



# Fair Employment (Northern Ireland) Act 1989 (repealed 1.3.1999)

## 1989 CHAPTER 32

### PART I

#### THE FAIR EMPLOYMENT COMMISSION, THE FAIR EMPLOYMENT TRIBUNAL AND THE FUNCTIONS OF THE COMMISSION AND THE TRIBUNAL

#### *The Fair Employment Commission for Northern Ireland*

#### **1 The Fair Employment Commission.**

- (1) The body corporate established by section 1 of the <sup>M1</sup>Fair Employment (Northern Ireland) Act 1976 with the name of the Fair Employment Agency for Northern Ireland shall be known instead as “the Fair Employment Commission for Northern Ireland”; and in this Act the Fair Employment Commission for Northern Ireland is referred to as “the Commission”.
- (2) In section 1(1) of the Fair Employment (Northern Ireland) Act 1976 (general duties of Commission) after paragraph (a) there is inserted—  
“(aa) promoting affirmative action;”.
- (3) References in the Fair Employment (Northern Ireland) Acts to the Commission include, in relation to any time before the commencement of subsection (1) above, references to the Fair Employment Agency for Northern Ireland.

#### **Marginal Citations**

**M1** 1976 c. 25.

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*Changes to legislation: There are currently no known outstanding effects for the Fair Employment (Northern Ireland) Act 1989 (repealed 1.3.1999), Part I. (See end of Document for details)*

## *The Fair Employment Tribunal for Northern Ireland*

### **2 Constitution of the Tribunal.**

- (1) The Department shall by regulations provide for the establishment of a tribunal, to be known as the Fair Employment Tribunal for Northern Ireland (in this Act referred to as “the Tribunal”), to exercise the jurisdiction conferred on it by the Fair Employment (Northern Ireland) Acts.
- (2) Regulations under subsection (1) above may provide for the jurisdiction of the Tribunal to be exercised by a single tribunal or by two or more tribunals.
- (3) The Fair Employment Appeals Board established by section 4 of the <sup>M2</sup>Fair Employment (Northern Ireland) Act 1976 is hereby abolished.
- (4) Any appeal that has been made to the Fair Employment Appeals Board under Part II of the Fair Employment (Northern Ireland) Act 1976 and has not been determined before the commencement of this section shall be determined by the Tribunal; and the provisions of that Part relating to appeals have effect in relation to such an appeal as if references to the Board were references to the Tribunal.

#### **Marginal Citations**

**M2** 1976 c. 25.

### **3 The President and Vice-President.**

- (1) There shall be—
  - (a) a President of the Industrial Tribunals and the Fair Employment Tribunal (in this Part of this Act referred to as “the President”),
  - (b) a Vice-President of the Industrial Tribunals and the Fair Employment Tribunal (in this Part of this Act referred to as “the Vice-President”), and
  - (c) a panel of chairmen of the Fair Employment Tribunal,
 who shall each be appointed by the Lord Chancellor and shall exercise the functions respectively conferred on them by or under the Fair Employment (Northern Ireland) Acts or any other enactment.
- (2) A person is not qualified for appointment under subsection (1) above unless he is a barrister or solicitor of not less than seven years’ standing.
- (3) The President and Vice-President may each resign his office at any time by notice in writing to the Lord Chancellor and shall each vacate his office [<sup>F1</sup>on the day on which he attains the age of 70, but subject to subsection (4) below and subsections (4) to (6) of section 26 of the Judicial Pensions and Retirement Act 1993 (power to authorise continuance in office up to the age of 75)].
- (4) If, in the opinion of the Lord Chancellor, the President or Vice-President is unfit to continue in office or is incapable of performing his duties, the Lord Chancellor may revoke his appointment.
- (5) A person appointed under subsection (1)(c) above to a panel of chairmen shall hold and vacate office as provided by or under regulations under section 2(1) of this Act.

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- (6) The functions of the President or Vice-President may, if he is for any reason unable to act or during a vacancy in his office, be discharged by a person nominated for that purpose by the Lord Chancellor.
- (7) Regulations under section 2(1) of this Act may provide for specified functions of the President and Vice-President (including functions under sections 6 and 17 of this Act) to be exercised in specified circumstances by a person appointed, under subsection (1) (c) above, to a panel of chairmen.
- (8) Until the first appointment under subsection (1)(a) above takes effect, the President of the Industrial Tribunals shall be the President.

<sup>F2</sup>(9) .....

