STATUTORY RULES OF NORTHERN IRELAND

1999 No. 148

FAIR EMPLOYMENT

Fair Employment (Monitoring) Regulations (Northern Ireland) 1999

Made - - - - 25th March 1999
To be laid before Parliament under paragraph 3(3) of Schedule 1 to the Northern Ireland Act 1974

Coming into operation 1st January 2001

The Department of Economic Development, in exercise of the powers conferred on it by Articles 52(2) to (4), 53 and 54 of the Fair Employment and Treatment (Northern Ireland) Order 1998(**1**) and of every other power enabling it in that behalf, after consultation with the Fair Employment Commission for Northern Ireland, hereby makes the following Regulations:

PART I

INTRODUCTION

Citation and commencement

1. These Regulations may be cited as the Fair Employment (Monitoring) Regulations (Northern Ireland) 1999 and shall come into operation on 1st January 2001.

Interpretation

2.—(1) In these Regulations—

"determination" means a determination of the community to which a person is to be treated as belonging for the purposes of monitoring;

"employee" in relation to the concern of a public authority includes any person who, by virtue of the Fair Employment (Specification of Public Authorities) Order (Northern Ireland) 1989(**2**), is treated for the purposes of Articles 52 to 61 as an employee of the authority;

(**1**) S.I. 1998/3162 (N.I. 21); for definition of "Department" *see* Article 2(2) and for definition of "prescribed" see Articles 52(10) and 54(3)
(**2**) S.R. 1989 No. 475 as last amended by S.R. 1998 No. 424; see also S.R. 1999 No. 82

"prescribed information" means the information which an employer is required by virtue of regulation 5 to give in a monitoring return;

"Protestant" means belonging to the Protestant community in Northern Ireland;

"public authority" means a person who, by virtue of Fair Employment (Specification of Public Authorities) Order (Northern Ireland) 1989 is such an authority for the purposes of Articles 52 to 61;

"registered concern" includes the concern of a public authority; and

"Roman Catholic" means belonging to the Roman Catholic community in Northern Ireland.

(2) Any reference in these Regulations to a numbered Article shall be construed as a reference to the Article so numbered in the Fair Employment and Treatment (Northern Ireland) Order 1998(**3**).

(3) For the purposes of these Regulations "promotion" in relation to an employee in a registered concern means that—

(a) the employee has moved from one situation to another within the concern;

(b) in doing so he did not fill a vacancy in the concern for which persons not already employed in the concern could apply; and

(c) as a direct result of his move there was, for the calendar year in which the move took place, an increase in the remuneration (excluding expenses) to which he was entitled from the concern,

and "promotee" shall be construed accordingly.

Revocation

3.—(1) Subject to paragraph (2), the Fair Employment (Monitoring) Regulations (Northern Ireland) 1989(**4**) and the Fair Employment (Monitoring) (Amendment) Regulations (Northern Ireland) 1991(**5**) are hereby revoked.

(2) The Regulations referred to in paragraph (1) shall continue to apply in relation to any monitoring return prepared for any year beginning before 1st January 2001 as if these Regulations had not been made.

Application

4. These Regulations shall apply in relation to any monitoring return prepared for any year beginning on or after 1st January 2001.

PART II

MONITORING RETURNS

Prescribed information

5.—(1) For the purposes of Article 52(1)(a) a monitoring return shall, subject to paragraph (4), contain the information about employees prescribed by—

(a) Part I of Schedule 1; and

(**3**) S.I. 1998/3162 (N.I. 21)
(**4**) S.R. 1989 No. 436; *see* also S.R. 1999 No. 82
(**5**) S.R. 1991 No. 324

(b) in the case of a return in respect of a registered concern to which Article 52(3) or (4) applies, Part II of Schedule 1.

(2) For the purposes of Article 52(1)(b) a monitoring return shall, subject to paragraph (4), contain the information about applicants for employment prescribed by Part III of Schedule 1.

(3) A monitoring return in respect of a registered concern to which Article 52(3) or (4) applies shall, for the purposes of those paragraphs, subject to paragraph (4), contain the information about former employees prescribed by Part IV of Schedule 1.

(4) Paragraphs (1)(b), (2) and (3) shall not have effect in relation to the first monitoring return prepared in respect of any registered concern.

Date or period to which prescribed information relates

6.—(1) The prescribed information about employees in a registered concern shall relate to the first day of the year for which the monitoring return containing the information is to be prepared.

(2) Without prejudice to paragraph (1), the information about employees which is prescribed by paragraph 2 of Part I of Schedule 1 and by Part II of Schedule 1 shall relate to the twelve months ending on the first day of the year for which the monitoring return containing that information is to be prepared.

(3) The prescribed information about applicants for employment in a registered concern shall relate to the twelve months ending on the first day of the year for which the monitoring return containing that information is to be prepared.

(4) The prescribed information about former employees in a registered concern to which Article 52(3) or (4) applies shall relate to the twelve months ending on the first day of the year for which the monitoring return containing that information is to be prepared and that shall be the period prescribed for the purposes of determining under Article 52(4) whether that paragraph applies to a registered concern.

