



**Isle of Man**

*Ellan Vannin*

V08

**EQUALITY BILL 2015**





## EQUALITY BILL 2015

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## EQUALITY BILL 2015

A **BILL** to reform and harmonise equality law; to increase equality of opportunity; to make further provision about employment law; and for connected purposes.

**BE IT ENACTED** by the Queen's Most Excellent Majesty, by and with the advice and consent of the Council and Keys in Tynwald assembled, and by the authority of the same, as follows:—

### PART 1 – INTRODUCTORY

#### 1 Short title

The short title of this Act is the Equality Act 2015.

#### 2 Commencement

- (1) This Act, other than section 1 and this section, comes into operation on such day or days as the Council of Ministers may by order appoint.
- (2) An order under subsection (1) may make different provision for different purposes.
- (3) An order under subsection (1) may contain such consequential, incidental, supplemental, transitional and transitory provision, including such modification of enactments (including those contained in this Act) which appear to the Council of Ministers to be necessary or expedient in consequence of, or otherwise in connection with, the partial operation of this Act.

#### 3 Interpretation

P2010/15/212

- (1) In this Act the following abbreviations are used in respect of Departments —
  - “DEC” means the Department of Education and Children;
  - “DED” means the Department of Economic Development;
  - “DHSC” means the Department of Health and Social Care; and

“**DOI**” means the Department of Infrastructure.

(2) In this Act —

“**armed forces**” means any of the naval, military or air forces of the Crown;

“**the Court**” means the High Court;

“**detriment**” does not include conduct which amounts to harassment;

“**employment**” is (subject to subsection (13)) to be read in accordance with section 72;

“**enactment**” means an enactment contained in —

- (a) an Act of Tynwald;
- (b) an Act of Parliament and applying to the Island as part of the law of the Island by virtue of a provision —
  - (i) in that Act,
  - (ii) in an Order in Council, or
  - (iii) in or under an Act of Tynwald;
- (c) subordinate legislation;

“**equality clause**” means a sex equality clause or maternity equality clause;

“**equality rule**” means a sex equality rule or maternity equality rule;

“**man**” means a male of any age;

“**maternity equality clause**” has the meaning given in section 64;

“**maternity equality rule**” has the meaning given in section 66;

“**non-discrimination rule**” has the meaning given in section 52;

“**occupational pension scheme**” has the meaning given in section 1 of the Pension Schemes Act 1993 (of Parliament);

“**OFT**” means the Isle of Man Office of Fair Trading;

“**parent**” has the meaning given by section 59 of the *Education Act 2001*;

“**prescribed**” means prescribed by regulations;

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

a “**relevant member of Tynwald staff**” is a person employed in the Office of the Clerk of Tynwald other than the Clerk of Tynwald;

“**sex equality clause**” has the meaning given in section 57;

“**sex equality rule**” has the meaning given in section 58;

“**substantial**” means more than minor or trivial;

“**trade**” includes any business;

“**Tribunal**” (without more) means the Employment and Equality Tribunal constituted by section 96;

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

- (3) Section 173 of the *Employment Act 2006* (construction of references to Crown employment and related concepts) applies for the purposes of this Act as it applies for those of the 2006 Act.
- (4) Except where otherwise provided, a reference in this Act to an Act of Parliament, or a provision of such an Act, is a reference to that Act, or provision, as it applies to the Island as part of the law of the Island.
- (5) A reference (however expressed) to an act includes a reference to an omission.
- (6) A reference (however expressed) to an omission includes (unless there is express provision to the contrary) a reference to —
  - (a) a deliberate omission to do something;
  - (b) a refusal to do it;
  - (c) a failure to do it.
- (7) A reference (however expressed) to providing or affording access to a benefit, facility or service includes a reference to facilitating access to the benefit, facility or service.
- (8) A reference to occupation, in relation to premises, is a reference to lawful occupation.
- (9) The following constitute “**the Executive**” —
  - (a) the Governor;
  - (b) the Governor in Council;
  - (c) the Council of Ministers;
  - (d) a Minister;
  - (e) the Attorney General (and any officer serving in the Attorney General’s Chambers);
  - (f) a Department;
  - (g) a Statutory Board;
  - (h) an office of the Government;
  - (i) a Minister of the Crown, but only insofar as that officer has functions in relation to the Island.

Expressions used in paragraph (i) that are defined in the Ministers of the Crown Act 1975 (of Parliament) have the same meaning in that paragraph as in that Act.

*Note: although the Cabinet Office, the Attorney General’s Chambers the General Registry are not themselves empowered to make legislation, they are all frequently involved in its preparation (the first two more than the last). Given the provisions of Schedule 3 it seems appropriate to include them. Do you agree?*

- (10) A reference to a breach of an equality clause or rule is a reference to a breach of a term modified by, or included by virtue of, an equality clause or rule.
- (11) A reference to a contravention of this Act does not include a reference to a breach of an equality clause or rule, unless there is express provision to the contrary.
- (12) “**Member**”, in relation to an occupational pension scheme, means an active member, a deferred member or a pensioner member (within the meaning, in each case, given by section 124 of the Pensions Act 1995 (of Parliament)).
- (13) “**Employer**”, “**deferred member**”, “**pension credit member**”, “**pensionable service**”, “**pensioner member**” and “**trustees or managers**” each have, in relation to an occupational pension scheme, the meaning given by section 124 of the Pensions Act 1995 (of Parliament).
- (14) A reference to the accrual of rights under an occupational pension scheme is to be construed in accordance with that section.
- (15) Nothing in section 29, 32, 73 or 84 is to be regarded as an express exception.
- (16) Section 172 makes further provision about interpretation.

#### 4 References to maternity leave, etc.

P2010/15/213

- (1) This section applies for the purposes of this Act.
- (2) A reference to a woman on maternity leave is a reference to a woman on—
  - (a) compulsory maternity leave,
  - (b) ordinary maternity leave, or
  - (c) additional maternity leave.
- (3) A reference to a woman on compulsory maternity leave is a reference to a woman absent from work because she satisfies the conditions prescribed for the purposes of section 80(1) of the *Employment Act 2006*.
- (4) A reference to a woman on ordinary maternity leave is a reference to a woman absent from work because she is exercising the right to ordinary maternity leave.
- (5) A reference to the right to ordinary maternity leave is a reference to the right conferred by section 79(1) of the *Employment Act 2006*.
- (6) A reference to a woman on additional maternity leave is a reference to a woman absent from work because she is exercising the right to additional maternity leave.

- (7) A reference to the right to additional maternity leave is a reference to the right conferred by section 81(1) of the *Employment Act 2006*.
- (8) “Additional maternity leave period” has the meaning given in section 81(2) of that Act.

## PART 2 — EQUALITY: KEY CONCEPTS

### DIVISION 1 — PROTECTED CHARACTERISTICS

#### 5 The protected characteristics

P2010/15/4

The following characteristics are protected characteristics—

age;  
disability;  
gender reassignment;  
marriage and civil partnership;  
pregnancy and maternity;  
race;  
religion or belief;  
sex;  
sexual orientation.

#### 6 Age

P2010/15/5

- (1) In relation to the protected characteristic of age—
  - (a) a reference to a person who has a particular protected characteristic is a reference to a person of a particular age group;
  - (b) a reference to persons who share a protected characteristic is a reference to persons of the same age group.
- (2) A reference to an age group is a reference to a group of persons defined by reference to age, whether by reference to a particular age or to a range of ages.

#### 7 Disability

P2010/15/6

- (1) A person (P) has a disability if —
  - (a) P has a physical or mental impairment, and

- (b) the impairment has a substantial and long-term adverse effect on P's ability to carry out normal day-to-day activities.
- (2) A reference to a disabled person is a reference to a person who has a disability.
- (3) In relation to the protected characteristic of disability —
  - (a) a reference to a person who has a particular protected characteristic is a reference to a person who has a particular disability;
  - (b) a reference to persons who share a protected characteristic is a reference to persons who have the same disability.
- (4) This Act (except Part 12 and section 152) applies in relation to a person who has had a disability as it applies in relation to a person who has the disability; accordingly (except in that Part and that section)—
  - (a) a reference (however expressed) to a person who has a disability includes a reference to a person who has had the disability, and
  - (b) a reference (however expressed) to a person who does not have a disability includes a reference to a person who has not had the disability.
- (5) A Department may issue guidance about matters to be taken into account in deciding any question for the purposes of subsection (1).
- (6) Schedule 1 (disability: supplementary provision) has effect.

## 8 Gender reassignment

P2010/15/7

- (1) A person has the protected characteristic of gender reassignment if the person is proposing to undergo, is undergoing or has undergone a process (or part of a process) for the purpose of reassigning the person's sex by changing physiological or other attributes of sex.
- (2) A reference to a transsexual person is a reference to a person who has the protected characteristic of gender reassignment.
- (3) In relation to the protected characteristic of gender reassignment—
  - (a) a reference to a person who has a particular protected characteristic is a reference to a transsexual person;
  - (b) a reference to persons who share a protected characteristic is a reference to transsexual persons.

## 9 Marriage and civil partnership

P2010/15/8

- (1) A person has the protected characteristic of marriage and civil partnership if the person is married or is a civil partner.

- (2) In relation to the protected characteristic of marriage and civil partnership—
  - (a) a reference to a person who has a particular protected characteristic is a reference to a person who is married or is a civil partner;
  - (b) a reference to persons who share a protected characteristic is a reference to persons who are married or are civil partners.

## 10 Race

P2010/15/9

- (1) Race includes—
  - (a) colour;
  - (b) nationality;
  - (c) ethnic or national origins; and
  - (d) caste.
- (2) In relation to the protected characteristic of race—
  - (a) a reference to a person who has a particular protected characteristic is a reference to a person of a particular racial group;
  - (b) a reference to persons who share a protected characteristic is a reference to persons of the same racial group.
- (3) A racial group is a group of persons defined by reference to race; and a reference to a person's racial group is a reference to a racial group into which the person falls.
- (4) The fact that a racial group comprises two or more distinct racial groups does not prevent it from constituting a particular racial group.

## 11 Religion or belief

P2010/15/10

- (1) Religion means any religion and a reference to religion includes a reference to a lack of religion.
- (2) Belief means any religious or philosophical belief and a reference to belief includes a reference to a lack of belief.
- (3) In relation to the protected characteristic of religion or belief—
  - (a) a reference to a person who has a particular protected characteristic is a reference to a person of a particular religion or belief;
  - (b) a reference to persons who share a protected characteristic is a reference to persons who are of the same religion or belief.

## 12 Sex

P2011/15/11

In relation to the protected characteristic of sex—

- (a) a reference to a person who has a particular protected characteristic is a reference to a man or to a woman;
- (b) a reference to persons who share a protected characteristic is a reference to persons of the same sex.

## 13 Sexual orientation

P2010/15/12

(1) Sexual orientation means a person's sexual orientation towards—

- (a) persons of the same sex,
- (b) persons of the opposite sex, or
- (c) persons of either sex.

(2) In relation to the protected characteristic of sexual orientation—

- (a) a reference to a person who has a particular protected characteristic is a reference to a person who is of a particular sexual orientation;
- (b) a reference to persons who share a protected characteristic is a reference to persons who are of the same sexual orientation.

### DIVISION 2 — PROHIBITED CONDUCT

#### SUBDIVISION 1 — DISCRIMINATION

## 14 Direct discrimination

P2010/15/13

- (1) A person (A) discriminates against another (B) if, because of a protected characteristic, A treats B less favourably than A treats or would treat others.
- (2) If the protected characteristic is age, A does not discriminate against B if A can show A's treatment of B to be a proportionate means of achieving a legitimate aim.
- (3) If the protected characteristic is disability, and B is not a disabled person, A does not discriminate against B only because A treats or would treat disabled persons more favourably than A treats B.
- (4) If the protected characteristic is marriage and civil partnership, this section applies to a contravention of Part 5 (work) only if the treatment is because it is B who is married or a civil partner.



- (5) If the protected characteristic is race, less favourable treatment includes segregating B from others.
- (6) If the protected characteristic is sex—
  - (a) less favourable treatment of a woman includes less favourable treatment of her because she is breast-feeding;
  - (b) in a case where B is a man, no account is to be taken of special treatment afforded to a woman in connection with pregnancy or childbirth.
- (7) Subsection (6)(a) does not apply for the purposes of Part 5 (work).
- (8) This section is subject to sections 18(6) (pregnancy and maternity) and 19(7) (pregnancy and maternity discrimination: work cases).

## **15 Combined discrimination: dual characteristics**

P2010/15/14

- (1) A person (A) discriminates against another (B) if, because of a combination of two relevant protected characteristics, A treats B less favourably than A treats or would treat a person who does not share either of those characteristics.
- (2) The relevant protected characteristics are—
  - (a) age;
  - (b) disability;
  - (c) gender reassignment;
  - (d) race;
  - (e) religion or belief;
  - (f) sex;
  - (g) sexual orientation.
- (3) For the purposes of establishing a contravention of this Act by virtue of subsection (1), B need not show that A's treatment of B is direct discrimination because of each of the characteristics in the combination (taken separately).
- (4) But B cannot establish a contravention of this Act by virtue of subsection (1) if, in reliance on another provision of this Act or any other enactment, A shows that A's treatment of B is not direct discrimination because of either or both of the characteristics in the combination.
- (5) Subsection (1) does not apply to a combination of characteristics that includes disability in circumstances where, if a claim of direct discrimination because of disability were to be brought, it would come within section 101 (special educational needs).
- (6) The Council of Ministers may by order amend this section so as to—

- (a) make further provision about circumstances in which B can, or in which B cannot, establish a contravention of this Act by virtue of subsection (1);
  - (b) specify other circumstances in which subsection (1) does not apply.
- (7) The references to direct discrimination are to a contravention of this Act by virtue of section 14.

## **16 Discrimination arising from disability**

P2010/15/15

- (1) A person (A) discriminates against a disabled person (B) if—
- (a) A treats B unfavourably because of something arising in consequence of B's disability, and
  - (b) A cannot show that the treatment is a proportionate means of achieving a legitimate aim.
- (2) Subsection (1) does not apply if A shows that A did not know, and could not reasonably have been expected to know, that B had the disability.

## **17 Gender reassignment discrimination: cases of absence from work**

P2010/15/16

- (1) This section has effect for the purposes of the application of Part 5 (work) to the protected characteristic of gender reassignment.
- (2) A person (A) discriminates against a transsexual person (B) if, in relation to an absence of B's that is because of gender reassignment, A treats B less favourably than A would treat B if—
- (a) B's absence was because of sickness or injury, or
  - (b) B's absence was for some other reason and it is not reasonable for B to be treated less favourably.
- (3) A person's absence is because of gender reassignment if it is because the person is proposing to undergo, is undergoing or has undergone the process (or part of the process) mentioned in section 8(1).

## **18 Pregnancy and maternity discrimination: non-work cases**

P2010/15/17

- (1) This section has effect for the purposes of the application to the protected characteristic of pregnancy and maternity of—
- (a) Part 3 (services and public functions);
  - (b) Part 4 (premises);
  - (c) Part 6 (education);
  - (d) Part 7 (associations).

- (2) A person (A) discriminates against a woman if A treats her unfavourably because of a pregnancy of hers.
- (3) A person (A) discriminates against a woman if, in the period of 26 weeks beginning with the day on which she gives birth, A treats her unfavourably because she has given birth.
- (4) The reference in subsection (3) to treating a woman unfavourably because she has given birth includes, in particular, a reference to treating her unfavourably because she is breast-feeding.
- (5) For the purposes of this section, the day on which a woman gives birth is the day on which—
  - (a) she gives birth to a living child, or
  - (b) she gives birth to a dead child (more than 24 weeks of the pregnancy having passed).
- (6) Section 14, so far as relating to sex discrimination, does not apply to anything done in relation to a woman in so far as—
  - (a) it is for the reason mentioned in subsection (2), or
  - (b) it is in the period, and for the reason, mentioned in subsection (3).

## **19 Pregnancy and maternity discrimination: work cases**

P2010/15/18

- (1) This section has effect for the purposes of the application of Part 5 (work) to the protected characteristic of pregnancy and maternity.
- (2) A person (A) discriminates against a woman if, in the protected period in relation to a pregnancy of hers, A treats her unfavourably—
  - (a) because of the pregnancy, or
  - (b) because of illness suffered by her as a result of it.
- (3) A person (A) discriminates against a woman if A treats her unfavourably because she is on compulsory maternity leave.
- (4) A person (A) discriminates against a woman if A treats her unfavourably because she is exercising or seeking to exercise, or has exercised or sought to exercise, the right to ordinary or additional maternity leave.
- (5) For the purposes of subsection (2), if the treatment of a woman is in implementation of a decision taken in the protected period, the treatment is to be regarded as occurring in that period (even if the implementation is not until after the end of that period).
- (6) The protected period, in relation to a woman's pregnancy, begins when the pregnancy begins, and ends—
  - (a) if she has the right to ordinary and additional maternity leave, at the end of the additional maternity leave period or (if earlier) when she returns to work after the pregnancy;

- (b) if she does not have that right, at the end of the period of 2 weeks beginning with the end of the pregnancy.
- (7) Section 14, so far as relating to sex discrimination, does not apply to treatment of a woman in so far as—
  - (a) it is in the protected period in relation to her and is for a reason mentioned in paragraph (a) or (b) of subsection (2), or
  - (b) it is for a reason mentioned in subsection (3) or (4).

## 20 Indirect discrimination

P2010/15/19

- (1) A person (A) discriminates against another (B) if A applies to B a provision, criterion or practice which is discriminatory in relation to a relevant protected characteristic of B's.
- (2) For the purposes of subsection (1), a provision, criterion or practice is discriminatory in relation to a relevant protected characteristic of B's if—
  - (a) A applies, or would apply, it to persons with whom B does not share the characteristic,
  - (b) it puts, or would put, persons with whom B shares the characteristic at a particular disadvantage when compared with persons with whom B does not share it,
  - (c) it puts, or would put, B at that disadvantage, and
  - (d) A cannot show it to be a proportionate means of achieving a legitimate aim.
- (3) The relevant protected characteristics are—
  - age;
  - disability;
  - gender reassignment;
  - marriage and civil partnership;
  - race;
  - religion or belief;
  - sex;
  - sexual orientation.

### SUBDIVISION 2 — ADJUSTMENTS FOR DISABLED PERSONS

## 21 Duty to make adjustments

P2010/15/20

- (1) Where this Act imposes a duty to make reasonable adjustments on a person, this section, sections 22 and 23 and the applicable Schedule

apply; and for those purposes, a person on whom the duty is imposed is referred to as A.

- (2) The duty comprises the following three requirements.
- (3) The first requirement is a requirement, where a provision, criterion or practice of A's puts a disabled person at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled, to take such steps as it is reasonable to have to take to avoid the disadvantage.
- (4) The second requirement is a requirement, where a physical feature puts a disabled person at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled, to take such steps as it is reasonable to have to take to avoid the disadvantage.
- (5) The third requirement is a requirement, where a disabled person would, but for the provision of an auxiliary aid, be put at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled, to take such steps as it is reasonable to have to take to provide the auxiliary aid.
- (6) Where the first or third requirement relates to the provision of information, the steps which it is reasonable for A to have to take include steps for ensuring that in the circumstances concerned the information is provided in an accessible format.
- (7) A person (A) who is subject to a duty to make reasonable adjustments is not (subject to express provision to the contrary) entitled to require a disabled person, in relation to whom A is required to comply with the duty, to pay to any extent A's costs of complying with the duty.
- (8) A reference in section 22 or 23 or an applicable Schedule to the first, second or third requirement is to be construed in accordance with this section.
- (9) In relation to the second requirement, a reference in this section or an applicable Schedule to avoiding a substantial disadvantage includes a reference to—
  - (a) removing the physical feature in question,
  - (b) altering it, or
  - (c) providing a reasonable means of avoiding it.
- (10) A reference in this section, section 22 or 23 or an applicable Schedule (apart from paragraphs 2 to 4 of Schedule 4) to a physical feature is a reference to —
  - (a) a feature arising from the design or construction of a building,
  - (b) a feature of an approach to, exit from or access to a building,
  - (c) a fixture or fitting, or furniture, furnishings, materials, equipment or other chattels, in or on premises, or

- (d) any other physical element or quality.
- (11) A reference in this section, section 22 or 23 or an applicable Schedule to an auxiliary aid includes a reference to an auxiliary service.
- (12) The applicable Schedule is, in relation to the Part of this Act specified in the first column of the Table, the Schedule specified in the second column.

<i>Part of this Act</i>	<i>Applicable Schedule</i>
Part 3 (services and public functions)	Schedule 2
Part 4 (premises)	Schedule 4
Part 5 (work)	Schedule 8
Part 6 (education)	Schedule 13
Part 7 (associations)	Schedule 15
Each of the Parts mentioned above	Schedule 17

## 22 Failure to comply with duty

P2010/15/21

- (1) A failure to comply with the first, second or third requirement is a failure to comply with a duty to make reasonable adjustments.
- (2) A discriminates against a disabled person if A fails to comply with that duty in relation to that person.
- (3) A provision of an applicable Schedule which imposes a duty to comply with the first, second or third requirement applies only for the purpose of establishing whether A has contravened this Act by virtue of subsection (2); a failure to comply is, accordingly, not actionable by virtue of another provision of this Act or otherwise.

## 23 Regulations

P2010/15/22

- (1) Regulations may prescribe—
- matters to be taken into account in deciding whether it is reasonable for A to take a step for the purposes of a prescribed provision of an applicable Schedule;
  - descriptions of persons to whom the first, second or third requirement does not apply.
- (2) Regulations may make provision as to—
- circumstances in which it is, or in which it is not, reasonable for a person of a prescribed description to have to take steps of a prescribed description;

- (b) what is, or what is not, a provision, criterion or practice;
  - (c) things which are, or which are not, to be treated as physical features;
  - (d) things which are, or which are not, to be treated as alterations of physical features;
  - (e) things which are, or which are not, to be treated as auxiliary aids.
- (3) Provision made by virtue of this section may amend an applicable Schedule.
- (4) The powers to make regulations conferred by this section are exercisable in accordance with the following Table—

<i>Part of this Act</i>	
Part 3 (services and public functions)	The Council of Ministers
Part 4 (premises)	DOI
Part 5 (work)	DED
Part 6 (education)	DEC
Part 7 (associations)	The Council of Ministers

In the Table above a reference to a Part includes the applicable Schedules for that Part determined in accordance with the provisions of the Table in section 21(12).

### SUBDIVISION 3: DISCRIMINATION: SUPPLEMENTARY

#### **24 Comparison by reference to circumstances**

P2010/15/23(1), (2)(a) and (3)

- (1) On a comparison of cases for the purposes of section 14, 15 or 20 there must be no material difference between the circumstances relating to each case.
- (2) The circumstances relating to a case include a person's abilities if —
  - (a) on a comparison for the purposes of section 14, the protected characteristic is disability;
  - (b) on a comparison for the purposes of section 15, one of the protected characteristics in the combination is disability.
- (3) (b) on a comparison for the purposes of section 15, one of the protected characteristics in the combination is disability.
- (4) If the protected characteristic is sexual orientation, the fact that one person (whether or not the person referred to as B) is a civil partner while another is married is not a material difference between the circumstances relating to each case.

## 25 Irrelevance of alleged discriminator's characteristics

P2010/15/24

- (1) For the purpose of establishing a contravention of this Act by virtue of section 14(1), it does not matter whether A has the protected characteristic.
- (2) For the purpose of establishing a contravention of section 15(1), it does not matter —
  - (a) whether A has one of the protected characteristics in the combination;
  - (b) whether A has both.

## 26 References to particular strands of discrimination

P2010/15/25

- (1) Age discrimination is—
  - (a) discrimination within section 14 because of age;
  - (b) discrimination within section 20 where the relevant protected characteristic is age.
- (2) Disability discrimination is—
  - (a) discrimination within section 14 because of disability;
  - (b) discrimination within section 15;
  - (c) discrimination within section 20 where the relevant protected characteristic is disability;
  - (d) discrimination within section 22.
- (3) Gender reassignment discrimination is—
  - (a) discrimination within section 14 because of gender reassignment;
  - (b) discrimination within section 17;
  - (c) discrimination within section 20 where the relevant protected characteristic is gender reassignment.
- (4) Marriage and civil partnership discrimination is—
  - (a) discrimination within section 14 because of marriage and civil partnership;
  - (b) discrimination within section 20 where the relevant protected characteristic is marriage and civil partnership.
- (5) Pregnancy and maternity discrimination is discrimination within section 18 or 19.
- (6) Race discrimination is—
  - (a) discrimination within section 14 because of race;
  - (b) discrimination within section 20 where the relevant protected characteristic is race.



- (7) Religious or belief-related discrimination is—
  - (a) discrimination within section 14 because of religion or belief;
  - (b) discrimination within section 20 where the relevant protected characteristic is religion or belief.
- (8) Sex discrimination is—
  - (a) discrimination within section 14 because of sex;
  - (b) discrimination within section 20 where the relevant protected characteristic is sex.
- (9) Sexual orientation discrimination is—
  - (a) discrimination within section 14 because of sexual orientation;
  - (b) discrimination within section 20 where the relevant protected characteristic is sexual orientation.

#### SUBVISION 4: OTHER PROHIBITED CONDUCT

### 27 Harassment

P2010/15/26

- (1) A person (A) harasses another (B) if—
  - (a) A engages in unwanted conduct related to a relevant protected characteristic, and
  - (b) the conduct has the purpose or effect of—
    - (i) violating B's dignity, or
    - (ii) creating an intimidating, hostile, degrading, humiliating or offensive environment for B.
- (2) A also harasses B if—
  - (a) A engages in unwanted conduct of a sexual nature, and
  - (b) the conduct has the purpose or effect referred to in subsection (1)(b).
- (3) A also harasses B if—
  - (a) A or another person engages in unwanted conduct of a sexual nature or that is related to gender reassignment or sex,
  - (b) the conduct has the purpose or effect referred to in subsection (1)(b), and
  - (c) because of B's rejection of or submission to the conduct, A treats B less favourably than A would treat B if B had not rejected or submitted to the conduct.
- (4) In deciding whether conduct has the effect referred to in subsection (1)(b), each of the following must be taken into account—
  - (a) the perception of B;

- (b) the other circumstances of the case;
  - (c) whether it is reasonable for the conduct to have that effect.
- (5) The relevant protected characteristics are—
- age;
  - disability;
  - gender reassignment;
  - race;
  - religion or belief;
  - sex;
  - sexual orientation.

## 28 Victimisation

P2010/15/27

- (1) A person (A) victimises another person (B) if A subjects B to a detriment because—
- (a) B does a protected act, or
  - (b) A believes that B has done, or may do, a protected act.
- (2) Each of the following is a protected act—
- (a) bringing proceedings under this Act;
  - (b) giving evidence or information in connection with proceedings under this Act;
  - (c) doing any other thing for the purposes of or in connection with this Act;
  - (d) making an allegation (whether or not express) that A or another person has contravened this Act.
- (3) Giving false evidence or information, or making a false allegation, is not a protected act if the evidence or information is given, or the allegation is made, in bad faith.
- (4) This section applies only where the person subjected to a detriment is an individual.
- (5) The reference to contravening this Act includes a reference to committing a breach of an equality clause or rule.

## PART 3 – SERVICES AND PUBLIC FUNCTIONS

### *Preliminary*

#### **29 Application of this Part**

P2010/15/28

- (1) This Part does not apply to the protected characteristic of—
  - (a) age, so far as relating to persons who have not attained the age of 18;
  - (b) marriage and civil partnership.
- (2) This Part does not apply to discrimination, harassment or victimisation —
  - (a) that is prohibited by Part 4 (premises), 5 (work) or 6 (education), or
  - (b) that would be so prohibited but for an express exception.
- (3) This Part does not apply to—
  - (a) a breach of an equality clause or rule;
  - (b) anything that would be a breach of an equality clause or rule but for section 60 or Part 2 of Schedule 7;
  - (c) a breach of a non-discrimination rule.

### *Provision of services, etc*

#### **30 Provision of services, etc.**

P2010/15/29(1) to (7) and (9) and (10)

- (1) A person (a “service-provider”) concerned with the provision of a service to the public or a section of the public (for payment or not) must not discriminate against a person requiring the service by not providing the person with the service.
- (2) A service-provider (A) must not, in providing the service, discriminate against a person (B)—
  - (a) as to the terms on which A provides the service to B;
  - (b) by terminating the provision of the service to B;
  - (c) by subjecting B to any other detriment.
- (3) A service-provider must not, in relation to the provision of the service, harass—
  - (a) a person requiring the service, or
  - (b) a person to whom the service-provider provides the service.

- (4) A service-provider must not victimise a person requiring the service by not providing the person with the service.
- (5) A service-provider (A) must not, in providing the service, victimise a person (B)—
  - (a) as to the terms on which A provides the service to B;
  - (b) by terminating the provision of the service to B;
  - (c) by subjecting B to any other detriment.
- (6) A person must not, in the exercise of a public function that is not the provision of a service to the public or a section of the public, do anything that constitutes discrimination, harassment or victimisation.
- (7) A duty to make reasonable adjustments applies to—
  - (a) a service-provider (and see also section 55(7));
  - (b) a person who exercises a public function that is not the provision of a service to the public or a section of the public.
- (8) In the application of this section, so far as relating to race or religion or belief, to the granting of entry clearance (within the meaning of the Immigration Act 1971 (of Parliament)<sup>1</sup>), it does not matter whether an act is done within or outside the Island.
- (9) Subsection (8) does not affect the application of any other provision of this Act to conduct outside the Island.

### **31 Interpretation and exceptions**

P2010/15/31

- (1) This section applies for the purposes of this Part.
- (2) A reference to the provision of a service includes a reference to the provision of goods or facilities.
- (3) A reference to the provision of a service includes a reference to the provision of a service in the exercise of a public function.
- (4) A public function is a function that is a function of a public nature for the purposes of the *Human Rights Act 2001*.
- (5) If an employer arranges for another person to provide a service only to the employer's employees —
  - (a) the employer is not to be regarded as the service-provider, but
  - (b) the employees are to be regarded as a section of the public.
- (6) A reference to a person requiring a service includes a reference to a person who is seeking to obtain or use the service.

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<sup>1</sup> 1971 c. 77: applied to the Island by SI 2008/680.

- (7) A reference to a service-provider not providing a person with a service includes a reference to –
- (a) the service-provider not providing the person with a service of the quality that the service-provider usually provides to the public (or the section of it which includes the person), or
  - (b) the service-provider not providing the person with the service in the manner in which, or on the terms on which, the service-provider usually provides the service to the public (or the section of it which includes the person).
- (8) Schedule 2 (reasonable adjustments) has effect.
- (9) Schedule 3 (exceptions) has effect.

## PART 4 – PREMISES

### *Preliminary*

#### **32 Application of this Part**

P2010/15/32

- (1) This Part does not apply to the following protected characteristics –
- (a) age;
  - (b) marriage and civil partnership.
- (2) This Part does not apply to discrimination, harassment or victimisation –
- (a) that is prohibited by Part 5 (work) or Part 6 (education), or
  - (b) that would be so prohibited but for an express exception.
- (3) This Part does not apply to the provision of accommodation if the provision –
- (a) is generally for the purpose of short stays by individuals who live elsewhere, or
  - (b) is for the purpose only of exercising a public function or providing a service to the public or a section of the public.
- (4) The reference to the exercise of a public function, and the reference to the provision of a service, are to be construed in accordance with Part 3.
- (5) This Part does not apply to –
- (a) a breach of an equality clause or rule;
  - (b) anything that would be a breach of an equality clause or rule but for section 60 or Part 2 of Schedule 7;
  - (c) a breach of a non-discrimination rule.

*Disposal and management***33 Disposals, etc**

P2010/15/33(1) to (3)

- (1) A person (A) who has the right to dispose of premises must not discriminate against another (B)—
  - (a) as to the terms on which A offers to dispose of the premises to B;
  - (b) by not disposing of the premises to B;
  - (c) in A's treatment of B with respect to things done in relation to persons seeking premises.
- (2) A person who has the right to dispose of premises must not, in connection with anything done in relation to their occupation or disposal, harass—
  - (a) a person who occupies them;
  - (b) a person who applies for them.
- (3) A person (A) who has the right to dispose of premises must not victimise another (B)—
  - (a) as to the terms on which A offers to dispose of the premises to B;
  - (b) by not disposing of the premises to B;
  - (c) in A's treatment of B with respect to things done in relation to persons seeking premises.

**34 Permission for disposal**

P2010/15/34(1) to (3) and (5)

- (1) A person whose permission is required for the disposal of premises must not discriminate against another by not giving permission for the disposal of the premises to the other.
- (2) A person whose permission is required for the disposal of premises must not, in relation to an application for permission to dispose of the premises, harass a person—
  - (a) who applies for permission to dispose of the premises, or
  - (b) to whom the disposal would be made if permission were given.
- (3) A person whose permission is required for the disposal of premises must not victimise another by not giving permission for the disposal of the premises to the other.
- (4) This section does not apply to anything done in the exercise of a judicial function.

**35 Management**

P2010/15/35(1) to (3)

- (1) A person (A) who manages premises must not discriminate against a person (B) who occupies the premises—
  - (a) in the way in which A allows B, or by not allowing B, to make use of a benefit or facility;
  - (b) by evicting B (or taking steps for the purpose of securing B's eviction);
  - (c) by subjecting B to any other detriment.
- (2) A person who manages premises must not, in relation to their management, harass—
  - (a) a person who occupies them;
  - (b) a person who applies for them.
- (3) A person (A) who manages premises must not victimise a person (B) who occupies the premises—
  - (a) in the way in which A allows B, or by not allowing B, to make use of a benefit or facility;
  - (b) by evicting B (or taking steps for the purpose of securing B's eviction);
  - (c) by subjecting B to any other detriment.

*Reasonable adjustments***36 Leasehold and common parts**

P2010/15/36(1) to (3) and (5) to (8)

- (1) A duty to make reasonable adjustment applies to—
  - (a) a controller of let premises;
  - (b) a controller of premises to let;
  - (c) a responsible person in relation to common parts.
- (2) A controller of let premises is—
  - (a) a person by whom premises are let, or
  - (b) a person who manages them.
- (3) A controller of premises to let is—
  - (a) a person who has premises to let; or
  - (b) a person who manages them.
- (4) A responsible person in relation to common parts is, where the premises to which the common parts relate are let, a person by whom the premises are let.

- (5) Common parts are in relation to let premises, the structure and exterior of, and any common facilities within or used in connection with, the building or part of a building which includes the premises.
- (6) A reference to letting includes subletting and for the purposes of subsection (1)(a) and (b), a reference to let premises includes premises subject to a right to occupy.

### **37 Interpretation and exceptions**

P2010/15/38(1) to (4) and (6) to (8)

- (1) This section applies for the purposes of this Part.
- (2) A reference to premises is a reference to the whole or part of the premises.
- (3) A reference to disposing of premises includes, in the case of premises subject to a tenancy, a reference to—
  - (a) assigning the premises,
  - (b) sub-letting them, or
  - (c) parting with possession of them.
- (4) A reference to disposing of premises also includes a reference to granting a right to occupy them.
- (5) A reference to a tenancy is to a tenancy created (whether before or after the passing of this Act)—
  - (a) by a lease or sub-lease,
  - (b) by an agreement for a lease or sub-lease,
  - (c) by a tenancy agreement, or
  - (d) in pursuance of an enactment,and a reference to a tenant is to be construed accordingly.
- (6) Schedule 4 (reasonable adjustments) has effect.
- (7) Schedule 5 (exceptions) has effect.

## **PART 5 — WORK**

### **DIVISION 1 — EMPLOYMENT, ETC**

#### *Subdivision 1: Employees*

### **38 Employees and applicants**

P2010/15/39

- (1) An employer (A) must not discriminate against a person (B)—



- (a) in the arrangements A makes for deciding to whom to offer employment;
  - (b) as to the terms on which A offers B employment;
  - (c) by not offering B employment.
- (2) An employer (A) must not discriminate against an employee of A's (B)—
- (a) as to B's terms of employment;
  - (b) in the way A affords B access, or by not affording B access, to opportunities for promotion, transfer or training or for receiving any other benefit, facility or service;
  - (c) by dismissing B;
  - (d) by subjecting B to any other detriment.
- (3) An employer (A) must not victimise a person (B)—
- (a) in the arrangements A makes for deciding to whom to offer employment;
  - (b) as to the terms on which A offers B employment;
  - (c) by not offering B employment.
- (4) An employer (A) must not victimise an employee of A's (B)—
- (a) as to B's terms of employment;
  - (b) in the way A affords B access, or by not affording B access, to opportunities for promotion, transfer or training or for any other benefit, facility or service;
  - (c) by dismissing B;
  - (d) by subjecting B to any other detriment.
- (5) A duty to make reasonable adjustments applies to an employer.
- (6) Subsection (1)(b), so far as relating to sex or pregnancy and maternity, does not apply to a term that relates to pay—
- (a) unless, were B to accept the offer, an equality clause or rule would have effect in relation to the term, or
  - (b) if paragraph (a) does not apply, except in so far as making an offer on terms including that term amounts to a contravention of subsection (1)(b) by virtue of section 14, 15 or 19.
- (7) In subsections (2)(c) and (4)(c), the reference to dismissing B includes a reference to the termination of B's employment—
- (a) by the expiry of a period (including a period expiring by reference to an event or circumstance);
  - (b) by an act of B's (including giving notice) in circumstances such that B is entitled, because of A's conduct, to terminate the employment without notice.

- (8) Subsection (7)(a) does not apply if, immediately after the termination, the employment is renewed on the same terms.

### **39 Employees and applicants: harassment**

P2010/15/40 (as amended by P2013/24/65)

An employer (A) must not, in relation to employment by A, harass a person —

- (a) who is an employee of A's; or
- (b) who has applied to A for employment.

### **40 Contract workers**

P2010/15/41

- (1) A principal must not discriminate against a contract worker —
- (a) as to the terms on which the principal allows the worker to do the work;
  - (b) by not allowing the worker to do, or to continue to do, the work;
  - (c) in the way the principal affords the worker access, or by not affording the worker access, to opportunities for receiving a benefit, facility or service;
  - (d) by subjecting the worker to any other detriment.
- (2) A principal must not, in relation to contract work, harass a contract worker.
- (3) A principal must not victimise a contract worker —
- (a) as to the terms on which the principal allows the worker to do the work;
  - (b) by not allowing the worker to do, or to continue to do, the work;
  - (c) in the way the principal affords the worker access, or by not affording the worker access, to opportunities for receiving a benefit, facility or service;
  - (d) by subjecting the worker to any other detriment.
- (4) A duty to make reasonable adjustments applies to a principal (as well as to the employer of a contract worker).
- (5) A “principal” is a person who makes work available for an individual who is —
- (a) employed by another person, and
  - (b) supplied by that other person in furtherance of a contract to which the principal is a party (whether or not that other person is a party to it).
- (6) “Contract work” is work such as is mentioned in subsection (5).

- (7) A “contract worker” is an individual supplied to a principal in furtherance of a contract such as is mentioned in subsection (5)(b).

*Subdivision 2 — Police officers*

**41 Police officers: identity of employer**

P2010/15/42(1) & (2) & 43(4)

- (1) For the purposes of this Part, holding the office of constable is to be treated as employment—
- (a) by the chief constable, in respect of any act done by the chief constable in relation to a constable or appointment to the office of constable;
  - (b) by the Department of Home Affairs, in respect of any act done by that Department in relation to a constable or appointment to the office of constable.
- (2) For the purposes of this Part, holding an appointment as a police cadet is to be treated as employment—
- (a) by the chief constable, in respect of any act done by the chief constable in relation to a police cadet or appointment as one;
  - (b) by the Department of Home Affairs, in respect of any act done by that Department in relation to a police cadet or appointment as one.
- (3) In subsection (2) “police cadet” means a person appointed to undergo training with a view to becoming a constable.

*Subdivision 3 — Partners*

**42 Partnerships**

P2010/15/44 & 46(2), (3), (6) & (7)

- (1) A firm or proposed firm must not discriminate against a person—
- (a) in the arrangements it makes for deciding to whom to offer a position as a partner;
  - (b) as to the terms on which it offers the person a position as a partner;
  - (c) by not offering the person a position as a partner.
- (2) A firm (A) must not discriminate against a partner (B)—
- (a) as to the terms on which B is a partner;
  - (b) in the way A affords B access, or by not affording B access, to opportunities for promotion, transfer or training or for receiving any other benefit, facility or service;

- (c) by expelling B;
  - (d) by subjecting B to any other detriment.
- (3) A firm must not, in relation to a position as a partner, harass—
- (a) a partner;
  - (b) a person who has applied for the position.
- (4) A proposed firm must not, in relation to a position as a partner, harass a person who has applied for the position.
- (5) A firm or proposed firm must not victimise a person—
- (a) in the arrangements it makes for deciding to whom to offer a position as a partner;
  - (b) as to the terms on which it offers the person a position as a partner;
  - (c) by not offering the person a position as a partner.
- (6) A firm (A) must not victimise a partner (B)—
- (a) as to the terms on which B is a partner;
  - (b) in the way A affords B access, or by not affording B access, to opportunities for promotion, transfer or training or for receiving any other benefit, facility or service;
  - (c) by expelling B;
  - (d) by subjecting B to any other detriment.
- (7) A duty to make reasonable adjustments applies to—
- (a) a firm;
  - (b) a proposed firm.
- (8) In this section—
- (a) “partnership” and “firm” have the same meanings as in the *Partnership Act 1909*;
  - (b) “proposed firm” means persons proposing to form themselves into a partnership;
  - (c) in its application to a limited partnership within the meaning of section 47 of the *Partnership Act 1909* “partner” means a general partner within the meaning of that section;
  - (d) a reference to expelling a partner of a firm includes a reference to the termination of the person’s position as such—
    - (i) by the expiry of a period (including a period expiring by reference to an event or circumstance);
    - (b) by an act of the person (including giving notice) in circumstances such that the person is entitled, because of the conduct of other partners or members, to terminate the position without notice;

- (iii) (in the case of a partner of a firm) as a result of the dissolution of the partnership.
- (9) Subsection (9)(d)(i) and (iii) does not apply if, immediately after the termination, the position is renewed on the same terms.

*Subdivision 4 — Office-holders*

**43 Personal offices: appointments etc**

P2010/15/49

- (1) This section applies to personal offices.
- (2) A personal office is an office or post—
  - (a) to which a person is appointed to discharge a function personally under the direction of another person; and
  - (b) in respect of which an appointed person is entitled to remuneration.
- (3) A person (A) who has the power to make an appointment to a personal office must not discriminate against a person (B) —
  - (a) in the arrangements A makes for deciding to whom to offer the appointment;
  - (b) as to the terms on which A offers B the appointment;
  - (c) by not offering the appointment.
- (4) A person who has the power to make an appointment to a personal office must not, in relation to the office, harass a person seeking, or being considered for, the appointment.
- (5) A person (A) who has the power to make an appointment to a personal office must not victimise a person (B)—
  - (a) in the arrangements A makes for deciding to whom to offer the appointment;
  - (b) as to the terms on which A offers B the appointment;
  - (c) by not offering B the appointment.
- (6) A person (A) who is a relevant person in relation to a personal office must not discriminate against a person (B) appointed to the office—
  - (a) as to the terms of B's appointment;
  - (b) in the way A affords B access, or by not affording B access, to opportunities for promotion, transfer or training or for receiving any other benefit, facility or service;
  - (c) by terminating B's appointment;
  - (d) by subjecting B to any other detriment.

