ISLE OF MAN EMPLOYMENT RIGHTS: A GUIDE

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DEPARTMENT FOR ENTERPRISE

Isle of Man Government

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Contents

Introduction and disclaimer

The guide is a summary of statutory employment rights as at **June 2023.**

The guide is written in general terms and is not intended to be a complete or authoritative statement of the law. Further, while we have done our best to make sure that the information is correct as the date shown on the front cover it is possible that some of the information is oversimplified, or may become inaccurate over time, for example because of changes to the law. In a work of this size, it is impossible to provide a definitive statement of the law, which in any case is the function of the Employment and Equality Tribunal and the High Court. Only the official wording of Acts, Regulations and Orders, and the interpretation given by the courts, are authoritative.

No responsibility can be accepted for errors or omissions, or their consequences.

Any subsequent legislative changes made after June 2023 will be included in the next edition.

Main changes since the previous edition (March 2022)

Change	Sections
New minimum wage rates	5.3

Abbreviations

DESC	The Department of Education, Sport and Culture
DfE	The Department for Enterprise
The Tribunal	The Employment and Equality Tribunal (except in section 2)

1. Background and conceptual framework

1.1 Employment rights and contractual rights

The legal relationship between employer and employee is one of contract, based on common law principles. Employment statutes have established a number of further rights for employees and other workers.

A contract of employment exists when an employer and employee agree the terms and conditions of employment. This is often shown by the employee's starting work on the terms offered by the employer. Both are bound by the agreed terms. A contract of employment need not be in writing. Workers are, however, entitled to a written statement of the main particulars of their employment (see further at 4).

Statutory employment rights are the minimum legal requirements; in most cases the contract between the employer and employee will offer better terms and where this is so the rights under the contract will apply. Contractual rights cannot be less than the rights established by Isle of Man employment law.

When the terms of a contract of employment are not adhered to, and either the employee or employer has suffered a measurable financial loss because the other party has departed from the agreed terms of the contract of employment (or any other contract connected with employment) the party that is not in breach can seek damages for breach of contract in the High Court (see 1.14).

If an employment right is denied or infringed, an employee can normally claim a remedy by making a complaint to the Employment and Equality Tribunal (see 1.13).

A single set of circumstances, may be capable of giving rise to a variety of conceptual and remedial responses. For example, a dismissal may be *unfair* or *wrongful* or both. Unfair dismissal is a statutory complaint; wrongful dismissal is the term used at common law to denote a dismissal by an employer in breach of contract. Depending upon the type of complaint, proceedings may take place at the Tribunal or the High Court or both. For further information see 1.13, 1.14 and 11.2.

Whilst the law of contract and statutory employment rights are intertwined this booklet is primarily intended to be a guide to the latter. Nevertheless a practical guide to the law at work cannot avoid the law of contract; consequently, the guide includes some basic information about contractual law as well as about statutory employment rights - see in

particular "implied terms" (1.3); variation of contract (1.4); proceedings at the High Court (1.14) and notice and wrongful dismissal (11).

1.2 Types of employment contract

An employment contract may be –

- open-ended, sometimes called 'permanent' (subject to any notice provisions); or
- for a 'limited term' whereby it expires on a particular date or on the occurrence of an event, such as the completion of a particular task (subject to any notice provisions) (see further at 1.9.5).

Either type of contract may be 'full-time' or 'part-time' although there is no statutory definition of these terms for employment rights purposes (see further at 1.9.4). The number of hours worked does not affect a person's entitlement to employment rights although gaps between periods of employment may break 'continuity of employment' (see section 1.10).

1.3 Types of contractual terms

The contract of employment sets out the relationship between an employer and employee ('the parties to the contract'). The terms and conditions, rules, obligations and entitlements related to an employee's employment (other than statutory employment rights) are established by reference to the employment contract.

Types of contractual terms include –

- **Express terms**

  These are the verbal or written terms explicitly agreed upon by the employer and the employee. An express term cannot seek to deprive a person of any statutory employment right.

- **Implied terms**

  In addition to the express terms in an employment contract, there are implied terms that may not be recorded in the written contract of employment or the written statement (see section 4).

  The general rule is that a term will be implied into a contract if it is so obvious that both parties would have regarded it as a term, even though they had not expressly stated it as a term, or if it is *necessary* to imply the term in order to give the contract business efficacy.

Some common implied terms are –

Implied duties of the employer

- to pay wages;
- to provide a safe working environment (see also 17.1.1); and
- to provide a reference which does not create an unfair impression.

Implied duties of the employee

- to serve his or her employer faithfully;
- to co-operate with the employer including obeying lawful orders;
- to take reasonable care for his or her own safety and that of fellow employees;
- to work with due diligence and care; and
- not to use or disclose the employer's trade secrets or confidential information.

Implied duties of both parties

- not to destroy the relationship of mutual trust and confidence which exists between them.

- **Statutory terms**

  These derive from employment statutes. For example the Equality Act 2017 incorporates an 'equality clause' into every contract of employment (see 5.5).

- **Incorporated terms**

  These derive from other sources such as a **collective agreement** (see 1.5) between the employer and trade union, works rules or a staff handbook.

- **Custom and practice**

  A term may be implied from *custom and practice*, but only if it can be shown that it is customarily applied in the particular trade or industry and that it is precise, reasonable and well-known.

1.4 Variation of contract

The contract of employment is binding upon both parties. It may be altered ("varied") by agreement between the employer and employee

either verbally or in writing (written agreements can help avoid subsequent problems). Alterations may be agreed in the following ways:

- with individuals;

- through collective agreements (see 1.5) such as those between employers and employees or their representatives. The employer and employee can expressly agree that employment should be on terms agreed by the employer and employee representatives and subject to any changes they may agree;

- through a term which provides for a variation in the contract, for example a clause specifically allowing an employer to change an employee's duties (which must nonetheless be exercised on a legitimate basis).

In view of the potential problems, changes to employment contracts should be agreed wherever possible. Employees should be fully consulted and any business reasons for change explained and discussed.

There may, nevertheless, be occasions when employers feel that change is essential despite failing to gain agreement. In order to avoid a breach of contract the employer can give the proper statutory or contractual notice to terminate the contract and offer a new contract on the revised terms. The termination would constitute a dismissal under the law (see 12.1.4) and it would be open to eligible employees to claim unfair dismissal before the Employment and Equality Tribunal. The Tribunal would decide whether the dismissal was fair in all the circumstances.

Where an employer imposes a unilateral change the options open to employees are as follows:

- acquiesce in the variation;

- resign and claim constructive dismissal (see 12.1.5);

- refuse to work under the new terms and force the employer to take what steps it thinks appropriate;

- stand and sue, by working under protest and seek damages either for breach of contract or for unfair dismissal.

Where an employee finds a variation of contract unsatisfactory, but nevertheless continues to work under the new terms and conditions

without making his or her objections known to the employer, he or she could after a time be deemed to have implicitly accepted the change.

1.5 Collective agreements

The term 'collective agreement' is used in a number of places in this guide. It refers to any agreement made by or on behalf of one or more trade unions and one or more employers or employers' associations and relating to one or more of the following matters:

- terms and conditions of employment, or the physical conditions in which any workers are required to work;
- engagement or non-engagement, or termination or suspension of employment or the duties of employment, of one or more workers;
- allocation of work or the duties of employment between workers or groups of workers;
- matters of discipline;
- a worker's membership or non-membership of a trade union;
- facilities for officials of trade unions; and
- machinery for negotiation or consultation, and other procedures, relating to any of the above matters, including the recognition by employers or employers' associations of the right of a trade union to represent workers in such negotiation or consultation or in the carrying out of such procedures.

A collective agreement is binding on an employer or employee only to the extent that the contract of employment contains a term (express or implied) incorporating the collective agreement.

1.6 Isle of Man employment law statutes

Many of the provisions covered by this guide are contained in the Employment Act 2006, which is the main source of individual employment rights. Other Acts which contain individual rights are:

- the Redundancy Payments Act 1990;
- the Shops Act 2000;
- the Minimum Wage Act 2001; and

- the Equality Act 2017.

The statutes governing collective rights, i.e. rights pertaining to trade unions and the law regarding trade disputes etc., are:

- the Trade Disputes (Regulation) Act 1936;
- the Trade Disputes Act 1985; and
- the Trade Unions Act 1991.

Various Regulations, Orders and Codes of Practice (see 1.19) are made under powers contained within these Acts. For example the Annual Leave Regulations 2007 are made under the Employment Act 2006.

The rights and obligations of employers and employees are also affected by other statutory provisions, such as health and safety legislation and data protection legislation, some of which are mentioned in this guide.

1.7 Entitlement to employment rights

Entitlement to employment rights is governed by a number of factors, the most important of which are as follows:

- the person's employment status (i.e. whether he or she is an employee, a worker who is not an employee, or self-employed (see further at 1.8 below));
- the person's length of service with his or her employer; some rights apply to all employees or workers as soon as they start work, but others depend on their period of continuous employment (see 1.10 below); and
- whether the person is in an excluded group in respect of which some or all employment rights may not apply; some groups of workers at 1.9 below have more limited employment rights).

Employers also need to consider whether the contract has any aspects which require special consideration, e.g. if it relates to shop work (see 8.8), or is part-time (see 10.1) or for a limited term (see 1.9.5);

1.8 Employment status

The legal rights enjoyed by a person flow from his or her employment status. This covers a spectrum of possibilities ranging from 'employees' who have the most rights to the genuinely self-employed who have the

least rights. Between these two extremes there is an intermediate status, usually termed 'worker'; such persons enjoy certain core employment rights. Each of these categories is discussed further below.

Except where this guide says that a right applies to some or all 'workers', it applies only to employees.

For a table of the rights enjoyed by various categories of working people see **Appendix 1**.

1.8.1 Employees

(Employment Act section 173)

Many employment rights, such as the right not to be unfairly dismissed, are enjoyed only by 'employees' (and, in certain cases, only if they fulfil certain conditions, e.g. as to length of service). An 'employee' is a person who works for an employer under a contract between them, called a 'contract of employment' (which may, but need not, be in writing: it may be agreed orally or simply implied by the nature of the relationship). A contract of employment is defined as 'a contract of service or apprenticeship'.

A number of essential elements must be fulfilled in order for a contract of employment to be shown to exist:

- there must be a contract between the working person and the employer;
- there is an obligation on the working person to undertake work personally (and not to delegate it to someone else);
- the employer has an ongoing commitment to provide work, and there is a corresponding expectation by the working person of receiving work (sometimes called 'mutuality of obligation'); and
- the employer controls both what the working person does and the way it is done.

In most cases, it will be clear whether a person is or is not an employee, but in borderline cases the High Court or the Employment and Equality Tribunal will look to see if these elements are present and will, in addition, look at a number of factors, e.g.:

- to what extent is the person integrated into the structure of the employer's organisation?

- if the person needs clothing, equipment or materials to carry out the work, does the employer provide them?
- is the person allowed to work for others?
- how are payments to the person processed, and how are they treated for tax and national insurance purposes?
- does the person have access to benefits and sick pay?

1.8.2 Workers

(Employment Act section 173)

Certain employment legislation, namely -

- the Minimum Wage Act 2001; and
- parts of the Employment Act 2006 and some regulations made under it;

give a number of core rights to 'workers'. This term comprises not only employees but also individuals in a relationship with a work provider which meets the following criteria:

- there is a contract;
- the contract is for carrying out personal services;
- such services are for another party to the contract who is not a client or customer of the individual's profession or business undertaking.

So, in addition to employees, the term 'worker' will cover, for example, casual, intermittent and some freelance workers, and most employment agency workers other than those who are truly in business on their own account. Some self-employed people can also be classed as workers for the purposes of employment rights provided that the particular working relationship points to that conclusion.

Unlike the case of employees who are protected against unfair dismissal, where the contract of a worker (who is not an employee) is terminated on a protected ground (for example, for asserting a statutory right – see 8.4), his or her recourse will be to make a complaint to the Employment and Equality Tribunal for 'detriment'

(which includes termination of the contract) under Part V of the Employment Act 2006. No qualifying period is required to make a complaint of detriment and compensation can be awarded in a successful case. The grounds for a potentially successful complaint are far more limited than for a complaint under the general law of unfair dismissal.

1.8.3 The extended definition of 'worker'

(Employment Act section 58)

Parts of the Employment Act 2006 extend the definition of 'worker' beyond its usual meaning elsewhere in the Act to give protection in respect of:

- assertion of certain health and safety rights (see 8.5);
- 'whistleblowing' (see 8.6); and
- the right to be accompanied at disciplinary and grievance hearings (see 8.7);

to both 'workers' and the following categories of working person which might otherwise fall outside the usual definition of 'worker':

- home workers (see 1.9.3);
- NHS primary care providers;
- certain trainees and persons on work experience; and
- agency workers, including those who are in business on their own account (and who would normally not be considered 'workers').

In addition, in the case of agency workers, the corresponding definition of 'employer' is widened to include the person who substantially determines or determined the terms on which the worker is or was engaged. In practice this means that employment agency workers (see 1.9.1) will be able to assert the particular right against either the employment agency or the principal, whichever is most appropriate in the particular case.

In the case of NHS primary care providers and trainees the definition of 'employer' includes, respectively, the Department of Health and

Social Care and the person providing the work experience or training.

Some of these categories are also entitled to rights under other legislation such as the minimum wage under the Minimum Wage Act 2001.

