



**Isle of Man**

*Ellan Vannin*

**AT 16 of 2000**

**EMPLOYMENT (SEX DISCRIMINATION)  
ACT 2000**





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## EMPLOYMENT (SEX DISCRIMINATION) ACT 2000

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**Isle of Man***Ellan Vannin*

## EMPLOYMENT (SEX DISCRIMINATION) ACT 2000

*Received Royal Assent:* 17 October 2000  
*Passed:* 17 October 2000  
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**AN ACT** to prevent discrimination between men and women in relation to employment.

### PART 1 – EQUAL PAY

#### 1 Equal treatment in same employment

[P1970/41/1; P1975/65/8]

- (1) If the terms of a contract under which a woman is employed at an establishment in the Island do not include (directly or by reference to a collective agreement or otherwise) an equality clause they shall be deemed to include one.
- (2) An equality clause is a provision which relates to terms (whether concerned with pay or not) of a contract under which a woman is employed (the “woman’s contract”), and has the effect that –
  - (a) where the woman is employed on like work with a man in the same employment –
    - (i) if (apart from the equality clause) any term of the woman’s contract is or becomes less favourable to the woman than a term of a similar kind in the contract under which that man is employed, that term of the woman’s contract shall be treated as so modified as not to be less favourable, and
    - (ii) if (apart from the equality clause) at any time the woman’s contract does not include a term corresponding to a term benefiting that man included in the contract under which he is employed, the woman’s contract shall be treated as including such a term;
  - (b) where the woman is employed on work rated as equivalent with that of a man in the same employment –

- (i) if (apart from the equality clause) any term of the woman's contract determined by the rating of the work is or becomes less favourable to the woman than a term of a similar kind in the contract under which that man is employed, that term of the woman's contract shall be treated as so modified as not to be less favourable, and
  - (ii) if (apart from the equality clause) at any time the woman's contract does not include a term corresponding to a term benefiting that man included in the contract under which he is employed and determined by the rating of the work, the woman's contract shall be treated as including such a term.
- (3) An equality clause shall not operate in relation to a variation between the woman's contract and the man's contract if the employer proves that the variation is genuinely due to a material factor which is not the difference of sex.
- (4) A woman is to be regarded as employed on like work with men if, but only if, her work and theirs is of the same or a broadly similar nature, and the differences (if any) between the things she does and the things they do are not of practical importance in relation to terms and conditions of employment; and accordingly in comparing her work with theirs regard shall be had to the frequency or otherwise with which any such differences occur in practice as well as to the nature and extent of the differences.
- (5) A woman is to be regarded as employed on work rated as equivalent with that of any men if, but only if, her job and their job have been given an equal value, in terms of the demand made on a worker under various headings (for instance effort, skill, decision), on a study undertaken with a view to evaluating in those terms the jobs to be done by all or any of the employees in an undertaking or group of undertakings, or would have been given an equal value but for the evaluation being made on a system setting different values for men and women on the same demand under any heading.
- (6) Subject to the following subsections, for purposes of this section —
  - (a) "employed" means employed under a contract of service or of apprenticeship or a contract personally to execute any work or labour, and related expressions shall be construed accordingly;
  - (b) men shall be treated as in the same employment with a woman if they are men employed by her employer or any associated employer at the same establishment or at establishments in the Island which include that one and at which common terms and conditions of employment are observed either generally or for employees of the relevant classes; and

- (c) two employers are to be treated as associated if one is a company of which the other (directly or indirectly) has control or if both are companies of which a third person (directly or indirectly) has control.
- (7) For the purposes of this Act it is immaterial whether the law which (apart from this subsection) is the law applicable to a contract is the law of the Island or not.

## 2 Exclusion of pensions etc

[P1970/41/6; P1975/65/8; P1989/24/5/14; P1993/48/7/1]

- (1) An equality clause shall not operate in relation to terms –
  - (a) affected by compliance with the laws regulating the employment of women, or
  - (b) affording special treatment to women in connection with pregnancy or childbirth.
- (2) An equality clause shall not operate in relation to terms relating to a person's membership of, or rights under, an occupational pension scheme, being terms in relation to which, by reason only of any provision made by or under sections 62 to 64 of the Pensions Act 1995 (an Act of Parliament) (equal treatment), an equal treatment rule would not operate if the terms were included in the scheme.<sup>1</sup>
- (3) In subsection (2), "occupational pension scheme" has the same meaning as in the Pension Schemes Act 1993 (an Act of Parliament) and "equal treatment rule" has the meaning given by section 62 of the Pensions Act 1995.<sup>2</sup>

## 3 Application to men

Provisions of sections 1 and 2 framed with reference to women and their treatment relative to men are to be read as applying equally in a converse case to men and their treatment relative to women.

# PART 2 – DISCRIMINATION IN EMPLOYMENT

## *General*

## 4 Sex discrimination against women

[P1975/65/1(2) & (4)]

A person discriminates against a women if –

- (a) on the ground of her sex he treats her less favourably than he treats or would treat a man; or

- (b) he applies to her a provision, criterion or practice which he applies or would apply equally to a man, but —
  - (i) which puts or would put women at a particular disadvantage when compared with men;
  - (ii) which puts her at that disadvantage; and
  - (iii) which he cannot show to be a proportionate means of achieving a legitimate aim.<sup>3</sup>

## 5 **Discrimination against married persons and civil partners in employment field**

- (1) In any circumstances relevant for the purposes of any provision of this Part, a person discriminates against a person (“A”) who fulfils the condition in subsection (2) if —
  - (a) on the ground of the fulfilment of the condition, he or she treats A less favourably than he or she treats or would treat a person who does not fulfil the condition, or
  - (b) he or she applies to A a provision, criterion or practice which he or she applies or would apply equally to a person who does not fulfil the condition, but —
    - (i) which puts or would put persons fulfilling the condition at a particular disadvantage when compared with persons not fulfilling the condition, and
    - (ii) which puts A at that disadvantage, and
    - (iii) which he or she cannot show to be a proportionate means of achieving a legitimate aim.
- (2) The condition is that the person is —
  - (a) married, or
  - (b) a civil partner.
- (3) For the purposes of subsection (1), a provision of this Part framed with reference to discrimination against women is to be treated as applying equally to the treatment of men, and for that purpose has effect with such modifications as are requisite.<sup>4</sup>

## 6 **Discrimination by way of victimisation**

[P1975/65/4]

- (1) A person (“the discriminator”) discriminates against another person (“the person victimised”) in any circumstances relevant for the purposes of any provision of this Part if he treats the person victimised less favourably than in those circumstances he treats or would treat other persons, and does so by reason that the person victimised has —

- (a) brought proceedings against the discriminator or any other person under Part 3 or under sections 62 to 65 of the Pensions Act 1995 (an Act of Parliament), or<sup>5</sup>
- (b) given evidence or information in connection with proceedings brought by any person against the discriminator or any other person under Part 3 or under sections 62 to 65 of the Pensions Act 1995, or<sup>6</sup>
- (c) otherwise done anything under or by reference to Part 1, this Part or sections 62 to 65 of the Pensions Act 1995 in relation to the discriminator or any other person, or<sup>7</sup>
- (d) alleged that the discriminator or any other person has committed an act which (whether or not the allegation so states) would amount to a contravention of this Part or give rise to a claim under Part 1 or under sections 62 to 65 of the Pensions Act 1995,<sup>8</sup>

or by reason that the discriminator knows the person victimised intends to do any of those things, or suspects the person victimised has done, or intends to do, any of them.

