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DRAFT STATUTORY INSTRUMENTS

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**1998 No.**

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

**PART VII**

**DUTIES OF EMPLOYERS IN RESPECT OF THEIR WORKFORCES**

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

**Employers in default: notice stating they are not qualified**

**62.**—(1) For the purposes of this Article, 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 Article 48(7);
- (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 Article 49(2);
- (c) the employer—
  - (i) has failed within the time allowed under Article 52 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 Article or regulations under Article 53; and
  - (ii) stands convicted of an offence under Article 52(5) or regulations made by virtue of Article 53(2)(f)(i), 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 Article 17(3)(b), or the High Court has exercised its jurisdiction by virtue of Article 17(4), in respect of that failure.

(2) Where an employer is in default, the Commission may serve notice on him stating that he is not qualified for the purposes of Articles 64 to 66; and references in those Articles to an unqualified person are to a person on whom a notice has been served under this paragraph or Article 63(1) 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 paragraph (2) by virtue of paragraph (1) (a) or (b) and he has ceased to be in default, the Commission shall serve notice on him cancelling the notice under paragraph (2).

(5) Where notice has been served on a person under paragraph (2), the Commission shall, if it is at any time satisfied, whether on an application under paragraph (6) or otherwise—

- (a) in the case of a notice served by virtue of paragraph (1)(c), 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 Article 52 and regulations under Article 53; or
- (b) in the case of a notice served by virtue of paragraph (1)(d), that he is complying, or has fully complied, with the order concerned,

serve notice on him cancelling the notice under paragraph (2).

(6) An application under this paragraph may be made by the person on whom the notice under paragraph (2) was served but may not be made before the expiry of the period of 6 months beginning with—

- (a) the date of the notice under paragraph (2); or
- (b) if he has previously applied under this paragraph, the latest date on which he so applied.

(7) Where the Commission refuses to grant an application under paragraph (6), 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 paragraph (1)(c), 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 Article 52 and regulations under Article 53, or
- (b) in the case of a notice served by virtue of paragraph (1)(d), 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 paragraph (2).

(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 Article or Article 63 or any failure to give such a notice.