#### Textual Amendments

- F1** Words in s. 3(3) substituted (31.3.1995) by 1993 c. 8, s. 26, **Sch. 6 para. 28(1)** (with Sch. 7 paras. 2(2), 3(2)(4)); S.I. 1995/631, **art. 2**
- F2** S. 3(9) repealed (24.9.1996) by S.I. 1996/1921 (N.I. 18), art. 28, **Sch. 3**

#### 4 Remuneration and allowances.

The Department may pay—

- (a) to members of the Tribunal, other than the President and Vice-President, such remuneration, fees and allowances, and
- (b) to any other persons, such allowances for the purposes of, or in connection with, their attendance at the Tribunal,

as the Department may, with the consent of the Department of Finance and Personnel, determine.

#### 5 Tribunal procedure.

- (1) The Department may by regulations make such provision as appears to it to be necessary or expedient with respect to proceedings before the Tribunal.
- (2) The regulations may in particular include provision—
  - (a) for determining by which tribunal any appeal, question or complaint is to be determined where the jurisdiction of the Tribunal is being exercised by more than one tribunal,
  - (b) for parties to proceedings to be represented by such persons as may be determined by or under the regulations,
  - (c) for requiring persons to attend to give evidence and produce documents,
  - (d) as to the admissibility of evidence,
  - (e) for authorising the administration of oaths to witnesses,
  - (f) for granting to any person such discovery or inspection of documents or right to further particulars as might be granted by a county court,
  - (g) for enabling an officer of the Tribunal to determine matters arising prior to a hearing,

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- (h) prescribing forms to be completed by the parties to a complaint under Part III of the <sup>M3</sup>Fair Employment (Northern Ireland) Act 1976 before any hearing before the Tribunal,
  - (j) for enabling the Tribunal to review its decisions, and revoke or vary its orders or awards, in such circumstances as may be determined in accordance with the regulations,
  - (k) for the award of costs or expenses,
  - (l) for taxing or otherwise settling any such costs or expenses (and, in particular, for enabling such costs to be taxed in the county court), and
  - (m) for the registration and proof of determinations of the Tribunal.
- (3) The Tribunal shall give reasons for its decisions.
- (4) In relation to proceedings on a complaint under Part III of the <sup>M4</sup>Fair Employment (Northern Ireland) Act 1976, the regulations shall include provision for postponing the hearing of a complaint for such period as may be determined in accordance with the regulations for the purpose of giving an opportunity for the complaint to be settled by way of conciliation and withdrawn.
- (5) Without prejudice to subsection (1) above, the regulations may enable the Tribunal to sit in private for the purposes of—
- (a) hearing evidence which in the opinion of the Tribunal relates to matters of such a nature that it would be against the interests of national security, public safety or public order to allow the evidence to be given in public,
  - (b) hearing evidence from any person which in the opinion of the Tribunal is likely to consist of—
    - (i) information which he could not disclose without contravening a prohibition imposed by or under any enactment,
    - (ii) information which has been communicated to him in confidence or which he has otherwise obtained in consequence of the confidence reposed in him by another person,
    - (iii) information the disclosure of which would cause substantial injury to any undertaking of his or in which he works, or
    - (iv) information the disclosure of which would create a substantial risk that he or another individual would be subject to physical attack or sectarian harassment.
- (6) The regulations may include provision authorising or requiring the Tribunal, in circumstances specified in the regulations, to send notice or a copy of any document so specified relating to any proceedings before the Tribunal, or of any decision, order or award of the Tribunal, to any person or body so specified.
- (7) The <sup>M5</sup>Arbitration Act (Northern Ireland) 1937 does not apply to any proceedings before the Tribunal.
- (8) Any person who without reasonable excuse fails to comply with—
- (a) any requirement imposed by the regulations by virtue of subsection (2)(c) above, or
  - (b) any requirement with respect to the discovery or inspection of documents imposed by the regulations by virtue of subsection (2)(f) above,
- is guilty of an offence.
- (9) A person guilty of an offence under subsection (8) above—

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- (a) is liable on summary conviction to a fine not exceeding level 5 on the standard scale, and
  - (b) if without reasonable excuse 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.
- (10) Where the Tribunal sits in private in accordance with any provision included in the regulations by virtue of subsection (5) above, the Tribunal may make an order prohibiting the disclosure of specified information, except so far as the disclosure is necessary—
- (a) for the purposes of the proceedings,
  - (b) for communicating to any person the decision of the Tribunal in the proceedings and for communicating the reasons for the decision to any person to whom the Tribunal is required by the regulations to communicate them, or
  - (c) for the purposes of any criminal proceedings or to comply with the order of a court.
- (11) If a person discloses any information in contravention of an order of the Tribunal under subsection (10) above, he is guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.

