



# Fair Employment (Northern Ireland) Act 1989 (repealed 1.3.1999)

## 1989 CHAPTER 32

### PART II

#### NEW DUTIES OF EMPLOYERS IN RESPECT OF THEIR WORKFORCES

##### *The register*

#### **22 The register of concerns in which people are employed.**

- (1) The Commission shall keep, in such form as the Commission may determine, a register of trades, businesses and other activities (whether carried on for profit or not) in which people are employed.
- (2) References in this Part of this Act to a concern are to any such trade, business or other activity and include any activity in the service of the Crown, but only to the extent provided by section 26 of this Act.
- (3) The Commission shall, on an application under section 23 of this Act, enter in the register the description of the concern given in the application, the name and address of the employer so given and the date of entry in the register and serve on the applicant notice of the contents and date of the entry.
- (4) The Commission shall provide facilities for making the information contained in the entries in the register available for inspection (in visible and legible form) by members of the public during normal office hours free of charge and any person shall be entitled to obtain from the Commission a copy of the information contained in all or any of the entries in the register upon payment of such reasonable fee as the Commission may fix.

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*Status: Point in time view as at 24/09/1996.*

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## **23 Employers to apply for registration.**

- (1) Where, on or after the commencement of this section, a concern, other than a registered concern, satisfies the condition for registration at the end of any week, the employer shall apply under this section for the concern to be registered.
- (2) For the purposes of this Act a concern satisfies the condition for registration at the end of any week if in that week more than ten employees have been employed in Northern Ireland.
- (3) In relation to any employment in the period of two years beginning with the commencement of this section, subsection (2) above shall have effect for those purposes (except section 24(9) of this Act) as if for “ten” there were substituted “twenty-five”.
- (4) An application under this section shall—
  - (a) describe the concern in general terms,
  - (b) give the name and address of the employer, and
  - (c) give the number of employees employed in Northern Ireland.
- (5) If an employer fails to make an application under this section within the period of one month after the time, on or after the commencement of this section, when the concern first satisfies the condition for registration (in the case of a concern the entry for which has been removed from the register, first satisfies that condition since the removal), he is guilty of an offence.
- (6) A person guilty of an offence under subsection (5) above—
  - (a) is liable on summary conviction to a fine not exceeding level 5 on the standard scale, and
  - (b) if 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.
- (7) It is a defence for a person charged with an offence under subsection (5) above to show that he had a reasonable excuse for failing to make an application under this section within that period and that he made such an application as soon as it was reasonably practicable for him to do so.
- (8) In determining for any of the purposes of this Act whether a concern satisfies the condition for registration, references to the employees of any person (referred to in this subsection as “the employer”) shall, if regulations made by the Department under this section so provide or in such circumstances as may be specified in the regulations, include a reference to the employees of—
  - (a) any body corporate controlled by the employer and, if the employer is a body corporate, any associated body corporate, and
  - (b) any person connected with the employer,and references to the employer’s concern shall be interpreted accordingly.
- (9) This section does not apply to any person who is a public authority for the purposes of sections 27 to 37 of this Act or to any person falling within section 25(3)(a) or (b) of this Act.

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## **24 Rectification of the register.**

- (1) Where a person becomes an employer in relation to a concern that is already a registered concern, he shall, within the period of one month beginning with his becoming such an employer, apply to the Commission for his name and address to be entered in the register and the Commission shall include in the entry in the register the name and address given in the application.
- (2) If an employer who is required so to apply fails to do so within that period, he is guilty of an offence.
- (3) A person guilty of an offence under subsection (2) above—
  - (a) is liable on summary conviction to a fine not exceeding level 5 on the standard scale, and
  - (b) if 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.
- (4) It is a defence for a person charged with an offence under subsection (2) above to show that he had a reasonable excuse for failing so to apply within that period and that he made such an application as soon as it was reasonably practicable for him to do so.
- (5) The Commission may, on an application by a registered employer, rectify the description in the register of the registered concern.
- (6) The Commission shall remove from the register any entry in respect of a person who becomes a public authority for the purposes of sections 27 to 37 of this Act.
- (7) The Commission—
  - (a) may remove from the register, in respect of any concern, the name of any person who appears to the Commission to have ceased to be an employer, and
  - (b) may remove from the register the entry for any registered concern which appears to the Commission to have ceased to exist.
- (8) The power conferred by subsection (7) above is exercisable by the Commission of its own motion or on the application of any person.
- (9) If a registered employer applies to the Commission to remove from the register the entry for the registered concern and the concern has been registered throughout the year ending on the date of the application, the Commission shall remove the entry if it is of the opinion that the concern did not, at the end of any of the weeks in the period of twenty-six weeks preceding the application, satisfy the condition for registration.
- (10) If the Commission exercises its powers under subsection (7) or (9) above, it shall serve notice of its action on any person whose name is removed from the register.
- (11) A person who knowingly makes a false statement in connection with an application under subsection (7) or (9) above is guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- (12) In this section, “registered employer”, in relation to a registered concern, means the person whose name and address is for the time being included in the entry for that concern in the register.

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## *Public authorities*

### **25 Power to specify public authorities by order.**

- (1) In this Part of this Act “public authority” means a person specified in an order made by the Department.
- (2) The order may provide for a person to be a public authority for all or any of the purposes of this Part of this Act.
- (3) The Department shall not exercise the power conferred by this section so that a person becomes a public authority for any of the purposes of this Part of this Act unless the person is—
  - (a) a Minister of the Crown or the head of a Northern Ireland department,
  - (b) a body created by a statutory provision within the meaning of the <sup>M1</sup>Interpretation Act (Northern Ireland) 1954 or the holder of any office so created, or
  - (c) a person appearing to the Department to exercise functions of a public nature.

