

55

**Fair Employment and
Treatment (NI) Order
1998**

ARTICLE 5 5 REVIEW

A Guide for Employers

1. INTRODUCTION

- 1.1 Under Article 55 of the Fair Employment and Treatment (NI) Order 1998 concerns registered with the Equality Commission have a statutory duty to carry out a periodic review of their workforce compositions and employment practices.
- 1.2 The Commission has prepared this booklet to assist employers. While we have attempted to cover all the major areas which should be subject to review, it may well be that particular circumstances in an organisation will indicate additional areas which will need to be examined.
- 1.3 The purpose of the review is to enable employers to determine whether or not Protestants and Roman Catholics are enjoying, and are likely to continue to enjoy, **fair participation** in employment in the concern.
- 1.4 Additionally, the review will help to identify appropriate and practical **affirmative action** programmes, to ensure the achievement of equality of opportunity and fair participation.
- 1.5 As part of your review, where it is practicable to do so, you are required to set **goals** and **timetables** as a means of measuring change and assessing the effectiveness of your affirmative action measures.
- 1.6 The Commission has a statutory duty to give advice to employers in relation to the conduct of a review. Such advice is free and can be obtained from the Commission's Advice and Information department.
- 1.7 To further assist registered concerns in completing their Article 55 Review, the Commission has also prepared a number of standard 'Report Structures' to assist in the collection and analysis of the relevant information.

2. WHAT IS A REVIEW?

Scope

- 2.1 Under Article 55 of the Fair Employment and Treatment (NI) Order 1998 all registered concerns are required to conduct periodic reviews of:
- a. The **composition** of employees; and
 - b. The **employment practices** and procedures of the concern, affecting:
 - recruitment
 - training for employment in the concern
 - training within the concern
 - promotion
 - redundancy.
- 2.2 The review of composition should include an analysis of employees, applicants, appointees, promotees and job leavers.
- 2.3 While it is necessary to examine these two broad areas separately, it must be borne in mind that they do not stand in isolation from each other. In particular, the operation of recruitment practices will have an impact on the community composition of the workforce.

Timing

- 2.4 The legal position is that the first review **must** be carried out not more than 3 years after the date of registration with the Commission and subsequently at intervals of not more than 3 years.
- 2.5 Undertaking a regular review of workforce compositions and practices relating to equality of opportunity is an essential part of good personnel practice. The Commission strongly recommends that employers conduct a review at an early stage and carry out frequent reviews to ensure that problems or potential problems are identified and tackled as early as possible. The Commission has the power to direct an employer to carry out more frequent reviews.

Code of Practice

- 2.6 In carrying out a review an employer must take into account the contents of the 'Code of Practice' on fair employment in Northern Ireland, copies of which are available free of charge from the Commission.
- 2.7 The precise way in which an employer carries out his/her review will depend upon their particular circumstances. However the review should be conducted in a formal manner with a written report prepared.
- 2.8 Although the main responsibility for providing equality of opportunity rests with employers, individual employees and their representatives also have a part to play. When carrying out their review, employers should consult with recognised trade unions or employee representatives and provide them with an opportunity to put forward their views.

3. THE REVIEW

Equal Opportunities Policy

- 3.1 An organisation conducting a review should at the outset examine its equal opportunity policy. If such a policy does not exist, one should be drawn up and should cover the following areas:
 - a. A statement of the organisation's commitment to ensuring fair participation and providing equality of opportunity to job applicants and employees regardless of religious belief or political opinion.
 - b. A statement that it will ensure that job applicants and employees will not be discriminated against on the grounds of religious belief or political opinion.

- c. A commitment to consult with recognised trade unions or workers' representatives on the implementation and regular review of the policy and on any affirmative action programme which may be identified as necessary.
- d. The appointment of a senior member of staff to be responsible for the implementation and regular review of the policy.
- e. The maintenance of a good and harmonious working environment. To assist the achievement of this, the employer and the appropriate trade union(s) or employee representatives should agree a 'Joint Declaration of Protection' for the individual employee or groups of employees. The 'Code of Practice' contains advice on what should be included in the 'Joint Declaration of Protection'.
- f. Confirmation that the company will regard any complaints of discrimination as a matter of the utmost gravity and that any such complaints will be dealt with sympathetically and confidentially. There should also be provision for any employee who feels that he or she has been discriminated against under the terms and conditions of the fair employment legislation to pursue a complaint through the organisation's internal grievance procedure. This should not in any way hinder the individual's right to seek redress under the fair employment legislation.
- g. A commitment to make any form of unlawful discriminatory behaviour a serious disciplinary offence.
- h. A commitment to make the policy known to all employees and to job applicants.

