



Fair Employment (Northern Ireland) Act 1989

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 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.

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 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.

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 at the end of the completed year of service in which he attains the age of seventy-two.
- (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.
- (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.
- (9) For Article 30(2)(a) of the Industrial Training (Northern Ireland) Order 1984 (remuneration of the President of the Industrial Tribunals) there is substituted—

“(a) the President and Vice-President of the Industrial Tribunals and the Fair Employment Tribunal;”.

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,
 - (h) prescribing forms to be completed by the parties to a complaint under Part III of the 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 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 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—
- (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.

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 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 Part III of the Industrial Relations (Northern Ireland) Order 1976, 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 Industrial Relations (Northern Ireland) Order 1976 or the 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.
- (3) For the purposes of complying with a direction under subsection (2) above the Tribunal shall have the jurisdiction, and may exercise all the powers, of an industrial tribunal.

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 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 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.

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 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 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 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.

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 Fair Employment (Northern Ireland) Act 1976.

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.

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 Fair Employment (Northern Ireland) Act 1976 before the commencement of this section.

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.
- (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.
- (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

Status: This is the original version (as it was originally enacted).

- (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,
 - (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—
 - (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 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.

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—

Status: This is the original version (as it was originally enacted).

- (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 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
 - (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.

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

- (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 to any person, except where—
- (a) it is disclosed to a person employed by the Commission the nature of whose duties renders it reasonable for him to be supplied with the information, or
 - (b) its disclosure is necessary—
 - (i) for the purposes of any proceedings under this Act, either before a court or before the Tribunal,

- (ii) for the purposes of any criminal proceedings, or
 - (iii) to comply with the order of a court.
- (2) Subsection (3) below applies to any information supplied to the Commission—
- (a) in the course of an investigation under section 11 of this Act or section 38 (review of exception of schoolteachers) of the 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 necessary as mentioned in subsection (1)(b) above, or
 - (c) is permitted by subsection (4) below or required by subsection (5) below.
- (4) Subject to subsection (1) above, 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 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) Subject to subsection (1) above, 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.

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
 - (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,

Status: This is the original version (as it was originally enacted).

“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 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.

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.

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.

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.

Status: This is the original version (as it was originally enacted).

- (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.

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 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.

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.

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

Status: This is the original version (as it was originally enacted).

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.
- (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—

Status: This is the original version (as it was originally enacted).

- (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) require information to which section 30(1)(a) or (b) of this Act applies 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 includes any false information in such a monitoring return, he is guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale,
 - (g) 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,

Status: This is the original version (as it was originally enacted).

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.

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 information to which section 30(1)(a) of this Act applies 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, and
 - (c) make different provision for different cases.

30 Confidentiality of monitoring information

- (1) This section applies—
- (a) to information about a person employed or applying for employment in a concern which might be used if any of the methods prescribed by regulations under section 28 of this Act for determining the community to which a person is to be treated as belonging for the purposes of monitoring were applied,
 - (b) to information as to the community to which a person employed or applying for employment in a concern is to be treated as belonging for those purposes, and
 - (c) to any other information from which that community might be deduced.
- (2) If person discloses any information which—

- (a) he holds or has held in his capacity as an employee in a concern or as the employer, and
 - (b) is information to which this section applies or has applied,
- he is guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- (3) This section does not apply to any disclosure—
- (a) to the Commission or to any person employed in the concern the nature of whose duties renders it reasonable for the disclosure to be made to him,
 - (b) which is necessary for the purposes of any proceedings under this Act, either before a court or before the Tribunal,
 - (c) which is necessary for the purposes of any criminal proceedings or to comply with the order of a court, or
 - (d) made in pursuance of regulations made by virtue of section 28(2)(e) of this Act or where the employee or applicant to whom the disclosure relates has given his consent in writing.
- (4) It is a defence for a person charged with an offence under this section to show that he has also obtained the information otherwise than in his capacity as an employee in the concern or the employer.

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.
- (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.

Status: This is the original version (as it was originally enacted).

- (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 held by the employer, being information to which section 30(1)(a) or (b) of this Act applies, 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.
- (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.

(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.

Status: This is the original version (as it was originally enacted).

- (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.

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,
- (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—
 - (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

Status: This is the original version (as it was originally enacted).

- (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
 - (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.

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.

Status: This is the original version (as it was originally enacted).

*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.
- (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.

Status: This is the original version (as it was originally enacted).

- (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.

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.