1.8.4 Coverage of the Equality Act 2017

(Equality Act 2017 Part 5, Division 1; section 75)

The Equality Act 2017 provides protection not only to employees but also to many other categories of working persons, including -

- job applicants;
- 'contract workers' (i.e. persons who work for a principal under a contract made with a third party) (see 1.9.1);
- police constables and cadets;
- members of partnerships and limited liability companies;
- personal and public office holders;
- persons under a contract of employment or of apprenticeship; and
- persons under a contract personally to execute any work or labour.

The final category means that people who are 'workers' will be protected by the Act. But unlike most legislation that covers workers, the Act does not exclude those who provide personal services for a client or customer in the course of practising a profession or running a business.

1.8.5 Self employed persons

The final main category of employed persons, other than 'employee' or 'worker', is that of self-employed persons, that is, persons who are in business on their own account and whose relationship with the organisation for whom they provide their services is that of client or customer. Examples of self-employed individuals, whose contracts are with clients or customers as opposed to employers, include

electricians performing skilled work for their customers and advocates advising or representing their clients.

Although some self-employed people can be classed as 'workers' for the purposes of some employment legislation, the general rule is that genuinely self-employed entrepreneurs are not covered by employment protection legislation, with a number of exceptions, the main ones being as follows:

- the rights conferred by the Equality Act 2017 (see 1.8.4 above)[1];
- the right to a safe and healthy working environment on clients' premises under health and safety legislation; and
- the possible entitlement of some self-employed women who have recently left their jobs to Maternity Allowance or equivalent benefits.

In addition, as set out at 1.8.3, even though they may be self-employed, agency workers are protected against detriment for asserting certain health and safety rights or for 'whistleblowing' and they also have the right to be accompanied at any disciplinary and grievance hearings.

1.8.6 Distinguishing between workers and self-employed persons

Just as there are cases where it can be difficult to determine whether a person is an employee or a worker there are also cases where it can be difficult to determine whether a person is a worker or self-employed. In borderline cases the High Court or the Employment and Equality Tribunal will look at the features of the particular contract and factors such as:

- whether the dominant feature of contractual arrangement was the obligation to personally perform work or whether it was a business outcome or objective;
- whether the individual has a single customer or a range of customers;

[1] But coverage is unlikely to include self-employed workers who can delegate their work to others.

- the extent to which he or she was engaged in skilled activities;
- the extent of investment in his or her business;
- the extent to which he or she carried the risk of non-performance or faulty performance of the work in question; and
- the extent to which he or she was free to negotiate the terms and conditions on services were provided.

1.9 Special categories of workers

1.9.1 Workers hired out by employment businesses ('agency temps' or 'agency workers')

Although the term 'employment agency' is widely used, strictly speaking it refers to a business which matches up employees and employers. The correct term for an organisation that hires out workers on a temporary basis to other organisations is 'employment business' (see further at 19.1). However, the term 'agency worker' is commonly used (even in legislation, e.g. the Minimum Wage Act 2001) to mean workers hired out by an employment business, and that term is used in this guide.

An 'employment business' typically engages a worker and then supplies him or her to work for its client (**the 'principal'**) in some capacity. The employment business typically pays the worker's remuneration direct, whilst the principal pays the employment business a fee which covers the worker's remuneration, national insurance contributions etc. and a profit element for the business.

Normally there are contracts between the employment business and the agency worker, and between the employment business and its client, but not between the agency worker and the principal. However, in rare cases a lengthy relationship and 'mutuality of obligation' may create an 'implied contract of employment between the agency worker and the principal. The High Court or Employment and Equality Tribunal can determine the matter depending on all the facts of the particular case.

The employment status of agency workers is determined by reference to the general principles set out at 1.8.1 to 1.8.6 above. Agency workers may be:

- employees of the employment business (or in rare cases, of the principal) employed under a contract of employment; or

- workers, engaged under a contract for services; or else
- self-employed.

Agency workers who are employees will, in general, have the same employment rights as other employees.

Agency workers who are neither employees nor truly self-employed will generally be engaged under a contract for services and have the status of 'worker' vis-à-vis the employment business. Such workers will therefore be entitled to core employment rights, most importantly the right to be paid the minimum wage and to receive paid annual leave. It is to be noted that in a number of cases the legislation allows the agency worker to assert the particular right against either the employment business or the principal, whichever is most appropriate.

An agency worker who is truly in business on his or her own account will have only those limited rights set out at 1.8.5 above.

1.9.2 Intermittent (casual, bank, seasonal and zero-hours) workers

Intermittent workers often operate under short-term contracts, each lasting for the period they are engaged to work. The nature of the working relationship will generally mean that not all of the essential elements of a contract of employment will be shown to exist (see 1.8.1). Such persons will usually be classed as 'workers' (see 1.8.2) for purposes of employment status and employment rights.

Occasionally such a worker may be able to argue that his or her overall relationship with the work-provider is one of a contract of employment. If the worker has been engaged to work with sufficient frequency, the regular offering and taking of work may over time create 'mutuality of obligation' (see 1.8.1).

Zero-hours workers constitute one type of intermittent worker. Such a worker may work under a zero-hours contract or under a non contractual zero-hours arrangement.

- In the former case the worker undertakes to perform work or services which the employer makes available to the worker but there is no certainty that any such work or services will be made available by the employer to the worker.
- In the latter case the employer and the worker agree terms on which the worker will undertake any work made available by the

employer but there is no obligation on the employer to offer work nor on the individual to accept work.

In each case any clause that seeks to tie a zero-hours worker to the employer by prohibiting the worker working for another employer, either absolutely or without the employer's consent ('an exclusivity clause') is unenforceable.

1.9.3 Home workers

Home workers are people who do all or part of their work at home. They may be employees or merely workers, or self-employed, their employment status being determined by reference to the general principles set out at 1.8. However, because of the requirement for there to be mutuality of obligation and to execute work on a personal basis some home workers may fall outside the definition of 'employee' or the usual definition of 'worker'. But, in general, the following rules will apply:

- all home workers will be protected against detriment for asserting certain health and safety rights (see 8.5) or for 'whistleblowing' (see 8.6) and will also have the right to be accompanied at disciplinary and grievance hearings (see 8.7);

- all home workers, except those truly in business on their own account, will be entitled to receive the minimum wage (see 5.3);

- all home workers will be entitled to rights under the Equality Act 2017 (see 9) provided that they are executing work on a personal basis.

1.9.4 Part-time workers

Part-time workers are entitled to the same statutory employment rights (e.g. entitlement to written statements and to paid annual leave) as full-time workers, irrespective of the number of hours they work per week or month.

Further, it is unlawful for an employer to afford part-time workers less favourable terms and benefits (on a pro rata basis) than comparable full-time workers, unless the different treatment can be justified on objective grounds (see 10.1).

In addition, depending on the constitution of the workforce, less favourable treatment may constitute indirect sex discrimination (see 9.4.2) under the Equality Act 2017.

1.9.5 Limited-term employees

(Employment Act 2006 s.173 (1) (definition of 'limited-term employment' and 'limiting event')

The Employment Act 2006 makes special provision for 'limited-term contracts', that is, a contract of employment under which the parties agree at the outset that the contract will come to an end at a certain time or in certain circumstances. The Act defines three types of "limiting event" which will bring the contract to an end:

- in the case of a contract for a fixed-term, the expiry of the term;
- in the case of a contract made in contemplation of the performance of a specific task, the completion of the task;
- in the case of a contract which provides for its termination on the occurrence of an event (or the failure of an event to occur), the occurrence of the event (or the failure of that event to occur).

In general, employees on limited-term contracts will enjoy the same employment protection rights as employees engaged on permanent contracts, provided they are directly employed by the organisation for which they work and have the necessary length of continuous employment (see 1.10).

Employees who work on a series of consecutive limited-term contracts will acquire continuity of service in the same way as an individual engaged on a single contract, irrespective of whether the successive contracts are on the same or different terms and conditions. Additionally, in certain circumstances, such as where there is a temporary cessation of work, gaps between contracts can count towards the employee's continuous employment.

In addition, depending on the constitution of the workforce, less favourable terms and benefits of limited-term employees than equivalent permanent employees may amount to indirect sex discrimination (see 9.4.2).

For employers' health and safety responsibilities to limited-term contract employees see 3.7.

1.9.6 Young workers

Employers need to be mindful both of the legal restrictions in the recruitment of young workers imposed by the Employment of

Children Regulations (No. 2) Regulations 2018 (see 3.4) and the requirement for undertaking a risk assessment before employing a person under 18 imposed by the Management of Health and Safety at Work Regulations 2003 (see 3.5).

The majority of employment rights apply not only to adult employees but also to children so that, for example, young workers should be issued with a written statement of particulars (unless the employment is to continue for less than 4 weeks) and itemised pay statements just as for other workers. But there are some exceptions:

- young people are treated differently from adults with regard to the minimum wage and there is no minimum wage for children under 16 years (see further at 5.3);

- the right to paid annual leave does not apply to workers who are below "the upper limit of compulsory school age" (defined at 3.4.1).

1.9.7 Workers from outside the Isle of Man

Most persons, other than Isle of Man workers (see 2.4), require permission to work in the Island.

Nationals from within the European Economic Area[2] who are not Isle of Man workers require a work permit under the Control of Employment Act 2014 unless the employment is exempt from the requirement for a permit. For further information see section 2 of this Guide.

Nationals from outside the European Economic Area are subject to immigration controls. Further information regarding these controls is outside the scope of this guide but can be obtained from the Isle of Man Passport, Immigration and Nationality Office (see "Useful Contacts" at Appendix 4).

For information on the employment of illegal migrants see 2.18.

The possession of a work permit or, in the case of a non EEA worker, an "immigration employment document" (see 2.6.1) makes

[2] See 2.1

the employment contract legal and puts the possessor on a "level playing field" with colleagues who are 'Isle of Man workers'.

As to the position regarding using non Isle of Man Worker status as a criterion for redundancy selection see 13.3.

1.9.8 Overseas workers

Workers engaged wholly or mainly outside the Isle of Man (except seafarers – see 1.9.9) are excluded from all rights under the Employment Act 2006 except in respect of their employer's insolvency or ceasing business in the Island (see 14.2). In this case the right only applies where the Manx National Insurance Fund has received or been entitled to receive Class 1 national insurance contributions from the employer in relation to the particular employment. (But note that persons from outside the Isle of Man who come to work in the Island are protected by Isle of Man employment law on the same basis as other persons.)

1.9.9 Seafarers

Seafarers on Manx ships and Manx fishing vessels are, in general, excluded from protection under the Employment Act 2006, with the following exceptions:

- Most provisions of the Act apply to a seafarer resident in the Island who works on a Manx ship registered in the Isle of Man and does not work wholly outside the Isle of Man. Those provisions which do not apply are: the right to time off for public duties or to look for work when facing redundancy (see 8.1, 8.2) and the right to be accompanied at disciplinary and grievance hearings (see 8.7) (a right comparable to the latter is conferred by the Merchant Shipping (Masters and Seamen) Act 1979). The rights to a written statement of particulars of the contract of employment and to a minimum period of notice (see 4.2, 11.1) apply only to a master, as other seafarers have similar rights under the 1979 Act.

- Most provisions of the Act apply to a seafarer resident in the Island who works on a Manx fishing vessel**,** except the right to time off for public duties or to look for work when facing redundancy (see 8.1, 8.2) and the right to be accompanied at disciplinary and grievance hearings (see 8.7).

- In the case of a share-fisherman**,** the only rights that apply are protection against detriment on a health and safety ground or for whistleblowing (see 8.5 and 8.6).

1.9.10 Crown employees

(Employment Act 2006 s. 173)

Crown employees comprise the following:

- employees of the Public Services Commission and any other persons employed by, or holding office within, a Department, Statutory Board, office of Government or other public sector entity (other than Ministers or members of Departments);
- members of the Isle of Man Constabulary;
- judges of the High Court;
- the Attorney General and His Majesty's Solicitor General for the Island.
- the Clerk of Tynwald;
- a person employed in the Office of the Clerk of Tynwald; and
- the Tynwald Commissioner for Administration and the staff of the Commissioner.

Crown employees are excluded from:

- rights to notice (see 11.1.1);
- rights in the period of notice; (see 11.1.2); and
- rights in respect of insolvency (see 14.2).

1.9.11 Police

Members of the Isle of Man Constabulary are not employees, and are excluded from most employment rights with the following exceptions:

- the right to receive written particulars (see 4.2);
- protection against unlawful deductions (see 5.2);

- time off with pay for pension scheme trustees and protection against detriment for exercising this right (see 8.3);
- 'whistleblowing' (see 8.6);
- protection against detriment and dismissal for a health and safety reason (see 8.5);
- the right to receive the minimum wage and protection against detriment and dismissal regarding this right (see 5.3);
- the right to notice and rights during notice (see 11.1.1 and 11.1.2);
- rights under the Equality Act 2017 (see 9).

The conditions of employment of the police are contained in Police Regulations made under the Police Act 1993.

1.9.12 Short-term workers

Persons who have been employed for less than 4 weeks are not entitled to receive a written statement of particulars of the terms of employment (see 4.2).

1.9.13 Voluntary workers

Most volunteers do not have the rights of either employees or workers.

Volunteers working for a charity, a voluntary organisation, an associated fund-raising body or a statutory body are generally excluded from the minimum wage but may receive basic expenses for their work.