#### **Marginal Citations**

**M1** 1954 c. 33 (N.I.).

### **26 Certain public authorities to be treated as employers.**

- (1) For the purposes of sections 27 to 37 of this Act, any reference to an employer includes any person who is a public authority for the purposes of those sections.
- (2) For the purposes of those sections, in relation to any such authority—
  - (a) “employee” includes any person in the service of the Crown for the purposes of the functions of the authority, but an order under section 25 of this Act may specify the persons who are to be treated for the purposes of those sections as the employees of that authority, and
  - (b) “concern” means the activities of those who are the employees of the authority for the purposes of those sections.
- (3) Those sections shall apply in relation to a person who becomes an employer for the purposes of those sections by virtue of an order under section 25 of this Act as if his concern were a registered concern and the description of his concern had been entered in the register on the commencement of the order (without prejudice to the effect of any previous order).
- (4) The Department shall not exercise the power conferred by section 25 of this Act so that a person becomes an employer for the purposes of those sections unless it appears to the Department that any of the people—
  - (a) who are employed by that person or are in the service of the Crown for the purposes of the functions of that person, or
  - (b) who are to be treated by virtue of the order as so employed or as in such service,
 are employed or serve in Northern Ireland.

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### *Monitoring the workforce*

#### **27 Monitoring returns.**

- (1) For the purpose of enabling the composition of those employed in a registered concern in Northern Ireland to be ascertained, the employer shall prepare for each year and serve on the Commission a return (in this Part of this Act referred to as a “monitoring return”) in a form provided by or on behalf of the Department.
- (2) A monitoring return shall contain such information about the employees of the employer as may be prescribed.
- (3) For the purpose of enabling the composition of those applying to fill vacancies for employment in Northern Ireland in any concern of a person who is a public authority for the purposes of this section to be ascertained, the employer shall include in a monitoring return such information as may be prescribed.
- (4) For the purpose of enabling the composition of those applying to fill vacancies for employment in Northern Ireland in any other registered concern in which more than 250 employees are employed there to be ascertained, the employer shall include in a monitoring return such information as may be prescribed; and for the purposes of this subsection where, at the beginning of or at any subsequent time in any prescribed period, more than 250 employees are employed there in the concern, that condition is to be treated as satisfied for the whole or, as the case may be, the remainder of that period.
- (5) If no monitoring return for a year in respect of any registered concern is served on the Commission before the time for serving the return expires, the employer is guilty of an offence.
- (6) A person guilty of an offence under subsection (5) above—
  - (a) is liable on summary conviction to a fine not exceeding level 5 on the standard scale, and
  - (b) if the failure to submit the monitoring return 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.
- (7) It is a defence for a person charged with an offence under subsection (5) above to show that he had a reasonable excuse for failing to serve on the Commission a monitoring return for that year before the time for serving the return expired and that he served such a return for that year on the Commission as soon as it was reasonably practicable to do so.
- (8) For the purposes of this section the time for serving a monitoring return expires in the case of each year at the end of the first four months of the year.
- (9) In this section “year”, in relation to a registered concern, means any period of twelve months beginning with—
  - (a) the date on which the description of the concern is entered, or treated by virtue of section 26 of this Act as entered, in the register, or
  - (b) the anniversary of that date.
- (10) In this section and section 28 of this Act “prescribed” means prescribed by regulations under section 28 of this Act.

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(11) In this Part of this Act—

“community” means the Protestant community, or the Roman Catholic community, in Northern Ireland, and

“composition” in relation to those employed or, as the case may be, applying for employment in a registered concern means the number who are to be treated for the purposes of monitoring as belonging to each community.

## 28 Regulations as to monitoring.

(1) The Department shall, by regulations made after consultation with the Commission, make provision for the purposes of section 27 of this Act.

(2) The regulations may—

- (a) require information to be given separately by reference to the sex of the employee or applicant or by reference to different descriptions of employment,
- (b) provide for section 27(4) of this Act 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) [<sup>F1</sup> require—

- (i) information about a person employed or applying for employment 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 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 is 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

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- 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,
- [<sup>F2</sup>(ff) 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 a concern is to be treated as belonging for the purposes of monitoring,
- is guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.]
- (g) require the Commission to maintain a list classifying each school in Northern Ireland, or each school in Northern Ireland in any class specified by the Department, for the purposes of monitoring and to publish the list from time to time, and
  - (h) make different provision for different cases.
- (3) The regulations may authorise or require the employer to determine which community (if any) a person employed or applying for employment in the concern is to be treated as belonging to for the purposes of monitoring by applying the principal method, or one of the principal methods, prescribed or, where that method does not enable him to make that determination or, as the case may be, none of those methods enables 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—
    - (i) has stated that he attended a particular primary school, being a school classified in any list maintained by virtue of subsection (2)(g) above as a school attended mainly by members of a particular community, or
    - (ii) 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 paragraph (a) above, 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) 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.
- (5) Subsections (2) to (4) above do not prejudice the generality of subsection (1) above.

