



**Isle of Man**

*Ellan Vannin*

**AT 5 of 2017**

**EQUALITY ACT 2017**





## EQUALITY ACT 2017

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*Announced to Tynwald:* 18 July 2017

**AN ACT** 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 — OPENING PROVISIONS

#### 1 Short title

The short title of this Act is the Equality Act 2017.

#### 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.<sup>1</sup>
- (2) An order under subsection (1) may make different provision for different purposes.
- (3) An order under subsection (1) may contain —
  - (a) such savings; and
  - (b) such consequential, incidental, supplemental, transitional and transitory provision, including such modification of enactments (including those contained in this Act);

as appear to the Council of Ministers to be necessary or expedient in consequence of, or otherwise in connection with, the commencement or partial operation of this Act.

### 3 Interpretation

P2010/15/212

(1) In this Act the following abbreviations are used in respect of Departments —

“DEC” [Repealed]<sup>2</sup>

“DED” [Repealed]<sup>3</sup>

“DEFA” means the Department of Environment, Food and Agriculture;

“DESC” means the Department of Education, Sport and Culture;<sup>4</sup>

“DfE” means the Department for Enterprise;<sup>5</sup>

“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, subject to subsection (8), include conduct which amounts to harassment;

“employment” is, subject to subsection (14), to be read in accordance with section 75(2);

“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) any statutory document;

“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 65;

“maternity equality rule” has the meaning given in section 67;

“non-discrimination rule” has the meaning given in section 53;

“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(1) of the *Education Act 2001*;

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

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

“**public authority**” has the meaning given in section 6 of the *Human Rights Act 2001*, and whether or not a function of such an authority constitutes a “**public function**” is to be determined in the light of that section;

*Note:* section 154 of the *Regulation of Care Act 2013* provides that a person who carries on an independent care service within the meaning of that Act, other than childminding, is taken to be exercising a function of a public nature for the purposes of the *Human Rights Act 2001*.

“**the relevant enactments**” means —

- (a) the *Redundancy Payments Act 1990*;
- (b) the *Shops Act 2000*;
- (c) the *Minimum Wage Act 2001*;
- (d) the *Employment Act 2006*; and
- (e) any statutory document made, or having effect, under any of those Acts;

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

“**relevant officer**” has the meaning given in section 102(1);

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

“**sex equality rule**” has the meaning given in section 59;

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

“**trade**” includes any business;

“**Tribunal**” (without more) means the Employment and Equality Tribunal constituted by section 103;

“**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) Where this Act disapplies a prohibition on harassment in relation to a specified protected characteristic, the disapplication does not prevent conduct relating to that characteristic from amounting to a detriment for the purposes of discrimination within section 14 because of that characteristic.
- (9) A reference to occupation, in relation to premises, is a reference to lawful occupation.
- (10) The following constitute “**the Executive**” —
- (a) the Governor;
  - (b) the Governor in Council;
  - (c) the Council of Ministers;
  - (d) a Minister;
  - (e) a member of a Department;
  - (f) the Attorney General (and any officer serving in the Attorney General’s Chambers);
  - (g) a Department;
  - (h) a Statutory Board;
  - (i) an office of the Government other than the General Registry;
  - (j) a Minister of the Crown, but only insofar as that officer has functions in relation to the Island.

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

- (11) 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.
- (12) 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.
- (13) “**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)).
- (14) “**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).

- (15) A reference to the accrual of rights under an occupational pension scheme is to be construed in accordance with that section.
- (16) Nothing in section 29, 32, 76 or 91 is to be regarded as an express exception.
- (17) Section 171 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 —

- (a) age;
- (b) disability;
- (c) gender reassignment;
- (d) marriage and civil partnership;
- (e) pregnancy and maternity;
- (f) race;
- (g) religion or belief;
- (h) sex;
- (i) 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 section 149) 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 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 transgender 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 transgender person;
  - (b) a reference to persons who share a protected characteristic is a reference to transgender 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 and drafting

- (1) Sexual orientation means a person's inherent romantic or sexual attraction towards —
- (a) persons of the same sex,
  - (b) persons of the opposite sex, or



- (c) persons of either sex.
- (2) For the sake of clarity, not being romantically or sexually attracted to persons of either sex is also a sexual orientation.
- (3) 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) and 19(7) (both of which concern pregnancy and maternity discrimination).

## 15 Combined discrimination: dual characteristics

P2010/15/14 [omitting ss(5)]

- (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) 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.
- (6) 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 transgender 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 maternity leave (but not additional maternity leave), at the end of the ordinary maternity leave period or, (if earlier) when she returns to work after the pregnancy;
  - (b) if she has the right to both 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; or
  - (c) if she has neither of those rights, 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 —
- (a) age;
  - (b) disability;
  - (c) gender reassignment;
  - (d) marriage and civil partnership;
  - (e) race;
  - (f) religion or belief;
  - (g) sex;
  - (h) sexual orientation.

*Subdivision 2 — Reasonable adjustments for disabled persons*

## **21 Duty to make reasonable 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 and 3 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 14
Part 7 (associations)	Schedule 15
Each of the Parts mentioned above	Schedule 19

## 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 and drafting (subsection (4))

- (1) Regulations may prescribe —
  - (a) 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;
  - (b) descriptions of persons to whom the first, second or third requirement does not apply.
- (2) Regulations may make provision as to, —
  - (a) 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>	<i>Body empowered to make regulations</i>
Part 3 (services and public functions)	The Council of Ministers
Part 4 (premises)	DOI
Part 5 (work)	DfE <sup>6</sup>

Part 6 (education)	DESC <sup>7</sup>
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) and drafting (in subsection (3)).

- (1) On a comparison of cases for the purposes of section 14 or 20 there must be no material difference between the circumstances relating to each case.<sup>8</sup>
- (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) If the protected characteristic is sexual orientation, neither, –
  - (a) the fact that one person (whether or not the person referred to as B) is a civil partner while another is married; nor
  - (b) the fact that in one case the parties to the marriage or civil partnership are of opposite sexes while in the other they are of the same sex;

is 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 16;
  - (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.

*Subdivision 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 –
  - (a) age;
  - (b) disability;
  - (c) gender reassignment;
  - (d) race;
  - (e) religion or belief;
  - (f) sex;
  - (g) sexual orientation.

## 28 Victimisation

P2010/15/27

- (1) A person (A) victimises another (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

### DIVISION 1 — 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 61 or Part 2 of Schedule 7;
- (c) a breach of a non-discrimination rule.

## DIVISION 2 — 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 49(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) 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.
- (5) A reference to a person requiring a service includes a reference to a person who is seeking to obtain or use the service.
- (6) 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).
- (7) Schedule 2 (services and public functions: reasonable adjustments) has effect.
- (8) Schedule 3 (services and public functions: exceptions) has effect.

## **PART 4 — PREMISES**

### **DIVISION 1 — PRELIMINARY**

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

P2010/15/32

- (1) This Part does not apply to the following protected characteristics —

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

- (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 61 or Part 2 of Schedule 7;
  - (c) a breach of a non-discrimination rule.

## DIVISION 2 – 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.

### DIVISION 3 – 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.

### DIVISION 4 – SUPPLEMENTARY

#### **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);
    - (ii) 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) Subparagraphs (i) and (iii) of subsection (8)(d) do not apply if, immediately after the termination, the position is renewed on the same terms.

*Subdivision 4 – Membership of Limited Liability Companies*

**43 Limited liability companies under the Limited Liability Companies Act 1996**

- (1) This section applies to a limited liability company under the *Limited Liability Companies Act 1996* (“the 1996 Act”), and references to a company, and to membership or management of a company are to be construed in accordance with the 1996 Act.
- (2) The members must not discriminate against a proposed transferee or assignee of the member’s interest —
  - (a) in deciding whether or not to approve of the proposed transfer or assignment of the member’s interest;

- (b) as to the terms on which the proposed transferee or assignee is to become a member; or
  - (c) by not approving the transfer or assignment of the member's interest.
- (3) The members must not discriminate against a member ("A")—
  - (a) as to the terms on which A is a member;
  - (b) in the way they afford A access, or by not affording A access, to opportunities for promotion, transfer or training or for receiving any other benefit, facility or service;
  - (c) by expelling A from membership;
  - (d) in deciding whether or not to approve of the proposed transfer or assignment of A's interest;
  - (e) as to the terms on which the proposed transferee or assignee is to become a member;
  - (f) by not approving the transfer or assignment of A's interest; or
  - (g) by subjecting A to any other detriment.
- (4) The members must not, in relation to a position as a member, harass, —
  - (a) a member; or
  - (b) a person who has applied for the position.
- (5) The members must not victimise a person, —
  - (a) in the arrangements they make for deciding to whom to offer a position as a member;
  - (b) as to the terms on which they offer the person a position as a member;
  - (c) by not offering the person a position as a member.
- (6) The members must not victimise a member (A)—
  - (a) as to the terms on which A is a member;
  - (b) in the way in which they afford A access, or by not affording A access, to opportunities for promotion, transfer or for receiving any other benefit, facility or service;
  - (c) by expelling A;
  - (d) by subjecting A to any other detriment.
- (7) In the case of a company whose articles of organisation make provision for the company to be managed as mentioned in section 17(3) of the 1996 Act this section applies to the manager of the company as it applies to the members.

*Subdivision 5 — Office-holders***44 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.

#### **45 Public offices: appointments etc**

P2010/15/50

- (1) This section and section 46 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 or a Branch of Tynwald.
- (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.

#### **46 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 45(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 45(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 45(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 45(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 45(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.

#### 47 Subdivision 5: interpretation and exceptions

P2010/15/52

- (1) This section applies for the purposes of this Subdivision.
- (2) “**Personal office**” has the meaning given in section 44(2).
- (3) “**Public office**” has the meaning given in section 45(2).
- (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 following 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 6 – Qualifications*

#### **48 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 77 (pupils' admission and treatment) applies,
  - (b) it is the governing body of an institution to which section 81 (students' admission and treatment) applies,
  - (c) it can confer a qualification to which section 87 applies, or
  - (d) 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 7 — Employment services***49 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 DESC or DfE;<sup>9</sup>
  - (g) the provision of a service in pursuance of arrangements made in respect of careers services by DESC or DfE;<sup>10</sup>
  - (h) an assessment related to the conferment of a relevant qualification within the meaning of section 48 (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 77 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 81 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.

## 50 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 8 — Local authorities*

## **51 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 9 – Recruitment*

## **52 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 99 or 100 (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 before the Tribunal 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 (6) 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 131 (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 146 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 (7)(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 is intrinsic to the work is to be read as a function that would be intrinsic to the work once A complied with the duty.
- (9) Subsection (7)(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(2)(a) or (c) (members of limited liability companies);
  - (e) section 44(3) (a) or (c) (personal offices);
  - (f) section 45(3)(a) or (c) (public offices);
  - (g) section 46(1) (public offices: recommendations for appointment);
  - (h) section 49(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

### 53 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) For the purposes of this section, 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 operation 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.

## **54 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 53(3).

## **55 Communications**

P2010/15/63

- (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 53 (non-discrimination rule);
  - (b) section 110 (Tribunal jurisdiction);
  - (c) section 115 (remedies: occupational pension schemes);
  - (d) paragraph 17 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*

#### **56 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.

#### **57 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.

## **58 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 57(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).

## **59 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 a person (A) differs according to the effect it has on a person of the same sex as A, according to whether A is married, in a civil partnership or for some other reason due to A's family status, a comparison for the purposes of this section of the effect of that matter on persons of the opposite sex must be with a person of the opposite sex to A who is in the same position as A and in particular —
  - (a) where A is the spouse or civil partner of someone of the opposite sex, A is to be compared to a person of the opposite sex ("B") where B is the spouse or civil partner of a person of the opposite sex to B;
  - (b) where A is the spouse or civil partner of someone of the same sex, A is to be compared to B where B is the spouse or civil partner of a person of the same sex as B.
- (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.

## 60 Sex equality rule: consequential alteration of schemes

P2010/15/68 and drafting

- (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.

## 61 Defence of material factor

P2010/15/69 and drafting (ss. (7) and (8))

- (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 59(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.
- (7) DfE may by regulations make further provision about what constitutes (or does not constitute) a proportionate means of achieving a legitimate aim for the purposes of this section.<sup>11</sup>
- (8) Regulations under subsection (7) may amend this Subdivision so far as appears to DfE to be necessary or expedient to give effect to the provision.<sup>12</sup>

## 62 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 61 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 58(2)(a);
  - (b) the failure to include in A's terms a corresponding term as referred to in section 58(2)(b).
- (3) The relevant sex discrimination provision is, in relation to work of a description given in the first column of the following table, the provision referred to in the second column so far as relating to sex.

Description of work	Provision
Employment	Section 38(2)
Appointment as a member of a limited liability company	Section 43(3)
Appointment to a personal office	Section 44(6)
Appointment to a public office	Section 45(6)

## 63 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 62) 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).<sup>13</sup>

*Subdivision 2 — pregnancy and maternity equality*

## 64 Relevant types of work

P2010/15/72

This subdivision applies if a woman —

- (a) is employed,

- (b) is a member of a limited liability company, or
- (c) holds a personal or public office.

## **65 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 66(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.

## **66 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 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).

## **67 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 begins on or after a date specified by order made by DfE (being a date not earlier than the date on which this paragraph comes into operation).<sup>14</sup>
- (10) In this section a reference to being on maternity leave includes a reference to having been on maternity leave.

## **68 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 65(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 following table, the provision referred to in the second column so far as relating to pregnancy and maternity.

<b>Description of work</b>	<b>Provision</b>
Employment	Section 38(2)
Appointment as a member of a limited liability company	Section 43(3)
Appointment to a personal office	Section 44(6)
Appointment to a public office	Section 45(6)

*Subdivision 3 – disclosure of information*

## **69 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 –
  - (a) seeking a disclosure that would be a relevant pay disclosure;
  - (b) making or seeking to make a relevant pay disclosure;
  - (c) 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.

<b>Description of work</b>	<b>Provision by virtue of which section 28 has effect</b>
Employment	Section 38(3) or (4)
Appointment as a member of a limited liability company	Section 43(5) or(6)
Appointment to a personal office	Section 44(5) or (8)

Appointment to a public office	Section 45(5) or (9)
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## 70 Gender pay gap information

P2010/15/78

- (1) DfE may make regulations which require employers to publish information relating to the pay of employees for the purpose of showing whether, by reference to factors of such description as is prescribed, there are differences in the pay of male and female employees.<sup>15</sup>
- (2) The regulations may prescribe —
  - (a) descriptions of employer;
  - (b) descriptions of employee;
  - (c) how to calculate the number of employees that an employer has;
  - (d) descriptions of information;
  - (e) the time at which information is to be published;
  - (f) the form and manner in which it is to be published.
- (3) Regulations under subsection (2)(e) may not require an employer, after the first publication of information, to publish information more frequently than at intervals of 12 months.
- (4) The regulations may make provision for a failure to comply with the regulations —
  - (a) to be an offence punishable on summary conviction by a fine not exceeding £5,000;
  - (b) to be enforced, otherwise than as an offence, by such means as are prescribed.
- (5) The reference to a failure to comply with the regulations includes a reference to a failure by a person acting on behalf of an employer.

*Subdivision 4 — supplementary*

## 71 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), (4) or (5) 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 by 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) This subsection applies if B previously held the employment held by A.
- (6) If A is a member of a limited liability company, B is a comparator if, —
- (a) B is also a member of the limited liability company, or
  - (b) B was previously a member of the limited liability company.
- (7) If A holds a personal or public office, B is a comparator if —
- (a) B holds a personal or public office and the person responsible for paying A is also responsible for paying B; or
  - (b) B is a previous holder of the office.
- (8) If A is a relevant member of Tynwald staff, B is a comparator if B is also a relevant member of Tynwald staff.
- (9) Section 41 (police officers: identity of employer) 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.
- (10) 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.

## 72 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 as in that Act.

- (7) Schedule 7 (equality of terms — exceptions) has effect.

#### DIVISION 4 — SUPPLEMENTARY

### 73 Offshore work

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

- (1) This Part applies to persons engaged in offshore work only to the extent, subject to such modifications and in such circumstances, as DfE may by order prescribe.<sup>16</sup>
- (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 paragraph (a) of the definition of “renewable energy installation” in subsection (4) 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.