- (7) A relevant person in relation to a personal office must not, in relation to that office, harass a person appointed to it.
- (8) A person (A) who is a relevant person in relation to a personal office must not victimise a person (B) appointed to the office—
- (a) as to the terms of B's appointment;
  - (b) in the way A affords B access, or by not affording B access, to opportunities for promotion, transfer or training or for receiving any other benefit, facility or service;
  - (c) by terminating B's appointment;
  - (d) by subjecting B to any other detriment.
- (9) A duty to make reasonable adjustments applies to—
- (a) a person who has the power to make an appointment to a personal office;
  - (b) a relevant person in relation to a personal office.
- (10) For the purposes of subsection (2)(a), a person is to be regarded as discharging functions personally under the direction of another person if that other person is entitled to direct the person as to when and where to discharge the functions.
- (11) For the purposes of subsection (2)(b), a person is not to be regarded as entitled to remuneration merely because the person is entitled to payments—
- (a) in respect of expenses incurred by the person in discharging the functions of the office or post, or
  - (b) by way of compensation for the loss of income or benefits the person would or might have received had the person not been discharging the functions of the office or post.
- (12) Subsection (3)(b), so far as relating to sex or pregnancy and maternity, does not apply to a term that relates to pay—
- (a) unless, were B to accept the offer, an equality clause or rule would have effect in relation to the term, or
  - (b) if paragraph (a) does not apply, except in so far as making an offer on terms including that term amounts to a contravention of subsection (3)(b) by virtue of section 14, 15 or 19.

#### **44 Public offices: appointments etc**

P2010/15/50

- (1) This section and section 45 apply in relation to public offices.
- (2) A public office is—

- (a) an office or post, appointment to which is made by the Governor, the Governor in Council, the Council of Ministers, the Chief Minister, a Minister or the Appointments Commission;
- (b) an office or post, appointment to which is made on the recommendation of, or subject to the approval of, the Governor, the Governor in Council, the Council of Ministers, the Chief Minister, a Minister or the Appointments Commission;
- (c) an office or post, appointment to which is made by or subject to the approval of Tynwald, a Branch of Tynwald.

Here “the Appointments Commission” means the body established by section 1 of the *Tribunals Act 2006*.

- (3) A person (A) who has the power to make an appointment to a public office within subsection (2)(a) or (b) must not discriminate against a person (B)—
  - (a) in the arrangements A makes for deciding to whom to offer the appointment;
  - (b) as to the terms on which A offers B the appointment;
  - (c) by not offering B the appointment.
- (4) A person who has the power to make an appointment to a public office within subsection (2)(a) or (b) must not, in relation to the office, harass a person seeking, or being considered for, the appointment.
- (5) A person (A) who has the power to make an appointment to a public office within subsection (2)(a) or (b) must not victimise a person (B)—
  - (a) in the arrangements A makes for deciding to whom to offer the appointment;
  - (b) as to the terms on which A offers B the appointment;
  - (c) by not offering B the appointment.
- (6) A person (A) who is a relevant person in relation to a public office within subsection (2)(a) or (b) must not discriminate against a person (B) appointed to the office—
  - (a) as to B’s terms of appointment;
  - (b) in the way A affords B access, or by not affording B access, to opportunities for promotion, transfer or training or for receiving any other benefit, facility or service;
  - (c) by terminating the appointment;
  - (d) by subjecting B to any other detriment.
- (7) A person (A) who is a relevant person in relation to a public office within subsection (2)(c) must not discriminate against a person (B) appointed to the office—
  - (a) as to B’s terms of appointment;

- (b) in the way A affords B access, or by not affording B access, to opportunities for promotion, transfer or training or for receiving any other benefit, facility or service;
  - (c) by subjecting B to any other detriment (other than by terminating the appointment).
- (8) A relevant person in relation to a public office must not, in relation to that office, harass a person appointed to it.
- (9) A person (A) who is a relevant person in relation to a public office within subsection (2)(a) or (b) must not victimise a person (B) appointed to the office—
  - (a) as to B's terms of appointment;
  - (b) in the way A affords B access, or by not affording B access, to opportunities for promotion, transfer or training or for receiving any other benefit, facility or service;
  - (c) by terminating the appointment;
  - (d) by subjecting B to any other detriment.
- (10) A person (A) who is a relevant person in relation to a public office within subsection (2)(c) must not victimise a person (B) appointed to the office—
  - (a) as to B's terms of appointment;
  - (b) in the way A affords B access, or by not affording B access, to opportunities for promotion, transfer or training or for receiving any other benefit, facility or service;
  - (c) by subjecting B to any other detriment (other than by terminating the appointment).
- (11) A duty to make reasonable adjustments applies to—
  - (a) a relevant person in relation to a public office;
  - (b) a person who has the power to make an appointment to a public office within subsection (2)(a) or (b).
- (12) Subsection (3)(b), so far as relating to sex or pregnancy and maternity, does not apply to a term that relates to pay—
  - (a) unless, were B to accept the offer, an equality clause or rule would have effect in relation to the term, or
  - (b) if paragraph (a) does not apply, except in so far as making an offer on terms including that term amounts to a contravention of subsection (3)(b) by virtue of section 14, 15 or 19.



**45 Public offices: recommendations for appointments etc**

P2010/15/51

- (1) A person (A) who has the power to make a recommendation for or give approval to an appointment to a public office within section 44(2)(a) or (b) must not discriminate against a person (B)—
  - (a) in the arrangements A makes for deciding who to recommend for appointment or to whose appointment to give approval;
  - (b) by not recommending B for appointment to the office;
  - (c) by making a negative recommendation of B for appointment to the office;
  - (d) by not giving approval to the appointment of B to the office.
- (2) A person who has the power to make a recommendation for or give approval to an appointment to a public office within section 44(2)(a) or (b) must not, in relation to the office, harass a person seeking or being considered for the recommendation or approval.
- (3) A person (A) who has the power to make a recommendation for or give approval to an appointment to a public office within section 44(2)(a) or (b) must not victimise a person (B)—
  - (a) in the arrangements A makes for deciding who to recommend for appointment or to whose appointment to give approval;
  - (b) by not recommending B for appointment to the office;
  - (c) by making a negative recommendation of B for appointment to the office;
  - (d) by not giving approval to the appointment of B to the office.
- (4) A duty to make reasonable adjustments applies to a person who has the power to make a recommendation for or give approval to an appointment to a public office within section 44(2)(a) or (b).
- (5) A reference in this section to a person who has the power to make a recommendation for or give approval to an appointment to a public office within section 44(2)(a) is a reference only to a relevant body which has that power; and for that purpose “relevant body” means —
  - (a) the Governor, the Governor in Council, the Council of Ministers, the Appointments Commission, the Chief Minister or a Minister; or
  - (b) a body established—
    - (i) by or in pursuance of an enactment, or
    - (ii) by the Governor, the Governor in Council, the Council of Ministers, the Chief Minister or a Minister.

**46 Sections 43 to 45: interpretation and exceptions**

P2010/15/52

- (1) This section applies for the purposes of sections 43 to 45.
- (2) “**Personal office**” has the meaning given in section 43.
- (3) “**Public office**” has the meaning given in section 44.
- (4) An office or post which is both a personal office and a public office is to be treated as being a public office only.
- (5) Appointment to an office or post does not include election to it.
- (6) “**Relevant person**”, in relation to an office, means the person who, in relation to a matter specified in the first column of the table, is specified in the second column (but a reference to a relevant person does not in any case include Tynwald, the Legislative Council or the House of Keys).

<i>Matter</i>	<i>Relevant person</i>
A term of appointment	The person who has the power to set the term.
Access to an opportunity	The person who has the power to afford access to the opportunity (or, if there is no such person, the person who has the power to make the appointment).
Terminating an appointment	The person who has the power to terminate the appointment.
Subjecting an appointee to any other detriment	The person who has the power in relation to the matter to which the conduct in question relates (or, if there is no such person, the person who has the power to make the appointment).
Harassing an appointee	The person who has the power in relation to the matter to which the conduct in question relates.

- (7) A reference to terminating a person’s appointment includes a reference to termination of the appointment—
  - (a) by the expiry of a period (including a period expiring by reference to an event or circumstance);
  - (b) by an act of the person (including giving notice) in circumstances such that the person is entitled, because of the relevant person’s conduct, to terminate the appointment without notice.
- (8) Subsection (7)(a) does not apply if, immediately after the termination, the appointment is renewed on the same terms.
- (9) Schedule 6 (excluded offices) has effect.

*Subdivision 5 — Qualifications***47 Qualifications bodies**

P2010/15/53 and 54

- (1) A qualifications body (A) must not discriminate against a person (B)—
  - (a) in the arrangements A makes for deciding upon whom to confer a relevant qualification;
  - (b) as to the terms on which it is prepared to confer a relevant qualification on B;
  - (c) by not conferring a relevant qualification on B.
- (2) A qualifications body (A) must not discriminate against a person (B) upon whom A has conferred a relevant qualification—
  - (a) by withdrawing the qualification from B;
  - (b) by varying the terms on which B holds the qualification;
  - (c) by subjecting B to any other detriment.
- (3) A qualifications body must not, in relation to conferment by it of a relevant qualification, harass—
  - (a) a person who holds the qualification, or
  - (b) a person who applies for it.
- (4) A qualifications body (A) must not victimise a person (B)—
  - (a) in the arrangements A makes for deciding upon whom to confer a relevant qualification;
  - (b) as to the terms on which it is prepared to confer a relevant qualification on B;
  - (c) by not conferring a relevant qualification on B.
- (5) A qualifications body (A) must not victimise a person (B) upon whom A has conferred a relevant qualification—
  - (a) by withdrawing the qualification from B;
  - (b) by varying the terms on which B holds the qualification;
  - (c) by subjecting B to any other detriment.
- (6) A duty to make reasonable adjustments applies to a qualifications body.
- (7) The application by a qualifications body of a competence standard to a disabled person is not disability discrimination unless it is discrimination by virtue of section 20 (indirect discrimination).
- (8) A qualifications body is an authority or body which can confer a relevant qualification.
- (9) A relevant qualification is an authorisation, qualification, recognition, registration, enrolment, approval or certification which is needed for, or facilitates engagement in, a particular trade or profession.

- (10) For the purposes of this section an authority or body is not a qualifications body in so far as—
- (a) it is the responsible body of a school to which section 74 (pupils' admission and treatment) applies,
  - (b) it is the governing body of an institution to which section 78 (students' admission and treatment) applies, or
  - (c) it exercises functions under the *Education Act 2001*.
- (11) A reference to conferring a relevant qualification includes a reference to renewing or extending the validity of a relevant qualification.

*Subdivision 6 — Employment services*

## 48 Employment service-providers

P2010/15/55 and 56

- (1) A person (an “**employment service-provider**”) concerned with the provision of an employment service must not discriminate against a person—
- (a) in the arrangements the employment service-provider makes for selecting persons to whom to provide, or to whom to offer to provide, the service;
  - (b) as to the terms on which the employment service-provider offers to provide the service to the person;
  - (c) by not offering to provide the service to the person.
- (2) An employment service-provider (A) must not, in relation to the provision of an employment service, discriminate against a person (B) —
- (a) as to the terms on which A provides the service to B;
  - (b) by not providing the service to B;
  - (c) by terminating the provision of the service to B;
  - (d) by subjecting B to any other detriment.
- (3) An employment service-provider must not, in relation to the provision of an employment service, harass—
- (a) a person who asks the employment service-provider to provide the service;
  - (b) a person for whom the employment service-provider provides the service.
- (4) An employment service-provider (A) must not victimise a person (B) —
- (a) in the arrangements A makes for selecting persons to whom to provide, or to whom to offer to provide, the service;
  - (b) as to the terms on which A offers to provide the service to B;
  - (c) by not offering to provide the service to B.

- (5) An employment service-provider (A) must not, in relation to the provision of an employment service, victimise a person (B)—
- (a) as to the terms on which A provides the service to B;
  - (b) by not providing the service to B;
  - (c) by terminating the provision of the service to B;
  - (d) by subjecting B to any other detriment.
- (6) A duty to make reasonable adjustments applies to an employment service-provider, except in relation to the provision of a vocational service.
- (7) The duty imposed by section 30(7)(a) (service provider to make reasonable adjustments) applies to a person concerned with the provision of a vocational service; but a failure to comply with that duty in relation to the provision of a vocational service is a contravention of this Part for the purposes of Part 9 (enforcement).
- (8) The provision of an employment service includes—
- (a) the provision of vocational training;
  - (b) the provision of vocational guidance;
  - (c) making arrangements for the provision of vocational training or vocational guidance;
  - (d) the provision of a service for finding employment for persons;
  - (e) the provision of a service for supplying employers with persons to do work;
  - (f) the provision of a service in pursuance of arrangements for training or work placements made by DEC or DED;
  - (g) the provision of a service in pursuance of arrangements made in respect of careers services by DEC or DED;
  - (h) an assessment related to the conferment of a relevant qualification within the meaning of section 47 except in so far as the assessment is by the qualifications body which confers the qualification).
- (9) This section does not apply in relation to training or guidance —
- (a) in so far as it is training or guidance in relation to which another provision of this Part applies;
  - (b) for pupils of a school to which section 74 applies in so far as it is training or guidance to which the responsible body of the school has power to afford access (whether as the responsible body of that school or as the responsible body of any other school at which the training or guidance is provided);
  - (c) for students of an institution to which section 78 applies in so far as it is training or guidance to which the governing body of the institution has power to afford access.

- (10) “Vocational training” means—
- (a) training for employment, or
  - (b) work experience (including work experience the duration of which is not agreed until after it begins).
- (11) A reference to the provision of a vocational service is a reference to the provision of an employment service within subsection (8)(a) to (d) (or an employment service within subsection (8)(f) or (g) in so far as it is also an employment service within subsection (8)(a) to (d)); and for that purpose—
- (a) the references to an employment service within subsection (8)(a) do not include a reference to vocational training within the meaning given by subsection (10)(b), and
  - (b) the references to an employment service within subsection (8)(d) also include a reference to a service for assisting persons to retain employment.
- (12) A reference to training includes a reference to facilities for training.

## 49 Trade organisations

P2010/15/57

- (1) A trade organisation (A) must not discriminate against a person (B)—
- (a) in the arrangements A makes for deciding to whom to offer membership of the organisation;
  - (b) as to the terms on which it is prepared to admit B as a member;
  - (c) by not accepting B’s application for membership.
- (2) A trade organisation (A) must not discriminate against a member (B)—
- (a) in the way it affords B access, or by not affording B access, to opportunities for receiving a benefit, facility or service;
  - (b) by depriving B of membership;
  - (c) by varying the terms on which B is a member;
  - (d) by subjecting B to any other detriment.
- (3) A trade organisation must not, in relation to membership of it, harass—
- (a) a member, or
  - (b) an applicant for membership.
- (4) A trade organisation (A) must not victimise a person (B) —
- (a) in the arrangements A makes for deciding to whom to offer membership of the organisation;
  - (b) as to the terms on which it is prepared to admit B as a member;
  - (c) by not accepting B’s application for membership.
- (5) A trade organisation (A) must not victimise a member (B)—

- (a) in the way it affords B access, or by not affording B access, to opportunities for receiving a benefit, facility or service;
  - (b) by depriving B of membership;
  - (c) by varying the terms on which B is a member;
  - (d) by subjecting B to any other detriment.
- (6) A duty to make reasonable adjustments applies to a trade organisation.
- (7) For the purposes of this section a “trade organisation” is—
- (a) an organisation of workers,
  - (b) an organisation of employers, or
  - (c) any other organisation whose members carry on a particular trade or profession for the purposes of which the organisation exists.

*Subdivision 7 — Local authorities*

**50 Official business of local authority members**

P2010/15/58 & 59

- (1) A local authority must not discriminate against a member of the authority in relation to the member’s carrying out of official business—
- (a) in the way the authority affords the member access, or by not affording the member access, to opportunities for training or for receiving any other facility;
  - (b) by subjecting the member to any other detriment.
- (2) A local authority must not, in relation to a member’s carrying out of official business, harass the member.
- (3) A local authority must not victimise a member of the authority in relation to the member’s carrying out of official business—
- (a) in the way the authority affords the member access, or by not affording the member access, to opportunities for training or for receiving any other facility;
  - (b) by subjecting the member to any other detriment.
- (4) A member of a local authority is not subjected to a detriment for the purposes of subsection (1)(b) or (3)(b) only because the member is—
- (a) not appointed or elected to an office of the authority,
  - (b) not appointed or elected to, or to an office of, a committee or sub-committee of the authority, or
  - (c) not appointed or nominated in exercise of an appointment power of the authority.

- (5) In subsection (4)(c), an appointment power of a local authority is a power of the authority, or of a group of bodies including the authority, to make—
  - (a) appointments to a body;
  - (b) nominations for appointment to a body.
- (6) A duty to make reasonable adjustments applies to a local authority.
- (7) A reference to the carrying-out of official business by a person who is a member of a local authority is a reference to the doing of anything by the person—
  - (a) as a member of the authority,
  - (b) as a member of a body to which the person is appointed by, or appointed following nomination by, the authority or a group of bodies including the authority, or
  - (c) as a member of any other public body.

*Subdivision 8 — recruitment*

## **51 Enquiries about disability and health**

P2010/15/60

- (1) A person (A) to whom an application for work is made must not ask about the health of the applicant (B)—
  - (a) before offering work to B, or
  - (b) where A is not in a position to offer work to B, before including B in a pool of applicants from whom A intends (when in a position to do so) to select a person to whom to offer work.
- (2) For the purposes of this section, whether or not a person has a disability is to be regarded as an aspect of that person's health.
- (3) A contravention of subsection (1) (or a contravention of section 92 or 93 (instructing, causing or inducing contraventions, and aiding contraventions) that relates to a contravention of subsection (1)) constitutes an unlawful act for which proceedings may be instituted only by the Attorney General.
- (4) A does not contravene a relevant disability provision merely by asking about B's health; but A's conduct in reliance on information given in response may be a contravention of a relevant disability provision.
- (5) Subsection (5) applies if B brings proceedings before the Tribunal on a complaint that A's conduct in reliance on information given in response to a question about B's health is a contravention of a relevant disability provision.
- (6) In the application of section 119 (burden of proof) to the proceedings, the particulars of the complaint are to be treated for the purposes of



subsection (2) of that section as facts from which the tribunal could decide that A contravened the provision.

- (7) This section does not apply to a question that A asks in so far as asking the question is necessary for the purpose of—
- (a) establishing whether B will be able to comply with a requirement to undergo an assessment or establishing whether a duty to make reasonable adjustments is or will be imposed on A in relation to B in connection with a requirement to undergo an assessment,
  - (b) establishing whether B will be able to carry out a function that is intrinsic to the work concerned,
  - (c) monitoring diversity in the range of persons applying to A for work,
  - (d) taking action to which section 135 would apply if references in that section to persons who share (or do not share) a protected characteristic were references to disabled persons (or persons who are not disabled) and the reference to the characteristic were a reference to disability, or
  - (e) if A applies in relation to the work a requirement to have a particular disability, establishing whether B has that disability.
- (8) In subsection (6)(b), where A reasonably believes that a duty to make reasonable adjustments would be imposed upon A in relation to B in connection with the work, the reference to a function that would be intrinsic to the work once A complied with the duty.
- (9) Subsection (6)(e) applies only if A shows that, having regard to the nature or context of the work—
- (a) the requirement is an occupational requirement, and
  - (b) the application of the requirement is a proportionate means of achieving a legitimate aim.
- (10) “Work” means employment, contract work, a position as a partner, an appointment to a personal or public office, or the provision of an employment service; and the references in subsection (1) to offering a person work are, in relation to contract work, to be read as references to allowing a person to do the work.
- (11) A reference to offering work is a reference to making a conditional or unconditional offer of work (and, in relation to contract work, is a reference to allowing a person to do the work subject to fulfilment of one or more conditions).
- (12) The following, so far as relating to discrimination within section 14 because of disability, are relevant disability provisions—
- (a) section 38(1)(a) or (c) (employees and applicants for employment);
  - (b) section 40(1)(b) (contract workers);

- (c) section 42(1)(a) or (c) (partnerships);
  - (d) section 43(3) (a) or (c) (personal offices);
  - (h) section 44(3)(a) or (c) (public offices);
  - (i) section 45(1) (public offices: recommendations for appointment);
  - (j) section 48(1)(a) or (c) (employment service providers).
- (13) An assessment is an interview or other process designed to give an indication of a person's suitability for the work concerned.
- (14) This section does not apply to anything done for the purpose of vetting applicants for work for reasons of national security.

## DIVISION 2 — OCCUPATIONAL PENSION SCHEMES

### 52 Non-discrimination rule

P2010/14/61

- (1) An occupational pension scheme must be taken to include a non-discrimination rule.
- (2) A non-discrimination rule is a provision by virtue of which a responsible person (A)—
- (a) must not discriminate against another person (B) in carrying out any of A's functions in relation to the scheme;
  - (b) must not, in relation to the scheme, harass B;
  - (c) must not, in relation to the scheme, victimise B.
- (3) The provisions of an occupational pension scheme have effect subject to the non-discrimination rule.
- (4) The following are responsible persons—
- (a) the trustees or managers of the scheme;
  - (b) an employer whose employees are, or may be, members of the scheme;
  - (c) a person exercising an appointing function in relation to an office the holder of which is, or may be, a member of the scheme.
- (5) A non-discrimination rule does not apply in relation to a person who is a pension credit member of a scheme.
- (6) An appointing function is any of the following—
- (a) the function of appointing a person;
  - (b) the function of terminating a person's appointment;
  - (c) the function of recommending a person for appointment;
  - (d) the function of approving an appointment.
- (7) A breach of a non-discrimination rule is a contravention of this Part for the purposes of Part 9 (enforcement).

- (8) It is not a breach of a non-discrimination rule for the employer or the trustees or managers of a scheme to maintain or use in relation to the scheme rules, practices, actions or decisions relating to age which are of a description specified by order by the Treasury.
- (9) An order authorising the use of rules, practices, actions or decisions which are not in use before the order comes into force must not be made unless the Treasury consults such persons as it thinks appropriate.
- (10) A non-discrimination rule does not have effect in relation to an occupational pension scheme in so far as an equality rule has effect in relation to it (or would have effect in relation to it but for Part 2 of Schedule 7 (equality of terms: exceptions applicable to occupational pension schemes)).
- (11) A duty to make reasonable adjustments applies to a responsible person.

### **53 Non-discrimination alterations**

P2010/15/62

- (1) This section applies if the trustees or managers of an occupational pension scheme do not have power to make non-discrimination alterations to the scheme.
- (2) This section also applies if the trustees or managers of an occupational pension scheme have power to make non-discrimination alterations to the scheme but the procedure for doing so—
  - (a) is liable to be unduly complex or protracted, or
  - (b) involves obtaining consents which cannot be obtained or which can be obtained only with undue delay or difficulty.
- (3) The trustees or managers may by resolution make non-discrimination alterations to the scheme.
- (4) Non-discrimination alterations may have effect in relation to a period before the date on which they are made.
- (5) Non-discrimination alterations to an occupational pension scheme are such alterations to the scheme as may be required for the provisions of the scheme to have the effect that they have in consequence of section 52(3).

### **54 Communications**

- (1) In their application to communications the following provisions apply in relation to a disabled person who is a pension credit member of an occupational pension scheme as they apply in relation to a disabled person who is a deferred member or pensioner member of the scheme —
  - (a) section 52;
  - (b) section 105 (Tribunal jurisdiction);

- (c) section 109 (remedies: occupational pension schemes);
  - (d) paragraph 15 of Schedule 8 (interested disabled person for the purposes of occupational pension scheme) and such other provisions of that Schedule as apply for the purposes of that paragraph.
- (2) Communications include—
- (a) the provision of information; and
  - (b) the operation of a dispute resolution procedure.

### DIVISION 3 — EQUALITY OF TERMS

#### *Subdivision 1 — Sex equality*

#### **55 Relevant types of work**

P2010/15/64

- (1) This subdivision applies if —
- (a) a person (A) is employed on work that is equal to the work that a comparator of the opposite sex (B) does;
  - (b) a person (A) holding a personal or public office does work that is equal to the work that a comparator of the opposite sex (B) does.
- (2) The references in subsection (1) to the work that B does are not restricted to work done contemporaneously with the work done by A.

#### **56 Equal work**

P2010/15/65

- (1) For the purposes of this Division, A's work is equal to that of B if it is—
- (a) like B's work,
  - (b) rated as equivalent to B's work, or
  - (c) of equal value to B's work.
- (2) A's work is like B's work if—
- (a) A's work and B's work are the same or broadly similar, and
  - (b) such differences as there are between their work are not of practical importance in relation to the terms of their work.
- (3) So on a comparison of one person's work with another's for the purposes of subsection (2), it is necessary to have regard to —
- (a) the frequency with which differences between their work occur in practice, and
  - (b) the nature and extent of the differences.
- (4) A's work is rated as equivalent to B's work if a job evaluation study —

- (a) gives an equal value to A's job and B's job in terms of the demands made on a worker, or
  - (b) would give an equal value to A's job and B's job in those terms were the evaluation not made on a sex-specific system.
- (5) A system is sex-specific if, for the purposes of one or more of the demands made on a worker, it sets values for men different from those it sets for women.
- (6) A's work is of equal value to B's work if it is—
- (a) neither like B's work nor rated as equivalent to B's work, but
  - (b) nevertheless equal to B's work in terms of the demands made on A by reference to factors such as effort, skill and decision-making.

## 57 Sex equality clause

P2010/15/66

- (1) If the terms of A's work do not (by whatever means) include a sex equality clause, they are to be treated as including one.
- (2) A sex equality clause is a provision that has the following effect—
- (a) if a term of A's is less favourable to A than a corresponding term of B's is to B, A's term is modified so as not to be less favourable;
  - (b) if A does not have a term which corresponds to a term of B's that benefits B, A's terms are modified so as to include such a term.
- (3) Subsection (2)(a) applies to a term of A's relating to membership of or rights under an occupational pension scheme only in so far as a sex equality rule would have effect in relation to the term.
- (4) In the case of work within section 56(1)(b), a reference in subsection (2) above to a term includes a reference to such terms (if any) as have not been determined by the rating of the work (as well as those that have).

## 58 Sex equality rule — occupational pension schemes

P2010/15/67

- (1) If an occupational pension scheme does not include a sex equality rule, it is to be treated as including one.
- (2) A sex equality rule is a provision that has the following effect—
- (a) if a relevant term is less favourable to A than it is to B, the term is modified so as not to be less favourable;
  - (b) if a term confers a relevant discretion capable of being exercised in a way that would be less favourable to A than to B, the term is modified so as to prevent the exercise of the discretion in that way.
- (3) A term is relevant if it is—

- (a) a term on which persons become members of the scheme, or
  - (b) a term on which members of the scheme are treated.
- (4) A discretion is relevant if its exercise in relation to the scheme is capable of affecting—
- (a) the way in which persons become members of the scheme, or
  - (b) the way in which members of the scheme are treated.
- (5) The reference in subsection (3)(b) to a term on which members of a scheme are treated includes a reference to the term as it has effect for the benefit of dependants of members.
- (6) The reference in subsection (4)(b) to the way in which members of a scheme are treated includes a reference to the way in which they are treated as the scheme has effect for the benefit of dependants of members.
- (7) If the effect of a relevant matter on persons of the same sex differs according to their family, marital or civil partnership status, a comparison for the purposes of this section of the effect of that matter on persons of the opposite sex must be with persons who have the same status.
- (8) A relevant matter is—
- (a) a relevant term;
  - (b) a term conferring a relevant discretion;
  - (c) the exercise of a relevant discretion in relation to an occupational pension scheme.
- (9) This section does not have effect in relation to pensionable service before 6 April 2006 —
- (a) so far as relating to the terms on which persons become members of an occupational pension scheme,
  - (b) so far as relating to the terms on which members of an occupational pension scheme are treated.

## **59 Sex equality rule: consequential alteration of schemes**

P2010/15/68

- (1) This section applies if the trustees or managers of an occupational pension scheme do not have power to make sex equality alterations to the scheme.
- (2) This section also applies if the trustees or managers of an occupational pension scheme have power to make sex equality alterations to the scheme but the procedure for doing so—
  - (a) is liable to be unduly complex or protracted, or

- (b) involves obtaining consents which cannot be obtained or which can be obtained only with undue delay or difficulty.
- (3) The trustees or managers may by resolution make sex equality alterations to the scheme.
- (4) Sex equality alterations may have effect in relation to a period before the date on which they are made.
- (5) Sex equality alterations to an occupational pension scheme are such alterations to the scheme as may be required to secure conformity with a sex equality rule.
- (6) Nothing in this section applies in respect of pensionable service before 6 April 2006.

## **60 Defence of material factor**

P2010/15/69

- (1) The sex equality clause in A's terms has no effect in relation to a difference between A's terms and B's terms if the responsible person shows that the difference is because of a material factor reliance on which—
  - (a) does not involve treating A less favourably because of A's sex than the responsible person treats B, and
  - (b) if the factor is within subsection (2), is a proportionate means of achieving a legitimate aim.
- (2) A factor is within this subsection if A shows that, as a result of the factor, A and persons of the same sex doing work equal to A's are put at a particular disadvantage when compared with persons of the opposite sex doing work equal to A's.
- (3) For the purposes of subsection (1), the long-term objective of reducing inequality between men's and women's terms of work is always to be regarded as a legitimate aim.
- (4) A sex equality rule has no effect in relation to a difference between A and B in the effect of a relevant matter if the trustees or managers of the scheme in question show that the difference is because of a material factor which is not the difference of sex.
- (5) "Relevant matter" has the meaning given in section 58(8).
- (6) For the purposes of this section, a factor is not material unless it is a material difference between A's case and B's.

## **61 Exclusion of sex discrimination provisions**

P2010/15/70

- (1) The relevant sex discrimination provision has no effect in relation to a term of A's that—

- (a) is modified by, or included by virtue of, a sex equality clause or rule, or
  - (b) would be so modified or included but for section 60 or Part 2 of Schedule 7.
- (2) Neither of the following is sex discrimination for the purposes of the relevant sex discrimination provision —
- (a) the inclusion in A's terms of a term that is less favourable as referred to in section 57(2)(a);
  - (b) the failure to include in A's terms a corresponding term as referred to in section 57(2)(b).
- (3) The relevant sex discrimination provision is, in relation to work of a description given in the first column of the table, the provision referred to in the second column so far as relating to sex.

Description of work	Provision
Employment	Section 38(2)
Appointment to a personal office	Section 43(6)
Appointment to a public office	Section 44(6)

## 62 Sex discrimination in relation to contractual pay

P2010/15/71

- (1) This section applies in relation to a term of a person's work —
- (a) that relates to pay, but
  - (b) in relation to which a sex equality clause or rule has no effect.
- (2) The relevant sex discrimination provision (as defined by section 61) has no effect in relation to the term except in so far as treatment of the person amounts to a contravention of the provision by virtue of section 14 (direct discrimination) or section 15 (combined discrimination: dual characteristics).

### *Subdivision 2 — pregnancy and maternity equality*

## 63 Relevant types of work

P2010/15/72

This subdivision applies if a woman —

- (a) is employed, or
- (b) holds a personal or public office.



**64 Maternity equality clause**

P2010/15/73

- (1) If the terms of the woman's work do not (by whatever means) include a maternity equality clause, they are to be treated as including one.
- (2) A maternity equality clause is a provision that, in relation to the terms of the woman's work, has the effect referred to in section 65(1), (6) and (8).
- (3) In the case of a term relating to membership of or rights under an occupational pension scheme, a maternity equality clause has only such effect as a maternity equality rule would have.

**65 Maternity equality clause: pay**

P2010/15/74

- (1) A term of the woman's work that provides for maternity-related pay to be calculated by reference to her pay at a particular time is, if each of the following three conditions is satisfied, modified as mentioned in subsection (5).
  - (2) The first condition is that, after the time referred to in subsection (1) but before the end of the protected period—
    - (a) her pay increases, or
    - (b) it would have increased had she not been on maternity leave.
  - (3) The second condition is that the maternity-related pay is not—
    - (a) what her pay would have been had she not been on maternity leave, or
    - (b) the difference between the amount of maternity allowance to which she is entitled and what her pay would have been had she not been on maternity leave.
  - (4) The third condition is that the terms of her work do not provide for the maternity-related pay to be subject to—
    - (a) an increase as mentioned in subsection (2)(a), or
    - (b) an increase that would have occurred as mentioned in subsection (2)(b).
- (5) The modification referred to in subsection (1) is a modification to provide for the maternity-related pay to be subject to—
  - (a) any increase as mentioned in subsection (2)(a), or
  - (b) any increase that would have occurred as mentioned in subsection (2)(b).
- (6) A term of her work that—
  - (a) provides for pay within subsection (7), but

(b) does not provide for her to be given the pay in circumstances in which she would have been given it had she not been on maternity leave,

is modified so as to provide for her to be given it in circumstances in which it would normally be given.

(7) Pay is within this subsection if it is—

(a) pay (including pay by way of bonus) in respect of times before the woman is on maternity leave,

(b) pay by way of bonus in respect of times when she is on compulsory maternity leave, or

(c) pay by way of bonus in respect of times after the end of the protected period.

(8) A term of the woman's work that—

(a) provides for pay after the end of the protected period, but

(b) does not provide for it to be subject to an increase to which it would have been subject had she not been on maternity leave,

is modified so as to provide for it to be subject to the increase.

(9) Maternity-related pay is pay to which a woman is entitled—

(a) as a result of being pregnant, or

(b) in respect of times when she is on maternity leave.

(10) A reference to the protected period is to be construed in accordance with section 19 (pregnancy and maternity discrimination: work cases).

## 66 Maternity equality rule

P2010/15/75

(1) If an occupational pension scheme does not include a maternity equality rule, it is to be treated as including one.

(2) A maternity equality rule is a provision that has the effect set out in subsections (3) and (4).

(3) If a relevant term does not treat time when the woman is on maternity leave as it treats time when she is not, the term is modified so as to treat time when she is on maternity leave as time when she is not.

(4) If a term confers a relevant discretion capable of being exercised so that time when she is on maternity leave is treated differently from time when she is not, the term is modified so as not to allow the discretion to be exercised in that way.

(5) A term is relevant if it is—

(a) a term relating to membership of the scheme,

(b) a term relating to the accrual of rights under the scheme, or

- (c) a term providing for the determination of the amount of a benefit payable under the scheme.
- (6) A discretion is relevant if its exercise is capable of affecting—
  - (a) membership of the scheme,
  - (b) the accrual of rights under the scheme, or
  - (c) the determination of the amount of a benefit payable under the scheme.
- (7) This section does not require the woman's contributions to the scheme in respect of time when she is on maternity leave to be determined otherwise than by reference to the amount she is paid in respect of that time.
- (8) This section, so far as relating to time when she is on ordinary maternity leave but is not being paid by her employer, applies only in a case where the expected week of childbirth began on or after 30 September 2007.
- (9) This section, so far as relating to time when she is on additional maternity leave but is not being paid by her employer—
  - (a) does not apply to the accrual of rights under the scheme in any case;
  - (b) applies for other purposes only in a case where the expected week of childbirth began on or after 5 October 2008.
- (10) In this section—
  - (a) a reference to being on maternity leave includes a reference to having been on maternity leave, and
  - (b) a reference to being paid by the employer includes a reference to receiving statutory maternity pay from the employer.

## **67 Exclusion of pregnancy and maternity discrimination provisions**

P2010/15/76

- (1) The relevant pregnancy and maternity discrimination provision has no effect in relation to a term of the woman's work that is modified by a maternity equality clause or rule.
- (2) The relevant pregnancy and maternity discrimination provision has no effect in relation to a term of the woman's work—
  - (a) that relates to pay, but
  - (b) in relation to which a maternity equality clause or rule has no effect.
- (3) The inclusion in the woman's terms of a term that requires modification by virtue of section 64(2) or (3) is not pregnancy and maternity discrimination for the purposes of the relevant pregnancy and maternity discrimination provision.

- (4) The relevant pregnancy and maternity discrimination provision is, in relation to a description of work given in the first column of the table, the provision referred to in the second column so far as relating to pregnancy and maternity.

Description of work	Provision
Employment	Section 38(2)
Appointment to a personal office	Section 43(6)
Appointment to a public office	Section 44(6)

*Subdivision 3 — disclosure of information*

**68 Discussions about pay**

P2010/15/77

- (1) A term of a person's work that purports to prevent or restrict the person (P) from disclosing or seeking to disclose information about the terms of P's work is unenforceable against P in so far as P makes or seeks to make a relevant pay disclosure.
- (2) A term of a person's work that purports to prevent or restrict the person (P) from seeking disclosure of information from a colleague about the terms of the colleague's work is unenforceable against P in so far as P seeks a relevant pay disclosure from the colleague; and "colleague" includes a former colleague in relation to the work in question.
- (3) A disclosure is a relevant pay disclosure if made for the purpose of enabling the person who makes it, or the person to whom it is made, to find out whether or to what extent there is, in relation to the work in question, a connection between pay and having (or not having) a particular protected characteristic.
- (4) The following are to be treated as protected acts for the purposes of the relevant victimisation provision—
- seeking a disclosure that would be a relevant pay disclosure;
  - making or seeking to make a relevant pay disclosure;
  - receiving information disclosed in a relevant pay disclosure.
- (5) The relevant victimisation provision is, in relation to a description of work specified in the first column of the table, section 28 so far as it applies for the purposes of a provision mentioned in the second column.

Description of work	Provision by virtue of which section 28 has effect
Employment	Section 38(3) or (4)
Appointment to a personal	Section 43(5) or (8)

office	
Appointment to a public office	Section 44(5) or (9)

*Subdivision 4 — supplementary*

## 69 Comparators

P2010/15/79

- (1) This section applies for the purposes of this Division.
- (2) If A is employed, B is a comparator if subsection (3) or (4) applies.
- (3) This subsection applies if—
  - (a) B is employed by A’s employer or by an associate of A’s employer, and
  - (b) A and B work at the same establishment.
- (4) This subsection applies if—
  - (a) B is employed by A’s employer or an associate of A’s employer,
  - (b) B works at an establishment other than the one at which A works, and
  - (c) common terms apply at the establishments (either generally or as between A and B).
- (5) If A holds a personal or public office, B is a comparator if—
  - (a) B holds a personal or public office, and
  - (b) the person responsible for paying A is also responsible for paying B.
- (6) If A is a relevant member of Tynwald staff, B is a comparator if B is also a relevant member of Tynwald staff.
- (7) Section 41 does not apply to this Division; accordingly for the purposes of this Division only, holding the office of constable is to be treated as a personal office.
- (8) For the purposes of this section, employers are associated if —
  - (a) one is a company of which the other (directly or indirectly) has control;
  - (b) both are companies of which a third person (directly or indirectly) has control.

## 70 Interpretation and exceptions

P2010/15/80

- (1) This section applies for the purposes of this Division.
- (2) The terms of a person’s work are—

- (a) if the person is employed, the terms of the person's employment that are in the person's contract of employment, contract of apprenticeship or contract to do work personally;
  - (b) if the person holds a personal or public office, the terms of the person's appointment to the office.
- (3) If work is not done at an establishment, it is to be treated as done at the establishment with which it has the closest connection.
- (4) A person (P) is the responsible person in relation to another person if—
- (a) P is the other's employer;
  - (b) P is responsible for paying remuneration in respect of a personal or public office that the other holds.
- (5) A job evaluation study is a study undertaken with a view to evaluating, in terms of the demands made on a person by reference to factors such as effort, skill and decision-making, the jobs to be done by some or all of the workers in an undertaking or group of undertakings.
- (6) In the case of public sector employees —
- (a) the reference in subsection(5) to workers in an undertaking is to be construed as a reference to public sector employees assigned to a single stationed employer; and
  - (b) the reference in that subsection to workers in a group of undertakings is to be construed as a reference to employees of the Commission.
- Expressions used in this subsection and defined in section 3 of the *Public Services Commission Act 2015* have the same meanings here.
- (7) “**Civil partnership status**” has the meaning given in section 124(1) of the Pensions Act 1995 (of Parliament).
- (8) Schedule 7 (equality of terms — exceptions) has effect.

#### DIVISION 4 — SUPPLEMENTARY

### 71 Offshore work

P2010/15/82 (and the Parliamentary enactments referred to there)

- (1) The Council of Ministers may by order provide that in the case of persons engaged in offshore work specified provisions of this Part apply (with or without modification).
- (2) The order may —
- (a) provide for these provisions, as applied by the order, to apply to individuals (whether or not British citizens) and bodies corporate (whether or not incorporated under the law of the Island), whether or not such application affects activities outside the British Islands;

- (b) make provision for conferring jurisdiction on a specified court or class of court or on the Tribunal in respect of offences, causes of action or other matters arising in connection with offshore work;
  - (c) provide that proceedings for offences under the provisions mentioned in subsection (1) must not be brought without such consent as may be required by the Order.
- (3) “Offshore work” is work for the purposes of –
- (a) activities in the extended territorial sea;
  - (b) activities such as are mentioned in subsection (2) of section 11 of the Petroleum Act 1998 (of Parliament) in waters within subsection (8)(b) or (c) of that section, or
  - (c) anything taking place on, under or above a renewable energy installation in the extended territorial sea, on in relation to a related line.

Here “work” includes employment, contract work, a position as a partner on an appointment to a personal or a public office.

- (4) In this section –

“related line” means an electric line or part of an electric line which falls within subsection (5) but is not an electricity interconnector;

“renewable energy installation” means –

- (a) an offshore installation used for purposes connected with the production of energy from water or winds;
  - (b) an installation in the course of construction at a place where it is to be used as an offshore installation within paragraph (a);
  - (c) an installation which has ceased to be an installation within paragraph (a) while remaining an offshore installation (whether or not at the same place);
  - (d) an installation that is being decommissioned at a place where it has been an installation within paragraph (a) or (c);
  - (e) an installation in transit to or from a place where it is to be, or has been, used for purposes that would make it, or made it, an installation within paragraph (a);
  - (f) an installation in transit to or from a place where it is to be, or was, an installation within paragraph (c).
- (5) In subsection (4) “offshore installation” means an installation which is situated in waters where –
- (a) it permanently rests on, or is permanently attached to, the bed of the waters; and
  - (b) it is not connected with dry land by a permanent structure providing access at all times for all purposes.

- (6) The purposes referred to in subsection (4)(a) include, in particular —
- (a) the transmission, distribution and supply of electricity generated using water or winds; and
  - (b) the doing of anything (whether by way of investigations, trials or feasibility studies or otherwise) with a view to ascertaining whether the generation of electricity in that manner is, in a particular case, practicable or commercially viable, or both.

## 72 Interpretation and exceptions

P2010/15/83

- (1) This section applies for the purposes of this Part.
- (2) “**Employment**” means —
- (a) employment under a contract of employment, a contract of apprenticeship or a contract personally to do work;
  - (b) employment as a public sector employee (within the meaning of section 3(2) of the *Public Services Commission Act 2015*);
  - (c) employment as a relevant member of Tynwald staff.
- (3) A reference to an employer or an employee, is (subject to section 2(3) and (13)) to be read with subsections (1) and (2); and a reference to an employer also includes a reference to a person who has no employees but is seeking to employ one or more other persons.
- (4) A reference to a personal or public office, or to an appointment to a personal or public office, is to be construed in accordance with section 46.
- (5) Schedule 8 (reasonable adjustments) has effect.
- (6) Schedule 9 (exceptions) has effect.