#### **Marginal Citations**

**M3** 1976 c. 25.

**M4** 1976 c. 25.

**M5** 1937 c. 8 (N.I.).

## **6 Complaints involving matters within the jurisdiction of industrial tribunal.**

- (1) This section applies where a complaint has been made to the Tribunal under Part III of the <sup>M6</sup>Fair Employment (Northern Ireland) Act 1976 and it appears to the President or Vice-President that the complaint is one in respect of which—
- (a) a complaint could be made to an industrial tribunal on the ground that—
    - (i) the complainant has been unfairly dismissed within the meaning of [<sup>F3</sup>Part XI of the Employment Rights (Northern Ireland) Order 1996.], or
    - (ii) a person has committed an act of discrimination against the complainant which is unlawful by virtue of Part III of the Sex Discrimination (Northern Ireland) Order 1976, or
  - (b) a complaint has been made to an industrial tribunal on that ground, but the proceedings under the [<sup>F4</sup>Employment Rights (Northern Ireland) Order 1996] or the <sup>M7</sup>Sex Discrimination (Northern Ireland) Order 1976 have not been disposed of.
- (2) Where this section applies and the President or Vice-President considers that any matters which would otherwise fall to be determined by an industrial tribunal could appropriately be heard and determined by the Tribunal, he may direct that those matters shall be so heard and determined.
- [<sup>F5</sup>(3) Where a direction is made under subsection (2) that any matters shall be heard and determined by the Tribunal, then—

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- (a) for the purpose of complying with that direction, the Tribunal shall, in relation to those matters, have the jurisdiction, and may exercise all the powers, of an industrial tribunal;
- (b) neither [<sup>F6</sup>Article 11(5) of the Industrial Tribunals (Northern Ireland) Order 1996] nor Article 63(3) of the Sex Discrimination (Northern Ireland) Order 1976 shall apply in relation to the hearing and determination of those matters by the Tribunal;
- (c) [<sup>F7</sup>Articles 16 and 17 of the Industrial Tribunals (Northern Ireland) Order 1996] (recovery of, and interest on, sums awarded by industrial tribunals) shall apply in relation to any sum payable in pursuance of a decision of the Tribunal in relation to any such matters as it applies in relation to a sum payable in pursuance of a decision of an industrial tribunal; and
- (d) [<sup>F8</sup>Article 22 of the Industrial Tribunals (Northern Ireland) Order 1996] (appeals against decisions of industrial tribunals) shall apply in relation to a decision of the Tribunal in relation to any such matters as it applies in relation to a decision of an industrial tribunal.]

#### Textual Amendments

- F3** Words in s. 6(1)(a)(i) substituted (24.9.1996) by S.I. 1996/1919 (N.I. 16), art. 255, **Sch. 1** (with Sch. 2)
- F4** Words in s. 6(1)(b) substituted (24.9.1996) by S.I. 1996/1919 (N.I. 16), art. 255, **Sch. 1** (with Sch. 2)
- F5** S. 6(3) substituted (1.7.1992) by S.I. 1992/807 (N.I. 5), art. 106(3); S.R. 1992/212, art. 2(3).
- F6** Words in s. 6(3)(b) substituted (24.9.1996) by S.I. 1996/1921 (N.I. 18), art. 26, **Sch. 1 para. 7(1)**
- F7** Words in s. 6(3)(c) substituted (24.9.1996) by S.I. 1996/1921 (N.I. 18), art. 26, **Sch. 1 para. 7(2)**
- F8** Words in s. 6(3)(d) substituted (24.9.1996) by S.I. 1996/1921 (N.I. 18), art. 26, **Sch. 1 para. 7(3)**

#### Marginal Citations

- M6** 1976 c. 25.
- M7** S.I.1976/1042 (N.I. 15).

### *Code of practice*

#### 7 **Code of practice for the promotion of equality of opportunity.**

- (1) The Commission shall maintain a code of practice for the promotion of equality of opportunity and publish the code as for the time being in force.
- (2) The Commission shall take such steps as it considers necessary to publicise the code.
- (3) The Commission and the Department shall each take such steps as they consider necessary to encourage employers and vocational organisations in Northern Ireland to adopt the policies and practices recommended in the code.
- (4) Where the Commission, in carrying out its functions under this Act, is considering whether or not action is required for promoting equality of opportunity, it shall have such regard to the recommendations contained in the code as it considers proper in all the circumstances.
- (5) A failure on the part of any person to observe any provision of the code shall not of itself render him liable to any proceedings; but if, in any proceedings under the Fair Employment (Northern Ireland) Acts before the Tribunal, any provision of the code

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appears to the Tribunal to be relevant to any question arising in the proceedings it shall be taken into account in determining that question.

