



**Isle of Man**

*Ellan Vannin*

**AT 6 of 2004**

**RACE RELATIONS ACT 2004**





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## RACE RELATIONS ACT 2004

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**Isle of Man***Ellan Vannin*

## RACE RELATIONS ACT 2004

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**AN ACT** to impose a duty on public authorities to exercise their functions in a manner that promotes good race relations; to make discrimination on grounds of colour, race, nationality or ethnic or national origin unlawful in the Isle of Man; and for connected purposes.

### *Public authorities*

#### **1 Public authorities: general statutory duty**

[P1976/74/71(1) and (7)]

- (1) Without prejudice to their obligation to comply with any other provision of this Act, it shall be the duty of every public authority to make appropriate arrangements with a view to securing that their various functions are carried out with due regard to the need —
  - (a) to promote equality of opportunity, and good relations, between persons of different racial groups; and
  - (b) to eliminate unlawful racial discrimination.
- (2) In this Act, “**public authority**” has the same meaning as in section 6 of the *Human Rights Act 2001*.

### *Unlawful discrimination*

#### **2 Unlawful racial discrimination**

[P1976/74/1(1) and (2) and 3(4)]

- (1) It is unlawful for a person —
  - (a) on racial grounds to treat another person less favourably than he treats or would treat other persons; or

- (b) to apply to another person a requirement or condition which he applies or would apply equally to persons not of the same racial group as that other but —
  - (i) which is such that the proportion of persons of the same racial group as that other who can comply with it is considerably smaller than the proportion of persons not of that racial group who can comply with it; and
  - (ii) which he cannot show to be justifiable irrespective of the colour, race, nationality or ethnic or national origins of the person to whom it is applied; and
  - (iii) which is to the detriment of that other because he cannot comply with it.
- (2) Segregating a person from other persons on racial grounds is treating him less favourably than they are treated.
- (3) A comparison of the case of a person of a particular racial group with that of a person not of that group under subsection (1) must be such that the relevant circumstances in the one case are the same, or not materially different, in the other.

### 3 Victimisation

[P1976/74/2(1) and (2)]

- (1) It is unlawful for a person ('the discriminator') to discriminate against another person ('the person victimised') by treating 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 this Act; or
  - (b) given evidence or information in connection with proceedings brought by any person against the discriminator or any other person under this Act; or
  - (c) otherwise done anything under or by reference to this Act in relation to the discriminator or any other person; or
  - (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 Act,or by reason that the discriminator knows that the person victimised intends to do any of those things, or suspects that he 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.

*Other acts relating to discrimination***4 Discriminatory advertisements**

[P1976/74/29 and 78(1)]

- (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 an act of discrimination, whether the doing of that act by him would be lawful or, by virtue of this Act, unlawful.
- (2) Subsection (1) does not apply to an advertisement —
  - (a) if the intended act would be lawful by virtue of the Schedule; or
  - (b) if the advertisement relates to the services of an employment agency and the intended act only concerns employment which the employer could by virtue of the Schedule lawfully refuse to offer to persons against whom the advertisement indicates an intention to discriminate.
- (3) Subsection (1) does not apply to an advertisement which indicates that persons defined otherwise than by reference to colour, race or ethnic or national origins are required for employment outside the Island.
- (4) The publisher of an advertisement made unlawful by subsection (1) shall not attract 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) or (3), the publication would not be unlawful; and
  - (b) that it was reasonable for him to rely on the statement.
- (5) A person who knowingly or recklessly makes a statement such as is mentioned in subsection (4)(a) which in a material respect is false or misleading commits an offence and shall be liable on summary conviction to a fine not exceeding £5,000.
- (6) In this section, ‘advertisement’ includes every form of advertisement or notice, whether to the public or not, and whether in a newspaper or other publication, by television or radio (including transmission by cable), 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 by means of video recordings, or by way of telecommunications or any electronic media, or in any other way, and references to the publishing of advertisements shall be construed accordingly.

**5 Instructions to discriminate**

[P1976/74/30]

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 this Act, or procure or attempt to procure the doing by him of any such act.