## PART 6 — EDUCATION

### DIVISION 1 — SCHOOLS

## 73 Application of this Division

P2010/15/84

This Division does not apply to the following protected characteristics —

- (a) age;
- (b) marriage and civil partnership.

## 74 Pupils: admission and treatment, etc.

P2010/15/85

- (1) The responsible body of a school to which this section applies must not discriminate against a person —



- (a) in the arrangements it makes for deciding who is offered admission as a pupil;
  - (b) as to the terms on which it offers to admit the person as a pupil;
  - (c) by not admitting the person as a pupil.
- (2) The responsible body of such a school must not discriminate against a pupil—
  - (a) in the way it provides education for the pupil;
  - (b) in the way it affords the pupil access to a benefit, facility or service;
  - (c) by not providing education for the pupil;
  - (d) by not affording the pupil access to a benefit, facility or service;
  - (e) by excluding the pupil from the school;
  - (f) by subjecting the pupil to any other detriment.
- (3) The responsible body of such a school must not harass—
  - (a) a pupil;
  - (b) a person who has applied for admission as a pupil.
- (4) The responsible body of such a school must not victimise a person—
  - (a) in the arrangements it makes for deciding who is offered admission as a pupil;
  - (b) as to the terms on which it offers to admit the person as a pupil;
  - (c) by not admitting the person as a pupil.
- (5) The responsible body of such a school must not victimise a pupil—
  - (a) in the way it provides education for the pupil;
  - (b) in the way it affords the pupil access to a benefit, facility or service;
  - (c) by not providing education for the pupil;
  - (d) by not affording the pupil access to a benefit, facility or service;
  - (e) by excluding the pupil from the school;
  - (f) by subjecting the pupil to any other detriment.
- (6) A duty to make reasonable adjustments applies to the responsible body of such a school.
- (7) This section applies to—
  - (a) a school maintained by DEC;
  - (b) an independent educational institution (other than a special school);
  - (c) a special school (not maintained by DEC).
- (8) The responsible body of a school to which this section applies is—

- (a) if the school is within subsection (7)(a), DEC or the governing body;
- (b) if it is within subsection (7)(b) or (c), the proprietor.

## 75 **Victimisation of pupils, etc. for conduct of parents, etc.**

P2010/15/86

- (1) This section applies for the purposes of section 28 in its application to section 74(4) or (5).
- (2) The references to B in section 28(1)(a) and (b) include a reference to a parent or sibling of the child in question.
- (3) Giving false evidence or information, or making a false allegation, in good faith is not a protected act in a case where—
  - (a) the evidence or information is given, or the allegation is made, by a parent or sibling of the child, and
  - (b) the child has acted in bad faith.
- (4) Giving false evidence or information, or making a false allegation, in bad faith, is a protected act in a case where—
  - (a) the evidence or information is given, or the allegation is made, by a parent or sibling of the child, and
  - (b) the child has acted in good faith.
- (5) In this section—

“child” means a person who has not attained the age of 18;

“sibling” means a brother or sister, a half-brother or half-sister, or a stepbrother or stepsister.

## 76 **Disabled pupils: accessibility**

P2010/15/88

Schedule 10 (accessibility) has effect.

## 77 **Interpretation and exceptions**

P2010/15/89

- (1) This section applies for the purposes of this Division.
- (2) Nothing in this Division applies to anything done in connection with the content of the curriculum.
- (3) “**Pupil**” means a person attending, or registered at a school.
- (4) “**Proprietor**” has the meaning given by section 59(1) of the *Education Act 2001*.
- (5) “**School**” has the meaning given in section 59(1) of the *Education Act 2001*.

- (6) Schedule 11 (exceptions) has effect.

## DIVISION 2 – FURTHER AND HIGHER EDUCATION

### 78 **Students: admission and treatment, etc.**

P2010/15/91

- (1) This section applies to—
- (a) a university;
  - (b) the Isle of Man College.
- (2) The governing body of an institution to which this section applies must not discriminate against a person—
- (a) in the arrangements it makes for deciding who is offered admission as a student;
  - (b) as to the terms on which it offers to admit the person as a student;
  - (c) by not admitting the person as a student.
- (3) The governing body of such an institution must not discriminate against a student—
- (a) in the way it provides education for the student;
  - (b) in the way it affords the student access to a benefit, facility or service;
  - (c) by not providing education for the student;
  - (d) by not affording the student access to a benefit, facility or service;
  - (e) by excluding the student;
  - (f) by subjecting the student to any other detriment.
- (4) The governing body of such an institution must not discriminate against a disabled person—
- (a) in the arrangements it makes for deciding upon whom to confer a qualification;
  - (b) as to the terms on which it is prepared to confer a qualification on the person;
  - (c) by not conferring a qualification on the person;
  - (d) by withdrawing a qualification from the person or varying the terms on which the person holds it.
- (5) Subsection (4) applies only to disability discrimination.
- (6) The governing body of such an institution must not harass—
- (a) a student;
  - (b) a person who has applied for admission as a student;
  - (c) a disabled person who holds or has applied for a qualification conferred by the institution.

- (7) The governing body of such an institution must not victimise a person—
  - (a) in the arrangements it makes for deciding who is offered admission as a student;
  - (b) as to the terms on which it offers to admit the person as a student;
  - (c) by not admitting the person as a student.
- (8) The governing body of such an institution must not victimise a student—
  - (a) in the way it provides education for the student;
  - (b) in the way it affords the student access to a benefit, facility or service;
  - (c) by not providing education for the student;
  - (d) by not affording the student access to a benefit, facility or service;
  - (e) by excluding the student;
  - (f) by subjecting the student to any other detriment.
- (9) The governing body of such an institution must not victimise a disabled person—
  - (a) in the arrangements it makes for deciding upon whom to confer a qualification;
  - (b) as to the terms on which it is prepared to confer a qualification on the person;
  - (c) by not conferring a qualification on the person;
  - (d) by withdrawing a qualification from the person or varying the terms on which the person holds it.
- (10) A duty to make reasonable adjustments applies to the governing body of such an institution.

## **79 Further and higher education courses**

P2010/15/92

- (1) The responsible body in relation to a course to which this section applies must not discriminate against a person —
  - (a) in the arrangements it makes for deciding who is enrolled on the course;
  - (b) as to the terms on which it offers to enrol the person on the course;
  - (c) by not accepting the person's application for enrolment.
- (2) The responsible body in relation to such a course must not discriminate against a person who is enrolled on the course in the services it provides or offers to provide.
- (3) The responsible body in relation to such a course must not harass a person who —

- (a) seeks enrolment on the course;
  - (b) is enrolled on the course;
  - (c) is a user of services provided by the body in relation to the course.
- (4) The responsible body in relation to such a course must not victimise a person—
- (a) in the arrangements it makes for deciding who is enrolled on the course;
  - (b) as to the terms on which it offers to enrol the person on the course;
  - (c) by not accepting the person’s application for enrolment.
- (5) The responsible body in relation to such a course must not victimise a person who is enrolled on the course in the services it provides or offers to provide.
- (6) A duty to make reasonable adjustments applies to the responsible body.
- (7) This section applies to a course of further or higher education provided by—
- (a) a university; or
  - (b) the Isle of Man College.
- (8) For the purposes of this section the responsible body is the governing body of the institution in question.
- (9) In this section—
- “course”, in relation to further education, includes each component part of a course if there is no requirement imposed on persons registered for a component part of the course to register for another component part of the course;
- “enrolment” includes registration for a component part of a course;
- “services” means services of any description which are provided wholly or mainly for persons enrolled on a course to which this section applies.

## 80 Recreational or training facilities

P2010/15/93

- (1) A responsible body in relation to facilities to which this section applies must not discriminate against a person —
- (a) in the arrangements it makes for deciding who is provided with the facilities;
  - (b) as to the terms on which it offers to provide the facilities to the person;
  - (c) by not accepting the person’s application for provision of the facilities.

- (2) A responsible body must not discriminate against a person who is provided with such facilities in the services it provides or offers to provide.
- (3) A responsible body must not harass a person who —
  - (a) seeks to have the facilities provided;
  - (b) is provided with the facilities;
  - (c) is a user of services provided by the responsible body in relation to the facilities.
- (4) A responsible body must not victimise a person —
  - (a) in the arrangements it makes for deciding who is provided with the facilities;
  - (b) as to the terms on which it offers to provide the facilities to the person;
  - (c) by not accepting the person's application for provision of the facilities.
- (5) A responsible body must not victimise a person who is provided with the facilities in the services it provides or offers to provide.
- (6) A responsible body has a duty to make reasonable adjustments.
- (7) This section applies to —
  - (a) facilities provided under paragraph 1 of Schedule 1 to the *Tourist Act 1975* which are recreational facilities within the meaning given in section 2 of the *Recreation and Leisure Act 1998*;
  - (b) recreational facilities provided under section 1 of the *Recreation and Leisure Act 1998*;
  - (c) facilities provided under section 36(1) of the *Education Act 2001*.
- (8) For the purposes of this section the following are responsible bodies —
  - (a) in the case of facilities falling within subsection (7)(a), DED;
  - (b) in the case of facilities falling within subsection (7)(b) —
    - (i) DOI;
    - (ii) a local authority insofar as it provides recreational facilities under section 1 of the *Recreation and Leisure Act 1998* by virtue of an order under section 6 of that Act;
    - (iii) a joint board established (or treated as established) under section 7 of that Act; and
  - (c) in the case of facilities falling within subsection (7)(c), DEC.
- (9) This section does not apply to the protected characteristic of age, so far as relating to persons who have not attained the age of 18.

**81 Interpretation and exceptions**

P2010/15/94

- (1) This section applies for the purposes of this Division.
- (2) Nothing in this Division applies to anything done in connection with the content of the curriculum.
- (3) A reference to a student, in relation to an institution, is a reference to a person for whom education is provided by the institution.
- (4) A reference to a university includes a reference to a university college and college, school or hall of a university.
- (5) A reference to a conferring a qualification includes a reference —
  - (a) to renewing or extending the conferment or validity of a qualification;
  - (b) to authenticating a qualification conferred by another person.
- (6) Schedule 12 (further and higher education — exceptions) has effect.

## DIVISION 3 — MISCELLANEOUS

**82 Reasonable adjustments**

P2010/15/98

Schedule 13 (education — reasonable adjustments) has effect.

**83 Educational charities**

P2010/15/Sch 14, para 1

- (1) This section applies to a trust deed or other instrument—
  - (a) which concerns property applicable for or in connection with the provision of education in an establishment in the Island to which section 74 or 78 (admissions) applies, and
  - (b) which in any way restricts the benefits available under the instrument to persons of one sex.
- (2) Subsection (3) applies if, on the application of DEC, the trustees or the governing body, the Attorney General is satisfied that the removal or modification of the restriction would be conducive to the advancement of education without sex discrimination.
- (3) The Attorney General may by order make such modifications of the instrument as appear to the Attorney General expedient for removing or modifying the restriction.
- (4) If the trust was created by a gift or bequest, an order must not be made until the end of the period of 25 years after the date when the gift or bequest took effect.

- (5) But subsection (4) does not apply if the donor or the personal representatives of the donor or testator consent in writing to making the application for the order.
- (6) The Attorney General must require the applicant to publish a notice—
  - (a) containing particulars of the proposed order;
  - (b) stating that representations may be made to the Attorney General within a period specified in the notice.
- (7) The period must be not less than one month beginning with the day after the date of the notice.
- (8) The applicant must publish the notice in the manner specified by the Attorney General.
- (9) The cost of publication may be paid out of the property of the trust.

## PART 7 - ASSOCIATIONS

### *Preliminary*

#### **84 Application of this Part**

P2010/15/100

- (1) This Part does not apply to the protected characteristic of marriage and civil partnership.
- (2) This Part does not apply to discrimination, harassment or victimisation—
  - (a) that is prohibited by Part 3 (services and public functions), Part 4 (premises), Part 5 (work) or Part 6 (education), or
  - (b) that would be so prohibited but for an express exception.

#### **85 Members and associates**

P2010/15/101

- (1) An association (A) must not discriminate against a person (B)—
  - (a) in the arrangements A makes for deciding who to admit to membership;
  - (b) as to the terms on which A is prepared to admit B to membership;
  - (c) by not accepting B's application for membership.
- (2) An association (A) must not discriminate against a member (B)—
  - (a) in the way A affords B access, or by not affording B access, to a benefit, facility or service;
  - (b) by depriving B of membership;
  - (c) by varying B's terms of membership;



- (d) by subjecting B to any other detriment.
- (3) An association (A) must not discriminate against an associate (B)—
  - (a) in the way A affords B access, or by not affording B access, to a benefit, facility or service;
  - (b) by depriving B of B's rights as an associate;
  - (c) by varying B's rights as an associate;
  - (d) by subjecting B to any other detriment.
- (4) An association must not harass—
  - (a) a member;
  - (b) a person seeking to become a member;
  - (c) an associate.
- (5) An association (A) must not victimise a person (B)—
  - (a) in the arrangements A makes for deciding who to admit to membership;
  - (b) as to the terms on which A is prepared to admit B to membership;
  - (c) by not accepting B's application for membership.
- (6) An association (A) must not victimise a member (B)—
  - (a) in the way A affords B access, or by not affording B access, to a benefit, facility or service;
  - (b) by depriving B of membership;
  - (c) by varying B's terms of membership;
  - (d) by subjecting B to any other detriment.
- (7) An association (A) must not victimise an associate (B)—
  - (a) in the way A affords B access, or by not affording B access, to a benefit, facility or service;
  - (b) by depriving B of B's rights as an associate;
  - (c) by varying B's rights as an associate;
  - (d) by subjecting B to any other detriment.

## 86 Guests

P2010/15/102

- (1) An association (A) must not discriminate against a person (B)—
  - (a) in the arrangements A makes for deciding who to invite, or who to permit to be invited, as a guest;
  - (b) as to the terms on which A is prepared to invite B, or to permit B to be invited, as a guest;
  - (c) by not inviting B, or not permitting B to be invited, as a guest.

- (2) An association (A) must not discriminate against a guest (B) invited by A or with A's permission (whether express or implied)—
  - (a) in the way A affords B access, or by not affording B access, to a benefit, facility or service;
  - (b) by subjecting B to any other detriment.
- (3) An association must not harass—
  - (a) a guest;
  - (b) a person seeking to be a guest.
- (4) An association (A) must not victimise a person (B)—
  - (a) in the arrangements A makes for deciding who to invite, or who to permit to be invited, as a guest;
  - (b) as to the terms on which A is prepared to invite B, or to permit B to be invited, as a guest;
  - (c) by not inviting B, or not permitting B to be invited, as a guest.
- (5) An association (A) must not victimise a guest (B) invited by A or with A's permission (whether express or implied)—
  - (a) in the way A affords B access, or by not affording B access, to a benefit, facility or service;
  - (b) by subjecting B to any other detriment.

## 87 Sections 85 and 86: further provision

P2010/15/103

A duty to make reasonable adjustments applies to an association.

## 88 Interpretation and exceptions

P2010/15/107

- (1) This section applies for the purposes of this Part.
- (2) An “**association**” is an association of persons—
  - (a) which has at least 25 members, and
  - (b) admission to membership of which is regulated by the association's rules and involves a process of selection.
- (3) The Council of Ministers may by order amend subsection (2)(a) so as to substitute a different number for that for the time being specified there.
- (4) It does not matter—
  - (a) whether an association is incorporated;
  - (b) whether its activities are carried on for profit.
- (5) Membership is membership of any description; and a reference to a member is to be construed accordingly.

- (6) A person is an “associate”, in relation to an association, if the person—
  - (a) is not a member of the association, but
  - (b) in accordance with the association’s rules, has some or all of the rights as a member as a result of being a member of another association.
- (7) Schedule 14 (associations: reasonable adjustments) has effect.
- (8) Schedule 15 (associations: exceptions) has effect

## **PART 8 – PROHIBITED CONDUCT: ANCILLARY PROVISIONS**

### **89 Relationships that have ended**

P2010/15/108

- (1) A person (A) must not discriminate against another (B) if—
  - (a) the discrimination arises out of and is closely connected to a relationship which used to exist between them, and
  - (b) conduct of a description constituting the discrimination would, if it occurred during the relationship, contravene this Act.
- (2) A person (A) must not harass another (B) if—
  - (a) the harassment arises out of and is closely connected to a relationship which used to exist between them, and
  - (b) conduct of a description constituting the harassment would, if it occurred during the relationship, contravene this Act.
- (3) It does not matter whether the relationship ends before or after the commencement of this section.
- (4) A duty to make reasonable adjustments applies to A if B is placed at a substantial disadvantage as mentioned in section 21.
- (5) For the purposes of subsection (4), sections 21, 22 and 23 and the applicable Schedules are to be construed as if the relationship had not ended.
- (6) For the purposes of Part 9 (enforcement), a contravention of this section relates to the Part of this Act that would have been contravened if the relationship had not ended.
- (7) But conduct is not a contravention of this section in so far as it also amounts to victimisation of B by A.

## 90 Liability of employers and principals

P2010/15/109

- (1) Anything done by a person (A) in the course of A's employment must be treated as also done by the employer.
- (2) Anything done by an agent for a principal, with the authority of the principal, must be treated as also done by the principal.
- (3) It does not matter whether that thing is done with the employer's or principal's knowledge or approval.
- (4) In proceedings against A's employer (B) in respect of anything alleged to have been done by A in the course of A's employment it is a defence for B to show that B took all reasonable steps to prevent A—
  - (a) from doing that thing, or
  - (b) from doing anything of that description.
- (5) This section does not apply to offences under this Act (other than offences under Part 12 (disabled persons: transport)).

## 91 Liability of employees and agents

P2010/15/110

- (1) A person (A) contravenes this section if—
  - (a) A is an employee or agent,
  - (b) A does something which, by virtue of section 90(1) or (2), is treated as having been done by A's employer or principal (as the case may be), and
  - (c) the doing of that thing by A amounts to a contravention of this Act by the employer or principal (as the case may be).
- (2) It does not matter whether, in any proceedings, the employer is found not to have contravened this Act by virtue of section 90(4).
- (3) A does not contravene this section if—
  - (a) A relies on a statement by the employer or principal that doing that thing is not a contravention of this Act, and
  - (b) it is reasonable for A to do so.
- (4) A person (B) commits an offence if B knowingly or recklessly makes a statement mentioned in subsection (3)(a) which is false or misleading in a material respect.
- (5) A person guilty of an offence under subsection (4) is liable on summary conviction to a fine not exceeding £5,000.
- (6) Part 9 (enforcement) applies to a contravention of this section by A as if it were the contravention mentioned in subsection (1)(c).

- (7) The reference in subsection (1)(c) to a contravention of this Act does not include a reference to disability discrimination in contravention of Division 1 of Part 6 (schools).

## **92 Instructing, causing or inducing contraventions**

P2010/15/111

- (1) A person (A) must not instruct another (B) to do in relation to a third person (C) anything which contravenes Part 3, 4, 5, 6 or 7 or section 89(1) or (2) or 93(1) (a “basic contravention”).
- (2) A person (A) must not cause another (B) to do in relation to a third person (C) anything which is a basic contravention.
- (3) A person (A) must not induce another (B) to do in relation to a third person (C) anything which is a basic contravention.
- (4) For the purposes of subsection (3), inducement may be direct or indirect.
- (5) Proceedings for a contravention of this section may be brought—
- (a) by B, if B is subjected to a detriment as a result of A’s conduct;
  - (b) by C, if C is subjected to a detriment as a result of A’s conduct;
  - (c) by the Attorney General.
- (6) For the purposes of subsection (5), it does not matter whether—
- (a) the basic contravention occurs;
  - (b) any other proceedings are, or may be, brought in relation to A’s conduct.
- (7) This section does not apply unless the relationship between A and B is such that A is in a position to commit a basic contravention in relation to B.
- (8) A reference in this section to causing or inducing a person to do something includes a reference to attempting to cause or induce the person to do it.
- (9) For the purposes of Part 9 (enforcement), a contravention of this section is to be treated as relating—
- (a) in a case within subsection (5)(a), to the Part of this Act which, because of the relationship between A and B, A is in a position to contravene in relation to B;
  - (b) in a case within subsection (5)(b), to the Part of this Act which, because of the relationship between B and C, B is in a position to contravene in relation to C.

**93 Aiding contraventions**

P2010/15/112

- (1) A person (A) must not knowingly assist another (B) to do anything which contravenes Part 3, 4, 5, 6 or 7 or section 89(1) or (2) or 92 (a “basic contravention”).
- (2) It is not a contravention of subsection (1) if —
  - (a) A relies on a statement by B that the act for which the assistance is given does not contravene this Act, and
  - (b) it is reasonable for A to do so.
- (3) B commits an offence if B knowingly or recklessly makes a statement mentioned in subsection (2)(a) which is false or misleading in a material respect.
- (4) A person guilty of an offence under subsection (3) is liable on summary conviction to a fine not exceeding £5,000.
- (5) For the purposes of Part 9 (enforcement), a contravention of this section is to be treated as relating to the provision of this Act to which the basic contravention relates.
- (6) The reference in subsection (1) to a basic contravention does not include a reference to disability discrimination in contravention of Division 1 of Part 6 (schools).

**PART 9 – ENFORCEMENT****DIVISION 1 – INTRODUCTORY****94 Proceedings**

P2010/15/113

- (1) Proceedings relating to a contravention of this Act must be brought in accordance with this Part.
- (2) Subsection (1) does not prevent—
  - (a) a petition of dolence;
  - (b) proceedings under the Immigration Acts of Parliament; or
  - (c) proceedings under the Special Immigration Appeals Commission Act 1997 (of Parliament), if Her Majesty makes an Order in Council under section 9(3) of that Act applying that Act to the Island.
- (3) This section is subject to any express provision of this Act conferring jurisdiction on a court or tribunal.
- (4) The reference to a contravention of this Act includes a reference to a breach of an equality clause or rule.

- (5) Division 2 does not apply to proceedings relating to an equality clause or rule except in so far as Division 3 provides for that.
- (6) This section does not apply to—
  - (a) proceedings for an offence under this Act;
  - (b) proceedings relating to a penalty under Part 12 (disabled persons: transport).
- (7) For the purposes of this section —
  - (a) “the Immigration Acts of Parliament” means the enactments comprised in the expression “The Immigration Acts” as those enactments apply to the Island; and
  - (b) “The Immigration Acts” (without more) has the meaning ascribed to that expression by Schedule 1 to the Interpretation Act 1978 (of Parliament) as that Act applies in the United Kingdom.

## DIVISION 2 — THE TRIBUNAL

### 95 **Tribunal: constitution, functions and transition**

#### Drafting

- (1) There is constituted the Employment and Equality Tribunal (referred to in this Act as “**the Tribunal**”).
- (2) In consequence of subsection (1) Part XII of the Employment Act 2006 is amended as follows —
  - (a) for section 156 there is substituted—

#### **156 The Employment and Equality Tribunal**

Part 9 of the Equality Act 2015 makes provision about the constitution and functions of the Employment and Equality Tribunal, appeals to that Tribunal and appeals against its decisions and awards. **22**; and

- (b) the remaining provisions of the Part (including Schedule 3 to that Act, referred to in this section as “the former Schedule 3”) are repealed.
- (3) On the day appointed for coming into operation of this Division (referred to in this section as “the appointed day”) —
  - (a) all proceedings which, immediately before the appointed day were pending before the Employment Tribunal are transferred to the Tribunal;
  - (b) the person who, immediately before the appointed day held office as chairperson of the Employment Tribunal in accordance with paragraph 1(1)(a) of the former Schedule 3 becomes the chairperson of the Tribunal;

- (c) the persons who, immediately before the appointed day, held office as members of the panel of deputy chairpersons constituted under paragraph 1(1)(b) of the former Schedule 3 become members of the panel of deputy chairpersons of the panel of deputy chairpersons of the Tribunal constituted under Schedule 16;
  - (d) the persons who, immediately before the appointed day, held office as members of the employers' panel or of the employees' panel constituted in accordance with paragraph 1(1)(c) of the former Schedule 3 become members of —
    - (i) the corresponding panel constituted under Schedule 16 in respect of proceedings under the relevant enactments and proceedings under Part 5; and
    - (ii) the Tribunal for the purposes of proceedings under this Act other than those relating to Part 5.
- (4) In this Part “**the relevant enactments**” means —
- (a) the *Redundancy Payments Act 1990*;
  - (b) the *Shops Act 2000*;
  - (c) the *Minimum Wage Act 2001*; and
  - (d) the *Employment Act 2006*.

## 96 Tribunal's jurisdiction under this Act

- (1) The Tribunal has jurisdiction to determine a claim relating to —
- (a) a contravention of Part 3 (services and public functions);
  - (b) a contravention of Part 4 (premises);
  - (c) a contravention of Part 5 (work);
  - (c) a contravention of Part 6 (education);
  - (d) a contravention of Part 7 (associations);
  - (e) a contravention of section 89, 92 or 93 that relates to any of those Parts.
- (2) The Tribunal also has jurisdiction —
- (a) to determine an application by a responsible person (as defined by section 52) for a declaration as to the rights of that person and a worker in relation to a dispute about the effect of a non-discrimination rule;
  - (b) to determine an application by the trustees or managers of an occupational pension scheme for a declaration as to their rights and those of a member in relation to a dispute about the effect of a non-discrimination rule;
  - (c) to determine a question that —



- (i) relates to a non-discrimination rule, and
  - (ii) is referred to it by virtue of section 105.
- (3) In proceedings before the Tribunal on a complaint relating to a breach of a non-discrimination rule, the employer—
  - (a) is to be treated as a party, and
  - (b) is accordingly entitled to appear and be heard.
- (4) For subsection (1)—
  - (a) paragraph (a) does not apply to a claim under section 100;
  - (a) paragraph (d) does not apply to a contravention of section 47 (qualifications bodies) in so far as the act complained of may, by virtue of an enactment, be subject to an appeal or proceedings in the nature of an appeal; and
  - (b) the references to Part 5 (work) do not include a reference to section 51(1) (questions about health).
- (5) For the purposes of proceedings on a claim within subsection (1)(a) —
  - (a) a decision in proceedings on a claim mentioned in section 100(1) that an act is a contravention of Part 3 is binding;
  - (b) it does not matter whether the act occurs outside the Island.
- (6) In exercising the jurisdiction conferred by —
  - (a) subsection (1)(a), (b), (d) or (e), or
  - (b) section 89, 92 or 93 so far as relating to a contravention of any of the provisions mentioned in those paragraphs,

the Tribunal has power to do anything which the Court might do in civil proceedings before it (including, for example, granting an injunction or an execution order).
- (7) Anything done by the Tribunal under subsection (6) has the same effect as if it were done by the Court.
- (8) However, the Tribunal —
  - (a) must not grant an interim injunction unless satisfied that no criminal matter would be prejudiced by doing so; but
  - (b) must grant an application to stay proceedings under subsection (1) on grounds of prejudice to a criminal matter unless satisfied the matter will not be prejudiced.
- (9) Schedule 16, which re-enacts the former Schedule 3 with amendments consequential on the passing of this Act, has effect.
- (10) Schedule 16 makes provision (among other things) about —
  - (a) the composition of the Tribunal in different classes of proceedings, and
  - (b) the proceedings which may be brought before the Tribunal;

- (11) The Tribunal has —
- (a) in relation to matters relating to employment matters (other than those involving equality issues) —
    - (i) the functions conferred (before the commencement of this section) on the Employment Tribunal by Part XII of the *Employment Act 2006*;
    - (ii) the additional functions conferred on it by the amendments to that Act contained in Schedule 22;
  - (b) the jurisdiction conferred by sections 99(1) (non-work cases), 105 (work cases) and 110 (equality of terms).

## 97 Remedies for breach of provisions of the Employment Act 2006

2006/21/156

- (1) This section specifies remedies in relation to provisions of the *Employment Act 2006*, and in this section a reference to a numbered section or Part is to the section or Part of that Act which is so numbered.
- (2) The remedy of an employee for infringement of any of the rights conferred on the employee or for contravention of any obligation imposed by —
- (a) Part II rights during employment);
  - (b) sections, 35 to 48 (time off work provisions) of Part III rights arising in course of employment);
  - (c) sections 61 (detriment: health and safety), 62 (detriment: annual leave and other working time cases), 64 (detriment: protected disclosures), 67 (detriment on grounds related to trade union membership or activities), 68 (detriment: right to accompany, etc.) and 70 (detriment: assertion of statutory right) of Part V (detriment);
  - (d) Part VI (suspension from work on maternity grounds);
  - (e) Part VII (leave for family and domestic reasons);
  - (f) section 110 (right to written statement of reasons for dismissal) of Part IX (termination of employment);
  - (g) Part X (unfair dismissal);
  - (h) Part XI (insolvency and cessation of business); and
  - (i) sections 165 (part-time work: discrimination, 166 (limited-term employment) and 167 (annual leave and other working time cases),
- is by way of complaint or reference to the Tribunal and not otherwise.
- (3) The remedy of a worker in respect of any contravention of —
- (a) section 21 restrictions or deductions),
  - (b) section 22(1) (deductions on account of cash shortages),

- (c) section 23 (payments on account of cash shortages), and
  - (d) section 26(1) (supplementary provisions as to complaints),
- is by way of complaint under section 25 and not otherwise.
- (4) In relation to the rights conferred by —
    - (a) section 61 (detriment: health and safety),
    - (b) section 62 (detriment: annual leave and other working time cases),
    - (c) section 64 (detriment: protected disclosures),
    - (d) section 67 (detriment: trade union membership or activities),
    - (e) section 68 (detriment: right to accompany, etc.), and
    - (f) section 70 (detriment: assertion of statutory right),
 the reference in subsection (3) to an employee has effect as a reference to a worker.
  - (5) DED may by order extend the provisions of subsections (3) and (4) to include other provisions of the *Employment Act 2006*.
  - (6) Complaints to the Tribunal shall be commenced in accordance with Tribunal rules under Schedule 16.
  - (7) In this Part (and Schedule 16) “**complaint**” includes a claim, reference, application or appeal to the Tribunal.

## 98 Conciliation

2006/21/157

- (1) This section applies to a complaint to the Tribunal arising out of a contravention of, or an alleged contravention of —
  - (a) any of the relevant enactments;
  - (b) any regulations made under the Employment Act 2006 or
  - (c) any provision of this Act,
 where the Tribunal has jurisdiction to hear a complaint.
- (2) If at any time —
  - (a) a person (P) claims that action has been taken in respect of which proceedings could be brought by P before the Tribunal, but
  - (b) before any application relating to that action has been presented by P a request is made to a relevant officer whether by P or by the person against whom the proceedings could be instituted, to make the officer’s services available to them,
 the officer must endeavour to promote a settlement of the question without recourse to the Tribunal.
- (3) Where a person (“C”) has made a complaint to which this section applies and a copy of it has been sent to an officer, the officer must —

- (a) if requested to do so by C and the other party to the proceedings, or
  - (b) without such a request, if the officer considers that the officer could act under this subsection with a reasonable prospect of success,
- endeavour to promote a settlement of the question without its being determined by the Tribunal.
- (4) For the purpose of promoting a settlement in a case falling within subsection (1)(a) where the claimant has ceased to be employed by the other party to the dispute or proceedings —
    - (a) the relevant officer must in particular seek to promote the reinstatement or re-engagement of the claimant by that other party, or by a successor of his or hers or by an associated employer, on terms appearing to the industrial relations officer to be equitable;
    - (b) where the claimant does not wish to be reinstated or re-engaged, or where reinstatement or re-engagement is not practicable, and the parties desire the industrial relations officer to act under this section, the industrial relations officer shall seek to promote agreement between them as to a sum by way of compensation to be paid by that other party to the claimant.
  - (5) In acting under this section a relevant officer must, where appropriate, have regard to the desirability of encouraging the use of procedures, other than proceedings before the Tribunal, available for the settlement of grievances.
  - (6) Anything communicated to a relevant officer in connection with the performance of his or her functions under this section is not admissible in evidence in proceedings before the Tribunal, except with the consent of the person who communicated it to him or her.
  - (7) .

### DIVISION 3 — JURISDICTION IN NON-WORK CASES

#### **99 Jurisdiction — non work cases**

P2010/15/114

- (1) The Tribunal has jurisdiction to determine a claim relating to—
  - (a) a contravention of Part 3 services and public functions);
  - (b) a contravention of Part 4 (premises);
  - (c) a contravention of Part 6 (education);
  - (d) a contravention of Part 7 (associations);
  - (e) a contravention of section 89, 92 or 93 that relates to any of those Parts.

- (2) Subsection (1)(a) does not apply to a claim within section 100.
- (3) For the purposes of proceedings on a claim within subsection (1)(a)—
  - (a) a decision in proceedings on a claim mentioned in section 100(1) that an act is a contravention of Part 3 is binding;
  - (b) it does not matter whether the act occurs outside the Island.
- (4) The Tribunal—
  - (a) must not grant an interim injunction unless satisfied that no criminal matter would be prejudiced by doing so; but
  - (b) must grant an application to stay proceedings under subsection (1) on grounds of prejudice to a criminal matter unless satisfied the matter will not be prejudiced.

## 100 Immigration cases

P2010/15/115

- (1) A claim is within this section if it relates to the act of an immigration authority in taking a relevant decision and —
  - (a) the question whether the act is a contravention of Part 3 (services and public functions) has been or could be raised on an appeal which is pending, or could be brought, under the immigration provisions, or
  - (b) it has been decided on an appeal under those provisions that the act is not a contravention of Part 3.
- (2) The relevant decision is not—
  - (a) subject to challenge in proceedings on a claim within section 96(1)(a), or
  - (b) affected by the decision of the Tribunal or a court in such proceedings.
- (3) For the purposes of subsection (1)(a) a power to grant permission to appeal out of time must be ignored.
- (4) Each of the following is an immigration authority—
  - (a) the Governor;
  - (b) an immigration officer;
  - (c) a person responsible for the grant or refusal of entry clearance (within the meaning of section 33(1) of the Immigration Act 1971 (of Parliament)).
- (5) The “immigration provisions” means the provisions of Part 5 of the Nationality, Immigration and Asylum Act 2002 (of Parliament).
- (6) A relevant decision is—
  - (a) a decision under the Immigration Acts of Parliament relating to the entitlement of a person to enter or remain in the Island;

- (b) a decision on an appeal under the immigration provisions relating to a decision within paragraph (a).
- (7) An appeal is pending if it is pending for the purposes of section 104 of the Nationality, Immigration and Asylum Act 2002 (of Parliament).
- (8) Subsection (7) of section 94 (which concerns the construction of references to immigration statutes) applies for the purposes of this section as it applies for the purposes of that section.

## 101 Education cases

P2010/15/116

Schedule 17 (education cases: enforcement) has effect.

## 102 National security

P2010/15/117 (except subsection (2) – drafting)

- (1) Rules of court may, in relation to proceedings on a claim within section 99, confer power as mentioned in subsections (2) to (5); but a power so conferred is exercisable only if the Court thinks it expedient to do so in the interests of national security.
- (2) The rules may confer jurisdiction on the Court in place of the Tribunal (and may accordingly include provision modifying this Act in relation to proceedings to which they apply).
- (3) The rules may confer power to exclude from all or part of the proceedings –
  - (a) the claimant ;
  - (b) a representative of the claimant;
  - (c) an assessor.
- (4) The rules may confer power to permit a claimant or representative who has been excluded to make a statement to the court before the commencement of the proceedings, or part of the proceedings, to which the exclusion relates.
- (5) The rules may confer power to take steps to keep secret all or part of the reasons for the Court’s decision.
- (6) The Attorney General may appoint a person to represent the interests of a claimant in, or in any part of, proceedings to which an exclusion by virtue of subsection (2)(a) or (b) relates.
- (7) A person (P) may be appointed under subsection (5) only if P is qualified to act as an advocate in accordance with section 7 of the *Advocates Act 1976*.
- (8) P is not responsible to the person whose interests P is appointed to represent.

- (9) Rules of court under this section are to be made by the Deemsters and to be laid before Tynwald as soon as reasonably practicable after they are made.

### 103 Time limits

P2010/15/118

- (1) Proceedings on a claim within section 99 may not be brought after the end of—
  - (a) the period of 6 months starting with the date of the act to which the claim relates, or
  - (b) such other period as the Tribunal thinks just and equitable.
- (2) If it has been decided under the immigration provisions that the act of an immigration authority in taking a relevant decision is a contravention of Part 3 (services and public functions), subsection (1) has effect as if for paragraph (a) there were substituted—
  - “(a) the period of 6 months starting with the day after the expiry of the period during which, as a result of section 96(2) proceedings could not be brought in reliance on section 96(1)(a);”.
- (3) For the purposes of this section—
  - (a) conduct extending over a period is to be treated as done at the end of the period;
  - (b) failure to do something is to be treated as occurring when the person in question decided on it.
- (4) In the absence of evidence to the contrary, a person (P) is to be taken to decide on failure to do something—
  - (a) when P does an act inconsistent with doing it, or
  - (b) if P does no inconsistent act, on the expiry of the period in which P might reasonably have been expected to do it.
- (5) In this section “immigration authority”, “immigration provisions” and “relevant decision” each have the meaning given in section 100.

### 104 Remedies

P2010/15/119

- (1) This section applies if the Court finds that there has been a contravention of a provision referred to in section 96(1).
- (2) The Court may grant any remedy which it could have granted —
  - (a) in proceedings in tort;
  - (b) on a petition of dolance.
- (3) An award of damages may include compensation for injured feelings (whether or not it includes compensation on any other basis).

- (4) Subsection (5) applies if the Court—
  - (a) finds that a contravention of a provision referred to in section 96(1) is established by virtue of section 20 (indirect discrimination), but
  - (b) is satisfied that the provision, criterion or practice was not applied with the intention of discriminating against the claimant.
- (5) The Court must not make an award of damages unless it first considers whether to make any other disposal.
- (6) The Court must not grant a remedy, other than an award of damages or the making of a declaration, unless satisfied that doing so would not prejudice a criminal matter.

#### DIVISION 4 — JURISDICTION IN WORK CASES

### 105 Jurisdiction

- (1) The Tribunal has jurisdiction to determine a complaint relating to—
  - (a) a contravention of Part 5 (work);
  - (b) a contravention of section 89, 92 or 93 that relates to Part 5.
- (2) The Tribunal has jurisdiction to determine an application by a responsible person (as defined by section 52) for a declaration as to the rights of that person and a worker in relation to a dispute about the effect of a non-discrimination rule.
- (3) The Tribunal also has jurisdiction to determine an application by the trustees or managers of an occupational pension scheme for a declaration as to their rights and those of a member in relation to a dispute about the effect of a non-discrimination rule.
- (4) In proceedings before the Tribunal on a complaint relating to a breach of a non-discrimination rule, the employer—
  - (a) is to be treated as a party, and
  - (b) is accordingly entitled to appear and be heard.
- (5) Subsection (1)(a) does not apply to a contravention of section 47 in so far as the act complained of may, by virtue of an enactment, be subject to an appeal or proceedings in the nature of an appeal.
- (6) In subsection (1), the references to Part 5 do not include a reference to section 51(1).

### 106 References by Court to Tribunal, etc.

P2010/15/122

- (1) If it appears to the Court, in respect of proceedings before it, that a claim or counter-claim relating to a non-discrimination rule could more



conveniently be determined by the Tribunal, the Court may strike out the claim or counter-claim.

- (2) If in proceedings before the Court a question arises about a non-discrimination rule, the Court may (whether or not on an application by a party to the proceedings)—
  - (a) refer the question, or direct that it be referred by a party to the proceedings, to the Tribunal for determination, and
  - (b) stay the proceedings in the meantime.

## 107 Time limits

P2010/15/123

- (1) Proceedings on a complaint within section 105 may not be brought after the end of—
  - (a) the period of 3 months starting with the date of the act to which the complaint relates, or
  - (b) such other period as the Tribunal thinks just and equitable.
- (2) For the purposes of this section—
  - (a) conduct extending over a period is to be treated as done at the end of the period;
  - (b) failure to do something is to be treated as occurring when the person in question decided on it.
- (3) In the absence of evidence to the contrary, a person (P) is to be taken to decide on failure to do something—
  - (a) when P does an act inconsistent with doing it, or
  - (b) if P does no inconsistent act, on the expiry of the period in which P might reasonably have been expected to do it.

## 108 Remedies: general

P2010/15/124

- (1) This section applies if the Tribunal finds that there has been a contravention of a provision referred to in section 105.
- (2) The Tribunal may do one or more of the following —
  - (a) make a declaration as to the rights of the complainant and the respondent in relation to the matters to which the proceedings relate;
  - (b) order the respondent to pay compensation to the complainant;
  - (c) make an appropriate recommendation.
- (3) An appropriate recommendation is a recommendation that within a specified period the respondent takes specified steps for the purpose of

- obviating or reducing the adverse effect of any matter to which the proceedings relate—
- (a) on the complainant;
  - (b) on any other person.
- (4) Subsection (5) applies if the Tribunal—
- (a) finds that a contravention is established by virtue of section 20 (indirect discrimination), but
  - (b) is satisfied that the provision, criterion or practice was not applied with the intention of discriminating against the complainant.
- (5) The Tribunal must not make an order under subsection (2)(b) unless it first considers whether to act under subsection (2)(a) or (c).
- (6) The amount of compensation awarded to a person under subsection (2)(b) must not exceed the limit for the time being imposed by section 144(1) of the *Employment Act 2006*.
- (7) If a respondent fails, without reasonable excuse, to comply with an appropriate recommendation in so far as it relates to the complainant, the tribunal may —
- (a) if an order was made under subsection (2)(b), increase the amount of compensation to be paid; or
  - (b) if no such order was made, make one.

## **109 Remedies: occupational pension schemes**

P2010/15/126

- (1) This section applies if the Tribunal finds that there has been a contravention of a provision referred to in section 105 in relation to—
- (a) the terms on which persons become members of an occupational pension scheme, or
  - (b) the terms on which members of an occupational pension scheme are treated.
- (2) In addition to anything which may be done by the Tribunal under section 108 the Tribunal may also by order declare—
- (a) if the complaint relates to the terms on which persons become members of a scheme, that the complainant has a right to be admitted to the scheme;
  - (b) if the complaint relates to the terms on which members of the scheme are treated, that the complainant has a right to membership of the scheme without discrimination.
- (3) The Tribunal may not make an order under subsection (2)(b) of section 108 unless—
- (a) the compensation is for injured feelings, or

- (b) the order is made by virtue of subsection (7) of that section.
- (4) An order under subsection (2)—
  - (a) may make provision as to the terms on which or the capacity in which the claimant is to enjoy the admission or membership;
  - (b) may have effect in relation to a period before the order is made.