## 8 Contents of the code.

- (1) The guide to good manpower policy and practice having effect under section 5 of the <sup>M8</sup>Fair Employment (Northern Ireland) Act 1976 at the commencement of section 7 of this Act shall be the first code of practice under that section.
- (2) Subject to section 9 of this Act, the Commission may from time to time revise the whole or any part of the code.
- (3) The Commission shall exercise its powers under this section so that the code contains such practical guidance as the Commission thinks fit for the promotion of equality of opportunity, including the elimination of discrimination.
- (4) If the Commission proposes to revise the code, it shall publish a draft of the revised code or of the amendments to the existing code.
- (5) The Commission shall consider any representations made to it about the draft and may modify the draft accordingly.
- (6) In the course of preparing any draft for publication under subsection (4) above the Commission shall consult—
  - (a) with the Standing Advisory Commission on Human Rights,
  - (b) with such organisations appearing to it to be representative of employers, of organisations of workers and of persons engaged in occupations in Northern Ireland as it thinks fit, and
  - (c) with such other persons as it thinks fit.

### Marginal Citations

M8 1976 c. 25.

## 9 Approval of code.

- (1) This section applies where the Commission determines to proceed with the revision of the code of practice after publishing a draft under section 8(4) of this Act.
- (2) The Commission shall send a draft of the revised code to the head of the Department or, if no head of the Department stands appointed for the time being, to the Secretary of State.
- (3) Where the draft of the revised code is sent to the head of the Department, he shall—
  - (a) if he approves of it, lay it before the Northern Ireland Assembly, and
  - (b) if he does not approve of it, publish details of his reasons.
- (4) If, within the period of forty days beginning with the day on which the draft of the revised code is laid before the Assembly, the Assembly so resolves, no further proceedings shall be taken on it, but without prejudice to the laying before the Assembly of a new draft.
- (5) Section 41(3) of the <sup>M9</sup>Interpretation Act (Northern Ireland) 1954 (laying of statutory documents) shall have effect as if the draft of the revised code required to be so laid

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were a statutory document (within the meaning of that Act) required under a Measure of the Assembly to be laid before the Assembly.

- (6) In reckoning the period of forty days referred to in subsection (4) above, no account shall be taken of any period during which the Assembly is dissolved by virtue of section 27(2) of the <sup>M10</sup>Northern Ireland Constitution Act 1973 or is prorogued or adjourned for more than four days.
- (7) Where the draft of the revised code is sent to the Secretary of State he shall—
  - (a) if he approves of it, lay it before Parliament, and
  - (b) if he does not approve of it, publish details of his reasons.
- (8) If, within the period of forty days beginning with the day on which the draft of the revised code is laid before each House of Parliament or, if the draft is laid on different days, with the later of the two days, either House so resolves, no further proceedings shall be taken on it, but without prejudice to the laying before Parliament of a new draft.
- (9) In reckoning the period of forty days referred to in subsection (8) above, no account shall be taken of any period during which Parliament is dissolved or prorogued or during which both Houses are adjourned for more than four days.
- (10) If no such resolution is passed as is referred to in subsection (4) or (8) above, the Commission shall issue the code in the form of the draft and the code shall come into effect on such day as the Department may by order appoint.

**Marginal Citations**

- M9** 1954 c. 33 (N.I.).  
**M10** 1973 c. 36.

*Identification of patterns and trends of employment, etc.*

**10 Survey of employment, etc., patterns.**

- (1) It shall be the duty of the Commission to identify and keep under review patterns and trends of employment in Northern Ireland and of occupations in Northern Ireland for the purposes of—
  - (a) considering whether they reveal the existence or absence of equality of opportunity, and
  - (b) assisting the Commission in forming an opinion about—
    - (i) the manner in which equality of opportunity can best be achieved, or
    - (ii) where such equality is absent, the reasons for its absence.
- (2) It shall also be the duty of the Commission to keep itself informed about proceedings on complaints under Part III of the <sup>M11</sup>Fair Employment (Northern Ireland) Act 1976.

**Marginal Citations**

- M11** 1976 c. 25.



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### *Investigation of practices*