**6 Pressure to discriminate**

[P1976/74/31]

- (1) It is unlawful to induce, or attempt to induce, a person to do any act which is unlawful by virtue of this Act.
- (2) An attempted inducement 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 of employers, agents and others***7 Liability of employers and principals**

[P1976/74/32]

- (1) Anything done by a person in the course of his employment shall be treated for the purposes of this Act (except as regards offences under this Act) as done by his employer as well as by him, whether or not it was done with the 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 Act (except as regards offences under this Act) as done by that other person as well as by him.
- (3) In proceedings brought under this Act against any person in respect of an act alleged to have been done by an employee of his it shall be 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.
- (4) For the purposes of this section —
  - (a) a constable shall be treated as in the employment of the Chief Constable (and not as being in the employment of any other person); and



- (b) anything done by a constable in the performance, or purported performance of his functions shall be treated as done in the course of that employment,
- and section 14 of the *Police Act 1993* (liability for wrongful acts of constables) shall apply accordingly.
- (5) In subsection (4), 'constable' has the same meaning as in section 14 of the *Police Act 1993*.

## 8 Aiding unlawful acts

[P1976/74/33]

- (1) A person who knowingly aids another person to do an act made unlawful by this Act shall be treated for the purposes of this Act 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 7 (or would be so liable but for section 7(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 Act, the act which he aids would not be unlawful; and
- (b) it is reasonable for him to rely on the statement.
- (4) A person who knowingly or recklessly makes a statement such as is mentioned in subsection (3)(a) which in a material respect is false or misleading commits an offence, and shall be liable on summary conviction to a fine not exceeding £5,000.

### *Effect on contracts and charities*

## 9 Validity revision of contracts

[P1976/74/72]

- (1) A term of a contract is void where —
- (a) its inclusion renders the making of the contract unlawful by virtue of this Act; or
- (b) it is included in the furtherance of an act rendered unlawful by this Act; or
- (c) it provides for the doing of an act which would be rendered unlawful by this Act.
- (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 claim to which section 12 applies.
- (5) On the application of any person interested in a contract to which subsection (2) applies, the High Court 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 of court notice may be dispensed with) and have been afforded an opportunity to make representations to the Court.
- (6) An order under subsection (5) may include provision as respects any period before the making of the order.

## 10 Charities

[P1976/74/34]

A provision which is contained in a charitable instrument (whenever that instrument took or takes effect) and which provides for conferring benefits on persons of a class defined by reference to colour shall have effect for all purposes as if it provided for conferring the like benefits —

- (a) on persons of the class which results if the restriction by reference to colour is disregarded; or
- (b) where the original class is defined by reference to colour only, on persons generally;

but nothing in this subsection shall be taken to alter the effect of any provision as regards any time before the coming into operation of this section.

### *Remedies and enforcement*

## 11 Proceedings for breach of Act

[P1976/74/53(1)]

Except as provided by this Act no proceedings, whether civil or criminal, shall lie against any person in respect of an act by reason that the act is unlawful by virtue of any provision of this Act.

## 12 Civil claims under this Act

[P1976/74/57(1) - (4A) and (7)]

- (1) A claim by any person ('the claimant') that another person ('the respondent') —

- (a) has committed an act of discrimination against the claimant which is unlawful by virtue of section 2 or 3; or
  - (b) is by virtue of section 7 or 8 to be treated as having committed such an act of discrimination against the claimant,
- may be made the subject of civil proceedings in like manner as any other claim in tort.
- (2) Proceedings under subsection (1) shall be brought in the High Court and all such remedies shall be obtainable in such proceedings as, apart from this subsection and section 11, would be obtainable in the High Court in respect of any other claim in tort.
  - (3) As respects an unlawful act of discrimination falling within section 2(1)(b), no award of damages shall be made if the respondent proves that the requirement or condition in question was not applied with the intention of treating the claimant unfavourably on racial grounds.
  - (4) As respects an unlawful act of discrimination under this Act which is done by a person when carrying out functions which —
    - (a) relate to the conduct of a criminal investigation;
    - (b) may lead to a decision by that person or another to institute criminal proceedings;
    - (c) may lead to a decision by that person or another to charge a suspected offender;
    - (d) relate to the conduct of criminal proceedings,no remedy other than damages shall be obtainable unless the court is satisfied that the remedy concerned would not prejudice a criminal investigation, a decision to implement criminal proceedings or any criminal proceedings.
  - (5) For the avoidance of doubt it is hereby declared that damages in respect of an unlawful act of discrimination may include compensation for injury to feelings whether or not they include compensation under any other head.
  - (6) This section is subject to sections 14 and 15.