## DIVISION 5 — EQUALITY OF TERMS

### 110 Jurisdiction

P2010/15/127

- (1) The Tribunal has jurisdiction to determine a complaint relating to a breach of an equality clause or rule.
- (2) The jurisdiction conferred by subsection (1) includes jurisdiction to determine a complaint arising out of a breach of an equality clause or rule; and a reference in this Division to a complaint relating to such a breach is to be read accordingly.
- (3) The Tribunal also has jurisdiction to determine an application by a responsible person for a declaration as to the rights of that person and a worker in relation to a dispute about the effect of an equality clause or rule.
- (4) The Tribunal also has jurisdiction to determine an application by the trustees or managers of an occupational pension scheme for a declaration as to their rights and those of a member in relation to a dispute about the effect of an equality rule.
- (5) The Tribunal also has jurisdiction to determine a question that—
  - (a) relates to an equality clause or rule, and
  - (b) is referred to the tribunal by virtue of section 111(2).
- (6) In proceedings before the Tribunal on a complaint relating to a breach of an equality rule, the employer—
  - (a) is to be treated as a party, and
  - (b) is accordingly entitled to appear and be heard.
- (7) Nothing in this section affects such jurisdiction as the Court has in relation to an equality clause or rule.

### 111 References by Court to Tribunal

P2010/15/128

- (1) If proceedings are pending in the Court and it appears that a claim or counter-claim relating to an equality clause or rule could more conveniently be determined by the Tribunal, the Court may strike out the claim or counter-claim.

- (2) If in proceedings before the Court a question arises about an equality clause or rule, the Court may (whether or not on an application by a party to the proceedings)—
- (a) refer the question, or direct that it be referred by a party to the proceedings, to the Tribunal for determination, and
  - (b) stay the proceedings in the meantime.

## 112 Time limits

P2010/15/129

- (1) This section applies to —
- (a) a complaint relating to a breach of an equality clause or rule;
  - (b) an application for a declaration referred to in section 110(3) or (4).
- (2) Proceedings on the complaint or application may not be brought before the Tribunal after the end of the qualifying period.
- (3) If the complaint or application relates to terms of work, the qualifying period is, in a case mentioned in column 1 of the table, the period mentioned in column 2.

Case	Qualifying period
A standard case	The period of 6 months beginning with the last day of the employment or appointment.
A stable work case (but not if it is also a concealment or incapacity case (or both)).	The period of 6 months beginning with the day on which the stable working relationship ended.
A concealment case (but not if it is also an incapacity case).	The period of 6 months beginning with the day on which the worker discovered (or could with reasonable diligence have discovered) the qualifying fact.
An incapacity case (but not if it is also a concealment case).	The period of 6 months beginning with the day on which the worker ceased to have the incapacity.
A case which is a concealment case and an incapacity case.	The period of 6 months beginning with the later of the days on which the period would begin if the case were merely a concealment or incapacity case.

- (4) For the purposes of this section —
- (a) a standard case is one which is not —
    - (i) a stable work case;
    - (ii) a concealment case;
    - (iii) an incapacity case; or

- (iv) a concealment and an incapacity case.
  - (b) a stable work case is a case where the proceedings relate to a period during which there was a stable working relationship between the worker and the responsible person (including any time after the terms of work had expired);
  - (c) a concealment case in proceedings relating to an equality clause is a case where —
    - (i) the responsible person deliberately concealed a qualifying fact from the worker, and
    - (ii) the worker did not discover (and could not with reasonable diligence have discovered) the qualifying fact until after the relevant day;
  - (d) a concealment case in proceedings relating to an equality rule is a case where —
    - (i) the employer or the trustees or managers of the occupational pension scheme in question deliberately concealed a qualifying fact from the member; and
    - (ii) the member did not discover (and could not with reasonable diligence have discovered) the qualifying fact until after the relevant day;
  - (e) an incapacity case in proceedings relating to an equality clause with respect to terms of work is a case where the worker had an incapacity during the period of 6 months beginning with the later of —
    - (i) the relevant day, or
    - (ii) the day on which the worker discovered (or could with reasonable diligence have discovered) the qualifying fact deliberately concealed from the worker by the responsible person; and
  - (f) an incapacity case in proceedings relating to an equality rule is a case where the member of the occupational pension scheme in question had an incapacity during the period of 6 months beginning with the later of—
    - (i) the relevant day, or
    - (ii) the day on which the member discovered (or could with reasonable diligence have discovered) the qualifying fact deliberately concealed from the member by the employer or the trustees or managers of the scheme.
- (5) For the purposes of this section the “relevant day” is the later of —
- (a) the last day of the employment or appointment, or
  - (b) the day on which the stable working relationship between the worker and the responsible person ended.

- (6) For the purposes of subsection (4)(c) or (d) a qualifying fact is a fact —
  - (a) which is relevant to the complaint; and
  - (b) without knowledge of which the worker or member could not reasonably have been expected to bring the proceedings.

### **113 Assessment of whether work is of equal value**

P2010/15/131

- (1) This section applies to proceedings before the Tribunal on—
  - (a) a complaint relating to a breach of an equality clause or rule, or
  - (b) a question referred to the Tribunal under section 111(2).
- (2) If a question arises in the proceedings as to whether one person's work is of equal value to another's, the Tribunal may, before determining the question, require a qualified person to prepare a report on the question.
- (3) The Tribunal may withdraw a requirement that it makes under subsection (2); and, if it does so, it may—
  - (a) request the qualified person to provide it with specified documentation;
  - (b) make such other requests to that person as are connected with the withdrawal of the requirement.
- (4) If the Tribunal requires the preparation of a report under subsection (2) (and does not withdraw the requirement), it must not determine the question unless it has received the report.
- (5) Subsection (6) applies where—
  - (a) a question arises in the proceedings as to whether the work of one person (A) is of equal value to the work of another (B), and
  - (b) A's work and B's work have been given different values by a job evaluation study.
- (6) The Tribunal must determine that A's work is not of equal value to B's work unless it has reasonable grounds for suspecting that the evaluation contained in the study—
  - (a) was based on a system that discriminates because of sex, or
  - (b) is otherwise unreliable.
- (7) For the purposes of subsection (6)(a), a system discriminates because of sex if a difference (or coincidence) between values that the system sets on different demands is not justifiable regardless of the sex of the person on whom the demands are made.
- (8) In this section —  
“job evaluation study” has the meaning given in section 70(5); and

“qualified person” means a person approved by a body with which the Appointments Commission has entered into arrangements for the provision of reports, documents and information under this section.

## **114 Remedies in non-pensions cases**

P2010/15/132

- (1) This section applies to proceedings before the Tribunal on a complaint relating to a breach of an equality clause, other than a breach with respect to membership of or rights under an occupational pension scheme.
- (2) If the Tribunal finds that there has been a breach of the equality clause, it may—
  - (a) make a declaration as to the rights of the parties in relation to the matters to which the proceedings relate;
  - (b) order an award by way of arrears of pay or damages in relation to the complainant.
- (3) The Tribunal may not order a payment under subsection (2)(b) in respect of a time before the arrears day.  
This is subject to subsection (4).
- (4) In the case of a claim which is based on the claimant’s work being of equal value to that of another person, the Tribunal may not make an order in respect of any day before section 113 comes into operation.
- (5) For the purposes of subsection (3) “the arrears day” is—
  - (a) the day falling 2 years before that on which this section comes into operation; or
  - (b) if later—
    - (i) in a standard case, the day falling 6 years before the day on which the proceedings were instituted; and
    - (ii) in a concealment case, or an incapacity case or a case which is both a concealment case and an incapacity case, the day on which the breach first occurred.

## **115 Remedies in pensions cases**

P2010/15/133

- (1) This section applies to proceedings before the Court or Tribunal on a complaint relating to—
  - (a) a breach of an equality rule, or
  - (b) a breach of an equality clause with respect to membership of, or rights under, an occupational pension scheme.
- (2) If the Court or Tribunal finds that there has been a breach as referred to in subsection (1)—

- (a) it may make a declaration as to the rights of the parties in relation to the matters to which the proceedings relate;
  - (b) it must not order arrears of benefits or damages or any other amount to be paid to the complainant.
- (3) Subsection (2)(b) does not apply if the proceedings are proceedings to which section 116 applies.
  - (4) If the breach relates to a term on which persons become members of the scheme, the Tribunal may declare that the complainant is entitled to be admitted to the scheme with effect from a specified date.
  - (5) A date specified for the purposes of subsection (4) must not be before 6 April 2006.
  - (6) If the breach relates to a term on which members of the scheme are treated, the Tribunal may declare that the complainant is, in respect of a specified period, entitled to secure the rights that would have accrued if the breach had not occurred.
  - (7) A period specified for the purposes of subsection (6) must not begin before 6 April 2006.
  - (8) If the Court or Tribunal makes a declaration under subsection (6), the employer must provide such resources to the scheme as are necessary to secure for the complainant (without contribution or further contribution by the complainant or other members) the rights referred to in that subsection.

## **116 Remedies in claims for arrears brought by pensioner members**

P2010/15/134

- (1) This section applies to proceedings before the Tribunal on a complaint by a pensioner member of an occupational pension scheme relating to a breach of an equality clause or rule with respect to a term on which the member is treated.
- (2) If the Tribunal finds that there has been a breach referred to in subsection (1), it may—
  - (a) make a declaration as to the rights of the complainant and the respondent in relation to the matters to which the proceedings relate;
  - (b) order an award by way of arrears of benefits or damages or of any other amount in relation to the complainant.
- (3) The Tribunal must not order an award under subsection (2)(b) in respect of a time before the arrears day.
- (4) If the Tribunal orders an award under subsection (2)(b), the employer must provide such resources to the scheme as are necessary to secure for



the complainant (without contribution or further contribution by the complainant or other members) the amount of the award.

- (5) For the purposes of subsection (3) “the arrears day” is —
  - (a) in a standard case, the day falling 6 years before the day on which the proceedings were instituted; and
  - (b) in a concealment case, or an incapacity case or a case which is both a concealment case and an incapacity case, the day on which the breach first occurred.
- (6) In a case falling within subsection (5)(b) and in which proceedings are instituted within 6 years of the commencement of this section, for the words following “day” in that paragraph substitute “falling 6 years before the day on which the proceedings were instituted”.

## **117 Remedies: supplementary**

P2010/15/135

- (1) This section applies for the purposes of sections 114 to 116.
- (2) A standard case is a case which is not—
  - (a) a concealment case,
  - (b) an incapacity case, or
  - (c) a concealment case and an incapacity case.
- (3) A concealment case in relation to an equality clause is a case where—
  - (a) the responsible person deliberately concealed a qualifying fact (as defined by section 112) from the worker, and
  - (b) the worker commenced the proceedings before the end of the period of 6 years beginning with the day on which the worker discovered (or could with reasonable diligence have discovered) the qualifying fact.
- (4) A concealment case in relation to an equality rule is a case where—
  - (a) the employer or the trustees or managers of the occupational pension scheme in question deliberately concealed a qualifying fact (as defined by section 112) from the member, and
  - (b) the member commenced the proceedings before the end of the period of 6 years beginning with the day on which the member discovered (or could with reasonable diligence have discovered) the qualifying fact.
- (5) An incapacity case is a case where the worker or member—
  - (a) had an incapacity when the breach first occurred, and
  - (b) commenced the proceedings before the end of the period of 6 years beginning with the day on which the worker or member ceased to have the incapacity.

- (6) A reference to a pensioner member of a scheme includes a reference to a person who is entitled to the present payment of pension or other benefits derived through a member.
- (7) In relation to proceedings before the Court—
- (a) a reference to a complaint is to be read as a reference to a claim, and
- (b) a reference to a complainant is to be read as a reference to a claimant.

#### DIVISION 6 — APPEALS

### 118 Appeals

- (1) Any person who is aggrieved by any decision, determination, order or award of the Tribunal under this Act or any of the Acts listed below may appeal to the High Court on a question of law.

The Acts are —

- the *Redundancy Payments Act 1990*,
  - the *Shops Act 2000*,
  - the *Minimum Wage Act 2001*,
  - the *Employment Act 2006*.
- (2) On an appeal under this section the High Court may exercise any power of the Tribunal or may remit the case to the Tribunal.
- (3) Any decision, determination, order or award of the High Court on such an appeal shall have the same effect and may be enforced in the same manner as a decision or award of the Tribunal.
- (4) Any sum payable in pursuance of a determination, order or award of the High Court on an appeal under this section shall be treated as if it were a sum payable in pursuance of a determination, order or award of the Tribunal for the purposes of paragraph 14 of Schedule 16 (interest on sums awarded).

#### DIVISION 7 — MISCELLANEOUS

### 119 Enforcement of awards etc. of Tribunal

2006/21/159

- (1) If on an appeal, reference or complaint, or in any other proceedings, under this Act or any of the relevant enactments the Tribunal —
- (a) determines that a party to the proceedings is entitled to be paid any sum by another such party; or
- (b) orders a party to the proceedings to pay or repay any sum to another such party, or

- (c) makes an award of compensation,  
the Tribunal may grant execution for the sum or the amount of the award, as the case may be.
- (2) An execution granted under subsection (1) is enforceable in the same manner as an execution of the High Court

## 120 Burden of proof

P2010/15/136

- (1) This section applies to any proceedings relating to a contravention of this Act.
- (2) If there are facts from which the Court or Tribunal, or the Rent and Rating Commissioners could decide, in the absence of any other explanation, that a person (A) contravened the provision concerned, the body in question must hold that the contravention occurred.
- (3) But subsection (2) does not apply if A shows that A did not contravene the provision.
- (4) The reference to a contravention of this Act includes a reference to a breach of an equality clause or rule.
- (5) This section does not apply to proceedings for an offence under this Act.

## 121 Previous findings

P2010/15/137

- (1) A finding in relevant proceedings in respect of an act which has become final is to be treated as conclusive in proceedings under this Act.
- (2) Relevant proceedings are proceedings before a court or the Employment Tribunal —
  - (a) under —
    - (i) the *Employment (Sex Discrimination) Act 2000*;
    - (ii) the *Race Relations Act 2004*; or
  - (b) relating to a dismissal to which section 125, 126 or 127, or any of subsections (12) to (14) of section 128 of the *Employment Act 2006* (dismissals on grounds of race, religion or sexual orientation, or redundancy where one of those grounds was the reason or principal reason for selecting the applicant for dismissal) applies .
- (3) A finding becomes final —
  - (a) when an appeal against the finding is dismissed, withdrawn or abandoned, or
  - (b) when the time for appealing expires without an appeal having been brought.

**122 Interest**

P2010/15/139

The Council of Ministers may make an order containing provision —

- (a) enabling the Tribunal to include interest on an amount awarded by it in proceedings under this Act;
- (b) specifying the manner in which, and the periods and rate by reference to which, the interest is to be determined;
- (c) modifying the operation of an order made under paragraph 14 of Schedule 16 (or under paragraph 11 of Part II of Schedule 3 to the *Employment Act 2006*) (interest on sums awarded) so far as it relates to an award in proceedings.

**123 Equal pay audits**

P2010/15/139A

- (1) DED may make regulations requiring the Tribunal to order the respondent to carry out an equal pay audit in any case where the Tribunal finds that there has been an equal pay breach.
- (2) An equal pay breach is—
  - (a) a breach of an equality clause, or
  - (b) a contravention in relation to pay of section 38(2), 43(6) or 44(6), so far as relating to sex discrimination.
- (3) An equal pay audit is an audit designed to identify action to be taken to avoid equal pay breaches occurring or continuing.
- (4) The regulations may make further provision about equal pay audits, including provision about—
  - (a) the content of an audit;
  - (b) the powers and duties of the Tribunal for deciding whether its order has been complied with;
  - (c) circumstances in which an audit may be required to be published or may be disclosed to any person.
- (5) The regulations must provide for an equal pay audit not to be ordered if the tribunal considers that—
  - (a) an audit completed by the respondent in the previous 3 years meets requirements prescribed for this purpose,
  - (b) it is clear without an audit whether any action is required to avoid equal pay breaches occurring or continuing,
  - (c) the breach the tribunal has found gives no reason to think that there may be other breaches, or
  - (d) the disadvantages of an equal pay audit would outweigh its benefits.

- (6) The regulations may provide for an employment tribunal to have power, where a person fails to comply with an order to carry out an equal pay audit, to order that person to pay a penalty of not more than an amount specified in the regulations.
- (7) The regulations may provide for the power in subsection (6) to be exercisable more than once, if the failure to comply continues.
- (8) The first regulations made by virtue of subsection (6) must not specify an amount of more than £5,000.
- (9) Penalties form part of the General Revenue of the Island.
- (10) The first regulations under this section must specify an exemption period during which the requirement to order an equal pay audit does not apply in the case of a business that—
  - (a) had fewer than 10 employees immediately before a specified time, or
  - (b) was begun as a new business in a specified period.
- (11) For the purposes of subsection (10)—
  - (a) “**specified**” means specified in the regulations, and
  - (b) the number of employees a business had or the time when a business was begun as a new business is to be determined in accordance with the regulations.

## 124 Conduct giving rise to separate proceedings

P2010/15/140(1) to (5)

- (1) This section applies in relation to conduct which has given rise to two or more separate proceedings under this Act, with at least one being for a contravention of section 92 (instructing, causing or inducing contraventions).
- (2) The Court may transfer proceedings to the Tribunal.
- (3) The Tribunal may transfer proceedings to the Court.
- (4) The Court or Tribunal is to be taken for the purposes of this Part to have jurisdiction to determine a claim or complaint transferred to it under this section; accordingly references to proceedings before the Court or the Tribunal includes a reference to proceedings transferred under this section.

## 125 Interpretation, etc.

P2010/15/141(1) to (5) and (9) and drafting (subsection (6)).

- (1) This section applies for the purposes of this Part.
- (2) A reference to the responsible person, in relation to an equality clause or rule, is to be construed in accordance with Division 3 of Part 5.

- (3) A reference to a worker is a reference to the person to the terms of whose work the proceedings in question relate; and, for the purposes of proceedings relating to an equality rule or a non-discrimination rule, a reference to a worker includes a reference to a member of the occupational pension scheme in question.
- (4) A reference to the terms of a person's work is to be construed in accordance with Division 3 of Part 5.
- (5) A reference to a member of an occupational pension scheme includes a reference to a prospective member.
- (6) A person lacks capacity if the person —
  - (a) has not attained the age of 18, or
  - (b) is unable to make a decision for himself or herself because of an impairment of, or a disturbance in the functioning of, the mind or brain.

It does not matter whether the disturbance or impairment is temporary or permanent.

- (7) “**Criminal matter**” means —
  - (a) an investigation into the commission of an alleged offence;
  - (b) a decision whether to commence criminal proceedings;
  - (c) criminal proceedings.

## PART 10 — CONTRACTS, ETC

### DIVISION 1— CONTRACTS AND OTHER AGREEMENTS

#### 126 Unenforceable terms

P2010/15/142

- (1) A term of a contract is unenforceable against a person in so far as it constitutes, promotes or provides for treatment of that or another person that is of a description prohibited by this Act.
- (2) A relevant non-contractual term is unenforceable against a person in so far as it constitutes, promotes or provides for treatment of that or another person that is of a description prohibited by this Act, in so far as this Act relates to disability.
- (3) A relevant non-contractual term is a term that —
  - (a) is a term of an agreement that is not a contract, and
  - (b) relates to the provision of an employment service within section 48(8)(a) to (e) or to the provision under a group insurance arrangement of facilities by way of insurance.

- (4) A reference in subsection (1) or (2) to treatment of a description prohibited by this Act does not include —
  - (a) a reference to the inclusion of a term in a contract referred to in section 61(2)(a) or 67(2), or
  - (b) a reference to the failure to include a term in a contract as referred to in section 61(2)(b).
- (5) Subsection (4) does not affect the application of section 131(2) to this section.

## **127 Removal or modification of unenforceable terms**

P2010/15/143

- (1) The Tribunal may, on an application by a person who has an interest in a contract or other agreement which includes a term that is unenforceable as a result of section 126, make an order for the term to be removed or modified.
- (2) An order under this section must not be made unless every person who would be affected by it—
  - (a) has been given notice of the application (except where notice is dispensed with in accordance with rules of court), and
  - (b) has been afforded an opportunity to make representations to the Tribunal.
- (3) An order under this section may include provision in respect of a period before the making of the order.

## **128 Contracting out**

P2010/15/144(1) to (5)

- (1) A term of a contract is unenforceable by a person in whose favour it would operate in so far as it purports to exclude or limit a provision of or made under this Act.
- (2) A relevant non-contractual term (as defined by section 126) is unenforceable by a person in whose favour it would operate in so far as it purports to exclude or limit a provision of or made under this Act, in so far as the provision relates to disability.
- (3) This section does not apply to a contract which settles a claim within section 99 (jurisdiction of the Tribunal – non work cases).
- (4) This section does not apply to a contract which settles a complaint within section 105 (jurisdiction of the Tribunal – work cases) if the contract is made with the assistance of the industrial relations officer.
- (5) A contract within subsection (4) includes a contract which settles a complaint relating to a breach of an equality clause or rule or of a non-discrimination rule.

DIVISION 2 — COLLECTIVE AGREEMENTS AND RULES OF  
UNDERTAKINGS

**129 Void and unenforceable terms**

P2010/15/145

- (1) A term of a collective agreement is void in so far as it constitutes, promotes or provides for treatment of a description prohibited by this Act.
- (2) A rule of an undertaking is unenforceable against a person in so far as it constitutes, promotes or provides for treatment of the person that is of a description prohibited by this Act.

**130 Declaration in respect of void term, etc.**

P2010/15/146

- (1) A qualifying person (P) may make a complaint to the Tribunal that a term is void, or that a rule is unenforceable, as a result of section 127.
- (2) But subsection (1) applies only if—
  - (a) the term or rule may in the future have effect in relation to P, and
  - (b) if the complaint alleges that the term or rule provides for treatment of a description prohibited by this Act, P may in the future be subjected to treatment that would (if P were subjected to it in present circumstances) be of that description.
- (3) If the Tribunal finds that the complaint is well-founded, it must make an order declaring that the term is void or the rule is unenforceable.
- (4) An order under this section may include provision in respect of a period before the making of the order.
- (5) In the case of a complaint about a term of a collective agreement, where the term is one made by or on behalf of a person of a description specified in the first column of the table, a qualifying person is a person of a description specified in the second column.

(1)	(2)
<b>Description of person who made collective agreement</b>	<b>Qualifying person</b>
Employer	A person who is, or is seeking to be, an employee of that employer
Organisation of employers	A person who is, or is seeking to be an employer who is a member of that organisation
Association of organisation of employers	A person who is, or is seeking to be, an employee of an employer who is a member of an organisation in that association



- (6) In the case of a complaint about a rule of an undertaking, where the rule is one made by or on behalf of a person of a description specified in column 1 of the table, a qualifying person is a person of a description specified column 2.

(1)	(2)
<b>Person who made rule</b>	<b>Qualifying person</b>
Employer	A person who is, or is seeking to be, an employee of that employer
Trade organisation or qualifications body	A person who is, or is seeking to be, a member of the organisation or body A person upon whom the body has conferred a relevant qualification A person seeking conferment by the body of a relevant qualification

### DIVISION 3 – SUPPLEMENTARY

#### 131 Interpretation

P2010/15/148(1), (3), drafting and (5) to (7)

- (1) This section applies for the purposes of this Part.
- (2) “**Group insurance arrangement**” means an arrangement between an employer and another person for the provision by that other person of facilities by way of insurance to the employer’s employees (or a class of those employees).
- (3) “**Collective agreement**” is to be construed in accordance with section 173 of the *Employment Act 2006*.
- (4) A rule of an undertaking is a rule within subsection (5) or (6).
- (5) A rule within this subsection is a rule made by a trade organisation or a qualifications body for application to –
- (a) its members or prospective members,
  - (b) persons on whom it has conferred a relevant qualification, or
  - (c) persons seeking conferment by it of a relevant qualification.
- (6) A rule within this subsection is a rule made by an employer for application to –
- (a) employees,
  - (b) persons who apply for employment, or
  - (c) persons the employer considers for employment.
- (7) “**Trade organisation**”, “**qualifications body**” and “**relevant qualification**” each have the meaning given in Part 5 (work).

## PART 11 – ADVANCEMENT OF EQUALITY

### DIVISION 1 – PUBLIC SECTOR EQUALITY DUTY

#### 132 Duty to promote equality

P2010/15/149

- (1) Every public authority must, in the exercise of its functions, have due regard to the need to –
  - (a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;
  - (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; and
  - (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.
- (2) A person who is not a public authority but who exercises public functions must, in the exercise of those functions, have due regard to the matters mentioned in subsection (1).
- (3) Having due regard to the need to advance equality of opportunity between persons who share a characteristic and those who do not share it involves having due regard in particular to the need to –
  - (a) remove or minimise disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic;
  - (b) take steps to meet the needs of persons who share a relevant protected characteristic that are different from the needs of persons who do not share it;
  - (c) encourage persons who share a relevant protected characteristic to participate in public life, or in any other activity in which participation by such persons is disproportionately low.
- (4) The steps involved in meeting the needs of disabled persons that are different from the needs of persons who are not disabled include, in particular, steps to take account of disabled persons' disabilities.
- (5) Having due regard to the need to foster good relations between persons who share a relevant protected characteristic and persons who do not share it involves having due regard, in particular, to the need to –
  - (a) tackle prejudice; and
  - (b) promote understanding.
- (6) Compliance with the duties in this section may involve treating some persons more favourably than others; but that is not to be taken as

permitting conduct that would otherwise be prohibited by or under this Act.

- (7) The relevant protected characteristics are —
- age;
  - disability;
  - gender reassignment;
  - pregnancy and maternity;
  - race;
  - religion or belief;
  - sex;
  - sexual orientation.
- (8) A reference to conduct that is prohibited by or under this Act includes a reference to—
- (a) a breach of an equality clause or rule;
  - (b) a breach of a non-discrimination rule.
- (9) Subsection (1) is subject to the exceptions in section 133.
- (10) In this Act “**public authority**” has the same meaning as in section 6 of the *Human Rights Act 2001*.

### 133 Exceptions from duty to promote equality

P2010/15/Sch 18

- (1) Section 132, so far as relating to age, does not apply to the exercise of a function relating to —
- (a) the provision of education to pupils in schools;
  - (b) the provision of benefits, facilities or services to pupils in schools;
  - (c) the provision of accommodation, benefits, facilities or services in children’s homes within the meaning of section 22 of the *Regulation of Care Act 2013*.
- (2) In the exercise of immigration and nationality functions, section 132 has effect as if subsection (1)(b) did not apply to the protected characteristic of age, race, religion or belief; but for this purpose “race” means race so far as it relates to —
- (a) nationality; or
  - (b) ethnic or national origins.
- (3) Section 132 does not apply to the exercise of —
- (a) a judicial function; or
  - (b) a function exercised on behalf of, or on the instructions of, a person exercising a judicial function.

References in this subsection to a judicial function include a reference to a judicial function conferred on a person other than a court or tribunal.

(4) In this section—

“immigration and nationality functions” means functions exercisable by virtue of —

- (a) the Immigration Acts, within the meaning given by section 64(2) of the Immigration, Asylum and Nationality Act 2006 (of Parliament), as those Acts have effect in the Island;
- (b) the following Acts of Parliament as they have effect in the Island—
  - (i) the British Nationality Act 1981;
  - (ii) the British Nationality (Falkland Islands) Act 1983;
  - (iii) the British Nationality (Hong Kong) Act 1990;
  - (iv) the Hong Kong (War Wives and Widows) Act 1996;
  - (v) the British Nationality (Hong Kong) Act 1997; or
- (c) a provision made under section 2B of *the European Communities (Isle of Man) Act 1973* which relates to the subject-matter of an enactment within paragraphs (a) and (b) of this definition;

“pupil” and “school” have the same meaning as they have in Division 1 of Part 6.

(5) The Council of Ministers may by order amend this section other than subsection (3).

## 134 Enforcement

P2010/15/156

A failure in respect of the performance of a duty under this Part does not confer a cause of action at private law.

### DIVISION 2 — POSITIVE ACTION

## 135 Positive action: general

P2010/15/158

- (1) This section applies if a person (P) reasonably thinks that—
- (a) persons who share a protected characteristic suffer a disadvantage connected to the characteristic,
  - (b) persons who share a protected characteristic have needs that are different from the needs of persons who do not share it, or
  - (c) participation in an activity by persons who share a protected characteristic is disproportionately low.

- (2) This Act does not prohibit P from taking any action which is a proportionate means of achieving the aim of—
  - (a) enabling or encouraging persons who share the protected characteristic to overcome or minimise that disadvantage,
  - (b) meeting those needs, or
  - (c) enabling or encouraging persons who share the protected characteristic to participate in that activity.
- (3) Regulations may specify action, or descriptions of action, to which subsection (2) does not apply.
- (4) This section does not apply to action within section 136(3).
- (5) This section does not enable P to do anything that is prohibited by or under an enactment other than this Act.

### **136 Positive action: recruitment and promotion**

P2010/15/159

- (1) This section applies if a person (P) reasonably thinks that—
  - (a) persons who share a protected characteristic suffer a disadvantage connected to the characteristic, or
  - (b) participation in an activity by persons who share a protected characteristic is disproportionately low.
- (2) Part 5 (work) does not prohibit P from taking action within subsection (3) with the aim of enabling or encouraging persons who share the protected characteristic to—
  - (a) overcome or minimise that disadvantage, or
  - (b) participate in that activity.
- (3) That action is treating a person (A) more favourably in connection with recruitment or promotion than another person (B) because A has the protected characteristic but B does not.
- (4) But subsection (2) applies only if—
  - (a) A is as qualified as B to be recruited or promoted,
  - (b) P does not have a policy of treating persons who share the protected characteristic more favourably in connection with recruitment or promotion than persons who do not share it, and
  - (c) taking the action in question is a proportionate means of achieving the aim referred to in subsection (2).
- (5) “Recruitment” means a process for deciding whether to—
  - (a) offer employment to a person,
  - (b) make contract work available to a contract worker,
  - (c) offer a person a position as a partner in a firm or proposed firm,

- (d) offer a person an appointment to a personal office,
  - (e) offer a person an appointment to a public office, recommend a person for such an appointment or approve a person's appointment to a public office, or
  - (f) offer a person a service for finding employment.
- (6) This section does not enable P to do anything that is prohibited by or under an enactment other than this Act.

## PART 12 – DISABLED PERSONS: TRANSPORT

### DIVISION 1 – PUBLIC TRANSPORT

#### 137 PPV accessibility regulations

P2010/15/174

- (1) DOI may make regulations (“**PPV accessibility regulations**”) for securing that it is possible for disabled persons—
- (a) to get on to and off regulated public passenger vehicles in safety and without unreasonable difficulty (and, in the case of disabled persons in wheelchairs, to do so while remaining in their wheelchairs), and
  - (b) to travel in such vehicles in safety and reasonable comfort.
- (2) PPV accessibility regulations may, in particular, make provision as to the construction, use and maintenance of regulated public passenger vehicles, including provision as to—
- (a) the fitting of equipment to vehicles;
  - (b) equipment to be carried by vehicles;
  - (c) the design of equipment to be fitted to, or carried by, vehicles;
  - (d) the fitting and use of restraining devices designed to ensure the stability of wheelchairs while vehicles are moving;
  - (e) the position in which wheelchairs are to be secured while vehicles are moving.
- (3) In this Division—

“**PPV accessibility regulations**” means regulations under subsection (1);

“**regulated public passenger vehicle**” means a public passenger vehicle (within the meaning given by the *Road Transport Act 2001*) —

- (a) which is constructed or adapted to convey more than 8 passengers in addition to the driver; and
- (b) to which PPV accessibility regulations are expressed to apply.

- (4) DOI must not make PPV accessibility regulations or regulations under section 139 or 140 without consulting—
  - (a) the Tynwald Equality Consultative Council, and
  - (b) such other representative organisations as DOI thinks appropriate.

### **138 Offence of contravening PPV accessibility regulations**

P2010/15/175

- (1) A person commits an offence by —
  - (a) contravening a provision of PPV accessibility regulations;
  - (b) using on a road a regulated public passenger vehicle which does not conform with a provision of the regulations with which it is required to conform;
  - (c) causing or permitting such a regulated public passenger vehicle to be used on a road.
- (2) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding £2,500.
- (3) If an offence under this section committed by a body corporate is committed with the consent or connivance of, or is attributable to neglect on the part of, a responsible person, the responsible person as well as the body corporate is guilty of the offence.
- (4) In subsection (3) a responsible person, in relation to a body corporate, is —
  - (a) a director, manager, secretary or similar officer;
  - (b) a person purporting to act in the capacity of a person mentioned in paragraph (a);
  - (c) in the case of a body corporate whose affairs are managed by its members, a member.

### **139 Accessibility certificates**

P2010/15/176

- (1) A regulated public passenger vehicle must not be used on a road unless—
  - (a) a vehicle examiner has issued a certificate (an “accessibility certificate”) that such provisions of PPV accessibility regulations as are prescribed are satisfied in respect of the vehicle, or
  - (b) an approval certificate has been issued under section 140 in respect of the vehicle.
- (2) Regulations may make provision—

- (a) with respect to applications for, and the issue of, accessibility certificates;
  - (b) providing for the examination of vehicles in respect of which applications have been made;
  - (c) with respect to the issue of copies of accessibility certificates which have been lost or destroyed.
- (3) The operator of a regulated public passenger vehicle commits an offence if the vehicle is used in contravention of this section.
- (4) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding £2,500.
- (5) In this section “operator” means a passenger vehicle operator, or the holder of a passenger vehicle operator’s licence, within the meaning of the *Road Traffic Regulation Act 1985*.

## 140 Approval certificates

P2010/15/177

- (1) DOI may approve a vehicle for the purposes of this section if satisfied that such provisions of PSV accessibility regulations as are prescribed for the purposes of section 139 are satisfied in respect of the vehicle.
- (2) A vehicle which is so approved is referred to in this section as a “type vehicle”.
- (3) Subsection (4) applies if a declaration in the prescribed form is made by an authorised person that a particular vehicle conforms in design, construction and equipment with a type vehicle.
- (4) A vehicle examiner may issue a certificate in the prescribed form (an “approval certificate”) that it conforms to the type vehicle.
- (5) DOI may make regulations that include provision about—
  - (a) applications for, and grants of, approval under subsection (1);
  - (b) applications for, and the issue of, approval certificates;
  - (c) the examination of vehicles in respect of which applications have been made;
  - (d) the issue of copies of approval certificates in place of certificates which have been lost or destroyed.
- (6) DOI may at any time withdraw approval of a type vehicle.
- (7) If an approval is withdrawn—
  - (a) no further approval certificates are to be issued by reference to the type vehicle; but
  - (b) an approval certificate issued by reference to the type vehicle before the withdrawal continues to have effect for the purposes of section 139.



- (8) In subsection (3) “authorised person” means a person authorised by DOI for the purposes of that subsection.

## 141 Special authorisations

P2010/15/178(1) to (3) and (5)

- (1) Nothing in this Division prevents the use of a vehicle in accordance with an order under paragraph 3 of Schedule 2 to the *Road Traffic Act 1985* (authorisation of special types of vehicle).
- (2) DOI may by order make provision for securing that provisions of PPV accessibility regulations apply to regulated public passenger vehicles of a description specified by the order, subject to any modifications or exceptions specified by the order.
- (3) An order under this section that applies only to a specified vehicle or to vehicles of a specified person need not be laid before Tynwald.

### DIVISION 2 – TAXIS, ETC.

## 142 Interpretation

P2010/15/173

- (1) In this Division –

“**accessibility requirements**” has the meaning given in section 147(5);

“**assistance dog**” means –

- (a) a dog which has been trained to guide a blind person;
- (b) a dog which has been trained to assist a deaf person;
- (c) a dog which has been trained by a prescribed charity to assist a disabled person who has a disability that consists of epilepsy or otherwise affects the person’s mobility, manual dexterity, physical co-ordination or ability to lift, carry or otherwise move everyday objects;
- (d) a dog of a prescribed category which has been trained to assist a disabled person who has a disability (other than one falling within paragraph (c)) of a prescribed kind;

“**passenger car**” means a motor vehicle (not being a goods vehicle, a motor ambulance or a motor caravan) which is constructed or adapted to carry no more than 8 seated passengers and a driver, together with their effects, has at least 3 wheels and a maximum gross weight not exceeding 3500 kg, and is not steered by handlebars;

“**private hire vehicle**” means a public passenger vehicle that –

- (a) is a passenger car; but
- (b) is not licensed to ply for hire in a road or other public place;

“**public passenger vehicle**” means a public passenger vehicle within the meaning given in section 63 of the *Road Transport Act 2001* and which has 4 or more wheels, but does not include a vehicle drawn by a horse or other animal;

“**RTL**” means the Road Transport Licensing Committee established by section 1 of the *Transport Act 2001*;

“**taxi**” means a public passenger vehicle that —

- (a) is a passenger car; and
- (b) is licensed to ply for hire in a road or other public place;

“**taxi accessibility regulations**” has the meaning given by section 143.

- (2) A power to make regulations under paragraph (c) or (d) of the definition of “**assistance dog**” in subsection (1) is exercisable by DOI.

### 143 Taxi accessibility regulations

P2010/15/160

- (1) DOI may make regulations (in this Division referred to as “**taxi accessibility regulations**”) for securing that it is possible for disabled persons —
  - (a) to get into and out of taxis in safety;
  - (b) to do so while in wheelchairs;
  - (c) to travel in taxis in safety and reasonable comfort;
  - (d) to do so while in wheelchairs.
- (2) The regulations may, in particular, require a regulated taxi to conform with provision as to—
  - (a) the size of a door opening for the use of passengers;
  - (b) the floor area of the passenger compartment;
  - (c) the amount of headroom in the passenger compartment;
  - (d) the fitting of restraining devices designed to ensure the stability of a wheelchair while the taxi is moving.
- (3) The regulations may also—
  - (a) require the driver of a regulated taxi which is plying for hire, or which has been hired to comply with provisions as to the carrying of ramps or other devices designed to facilitate the loading and unloading of wheelchairs;
  - (b) require the driver of a regulated taxi in which a disabled person is being carried while in a wheelchair to comply with provisions as to the position in which the wheelchair is to be secured.
- (4) The driver of a regulated taxi which is plying for hire or has been hired commits an offence—

- (a) by failing to comply with a requirement of the regulations, or
  - (b) if the taxi fails to conform with any provision of the regulations with which it is required to conform.
- (5) A person guilty of an offence under subsection (4) is liable on summary conviction to a fine not exceeding £1,000.
- (6) In this section—
- “passenger compartment” has such meaning as is specified in taxi accessibility regulations;
- “regulated taxi” means a taxi to which taxi accessibility regulations are expressed to apply.

#### **144 Taxi licence conditional on compliance with taxi accessibility regulations**

P2010/15/163(1) to (3)

- (1) A licence for a taxi to ply for hire must not be granted unless the vehicle conforms to the provisions of taxi accessibility regulations to which a vehicle is required to conform if it is licensed.
- (2) Subsection (1) does not apply if a licence is in force in relation to the vehicle at any time during the period of 28 days immediately before the day on which the licence is granted.
- (3) DOI may by order provide for subsection (2) to cease to have effect on a specified date.

#### **145 Passengers in wheelchairs**

P2010/15/165

- (1) This section imposes duties on the driver of a designated taxi which has been hired—
  - (a) by or for a disabled person who is in a wheelchair, or
  - (b) by another person who wishes to be accompanied by a disabled person who is in a wheelchair.
- (2) This section also imposes duties on the driver of a designated private hire vehicle, if a person within paragraph (a) or (b) of subsection (1) has indicated to the driver that the person wishes to travel in the vehicle.
- (3) For the purposes of this section—
  - (a) a taxi or private hire vehicle is “designated” if it appears on a list maintained under section 147;
  - (b) “the passenger” means the disabled person concerned.
- (4) The duties are—
  - (a) to carry the passenger while in the wheelchair;

- (b) not to make any additional charge for doing so;
  - (c) if the passenger chooses to sit in a passenger seat, to carry the wheelchair;
  - (d) to take such steps as are necessary to ensure that the passenger is carried in safety and reasonable comfort;
  - (e) to give the passenger such mobility assistance as is reasonably required.
- (5) Mobility assistance is assistance—
- (a) to enable the passenger to get into or out of the vehicle;
  - (b) if the passenger wishes to remain in the wheelchair, to enable the passenger to get into and out of the vehicle while in the wheelchair;
  - (c) to load the passenger’s luggage into or out of the vehicle;
  - (d) if the passenger does not wish to remain in the wheelchair, to load the wheelchair into or out of the vehicle.
- (6) This section does not require the driver—
- (a) unless the vehicle is of a description prescribed by DOI, to carry more than one person in a wheelchair, or more than one wheelchair, on any one journey;
  - (b) to carry a person in circumstances in which it would otherwise be lawful for the driver to refuse to carry the person.
- (7) A driver of a designated taxi or designated private hire vehicle commits an offence by failing to comply with a duty imposed on the driver by this section.
- (8) A person guilty of an offence under subsection (7) is liable on summary conviction to a fine not exceeding £1,000.
- (9) It is a defence for a person charged with the offence to show that at the time of the alleged offence—
- (a) the vehicle conformed to the accessibility requirements which applied to it, but
  - (b) it would not have been possible for the wheelchair to be carried safely in the vehicle.
- (10) In this section and sections 146 and 147 “private hire vehicle” means a public passenger vehicle (within the meaning of the *Road Transport Act 2001*) that —
- (a) is equipped with seats for not more than 8 passengers in addition to the driver; and
  - (b) is not licensed to ply for hire in a road or other public place.

**146 Passengers in wheelchairs: exemption certificates**

P2010/15/165

- (1) A licensing authority must issue a person with a certificate exempting the person from the duties imposed by section 145 (an “exemption certificate”) if satisfied that it is appropriate to do so—
  - (a) on medical grounds, or
  - (b) on the ground that the person’s physical condition makes it impossible or unreasonably difficult for the person to comply with those duties.
- (2) An exemption certificate is valid for such period as is specified in the certificate.
- (3) The driver of a designated taxi is exempt from the duties imposed by section 145 if—
  - (a) an exemption certificate issued to the driver is in force, and
  - (b) the prescribed notice of the exemption is exhibited on the taxi in the prescribed manner.
- (4) The driver of a designated private hire vehicle is exempt from the duties imposed by section 145 if—
  - (a) an exemption certificate issued to the driver is in force, and
  - (b) the prescribed notice of the exemption is exhibited on the vehicle in the prescribed manner.
- (5) For the purposes of this section, a taxi or private hire vehicle is “designated” if it appears on a list maintained under section 147.

**147 Lists of wheelchair-accessible vehicles**

P2010/15/167

- (1) For the purposes of section 145, RTLC must maintain a list of vehicles falling within subsection (2).
- (2) A vehicle falls within this subsection if—
  - (a) it is a taxi or a private hire vehicle, and
  - (b) it conforms to such accessibility requirements as RTLC thinks fit.
- (3) RTLC may, if it thinks fit, decide that a vehicle may be included on a list maintained under this section only if it is being used, or is to be used, by the holder of a licence for regular service under that licence.
- (4) In subsection (3) “licence for regular service” has the same meaning as it has in section 25 of the *Road Transport Act 2001* (use of public passenger vehicles in providing local services).
- (5) “**Accessibility requirements**” are requirements for securing that it is possible for disabled persons in wheelchairs—
  - (a) to get into and out of vehicles in safety, and

- (b) to travel in vehicles in safety and reasonable comfort, either staying in their wheelchairs or not (depending on which they prefer).