## **11 Investigation of employment etc., practices.**

- (1) The Commission may conduct the investigations mentioned in subsection (2) below for the purpose of assisting it in considering what, if any, action for promoting equality of opportunity ought to be taken by any of the following persons, that is to say—
- (a) any employer,
  - (b) any person who is empowered by virtue of an enactment to select or nominate another person for employment by a third person,
  - (c) any employment agency,
  - (d) any vocational organisation,
  - (e) any person who provides services in connection with training for employment in any capacity or for a particular employment (not being services provided by the employer of a person who is seeking to obtain or is receiving those services) or in connection with training for a particular occupation, and
  - (f) any person who has power to confer a qualification that is needed for, or facilitates, engagement in employment in any capacity, or in a particular employment or occupation.
- (2) The investigations referred to in subsection (1) above are investigations—
- (a) into the composition, by reference to religious beliefs, of any of the following classes of person (or any class of person within such a class), that is to say—
    - (i) the employees of, or other persons who have applied for employment by, any employer or employers of any class,
    - (ii) the persons who have applied for or obtained the services of any employment agency,
    - (iii) the members of, or other persons who have applied for membership of, any vocational organisation or such an organisation of any class,
    - (iv) the persons who have sought (or on whose behalf there have been sought) or who have obtained the services of a person such as is mentioned in subsection (1)(e) above, or
    - (v) the persons who have applied to have, or have had, conferred on them any qualification such as is mentioned in subsection (1)(f) above, and
  - (b) into practices—
    - (i) affecting the recruitment, admission to membership or access to benefits or services of persons belonging to any class referred to in paragraph (a) above or the terms of employment or membership or provision of benefits or services applicable to such persons,
    - (ii) involving any detriment to such persons, or
    - (iii) affecting the conferring or holding of any qualification such as is mentioned in subsection (1)(f) above,including practices discontinued before the time of the investigation so far as relevant for explaining the composition of the class of persons in question at that time.
- (3) Schedule 1 to this Act has effect with respect to the conduct of investigations under this section.

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*Undertakings or directions for promoting equality of opportunity*

**12 Undertaking following investigation under section 11.**

- (1) The following provisions of this section apply where, following an investigation under section 11 of this Act, the Commission is of the opinion any of the persons mentioned in subsection (1) of that section 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 subsection (2)(a) above, 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 section 14(1) of this Act, 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 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.
- (5) The reference in subsection (1) above to an investigation under section 11 of this Act includes a reference to an investigation made by the Fair Employment Agency for Northern Ireland under section 12 of the <sup>M12</sup>Fair Employment (Northern Ireland) Act 1976 before the commencement of this section.

**Marginal Citations**

**M12** 1976 c. 25.

**13 Voluntary undertakings.**

- (1) Any of the persons mentioned in section 11(1) of this Act may give a written undertaking to the Commission if the Commission informs him—
  - (a) that, in exercising its functions under this Act, 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 III of the Fair Employment (Northern Ireland) Act 1976, or from any evidence given in such proceedings, that he ought to take such action.

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- (2) An undertaking under this section 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 section 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 section 14(1) of this Act, or
  - (b) 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 a case where the Commission decides that no further action by it is appropriate.
- (5) Subsection (3) above does not apply in relation to an undertaking given by any of the authorities specified in subsection (1) of section 54 of the Fair Employment (Northern Ireland) Act 1976, but where an undertaking given under this section 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 subsection (2) of that section following an investigation relating to the authority would be sent.

#### **14 Directions under sections 12 and 13.**

- (1) The directions contained in a notice under section 12(3)(a) or (b)(i) or section 13(3)(a) of this Act 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 section 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) A notice under section 12(3)(a) or (b)(i) or section 13(3)(a) of this Act shall inform the person on whom it is served of the right of appeal against the directions which is conferred by section 15 of this Act.
- (3) The Commission, on the written application of the person on whom a notice under section 12(3)(a) or (b)(i) or section 13(3)(a) of this Act 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 paragraph (a) above, may accept from that person an undertaking such as is mentioned in section 12(2)(b) or 13(2) of this Act.

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- (4) The Commission shall serve notice of the revocation or modification on the person concerned.
- (5) 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 section 15 of this Act), and
  - (b) are enforceable only in accordance with section 16 of this Act.

*Appeals and legal proceedings in relation to undertakings and directions*

## 15 Appeal to Tribunal against directions under section 12 or 13.

- (1) Where, under section 12(3) or 13(3)(a) of this Act, the Commission serves on a person a notice containing directions (not being directions substituted for others in accordance with an application made by him under section 14(3) of this Act), he may within 21 days from the date of service appeal to the Tribunal against the directions.
- (2) The appeal may be brought on any of the following grounds—
  - (a) that in all the circumstances it is unreasonable to expect the appellant to comply with the directions,
  - (b) that in all the circumstances the directions are not appropriate for promoting equality of opportunity, or
  - (c) that the appellant is already affording equality of opportunity and taking any appropriate action to promote equality of opportunity and the directions are, therefore, unnecessary.
- (3) On hearing the appeal the Tribunal may—
  - (a) dismiss the appeal, or
  - (b) quash the directions or any of them, or
  - (c) substitute for the directions or any of them such other directions (of a kind that the Commission could have given) as the Tribunal considers reasonable and appropriate in all the circumstances.
- (4) Directions substituted under subsection (3)(c) above are binding on the appellant and are enforceable only in accordance with section 16 of this Act.

