

---

DRAFT STATUTORY INSTRUMENTS

---

**1998 No.**

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

**PART II**

**FUNCTIONS OF THE EQUALITY COMMISSION**

*Principal functions of Commission*

**General duty of Commission**

7. It shall be the duty of the Commission—
- (a) to promote equality of opportunity in Northern Ireland;
  - (b) to promote affirmative action;
  - (c) to work for the elimination of unlawful discrimination; and
  - (d) to keep under review the working of this Order and, when it is so required by the Department or otherwise thinks it necessary, draw up and submit to the Department proposals for amending this Order,

and for the purposes of discharging that duty the Commission shall have the functions conferred on it by this Order.

**Educational and advisory functions**

8.—(1) In order to assist the Commission in discharging its duty under Article 7 the Commission may—

- (a) establish services for giving advice on matters connected with equality of opportunity;
- (b) provide training courses;
- (c) hold conferences;
- (d) undertake research which appears to the Commission to be necessary or expedient for the purposes of its functions; and
- (e) disseminate (subject to the safeguard in Article 18(1)) information about the Commission's activities or anything to which those activities relate;

or it may arrange for, or assist (financially or otherwise), any of those things to be done.

(2) The Commission may advise the Department on—

- (a) any matter relating to the duty of the Commission under Article 7; or
- (b) any other matter specified by the Department.

(3) The Commission may make charges for training or other facilities or services made available by it under paragraph (1).

### **Codes of practice**

9.—(1) The Commission shall continue to maintain a code of practice containing such practical guidance as the Commission thinks fit for the promotion of equality of opportunity, including the elimination of discrimination which is unlawful by virtue of any provision of Part III.

(2) Where the Commission in carrying out its functions under this Order is considering whether or not action is required for promoting equality of opportunity, it shall have such regard to the recommendations contained in the code of practice under paragraph (1) as it considers proper in all the circumstances.

(3) The Commission may issue a code of practice containing such practical guidance as the Commission thinks fit for the elimination of discrimination which is unlawful by virtue of any provision of Part IV.

(4) Part I of Schedule 1 shall apply in relation to the issue of a code of practice under paragraph (3) and Part II of that Schedule shall apply in relation to all codes of practice under this Article.

### **Identification of patterns and trends of employment, etc.**

10.—(1) It shall be the duty of the Commission to identify and keep under review patterns and trends of employment in Northern Ireland and of occupations in Northern Ireland for the purposes of—

- (a) considering whether they reveal the existence or absence of equality of opportunity; and
- (b) assisting the Commission in forming an opinion about—
  - (i) the manner in which equality of opportunity can best be achieved; or
  - (ii) where such equality is absent, the reasons for its absence.

(2) It shall also be the duty of the Commission to keep itself informed about proceedings on complaints under Article 38.

### **Investigation of practices**

11.—(1) The Commission may conduct the investigations mentioned in paragraph (2) for the purpose of assisting it in considering what, if any, action for promoting equality of opportunity ought to be taken by any of the following persons, that is to say—

- (a) any employer;
  - (b) any person who is empowered by virtue of any statutory provision to select or nominate another person for employment by a third person;
  - (c) any employment agency;
  - (d) any vocational organisation;
  - (e) any person who provides services in connection with training for employment in any capacity or for a particular employment (not being services provided by the employer of a person who is seeking to obtain or is receiving those services) or in connection with training for a particular occupation; and
  - (f) any person who has power to confer a qualification that is needed for, or facilitates, engagement in employment in any capacity, or in a particular employment or occupation.
- (2) The investigations referred to in paragraph (1) are investigations—
- (a) into the composition, by reference to religious beliefs, of any of the following classes of person (or any class of person within such a class), that is to say—
    - (i) the employees of, or other persons who have applied for employment by, any employer or employers of any class;