### **13 Non-discrimination orders**

- (1) A non-discrimination order is an order of the High Court requiring the person concerned —
  - (a) not to commit any act mentioned in subsection (2); and
  - (b) where compliance with paragraph (a) involves changes in any of that person's practices or other arrangements —
    - (i) to inform the Attorney General that he has effected those changes and what those changes are; and

- (ii) to take such steps as are required by the order for the purpose of affording that information to other persons concerned; and
  - (c) to furnish the Attorney General with such other information as may reasonably be required by the Attorney General in order to verify that the order has been complied with.
- (2) This section applies to —
  - (a) any act which is unlawful by virtue of section 2 or 3; and
  - (b) any act contravening section 4 (except subsection (5)), 5 or 6.
- (3) If the Attorney General, after such inquiry as he thinks appropriate in the circumstances of the case, has reasonable grounds to believe that a person is committing, or has committed, any act to which this section applies, he may serve on that person a notice that he is minded to apply to the High Court for a non-discrimination order.
- (4) A notice under subsection (3) shall —
  - (a) specify the grounds on which the Attorney General contemplates the application; and
  - (b) offer that person the opportunity to make oral or written representations in the matter (or both oral and written representations if that person wishes) within a period of not less than 28 days specified in the notice.
- (5) After taking into account any representations made by the person concerned, the Attorney General may apply to the High Court for a non-discrimination order.
- (6) If, after the expiry of a period of 6 weeks from the date on which the non-discrimination order was made, the Attorney General has reasonable grounds to believe that any of the requirements of that order have not been complied with, he may, at any time, report the circumstances to High Court.
- (7) The references in this section to a person who is committing, or has committed, any act to which this section applies include references to a person who is by virtue of section 7 or 8 to be treated as having committed an act to which this section applies.
- (8) This section applies to the acts mentioned in subsection (2) whether or not other proceedings have been brought in respect of the act.
- (9) This section does not prejudice any other power of the Attorney General to enforce the law of the Island.

**14 Enforcement of sections 4 to 6**

- (1) Proceedings in respect of an act which is unlawful by virtue of section 4 (except subsection (5)), 5 or 6 shall be brought only by the Attorney General and shall be so brought before the High Court.
- (2) The proceedings shall be –
  - (a) an application for a decision whether the alleged contravention occurred; or
  - (b) an application under subsection (3),or both.
- (3) If it appears to the Attorney General –
  - (a) that a person has done an act which by virtue of section 4 (except subsection (5)), 5 or 6 was unlawful; and
  - (b) that unless restrained that person is likely to do further acts which by virtue of this Act are unlawful,

the Attorney General may apply to the High Court for an order 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 in more limited terms.

**15 Period within which proceedings to be brought**

[P1976/74/68(2) - (4), (6) and (7)]

- (1) The High Court shall not consider a claim under section 12 unless proceedings in respect of the claim are instituted before the end of the period of 6 months beginning when the act complained of was done.
- (2) The High Court shall not consider an application under section 14(2)(a) unless it is made before the end of the period of 6 months beginning when the act to which it relates was done; and the Court shall not consider an application under section 14(3) unless it is made before the end of the period of 5 years so beginning.
- (3) The High Court may nevertheless consider such a claim 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.
- (4) For the purposes of this section –
  - (a) when 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 was to be done.

### *Supplementary*

## **16 Codes of practice**

- (1) The Department of Home Affairs (in this section referred to as 'the Department') may issue codes of practice containing such practical guidance as it thinks appropriate for all or any of the following purposes —
  - (a) the implementation of this Act by public authorities and others;
  - (b) the elimination of discrimination;
  - (c) the promotion of equality of opportunity between persons of different racial groups.
- (2) In the course of preparing a draft code of practice under this section the Department shall consult with such persons and organisations as appear to the Department to be appropriate.
- (3) Before issuing a code of practice under this section, the Department shall cause the draft code to be laid before Tynwald.
- (4) A failure on the part of any person to observe any provision of a code of practice shall not of itself render him liable to any proceedings.
- (5) In any proceedings under this Act before any court, a code of practice issued under this section shall be admissible in evidence, and if any provision of a code appears to the court to be relevant to any question arising in the proceedings it shall be taken into account in determining that question.
- (6) Without prejudice to subsection (1), a code of practice issued under this section may include such practical guidance as the Department thinks appropriate as to what steps it is reasonably practicable for employers to take for the purpose of preventing their employees from doing in the course of their employment acts made unlawful by this Act.