## 74 International pension arrangements

Nothing in this Part applies in relation to a pension scheme approved under section 50B(2) of the *Income Tax Act 1970*.

## 75 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 3(3) and (14)) 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) References in this Part to a limited liability company are to a company formed under the *Limited Liability Companies Act 1996*.
- (5) 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 47.
- (6) Schedule 8 (work: reasonable adjustments) has effect.
- (7) Schedule 9 (work: exceptions) has effect.

# PART 6 — EDUCATION

## DIVISION 1 — SCHOOLS

### 76 Application of this Division

P2010/15/84

This Division does not apply to the protected characteristic of age.

### 77 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 DESC;<sup>17</sup>
  - (b) an independent educational institution (other than a special school);
  - (c) a special school (not maintained by DESC).<sup>18</sup>
- (8) The responsible body of a school to which this section applies is —
  - (a) if the school is within subsection (7)(a), DESC or the governing body;<sup>19</sup>
  - (b) if it is within subsection (7)(b) or (c), the proprietor.

## 78 **Victimisation of pupils, their siblings and parents for giving false evidence or information or making false allegations**

P2010/15/86

- (1) This section applies for the purposes of section 28 in its application to section 77(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.

## 79 **Disabled pupils: accessibility**

P2010/15/88

Schedule 10 (disabled pupils: accessibility) has effect.

## 80 **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 (schools: exceptions) has effect.

## DIVISION 2 — FURTHER AND HIGHER EDUCATION

**81 Students: admission and treatment etc**

P2010/15/91

- (1) This section applies to —
  - (a) a university;
  - (b) University College Isle of Man.
- (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.

## **82 Further and higher education courses**

P2010/15/92

- (1) This section applies to a course of further or higher education provided by, —
  - (a) a university; or
  - (b) University College Isle of Man.
- (2) 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.

- (3) 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.
- (4) 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.
- (5) 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.
- (6) 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.
- (7) A duty to make reasonable adjustments applies to the responsible body.
- (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.

### **83 Disabled students at further and higher education institutions: accessibility**

- (1) This section applies to a university and to University College Isle of Man.
- (2) Schedule 12 (students in further and higher education: accessibility) has effect.



## 84 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), DfE and DOI;<sup>20</sup>
  - (b) in the case of facilities falling within subsection (7)(b) —

- (i) DESC, DfE and DOI;<sup>21</sup>
  - (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), DESC and DOI.<sup>22</sup>
- (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.

## 85 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 13 (further and higher education — exceptions) has effect.

### DIVISION 3 – GENERAL QUALIFICATION BODIES

## 86 Application of this Division

P2010/15/95

This Division does not apply to the protected characteristic of marriage and civil partnership.

## 87 Qualifications bodies

P2010/15/96

- (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) Subsection (6) does not apply to the body in so far as the appropriate regulator specifies provisions, criteria or practices in relation to which the body —
  - (a) is not subject to a duty to make reasonable adjustments;
  - (b) is subject to a duty to make reasonable adjustments, but in relation to which such adjustments as the regulator specifies should not be made.
- (8) For the purposes of subsection (7) the appropriate regulator must have regard to —
  - (a) the need to minimise the extent to which disabled persons are disadvantaged in attaining the qualification because of their disabilities;
  - (b) the need to secure that the qualification gives a reliable indication of the knowledge, skills and understanding of a person upon whom it is conferred;
  - (c) the need to maintain public confidence in the qualification.
- (9) The appropriate regulator —

- (a) must not specify any matter for the purposes of subsection (7) unless it has consulted such persons as it thinks appropriate;
  - (b) must publish matters so specified (including the date from which they are to have effect) in such manner as is prescribed.
- (10) The appropriate regulator in relation to a qualification conferred in the Island is a person prescribed by DESC.<sup>23</sup>
- (11) For the purposes of subsection (10), a qualification is “conferred in the Island” if there are, or may reasonably be expected to be, persons seeking to obtain the qualification who are or will be assessed for those purposes wholly or mainly in the Island.

## 88 Interpretation

P2010/15/97

- (1) This section applies for the purposes of section 87.
- (2) A qualifications body is an authority or body which can confer a relevant qualification.
- (3) A relevant qualification is an authorisation, qualification, approval or certification of such description as may be prescribed, in relation to conferment in the Island, by the Council of Ministers.
- (4) An authority or body is not a qualifications body insofar as —
- (a) it is the responsible body of a school to which section 77 applies,
  - (b) it is the governing body of an institution to which section 81 applies,
  - (c) it exercises functions under the *Education Act 2001*.
- (5) A qualifications body does not include an authority or body of such description, or in such circumstances, as may be prescribed by regulations made by the Council of Ministers.
- (6) A reference to conferring a relevant qualification includes a reference —
- (a) to renewing or extending the conferment of a relevant qualification;
  - (b) to authenticating a relevant qualification conferred by another person.
- (7) A reference in section 87(8), (10) or (11) to a qualification is a reference to a relevant qualification.
- (8) Subsection (11) of section 87 applies for the purposes of subsection (3) of this section as it applies for the purposes of subsection (10) of that section.

## DIVISION 4 — MISCELLANEOUS

**89 Reasonable adjustments**

P2010/15/98

Schedule 14 (education — reasonable adjustments) has effect.

**90 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 to which section 77 or 81 (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 DESC, 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.<sup>24</sup>
- (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

### 91 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.

### 92 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.

### 93 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.

#### **94 Sections 92 and 93: further provision**

P2010/15/103

A duty to make reasonable adjustments applies to an association.

#### **95 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 15 (associations: reasonable adjustments) has effect.
- (8) Schedule 16 (associations: exceptions) has effect.

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

#### **96 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.

## **97 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.

## **98 Liability of employees and agents**

P2010/15/110 as amended by P2013/30/s.2(5).

- (1) A person (A) contravenes this section if —

- (a) A is an employee or agent,
  - (b) A does something which, by virtue of section 97(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 97(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) A does not contravene this section if A, —
- (a) does not conduct a relevant marriage,
  - (b) is not present at, does not carry out, or does not otherwise participate in, a relevant marriage, or
  - (c) does not consent to a relevant marriage being conducted,
- for the reason that the marriage is the marriage of a same sex couple.
- (7) Subsection (6) applies to A only if A is within the meaning of “**person**” for the purposes of section 4C of the *Marriage Act 1984*; and other expressions used in subsection (6) and in section 4C of that Act have the same meanings in that subsection as in that section
- (8) Part 9 (enforcement) applies to a contravention of this section by A as if it were the contravention mentioned in subsection (1)(c).
- (9) 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).

## 99 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 96(1) or (2) or 100(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.

## 100 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 96(1) or (2) or 99 (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

#### 101 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 that Act applying it 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 subdivision 4 of that Division provides for that.
- (6) This section does not apply to proceedings for an offence under this Act.
- (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

*Subdivision 1 – Constituting the Tribunal***102 Definitions relating to the Tribunal, and proceedings before it**

Drafting

- (1) In this Act “**relevant officer**” means —
  - (a) in relation to proceedings under Part 5 (work) or the relevant enactments, an industrial relations officer;
  - (b) in relation to proceedings under section 107, a person appointed by DESC to conciliate in proceedings under that section; and<sup>25</sup>
  - (c) in relation to proceedings under any other provision of this Act, an officer of the OFT.
- (2) In this Part —

“**complaint**” includes a claim, reference, application or appeal to the Tribunal;

“**the former Schedule 3**” means Schedule 3 to the *Employment Act 2006* as it stood immediately before its repeal.

**103 The Tribunal: constitution, functions and transition**

Drafting

- (1) There is constituted the Employment and Equality Tribunal.
- (2) In consequence of subsection (1) —
  - (a) [Repealed Part XII of the *Employment Act 2006* (including the former Schedule 3), apart from sections 156 and 159]<sup>26</sup>
  - (b) [Substituted section 156 of the *Employment Act 2006*]<sup>27</sup>
  - (c) [Substituted section 159 of the *Employment Act 2006*]<sup>28</sup>
- (3) Schedule 17, which re-enacts the former Schedule 3 with amendments consequential on the passing of this Act, has effect.
- (4) Schedule 17 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.
- (5) The Tribunal has —
  - (a) the functions conferred upon it by this Division; and
  - (b) all the functions conferred, immediately before the coming into operation of this section (“the relevant time”), on the Employment Tribunal, under the relevant enactments.

- (6) On the day appointed for the 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 Tribunal constituted under Schedule 17; and
  - (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 this Part in respect of proceedings under the relevant enactments and proceedings under Part 5 (work); and
    - (ii) the Tribunal for the purposes of proceedings under this Act other than those relating to Part 5.

## 104 Conciliation

2006/21/157 and drafting

- (1) This section applies in the case of proceedings before the Tribunal, and matters which could be the subject of proceedings before the Tribunal, arising out of a contravention of, or an alleged contravention of any provision of this Act or any of the relevant enactments, 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 a relevant 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 with an employment element where the complainant has ceased to be employed by the other party to the dispute or proceedings –
    - (a) an industrial relations officer must, in particular, seek to promote the reinstatement or re-engagement of the complainant by –
      - (i) that other party,
      - (ii) a successor of that other party, or
      - (iii) an associated employer of that other party,
 on terms appearing to the industrial relations officer to be equitable;
    - (b) where the complainant does not wish to be reinstated or re-engaged, or where reinstatement or re-engagement is not practicable, and the parties desire an industrial relations officer to act under this section, the industrial relations officer must seek to promote agreement between them as to a sum by way of compensation to be paid by that other party to the complainant.
  - (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) Paragraph 30 of Schedule 17 makes further provision about conciliation.

*Subdivision 2 – Jurisdiction in relation to goods and services*

**105 Jurisdiction of the Tribunal in relation to goods and services**

P2010/21/114 and drafting

- (1) The Tribunal has jurisdiction in accordance with this Subdivision to determine a complaint 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 96, 99 or 100 that relates to Part 3, 4, 6 or 7.
- (2) In exercising the jurisdiction conferred by subsection (1) 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).
- (3) Anything done by the Tribunal under subsection (2) has the same effect as if it were done by the Court.
- (4) 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.
- (5) Subsection (1)(a) does not apply to a complaint within section 106.
- (6) For the purposes of proceedings on a complaint within subsection (1)(a) –
- (a) a decision in proceedings on a complaint mentioned in section 106(1) that an act is a contravention of Part 3 is binding;
  - (b) it does not matter whether the act occurs outside the Island.

## 106 Immigration cases

P2010/15/115

- (1) A complaint 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 105(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 101 (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.

## 107 Education cases

P2010/15/116

Schedule 18 (education cases: enforcement) has effect.

## 108 Time limits

P2010/15/118

- (1) Proceedings on a claim within this Subdivision 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 105(5) proceedings could not be brought in reliance on section 105(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 106.

## 109 Remedies

P2010/15/119

- (1) This section applies if the Tribunal finds that there has been a contravention of a provision referred to in section 105(1).
- (2) The Tribunal may grant any remedy which the Court could have granted —
- (a) in proceedings in tort; or
  - (b) on a petition of doléance.
- (3) Any remedy granted under subsection (2) is enforceable as if it had been granted by the Court at the time when the Tribunal granted it.
- (4) An award of damages may include compensation for injured feelings (whether or not it includes compensation on any other basis).
- (5) Subsection (6) applies if the Tribunal —
- (a) finds that a contravention of a provision referred to in section 105 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.
- (6) The Tribunal must not make an award of damages unless it first considers whether to make any other disposal.
- (7) The Tribunal 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.
- (8) In subsection (1), the reference to a provision referred to in section 105(1) does not include —
- (a) a reference to section 52(1) (enquiries as to disability and health); or
  - (b) a reference to section 58 or 59 (sex equality clause and sex equality rule).

*Subdivision 3 – Jurisdiction in relation to work and employment-related cases***110 Jurisdiction of the Tribunal in work cases**

P2010/15/120 and drafting

- (1) The Tribunal has jurisdiction to determine a complaint relating to –
  - (a) a contravention of Part 5 (work);
  - (b) a contravention of section 96 (relationships that have ended), 99 (instructing, causing or inducing contraventions) or 100 (aiding contraventions) that relates to Part 5.
- (2) The Tribunal has jurisdiction to determine an application by a responsible person (as defined by section 53(4)) 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) The Tribunal also has jurisdiction to determine a question that –
  - (a) relates to a non-discrimination rule, and
  - (b) is referred to it by virtue of section 112.
- (5) 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.
- (6) Subsection (1)(a) does not apply to a contravention of section 48 (qualification 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.

**111 Remedies for breach of provisions of the relevant enactments**

2006/21/156 as originally enacted, and drafting

- (1) This section specifies remedies in relation to provisions of the relevant enactments.
- (2) In this section a reference (without more) to a numbered section or Part is to the section or Part of the *Employment Act 2006* which is so numbered.
- (2A) A person may assert any of the rights conferred on him or her by or under –
  - (a) the *Redundancy Payments Act 1990*; and
  - (b) Part III of the *Shops Act 2000* (rights in respect of Sunday working),

by way of complaint or reference to the Tribunal and not otherwise.<sup>29</sup>

- (3) A person may assert any of the rights conferred on him or her by or under —
- (a) Part I (discrimination at recruitment on trade union grounds);
  - (b) Part II (rights during employment);
  - (c) sections 29 to 34 (inducements etc.) and 35 to 48 (time off work) of Part III (rights arising in course of employment);
  - (d) Part V (detriment);
  - (e) Part VI (suspension from work on maternity grounds);
  - (f) Part VII (leave for family and domestic reasons);
  - (g) Part VIII (right to be accompanied at disciplinary and grievance hearings);
  - (h) section 110 (right to written statement of reasons for dismissal) of Part IX (termination of employment);
  - (i) Part X (unfair dismissal);
  - (j) Part XI (insolvency and cessation of business); and
  - (k) sections 165 (part-time work: discrimination), 166 (limited-term employment), 166A (zero-hours contracts), 167 (annual leave and other working time cases) and 168 (death of employer or employee),

by way of complaint or reference to the Tribunal and not otherwise.<sup>30</sup>

- (3A) A person may assert any of the rights conferred on him or her by or under —
- (a) sections 21 to 28 (deductions from wages etc.);
  - (b) sections 106 to 109 and Schedule 2 (rights in relation to notice etc.),

by way of complaint or reference to the Tribunal.<sup>31</sup>

- (4) [Repealed]<sup>32</sup>
- (5) [Repealed]<sup>33</sup>
- (5A) A person may assert any of the rights conferred on him or her by or under the *Minimum Wage Act 2001* by way of complaint or reference to the Tribunal.<sup>34</sup>
- (6) Complaints to the Tribunal may be commenced only in accordance with Tribunal rules under Schedule 17 to this Act.
- (7) DfE may by order amend this section to make different provision about the remedies for breach of the relevant enactments.

An order under this subsection may include amendments to this Act and any of the relevant enactments which appear to DfE to be necessary or

expedient in consequence of the amendment made by the order to this section.<sup>35</sup>

*Note: this section does not preclude a right of appeal to the High Court under section 127 (appeals) of this Act in relation to any of the provisions of the relevant enactments.*<sup>36</sup>

## **112 References by Court to Tribunal etc**

P2010/15/128 adapted

- (1) If proceedings are pending in the Court and it appears that a claim or counter-claim relates to a non-discrimination rule, the Court must strike out the claim or counter-claim, unless it proceeds as mentioned in subsection (2).
- (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.
- (3) On a reference under subsection (2)(a) the Tribunal must determine whether the claim or counter-claim is to be accepted as having been made within the time limit which applies to it under section 113.

For the purpose of this subsection the Tribunal must —

- (a) in the case of a claim, treat a complaint as having been made to the Tribunal at the time when the proceedings in the Court were commenced; and
- (b) in the case of a counter-claim, treat a complaint as having been made to the Tribunal at the time when the counter-claim was asserted in the proceedings before the Court.

