

EXPLANATORY MEMORANDUM

THE FAIR EMPLOYMENT (SPECIFICATION OF PUBLIC AUTHORITIES) (AMENDMENT) ORDER (NORTHERN IRELAND) 2013

SR 2013 No. 49

Introduction

1. This Explanatory Memorandum has been prepared by the Office of the First Minister and Deputy First Minister to accompany the Fair Employment (Specification of Public Authorities) (Amendment) Order (Northern Ireland) 2013.
2. This Order is made under powers conferred by Articles 50 and 51 of the 1998 Order. The order making power is now vested in the Office of the First Minister and Deputy First Minister by virtue of Article 4(a) of, and Part I of Schedule to, the Departments (Transfer and Assignment of Functions) Order (Northern Ireland) 1999 (SR No. 481). The Order is subject to negative resolution.
3. The Order is due to come into operation on 31st March 2013.

Purpose

4. The Order amends the Schedule to the Fair Employment (Specification of Public Authorities) Order (Northern Ireland) 2004 (SR No. 494). The Schedule lists those public bodies who are to be regarded as public authorities for the purposes of the Fair Employment and Treatment (Northern Ireland) Order 1998 (the "1998 Order").

Background

5. Under the 1998 Order, all private sector employers with 11 or more employees are required to register with the Equality Commission for Northern Ireland (ECNI) and to submit to it annually, information regarding their workforces. Public authorities do not have to register with the ECNI – they are automatically deemed to be registered. However, because there is no standard legal definition of what constitutes a public authority, Article 50 of 1998 Order provides that the Office of the First Minister and Deputy First Minister (OFMDFM) may specify, by order, various persons as public authorities.
6. To be specified as a public authority, a person must be:
 - a Minister of the Crown or a Northern Ireland Minister;
 - a statutory body or the holder of a statutory office; or
 - a person appearing to OFMDFM to exercise functions of a public nature.

7. The Schedule is split into two parts. Part I lists the bodies that are specified as public authorities for the purposes of Articles 52 to 65 of the 1998 Order. Part II lists the bodies that are specified as public authorities for the purposes of Articles 62 to 65 of the 1998 Order. Article 2 of the Fair Employment (Specification of Public Authorities) Order (Northern Ireland) 2004, which will remain unchanged, means that all bodies in Part II of the schedule have already been specified for the purposes of Articles 52 to 61 of the 1988 Order.
8. For the purpose of Articles 52 to 61 of the 1998 Order, Article 2 of the 2004 Order –
 - (a) specifies the Minister for the Department of Finance and Personnel as a public authority and provides that all Northern Ireland civil servants (as defined) shall be treated as employees of that authority;
 - (b) specifies the Minister for the Civil Service as a public authority and provides that all United Kingdom civil servants (as defined) shall be treated as employees of that authority;
 - (c) specifies the Secretary of State for Defence as a public authority and provides that all reservists and members of the home service forces (as defined) shall be treated as employees of that authority; and
 - (d) specifies the Chief Constable of the Police Service of Northern Ireland as a public authority and provides that all members of the police (as defined) shall be treated as employees of that authority.
9. The duties imposed by Articles 52 to 61 of the 1998 Order are:
 - preparation and submission to ECNI of monitoring returns;
 - periodic review of recruitment, training and promotion practices;
 - dealing with enquiries from ECNI;
 - complying with ECNI directions or providing undertakings; and
 - setting of goals and timetables for the achievement of fair participation.
10. All registered employers and all public sector employers identified in the Fair Employment (Specification of Public Authorities) Order are required to monitor the composition of their workforces giving details of the community background and sex of employees, applicants, appointees, promotees and leavers. Community background means being a member of the Protestant or Roman Catholic community.
11. Where a public authority is specified for the purposes of Articles 62 to 65 of the 1998 Order, it is prohibited from entering into any contract with a person who is not qualified for the purposes of Articles 64 to 66 of that Order (i.e. eligibility for public contracts and government assistance). ECNI is under an

obligation to inform public authorities of the fact of any employer being unqualified.

12. The first Fair Employment (Specification of Public Authorities) Order was made in 1989. Since then, similar Orders have been made on an annual basis to take account of bodies which have been established, wound-up or whose name may have changed. Specification Orders are timed so that public authorities are deemed to be registered on 1 January. This then becomes their monitoring date.

Consultation

13. The Department wrote to all Northern Ireland Departments and ECNI asking for information on any public bodies established, wound up or whose name may have changed during the course of 2012.

Equality Impact

14. The Order is a technical piece of subordinate legislation simply listing those bodies that are to be regarded as public authorities. It can be regarded as “housekeeping” legislation. It does not alter or amend current fair employment policy. It therefore does not raise any equality issues.

Regulatory Impact

15. The Order is a purely technical device and does not, of itself, impose any burdens on business. If a body were not specified in the Order, it would be required to register with the Equality Commission anyway if the number of employees exceeds 10.

Financial implications

16. There are no associated financial implications with this Order.

Section 24 of the Northern Ireland Act 1998

17. The Department is satisfied that this legislation is compliant with section 24 of the Northern Ireland Act 1998.

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