



Fair Employment (Northern Ireland) Act 1989 (repealed 1.3.1999)

1989 CHAPTER 32

PART II

NEW DUTIES OF EMPLOYERS IN RESPECT OF THEIR WORKFORCES

Enquiries, undertakings and directions

32 Enquiries by the Commission.

- (1) The Commission may from time to time require the employer to give the Commission such information held by the employer, being information to which section 30(1)(a) or (b) of this Act applies, as the Commission may specify; but an employer who has been required on any date to give any information under this subsection shall not be required to do so again before the expiry of the period of six months beginning with that date.
- (2) Where a monitoring return in respect of any registered concern has been served on the Commission, the Commission may require the employer to give the Commission such information as to the manner in which the return was prepared as it may specify.
- (3) The Commission may, in the case of any registered concern, require the employer to give the Commission such information as it may specify as to the steps the employer has taken or proposes to take to carry out a review and as to the manner in which the review has been or is to be carried out.
- (4) The Commission may, where a review has been carried out in the case of any registered concern, require the employer to give to the Commission such information as it may specify—
 - (a) as to the matters disclosed by the review,
 - (b) as to any determination under subsection (2) of section 31 of this Act, and

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- (c) in a case falling within subsection (3) of that section, as to his consideration of the matters referred to in paragraph (a) of that subsection and any determination under paragraph (b) of that subsection.
- (5) The Commission shall, where a review discloses that members of a particular community are not enjoying, or are not likely to continue to enjoy, fair participation in employment in the concern, make such recommendations as it thinks fit as to the affirmative action to be taken and, assuming the action is taken, as to the progress towards fair participation in employment in the concern, by reference to any period or periods, that can reasonably be expected to be made by members of that community.
- (6) Where the employer discloses to the Commission a determination to take any affirmative action, the Commission may from time to time require him to give the Commission such information as it may specify as to the affirmative action that he has taken or proposes to take, but the Commission may not require an employer to give any information under this subsection before the expiry of the period of six months beginning with—
- (a) the date of the disclosure, or
 - (b) if he has previously been required to give any information under this subsection, the date on which he was last required to do so.
- (7) Where the employer discloses to the Commission a determination as to the progress towards fair participation in employment in the concern, by reference to any period, that can reasonably be expected to be made by members of a particular community, the Commission may from time to time require him to give the Commission such information as it may specify for the purpose of determining the extent to which the progress has been made on the date of the requirement, but the Commission may not require an employer to give any information under this subsection before the expiry of the period of six months beginning with—
- (a) the date of the disclosure, or
 - (b) if he has previously been required to give any information under this subsection, the date on which he was last required to do so.
- (8) A requirement under this section to give any information in respect of a registered concern—
- (a) shall be made by notice served on the employer, and
 - (b) shall specify the time by which the information is to be given,
- and the reference in subsections (1), (6) and (7) above to the date of the requirement is to the date on which the notice was served.
- (9) A notice under this section served on the person whose name and address is for the time being included in the entry for any concern in the register is to be treated as served on the employer.
- (10) 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.
- (11) A person guilty of an offence under subsection (10) 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.

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- (12) It is a defence for a person charged with an offence under subsection (10) 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.
- (13) A person required to give any information under this section who knowingly gives 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.

33 Undertakings in connection with monitoring and reviews.

- (1) The following provisions of this section apply where the Commission is of the opinion, in the light of information received in respect of any registered concern in pursuance of a requirement under section 32 of this Act—
- (a) that the manner in which the employer prepares his monitoring returns is in any respect unsatisfactory or that the information sought by him for the purposes of monitoring is in any respect inadequate, or
 - (b) that the employer has no proposals for carrying out a review or that the manner in which he proposes to carry out the review, or the timing of the review, is in any respect unsatisfactory or that the information sought by him for the purposes of the review is in any respect inadequate.
- (2) The Commission shall use its best endeavours for the following purposes (as the case may be)—
- (a) to ensure that the manner in which the employer prepares his monitoring returns is satisfactory,
 - (b) to ensure that the information sought by the employer for the purposes of monitoring is adequate,
 - (c) to ensure that the information sought by the employer for the purposes of a review is adequate, or
 - (d) to ensure that a review is carried out at a time and in a manner that is satisfactory,
- and shall where appropriate use its best endeavours to secure a satisfactory written undertaking by the employer for the purpose in question.
- (3) Where the Commission asks the employer for an undertaking, on such terms as appear satisfactory to the Commission, for the purpose in question, then—
- (a) if the undertaking is not given, the Commission shall serve on the employer a notice containing directions such as are mentioned in section 34 of this Act, and
 - (b) if the undertaking, although given, is not complied with, the Commission shall either—
 - (i) serve on him a notice containing such directions (which shall supersede the undertaking), or

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(ii) make an application to the Tribunal under section 16 of this Act for enforcement of the undertaking.

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

34 Directions.

(1) The directions contained in a notice served under section 33(3) of this Act shall be those which the Commission considers to be, in all the circumstances, reasonable and appropriate for the purpose in question.

(2) The directions may in particular include such directions as the Commission considers necessary to ensure that other directions are duly carried out.

(3) The terms of the directions contained in a notice served under section 33(3)(b)(i) of this Act which supersede an undertaking shall be such as, in the opinion of the Commission, are not substantially more onerous than the terms of the undertaking.

(4) A notice served under section 33(3)(a) or (b)(i) of this Act shall inform the employer of the right of appeal against the directions which is conferred by section 15 of this Act.

(5) The Commission, on the written application of the employer, 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 paragraph (a) above, may accept from the employer an undertaking such as is mentioned in section 33(2) of this Act.

(6) The Commission shall serve notice of the revocation or modification on the employer.

(7) The directions—

(a) are binding on the employer (except to the extent that they are quashed, or other directions are substituted for them, by the Tribunal under section 15 of this Act), and

(b) are enforceable only in accordance with section 16 of this Act.

35 Application of sections 15 to 18.

Sections 15 to 18 of this Act shall have effect for the purposes of sections 33 and 34 of this Act as they have effect for the purposes of sections 12 and 14 of this Act but as if—

(a) references to section 12(2) or (3) were references to section 33(2) or, as the case may be, (3),

(b) references to section 14(3) were references to section 34(5), and

(c) for paragraphs (b) and (c) of section 15(2) there were substituted—

“(b) that in all the circumstances the directions are not appropriate for the purpose in question, or

(c) that the appellant is already taking appropriate steps for the purpose in question and the directions are, therefore, unnecessary.”

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