- (2) Subsection (1) does not apply to treatment of a person by reason of any allegation made by him if the allegation was false and not made in good faith.

## 7 Interpretation of Part 2

[P1975/65/2 and 5]

- (1) In this Part —
  - (a) references to discrimination refer to any discrimination falling within sections 4 to 6; and
  - (b) references to sex discrimination refer to any discrimination falling within section 4,and related expressions shall be construed accordingly.
- (2) Each of the following comparisons, that is —
  - (a) a comparison of the cases of persons of different sex under section 4, and
  - (b) a comparison of the cases of persons who do and who do not fulfil the condition in section 5(2),must be such that the relevant circumstances in the one case are the same, or not materially different, in the other.<sup>9</sup>
- (3) Subject to subsection (4), provisions of this Part which are framed with reference to women only and their treatment relative to men are to be read as applying equally in a converse case to men and their treatment relative to women, and for that purpose shall have effect with such modifications as are requisite.

- (4) In the application of subsection (3) no account shall be taken of special treatment afforded to women in connection with pregnancy or childbirth.

*Discrimination by employers*

**8 Discrimination against applicants and employees**

[P1975/65/6; P1986/59/1-2]

- (1) It is unlawful for a person, in relation to employment by him at an establishment in the Island, to discriminate against a woman —
- (a) in the arrangements he makes for the purpose of determining who should be offered that employment, or
  - (b) in the terms on which he offers her that employment, or
  - (c) by refusing or deliberately omitting to offer her that employment.
- (2) It is unlawful for a person, in the case of a woman employed by him at an establishment in the Island, to discriminate against her —
- (a) in the way he affords her access to opportunities for promotion, transfer or training, or to any other benefits, facilities or services, or by refusing or deliberately omitting to afford her access to them, or
  - (b) by dismissing her, or subjecting her to any other detriment.
- (3) Subsections (1)(b) and (2) do not render it unlawful for a person to discriminate against a woman in relation to her membership of, or rights under, an occupational pension scheme in such a way that, were any term of the scheme to provide for discrimination in that way, then, by reason only of any provision made by or under sections 62 to 64 of the Pensions Act 1995 (equal treatment), an equal treatment rule would not operate in relation to that term.<sup>10</sup>
- (3A) In subsection (3), “occupational pension scheme” has the same meaning as in the Pensions Schemes Act 1993 and “equal treatment rule” has the meaning given by section 62 of the Pensions Act 1995.<sup>11</sup>
- (4) Subject to 10(2), subsection (1)(b) does not apply to any provision for the payment of money which, if the woman in question were given the employment, would be included (directly or otherwise) in the contract under which she was employed.
- (5) Subsection (2) does not apply to benefits consisting of the payment of money when the provision of those benefits is regulated by the woman’s contract of employment.
- (6) Subsection (2) does not apply to benefits, facilities or services of any description if the employer is concerned with the provision (for payment

or not) of benefits, facilities or services of that description to the public, or to a section of the public comprising the woman in question, unless —

- (a) that provision differs in a material respect from the provision of the benefits, facilities or services by the employer to his employees, or
- (b) the provision of the benefits, facilities or services to the woman in question is regulated by her contract of employment, or
- (c) the benefits, facilities or services relate to training.

## 9 Genuine occupational qualification

[P1975/65/7; P1986/59/1]

- (1) In relation to sex discrimination —
  - (a) section 8(1)(a) or (c) does not apply to any employment where being a man is a genuine occupational qualification for the job, and
  - (b) section 8(2)(a) does not apply to opportunities for promotion or transfer to, or training for, such employment.
- (2) Being a man is a genuine occupational qualification for a job only where —
  - (a) the essential nature of the job calls for a man for reasons of anatomy (excluding physical strength or stamina) or, in dramatic performances or other entertainment, for reasons of authenticity, so that the essential nature of the job would be materially different if carried out by a woman; or
  - (b) the job needs to be held by a man to preserve decency or privacy because —
    - (i) it is likely to involve physical contact with men in circumstances where they might reasonably object to its being carried out by a woman, or
    - (ii) the holder of the job is likely to do his work in circumstances where men might reasonably object to the presence of a woman because they are in a state of undress or are using sanitary facilities; or
  - (c) the job is likely to involve the holder of the job doing his work, or living, in a private home and needs to be held by a man because objection might reasonably be taken to allowing to a woman —
    - (i) the degree of physical or social contact with a person living in the home, or
    - (ii) the knowledge of intimate details of such a person's life, which is likely, because of the nature or circumstances of the job or of the home, to be allowed to, or available to, the holder of the job; or

- (d) the nature or location of the establishment makes it impracticable for the holder of the job to live elsewhere than in premises provided by the employer, and —
    - (i) the only such premises which are available for persons holding that kind of job are lived in, or normally lived in, by men and are not equipped with separate sleeping accommodation for women and sanitary facilities which could be used by women in privacy from men, and
    - (ii) it is not reasonable to expect the employer either to equip those premises with such accommodation and facilities or to provide other premises for women; or
  - (e) the nature of the establishment, or of the part of it within which the work is done, requires the job to be held by a man because —
    - (i) it is, or is part of, a hospital, prison or other establishment for persons requiring special care, supervision or attention, and
    - (ii) those persons are all men (disregarding any woman whose presence is exceptional), and
    - (iii) it is reasonable, having regard to the essential character of the establishment or that part, that the job should not be held by a woman; or
  - (f) the holder of the job provides individuals with personal services promoting their welfare or education, or similar personal services, and those services can most effectively be provided by a man, or
  - (g) the job needs to be held by a man because it is likely to involve the performance of duties outside the Island in a country whose laws or customs are such that the duties could not, or could not effectively, be performed by a woman, or
  - (h) the job is one of two to be held —
    - (i) by a married couple,
    - (ii) by a couple who are civil partners of each other, or
    - (iii) by a married couple or a couple who are civil partners of each other.<sup>12</sup>
- (3) Subsection (2) applies where some only of the duties of the job fall within paragraphs (a) to (g) as well as where all of them do.
- (4) Subsection (2) (except paragraphs (c) and (h)) does not apply in relation to the filling of a vacancy at a time when the employer already has male employees —
- (a) who are capable of carrying out the duties falling within that paragraph, and
  - (b) whom it would be reasonable to employ on those duties, and

- (c) whose numbers are sufficient to meet the employer's likely requirements in respect of those duties without undue inconvenience.

## 10 Equal pay

[P1975/65/8]

- (1) Section 1(1) does not apply in determining for the purposes of section 8(1)(b) the terms on which employment is offered.
- (2) Where a person offers a woman employment on certain terms, and if she accepted the offer then, by virtue of an equality clause, any of those terms would fall to be modified, or any additional term would fall to be included, the offer shall be taken to contravene section 8(1)(b).
- (3) Where a person offers a woman employment on certain terms, and subsection (2) would apply but for the fact that, on her acceptance of the offer, section 1(3) would prevent the equality clause from operating, the offer shall be taken not to contravene section 8(1)(b).
- (4) An act does not contravene section 8(2) if —
  - (a) it contravenes a term modified or included by virtue of an equality clause, or
  - (b) it would contravene such a term but for the fact that the equality clause is prevented from operating by section 1(3).