Composition of the Workforce

- 3.2 Any employer carrying out a review will have made at least one monitoring return to the Commission. The monitoring information will not only establish the facts in relation to employment patterns in an organisation, it will also help identify problem areas and indicate the type of remedial action which will be required. The first step therefore in deciding whether or not there is fair participation between Catholics and Protestants in a workforce is to analyse the monitoring return(s).

- 3.3 When reviewing the composition of a workforce, the overall proportion of Protestants and Catholics working there should be examined. If there appears to be under-representation of members of one community, reasons for this should be sought and appropriate action taken.
- 3.4 Employers should not simply look at overall representation of Protestants and Catholics in the workforce. They should also examine the nine major occupational groupings identified in the monitoring form to see if there are concentrations of Protestants and Catholics in certain categories which, while perhaps showing a reasonable overall picture, indicates an imbalanced workforce within the structure. For example, members of one community may comprise the bulk of the shopfloor workers but members of the other community may hold all the supervisory or management positions. The total workforce and the nine categories should be analysed in terms of males and females working in the organisation. It may also be necessary to examine rates of pay for different jobs.
- 3.5 In many cases it will be necessary to carry out an analysis of the composition by departments, workshops, or more specific job groupings, etc, where these differ to some extent from the makeup of the nine categories on the monitoring form. No company can say that it provides fair participation if sections are staffed disproportionately by people of one religion.
- 3.6 If a concern has more than one location, each location must be examined as outlined above to determine whether fair participation exists at each facility.

Monitoring Applicants and Appointees

- 3.7 As part of a review it is essential to monitor the composition of job applicants and appointees in an organisation; this information provides the context in which the current composition can be analysed.
- 3.8 All registered concerns are required to obtain certain information from all job applicants. Registered concerns should assess the composition of job applicants on a regular basis (at least once a year, more often if recruitment is frequent). From 1 January 2001, all

registered employers, regardless of size, are required to submit this information to the Commission on an annual basis.

- 3.9 In carrying out a review under Article 55, the Commission considers that each stage of the recruitment procedure should be monitored so that a concern can identify the success rates of Protestant and Catholic applicants at each stage. This should be done for each separate recruitment exercise. Of particular importance is the comparison of the respective application and appointment rates for Protestants and Catholics. Any discrepancy in the rates which is found must be examined and reasons for its occurrence sought.
- 3.10 Any employer should be in a position to analyse applicant flow to determine whether the pool of applicants for that concern contains a fair representation of members of the Protestant community and members of the Catholic community. The Commission strongly recommends that employers should establish procedures to enable this to be done on the basis of separate recruitment exercises so that any problems in relation to types of employment in a concern can be identified and dealt with.
- 3.11 The Commission has prepared a 'Step by Step Guide to Monitoring', which includes pro forma documentation to assist in the collection and recording of monitoring information. Copies of the step by step guide are available free from the Commission.

Employment Practices

- 3.12 Employment practices must always be placed in the context of the existing workforce composition and the applicant flow. Where there is under-representation in these areas, it may well be due to the operation of employment practices which do not afford equality of opportunity.
- 3.13 The need to review the impact of employment practices and procedures is all the more pressing due to the fact that indirect discrimination is now illegal under the fair employment legislation. Therefore employers should be aware that they may be acting unlawfully if they apply a condition or requirement which has a disproportionate impact upon Catholics or Protestants. This could be the case even if done unintentionally.

- 3.14 Employers should ensure that their employment procedures and practices are fair and consistent. The 'Code of Practice' contains advice about the standards of good practice which are required and the Commission will provide more specific advice to employers on request.
- 3.15 The practices and procedures relating to the following areas must be examined to ascertain whether or not equality of opportunity is being provided and, where problems are identified, to determine what needs to be done to ensure the provision of equality of opportunity:
- recruitment
 - training for employment in an organisation
 - training opportunities for employees
 - promotions
 - transfers
 - redundancy
 - leavers
 - access to benefits.
- 3.16 Companies carrying out a review must be able to analyse the religious composition of those affected by the operation of practices and procedures in the above areas. On the basis of the statistics revealed by this analysis, companies will be able to identify areas of under-representation which require affirmative action.

Assess the Situation

- 3.17 Having collected the information for the review, the first aim is to assess the situation with respect to:
- a. the present composition of the overall workforce,
 - b. among any group of employees, and
 - c. the composition of applicants and appointees to the organisation.