Where payments or benefit in kind are paid a contractual relationship may develop so that the volunteer becomes an 'employee' or a 'worker' (see 1.8).

1.10 Continuity of employment

Some of the individual employment rights described in this guide depend upon an employee having worked a qualifying period of continuous employment with the same employer or an associated employer. For example,

- 1 year's continuous employment is generally required to bring a complaint of unfair dismissal, though there are exceptions to this rule (see 12.1.3);

- 2 years' continuous employment is required to claim a statutory redundancy payment (see 13.1.1).

The qualifying periods are summarised in the table at Appendix 2.

Normally only employment with the present employer counts towards continuous employment but there are certain circumstances in which a change of employer does not break continuity (see 8.10). The rules for determining the length of an employee's period of continuous employment are contained in Schedule 5 to the Employment Act 2006.

1.11 Alternatives to the Employment and Equality Tribunal

Whilst this guide is primarily concerned with setting out statutory employment rights, the remedy for which is usually by way of complaint to the Employment and Equality Tribunal (see 1.13, 15.2), there are a number of alternative options other than pursuing a case at the Tribunal. These are as follows:

- to try and resolve the matter informally;

- to use any internal grievance procedures;

  [Note in this respect that the written statement of particulars of employment (see 4.2) must specify a person to whom the employee can apply for the purpose of seeking redress of any grievance, how this should be done and any further steps that may be applicable. In addition, advice about grievance procedures is contained in the *Code of Practice on Disciplinary and Grievance Procedures in Employment 2007.* (A copy of the Code can be downloaded from the employment law pages of the IOM Government website (see "Useful Contacts" at Appendix 4)).]

- conciliation by the Manx Industrial Relations Service (see 1.12, 15.1).

However, any time limit (see 1.17) for making a reference or complaint to the Tribunal will still apply, and will not normally be extended to allow for the fact that attempts have been made to settle the dispute.

1.12 The Manx Industrial Relations Service

Industrial Relations Officers (IROs), who are independent of the Government, provide advice on employment rights in the Isle of Man. IROs perform the following roles:

- providing individual and collective conciliation services;
- arranging voluntary arbitration and mediation services;
- providing advice to both employers and workers.

See also 15.1, and "Useful Contacts" at Appendix 4.

1.13 The Employment and Equality Tribunal

The Employment and Equality Tribunal is a special court of law which determines complaints brought under employment protection legislation, for example, complaints of discrimination, unfair dismissal, and non-payment of the minimum wage. The Tribunal has exclusive jurisdiction to hear many types of complaint such as unfair dismissal cases.

For information on how the Tribunal operates see 15.2. For time limits to bring a complaint to the Tribunal see Appendix 2.

1.14 The High Court of Justice

Not all employment-related cases go to the Employment and Equality Tribunal. Where an employer is in breach of a contractual term, either express or implied (see 1.1 and 1.3), the employee may be entitled to bring a complaint for damages for breach of contract in the High Court, e.g.:

- failure to pay the agreed remuneration (or the minimum wage, where appropriate: see 4.21) or including making unlawful deductions from wages (see 5.2.2);
- wrongful dismissal whereby the employer dismisses the employee without giving him or her the proper notice to which he or she is entitled (see 11.2).

Whereas in some cases the employee may be able to make a claim either in the High Court or in the Employment and Equality Tribunal, in others the claim can be brought only in the High Court, e.g.:

- claims for damages for personal injuries suffered in the course of employment; and

- breach of contract not amounting to dismissal, e.g. failure to provide agreed facilities or benefits;

- claims for contravention of the Protection from Harassment Act 2000 (see 8.9.4).

For time limits for High Court claims, see 1.17. There is no statutory limit on the amount of damages that the Court can award. Legal aid may be available for a High Court claim (but not for proceedings in the Employment and Equality Tribunal).

Legal advice should be sought where a claim in the High Court is contemplated.

1.15 Restrictions on contracting out of employment rights

(Employment Act 2006 section 57; Equality Act 2017 section 139)

The employment statutes prevent workers signing away or giving up ('waiving') their statutory employment rights. This rule is for workers' own protection.

The only exception to this rule is in the case of a conciliated settlement of a dispute brokered by an industrial relations officer (see 15.1). Where such a settlement is reached, then an agreement will be drawn up which will be binding upon the parties.

But a provision in any agreement, (including a contract of employment), which purports to preclude a worker from making a protected disclosure (see 8.6) is rendered void.

1.16 Calculation of a week's pay

Certain payments to an employee, e.g. the basic award of compensation for unfair dismissal and redundancy payments, are calculated by reference to a week's pay, which is usually the amount the employee earned during his or her normal working hours in one week (though different calculations are used where the employee receives different rates for different hours, or has no normal working hours), up to a maximum amount, £540. The rules for determining the amount of a week's pay are contained in Schedule 6 to the Employment Act 2006.

1.17 Time limits

Where an employment right is denied or infringed, any complaint to the Employment and Equality Tribunal must be made within the time limit specified for the particular right.

For most of the statutory employment rights referred to in this Guide the complaint must be made within 3 months of the incident or dismissal occurring although there are some exceptions (e.g. 6 months for an equal pay claim and 12 months for a redundancy payment. The date of the relevant event is included in the relevant time period.

Example

An employee is dismissed on 9th January; the complaint must be presented to the Tribunal by 8th April.

Where a complaint is made to the High Court the time limits will be as prescribed by the Limitation Act 1984. For example a complaint regarding breach of contract or an action founded on a tort (a civil wrong) must be brought within 6 years of the date of the relevant event whilst a personal injury claim must ordinarily be brought within 3 years of the date on which the cause of action accrued or (if later) the date of knowledge of the person injured.

1.18 Illegal contracts

A worker may not ordinarily claim any statutory employment rights if the contract is 'tainted with illegality', i.e. where a term of the contract is unlawful (e.g. that the employer will not make ITIP deductions) or the contract is contrary to public policy (e.g. a contract to commit a crime). However, the Tribunal has discretion to consider a complaint or reference in such a case, where it considers it to be just and equitable to do so (e.g. where the worker was innocent of any wrongdoing).

1.19 Codes of Practice

Codes of practice are written in clear terms for lay people in order to provide practical guidance on specific topics. The Department for Enterprise has powers to issue codes for various purposes while the Council of Ministers has powers to issue codes under the Equality Act 2017. To date the following Codes have been issued:

- Time Off for Trade Union Duties and Activities 1992 (see 7.4 and 7.5);
- Recognition of Trade Unions 2001 (see 16.5.2);
- Disciplinary and Grievance Procedures in Employment 2007 (see 12.2.2); and
- Equality Act 2017 Statutory Code of Practice on Employment.

The legal effect of the codes is that whilst a breach of any of the codes does not render a person liable for proceedings, they are admissible and are to be taken into account if relevant in any proceedings before the Employment and Equality Tribunal. Copies of the codes can be downloaded from the from the employment law pages of the IOM Government website (see Useful Contacts at Appendix 4).

2. Requirement for work permits

Work permits for workers (see 2.1 below) are explained more fully in the Department for Enterprise booklet "A Guide to Work Permits". A copy of the guide can be downloaded from the work permit pages of the IOM Government website (see "Useful Contacts" at Appendix 4).This section accordingly covers only the most important information.

Note that since Brexit, European Economic Area nationals and non-European Economic Area are covered under immigration legislation. The Isle of Man Passport, Immigration and Nationality Office deals with visa applications for EEA and non-EEA nationals seeking to work in the Isle of Man and all immigration enquiries should be addressed to them. (For contact details see "useful contacts" at Appendix 4).

For information on the employment of illegal migrants see 2.18.

2.1 Abbreviations used in this section

Abbreviations used throughout this section are as follows:

CEA / the 2014 Act	The Control of Employment Act 2014
The Department	The Department for Enterprise
The Regulations	The Control of Employment Regulations 2017

2.2 The relevant legislation

- Control of Employment Act 2014
- Control of Employment Regulations 1993 - provision still in force
- Control of Employment Regulations 2017
- Work Permit (Fees) Order 2017

Copies of the legislation can be downloaded from the employment law pages of the IOM Government website (see "Useful Contacts" at Appendix 4).

2.3 Requirement for work permits

Anyone who is not an "Isle of Man worker" (see 2.4) requires a work permit to take up employment (including self-employment) except in the case of a small number of occupations and certain employments of a temporary nature which are exempt (see 2.6). An employer must not

employ a person unless he or she is an Isle of Man worker except in accordance with the Act.

The legislation applies to all EEA and non-EEA nationals, though an EEA or non-EEA national who holds an immigration employment document is exempt (see 2.6.1). The legislation also applies to United Kingdom nationals (i.e. British citizens).

2.4 Who is an "Isle of Man worker"?

There are nine separate ways that a person can be an "Isle of Man worker". An "Isle of Man worker" is an individual:

- who was born in the Isle of Man;
- who has at any time been ordinarily resident in the Isle of Man for an unbroken period of at least 5 years (but see 2.4.1 below);
- who is the spouse or civil partner of an Isle of Man worker and is entitled to remain in the Island under immigration law;
- who was the spouse or civil partner of an Isle of Man worker, was living in the Isle of Man immediately before the death of the Isle of Man worker, and has lived in the Island ever since;
- who was the spouse or civil partner of an Isle of Man worker, had lived in the Isle of Man for an unbroken period of at least 3 years immediately before being divorced and has lived in the Island ever since;
- whose parent is (or was immediately before death) an Isle of Man worker, if at the time of the child's birth the parent, or the parent's spouse or civil partner, was serving in the armed forces;
- whose parent was born in the Isle of Man and lived in the Isle of Man for his or her first 5 years;
- whose grandparent was born in the Isle of Man and lived in the Isle of Man for his or her first 5 years;
- who:

  (a) was for an unbroken period of at least a year:
  - (i) under 23 years old,
  - (ii) ordinarily resident in the Island, and
  - (iii) in full-time education, and

(b) has lived in the Isle of Man since the end of that period, and
(c) is the child of a person who during that period was:
    (i) an Isle of Man worker, or
    (ii) an exempt person in regular full-time employment, or
    (iii) the holder of a work permit.

References to relationships in this section include adoptive and step relationships.

2.4.1 Treatment of periods of residence before 1st October 2015

Under the Control of Employment Act 1975, which was repealed by the 2014 Act, whether a person was an Isle of Man worker was determined according to different residence rules. The following transitional rules apply:

- Living in the Island for an unbroken period of 5 years does not confer the status of Isle of Man worker, if the 5 year period ended before 1st October 2015.

- Living in the Island for an unbroken period of 10 years before 1st October 2015 does confer Isle of Man worker status.

- In some circumstances a person is an Isle of Man worker, if, before 1st October 2015, he or she lived in the Isle of Man for an unbroken period of between 5 and 10 years, left the Island and returned once more.

However individuals who are unsure as to whether they qualify as an Isle of Man worker are advised to contact the Work Permit Office for advice. Contact details for the Office can be found in Appendix 4.

2.4.2 Time spent in prison

Any period of imprisonment (for one or more offences) in the Isle of Man exceeding 6 months will break a period of continuous residence required to be an Isle of Man worker.

2.4.3 Service in the armed forces

Where a person has lived in the Island for an unbroken period of at least 3 years immediately before serving in the armed forces, he or she is treated as living in the Island during that period of service.

2.5 Criminal records

Special rules apply where a person has been convicted of an offence and sentenced (anywhere in the world) to a term of custody where —

- the sentence is excluded from rehabilitation by section 2 of the Rehabilitation of Offenders Act 2001 (e.g. custody for a term exceeding 30 months);

- the conviction is not a "spent" conviction for the purposes of that Act; or

- the employment in question is excluded from the operation of that Act (e.g. doctors, accountants).

Any such conviction will be taken into consideration by the Department when determining an application for a permit (see 2.9).

In addition a person with any such conviction:

- may not rely upon any exemption (see 2.6); and

- has no entitlement to a permit which, upon application, is granted to the spouse, civil partner or cohabiting partner of a work permit holder or exempt person (see further at 2.12); and

- has no entitlement to a permit which, upon application, is granted to the cohabiting partner of an Isle of Man worker (see further at 2.13).

However, an application for an ordinary work permit can still be made.

Further information on the Rehabilitation of Offenders Act 2001 can be obtained from the Department of Home Affairs (see "Useful Contacts" at Appendix 4).

2.6 Exempted employments: general

There are certain employments which do not require a permit. These are set out below.

- Persons with certain unspent criminal convictions etc. are prohibited from using any exemption (see 2.5).

- Some exemptions are subject to conditions. An exemption only applies if the condition is complied with.

- The spouse, civil partner or cohabiting partner of an exempt person may be entitled to a work permit. See further at 2.12 .

2.6.1 Immigration employment documents held by non EEA nationals

An EEA or non-EEA national who is the holder of an 'immigration employment document' (IED) is exempt from the requirement for a work permit.

Further information regarding these controls is outside the scope of this guide but can be obtained from either the Work Permit Office or the Isle of Man Passport, Immigration and Nationality Office (see "Useful Contacts" at Appendix 4 in each case).

2.6.2 Exemptions in the national interest

The Department may grant a written exemption to a person working in a specified capacity if it considers the employment of that person to be in the national interest. This exemption may be made subject to conditions.