#### **148 Assistance dogs in taxis**

P2010/15/168

- (1) This section imposes duties on the driver of a taxi which has been hired—
  - (a) by or for a disabled person who is accompanied by an assistance dog, or
  - (b) by another person who wishes to be accompanied by a disabled person with an assistance dog.
- (2) The driver must—
  - (a) carry the disabled person’s dog and allow it to remain with that person;
  - (b) not make any additional charge for doing so.
- (3) The driver of a taxi commits an offence by failing to comply with a duty imposed by this section.
- (4) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding £1,000.

#### **149 Assistance dogs in taxis: exemption certificates**

P2010/15/169

- (1) The RTLC must issue a person with a certificate exempting the person from the duties imposed by section 148 (an “exemption certificate”) if satisfied that it is appropriate to do so on medical grounds.
- (2) In deciding whether to issue an exemption certificate the authority must have regard, in particular, to the physical characteristics of the taxi which the person drives or those of any kind of taxi in relation to which the person requires the certificate.
- (3) An exemption certificate is valid—
  - (a) in respect of a specified taxi or a specified kind of taxi;
  - (b) for such period as is specified in the certificate.
- (4) The driver of a taxi is exempt from the duties imposed by section 148 if—
  - (a) an exemption certificate issued to the driver is in force with respect to the taxi, and
  - (b) the prescribed notice of the exemption is exhibited on the taxi in the prescribed manner.

The power to make regulations under paragraph (b) is exercisable by DOI.

**150 Assistance dogs in private hire vehicles**

P2010/15/170

- (1) The operator of a private-hire vehicle commits an offence by failing or refusing to accept a booking for the vehicle—
  - (a) if the booking is requested by or on behalf of a disabled person or a person who wishes to be accompanied by a disabled person, and
  - (b) the reason for the failure or refusal is that the disabled person will be accompanied by an assistance dog.
- (2) The operator commits an offence by making an additional charge for carrying an assistance dog which is accompanying a disabled person.
- (3) The driver of a private-hire vehicle commits an offence by failing or refusing to carry out a booking accepted by the operator—
  - (a) if the booking is made by or on behalf of a disabled person or a person who wishes to be accompanied by a disabled person, and
  - (b) the reason for the failure or refusal is that the disabled person is accompanied by an assistance dog.
- (4) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding £1,000.
- (5) In this section —
  - (a) “operator” means an operator registered or licensed under section 5 of the *Road Transport Act 2001*; and
  - (b) “driver” means a person who is employed by an operator to drive a private-hire vehicle.

**151 Assistance dogs in private hire vehicles: exemption certificates**

- (1) The RTLC must issue a driver with a certificate exempting the driver from the offence under section 146(3) (an “exemption certificate”) if satisfied that it is appropriate to do so on medical grounds.
- (2) In deciding whether to issue an exemption certificate the RTLC must have regard, in particular, to the physical characteristics of the private hire vehicle which the person drives or those of any kind of private hire vehicle in relation to which the person requires the certificate.
- (3) An exemption certificate is valid—
  - (a) in respect of a specified private hire vehicle or a specified kind of private hire vehicle;
  - (b) for such period as is specified in the certificate.
- (4) A driver does not commit an offence under section 146(3) if—
  - (a) an exemption certificate issued to the driver is in force with respect to the private hire vehicle, and

- (b) notice of the exemption is exhibited on the vehicle in accordance with regulations made by the DOI.
- (5) In this section “driver” has the same meaning as in section 146.

## PART 13 — DISABILITY: MISCELLANEOUS

### 152 Reasonable adjustments

P2010/15/189

Schedule 18 (reasonable adjustments: supplementary) has effect.

### 153 Improvements to let dwelling houses

P2010/15/190

- (1) This section applies in relation to a lease of a dwelling house if each of the following applies —
  - (a) the tenant or another person occupying or intending to occupy the premises is a disabled person;
  - (b) the disabled person occupies or intends to occupy the premises as that person’s only or main home;
  - (c) the tenant is entitled, with the consent of the landlord, to make improvements to the premises;
  - (d) the tenant applies to the landlord for consent to make a relevant improvement.
- (2) Where the tenant applies in writing for the consent —
  - (a) if the landlord refuses to give consent, the landlord must give the tenant a written statement of the reason why the consent was withheld;
  - (b) if the landlord neither gives nor refuses to give consent within a reasonable time, consent must be taken to have been unreasonably withheld.
- (3) If the landlord gives consent subject to a condition which is unreasonable, the consent must be taken to have been unreasonably withheld.
- (4) If the landlord’s consent is unreasonably withheld, it must be taken to have been given.
- (5) On any question as to whether —
  - (a) consent was unreasonably withheld, or
  - (b) a condition imposed was unreasonable,it is for the landlord to show that it was not.



- (6) If the tenant fails to comply with a reasonable condition imposed by the landlord on the making of a relevant improvement, the failure is to be treated as a breach by the tenant of an obligation of the tenancy.
- (7) An improvement to premises is a relevant improvement if, having regard to the disabled person's disability, it is likely to facilitate that person's enjoyment of the premises.
- (8) Subsections (2) to (7) apply only in so far as provision of a like nature is not made by the lease.
- (9) In this section—
- “improvement” means an alteration in or addition to the premises and includes—
- (a) an addition to or alteration in the landlord's fittings and fixtures;
  - (b) an addition or alteration connected with the provision of services to the premises;
  - (c) the erection of a wireless or television aerial;
  - (d) carrying out external decoration;
- “lease” includes a sub-lease or other tenancy, and “landlord” and “tenant” are to be construed accordingly;

## PART 14 – GENERAL EXCEPTIONS

### 154 Statutory provisions

P2010/15/191

Schedule 19 (statutory provisions) has effect.

### 155 National security

P2010/15/192

A person does not contravene this Act only by doing, for the purpose of safeguarding national security, anything that it is proportionate to do for that purpose.

### 156 Charities

P2010/15/193

- (1) A person does not contravene this Act only by restricting the provision of benefits to persons who share a protected characteristic if—
- (a) the person acts in pursuance of a charitable instrument, and
  - (b) the provision of the benefits is —
    - (i) a proportionate means of achieving a legitimate aim, or
    - (ii) for the purpose of preventing or compensating for a disadvantage linked to the protected characteristic.

- (2) It is not a contravention of this Act for—
  - (a) a person who provides supported employment to treat persons who have the same disability or a disability of a prescribed description more favourably than those who do not have that disability or a disability of such a description in providing such employment;
  - (b) a Department to agree to arrangements for the provision of supported employment which will, or may, have that effect.
- (3) If a charitable instrument enables the provision of benefits to persons of a class defined by reference to colour, it has effect for all purposes as if it enabled the provision of such benefits—
  - (a) to persons of the class which results if the reference to colour is ignored, or
  - (b) if the original class is defined by reference only to colour, to persons generally.
- (4) It is not a contravention of this Act for a charity to require members, or persons wishing to become members, to make a statement which asserts or implies membership or acceptance of a religion or belief; and for this purpose restricting the access by members to a benefit, facility or service to those who make such a statement is to be treated as imposing such a requirement.
- (5) Subsection (4) applies only if —
  - (a) the charity, or an organisation of which it is part, first imposed such a requirement before the date on which the Bill for this Act was introduced in the Keys, and
  - (b) the charity or organisation has not ceased since that date to impose such a requirement.
- (6) It is not a contravention of section 30 for a person, in relation to an activity which is carried on for the purpose of promoting or supporting a charity, to restrict participation in the activity to persons of one sex.
- (7) Neither the court, nor the Attorney General contravenes this Act only by exercising a function in relation to a charity in a manner which the court or the Attorney General thinks is expedient in the interests of the charity, having regard to the charitable instrument.
- (8) Subsection (1) does not apply to a contravention of—
  - (a) any provision of Subdivision 1 of Division 1 of Part 5 (Work: employees); or
  - (b) section 48 so far as relating to the provision of vocational training.
- (9) Subsection (8) does not apply in relation to disability.
- (10) This section does not apply to race, so far as relating to colour.
- (11) For the purposes of this section —

- (a) “charity” means any institution, corporate or not, which is established for charitable purposes, and is subject to the control of the Court in the exercise of the Court’s jurisdiction with respect to charities;
- (b) “charitable purposes” means purposes which are exclusively charitable according to the law of the Island;
- (c) “charitable instrument” means an instrument establishing or governing a charity (including an instrument made or having effect before the commencement of this section);
- (d) in subsection (4) “membership” means membership of any description;
- (e) “supported employment” means facilities provided, or in respect of which payments are made, under section 15 of the *Disabled Persons (Employment) Act 1946*.

## 157 Sport

P2010/15/195

- (1) A person does not contravene this Act, so far as relating to sex, only by doing anything in relation to the participation of another as a competitor in a gender-affected activity.
- (2) A person does not contravene section 30, 33, 34 or 35 (which respectively concern the provision of services, the disposal of premises, permissions for such disposal and their management), so far as relating to gender reassignment, only by doing anything in relation to the participation of a transsexual person as a competitor in a gender-affected activity if it is necessary to do so to secure in relation to the activity—
  - (a) fair competition, or
  - (b) the safety of competitors.
- (3) A gender-affected activity is a sport, game or other activity of a competitive nature in circumstances in which the physical strength, stamina or physique of average persons of one sex would put them at a disadvantage compared to average persons of the other sex as competitors in events involving the activity.
- (4) In considering whether a sport, game or other activity is gender-affected in relation to children, it is appropriate to take account of the age and stage of development of children who are likely to be competitors.
- (5) A person who does anything to which subsection (6) applies does not contravene this Act only because of the nationality or place of birth of another or because of the length of time the other has been resident in a particular area or place.
- (6) This subsection applies to—

- (a) selecting one or more persons to represent a country, place or area or a related association, in a sport or game or other activity of a competitive nature;
  - (b) doing anything in pursuance of the rules of a competition so far as relating to eligibility to compete in a sport or game or other such activity.
- (7) A person does not contravene this Act, so far as relating to age discrimination, only by doing anything in relation to the participation of another as a competitor in an age-banded activity if it is necessary to do so—
- (a) to secure in relation to the activity fair competition or the safety of competitors,
  - (b) to comply with the rules of a national or international competition, or
  - (c) to increase participation in that activity.
- (8) For the purposes of subsection (7), an age-banded activity is a sport, game or other activity of a competitive nature in circumstances in which the physical or mental strength, agility, stamina, physique, mobility, maturity or manual dexterity of average persons of a particular age group would put them at a disadvantage compared to average persons of another age group as competitors in events involving the activity.

## 158 General

P2010/15/196

Schedule 20 (general exceptions) has effect.

## 159 Age

P2010/15/197

- (1) The Council of Ministers may by order amend this Act to provide that any of the following does not contravene this Act so far as relating to age —
- (a) specified conduct;
  - (b) anything done for a specified purpose;
  - (c) anything done in pursuance of arrangements of a specified description.
- (2) Specified conduct is conduct —
- (a) of a specified description,
  - (b) carried out in specified circumstances, or
  - (c) by or in relation to a person of a specified description.
- (3) An order under this section may —

- (a) confer on the Council of Ministers or a Department a power to issue guidance about the operation of the order (including, in particular, guidance about the steps that may be taken by persons wishing to rely on an exception provided for by the order);
  - (b) require the Council of Ministers or a Department to carry out consultation before issuing guidance under a power conferred by virtue of paragraph (a);
  - (c) make provision (including provision to impose a requirement) that refers to guidance issued under a power conferred by virtue of paragraph (a).
- (4) Guidance issued by the Council of Ministers or a Department in anticipation of the making of an order under this section is, on the making of the order, to be treated as if it has been issued in accordance with the order.
- (5) For the purposes of satisfying a requirement imposed by virtue of subsection (3)(b), the Council of Ministers or a Department may rely on consultation carried out before the making of the order that imposes the requirement (including consultation carried out before the commencement of this section).
- (6) Provision by virtue of subsection (3)(c) may, in particular, refer to provisions of the guidance that themselves refer to a document specified in the guidance.
- (7) Guidance issued (or treated as issued) under a power conferred by virtue of subsection (3)(a) comes into force on such day as the body issuing the guidance may by order appoint; and an order under this subsection may include the text of the guidance or of extracts from it.
- (8) This section is not affected by any provision of this Act which makes special provision in relation to age.
- (9) The references to this Act in subsection (1) do not include references to—
- (a) Part 5 (work);
  - (b) Division 2 of Part 6 (further and higher education).

## PART 15 — CLOSING PROVISIONS AND MISCELLANEOUS

### 160 Codes of practice

P2006/3/14(1) to (3) and (6) and drafting (subsection (6))

- (1) The Council of Ministers may issue a code of practice in connection with any matter addressed by this Act.
- (2) A code of practice under subsection (1) must contain provision designed —

- (a) to ensure or facilitate compliance with this Act or an enactment made under it, or
  - (b) to promote equality of opportunity.
- (3) The Council of Ministers may issue a code of practice giving practical guidance to landlords and tenants about —
- (a) the circumstances in which a tenant requires the consent of his or her landlord to make a relevant improvement, to a dwelling house;
  - (b) reasonableness in relation to that consent; and
  - (c) the application in relation to relevant improvements of —
    - (i) section 22 of the *Tenancies (Implied Terms) Act 1954* (implied condition that Court may give licence and consent to improvements);
    - (ii) section 153 (improvements to let dwelling-houses).

In this subsection “relevant improvement” has the meaning given by section 153(7) (improvements).

- (4) Before issuing a code under this section the Council of Ministers must —
- (a) publish proposals, and
  - (b) consult such persons as the Council thinks appropriate.
- (5) In determining any question arising in proceedings under this Act the Court or Tribunal must have regard to the content of any code of practice insofar as it appears to the Court or Tribunal to be relevant to the question.

## 161 Codes of practice: supplemental

P2006/3/15(1), (4)

- (1) The Council of Ministers may revise a code issued under section 160; and a reference in that section to the issue of a code includes a reference to the revision of a code.
- (2) A failure to comply with a provision of a code does not of itself make a person liable to criminal or civil proceedings; but a code —
- (a) is admissible in evidence in criminal or civil proceedings; and
  - (b) must be taken into account by a court or tribunal in any case in which it appears to the court or tribunal to be relevant.
- (3) The Council of Ministers may by order amend section 160 so as to vary the range of matters that codes of practice under that section may address.

**162 Promoting equality**

Drafting

The Council of Ministers may make such arrangements as it considers appropriate —

- (a) to promote equality of treatment in relation to protected characteristics and related matters;
- (b) to facilitate understanding of, and compliance with, this Act, and any subordinate legislation, codes of practice or guidance made or issued under it.

**163 Manx ships and seafarers**

Drafting

(1) This Act applies to —

- (a) Manx aircraft;
- (b) Manx ships;
- (c) Manx hovercraft; and
- (d) persons employed aboard such aircraft, ships or hovercraft;

only to such extent, subject to such modifications and in such circumstances as DED may by order prescribe.

(2) Here —

- (a) “Manx aircraft” means an aircraft (within the meaning of paragraph 1 of Part A of Schedule 1 the Air Navigation (Isle of Man) Order 2007<sup>2</sup>) that is registered by DED in accordance with that Order, and “aircraft” has the meaning given in that paragraph;
- (b) “Manx ship” has the meaning given by section 1(1) of the *Merchant Shipping Registration Act 1991* (“the 1991 Act”) and “ship” has the same meaning as in the 1991 Act;
- (c) “Manx hovercraft” means a hovercraft that is registered in the Island under the 1991 Act and “hovercraft” has the same meaning as in the Hovercraft Act 1968 (of Parliament)<sup>3</sup>.

**164 Crown application**

P2010/15/205

- (1) Part 3 (services and public functions) so far as it applies to the exercise of public functions binds the Crown.
- (2) Part 5 (work) binds the Crown as provided by that Part.

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<sup>2</sup> SI 2007/1115.

<sup>3</sup> 1968 c. 9: applied to the Island with modifications by GC 263/86.

- (3) The rest of the Act applies to the Crown acts as it applies to acts done by a private person.
- (4) Despite subsections (1) to (3) nothing in this Act applies to—
  - (a) the armed forces of the Crown;
  - (b) the intelligence services; or
  - (c) the Security Service.
- (5) In subsection (4) —

“the intelligence services” means the bodies whose existence is continued by sections 1 and 3 of the Intelligence Services Act 1994 (of Parliament) (which respectively concern the Secret Intelligence Service and the Government Communications Headquarters); and

“the Security Service” means the body whose existence is continued by section 1 of the Security Service Act 1989 (of Parliament).
- (6) For the purposes of subsection (3) an act is a Crown act if (but only if) it is done by or on behalf of —
  - (a) the executive;
  - (b) any other office of the Isle of Man Government;
  - (c) the Manx Museum and National Trust;
  - (d) the holder of a statutory office acting on behalf of the Crown in right of the Island.
- (7) For the purposes of subsection (6)(d) a statutory office is an office established by or under an enactment.

## 165 Tynwald Equality Consultative Council

Drafting (reflects 1981/36/9)

- (1) The Tynwald Advisory Council for Disabilities continues to exist but its functions and title are amended in accordance with this section.
- (2) The Council is renamed the Tynwald Equality Consultative Council (“the TECC”).
- (3) The TECC consists of 5 members, namely —
  - (a) 2 members of Tynwald appointed by Tynwald, one of whom is to be appointed by the TECC as chairperson;
  - (b) 3 persons who are not members of Tynwald, appointed by the Appointments Commission as representatives of interested statutory or voluntary welfare organisations with experience or knowledge of disability or other protected characteristics.
- (4) The TECC must not transact any business unless three of its members are present, one of whom must be the chairperson or deputy chairperson.



- (5) The persons appointed under subsection (3)(b) are to include, if practicable, a disabled person with the experience or knowledge referred to in that paragraph.
- (6) Appointments under subsection (3)(b) are subject to the approval of Tynwald.
- (7) Section 3 of the *Statutory Boards Act 1987* (tenure of office) applies to the TECC as it applies to a Statutory Board.
- (8) The TECC must give to any Department, Statutory Board advice on matters relating to the execution of this Act or the exercise of any power conferred on such Department or Statutory Board or otherwise relating to persons who share protected characteristics —
  - (a) if the TECC considers it expedient to do so; or
  - (b) if requested to do so by a Department or a Statutory Board.
- (9) Without limiting its other functions, the TECC may recommend changes in legislation to a Department or Statutory Board.
- (10) The Public Service Commission must make such arrangements as it considers appropriate for the provision of staff for the TECC.
- (11) Until the coming into operation of the Public Service Commission Act 2014 subsection (10) has effect as if for “Public Service Commission” there were substituted “Civil Service Commission”.

## **166 Information society services**

P2010/15/206

Schedule 21 (information society services) has effect.

## **167 Employment legislation amended**

Drafting

Schedule 21 (employment legislation amended) has effect.

## **168 Harmonisation with UK Equality Act 2010**

Drafting

- (1) This section applies if —
  - (a) a Minister of the Crown has made an order under section 203 of the Equality Act 2010 of Parliament (“a section 203 order”); and
  - (b) it appears to the Council of Ministers that it is desirable for this Act to be amended to reflect the provision made, in relation to the United Kingdom or any part of it, by the section 203 order.
- (2) If this section applies, the Council of Ministers may by order (a “corresponding order”) amend this Act in order to make harmonising provision.

- (3) Harmonising provision is provision made in relation to the subject matter of this Act—
- (a) which corresponds to the provision made by or under the section 203 order; or
  - (b) which the Council of Ministers believes to be necessary or expedient in consequence of or related to —
    - (i) the subject-matter of the section 203 order; or
    - (ii) provision made under paragraph (a).
- (4) If the Council of Ministers proposes to make a corresponding order, it must consult such persons and organisations as it thinks are likely to be affected by the provision made by the corresponding order.

### **169 Subordinate legislation**

- (1) Orders or regulations under any provision of this Act must not come into operation unless approved by Tynwald.
- (2) Subsection (1) does not apply to an order under section 2 (commencement).

### **170 Consequential amendments**

Drafting

Schedule 23 (consequential amendments) has effect.

### **171 Repeals**

Drafting

Schedule 24 (repeals) has effect.

### **172 Glossary**

Drafting

Schedule 25 (glossary) specifies the places where expressions used in this Act are defined or otherwise explained.

**SCHEDULE 1****DISABILITY: SUPPLEMENTARY PROVISION**

[Section 7(6)]

**PART 1 – DETERMINATION OF DISABILITY****1 Impairment**

Regulations may make provision for a condition of a prescribed description to be, or not to be, an impairment.

**2 Long-term effects**

- (1) The effect of an impairment is long-term if—
  - (a) it has lasted for at least 12 months,
  - (b) it is likely to last for at least 12 months, or
  - (c) it is likely to last for the rest of the life of the person affected.
- (2) If an impairment ceases to have a substantial adverse effect on a person's ability to carry out normal day-to-day activities, it is to be treated as continuing to have that effect if that effect is likely to recur.
- (3) For the purposes of sub-paragraph (2), the likelihood of an effect recurring is to be disregarded in such circumstances as may be prescribed.
- (4) Regulations may prescribe circumstances in which, despite sub-paragraph (1), an effect is to be treated as being, or as not being, long-term.

**3 Severe disfigurement**

- (1) An impairment which consists of a severe disfigurement is to be treated as having a substantial adverse effect on the ability of the person concerned to carry out normal day-to-day activities.
- (2) Regulations may provide that in prescribed circumstances a severe disfigurement is not to be treated as having that effect.
- (3) The regulations may, in particular, make provision in relation to deliberately acquired disfigurement.

#### 4 Substantial adverse effects

Regulations may make provision for an effect of a prescribed description on the ability of a person to carry out normal day-to-day activities to be treated as being, or as not being, a substantial adverse effect.

#### 5 Effect of medical treatment

- (1) An impairment is to be treated as having a substantial adverse effect on the ability of the person concerned to carry out normal day-to-day activities if—
  - (a) measures are being taken to treat or correct it, and
  - (b) but for that, it would be likely to have that effect.
- (2) “Measures” includes, in particular, medical treatment and the use of a prosthesis or other aid.
- (3) Sub-paragraph (1) does not apply—
  - (a) in relation to the impairment of a person’s sight, to the extent that the impairment is, in the person’s case, correctable by spectacles or contact lenses or in such other ways as may be prescribed;
  - (b) in relation to such other impairments as may be prescribed, in such circumstances as are prescribed.

#### 6 Certain medical conditions

- (1) Cancer, HIV infection and multiple sclerosis are each a disability.
- (2) HIV infection is infection by a virus capable of causing the Acquired Immune Deficiency Syndrome.

#### 7 Deemed disability

- (1) Regulations may provide for persons of prescribed descriptions to be treated as having disabilities.
- (2) The regulations may prescribe circumstances in which a person who has a disability is to be treated as no longer having the disability.
- (3) This paragraph does not affect the other provisions of this Schedule.

#### 8 Progressive conditions

- (1) This paragraph applies to a person (P) if—
  - (a) P has a progressive condition,
  - (b) as a result of that condition P has an impairment which has (or had) an effect on P’s ability to carry out normal day-to-day activities, but
  - (c) the effect is not (or was not) a substantial adverse effect.

- (2) P is to be taken to have an impairment which has a substantial adverse effect if the condition is likely to result in P having such an impairment.
- (3) Regulations may make provision for a condition of a prescribed description to be treated as being, or as not being, progressive.

## **9 Past disabilities**

- (1) A question as to whether a person had a disability at a particular time (“the relevant time”) is to be determined, for the purposes of section 6, as if the provisions of, or made under, this Act were in force when the act complained of was done had been in force at the relevant time.
- (2) The relevant time may be a time before the coming into force of the provision of this Act to which the question relates.

## **PART 2 –GUIDANCE**

### **10 Preliminary**

This Part of this Schedule applies in relation to guidance referred to in section 7(5).

### **11 Examples**

The guidance may give examples of—

- (a) effects which it would, or would not, be reasonable, in relation to particular activities, to regard as substantial adverse effects;
- (b) substantial adverse effects which it would, or would not, be reasonable to regard as long-term.

### **12 Adjudicating bodies**

In determining whether a person is a disabled person, the Court or the Tribunal must take account of such guidance as it thinks is relevant.

### **13 Representations**

Before issuing the guidance, a Department must—

- (a) publish a draft of it;
- (b) consider any representations made to the Department about the draft;
- (c) make such modifications as the Department thinks appropriate in the light of the representations.

**14 Commencement**

The guidance comes into force on the day appointed by order by the Council of Ministers.

**15 Revision and revocation**

- (1) A Department may in respect of guidance issued by it —
  - (a) revise the whole or part of guidance and re-issue it;
  - (b) by order revoke guidance.
- (2) A reference to guidance includes a reference to guidance which has been revised and re-issued.

**SCHEDULE 2**

[Section 31(8)]

**SERVICES AND PUBLIC FUNCTIONS: REASONABLE ADJUSTMENTS****1 Preliminary**

This Schedule applies if a duty to make reasonable adjustments is imposed on A by this Part.

**2 The duty**

- (1) A must comply with the first, second and third requirements.
- (2) For the purposes of this paragraph the reference in section 21(3), (4) or (5) to a disabled person is to disabled persons generally.
- (3) Section 21(4) has effect as if for “to avoid the disadvantage” there were substituted—
  - “(a) to avoid the disadvantage, or
  - (b) to adopt a reasonable alternative method of providing the service or exercising the function.”.
- (4) In relation to each requirement, the relevant matter is the provision of the service, or the exercise of the function, by A.

**3 Transport**

- (1) This paragraph applies if A is concerned with the provision of a service which involves transporting people by land, air or water.
- (2) It is never reasonable for A to have to take a step which would—
  - (a) involve the alteration or removal of a physical feature of a vehicle used in providing the service;
  - (b) affect whether vehicles are provided;
  - (c) affect what vehicles are provided;
  - (d) affect what happens in the vehicle while someone is travelling in it.
- (3) But, for the purpose of complying with the first or third requirement, A may not rely on sub-paragraph (2)(b), (c) or (d) if the vehicle concerned is —
  - (a) a vehicle —
    - (i) supplied under a contract of lease or hire;
    - (ii) designed and constructed for the carriage of passengers, comprising more than 8 seats in addition to the driver’s seat and having a maximum mass not exceeding 5 tonnes,

- (b) a vehicle —
  - (i) supplied under a contract of lease or hire;
  - (ii) designed and constructed for the carriage of goods; and
  - (iii) having a maximum mass not exceeding 3.5 tonnes,
- (c) a passenger vehicle which is used commercially for the carriage of passengers ; or
- (d) a vehicle deployed to transport the driver and passengers of a vehicle that has broken down or is involved in an accident.

For the purposes of paragraph (c) whether a vehicle is a passenger vehicle and whether it is used commercially are to be determined in accordance with section 4 of the *Road Transport Act 2001*.

- (4) In so far as the second requirement requires A to adopt a reasonable alternative method of providing the service to disabled persons, A may not, for the purpose of complying with the requirement, rely on sub-paragraph (2)(b), (c) or (d) if the vehicle is within sub-paragraph (3)(d).
- (5) A may not, for the purpose of complying with the first, second or third requirement rely on sub-paragraph (2) if A provides the service by way of a hire-vehicle built to carry no more than 8 passengers.
- (6) For the purposes of sub-paragraph (5) in its application to the second requirement, a part of a vehicle is to be regarded as a physical feature if it requires alteration in order to facilitate the provision of—
  - (a) hand controls to enable a disabled person to operate braking and accelerator systems in the vehicle, or
  - (b) facilities for the stowage of a wheelchair.
- (7) For the purposes of sub-paragraph (6)(a), fixed seating and in-built electrical systems are not physical features; and for the purposes of sub-paragraph (6)(b), fixed seating is not a physical feature.
- (8) In the case of a vehicle within sub-paragraph (3), a relevant device is not an auxiliary aid for the purposes of the third requirement.
- (9) A relevant device is a device or structure, or equipment, the installation, operation or maintenance of which would necessitate making a permanent alteration to, or which would have a permanent effect on, the internal or external fabric of the vehicle.
- (10) Regulations may amend this paragraph so as to provide for sub-paragraph (2) not to apply, or to apply only so far as is prescribed, in relation to vehicles of a prescribed description.

#### 4 Interpretation

In this Schedule—



- (a) “**hire-vehicle**” means a vehicle hired (by way of a trade) under a hiring agreement;
- (b) “**hiring agreement**” means (and means only) an agreement which contains such particulars as may be prescribed in regulations made by OFT but does not include a hire-purchase agreement;
- (c) “**vehicle hire firm**” means a person engaged in hiring vehicles in the course of a business; and
- (d) “**taxi**” has the meaning given by section 142.

**SCHEDULE 3**

[Section 31(9)]

**SERVICES AND PUBLIC FUNCTIONS: EXCEPTIONS****PART 1 – CONSTITUTIONAL MATTERS****1 Tynwald**

- (1) Section 30 does not apply to the exercise of –
  - (a) a function of Tynwald or of a Branch;
  - (b) a function exercisable in connection with proceedings in Tynwald or a Branch.
- (2) Sub-paragraph (1) does not permit anything to be done to, or in relation to, an individual unless it is done by or in pursuance of a resolution of Tynwald or of a Branch.
- (3) In this paragraph “a Branch” means the Legislative Council or the House of Keys.

**2 Legislation**

- (1) Section 30 does not apply to preparing, making or considering –
  - (a) an Act of Tynwald;
  - (b) a Bill for an Act of Tynwald.
- (2) Section 30 does not apply to preparing, making, confirming, approving or considering a public document (of a legislative character) that is made under an enactment by –
  - (a) the Presiding Officers, or either of them;
  - (b) a member of the Executive;
  - (d) Her Majesty’s First Deemster and Clerk of the Rolls;
  - (e) the Deemsters;
  - (f) a Statutory Board; or
  - (f) the Manx Museum and National Trust.
- (3) Section 30 does not apply to preparing, making, confirming, approving or considering an instrument to which section 2 or 3 of the *Church Legislation Procedure Act 1993* applies, or a public document of a legislative character made under such an instrument.
- (4) Section 30 does not apply to anything done in connection with the preparation, making or consideration of an instrument made by –
  - (a) Her Majesty in Council; or

- (b) the Privy Council.
- (5) Section 30 does not apply to anything done in connection with the imposition of a requirement or condition that falls within Schedule 18 (statutory provisions).

### **3 Judicial functions**

- (1) Section 30 does not apply to—
  - (a) a judicial function;
  - (b) anything done on behalf of, or on the instructions of, a person exercising a judicial function;
  - (c) a decision not to commence or continue criminal proceedings;
  - (d) anything done for the purpose of reaching, or in pursuance of, a decision not to commence or continue criminal proceedings.
- (2) A reference in sub-paragraph (1) to a judicial function includes a reference to a judicial function conferred on a person other than a court or tribunal.

## **PART 2 — SCHOOLS**

### **4 Provision of schools**

Section 30 so far as relating to age discrimination, sex discrimination or religious or belief-related discrimination, does not apply to the functions of DEC in respect of the establishment of schools under section 3 of the *Education Act 2001*.

### **5 Age discrimination**

Section 30, so far as relating to age discrimination, does not apply in relation to anything done in connection with—

- (a) the curriculum of a school;
- (b) admission to a school; or
- (c) transport to or from a school.

### **6 Religious or belief-related discrimination: general**

- (1) Section 30, so far as relating to religious or belief-related discrimination does not apply in relation to anything done in connection with —
  - (a) the curriculum of a school;
  - (b) admission to a school which has a religious ethos;
  - (c) acts of worship or other religious observance organised by or on behalf of a school (whether or not forming part of the curriculum);
  - (d) the responsible body of a school which has a religious character;

- (e) transport to or from a school;
  - (f) the establishment, alteration or closure of schools.
- (2) For the purposes of subparagraph (1) a school has a religious character if, but only if, it is specified in an order made by DEC under this subparagraph.
- (3) An order under subparagraph (2) must be laid before Tynwald as soon as practicable after it is made.

## **7 Religious or belief-related discrimination: reserved teachers**

Section 30, so far as relating to religious or belief-related discrimination, does not apply to the functions of DEC or a governing body of a maintained school in respect of the employment of reserved teachers within the meaning of section 7 of the *Education Act 2001*.

## **8 Physical features of schools**

Section 30, so far as relating to disability discrimination, does not require DEC or the governing body of a school to remove or alter a physical feature.

## **9 Construction**

This Part of this Schedule is to be construed in accordance with Division 1 of Part 6.

# **PART 3 – HEALTH AND CARE**

## **10 Blood services**

- (1) A person operating a blood service does not contravene section 30 only by refusing to accept a donation of an individual's blood if—
- (a) the refusal is because of an assessment of the risk to the public, or to the individual, based on clinical, epidemiological or other data obtained from a source on which it is reasonable to rely, and
  - (b) the refusal is reasonable.
- (2) A blood service is a service for the collection and distribution of human blood for the purposes of medical services.
- (3) “Blood” includes blood components.

## **11 Health and safety**

- (1) A service-provider (A) who refuses to provide the service to a pregnant woman does not discriminate against her in contravention of section 30 because she is pregnant if—

- (a) A reasonably believes that providing her with the service would, because she is pregnant, create a risk to her health or safety,
  - (b) A refuses to provide the service to persons with other physical conditions, and
  - (c) the reason for that refusal is that A reasonably believes that providing the service to such persons would create a risk to their health or safety.
- (2) A service-provider (A) who provides, or offers to provide, the service to a pregnant woman on conditions does not discriminate against her in contravention of section 30 because she is pregnant if—
- (a) the conditions are intended to remove or reduce a risk to her health or safety,
  - (b) A reasonably believes that the provision of the service without the conditions would create a risk to her health or safety,
  - (c) A imposes conditions on the provision of the service to persons with other physical conditions, and
  - (d) the reason for the imposition of those conditions is that A reasonably believes that the provision of the service to such persons without those conditions would create a risk to their health or safety.

## 12 Care within the family

A person (A) does not contravene section 30 only by participating in arrangements under which (whether or not for reward) A takes into A's home, and treats as members of A's family, persons requiring particular care and attention.

## PART 4 – IMMIGRATION

### 13 Age

- (1) This paragraph applies in relation to age discrimination.
- (2) Section 30 does not apply to anything done by a relevant person in the exercise of functions under a relevant immigration enactment.
- (3) A relevant person is —
  - (a) the Governor acting personally;
  - (b) a person acting in accordance with a relevant authorisation.
- (4) A relevant authorisation is a requirement imposed, or express authorisation given —
  - (a) with respect to a particular case or class of case, by the Governor acting personally;

- (b) with respect to a particular class of case, by a relevant enactment or a public document made under a relevant enactment.
- (5) The relevant immigration enactments are —
  - (a) the Immigration Acts (of Parliament); and
  - (b) any provision made under the *European Communities (Isle of Man) Act 1973* which relates to immigration or asylum.
- (6) The reference in sub-paragraph (5)(a) to the Immigration Acts (of Parliament) does not include a reference to—
  - (a) sections 28A to 28K of the Immigration Act 1971 (of Parliament); (powers of arrest, entry and search) or
  - (b) section 14 of the Asylum and Immigration (Treatment of Claimants Etc.) Act 2004 (of Parliament) (power of arrest).

## 14 Disability

- (1) This paragraph applies in relation to disability discrimination.
- (2) Section 30 does not apply to—
  - (a) a decision within sub-paragraph (3);
  - (b) anything done for the purposes of or in pursuance of a decision within that sub-paragraph.
- (3) A decision is within this sub-paragraph if it is a decision (whether or not taken in accordance with immigration rules) to do any of the following on the ground that doing so is necessary for the public good—
  - (a) to refuse entry clearance;
  - (b) to refuse leave to enter or remain in the Island;
  - (c) to cancel leave to enter or remain in the Island;
  - (d) to vary leave to enter or remain in the Island;
  - (e) to refuse an application to vary leave to enter or remain in the Island.
- (4) Section 30 does not apply to—
  - (a) a decision taken, or guidance given, by the Governor in connection with a decision within sub-paragraph (3);
  - (b) a decision taken in accordance with guidance given by the Governor in connection with a decision within that sub-paragraph.

## 15 Nationality and ethnic or national origins

P2010/15/Sch 3, para 17

- (1) This paragraph applies in relation to race discrimination so far as relating to—

- (a) nationality, or
  - (b) ethnic or national origins.
- (2) Section 30 does not apply to anything done by a relevant person in the exercise of functions exercisable by virtue of a relevant enactment.
- (3) A relevant person is—
- (a) the Governor acting personally, or
  - (b) a person acting in accordance with a relevant authorisation.
- (4) A relevant authorisation is a requirement imposed or express authorisation given—
- (a) with respect to a particular case or class of case, by the Governor acting personally;
  - (b) with respect to a particular class of case, by a relevant immigration enactment or by an instrument made under or by virtue of a relevant enactment.
- (5) The relevant immigration enactments are—
- (a) the Immigration Acts (of Parliament), and
  - (b) a provision made under the *European Communities (Isle of Man) Act 1973* which relates to immigration or asylum.
- (6) The reference in sub-paragraph (5)(a) to the Immigration Acts (of Parliament) does not include a reference to—
- (a) sections 28A to 28K of the Immigration Act 1971 (of Parliament) (powers of arrest, entry and search, etc.); or
  - (b) section 14 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 (of Parliament) (power of arrest).

## 16 Religion or belief

- (1) This paragraph applies in relation to religious or belief-related discrimination.
- (2) Section 30 does not apply to a decision within sub-paragraph (3) or anything done for the purposes of or in pursuance of a decision within that sub-paragraph.
- (3) A decision is within this sub-paragraph if it is a decision taken in accordance with immigration rules—
- (a) to refuse entry clearance or leave to enter the Island, or to cancel leave to enter or remain in the Island, on the grounds that the exclusion of the person from the Island is conducive to the public good; or
  - (b) to vary leave to enter or remain in the Island, or to refuse an application to vary leave to enter or remain in the Island, on the

grounds that it is undesirable to permit the person to remain in the Island.

- (4) Section 30 does not apply to a decision within sub-paragraph (5), or anything done for the purposes of or in pursuance of a decision within that sub-paragraph, if the decision is taken on grounds mentioned in sub-paragraph (6).
- (5) A decision is within this sub-paragraph if it is a decision (whether or not taken in accordance with immigration rules) in connection with an application for entry clearance or for leave to enter or remain in the Island.
- (6) The grounds referred to in sub-paragraph (4) are—
  - (a) the grounds that a person holds an office or post in connection with a religion or belief or provides a service in connection with a religion or belief,
  - (b) the grounds that a religion or belief is not to be treated in the same way as certain other religions or beliefs, or
  - (c) the grounds that the exclusion from the Island of a person to whom paragraph (a) applies is conducive to the public good.
- (7) Section 30 does not apply to—
  - (a) a decision taken, or guidance given, by the Governor in connection with a decision within sub-paragraph (3) or (5);
  - (b) a decision taken in accordance with guidance given by the Governor in connection with a decision within either of those sub-paragraphs.

## 17 Interpretation

In this Part a reference to entry clearance, leave to enter or remain or immigration rules is to be construed in accordance with the Immigration Act 1971 (of Parliament).

## PART 5 — CONTROL OF EMPLOYMENT

### 18 Race and disability

- (1) This paragraph applies in relation to race discrimination and disability discrimination.
- (2) Section 30 does not apply to anything done in compliance with a requirement or restriction imposed, or by virtue of a power or exemption conferred, by or under the *Control of Employment Act 1975*.



## PART 6 — INSURANCE AND OTHER FINANCIAL SERVICES

### 19 Services arranged by employer

- (1) Section 30 does not apply to the provision of a relevant financial service if the provision is in pursuance of arrangements made by an employer for the service-provider to provide the service to the employer's employees, and other persons, as a consequence of the employment.
- (2) "Relevant financial service" means—
  - (a) insurance or a related financial service, or
  - (b) a service relating to membership of or benefits under a personal pension scheme (within the meaning given by section 1 of the Pension Schemes Act 1993 (of Parliament)).

### 20 Age

- (1) A person (A) does not contravene section 30, so far as relating to age discrimination, by doing anything in connection with the provision of a financial service.
- (2) Where A conducts an assessment of risk for the purposes of providing the financial service to another person (B), A may rely on sub-paragraph (1) only if the assessment of risk, so far as it involves a consideration of B's age, is carried out by reference to information which is relevant to the assessment of risk and from a source on which it is reasonable to rely.
- (3) In this paragraph, "financial service" includes a service—
  - (a) falling within the Regulated Activities Order 2013; or
  - (b) in the nature of insurance or a personal pension.

### 21 Disability

- (1) It is not a contravention of section 30, so far as relating to disability discrimination, to do anything in connection with insurance business if—
  - (a) that thing is done by reference to information that is both relevant to the assessment of the risk to be insured and from a source on which it is reasonable to rely, and
  - (b) it is reasonable to do that thing.
- (2) "Insurance business" has the meaning given by section 54 of the *Insurance Act 2008*.

## 22 Existing insurance policies

- (1) It is not a contravention of section 30, so far as relating to relevant discrimination, to do anything in connection with insurance business in relation to an existing insurance policy.
- (2) “Relevant discrimination” is—
  - (a) age discrimination;
  - (b) disability discrimination;
  - (c) gender reassignment discrimination;
  - (d) pregnancy and maternity discrimination;
  - (e) race discrimination;
  - (f) religious or belief-related discrimination;
  - (g) sex discrimination;
  - (h) sexual orientation discrimination.
- (3) An existing insurance policy is a policy of insurance entered into before the date on which this paragraph comes into force.
- (4) Sub-paragraph (1) does not apply where an existing insurance policy was renewed, or the terms of such a policy were reviewed, on or after the date on which this paragraph comes into force.
- (5) A review of an existing insurance policy which was part of, or incidental to, a general reassessment by the service-provider of the pricing structure for a group of policies is not a review for the purposes of sub-paragraph (4).
- (6) “Insurance business” has the meaning given in paragraph 21.

## PART 7 — MARRIAGE

### 23 Gender reassignment

- (1) A person does not contravene section 30 so far as relating to gender reassignment discrimination, only because of anything done in reliance on section 5A(5) of the *Marriage Act 1984* (which concerns the solemnisation of marriages involving person of acquired gender).
- (2) A person (A) whose consent to the solemnisation of the marriage of a person (B) is required under section 31(1A) of the *Marriage Act 1984* (solemnisation in registered building) does not contravene section 30, so far as relating to gender reassignment discrimination, by refusing to consent if A reasonably believes that B’s gender has become the acquired gender under the Gender Recognition Act 2004 (of Parliament).
- (3) Sub-paragraph (4) applies to a person (A) who may, in a case that comes within the *Marriage Act 1984* (other than the case mentioned in sub-

paragraph (1)), solemnise marriages according to a form, rite or ceremony of a body of persons who meet for religious worship.

- (4) A does not contravene section 30, so far as relating to gender reassignment discrimination, by refusing to solemnise, in accordance with a form, rite or ceremony as described in sub-paragraph (3), the marriage of a person (B) if A reasonably believes that B's gender has become the acquired gender under the Gender Recognition Act 2004 (of Parliament).