## **113 Time limits — work cases**

P2010/15/123(1) (adapted), (3) and (4)

- (1) Proceedings on a complaint relating to —
  - (a) a contravention of Part 5 (work); or
  - (b) a contravention of section 96, 99 or 100 that relates to Part 5,
 may not be brought after the end of —
  - (i) the period of 3 months starting with the date of the act to which the complaint relates, or
  - (ii) 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.
- (4) This section does not apply for the purposes of Subdivision 4 (see section 120 (which concerns time limits in cases involving questions of equality of terms)).

#### **114 Remedies: general**

P2010/15/124 and drafting in ss. (1) and proviso to ss. (6)

- (1) This section applies if the Tribunal finds that there has been a contravention of a provision referred to in section 110(1), other than a provision contained in Subdivision 4 (see that Subdivision for specific remedies in the cases falling within it).
- (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 total amount of compensation awarded to a person under subsection (2)(b) must not exceed the sum of the amounts which might be awarded under section 144(1) and (2) of the *Employment Act 2006*.

But this subsection does not limit an individual component of an award of compensation to the amount specified, in respect of a particular kind of compensation, in section 144(1) or (2) 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.

## **115 Remedies: occupational pension schemes**

P2010/15/126

- (1) This section applies if the Tribunal finds that there has been a contravention of an applicable provision 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) For the purposes of subsection (1) the following are applicable provisions —
- (a) Part 5;
  - (b) sections 96, 99 and 100 so far as relating to Part 5.
- (3) In addition to anything which may be done by the Tribunal under section 114 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.
- (4) The Tribunal may not make an order under subsection (2)(b) of section 114 unless —
- (a) the compensation is for injured feelings, or
  - (b) the order is made by virtue of subsection (7) of that section.
- (5) An order under subsection (3) —
- (a) may make provision as to the terms on which or the capacity in which the complainant is to enjoy the admission or membership;

- (b) may have effect in relation to a period before the order is made.

## 116 Remedies: supplemental

### Drafting

- (1) If DfE is satisfied that an employee or worker is entitled to exercise a remedy conferred under Part 5 or any of the relevant enactments by way of a complaint or reference to the Tribunal in respect of —

- (a) an infringement of a right conferred on the employee or worker under that Part or any of the relevant enactments; or  
 (b) the contravention of an obligation mentioned in section 111,

DfE may with the consent of the employee or worker, exercise the remedy on behalf of the employee or worker.<sup>37</sup>

- (2) If an act by an employer —

- (a) is an infringement of more than one of the rights conferred on an employee or worker by the applicable provisions or any of the relevant enactments; or  
 (b) is a contravention of more than one obligation imposed by any of the relevant enactments,

the Tribunal has no power to make more than one award (in respect of each employee or worker) in respect of the act in question.

- (3) Subsection (2) of section 115 applies for the purposes of subsection (2)(a) as it applies for the purposes of subsection (1) of that section.

## 117 Recoupment of benefit

2006/21/158

- (1) This section applies to payments which are the subject of proceedings before the Tribunal and are —

- (a) payments of wages or compensation for loss of wages; or  
 (b) payments by employers to workers or employees (as the case requires), under Part III, Part V, section 110 (right to written statement of reasons for dismissal) or Part X of the *Employment Act 2006*, or  
 (c) payments by employers to workers or employees (as the case requires), of a nature similar to, or for a purpose corresponding to the purpose of, such payments as are mentioned in paragraph (b).

- (2) The Treasury may by regulations make provision with respect to payments to which this section applies for all or any of the following purposes —

- (a) enabling the Treasury to recover from an employer, by way of total or partial recoupment of jobseeker's allowance or income



- support, a sum not exceeding the amount of the prescribed element of the monetary award;
- (b) requiring or authorising the Tribunal to order the payment of such a sum, by way of total or partial recoupment of either benefit, to the Treasury instead of to the employee;
  - (c) requiring the Tribunal to order the payment to the employee of only the excess of the prescribed element of the monetary award over the amount of any jobseeker's allowance or income support shown to the Tribunal to have been paid to the employee, and enabling the Treasury to recover from the employer, by way of total or partial recoupment of the benefit, a sum not exceeding that amount.
- (3) Regulations under subsection (2) may —
- (a) be so framed as to apply to all payments to which this section applies or one or more classes of those payments, and so as to apply both to jobseeker's allowance and income support or only to one of those benefits;
  - (b) confer powers and impose duties on the Court, the Tribunal, adjudication officers and other persons;
  - (c) impose, on an employer to whom a monetary award relates, a duty to furnish particulars connected with the award and to suspend payments in pursuance of the award during any period prescribed by the regulations;
  - (d) provide for an employer who pays a sum to the Treasury in pursuance of this section to be relieved from any liability to pay the sum to another person;
  - (e) provide for the determination by an adjudication officer of any issue arising as to the total or partial recoupment in pursuance of the regulations, of a jobseeker's allowance or income support;
  - (f) confer on an employee a right of appeal to an appeal tribunal constituted under chapter 1 of Part 1 of the Social Security Act 1998 (of Parliament) against any decision of an adjudication officer on any such issue;
  - (g) provide for the proof in proceedings before the Court or the Tribunal (whether by certificate or in any other manner) of any amount of jobseeker's allowance or income support paid to an employee.
- Nothing in this subsection limits the scope of subsection (2).
- (4) Where under any regulations under subsection (2) a sum has been recovered by or paid to the Treasury by way of total or partial recoupment of jobseeker's allowance or income support —
- (a) no sum shall be recoverable under Part III or V of the Social Security Administration Act 1992 (of Parliament); and

- (b) no abatement, payment or reduction shall be made by reference to the jobseeker's allowance or the income support recouped.
- (5) Any amount found to have been duly recovered by or paid to the Treasury in pursuance of regulations under subsection (2) by way of total or partial recoupment of jobseeker's allowance or income support shall be paid into the Manx National Insurance Fund or the general revenue of the Island respectively.
- (6) In this section —
- “adjudication officer” means an adjudication officer appointed under chapter 1 of Part 1 of the Social Security Act 1998 (of Parliament);
- “income support” means income support payable under section 124 of the Social Security Contributions and Benefits Act 1992 (of Parliament);
- “jobseeker's allowance” means —
- (a) a jobseeker's allowance under the Jobseekers Act 1995 (of Parliament); and
- (b) any benefit payable by virtue of a resolution of Tynwald which is designated by regulations under subsection (2) for the purpose of this definition;
- “monetary award” means the amount which is awarded, or ordered or adjudged to be paid, to the employee by the Court or the Tribunal or would be so awarded or ordered apart from any provision of regulations under this section;
- “the prescribed element”, in relation to any monetary award, means so much of that award as is attributable to such matters as may be prescribed by regulations under subsection (2).
- (7) Subsection (1)(a) does not apply to a claim within section 105 (goods and services).

#### *Subdivision 4 — Equality of terms*

### **118 Jurisdiction – equality of terms**

P2010/15/127 (part)

- (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 Subdivision 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 it by virtue of section 119.
- (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.

## **119 References by Court to Tribunal**

P2010/15/128 adapted

- (1) If proceedings are pending in the Court and it appears that a claim or counter-claim relates to an equality clause or rule, the Court must strike out the claim or counter-claim, unless it proceeds as mentioned in subsection (2).
- (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.
- (3) On a reference under subsection (2)(a) the Tribunal must determine whether the claim or counter-claim is to be accepted as having been made within the time limit which applies to it under section 120.

For the purposes of this subsection, the Tribunal must, —

- (a) in the case of claim, treat a complaint as having been made to the Tribunal at the time when the proceedings in the Court were commenced; and
- (b) in the case of a counter-claim, treat a complaint as having been made to the Tribunal at the time when the counter-claim was asserted in the proceedings before the Court.

## **120 Time limits**

P2010/15/129 and 130

- (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 118(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.

## **121 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 119(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 72(5); and
- “qualified person” means a person with whom the Manx Industrial Relations Service has entered into arrangements for the provision of reports, documents and information under this section.

## 122 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 complaint which is based on the complainant'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 121 comes into operation.
- (5) For the purposes of subsection (3) "the arrears day" is, —
  - (a) in a standard case, the day falling 2 years before the day on which the proceedings were instituted; or
  - (b) in a concealment case or an incapacity case (or a case which is both) the day on which the breach first occurred.

### **123 Remedies in pensions cases**

P2010/15/133

- (1) This section applies to proceedings before the 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 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 124 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 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.

## **124 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 2 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), the day on which the breach first occurred.
- (6) In a case falling within subsection (5)(b) and in which proceedings are instituted within 2 years of the commencement of this section, for the words following “day” in that paragraph substitute “falling 2 years before the day on which the proceedings were instituted”.



## 125 Remedies: supplementary

P2010/15/135

- (1) This section applies for the purposes of sections 122 to 124.
- (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 120) from the worker, and
  - (b) the worker commenced the proceedings before the end of the period of 2 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 120) from the member, and
  - (b) the member commenced the proceedings before the end of the period of 2 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 2 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.

## 126 Time limits and “the arrears day” for proceedings

Drafting

- (1) DfE may by order amend any provision of this Division which specifies, —
  - (a) a qualifying period or time limit for the bringing of proceedings, or
  - (b) the arrears day for the purpose of computing the amount of an award,

so as to specify a longer or shorter period, or an earlier or later day, as the case requires.<sup>38</sup>

- (2) An order under subsection (1) —
  - (a) may include such consequential, incidental, supplemental and transitional provision (including amendments to other provisions of this Act) as DfE considers appropriate; but<sup>39</sup>
  - (b) may not include provision reducing the amount of an award in the case of proceedings which have been commenced before the order is made.

### DIVISION 3 — APPEALS

#### 127 Appeals

2006/21/160

- (1) Any person who is aggrieved by any decision, determination, order or award of the Tribunal under this Act or any of the relevant enactments may appeal to the Court on a question of law.
- (2) On an appeal under this section the 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 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 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 section 133 (interest on sums awarded).

### DIVISION 4 — MISCELLANEOUS

#### 128 Action taken to safeguard national security

2006/21/Sch 3, Part II para 3(1)

If on a complaint made under section 29, 30, 67, or 115 of the *Employment Act 2006* 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.

#### 129 Enforcement of section 99 or 100

2000/16/41 adapted

- (1) If it appears to the Attorney General —
  - (a) that a person has done an act which by virtue of section 99 or 100 was unlawful (instructing, causing or inducing or aiding contraventions), and

- (b) that, unless restrained the person is likely to do further acts which by virtue of that section are unlawful,
- the Attorney General may apply to the Court for an injunction restraining the person from doing such acts; and the Court, if satisfied that the application is well-founded, may grant the injunction in the terms applied for or more limited terms.
- (2) Any finding by the Tribunal or a court of summary jurisdiction under this Act in respect of any act, if it has become final, is to be treated as conclusive by the Court on an application under subsection (1).
- (3) Proceedings in respect of a contravention of section 99 or 100 may be brought only by the Attorney General in accordance with this section.

### **130 Enforcement of awards etc of Tribunal**

2006/21/159 and drafting

- (1) If, on a complaint under this Act or any of the relevant enactments the Tribunal –
- (a) decides that a party to the proceedings is entitled to be paid any sum by another such party;
- (b) orders a party to the proceedings to pay or repay any sum to another such party, or
- (c) makes an award of compensation,
- then, subject to subsection (2), the decision, order or award may be enforced as if it were an order of the Court.
- (2) Rules of Court may require the registration (in such manner as may be specified in them) of a decision, order or award before it may be enforced.

### **131 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 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.

### 132 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 the Court or the Employment Tribunal —
  - (a) under —
    - (i) the *Employment (Sex Discrimination) Act 2000*;
    - (ii) the *Race Relations Act 2004*;
    - (iii) the *Disability Discrimination Act 2006*; 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.

### 133 Interest on sums awarded

2006/21/Sch. 3, para 11

- (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 is recoverable as a sum payable in pursuance of the decision.
- (3) The power conferred by subsection (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 subsection (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 Council of Ministers considers necessary.
- (4) Without limiting subsection (3), an order under subsection (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*.

### **134 Equal pay audits**

P2010/15/139A

- (1) DfE 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.<sup>40</sup>
- (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), 44(6) or 45(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 which 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 the 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.

### 135 Restriction of frivolous or vexatious proceedings

P1996/17/33

- (1) If, on an application made by the Attorney General, the Tribunal is satisfied that a person has habitually and persistently and without any reasonable ground —
  - (a) instituted frivolous or vexatious proceedings before the Tribunal, and whether against the same person or against different persons, or
  - (b) made frivolous or vexatious applications in any proceedings before the Tribunal,the Tribunal may, after hearing the person or giving him or her an opportunity of being heard, make a restriction of proceedings order.
- (2) A “**restriction of proceedings order**” is an order that —
  - (a) the person against whom it is made may not, without leave of the Tribunal, institute proceedings before the Tribunal,
  - (b) any proceedings instituted by that person before the Tribunal before the making of the order may not be continued by that person without the leave of the Tribunal, and
  - (c) no application (other than one for leave under this section) is to be made by that person in any proceedings before the Tribunal without the leave of the Tribunal.
- (3) A restriction of proceedings order may provide that it is to cease to have effect at the end of a specified period, but otherwise it remains in force indefinitely.

- (4) Leave for the institution or continuance of or for the making of an application in, any proceedings before the Tribunal by a person who is the subject of a restriction of proceedings order is not to be given unless the Tribunal is satisfied —
  - (a) that the proceedings or application are not an abuse of process, and
  - (b) that there are reasonable grounds for the proceedings or application.
- (5) A copy of a restriction of proceedings order must be published in the electronic gazette (see section 43 of the *Legislation Act 2015*).

### 136 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

#### 137 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 49(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 62(2)(a) or 68(2), or
  - (b) a reference to the failure to include a term in a contract as referred to in section 62(2)(b).
- (5) Subsection (4) does not affect the application of section 142(2) to this section.

#### 138 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 137, 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 Tribunal rules), 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.



**139 Contracting out**

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

- (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 137) 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 —
  - (a) settles a complaint within section 110 —
    - (i) under a provision of Part 5; or
    - (ii) under section 96, 99 or 100 so far as relating to that Part, with the assistance of an industrial relations officer;
  - (b) settles a claim under section 107 with the assistance of a person appointed by DESC to conciliate in proceedings under that section; or<sup>41</sup>
  - (c) settles a complaint within section 105 under any other provision of this Act with the assistance of an officer of OFT.
- (4) A contract within subsection (3)(a) 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****140 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.

**141 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 140.
- (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

**142 Interpretation**

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

- (1) This section applies for the purposes of this Part.
- (2) A reference to treatment of a description prohibited by this Act does not include treatment in so far as it is treatment that would contravene Division 1 of Part 11 (public sector equality duty).
- (3) “**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).
- (4) “**Collective agreement**” is to be construed in accordance with section 173 of the *Employment Act 2006*.
- (5) A rule of an undertaking is a rule within subsection (6) or (7).
- (6) 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.
- (7) 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.
- (8) “**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

**143 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 —
  - (a) age;
  - (b) disability;
  - (c) gender reassignment;
  - (d) pregnancy and maternity;
  - (e) race;
  - (f) religion or belief;
  - (g) sex;

- (h) 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) The following are public authorities for the purposes of this section —
  - (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 two or more local authorities; or
    - (ii) by the Department of Infrastructure and one or more local authorities;
  - (f) the Chief Constable;
  - (g) the Manx Museum and National Trust;
  - (h) the Public Services Commission;
  - (i) the Attorney General’s Chambers; and
  - (j) the General Registry.
- (10) Subsection (1) is subject to the exceptions in section 144.

#### **144 Exceptions from duty to promote equality**

P2010/15/Sch 18

- (1) Section 143, 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 143 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 143 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) Section 143 does not apply to a function conferred on a person under the *Control of Employment Act 2014*.

- (5) In this section —

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

- (a) the Immigration Acts, within the meaning given by section 61 of the UK Borders Act 2007 (of Parliament);
- (b) the following Acts of Parliament —
  - (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 paragraph (a) or (b) of this definition;

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

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

## 145 Enforcement

P2010/15/156

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

### DIVISION 2 — POSITIVE ACTION

## 146 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) The Council of Ministers may by regulations specify action, or descriptions of action, to which subsection (2) does not apply.
- (4) This section does not apply to action within section 147(3).
- (5) This section does not enable P to do anything that is prohibited by or under an enactment other than this Act.