## 11 Discrimination against contract workers

[P1975/65/9]

- (1) This section applies to any work for a person ("the principal") which is available for doing by individuals ("contract workers") who are employed not by the principal himself but by another person, who supplies them under a contract made with the principal.
- (2) It is unlawful for the principal, in relation to work to which this section applies, to discriminate against a woman who is a contract worker —
  - (a) in the terms on which he allows her to do that work, or
  - (b) by not allowing her to do it or continue to do it, or
  - (c) in the way he affords her access to any benefits, facilities or services or by refusing or deliberately omitting to afford her access to them, or
  - (d) by subjecting her to any other detriment.
- (3) The principal does not contravene subsection (2)(b) by doing any act in relation to a woman at a time when, if the work were to be done by a person taken into his employment, being a man would be a genuine occupational qualification for the job.

- (4) Subsection (2)(c) does not apply to benefits, facilities or services of any description if the principal is concerned with the provision (for payment or not) of benefits, facilities or services of that description to the public, or to a section of the public to which the woman belongs, unless that provision differs in a material respect from the provision of the benefits, facilities or services by the principal to his contract workers.

*Discrimination by other bodies*

## 12 Partnerships

[P1975/65/11; P1986/59/2]

- (1) It is unlawful for a firm, in relation to a position as partner in the firm, to discriminate against a woman —
- (a) in the arrangements they make for the purpose of determining who should be offered that position, or
  - (b) in the terms on which they offer her that position, or
  - (c) by refusing or deliberately omitting to offer her that position, or
  - (d) in a case where the woman already holds that position —
    - (i) in the way they afford her access to any benefits, facilities or services, or by refusing or deliberately omitting to afford her access to them, or
    - (ii) by expelling her from that position, or subjecting her to any other detriment.
- (2) Subsection (1) applies in relation to persons proposing to form themselves into a partnership as it applies in relation to a firm.
- (3) Subsection (1)(a) and (c) do not apply to a position as partner where, if it were employment, being a man would be a genuine occupational qualification for the job.
- (4) Subsection (1)(b) and (d) do not apply to provision made in relation to death or retirement except in so far as, in their application to provision made in relation to retirement, they render it unlawful for a firm to discriminate against a woman —
- (a) in such of the terms on which they offer her a position as partner as provide for her expulsion from that position; or
  - (b) by expelling her from a position as partner or subjecting her to any detriment which results in her expulsion from such a position.
- (5) In the case of a limited partnership references in subsection (1) to a partner shall be construed as references to a general partner as defined in section 47 of the *Partnership Act 1909*.

### 13 Trade unions etc

[P1975/65/12]

- (1) This section applies to an organisation of workers, an organisation of employers, or any other organisation whose members carry on a particular profession or trade for the purposes of which the organisation exists.
- (2) It is unlawful for an organisation to which this section applies, in the case of a woman who is not a member of the organisation, to discriminate against her —
  - (a) in the terms on which it is prepared to admit her to membership, or
  - (b) by refusing, or deliberately omitting to accept, her application for membership.
- (3) It is unlawful for an organisation to which this section applies, in the case of a woman who is a member of the organisation, to discriminate against her —
  - (a) in the way it affords her access to any benefits, facilities or services, or by refusing or deliberately omitting to afford her access to them, or
  - (b) by depriving her of membership, or varying the terms on which she is a member, or
  - (c) by subjecting her to any other detriment.
- (4) This section does not apply to provision made in relation to the death or retirement from work of a member.

### 14 Qualifying bodies

[P1975/65/13]

- (1) It is unlawful for an authority or body which can confer an authorisation or qualification which is needed for, or facilitates, engagement in a particular profession or trade to discriminate against a woman —
  - (a) in the terms on which it is prepared to confer on her that authorisation or qualification, or
  - (b) by refusing or deliberately omitting to grant her application for it, or
  - (c) by withdrawing it from her or varying the terms on which she holds it.
- (2) Where an authority or body is required by law to satisfy itself as to his good character before conferring on a person an authorisation or qualification which is needed for, or facilitates, his engagement in any profession or trade then, without prejudice to any other duty to which it is subject, that requirement shall be taken to impose on the authority or

body a duty to have regard to any evidence tending to show that he, or any of his employees or agents (whether past or present), has practised unlawful discrimination in, or in connection with, the carrying on of any profession or trade.

- (3) In this section —
- (a) “authorisation or qualification” includes recognition, registration, enrolment, approval and certification,
  - (b) “confer” includes renew or extend.

## 15 Persons concerned with vocational training

[P1975/65/14; P1989/38/7]

- (1) It is unlawful, in the case of a woman seeking or undergoing training which would help fit her for any employment, for any person who provides, or makes arrangements for the provision of, facilities for such training to discriminate against her —
- (a) in the terms on which that person affords her access to any training course or other facilities concerned with such training, or
  - (b) by refusing or deliberately omitting to afford her such access, or
  - (c) by terminating her training; or
  - (d) by subjecting her to any detriment during the course of her training.
- (2) Subsection (1) does not apply to —
- (a) discrimination which is rendered unlawful by section 8(1) or (2), or
  - (b) discrimination which would be rendered unlawful by section 8(1) or (2) but for the operation of any other provision of this Part.

## 16 Employment agencies

[P1975/65/15]

- (1) It is unlawful for an employment agency to discriminate against a woman —
- (a) in the terms on which the agency offers to provide any of its services, or
  - (b) by refusing or deliberately omitting to provide any of its services, or
  - (c) in the way it provides any of its services.
- (2) References in subsection (1) to the services of an employment agency include guidance on careers and any other services related to employment.

- (3) This section does not apply if the discrimination only concerns employment which the employer could lawfully refuse to offer the woman.
- (4) An employment agency shall not be subject to any liability under this section if it proves —
  - (a) that it acted in reliance on a statement made to it by the employer to the effect that, by reason of the operation of subsection (3), its action would not be unlawful, and
  - (b) that it was reasonable for it to rely on the statement.

*Special cases*

## 17 Police

[P1975/65/17]

- (1) For the purposes of this Act, the holding of the office of constable shall be treated as employment —
  - (a) by the Chief Constable as respects any act done by him in relation to a constable or that office;
  - (b) by the Department of Home Affairs as respects any act done by it in relation to a constable or that office.
- (2) Regulations made under any provision of the *Police Act 1993* shall not treat men and women differently except —
  - (a) as to requirements relating to height, uniform or equipment, or allowances in lieu of uniform or equipment, or
  - (b) so far as special treatment is accorded to women in connection with pregnancy or childbirth, or
  - (c) in relation to pensions.
- (3) Nothing in this Act renders unlawful any discrimination between male and female constables as to matters such as are mentioned in subsection (2)(a).
- (4) There shall be paid out of money provided by Tynwald —
  - (a) any compensation, costs or expenses awarded against the Chief Constable in any proceedings brought against him under this Act and any costs or expenses incurred by him in any such proceedings so far as not recovered by him in the proceedings; and
  - (b) any sum required by the Chief Constable for the settlement of any claim made against him under this Act if the settlement is approved by the Department of Home Affairs.
- (5) Any proceedings under Part 3 which, by virtue of subsection (1), would lie against a Chief Constable shall be brought against the Chief Constable

for the time being or, in the case of a vacancy in that office, against the person for the time being performing the functions of that office; and references in subsection (4) to the Chief Constable shall be construed accordingly.

