belonging for the purposes of monitoring.

12. *Regulation 17* requires an employer to retain certain information that he has obtained about his employees and a record of his determination in respect of each employee for a period of three years from the date when the person to whom the information relates ceased to be employed by him. Failure to comply with these requirements is an offence for which the maximum penalty is a fine not exceeding level 5 on the standard scale (currently £5,000).

13. Regulation 18(1) requires an employer in a registered concern to seek to obtain certain information from an applicant to his concern. Giving false information to an employer seeking such information is an offence for which the maximum penalty is a fine not exceeding level 5 on the standard scale.

14. Regulation 18(2) to (4) requires an employer to retain information which he has obtained about an applicant whom he has monitored and a record of his determination in respect of each applicant for a period of three years from the date of the application. Failure to comply with these requirements or the inclusion of false information in the records of information obtained under regulation 18(1) is an offence for which the maximum penalty is a fine not exceeding level 5 on the standard scale.

15. Service, by an employer, on the Commission of a monitoring return which is not prepared in accordance with these Regulation or does not contain the prescribed information is an offence for which the maximum penalty is a fine not exceeding £10,000 (regulation 19).

16. The giving of false information to another, who with a view to including any information on a monitoring return to be served on the Commission, is seeking information or the inclusion of any false information in such a monitoring return, is an offence for which the maximum penalty is a fine not exceeding level 5 on the standard scale (regulation 20).

Under Article 52(5) of the Order it is an offence, for which the maximum penalty is a fine not exceeding level 5 on the standard scale, if a monitoring return for a year in respect of any registered concern is not served on the Commission before the time for serving the return expires and, if the failure to submit the return continues after conviction, it is a further offence for which the penalty is a fine not exceeding one tenth of level 5 on the standard scale for each day on which the failure continues.

The Standard Occupational Classification mentioned in paragraph 1(g) of Schedule 1 as published from time to time by the Office of Population Censuses and Surveys is obtainable from the Stationery Office Bookshop, 16 Arthur Street, Belfast BT1 4GD and through good booksellers.