2.6.3 Permanent employments which are exempt

(a) Crown employment

Employment in the service of the Crown is the right of the Government of the United Kingdom. This includes any office holder appointed by His Majesty and paid out of money provided by Tynwald (e.g. the Lieutenant Governor).

(b) Diplomatic employment

Employment in a diplomatic or consular capacity.

(c) Police

Employment as the Chief Constable.

(For temporary police and related employments which are exempt see 2.6.5 (c) below).

(d) Isle of Man Fire and Rescue Service

Employment as the Chief Fire Officer.

(e) Judicial, court and tribunal employments

- Employment as a Deemster, High Bailiff, or Judicial Officer or as a judge of the consistory court of the Diocese of Sodor and Man.

- Employment as a chairperson or member of any commission, tribunal or inquiry established under any statutory provision or resolution of Tynwald.

(For temporary judicial, court and tribunal employments which are exempt see 2.6.5 below).

(f) Senior public service appointments

Employment as the Chief Secretary or the chief officer of a Department or a Statutory Board.

(g) Professions etc.

- Employment as a minister of religion or as a lay worker with a religious body.
- Employment as a registered medical practitioner.
- Employment as a registered dentist.
- Employment as a teacher in a secondary school.
- Employment as a registered nurse or midwife.
- Employment as a registered social worker.

(h) Information and Communication Technologies

Employment in Information and Communications Technologies (ICT).

ICT means the use of digital technology as a central part of the development, manufacture or delivery of a product or service.

The exemptions only apply to employment of at least 12 months' duration and the salary, excluding bonuses, must be at least £25,000 a year.

In addition a person claiming an exemption in ICT must:

- have a minimum of 3 years' experience in an ICT role; or
- hold a computer science degree; or

- hold a technical or vocational ICT-related qualification at Level 5 of the Regulated Qualifications Framework[3] or the European Qualifications Framework[4] or equivalent; or

- be able to demonstrate competency at Level 5 or above of the Skills Framework for the Information Age[5].

(i) e-business (including e-gaming)

Employment in e-business (including e-gaming).

'e-business' means the supply or delivery of goods and services primarily by electronic means using the internet or similar electronic networks and includes e-gaming.

The exemptions only apply to employment of at least 12 months' duration and the salary, excluding bonuses, must be at least £25,000 a year.

In addition a person claiming an exemption in e-business must have:

- a minimum of 2 years' experience in an e-business role; or

- advanced mathematical, statistical or data analysis skills; or

- extensive knowledge of e-business systems, tools or established processes.

(j) Ships and aircraft

Employment in a vessel or aircraft.

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[3] 'The Regulated Qualifications Framework' is a system for cataloguing all qualifications regulated by the Office of Qualifications and Examinations Regulation, a non-ministerial government department with jurisdiction in England and Northern Ireland.

[4] 'The European Qualifications Framework' is an overarching framework for the national qualifications frameworks of member states of the European Union (EU), as formally adopted in 2008 as part of the EU's strategy for promoting lifelong learning and mutual recognition of qualifications.

[5] 'The Skills Framework for the Information Age (SFIA)' is the Skills Framework for the Information Age, produced by the Skills Framework for the Information Age Foundation (see www.sfia-online.org/en).

(k) Chief Officers etc. of an international group

An officer of an international group in charge of the group's activities in the Island.

(A "group" means a holding company and its subsidiaries (within the meaning of the Companies Act 1974); and an "international group" means a group comprising at least one company incorporated, and bona fide carrying on business, in a country or territory outside the Island.)

(l) Voluntary workers

Employment as a voluntary worker, as defined in the Minimum Wage Act 2001. This covers certain unpaid workers for a charity, a voluntary organisation, an associated fund-raising body or a statutory body.

(m) Cultural self-employment etc.

Self-employment of a purely cultural nature.

(n) Commercial travellers

Employment of a person who is not resident in the Island as a commercial traveller or sales representative by or for any person not resident in the Island for the purpose of selling to or seeking orders for goods from —

- persons who are dealers in such goods and buy to sell again; or
- persons who purchase such goods for use (except for resale) in their own business.

(o) Establishment of businesses from outside the Island etc.

Employment in a business being established in the Island as a branch or subsidiary of a business carried on elsewhere, or in a business being relocated in the Island from elsewhere. The exemption is subject to the following conditions:

- it only applies to a business being established or relocated from outside the Island (and so does not apply to new businesses being established from within the Island);

- it only applies to a business being established or relocated after 1st January 2010;

- it does not apply to any of the following excluded employments:

    - in the supply, in the course of a business, of food and drink;
    - in the sale by retail of goods, otherwise than from a permanent place of business in the Island, whether at a fixed location or from door to door;
    - in 'construction operations' (see Appendix 7);
    - in shop work;
    - in tourist premises;
    - in licensed premises;
    - in the provision of personal care;
    - in clerical work;
    - in horticulture; or
    - in cleaning work.

- it may be claimed for up to 3 persons, or 10 per cent. of the persons employed in the business in the Island, whichever is the greater, subject to a maximum of 10 persons;

- the actual turnover of the business in the Island in the previous year (or, in the case of a business in its first year, the projected turnover) must not be less than £100,000 for each person employed in the business in the Island;

- not later than 31st January in each year the person claiming the exemption must provide the Department with a written return in respect of the previous year stating:

    - the name of each person in respect of whom the exemption was claimed;
    - the number of staff employed in the business in the Island; and
    - accounts or other information verifying that the turnover requirement has been fulfilled.

2.6.4 Temporary employments: general rules

(a) Employment for up to 10 days a year

A person may be in employment of a temporary nature in the Isle of Man for up to 10 days without requiring a work permit. This is for a person who comes to the Island, carries out a specific job and goes away not to return. Separate periods of connected employment of less than 10 days in any year are added together, and where the total exceeds 10 days a permit will be required.

Note that:

- any days where a worker is employed in the Island but not actually working (e.g. weekends) will count against the 10 days; and
- the exemption may not be used to cover the first ten days of employment of a non temporary nature.

The exemption does not apply in the following cases:

- 'construction operations' (see Appendix 7);
- mobile catering; or
- retail where the retailer does not have a permanent place of business in the Island.

(b) Administrative exemption

Upon request, the Department may grant an exemption for employment of a temporary or intermittent nature for more than 10 days where it considers there is good reason. Such an exemption will be authorised in writing.

The exemption is intended to reduce bureaucracy in cases which do not materially affect the prospects of Isle of Man workers. It is not intended to apply to any limited-term contract provision.

The Department sometimes authorises temporary exemptions in the following cases:

- persons providing services to specific projects in filming projects which have been approved by the Department; and

- employment during the TT festival.

2.6.5 Specific temporary employments

(a) Temporary exemptions for international companies

Employment by a company incorporated in the Island which is a member of an international group (see 2.6.3 (i)) or by a Class 1, Class 2 or Class 3 licence holder within the meaning of the Regulated Activities Order 2011[6] of a person who is mainly employed outside the Island by a member of the group or the licence holder for up to 48 days a year.

The exemption does not apply to any of the excluded employments set out at 2.6.3 (o).

The exemption is subject to a condition that not later than 31st January in each year the employer must provide the Department with a written return (which could be a simple spreadsheet) giving, in respect of each person who has been subject to the exemption in the previous year, the following information:

- the person's name;

- the number of days he or she spent in paid employment in the Island during that year;

- the nature of his or her work in the Island;

- whether the person is still employed; and

- to the best of the employer's knowledge, whether the person is still residing in the Island.

(b) Non-resident non-executive directors

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[6] The Order (Statutory Document No. 884/11) regulates all classes of financial services. Class 1 covers deposit-taking; class 2 covers investment business; and class 3 covers services to collective investment schemes.

Employment as a non-resident, non-executive director who visits the Island for up to 3 days in any calendar month. (This is intended to cover the situation where, for example, such a person comes to the Island to attend board meetings).

(c) Police and related employments

- Employment as an inspector under any enactment to investigate and report on the affairs of any person.
- Employment in any capacity to assist, or to provide services for, the Attorney General or the Isle of Man Constabulary in relation to the investigation of fraud or any other crime.
- (For permanent police and related employments which are exempt see 2.6.3 (c) above).

(d) Judicial, court and tribunal employments

- Employment as a Deemster, High Bailiff, or Judicial Officer or as a judge of the consistory court of the Diocese of Sodor and Man.
- Employment as a chairperson or member of any commission, tribunal or inquiry established under any statutory provision or resolution of Tynwald.
- Employment as an arbitrator in any specific arbitration proceedings which have been or may be commenced in the Island.
- Employment of any person who is not ordinarily resident in the Island, as counsel or as a solicitor by or for any person who is a party to or may be directly affected by any specific proceedings which have been or may be commenced before a court, tribunal or arbitrator in the Island.
- Employment of any person in any capacity in relation to proceedings which have been or may be commenced before a court, tribunal or arbitrator in the Island, in respect of which the person is paid out of money provided by Tynwald.
- Employment of a temporary nature of any person who is not ordinarily resident in the Island, in relation to any specific proceedings which have been or may be

commenced before a court, tribunal or arbitrator in the Island.

(e) Employees undertaking training

Employment for up to 48 days in a year where the work done consists only of undergoing training for the purposes of a business, public authority or voluntary organisation.

(f) Clients or customers of Island businesses

Employment for up to 48 days a year in connection with the supply of goods or services by a business in the Island to the employer or, in the case of a self-employed person, to that person. This exemption covers, for example, technicians who are sent to the Island in connection with orders placed with local engineering companies; and persons who are in the Island for the purpose of registering aircraft with the Isle of Man Aircraft Registry or in connection with the Isle of Man Ship Registry.

(g) Supply etc. of machinery

Employment for up to 30 days a year in connection with the supply, installation, maintenance, and repair of specialist plant, machinery or equipment, or training in its use. But the exemption does not apply where the necessary expertise or service is available in the Island.

(h) Disaster recovery

- Employment for up to 48 days a year for the purpose of disaster recovery.

- Certain Island companies host disaster recovery facilities, such as data back-up, for off Island businesses; the exemption allows staff from those businesses to come to the Island to access their data and implement recovery plans in the event of a disaster.

(i) Media representatives

Employment for up to 30 days a year as a media representative reporting on events of public interest.

(j) Delivery workers

Employment for up to 48 days a year in the delivery of goods from a place outside the Island to a place of business in the Island. This covers, for example, a UK company that makes a weekly delivery of goods to businesses in the Isle of Man that have placed orders with that company.

(k) Coach drivers

Employment for up to 48 days a year as a coach driver, provided that the vehicle is:

- registered outside the Island;
- can carry more than 8 passengers (in addition to the driver); and
- is being used commercially for the carriage of passengers visiting the Island (otherwise than as a taxi).

(l) Regulatory aircraft surveyors

Employment for up to 48 days a year as an aircraft regulatory surveyor employed by the Department in connection with the Isle of Man Aircraft Registry.

(m) Employment in connection with conferences

Employment for up to 30 days in a year in connection with any conference to be held in the Island. The exemption covers both the conference organisers and participants.

(n) International organisations

Employment for a period of up to 30 days a year as a representative or an official of an international organisation, that is, an organisation of which 2 or more governments are members (e.g. the World Trade Organisation).

(o) Theatrical and musical productions

Employment for a period of up to 48 days a year in connection with any theatrical or musical performance (but not any film production) in the Island. The exemption covers employment as director, producer, actor, singer, dancer, musician or production crew.

(p) Inspections and investigations by certain bodies

Employment of a temporary nature of any person who is not ordinarily resident in the Island for the purpose of conducting or assisting in an inspection or investigation by —

- the Isle of Man Financial Services Authority; or
- any United Kingdom or Channel Islands body prescribed by the Department, the function of which is to regulate or supervise a trade or profession.

2.7 Application for a work permit

An application can be submitted in the following cases -

2.7.1 Application by employer to employ a worker

An application for a work permit may be made to the Department by an employer to employ a specific individual. If granted, the permit will be limited to employment by the employer in a specified capacity; it may also specify a place of work and may be issued subject to conditions. Once issued the permit cannot be varied except in certain narrow circumstances so an employee cannot usually change employment unless the employer first obtains a new work permit.

Note that it is unlawful for an employer to receive from a worker, or deduct from his or her wages, a fee for a work permit. A worker may recover such fee by making an unlawful deduction complaint at the Employment and Equality Tribunal (see further at 5.2.2 below).

2.7.2 Application by a self-employed person

An application for a work permit may be made to the Department by a self-employed person and may be issued subject to specified conditions. Once issued the permit cannot be varied other than by a new application except in certain narrow circumstances.

2.7.3 Application by the spouse, civil partner, or cohabiting partner of a permit holder or an exempt person

The spouse, civil partner or cohabiting partner of a work permit holder or an exempt person may apply for a permit which is not limited to any specific employment. This permit is known as "a qualifying person's permit". (See further at 2.12).

2.7.4 Application by the cohabiting partner of an Isle of Man worker

The cohabiting partner of an Isle of Man worker may apply for a permit which is not limited to any specific employment (see further at 2.13).

In each of the 4 cases above -

- the information to be provided is set out in the appropriate application form; and
- an application for a work permit must be accompanied by the prescribed fee (see further at 2.8).

2.8 Application fee

An initial application for the grant or renewal of a work permit must be accompanied by a fee of £60. (The fee is the same irrespective of the duration of the permit). The fee is not refundable if the application is refused.