#### Textual Amendments

**F1** Words in s. 28(2)(d) substituted (25.8.1991) by S.I. 1991/1713 (N.I. 18), art. 3(2)(a)

**F2** S. 28(2)(ff) inserted (25.8.1991) by S.I. 1991/1713 (N.I. 18), art. 3(2)(b)

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**29 Monitoring applicants.**

- (1) The Department may, by regulations made after consultation with the Commission, provide that the employer shall, for the purpose of enabling the composition of those applying to fill vacancies for employment in any registered concern in Northern Ireland to be ascertained (whether or not section 27(3) or (4) of this Act has effect in respect of their applications), seek to obtain such information about them as may be prescribed.
- (2) The regulations may—
  - (a) require <sup>F3</sup>information of a prescribed description which is obtained in pursuance of the regulations] to be retained by the employer for such period as may be prescribed,
  - (b) provide that a person who—
    - (i) without reasonable excuse fails to comply with such a requirement, or
    - (ii) knowingly gives any false information to another who is seeking to obtain information in pursuance of the regulations, or
    - (iii) knowingly includes any false information in any records kept in pursuance of the regulations, is guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale, <sup>F4</sup> . . .
  - <sup>F5</sup>(bb) provide that, subject to such exceptions as may be prescribed, a person who discloses any information of a prescribed description which is obtained in pursuance of the regulations is guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale, and]
  - (c) make different provision for different cases.

**Textual Amendments**

**F3** Words in s. 29(2)(a) substituted (25.8.1991) by S.I. 1991/1713 (N.I. 18), art. 3(3)(a)

**F4** Word in s. 29(2)(b) repealed (25.8.1991) by S.I. 1991/1713 (N.I. 18), art. 3(3)(b)

**F5** S. 29(2)(bb) inserted (25.8.1991) by S.I. 1991/1713 (N.I. 18), art. 3(3)(c)

**<sup>F6</sup>30 Confidentiality of monitoring information.**

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**Textual Amendments**

**F6** S. 30 repealed (25.8.1991) by S.I. 1991/1713 (N.I. 18), art. 3(1) (subject to saving in art. 3(5))

*Review of recruitment, training and promotion practices*

**31 Periodic reviews by employers.**

- (1) In the case of each registered concern, the employer shall from time to time review the composition of those employed in the concern in Northern Ireland and the employment practices of the concern for the purposes of determining whether members of each community are enjoying, and are likely to continue to enjoy, fair participation in employment in the concern.



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- (2) In a case where it appears to the employer in the course of the review that members of a particular community are not enjoying, or are not likely to continue to enjoy, such participation, he shall as part of the review determine the affirmative action (if any) which would be reasonable and appropriate.
- (3) In a case where the employer determines in the course of the review that affirmative action would be reasonable and appropriate he shall as part of the review—
  - (a) consider whether, assuming the action is taken, it is practicable to determine, by reference to one or more periods, the progress towards fair participation in employment in the concern that can reasonably be expected to be made by members of a particular community, and
  - (b) if he considers that it is practicable to determine such progress, determine the period or periods concerned and, in respect of each period, the progress that, in his opinion, can reasonably be expected to be made towards fair participation by members of the community concerned—
    - (i) in employment in the concern in Northern Ireland or among those whose employment in the concern there begins after the determination, or
    - (ii) among applicants to fill vacancies for employment in the concern there.
- (4) A review under this section shall be carried out not more than three years after the date on which the description of the concern is entered, or treated by virtue of section 26 of this Act as entered, in the register and subsequent reviews at intervals of not more than three years.
- (5) In carrying out a review under this section the employer shall have regard to the code of practice and the Commission shall, if requested to do so by the employer, give advice as to the manner in which a review under this section should be carried out.
- (6) In this Part of this Act—
  - (a) references to a review are to a review under this section, and
  - (b) “employment practice”, in relation to a concern, means a practice affecting recruitment or training for employment in the concern or training or promotion of employees in the concern.

### *Enquiries, undertakings and directions*

## **32 Enquiries by the Commission.**

- (1) The Commission may from time to time require the employer to give the Commission such information [<sup>F7</sup>retained by the employer in compliance with regulations under section 28(2)(d) or 29(2)(a) above], as the Commission may specify; but an employer who has been required on any date to give any information under this subsection shall not be required to do so again before the expiry of the period of six months beginning with that date.
- (2) Where a monitoring return in respect of any registered concern has been served on the Commission, the Commission may require the employer to give the Commission such information as to the manner in which the return was prepared as it may specify.

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- (3) The Commission may, in the case of any registered concern, require the employer to give the Commission such information as it may specify as to the steps the employer has taken or proposes to take to carry out a review and as to the manner in which the review has been or is to be carried out.
- (4) The Commission may, where a review has been carried out in the case of any registered concern, require the employer to give to the Commission such information as it may specify—
  - (a) as to the matters disclosed by the review,
  - (b) as to any determination under subsection (2) of section 31 of this Act, and
  - (c) in a case falling within subsection (3) of that section, as to his consideration of the matters referred to in paragraph (a) of that subsection and any determination under paragraph (b) of that subsection.
- (5) The Commission shall, where a review discloses that members of a particular community are not enjoying, or are not likely to continue to enjoy, fair participation in employment in the concern, make such recommendations as it thinks fit as to the affirmative action to be taken and, assuming the action is taken, as to the progress towards fair participation in employment in the concern, by reference to any period or periods, that can reasonably be expected to be made by members of that community.
- (6) Where the employer discloses to the Commission a determination to take any affirmative action, the Commission may from time to time require him to give the Commission such information as it may specify as to the affirmative action that he has taken or proposes to take, but the Commission may not require an employer to give any information under this subsection before the expiry of the period of six months beginning with—
  - (a) the date of the disclosure, or
  - (b) if he has previously been required to give any information under this subsection, the date on which he was last required to do so.
- (7) Where the employer discloses to the Commission a determination as to the progress towards fair participation in employment in the concern, by reference to any period, that can reasonably be expected to be made by members of a particular community, the Commission may from time to time require him to give the Commission such information as it may specify for the purpose of determining the extent to which the progress has been made on the date of the requirement, but the Commission may not require an employer to give any information under this subsection before the expiry of the period of six months beginning with—
  - (a) the date of the disclosure, or
  - (b) if he has previously been required to give any information under this subsection, the date on which he was last required to do so.
- (8) A requirement under this section to give any information in respect of a registered concern—
  - (a) shall be made by notice served on the employer, and
  - (b) shall specify the time by which the information is to be given,and the reference in subsections (1), (6) and (7) above to the date of the requirement is to the date on which the notice was served.