- (6) Subsections (1) and (3) apply to a police cadet and appointment as a police cadet as they apply to a constable and the office of constable.
- (7) This section does not apply to a constable (except a special constable) who is not a member of the Isle of Man Constabulary.

## 18 Prison officers

- (1) Nothing in this Part renders unlawful any act done by a person in connection with the employment of a person as an officer of an institution if it is necessary in order to comply with the requirements of section 13(2) of the *Custody Act 1995* (sufficient number of women officers).
- (2) In this section “institution” has the same meaning as in the *Custody Act 1995*.

## 19 Ministers of religion etc

[P1975/65/19; GSM93/2/6]

- (1) Nothing in this Part applies to employment for purposes of an organised religion where the employment is limited to one sex so as to comply with the doctrines of the religion or avoid offending the religious susceptibilities of a significant number of its followers.
- (2) Nothing in section 14 applies to an authorisation or qualification (as defined in that section) for purposes of an organised religion where the authorisation or qualification is limited to one sex so as to comply with the doctrines of the religion or avoid offending the religious susceptibilities of a significant number of its followers.
- (3) Without prejudice to subsections (1) and (2), nothing in this Part shall render unlawful sex discrimination against a woman in respect of –
  - (a) her ordination to the office of priest in the Church of England;
  - (b) the giving to her of a licence or permission to serve or officiate as such a priest; or
  - (c) her appointment as incumbent, priest-in-charge or team vicar or, in the case of a woman ordained to the office of priest, as assistant curate.

## 20 Certain educational appointments

[P1989/38/5]

- (1) Nothing in this Part renders unlawful any act done by a person in connection with the employment of another person as the head teacher or principal of any educational establishment if it is necessary for that person to do that act in order to comply with any requirement of any instrument relating to the establishment that its head teacher or principal should be a member of a particular religious order.
- (2) Nothing in this section shall be construed as prejudicing the operation of section 19.

## 21 Statutory requirements

- (1) Subject to any order under subsection (2), nothing in this Part renders unlawful any act done by a person in relation to a woman if it was necessary for that person to do it in order to comply with a requirement of a statutory provision other than this Act, whether made before or after the passing of this Act.
- (2) Where it appears to the Department of Economic Development (“the Department”) that a statutory provision made before the passing of this Act would require the doing of an act which would, apart from subsection (1), be unlawful by virtue of any provision of this Part, it may by order make such provision (whether by amending, repealing or revoking that statutory provision or otherwise) as it considers appropriate for removing any such requirement.<sup>13</sup>
- (3) An order under subsection (2) may not be made with respect to any of the relevant statutory provisions without the consent of the Department of Infrastructure.<sup>14</sup>
- (4) An order under subsection (2) shall not have effect unless it is approved by Tynwald.
- (5) In this section “the relevant statutory provisions” has the same meaning as in Part I of the Health and Safety at Work etc. Act 1974 (an Act of Parliament), as it has effect in the Island<sup>1</sup>.
- (6) Where a statutory provision made after the passing of this Act re-enacts (with or without modification) a statutory provision made before the passing of this Act, that provision as re-enacted shall be treated for the purposes of subsection (2) as if it continued to be a statutory provision made before the passing of this Act.

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<sup>1</sup> [SD 155/98]

## 22 Charities

[P1975/65/43; SI77/528/2]

- (1) Nothing in this Part —
- (a) shall be construed as affecting a provision for conferring benefits on persons of one sex only (disregarding any benefits to persons of the opposite sex which are exceptional or are relatively insignificant), being a provision which is contained in a charitable instrument; or
  - (b) renders unlawful an act which is done in order to give effect to such a provision.
- (2) In this section —

“charitable instrument” means an enactment or other instrument so far as it relates to charitable purposes;

“charitable purposes” means purposes which are exclusively charitable according to the law of the Island.

## 23 Sport etc

[P1975/65/44]

Nothing in this Part, in relation to any sport, game or other activity of a competitive nature where the physical strength, stamina or physique of the average woman puts her at a disadvantage to the average man, renders unlawful any act related to the participation of a person as a competitor in events involving that activity which are confined to competitors of one sex.

## 24 Insurance etc

[P1975/65/45]

Nothing in this Part renders unlawful the treatment of a person in relation to an annuity, life assurance policy, accident insurance policy, or similar matter involving the assessment of risk, where the treatment —

- (a) was effected by reference to actuarial or other data from a source on which it was reasonable to rely, and
- (b) was reasonable having regard to the data and any other relevant factors.

## 25 Communal accommodation

[P1975/65/46]

- (1) In this section “communal accommodation” means residential accommodation which includes dormitories or other shared sleeping accommodation which for reasons of privacy or decency should be used by men only, or by women only (but which may include some shared sleeping accommodation for men, and some for women, or some ordinary sleeping accommodation).

- (2) In this section “communal accommodation” also includes residential accommodation all or part of which should be used by men only, or by women only, because of the nature of the sanitary facilities serving the accommodation.
- (3) Nothing in this Part renders unlawful sex discrimination in the admission of persons to communal accommodation if the accommodation is managed in a way which, given the exigencies of the situation, comes as near as may be to fair and equitable treatment of men and women.
- (4) In applying subsection (3) account shall be taken of —
  - (a) whether and how far it is reasonable to expect that the accommodation should be altered or extended, or that further alternative accommodation should be provided; and
  - (b) the frequency of the demand or need for use of the accommodation by men as compared with women.
- (5) Nothing in this Part renders unlawful sex discrimination against a woman, or against a man, as respects the provision of any benefit, facility or service if —
  - (a) the benefit, facility or service cannot properly and effectively be provided except for those using communal accommodation, and
  - (b) in the relevant circumstances the woman or, as the case may be, the man could lawfully be refused the use of the accommodation by virtue of subsection (3).
- (6) Neither subsection (3) nor subsection (5) is a defence to an act of sex discrimination under this Part unless such arrangements as are reasonably practicable are made to compensate for the detriment caused by the discrimination; but in considering under subsection (5)(b) whether the use of communal accommodation could lawfully be refused it shall be assumed that the requirements of this subsection have been complied with as respects subsection (3).

## 26 Discriminatory training

[P1975/65/47, 48; P1986/59/4]

- (1) Nothing in this Part renders unlawful any act, done in relation to particular work by any person in, or in connection with —
  - (a) affording women only, or men only, access to facilities for training which would help to fit them for that work, or
  - (b) encouraging women only, or men only, to take advantage of opportunities for doing that work,

where it reasonably appears to that person that at any time within the 12 months immediately preceding the doing of the act there were no persons of the sex in question doing that work in the Island or the

number of persons of that sex doing the work in the Island was comparatively small.

- (2) Nothing in this Part renders unlawful any act done by any person in, or in connection with, affording persons access to facilities for training which would help to fit them for employment, where it reasonably appears to that person that those persons are in special need of training by reason of the period for which they have been discharging domestic or family responsibilities to the exclusion of regular full time employment.

