
DRAFT STATUTORY INSTRUMENTS

1998 No.

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

PART II

FUNCTIONS OF THE EQUALITY COMMISSION

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.