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- (9) A notice under this section served on the person whose name and address is for the time being included in the entry for any concern in the register is to be treated as served on the employer.
- (10) A person required to give any information under this section who fails to comply with the requirement by the specified time is guilty of an offence.
- (11) A person guilty of an offence under subsection (10) above—
- (a) is liable on summary conviction to a fine not exceeding level 5 on the standard scale, and
  - (b) if 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.
- (12) It is a defence for a person charged with an offence under subsection (10) above to show that he had a reasonable excuse (which may include unreasonable expense or inconvenience) for failing to comply with the requirement by the specified time and, in a case where it was reasonably practicable for him to comply with it after that time, to show that either—
- (a) he complied with it as soon as was reasonably practicable, or
  - (b) it was not reasonably practicable for him to comply with it before the proceedings were commenced,
- and for the purposes of this subsection the making of a complaint is to be treated as the commencement of the proceedings.
- (13) A person required to give any information under this section who knowingly gives false or misleading information is guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.

#### Textual Amendments

F7 Words in s. 32(1) substituted (25.8.1991) by S.I. 1991/1713 (N.I. 18), art. 3(4)

### 33 Undertakings in connection with monitoring and reviews.

- (1) The following provisions of this section apply where the Commission is of the opinion, in the light of information received in respect of any registered concern in pursuance of a requirement under section 32 of this Act—
- (a) that the manner in which the employer prepares his monitoring returns is in any respect unsatisfactory or that the information sought by him for the purposes of monitoring is in any respect inadequate, or
  - (b) that the employer has no proposals for carrying out a review or that the manner in which he proposes to carry out the review, or the timing of the review, is in any respect unsatisfactory or that the information sought by him for the purposes of the review is in any respect inadequate.
- (2) The Commission shall use its best endeavours for the following purposes (as the case may be)—
- (a) to ensure that the manner in which the employer prepares his monitoring returns is satisfactory,

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- (b) to ensure that the information sought by the employer for the purposes of monitoring is adequate,
  - (c) to ensure that the information sought by the employer for the purposes of a review is adequate, or
  - (d) to ensure that a review is carried out at a time and in a manner that is satisfactory,
- and shall where appropriate use its best endeavours to secure a satisfactory written undertaking by the employer for the purpose in question.
- (3) Where the Commission asks the employer for an undertaking, on such terms as appear satisfactory to the Commission, for the purpose in question, then—
- (a) if the undertaking is not given, the Commission shall serve on the employer a notice containing directions such as are mentioned in section 34 of this Act, and
  - (b) if the undertaking, although given, is not complied with, the Commission shall either—
    - (i) serve on him 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.

### **34 Directions.**

- (1) The directions contained in a notice served under section 33(3) of this Act shall be those which the Commission considers to be, in all the circumstances, reasonable and appropriate for the purpose in question.
- (2) The directions may in particular include such directions as the Commission considers necessary to ensure that other directions are duly carried out.
- (3) The terms of the directions contained in a notice served under section 33(3)(b)(i) of this Act which supersede an undertaking shall be such as, in the opinion of the Commission, are not substantially more onerous than the terms of the undertaking.
- (4) A notice served under section 33(3)(a) or (b)(i) of this Act shall inform the employer of the right of appeal against the directions which is conferred by section 15 of this Act.
- (5) The Commission, on the written application of the employer, 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 the employer an undertaking such as is mentioned in section 33(2) of this Act.
- (6) The Commission shall serve notice of the revocation or modification on the employer.
- (7) The directions—

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- (a) are binding on the employer (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.

### **35 Application of sections 15 to 18.**

Sections 15 to 18 of this Act shall have effect for the purposes of sections 33 and 34 of this Act as they have effect for the purposes of sections 12 and 14 of this Act but as if—

- (a) references to section 12(2) or (3) were references to section 33(2) or, as the case may be, (3),
- (b) references to section 14(3) were references to section 34(5), and
- (c) for paragraphs (b) and (c) of section 15(2) there were substituted—
  - “(b) that in all the circumstances the directions are not appropriate for the purpose in question, or
  - (c) that the appellant is already taking appropriate steps for the purpose in question and the directions are, therefore, unnecessary.”

