EXPLANATORY MEMORANDUM

THE FAIR EMPLOYMENT (SPECIFICATION OF PUBLIC AUTHORITIES) (AMENDMENT) ORDER (NORTHERN IRELAND) 2025

S.R. 2025 No. 34

Introduction

1. This Explanatory Memorandum has been prepared by the Executive Office to accompany the Fair Employment (Specification of Public Authorities) (Amendment) Order (Northern Ireland) 2025.

2. This Order is made under powers conferred by Articles 50 and 51 of the Fair Employment and Treatment (Northern Ireland) Order 1998 ("the 1998 Order"). The order making power is now vested in the Executive Office by virtue of Article 4(a), of and Part I of Schedule 2 to, the Departments (Transfer and Assignment of Functions) Order (Northern Ireland) 1999 (SR No. 481). The Order is subject to negative resolution.

3. The Order is due to come into operation on 31st March 2025.

Purpose

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

Background

5. Under the 1998 Order, all private sector employers with 11 or more employees are required to register with the Equality Commission for Northern Ireland ("ECNI") and to submit to it annually, information regarding their workforces. Public authorities are not subject to this registration requirement. Article 50 of the 1998 Order provides that the Executive Office may specify, by order, various persons as public authorities. This means that they will be automatically deemed to be registered when specified.

6. To be specified as a public authority, a person must be:

- a Minister of the Crown or a Northern Ireland Minister;
- a statutory body or the holder of a statutory office; or
- a person appearing to the Executive Office to exercise functions of a public nature.

7. The Schedule is split into two parts. Part I lists the bodies that are specified as public authorities for the purposes of Articles 52 to 65 of the 1998 Order. Part II lists the bodies that are specified as public authorities for the purposes of Articles 62 to 65 of the 1998 Order. Article 2 of the 2004 Order,

which will remain unchanged, means that certain bodies in Part II of the Schedule are also specified for the purposes of Articles 52 to 61 of the 1988 Order.

8. For the purpose of Articles 52 to 61 of the 1998 Order, Article 2 of the 2004 Order –

(a) specifies the Minister for the Department of Finance as a public authority and provides that all Northern Ireland civil servants (as defined) shall be treated as employees of that authority;

(b) specifies the Minister for the Civil Service as a public authority and provides that all United Kingdom civil servants (as defined) shall be treated as employees of that authority;

(c) specifies the Secretary of State for Defence as a public authority and provides that all reservists and members of the home service forces (as defined) shall be treated as employees of that authority; and

(d) specifies the Chief Constable of the Police Service of Northern Ireland as a public authority and provides that all members of the police (as defined) shall be treated as employees of that authority.

9. The duties imposed by Articles 52 to 61 of the 1998 Order are:

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

10. All registered employers and all public authorities identified in the 2004 Order are required to monitor the composition of their workforces giving details of the community background and sex of employees, applicants and appointees. In addition, specified public authorities and registered employers with more than 250 employees are also required to monitor promotees and leavers. Community background means being a member of the Protestant or Roman Catholic community.

11. Where a public authority is specified for the purposes of Articles 62 to 65 of the 1998 Order, it is prohibited from entering into any contract with a person who is not qualified for the purposes of Articles 64 to 66 of that Order (i.e. eligibility for public contracts and government assistance). ECNI is under an obligation to inform public authorities of the fact of any employer being unqualified.

12. The original Fair Employment (Specification of Public Authorities) Order was made in 1989 (revoked), in accordance with section 25(3) of the Fair Employment (Northern Ireland) Act 1989 (repealed). Since then, similar

Orders have been made to take account of bodies which have been established, wound-up or whose name may have changed. Specification Orders are timed so that public authorities are deemed to be registered on 1 January. This then becomes their monitoring date.

Consultation

13. The Executive Office wrote to all Northern Ireland Departments, The Northern Ireland Assembly, the Northern Ireland Office, Whitehall contacts and ECNI asking for information on any public bodies established, wound up or whose name may have changed since the last amendments, and during the course of 2023 and 2024.

Equality Impact

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

Regulatory Impact

15. The Order is a purely technical device and does not, of itself, impose any burdens on business.

Financial implications

16. There are no costs associated with this legislation, apart from a small cost, in the region of £475, associated with the printing and publication of a statutory rule.

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

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