(5) For the avoidance of doubt, it is hereby declared that nothing in paragraph (2) shall require an employer to include in any monitoring return information about a person who was not an employee on the day prescribed by paragraph (1) in relation to that return.

Period within which prescribed information shall be obtained

7.—(1) The prescribed information insofar as it relates to each employee in a registered concern shall be obtained—

(a) in the case of the first year for which a monitoring return is to be prepared in respect of the concern, within the first three months of that year; and

(b) in the case of any subsequent year, within the first month of that year.

(2) The prescribed information insofar as it relates to each applicant for employment or former employee in a registered concern shall be obtained within the first two months after the date of his application, or the date on which he ceased to be employed, as the case may be.

(3) In this regulation, "obtain" means obtain in accordance with these Regulations.

Principal method of making a determination in respect of employees

8.—(1) For the purposes of preparing a monitoring return in respect of a registered concern, an employer shall, subject to paragraph (2)—

(a) determine the community to which he will treat each employee as belonging by using the principal method prescribed by Part I of Schedule 2; and

(b) subject to regulation 11(1), where the use of that method does not enable him to treat any employee as belonging to a particular community, treat him as if the community to which he belongs cannot be determined.

(2) Where for the purpose of preparing any monitoring return in respect of a registered concern—

(a) an employer under and in accordance with paragraph (1) or regulation 8(1) of the Fair Employment (Monitoring) Regulations (Northern Ireland) 1989 treats an employee as belonging to a particular community; and

(b) that information is contained in a monitoring return served under Article 52(1) or section 27(1) of the Fair Employment (Northern Ireland) Act 1989(**6**),

he shall continue to treat the employee as belonging to that community for the purposes of preparing any subsequent monitoring return in respect of the concern and, accordingly, paragraph (1) shall not apply to such an employee in relation to that subsequent return.

Principal method of making a determination in respect of applicants

9. For the purposes of preparing a monitoring return in respect of a registered concern an employer shall—

(a) determine the community to which he will treat each applicant for employment in the concern as belonging by using the principal method prescribed by Part II of Schedule 2; and

(b) subject to regulation 11(2), where the use of that method does not enable him to treat any such applicant as belonging to a particular community, treat him as if the community to which he belongs cannot be determined.

Determinations in respect of former employees

10.—(1) For the purposes of preparing a monitoring return in respect of a registered concern to which Article 52(3) or (4) applies, an employer shall treat—

(a) each former employee of the concern to whom paragraph (2) or (3) applies as belonging to a community in accordance with the paragraph which applies to him; and

(b) any other former employee in the concern as if the community to which he belongs cannot be determined.

(2) Where—

(a) for the purpose of preparing a monitoring return the employer in a registered concern treated an employee in that concern as belonging to a particular community ("the relevant community");

(b) that information is contained in the return when it was served under Article 52(1); and

(c) the employer is required to include in the next monitoring return information about the same person as a former employee,

then the employer shall, for that purpose, treat the former employee as belonging to the relevant community.

(3) Where—

(a) for the purpose of preparing a monitoring return the employer in a registered concern treated an applicant for employment in that concern as belonging to a particular community ("the relevant community");

(**6**) 1989 c. 32

(b) the employer is required to include in a subsequent return information about the same person as a former employee; and

(c) paragraph (2) does not apply in the case of that former employee,

then the employer shall, for that purpose, treat the former employee as belonging to the relevant community.

Residuary methods of making a determination

11.—(1) Where an employee in a registered concern who, but for this paragraph, would fall within regulation 8(1)(b) has provided his employer, in writing, with any relevant information about himself then, notwithstanding that sub-paragraph, the employer may for the purposes of preparing a monitoring return in relation to that concern—

(a) treat that employee as belonging to the community with which the information shows that he has a connection; and

(b) if the information tends to show that he has a connection with both communities, treat him as belonging to the community with which, in general, it tends to show he has the stronger connection.

(2) Where an applicant for employment in a registered concern who, but for this paragraph, would fall within regulation 9(b) has provided his employer, in writing, with any relevant information about himself then, notwithstanding that paragraph, the employer may for the purposes of preparing a monitoring return in relation to that concern—

(a) treat the applicant as belonging to the community with which the information shows he has a connection; and

(b) if the information tends to show that he has a connection with both communities, treat him as belonging to the community with which, in general, it tends to show he has the stronger connection.

(3) For the purposes of this regulation, the following is relevant information about a person, that is to say—

(a) his surname and other names;

(b) his address;

(c) the schools attended by him (whether in Northern Ireland or elsewhere);

(d) any course that he has undertaken in preparation for any recognized award or any examination conducted by the Department of Education under Article 110 of the Education and Libraries (Northern Ireland) Order 1986(**7**);

(e) his sporting or other leisure pursuits or interests;

(f) the clubs, societies or other organisations to which he belongs;

(g) the occupation as a clergyman or minister of a particular religious denomination or as a teacher in any particular school, of any referee nominated by him when he applied for his employment.

(4) Schedule 3 shall have effect for the purposes of this regulation.

Disclosure to employees

12.—(1) An employer shall, not less than two weeks before serving a monitoring return on the Commission, give to each employee to whom this regulation applies a notice in writing which discloses to the employee—

(**7**) S.I. 1986/594 (N.I. 3)