- (ii) the persons who have applied for or obtained the services of any employment agency;
  - (iii) the members of, or other persons who have applied for membership of, any vocational organisation or such an organisation of any class;
  - (iv) the persons who have sought (or on whose behalf there have been sought) or who have obtained the services of a person such as is mentioned in paragraph (1)(e); or
  - (v) the persons who have applied to have, or have had, conferred on them any qualification such as is mentioned in paragraph (1)(f); and
- (b) into practices—
- (i) affecting the recruitment, admission to membership or access to benefits of persons belonging to any class referred to in sub-paragraph (a) or the terms of employment or membership or provision of benefits applicable to such persons;
  - (ii) involving any detriment to such persons; or
  - (iii) affecting the conferring or holding of any qualification such as is mentioned in paragraph (1)(f),
- including practices discontinued before the time of the investigation so far as relevant for explaining the composition of the class of persons in question at that time.
- (3) Schedule 2 has effect with respect to the conduct of investigations under this Article.

*Undertakings or directions for promoting equality of opportunity*

**Undertaking following investigation under Article 11**

**12.**—(1) The following provisions of this Article apply where, following an investigation under Article 11, the Commission is of the opinion that any of the persons mentioned in paragraph (1) of that Article ought to take action for promoting equality of opportunity.

- (2) The Commission shall use its best endeavours—
- (a) to ensure that the person concerned takes such action for promoting equality of opportunity as is, in all the circumstances, reasonable and appropriate; and
  - (b) where appropriate, to secure a satisfactory written undertaking by him that such action will be taken.

(3) Where the Commission asks the person concerned for an undertaking, on such terms as appear satisfactory to the Commission, to take such action as is mentioned in paragraph (2)(a), then—

- (a) if the undertaking is not given, the Commission shall serve on the person concerned a notice containing directions such as are mentioned in Article 14(1); and
- (b) if the undertaking, although given, is not complied with, the Commission shall either—
  - (i) serve on him such a notice containing such directions (which shall supersede the undertaking); or
  - (ii) make an application to the Tribunal under Article 16 for enforcement of the undertaking.

(4) Paragraph (3) does not apply in any case where the Commission decides that no further action by it is appropriate.

**Voluntary undertakings**

**13.**—(1) Any of the persons mentioned in Article 11(1) may give a written undertaking to the Commission if the Commission informs him—

- (a) that, in exercising its functions under this Order, the Commission has formed the opinion that he ought to take action for promoting equality of opportunity; or
  - (b) that it appears to the Commission from any decision of the Tribunal in proceedings under Part VI, or from any evidence given in such proceedings, that he ought to take such action.
- (2) An undertaking under this Article shall be in such terms as appear satisfactory to the Commission for the purpose of ensuring that the person giving it takes such action for promoting equality of opportunity as is, in all the circumstances, reasonable and appropriate.
- (3) If an undertaking given by a person under this Article is not complied with, the Commission shall either—
- (a) serve on him a notice containing directions (which shall supersede the undertaking) such as are mentioned in Article 14(1); or
  - (b) make an application to the Tribunal under Article 16 for enforcement of the undertaking.
- (4) Paragraph (3) does not apply in a case where the Commission decides that no further action by it is appropriate.
- (5) Paragraph (3) does not apply in relation to an undertaking given by any of the authorities specified in paragraph (1) of Article 95, but where an undertaking given under this Article by such an authority is not complied with the Commission shall send a report of the circumstances of the failure to comply with it to the person to whom a report under paragraph (2) of that Article following an investigation relating to the authority would be sent.

### **Directions under Articles 12 and 13**

**14.**—(1) The directions contained in a notice under Article 12(3)(a) or (b)(i) or Article 13(3)(a) shall be those which the Commission considers to be, in all the circumstances, reasonable and appropriate for promoting equality of opportunity, and the directions may in particular include—

- (a) directions for the abandonment, or for the modification in accordance with any instructions given in the directions, of any practice or for the substitution or adoption of new practices specified by the Commission; and
- (b) such directions as the Commission considers necessary to ensure that other directions are duly carried out,

but the terms of the directions contained in a notice under Article 12(3)(b)(i) or 13(3)(a) shall be such as, in the opinion of the Commission, are not substantially more onerous than the terms of the undertaking which they supersede.

(2) The directions contained in a notice under Article 12(3)(a) or (b)(i) or Article 13(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).

