1989 No. 436

FAIR EMPLOYMENT

Fair Employment (Monitoring) Regulations (Northern Ireland) 1989

Made . . . . . 20th November 1989

Coming into operation . . 1st January 1990

To be laid before Parliament under paragraph 3(3) of Schedule 1 to the Northern Ireland Act 1974

The Department of Economic Development, in exercise of the powers conferred on it by sections 27(10), 28, 29 and 47(5)(**a**) of the Fair Employment (Northern Ireland) Act 1989(**b**), and of every other power enabling it in that behalf, after consultation with the Fair Employment Agency for Northern Ireland(**c**), hereby makes the following Regulations:—

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(**a**) *See* the definition of "the Department" as read with section 57(1) of the Fair Employment (Northern Ireland) Act 1976 (c. 25); the Department of Manpower Services was renamed the Department of Economic Development by S.I. 1982/846 (N.I. 11) Article 3

(**b**) 1989 c. 32

(**c**) *See* section 1(3)

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Schedule 3 — Principal methods of determining the community to which applicants for employment belong
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Schedule 4 — Residuary methods of determining the community to which persons belong

PART I

INTRODUCTION AND THE SCHOOLS LIST

Citation and commencement

1. These Regulations may be cited as the Fair Employment (Monitoring) Regulations (Northern Ireland) 1989 and shall come into operation on 1st January 1990.

Interpretation

2.—(1) The Interpretation Act (Northern Ireland) 1954(**a**) shall apply to these Regulations as it applies to a Measure of the Northern Ireland Assembly.

(**a**) 1954 c. 33 (N.I.)

(2) Any reference in these Regulations to a numbered section shall be construed as a reference to the section bearing that number in the Fair Employment (Northern Ireland) Act 1989.

(3) In these Regulations expressions which are also used in Part II of the Fair Employment (Northern Ireland) Act 1989 shall, unless the contrary intention appears, have the same meaning as in that Part.

(4) In these Regulations—

"classify" in relation to a school, means classify that school as Protestant or Roman Catholic for the purposes of the Schools List;

"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(**a**), is treated for the purposes of sections 27 to 37 as an employee of the authority; and "employment" and "employed" shall be interpreted accordingly;

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

"primary education" and "secondary education" have the same meaning as in Article 2(2) of the Education and Libraries (Northern Ireland) Order 1986(**b**);

"primary school" means a school in Northern Ireland providing only primary education;

"principal method" means the method prescribed by Part I, the method prescribed by Part II or the method prescribed by Part III, of Schedule 2 for making a determination in respect of employees;

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

"Public authority" means a person who, by virtue of the Fair Employment (Specification of Public Authorities) Order (Northern Ireland) 1989 is such an authority for the purposes of sections 27 to 37;

"recognized award" has the meaning assigned to it by Article 3(2) of the Education (Unrecognised Degrees) (Northern Ireland) Order 1988(**c**);

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

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

"Schools List" has the meaning assigned to it by regulation 3(1) and any reference to the Schools List shall be construed as a reference to that List as published for the time being; and

"secondary school" means a school in Northern Ireland providing only secondary education or both primary and secondary education.

(**a**) S.R. 1989 No. 475
(**b**) S.I. 1986/594 (N.I. 3)
(**c**) S.I. 1988/89 (N.I. 22)

Schools list

3.—(1) The Commission shall maintain a list (in these Regulations referred to as "the Schools List") of every primary school and every secondary school and shall publish the list from time to time.

(2) The Schools List shall, for the purposes of monitoring, classify each school as—

(*a*) Protestant, where in the opinion of the Commission it is attended wholly or mainly by those who are Protestant; or

(*b*) Roman Catholic, where in the opinion of the Commission it is attended wholly or mainly by those who are Roman Catholic,

and shall list any other school as unclassified.

4. For the purposes of these Regulations "The Classification of Schools for Monitoring Purposes" published by the Department in September 1987 (as amended by Addendum No. 1 published in September 1988) shall be the first Schools List.

PART II

MONITORING RETURNS

Prescribed information

5.—(1) For the purposes of section 27(1) a monitoring return shall contain the information prescribed by Part I of Schedule 1.

(2) Without prejudice to the generality of paragraph (1), a monitoring return in respect of a registered concern to which section 27(3) or (4) applies shall, for the purposes of those sub-sections, include the information prescribed by Part II of Schedule 1.

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 that information is to be prepared.

(2) The prescribed information about applicants for employment in a registered concern to which section 27(3) or (4) applies shall relate to—

(*a*) in the case of the first year for which a monitoring return is to be prepared in respect of that concern, the first 2 months of that year; and

(*b*) in the case of any subsequent year, the 12 months ending on the first day of that year,

and in relation to each year those shall be the periods respectively prescribed for the purposes of determining under section 27(4) whether that sub-section applies to a registered concern.

Period within which prescribed information shall be obtained

7.—(1) Subject to regulation 12, 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 3 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 in a registered concern to which section 27(3) or (4) applies shall (unless otherwise required by Part II of Schedule 1) be obtained—

(*a*) in the case of the first year for which a monitoring return is to be prepared in respect of that concern, within the first 3 months of that year; and

(*b*) in the case of any subsequent year, within the first 2 months after the date of his application.

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

Principal methods of making a determination

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

(*a*) make a determination in respect of the employees in the concern by choosing one of the principal methods and applying it to all of them; or

(*b*) where that method does not enable him to make a determination in the case of any employee and the employer does not treat him as belonging to a community under regulation 10(1), treat him as if the community to which he belongs cannot be determined.

(2) Where—

(*a*) for the purpose of preparing any monitoring return in respect of a registered concern, an employer under and in accordance with paragraph (1) treats an employee as belonging to a particular community; and

(*b*) that information is contained in a monitoring return served on the Commission under section 27(1),

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

9. For the purpose of preparing a monitoring return in respect of a registered concern to which section 27(3) or (4) applies, an employer shall—

(*a*) make a determination in respect of applicants for employment in the concern by choosing the method prescribed by Part I, the method prescribed by Part II or the method prescribed by Part III, of Schedule 3 for the purpose and applying it to all of them; or

(*b*) where that method does not enable him to make a determination in the case of any such applicant and the employer does not treat him as belonging to a community under regulation 10(2), treat him as if the community to which he belongs cannot be determined.