Each of these areas should be compared with information on the availability of Protestants and Catholics for the employment concerned (see Section 6: Catchment Areas). Specific advice on the

information which is available to assist with this comparison can be sought from the Commission.

- 3.18 Such comparisons will help to indicate if fair participation exists for Protestants and Catholics at present. The question should also be addressed as to whether or not the composition of the workforce, applicants and recent recruits is broadly in line with what might reasonably be expected. Your conclusions should be included in the written report of the review.

4. AFFIRMATIVE ACTION

- 4.1 The purpose of a review is to determine whether for members of each community there is **fair participation** and, if this is the case, whether the situation is likely to continue. Where fair participation does not exist, employers **must** decide on the affirmative action that would be appropriate, including the use of goals and timetables.
- 4.2 In general terms, affirmative action can be defined as being anything consistent with the legislation which is necessary to bring about positive change. Affirmative action measures should be designed to bring about such change and any employer who discovers a problem area or potential problem area should take action to resolve the situation. This applies at any time and not simply to something discovered during the conduct of a review. There is no need for an employer to wait to be required to take action by the Commission but naturally the Commission can be consulted at any time for advice about action which an employer is contemplating.

Deciding on Affirmative Action

- 4.3 The Commission considers that the successful implementation of any affirmative action programme is likely to occur where the employees and management work together to achieve the aims of the programme. For this reason consultation with recognised trade unions or employee representatives should take place following the review, prior to the introduction of any affirmative action programme and at various stages thereafter.

4.4 The type of affirmative action measures which are appropriate will follow from the analysis of what the review reveals. Each organisation should draw up a programme which is suitable for its particular needs. All employment practices and procedures should be examined to see if they have an adverse impact on members of a particular community. Unless the use of the practices or procedures can be shown to be justifiable they must be abandoned and replaced by measures which ensure equality of opportunity for all job applicants and employees.

For example:

- a. Where members of one community are applying in fewer numbers than might reasonably be expected, it could be decided to include a statement in advertisements that applications from that group are particularly welcome.
- b. If a lower proportion of members of one community is recruited, then changes to the recruitment procedures may be appropriate.
- c. If fewer members of one community are represented in senior positions than might reasonably be expected, then it might be appropriate to devise a training or development programme which would fit members of that group for promotion but would not exclude members of any other group.
- d. If members of a community are under-represented in the workforce, a training programme for that community may be appropriate.

'Chill Factors'

4.5 The representation of members of one community in some organisations may be affected by a 'chill factor'. This occurs where members of one community can feel discouraged or prevented from applying for employment in an organisation because it is traditionally associated with the other community. Attempts to overcome a 'chill factor' must be made by adopting appropriate affirmative action measures.

4.6 There are three areas outlined in the legislation where affirmative action is likely to have the greatest impact on the provision of equality and the achievement of fair participation and which are excepted from complaints of direct or indirect discrimination. They cover:

- a. **Encouraging applications from the under-represented group** to achieve a more representative pool from which employees will be selected.
- b. **The provision of training.** An employer may provide training for people at a particular location or for people of a particular class to help fit them for employment but may not confine the training to members of one community.

In some circumstances an employer may be allowed to develop training programmes focussed solely on individuals of a particular religious belief.

- c. **The amendment of redundancy procedures** to ensure that gains made as a result of affirmative action measures at the recruitment stage are not automatically lost in the event of redundancies. Any new procedures may not be framed by reference to a particular religious belief or political opinion.

Goals and Timetables

4.7 Where appropriate, affirmative action measures should be accompanied by the setting of goals and timetables. These should be used as measures of the progress towards the achievement of fair participation. The goals and timetables which are appropriate will depend upon what the review reveals and the specific circumstances of the company. For example, organisations with high labour turnover may be able to set more challenging goals than those with low labour turnover.

4.8 While goals and timetables should be realistic, they should also be challenging and reflect a commitment to make sustained efforts to ensure fair participation.

- 4.9 Goals and timetables should not be confused with the introduction of 'quotas', that is, reserving specific numbers or proportions of positions for members of one community. This type of action is **unlawful**.

5. FAIR PARTICIPATION

- 5.1 Fair participation in employment is one of the primary aims of the legislation. It involves arriving at a situation where Catholics and Protestants enjoy proportionate representation in terms of extent of employment, in types of employment and at all levels of employment.
- 5.2 Employers must therefore assess how many members of the Catholic and Protestant communities are employed throughout each of the major job groupings in their organisation. A similar assessment should be made of applicants for vacancies. Any assessment concerning fair participation will involve making comparisons between what an employer would reasonably expect and the appropriate catchment areas for the particular job grade in question.

