EXPLANATORY MEMORANDUM

THE FAIR EMPLOYMENT (MONITORING) (AMENDMENT) REGULATIONS (NORTHERN IRELAND) 2024

SR 2024 No. 203

Introduction

1. This Explanatory Memorandum has been prepared by the Executive Office (TEO) to accompany the Fair Employment (Monitoring) (Amendment) Regulations (Northern Ireland) 2024.

2. The Executive Office proposes to make a Statutory Rule under powers conferred by Article 53 of the Fair Employment and Treatment (Northern Ireland) Order 1998 (FETO) to make an amendment to the Fair Employment (Monitoring) Regulations (Northern Ireland) 1999 (the Monitoring Regulations). The Statutory Rule is subject to draft affirmative resolution procedure before the Assembly. I enclose a copy of the Statutory Rule.

3. The amendment to the regulations is due to come into operation on 9th December 2024.

Purpose

4. The Statutory Rule is substantively an administrative matter. It will amend the Monitoring Regulations to require existing registered concerns (including public authorities) to provide monitoring information in respect of school teachers from 12th May 2024 only – the date on which the school teachers' exception in FETO was removed by the commencement of sections 1 and 2 of the Fair Employment (School Teachers) Act (Northern Ireland) 2022. Without this amendment, some schools could be in breach of the Monitoring Regulations.

5. The Monitoring Regulations currently require employers to provide 12 months data to the Equality Commission for Northern Ireland (ECNI). The Fair Employment (School Teachers) Act (Northern Ireland) 2022 ("the 2022 Act") does not provide for the collation of 12 months of teachers' data needed for the first return that follows the removal of the school teachers' exception. The Monitoring Regulations state that failure to provide a return containing the required information is an offence.

Background

6. Part VII of FETO imposes duties on certain employers in respect of their workforce.

7. Under FETO, all private sector employers with 11 or more employees (working 16 hours a week or more) are required to register with the ECNI and submit an annual monitoring return containing information regarding their workforces. All bodies specified as public authorities for the purposes of FETO are automatically registered for fair employment monitoring purposes.

8. Article 47 of FETO requires ECNI to keep a register of trades, businesses, and other activities (whether carried on for profit or not) in which people are employed. The employer in any of those concerns is required to apply for registration at the end of any week if in that week he employs more than ten people working more than sixteen hours a week ("full-time employees").

9. The duties imposed by Articles 52 to 61 of FETO are:

- preparation and submission to ECNI of monitoring returns;
- periodic review of recruitment, training, and promotion practices;
- dealing with enquiries from ECNI;
- complying with ECNI directions or providing undertakings; and
- setting of goals and timetables for the achievement of fair participation.

10. All registered employers and all public authorities (as listed in the relevant specification order) are required to monitor and report on the composition of their workforce giving details of the community background, sex and Standard Occupational Classification of employees, applicants, and appointees along with details of the full-time or part-time status of employees. In addition, specified public authorities and registered employers with more than 250 employees are also required to monitor and report on promotees and leavers. Community background means being a member of the Protestant or Roman Catholic community.

11. The 2022 Act revoked the exception contained in FETO relating to employment as a teacher in a school, from 12 May 2024, providing school teachers with the same protection from discrimination as other employees. It also means that school teachers are subject to fair employment monitoring for the first time. Some schools, who are their own employing authority, already provide annual monitoring returns to ECNI because the number of non-teaching staff they employ already exceeds the threshold for registration (11 or more staff working 16 hours per week or more). Other schools will be

required to register for the first time as the inclusion of school teachers will mean they will reach the threshold. For a considerable number of schools the employing authority is either the Education Authority (EA) or the Council for Catholic Maintained Schools (CCMS), both of which are specified public authorities for the purposes of FETO, and report annually on non-teaching employees.

12. At the point of registration newly registered employers are required to provide monitoring information on the community background, sex, Standard Occupational Classification and full-time or part-time employment status of employees. On the anniversary of their first registration, and annually thereafter, they are required to provide a more detailed monitoring return which includes additional information on applicants and leavers.

13. Existing employers of school teachers (including the EA and the CCMS) are required to submit the more detailed annual monitoring return but will not have had an opportunity to collect 12 months of monitoring information for school teachers at the point at which the exception was revoked by the 2022 Act. As such, they may be in breach of their fair employment monitoring requirements, should they fail to supply this data in their first annual monitoring return following the removal of the school teachers' exception.

14. In order to ensure that employers are able to provide the required monitoring data, and not be potentially subject to a fine, there is a need to amend the Monitoring Regulations. At present, on ECNI receiving a monitoring return which, without reasonable excuse, is not prepared in accordance with the Monitoring Regulations or does not contain the prescribed information, the employer is guilty of an offence for which the maximum penalty, on summary conviction, is a fine not exceeding £10,000 (Regulation 19). However, ECNI has indicated that, if required, it will consider the reasonable excuse defence as relating specifically to the impact of the 2022 Act as to the monitoring information provided. The purpose of this Statutory Rule therefore is to amend the reporting requirements in respect of school teachers employed at already registered concerns to provide monitoring data from the 12th May 2024 only.

Consultation

15. The proposed Regulations are a technical device for updating the Monitoring Regulations, to ensure employers are not in breach of the Monitoring Regulations as a result of the 2022 Act. The Regulations propose to amend the Monitoring Regulations for the first monitoring return only in relation to employment as a teacher in a school, and in respect of already registered concerns. In view of the technical nature of the legislation, it is not considered appropriate for the draft Regulations to be subject to a public consultation exercise. We have engaged with the ECNI and the Department of Education

around the smooth implementation of the 2022 Act. We have formally consulted with the ECNI in accordance with Article 53(1) of FETO.

Equality Impact

16. I can confirm that consideration has been given to compliance with section 75 of the Northern Ireland Act 1998. An Equality Screening was carried out when considering how best to provide for reporting following the implementation of the 2022 Act, which exists to ensure school teachers are now subject to the same fair employment practices in relation to recruitment and monitoring as others in Northern Ireland. The proposed draft Regulations ensure smooth implementation of the 2022 Act, and that employers are not in breach of the Monitoring Regulations. The Statutory Rule is substantively an administrative matter.

Regulatory Impact

17. The proposed draft Regulations allow for employers to be able to provide the required monitoring data, and not be subject to a risk of a fine.

Financial implications.

18. There is a small administrative charge associated with publication of this Order.

Article 2 Windsor Framework

19. This legislation of a technical nature and does not engage Article 2 of the Windsor Framework.

Section 24 of the Northern Ireland Act 1998

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

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