#### *Goals and timetables*

### **36 Notices about goals and timetables.**

- (1) The Commission may serve a notice under subsection (2) below on the person who is the employer in relation to a registered concern where—
  - (a) he gives an undertaking under Part I of this Act to take any action,
  - (b) he has been directed under that Part to take any action, or
  - (c) the Tribunal makes an order under section 16(3)(a) of this Act in relation to an undertaking given by, or directions given to, him to take any action,being action appearing to the Commission to be affirmative action, and the Commission is of the opinion that, assuming the action is taken, it is practicable to determine, by reference to one or more periods, the progress towards fair participation in employment in the concern that can reasonably be expected to be made by members of a particular community.
- (2) The notice (“a notice about goals and timetables”) shall specify the period or periods concerned and, in respect of any specified period, the progress that, in the opinion of the Commission, can reasonably be expected to be made towards fair participation by members of the community concerned—
  - (a) in employment, or any class of employment, in the concern in Northern Ireland, or
  - (b) among applicants to fill vacancies for such employment or any class of such employment.
- (3) Where, by virtue of any undertaking given by, or directions given to, the person who is the employer in relation to a registered concern, such a notice is served on him, the notice shall cease to have effect—
  - (a) if the Tribunal makes an order for the purpose of giving effect to the undertaking or directions or, in the case of directions, the Tribunal or the Commission substitutes for them or any of them other directions, or

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- (b) in the case of directions, if they, or such of them as the notice relates to, are quashed or otherwise cease to have effect, or
  - (c) in the case of an undertaking, if it, or such part of it as the notice relates to, ceases to have effect,
- but without prejudice, in a case within paragraph (a) above, to any power to give a new notice.
- (4) Where a notice about goals and timetables has effect, the Commission may from time to time require the employer to give the Commission such information as the Commission may specify for the purpose of determining the extent to which the progress specified in the notice in respect of any period has been made on the date of the requirement.
- (5) The Commission may not require an employer to give any information under this section before the expiry of the period of six months beginning with—
- (a) the date of the notice about goals and timetables, or
  - (b) if he has previously been required to give any information under this section, the date on which he was last required to do so.
- (6) A requirement under this section to give any information—
- (a) shall be made by notice served on the employer, and
  - (b) shall specify the time by which the information is to be given,
- and the reference in subsections (4) and (5) above to the date of the requirement is to the date on which the notice was served.
- (7) A person required to give any information under this section who fails to comply with the requirement by the specified time is guilty of an offence.
- (8) A person guilty of an offence under subsection (7) above—
- (a) is liable on summary conviction to a fine not exceeding level 5 on the standard scale, and
  - (b) if 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.
- (9) It is a defence for a person charged with an offence under subsection (7) above to show that he had a reasonable excuse (which may include unreasonable expense or inconvenience) for failing to comply with the requirement by the specified time and, in a case where it was reasonably practicable for him to comply with it after that time, to show that either—
- (a) he complied with it as soon as was reasonably practicable, or
  - (b) it was not reasonably practicable for him to comply with it before the proceedings were commenced,
- and for the purposes of this subsection the making of a complaint is to be treated as the commencement of the proceedings.
- (10) A person required to give any information under this section who knowingly gives any false or misleading information is guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.

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### **37 Power to secure further undertakings or issue further directions.**

- (1) Subsection (2) below applies where, by reason of any undertaking or directions under section 12 of this Act, any directions substituted for such directions by the Tribunal or any order made by the Tribunal for the purpose of giving effect to any such undertaking or directions, a notice has been served on any person under section 36(2) of this Act.
- (2) If, while the notice has effect, the Commission forms the opinion—
  - (a) that the progress specified in the notice in respect of any period has not been made, and
  - (b) that the person concerned ought to take action for promoting equality of opportunity in addition to the action required to be taken under the existing undertaking or directions,section 12 of this Act shall again apply in relation to the person concerned as if the Commission had conducted a fresh investigation under section 11 of this Act.
- (3) Where, by virtue of this section, the Commission secures a written undertaking from the person concerned or serves a notice on him containing directions—
  - (a) the undertaking or directions shall have effect in place of the existing undertaking or directions, and
  - (b) any notice previously served on him under section 36(2) of this Act shall cease to have effect, but without prejudice to any power to give a new notice under that subsection.

*Employers in default and connected persons: restrictions  
on dealing with them or giving them financial assistance*

### **38 Employers in default: notice stating they are not qualified.**

- (1) For the purposes of this section and section 39 of this Act, an employer is in default in any of the following circumstances—
  - (a) in the case of any concern that is not a registered concern but has satisfied the condition for registration at the end of any week, the employer stands convicted of an offence under section 23(5) of this Act,
  - (b) in the case of a registered concern—
    - (i) the employer's name is not entered in the register, and
    - (ii) he stands convicted of an offence under section 24(2) of this Act,
  - (c) the employer—
    - (i) has failed within the time allowed under section 27 of this Act to serve on the Commission a monitoring return for any period or has failed to serve a return for that period that complies with the requirements of that section or regulations under section 28 of this Act, and
    - (ii) stands convicted of an offence under section 27(5) of this Act, or regulations made by virtue of section 28(2)(f)(i) of this Act, in respect of that failure, and
  - (d) the employer has failed to comply with an order of the Tribunal and a penalty has been imposed under section 17(3)(b) of this Act, or the High Court has exercised its jurisdiction by virtue of subsection (4) of that section, in respect of that failure.