6. CATCHMENT AREAS

- 6.1 A catchment area can be defined as the area from within which an employer would reasonably be expected to recruit for particular jobs in his/her organisation. It is rarely the case that an employer's catchment areas correspond exactly to the area in the immediate vicinity of the company's premises. Employers should not make ready assumptions about their catchment areas and whether or not fair participation exists in their company until they have examined a number of pieces of information.
- 6.2 It is also important to recognise that the current pattern of employment in Northern Ireland is, to a greater or lesser extent, a reflection of past discrimination and segregation. In consequence, the present employment pattern may be unnecessarily restrictive in some instances.

- 6.3 The first need is to identify where the current workforce is drawn from. This should be done for each occupational group and location.
- 6.4 The second need is to examine the home addresses of recent job applicants.
- 6.5 Having collected this information, an employer is able to define the geographical areas which provide the existing workforce and job applicants. The employer is therefore in a position to identify geographical areas which may be within reach but which are providing very few or no employees or job applicants. Reasons for this must be sought.
- 6.6 There are a number of factors which will help to determine the area from which a company draws its labour. For example:
- a. **Rates of pay.** Lower paid jobs, as a general rule, are likely to attract labour from a more localised area whereas better paid positions are more likely to attract people from further afield.
 - b. **Methods of notifying vacancies.** The practices by which people learn of job opportunities in any company will influence the employment patterns there.
 - c. **Specific qualifications or specialised abilities.** The need to recruit people with particular expertise or training will have a direct effect on the potential applicant pool. Such vacancies will normally need to be notified over a wider area.
 - d. **Travelling conditions.** Is the location accessible? If public transport is infrequent or non-existent, this may have a bearing on how easily people can get to the location. Travelling time and the existence of shift work may also be relevant factors.
 - e. **Alternative employment.** The proximity of other companies and their respective working conditions and rates of pay may affect employment patterns.
- 6.7 The above factors, acting alone or in combination, will help to determine the catchment areas for any company. There may be other factors which come into play. What is important is that employers should seek to deal positively with any factors which have the effect of

restricting the potential applicant pool for any type of job or any location.

6.8 After the appropriate catchment area has been identified for each major job group, the employer should seek to assess the availability for employment of members of each community within those catchment areas. For each catchment area the employer should discover the community composition of:

- the overall population
- those who are unemployed
- those having the skills for the particular job in question
- school leavers.

In making an assessment relating to fair participation employers should compare their own workforce compositions with these figures.

6.9 In this context employers should also consider the availability of promotable or trainable members of any under-represented community background within their own organisation.

7. SUMMARY

Key Steps

7.1 Outlined below are some of the basic steps that will need to be taken by all employers when conducting their review. Large employers with a more complex organisational structure will need to develop these basic steps to fit the requirements of their particular situation. Further advice can be obtained from the Code of Practice and the Commission's Advice and Information staff.

- a. Analyse monitoring returns to establish any patterns and what additional information needs to be assessed.

In particular look for trends in relation to:

- total workforce
- job applicants

- any separate locations
 - separate job groups.
- b. For each location/job group, estimate the catchment area from which employees could be reasonably expected to travel:
- identify any parts of the catchment areas which are providing few or no employees or applicants,
 - estimate the proportions of Catholic and Protestant potential employees contained within your catchment areas.
- c. Compare the trends emerging from your analysis of:
- monitoring returns
 - catchment area data
 - company information relating to training, promotion and leavers.
- d. Review the impact of employment practices and procedures, including review of your existing equal opportunities policies.
- e. Make an assessment of whether both communities are currently participating in your workforce in the numbers that could reasonably be expected, and if this is likely to continue.
- f. Consider the implementation of appropriate affirmative action measures and the setting of reasonable goals and timetables for those in employment, applicants and appointees.
- g. Develop a programme for assessing progress towards the targets set in your goals and timetables and begin planning your next review.
- 7.2 Each of the areas subject to review must be dealt with in a written report. Any area which appears to present problems for fair participation in an organisation must be dealt with in an affirmative action programme. The Commission will give advice and assistance to employers on the conduct of reviews, on appropriate affirmative action measures and on whether or not affirmative action is required in particular instances.

8. FURTHER INFORMATION

Other useful publications freely available from the Commission include:

Code of Practice: Fair Employment in Northern Ireland

Article 55 Report Structure

Article 55 Report Structure for Small Organisations

Taking Affirmative Action: A Guide for Employers

A Step by Step Guide to Monitoring

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