The discrimination in relation to which this subsection applies may result from confining the training to persons who have been discharging domestic or family responsibilities, or from the way persons are selected for training, or both.

- (3) Nothing in subsections (1) and (2) applies in relation to discrimination which is rendered unlawful by section 8.
- (4) Nothing in this Part renders unlawful any act done by an employer in relation to particular work in his employment, being an act done in, or in connection with —
- (a) affording his female employees only, or his male employees only, access to facilities for training which would help to fit them for that work, or
  - (b) encouraging women only, or men only, to take advantage of opportunities for doing that work,

where at any time within the 12 months immediately preceding the doing of the act there were no persons of the sex in question among those doing that work or the number of persons of that sex doing the work was comparatively small.

- (5) Nothing in section 13 renders unlawful any act done by an organisation to which that section applies in, or in connection with —
- (a) affording female members of the organisation only, or male members of the organisation only, access to facilities for training which would help to fit them for holding a post of any kind in the organisation, or
  - (b) encouraging female members only, or male members only, to take advantage of opportunities for holding such posts in the organisation,

where at any time within the 12 months immediately preceding the doing of the act there were no persons of the sex in question among persons holding such posts in the organisation or the number of persons of that sex holding such posts was comparatively small.

- (6) Nothing in this Part renders unlawful any act done by an organisation to which section 13 applies in, or in connection with, encouraging women

only, or men only, to become members of the organisation where at any time within the 12 months immediately preceding the doing of the act there were no persons of the sex in question among those members or the number of persons of that sex among the members was comparatively small.

## 27 Indirect access to benefits etc

[P1975/65/50]

- (1) References in this Part to the affording by any person of access to benefits, facilities or services are not limited to benefits, facilities or services provided by that person himself, but include any means by which it is in that person's power to facilitate access to benefits, facilities or services provided by any other person (the "actual provider").
- (2) Where by any provision of this Part the affording by any person of access to benefits, facilities or services in a discriminatory way is in certain circumstances prevented from being unlawful, the effect of the provision extends also to the liability under this Part of any actual provider.

## 28 Acts safeguarding national security

[P1975/65/52; SI88/249/2]

Nothing in this Part renders unlawful an act done for the purpose of safeguarding national security.

*Discriminatory advertisements etc.*

## 29 Discriminatory advertisements

[P1975/65/38]

- (1) It is unlawful to publish or cause to be published an advertisement which indicates, or might reasonably be understood as indicating, an intention by a person to do any act which is or might be unlawful by virtue of the foregoing provisions of this Part.
- (2) Subsection (1) does not apply to an advertisement if the intended act would not in fact be unlawful.
- (3) For the purposes of subsection (1), use of a job description with a sexual connotation (such as "waiter", "salesgirl", "postman" or "stewardess") shall be taken to indicate an intention to discriminate, unless the advertisement contains an indication to the contrary.
- (4) The publisher of an advertisement made unlawful by subsection (1) shall not be subject to any liability under that subsection in respect of the publication of the advertisement if he proves —
  - (a) that the advertisement was published in reliance on a statement made to him by the person who caused it to be published to the

effect that, by reason of the operation of subsection (2), the publication would not be unlawful, and

- (b) that it was reasonable for him to rely on the statement.

### 30 Instructions to discriminate

[P1975/65/39]

It is unlawful for a person —

- (a) who has authority over another person, or  
(b) in accordance with whose wishes that other person is accustomed to act,

to instruct him to do any act which is unlawful by virtue of any of sections 4 to 16 or procure or attempt to procure the doing by him of any such act.

### 31 Pressure to discriminate

[P1975/65/40]

- (1) It is unlawful to induce, or attempt to induce, a person to do any act which contravenes any of sections 4 to 16 by —  
(a) providing or offering to provide him with any benefit, or  
(b) subjecting or threatening to subject him to any detriment.
- (2) An offer or threat is not prevented from falling within subsection (1) because it is not made directly to the person in question, if it is made in such a way that he is likely to hear of it.

### *Liability*

### 32 Liability of employers and principals

[P1975/65/41]

- (1) Anything done by a person in the course of his employment shall be treated for the purpose of this Part as done by his employer as well as by him, whether or not it was done with his employer's knowledge or approval.
- (2) Anything done by a person as agent for another person with the authority (whether express or implied, and whether precedent or subsequent) of that other person shall be treated for the purposes of this Part and Part 3 as done by that other person as well as by him.
- (3) In proceedings brought under Part 3 against any person in respect of an act alleged to have been done by an employee of his, it is a defence for that person to prove that he took such steps as were reasonably practicable to prevent the employee from doing that act, or from doing in the course of his employment acts of that description.

**33 Aiding unlawful acts**

[P1975/65/42]

- (1) A person who knowingly aids another person to do an act made unlawful by this Part shall be treated for the purpose of this Part as himself doing an unlawful act of the like description.
- (2) For the purposes of subsection (1) an employee or agent for whose act the employer or principal is liable under section 32 (or would be so liable but for section 32(3)) shall be deemed to aid the doing of the act by the employer or principal.
- (3) A person does not under this section knowingly aid another to do an unlawful act if —
  - (a) he acts in reliance on a statement made to him by that other person that, by reason of any provision of this Part, the act which he aids would not be unlawful, and
  - (b) it is reasonable for him to rely on the statement.

*Codes of practice***34 [Repealed]<sup>15</sup>****PART 3 – ENFORCEMENT****35 Proceedings in respect of equal pay**

[P1970/41/2; P1975/65/Sch1]

- (1) Any claim in respect of the contravention of a term modified or included by virtue of any equality clause, including a claim for arrears of remuneration or damages in respect of the contravention, may be presented by way of a complaint to the Employment Tribunal (“the Tribunal”).
- (2) Where a dispute arises in relation to the effect of an equality clause the employer may apply to the Tribunal for an order declaring the rights of the employer and the employee in relation to the matter in question.
- (3) Where it appears to the Department that there may be a question whether the employer of any women is or has been contravening a term modified or included by virtue of their equality clauses, but that it is not reasonable to expect them to take steps to have the question determined, the question may be referred by the Department as respects all or any of them to the Tribunal and shall be dealt with as if the reference were a complaint by the women or woman against the employer.
- (4) Where proceedings are pending in the High Court and it appears to the Court that a claim or counter-claim in the proceedings in respect of the

operation of an equality clause could more conveniently be disposed of separately by the Tribunal, the Court may direct that the claim or counter-claim shall be struck out; and (without prejudice to the foregoing) where in proceedings in the High Court a question arises as to the operation of an equality clause, the Court may on the application of any party to the proceedings or otherwise refer that question, or direct it to be referred by a party to the proceedings, to the Tribunal for determination by the Tribunal, and may stay the proceedings in the meantime.

