
STATUTORY INSTRUMENTS

1998 No. 3162

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

PART VII

DUTIES OF EMPLOYERS IN RESPECT OF THEIR WORKFORCES

Monitoring the workforce

Regulations as to monitoring

53.—(1) The Department shall, by regulations made after consultation with the Commission, make provision for the purposes of Article 52.

(2) The regulations may—

- (a) require information to be given separately by reference to the sex of the employee, former employee or applicant or by reference to different descriptions or classes of employment;
- (b) provide for Article 52(4) to apply either generally or in prescribed circumstances as if the reference to 250 employees were a reference to the prescribed number of employees;
- (c) provide that—
 - (i) the date or period to which any information given in a monitoring return is to relate; and
 - (ii) the period in which that information is to be obtained, is to be determined by or in accordance with the regulations;
- (d) require—
 - (i) information about a person employed or applying for employment in or ceasing to be employed in a concern which might be used if any of the prescribed methods for determining the community to which a person is to be treated as belonging for the purposes of monitoring were applied; and
 - (ii) a record of the determination by an employer of the community to which a person employed or applying for employment in or ceasing to be employed in a concern is to be treated as belonging for those purposes,

to be retained by the employer for such period as may be prescribed and provide that a person who without reasonable excuse fails to comply with such a requirement shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale;

- (e) make such other provision as to the manner of preparing monitoring returns (including provision for the disclosure of information held for the purposes of monitoring to the person to whom it relates) as appears appropriate to the Department;
- (f) provide that—

- (i) an employer who without reasonable excuse serves on the Commission a monitoring return which is not prepared in accordance with the regulations or does not contain the prescribed information is guilty of an offence and liable on summary conviction to a fine not exceeding £10,000; and
 - (ii) if a person knowingly gives any false information to another who, with a view to including any information in a monitoring return to be served on the Commission, is seeking information or knowingly includes any false information in such a monitoring return, he is guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale;
- (g) provide that, subject to such exceptions as may be prescribed, a person who discloses—
- (i) any information of a prescribed description which is obtained or used in pursuance of the regulations for the purposes of preparing any monitoring return; or
 - (ii) the determination by an employer of the community to which a person employed or applying for employment in or ceasing to be employed in a concern is to be treated as belonging for the purposes of monitoring,
- shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- (3) The regulations may authorise or require the employer to determine which community (if any) a person employed or applying for employment in or ceasing to be employed in the concern is to be treated as belonging to for the purposes of monitoring by applying the principal method prescribed or where that method does not enable him to make that determination, by applying the residuary method, or one of the residuary methods, prescribed; so that, for example—
- (a) where an applicant has stated that he belongs to a particular community the employer may be required to determine that he is to be treated as belonging to the community concerned; and
 - (b) where, in any case not within sub-paragraph (a), the employer has information about the applicant, being information which the employer is authorised by the regulations to take into account as tending to show that the person to whom it relates has a connection with a particular community, the employer may be required to determine the community to which the applicant is to be treated as belonging by reference to that information.
- (4) Where the regulations authorise an employer to take into account information which relates to the schools attended by any person, the regulations may require the Commission to maintain a list classifying each school, or each school in any class specified by the Department, as a school attended mainly by members of a particular community.
- (5) The regulations may require compliance with any direction of the Commission to a particular employer to apply the prescribed methods for determining the community to which a person is to be treated as belonging for the purposes of monitoring in a manner different from that otherwise authorised or required by the regulations.
- (6) Paragraphs (2) to (5) do not prejudice the generality of paragraph (1).