## **17 Offences by bodies corporate**

- (1) Where an offence under this Act committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to neglect on the part of, a director, manager, secretary or other similar officer of the body corporate or a person who was purporting to act in such a capacity, he, as well as the body corporate, is

guilty of the offence and liable to be proceeded against and punished accordingly.

- (2) Where the affairs of a body corporate are managed by its members, subsection (1) applies in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate.
- (3) For the purposes of subsection (1), 'body corporate' includes a limited liability company constituted under the *Limited Liability Companies Act 1996* and, in relation to such a company, any reference to a director, or other officer of a body corporate is a reference to a member and to the company's manager and registered agent.

## 18 Interpretation: "racial grounds", "racial group", etc

[P1976/74/3(1)]

- (1) In this Act —

"**racial grounds**" means any of the following grounds namely, colour, race, nationality or ethnic or national origins;

"**racial group**" means a group of persons defined by reference to colour, race, nationality or ethnic or national origins, and references to a person's racial group refer to any racial group into which he falls.

- (2) The fact that a racial group comprises two or more distinct racial groups does not prevent it from constituting a particular racial group for the purposes of this Act.

## 19 Interpretation: general

[P1976/74 78(1) and 3(3)]

- (1) In this Act —

"**act**" includes omission;

"**discrimination**" and related terms shall be construed in accordance with section 2;

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

"**employment agency**" has the meaning given in section 12(2) of the *Employment Agencies Act 1975*;

"**nationality**" includes citizenship;

"**non-discrimination order**" means an order under section 13;

"**notice**" means a notice in writing;

"**public authority**" has the meaning given in section 1(2);

“**racial grounds**” and “**racial group**” have the meaning given by section 18(1).

- (2) In this Act —
- (a) references to discrimination refer to any discrimination falling within section 2 or section 3; and
  - (b) references to racial discrimination refer to any discrimination falling within section 2,
- and related expressions shall be construed accordingly.

## **20 Acts which are not unlawful**

The Schedule (which specifies acts, etc which are not unlawful under this Act) shall have effect.

## **21 Financial**

There shall be paid out of money provided by Tynwald any expenses of the Government under this Act and any increase attributable to this Act in the sums so payable under any other Act.

## **22 Short title and commencement**

- (1) This Act may be cited as the Race Relations Act 2004.
- (2) This Act shall come into operation on such day as the Council of Ministers may by order appoint and different days may be so appointed for different provisions and for different purposes.<sup>1</sup>
- (3) An order under subsection (2) may make such transitional provisions as the Council of Ministers may consider necessary in connection with any provision brought into force by the order.



**SCHEDULE****ACTS WHICH ARE NOT UNLAWFUL UNDER THIS ACT**

## Section 4 and 20

*Acts done under statutory provisions*

1. (1) Nothing in this Act shall render unlawful any act of discrimination done —
  - (a) in pursuance of any statutory provision; or
  - (b) in order to comply with any condition or requirement imposed by any person (whether before or after the enactment of this Act) in accordance with any statutory provision.
- (2) In sub-paragraph (1), references to a statutory provision include statutory provisions enacted or made before or after the enactment of this Act.
- (3) This paragraph is without prejudice to the *Human Rights Act 2001*.

*Making, etc of statutory provisions*

2. Nothing in this Act shall render unlawful any act of discrimination in respect of, or relating to —
  - (a) making, confirming or approving any statutory provision;
  - (b) making or approving arrangements, or imposing requirements or conditions, of a kind falling within paragraph 1(1)(b).

*Judicial, etc acts*

3. (1) Nothing in this Act shall render unlawful any act of discrimination in respect of, or relating to —
  - (a) any judicial act (whether done by a court, tribunal or other person); or
  - (b) any act done on the instructions, or on behalf, of a person acting in a judicial capacity.
- (2) Nothing in this Act shall render unlawful any act of discrimination in respect of, or relating to —
  - (a) a decision not to institute criminal proceedings and, where such a decision has been made, any act done for the purpose of enabling the decision whether to institute criminal proceedings to be made;
  - (b) where criminal proceedings are not continued as a result of a decision not to continue them, the decision and, where such a decision has been made —

- (i) any act done for the purpose of enabling the decision whether to continue the proceedings to be made; and
- (ii) any act done for the purpose of securing that the proceedings are not continued.