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- (2) Where an employer is in default, the Commission may serve notice on him stating that he is not qualified for the purposes of sections 41 to 43 of this Act; and references in those sections to an unqualified person are to a person on whom a notice has been served under this subsection or section 39(1) of this Act which has not been cancelled.
- (3) The Commission shall take all such steps as it considers reasonable to bring the fact that a person is an unqualified person, or has ceased to be an unqualified person, to the attention of public authorities and other interested persons.
- (4) Where notice has been served on a person under subsection (2) above by virtue of subsection (1)(a) or (b) above and he has ceased to be in default, the Commission shall serve notice on him cancelling the notice under subsection (2) above.
- (5) Where notice has been served on a person under subsection (2) above, the Commission shall, if it is at any time satisfied, whether on an application under subsection (6) below or otherwise—
  - (a) in the case of a notice served by virtue of subsection (1)(c) above, that he has served on it a monitoring return for the period concerned that complies, so far as is reasonably practicable, with the requirements of section 27 of this Act and regulations under section 28 of this Act, or
  - (b) in the case of a notice served by virtue of subsection (1)(d) above, that he is complying, or has fully complied, with the order concerned,serve notice on him cancelling the notice under subsection (2) above.
- (6) An application under this subsection may be made by the person on whom the notice under subsection (2) above was served but may not be made before the expiry of the period of six months beginning with—
  - (a) the date of the notice under subsection (2) above, or
  - (b) if he has previously applied under this subsection, the latest date on which he so applied.
- (7) Where the Commission refuses to grant an application under subsection (6) above, it shall serve notice of that fact on the applicant and the applicant may, within 21 days from the date of the notice, appeal to the Tribunal against the refusal.
- (8) If, on the appeal, the Tribunal is satisfied—
  - (a) in the case of a notice served by virtue of subsection (1)(c) above, that the appellant has served on the Commission a monitoring return for the period concerned that complies, so far as is reasonably practicable, with the requirements of section 27 of this Act and regulations under section 28 of this Act, or
  - (b) in the case of a notice served by virtue of subsection (1)(d) above, that the appellant is complying, or has fully complied, with the order concerned,the Commission shall serve on him a notice cancelling the notice under subsection (2) above.
- (9) No action shall lie in respect of any loss or damage that may be suffered in consequence of a notice or purported notice under this section or section 39 of this Act or any failure to give such a notice.



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### **39 Notice stating that connected and other persons are not qualified.**

- (1) Where notice has been served on any employer under section 38(2) of this Act and has not been cancelled, the Commission may serve notice on any of the following persons—
  - (a) any body corporate controlled by him and, if he is a body corporate, any associated body corporate, and
  - (b) any person connected with him,stating that the person on whom the notice is served is not qualified for the purposes of sections 41 to 43 of this Act.
- (2) No notice shall be served on any person under subsection (1) above if it appears to the Commission—
  - (a) that it is unlikely that he will execute any work or supply any goods or services for the purposes of any contract—
    - (i) made by a public authority accepting any offer made in response to an invitation by the public authority to submit offers, or
    - (ii) falling within a class or description for the time being specified for the purposes of section 41(3) of this Act to which a public authority is a party, or
  - (b) that, if he executes any work or supplies any goods or services for the purposes of any such contract, it is unlikely that the employer on whom the notice was served under section 38(2) of this Act will benefit, directly or indirectly.
- (3) Where notice has been served on any person under subsection (1) above, the Commission shall serve notice on him cancelling the notice—
  - (a) if the notice served on the employer under section 38(2) of this Act is cancelled, or
  - (b) if it appears to the Commission, whether on an application under subsection (4) below or otherwise, that (apart from section 41(1) of this Act) subsection (2)(a) or (b) above is satisfied in his case.
- (4) An application under this subsection may be made by the person on whom the notice under subsection (1) above was served, but if he has previously made an application under this subsection may not be made before the expiry of the period of six months beginning with the latest date on which he so applied.
- (5) Where the Commission refuses to grant an application under subsection (4) above, it shall serve notice of that fact on the applicant and the applicant may, within 21 days from the date of the notice, appeal to the Tribunal against the refusal.
- (6) If, on the appeal, it appears to the Tribunal that (apart from section 41(1) of this Act) subsection (2)(a) or (b) above is satisfied in the appellant's case, the Commission shall serve notice on him cancelling the notice under subsection (1) above.

### **40 Appeals against decisions of Tribunal under sections 38 and 39.**

- (1) A person who is dissatisfied in point of law with a decision of the Tribunal on an appeal brought by him under section 38 or 39 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.

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- (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.

**41 Restriction on execution of works, etc. by unqualified persons.**

- (1) A public authority shall not enter into any contract to which subsection (2) or (3) below applies.
- (2) This subsection applies to a contract made by the public authority accepting an offer to execute any work or supply any goods or services where the offer is made—
- (a) by an unqualified person, and
  - (b) in response to an invitation by the public authority to submit offers.
- (3) This subsection applies to a contract falling within a class or description for the time being specified in an order made by the Department, where work is to be executed or goods or services supplied by any unqualified person.
- (4) Where a public authority enters into a contract—
- (a) made by the public authority accepting an offer made by any person, being an offer made in response to an invitation by the public authority to submit offers, or
  - (b) falling within a class or description for the time being specified for the purposes of subsection (3) above,
- the public authority shall take all such steps as are reasonable to secure that no work is executed or goods or services supplied for the purposes of the contract by any unqualified person.
- (5) An order under subsection (3) above may frame any class or description of contract by reference to—
- (a) any work to be executed or goods or services to be supplied under the contract,
  - (b) any amounts to be paid under or in connection with the contract,
  - (c) any terms of the contract, and
  - (d) any surrounding circumstances,
- and by reference to such other factors as the Department thinks fit.
- (6) Nothing in this section affects the validity of any contract.
- (7) This section does not apply to the execution of any work, or the provision of any goods or services, by any person which is certified in writing to be necessary or desirable—
- (a) by the Secretary of State for the purpose of safeguarding national security or protecting public safety or public order, or
  - (b) by the Secretary of State, by the Department or, after consultation with the Department, by any other Northern Ireland department—
    - (i) for the purpose of securing works, goods or services which could not otherwise be secured without disproportionate expense, or
    - (ii) in the public interest.
- (8) This section applies to any contract, whether or not it is governed by the law of Northern Ireland.