### **36 Tribunal proceedings for breach of Part 2**

[P1975/65/62, 63]

- (1) A person may present a complaint to the Tribunal that —
  - (a) a person has committed an act to which this section applies against the complainant, or
  - (b) a person is by virtue of section 32 or 33 to be treated as having committed such an act against the complainant.
- (2) This section applies to any act which is declared by any provision of Part 2 to be unlawful, except —
  - (a) an act declared unlawful by section 14(1) in respect of which an appeal or proceedings in the nature of an appeal may be brought under any statutory provision; or
  - (b) a contravention of section 29, 30 or 31.
- (3) No proceedings, whether criminal or civil, shall lie against any person in respect of an act by reason that it is unlawful by virtue of any provision of Part 2, other than —
  - (a) proceedings under subsection (1) or section 40 or 41;
  - (b) in relation to an act declared unlawful by section 14(1) an appeal or proceedings referred to in subsection (2)(a); or
  - (c) proceedings for an offence under section 39.

### **37 Remedies on complaint under s 36**

[P1975/65/65, 66]

- (1) Where the Tribunal finds that a complaint presented to it under section 36(1) 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 for loss or damage for breach of statutory duty;

- (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 act of discrimination to which the complaint relates.
- (2) The amount of compensation awarded to a person under subsection (1)(b) shall not exceed the limit for the time being imposed by section 144 of the *Employment Act 2006*.<sup>16</sup>
- (2A) For the avoidance of doubt compensation in respect of an unlawful act of discrimination may include compensation for injury to feelings whether or not it includes compensation for any other loss or damage.<sup>17</sup>
- (3) 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 thinks it just and equitable to do so —
  - (a) the Tribunal may (subject to the limit in subsection (2)) increase the amount of 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.
- (4) Compensation in respect of an unlawful act of discrimination falling within section 4(b) or section 5(b) may not include compensation for injury to feelings 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 sex or (as the case may be) fulfilment of the condition in section 5(2).<sup>18</sup>

### 38 Conciliation

[P1975/65/64]

- (1) Where a complaint has been presented to the Tribunal under section 35(1) or 36(1) and a copy of the complaint has been sent to an industrial relations officer, he shall endeavour to promote a settlement of the complaint without its being determined by the Tribunal —
  - (a) if he is requested to do so by both the complainant and the respondent, or
  - (b) if, in the absence of requests by the complainant and the respondent, he considers that he can do so with a reasonable prospect of success.
- (2) Where, before a complaint such as is mentioned in subsection (1) has been presented to the Tribunal a request is made to an industrial relations officer to make his services available in the matter by a person who, if the complaint were so presented, would be the complainant or

respondent, subsection (1) shall apply as if the complaint had been so presented and a copy of it had been sent to the officer.

- (3) In proceedings under subsection (1) or (2) an industrial relations officer 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 an industrial relations officer in connection with the performance of his functions under this section shall not be admissible in evidence in any proceedings before any court or the Tribunal except with the consent of the person who communicated it to that officer.

### **39 Offences**

- (1) Any person who contravenes section 29(1) is guilty of an offence and liable on summary conviction to a fine not exceeding £5,000.
- (2) A person who knowingly or recklessly makes a statement such as is referred to in section 16(4), 29(4) or 33(3) which in a material respect is false or misleading is guilty of an offence and liable on summary conviction to a fine not exceeding £5,000.

### **40 Persistent discrimination**

[P1975/65/71]

- (1) If —
  - (a) the Tribunal makes a finding in proceedings under section 35 or 36 that a person has done a discriminatory act, and
  - (b) it appears to the Attorney General that unless restrained he is likely to do one or more discriminatory acts,

the Attorney General may apply to the High Court for an injunction restraining him from doing so; and the Court, if satisfied that the application is well-founded, may grant the injunction in the terms applied for or more limited terms.

- (2) Proceedings may not be brought under this section in respect of a finding by the Tribunal unless that finding has become final.

### **41 Enforcement of sections 29 to 31**

[P1975/65/72, 73(3)]

- (1) If it appears to the Attorney General —
  - (a) that a person has done an act which by virtue of section 29, 30 or 31 was unlawful, and
  - (b) that unless restrained he is likely to do further acts which by virtue of that section are unlawful,

the Attorney General may apply to the High Court for an injunction restraining him from doing such acts; and the Court, if satisfied that the application is well-founded, may grant the injunction in the terms applied for or more limited terms.

- (2) Any finding by the Tribunal under this Act in respect of any act shall, if it has become final, be treated as conclusive by the High Court on an application under subsection (1).
- (3) Except as provided by section 39, proceedings in respect of a contravention of section 29, 30 or 31 shall be brought only by the Attorney General in accordance with this section.

## **42 Time-limit for proceedings**

[P1970/41/22; P1975/65/76]

- (1) No claim in respect of the operation of an equality clause relating to a woman's employment shall be presented or referred to the Tribunal otherwise than by virtue of section 35(4) if she has not been employed in the employment within the 6 months preceding the date of the reference.
- (2) A woman shall not be entitled, in proceedings brought in respect of a failure to comply with an equality clause (including proceedings before the Tribunal), to be awarded any payment by way of arrears of remuneration or damages in respect of a time earlier than 2 years before the date on which the proceedings were instituted.
- (3) The Tribunal shall not consider a complaint under section 36(1) unless it is presented to the Tribunal before the end of the period of 3 months beginning when the act complained of was done.
- (4) The High Court shall not consider an application under section 40 or 41 unless it is made before the end of the period of 5 years beginning —
  - (a) with the date on which the finding in question became final, or
  - (b) when the act referred to in section 41(1)(a) was done,as the case may be.
- (5) The Tribunal or Court may nevertheless consider any such claim, appeal, complaint or application which is out of time if, in all the circumstances of the case, it considers that it is just and equitable to do so.
- (6) For the purposes of subsection (3) —
  - (a) where the inclusion of any term in a contract renders the making of the contract an unlawful act, that act shall be treated as extending throughout the duration of the contract, and
  - (b) any act extending over a period shall be treated as done at the end of that period, and
  - (c) a deliberate omission shall be treated as done when the person in question decided upon it,

and in the absence of evidence establishing the contrary a person shall be taken for the purposes of this section to decide upon an omission when he does an act inconsistent with doing the omitted act or, if he has done no such inconsistent act, when the period expires within which he might reasonably have been expected to do the omitted act if it were to be done.

#### **43 Help for aggrieved persons in obtaining information etc**

[P1975/65/74]

- (1) With a view to helping a person (“the person aggrieved”) who considers that he may have been discriminated against in contravention of Part 2 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 order 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;
  - (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 an order under subsection (1) or not) –
  - (a) the question, and any reply by the respondent (whether in accordance with such an order 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 Court or Tribunal that the respondent deliberately and without reasonable excuse omitted to reply within a reasonable time or that his reply is evasive or equivocal, the Court or Tribunal may draw any inference from that fact that it considers just and equitable to draw, including an inference that he committed an unlawful act.
- (3) An order under subsection (1) may prescribe –
  - (a) the period within which questions must be duly served in order to be admissible under subsection (2)(a), and
  - (b) the manner in which a question, and any reply by the respondent, may be served.
- (4) An order under subsection (1) shall be laid before Tynwald as soon as may be after it is made.
- (5) In this section “respondent” includes a prospective respondent.

#### **44 Application to men**

References in this Part to women shall be construed in accordance with section 3 or section 7(3) and (4), as the case may be.