## 16 Order of Tribunal to enforce undertaking or directions.

- (1) Where—
  - (a) an undertaking to take action for promoting equality of opportunity—
    - (i) which has been given to the Commission under section 12(2) or 13 of this Act and has not been superseded by directions given by the Commission, or
    - (ii) which has been given to the Commission under section 14(3) of this Act,
 has not been complied with within such period as the Commission considers reasonable,

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- (b) directions given by the Commission or substituted by the Tribunal under section 15 of this Act for directions given by the Commission have not been complied with within such period as the Commission considers reasonable, or
- (c) steps have not been taken to the Commission's satisfaction within such period as the Commission considers reasonable to comply with the undertaking or directions,

the Commission may, subject to subsection (2) below, make an application to the Tribunal under this section for enforcement of the undertaking or directions.

- (2) An application for the enforcement of directions shall not be made—
  - (a) until the end of the period of 21 days within which an appeal may be brought to the Tribunal under section 15 of this Act,
  - (b) if such an appeal is brought, until—
    - (i) the appeal is abandoned, or
    - (ii) the appeal is determined and the period within which notice of an appeal to the Court of Appeal under section 18 of this Act may be given has expired, or
  - (c) if notice of an appeal to the Court of Appeal under that section is given within that period, until the appeal is abandoned or determined.
- (3) On an application under subsection (1) above the Tribunal—
  - (a) may make such order as it thinks fit for the purpose of giving effect to the undertaking or directions, and
  - (b) whether or not it makes such an order, may order that the whole or part of the undertaking or directions shall cease to have effect.
- (4) An order under subsection (3)(a) above—
  - (a) shall specify the steps to be taken by the person by whom the undertaking was given or to whom the directions were given,
  - (b) may specify the time within which each step is to be taken, and
  - (c) may require a specified person to attend before the Tribunal at a specified time to report to the Tribunal on the extent to which those steps have been taken.
- (5) The terms of an order under subsection (3)(a) above (except so far as it requires attendance before the Tribunal) shall be such as, in the opinion of the Tribunal, are not substantially more onerous than the terms of the undertaking or directions.
- (6) The Commission—
  - (a) is entitled to appear and be heard when a person attends before the Tribunal in pursuance of an order under subsection (3)(a) above, and
  - (b) may itself apply to the Tribunal for the enforcement of such an order.
- (7) Subject to subsection (5) above, the Tribunal may at any time revoke or vary the terms of an order under subsection (3) above—
  - (a) on an application by the Commission or by the person in relation to whom the order was made, or
  - (b) where a person attends before the Tribunal in pursuance of an order under subsection (3)(a) above or on an application by the Commission under subsection (6)(b) above.
- (8) In subsection (1) above—

*Status: Point in time view as at 24/09/1996.*

*Changes to legislation: There are currently no known outstanding effects for the Fair Employment (Northern Ireland) Act 1989 (repealed 1.3.1999), Part I. (See end of Document for details)*

- (a) the references to an undertaking given to the Commission under section 12(2) or 14(3) of this Act include references to an undertaking given to the Fair Employment Agency for Northern Ireland under section 13(1) or (5) of the <sup>M13</sup>Fair Employment (Northern Ireland) Act 1976 before the commencement of section 12 of this Act, and
- (b) the reference to directions given by the Commission or substituted by the Tribunal under section 15 of this Act for such directions includes a reference to directions given by the Fair Employment Agency for Northern Ireland before the commencement of that section or substituted by the Fair Employment Appeals Board under section 14 of the Fair Employment (Northern Ireland) Act 1976 for such directions.

#### **Marginal Citations**

**M13** 1976 c. 25.

### **17 Failure to comply with order of Tribunal.**

- (1) Subsection (3) below applies where the Tribunal determines that a person (in this section referred to as “the respondent”)—
  - (a) has failed to comply with a requirement to attend before the Tribunal included in an order under section 16(3) of this Act, or
  - (b) has failed to comply to the satisfaction of the Tribunal with any term included in such an order by virtue of section 16(4)(a) or (b) of this Act.
- (2) The Tribunal shall not make a determination under subsection (1) above until the end of the period within which notice of an appeal to the Court of Appeal under section 18 of this Act against the order in question may be given or, if notice of such an appeal is given within that period, until the appeal is abandoned or determined.
- (3) Where this subsection applies, the President or Vice-President may—
  - (a) certify the failure to the High Court, or
  - (b) require the respondent to pay to the Department a pecuniary penalty of an amount not exceeding £30,000.
- (4) Where the President or Vice-President has certified a failure under subsection (3)(a) above, the High Court may deal with the respondent as if the relevant order of the Tribunal had been an order of the High Court.
- (5) The <sup>M14</sup>Judgments Enforcement (Northern Ireland) Order 1981 shall apply with the necessary modifications in relation to a penalty imposed under subsection (3)(b) above as it applies to a sum due to the Crown under a money judgment (within the meaning of that Order).
- (6) If it appears to the Department that there has been a change in the value of money since the relevant date, it may by order substitute for the sum for the time being specified in subsection (3)(b) above such other sum as appears to it to be justified by the change.
- (7) In subsection (6) above “the relevant date” means—
  - (a) in relation to the first order under that subsection, the commencement of this section, and