Note that a permit which is granted automatically to (1) the spouse, civil partner or cohabiting partner of a work permit holder or exempt person or (2) the cohabiting partner of an Isle of Man worker is only granted for one year at a time but such a permit can be renewed annually provided the eligibility requirement continue to be met.

2.9 Matters which must be taken into account

The Department must take the following matters into account in deciding whether or not to grant a permit.

Note: in this section and section 2.10 **"the person concerned"** means the person in respect of whom an application is made.

Economic circumstances

- **Whether there are any suitable Isle of Man workers available in the trade, occupation or profession in respect of which the application is made, having regard to –**

  (a) any skills, qualifications, knowledge, or experience required for the position; and

  (b) the importance of the position to the applicant's undertaking.

- **The level of unemployment in the Island in the trade, occupation or profession in respect of which the application is made.**

- **Any likely economic or social consequences of granting or declining the application (other than for the person concerned or any relevant person).**

The process

- **Whether and how the availability of the employment has been publicised in the Island.**

- **The process by which the applicant has selected the person concerned.**

- **The grounds on which the person concerned was selected.**

Personal circumstances of the person concerned

- **Any conviction of the person concerned falling within section 10 of the Act.**

  Relevant convictions are set out at 2.5 above.

- **Where the person concerned has, within a reasonable time before the making of the application, worked in the Island for a continuous period of 2 years or more by virtue of a permit or an exemption, his or her family circumstances (including whether his or her family are living in the Island).**

- **Whether a refusal to grant or renew a permit would cause substantial hardship to the person concerned.**

Additional considerations regarding the person concerned

- **The status of the person concerned under immigration law including whether he or she has leave to enter and remain in the Island and is permitted to work in the Island under immigration law.**

  A person seeking to obtain a work permit must not be precluded from living or working in the Isle of Man under immigration law.

2.10 Matters which may be taken into account

The Department may, but does not have to, take the following additional matters into account in deciding whether or not to grant a permit:

Economic circumstances

- **In the case of a self-employed person, the number of individuals already engaged in the employment in question in the Island.**

Additional considerations regarding the employer

- **The number of Isle of Man workers employed by the applicant as a percentage of as a percentage of his or her workforce.**

- **Whether the wages and conditions offered are less favourable than those normally applying in the particular trade or occupation in the Isle of Man.**

- **Any career development policy or rotation policy of the applicant.**

Additional considerations regarding the person concerned

- **If the person concerned engages or intends to engage in a construction trade, whether he or she is suitably qualified to do so and holds a relevant skills card, as may be specified by the Department.**

  A "skills card" is a document issued by a recognised organisation to demonstrate the qualifications and skills of a person who is employed in a construction trade. The person concerned must hold a skills card before the application for a work permit is made.

  For contact details of the Registrar of Craftsmen and Craftswomen, who issues skills cards, see Appendix 4.

- **The ability of the person concerned to speak English.**

2.11 Decision of the Department

The Department will issue a written decision on each work permit application. If the Department decides:

(a) to refuse to grant or renew a permit; or

(b) to grant or renew a permit for a shorter period than that applied for; or

(c) to include a condition in a permit,

the Department will include a statement of the reasons for the decision and information about an appeal to the Work Permit Appeal Tribunal (see further at 2.15).

2.12 Permits which are granted automatically to spouses, civil partners and cohabiting partners of work permit holders or exempt persons

Where a work permit holder or exempt person (including the holder of an "immigration employment document") is engaged in permanent, regular, full-time employment, (**'the primary employment')**, his or her spouse, civil partner or cohabiting partner is, upon application, entitled to a work permit (referred to as **'a qualifying person's permit'**). A qualifying person's permit is granted for a year at a time, beginning with the date on which it is granted or renewed. The permit will expire 6 months after the primary employment ceases or 12 months after it is granted or renewed, whichever is sooner.

An application for a qualifying person's permit should be made directly to the Department by the spouse, civil partner, or cohabiting partner of the permit holder or exempt person.

Where the applicant is a cohabiting partner certain additional information will be required.

A qualifying person's permit authorises the employment of the person named in it generally, in any capacity, subject to any conditions specified in it.

Note that:

- persons with certain unspent criminal convictions have no entitlement to this kind of permit (see 2.5);

- the spouse, civil partner or cohabiting partner of a non EEA worker who holds an immigration employment document (see 2.6.1) has an entitlement to a qualifying person's permit. However, most non EEA workers do not require a work permit in any case.

2.13 Permits which are granted automatically to cohabiting partners of Isle of Man workers

The cohabiting partner of an Isle of Man worker is, upon application, entitled to a work permit **'a CPIOMW permit'**. Such a permit is granted for a year at a time, beginning with the date on which it is granted or renewed. The permit will expire 6 months after the two cohabiting

partners cease to live together as cohabiting partners or 12 months after it is granted or renewed, whichever is sooner.

An application for a CPIOMW permit should be made directly to the Department.

A CPIOMW permit authorises the employment of the person named in it generally, in any capacity, subject to any conditions specified in it.

Note that persons with certain unspent criminal convictions have no entitlement to a CPIOMW permit (see 2.5).

2.14 Renewals

An application for the renewal of a permit should be made by the employer or a self-employed person or the spouse or civil partner in the case of a spouse/civil partner permit), as appropriate.

A renewal is usually made by completing a renewal request section on the original permit rather than by completing a new application form.

2.15 The Work Permit Appeal Tribunal

A directly interested person (see 2.15.4) who is aggrieved by certain decisions of the Department (see 2.15.3) (e.g. an employer who is refused a permit or granted a permit for a shorter period than was applied for or an Isle of Man worker who considers that the permit should not have been granted) may appeal to the Tribunal.

The right of appeal is explained in the letter which notifies an applicant of the refusal or revocation of a permit. Written notice of an appeal should be given to the Tribunal Clerk within 7 days of notification of the relevant decision.

A permit which has been granted may be rescinded after consideration by the Tribunal upon appeal.

For contact details of the Tribunal see Appendix 4.

2.15.1 Scope of the Tribunal

The role of the Tribunal is to determine whether the decision of the Department was lawfully reached (see 2.15.5 below). It is not to re-determine the application.

An applicant who has been unsuccessful in obtaining a permit in the first instance should not assume that he or she will be allowed to rely upon additional evidence if such evidence could have been

reasonably obtained and presented prior to the Department determining the application.

2.15.2 Constitution

The Tribunal is independent of the Department and is administered by the Tribunals Service. It consists of a legally qualified Chairperson (whose place can be taken by a Deputy Chairperson) and two other members, one selected from a panel representing employers and self-employed persons, and the other from a panel representing employees.

2.15.3 Grounds for an appeal

The decisions against which an appeal may be brought are as follows:

- a decision to grant a permit;
- a decision to refuse or revoke a work permit; or
- a decision to include a condition in a work permit.

2.15.4 Who can appeal?

The following persons have a right of appeal:

- where a permit is granted, any other person who applied for that employment;

  Note: where the Tribunal considers that a person who did not apply for employment, because it was insufficiently advertised, would have had a reasonable expectation of obtaining the employment, it may treat that person as having applied for the employment.

- where a permit is refused or revoked, or is granted subject to a condition, the applicant or holder, and his or her employer or prospective employer.

2.15.5 Criteria for allowing an appeal

The Tribunal must either allow or dismiss an appeal. It must allow the appeal where it considers that the Department in reaching the decision:

- made a mistake in law; or
- based its decision on any incorrect material fact; or

- exercised its discretion in an unreasonable manner.

2.15.6 What happens when an appeal is granted?

Where the Tribunal allows an appeal, it remits the application back to the Department, together with its reasons for the decision, and the Department must reconsider the application.

Subject to 2.16 below, the decision of the Tribunal on an appeal is final.

2.16 The High Court

A decision of the Tribunal may be appealed on a point of law only, to **the Civil Division of the High Court**. The usual period allowed for bringing such an appeal is 6 weeks. Anyone considering an appeal from a decision of the Tribunal should take legal advice.

Where an appeal is made, there is always the possibility of a permit that has previously been granted being rescinded.

2.17 Revocation of a permit

The Department may revoke a work permit if it considers that the circumstances that justified the grant or renewal of the permit have changed. The relevant circumstances are where:

(a) in relation to criminality:

(i) either the holder has been convicted of a criminal offence and received a sentence falling within 2.5 above since the work permit was granted or was last renewed, or before it was granted or renewed if the Department was then unaware of the sentence; or

(ii) since the work permit was granted the holder or a relevant person has been convicted of a criminal offence;

(b) it is discovered that the application for the permit includes a false statement or an omission such that a true and complete statement would have caused the Department to refuse to grant or to renew the permit;

(c) the holder or his or her employer has failed to comply with any condition subject to which the permit was granted;

(d) the holder has failed to pay his or her income tax or contributions under any statutory provision relating to social security;

(e) two or more complaints against the holder have been referred to the Department by the Office of Fair Trading, tending to show that the

holder is not a fit and proper person to undertake or be engaged in the employment in question; or

(f) the continued employment of the holder would be unlawful under immigration law.

2.18 Illegal working

(Section 8 of the Asylum and Immigration Act 1996 (of Parliament) as extended to the Isle of Man by the Immigration (Isle of Man) Order 2008; the Immigration (Restrictions on Employment) Order 2021)

Employers need to be aware that there are criminal penalties for employing a migrant who is either in the Island illegally and working or employing a migrant who is lawfully in the Island but who is working in breach of the conditions of his or her visa.

The criminal offence of illegal working can result in serious penalties including an unlimited fine. A fine can be imposed for each person the employer is found to have employed illegally.

An employer has a statutory defence from conviction if it can show that it complied with the requirements set out in the Immigration (Restrictions on Employment) Order 2021. The defence requires the employer to have undertaken certain checks and maintained proper records.

3. Entering into the contract: miscellaneous considerations

In addition to ensuring the requirement for work permits for workers from both within and outside the European Economic Area is met (see 2) there are certain aspects of employment law, described here, which regulate behaviour before a working relationship starts, or even if it never commences. The recruitment and selection process, including the publication of advertisements and the conduct of interviews, can be subject to legal scrutiny.

3.1 Discrimination on the ground of a protected characteristic under the Equality Act

(Equality Act 2017, various including sections 38, 40 and 52)

The Equality Act provides protection against discrimination on the ground of a protected characteristic (see 9.2) which extends to many types of working relationship (see 1.8.4). In particular the following should be noted -

- It is unlawful for an employer to discriminate against a job applicant on the ground of a protected characteristic; and
- It is also unlawful for an employment agency or employment business to discriminate against, harass or victimise a person when providing an employment service (see further at 19.6);
- It is unlawful to for an employer to ask questions about a job applicant's health or disability prior to offering him or her a job (see further at 9.14.4).

3.2 Discrimination on grounds of trade union membership or activities etc

(Employment Act 2006 sections 1-7)

It is unlawful to discriminate a job applicant on the ground of his or her trade union membership or activities etc. (see further at 7.1).

3.3 Employees' past criminal convictions

With exceptions, it is unlawful to discriminate a job applicant on the ground of his or her 'spent' criminal convictions or activities etc. (see further at 10.2).

3.4 Recruitment of young workers – legal restrictions

(Employment of Children (No. 2) Regulations 2018 (ECR))

3.4.1 General framework

The ECR prohibit the employment of children under 13 years of age in any work.

Additional rules apply to children who are **not over compulsory school age.**

The upper limit of compulsory school age is a child's 16th birthday, except where on his or her 16th birthday the child is, or has during the past 12 months been, a registered pupil at a school in the Isle of Man. In that case he or she attains the upper limit on the Friday before the last Monday in May in the current school year (beginning on 1st September). (Education Act 2001 s.23)

> **Example**: a child whose 16th birthday is in November 2017 will not be regarded as having reached the upper limit until 28th May 2018.

A child under compulsory school age may only be employed in specified **light work**.

Light work is work which is not likely to be harmful to the safety, health or development of children or to adversely affect their attendance at school or engagement and enjoyment of extra-curricular activities.

3.4.2 Prohibited employments

A child who is not over compulsory school age may not be employed:

- in a cinema, theatre or nightclub (unless it is in connection with an age appropriate performance);
- to sell or deliver alcohol;
- to deliver fuel oils;
- to prepare food in a commercial kitchen;
- to work with refuse;

- in any work which is more than 3 metres above ground or floor level;
- in employment involving harmful exposure to physical, biological or chemical agents;
- in door to door work;
- in work involving adult material not suitable for children;
- in telephone sales;
- in a slaughterhouse or in that part of any butchers shop or other premises connected with the killing of livestock, butchery or the preparation of carcasses or meat for sale;
- in a fairground, amusement hall or arcade; or
- in the personal care of residents of a care or nursing home;

3.4.3 Permitted employments

A child of 13 and above may be employed in light work in one or more of the following categories:

- work in farming if employed by his or parent or guardian on an occasional basis;
- delivery of newspapers;
- shop work including stacking shelves;
- hairdressing salons;
- office work;
- car washing by hand;
- in a café or restaurant but not in the kitchen
- in a riding stables but not to supervise riding or to be left in charge of stables; or
- domestic work in hotels and other establishments offering accommodation.

Children may work outside but only if provided with suitable clothing and shoes.

3.4.4 Two additional permitted employments

A child of or below compulsory school age may take part in a performance in accordance with a licence granted by DESC to an approved body. (Performances by Children Regulations 2004; Performances by Children (Amendment) Regulations 2018).