#### **147 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 — DISABILITY: MISCELLANEOUS**

### **148 Reasonable adjustments**

P2010/15/189

Schedule 19 (reasonable adjustments: supplementary) has effect.

### **149 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 13 – GENERAL EXCEPTIONS

### 150 Statutory provisions

P2010/15/191

Schedule 20 (statutory provisions) has effect.

### 151 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.

### 152 Charities

P2010/15/193 and 194

- (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) DHSC 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 Legislative Council, 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 (provision of services) 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: employment etc); or
  - (b) section 49 (employment-service providers) 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 place in which the charity is established;
  - (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 arrangements made by DHSC under section 9 of the *Social Services Act 2011* for eligible persons (within the meaning of that Act) by reason of disability.

## 153 Control of Employment

Drafting

A person does not contravene this Act by doing anything which is required or authorised by the *Control of Employment Act 2014*.

## 154 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 transgender 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.

## 155 General

P2010/15/196

Schedule 21 (general exceptions) has effect.

**156 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 14 — CLOSING PROVISIONS AND MISCELLANEOUS

### 157 Codes of practice

P2006/3/14(1) to (3) and (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 149 (improvements to let dwelling houses).

In this subsection “relevant improvement” has the meaning given by section 149(7) (improvements).

- (4) Before issuing a code under this section the Council of Ministers must —
  - (a) publish its 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.

**158 Codes of practice: supplemental**

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

- (1) The Council of Ministers may revise a code issued under section 157; 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 157 so as to vary the range of matters that codes of practice under that section may address.

**159 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 statutory documents, codes of practice or guidance made or issued under it.

**160 Manx ships, aircraft and hovercraft and those employed aboard them**

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 DfE may by order prescribe.<sup>42</sup>
- (2) Here —
  - (a) “Manx aircraft” means an aircraft (within the meaning of Part 1 of Schedule 2 to the Air Navigation (Isle of Man) Order 2015<sup>2</sup>) that is

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<sup>2</sup> SI 2015/870.

registered by DfE in accordance with that Order, and “aircraft” means any of the craft described in that Part;<sup>43</sup>

- (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>.

## 161 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.
- (3) The rest of the Act applies to 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.

<sup>3</sup> 1968 c. 59: applied to the Island with modifications by GC 263/86.



## 162 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 7 members, namely —
  - (a) 2 members of Tynwald appointed by the Council of Ministers subject to the approval of Tynwald, one of whom is to be appointed by the TECC as chairperson;
  - (b) 5 persons who are not members of Tynwald, appointed by the Appointments Commission as persons with experience or knowledge of disability or other protected characteristics.
- (4) The TECC must elect one of its members as deputy chairperson.
- (5) The TECC must not transact any business unless 4 of its members are present, one of whom must be the chairperson or deputy chairperson.
- (6) 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.
- (7) Appointments under subsection (3)(b) are subject to the approval of Tynwald.
- (8) Section 3 of the *Statutory Boards Act 1987* (tenure of office) applies to the TECC as it applies to a Statutory Board.
- (9) The TECC may give to the Council of Ministers, any Department, or Statutory Board advice on matters relating to the execution of this Act or the exercise of any power conferred on that body 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 the Council of Ministers, a Department or a Statutory Board.
- (10) Without limiting its other functions, the TECC may recommend changes in legislation to a Department or Statutory Board.
- (11) The Public Services Commission must make such arrangements as it considers appropriate for the provision of staff for the TECC.
- (12) On the coming into operation of this section every person who immediately before that time was a member of the Tynwald Advisory Committee for Disabilities becomes a member of the TECC, but in making subsequent appointments to the TECC the Appointments Commission must have regard to the desirability of including among the

TECC's members persons with experience of protected characteristics other than disability.

### **163 Information society services**

#### Drafting

- (1) The Council of Ministers may by order make such provision about equality of treatment in respect of protected characteristics and related matters in connection with the provisions of information society services as it considers appropriate,
- (2) Provision which may be made under subsection (1) includes provision —
  - (a) amending, modifying or repealing any Act of Tynwald;
  - (b) applying with or without modification the E-Commerce Directive.
- (3) Before making provision under subsection (1) the Council of Ministers must consult —
  - (a) the Communications Commission; and
  - (b) such other persons (if any) as the Council of Ministers considers appropriate.
- (4) In this section —
  - (a) “information society service” has the meaning given by article 1(1)(b) of the Directive 2015/1535 of the European Parliament and of the Council of 9 September 2015 laying down a procedure for the provision of information in the field of technical regulations and of rules on Information Society services<sup>4</sup>; and, —
  - (b) “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<sup>5</sup>.

### **164 Gender identity and expression**

- (1) The Council of Ministers may by order make such provision as it considers necessary to replace the protected characteristic of gender reassignment in this Act with a protected characteristic of gender identity and expression.
- (2) An order under subsection (1) may —
  - (a) include provision amending, modifying or repealing any Act of Tynwald, including this Act; and

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<sup>4</sup> OJ L 241 of 17/09/2015 p. 1.

<sup>5</sup> OJ L 178 of 17/07/2000 p. 1.

- (b) provide for such exceptions as the Council of Ministers considers necessary or expedient in particular cases or circumstances.
- (3) Before making an order under subsection (1), the Council of Ministers must consult such persons as the Council of Ministers considers appropriate.
- (4) In this section —
  - (a) “gender identity” —
    - (i) means a person’s internal and individual experience of gender, which may or may not correspond with the sex assigned at birth; and
    - (ii) includes the person’s sense of the body; and
  - (b) “gender expression” includes, where freely chosen by the person concerned, —
    - (i) any modification of bodily appearance or bodily functions (or both) by medical, surgical or other means; and
    - (ii) any other expression of gender, including name, dress, speech and mannerism.

## 165 Application of UK and European equality legislation

- (1) The Council of Ministers may by order apply to the Island as part of the law of the Island, subject to such exceptions, adaptations and modifications as may be specified in the order, any UK legislation or EU instrument to which this section applies.
- (2) An order under subsection (1) may repeal or amend any provision of any enactment (including this Act, other than this section) which is inconsistent with, or is unnecessary or requires modification in consequence of, the order or any UK legislation or EU instrument applied to the Island by the order.
- (3) An order made under subsection (1) may refer to, or give effect to a provision of, any UK legislation or EU instrument to which this section applies as it has effect from time to time.
- (4) This section applies to any provision of —
  - (a) an Act of Parliament,
  - (b) any instrument of a legislative character made under any Act of Parliament, and
  - (c) any EU instrument,

which relates, directly or indirectly, to equality or discrimination or any protected characteristic.

For the sake of clarity, for the purposes of this section “UK legislation” means any enactment falling within paragraph (a) or (b).

- (5) As soon as practicable after the coming into operation of an order under subsection (1) the Council of Ministers must cause a text to be prepared of the legislation applied by the order, incorporating the exceptions, adaptations and modifications specified in the order.
- (6) The Council of Ministers must supply a copy of the text prepared under subsection (5) to any person requesting it, at such reasonable charge as it may determine.

## **166 Employment legislation amended**

Drafting

Schedule 22 (employment legislation amended) has effect.

## **167 Exercise of powers to make statutory documents**

Drafting

- (1) For the purpose of facilitating the exercise of a combination of powers under this Act —
  - (a) any power conferred by a provision of this Act to make regulations may instead be exercised to make an order, and
  - (b) any power conferred by a provision of this Act to make an order (other than one under section 2) may instead be exercised to make regulations.
- (2) If a provision of this Act confers a power to make an order or regulations, but does not specify by whom the power is exercisable, the power is exercisable by the Council of Ministers.
- (3) If it appears to the Council of Ministers to be desirable to make provision under this Act in a single statutory document which could otherwise be made only by different Departments or Statutory Boards (or a combination of those bodies), the Council of Ministers, after consulting those bodies, may itself make provision under the powers concerned.
- (4) Subsection (5) applies if it appears to a body making regulations or an order under authorising legislation contained in two or more or more provisions of this Act that —
  - (a) it would be more convenient to make a single statutory document under both or all of those provisions, and
  - (b) different Tynwald procedures would otherwise apply to the authorising legislation.
- (5) The body may make the statutory document under all the authorising legislation, despite the fact different Tynwald procedures would apply but for this section.

Subsections (6) and (7) determine which Tynwald procedure applies to the statutory document.

- (6) If section 30 of the *Legislation Act 2015* (Tynwald procedure – approval required) applies to any of the authorising legislation, that section applies to the statutory document.
- (7) If section 30 of the *Legislation Act 2015* does not apply to any of the authorising legislation, section 32 of that Act (Tynwald procedure – negative) applies to the statutory document.

## **168 Statutory documents: Tynwald procedure**

### Drafting

- (1) Section 30 of the *Legislation Act 2015* (Tynwald procedure – approval required) applies to statutory documents under any provision of this Act, subject to section 167 and the following provisions of this section.
- (2) Section 36 of the *Legislation Act 2015* (default Tynwald procedure – laying only) applies to an order under –
  - (a) section 2 (commencement);
  - (b) paragraph 14 of Schedule 1 (commencement of guidance on disability);
  - (c) paragraph 7(2) of Schedule 3 (designation of schools as schools of religious character).
- (3) Section 32 of the *Legislation Act 2015* (Tynwald procedure – negative) applies to rules made under this Act.

## **169 Consequential and minor amendments**

### Drafting

Schedule 23 (consequential and minor amendments) has effect.

## **170 Repeals**

### Drafting

Schedule 24 (repeals) has effect.

## **171 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)]

Whole Schedule P2010/15/Sch. 1 other than para 14

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

- (1) The Council of Ministers, after consulting such persons as it considers appropriate, may make regulations providing for a condition of a prescribed description to be, or not to be, an impairment.
- (2) Regulations under subparagraph (1) may amend this Schedule.

**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 subparagraph (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 subparagraph (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) Subparagraph (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 7, 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, a court or 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 operation on the day appointed by order by the Department.

**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) Paragraph 14 applies to revised guidance as it applies to other guidance.
- (3) A reference to guidance includes a reference to guidance which has been revised and re-issued.

**Schedule 2****SERVICES AND PUBLIC FUNCTIONS: REASONABLE ADJUSTMENTS**

[Section 31(7)]

**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.
- (5) Being placed at a substantial disadvantage in relation to the exercise of a function means, —
  - (a) if a benefit is or may be conferred in the exercise of the function, being placed at a substantial disadvantage in relation to the conferment of the benefit, or
  - (b) if a person is or may be subjected to a detriment in the exercise of the function, suffering an unreasonably adverse experience when being subjected to the detriment.
- (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 providing the service or exercising the function, on to premises other than those that A occupies (as well as including a physical feature in or on premises that A occupies).
- (7) If A is a service-provider, nothing in this paragraph requires A to take a step which would fundamentally alter, —
  - (a) the nature of the service, or
  - (b) the nature of A’s trade or profession.
- (8) If A exercises a public function, nothing in this paragraph requires A to take a step which A has no power to take.

### 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 subparagraph (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 subparagraph (2)(b), (c) or (d) if the vehicle is within subparagraph (3)(d).
- (5) A may not, for the purpose of complying with the first, second or third requirement rely on subparagraph (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 subparagraph (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 subparagraph (6)(a), fixed seating and in-built electrical systems are not physical features; and for the purposes of subparagraph (6)(b), fixed seating is not a physical feature.
- (8) In the case of a vehicle within subparagraph (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 made by DOI may amend this paragraph so as to provide for subparagraph (2) not to apply, or to apply only so far as is prescribed, in relation to vehicles of a prescribed description.
- (11) In this paragraph, —
  - (a) “hire-vehicle” means a vehicle hired (by way of a trade) under a hiring agreement; and
  - (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.

**Schedule 3****SERVICES AND PUBLIC FUNCTIONS: EXCEPTIONS**

[Section 31(8)]

**PART 1 – CONSTITUTIONAL MATTERS****1 Tynwald**

P2010/15/Sch. 3 para 1

- (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) Subparagraph (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**

P2010/15/Sch. 3 para 2

- (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;
  - (c) Her Majesty’s First Deemster and Clerk of the Rolls;
  - (d) the Deemsters;
  - (e) 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 20 (statutory provisions).

### **3 Judicial functions**

P2010/15/Sch. 3 para 3

- (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 subparagraph (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**

P2010/15/Sch. 3 paras 6-8

Section 30 so far as relating to age discrimination, sex discrimination or religious or belief-related discrimination, does not apply to the functions of DESC in respect of the establishment of schools under section 3 of the *Education Act 2001*.<sup>44</sup>

### **5 Age discrimination**

P2010/15/Sch. 3 para 9

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 Disability discrimination

P2010/15/Sch. 3 para 10

Section 30, so far as relating to disability discrimination, does not require DESC in exercising its functions under the *Education Act 2001* or the governing body of a school to remove or alter a physical feature.<sup>45</sup>

## 7 Religious or belief-related discrimination: general

P2010/15/Sch. 3 para 11

- (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 ethos;
  - (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 ethos if, but only if, it is specified in an order made by DESC under this subparagraph.<sup>46</sup>
- (3) An order under subparagraph (2) must state, in relation to each school designated by the order, the religion or religious denomination in accordance with whose tenets religious education is, or may be, required to be provided at the school.

## 8 Religious or belief-related discrimination: reserved teachers

Drafting

Section 30, so far as relating to religious or belief-related discrimination, does not apply to the functions of DESC 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*.<sup>47</sup>

## 9 Construction

P2010/15/Sch. 3, para 12

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

P2010/15/Sch. 3 para 13

- (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

P2010/15/Sch. 3 para 14

- (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**

P2010/15/Sch. 3 para 15

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**

P2010/15/Sch. 3 para 15A

- (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 immigration enactment or a public document made under a relevant immigration 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 subparagraph (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**

P2010/15/Sch. 3 para 16

- (1) This paragraph applies in relation to disability discrimination.
- (2) Section 30 does not apply to –

- (a) a decision within subparagraph (3);
  - (b) anything done for the purposes of or in pursuance of a decision within that subparagraph.
- (3) A decision is within this subparagraph 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 subparagraph (3);
  - (b) a decision taken in accordance with guidance given by the Governor in connection with a decision within that subparagraph.

## **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 immigration 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 subparagraph (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

P2010/15/Sch. 3, para 18

- (1) This paragraph applies in relation to religious or belief-related discrimination.
- (2) Section 30 does not apply to a decision within subparagraph (3) or anything done for the purposes of or in pursuance of a decision within that subparagraph.
- (3) A decision is within this subparagraph 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 subparagraph (5), or anything done for the purposes of or in pursuance of a decision within that subparagraph, if the decision is taken on grounds mentioned in subparagraph (6).
- (5) A decision is within this subparagraph 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 subparagraph (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 subparagraph (3) or (5);
  - (b) a decision taken in accordance with guidance given by the Governor in connection with a decision within either of those subparagraphs.

## 17 Interpretation

P2010/15/Sch. 3 para 19

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 — INSURANCE AND OTHER FINANCIAL SERVICES

### 18 Services arranged by employer

P2010/15/Sch. 3, para 20

- (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)).

### 19 Age

P2010/15/Sch. 3, para 20A

- (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 subparagraph (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 2011<sup>6</sup>; or
- (b) in the nature of insurance or a personal pension.

## 20 Disability

P2010/15/Sch. 3, para 21

- (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*.

## 21 Existing insurance policies

P2010/15/Sch. 3 para 23

- (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) Subparagraph (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 subparagraph (4).

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<sup>6</sup> SD 884/11 as amended by SD 0373/2013, 2016/0099 and 2016/0188.

- (6) “Insurance business” has the meaning given in paragraph 20.

## PART 6 – MARRIAGE

### 22 Gender reassignment

P2010/15/Sch. 3 para 24

- (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*<sup>7</sup> (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 2009*.
- (3) Subparagraph (4) applies to a person (A) who may, in a case that comes within the *Marriage Act 1984* (other than the case mentioned in subparagraph (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 subparagraph (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 2009*.