*Status: Point in time view as at 24/09/1996.*

*Changes to legislation: There are currently no known outstanding effects for the Fair Employment (Northern Ireland) Act 1989 (repealed 1.3.1999), Part 1. (See end of Document for details)*

- (b) in relation to each subsequent order, the last occasion when the sum specified in subsection (3)(b) above was altered.
- (8) The Department shall pay into the Consolidated Fund of Northern Ireland any sums received in respect of penalties under this section.

#### Marginal Citations

M14 S.I.1981/226 (N.I.6).

### 18 Appeal to Court of Appeal from certain decisions of Tribunal.

- (1) A person who is dissatisfied in point of law with any decision of the Tribunal under section 15, 16 or 17 of this Act may, according as rules of court may provide, either appeal from it to the Court of Appeal or require the Tribunal to state and sign a case for the opinion of the Court of Appeal.
- (2) Rules of court may provide for authorising or requiring the Tribunal to state, in the form of a special case for the decision of the Court of Appeal, any question of law arising in the proceedings.
- (3) A person on whom a penalty is imposed under section 17(3)(b) of this Act may, with the leave of the Court of Appeal, appeal to the Court of Appeal against the amount of the penalty.

#### *Confidentiality of information*

### 19 Confidentiality of information.

- [<sup>F9</sup>(1) No information in the Commission's possession which discloses, or from which there can be deduced, the religious belief of any identifiable individual shall, without that individual's written consent, be disclosed by a member, officer or servant of the Commission to a person who is not associated with the Commission, except so far as such disclosure—
- (a) is necessary or expedient for the proper discharge of the functions of the Commission or is necessary to comply with any obligation imposed by or under an enactment (including this Act); or
- (b) is made for the purpose of, or in connection with—
- (i) any actual or prospective proceedings before the Tribunal or an industrial tribunal; or
- (ii) any actual or prospective civil or criminal proceedings before a court.
- (1A) For the purposes of subsection (1) above a person is associated with the Commission if—
- (a) he is a member of, or in the employment of, the Commission; or
- (b) his services have been made available to the Commission for the purpose of the exercise of any of its functions.]
- (2) Subsection (3) below applies to any information supplied to the Commission—

*Status: Point in time view as at 24/09/1996.*

*Changes to legislation: There are currently no known outstanding effects for the Fair Employment (Northern Ireland) Act 1989 (repealed 1.3.1999), Part I. (See end of Document for details)*

- (a) in the course of an investigation under section 11 of this Act or section 38 (review of exception of schoolteachers) of the <sup>M15</sup>Fair Employment (Northern Ireland) Act 1976, or
  - (b) in pursuance of a requirement under section 45 of this Act.
- (3) No information to which this subsection applies shall be disclosed by a member, officer or servant of the Commission to a person who is not a member of, or in the employment of, the Commission, except so far as such disclosure—
- (a) is relevant for the purposes of section 2(1) (educational functions) or section 38(3) (report on review of exception of schoolteachers) of, or paragraph 14 (annual report) of Schedule 1 to, the Fair Employment (Northern Ireland) Act 1976 and is not prohibited by subsection (1) above,
  - (b) is [<sup>F10</sup>made] as mentioned in subsection (1)(b) above, or
  - (c) is permitted by subsection (4) below or required by subsection (5) below.
- (4) <sup>F11</sup> . . . Where it is necessary or expedient to do so for the proper discharge of the functions of the Commission, a member, officer or servant of the Commission may—
- (a) disclose to an employer any information in the Commission’s possession which relates to his employees or to other persons who have applied for employment by him,
  - (b) disclose to a principal (within the meaning of section 18 of the <sup>M16</sup>Fair Employment (Northern Ireland) Act 1976) any information in the Commission’s possession which relates to contract workers whose services are or have been available to him,
  - (c) disclose to any person who is empowered by virtue of an enactment to select or nominate another person for employment by a third person any information in the Commission’s possession which relates to a person who has applied for the employment in question,
  - (d) disclose to an employment agency any information in the Commission’s possession which relates to a person who has applied for or obtained the services of the agency,
  - (e) disclose to a vocational organisation any information in the Commission’s possession which relates to members of that organisation or other persons who have applied for membership,
  - (f) disclose to a person who provides services in connection with the training of persons for employment in any capacity, or for a particular employment or occupation, any information in the Commission’s possession which relates to a person who has sought, or on whose behalf it has been sought, to obtain those services, or who has obtained those services, or
  - (g) disclose to a person who has power to confer a qualification such as is mentioned in section 23 of the Fair Employment (Northern Ireland) Act 1976 any information in the Commission’s possession which relates to a person who has applied to have, or has had, that qualification conferred on him.
- (5) <sup>F11</sup> . . . The Commission shall supply to the Department any information in the Commission’s possession which the Department requests.
- (6) Any person who discloses any information in contravention of any provision of this section is guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.