A child aged 14 years may be employed in order to provide him or her with work experience as part of the child's education provided that the arrangements are made by the school at which the child is registered and approved by the DESC.

3.4.5 Hours of work

No child of compulsory school age may be employed in any work:

- on more than 6 days per week (i.e. he or she must have a 'rest day' each week); or
- on a school day, for more than one hour before school starts.

Maximum weekly hours of work for a child of compulsory school age are 28 hours.

Maximum daily hours of work are:

- on school days: 2 hours (where the following day is a school day) or 4 hours (where the following day is not a school day);
- on non-school days: 7 hours.

It should be noted that these are overall limits, and that account must be taken by employers of any part-time work being undertaken by a child for another employer. Employers may therefore consider it advisable before employing a child to obtain written confirmation from parents:

- that the child has no other part-time work; and
- if he or she does have another job, as to the number of days and hours of work that job involves.

There are no restrictions in the case of children over the upper limit of compulsory school age.

3.4.6 Starting and finishing work

Children of school age must not be at work:

- on school days: before 7.00 am or after 9.00 pm;
- on non-school days: before 7.00 am or after 10.00 pm.

There are no restrictions in the case of children over the upper limit of compulsory school age.

3.4.7 Rest periods and breaks

Children of school age must have:

- if working between 2 and 4 hours in a day, a rest period of at least 15 minutes in every 2 hours' continuous work;
- if working between 4 and 6 hours in a day (treating any rest period of less than 30 minutes as part of that period), a rest period of at least 30 minutes;
- if working more than 6 hours in a day, a rest period of at least one hour;
- at least 2 consecutive weeks during each year when they are not either working or required to attend school.

No child is allowed to be employed at any time unless he or she has had the required 2 week break, or could still have one.

There are no restrictions in the case of children over the upper limit of compulsory school age.

3.4.8 Registers of employment

Other than in the two cases at 3.4.4 above employers are required to maintain a register containing details of any children of school age employed by them within the previous 6 months.

The following particulars must be entered in the register for each child —

- full name;
- date of birth;
- address;

- the nature of the work undertaken;
- the date on which employment began;
- the days and number of hours for which the child is normally employed;
- the days and number of hours for which the child was actually employed each week during the previous 6 months;
- the rate of pay; and
- if known, the date on which the employment ended.

A pro forma register form for use by employers can be downloaded from the from the employment of children pages of the IOM Government website or obtained from Department of Education, Sport and Culture (in each case see "Useful Contacts" at Appendix 4).

3.4.9 Powers of entry

An authorised officer of DESC or a police constable may enter and inspect any premises where they have reason to believe that a child is being employed, and make appropriate enquiries.

3.4.10 Penalties

Where a child is employed in contravention of the provisions regarding age, prohibited occupations, hours of work or rests and breaks, the employer and the child's parents commit an offence, punishable on summary conviction by a fine of up to £10,000.

An employer who fails to maintain a register of children of school age employed by him or her, or who obstructs an authorised officer of the Department or a police constable exercising the powers conferred on them, commits an offence, punishable on summary conviction by a fine of up to £10,000.

3.5 Recruitment of young people – requirement for risk assessment etc.

(Management of Health and Safety at Work Regulations 2003 regulation 3 (made under the Health and Safety at Work, etc. Act 1974 (an Act of Parliament), as it has effect in the Island))

Before employing a person under 18, an employer must assess the risks to his or her health and safety, and provide his or her parents with information about those risks and the measures taken to minimise them. The Regulations also require the employer to ensure that employees under 18 are protected from risks to their health and safety on account of their inexperience, ignorance and immaturity, and not to employ a person under 18 in certain hazardous activities.

Breach of the requirements may give rise to civil or criminal liability under the Health and Safety at Work Act 1974 (see 17.1.2).

For further information contact the Health and Safety at Work Inspectorate (see "Useful Contacts" at Appendix 4).

3.6 Recruitment of women of child-bearing age - requirement for risk assessment etc.

(Management of Health and Safety at Work Regulations 2003 regulation 15 (made under the Health and Safety at Work, etc. Act 1974 (an Act of Parliament), as it has effect in the Island))

Employers are required to carry out a risk assessment of each workplace, which must include risks to new and expectant mothers as soon as a woman of child-bearing age is employed. It is not sufficient to wait until the employee becomes pregnant. See also 6.2.

Breach of the requirements may give rise to civil or criminal liability under the Health and Safety at Work Act 1974 (see 17.1.2).

For further information contact the Health and Safety at Work Inspectorate (see "Useful Contacts" at Appendix 4).

3.7 Recruitment of employees on limited-term contracts – health and safety requirements

(Management of Health and Safety at Work Regulations 2003 regulation 14 (made under the Health and Safety at Work, etc. Act 1974 (an Act of Parliament), as it has effect in the Island))

Employers are required to give any employees on limited-term contracts (see 1.9.5) information on:

- any special occupational qualifications or skills necessary for them to carry out their work safely; and
- any health surveillance that is legally required.

This information must be provided before employees start work.

Breach of the requirements may give rise to criminal liability under the Health and Safety at Work Act 1974 (see 17.1.2).

For further information contact the Health and Safety at Work Inspectorate (see "Useful Contacts" at Appendix 4).

3.8 Recruitment of agency workers – additional considerations

3.8.1 Recruitment of agency workers – health and safety requirements

(Management of Health and Safety at Work Regulations 2003 regulation 14 (made under the Health and Safety at Work, etc. Act 1974 (an Act of Parliament), as it has effect in the Island))

Employers hiring agency workers from an employment business (see 19.1) must provide those workers with comprehensible information on:

- any special occupational qualifications or skills necessary for them to carry out their work safely; and
- any health surveillance that is legally required.

Employers must also provide the employment business with comprehensible information on:

- any special occupational qualifications or skills necessary for the agency workers to carry out their work safely; and
- any specific health and safety risks presented by the jobs to be filled.

The employment business should pass this information on to workers in a way that they can clearly understand, and must ensure they have received and understood it.

Breach of the requirements may give rise to criminal liability under the Health and Safety at Work Act 1974 (see 17.1.2).

For further information contact the Health and Safety at Work Inspectorate (see "Useful Contacts" at Appendix 4).

3.8.2 Employment agency fees

(Employment Agencies Act 1975 and Employment Act 2006 section 21)

With some strictly defined exceptions, it is an offence, punishable by a fine of up to £5,000, for an employment agency or employment business (see 19.1) to receive from any person directly or indirectly any fee from an individual placed in employment (see 19.4).

In addition, the deduction or payment of an employment agency's fees from a worker's pay is unlawful (see 5.2.2).

3.8.3 Conduct requirements

(Conduct of Employment Agencies and Employment Businesses Regulations 1977)

The Regulations impose various requirements on persons running employment agencies and employment businesses which are relevant at recruitment. See further at 19.3.

4. Entering into the contract: written statements

4.1 Employment contracts and written statements

A contract of employment (see 1.1 and 1.2) need not be in writing, except in the case of seamen on merchant ships registered in the Island (Merchant Shipping (Masters and Seamen) Act 1979 section 1).

Prior to 1st April 2024 in the Isle of Man only employees were entitled to a written statement. From 1st April 2024 workers as well as employees are entitled to a written statement.

With some exceptions (see 4.2.6) workers are entitled to a written statement which contains various prescribed details about the particular employment (see further below).

4.2 Written statements of particulars of employment

4.2.1 The employer's obligation

(Employment Act 2006 Part II)

Employers must give workers (other than those who are to be employed for less than 4 weeks and the other exceptions at 4.2.6) a written statement of particulars of the terms of their contract of employment, which is a summary of the main terms of the contract within 4 weeks of their beginning employment.

Where the worker is to leave the Isle of Man to work within 4 weeks after the employment begins the statement is to be given before he or she leaves.

The employer must keep a copy of each statement until 6 months after the end of the employment.

4.2.2 Legal status of the written statement

The primary purpose of the written statement is to provide information, thereby avoiding misunderstandings and mismatched expectations and reducing the scope for disputes between employer and worker. However, there is nothing to stop the document also being called a 'contract of employment' or its including words to the effect that its contents are contractually binding (equally, a document that is intended, and headed as a 'contract of employment' may satisfy the statutory requirement for a written statement of particulars - and will say that it does so). Even where the statement does not identify itself as a contract of employment, it

will still normally be taken, by the Employment and Equality Tribunal or the High Court, as good evidence of the parties' rights and obligations. So, unless there is clear evidence of a later agreement on a different basis, its contents will usually be treated as binding.

4.2.3 What a statement must contain

The Employment Act 2006 requires that a statement must contain certain items of information. From 1st April 2024 a number of new items of information must be included. This are highlighted in the list below.

Written statements must contain:

- the names of the employer and the worker ;
- the date employment began;
- the date when 'continuous employment' (see 1.10) began (taking into account any relevant employment with a previous employer (see 8.10);
- the scale or rate of remuneration or the method of calculation (note that a minimum wage is specified under the Minimum Wage Act 2001 (see 5.3));
- the method by which itemised pay statements, and any standing statement of fixed deductions are provided to the workers should be given (provision of this information is a new requirement from 1st April 2024);
- the intervals at which remuneration is paid (whether weekly, monthly etc.);
- hours of work and any terms and conditions relating to normal working (in the case of shop workers, note the special rules set out at 4.3 below);
- terms and conditions relating to hours of work, including normal working hours, days of the week the worker is required to work, or whether or not the hours or days may be variable, and if so how they vary or how the variation may be determined, any paid leave in addition to holiday or sick pay, and any other benefits;
- holiday entitlement, including any entitlement to public holidays and holiday pay, such particulars being sufficient to enable the

employee's entitlement, including any entitlement to accrued holiday pay on the termination of employment to be precisely calculated (note that the Annual Leave Regulations 2007 specify a minimum entitlement of 4 weeks' paid annual leave (see 5.8));

- Note that the term 'public holidays' includes bank holidays and other holidays by Royal Proclamation (Paragraph 1 of schedule 3 to the Interpretation Act 2015).

- any other paid leave (provision of this information is a new requirement from 1st April 2024);

- any sickness and pension entitlements, including the normal retirement age in the employment (other than in the case of a public-sector pension scheme which requires new employees to be notified of its terms);

- entitlement as to notice which the worker is both obliged to give and entitled to receive (which must not be less than the minimum statutory periods of notice – see 11.1);

- the job title;

- where the employment is not intended to be permanent, the period for which it is expected to continue or, if it is for a 'limited-term' (see 1.9.5), the date when or the event on which it is to end;

- the place of work or, where the worker works at different places, an indication of that and of the employer's address;

- any collective agreements (see 1.5) which directly affect the terms and conditions of the worker, including, where the worker is not a party, the persons by whom they were made);

- details as to any work required outside the Island which will last longer than 1 month, including the duration of such work, the currency in which the worker is to be paid and any additional benefits, and any terms and conditions relating to his or her return;

- any contractual or non-contractual benefits such as bonus schemes, private health insurance, company car, gym membership and share options (provision of this information is a new requirement from 1st April 2024);

- any disciplinary rules and procedures and a person to whom an appeal can be made if he or she is dissatisfied with any disciplinary decision and how such an application should be made. Alternatively, the statement may refer the worker to a document which is reasonably accessible and which specifies any such rules and procedures. (Note there is a relevant code of practice which provides guidance – see further at 12.2.2 below);

- a specified person to whom the worker can apply for the purpose of seeking redress of any grievance, how this should be done and any further steps that may be applicable. (Note there is a relevant code of practice which provides guidance – see further at 12.2.2 below);

Where there are no particulars to be entered under a particular head (e.g. if there is no collective agreement), that fact should be stated.

4.2.4 Alternatives to inclusion of particulars in written statements

A written statement need not contain all or any of the specified particulars provided that it refers the worker to some other document which he or she has reasonable opportunities of reading in the course of his or her employment or which is made reasonably accessible to him or her in some other way.

4.2.5 Use of contracts of employment instead of written statements

An employer is not required to issue a written statement if the contract of employment contains all the required information and -

- the contract is in writing,

- the employee has a copy of it, or it is accessible to him or her, and

- he or she has been notified of the disciplinary and grievance procedures (see 4.2.3).

Including all of the details in a formal contract of employment instead of issuing a written statement is fairly common as is the inclusion of additional employment particulars other than those which are required by law (see 4.2.7).

4.2.6 Categories of workers excluded from the right

The following have no statutory entitlement to receive a written statement:

- workers who have been employed for less than 4 weeks; and
- workers whose employment is within 6 months of the ending of an earlier period of employment for which a statement was provided and where the particulars therein have not changed (but note that the date of commencement of continuous employment (see 1.10) may have changed in such circumstances).

In addition, the police (who are not workers) and some seafarers (who are covered by industry specific legislation) have no entitlement to particulars (see further at 1.11.5 and 1.11.6 respectively).

4.2.7 Additional information which may be recorded in a contract or written statement

In addition to covering all of the prescribed details employers may wish to include additional items in the written statement or contract such as –

- smoking policy;
- policy regarding private telephone calls;
- any probationary period;
- details as to any confidentiality requirements;
- details as to ownership of any intellectual property rights where the employee's work may lead to innovation etc. ;
- details of termination arrangements including circumstances in which the employer may terminate the contract without notice, circumstances in which a payment in lieu of notice may be made and when an employee may be placed on garden leave;
- any post termination restrictions such as seeking to recruit other workers of the employer, taking the employer's customers or clients, or working for the employer's competitors.