## **PART 8 — SEPARATE, SINGLE AND CONCESSIONARY SERVICES ETC**

### **24 Separate services for the sexes**

- (1) A person does not contravene section 30, so far as relating to sex discrimination, by providing separate services for persons of each sex if —
- (a) a joint service for persons of both sexes would be less effective, and
  - (b) the limited provision is a proportionate means of achieving a legitimate aim.
- (2) A person does not contravene section 30, so far as relating to sex discrimination, by providing separate services differently for persons of each sex if —
- (a) a joint service for persons of both sexes would be less effective,
  - (b) the extent to which the service is required by one sex makes it not reasonably practicable to provide the service otherwise than as a separate service provided differently for each sex, and
  - (c) the limited provision is a proportionate means of achieving a legitimate aim.
- (3) This paragraph applies to a person exercising a public function in relation to the provision of a service as it applies to the person providing the service.

### **25 Single-sex services**

- (1) A person does not contravene section 30, so far as relating to sex discrimination, by providing a service only to persons of one sex if —
- (a) any of the conditions in sub-paragraphs (2) to (7) is satisfied, and
  - (b) the limited provision is a proportionate means of achieving a legitimate aim.
- (2) The condition is that only persons of that sex have need of the service.

- (3) The condition is that —
  - (a) the service is also provided jointly for persons of both sexes, and
  - (b) the service would be insufficiently effective were it only to be provided jointly.
- (4) The condition is that —
  - (a) a joint service for persons of both sexes would be less effective, and
  - (b) the extent to which the service is required by persons of each sex makes it not reasonably practicable to provide separate services.
- (5) The condition is that the service is provided at a place which is, or is part of —
  - (a) a hospital, or
  - (b) another establishment for persons requiring special care, supervision or attention.
- (6) The condition is that —
  - (a) the service is provided for, or is likely to be used by, two or more persons at the same time, and
  - (b) the circumstances are such that a person of one sex might reasonably object to the presence of a person of the opposite sex.
- (7) The condition is that—
  - (a) there is likely to be physical contact between a person (A) to whom the service is provided and another person (B), and
  - (b) B might reasonably object if A were not of the same sex as B.
- (8) This paragraph applies to a person exercising a public function in relation to the provision of a service as it applies to the person providing the service.

## 26 Gender reassignment

- (1) A person does not contravene section 30, so far as relating to gender reassignment discrimination, only because of anything done in relation to a matter within sub-paragraph (2) if the conduct in question is a proportionate means of achieving a legitimate aim.
- (2) The matters are—
  - (a) the provision of separate services for persons of each sex;
  - (b) the provision of separate services differently for persons of each sex;
  - (c) the provision of a service only to persons of one sex.

**27 Services relating to religion**

- (1) A minister does not contravene section 30, so far as relating to sex discrimination, by providing a service only to persons of one sex or separate services for persons of each sex, if—
- (a) the service is provided for the purposes of an organised religion,
  - (b) it is provided at a place which is (permanently or for the time being) occupied or used for those purposes, and
  - (c) the limited provision of the service is necessary in order to comply with the doctrines of the religion or is for the purpose of avoiding conflict with the strongly held religious convictions of a significant number of the religion's followers.
- (2) Here "a minister" means a minister of religion, or other person, who—
- (a) performs functions in connection with the religion, and
  - (b) holds an office or appointment in, or is accredited, approved or recognised for purposes of, a relevant organisation in relation to the religion.
- (3) An organisation is a relevant organisation in relation to a religion if its purpose is—
- (a) to practise the religion,
  - (b) to advance the religion,
  - (c) to teach the practice or principles of the religion,
  - (d) to enable persons of the religion to receive benefits, or to engage in activities, within the framework of that religion, or
  - (e) to foster or maintain good relations between persons of different religions.
- (4) But an organisation is not a relevant organisation in relation to a religion if its sole or main purpose is commercial.

**28 Religious organisations and civil partnerships**

For the avoidance of doubt, nothing in this Act places an obligation on religious organisations (within the meaning of paragraph 27) to host civil partnerships if they do not wish to do so.

**29 Services generally provided only for persons who share a protected characteristic**

If a service is generally provided only for persons who share a protected characteristic, a person (A) who normally provides the service for persons who share that characteristic does not contravene section 30(1) or (2)—

- (a) by insisting on providing the service in the way A normally provides it, or

- (b) if A reasonably thinks it is impracticable to provide the service to persons who do not share that characteristic, by refusing to provide the service.

### 30 Concessions

- (1) A person does not contravene section 30, so far as relating to age discrimination, by giving a concession in respect of a service to persons of a particular age group.
- (2) Here “concession in respect of a service” means a benefit, right or privilege having the effect that the manner in which the service is provided is, or the terms on which it is provided are, more favourable than the manner in which, or the terms on which, it is usually provided to the public (or, where it is provided to a section of the public, that section).

### 31 Age related holidays

- (1) A person (P) does not contravene section 30, so far as relating to age discrimination, by providing a relevant holiday service to persons of a particular age group.
- (2) In sub-paragraph (1) “relevant holiday service” means a service—
  - (a) which involves the provision of at least two of the following together for a single price—
    - (i) travel;
    - (ii) accommodation;
    - (iii) access to activities or services not ancillary to travel or accommodation which form a significant part of the service or its cost;
  - (b) the provision of which is for a period of more than 24 hours or includes the provision of overnight accommodation;
  - (c) which P provides only to persons of the age group in question; and
  - (d) an essential feature of which is the bringing together of persons of that age group with a view to facilitating their enjoyment of facilities or services designed with particular regard to persons of that age group.
- (3) P may not rely on sub-paragraph (1) unless, before providing a person with a relevant holiday service, P provides the person with a written statement that the service is provided only to persons of the age group in question.

- (4) For the purpose of sub-paragraph (2)(a)(i), “travel” includes an option for an individual to make alternative travel arrangements to those included in the relevant holiday service as offered by P.

## 32 Age restricted services

- (1) This paragraph applies where a person (P)—
- (a) provides a service the provision of which is prohibited by or under an enactment to persons under the age specified in or under the enactment (“the statutory age”), and
  - (b) displays on the premises on which the service is provided an age warning in relation to the provision of the service.
- (2) An age warning in relation to the provision of a service is a statement to the effect that the service will not be provided to a person who—
- (a) appears to P, or an employee or agent of P’s, to be under the age specified in the statement, and
  - (b) on being required to do so by P or the employee or agent, fails to produce satisfactory identification.
- (3) P does not contravene section 30, so far as relating to age discrimination, by not providing the service to a person, who—
- (a) appears to P, or an employee or agent of P’s, to be under the age specified in the age warning in relation to the provision of the service, and
  - (b) on being required to do so by P or the employee or agent, fails to produce satisfactory identification.
- (4) In this paragraph—
- (a) a reference to the provision of a service includes a reference to provision of access to the service, and
  - (b) “satisfactory identification”, in relation to a person, means a valid document which—
    - (i) in the case of a sale by retail of alcohol in circumstances where an age condition applies, meets that condition, and
    - (ii) in any other case includes a photograph of the person and establishes that the person has attained the statutory age in relation to the provision of a service;
  - (c) “sale by retail” has the meaning given in section 80(3) of the *Licensing Act 1995*; and
  - (d) “age condition” means a condition applying to a licence (of any description) under that Act which requires the age of certain persons to be verified in the manner specified in the condition before they are served alcohol in premises where the condition applies.

## PART 9 – TELEVISION, RADIO AND ON-LINE BROADCASTING AND DISTRIBUTION

### 33 Content services

- (1) Section 30 does not apply to the provision of a content service (within the meaning given by section 32(7) of the Communications Act 2003 (of Parliament<sup>4</sup>)).
- (2) Sub-paragraph (1) does not apply to the provision of an electronic communications network, electronic communications service or associated facility (each of which has the same meaning as in that Act).

## PART 10 – TRANSPORT

### 34 Application to disability

This Part of this Schedule applies in relation to disability discrimination.

### 35 Transport by air

- (1) Section 30 does not apply to—
  - (a) transporting people by air;
  - (b) a service provided on a vehicle for transporting people by air.
- (2) Section 30 does not apply to anything governed by Regulation (EC) No.1107/2006 concerning the rights of disabled persons and persons with reduced mobility when travelling by air.

### 36 Transport by road

- (1) Section 30 does not apply to transporting people by land unless the vehicle concerned is —
  - (a) a hire-vehicle designed and constructed for the carriage of passengers and comprising no more than 8 seats in addition to the driver's seat;
  - (b) a hire-vehicle designed and constructed for the carriage of passengers, comprising more than 8 seats in addition to the driver's seat and having a maximum mass not exceeding 3.5 tonnes;
  - (c) a hire-vehicle designed and constructed for the carriage of goods and having a maximum mass not exceeding 3.5 tonnes;
  - (d) a designated private hire vehicle or a designated taxi for the purposes of Division 2 of Part 12; or

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<sup>4</sup> Applied to the Island by article 6 of SI 2003/3198.



- (e) a vehicle deployed to transport the driver and passengers of a vehicle that has broken down or has been involved in an accident.
- (2) Paragraph 4 of Schedule 2 applies for the purposes of this paragraph as it applies for the purposes of that Schedule.

## **PART 11 –SUPPLEMENTARY**

### **37 Power to amend**

The Council of Ministers may by order amend this Schedule.

**SCHEDULE 4**

[Section 37(6)]

**PREMISES: REASONABLE ADJUSTMENTS****1 Preliminary**

This Schedule applies where a duty to make reasonable adjustments is imposed on A by this Part.

**2 The duty in relation to let premises**

- (1) This paragraph applies where A is a controller of let premises.
- (2) A must comply with the first and third requirements.
- (3) For the purposes of this paragraph, the reference in section 21(3) to a provision, criterion or practice of A's includes a reference to a term of the letting.
- (4) For those purposes, the reference in section 21(3) or (5) to a disabled person is a reference to a disabled person who—
  - (a) is a tenant of the premises, or
  - (b) is otherwise entitled to occupy them.
- (5) In relation to each requirement, the relevant matters are—
  - (a) the enjoyment of the premises;
  - (b) the use of a benefit or facility, entitlement to which arises as a result of the letting.
- (6) Sub-paragraph (2) applies only if A receives a request from or on behalf of the tenant or a person entitled to occupy the premises to take steps to avoid the disadvantage or provide the auxiliary aid.
- (7) If a term of the letting that prohibits the tenant from making alterations puts the disabled person at the disadvantage referred to in the first requirement, A is required to change the term only so far as is necessary to enable the tenant to make alterations to the let premises so as to avoid the disadvantage.
- (8) It is never reasonable for A to have to take a step which would involve the removal or alteration of a physical feature.
- (9) For the purposes of this paragraph, physical features do not include furniture, furnishings, materials, equipment or other chattels in or on the premises; and none of the following is an alteration of a physical feature—
  - (a) the replacement or provision of a sign or notice;
  - (b) the replacement of a tap or door handle;

- (c) the replacement, provision or adaptation of a door bell or door entry system;
  - (d) changes to the colour of a wall, door or any other surface.
- (10) The terms of a letting include the terms of an agreement relating to it.

### **3 The duty in relation to premises to let**

- (1) This paragraph applies where A is a controller of premises to let.
- (2) A must comply with the first and third requirements.
- (3) For the purposes of this paragraph, the reference in section 21(3) or (5) to a disabled person is a reference to a disabled person who is considering taking a letting of the premises.
- (4) In relation to each requirement, the relevant matter is becoming a tenant of the premises.
- (5) Sub-paragraph (2) applies only if A receives a request by or on behalf of a disabled person within sub-paragraph (3) for A to take steps to avoid the disadvantage or provide the auxiliary aid.
- (6) Nothing in this paragraph requires A to take a step which would involve the removal or alteration of a physical feature.
- (7) Sub-paragraph (9) of paragraph 2 applies for the purposes of this paragraph as it applies for the purposes of that paragraph.

### **4 The duty in relation to common parts**

- (1) This paragraph applies where A is a responsible person in relation to common parts.
- (2) A must comply with the second requirement.
- (3) For the purposes of this paragraph, the reference in section 21(4) to a physical feature is a reference to a physical feature of the common parts.
- (4) For those purposes, the reference in section 21(4) to a disabled person is a reference to a disabled person who—
  - (a) is a tenant of the premises, or
  - (b) is otherwise entitled to occupy the premises,and uses or intends to use the premises as the person's only or main home.
- (5) In relation to the second requirement, the relevant matter is the use of the common parts.
- (6) Sub-paragraph (2) applies only if—
  - (a) A receives a request by or on behalf of a disabled person within sub-paragraph (4) for A to take steps to avoid the disadvantage, and

- (b) the steps requested are likely to avoid or reduce the disadvantage.

## 5 Consultation on adjustments relating to common parts

- (1) In deciding whether it is reasonable to take a step for the purposes of paragraph 4, A must consult all persons A thinks would be affected by the step.
- (2) The consultation must be carried out within a reasonable period of the request being made.
- (3) A is not required to have regard to a view expressed against taking a step in so far as A reasonably believes that the view is expressed because of the disabled person's disability.

## 6 Agreement on adjustments relating to common parts

- (1) If A decides that it is reasonable to take a step for the purposes of paragraph 4, A and the disabled person must agree in writing the rights and responsibilities of each of them in relation to the step.
- (2) An agreement under this paragraph must, in particular, make provision as to the responsibilities of the parties in relation to—
  - (a) the costs of any work to be undertaken;
  - (b) other costs arising from the work;
  - (c) the restoration of the common parts to their former condition if the relevant disabled person stops living in the premises.
- (3) It is always reasonable before the agreement is made for A to insist that the agreement should require the disabled person to pay—
  - (a) the costs referred to in paragraphs (a) and (b) of sub-paragraph (2), and
  - (b) the costs of the restoration referred to in paragraph (c) of that sub-paragraph.
- (4) If an agreement under this paragraph is made, A's obligations under the agreement become part of A's interest in the common parts and pass on subsequent disposals accordingly.
- (5) DEFA may make regulations requiring a party to an agreement under this paragraph to provide, in prescribed circumstances, prescribed information about the agreement to persons of a prescribed description.
- (6) The regulations may require the information to be provided in a prescribed form.
- (7) Regulations may make provision as to circumstances in which an agreement under this paragraph is to cease to have effect, in so far as the agreement does not itself make provision for termination.

**7 Victimisation**

- (1) This paragraph applies where the relevant disabled person comes within paragraph 2(4)(b) or 4(4)(b).
- (2) A must not, because of costs incurred in connection with taking steps to comply with a requirement imposed for the purposes of paragraph 2 or 4, subject a tenant of the premises to a detriment.

**8 Regulations**

- (1) This paragraph applies for the purposes of section 37 and this Schedule.
- (2) Regulations may make provision as to—
  - (a) circumstances in which premises are to be treated as let, or as not let, to a person;
  - (b) circumstances in which premises are to be treated as being, or as not being, to let;
  - (c) who is to be treated as being, or as not being, a person entitled to occupy premises otherwise than as tenant or unit-holder;
  - (d) who is to be treated as being, or as not being, a person by whom premises are let;
  - (e) who is to be treated as having, or as not having, premises to let;
  - (f) who is to be treated as being, or as not being, a manager of premises.
- (3) Provision made by virtue of this paragraph may amend this Schedule.

**Schedule 5****PREMISES: EXCEPTIONS**

[Section 37(7)]

**1 Disposal by an owner-occupier**

- (1) This paragraph applies to the private disposal of premises by an owner-occupier.
- (2) A disposal is a private disposal if (but only if) the owner-occupier does not —
  - (a) use the services of an estate agent for the purpose of disposing of the premises, or
  - (b) publish (or cause to be published) an advertisement in connection with their disposal.
- (3) Section 33(1) applies only insofar as it relates to race.
- (4) Section 34(1) does not apply in so far as it relates to —
  - (a) religion or belief; or
  - (b) sexual orientation.
- (5) In this paragraph —

“estate agent” means a person who, by way of profession or trade, provides services for the purpose of—

  - (a) finding premises for persons seeking them, or
  - (b) assisting in the disposal of premises;

“owner-occupier” means a person who—

  - (a) owns an estate or interest in premises, and
  - (b) occupies the whole of them.

**2 Duty to make reasonable adjustments: leasehold premises and common parts**

- (1) Section 36(1)(a) does not apply if —
  - (a) the premises are, or have been, the only or main home of a person by whom they are let, and
  - (b) since entering into the letting, neither that person nor any other by whom they are let has used a manager for managing the premises.
- (2) A manager is a person who, by profession or trade, manages let premises.
- (3) Section 36(1) does not apply if—

- (a) the premises are, or have been, the only or main home of a person who has them to let, and
  - (b) neither that person nor any other who has the premises to let uses the services of an estate agent for letting the premises.
- (4) “Estate agent” has the meaning given in paragraph 1.

### 3 **Small premises: disposal, occupation or management**

- (1) This paragraph applies to anything done by a person in relation to the disposal, occupation or management of part of small premises if—
- (a) the person or a relative of that person resides, and intends to continue to reside, in another part of the premises, and
  - (b) the premises include parts (other than storage areas and means of access) shared with residents of the premises who are not members of the same household as the resident mentioned in paragraph (a).
- (2) Sections 33(1), 34(1) and 35(1) apply only in so far as they relate to race.
- (3) Premises are small if—
- (a) the only other persons occupying the accommodation occupied by the resident mentioned in sub-paragraph (1)(a) are members of the same household,
  - (b) the premises also include accommodation for at least one other household,
  - (c) the accommodation for each of those other households is let, or available for letting, on a separate tenancy or similar agreement, and
  - (d) the premises are not normally sufficient to accommodate more than two other households.
- (4) Premises are also small if they are not normally sufficient to provide residential accommodation for more than six persons (in addition to the resident mentioned in sub-paragraph (1)(a) and members of the same household).
- (5) In this paragraph, “relative” means —
- (a) a spouse or civil partner,
  - (b) an unmarried partner,
  - (c) a parent or grandparent,
  - (d) a child or grandchild (whether or not legitimate),
  - (e) a brother or sister (whether of full blood or half-blood), or
  - (f) a person who is the spouse, civil partner or unmarried partner of a person falling within paragraph (c), (d), or (e).

- (6) In sub-paragraph (5), a reference to an unmarried partner is a reference to the other member of a couple consisting of—
- (a) a man and a woman who are not married to each other but are living together as husband and wife, or
  - (b) two people of the same sex who are not civil partners of each other but are living together as if they were.

#### **4 Small leasehold premises with common parts**

- (1) Section 36(1) does not apply if —
- (a) the premises in question are small premises,
  - (b) the relevant person or a relative of that person resides, and intends to continue to reside, in another part of the premises, and
  - (c) the premises include parts (other than storage areas and means of access) shared with residents of the premises who are not members of the same household as the resident mentioned in paragraph (b).
- (2) For the purpose of sub-paragraph (1) “the relevant person” is the person who, if section 36(1) applied, would be —
- (a) the controller of the premises; or
  - (b) the responsible person in relation to the common parts.
- (3) In this paragraph “relative” and “small premises” have the meaning given in paragraph 3.

#### **5 Power to amend**

DEFA may amend this Schedule by order.



## SCHEDULE 6

## OFFICE-HOLDERS: EXCLUDED OFFICES

[Section 46(9)]

**1 Work to which other provisions apply**

- (1) An office or post is not a personal or public office in so far as one or more of the provisions mentioned in sub-paragraph (2)—
- (a) applies in relation to the office or post, or
  - (b) would apply in relation to the office or post but for the operation of some other provision of this Act.
- (2) Those provisions are—
- (a) section 38 (employees and applicants for employment);
  - (b) section 40 (contract workers);
  - (c) section 48 (employment services) so far as applying to the provision of work experience within subsection (8)(a) of that section or arrangements within subsection (8)(c) of that section for such provision.

**2 Political offices**

- (1) An office or post is not a personal or a public office if it is a political office.
- (2) A political office is an office or post described in column 2 of the following Table—

<b>Political context</b>	<b>Office or post</b>
Tynwald	The office of President of Tynwald
	An office of Tynwald held by a member of either Branch
	An office of the House of Keys held by a member of the House
	An office of the Legislative Council held by a member of the Council
	The office of Chief Minister
	Office as a Minister or a member of Department
	Office as a member of a Statutory Board (whether or not by virtue of being a member of Tynwald).
Douglas Borough Council	The office of mayor Office as a councillor
Commission for a town, parish or village district constituted or continued under the <i>Local Government Consolidation Act 1916</i>	Office as a Chairman of Commissioners

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	Office as a Commissioner
Manx Museum and National Trust	Office as chairperson or a trustee

**3 Honours**

A dignity or honour conferred by the Crown is not a personal or public office.

**4 Bishop**

The office of the Lord Bishop is not a public office.

**SCHEDULE 7**

[Section 70(8)]

**EQUALITY OF TERMS: EXCEPTIONS****PART 1 – TERMS OF WORK****1 Compliance with laws regulating employment of women, etc**

Neither a sex equality clause nor a maternity equality clause has effect in relation to terms of work affected by compliance with laws regulating –

- (a) the employment of women;
- (b) the appointment of women to personal or public offices.

**2 Pregnancy and childbirth**

A sex equality clause does not have effect in relation to terms of work affording special treatment to women in connection with pregnancy or childbirth.

**PART 2 – OCCUPATIONAL PENSION SCHEMES****3 Preliminary**

- (1) A sex equality rule does not have effect in relation to a difference between men and women in the effect of a relevant matter if the difference is permitted by virtue of this Part of this Schedule.
- (2) “Relevant matter” has the meaning given in section 58.

**4 State retirement pensions**

- (1) This paragraph applies where a man and a woman are eligible, in such circumstances as may be prescribed, to receive different amounts by way of pension.
- (2) The difference is permitted if, in prescribed circumstances, it is attributable only to differences between men and women in the retirement benefits to which, in prescribed circumstances, the man and woman are or would be entitled.
- (3) “Retirement benefits” are benefits under sections 43 to 55 of the Social Security Contributions and Benefits Act 1992 (of Parliament) (state retirement pensions).

## 5 Actuarial factors

- (1) A difference as between men and women is permitted if it consists of applying to the calculation of the employer's contributions to an occupational pension scheme actuarial factors which—
  - (a) differ for men and women, and
  - (b) are of such description as may be prescribed.
- (2) A difference as between men and women is permitted if it consists of applying to the determination of benefits of such description as may be prescribed actuarial factors which differ for men and women.

## 6 Meaning of “prescribed”

In this Part of this Schedule “**prescribed**” means prescribed by regulations made by the Treasury.

## 7 Power to amend

- (1) The Treasury may amend this Part of this Schedule by regulations so as to add, vary or omit provision about cases where a difference as between men and women in the effect of a relevant matter is permitted.
- (2) The regulations may make provision about pensionable service before the date on which they come into force (but not about pensionable service before 6 April 2006).

**Schedule 8****WORK – REASONABLE ADJUSTMENTS**

[Section 72(5)]

**PART 1 – INTRODUCTORY****1 Preliminary**

This Schedule applies where a duty to make reasonable adjustments is imposed on A by this Part of this Act.

**2 The duty**

- (1) A must comply with the first, second and third requirements.
- (2) For the purposes of this paragraph—
  - (a) the reference in section 21(3) to a provision, criterion or practice is a reference to a provision, criterion or practice applied by or on behalf of A;
  - (b) the reference in section 21(4) to a physical feature is a reference to a physical feature of premises occupied by A;
  - (c) the reference in section 21(3), (4) or (5) to a disabled person is to an interested disabled person.
- (3) In relation to the first and third requirements, a relevant matter is any matter specified in the first column of the applicable table in Part 2 of this Schedule.
- (4) In relation to the second requirement, a relevant matter is—
  - (a) a matter specified in the second entry of the first column of the applicable table in Part 2 of this Schedule, or
  - (b) where there is only one entry in a column, a matter specified there.
- (5) If two or more persons are subject to a duty to make reasonable adjustments in relation to the same interested disabled person, each of them must comply with the duty so far as it is reasonable for each of them to do so.

**3 Reasonable adjustment – employment services**

- (1) This paragraph applies if a duty to make reasonable adjustments is imposed on A by section 48 (except where the employment service which A provides is the provision of vocational training within the meaning given by subsection (8)(b) of that section).

- (2) The reference in section 21(3), (4) and (5) to a disabled person is a reference to an interested disabled person.
- (3) In relation to each requirement, the relevant matter is the employment service which A provides.
- (4) Sub-paragraph (5) of paragraph 2 applies for the purposes of this paragraph as it applies for the purposes of that paragraph.

## PART 2 — INTERESTED DISABLED PERSON

### 4 Employers (see section 38)

- (1) This paragraph applies if A is an employer.

Relevant matter	Description of disabled person
Deciding to whom to offer employment	A person who is, or has notified A that the person may be, an applicant for the employment.
Employment by A	An applicant for employment by A. An employee of A's.

- (2) If A is the employer of a disabled contract worker (B), A must comply with the first, second and third requirements on each occasion when B is supplied to a principal to do contract work.
- (3) In relation to the first requirement (as it applies for the purposes of sub-paragraph (2))—
  - (a) the reference in section 21(3) to a provision, criterion or practice is a reference to a provision, criterion or practice applied by or on behalf of all or most of the principals to whom B is or might be supplied,
  - (b) the reference to being put at a substantial disadvantage is a reference to being likely to be put at a substantial disadvantage that is the same or similar in the case of each of the principals referred to in paragraph (a), and
  - (c) the requirement imposed on A is a requirement to take such steps as it would be reasonable for A to have to take if the provision, criterion or practice were applied by or on behalf of A.
- (4) In relation to the second requirement (as it applies for the purposes of sub-paragraph (2))—
  - (a) the reference in section 21(4) to a physical feature is a reference to a physical feature of premises occupied by each of the principals referred to in sub-paragraph (3)(a),
  - (b) the reference to being put at a substantial disadvantage is a reference to being likely to be put at a substantial disadvantage

that is the same or similar in the case of each of those principals, and

- (c) the requirement imposed on A is a requirement to take such steps as it would be reasonable for A to have to take if the premises were occupied by A.
- (5) In relation to the third requirement (as it applies for the purposes of sub-paragraph (2))—
  - (a) the reference in section 21(5) to being put at a substantial disadvantage is a reference to being likely to be put at a substantial disadvantage that is the same or similar in the case of each of the principals referred to in sub-paragraph (3)(a), and
  - (b) the requirement imposed on A is a requirement to take such steps as it would be reasonable for A to have to take if A were the person to whom B was supplied.

**5 Principals in contract work (see section 40)**

- (1) This paragraph applies where A is a principal.

Relevant matter	Description of disabled person
Contract work that A may make available	A person who is, or has notified A that the person may be, an applicant to do the work.
Contract work that A makes available.	A person who is supplied to do the work.

- (2) A is not required to do anything which a disabled person’s employer is required to do by virtue of paragraph 5.

**6 Partnerships (see section 42)**

- (1) This paragraph applies where A is a firm or a proposed firm.

Relevant matter	Description of disabled person
Deciding to whom to offer a position as a partner	A person who is, or has notified A that the person may be, a candidate for the position.
A position as a partner	A candidate for the position. The partner who holds the position.

- (2) If a firm or proposed firm (A) is required by this Schedule to take a step in relation an interested disabled person (B)—
  - (a) the cost of taking the step is to be treated as an expense of A;
  - (b) the extent to which B should (if B is or becomes a partner) bear the cost is not to exceed such amount as is reasonable (having regard in particular to B’s entitlement to share in A’s profits).

## 7 Persons making appointments to offices etc. (see sections 43 to 45)

This paragraph applies where A is a person who has the power to make an appointment to a personal or public office.

Relevant matter	Description of disabled person
Deciding to whom to offer the appointment	A person who is, or has notified A that the person may be, seeking the appointment A person who is being considered for the appointment.
Appointment to the office	A person who is seeking, or being considered for, appointment to the office.

## 8 Personal and public offices: duty of relevant person

This paragraph applies where A is a relevant person in relation to a personal or public office.

Relevant matter	Description of disabled person
Appointment to the office.	A person appointed to the office.

## 9 Public offices: making recommendation for, or giving approval to appointment

This paragraph applies where A is a person who has the power to make a recommendation for, or give approval to, an appointment to a public office.

Relevant matter	Description of disabled person
Deciding whom to recommend or approve for appointment to the office.	A person who is, or has notified A that the person may be, seeking recommendation or approval for appointment to the office. A person who is being considered for recommendation or approval for appointment to the office.
An appointment to the office	A person who is seeking, or being considered for, appointment to the office in question.

## 10 Appointments to offices: supplemental

In relation to the second requirement in a case within paragraph 7, 8 or 9 the reference in paragraph 2(2)(b) to premises occupied by A is to be read as a reference to premises —

- (a) under the control of A, and
- (b) at or from which the functions of the office concerned are performed.



**11 Qualifications bodies (see section 47)**

- (1) This paragraph applies if A is a qualifications body.

<b>Relevant matter</b>	<b>Description of disabled person</b>
Deciding upon whom to confer a relevant qualification.	A person who is, or who has notified A the person may be an applicant for the conferment of the qualification.
Conferment by the body of a relevant qualification.	An applicant for the conferment of the qualification. A person who holds the qualification.

- (2) A provision, criterion or practice does not include the application of a competence standard.

**12 Employment service providers (see section 48)**

This paragraph applies if—

- (a) A is an employment service-provider; and  
 (b) the employment service that A provides is vocational training within the meaning of section 48(10).

<b>Relevant matter</b>	<b>Description of disabled person</b>
Deciding to whom to offer the service.	A person who is, or who has notified A the person may be, an applicant for the provision of the service.
Provision by A of the service	A person who applies for the provision of the service. A person to whom A provides the service.

**13 Trade organisations (see section 49)**

This paragraph applies if A is a trade organisation.

<b>Relevant matter</b>	<b>Description of disabled person</b>
Deciding to whom to offer membership of the organisation	A person who is, or who has notified A the person may be, an applicant for membership.
Membership of the organisation	An applicant for membership. A member.

**14 Local authorities (see section 50)**

- (1) This paragraph applies where A is a local authority.

<b>Relevant matter</b>	<b>Description of disabled person</b>
A member's carrying-out of official business.	The member.

- (2) Regulations may, for the purposes of a case within this paragraph, make provision—
- (a) as to circumstances in which a provision, criterion or practice is, or is not, to be taken to put a disabled person at the disadvantage referred to in the first requirement;
  - (b) as to circumstances in which a physical feature is, or is not, to be taken to put a disabled person at the disadvantage referred to in the second requirement;
  - (c) as to circumstances in which it is, or in which it is not, reasonable for a local authority to be required to take steps of a prescribed description;
  - (d) as to steps which it is always, or which it is never, reasonable for a local authority to take.

### 15 Occupational pensions (see section 52)

This paragraph applies if A is, in relation to an occupational pension scheme, a responsible person within the meaning of section 52.

Relevant matter	Description of disabled person
Carrying out A's functions in relation to the scheme.	A person who is or may be a member of the scheme.

## PART 3 — LIMITATIONS ON THE DUTY

### 16 Lack of knowledge of disability

- (1) A is not subject to a duty to make reasonable adjustments if A does not know, and could not reasonably be expected to know—
- (a) in the case of an applicant or potential applicant, that an interested disabled person is or may be an applicant for the work in question;
  - (b) in any case referred to in Part 2 of this Schedule, that an interested disabled person has a disability and is likely to be placed at the disadvantage referred to in the first, second or third requirement.
- (2) An applicant is, in relation to the description of A specified in the first column of the table, a person of a description specified in the second column (and the reference to a potential applicant is to be construed accordingly).

Description of A	Applicant
An employer	An applicant for employment
A firm or proposed firm	A candidate for a position as a partner
A relevant person in relation to a public office	A person who is seeking appointment to, or recommendation or approval for, appointment to the office

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A qualifications body	An applicant for the conferment of a relevant qualification
An employment service-provider	An applicant for the provision of an employment service
A trade organisation	An application for membership

- (3) If the duty to make reasonable adjustments is imposed on A by section 48, this paragraph applies only insofar as the employment service that A provides is vocational training within the meaning of section 48(10).

**SCHEDULE 9**

[Section 72(6)]

**WORK: EXCEPTIONS****PART 1— OCCUPATIONAL REQUIREMENTS****1 General**

- (1) A person (A) does not contravene a provision mentioned in sub-paragraph (2) by applying in relation to work a requirement to have a particular protected characteristic, if A shows that, having regard to the nature or context of the work—
  - (a) it is an occupational requirement,
  - (b) the application of the requirement is a proportionate means of achieving a legitimate aim, and
  - (c) the person to whom A applies the requirement does not meet it (or A has reasonable grounds for not being satisfied that the person meets it).
- (2) The provisions are—
  - (a) section 38(1)(a) or (c) or (2)(b) or (c);
  - (b) section 40(1)(b);
  - (c) section 42(1)(a) or (c) or (2)(b) or (c);
  - (e) section 43(3)(a) or (c) or (6)(b) or (c);
  - (f) section 44(3)(a) or (c) or (6)(b) or (c);
  - (g) section 45(1).
- (3) The references in sub-paragraph (1) to a requirement to have a protected characteristic are to be read—
  - (a) in the case of gender reassignment, as references to a requirement not to be a transsexual person (and section 8(3) is accordingly to be ignored);
  - (b) in the case of marriage and civil partnership, as references to a requirement not to be married or a civil partner (and section 9(2) is accordingly to be ignored).
- (4) In the case of a requirement to be of a particular sex, sub-paragraph (1) has effect as if in paragraph (c), the words from “(or” to the end were omitted.

**2 Religious requirements relating to sex, marriage etc., sexual orientation**

- (1) A person (A) does not contravene a provision mentioned in sub-paragraph (2) by applying in relation to employment a requirement to which sub-paragraph (4) applies if A shows that—
  - (a) the employment is for the purposes of an organised religion,
  - (b) the application of the requirement engages the compliance or non-conflict principle, and
  - (c) the person to whom A applies the requirement does not meet it (or A has reasonable grounds for not being satisfied that the person meets it).
- (2) The provisions are—
  - (a) section 38(1)(a) or (c) or (2)(b) or (c);
  - (b) section 43(3)(a) or (c) or (6)(b) or (c);
  - (c) section 44(3)(a) or (c) or (6)(b) or (c);
  - (d) section 45(1).
- (3) A person does not contravene section 47(1) or (2)(a) or (b) by applying in relation to a relevant qualification (within the meaning of that section) a requirement to which sub-paragraph (4) applies if the person shows that—
  - (a) the qualification is for the purposes of employment mentioned in sub-paragraph (1)(a), and
  - (b) the application of the requirement engages the compliance or non-conflict principle.
- (4) This sub-paragraph applies to—
  - (a) a requirement to be of a particular sex;
  - (b) a requirement not to be a transsexual person;
  - (c) a requirement not to be married or a civil partner;
  - (d) a requirement not to be married to, or the civil partner of, a person who has a living former spouse or civil partner;
  - (e) a requirement relating to circumstances in which a marriage or civil partnership came to an end;
  - (f) a requirement related to sexual orientation.
- (5) The application of a requirement engages the compliance principle if the requirement is applied so as to comply with the doctrines of the religion.
- (6) The application of a requirement engages the non-conflict principle if, because of the nature or context of the employment, the requirement is applied so as to avoid conflicting with the strongly held religious convictions of a significant number of the religion's followers.

- (7) A reference to employment includes a reference to an appointment to a personal or public office.
- (8) In the case of a requirement within sub-paragraph (4)(a), sub-paragraph (1) has effect as if in paragraph (c) the words from “(or” to the end were omitted.

### **3 Other requirements relating to religion or belief**

A person (A) with an ethos based on religion or belief does not contravene a provision mentioned in paragraph 1(2) by applying in relation to work a requirement to be of a particular religion or belief if A shows that, having regard to that ethos and to the nature or context of the work—

- (a) it is an occupational requirement,
- (b) the application of the requirement is a proportionate means of achieving a legitimate aim, and
- (c) the person to whom A applies the requirement does not meet it (or A has reasonable grounds for not being satisfied that the person meets it).

### **4 Employment services**

- (1) A person (A) does not contravene section 48(1) or (2) if A shows that A’s treatment of another person relates only to work the offer of which could be refused to that other person in reliance on paragraph 1, 2 or 3.
- (2) A person does not contravene section 48(1) or (2) if A shows that A’s treatment of another person relates only to training for work of a description mentioned in sub-paragraph (1).
- (3) A person (A) does not contravene section 48(1) or (2) if A shows that—
  - (a) A acted in reliance on a statement made to A by a person with the power to offer the work in question to the effect that, by virtue of sub-paragraph (1) or (2), A’s action would be lawful, and
  - (b) it was reasonable for A to rely on the statement.
- (4) A person commits an offence by knowingly or recklessly making a statement such as is mentioned in sub-paragraph (3)(a) which in a material respect is false or misleading.
- (5) A person guilty of an offence under sub-paragraph (4) is liable on summary conviction to a fine not exceeding £5,000.

### **5 Interpretation**

- (1) This paragraph applies for the purposes of this Part of this Schedule.
- (2) A reference to contravening a provision of this Act is a reference to contravening that provision by virtue of section 14.

- (3) A reference to work is a reference to employment, contract work, a position as a partner, or an appointment to a personal or public office.
- (4) A reference to section 38(2)(b), 42(2)(b), 43(6)(b) or 44(6)(b) is to be read as a reference to that provision with the omission of the words “or for receiving any other benefit, facility or service”.
- (5) A reference to section 39(2)(c), 43(2)(c), 43(6)(c), 45(6)(c) 47(2)(a) or 48(2)(c) (dismissal, etc.) does not include a reference to that provision so far as relating to sex.
- (6) The reference to paragraph (b) of section 41(1), so far as relating to sex, is to be read as if that paragraph read—
  - “ (b) by not allowing the worker to do the work.”.

## PART 2 — EXCEPTIONS RELATING TO AGE

### 6 Preliminary

For the purposes of this Part of this Schedule, a reference to an “**age contravention**” is a reference to a contravention of this Part of this Act, so far as relating to age.

### 7 Benefits based on length of service

- (1) It is not an age contravention for a person (A) to put a person (B) at a disadvantage when compared with another (C), in relation to the provision of a benefit, facility or service in so far as the disadvantage is because B has a shorter period of service than C.
- (2) If B’s period of service exceeds 5 years, A may rely on sub-paragraph (1) only if A reasonably believes that doing so fulfils a business need.
- (3) A person’s period of service is whichever of the following A chooses—
  - (a) the period for which the person has been working for A at or above a level (assessed by reference to the demands made on the person) that A reasonably regards as appropriate for the purposes of this paragraph, or
  - (b) the period for which the person has been working for A at any level.
- (4) The period for which a person has been working for A must be based on the number of weeks during the whole or part of which the person has worked for A.
- (5) But for that purpose A may, so far as is reasonable, discount—
  - (a) periods of absence;
  - (b) periods that A reasonably regards as related to periods of absence.

- (6) For the purposes of sub-paragraph (3)(b), a person is to be treated as having worked for A during any period in which the person worked for a person other than A if –
- (a) that period counts as a period of employment with A as a result of Schedule 5 to the *Employment Act 2006*, or
  - (b) if sub-paragraph (a) does not apply, that period is treated as a period of employment by an enactment pursuant to which the person's employment was transferred to A.
- (7) For the purposes of this paragraph, the reference to a benefit, facility or service does not include a reference to a benefit, facility or service which may be provided only by virtue of a person's ceasing to work.

## 8 Minimum wage: young workers

- (1) It is not an age contravention for a person to pay a young worker (A) at a lower rate than that at which the person pays an older worker (B) if –
- (a) the hourly rate for the minimum wage for a person of A's age is lower than that for a person of B's age, and
  - (b) the rate at which A is paid is below the single hourly rate.
- (2) A young worker is a person who qualifies for the minimum wage at a lower rate than the single hourly rate; and an older worker is a person who qualifies for the minimum wage at a higher rate than that at which the young worker qualifies for it.
- (3) The single hourly rate is the rate prescribed under section 1(3) of the *Minimum Wage Act 2001*.

## 9 Minimum wage: apprentices

- (1) It is not an age contravention for a person to pay an apprentice who does not qualify for the minimum wage at a lower rate than the person pays an apprentice who does.
- (2) An apprentice is a person who –
- (a) is employed under a contract of apprenticeship, or
  - (b) as a result of provision made by virtue of section 4(2)(a) of the *Minimum Wage Act 2001* (persons not qualifying for minimum wage) is treated as employed under a contract of apprenticeship.

## 10 Redundancy

- (1) It is not an age contravention for a person to give a qualifying employee a redundancy payment of an amount less than that of a redundancy payment which the person gives to another qualifying employee, if each amount is calculated on the same basis.



- (2) Nor is it an age contravention for person to give a qualifying employee (E) a redundancy payment of an amount less than the amount of such a payment given to another employee (F) if the amounts are calculated on the same basis but the payment to E is reduced in accordance with paragraph 2 of Schedule 2 to the *Redundancy Payments Act 1990*.

## 11 Insurance etc.

- (1) It is not an age contravention for an employer to make arrangements for, or afford access to, the provision of insurance or a related financial service to or in respect of an employee for a period ending when the employee attains whichever is the greater of—
- (a) the age of 65, and
  - (b) the state pensionable age.
- (2) It is not an age contravention for an employer to make arrangements for, or afford access to, the provision of insurance or a related financial service to or in respect of only such employees as have not attained whichever is the greater of—
- (a) the age of 65, and
  - (b) the state pensionable age.
- (3) Sub-paragraphs (1) and (2) apply only where the insurance or related financial service is, or is to be, provided to the employer's employees or a class of those employees—
- (a) in pursuance of an arrangement between the employer and another person, or
  - (b) if the employer's business includes the provision of insurance or financial services of the description in question, by the employer.
- (4) The state pensionable age is the pensionable age determined in accordance with the rules in paragraph 1 of Schedule 4 to the Pensions Act 1995 (of Parliament).

## 12 Child care

- (1) A person does not contravene a relevant provision, so far as relating to age, only by providing, or making arrangements for or facilitating the provision of, care for children of a particular age group.
- (2) The relevant provisions are—
- (a) section 38(2)(b);
  - (b) section 40(1)(c);
  - (c) section 42(2)(b);
  - (d) section 43(6)(b);
  - (e) section 44(6)(b);

- (f) section 49(2)(a);
  - (g) section 50(3)(a).
- (3) Facilitating the provision of care for a child includes—
- (a) paying for some or all of the cost of the provision;
  - (b) helping a parent of the child to find a suitable person to provide care for the child;
  - (c) enabling a parent of the child to spend more time providing care for the child or otherwise assisting the parent with respect to the care that the parent provides for the child.
- (4) For the purpose of this paragraph —
- (a) a child is a person who has not attained the age of 18;
  - (b) a reference to care includes a reference to supervision.

### **13 Contributions to personal pension schemes**

- (1) Treasury may by order provide that it is not an age contravention for an employer to maintain or use, with respect to contributions to personal pension schemes, practices, actions or decisions relating to age which are of a specified description.
- (2) Before making an order under sub-paragraph (1) the Treasury must —
- (a) consult the Insurance and Pensions Authority; and
  - (b) if the order authorises the use of practices, actions or decisions which are not in use before the order comes into operation, consult such other persons as it considers appropriate.
- (3) For the purposes of this paragraph—
- (a) “personal pension scheme” has the meaning given by section 1 of the Pension Schemes Act 1983 (of Parliament); and
  - (b) “employer” in relation to a personal pension scheme has the meaning given by section 318(1) of the Pensions Act 2004 (of Parliament).