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#### **42 Enforcement at instance of Commission and actions for breach of duty.**

- (1) If it appears to the Commission—
  - (a) that any public authority has taken any action in contravention of section 41 of this Act or has, in neglecting to take any action, failed to comply with that section and that, unless an injunction is granted, the authority is likely again to contravene or fail to comply with that section, or
  - (b) that any public authority proposes to take any action in contravention of that section,the Commission may apply to the High Court for an injunction restraining him from contravening that section and, where paragraph (a) above applies, requiring him to comply with that section.
- (2) Any contravention of or failure to comply with that section is actionable by any person who, in consequence, suffers loss or damage, but the amount recoverable in any such action shall not exceed any expenditure reasonably incurred by him before the date of the contravention or failure in question.

#### **43 Denial of financial assistance to unqualified persons.**

- (1) A Northern Ireland department may refuse to give to any unqualified person any financial assistance to which this section applies or, where it has given or agreed to give such assistance to any unqualified person, refuse or cease to make any payments to him in pursuance of the assistance.
- (2) This section applies to any financial assistance by way of grant or otherwise which may be given at the discretion of a Northern Ireland department, if the moneys required for giving the assistance are payable out of the Consolidated Fund of Northern Ireland or may be appropriated by Measure of the Northern Ireland Assembly.

#### *General*

#### **44 Offences by bodies corporate and partnerships.**

- (1) Where an offence under this Part of this Act committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate, or any person who was purporting to act in any such capacity, he as well as the body corporate is guilty of that offence and liable to be proceeded against and punished accordingly.
- (2) Where the affairs of a body corporate are managed by the members, subsection (1) above shall apply in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate.
- (3) Where a partnership is guilty of an offence under this Part of this Act, every partner, other than a partner who is proved to have been ignorant of or to have attempted to prevent the commission of the offence, shall also be guilty of that offence and be liable to be proceeded against and punished accordingly.

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#### **45 Additional powers of Commission to obtain information.**

- (1) In connection with its functions under this Part of this Act, the Commission may require any person to give the Commission such information as it may specify for the purpose of determining—
  - (a) whether a person is an employer or whether a concern has satisfied the condition for registration at the end of any week,
  - (b) whether a body corporate is controlled by an employer or associated with him or whether any person is connected with him, and
  - (c) whether a contract of either of the following kinds has been made or is likely to be made—
    - (i) a contract made by a public authority accepting an offer to execute any work or supply any goods or services where the offer is made by any person in response to an invitation by the public authority to submit offers, or
    - (ii) a contract falling within a class or description for the time being specified for the purposes of section 41(3) of this Act to which a public authority is a party,or whether any person has executed any work or supplied any goods or services for the purposes of any such contract, or is likely to do so.
- (2) A requirement under this section to give any information—
  - (a) shall be made by notice served on the person concerned, and
  - (b) shall specify the time by which the information is to be given.
- (3) A person required to give any information under this section who fails to comply with the requirement by the specified time is guilty of an offence.
- (4) A person guilty of an offence under subsection (3) above—
  - (a) is liable on summary conviction to a fine not exceeding level 5 on the standard scale, and
  - (b) if 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.
- (5) It is a defence for a person charged with an offence under subsection (3) above to show that he had a reasonable excuse (which may include unreasonable expense or inconvenience) for failing to comply with the requirement by the specified time and, in a case where it was reasonably practicable for him to comply with it after that time, to show that either—
  - (a) he complied with it as soon as was reasonably practicable, or
  - (b) it was not reasonably practicable for him to comply with it before the proceedings were commenced,and for the purposes of this subsection the making of a complaint is to be treated as the commencement of the proceedings.
- (6) A person required to give any information under this section who knowingly gives any false or misleading information is guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- (7) A notice under this section may not require any person to give any information which he could not be compelled to give in evidence in civil proceedings before the High Court.

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#### 46 Procedure in case of default by Crown bodies.

- (1) This section applies where—
- (a) the Commission asks a public authority acting on behalf of the Crown for an undertaking under section 33 of this Act and the undertaking is not given,
  - (b) an undertaking is given under that section by such a public authority, but is not complied with, or
  - (c) such a public authority is, or is in the opinion of the Commission, in breach of any duty under section 27, 31, 32, 36, 41 or 45 of this Act or under regulations under section 28 or 29 of this Act,
- and, accordingly, sections 33(3), 34 and 42 do not apply in relation to such a public authority.
- (2) The Commission shall send a report of the circumstances of the failure to comply with the Commission's request or with the undertaking or other breach of duty—
- (a) where a Minister of the Crown is the public authority or is generally responsible for matters falling within the scope of the functions of the public authority, to the Minister, and
  - (b) in any other case, to the head of the Northern Ireland department generally responsible for matters falling within the scope of the functions of the public authority or, if no such head stands appointed, to the Secretary of State.
- (3) Where a report is sent to a Minister of the Crown he shall lay it before Parliament, and where a report is sent to the head of a Northern Ireland department he shall lay it before the Northern Ireland Assembly.
- (4) Section 41(3) of the <sup>M2</sup>Interpretation Act (Northern Ireland) 1954 (laying of statutory documents) shall have effect as if a report required to be laid before the Assembly were a statutory document (within the meaning of that Act) required under a Measure of the Assembly to be so laid.