*Acts safeguarding public security, etc*

4. Nothing in this Act shall render unlawful an act done in the interests of defence or internal security or for securing public safety or public order.

*Immigration and nationality functions*

5. (1) Nothing in this Act shall render unlawful any act of discrimination on grounds of nationality or ethnic or national origins in exercising immigration and nationality functions.

(2) In paragraph (1), ‘immigration and nationality functions’ means functions exercisable by virtue of the following Acts of Parliament, to the extent that they apply to the Island, —

- (a) the Immigration Acts (within the meaning of section 64(2) of the Immigration, Asylum and Nationality Act 2006 (of Parliament));<sup>2</sup>
- (b) the British Nationality Act 1981;
- (c) the British Nationality (Falkland Islands) Act 1983;
- (d) the British Nationality (Hong Kong) Act 1990;
- (e) the Hong Kong (War Wives and Widows) Act 1996;
- (f) the British Nationality (Hong Kong) Act 1997;
- (g) [Repealed]<sup>3</sup>
- (h) any provision made under section 2B of the *European Communities (Isle of Man) Act 1973*, or any provision of Community law, which relates to the subject-matter of any of the enactments mentioned above.

6. Nothing in this Act shall render unlawful any act of discrimination in respect of, or relating to, a requirement imposed or authorisation given with respect to a particular case or class of case by virtue of the statutory provisions specified in paragraph 5(2)(a) to (h).

*Special needs of racial groups in regard to education, etc*

7. (1) Nothing in this Act shall render unlawful any act done in affording persons of a particular racial group access to facilities or services to meet the special needs of persons of that group in regard to their education, instruction, training or welfare, or any ancillary benefits.

(2) The reference in sub-paragraph (1) to the affording by any person of access to facilities, services or benefits, is not limited to facilities, services or benefits,

provided by that person himself, but includes any means by which it is in that person's power to facilitate access to facilities, services or benefits provided by any other person (the 'actual provider') and sub-paragraph (1) shall extend also to the liability under this Act of any actual provider.

*Provision of education, etc for persons not ordinarily resident in the Island*

8. (1) Nothing in this Act shall render unlawful any act done by a person for the benefit of persons not ordinarily resident in the Island in affording them access to facilities for education, instruction or training or any ancillary benefits, where it appears to him that the persons in question do not intend to remain in the Island after their period of education, instruction or training there.

(2) The reference in sub-paragraph (1) to the affording by any person of access to facilities, services or benefits, is not limited to facilities, services or benefits, provided by that person himself, but includes any means by which it is in that person's power to facilitate access to facilities, services or benefits provided by any other person (the 'actual provider') and sub-paragraph (1) shall extend also to the liability under this Act of any actual provider.

*Charities for the benefit of specific classes of persons*

9. (1) Nothing in this Act shall —

- (a) be construed as affecting a provision to which this paragraph applies; or
- (b) render unlawful an act which is done to give effect to such a provision.

(2) This paragraph applies to any provision which is contained in a charitable instrument (whenever that instrument took or takes effect) and which provides for conferring benefits on persons of a class defined otherwise than by reference to colour (including a class resulting from the operation of sub-paragraph (1)).

(3) In this paragraph —

'charitable instrument' means any instrument made for charitable purposes, or any instrument so far as it relates to charitable purposes;

'charitable purposes' means purposes which are exclusively charitable according to the law in force in the Island.

*Sports and competitions*

10. Nothing in this Act shall render unlawful any act whereby a person discriminates against another on the basis of that other's nationality or place of birth or the length of time for which he has been resident in a particular area or place, if the act is done —

- (a) in selecting one or more persons to represent the Island, or a place or area, or any related association, in any sport or game; or
- (b) in pursuance of the rules of any competition so far as they relate to eligibility to compete in any sport or game.

### *Employment*

11. (1) Nothing in this Act shall render unlawful any treatment accorded or requirement or condition imposed by or on behalf of an employer in relation to —

- (a) an employee in or in connection with the employment of that employee;
- (b) an applicant for employment in or in connection with the selection of employees by the employer.

(2) Nothing in this Act shall render unlawful any treatment accorded or requirement or condition imposed by or on behalf of an employer in relation to —

- (a) a contract worker in or connection with contract work for the employer;
- (b) a prospective contract worker in connection with contract work or prospective contract work for the employer.