Status: This is the original version (as it was originally enacted).

- (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.
- (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.

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.

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.

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.

Status: This is the original version (as it was originally enacted).

- (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 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.

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,
 - “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—

Status: This is the original version (as it was originally enacted).

- (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 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 Fair Employment (Northern Ireland) Act 1976—
- “contract”,
 - “the Department”,
 - “employment in Northern Ireland”,
 - “Northern Ireland”,
 - “notice”, and
 - “practices”.
- (6) Part I of Schedule 2 to the Industrial Relations (Northern Ireland) Order 1976 (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 House of Commons Disqualification Act 1975 (Ministerial offices) as for the time being in force.

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.

| <i>Expression</i> | <i>Relevant provision</i> |
|---------------------------|---------------------------|
| Affirmative action | Section 58 |
| Associated body corporate | Section 47(4) |
| Code of practice | Section 7 |

Status: This is the original version (as it was originally enacted).

| <i>Expression</i> | <i>Relevant provision</i> |
|--|---------------------------|
| 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) |
| 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) |

PART III

DISCRIMINATION

49 Meaning of “discrimination”

(1) In section 16 of the Fair Employment (Northern Ireland) Act 1976 (meaning in that Act of “discrimination” and “unlawful discrimination”) for subsection (2) there is substituted—

“(2) A person discriminates against another person on the grounds of religious belief or political opinion in any circumstances relevant for the purposes of this Act if—

- (a) on either of those grounds he treats that other less favourably than he treats or would treat other persons, or
 - (b) he applies to that other a requirement or condition which he applies or would apply equally to persons not of the same religious belief or political opinion as that other but—
 - (i) which is such that the proportion of persons of the same religious belief or of the same political opinion as that other who can comply with it is considerably smaller than the proportion of persons not of that religious belief or, as the case requires, not of that political opinion who can comply with it, and
 - (ii) which he cannot show to be justifiable irrespective of the religious belief or political opinion of the person to whom it is applied, and
 - (iii) which is to the detriment of the other because he cannot comply with it.”
- (2) After subsection (4) of that section there is inserted—
- “(4A) A comparison of the cases of persons of different religious belief or political opinion under subsection (2) must be such that the relevant circumstances in the one case are the same, or not materially different, in the other.”

50 Complaints of unlawful discrimination

- (1) For sections 24 to 31 of the Fair Employment (Northern Ireland) Act 1976 there is substituted—

“24 Jurisdiction of the Fair Employment Tribunal

- (1) A complaint by any person (“the complainant”) that another person (“the respondent”) has committed unlawful discrimination against him may be presented to the Tribunal.
- (2) Subject to subsection (3), the Tribunal shall not consider a complaint unless it is brought before whichever is the earlier of—
 - (a) the end of the period of three months beginning with the day on which the complainant first had knowledge, or might reasonably be expected first to have had knowledge, of the act complained of, or
 - (b) the end of the period of six months beginning with the day on which the act was done.
- (3) The Tribunal may consider a complaint which is out of time if, in all the circumstances of the case, it considers that it is just and equitable to do so.
- (4) The Tribunal shall not consider a complaint relating to an act which is unlawful by virtue of section 23 if the act is one in respect of which an appeal, or proceedings in the nature of an appeal, may be brought to a court under any enactment.

25 Conciliation

- (1) Where a complaint is presented to the Tribunal under section 24, the Tribunal shall send a copy of the complaint to the Labour Relations Agency and it shall be the duty of the Agency—
 - (a) in any case where it is requested to do so by both the complainant and the respondent, or
 - (b) in any other case where it considers that it could act under this subsection with a reasonable prospect of success,to endeavour to promote a settlement of the complaint without its being determined by the Tribunal.
- (2) Where, before a complaint such as is mentioned in subsection (1) has been presented to the Tribunal, a request is made to the Labour Relations Agency to make its services available in the matter by a person who, if the complaint were so presented, would be the complainant or respondent, subsection (1) applies as if the complaint had been so presented and a copy of it had been sent to the Agency.
- (3) In proceeding under subsection (1) or (2), the Labour Relations Agency shall where appropriate have regard to the desirability of encouraging the use of other procedures available for the settlement of grievances.
- (4) Anything communicated to the Labour Relations Agency in connection with the performance of its functions under this section shall not be admissible in evidence in any proceedings before the Tribunal except with the consent of the person who communicated it to the Agency.