## PART 4 – SUPPLEMENTAL

### 45 Appointment and functions of discrimination officer

There shall be appointed an officer (“the discrimination officer”) whose functions shall be, in accordance with any general directions of the Department –

- (a) to promote the removal and avoidance of discriminatory acts in employment; and
- (b) for that purpose to give general guidance and information to employers and employees, and to organisations representative of employers and employees, on the removal and avoidance of discriminatory acts in employment.

### 46 Validity and revision of contracts

[P1975/65/77]

- (1) A term of a contract is void where –
  - (a) its inclusion renders the making of the contract unlawful by virtue of Part 2, or
  - (b) it is included in furtherance of an act rendered unlawful by Part 2, or
  - (c) it provides for the doing of an act which would be rendered unlawful by Part 2.
- (2) Subsection (1) does not apply to a term the inclusion of which constitutes, or is in furtherance of, or provides for, unlawful discrimination against a party to the contract, but the term shall be unenforceable against that party.
- (3) A term in a contract which purports to exclude or limit any provision of this Act is unenforceable by any person in whose favour the term would operate apart from this subsection.
- (4) Subsection (3) does not apply to a contract settling a complaint under section 35(1) or 36(1) where –
  - (a) the contract is made with the assistance of an industrial relations officer.<sup>19</sup>
  - (b) [Repealed]<sup>20</sup>
- (5) [Repealed]<sup>21</sup>
- (6) On the application of any person interested in a contract to which subsection (2) applies, the Tribunal may make such order as it thinks just for removing or modifying any term made unenforceable by that subsection; but such an order shall not be made unless all persons affected have been given notice of the application (except where under

rules under Part II of Schedule 3 to the *Employment Act 2006* notice may be dispensed with) and have been afforded an opportunity to make representations to the Tribunal.<sup>22</sup>

- (7) An order under subsection (6) may include provision as respects any period before the making of the order.

#### 47 Collective agreements etc

[P1986/59/6; P1993/19/32]

- (1) Without prejudice to the generality of section 46, that section shall apply, as it applies in relation to the term of a contract, to the following namely –

- (a) any term of a collective agreement, including an agreement which was not intended, or is presumed not to have been intended, to be a legally enforceable contract;
- (b) any rule made by an employer for application to all or any of the persons who are employed by him or who apply to be, or are, considered by him for employment;
- (c) any rule made by an organisation, authority or body to which this paragraph applies for application to all or any of its members or prospective members or to all or any of the persons on whom it has conferred authorisations or qualifications or who are seeking the authorisations or qualifications which it has power to confer;

and that section shall so apply whether the agreement was entered into, or the rule made, before or after the commencement of this section.

- (2) Subsection (1)(c) applies to –
- (a) any organisation of workers;
  - (b) any organisation of employers;
  - (c) any organisation whose members carry on a particular profession or trade for the purposes of which the organisation exists;
  - (d) any authority or body which can confer an authorisation or qualification which is needed for, or facilitates, engagement in a particular profession or trade.
- (3) For the purposes of section 46 a term or rule shall be deemed to provide for the doing of an act which would be rendered unlawful by Part 2 if –
- (a) it provides for the inclusion in any contract of employment of any term which by virtue of an equality clause would fall either to be modified or to be supplemented by an additional term; and
  - (b) that clause would not be prevented from operating in relation to that contract by section 1(3) (material factors justifying discrimination).

- (4) Nothing in section 46 shall affect the operation of any term or rule in so far as it provides for the doing of a particular act in circumstances where the doing of that act would not be, or be deemed by virtue of subsection (3) to be, rendered unlawful by Part 2.
- (5) A person to whom this subsection applies may present a complaint to the Tribunal that a term or rule is void by virtue of section 46(1) if he has reason to believe —
- (a) that the term or rule may at some future time have effect in relation to him, and
  - (b) where he alleges that it is void by virtue of section 46(1)(c), that —
    - (i) an act for the doing of which it provides may at some such time be done in relation to him, and
    - (ii) the act would be, or be deemed by virtue of subsection (3) to be, rendered unlawful by virtue of Part 2 if done in relation to him in present circumstances.
- (6) In the case of a complaint about —
- (a) a collective agreement made by or on behalf of —
    - (i) an employer,
    - (ii) an organisation of employers of which an employer is a member, or
    - (iii) an association of such organisations of one of which an employer is a member, or
  - (b) a rule made by an employer,
- subsection (5) applies to any person who is, or is genuinely and actively seeking to become, one of his employees.
- (7) In the case of a complaint about a rule made by an organisation, authority or body to which subsection (2) applies, subsection (5) applies to any person —
- (a) who is, or is genuinely and actively seeking to become, a member of the organisation, authority or body,
  - (b) on whom the organisation, authority or body has conferred an authorisation or qualification, or
  - (c) who is genuinely and actively seeking an authorisation or qualification which the organisation, authority or body has power to confer.
- (8) When the Tribunal finds that a complaint presented to it under subsection (5) is well-founded it shall make an order declaring that the term or rule is void.
- (9) The avoidance by virtue of section 46 of any term or rule which provides for any person to be discriminated against shall be without prejudice to

following rights except in so far as they enable any person to require another person to be treated less favourable than himself, namely —

- (a) such of the rights of the person to be discriminated against; and
- (b) such of the rights of any person who will be treated more favourably in direct or indirect consequence of the discrimination,

as are conferred by or in respect of a contract made or modified wholly or partly in pursuance of, or by reference to, that term or rule.

- (10) In this section “collective agreement” means any agreement relating to one or more of the matters mentioned in the definition of “trade dispute” in section 7(1) of the *Trade Disputes Act 1985*, being an agreement made by or on behalf of one or more employers or one or more organisations of employers or associations of such organisations with one or more organisations of workers or associations of such organisations.

## 48 Interpretation

- (1) In this Act —

“access” shall be construed in accordance with section 27;

“act” includes a deliberate omission;

“advertisement” includes every form of advertisement, whether to the public or not, and whether in a newspaper or other publication, by television or radio, by display of notices, signs, labels, showcards or goods, by distribution of samples, circulars, catalogues, price lists or other material, by exhibition of pictures, models or films, or in any other way, and references to the publishing of advertisements shall be construed accordingly;

“the Department” means the Department of Economic Development;<sup>23</sup>

“discrimination” and related terms shall be construed in accordance with section 7(1);

“discrimination officer” means a person appointed under section 45 to be a discrimination officer;

“discriminatory act” means —

- (a) an act which is in breach of a term modified or included by virtue of an equality clause; or
- (b) an act which is declared by any provision of Part 2 to be unlawful, other than —
  - (i) an act declared unlawful by section 14(1) in respect of which an appeal or proceedings in the nature of an appeal may be brought under any statutory provision; or
  - (ii) a contravention of section 29, 30 or 31;

“education” includes any form of training or instruction;

“**employment**” means employment under a contract of service or of apprenticeship or a contract personally to execute any work or labour, and related expressions shall be construed accordingly;

“**employment agency**” means a person who, for profit or not, provides services for the purpose of finding employment for workers or supplying employers with workers;

“**equality clause**” has the meaning given by section 1(2);

“**final**” shall be construed in accordance with subsection (3);

“**firm**” has the meaning given by section 4 of the *Partnership Act 1909*;

“**genuine occupational qualification**” shall be construed in accordance with section 9;

“**the Island**” includes the territorial waters of the Island;

“**man**” includes a male of any age;

“**notice**” means a notice in writing;

“**profession**” includes any vocation or occupation;

“**retirement**” includes retirement (whether voluntary or not) on grounds of age, length of service or incapacity;

“**trade**” includes any business;

“**the Tribunal**” means the Employment Tribunal;

“**training**” includes any form of education or instruction;

“**woman**” includes a female of any age.