(2) In this paragraph —

‘contract worker’ means an individual who is employed not by an employer but by another person who supplies the worker under a contract made with the employer, and ‘contract work’ shall be construed accordingly;

‘employee’ includes prospective employee;

‘employment’ includes prospective employment.

(3) This paragraph is without prejudice to section 125 of the *Employment Act 2006* and any other enactment relating to employment.<sup>4</sup>

### *Employment agencies*

12. (1) Nothing in this Act shall render unlawful any act by an employment agency if the discrimination only concerns employment which the employer could lawfully refuse to offer the person in question.

(2) An employment agency shall not be subject to any liability under this Act if —

- (a) it acted in reliance on a statement made by the employer to the effect that, by reason of the operation of sub-paragraph (1), its action would not be unlawful; and
- (b) it was reasonable for it to rely on the statement.

(3) A person who knowingly or recklessly makes a statement such as is referred to in sub-paragraph (2)(a) which in a material respect is false or misleading

commits an offence and shall be liable on summary conviction to a fine not exceeding £5,000.

### *Partnerships*

13. (1) Nothing in this Act shall render unlawful any treatment accorded or requirement or condition imposed by a partnership in relation to a position as a partner in the firm, where being of a particular racial group is a genuine occupational qualification for membership of the partnership.

(2) Sub-paragraph (1) shall apply in relation to persons proposing to form themselves into a partnership as it applies in relation to a firm.

(3) Being of a particular racial group is a genuine occupational qualification for membership of a partnership only where —

- (a) membership of the firm involves participation in a dramatic performance or other entertainment in a capacity for which a person of that racial group is required for reasons of authenticity; or
- (b) membership of the firm involves participation as an artist's or photographic model in the production of a work of art, visual image or sequence of visual images for which a person of that racial group is required for reasons of authenticity; or
- (c) membership of the firm involves working in a place where food or drink is (for payment or not) provided to and consumed by members of the public or a section of the public in a particular setting for which a person of that racial group is required for reasons of authenticity; or
- (d) the member of the firm will provide persons of that racial group with personal services promoting their welfare, and those services can most effectively be provided by a person of that racial group.

(4) Sub-paragraph (3) applies where some only of the duties of membership of the firm fall within sub-paragraph (3)(a), (b), (c) or (d) as well as where all of them do.

(5) Sub-paragraph (3)(a), (b), (c) or (d) does not apply in relation to the filling of a vacancy in the membership of a firm at a time when the firm already has members or employees of the racial group in question —

- (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 firm's likely requirements in respect of those duties without undue inconvenience.

(6) In the case of a limited partnership references in this paragraph to a partner shall be construed as references to a general partner as defined in section 47 of the *Partnership Act 1909*.

(7) In this paragraph, 'firm' has the meaning given by section 2 of the *Partnership Act 1909*.

(8) This paragraph shall apply to the category of Chinese firm known as a kongsi and references to 'firm' and 'partnership' shall be construed accordingly.

*Private dwellings*

14. (1) Nothing in this Act shall render unlawful anything said or done by a person inside his dwelling if that person had no reason to believe that his acts would be heard or seen by, or have any effect on, any person outside that dwelling.

(2) In this paragraph, 'dwelling' means a building or part of a building occupied or intended to be occupied as a private dwelling, together with any yard, garden, garage or outhouse belonging to that building or part and includes a flat.

*Power to amend*

15. (1) The Council of Ministers may by order amend this Schedule by repealing, altering or adding to its provisions.

(2) Before making an order under this paragraph the Council of Ministers shall –

- (a) consult with such organisations in the Island as appear to it to be representative of interests substantially affected by the order; and
- (b) satisfy itself that the order will not operate so as to contravene the provisions of any international agreement which extends to the Island.

(3) An order under this paragraph shall be laid before Tynwald as soon as practicable after it is made, and if Tynwald at the sitting at which the order is laid or at the next following sitting fails to approve it, the order shall cease to have effect.

## ENDNOTES

### Table of Legislation History

Legislation	Year and No	Commencement

### Table of Renumbered Provisions

Original	Current

### Table of Endnote References

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<sup>1</sup> ADO (whole Act) 1/11/2010 (SD827/10).

<sup>2</sup> Item (a) substituted by SD828/10.

<sup>3</sup> Item (g) repealed by SD828/10.

<sup>4</sup> Subpara (3) amended by SD828/10.