*Status: Point in time view as at 24/09/1996.*

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[<sup>F12</sup>(7) It is a defence for a person charged with contravening subsection (1) or (3) above to show that before the disclosure in question was made he had also obtained the information otherwise than in his capacity as a member, officer or servant of the Commission.

(8) In subsections (1), (3), (4) and (7) above “a member, officer or servant of the Commission” includes a former member, officer or servant of the Commission.]

#### Textual Amendments

**F9** S. 19(1) substituted (25.8.1991) by S.I. 1991/1713 (N.I. 18), art. 4(2)

**F10** Word in s. 19(3)(b) substituted (25.8.1991) by S.I. 1991/1713 (N.I. 18), art. 4(3)

**F11** Words in s. 19(4)(5) ceased to have effect (25.8.1991) by virtue of S.I. 1991/1713 (N.I. 18), art. 4(4)

**F12** S. 19(7)(8) added (25.8.1991) by S.I. 1991/1713 (N.I. 18), art. 4(5)

#### Marginal Citations

**M15** 1976 c. 25.

**M16** 1976 c. 25.

### General

## 20 Meaning of “equality of opportunity”.

- (1) In this Part of this Act “equality of opportunity” means equality of opportunity between persons of different religious beliefs.
- (2) For the purposes of this Part of this Act a person of any religious belief has equality of opportunity with a person of any other religious belief if, being—
  - (a) a person who is seeking employment or in employment, or
  - (b) a person who is seeking to become engaged in, or is engaged in, any occupation,he has in any circumstances the same opportunity of a kind mentioned in subsection (4) below as that other person has or would have in those circumstances, due allowance being made for any material difference in their suitability.
- (3) For the purposes of subsection (2) above, a person is not to be treated as not having the same opportunity as another person has or would have by reason only of anything lawfully done in pursuance of affirmative action.
- (4) The kinds of opportunity referred to in subsection (2) above are—
  - (a) in relation to an employment, the opportunity to be considered, and to be submitted for consideration, for the employment, and to have and hold it on any terms, with access to all benefits connected with it and without being subjected to any detriment, and
  - (b) in relation to an employment or an occupation—
    - (i) the opportunity to become, and remain, on any terms a member of any vocational organisation which exists for purposes of the employment or the occupation (or for purposes of employments or occupations of any class which includes the employment or occupation), with access to all the benefits of membership and without being subjected to any detriment, and

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*Changes to legislation: There are currently no known outstanding effects for the Fair Employment (Northern Ireland) Act 1989 (repealed 1.3.1999), Part I. (See end of Document for details)*

- (ii) where services in connection with training for the employment are provided by a person other than the employer, or where services in connection with training for the occupation are provided by any person, the opportunity to have those services on any terms, with access to all benefits connected with them, and
- (iii) the opportunity to have conferred on him, and to hold, on any terms any qualification which is needed for, or facilitates, his engagement in the employment or the occupation.

## 21 Interpretation of Part I.

(1) In this Part of this Act—

“affirmative action” has the meaning given by section 58 of this Act,

“the Commission” means the Fair Employment Commission for Northern Ireland,

“equality of opportunity” has the meaning given by section 20 of this Act,

“the President” means the President of the Industrial Tribunals and the Fair Employment Tribunal,

“the Tribunal” means the Fair Employment Tribunal for Northern Ireland,

“the Vice-President” means the Vice-President of the Industrial Tribunals and the Fair Employment Tribunal;

and other expressions used in this Part and in the <sup>M17</sup>Fair Employment (Northern Ireland) Act 1976 have the same meaning as in that Act.

(2) Any reference in this Part of this Act to the promotion of equality of opportunity includes a reference to the promotion of affirmative action and, accordingly, any reference to action for promoting equality of opportunity includes a reference to affirmative action.

### Marginal Citations

M17 1976 c. 25.

**Status:**

Point in time view as at 24/09/1996.

**Changes to legislation:**

There are currently no known outstanding effects for the Fair Employment (Northern Ireland) Act 1989 (repealed 1.3.1999), Part I.