## **PART 3 — OTHER EXCEPTIONS**

### **14 Non-contractual payments to women on maternity leave**

- (1) A person does not contravene section 38(1)(b) or (2), so far as relating to pregnancy and maternity, by depriving a woman who is on maternity leave of any benefit from the terms of her employment relating to pay.
- (2) The reference in sub-paragraph (1) to benefit from the terms of a woman’s employment relating to pay does not include a reference to—

- (a) maternity-related pay (including maternity-related pay that is increase-related),
  - (b) pay (including increase-related pay) in respect of times when she is not on maternity leave, or
  - (c) pay by way of bonus in respect of times when she is on compulsory maternity leave.
- (3) For the purposes of sub-paragraph (2), pay is increase-related in so far as it is to be calculated by reference to increases in pay that the woman would have received had she not been on maternity leave.
- (4) A reference to terms of her employment is a reference to terms of her employment that are not in her contract of employment, her contract of apprenticeship or her contract to do work personally.
- (5) “Pay” means benefits—
- (a) that consist of the payment of money to an employee by way of wages or salary, and
  - (b) that are not benefits whose provision is regulated by the contract referred to in sub-paragraph (4).
- (6) “Maternity-related pay” means pay to which a woman is entitled—
- (a) as a result of being pregnant, or
  - (b) in respect of times when she is on maternity leave.

## **15 Benefits dependent on marital status, etc.**

- (1) A person does not contravene this Part of this Act, so far as relating to sexual orientation, by doing anything which prevents or restricts a person who is not married from having access to a benefit, facility or service—
- (a) the right to which accrued before 6 April 2011 (the day on which section 1 of the Civil Partnership Act 2011 came into force for the purpose of civil partnership ceremonies), or
  - (b) which is payable in respect of periods of service before that date.
- (2) A person does not contravene this Part of this Act, so far as relating to sexual orientation, by providing married persons and civil partners (to the exclusion of all other persons) with access to a benefit, facility or service.

## **16 Provision of services etc. to the public**

- (1) A does not contravene a provision mentioned in sub-paragraph (2) in relation to the provision of a benefit, facility or service to B if A is concerned with the provision (for payment or not) of a benefit, facility or service of the same description to the public.

- (2) The provisions are—
  - (a) section 39(2) and (4);
  - (b) section 41(1) and (3);
  - (c) sections 44(2) and (6) and 45(2) and (6);
  - (d) sections 49(6) and (8) and 50(6), (7), (9) and (10).
- (3) Sub-paragraph (1) does not apply if—
  - (a) the provision by A to the public differs in a material respect from the provision by A to comparable persons,
  - (b) the provision to B is regulated by B's terms, or
  - (c) the benefit, facility or service relates to training.
- (4) "Comparable persons" means—
  - (a) in relation to section 39(2) or (4), the other employees;
  - (b) in relation to section 41(1) or (3), the other contract workers supplied to the principal;
  - (c) in relation to section 42(2) or (6), the other partners of the firm;
  - (f) in relation to section 43(6) or (8) or 44(6), (7), (9) or (10), persons holding offices or posts not materially different from that held by B.
- (5) "B's terms" means—
  - (a) the terms of B's employment,
  - (b) the terms on which the principal allows B to do the contract work,
  - (c) the terms on which B has the position as a partner or member, or
  - (d) the terms of B's appointment to the office.
- (6) A reference to the public includes a reference to a section of the public which includes B.

## 17 Insurance contracts, etc.

- (1) It is not a contravention of this Part of this Act, so far as relating to relevant discrimination, to do anything in relation to an annuity, life insurance policy, accident insurance policy or similar matter involving the assessment of risk if—
  - (a) that thing is done by reference to actuarial or other data from a source on which it is reasonable to rely, and
  - (b) it is reasonable to do it.
- (2) For the purposes of this paragraph "relevant discrimination" is—
  - (a) gender reassignment discrimination;
  - (b) marriage and civil partnership discrimination;
  - (c) pregnancy and maternity discrimination;

(d) sex discrimination.

## SCHEDULE 10

[Section 76]

### ACCESSIBILITY FOR DISABLED PUPILS

#### 1 Accessibility strategy

- (1) DEC must prepare and publish in such manner as it thinks appropriate an accessibility strategy in relation to provided and maintained schools.
- (2) An accessibility strategy is a strategy for —
  - (a) increasing the extent to which disabled pupils can participate in the curriculum of the schools referred to in subparagraph (1); and
  - (b) improving the physical environment of those schools for the purpose of increasing the extent to which disabled pupils are able to take advantage of —
    - (i) education, and
    - (ii) benefits, facilities or services, provided or offered by those schools;
  - (c) improving the delivery to disabled pupils of information which is readily available to pupils who are not disabled.
- (3) The improvement in delivery referred to in subparagraph (2)(c) must be achieved within a reasonable time and in ways which are determined after taking account of —
  - (a) the disabilities of the pupils attending the schools in question; and
  - (b) any preferences expressed by them or their parents or guardians.
- (4) DEC must keep its accessibility strategy under review, and must revise it if it appears to DEC to be necessary to do so.
- (5) DEC must implement the accessibility strategy.

#### 2 Accessibility plans

- (1) The responsible body of a school must prepare, and publish in such manner as it considers appropriate, an accessibility plan.
- (2) An accessibility plan is a plan for —
  - (a) increasing the extent to which disabled pupils can participate in the school's curriculum,
  - (b) improving the physical environment of the school for the purpose of increasing the extent to which disabled pupils are able to take advantage of education and benefits, facilities or services provided or offered by the school, and

- (c) improving the delivery to disabled pupils of information which is readily accessible to pupils who are not disabled, during the period to which the plan relates.
- (3) Subparagraphs (3) to (5) of paragraph 1 apply to the responsible body of a school and its accessibility plan, as they apply to DEC and its accessibility strategy.

**Schedule 11****SCHOOLS – EXCEPTIONS**

[Section 77(6)]

**PART 1 – SEX DISCRIMINATION****1 Admission to single-sex schools**

- (1) Section 74(1), so far as relating to sex, does not apply in relation to a single-sex school.
- (2) A single-sex school is a school which—
  - (a) admits pupils of one sex only, or
  - (b) on the basis of the assumption in sub-paragraph (3), would be taken to admit pupils of one sex only.
- (3) That assumption is that pupils of the opposite sex are to be disregarded if—
  - (a) their admission to the school is exceptional, or
  - (b) their numbers are comparatively small and their admission is confined to particular courses or classes.
- (4) In the case of a school which is a single-sex school by virtue of sub-paragraph (3)(b), section 74(2)(a) to (d), so far as relating to sex, does not prohibit confining pupils of the same sex to particular courses or classes.

**2 Single-sex boarding at schools**

- (1) Section 74(1), so far as relating to sex, does not apply in relation to admission as a boarder to a school to which this paragraph applies.
- (2) Section 74(2)(a) to (d) so far as relating to sex, does not apply in relation to boarding facilities at a school to which this paragraph applies.
- (3) This paragraph applies to a school (other than a single-sex school) which has some pupils as boarders and others as non-boarders and which—
  - (a) admits as boarders pupils of one sex only, or
  - (b) on the basis of the assumption in sub-paragraph (4), would be taken to admit as boarders pupils of one sex only.
- (4) That assumption is that pupils of the opposite sex admitted as boarders are to be disregarded if their numbers are small compared to the numbers of other pupils admitted as boarders.



### **3 Single-sex schools turning co-educational**

- (1) If the governing body of a single-sex school decides to alter its admissions arrangements so that the school will cease to be a single-sex school, the body may apply for a transitional exemption order in relation to the school.
- (2) If the governing body of a school to which paragraph 2 applies decides to alter its admissions arrangements so that the school will cease to be one to which that paragraph applies, the body may apply for a transitional exemption order in relation to the school.
- (3) A transitional exemption order in relation to a school is an order which, during the period specified in the order as the transitional period, authorises—
  - (a) sex discrimination by the responsible body of the school in the arrangements it makes for deciding who is offered admission as a pupil;
  - (b) the governing body, in the circumstances specified in the order, not to admit a person as a pupil because of the person's sex.
- (4) Paragraph 4 applies in relation to the making of transitional exemption orders.
- (5) The responsible body of a school does not contravene this Act, so far as relating to sex discrimination, if—
  - (a) in accordance with a transitional exemption order, or
  - (b) pending the determination of an application for a transitional exemption order in relation to the school,it does not admit a person as a pupil because of the person's sex.

## **PART 2 — RELIGIOUS OR BELIEF-RELATED DISCRIMINATION**

### **4 Schools with religious character**

Section 74(2)(a) to (d), so far as relating to religion or belief, does not apply to a school for the time being specified in an order under paragraph 6 of Schedule 3.

### **5 Curriculum and worship**

Section 74(2)(a) to (d), so far as relating to religion or belief, does not apply in relation to anything done in connection with acts of worship or other religious observance organised by or on behalf of a school (whether or not forming part of the curriculum).

## 6 Power to amend

- (1) The Council of Ministers may by order amend this Part of this Schedule —
  - (a) so as to add, vary or omit an exception to section 74;
  - (b) so as to make provision about the application of section 20(2).
- (2) The power under sub-paragraph (1) is exercisable only in relation to religious or belief-related discrimination.

## PART 3 — DISABILITY DISCRIMINATION

### 7 Permitted form of selection

- (1) A person does not contravene section 74(1), so far as relating to disability, only by applying a permitted form of selection.
- (2) For the purposes of sub-paragraph (1) a permitted form of selection is —
  - (a) in the case of a provided school, maintained or special school, a form of selection approved by DEC;
  - (b) in the case of an independent school, arrangements which provide for some or all of its pupils to be selected by reference to general or special ability or aptitude, with a view to admitting only pupils or high ability or aptitude.
- (3) In subparagraph (2)(a) “maintained school”, “provided school” and “special school” have the meanings respectively assigned to them by section 59(1) of the *Education Act 2001*.

**Schedule 12**

[Section 81(6)]

**FURTHER AND HIGHER EDUCATION – EXCEPTIONS****1 Occupational requirements**

A person does not contravene section 79(1) or (2) if P shows that P's treatment of another relates only to training that would help fit that other person for work the offer of which the other person could be refused in reliance on Part 1 of Schedule 9.

**2 Institutions with a religious ethos**

- (1) The responsible body of an institution which is designated for the purposes of this paragraph does not contravene section 79(1), so far as relating to religion or belief, if, in the admission of students to a course at the institution—
  - (a) it gives preference to persons of a particular religion or belief,
  - (b) it does so to preserve the institution's religious ethos, and
  - (c) the course is not a course of vocational training.
- (2) DEC may by order designate an institution if satisfied that the institution has a religious ethos.

**3 Benefits dependent on marital status, etc.**

A person does not contravene section 78, so far as relating to sexual orientation, by providing married persons and civil partners (to the exclusion of all other persons) with access to a benefit, facility or service.

**4 Child care**

- (1) A person does not contravene section 78(3)(b) or (d), so far as relating to age, only by providing, or making arrangements for or facilitating the provision of, care for children of a particular age group.
- (2) For the purpose of this paragraph —
  - (a) facilitating the provision of care for a child includes—
    - (i) paying for some or all of the cost of the provision,
    - (ii) helping a parent of the child to find a suitable person to provide care for the child,
    - (iii) enabling a parent of the child to spend more time providing care for the child or otherwise assisting the parent with respect to the care that the parent provides for the child;

- (b) a child is a person who has not attained the age of 17; and
- (c) a reference to care includes a reference to supervision.

## 5 Confidentiality requests

- (1) This paragraph applies if —
  - (a) a person has made a confidentiality request; and
  - (b) A is aware of that request.
- (2) In deciding whether it is reasonable for A to have to take a step in relation to that person so as to comply with the first, second or third requirement, A must have regard to the extent to which taking the step is consistent with the request.
- (3) In a case within paragraph 2, a “**confidentiality request**” is a request—
  - (a) that the nature or existence of a disabled person’s disability be treated as confidential, and
  - (b) which satisfies the condition in sub-paragraph (4) or that in sub-paragraph (5).
- (4) The first condition is that the request is made by the person’s parent.
- (5) The second condition is that—
  - (a) it is made by the person, and
  - (b) A reasonably believes that the person has sufficient understanding of the nature and effect of the request.
- (6) In a case within paragraph 3, a “**confidentiality request**” is a request by a disabled person that the nature or existence of the person’s disability be treated as confidential.

**Schedule 13**

[Section 82]

**EDUCATION — REASONABLE ADJUSTMENTS****1 Preliminary**

This Schedule applies if a duty to make reasonable adjustments is imposed on A by this Part.

**2 The duty for schools**

- (1) This paragraph applies where A is the responsible body of a school to which section 74 applies.
- (2) A must comply with the first and third requirements.
- (3) For the purposes of this paragraph—
  - (a) the reference in section 21(3) to a provision, criterion or practice is a reference to a provision, criterion or practice applied by or on behalf of A;
  - (b) the reference in section 21(3) or (5) to a disabled person is—
    - (i) in relation to a relevant matter within sub-paragraph (4)(a), a reference to disabled persons generally;
    - (ii) in relation to a relevant matter within sub-paragraph (4)(b), a reference to disabled pupils generally.
- (4) In relation to each requirement, the relevant matters are —
  - (a) deciding who is offered admission as a pupil;
  - (b) provision of education or access to a benefit, facility or service.

**3 The duty for further or higher education institutions**

- (1) This paragraph applies where A is the responsible body of an institution to which section 80 applies.
- (2) A must comply with the first, second and third requirements.
- (3) For the purposes of this paragraph—
  - (a) the reference in section 21(3) to a provision, criterion or practice is a reference to a provision, criterion or practice applied by or on behalf of A;
  - (b) the reference in section 21(4) to a physical feature is a reference to a physical feature of premises occupied by A;
  - (c) the reference in section 21(3), (4) or (5) to a disabled person is—
    - (i) in relation to a relevant matter within sub-paragraph (4)(a), a reference to disabled persons generally;

- (ii) in relation to a relevant matter within sub-paragraph (4)(b) or (c), a reference to disabled students generally;
  - (iii) in relation to a relevant matter within sub-paragraph (4)(d) or (e) below, a reference to an interested disabled person.
- (4) In relation to each requirement, the relevant matters are—
- (a) deciding who is offered admission as a student;
  - (b) provision of education;
  - (c) access to a benefit, facility or service;
  - (d) deciding on whom a qualification is conferred;
  - (e) a qualification that A confers.

#### 4 Meaning of “interested disabled person”

For the purposes of this Schedule “**an interested disabled person**” is a person who, in relation to a relevant matter specified in column 1 of the table, is of a description specified in column 2.

Relevant matter	Description of disabled person
Deciding upon whom to confer a qualification.	A person who is, or has notified A that the person may be, an applicant for the conferment of the qualification.
A qualification that A confers.	An applicant for the conferment by A of the qualification A person upon whom A confers the qualification

For the purposes of this paragraph—

- (a) the application of a competence standard is not a provision, criterion or practice; and
- (b) a competence standard is an academic, medical or other standard applied for the purpose of determining whether or not a person has a particular level of competence or ability.

#### 5 The duty relating to certain other further or higher education courses

- (1) This paragraph applies if A is the responsible body in relation to a course to which section 79 applies.
- (2) A must comply with the first, second and third requirements; but if A is the governing body of a school maintained by DEC, A is not required to comply with the second requirement.
- (3) For the purposes of this paragraph—
  - (a) the reference in section 21(3) to a provision, criterion or practice is a reference to a provision, criterion or practice applied by or on behalf of A;

- (b) the reference in section 21(4) to a physical feature is a reference to a physical feature of premises occupied by A;
- (c) the reference in section 21(3), (4) or (5) to a disabled person is—
  - (i) in relation to a relevant matter within sub-paragraph (4)(a), a reference to disabled persons generally;
  - (ii) in relation to a relevant matter within sub-paragraph (4)(b), a reference to disabled persons generally who are enrolled on the course.
- (4) In relation to each requirement, the relevant matters are —
  - (a) arrangements for enrolling persons on a course of further or higher education secured by A;
  - (b) services provided by A for persons enrolled on the course.

**Schedule 14****ASSOCIATIONS – REASONABLE ADJUSTMENTS**

[Section 88(7)]

**1 Preliminary**

This Schedule applies where a duty to make reasonable adjustments is imposed on an association (A) by this Part.

**2 The duty**

- (1) A must comply with the first, second and third requirements.
- (2) For the purposes of this paragraph, the reference in section 21(3), (4) or (5) to a disabled person is a reference to disabled persons who—
  - (a) are, or are seeking to become or might wish to become, members,
  - (b) are associates, or
  - (c) are, or are likely to become, guests.
- (3) Section 21 has effect as if, in subsection (4), for “to avoid the disadvantage” there were substituted—
  - “(a) to avoid the disadvantage, or
  - (b) to adopt a reasonable alternative method of affording access to the benefit, facility or service or of admitting persons to membership or inviting persons as guests.”.
- (4) In relation to the first and third requirements, the relevant matters are—
  - (a) access to a benefit, facility or service;
  - (b) members’ or associates’ retaining their rights as such or avoiding having them varied;
  - (c) being admitted to membership or invited as a guest.
- (5) In relation to the second requirement, the relevant matters are—
  - (a) access to a benefit, facility or service;
  - (b) being admitted to membership or invited as a guest.
- (6) In relation to the second requirement, a physical feature includes a physical feature brought by or on behalf of A, in the course of or for the purpose of providing a benefit, facility or service, on to premises other than those that A occupies (as well as including a physical feature in or on premises that A occupies).
- (7) Nothing in this paragraph requires A to take a step which would fundamentally alter—
  - (a) the nature of the benefit, facility or service concerned, or
  - (b) the nature of the association.



- (8) Nor does anything in this paragraph require a member or associate in whose house meetings of the association take place to make adjustments to a physical feature of the house.

**Schedule 15****ASSOCIATIONS – EXCEPTIONS**

[Section 88(8)]

**1 Single characteristic associations**

- (1) An association does not contravene section 85(1) by restricting membership to persons who share a protected characteristic.
- (2) An association that restricts membership to persons who share a protected characteristic does not breach section 85(3) by restricting the access by associates to a benefit, facility or service to such persons as share the characteristic.
- (3) An association that restricts membership to persons who share a protected characteristic does not breach section 86(1) by inviting as guests, or by permitting to be invited as guests, only such persons as share the characteristic.
- (4) Sub-paragraphs (1) to (3), so far as relating to race, do not apply in relation to colour.

**2 Age**

- (1) An association does not contravene section 85(1) or (2), so far as relating to age discrimination, by giving a concession on admission to membership for—
  - (a) persons of a particular age group, or
  - (b) persons who have been members of the association for more than a number of years specified by the association for this purpose.
- (2) An association does not contravene section 86(2) or (3), so far as relating to age discrimination, by giving a concession on access to a benefit, facility or service for—
  - (a) members of a particular age group, or
  - (b) persons who have been members of the association for more than a number of years specified by the association for this purpose.
- (3) An association does not contravene section 86(1), so far as relating to age discrimination, by giving a concession on invitations of persons of a particular age group as guests.
- (4) An association does not contravene section 86(2), so far as relating to age discrimination, by giving a concession on access to a benefit, facility or service for guests of a particular age group.

- (5) For the purposes of this paragraph, affording only persons of a particular age group access to a benefit, facility or service for a limited time is to be regarded as a concession.
- (6) The reference to a concession in respect of something done by an association is a reference to a benefit, right or privilege having the effect that the manner in which, or the terms on which, it does it are more favourable than the manner in which, or the terms on which, it usually does the thing.

### 3 Health and safety

- (1) An association (A) does not discriminate against a pregnant woman in contravention of section 85(1)(b) because she is pregnant if—
  - (a) the terms on which A is prepared to admit her to membership include a term intended to remove or reduce a risk to her health or safety,
  - (b) A reasonably believes that admitting her to membership on terms which do not include that term would create a risk to her health or safety,
  - (c) the terms on which A is prepared to admit persons with other physical conditions to membership include a term intended to remove or reduce a risk to their health or safety, and
  - (d) A reasonably believes that admitting them to membership on terms which do not include that term would create a risk to their health or safety.
- (2) Sub-paragraph (1) applies to section 86(1)(b) as it applies to section 85(1)(b); and for that purpose a reference to admitting a person to membership is to be read as a reference to inviting the person as a guest or permitting the person to be invited as a guest.
- (3) An association (A) does not discriminate against a pregnant woman in contravention of section 85(2)(a) or (3)(a) or 86(2)(a) because she is pregnant if—
  - (a) the way in which A affords her access to a benefit, facility or service is intended to remove or reduce a risk to her health or safety,
  - (b) A reasonably believes that affording her access to the benefit, facility or service otherwise than in that way would create a risk to her health or safety,
  - (c) A affords persons with other physical conditions access to the benefit, facility or service in a way that is intended to remove or reduce a risk to their health or safety, and

- (d) A reasonably believes that affording them access to the benefit, facility or service otherwise than in that way would create a risk to their health or safety.
- (4) An association (A) which does not afford a pregnant woman access to a benefit, facility or service does not discriminate against her in contravention of section 85(2)(a) or (3)(a) or 86(2)(a) because she is pregnant if—
- (a) A reasonably believes that affording her access to the benefit, facility or service would, because she is pregnant, create a risk to her health or safety,
  - (b) A does not afford persons with other physical conditions access to the benefit, facility or service, and
  - (c) the reason for not doing so is that A reasonably believes that affording them access to the benefit, facility or service would create a risk to their health or safety.
- (5) An association (A) does not discriminate against a pregnant woman under section 85(2)(c) or (3)(c) because she is pregnant if—
- (a) the variation of A's terms of membership, or rights as an associate, is intended to remove or reduce a risk to her health or safety,
  - (b) A reasonably believes that not making the variation to A's terms or rights would create a risk to her health or safety,
  - (c) A varies the terms of membership, or rights as an associate, of persons with other physical conditions,
  - (d) the variation of their terms or rights is intended to remove or reduce a risk to their health or safety, and
  - (e) A reasonably believes that not making the variation to their terms or rights would create a risk to their health or safety.

**Schedule 16**

[Section 96(9)]

**THE TRIBUNAL****PART 1 – CONSTITUTION OF THE TRIBUNAL****1 Appointment of members of the Tribunal**

- (1) The Appointments Commission is to appoint, in accordance with the *Tribunals Act 2006* –
- (a) a person to act as chairperson of the Tribunal;
  - (b) a panel of persons to act as deputy chairpersons of the Tribunal;
  - (c) 2 panels of persons to act as members of the Tribunal, namely –
    - (i) one panel (“the employer panel”) consisting of persons appointed after consultation with such organisation or organisations as appear to the Appointments Commission to be representative of employers, and
    - (ii) one panel (“the employee panel”) consisting of persons appointed after consultation with such organisation or organisations as appear to the Appointments Commission to be representative of employees; and
  - (d) a panel (“the general panel”) consisting of persons appointed by the Commission.
- (2) This paragraph is subject to the transitional provision made by section 95(3) for the continuation of certain appointments.

**2 Constitution for an appeal**

- (1) For the hearing and determination of an appeal, the Tribunal is to consist of the chairperson and –
- (a) in the case of an appeal under Part 5 of this Act or the relevant enactments<sup>5</sup>, one person chosen by the chairperson from the employer panel and one person so chosen from the employee panel; and
  - (b) in the case any other appeal, two persons each chosen by the chairperson from any of the panels constituted by paragraphs (c) and (d) of paragraph 1.
- (2) If the chairperson of the Tribunal is absent or unable to act, his or her place shall be taken, and any of his or her functions may be exercised, by the senior deputy chairperson who is available to act (for this purpose

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<sup>5</sup> See section 95(4).

deputy chairpersons appointed on the same occasion are to be ranked in alphabetical order).

- (3) If one of the other members of the Tribunal is absent or unable to act, his or her place shall be taken by another member, chosen by the chairperson of the Tribunal, of the same panel as that from which that member was chosen.
- (4) Except where the rules otherwise provide, if the Tribunal has begun to hear any complaint or other matter, it may not, without the consent of the parties, continue to do so unless it comprises at least 2 of the members who began to hear the matter, one of whom must be the chairperson or deputy chairperson.

## **PART 2 – PROCEEDINGS BEFORE THE TRIBUNAL**

### **3 Interpretation for the purposes of this Part**

In this Part “the 2006 Act” means the *Employment Act 2006*.

### **4 Rules as to Tribunal procedure**

- (1) After consulting the Deemsters, the Council of Ministers may by rules (in this Schedule referred to as “Tribunal rules”) make such provision as appears to it to be necessary or expedient with respect to proceedings before the Tribunal.
- (2) Tribunal rules may in particular include provision —
  - (a) for requiring a fee to be paid on the making of a complaint, and providing for it to be refunded in specified circumstances;
  - (b) for treating DED or the Treasury (either generally or in such circumstances as may be prescribed by the rules) as a party to any proceedings before the Tribunal, where it would not otherwise be a party to them, and entitling it to appear and to be heard accordingly;
  - (c) for requiring persons to attend to give evidence and produce documents, and for authorising the administration of oaths to witnesses;
  - (d) for enabling the Tribunal, on the application of any party to proceedings before it or of its own motion, to order such discovery or inspection of documents, or the furnishing of such further particulars, as might be ordered by the High Court on an application by a party to proceedings before that court;
  - (e) for the determination of any matter before the Tribunal by a hearing on a preliminary point;

- (f) for prescribing the procedure to be followed on any complaint before the Tribunal, including provisions as to the persons entitled to appear and to be heard on behalf of parties to such proceedings, and provisions for enabling the Tribunal to review its decisions, and revoke or vary its orders and awards, in such circumstances as may be determined in accordance with the rules;
  - (g) for the award of costs;
  - (h) for requiring a respondent to a complaint to pay such part of any fee paid (under paragraph (a)) by a complainant in such circumstances as may be specified;
  - (i) for taxing or otherwise settling any such costs (and in particular for enabling such costs to be taxed in the High Court);
  - (j) for the registration of applications to the Tribunal and the registration and proof of decisions, orders and awards made by it; and
  - (k) for the terms of an award made in a case mentioned in section 168(1) of the 2006 Act (death of employee or employer), and for the enforcement of such an award.
- (3) In relation to proceedings under section 133 of the 2006 Act (complaints to tribunal: unfair dismissal), where the proceedings arise out of the employer's failure to permit the employee to return to work after an absence due to pregnancy or childbirth, Tribunal rules must include provision for requiring the employer to pay the costs or expenses of any postponement or adjournment of the hearing caused by his or her failure, without a special reason, to adduce reasonable evidence as to the availability of the job which the employee held before her absence, or of suitable employment.
- (4) Tribunal rules may include provision authorising the Tribunal to restrict the registration and reporting of applications, proceedings, decisions, orders or awards in appropriate cases.
- (5) Tribunal rules may include provision authorising or requiring the Tribunal, in circumstances specified in the rules, to send notice or a copy of any document so specified relating to any proceedings before the Tribunal, or of any decision, order or award of the Tribunal, to any Department or other person or body so specified.
- (6) Tribunal rules may include provision enabling the chairperson of the Tribunal sitting alone to hear and determine —
- (a) a complaint under section 25 (complaints to tribunal: deductions from wages) or 152 (complaints to tribunal: insolvency, etc.) of the 2006 Act;
  - (b) a complaint in respect of a failure to comply with the Annual Leave Regulations 2007;

- (c) a complaint in respect of a failure to issue written particulars of employment under section 8 or 10 of the 2006 Act;
  - (d) a complaint in respect of a failure to issue an itemised pay statement that complies with section 14 of the 2006 Act;
  - (e) a complaint in respect of a redundancy payment;
  - (f) a complaint in respect of the right to be accompanied at a disciplinary hearing or a hearing in respect of a grievance,
  - (g) a complaint of a prescribed description, not being a complaint in respect of unfair dismissal, or
  - (h) any other complaint —
    - (i) with the consent of the parties, or
    - (ii) if it appears to the chairperson that the complainant does not intend to pursue the complaint, or that the respondent does not intend to contest the complaint, or (where there are 2 or more respondents) that none of them intends to contest the complaint.
- (7) Any person who without reasonable excuse fails to comply with —
- (a) a requirement imposed by Tribunal rules by virtue of sub-paragraph (2)(c) or (2)(d); or
  - (b) a restriction imposed by sub-paragraph (4)
- is guilty of an offence and liable on summary conviction to a fine not exceeding £5,000.
- (8) If an offence under sub-paragraph (7) is committed by a body corporate and is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate, he or she, as well as the body corporate, shall be guilty of that offence and liable to be proceeded against and punished accordingly.
- (9) Where the affairs of a body corporate are managed by its members, sub-paragraph (8) applies in relation to the acts and defaults of a member in connection with his or her functions of management as if he or she were a director of the body corporate.

## 5 Pre-hearing reviews

- (1) Tribunal rules may include provision —
  - (a) for authorising a preliminary consideration of proceedings, before the Tribunal (a “pre-hearing review”) to be carried out by such person as may be determined by or in accordance with the rules, or (if so determined in accordance with the rules) by the Tribunal itself, and



- (b) for enabling such powers to be exercised in connection with a pre-hearing review as may be prescribed by the rules.
- (2) The rules may in particular include provision —
- (a) for authorising any person or the Tribunal carrying out a pre-hearing review under the rules to make, in circumstances specified in the rules, an order requiring a party to the proceedings, if he or she wishes to continue to participate in the proceedings, to pay a deposit of an amount not exceeding such sum as may be prescribed by the rules;
  - (b) for prescribing —
    - (i) the manner in which the amount of any such deposit is to be determined in any particular case;
    - (ii) the consequences of non-payment of any such deposit; and
    - (iii) the circumstances in which any such deposit, or any part of it, may be refunded to the party who paid it, or be paid over to another party to the proceedings.
- (3) In respect of a complaint to which this sub-paragraph applies, Tribunal rules may make provision —
- (a) about the withdrawal and adjournment of applications (including provision for the extension of time within which to make a fresh application, an application having once been withdrawn in specified circumstances), and
  - (b) requiring a pre-hearing review to be carried out in specified circumstances.
- (4) Sub-paragraph (3) applies to a complaint under section 69 (detriment: protected industrial action) or section 133 (unfair dismissal: complaints to tribunal) that a dismissal was unfair by virtue of section 124 (dismissal: protected industrial action) or section 130 (dismissal: selective dismissal or re-engagement).

References in this sub-paragraph to a numbered section are to the section of the 2006 Act so numbered.

## **6 National security**

- (1) If on a complaint made under section 29, 30, 67, or 115 of the 2006 Act or under this Act, it is shown that the action complained of was taken for the purpose of safeguarding national security the Tribunal must dismiss the complaint.
- (2) Tribunal rules may make provision about the composition of the Tribunal (including provision disapplying or modifying paragraph 1 or 2 of this Schedule) for the purposes of proceedings in relation to which a direction is given under sub-paragraph (3).

- (3) A direction may be given under this sub-paragraph by the Chief Minister if —
  - (a) it relates to particular Crown employment proceedings, and
  - (b) the Chief Minister considers it expedient in the interests of national security.
- (4) The rules may make provision enabling the Chief Minister, if he or she considers it expedient in the interests of national security —
  - (a) to direct the Tribunal to sit in private for all or part of particular Crown employment proceedings;
  - (b) to direct the Tribunal to exclude the applicant from all or part of particular Crown employment proceedings;
  - (c) to direct the Tribunal to exclude the applicant's representatives from all or part of particular Crown employment proceedings;
  - (d) to direct the Tribunal to take steps to conceal the identity of a particular witness in particular Crown employment proceedings;
  - (e) to direct the Tribunal to take steps to keep secret all or part of the reasons for its decision in particular Crown employment proceedings.
- (5) The rules may enable the Tribunal, if it considers it expedient in the interests of national security, to do in relation to particular proceedings before it anything of a kind which the Tribunal can be required to do by direction under provision of sub-paragraph (4) in relation to particular Crown employment proceedings.
- (6) In relation to cases where a person has been excluded by virtue of subparagraph (4)(b) or (c) or (5), the rules may make provision —
  - (a) for the appointment by the Attorney General of a person to represent the interests of the applicant;
  - (b) about the publication and registration of reasons for the Tribunal's decision;
  - (c) permitting an excluded person to make a statement to the Tribunal before the commencement of the proceedings, or the part of the proceedings, from which he or she is excluded.
- (7) Proceedings are Crown employment proceedings for the purposes of this paragraph if the employment to which the complaint relates is connected with the performance of functions on behalf of the Crown (whether in right of the Island, the United Kingdom or otherwise).

## 7 Confidential information

The rules may enable the Tribunal to sit in private for the purpose of hearing evidence from any person which in the opinion of the Tribunal is likely to consist of —

- (a) information which he or she could not disclose without contravening a prohibition imposed by or by virtue of any enactment,
- (b) information which has been communicated to him or her in confidence or which he or she has otherwise obtained in consequence of the confidence reposed in him or her by another person, or
- (c) information the disclosure of which would, for reasons other than its effect on negotiations with respect to any of the matters mentioned in the definition of “trade dispute” in section 173 of the 2006 Act, cause substantial injury to any undertaking of that person or in which that person works.

## **8 Restriction of publicity in cases involving national security**

- (1) This paragraph applies where the Tribunal has been directed under paragraph 5(4) or has determined under paragraph 5(5) —
  - (a) to take steps to conceal the identity of a particular witness, or
  - (b) to take steps to keep secret all or part of the reasons for its decision.
- (2) It is an offence to publish —
  - (a) anything likely to lead to the identification of the witness, or
  - (b) the reasons for the Tribunal’s decision or the part of its reasons which it has been directed or has itself determined to keep secret.
- (3) A person guilty of an offence under this paragraph is liable on summary conviction to a fine not exceeding £5,000.
- (4) Where a person is charged with an offence under this paragraph it is a defence to prove that at the time of the alleged offence he or she was not aware, and neither suspected nor had reason to suspect, that the publication in question was of, or included, the matter in question.
- (5) Where an offence under this paragraph committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of —
  - (a) a director, manager, secretary or other similar officer of the body corporate, or
  - (b) a person purporting to act in any such capacity,that person as well as the body corporate is guilty of the offence and liable to be proceeded against and punished accordingly.
- (6) Where the affairs of a body corporate are managed by its members, sub-paragraph (5)(a) applies in relation to the acts and defaults of a member in connection with his or her functions of management as if he or she were a director of the body corporate.

- (7) A reference in this paragraph to publication includes a reference to inclusion in a programme which is included in a programme service, within the meaning of the *Broadcasting Act 1993*.

## 9 Restrictions on disclosure of information

P1996/18/202

- (1) Where in the opinion of the Chief Minister the disclosure of any information would be contrary to the interests of national security —
- (a) nothing in any of the provisions to which this paragraph applies requires any person to disclose the information, and
  - (b) no person shall disclose the information in any court or tribunal relating to any of those provisions.
- (2) This paragraph applies to the following provisions of the 2006 Act—
- (a) Part II (rights during employment), so far as it relates to employment particulars,
  - (b) in Part III (rights arising in course of employment), sections 43 (time off for ante-natal care) and 44 (complaints to tribunal),
  - (c) in Part V (detriment), sections 61 (health and safety), 62 (annual leave and other working time cases), 65 (leave for family and domestic reasons), and sections 71 (complaints to tribunal) and 72 (remedies) so far as relating to those sections,
  - (d) in Part VI (suspension from work on maternity grounds), sections 74 to 76, (rights in respect of suspension from work on maternity grounds) and sections 77 and 78 so far as relating to those sections,
  - (e) Part VII (leave for family and domestic reasons),
  - (f) in Part IX (termination of employment), section 110 (right to written statement of reasons for dismissal),
  - (g) Part X (unfair dismissal) so far as relating to a dismissal which is treated as unfair —
    - (i) by section 114 (leave for family reasons) or 115 (health and safety);
    - (ii) by section 128(1) (dismissal on ground of redundancy) by reason of the application of subsection (2) (health and safety);
  - (h) Part XIII (miscellaneous and supplemental) and Schedule 5 (continuous employment) (so far as relating to any of the provisions in paragraphs (a) to (g)).

## 10 Exclusion of Arbitration Act 1976

The *Arbitration Act 1976* does not apply to any proceedings before the Tribunal.

## 11 Conciliation

- (1) This paragraph applies to —
  - (a) any proceedings before the Tribunal; and
  - (b) any claim which could be the subject of proceedings before the Tribunal.
- (2) If a relevant officer, in accordance with Tribunal rules, certifies to the Tribunal that he or she has (whether before or after the commencement of the proceedings) brought about a settlement of the question to which the proceedings or claim relate, any extant proceedings must be stayed, and may not be continued or commenced (as the case requires), without the leave of the Tribunal.
- (3) Tribunal rules must include provision —
  - (a) for requiring a copy of any such complaint, and a copy of any other document relating to the complaint which is prescribed by the rules, to be sent to an industrial relations officer;
  - (b) for securing that the parties to the proceedings are notified that the services of a relevant officer are available to them; and
  - (c) for postponing the hearing and any pre-hearing review for such time as may be determined in accordance with the rules for the purpose of giving an opportunity for the complaint to be settled by way of conciliation and withdrawn.
- (4) In this paragraph “relevant officer” means —
  - (a) in relation to proceedings under Part 5 (work) or under the 2006 Act, an industrial relations officer;
  - (b) in relation to proceedings under Division 1 of Part 6 (schools) the secretary of the Education Council; and
  - (c) in relation to proceedings under any other provision of this Act, an officer of the OFT

## 12 Right of appearance

Any person may appear before the Tribunal in person or be represented by an advocate or by any other person whom he or she desires to represent him or her.

## 13 Expenses

- (1) The Council of Ministers may, with the approval of the Treasury, make arrangements for the payment of sums in respect of loss of earnings and travelling expenses to persons who are parties to or witnesses in proceedings before the Tribunal.
- (2) Arrangements under sub-paragraph (1) may be limited to such class or description of proceedings, and to persons falling within that sub-

paragraph who satisfy such conditions, as appear to the Department to be appropriate.

#### **14 Interest on sums awarded**

- (1) The Council of Ministers may by order provide that sums payable in pursuance of decisions of the Tribunal shall carry interest at such rate and between such times as may be prescribed by the order.
- (2) Any interest due by virtue of such an order shall be recoverable as a sum payable in pursuance of the decision.
- (3) The power conferred by sub-paragraph (1) includes power —
  - (a) to specify cases or circumstances in which interest is not payable;
  - (b) to provide that interest shall be payable only on sums exceeding a specified amount or falling between specified amounts;
  - (c) to make provision for the manner in which and the periods by reference to which interest is to be calculated and paid;
  - (d) to provide that any enactment does or does not apply in relation to interest payable by virtue of an order under sub-paragraph (1) or applies to it with such modifications as may be specified in the order;
  - (e) to make provision for cases where sums are payable in pursuance of decisions or awards made on appeal from the Tribunal;
  - (f) to make such incidental or supplemental provision as the Department considers necessary.
- (4) Without limiting sub-paragraph (3), an order under sub-paragraph (1) may provide that the rate of interest is the rate from time to time specified or prescribed under section 9 of the *Administration of Justice Act 1981* as that enactment has effect from time to time.

**Schedule 17**

[Section 101]

**EDUCATION CASES — ENFORCEMENT****1 Definition**

In this Schedule “**the Council**” means the Education Council established under section 4A of the *Education Act 2001*.

**2 Jurisdiction**

A claim that a responsible body has contravened Division 1 of Part 6 (education: schools) may be made to the Tribunal by the person’s parent.

**3 Time for bringing proceedings**

- (1) Proceedings on a claim may not be brought after the end of the period of 6 months beginning with the date on which the conduct complained of occurred.
- (2) If, in relation to proceedings on a claim under paragraph 2, the dispute is referred for resolution in accordance with arrangements under paragraph 5, before the end of the period mentioned in sub-paragraph (1), that period is extended by 3 months.
- (3) The Tribunal may consider a claim out of time.
- (4) But sub-paragraph (3) does not apply if the Tribunal has previously decided under that sub-paragraph not to consider a claim.
- (5) For the purposes of sub-paragraph (1) —
  - (a) if the contravention is attributable to a term in a contract, the conduct is to be treated as extending throughout the duration of the contract;
  - (b) conduct extending over a period is to be treated as occurring at the end of the period;
  - (c) failure to do something is to be treated as occurring when the person in question decided on it.
- (6) In the absence of evidence to the contrary, a person (P) is to be taken to decide on failure to do something —
  - (a) when P acts inconsistently with doing it, or
  - (b) if P does not act inconsistently, on the expiry of the period in which P might reasonably have been expected to do it.

#### 4 Powers

- (1) This paragraph applies if the Tribunal finds that the contravention has occurred.
- (2) The Tribunal may make such order as it thinks fit.
- (3) The power under sub-paragraph (2)—
  - (a) may, in particular, be exercised with a view to obviating or reducing the adverse effect on the person of any matter to which the claim relates; but
  - (b) does not include power to order the payment of compensation.

#### 5 Resolution of disputes

P2010/15/Sch17/para 6C

- (1) DEC must make arrangements with a view to avoiding or resolving disagreements between responsible bodies and children attending (or wishing to attend) schools or their parents about contraventions of Division 1 of Part 6.
- (2) The arrangements —
  - (a) must provide for the appointment of independent persons with the function of facilitating the avoidance or resolution of such disagreements; and
  - (b) may require the Council to provide such assistance as it can to resolve disagreements.
- (3) DEC must take such steps as it considers appropriate to make the arrangements under subparagraph (1) known to —
  - (a) children of school age;
  - (b) parents of such children;
  - (c) responsible bodies of schools;
  - (d) the Council; and
  - (d) such other persons as it considers appropriate.
- (4) The arrangements must not affect the entitlement of any person to make a claim to the Tribunal.



## SCHEDULE 18

## REASONABLE ADJUSTMENTS: SUPPLEMENTARY

[Section 152]

**1 Preliminary**

- (1) This Schedule applies for the purposes of –
- (a) Schedule 2 (services and public functions – reasonable adjustments),
  - (b) Schedule 4 (premises – reasonable adjustments),
  - (c) Schedule 8 (work – reasonable adjustments),
  - (d) Schedule 13 (education – reasonable adjustments), and
  - (e) Schedule 15 (associations: – reasonable adjustments),
- and an expression used in this Schedule and in any of the Schedules listed in paragraphs (a) to (e) has the same meaning in this Schedule as it has there.
- (2) In this Schedule “**the Commissioners**” means the Isle of Man Rent and Rating Appeal Commissioners.

**2 Binding obligations, etc.**

- (1) This paragraph applies if—
- (a) a binding obligation requires A to obtain the consent of another person to an alteration of premises which A occupies,
  - (b) where A is a controller of let premises, a binding obligation requires A to obtain the consent of another person to a variation of a term of the tenancy, or
  - (c) where A is a responsible person in relation to common parts, a binding obligation requires A to obtain the consent of another person to an alteration of the common parts.
- (2) For the purpose of discharging a duty to make reasonable adjustments—
- (a) it is always reasonable for A to have to take steps to obtain the consent, but
  - (b) it is never reasonable for A to have to make the alteration before the consent is obtained.
- (3) In this Schedule, a binding obligation is a legally binding obligation in relation to premises, however arising; but the reference to a binding obligation in sub-paragraph (1)(a) or (c) does not include a reference to an obligation imposed by a tenancy.