### 23 Marriage of same-sex couples according to religious rites: no compulsion to solemnize etc

[P2010/13/Sch 3/25A]

- (1) A person does not contravene section 30 only because the person, —
- (a) does not conduct a relevant marriage,
  - (b) is not present at, does not carry out, or does not otherwise participate in, a relevant marriage, or
  - (c) does not consent to a relevant marriage being conducted,
- for the reason that the marriage is the marriage of a same sex couple.
- (2) Expressions used in this paragraph and in section 4C of the *Marriage Act 1984* have the same meanings in this paragraph as in that section.

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<sup>7</sup> This subsection is inserted into the 1984 Act by paragraph 3(3) of Schedule 23 to this Act.

## PART 7 — SEPARATE, SINGLE AND CONCESSIONARY SERVICES ETC

### 24 Separate services for the sexes

P2010/15/Sch. 3 para 26

- (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

P2010/15/Sch. 3, para 27

- (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 subparagraphs (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

P2010/15/Sch. 3, para 28

- (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 subparagraph (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.
- (3) Subparagraph (1) does not apply if the conduct in question relates to a person who has been issued with a full gender recognition certificate under the Gender Recognition Act 2004 (of Parliament) which continues to be valid.

## 27 Services relating to religion

P2010/15/Sch. 3, para 29

- (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

Drafting

For the sake of clarity, nothing in this Act places an obligation on religious organisations (within the meaning of paragraph 27(3)) to host civil partnerships or same sex marriage ceremonies if they do not wish to do so.

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

P2010/15/Sch. 3 para 30

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 Concession

P2010/15/Sch. 3, para 30A

- (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

P2010/15/Sch. 3, para 30B

- (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 subparagraph (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 subparagraph (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 subparagraph (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

P2010/15/Sch. 3, para 30C and drafting (structure)

- (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,
  - (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 8 – TELEVISION, RADIO AND ON-LINE BROADCASTING AND DISTRIBUTION**

### **33 Content services**

P2010/15/Sch. 3, para 31

- (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>8</sup>)).
- (2) Subparagraph (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 9 – TRANSPORT**

### **34 Application to disability**

P2010/15/Sch. 3, para 32

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

### **35 Transport by air**

P2010/15/Sch. 3, para 33

- (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<sup>9</sup> concerning the rights of disabled persons and persons with reduced mobility when travelling by air.

### **36 Transport by road**

P2010/15/Sch 3, para 34

- (1) Section 30 does not apply to transporting people by land unless the vehicle concerned is –

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<sup>8</sup> Extended to the Island by article 6 of SI 2003/3198.

<sup>9</sup> OJ 2006 L204/1, 26.7.2006.

- (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; or
  - (d) 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 3 of Schedule 2 applies for the purposes of this paragraph as it applies for the purposes of that Schedule.

## **PART 10 – SUPPLEMENTARY**

### **37 Power to amend**

The Council of Ministers may by order amend this Schedule.

**Schedule 4****PREMISES: REASONABLE ADJUSTMENTS**

[Section 37(6)]

**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) Subparagraph (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) Subparagraph (2) applies only if A receives a request by or on behalf of a disabled person within subparagraph (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) Subparagraph (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) Subparagraph (2) applies only if —
  - (a) A receives a request by or on behalf of a disabled person within subparagraph (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 subparagraph (2), and
  - (b) the costs of the restoration referred to in paragraph (c) of that subparagraph.
- (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 Victimization**

- (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 36 and this Schedule.
- (2) Regulations made by DEFA 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 a tenant;
  - (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 subparagraph (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 subparagraph (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 subparagraph (5), a reference to an unmarried partner is a reference to the other member of a couple consisting of two persons who are living together as if they were married.

#### **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 subparagraph (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 after consulting DOI.

## Schedule 6

### OFFICE-HOLDERS: EXCLUDED OFFICES

[Section 47(9)]

Whole Schedule: P2010/15/Sch. 6 as amended by General Synod Measure 2014 No. 2/2

#### 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 subparagraph (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 42 (partnerships);
  - (d) section 43 (limited liability companies);
  - (e) section 49 (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 –

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

- (3) The Council of Ministers may by order amend the Table in subparagraph (2).

### 3 Honours

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

**Schedule 7****EQUALITY OF TERMS – EXCEPTIONS**

[Section 72(7)]

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

P2010/15/Sch 7 para 1

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**

P2010/15/Sch 7 para 2

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**

P2010/15/Sch 7 para 3

- (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 or by virtue of this Part of this Schedule.
- (2) “Relevant matter” has the meaning given in section 59.

**4 State retirement pensions**

P2010/15/Sch 7 para 4

- (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) as that Act has effect in the Island or sections 2 to



12 of the Pensions Act 2014 (of Parliament) (Manx state pension) as that Act has effect in the Island.<sup>48</sup>

## 5 Actuarial factors

P2010/15/Sch 7 para 5

- (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”

Drafting

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

## 7 Power to amend

P2010/15/Sch 7 para 6

- (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 75(6)]

**PART 1 — INTRODUCTORY****1 Preliminary**

P2010/15/Sch 8 para 1

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

**2 The duty**

P2010/15/Sch 8 para 2

- (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**

P2010/15/Sch 8 para 3 and drafting (para heading)

- (1) This paragraph applies if a duty to make reasonable adjustments is imposed on A by section 49 (except where the employment service

which A provides is the provision of vocational training within the meaning given by subsection (10)(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) Subparagraph (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 Who is an “interested disabled person”

P2010/15/Sch 8 para 4 and drafting (para heading)

An interested disabled person is a disabled person who, in relation to a relevant matter, is of a description specified in the second column of the applicable table in this Part of this Schedule.

### 5 Employers (see section 38)

P2010/15/Sch 8 para 5

- (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 subparagraph (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 subparagraph (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 subparagraph (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 subparagraph (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 subparagraph (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.

## 6 Principals in contract work (see section 40)

P2010/15/Sch 8 para 6

- (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.

## 7 Partnerships (see section 42)

P2010/15/Sch 8 para 7

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

<b>Relevant matter</b>	<b>Description of disabled person</b>
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).

## 8 Limited liability companies

### Drafting

This paragraph applies where A is a person who has the power to determine who may be a member of a limited liability company within the meaning of the *Limited Liability Companies Act 1996*.

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

## 9 Persons making appointments to offices etc (see sections 44 to 46)

P2010/15/Sch 8 para 11

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

<b>Relevant matter</b>	<b>Description of disabled person</b>
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.

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

P2010/15/Sch 8 para 12 and drafting (para heading)

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

<b>Relevant matter</b>	<b>Description of disabled person</b>
Appointment to the office.	A person appointed to the office.

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

P2010/15/Sch 8 para 13 and drafting (para heading)

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.

<b>Relevant matter</b>	<b>Description of disabled person</b>
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.

## 12 **Appointments to offices: reasonable adjustments to premises**

P2010/15/Sch. 8 para 14 and drafting (para heading)

In relation to the second requirement in a case within paragraph 9, 10 or 11 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.

## 13 **Qualifications bodies (see section 48)**

P2010/15/Sch. 8 para 15

- (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.

**14 Employment service-providers (see section 49)**

P2010/15/Sch 8 para 16

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 49(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.

**15 Trade organisations (see section 50)**

P2010/15/Sch 8 para 17

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.

**16 Local authorities (see section 51)**

P2010/15/Sch 8 para 18

- (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.

### 17 Occupational pensions (see section 53)

P2010/15/Sch 8 para 19

This paragraph applies if A is, in relation to an occupational pension scheme, a responsible person within the meaning of section 53.

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

### 18 Lack of knowledge of disability

P2010//15/Sch 8 para 20

- (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 person who has the power to determine who may be a member of a limited liability company within the meaning of the <i>Limited Liability Companies Act 1996</i>	A person who is seeking a position as a member of the company.
A relevant person in relation to a personal or 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

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- (3) If the duty to make reasonable adjustments is imposed on A by section 49, this paragraph applies only insofar as the employment service that A provides is vocational training within the meaning of section 49(10).

**Schedule 9****WORK: EXCEPTIONS**

[Section 75(7)]

**PART 1, – OCCUPATIONAL REQUIREMENTS****1 General**

P2010/15/Sch 9 para 1

- (1) A person (A) does not contravene a provision mentioned in subparagraph (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);
  - (d) section 43(2)(a) or (c) or (3)(b) or (c);
  - (e) section 44(3)(a) or (c) or (6)(b) or (c);
  - (f) section 45(3)(a) or (c) or (6)(b) or (c);
  - (g) section 46(1).
- (3) The references in subparagraph (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 transgender 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, subparagraph (1) has effect as if in paragraph (c), the words from “(or” to the end were omitted.

- (5) For the purposes of subparagraph (3)(a) “transgender person” does not include a person who has been issued with a full gender recognition certificate under the Gender Recognition Act 2004 (of Parliament) which continues to be valid.

## 2 Religious requirements relating to sex, marriage etc and sexual orientation

P2010/15/Sch. 9 para 2

- (1) A person (A) does not contravene a provision mentioned in subparagraph (2) by applying in relation to employment a requirement to which subparagraph (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 44(3)(a) or (c) or (6)(b) or (c);
  - (c) section 45(3)(a) or (c) or (6)(b) or (c);
  - (d) section 46(1).
- (3) A person does not contravene section 48(1) or (2)(a) or (b) by applying in relation to a relevant qualification (within the meaning of that section) a requirement to which subparagraph (4) applies if the person shows that —
- (a) the qualification is for the purposes of employment mentioned in subparagraph (1)(a), and
  - (b) the application of the requirement engages the compliance or non-conflict principle.
- (4) This subparagraph applies to —
- (a) a requirement to be of a particular sex;
  - (b) a requirement not to be a transgender person;
  - (c) a requirement not to be married or a civil partner;
  - (d) a requirement not to be married to, or a civil partner of, a person of the same gender;
  - (e) a requirement not to be married to, or the civil partner of, a person who has a living former spouse or civil partner;
  - (f) a requirement relating to circumstances in which a marriage or civil partnership came to an end;

- (g) 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 subparagraph (4)(a), subparagraph (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

P2010/15/Sch 9. para 3

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

P2010/15/Sch 9. para 5

- (1) A person (A) does not contravene section 49(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 49(1) or (2) if A shows that A's treatment of another person relates only to training for work of a description mentioned in subparagraph (1).
- (3) A person (A) does not contravene section 49(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 subparagraph (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 subparagraph (3)(a) which in a material respect is false or misleading.
- (5) A person guilty of an offence under subparagraph (4) is liable on summary conviction to a fine not exceeding £5,000.

## 5 Interpretation

P2010/15/Sch. 9 para 6

- (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), 44(6)(b) or 45(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 38(2)(c), 42(2)(c), 44(6)(c), 45(6)(c) 48(2)(a) or 49(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 40(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

P2010/15/Sch. 9 para 7

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

P2010/15/Sch. 9 para 10

- (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 subparagraph (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 subparagraph (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 subparagraph (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

P2010/15/Sch. 9 para 11

- (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

P2010/15/Sch 9, para 12

- (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), is treated as employed under a contract of apprenticeship.

## 10 Redundancy

P2010/15/Sch. 9, para 13

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.

## 11 Insurance etc

P2010/15/Sch. 9, para 14

- (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) Subparagraphs (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

P2010/15/Sch. 9, para 15

- (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(3)(b);
  - (e) section 44(6)(b);
  - (f) section 45(6)(b);
  - (g) section 50(2)(a);
  - (h) section 51(1)(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

P2010/15/Sch. 9 para 16

- (1) The 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 subparagraph (1) the Treasury must —
- (a) consult the Isle of Man Financial Services 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 1993 (of Parliament);
  - (b) “employer”, in relation to a personal pension scheme where direct payment arrangements exist in respect of one or more members of the scheme who are employees, means an employer with whom those arrangements exist;
  - (c) “direct payment arrangements”, in relation to a personal pension scheme, means arrangements under which contributions fall to be paid by or on behalf of the employer towards the scheme —
    - (i) on the employer’s own account (but in respect of the employee); or
    - (ii) on behalf of the employee out of deductions from the employee’s earnings; and
  - (d) “earnings” and “employee” have the meanings given by section 181(1) of the Pension Schemes Act 1993 (of Parliament).

### **PART 3 — OTHER EXCEPTIONS**

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

P2010/15/Sch. 9 para 17

- (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 subparagraph (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 subparagraph (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 subparagraph (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

P2010/15/Sch 9 para 18

- (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 within subparagraph (2) 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 operation for the purpose of civil partnership ceremonies), or
  - (b) which is payable in respect of periods of service before that date.
- (2) A person is within this subparagraph if the person is, —
  - (a) married to a person of the opposite sex; or
  - (b) married to a person of the same sex in a relevant gender change case.
- (3) The reference in subparagraph (2)(b) to a relevant gender change case is a reference to a case where, —
  - (a) the couple were of the opposite sex at the time of the marriage; and
  - (b) a full gender recognition certificate has been issued to one of the couple under the Gender Recognition Act 2004 (of Parliament).
- (4) 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

P2010/15/Sch 9, para 19

- (1) A does not contravene a provision mentioned in subparagraph (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 38(2) and (4);
  - (b) section 40(1) and (3);
  - (c) sections 42(2) and (6);
  - (d) section 43(3) and (6);
  - (e) sections 44(6) and (8) and 45(6), (7), (9) and (10).
- (3) Subparagraph (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 38(2) or (4), the other employees;
  - (b) in relation to section 40(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;
  - (d) in relation to section 43(3) or (6), the other members of the limited liability company;
  - (e) in relation to section 44(6) or (8) or 45(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

P2010/15/Sch 9, para 20

- (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****DISABLED PUPILS: ACCESSIBILITY**

[Section 79]

**1 Accessibility strategy**

P2010/15/Sch 10, para 1 (adapted)

- (1) DESC must prepare and publish in such manner as it thinks appropriate an accessibility strategy in relation to provided and maintained schools.<sup>49</sup>
- (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) DESC must keep its accessibility strategy under review, and must revise it if appears to DESC to be necessary to do so.<sup>50</sup>
- (5) DESC must implement the accessibility strategy.<sup>51</sup>

**2 Accessibility plans**

P2010/15/Sch 10, para 3(1) and (2)(adapted) and drafting

- (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 DESC and its accessibility strategy.<sup>52</sup>

**Schedule 11****SCHOOLS: EXCEPTIONS**

[Section 80(6)]

**PART 1 – RELIGIOUS OR BELIEF-RELATED  
DISCRIMINATION****1 Schools with religious character**

P2010/15/Sch 11, para 5

Section 77(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 7 of Schedule 3.

**2 Curriculum and worship**

P2010/15/Sch 11, para 6

Section 77(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).

**3 Power to amend**

P2010/15/Sch 11, para 7

- (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 77;
  - (b) so as to make provision about the application of section 20(2) in relation to section 77.
- (2) Before making an order under this paragraph, the Council of Ministers must consult such persons as it considers appropriate.
- (3) The power under subparagraph (1) is exercisable only in relation to religious or belief-related discrimination.

**PART 2 – DISABILITY DISCRIMINATION****4 Permitted form of selection**

P2010/15/Sch 11, para 8

- (1) A person does not contravene section 77(1), so far as relating to disability, only by applying a permitted form of selection.
- (2) For the purposes of subparagraph (1) a permitted form of selection is –

- (a) in the case of a maintained school, provided school or special school, a form of selection approved by DESC;<sup>53</sup>
  - (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 of 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****STUDENTS IN FURTHER AND HIGHER EDUCATION: ACCESSIBILITY**

[Section 83(2)]

**1 Duty of responsible body for further and higher education institutions**

- (1) The governing body of a relevant institution 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 students can participate in the institution's courses,
  - (b) improving the physical environment of the institution for the purpose of increasing the extent to which disabled students are able to take advantage of education and benefits, facilities and services provided or offered by the institution; and
  - (c) improving the delivery to disabled students of information which is readily accessible to students who are not disabled,during the period to which the plan relates.
- (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 students attending the institution in question; and
  - (b) any preferences expressed by them or (in the case of students who are minors) their parents or guardians.
- (4) The governing body must keep its accessibility plan under review, and must revise it if appears to that body to be necessary to do so.
- (5) The governing body must implement the accessibility plan.
- (6) In this Schedule “relevant institution” means a university or the University College Isle of Man.