(3) A notice under Article 12(3)(a) or (b)(i) or Article 13(3)(a) shall inform the person on whom it is served of the right of appeal against the directions which is conferred by Article 15.

(4) The Commission, on the written application of the person on whom a notice under Article 12(3)(a) or (b)(i) or Article 13(3)(a) is served, may—

- (a) revoke all of the directions; or
- (b) modify the directions in accordance with the application—
  - (i) by revoking any of them; or
  - (ii) by substituting new directions for all or any of them,

- and, in substitution for any directions which are revoked under sub-paragraph (a), may accept from that person an undertaking such as is mentioned in Article 12(2)(b) or 13(2).
- (5) The Commission shall serve notice of the revocation or modification on the person concerned.
- (6) The directions—
- (a) are binding on the person concerned (except to the extent that they are quashed, or other directions are substituted for them, by the Tribunal under Article 15); and
  - (b) are enforceable only in accordance with Article 16.

#### *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.

#### *Restriction on disclosure of information*

#### **Restriction on disclosure of information**

- 18.**—(1) No information in the Commission’s possession which discloses, or from which there can be deduced, the religious belief of any identifiable individual shall, without the written consent of that individual, be disclosed by a person who is, or has been, a member or officer of the Commission to a person who is not associated with the Commission, except so far as such disclosure—
- (a) is necessary or expedient for the proper discharge of the functions of the Commission or is necessary to comply with any obligation imposed by or under any statutory provision (including this Order); or
  - (b) is made for the purpose of, or in connection with—
    - (i) any actual or prospective proceedings before the Tribunal or an industrial tribunal; or
    - (ii) any actual or prospective civil or criminal proceedings before a court.
- (2) For the purposes of paragraph (1) a person is associated with the Commission if—
- (a) he is a member or officer of the Commission; or
  - (b) his services have been made available to the Commission for the purpose of the exercise of any of its functions.
- (3) Paragraph (4) applies to any information supplied to the Commission—

- (a) in the course of an investigation under Article 11 or 71; or
  - (b) in pursuance of a requirement under Article 67.
- (4) No information to which this paragraph applies shall be disclosed by a person who is, or has been, a member or officer of the Commission to a person who is not a member or officer of the Commission, except so far as such disclosure—
- (a) is relevant for the purposes of Article 8(1) or 71(4) of this Order or paragraph 5 of Schedule 8 to the Northern Ireland Act 1998 and is not prohibited by paragraph (1);
  - (b) is made as mentioned in paragraph (1)(b); or
  - (c) is permitted by paragraph (5) or required by paragraph (6).
- (5) Where it is necessary or expedient to do so for the proper discharge of the functions of the Commission, a member or officer of the Commission may—
- (a) disclose to an employer any information in the Commission's possession which relates to his employees or to other persons who have applied for employment by him;
  - (b) disclose to a principal (within the meaning of Article 20) any information in the Commission's possession which relates to contract workers whose services are or have been available to him;
  - (c) disclose to any person who is empowered by virtue of any statutory provision to select or nominate another person for employment by a third person any information in the Commission's possession which relates to a person who has applied for the employment in question;
  - (d) disclose to an employment agency any information in the Commission's possession which relates to a person who has applied for or obtained the services of the agency;
  - (e) disclose to a vocational organisation any information in the Commission's possession which relates to members of that organisation;
  - (f) disclose to a person who provides services in connection with the training of persons for employment in any capacity, or for a particular employment or occupation, any information in the Commission's possession which relates to a person who has sought, or on whose behalf it has been sought, to obtain those services, or who has obtained those services; or
  - (g) disclose to a person who has power to confer a qualification such as is mentioned in Article 25 any information in the Commission's possession which relates to a person who has applied to have, or has had, that qualification conferred on him.
- (6) The Commission shall supply to the Department any information in the Commission's possession, the supply of which is, in the opinion of the Department, necessary for the proper discharge of the Department's functions.
- (7) Any person who discloses any information in contravention of any provision of this Article is guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- (8) It is a defence for a person charged with contravening paragraph (1) or (4) to show that before the disclosure in question was made he had also obtained the information otherwise than in his capacity as a member or officer of the Commission.