26 Remedies on complaint under section 24

- (1) Where the Tribunal finds that a complaint presented to it under section 24 is well-founded, the Tribunal shall make such of the following as it considers just and equitable—
 - (a) an order declaring the rights of the complainant and the respondent in relation to the act to which the complaint relates,
 - (b) an order requiring the respondent to pay to the complainant compensation of an amount corresponding to any damages he could have been ordered to pay by the High Court if the complaint had been a claim in tort, and
 - (c) a recommendation that the respondent take within a specified period action appearing to the Tribunal to be practicable for the purpose of obviating or reducing the adverse effect on the complainant of any unlawful discrimination to which the complaint relates.
- (2) As respects an act of unlawful discrimination falling within section 16(2)(b) no award of compensation shall be made if the respondent proves that the requirement or condition in question was not applied with the intention of treating the claimant unfavourably on the ground of his religious belief or political opinion as the case may be.

- (3) Compensation awarded to a person under subsection (1)(b) may include compensation for injury to feelings whether or not it includes compensation under any other head.
- (4) The amount of compensation awarded to a person under subsection (1)(b) shall not exceed £30,000.
- (5) If without reasonable justification the respondent to a complaint fails to comply with a recommendation made by the Tribunal under subsection (1)(c), then, if it considers it just and equitable to do so—
 - (a) the Tribunal may (subject to the limit in subsection (4)) increase the amount of any compensation required to be paid to the complainant in respect of the complaint by an order made under subsection (1)(b), or
 - (b) if an order under subsection (1)(b) could have been made but was not, the Tribunal may make such an order.
- (6) Where compensation falls to be awarded in respect of any act both under the provisions of this section and under any other enactment, the Tribunal shall not award compensation under this section in respect of any loss or other matter which has been taken into account under that other enactment by a court or tribunal in awarding compensation in an action in respect of that act.
- (7) Paragraphs (3) to (6) of Article 61 of the Industrial Relations (Northern Ireland) Order 1976 (which enables the Department to provide by order that sums payable in pursuance of decisions of industrial tribunals shall carry interest) shall apply with the necessary modifications in relation to an award of compensation under subsection (1)(b) as they apply in relation to a sum payable in pursuance of a decision of an industrial tribunal.
- (8) The Judgments Enforcement (Northern Ireland) Order 1981 shall apply with the necessary modifications in relation to an award of compensation under subsection (1)(b) as it applies to a sum due under a money judgment (within the meaning of that Order).
- (9) 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 (4) such other sum as appears to it to be justified by the change.
- (10) In subsection (9) “the relevant date” means—
 - (a) in relation to the first order under that subsection, the commencement of section 50 of the Fair Employment (Northern Ireland) Act 1989, and
 - (b) in relation to each subsequent order, the last occasion when the sum specified in subsection (4) was altered.
- (11) A statutory rule containing an order under subsection (9) shall be subject to negative resolution; and section 41(6) of the Interpretation Act (Northern Ireland) 1954 (meaning of “subject to negative resolution”) shall apply as if the power to make the order were conferred by a Measure of the Northern Ireland Assembly.
- (12) It is hereby declared that the limit imposed by subsection (4) applies to the amount which the Tribunal would, apart from that subsection, otherwise

award in respect of the subject matter of the complaint after taking into account any payment made by the respondent to the complainant in respect of that matter and any reduction in the amount of the award required by any enactment or rule of law.

27 Appeal to Court of Appeal

- (1) If any party to a complaint under section 24 is dissatisfied in point of law with a decision of the Tribunal, he 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.

Help for persons suffering discrimination

28 Help for aggrieved persons in obtaining information etc

- (1) With a view to helping a person (“the person aggrieved”) who considers that another person may have unlawfully discriminated against him to decide whether to institute proceedings and, if he does so, to formulate and present his case in the most effective manner, the Department shall by regulations prescribe—
 - (a) forms by which the person aggrieved may question the respondent on his reasons for doing any relevant act, or on any other matter which is or may be relevant, and
 - (b) forms by which the respondent may if he so wishes reply to any questions.
- (2) Where the person aggrieved questions the respondent (whether in accordance with regulations under subsection (1) or not)—
 - (a) the question, and any reply by the respondent (whether in accordance with the regulations or not) shall, subject to the following provisions of this section, be admissible as evidence in the proceedings, and
 - (b) if it appears to the Tribunal that the respondent deliberately and without reasonable cause omitted to reply within a reasonable period or that his reply is evasive or equivocal, the Tribunal may draw any inference from that fact that it considers it just and equitable to draw, including an inference that he committed an unlawful act.
- (3) The Department may by regulations—
 - (a) prescribe the period within which questions must be duly served in order to be admissible under subsection (2)(a), and
 - (b) prescribe the manner in which a question, and any reply by the respondent, may be duly served.
- (4) A statutory rule containing regulations under this section shall be subject to negative resolution; and section 41(6) of the Interpretation Act (Northern Ireland) 1954 (meaning of “subject to negative resolution”) shall apply as

if the power to make the regulations were conferred by a Measure of the Northern Ireland Assembly.