**Schedule 13****FURTHER AND HIGHER EDUCATION – EXCEPTIONS**

[Section 85(6)]

**1 Occupational requirements**

P2010/15/Sch.12 para 4

A person does not contravene section 81(2) or (3) 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**

P2010/15/Sch.12 para 5

- (1) The responsible body of an institution which is designated for the purposes of this paragraph does not contravene section 81(2), 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) DESC may by order designate an institution if satisfied that the institution has a religious ethos.<sup>54</sup>

**3 Benefits dependent on marital status etc**

P2010/15/Sch.12 para 6

A person does not contravene section 81, 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 Student support**

Drafting

For the sake of clarity, DESC does not contravene section 81 or 82 so far as relating to age by –

- (a) providing different amounts and different kinds of financial support under section 37(b) or (c) of the *Education Act 2001* (financial support, scholarships and bursaries) for persons of different ages; or
- (b) imposing different criteria for the provision of such support to persons of different ages.<sup>55</sup>

## 5 Child care

P2010/15/Sch. 12 para 7

- (1) A person does not contravene section 81(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 18; and
  - (c) a reference to care includes a reference to supervision.

**Schedule 14****EDUCATION — REASONABLE ADJUSTMENTS**

[Section 89]

**1 Preliminary**

P2010/15/Sch. 13 para 1

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

**2 The duty for schools**

P2010/15/Sch. 13 para 2

- (1) This paragraph applies where A is the responsible body of a school to which section 77 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 subparagraph (4)(a), a reference to disabled persons generally;
    - (ii) in relation to a relevant matter within subparagraph (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**

P2010/15/Sch. 13 para 3

- (1) This paragraph applies where A is the responsible body of an institution to which section 81 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 subparagraph (4)(a), a reference to disabled persons generally;
  - (ii) in relation to a relevant matter within subparagraph (4)(b) or (c), a reference to disabled students generally;
  - (iii) in relation to a relevant matter within subparagraph (4)(d) or (e), 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”

P2010/15/Sch 13 para 4

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

P2010/15/Sch. 13 para 5

- (1) This paragraph applies if A is the responsible body in relation to a course to which section 82 applies.

- (2) A must comply with the first, second and third requirements; but if A is the governing body of a school maintained by DESC, A is not required to comply with the second requirement.<sup>56</sup>
- (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 subparagraph (4)(a), a reference to disabled persons generally;
    - (ii) in relation to a relevant matter within subparagraph (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.

## 6 The duty relating to recreation or training facilities

P2010/15/Sch. 13 para 6

- (1) This paragraph applies where A is the responsible body in relation to facilities to which section 84 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 a reference to disabled persons generally.
- (4) In relation to each requirement, the relevant matter is A's arrangements for providing the recreational or training facilities.

## 7 Codes of practice

P2010/15/Sch. 13 para 7

In deciding whether it is reasonable for A to have to take a step for the purpose of complying with the first, second or third requirement A must have regard to relevant provisions of a code of practice issued under section 157.

## 8 Confidentiality requests

P2010/15/Sch 13 para 8

- (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 subparagraph (4) or that in subparagraph (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.

## 9 The duty for qualifications bodies

P2010/15/Sch. 13, para 9 (and drafting in subparagraph (3))

- (1) This paragraph applies where A is a qualifications body for the purposes of section 87.
- (2) Paragraphs 3 and 4, so far as relating to qualifications bodies, apply to a qualifications body as they apply to a responsible body.
- (3) This paragraph is subject to provision made under section 87(7) by the appropriate regulator.

**Schedule 15****ASSOCIATIONS – REASONABLE ADJUSTMENTS**

[Section 95(7)]

**1 Preliminary**

P2010/15/Sch 15 para 1

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

**2 The duty**

P2010/15/Sch. 15 para 2

- (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 16****ASSOCIATIONS – EXCEPTIONS**

[Section 95(8)]

**1 Single characteristic associations**

P2010/15/Sch. 16 para 1

- (1) An association does not contravene section 92(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 92(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 93(1) by inviting as guests, or by permitting to be invited as guests, only such persons as share the characteristic.
- (4) Subparagraphs (1) to (3), so far as relating to race, do not apply in relation to colour.

**2 Age**

P2010/15/Sch. 16 para 1A

- (1) An association does not contravene section 92(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 92(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 93(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 93(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

P2010/15/Sch. 16 para 2

- (1) An association (A) does not discriminate against a pregnant woman in contravention of section 92(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) Subparagraph (1) applies to section 93(1)(b) as it applies to section 92(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 92(2)(a) or (3)(a) or 93(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 92(2)(a) or (3)(a) or 93(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 92(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 17**

Whole Schedule: 2006/21/Sch 3, P1996/17/7 and drafting

**THE TRIBUNAL**

[Section 103(3)]

**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) 3 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;
    - (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
    - (iii) a panel (“**the general panel**”) consisting of persons appointed by the Appointments Commission.
- (2) This paragraph is subject to the transitional provision made by section 103(6) for the continuation of certain appointments.

**2 Constitution for hearing a complaint**

- (1) For the hearing and determination of a complaint, the Tribunal is to consist of the chairperson and –
- (a) in the case of a complaint under Part 5 of this Act or the relevant enactments, one person chosen from the employer panel and one person so chosen from the employee panel; and
  - (b) in the case of any other complaint, two persons each chosen from any of the panels constituted by paragraph 1(1)(c).
- (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 a deputy chairperson who is available to act.

- (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 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**

### **DIVISION 1: GENERAL**

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

In this Part “**the 2006 Act**” means the *Employment Act 2006* and a reference to a numbered provision (without more) is a reference to the provision of the 2006 Act which is so numbered.

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

After consulting the Deemsters, the Council of Ministers may by rules (in this Schedule referred to as “**EET rules**”) make such provision as appears to it to be necessary or expedient with respect to proceedings before the Tribunal.

Paragraphs 5 to 30 below make further provision about the content of EET rules but do not limit the breadth of the power conferred by this paragraph.

#### **5 Fees**

EET rules may include provision for requiring a fee to be paid on the making of a complaint, and providing for it to be refunded in specified circumstances.

### **DIVISION 2: CASES UNDER THIS ACT WHICH DO NOT RELATE TO EMPLOYMENT**

#### **6 Scope of Division 2**

This Division applies for the purposes of proceedings before the Tribunal in which it has jurisdiction by virtue of section 105 of this Act.

#### **7 EET rules may make provision similar to the Rules of the High Court**

For the purposes of the jurisdiction referred to in paragraph 6 of this Schedule, EET rules may make any provision which might be made, in respect of cases before the Court in tort or doleance, under section 25 of the *High Court Act 1991*.

## DIVISION 3: EMPLOYMENT-RELATED CASES

**8 Scope of Division 3**

This Division applies for the purposes of proceedings before the Tribunal in which it has jurisdiction by virtue of section 110, 111 or 118 of this Act.

**9 Parties to proceedings**

EET rules may make provision treating DfE 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.<sup>57</sup>

**10 Evidence and documents**

EET rules may provide —

- (a) for requiring persons to attend to give evidence and produce documents, and for authorising the administration of oaths to witnesses; and
- (b) 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 Court on an application by a party to proceedings before that court.

**11 Determining preliminary points**

EET rules may provide for the determination of any matter before the Tribunal by a hearing on a preliminary point.

**12 Procedure to be followed**

EET rules may —

- (a) prescribe 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;
- (b) enable 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.

**13 Notices**

EET rules may include provision authorising or requiring the Tribunal, in circumstances specified in the rules, to send a 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.

#### **14 Costs**

EET rules may provide —

- (a) for the award of costs;
- (b) for requiring a respondent to a complaint to pay such part of any fee paid (under paragraph 5) by a complainant in such circumstances as may be specified; and
- (c) for taxing or otherwise settling any such costs (and in particular for enabling such costs to be taxed by the Court).

#### **15 Registration of complaints, decisions and awards etc**

- (1) EET rules may provide for or authorise the Tribunal to make provision about —
  - (a) the registration of complaints to the Tribunal;
  - (b) the registration and proof of decisions, orders and awards made by the Tribunal; and
  - (c) 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.
- (2) Tribunal rules may include provision authorising the Tribunal to restrict the registration and reporting of applications, proceedings, decisions, orders or awards in appropriate cases.

#### **16 Complaints of unfair dismissal: pregnancy and childbirth cases**

In relation to proceedings under section 133 of the 2006 Act (complaints to tribunal: unfair dismissal), if 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.

#### **17 Cases in which Tribunal chairperson may sit alone**

- (1) EET rules may include provision enabling the chairperson of the Tribunal sitting alone to hear and determine —
  - (a) a complaint under section 25 (deductions from wages) or 152 (insolvency etc) of the 2006 Act;



- (b) a complaint in respect of a failure to comply with the Annual Leave Regulations 2007<sup>10</sup>;
  - (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 a pay statement that complies with section 14 or 15 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.
- (2) The Council of Ministers may by order amend sub-paragraph (1).

## 18 Assessors

EET rules may provide for the appointment of one or more assessors for the purposes of any proceedings before the Tribunal, if the proceedings are brought under an enactment which provides for the appointment of one or more assessors.

## 19 Assessment of whether work is of equal value

EET rules may authorise the Tribunal to require persons to furnish information, and produce documents to person required to prepare a report for the purposes of section 121(2) of this Act.

## 20 Pre-hearing reviews

- (1) EET 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

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<sup>10</sup> SD 102/2007.

- (b) for enabling such powers to be exercised in connection with a pre-hearing review as may be prescribed by the rules.
- (2) EET 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.

## 21 Postponement of hearings

- (1) EET rules may include provision about the postponement of Tribunal hearings and, in particular, about limiting the number of relevant postponements available to a party to proceedings.
- (2) For the purposes of this paragraph —
  - (a) “relevant postponement”, in relation to a party to proceedings, means the postponement of a hearing granted on the application of that party in —
    - (i) the proceedings, or
    - (ii) any other proceedings identified in accordance with EET rulesexcept in circumstances determined in accordance with the rules, and
  - (b) “postponement” includes adjournment.

## 22 Determination of proceedings without a hearing

- (1) EET rules may authorise the determination of proceedings without any hearing in such circumstances as the rules may specify.
- (2) But rules under subparagraph (1) may only authorise the determination of proceedings without a hearing in circumstances where —
  - (a) all the parties to the proceedings consent in writing to the determination without a hearing, or

- (b) the person (or where more than one, each of the persons) against whom the proceedings are brought —
  - (i) has presented no response in the proceedings, or
  - (ii) does not contest the case.
- (3) For the purposes of subparagraph (2)(b), a person does not present a response in the proceedings if the person presents a response but, in accordance with provision made by EET rules, it is not accepted.

### **23 Determination of proceedings in the absence of a party**

- (1) EET rules may authorise the determination of proceedings without hearing anyone other than the person or persons by whom the proceedings are brought (or his, her or their representative) if —
  - (a) the person (or, where more than one, each of the persons) against whom the proceedings are brought has done nothing to contest the case, or
  - (b) it appears from the application made by the person (or, where more than one, each of the persons) bringing the proceedings that he or she is not (or they are not) —
    - (i) seeking any relief which the Tribunal has power to give; or
    - (ii) entitled to any such relief.
- (2) EET rules may authorise the determination of proceedings without hearing anyone other than the person or persons by whom, and the person or persons against whom, the proceedings are brought (or his or their representatives) if —
  - (a) the Tribunal is on undisputed facts bound by the decision of a court in another case to dismiss the case of the person or persons by whom, or of the person or persons against whom, the proceedings are brought, or
  - (b) the proceedings relate only to a preliminary issue which may be heard and determined in accordance with EET rules made under paragraph 11 or 20.

### **24 Special rules about withdrawal, adjournment and pre-hearing review in particular cases**

- (1) In respect of a complaint to which this paragraph applies, EET 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.
- (2) This paragraph 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).

## 25 National security

- (1) EET rules may make provision about the composition of the Tribunal (including provision disapplying or modifying Part 1 of this Schedule) for the purposes of proceedings in relation to which a direction is given under subparagraph (2).
- (2) A direction may be given under this subparagraph 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.
- (3) Tribunal 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.
- (4) EET 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 subparagraph (3) in relation to particular Crown employment proceedings.
- (5) In relation to cases where a person has been excluded by virtue of subparagraph (3)(b) or (c) or (4), the rules may make provision —
  - (a) for the appointment by the President of the Isle of Man Law Society 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.
- (6) A person (P) may be appointed under subparagraph (5)(a) only if P is qualified to act as an advocate in accordance with section 7 of the *Advocates Act 1976*.
- (7) P is not responsible to the person whose interests P is appointed to represent.
- (8) 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).

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

- (1) This paragraph applies where the Tribunal has been directed under paragraph 25(3) or has determined under paragraph 25(4) —
- (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, subparagraph (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*.

## 27 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)).

## 28 Confidential information

EET 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.

## 29 Exclusion of Arbitration Act 1976

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

# PART 3 — MISCELLANEOUS

## 30 Conciliation

- (1) This paragraph applies to —
  - (a) any proceedings before the Tribunal; and
  - (b) any matter which could be the subject of proceedings before the Tribunal.
- (2) If a relevant officer, in accordance with EET 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) EET 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 a relevant 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.

### **31 Offences**

- (1) Any person who without reasonable excuse fails to comply with —
  - (a) a requirement imposed by EET rules by virtue of paragraph 10; or
  - (b) a restriction imposed by paragraph 15(2);is guilty of an offence and liable on summary conviction to a fine not exceeding £5,000.
- (2) If an offence under subparagraph (1) 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, is guilty of that offence and liable to be proceeded against and punished accordingly.
- (3) Where the affairs of a body corporate are managed by its members, subparagraph (2) 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.

### **32 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.

### **33 Expenses**

- (1) The Council of Ministers may, with the approval of the Treasury, by order specify sums in respect of loss of earnings and travelling expenses which are to be paid to persons who are parties to, or witnesses in proceedings before the Tribunal.
- (2) The Council of Ministers may with the approval of the Treasury, by order specify sums to be paid to assessors appointed as mentioned in paragraph 18.
- (3) An order under this paragraph may —
  - (a) make different provision for different cases, and
  - (b) provide for exceptions.



**Schedule 18****EDUCATION CASES – ENFORCEMENT**

[Section 107]

**1 Jurisdiction**

P2010/15/Sch. 17 para 3 (adapted)

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.

**2 Time for bringing proceedings**

P2010/15/Sch. 17 para 4

- (1) Proceedings on a claim falling within paragraph 1 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 1, the dispute is referred for resolution in accordance with arrangements under paragraph 4, before the end of the period mentioned in subparagraph (1), that period is extended by 3 months.
- (3) The Tribunal may consider a claim out of time.
- (4) But subparagraph (3) does not apply if the Tribunal has previously decided under that subparagraph not to consider a claim.
- (5) For the purposes of subparagraph (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.

**3 Powers**

P2010/15/Sch. 17 para 5

- (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 subparagraph (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.

#### **4 Resolution of disputes**

P2010/15/Sch. 17 para 6C

- (1) DESC 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.<sup>58</sup>
- (2) The arrangements must provide for the appointment of independent persons with the function of facilitating the avoidance or resolution of such disagreements.
- (3) DESC 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 OFT; and
  - (e) such other persons as it considers appropriate.<sup>59</sup>
- (4) The arrangements must not affect the entitlement of any person to make a claim to the Tribunal.

**Schedule 19****REASONABLE ADJUSTMENTS: SUPPLEMENTARY**

[Section 148]

**1 Preliminary**

P2010/15/Sch. 21 paras 1 and 7

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 14 (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 Binding obligations etc**

P2010/15/Sch. 21 para 2

- (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 subparagraph (1)(a) or (c) does not include a reference to an obligation imposed by a tenancy.
- (4) The steps referred to in subparagraph (2)(a) do not include applying to the Tribunal.

### 3 Landlord's consent

P2010/15/Sch. 21 para 3

- (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 subparagraph (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 about the refusal of landlord's consent

P2010/15/Sch. 21 para 4

- (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 Tribunal.
- (3) The Tribunal must determine whether the refusal or condition is unreasonable.
- (4) If the Tribunal finds that the refusal or condition is unreasonable, it may make —
  - (a) such declaration as it 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**

P2010/15/Sch. 21 para 5

- (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 to direct that the landlord be joined as a party to the proceedings.
- (3) The Tribunal —
  - (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 Tribunal 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 Tribunal 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.
- (6) The Tribunal may act in reliance on subparagraph (5)(c) instead of, or in addition to, acting in reliance on section 114(2); but if it orders the landlord to pay compensation it must not do so in reliance on section 114(2).