4.2.8 Changes in contract terms covered by written statements

Any change to the required content of the written statement[7] must be notified to the worker by way of a further statement within 4 weeks of the change or, where the change results from the worker being required to work outside the Island for a period of more than a month, by the time the employee leaves the Island, if earlier. If the statement is not left with the worker, the employer must keep it and give the employee access to it.

The statement can incorporate terms set out in some other document accessible to the employee, instead of setting them out in full.

It is unnecessary to notify the worker of all changes which are entered up within 4 weeks of being made in a document (e.g. a staff manual) which is accessible to the worker, if he or she has previously been notified that it will include particulars of future changes.

Where the terms of the contract are unchanged other than -

- a change in the employer's name, or
- a change in the identity of the employer which does not result in the worker's continuity of employment (see 1.10) being broken,

the employer need only give a statement of change rather than a completely new statement. But in the latter case (where the identity of the employer has changed) the statement of change must state the date on which the worker's period of continuous employment began.

4.2.9 Notification by electronic media

(Electronic Transactions Act 2000 s.4(2) and (3)(a) and (c))

Written statements, including statements of changes may be notified to employees by email or other electronic media provided that the staff concerned have agreed to accept such notification.

4.2.10 Enforcement

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[7] But this does not mean the employer has the right to change terms in the contract without the employee's consent – see further at 1.4 above.

An employee who is not given a written statement of particulars, or a notification of a change in those particulars, by his or her employer, or who contests the accuracy of the statement, may refer the matter to the Employment and Equality Tribunal. If the employment has come to an end, the reference must be made within 3 months of the end of the employment. The Tribunal will decide what particulars the employee should have been given.

Where the Tribunal finds that a statement has been issued but that it is incomplete or hasn't been updated it will make a declaration to this effect and may, depending upon the circumstances of the case, order the employer to pay to the employee up to two weeks' pay.

Where the Tribunal finds that no statement has been issued it will make a declaration to this effect and will order the employer to pay between 2- 4 weeks' pay, depending upon the circumstances of the case, to the employee.

In other circumstances where an employee brings certain other types of complaint (set out in Employment Act 2006 Schedule 1), such as unfair dismissal, and the Tribunal finds that the employer was in breach of the duty to issue written particulars at the time the proceedings were begun, it may order an employer to make a payment to the employee, the amount, to be determined in accordance with the above principles.

In addition, failure to give a written statement is an offence, punishable by a fine of up to £1,000, and a further fine of £50 a day for continued non-compliance; giving a false statement is an offence, punishable by a fine of up to £2,500. The employer may face prosecution initiated by the Department for Enterprise (see "Useful Contacts" at Appendix 4).

4.2.11 Further information

Further information, including an example of a written statement, is available in a leaflet published by the Manx Industrial Relations Service (MIRS) entitled *A Guide to Preparing Written Statements of the Terms and Conditions of Employment*. This can be downloaded from the MIRS website (see "Useful Contacts" at Appendix 4).

4.3 Additional requirements for shop workers

(Shops Act 2000 sections 13 and 23)

4.3.1 Maximum working hours

The contract of employment of a shop worker must not include a term *obliging* him or her to work:

- for more than 5 hours without an interval of at least 30 minutes;
- for a total number of hours, exclusive of intervals allowed for meals and rest in excess of:
  - 10 hours in any 24 hours; or
  - 44 hours in any week.

If the worker's contract includes an obligation contravening this requirement, the employer commits an offence, punishable by a fine of up to £2,500.

The written statement of particulars of the worker's contract of employment must include a statement that the contract does not oblige him or her to work for any spell exceeding the above hours.

'Shop worker' in this context means any person wholly or mainly employed in a shop in connection with the serving of customers or the receipt of orders or the dispatch of goods and 'shop' includes any premises, stall, vehicle or place in or from which any retail trade or business is carried on.

4.3.2 Explanatory statement

An employer must give a shop worker, within 2 months of commencing employment, an explanatory statement entitled *Statutory Rights in Relation to Shop Work on Sundays, Christmas Day and Good Friday*. The statement is reproduced at Appendix 6.

5. Statutory employment rights: pay and holidays

5.1 Itemised pay statements

(Employment Act 2006 Part II)

5.1.1 Right to an itemised statement

A worker has the right to be given an itemised statement, setting out the gross earnings, net pay, and fixed and variable deductions, at or before the time when any payment of wages or salary is made.

Where different parts of the net amount are paid in different ways the amount and method of payment of each part-payment must also be set out.

From 1 April 2024, if someone's hours often change from one pay period to the next, an employer must record variable hours on the payslip.

This might be if the worker:

- worked overtime; or
- the number of hours they work changes in each pay period.

How this is recorded will depend on the working arrangement.

The statement need not itemise fixed deductions, provided that a standing statement of such deductions is given to employees. In the event of any change in one or more details, written notification must be given to the employee. In this case a consolidated statement must be reissued at least annually.

5.1.2 Enforcement

The right may be enforced by complaint to the Employment and Equality Tribunal, which may determine the information which should have been included in the statement. If the employment has come to an end, the reference must be made within 3 months of the end of the employment.

Where the Tribunal finds that a pay statement has been issued but that is incomplete it will make a declaration to this effect and may, depending upon the circumstances of the case, order the employer to pay to the employee up to two weeks' pay.

Where the Tribunal finds that no pay statement has been issued it will make a declaration to this effect and will order the employer to pay between 2- 4 weeks' pay, depending upon the circumstances of the case, to the employee.

Also, failure to give an itemised statement is an offence, punishable by a fine of up to £1,000, and a further fine of £50 a day for continued non-compliance; giving a false statement is an offence, punishable by a fine of up to £2,500. The employer may face prosecution initiated by the Department for Enterprise (see "Useful Contacts at Appendix 4).

5.2 Deductions from wages

(Employment Act 2006 sections 21–28)

An employer must not make any deduction from a worker's wages nor receive a payment from a worker except in specified circumstances. 'Deduction' includes non payment of any element of wages (see 5.2.1) which is due to a worker.

5.2.1 Meaning of 'wages'

The term 'wages' for this purpose means any sum payable to the worker by his or her employer in connection with the employment. It includes fees, bonuses, commission, holiday pay, other emoluments, payments for time off (see 7.4, 8.2, 8.3 and 6.1) and any amount owed in lieu of notice or in respect of the worker's statutory rights in the period of notice (see 11).

However, certain payments are expressly excluded from the definition of 'wages', including loans and advances on wages; expenses; pensions, allowances or gratuities; redundancy payments; any payments made to the worker otherwise than in his or her capacity as a worker; and any payments or benefits in kind.

Note that, subject to the 6 year time limit in the Limitation Act 1984, individuals may still be entitled to make a claim for breach of contract in the High Court for such payments if the deductions are in breach of contract (see 1.14).

5.2.2 Unlawful deductions

Deductions or payment from a worker's wages in respect of the following are unlawful

- an employment agency's fees (see 3.8.2);
- any fee for a work permit under the Control of Employment Act 2014.

Subject to the exceptions at 5.2.3 below any other deduction from the wages of a worker or receipt of payment from a worker is unlawful unless:

- it is required or authorised by statute (such as national insurance and income tax);
- it is required or authorised by any relevant provision of the worker's contract; or
- the worker has previously signified in writing his or her agreement or consent to the making of it.

5.2.3 Exceptions

The general rules at 5.2.2 do not apply in the circumstances where the deduction or payment:

- is for the purpose of reimbursement of the employer in respect of an overpayment of wages or expenses;
- arises out of disciplinary proceedings held under a statutory provision;
- arises out of a requirement on the employer by a statutory provision to deduct and pay over sums to a public authority;
- is made under an arrangement to deduct and pay sums over to a third party, provided that the worker has consented or agreed in writing to the arrangement, or else it is a relevant provision of the contract to which the worker has consented or agreed to in writing;
- is made on account of the worker having taken part in industrial action; or
- is made with the worker's prior written agreement or consent and is in satisfaction of a court or tribunal order requiring payment from the worker to the employer.

In retail employment, there is a limit of 10% of the gross pay on all deductions from any single pay instalment (except the final instalment of wages) made in respect of stock deficiencies or cash shortages. Any such deduction must also meet the general criteria as set out above.

5.2.4 Enforcement

The worker's right may be enforced by complaint to the Employment and Equality Tribunal within 3 months of the action in question, but the Tribunal can allow a complaint out of time if there was a good reason for the delay. In the case of a series of deductions or payments the 3 months run from the last deduction or payment in the series; a complaint may then be made about the entire unlawful series but this is subject to an overall limitation period of 6 years.

If the Tribunal finds that the employer has made or received an unauthorised deduction or payment, it will order the employer to:

- repay the unauthorised deduction or payment to the worker; and
- pay an additional amount of up to 4 weeks' pay (see 1.16), if it considers this to be 'just and equitable in all the circumstances'.

An employer cannot subsequently recover that amount even if it is a genuine debt.

5.3 Minimum wage

(Minimum Wage Act 2001 and Minimum Wage Regulations 2001; annual minimum wage regulations which set minimum wage rates; see also Employment Act 2006 section 121)

5.3.1 Entitlement

The Minimum Wage Act 2001 requires an employer to pay most adult workers at least the minimum wage. A worker who is entitled to the minimum wage but is paid less has a contractual right to be paid the difference.

Those who are entitled to be paid the minimum wage include:

- salaried hours workers;
- agency workers;

- home workers;
- piece workers;
- commission workers; and
- agricultural workers (for whom special rules apply – see 5.4).

Those not entitled to the minimum wage include:

- the genuinely self-employed;
- workers of compulsory school age (see 3.4.1);
- persons on Government schemes designed to provide them with training, work experience or temporary work;
- persons on work experience which is connected to a higher education course;
- share fishermen;
- unpaid voluntary workers;
- members of a religious community;
- persons living in the employer's home working as part of the family and not paying for subsistence (for example, au pairs).

Entitlement of apprentices

The minimum wage does not need to be paid to apprentices (i.e. those trainees under formal training agreement with their employer and the Department of Education, Sport and Culture who:

- have not attained the age of 19; or
- have attained the age of 19 but are within the first 12 months of their apprenticeship.

But an apprentice who has attained the age of 25 will be entitled to receive the minimum wage.

5.3.2 Rates of minimum wage

A worker's hourly rate of pay must not be less than the appropriate rate of the minimum wage (which is subject to annual review). The hourly rates are as follows:

Description of worker	*Rate from 1st April 2022*	*Rate from 1st April 2023*
Over compulsory school age but under 18	£6.80	£8.05
Aged 18 or over	£9.50	£10.75
Development worker	£8.05	N/A

5.3.3 Calculation of a worker's hourly rate

A worker's hourly rate of remuneration is calculated by dividing the total gross pay for the pay reference period by the number of hours worked.

Gross pay includes commission and bonuses. It excludes:

- overtime or shift premiums;
- unsocial hours allowances;
- stand-by payments;
- any gratuities received either directly from customers or paid through the payroll;
- benefits in kind, except accommodation - see further at 5.3.4 below.

The pay reference period is the normal period for which the worker is paid, unless that period is more than one month, in which case it is one month. If pay for work done in one pay reference period is not actually paid until the next pay reference period, it can be attributed to the original pay reference period.

Hours that count for calculating the hourly rate depend on the type of work involved:

- **Time work** (payment by number of hours 'worked', wherever the location):

  the hours include those on business travel during normal working time and on stand-by or call near the workplace (but not at home) and exclude those when the worker is on rest break or absent.

- **Salaried work** (payment in equal instalments through the year for a set basic minimum number of hours):

  the hours are as for time work, except that absences attracting normal pay and rest breaks forming part of basic hours are counted.

- **Output work** (payment by number of items produced or sales made, unless classified as 'time work'):

  the hours are those on business travel plus either (i) every hour of actual work or (ii) those fixed (at least 80% of those taken by an average worker) by a written 'fair estimate agreement'. The worker must keep a record of actual hours worked and give it to the employer at the end of pay reference period.

- **Unmeasured work** (not time, salaried or output work and no specified hours):

  the hours are those on business travel plus either every hour of actual work or those fixed by written 'daily average agreement'.

5.3.4 Accommodation offset

Provision of accommodation for a worker by an employer is the only benefit in kind that can count towards minimum wage pay. There are special rules for calculating how much can be counted towards minimum wage pay for the accommodation that is provided

There is a limit on the amount that an employer providing accommodation can count towards minimum wage pay. (An employer may charge or deduct more than the maximum permitted accommodation offset from a worker's pay but the excess amount will not count towards minimum wage pay). The value of the "accommodation offset" cannot exceed £1.05 an hour, £6.00 a day (whichever of the daily rate or the number of hours worked by the hourly rate is the lesser amount) or £42 a week.

5.3.5 Records

Employers are obliged to keep for 3 years records capable of establishing that a worker is receiving or has received the minimum wage.

A worker has a right of access to his or her employer's records if he or she reasonably believes the employer has paid less than the minimum wage and he or she has given notice to the employer requesting the relevant records. An authorised officer of the Department for Enterprise may also require the employer to produce records.

5.3.6 Enforcement

The right to a minimum wage is enforceable in a number of different ways.