- (5) In this section “respondent” includes a prospective respondent.

29 Advice and assistance by Commission

- (1) Where a prospective complainant requests the Commission in writing for advice in relation to prospective proceedings under this Part, the Commission shall give him such advice unless it considers that the request is frivolous.
- (2) Where, in relation to proceedings or prospective proceedings under this Part, an individual who is an actual or prospective complainant applies to the Commission for assistance under this subsection, the Commission shall consider the application and may grant it if it thinks fit to do so on the ground that—
- (a) the case raises a question of principle, or
 - (b) it is unreasonable, having regard to the complexity of the case or the applicant’s position in relation to the respondent, or another person involved, or to any other matter to expect the applicant to deal with the case unaided,
- or by reason of any other special consideration.
- (3) Assistance given by the Commission under subsection (2) may include—
- (a) giving advice to an actual complainant,
 - (b) procuring or attempting to procure the settlement of any matter in dispute,
 - (c) arranging for the giving of advice or assistance by a solicitor or counsel,
 - (d) arranging for representation by any person including all such assistance as is usually given by a solicitor or counsel in the steps preliminary or incidental to any proceedings, or in arriving at or giving effect to a compromise to avoid or bring to an end any proceedings, and
 - (e) any other form of assistance which the Commission may consider appropriate.”
- (2) Subsection (1) above, section 51 of this Act and the repeal by this Act of Schedule 5 to the Fair Employment (Northern Ireland) Act 1976 do not apply—
- (a) in relation to any complaint that was made to the Fair Employment Agency for Northern Ireland under section 24 of that Act but not disposed of before the commencement of this section, or
 - (b) in relation to any act done before the commencement of this section in respect of which a complaint under section 24 of that Act could have been, but was not, made before that time or in relation to any such complaint made in respect of it,

but in relation to any such complaint or act Part III of that Act has effect as if references to the Agency were references to the Commission.

51 Power of High Court to revise contracts

- (1) In section 32 of the Fair Employment (Northern Ireland) Act 1976 in subsection (1) for the words from “but” onwards there are substituted “but this subsection has effect subject to subsection (1A).”
- (2) After that subsection there is inserted—
- “(1A) Where a complaint has been presented to the Tribunal under section 24, the complainant or respondent may apply to the High Court to revise the contract or any of its terms.”

52 Discriminatory advertisements

- (1) In section 33 of the Fair Employment (Northern Ireland) Act 1976 (discriminatory advertisements) after subsection (2) there is inserted—
- “(2A) Subsection (1) does not apply to the publisher of an advertisement in respect of the publication of the advertisement if the intended act would not be unlawful by virtue of Part III but for section 16(2)(b).”
- (2) In section 36 of that Act (enforcement of section 33) for subsection (1) there is substituted—
- “(1) If it appears to the Commission—
- (a) that a person has done an act which by virtue of section 33 was unlawful, and
- (b) that unless restrained he is likely to do further acts which by virtue of that section are unlawful,
- the Commission may apply to the High Court for an injunction restraining him from doing such acts.”

53 Provision of training

After section 37 of the Fair Employment (Northern Ireland) Act 1976 there is inserted—

“37A Provision of training in pursuance of affirmative action

- (1) This section applies where, in pursuance of affirmative action, persons are afforded access to facilities for training which would help to fit them for employment, for employment in a particular capacity or for a particular employment or occupation, but—
- (a) the facilities are provided only at a particular place in Northern Ireland or the training is confined to persons of a particular class, not being a class framed by reference to religious belief or political opinion, and
- (b) by providing the facilities only there or by so confining the training, access to the facilities by persons of a particular religious belief or political opinion is excluded or restricted.
- (2) For the purpose of determining whether any act done in, or in connection with, affording those facilities is by virtue of section 16(2) unlawful under any provision of Parts III and IV, the fact that, by providing the facilities only there

or by so confining the training, their access to the facilities is thereby excluded or restricted is to be disregarded.”