- (7) If the Tribunal orders the landlord to pay compensation, it may not order A to do so.

## 6 Regulations

P2010/15/Sch. 21 para 6

- (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 20

## STATUTORY PROVISIONS

[Section 150]

**1 Statutory authority**

P2010/15/Sch. 22, para 1 and drafting (for Manx church provision)

- (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	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 and which applies to 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

P2010/15/Sch. 22 para 2

- (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 1 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 an 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) an enactment contained in an Order in Council (whenever made) which extends to the Island, as part of the law of the Island, an Act of Parliament passed before the 2000 Act; or
  - (d) a statutory document whenever made under an enactment falling within any of the preceding heads.
- (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**

P2010/15/Sch. 22 para 3 (part only)

- (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 DESC may by order provide that subparagraphs (1) and (2) do not apply in relation to —
- (a) a specified school; or
- (b) a specified description of school.<sup>60</sup>
- (4) This paragraph does not affect paragraph 2 of Schedule 9.

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

P2010/15/Sch. 22 para 5(1) to (3)

- (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 (whether in right of the United Kingdom or of the Island);
- (b) employment by a prescribed public body;
- (c) holding a public office (within the meaning of section 45).
- (3) The power to make regulations for the purposes of subparagraph (2)(b) is exercisable by the Council of Ministers.

**Schedule 21****GENERAL EXCEPTIONS**

[Section 155]

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

P2010/15/Sch. 23 para 1

- (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**

P2010/15/Sch. 23, para 2

- (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 subparagraph (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) Subparagraphs (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) Subparagraphs (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 subparagraph (9).
- (8) In subparagraph (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, subparagraph (1)(e) must be ignored.
- (12) In the application of this paragraph in relation to sexual orientation, in subparagraph (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 subparagraph (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 Services Commission;
  - (h) the Attorney General’s Chambers;
  - (i) the General Registry;
  - (j) the Clerk of Tynwald;
  - (k) the Information Commissioner;

- (l) the Commissioner appointed under paragraph 2(1) of Schedule 1 to the *Police Act 1993*;
  - (m) the Commissioner appointed under section 28 of the *Regulation of Surveillance, etc. Act 2006*;
  - (n) the Manx Industrial Relations Service.
- (15) The Council of Ministers may by order amend sub-paragraph (14).

### 3 Communal accommodation

P2010/15/Sch. 23 para 3

- (1) A person does not contravene this Act, so far as relating to sex discrimination or gender reassignment discrimination, 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) Subparagraph (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 subparagraph (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 subparagraph (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) But subparagraph (1)(a) does not apply in relation to gender assignment in relation to persons who have been issued with a full gender recognition certificate under the Gender Recognition Act 2004 (of Parliament) which continues to be valid.
- (6) 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.
- (7) 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.

- (8) 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 subparagraph (1)(a).
- (9) 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 subparagraph (1)(a) applies, the refusal of use of the accommodation;
  - (b) in a case where subparagraph (1)(b) applies, the refusal of provision of the benefit, facility or service.

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

P2010/15/Sch. 23, para 4

- (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 40.

## Schedule 22

## EMPLOYMENT LEGISLATION – MISCELLANEOUS AMENDMENTS

[Section 166]

Drafting

**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 Right of appeal: section 1 amended**[Amended section 1(2)]<sup>61</sup>**3 Supplementary provisions as to statements under section 8: section 9 amended**

[Amended subsection 9(1)]

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

[Substituted section 17(8) and inserted section 17(8A)]

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

[Substituted section 18(2) and inserted section 18(2A)]

**6 Complaints to Tribunal: section 25 amended**

[Substituted section 25(6)]

**7 Flexible working: section 66 amended**

Omit section 66(1)(b).

**8 Remedies in detriment cases: section 72 amended**

- (1) Section 72 is amended as follows.
- (2) [Amended subsection (2)]
- (3) [Inserted subsections (2A) and (2B)]

**9 Conditions for right to request flexible working: section 99 amended**

P2014/6/131

- (1) Section 99 is amended as follows.
- (2) In subsection (1), paragraph (b) and the word “and” preceding it are repealed.
- (3) In subsection (2) —
  - (a) after paragraph (b) insert **64** and **65**; and
  - (b) paragraph (d) and the word “and” preceding it are repealed.
- (4) Subsection (6) is repealed.

**10 Employer’s duties on application under section 99: section 100 amended**

P2014/6/132

- (1) Section 100 is amended as follows.
- (2) For subsection (1)(a) substitute —
 

<ol style="list-style-type: none"> <li><b>64</b>(a) shall deal with the application in a reasonable manner,</li> <li>(aa) shall notify the employee of the decision on the application within the decision period, and <b>65</b>.</li> </ol>
--
- (3) After subsection (1) insert, —
 

<ol style="list-style-type: none"> <li><b>64</b>(1A) If an employer allows an employee to appeal a decision to reject an application, the reference in subsection (1)(aa) to the decision on the application is a reference to, —           <table border="0" style="margin-left: 2em;"> <tr> <td style="border-left: 1px solid black; padding-left: 0.5em;"> <ol style="list-style-type: none"> <li>(a) the decision on the appeal, or</li> <li>(b) if more than one appeal is allowed, the decision on the final appeal.</li> </ol> </td> </tr> </table> </li> <li>(1B) For the purposes of subsection (1)(aa) the decision period applicable to an employee’s application under section 99 is, —           <table border="0" style="margin-left: 2em;"> <tr> <td style="border-left: 1px solid black; padding-left: 0.5em;"> <ol style="list-style-type: none"> <li>(a) the period of three months beginning with the date on which the application is made, or</li> <li>(b) such longer period as may be agreed by the employer and the employee.</li> </ol> </td> </tr> </table> </li> <li>(1C) An agreement to extend the decision period in a particular case may be made —           <table border="0" style="margin-left: 2em;"> <tr> <td style="border-left: 1px solid black; padding-left: 0.5em;"> <ol style="list-style-type: none"> <li>(a) before it ends, or</li> <li>(b) with retrospective effect, before the end of a period of three months beginning with the day after that on which the decision period that is being extended came to an end.</li> </ol> </td> </tr> </table> </li> <li>(1D) An application under section 99 is to be treated as having been withdrawn by the employee if —</li> </ol>	<ol style="list-style-type: none"> <li>(a) the decision on the appeal, or</li> <li>(b) if more than one appeal is allowed, the decision on the final appeal.</li> </ol>	<ol style="list-style-type: none"> <li>(a) the period of three months beginning with the date on which the application is made, or</li> <li>(b) such longer period as may be agreed by the employer and the employee.</li> </ol>	<ol style="list-style-type: none"> <li>(a) before it ends, or</li> <li>(b) with retrospective effect, before the end of a period of three months beginning with the day after that on which the decision period that is being extended came to an end.</li> </ol>
<ol style="list-style-type: none"> <li>(a) the decision on the appeal, or</li> <li>(b) if more than one appeal is allowed, the decision on the final appeal.</li> </ol>			
<ol style="list-style-type: none"> <li>(a) the period of three months beginning with the date on which the application is made, or</li> <li>(b) such longer period as may be agreed by the employer and the employee.</li> </ol>			
<ol style="list-style-type: none"> <li>(a) before it ends, or</li> <li>(b) with retrospective effect, before the end of a period of three months beginning with the day after that on which the decision period that is being extended came to an end.</li> </ol>			



- (a) the employee without good reason has failed to attend both the first meeting arranged by the employer to discuss the application and the next meeting arranged for that purpose, or
  - (b) where the employer allows the employee to appeal a decision to reject an application or to make a further appeal, the employee without good reason has failed to attend both the first meeting arranged by the employer to discuss the appeal and the next meeting arranged for that purpose,
- and the employer has notified the employee that the employer has decided to treat that conduct of the employee as a withdrawal of the application. **22**.

## 11 Complaints to Tribunal: section 101 amended

P2014/6/133

- (1) Section 101 is amended as follows.
- (2) In subsection (1) —
  - (a) the word “or” following paragraph (a) is repealed;
  - (b) after paragraph (b) insert —
    - 23**; or
    - (c) that the employer’s notification under section 100(1D) was given in circumstances that did not satisfy one of the requirements in section 100(1D)(a) and (b). **22**.
- (3) In subsection (2) (no complaints under section 100 in respect of an application disposed of by agreement or withdrawn), for “under this section” substitute **24** under subsection (1)(a) or (b) **22**.
- (4) For subsection (3) (no complaints to be made until the employer rejects an application on appeal or contravenes specified regulations under section 100(1)(a)) substitute —
  - 25**(3) In the case of an application which has not been disposed of by agreement or withdrawn, no complaint under subsection (1)(a) or (b) may be made until, —
    - (a) the employer notifies the employee of the employer’s decision on the application, or
    - (b) if the decision period applicable to the application (see section 100(1B)) comes to an end without the employer notifying the employee of the employer’s decision on the application, the end of the decision period.
  - (3A) If an employer allows an employee to appeal a decision to reject an application, a reference in other subsections of this section to

the decision on the application is a reference to the decision on the appeal or, if more than one appeal is allowed, the decision on the final appeal.

(3B) If an agreement to extend the decision period is made as described in section 100(1C)(b), subsection (3)(b) is to be treated as not allowing a complaint until the end of the extended period.

(3C) A complaint under subsection (1)(c) may be made as soon as the notification under section 100(1D) complained of is given to the employee. <sup>62</sup>

(5) In subsection (6) (meaning of the relevant date), for “relevant date” to the end of the subsection substitute —

<sup>63</sup>relevant date is a reference to the first date on which the employee may make a complaint under subsection (1)(a), (b) or (c), as the case may be. <sup>64</sup>

## 12 Interpretation of Part VIII: section 105 amended

[Substituted section 105(1)]

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

(1) Section 107 is amended as follows.

(2) [Amended subsection (3) and inserted subsection (4)]

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

[Inserted section 124A]<sup>62</sup>

[Inserted section 124B]

## 15 Dismissal on grounds of redundancy: section 128 amended

(1) Section 128 is amended as follows.

(2) [Inserted subsection (11A)]<sup>63</sup>

[Inserted subsections (11B) and (11C)]

## 16 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” substituted “113 to 124B”]<sup>64</sup>

(b) [For “125 to 129” substituted “128 and 129”]<sup>65</sup>

**17 Qualifying period, upper age limit etc: section 132 amended**

- (1) Section 132 is amended as follows.
- (2) For subsection (1) substitute —
  - 66(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. 67.
- (3) [Inserted paragraph (ka)]<sup>66</sup>  
[Inserted paragraph (kb)]
- (4) [Inserted subsections (4) and (5)]
- (5) In consequence of the amendments made by this paragraph, in the section heading omit “and upper age limit”.

**18 Compensation for unfair dismissal: section 140 amended**

For section 140(1)(a) substitute —

- 68(a) a basic award calculated in accordance with section 142; and 69.

**19 Calculation of basic award: section 142 amended**

- (1) Section 142 is amended as follows.
- (2) For subsections (1) and (2) substitute —
  - “(1) The amount of a basic award is found by the formula, —  
 $P \times Y$ .  
Here, —  
 $P$  is the lesser of, —
    - (a) the amount of a week’s pay for the employee; and
    - (b) the maximum amount of a week’s pay;
 those amounts being computed or determined in accordance with Schedule 6; and  
 $Y$  is the lesser of —
    - (a) the number of completed years for which the employee has been in the employment; and
    - (b) 26.
- (2) Subsection (1) is subject to subsections (5) to (7).”.

**20 Limit of compensatory award etc: section 144 amended**

- (1) Section 144 is amended as follows.
- (2) [Amended subsection (1)]
- (3) [Amended subsection (2)]
- (4) [Inserted subsection (7)]

**21 Acts which are both unfair dismissal and discrimination: section 145 amended**

[Substituted section 145(1)(b)]<sup>67</sup>

**22 Insolvency of employer: section 147 amended**

[Substituted section 147(1) and inserted section 147(1A).]

**23 Cessation of business of employer: section 148 amended**

[Substituted 148(1) and inserted section 148(1A).]

**24 Payment of unpaid contributions to occupational pension scheme: section 149 amended**

[Substituted section 149(1) and inserted section 149(1A).]

**25 Subrogation of the Treasury: section 153 amended**

[Amended sections 153(1), (4), (5) and (7).]

**26 Restrictions on contracting-out: section 164 amended**

[Amended section 164(2)]

**27 Regulation of zero-hours contracts: new section 166A**

[Inserted section 166A]

**28 Codes of practice: section 171 amended**

[Substituted section 171(1)]

**29 General interpretation: section 173 amended**

- (1) Section 173 is amended as follows.
- (2) In subsection (1) —
  - (a) [Amended definition of “Crown employment”]
  - (b) [Amended definition of “the Employment Acts”]

- (c) [Substituted definition of “public authority”.]
- (d) [Substituted definition of “the Tribunal”]
- (3) [Inserted subsection (4A).]
- (4) [Substituted subsection (5).]

**30 Subordinate legislation: general provisions: section 174 amended**

[Amended section 174(3).]

**31 Tribunal’s duties in cases other than section 17: Schedule 1 amended**

In the list in Schedule 1 —

- (a) [Repealed the entries relating to sections 35 and 36 of the *Employment (Sex Discrimination) Act 2000*]<sup>68</sup>
- (b) [Inserted entries relating to sections 104 and 110 of the *Employment Act 2006*]<sup>69</sup>
- (c) [Inserted entries relating to sections 110 and 118 of the Equality Act 2017 and to Regulation 10 of the Part-time Workers (Prevention of Less Favourable Treatment) Regulations 2007 and Regulation 11 of the Annual Leave Regulations 2007]<sup>70</sup>

**32 Treatment of special categories of worker: Schedule 4 amended**

[Amended paragraph 1 of Schedule 4.]

**33 Computation of period of employment: Schedule 5 amended**

- (1) Schedule 5 is amended as follows.
- (2) [Substituted subparagraph (2) of paragraph 8.]
- (3) [Inserted subparagraph (2A) in paragraph 8.]
- (4) [Inserted subparagraph (6) in paragraph 8.]
- (5) In paragraph 13 —
  - (a) in sub-paragraph (2) —
    - (i) [Amended words preceding paragraph (a).]
    - (ii) [Substituted paragraph (b).]
  - (b) [Substituted sub-paragraph (4).]
- (6) [Inserted cross heading and paragraph 16.]

**34 Calculation of normal working hours and a week’s pay: Schedule 6 amended**

- (1) Schedule 6 is amended as follows.

- (2) [Substituted paragraph 8(3).]
- (3) In paragraph 10 —
  - (a) [Amended subparagraphs (f) and (g).]
  - (b) [Amended subparagraph (g).]
  - (c) [Substituted subparagraph (h) and inserted subparagraphs (ha) and (hb).]
  - (d) [Amended concluding words.]
- (4) [Inserted cross heading and paragraph 13.]

## PART 2 – AMENDMENT OF OTHER LEGISLATION

### 35 Redundancy Payments Act 1990 amended

- (1) The *Redundancy Payments Act 1990* is amended as follows.
- (2) In section 11, —
  - (a) [Amended section heading.]
  - (b) [Amended subsection (1).]
  - (c) [Amended subsection (2).]
  - (d) [Amended subsection (5).]
  - (e) [Inserted subsection (8).]
- (3) [Inserted section 11A.]
- (4) [Amended section 15(1).]
- (5) [Amended section 25(2) by repealing paragraph (d).]
- (6) [Amended section 33(1).]
- (7) In section 38 —
  - (a) [Amended subsection (1).]
  - (b) [Substituted subsection (2).]
- (8) In section 40 —
  - (a) [Renumbered existing text as subsection (1).]
  - (b) [Inserted subsections (2) and (3).]
- (9) [Substituted the definition of “the Tribunal” in section 46(1)]
- (10) In Schedule 1 for paragraph 1 substitute, —
 

“1. The amount of a redundancy payment to which an employee is entitled is found by the formula, —

$P \times Y.$

Here, —

*P* is the lesser of, —

- (a) the amount of a week's pay for the employee; and
  - (b) the maximum amount of a week's pay;
- those amounts being computed or determined in accordance with Schedule 6 to the *Employment Act 2006*; and

*Y* is the lesser of, —

- (a) the number of completed years for which the employee has been in the employment; and
- (b) 26.”.