- (4) The steps referred to in sub-paragraph (2)(a) do not include applying to the Tribunal or the Commissioners.

### **3 Landlord's consent**

- (1) (1) This paragraph applies if—
- (a) A occupies premises under a tenancy,
  - (b) A is proposing to make an alteration to the premises so as to comply with a duty to make reasonable adjustments, and
  - (c) but for this paragraph, A would not be entitled to make the alteration.
- (2) This paragraph also applies if—
- (a) A is a responsible person in relation to common parts,
  - (b) A is proposing to make an alteration to the common parts so as to comply with a duty to make reasonable adjustments,
  - (c) A is the tenant of property which includes the common parts, and
  - (d) but for this paragraph, A would not be entitled to make the alteration.
- (3) The tenancy has effect as if it provided—
- (a) for A to be entitled to make the alteration with the written consent of the landlord,
  - (b) for A to have to make a written application for that consent,
  - (c) for the landlord not to withhold the consent unreasonably, and
  - (d) for the landlord to be able to give the consent subject to reasonable conditions.
- (4) If a question arises as to whether A has made the alteration (and, accordingly, complied with a duty to make reasonable adjustments), any constraint attributable to the tenancy must be ignored unless A has applied to the landlord in writing for consent to the alteration.
- (5) For the purposes of sub-paragraph (1) or (2), A must be treated as not entitled to make the alteration if the tenancy—
- (a) imposes conditions which are to apply if A makes an alteration, or
  - (b) entitles the landlord to attach conditions to a consent to the alteration.

### **4 Proceedings before the Commissioners**

- (1) This paragraph applies if, in a case within Part 3, 4, 6 or 7 of this Act—
- (a) A has applied in writing to the landlord for consent to the alteration, and

- (b) the landlord has refused to give consent or has given consent subject to a condition.
- (2) A (or a disabled person with an interest in the alteration being made) may refer the matter to the Commissioners.
- (3) The Commissioners must determine whether the refusal or condition is unreasonable.
- (4) If the Commissioners find that the refusal or condition is unreasonable, they may make—
  - (a) such declaration as they thinks appropriate; and
  - (b) an order authorising A to make the alteration specified in the order (and requiring A to comply with such conditions as are so specified).

## **5 Joining landlord as a party to proceedings**

- (1) This paragraph applies to proceedings for a contravention of the Act by virtue of section 21.
- (2) A party to the proceedings may request the Tribunal or the Commissioners (“the judicial authority”) to direct that the landlord be joined as a party to the proceedings.
- (3) The judicial authority —
  - (a) must grant the request if it is made before the hearing of the complaint or claim begins;
  - (b) may refuse it if it is made after the hearing begins; and
  - (c) must refuse it if it is made after the complaint or claim has been determined.
- (4) If the landlord is joined as a party to the proceedings, the judicial authority may determine whether —
  - (a) the landlord has refused to consent to the alteration;
  - (b) the landlord has consented subject to a condition;
  - (c) the refusal or condition was unreasonable.
- (5) If the judicial authority finds that the refusal or condition was unreasonable, it—
  - (a) may make such declaration as it thinks appropriate;
  - (b) may make an order authorising A to make the alteration specified in the order (and requiring A to comply with such conditions as are so specified);
  - (c) may order the landlord to pay compensation to the complainant or claimant.

- (6) The Tribunal may act in reliance on sub-paragraph (5)(c) instead of, or in addition to, acting in reliance on section 108(2); but if it orders the landlord to pay compensation it must not do so in reliance on section 108(2).
- (7) If the Commissioners order the landlord to pay compensation, they may not order A to do so.

## 6 Regulations

- (1) The Council of Ministers may make regulations for the purposes of this paragraph.
- (2) Regulations may make provisions about circumstances in which a landlord is taken for the purposes of this Schedule to have—
  - (a) withheld consent;
  - (b) withheld consent reasonably;
  - (c) withheld consent unreasonably.
- (3) Regulations may also make provision as to circumstances in which a condition subject to which a landlord gives consent is taken—
  - (a) to be reasonable;
  - (b) to be unreasonable.
- (4) Regulations may also make provision supplementing or modifying the preceding paragraphs of this Schedule, or provision made under this paragraph, in relation to a case where A's tenancy is a sub-tenancy.
- (5) Regulations under this paragraph may amend the preceding paragraphs of this Schedule.

## SCHEDULE 19

## STATUTORY PROVISIONS

[Section 154]

**1 Statutory authority**

- (1) A person (P) does not contravene a provision specified in the first column of the table, so far as relating to the protected characteristic specified in the second column in respect of that provision, if P does anything P must do pursuant to a requirement specified in the third column.

Specified provision	Protected characteristic	Requirement
Parts 3 to 7	Age	A requirement of an enactment
Parts 3 to 7 and 12	Disability	A requirement of an enactment A relevant requirement or condition imposed by virtue of an enactment
Parts 3 to 7	Religion or belief	A requirement of an enactment A relevant requirement or condition imposed by virtue of an enactment
Section 30(6) and Parts 6 and 7	Sex	A requirement of an enactment
Parts 3, 4, 6 and 7	Sexual orientation	A requirement of an enactment A relevant requirement or condition imposed by virtue of an enactment

- (2) A reference in the table to Part 6 does not include a reference to that Part so far as it relates to vocational training.
- (3) A reference in this paragraph to an enactment includes —
- an instrument of a legislative character made under an Act of Parliament and which applies to the Island;
  - a Measure of the General Synod of the Church of England which applies to the Island as part of the law of the Island;
  - a Measure of the Diocesan Synod of the Diocese of Sodor and Man; and
  - an enactment passed or made on or after the date on which this Act is passed.

- (4) In the table a relevant requirement or condition is a requirement or condition imposed (whether before or after the passing of this Act) by a member of the Executive.

## 2 Protection of women

- (1) A person (P) does not contravene a specified provision only by doing in relation to a woman (W) anything which P is required to do to comply with —
- (a) a pre-2000 Act enactment concerning the protection of women in relation to employment;
  - (b) a relevant statutory provision (within the meaning of Part I of the Health and Safety at Work etc. Act 1974 (of Parliament)) which applies to the Island by virtue of an order under section 1 of the *Health and Safety at Work etc Act 1977* if the purpose of doing that thing is the protection of W (or a description of women that includes W).
- (2) The references to the protection of women are references to protecting women in relation to—
- (a) pregnancy or maternity, or
  - (b) any other circumstances giving rise to risks specifically affecting women.
- (3) It does not matter whether the protection is restricted to women.
- (4) These are the specified provisions—
- (a) Part 5 (work);
  - (b) Part 6 (education), so far as relating to vocational training.
- (5) A “pre-2000 Act enactment” is —
- (a) an enactment contained in Act of Tynwald passed before the *Employment (Sex Discrimination) Act 2000* (“the 2000 Act”);
  - (b) an enactment contained in an Act of Parliament which applied to the Island as part of the law of the Island before the passing of the 2000 Act;
  - (c) subordinate legislation made under an enactment falling within paragraph (a) or (b) (including such legislation approved after the passing of that Act).
- (6) If —
- (a) an Act, or
  - (b) an Act of Parliament which is applied to the Island as part of the law of the Island,

repeals and re-enacts (with or without modification) a pre-2000 Act enactment then the provision re-enacted is to be treated as being in a pre-2000 Act enactment.

- (7) This paragraph applies only to the following protected characteristics—
- (a) pregnancy and maternity;
  - (b) sex.

### **3 Educational appointments: religious belief of head teachers**

- (1) A person does not contravene Part 5 (work) only by doing a relevant act in connection with the employment of another as the head teacher of a school within the meaning of the *Education Act 2001*.
- (2) A relevant act is anything that it is necessary to do to comply with a requirement of an instrument relating to the school that the head teacher must be a member of a particular religious order.
- (3) The DEC may by order provide that sub-paragraphs (1) and (2) do not apply in relation to—
- (a) a specified school; or
  - (b) a specified description of school.
- (4) This paragraph does not affect paragraph 2 of Schedule 9.

### **4 Crown and public service employment provisions**

- (1) A person does not contravene this Act —
- (a) by making or continuing in force rules mentioned in subparagraph (2);
  - (b) by publishing, displaying or implementing such rules;
  - (c) by publishing the gist of such rules.
- (2) The rules are rules restricting to persons of particular birth, nationality, descent or residence —
- (a) employment in the service of the Crown;
  - (b) employment as a civil servant;
  - (c) employment by a prescribed public body;
  - (d) holding a public office (within the meaning of section 46).

### **5 Control of Employment**

A person does not contravene this Act so far as relating to disability or race in so far as relating to nationality —

- (a) by doing anything required by, or for the purpose of securing compliance with, the *Control of Employment Act 1975*; or

- (b) by advertising a position as being available only to a Manx worker if there is a reasonable likelihood that a work permit would not be granted for a person who was not a Manx worker to hold that position.

Here “Manx worker” has the same meaning as it has in the 1975 Act.



## SCHEDULE 20

## GENERAL EXCEPTIONS

[Section 158]

**1 Acts authorised by statute or the executive**

- (1) This paragraph applies to anything done—
  - (a) in pursuance of an enactment;
  - (b) in pursuance of an instrument made by a member of the executive under an enactment;
  - (c) to comply with a requirement imposed (whether before or after the passing of this Act) by a member of the executive by virtue of an enactment;
  - (d) in pursuance of arrangements made (whether before or after the passing of this Act) by or with the approval of, or for the time being approved by, a member of the executive;
  - (e) to comply with a condition imposed (whether before or after the passing of this Act) by a member of the executive.
- (2) A person does not contravene Part 3, 4, 5 or 6 by doing anything to which this paragraph applies which discriminates against another because of the other's nationality.
- (3) A person (A) does not contravene Part 3, 4, 5 or 6 if, by doing anything to which this paragraph applies, A discriminates against another (B) by applying to B a provision, criterion or practice which relates to—
  - (a) B's place of ordinary residence;
  - (b) the length of time B has been present or resident in or outside the Island or an area within it.

**2 Organisations relating to religion or belief**

- (1) This paragraph applies to an organisation the purpose of which is—
  - (a) to practise a religion or belief,
  - (b) to advance a religion or belief,
  - (c) to teach the practice or principles of a religion or belief,
  - (d) to enable persons of a religion or belief to receive any benefit, or to engage in any activity, within the framework of that religion or belief, or
  - (e) to foster or maintain good relations between persons of different religions or beliefs.
- (2) This paragraph does not apply to an organisation whose sole or main purpose is commercial.

- (3) The organisation does not contravene Part 3, 4 or 7, so far as relating to religion or belief or sexual orientation, only by restricting—
- (a) membership of the organisation;
  - (b) participation in activities undertaken by the organisation or on its behalf or under its auspices;
  - (c) the provision of goods, facilities or services in the course of activities undertaken by the organisation or on its behalf or under its auspices;
  - (d) the use or disposal of premises owned or controlled by the organisation.
- (4) A person does not contravene Part 3, 4 or 7, so far as relating to religion or belief or sexual orientation, only by doing anything mentioned in sub-paragraph (3) on behalf of or under the auspices of the organisation.
- (5) A minister does not contravene Part 3, 4 or 7, so far as relating to religion or belief or sexual orientation, only by restricting—
- (a) participation in activities carried on in the performance of the minister's functions in connection with or in respect of the organisation;
  - (b) the provision of goods, facilities or services in the course of activities carried on in the performance of the minister's functions in connection with or in respect of the organisation.
- (6) Sub-paragraphs (3) to (5) permit a restriction relating to religion or belief only if it is imposed—
- (a) because of the purpose of the organisation, or
  - (b) to avoid causing offence, on grounds of the religion or belief to which the organisation relates, to persons of that religion or belief.
- (7) Sub-paragraphs (3) to (5) permit a restriction relating to sexual orientation only if it is imposed—
- (a) because it is necessary to comply with the doctrine of the organisation, or
  - (b) to avoid conflict with strongly held convictions within sub-paragraph (9).
- (8) In sub-paragraph (5), the reference to a minister is a reference to a minister of religion, or other person, who—
- (a) performs functions in connection with a religion or belief to which the organisation relates, and
  - (b) holds an office or appointment in, or is accredited, approved or recognised for the purposes of the organisation.
- (9) The strongly held convictions are—

- (a) in the case of a religion, the strongly held religious convictions of a significant number of the religion's followers;
  - (b) in the case of a belief, the strongly held convictions relating to the belief of a significant number of the belief's followers.
- (10) This paragraph does not permit anything which is prohibited by section 30, so far as relating to sexual orientation, if it is done —
  - (a) on behalf of a relevant public body, and
  - (b) under the terms of a contract between the organisation and the relevant public body.
- (11) In the application of this paragraph in relation to sexual orientation, sub-paragraph (1)(e) must be ignored.
- (12) In the application of this paragraph in relation to sexual orientation, in sub-paragraph (3)(d), “disposal” does not include disposal of an interest in premises by way of sale if the interest which is the subject of the disposal is—
  - (a) the entirety of the organisation's interest in the premises, or
  - (b) the entirety of the interest in respect of which the organisation has power of disposal.
- (13) In this paragraph —
  - (a) “disposal” is to be construed in accordance with section 37;
  - (b) “relevant public body” is to be construed in accordance with sub-paragraph (14).
- (14) The following are relevant public bodies —
  - (a) Departments;
  - (b) Statutory Boards;
  - (c) local authorities;
  - (d) a joint committee of two or more local authorities;
  - (e) a joint board being a body corporate established under an enactment and consisting of members appointed —
    - (i) by 2 or more local authorities; or
    - (ii) by the Department of Infrastructure and one or more local authorities;
  - (f) the Manx Museum and National Trust;
  - (g) the Public Service Commission;
  - (h) the Attorney General's Chambers;
  - (i) the General Registry;
  - (j) the Cabinet Office;
  - (k) the Clerk of Tynwald;
  - (m) the Data Protection Supervisor;

- (n) the Commissioner appointed under paragraph 2(1) of Schedule 1 to the *Police Act 1993*;
- (o) the Commissioner appointed under section 28 of the *Regulation of Surveillance, etc. Act 2006*.

### 3 Communal accommodation

- (1) A person does not contravene this Act, so far as relating to sex discrimination or gender reassignment, only because of anything done in relation to —
  - (a) the admission of persons to communal accommodation;
  - (b) the provision of a benefit, facility of service linked to the accommodation.
- (2) Sub-paragraph (1)(a) does not apply unless the accommodation is managed in a way which is as fair as possible to both men and women.
- (3) In applying sub-paragraph (1)(a), account must be taken of—
  - (a) whether and how far it is reasonable to expect that the accommodation should be altered or extended or that further accommodation should be provided, and
  - (b) the frequency of the demand or need for use of the accommodation by persons of one sex as compared with those of the other.
- (4) In applying sub-paragraph (1)(a) in relation to gender reassignment, account must also be taken of whether and how far the conduct in question is a proportionate means of achieving a legitimate aim.
- (5) Communal accommodation is residential accommodation which includes dormitories or other shared sleeping accommodation which for reasons of privacy should be used only by persons of the same sex.
- (6) Communal accommodation may include—
  - (a) shared sleeping accommodation for men and for women;
  - (b) ordinary sleeping accommodation;
  - (c) residential accommodation all or part of which should be used only by persons of the same sex because of the nature of the sanitary facilities serving the accommodation.
- (7) A benefit, facility or service is linked to communal accommodation if—
  - (a) it cannot properly and effectively be provided except for those using the accommodation, and
  - (b) a person could be refused use of the accommodation in reliance on sub-paragraph (1)(a).

- (8) This paragraph does not apply for the purposes of Part 5 (work) unless such arrangements as are reasonably practicable are made to compensate for—
- (a) in a case where sub-paragraph (1)(a) applies, the refusal of use of the accommodation;
  - (b) in a case where sub-paragraph (1)(b) applies, the refusal of provision of the benefit, facility or service.

#### **4 Training provided to non-EEA residents, etc.**

- (1) A person (A) does not contravene this Act, so far as relating to nationality, only by providing a non-resident (B) with training, if A thinks that B does not intend to exercise in the British Islands skills B obtains as a result.
- (2) A non-resident is a person who is not ordinarily resident in the Island or an EEA state.
- (3) The reference to providing B with training is—
- (a) if A employs B in relevant employment, a reference to doing anything in or in connection with the employment;
  - (b) if A as a principal allows B to do relevant contract work, a reference to doing anything in or in connection with allowing B to do the work;
  - (c) in a case within paragraph (a) or (b) or any other case, a reference to affording B access to facilities for education or training or ancillary benefits.
- (4) Employment or contract work is relevant if its sole or main purpose is the provision of training in skills.
- (5) “Contract work” and “principal” each have the meaning given in section 41.

**Schedule 21****INFORMATION SOCIETY SERVICES**

[Section 165]

**1 Service providers**

- (1) This paragraph applies where a person concerned with the provision of an information society service (an “**information society service provider**”) is established in the Island.
- (2) This Act applies to anything done by the person in an EEA state (other than the United Kingdom) in providing the service as this Act would apply if the act in question were done by the person in the Island.

**2 Service providers outside the Island**

- (1) This paragraph applies if an information society service provider is established outside the Island but within the territory of the European Economic Area.
- (2) This Act does not apply to anything done by the person in providing the service.

**3 Exceptions for mere conduits**

- (1) An information society service provider does not contravene this Act only by providing so much of an information society service as consists in—
  - (a) the provision of access to a communication network, or
  - (b) the transmission in a communication network of information provided by the recipient of the service.
- (2) But sub-paragraph (1) applies only if the service provider does not—
  - (a) initiate the transmission,
  - (b) select the recipient of the transmission, or
  - (c) select or modify the information contained in the transmission.
- (3) For the purposes of sub-paragraph (1), the provision of access to a communication network, and the transmission of information in a communication network, includes the automatic, intermediate and transient storage of the information transmitted so far as the storage is solely for the purpose of carrying out the transmission in the network.
- (4) Sub-paragraph (3) does not apply if the information is stored for longer than is reasonably necessary for the transmission.

#### 4 Exception for caching

- (1) This paragraph applies where an information society service consists in the transmission in a communication network of information provided by a recipient of the service.
- (2) The information society service provider does not contravene this Act only by doing anything in connection with the automatic, intermediate and temporary storage of information so provided if—
  - (a) the storage of the information is solely for the purpose of making more efficient the onward transmission of the information to other recipients of the service at their request, and
  - (b) the condition in sub-paragraph (3) is satisfied.
- (3) The condition is that the service-provider—
  - (a) does not modify the information,
  - (b) complies with such conditions as are attached to having access to the information, and
  - (c) (where sub-paragraph (4) applies) expeditiously removes the information or disables access to it.
- (4) This sub-paragraph applies if the service-provider obtains actual knowledge that—
  - (a) the information at the initial source of the transmission has been removed from the network,
  - (b) access to it has been disabled, or
  - (c) a court or administrative authority has required the removal from the network of, or the disablement of access to, the information.

#### 5 Exception for hosting

- (1) An information society service provider does not contravene this Act only by doing anything in providing so much of an information society service as consists in the storage of information provided by a recipient of the service, if—
  - (a) the service provider had no actual knowledge when the information was provided that its provision amounted to a contravention of this Act, or
  - (b) on obtaining actual knowledge that the provision of the information amounted to such a contravention, the service provider expeditiously removed the information or disabled access to it.
- (2) Sub-paragraph (1) does not apply if the recipient of the service is acting under the authority of the control of the service provider.

## 6 Interpretation

- (1) This paragraph applies for the purposes of this Schedule.
- (2) “**Information society service**” –
  - (a) has the meaning given in Article 2(a) of the E-Commerce Directive (which refers to Article 1(2) of Directive 98/34/EC of the European Parliament and of the Council of 22 June 1998 laying down a procedure for the provision of information in the field of technical standards and regulations), and
  - (b) is summarised in recital 17 of the E-Commerce Directive as covering “any service normally provided for remuneration, at a distance, by means of electronic equipment for the processing (including digital compression) and storage of data, and at the individual request of a recipient of a service”.
- (3) “**The E-Commerce Directive**” means Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market (Directive on electronic commerce).
- (4) “**Recipient**” means a person who (whether for professional purposes or not) uses an information society service, in particular for seeking information or making it accessible.
- (5) An information society service-provider is “**established**” in a country or territory if the service-provider –
  - (a) effectively pursues an economic activity using a fixed establishment in that country or territory for an indefinite period, and
  - (b) is a national of an EEA state or a body mentioned in Article 54 of the Treaty on the Functioning of the European Union.
- (6) The presence or use in a particular place of equipment or other technical means of providing an information society service is not itself sufficient to constitute the establishment of a service-provider.
- (7) Where it cannot be decided from which of a number of establishments an information society service is provided, the service is to be regarded as provided from the establishment at the centre of the information society service provider’s activities relating to that service.
- (8) Section 3(7) does not apply to references to providing a service.



## Schedule 22

[Section 167]

## EMPLOYMENT LEGISLATION – MISCELLANEOUS AMENDMENTS

## PART 1 – EMPLOYMENT ACT 2006 AMENDED

**1 Amendment of the Employment Act 2006**

The *Employment Act 2006* is amended as set out in this Part.

**2 References to and determination by Tribunal: section 17 amended**

For section 17(8) substitute –

**(8)** If, on an application under this section, the Tribunal finds that an employer has failed to give to an employee a statement that complies with section 8 or 10, or one or more statements which comply with 14 or 15, the Tribunal must make a declaration to that effect and –

(a) if the Tribunal finds that a statement has been given to the employee but that it failed to comply with section 8, 10, 14 or 15, as the case may be, may, if it considers it just and equitable to do so, order the employer to pay to the employee a sum not exceeding 2 weeks' pay; or

(b) if the Tribunal finds that no statement has been given –

(i) subject to subparagraph (ii) it must order the employee to pay to the employee a sum equal 2 weeks' pay, but

(ii) if it considers it just and equitable to do so it may order the employer to pay to the employee up to 4 weeks' pay.

For the purposes of this subsection a week's pay is to be calculated in accordance with Schedule 6 (a week's pay). **(2)**

**3 Tribunal's duties in cases other than section 17 cases: section 18 amended**

For section 18(2) substitute –

**(2)** If, in proceedings to which this section applies, the Tribunal finds that at the time when the proceedings began the employer had failed to give the employee a statement that complied with section 8 or 10, the Tribunal –

- (a) may, if it finds that a statement had been given but that it failed to comply with section 8 or 10, order the employer to pay to the employee a sum not exceeding 2 weeks' pay; or
  - (b) must, if it finds that a statement had not been given within 14 days of being requested, order the employee to pay to the employee a sum equal to 4 weeks' pay, as so calculated.
- For the purposes of this subsection a week's pay is to be calculated in accordance with Schedule 6 (a week's pay). **22**.

#### 4 Complaints to Tribunal: section 25 amended

- (1) Section 25 is amended as follows.
- (2) For subsection (6) substitute —
  - 66**(6) The Tribunal may not order an employer to pay or repay to a worker an amount under subsection (4)(a) or (b) in respect of a deduction or payment, in so far as it appears to the Tribunal that —
    - (a) the employer has already paid or repaid the amount to the worker; or
    - (b) the deduction or payment was made more than 6 years before the complaint was made. **22**.
- (3) At the end add —
  - 66**(9) A complaint may not be brought under this section in respect of holiday pay to the extent that it might be recovered by virtue of regulations under section 167. **22**.

#### 5 Interpretation of Part VIII: section 105 amended

For section 105(1) substitute —

- 66**(1) In this Part —
  - (a) “**worker**” has the meaning given to it by section 58(1); and
  - (b) “**employer**” has the meaning given by section 58(2),
 and a reference to a worker's contract, to employment, or to a worker being “employed” is to be construed accordingly. **22**.

#### 6 Rights of employee in notice period: section 107 amended

- (1) Section 107 is amended as follows.
- (2) In subsection (3) at the end add —
  - 66** This subsection is subject to the following qualification.

- (4) Subsection (3) does not apply to the extent that the employee is entitled, under any other enactment, to the benefit of the terms and conditions of employment despite his or her absence. **22**.

**7 Dismissal on grounds of protected characteristic or spent conviction: sections 124A and 124B inserted**

After section 124 insert —

**124A Dismissal on grounds of protected characteristic**

An employee who is dismissed shall be regarded for the purposes of this Part as unfairly dismissed if the reason (or, if more than one, the principal reason) for the dismissal would constitute unlawful discrimination under the *Equality Act 2015*.

**124B Dismissal on grounds of spent conviction**

An employee who is dismissed shall be regarded for the purposes of this Part as unfairly dismissed if the reason (or, if more than one, the principal reason) for the employee's dismissal is a spent conviction (within the meaning of the *Rehabilitation of Offenders Act 2001*). **22**.

**8 Dismissal on grounds of redundancy: section 128 amended**

(1) Section 128 is amended as follows.

(2) After subsection (11) insert —

**11A** This section applies if the reason (or, if more than one, the principal reason) for the dismissal is, or relates to, a protected characteristic within the meaning of section 5 of the *Equality Act 2015*.

**11B** This section applies if the reason (or where there is more than one, the principal reason) for the dismissal is, or is connected with, the employee's having a spent conviction within the meaning of the *Rehabilitation of Offenders Act 2001*. **22**.

**9 Selective dismissal or re-engagement arising out of industrial action: jurisdiction of Tribunal – section 130 amended**

In section 130(5) —

- (a) for “113 to 123” substitute **113 to 124B** **22**; and  
 (b) for “125 to 129” substitute **128 and 129** **22**.

## 10 Qualifying period, upper age limit and membership of the reserve forces: section 132 amended

- (1) Section 132 is amended as follows.
- (2) For subsection (1) substitute —
  - (1) Subject to the following provisions of this section, section 111 (right of employee not to be unfairly dismissed) does not apply to the dismissal of an employee if, on the effective date of the termination of the employment the employee has not been employed in the employment for a continuous period of at least one year. **22**.
  - (3) In subsection (2) —
    - (a) insert after paragraph (k)—
      - 22**(ka) section 124A (dismissal on grounds of protected characteristic),
      - (kb) section 124B (dismissal on grounds of spent conviction), **22**
      - and
    - (b) omit paragraphs (l), (m) and (n).
  - (4) At the end insert —
    - 22**(4) Subsection (1) does not apply to the dismissal of an employee if it is shown that the reason (or where there is more than one, the principal reason) for the dismissal is, or is connected with, the employee’s membership of a reserve force (as defined in section 374 of the Armed Forces Act 2006 (of Parliament)).
    - (5) Subsection (1) does not apply to the dismissal of an employee if it is shown that the reason (or where there is more than one, the principal reason) for the dismissal is, or is connected with, the employee’s political affiliations or opinions. **22**.
- (5) In consequence of the amendments made by this paragraph, in the section heading omit “and upper age limit”.

## 11 Compensation for unfair dismissal: section 140 amended

For section 140(1)(a) substitute —

- 22**(a) a basic award calculated in accordance with section 142; and **22**.

## 12 Acts which are both unfair dismissal and discrimination: section 145 amended

For section 145(1)(b) substitute —

- 22**(b) the provisions of the *Equality Act 2015*; or **22**.

**13 Insolvency of employer: section 147 amended**

For section 147(1) substitute —

- ▮(1) If, on a written application made to the Treasury by an employee, the Treasury is satisfied that —
- (a) the employer of the employee has become insolvent;
  - (b) the employment of the employee has terminated; and
  - (c) on the relevant date the employee was entitled to be paid a debt to which this section applies,

the Treasury must, subject to this section, section 150 (restriction on payment in certain cases), section 153 (subrogation) and paragraph 10 of Schedule 6 (maximum amount of a week's pay), pay to the employee out of the Manx National Insurance Fund the amount to which, in the Treasury's opinion, the employee is entitled in respect of the debt to the extent that the amount does not exceed any prescribed amount. ▮.

**14 Cessation of business of employer: section 148 amended**

For section 148(1) substitute —

- ▮(1) If, on a written application made to the Treasury by an employee, the Treasury is satisfied that —
- (a) the employer of the employee has ceased to carry on business in the Island;
  - (b) the employment of the employee has terminated;
  - (c) at the date of the application the employee was entitled to be paid a debt to which section 147 (insolvency of employer) applies; and
  - (e) the employee has taken all reasonable steps (other than legal proceedings) to recover the debt from the employer, and the employer has refused or failed to pay all or any part of the debt,

the Treasury may, subject to paragraph 10 of Schedule 6 (maximum amount of a week's pay) pay to the employee out of the Manx National Insurance Fund the amount to which, in the Treasury's opinion, the employee is entitled in respect of the debt. ▮.

**15 Payment of unpaid contributions to pension scheme: section 149 amended**

For section 149(1) substitute —

- ▮(1) If, on a written application made to the Treasury by a person competent to act in respect of an occupational pension scheme or a personal pension scheme, the Treasury is satisfied that —

- (a) an employer has become insolvent; and
  - (b) at that time there remained unpaid relevant contributions falling to be paid by the employer to the scheme,
- the Treasury must, subject to this section and section 150 (restriction on payment in certain cases), pay into the resources of the scheme out of the Manx National Insurance Fund the amount that, in the Treasury's opinion, is payable in respect of the unpaid relevant contributions. **22**.

## 16 Subrogation of the Treasury: section 153 amended

In section 153(1), (4), (5) and (7) for “the DSC” (wherever occurring) substitute **23** the Treasury **22**.

## 17 The Tribunal: section 156 amended

At the end of section 156 insert —

- 24** (9) If the Department is satisfied that an employee or worker is entitled to exercise a remedy by way of complaint or reference to the Tribunal in respect of an infringement of a right conferred on the employee or worker or for the contravention of an obligation mentioned in this section, the Department may, with the consent of the employee or worker, exercise the remedy on behalf of the employee or worker.
- (10) If any act or omission by an employer is an infringement of more than one of the rights conferred on an employee or worker by this Act or the contravention of more than one of the obligation imposed by this Act, the Tribunal has no power to make more than one award in respect of the action. **22**.

## 18 Codes of practice: section 171 amended

In subsection (1) for the words following paragraph (c) substitute —

**25** In this subsection “discrimination” has the same meaning as it has for the purposes of the *Equality Act 2015* by virtue of Subdivision 1 of Division 2 of Part 2 of that Act. **22**.

## 19 General interpretation: section 173 amended

- (1) Section 173 is amended as follows.
- (2) In subsection (1) —
  - (a) for the definition of “**Crown employment**” substitute —
    - 26** “**Crown employment**” means service in any of the following offices —

- (a) First Deemster and Clerk of the Rolls,
  - (b) Second Deemster,
  - (c) Deemster,
  - (d) Judge of Appeal,
  - (e) Attorney General,
  - (f) Solicitor General,
  - (g) High Bailiff,
  - (h) Deputy High Bailiff,
  - (j) Arbitrator appointed under section 16(4) of the High Court Act 1991,
  - (k) as a member of the Isle of Man Constabulary,
- or in any other prescribed office;<sup>22</sup> and

(b) in the definition of “**the Employment Acts**” –

- (i) omit “the *Employment (Sex Discrimination) Act 2000*, and”; and
- (ii) at the end add –

<sup>23</sup>and the *Equality Act 2015* so far as that Act relates to employment or the holding of a public office;<sup>22</sup>.

## 20 Subordinate legislation: general provisions: section 174 amended

In section 174(3) for “to the Department” substitute <sup>23</sup>to the maker of the subordinate legislation<sup>22</sup>.

## 21 Tribunal’s duties in cases other than section 17: Schedule 1 amended

In the list in Schedule 1 –

- (a) omit the entries relating to sections 35 and 36 of the Employment (Sex Discrimination) Act 2000;
- (b) after the entry relating to section 71 (of the Employment Act 2006) insert –

<sup>23</sup>Section 104 of this Act (discipline and grievance hearings)  
Section 110 of this Act (written reasons for dismissal)<sup>22</sup>.

- (b) at the end insert –

<sup>23</sup>Section 101 of the *Equality Act 2015* (jurisdiction of the Tribunal in claims under that Act)  
Section 105 of the *Equality Act 2015* (jurisdiction of the Court in claims under that Act)  
Section 110 (claims in relation to equality of terms)

Regulation 10 of the Part-time Workers (Prevention of Less Favourable Treatment) Regulations 2007

Regulation 11 of the Annual Leave Regulations 2007<sup>22</sup>.

## 22 Computation of period of employment: Schedule 5 amended

- (1) Schedule 5 is amended as follows.
- (2) For paragraph 8(2) substitute —
  - <sup>23</sup>(2) If a trade, business or undertaking (including one established by or under an enactment) is transferred, whether in whole or in part, from one person to another, the period of employment of an employee in the trade, business or undertaking or, as the case may be, in that part of it, at the time of the transfer counts as a period of employment with the transferee, and the transfer does not break the continuity of the period of employment.<sup>22</sup>
- (3) At the end of that paragraph insert —
  - <sup>24</sup>(6) If an employee of a Department, Statutory Board or an office of the Government, who is not a public sector employee, is transferred to another such body —
    - (a) the period of employment of the employee with the original body at the time of the transfer counts as a period of employment with the transferee, and
    - (b) the transfer does not break the continuity of the employee's period of employment.<sup>22</sup>
- (4) In paragraph 13(2) in the words preceding paragraph (a) for “Schedule 1 of that Act” substitute <sup>25</sup>Schedule 1 to that Act<sup>22</sup>.
- (5) Omit paragraph 14(2)(b).

## 23 Calculation of normal working hours and a week's pay: Schedule 6 amended

- (1) Schedule 6 is amended as follows.
- (2) For paragraph 8(3) substitute —
  - <sup>26</sup>(3) If the calculation is for the purposes of section 77 (calculation of remuneration in respect of suspension on maternity grounds), the calculation date is —
    - (a) where the day before that on which the suspension begins falls during a period of ordinary or additional maternity leave, the day before the beginning of that period; or
    - (b) otherwise, the day before that on which the suspension begins.<sup>22</sup>
- (3) In paragraph 10—



- (a) at the end of sub-paragraphs (f) and (g) omit “or”;
- (b) for subparagraph (h) substitute —
  - ☐(h) an award under section 142 (basic award of compensation for unfair dismissal)
  - (ha) a payment made by the Treasury under section 147 (insolvency of employer),
  - (hb) a payment made by the Treasury under section 148 (cessation of employer’s business), or
  - (hc) a payment made by the Treasury under section 149 (unpaid contributions to pension scheme), or

## 24 Transitional provisions and savings: Schedule 7 amended

Paragraphs 14 to 19 of Schedule 7 are repealed.

## PART 2 – AMENDMENT OF OTHER LEGISLATION

### 25 Redundancy Payments Act 1990 amended

- (1) The *Redundancy Payments Act 1990* is amended as follows.
- (2) In section 2(1) (general exclusions from right to redundancy payment) paragraphs (a) and (b) are repealed.
- (3) In section 11(1)(a) (which concerns the transfer of a trade, business or undertaking) after “enactment)” insert ☐ or any part of a trade, business or undertaking ☐.
- (4) In section 33(1) for the words following paragraph (b) substitute —
  - ☐but is employment the earnings from which are subject to secondary Class 1 contributions under the Social Security Contributions and Benefits Act 1992 (of Parliament) as that Act has effect in the Island. ☐.
- (5) In Schedule 1, paragraph 1 omit “Subject to paragraph 2,”.
- (6) In Schedule 4, paragraph 1 omit “Except for the provisions of Part XI (insolvency and cessation of business of employer),”.

### 26 Interpretation: section 1 of the Shops Act 2000 amended

At the end of section 1 of the Shops Act 2000 add —

- ☐(3) The Department of Economic Development may by order specify additional businesses that are to be taken to be included in the definition “**retail trade or business**” in subsection (1).
- (4) An order under subsection (3) must be laid before Tynwald. ☐.

**27 Construction Contracts Act 2004**

In section 1(3) for “the Employment Act 1991” substitute ~~the~~ *Employment Act 2006*.

## Schedule 23

[Section 170]

## CONSEQUENTIAL AND MINOR AMENDMENTS

**1 Douglas Municipal Corporation Act 1895**

In section 17(4) and (5) for “He” substitute **“The mayor”**.

**2 Marriage Act 1984**

(1) Amend section 31 as follows.

(2) In subsection (1) for “(2) to (5) substitute **“(1A) to (5)”**.

(3) After subsection (1) insert —

**“(1A) No marriage may be solemnized —**

- (a) in a registered building, other than one falling within paragraph (b), without the consent of the minister or one of the trustees, owners, deacons or managers of the building; or
- (b) in a registered building of the Roman Catholic Church, without the consent of the minister of the registered building. **”**

**3 Road Transport Act 2001**

In section 37 (obligation to carry passengers) at the end add —

**“(4) Subject to regulations under section 45 and any exemption, the operator and driver of a private-hire vehicle must comply with any request to carry a disabled person, and any assistance dog of a prescribed description or wheelchair accompanying the disabled person, in the vehicle.**

For the purpose of this subsection it is immaterial whether the request is made —

- (a) by or on behalf of the disabled person; or
- (b) by another who wishes to be accompanied by the disabled person.

(5) In subsection (4) —

**“private-hire vehicle” means a public passenger vehicle (not being a taxi) which —**

- (a) is constructed or adapted to carry no more than 8 passengers, and

- (b) is provided for hire with the services of a driver for the purpose of carrying passengers;

“taxi” means a public passenger vehicle in respect of which a valid licence to ply for hire has been granted under section 31.

- (6) Regulations made by the Department may supplement the obligations imposed by this section, and may provide for breach of the regulations to be an offence triable summarily and punishable by a fine not exceeding £2,500. **22**.

#### 4 Tribunals Act 2006

For the entry in Part 2 of Schedule 2 relating to the Employment Tribunal substitute —

- 22**2. The Employment and Equality Tribunal. **22**.

#### 5 Civil Partnership Act 2011

- (1) Section 7 (place of registration) is amended as follows.
- (2) In subsection (3) after “determining whether” insert **22** to approve a place under subsection (1) or **22**.
- (3) After subsection (3) insert—
- 22**(3A) The guidance may in particular be framed so as to prescribe different factors and circumstances which apply to the registration of premises for the solemnization of marriages under section 29 of the *Marriage Act 1984*.
- (3B) For the avoidance of doubt, nothing in this Act obliges a religious organisation to permit the use of its premises for the purposes of civil partnership ceremonies if it does not wish to do so. **22**.

#### 6 Regulation of Care Act 2013

For “childrens home” wherever occurring substitute **22** children’s home **22**.

#### 7 Social Services Act 2011

After section 2 insert —

##### **2A Information about need for and existence of social care services and carer support**

[P1978/53/1; 1981/36/1 and 2011/22/Sch3, para 5]

- (1) The Department must inform itself —
- (a) of the number of and, so far as reasonably practicable, the identity of persons —


- (i) who are disabled and whose disability is of a permanent or lasting nature; or
  - (ii) are suffering from a mental disorder within the meaning of the *Mental Health Act 1974*; and
- (b) of the need for the making by the Department of arrangements for promoting the social welfare of such persons under section 2.
- (2) The Department must –
- (a) cause to be published from time to time at such times and in such manner as it considers appropriate general information as to the services provided under arrangements made by the Department under section 2 which are for the time being available in the Island; and
  - (b) ensure that any person mentioned at subsection (1) who uses any of those services is informed of any other of those services which in the opinion of the Department is relevant to that person's needs and of services provided by other government departments, public bodies and voluntary organisations which in the opinion of the Department are also relevant to that person's needs.

## 2B Provision of welfare services

[P1970/44/2; P1978/53/2; 1981/36/2; 2011/22/Sch3, para 5

If the Department is satisfied in the case of any person to whom section 2A applies and who is ordinarily resident in the Island that it is necessary in order to meet the needs of that person for the Department to make arrangements for all or any of the following matters, namely –

- (a) the provision of practical assistance for that person in his or her home;
- (b) the provision for that person of, or assistance to that person in obtaining, wireless, television, library or similar recreational facilities;
- (c) the provision for that person of lectures, games, outings or other recreational facilities outside his home or assistance to that person in taking advantage of educational facilities available to him;
- (d) the provision for that person of facilities for, or assistance in, travelling to and from his or her home for the purpose of participating in any services provided under arrangements made by the Department under section 2 or, with the approval of the Department, in any services, provided otherwise than as set out above in this section,

- that are similar to services which could be provided under such arrangements;
- (e) if that person suffers from a disability of such kind or to such a degree as seriously to restrict the person's mobility, the provision for that person of such a conveyance or other appliance as is appropriate for the purpose of affording that person a reasonable degree of mobility;
  - (f) the provision of assistance for that person in arranging for the carrying out of any works of adaptation in his or her home or the provision of any additional facilities designed to secure his or her greater safety, comfort or convenience;
  - (g) facilitating the taking of holidays by that person, whether at holiday homes or otherwise and whether provided under arrangements made by the Department or otherwise;
  - (h) the provision of meals for that person whether in the person's home or elsewhere;
  - (i) the provision for that person of, or assistance to that person in obtaining, a telephone and any special equipment necessary to enable the person to use a telephone,
- the Department must (if in the circumstances it considers it reasonable) make those arrangements in the exercise of its functions under section 2. .

**Schedule 24****REPEALS**

[Section 171]

**1 Repeals**

The following are repealed—

- (a) the Factories and Workshops Act 1909 (AT 1 of 1909);
- (b) the Sex Disqualification (Removal) Act 1921 (AT 5 of 1921);
- (c) the Factories and Workshops (Amendment) Act 1931;
- (d) the Factories and Workshops Amendment Act 1936 (AT 3 of 1936);
- (e) the Factories and Workshops Amendment Act 1939 (AT 3 of 1939)
- (f) the Disabled Persons (Employment) Act 1946 (AT 2 of 1946);
- (g) the Chronically Sick and Disabled Persons Act 1981 (AT 36 of 1981);
- (h) in the *Redundancy Payments Act 1990* (AT 18 of 1990)—
  - (i) section 13;
  - (ii) section 23(3) and (4);
  - (iii) in Schedule 1, paragraphs 2 and 4; and
  - (iv) Schedule 2;
- (i) the Chronically Sick and Disabled Persons (Amendment) Act 1992 (AT 8 of 1992);
- (j) the Employment (Sex Discrimination) Act 2000 (AT 16 of 2000);
- (k) the Race Relations Act 2004 (AT 6 of 2004);
- (l) the Disability Discrimination Act 2006 (AT 17 of 2006);
- (m) in the *Employment Act 2006* (AT 21 of 2006) —
  - (i) sections 125 to 127;
  - (ii) section 128(12) to (14);
  - (iii) section 132(2) paragraphs (l) to (n);
  - (iv) section 156;
  - (v) section 160 (which is re-enacted, with necessary amendments, as section 118);
  - (vi) Schedule 3; and
  - (vii) in Schedule 5, paragraphs 1(3) and 14(2)(b);
- (n) the Breastfeeding Act 2011 (AT 20 of 2011);
- (o) in the Regulation of Care Act 2013, section 165(3).

## 2 **Saving**

For the sake of clarity, the repeal by paragraph 1(b) of the Sex Disqualification (Removal) Act 1921 does not revive any rule of law applying before the commencement of that Act which —

- (a) prevented a person of a particular gender from enjoying or exercising any right, holding any office or employment or performing any function; or
- (b) imposed on a person of a particular gender any disability or liability.



**SCHEDULE 25**

[Section 172]

**GLOSSARY**