54 Redundancy

After section 37A of the Fair Employment (Northern Ireland) Act 1976 there is inserted—

“37B Redundancy

- (1) This section applies where—
- (a) a practice relating to the selection of employees who may be dismissed as redundant is followed by an employer in pursuance of affirmative action and in accordance with an agreed procedure, and
 - (b) the practice does not involve the application of any condition or requirement framed by reference to religious belief or political opinion, but has or may have the effect that the proportion of employees of a particular religious belief or political opinion who are selected is smaller than the proportion of employees not of that religious belief or, as the case may be, not of that political opinion who are selected.
- (2) The dismissal of an employee in pursuance of the practice is not by virtue of section 16(2) unlawful under any provision of Parts III and IV.”

55 Measures to encourage applications etc. from under-represented community

After section 37B of the Fair Employment (Northern Ireland) Act 1976 there is inserted—

“37C Measures to encourage applications etc. from under-represented community

Nothing in Parts III or IV shall render unlawful any act done by—

- (a) an employer,
- (b) an employment agency,
- (c) a vocational organisation, or
- (d) a person providing services as mentioned in section 22(1),

in or in connection with encouraging members of the Roman Catholic, or members of the Protestant, community in Northern Ireland to consider or to apply for a particular employment or particular training or to consider a particular occupation, where the act is done in pursuance of affirmative action.”

PART IV

MISCELLANEOUS AND GENERAL

56 Restriction on proceedings for contravention of legislation

- (1) Except as provided by the Fair Employment (Northern Ireland) Acts or regulations made under those Acts, no proceedings whether civil or criminal shall be brought

Status: This is the original version (as it was originally enacted).

against any person in respect of a contravention of, or failure to comply with, any provision of those Acts or of such regulations.

(2) Nothing in subsection (1) above prevents any application for judicial review.

57 Regulations and orders

(1) The power to make—

- (a) regulations under section 2(1), 5, 23(8), 28 or 29 of this Act, or
- (b) an order under section 9(10), 17(6), 25, 41(3) or 47(2) of this Act,

shall be exercisable by statutory rule, for the purposes of the Statutory Rules (Northern Ireland) Order 1979.

(2) No regulations under section 23(8), 28 or 29 of this Act or order under section 47(2) of this Act shall be made unless a draft of the regulations or order has been laid before and approved by the Northern Ireland Assembly.

(3) A statutory rule containing regulations under section 2(1) or 5 of this Act or an order under section 17(6), 25 or 41(3) of this Act shall be subject to negative resolution; and section 41(6) of the Interpretation Act (Northern Ireland) 1954 (meaning of “subject to negative resolution”) shall apply as if the power to make the regulations or order were conferred by a Measure of the Northern Ireland Assembly.

58 Meaning of “affirmative action”

(1) In this Act “affirmative action” means action designed to secure fair participation in employment by members of the Protestant, or members of the Roman Catholic, community in Northern Ireland by means including—

- (a) the adoption of practices encouraging such participation, and
- (b) the modification or abandonment of practices that have or may have the effect of restricting or discouraging such participation.

(2) In this section—

“employment”—

- (a) in the application of this section for the purposes of Part I of this Act or the Fair Employment (Northern Ireland) Act 1976, has the same meaning as in that Act but includes an occupation within the meaning of that Act, and
 - (b) in the application of this section for the purposes of Part II of this Act, has the same meaning as in that Part, and
- “practices” includes procedures and arrangements.

59 Minor and consequential amendments and repeals

(1) The minor and consequential amendments in Schedule 2 to this Act have effect.

(2) The enactments specified in Schedule 3 to this Act are repealed to the extent specified in the third column of that Schedule.

60 Citation, commencement and extent

- (1) This Act may be cited as the Fair Employment (Northern Ireland) Act 1989; and this Act and the Fair Employment (Northern Ireland) Act 1976 may together be cited as the Fair Employment (Northern Ireland) Acts.
- (2) This Act shall come into force on such day as the Secretary of State may by order made by statutory instrument appoint, and different days may be appointed for different provisions and for different purposes.
- (3) This Act extends to Northern Ireland only, except so far as it—
 - (a) affects enactments extending to the United Kingdom, or
 - (b) relates to the application, by virtue of regulations under section 5 of this Act or by virtue of paragraph 7 of Schedule 1 to this Act, of any enactment so extending.