#### Marginal Citations

M2 1954 c. 33 (N.I.).

#### 47 Interpretation of Part II.

- (1) In this Part of this Act—
- “employee” means—
- (a) an individual employed under a contract of service or of apprenticeship, other than a contract which normally involves employment for less than sixteen hours weekly, or
  - (b) an individual employed under a contract personally to execute any work or labour,
- and includes a person in the service of the Crown, but only to the extent provided by section 26 of this Act; and “employment” and “employed” shall be interpreted accordingly,
- “employer”, in relation to a concern, means the person entitled to the benefit of the contracts of those employed in the concern and includes a public authority, but only to the extent provided by section 26 of this Act,
- “register” means the register kept under section 22 of this Act,

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“registered concern” means a concern a description of which is for the time being included in the register; but where, by reason of a disposal of a part of a registered concern, there has been a change of employer in relation to that part, that part is not to be treated as a registered concern unless registered since the disposal, and

“week” means a week ending on a Saturday.

- (2) The Department may by order amend the definition of “employee” in subsection (1) above by substituting for the number of hours for the time being specified in paragraph (a) such other number as is specified in the order.
- (3) For the purposes of this Part of this Act—
  - (a) where people are employed by a body corporate, references to the name of the employer are to the name of the body and of its secretary and references to the address of the employer are to the address of the body’s registered or principal office, or its principal office in Northern Ireland,
  - (b) where people are employed by the members of a partnership, references to the employer are to the firm and references to the employer’s address are to the principal office of the partnership, or its principal office in Northern Ireland, but each member of the partnership may exercise any function, under or by virtue of this Part of this Act, of the employer,
  - (c) where people are employed by any other body, references to the employer are to the secretary or other executive officer charged with the conduct of the general affairs of the body.
- (4) For the purposes of this Part of this Act—
  - (a) bodies corporate are associated if they are members of the same group, and for this purpose any two bodies corporate are to be treated as members of the same group if one of them is a body corporate of which the other is a subsidiary (within the meaning of Article 4 of the <sup>M3</sup>Companies (Northern Ireland) Order 1986) or if both of them are subsidiaries (within the meaning of that Article) of one and the same body corporate,
  - (b) a body corporate (call it “A”) is controlled by a person (call him “B”) if B has the power to secure, by means of the holding of shares or the possession of voting power in or in relation to A or any other body corporate, or by virtue of any powers conferred by the articles of association or other document regulating A or any other body corporate, that the affairs of A are conducted in accordance with the wishes of B,
  - (c) a person is connected with an individual if that person is the individual’s wife or husband, or is a relative, or the wife or husband of a relative, of the individual or of the individual’s wife or husband, and for this purpose “relative” means brother, sister, ancestor or lineal descendant, and
  - (d) a person is connected with a body corporate if he is a director or officer of that body.
- (5) In this Part of this Act the following expressions have the same meaning as in the <sup>M4</sup>Fair Employment (Northern Ireland) Act 1976—
  - “contract”,
  - “the Department”,
  - “employment in Northern Ireland”,
  - “Northern Ireland”,
  - “notice”, and

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“practices”.

- (6) [<sup>F8</sup>Article 5 of the Employment Rights (Northern Ireland) Order 1996] (normal working hours) shall have effect to determine the normal working hours for the purposes of the definition of employee in subsection (1) above.
- (7) References in this Part of this Act to the Crown are to the Crown in right of the Government of the United Kingdom and in right of the Government of Northern Ireland.
- (8) References in this Part of this Act to a person in the service of the Crown do not include the holder of any office in Schedule 2 to the <sup>M5</sup>House of Commons Disqualification Act 1975 (Ministerial offices) as for the time being in force.

#### Textual Amendments

**F8** Words in s. 47(6) substituted (24.9.1996) by S.I. 1996/1919 (N.I. 16), art. 255, Sch. 1 (with Sch. 2)

#### Marginal Citations

**M3** S.I. 1986/1032 (N.I.6).

**M4** 1976 c. 25.

**M5** 1975 c. 24.

## 48 Index to Part II.

The expressions listed in the left-hand column below are respectively defined or (as the case may be) fall to be construed in accordance with the provisions of this Act listed in the right-hand column in relation to those expressions.

Affirmative action	Section 58
Associated body corporate	Section 47(4)
Code of practice	Section 7
Commission	Section 1
Community	Section 27(11)
Composition	Section 27(11)
Concern	Section 22(2)
Connected, in relation to a person	Section 47(4)
Contract	Section 47(5)
Control, in relation to a body corporate	Section 47(4)
Department	Section 47(5)
Employer	Section 47(1)
Employee and related expressions	Sections 23(8) and 47(1)
Employment in Northern Ireland	Section 47(5)
Employment practice	Section 31(6)
Monitoring return	Section 27(1)

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Northern Ireland	Section 47(5)
Notice	Section 47(5)
Practices	Section 47(5)
Public authority	Section 25
Register	Section 47(1)
Registered concern	Sections 26(3) and 47(1)
Review	Section 31(6)
Satisfies the condition for registration	Section 23(2)
Tribunal	Section 2
Unqualified person	Section 38(2)
Week	Section 47(1)

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