- (2) References in this Act to the dismissal of a person from employment or to the expulsion of a person from a position as partner include references —
- (a) to the termination of that person’s employment or partnership by the expiration of any period (including a period expiring by reference to an event or circumstance), not being a termination immediately after which the employment or partnership is renewed on the same terms; and
  - (b) to the termination of that person’s employment or partnership by any act of his (including the giving of notice) in circumstances such that he is entitled to terminate it without notice by reason of the conduct of the employer or, as the case may be, the conduct of the other partners.
- (3) For the purposes of this Act a finding by a court or tribunal becomes final when an appeal against the finding is dismissed, withdrawn or abandoned or when the time for appealing expires without an appeal having been brought.

**49 Meaning of “employment at establishment in the Island”**

[P1975/65/10]

- (1) For the purposes of this Act employment is to be regarded as being at an establishment in the Island unless the employee does his work wholly or mainly outside the Island.
- (2) Subsection (1) does not apply to —
  - (a) employment on board a ship registered in the Island, or
  - (b) employment on an aircraft or hovercraft registered in the United Kingdom and operated by a person who has his principal place of business, or is ordinarily resident, in the Island;

but for the purposes of Parts 1 and 2 such employment is to be regarded as being at an establishment in the Island unless the employee does his work wholly outside the Island.

- (3) In the case of employment on board a ship registered in the Island (except where the employee does his work wholly outside the Island) the ship shall for the relevant purposes be deemed to be the establishment.
- (4) Where work is not done at an establishment it shall be treated for the relevant purposes as done at the establishment from which it is done or (where it is not done from any establishment) at the establishment with which it has the closest connection.

**50 Application to the Crown**

[P1970/41/1; P1975/65/85, 86]

- (1) This Act applies to —
  - (a) an act done by or for the purposes of a Department or an office or department of the Government of the Island or the Government of the United Kingdom, or
  - (b) an act done on behalf of the Crown (in right of the Island or in right of the United Kingdom) by a statutory body, or a person holding a statutory office or an office under the Crown,

as it applies to an act done by a private person.

- (2) Section 1 and Part 2 apply to —
  - (a) service for purposes of the Government of the Island or the Government of the United Kingdom, other than service of a person holding a statutory office, or
  - (b) service on behalf of the Crown (in right of the Island or in right of the United Kingdom) for purposes of a person holding a statutory office or purposes of a statutory body,

as they apply to employment by a private person, and apply as if references to a contract of employment included references to the terms of service.

- (3) Subsections (1) and (2) have effect subject to section 17 (police).
- (4) This Act does not apply to service in any of the naval, military or air forces of the Crown.
- (5) Section 49(2) has effect in relation to a ship, aircraft or hovercraft belonging to or possessed by Her Majesty in right of the Government of the United Kingdom as it has effect in relation to a ship, aircraft or hovercraft mentioned in section 49(2).
- (6) Where section 8 does not apply in relation to an appointment by a Crown appointor to an office or post, the appointor, in making the appointment, and in making the arrangements for who shall be offered the office or post, shall not do an act which would be unlawful under section 8 if the Crown were the employer for the purposes of Part 2.
- (7) In this section —  
“Crown appointor” means the Governor, the Governor in Council, the Council of Ministers, the Public Services Commission or any Department or Statutory Board;<sup>24</sup>  
“statutory body” means a body set up by or in pursuance of a statutory provision;  
“statutory office” means an office so set up.

## 51 Commencement, transitional provisions etc

- (1) This Act, except —
  - (a) section 34 (codes of practice),
  - (b) section 45 (discrimination officer),
  - (c) section 48 (interpretation),
  - (d) subsections (1), (2) and (3) of this section,
  - (e) section 52 (power to make additional payments out of Manx National Insurance Fund), and
  - (f) section 53 (short title etc.),shall come into operation on the expiration of the period of 12 months beginning with the day on which it is passed.<sup>25</sup>
- (2) The Department may by order make such transitional provisions as appear to the Department to be necessary or expedient in connection with the commencement of any provision of this Act.
- (3) An order under subsection (2) shall not have effect unless it is approved by Tynwald.
- (4) [Repealed]<sup>26</sup>

**52 [Repealed]<sup>27</sup>****53 Short title etc**

- (1) This Act may be cited as the Employment (Sex Discrimination) Act 2000.
- (2) The *Redundancy Payments Act 1990*, the *Employment Act 1991*, the *Employment (Amendment) Act 1996* and this Act may be cited together as the Employment Acts 1990 to 2000.

## ENDNOTES

### Table of Legislation History

Legislation	Year and No	Commencement

### Table of Renumbered Provisions

Original	Current

### Table of Endnote References

<sup>1</sup> Subs (2) substituted by SD70/05.

<sup>2</sup> Subs (3) substituted by SD70/05.

<sup>3</sup> S 4 substituted by Civil Partnership Act 2011 Sch 14.

<sup>4</sup> S 5 substituted by Civil Partnership Act 2011 Sch 14.

<sup>5</sup> Para (a) amended by SD70/05.

<sup>6</sup> Para (b) amended by SD70/05.

<sup>7</sup> Para (c) amended by SD70/05.

<sup>8</sup> Para (d) amended by SD70/05.

<sup>9</sup> Subs (2) substituted by Civil Partnership Act 2011 Sch 14.

<sup>10</sup> Subs (3) substituted by SD70/05.

<sup>11</sup> Subs (3A) inserted by SD70/05.

<sup>12</sup> Para (h) amended by Civil Partnership Act 2011 Sch 14.

<sup>13</sup> Subs (2) amended by SD155/10 Sch 2.

<sup>14</sup> Subs (3) amended by SD155/10 Sch 5.

<sup>15</sup> S 34 repealed by Employment Act 2006 Sch 9.

<sup>16</sup> Subs (2) amended by Employment Act 2006 Sch 8.

<sup>17</sup> Subs (2A) inserted by Employment Act 2006 Sch 8.

<sup>18</sup> Subs (4) amended by Civil Partnership Act 2011 Sch 14.

<sup>19</sup> Para (a) amended by Employment Act 2006 Sch 9.

<sup>20</sup> Para (b) repealed by Employment Act 2006 Sch 9.

<sup>21</sup> Subs (5) repealed by Employment Act 2006 Sch 9

<sup>22</sup> Subs (6) amended by Employment Act 2006 Sch 8.

<sup>23</sup> Definition of “the Department” amended by SD155/10 Sch 2.

<sup>24</sup> Definition of “Crown appointor” amended by Public Services Commission Act 2015 Sch.

<sup>25</sup> Date of commencement (ss 34, 45, 48, 51(1) to (3), 52, 53) 17/10/2000; (remainder of Act) 17/10/2001.

<sup>26</sup> Subs (4) repealed by Employment Act 2006 Sch 9.

<sup>27</sup> S 52 repealed by Employment Act 2006 Sch 9.