(11) [Amended paragraph 7 of Schedule 5.]

### 36 Shops Act 2000 amended

(1) The *Shops Act 2000* is amended as follows.

(2) [Inserted section 1(2A)]

(3) In section 11 —

- (a) for the section heading substitute —

#### 11 Application of section 111 of Employment Act 2006

- (b) omit “and of his age”; and

- (c) omit “and an upper age limit”.

(4) [Amended section 13(4) and the heading to section 18]

(5) In section 19 (remedies)—

- (a) [Amended subsection (2)]

- (b) [Inserted subsections (2A) and (2B)]

(6) Section 20 (restrictions on contracting out of Part III) is amended as follows, —

- (a) [Existing text renumbered as subsection (1)]

- (b) [Inserted subsection (2)]

(7) [Substituted section 22]

### 37 Minimum Wage Act 2001 amended

(1) The *Minimum Wage Act 2001* is amended as set out in this paragraph.

(2) [Amended section 4(1)(b)(v)]

(3) [Amended section 21(7)(b)]

(4) [Inserted section 37(1A)]

- (5) [In section 47(1) substituted the entry relating to the Employment Tribunal]

### **38 Control of Employment Act 2014**

- (1) The *Control of Employment Act 2014* is amended as follows
- (2) [Inserted subsection 4(8A).]
- (3) [Renumbered existing text of section 6 as subsection (1) and inserted subsections (2) and (3).]
- (4) [Substituted sections 7(1) and (2).]
- (5) [Amended section 9(1)(b).]
- (6) [Substituted section 14(1) and inserted section 14(1A).]
- (7) [Inserted sections 24(3A) and (3B).]
- (8) [Amended section 24(4)(a).]
- (9) [Amended section 24(4)(b).]



## Schedule 23

## CONSEQUENTIAL AND MINOR AMENDMENTS

[Section 169]

Drafting (whole Schedule)

**1 Douglas Municipal Corporation Act 1895**

[Amended sections 17(4) and (5).]

**2 Housing (Miscellaneous Provisions) Act 1976**

[Inserted section 3A.]

**3 Marriage Act 1984**

- (1) Section 31 amended as follows.
- (2) [Amended subsection (1).]
- (3) [Inserted subsection (1A).]

**4 Licensing Act 1995**[Inserted section 35(2A)]<sup>71</sup>**5 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 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 this section —  
 ”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;

“disabled” has the same meaning as in the *Equality Act 2017*;

“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.”.

## 6 Construction Contracts Act 2004

[Amended section 1(3).]

## 7 Tribunals Act 2006

[Substituted entry 2 in Part 2 of Schedule 2]

## 8 Civil Partnership Act 2011

(1) [Amended section 7 as follows.]

(2) [Amended subsection (3).]

(3) [Inserted subsection (3A).]

## 9 Social Services Act 2011

[Amended section 9(2).]

## 10 Regulation of Care Act 2013

[Substituted for “childrens home” wherever occurring “children’s home”.]

**Schedule 24****REPEALS**

[Section 170]

Drafting (whole Schedule)

**1 Repeals**

The following are repealed, —

- (a) [Repealed sections 12, 14 to 17 and 18(1) of the *Factories and Workshops Act 1909*]
- (b) [Repealed *Sex Disqualification (Removal) Act 1921*]
- (c) in the *Factories and Workshops Amendment Act 1939* (AT 3 of 1939), section 3;
- (d) [Repealed *Disabled Persons (Employment) Act 1946*]
- (e) [Repealed *Employment Act 1954*]
- (f) the *Chronically Sick and Disabled Persons Act 1981* (AT 36 of 1981);
- (g) in the *Redundancy Payments Act 1990* (AT 18 of 1990) —
  - (i) section 2(1);
  - (ii) section 13;
  - (iii) in Schedule 1, paragraphs 2 and 4; and
  - (iv) in Schedule 2, paragraphs 2 and 9;
- (h) the *Chronically Sick and Disabled Persons (Amendment) Act 1992* (AT 8 of 1992);
- (i) [Repealed the *Employment (Sex Discrimination) Act 2000* (AT 16 of 2000)]
- (j) [Repealed section 43(2)(b) of the *Minimum Wage Act 2001*]
- (k) [Repealed 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)<sup>11</sup> —
  - (i) section 100(2) to (4);
  - (ii) section 101(4);
  - (iii) section 122(b);
  - (iv) [Repealed sections 125 to 127]
  - (v) [Repealed section 128(12) to (14)]
  - (vi) [Repealed section 132(2) paragraphs (l) to (n)]

<sup>11</sup> Part XII (including Schedule 3) is repealed and substantially re-enacted with necessary modifications in Part 9 of this Act. A replacement section 156 is inserted by section 103(2) of this Act.

- (vii) section 142(3) and (4);
- (viii) [Repealed section 172]
- (ix) [Repealed paragraph 14(2)(b) in Schedule 5]
- (x) [Repealed Schedule 7, paragraphs 14 to 19]
- (n) [Repealed section 9 of in the *Gender Recognition Act 2009* (AT 11 of 2009)]
- (o) [Repealed the *Breastfeeding Act 2011* (AT 20 of 2011)]
- (p) [Repealed section 13(4) and (5) of the *Bribery Act 2013*.]
- (q) [Repealed section 165(3) of the *Regulation of Care Act 2013*.]

## 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

## GLOSSARY

[Section 171]

## Drafting (whole Schedule)

Defined term	Location	Application
“act”	Section 3(5)	The whole Act
“additional maternity leave”	Section 4(6)	The whole Act
“additional maternity leave period”	Section 4(8)	The whole Act
“armed forces”	Section 3(2)	The whole Act
“associate”	Section 95(6)	Part 7
“association”	Section 95(2)	Part 7
“complaint”	Section 102(2)	Part 9
“compulsory maternity leave”	Section 4(3)	The whole Act
“conferring a qualification”	Section 85(5)	Part 6, Division 2
“the Court”	Section 3(2)	The whole Act
“DESC” <sup>72</sup>	Section 3(1)	The whole Act
“DEFA”	Section 3(1)	The whole Act
“detriment”	Section 3(2) and (8)	The whole Act
“DfE” <sup>73</sup>	Section 3(1)	The whole Act
“DHSC”	Section 3(1)	The whole Act
“DOI”	Section 3(1)	The whole Act
“employment”	Section 75(2), subject to section 3(14)	The whole Act
“enactment”	Section 3(2)	The whole Act
“entry clearance”	Schedule 3, paragraph 17	Schedule 3, Part 4
“equality clause”	Section 3(2)	The whole Act
“equality rule”	Section 3(2)	The whole Act
“the first requirement” (in relation to disability)	Section 21(3)	The whole Act
“the former Schedule 3”	Section 102(2)	Part 9
“interested disabled person”	Schedule 8, paragraph 4 (but see also Schedule 14, paragraph 4 in connection with the term’s application to that Schedule).	Schedule 8
“job evaluation study”	Section 72(5)	Part 5, Division 3
“leave to enter or remain”	Schedule 3, paragraph 17	Schedule 3, Part 4
“limited liability company” (and cognate expressions)	Section 75(4)	Part 5
“man”	Section 3(2)	The whole Act
“maternity equality clause”	Section 65	The whole Act
“maternity equality rule”	Section 67	The whole Act
“non-discrimination rule”	Section 53	The whole Act
“occupational pension scheme”	Section 3(2)	The whole Act

“OFT”	Section 3(2)	The whole Act
“ordinary maternity leave”	Section 4(4)	The whole Act
“parent”	Section 3(2)	The whole Act
“prescribed”	Section 3(2)	The whole Act
“profession”	Section 3(2)	The whole Act
“proprietor”	Section 80(4)	Part 6, Division 1
“public authority”	Section 3(2)	The whole Act
“public function”	Section 3(2)	The whole Act
“pupil”	Section 80(3)	Part 6, Division 1
“the relevant enactments”	Section 3(2)	The whole Act
“relevant member of Tynwald staff”	Section 3(2)	The whole Act
“relevant officer”	Section 102(1)	The whole Act
“responsible person”	Section 72(4)	Part 5, Division 3
“right to additional maternity leave”	Section 4(7)	The whole Act
“right to ordinary maternity leave”	Section 4(5)	The whole Act
“school”	Section 80(5)	Part 6, Division 1
“the second requirement” (in relation to disability)	Section 21(4)	The whole Act
“sex equality clause”	Section 58	The whole Act
“sex equality rule”	Section 59	The whole Act
“student”	Section 85(3)	Part 6, Division 2
“substantial”	Section 3(2)	The whole Act
“terms of a person’s work”	Section 72(2)	Part 5, Division 3
“the third requirement” (in relation to disability)	Section 21(5)	The whole Act
“trade”	Section 3(2)	The whole Act
“the Tribunal”	Section 3(2)	The whole Act
“university”	Section 85(4)	Part 6, Division 2
“woman”	Section 3(2)	The whole Act

## ENDNOTES

### Table of Endnote References

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- <sup>1</sup> ADO – various provisions in operation on various dates [for details see SD2017/0221 (as amended by SD2017/0231); SD2017/0231; SD2017/0384 (as amended by SD2018/0329); SD2018/0194 and SD2018/0329].
- <sup>2</sup> Definition of “DEC” repealed by SD2017/0325.
- <sup>3</sup> Definition of “DED” repealed by SD2017/0325.
- <sup>4</sup> Definition of “DESC” inserted by SD2017/0325.
- <sup>5</sup> Definition of “DfE” inserted by SD2017/0325.
- <sup>6</sup> Entry amended by SD2017/0325.
- <sup>7</sup> Entry amended by SD2017/0325.
- <sup>8</sup> Subs (1) transitionally modified by SD2018/0329 until the coming into operation of section 15.
- <sup>9</sup> Para (f) amended by SD2017/0325.
- <sup>10</sup> Para (g) amended by SD2017/0325.
- <sup>11</sup> Subs (7) amended by SD2017/0325.
- <sup>12</sup> Subs (8) amended by SD2017/0325.
- <sup>13</sup> Subs (2) transitionally modified by SD2018/0329 until the coming into operation of section 15.
- <sup>14</sup> Para (b) amended by SD2017/0325.
- <sup>15</sup> Subs (1) amended by SD2017/0325.
- <sup>16</sup> Subs (1) amended by SD2017/0325.
- <sup>17</sup> Para (a) amended by SD2017/0325.
- <sup>18</sup> Para (c) amended by SD2017/0325.
- <sup>19</sup> Para (a) amended by SD2017/0325.
- <sup>20</sup> Para (a) amended by SD2017/0325.
- <sup>21</sup> Subpara (i) amended by SD2017/0325.
- <sup>22</sup> Para (c) amended by SD2017/0325.
- <sup>23</sup> Subs (10) amended by SD2017/0325.
- <sup>24</sup> Subs (2) amended by SD2017/0325.
- <sup>25</sup> Para (b) amended by SD2017/0325.
- <sup>26</sup> Para (a) transitionally modified by SD2018/0329 to exclude the coming into operation of the repeal of section 159 of the Employment Act 2006.
- <sup>27</sup> S 156 of the Employment Act 2006 substituted for all purposes other than those relating to the protected characteristics of age and disability. Existing s 156 remains in operation for all purposes relating to the protected characteristics of age and disability. [See SD2018/0329 for details.]
- <sup>28</sup> Para (c), which substituted section 159 of the Employment Act 2006, temporarily inserted by SD2018/0329 until the coming into operation of the repeal of section 159 of the Employment Act 2006.

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- <sup>29</sup> Subs (2A) inserted by SD2018/0289.
- <sup>30</sup> Subs (3) substituted by SD2018/0289.
- <sup>31</sup> Subs (3A) inserted by SD2018/0289.
- <sup>32</sup> Subs (4) repealed by SD2018/0289.
- <sup>33</sup> Subs (5) repealed by SD2018/0289.
- <sup>34</sup> Subs (5A) inserted by SD2018/0289.
- <sup>35</sup> Subs (7) amended by SD2017/0325.
- <sup>36</sup> Note added by SD2018/0289.
- <sup>37</sup> Subs (1) amended by SD2017/0325.
- <sup>38</sup> Subs (1) amended by SD2017/0325.
- <sup>39</sup> Para (a) amended by SD2017/0325.
- <sup>40</sup> Subs (1) amended by SD2017/0325.
- <sup>41</sup> Para (b) amended by SD2017/0325.
- <sup>42</sup> Subs (1) amended by SD2017/0325.
- <sup>43</sup> Para (a) amended by SD2017/0325.
- <sup>44</sup> Para 4 amended by SD2017/0325.
- <sup>45</sup> Para 6 amended by SD2017/0325.
- <sup>46</sup> Subpara (2) amended by SD2017/0325.
- <sup>47</sup> Para 8 amended by SD2017/0325.
- <sup>48</sup> Subpara (3) amended State Pensions Regulations 2015 [SI 2015/173] as applied by SD2018/0124.
- <sup>49</sup> Subpara (1) amended by SD2017/0325.
- <sup>50</sup> Subpara (4) amended by SD2017/0325.
- <sup>51</sup> Subpara (5) amended by SD2017/0325.
- <sup>52</sup> Subpara (3) amended by SD2017/0325.
- <sup>53</sup> Item (a) amended by SD2017/0325.
- <sup>54</sup> Subpara (2) amended by SD2017/0325.
- <sup>55</sup> Para 4 amended by SD2017/0325.
- <sup>56</sup> Subpara (2) amended by SD2017/0325.
- <sup>57</sup> Para 9 amended by SD2017/0325.
- <sup>58</sup> Subpara (1) amended by SD2017/0325.
- <sup>59</sup> Subpara (3) amended by SD2017/0325.
- <sup>60</sup> Subpara (3) amended by SD2017/0325.
- <sup>61</sup> Para 2 in operation 01/01/2019 for all purposes other than those relating to the protected characteristics of age and disability [see SD2018/0329].
- <sup>62</sup> Para 14 (insertion of section 124A, as modified by SD2018/0329, in Employment Act 2006) in operation 01/01/2019 for all purposes other than those relating to the protected characteristics of age and disability [see SD2018/0329].
- <sup>63</sup> Para 15(2) (insertion of section 128(11A), as modified by SD2018/0329, in Employment Act 2006) in operation 01/01/2019 for all purposes other than those relating to the protected characteristics of age and disability [see SD2018/0329].



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- <sup>64</sup> Para 16(a) in operation 01/01/2018 as temporarily modified by SD2017/0221. [Editorial note: Temporary modification ceased on the partial coming into operation of section 124A of the Employment Act 2006 on 01/01/2019.]
- <sup>65</sup> Para 16(b) in operation 01/01/2019 for all purposes [see SD2018/0329].
- <sup>66</sup> Para 17(3) (insertion of section 132(2)(ka) in Employment Act 2006) in operation 01/01/2019 [see SD2018/0329]. [Editorial note: this amendment subject to transitional modification of section 132(2) of the Employment Act 2006 by SD2018/0329.]
- <sup>67</sup> Para 21 in operation 01/01/2019 for all purposes other than those relating to the protected characteristics of age and disability [see SD2018/0329].
- <sup>68</sup> Para 31(a) in operation 01/01/2019 for all purposes other than those relating to the protected characteristics of age and disability [see SD2018/0329].
- <sup>69</sup> Para 31(b) in operation 01/01/2019 for all purposes other than those relating to the protected characteristics of age and disability [see SD2018/0329].
- <sup>70</sup> Para 31(c) in operation 01/01/2019 for all purposes other than those relating to the protected characteristics of age and disability [see SD2018/0329].
- <sup>71</sup> Para 4 in operation 01/01/2019 for all purposes other than those relating to the protected characteristics of age and disability [see SD2018/0329]. [Editorial note: this amendment subject to transitional modification of section 35(2A) by SD2018/0329.]
- <sup>72</sup> Entry amended by SD2017/0325.
- <sup>73</sup> Entry amended and relocated by SD2017/0325.