A worker (or former worker) who is entitled to the minimum wage but is paid less may:

- sue the employer in the High Court (see 1.14) for the difference; or

- complain to the Employment and Equality Tribunal on the grounds that an unauthorised deduction has been made from the worker's wages (see 5.2 above).

Alternatively, an authorised officer of the Department for Enterprise may serve an enforcement notice on the employer requiring him or her to start paying the minimum wage and to make good previous underpayments. If the employer fails to comply with the notice, the authorised officer can:

- complain to the Employment and Equality Tribunal on the grounds that an unauthorised deduction has been made from the worker's wages; or

- commence proceedings in the High Court on behalf of the worker;

- issue a penalty notice under which a daily penalty is payable to the Treasury.

Refusing or wilfully neglecting to pay a worker the minimum wage is an offence, punishable on summary conviction by a fine of up to

£5,000. An authorised officer of the Department for Enterprise may initiate prosecution for an offence. (Other offences include failing to keep records, making or producing false records, obstructing an authorised officer and failing to give him or her information or produce a document on request.)

The right of access to records may be enforced by complaint to the Employment and Equality Tribunal within 3 months of the end of 14 days after service of the production notice on the employer, but the Tribunal can allow a complaint out of time if there was a good reason for the delay. Where the complaint is successful the Tribunal makes a declaration, and may award compensation of 80 times the minimum wage.

The right not to be subjected to any detriment (see 5.3.7) may be enforced by complaint to the Employment and Equality Tribunal within 3 months of the act or failure (or the last of them), but the Tribunal can allow a complaint out of time if there was a good reason for the delay. Where the complaint is successful the Tribunal makes a declaration, and may award compensation of an amount which the Tribunal considers just and equitable having regard to the worker's loss.

5.3.7 Detriment

A worker has the right not to suffer detriment for seeking to enforce a right to the minimum wage, or taking action resulting in the prosecution of the employer for an offence under the Minimum Wage Act, or because the worker qualifies or will or might qualify for the minimum wage. This does not cover dismissal of an employee but such a dismissal is automatically unfair (see 12.3.1).

The right may be enforced by complaint to the Employment and Equality Tribunal, as for assertion of a statutory right (see 8.4.2).

5.4 Agricultural workers

(Agricultural Wages Act 1952)

The Agricultural Wages Board fixes rates of wages (for both time and piece work), holidays, and holiday pay for agricultural workers by order.

A minimum wage rate set by the Board must not be less than the appropriate rate set under the Minimum Wage Act 2001. Prosecutions cannot be brought or complaints made under both Acts in respect of the same set of circumstances.

For contact details of the Agricultural Wages Board and for further information see "Useful Contacts" at Appendix 4.

5.5 Equal pay rights etc.

(Equality Act Parts 5 and 9 and Schedule 7; Employment and Equality Tribunal Rules 2018; Equality Act 2017 (Sex Equality Rule) (Exceptions) Regulations 2018)

The following rules form part of the framework provided by the Equality Act 2017 to eliminate sex discrimination. For further information on that Act see section 9.

A *'sex equality clause'* is implied into every contract of employment (unless there is already an express equality clause in a particular contract) and a *'sex equality rule'* is to be read into every occupational pension scheme (unless the scheme already contains such a rule). These provide that men and women must have the same terms of employment and occupational pension entitlements if a man and a woman are engaged in -

- *like work*, which is work of the same or a broadly similar nature and, if there are differences between their work, they are not of practical importance;

- *work rated as equivalent* in accordance with a job evaluation study by reference to certain factors; or

- *work of equal value,* that is different work in respect of which there has been no job evaluation study but the work is nevertheless equal in terms of the demands made on the man and woman by reference to factors such as effort, skill and decision-making;

and the man and woman -

- are employed by the same or an associated employer at the same establishment or workplace; or

- by the same or an associated employer at a different establishment or workplace, provided that common terms and conditions apply either generally between employees or as between the woman and her comparator.

An associated employer means a company over which another company has control, or companies over which a third party has control (for example, the employer's parent company).

A sex equality clause does not operate where more favourable treatment is afforded to women than men in connection with pregnancy or childbirth or because of a statutory requirement.

The Equality Act 2017 (Sex Equality Rule) (Exceptions) Regulations 2018 contain various permitted exceptions to a sex equality rule, for example bridging pensions which are paid to men before they reach state pension age.

5.5.1 Comparators

A person who claims the benefit of a sex equality clause or sex equality rule must be able to show that his or her work is equal to that of a chosen comparator of the opposite sex who meets the criteria at 5.5 above.

A comparator can include the person's predecessor in the same job.

5.5.2 Defences open to employers

The possible defences that an employer may raise in response to an equal pay claim are:

- the woman and her comparator are not doing equal work;
- the chosen comparator is not one allowed by law (for example he or she is not in the same employment);
- the difference in pay is genuinely due to a material factor, which is not related to the sex of the jobholders.

Once a woman has shown that she is doing equal work with her male comparator, the equality clause will take effect unless her employer can prove that the difference in pay or other contractual terms is due to a material factor which does not itself discriminate against her either directly or indirectly because of her sex.

If there is evidence that the factor which explains the difference in terms may be indirectly discriminatory, the employer must show that it is objectively justified (as being a proportionate means of meeting a legitimate aim).

5.5.3 Enforcement

A sex equality clause and sex equality rule may be enforced by complaint to the Employment and Equality Tribunal. If the employment has terminated, a complaint must normally be brought

within 6 months of termination. An employer, in the case of a equality clause, and the trustees or managers of the scheme, in the case of an equal treatment rule, may apply to the Tribunal for an order declaring the rights of the parties.

The Tribunal also has jurisdiction to determine a question that relates to a non-discrimination rule and which is referred to it by the High Court.

Where proceedings are brought in the High Court, the Court cannot deal with the question itself but may refer the case to the Tribunal for determination.

If a complaint for breach of an equality clause succeeds, the Tribunal may make a declaration clarifying what the rights of the parties to the complaint are. The Tribunal can also order the employer to pay the complainant arrears of pay or damages, normally two years from the date a complaint is made.

In pensions cases the Tribunal may make a declaration and require the employer to provide the scheme with the necessary resources to ensure equality.

It is unlawful for an employer to victimise a worker for bringing Tribunal proceedings or for giving evidence about a complaint.

5.5.4 Enforcement – work of equal value cases

(Equality Act section 121- 122; Schedule 3 to the Employment and Equality Tribunal Rules 2018)

Where the Tribunal has to decide if the work of a complainant and comparator are of equal value, it may require an independent expert to prepare a report on the matter. In that case, (unless the Tribunal withdraws its request for a report) it must wait for the expert's report before deciding whether the work is of equal value.

Where a work of equal value claim is successful the Tribunal can only order the employer to pay the complainant arrears of pay or damages from 1st January 2020, (the date that provisions on work of equal value came into operation).

5.6 Maternity equality clause and maternity equality rule

(Equality Act 2017 section 19, 65-68 and schedule 9 para 14)

The following rules are part of the framework provided by the Equality Act 2017 to eliminate discrimination on the ground of pregnancy and maternity which, together, are a 'protected characteristic' under that Act. For further information on the Equality Act see section 9.

5.6.1 Treatment of maternity related pay etc.

While women on maternity leave have no statutory right to pay for the duration of their maternity leave, the Equality Act 2017 inserts a *'maternity equality clause'* into a woman's contract (unless already expressly included) which deals with certain aspects of a woman's maternity-related pay, that is any contractual pay to which a woman is entitled as a result of being pregnant or in respect of times when she is on maternity leave, and her pay when she returns to work.

The maternity equality clause deals with the following aspects of a woman's pay –

- the calculation of any contractual maternity-related pay;
- any bonus payments prior to or during maternity leave; and
- any pay increases following maternity leave.

The maternity equality clause has the following effects –

- any pay increase a woman receives or would have received had she not been on maternity leave must be taken into account in the calculation of her maternity-related pay;
- any pay or bonus related to time before the maternity leave starts, during compulsory maternity leave or after maternity leave ends must be paid without delay. So if a woman becomes entitled to a contractual bonus for work she undertook before she went on maternity leave, she should receive it when it would have been paid had she not been on maternity leave; and
- on her return to work a woman should receive any pay increases which would have been paid to her had she not been on maternity leave.

5.6.2 Treatment of occupational pension payments during maternity leave etc.

The Act provides specific protection for women on maternity leave in respect of occupational pension entitlements.

An occupational pension scheme is treated as including a *'maternity equality rule'* if it does not have such a rule already; this is analogous to the maternity equality clause (see above). The effect of a maternity equality rule is to ensure that a woman on maternity leave is treated as if she were at work for pension purposes.

The rule provides that any term or discretion in a scheme which treats a woman on maternity leave differently from the way she would be treated if she were not on maternity leave is modified to remove the difference. The rule applies to a term or discretion relating to any of the following –

- scheme membership;
- accrual of scheme rights; and
- determination of benefits.

A woman must continue to accrue rights in an occupational pension scheme during –

- periods of ordinary maternity Leave (see section 6.3.2), whether paid or unpaid, where the expected week of childbirth is on or after 30th September 2007; and
- paid periods of additional maternity leave (see section 6.3.3).

But during unpaid period of additional maternity leave employers are not required to continue to provide for the accrual of pension rights.

A woman's contributions to the scheme during maternity leave need be determined only by reference to the amount she is paid during maternity leave.

5.6.3 Enforcement

A complaint of breach of a maternity equality clause or maternity equality rule may be enforced by complaint to the Employment and Equality Tribunal in a similar way to a complaint of breach of a sex equality clause or sex equality rule (see 5.5.3 above).

5.7 Pay secrecy

(Equality Act 2017 section 69)

Any terms of employment or appointment that prevent or restrict people from:

- disclosing or seeking to disclose the terms of his or her employment; or
- seeking disclosure of information from a colleague or former colleague about the colleague's terms,

are unenforceable if they constitute a 'relevant pay disclosure', the purpose of which is to find out whether there is a connection between any difference in pay and a 'protected characteristic' (see 9.2).

5.8 Annual leave with pay

(Employment Act 2006 sections 62, and 167; the Annual Leave Regulations 2007; and the Annual Leave (Agency Workers and Trainees) Order 2007)

Workers' statutory rights to annual leave are explained more fully in a separate booklet *Holidays and Holiday Pay* which can be downloaded from the employment law pages of the IOM Government website (see "Useful Contacts" at Appendix 4).This section accordingly gives only an outline of the rights.

5.8.1 Entitlement

All workers over compulsory school age (see 3.4.1), including agency workers (see 1.9.1) and trainees, are entitled to:

- 4 weeks' paid leave each year ('**statutory leave**'); and
- payment, when their employment terminates, for any leave to which they are entitled but which they have not taken.

There is no qualifying period for these rights. But in the first year of a worker's employment, his or her entitlement accrues at the rate of one twelfth per month.

A week's leave should allow a worker to be away from work for a week. It should be the same amount of time as the working week: if

a person works a 5 day week, he or she is entitled to 20 days' leave in a leave year; if he or she works 3 hours a week, the entitlement is 12 hours' leave.

Employers may count any paid bank holidays taken by workers towards their entitlement.

5.8.2 Interaction with family leave

Entitlement to statutory annual leave is not affected by any period of ordinary or additional maternity leave, ordinary or additional adoption leave, parental leave or paternity leave. Further, an employer may not require a worker to take annual leave on any day when the worker is taking such leave. For the interaction of ordinary maternity leave and additional maternity leave with annual leave see 6.3.2 and 6.3.3.

5.8.3 Interaction with sick leave

Entitlement to statutory annual leave is not affected by sick leave which does not exceed 26 weeks in a complete leave year. Where the amount of sick leave is greater than 26 weeks in a complete leave year (or a proportionate period in a part year), the entitlement to annual leave is reduced proportionately and totally extinguished in the case where the worker has been sick for the whole of a leave year (or part-leave year).

5.8.4 Carrying over leave and payment in lieu

The Regulations make no provision for carrying over statutory leave from one leave year to the next. So if a worker's holiday rights are confined to those which he or she is granted by the Regulations and he or she does not exercise the right to take annual leave within a leave year, then the statutory entitlement to paid holiday will be lost.

Nor do the Regulations make any provision for unused leave to be replaced with a payment in lieu, except where employment is terminated.

5.8.5 Notice of intention to take leave

Workers are required to give notice to their employers if they wish to take a holiday. The notice must be twice as long as the period of leave requested (e.g. a worker wanting one week's holiday must give 2 weeks' notice). The employer can refuse permission by giving notice at least as long as the leave requested.

5.8.6 Requirement to take leave at specific time

An employer may require a worker to take all or any of his or her annual leave at specific times, provided that the worker is given prior notice of at least twice the period of leave to be taken.

5.8.7 Contractual rights

A worker's contract may confer rights to paid holiday more advantageous than the statutory rights. In that case the worker may exercise whichever right is more favourable.

5.8.8 'Relevant agreements'

Certain aspects of the statutory regime (such as the leave year commencement date and notice requirements) may be varied to a certain extent by a 'relevant agreement', i.e. a collective agreement (see 1.5) with a trade union, or any other agreement in writing which is legally enforceable between the worker and the employer.

5.8.9 "Rolled up" holiday pay

A worker's holiday pay is normally paid when annual leave is taken. But in some cases it can be paid in instalments, on an accruing pro-rata basis, as an addition to the worker's ordinary wages. This is known as 'rolled-up' holiday pay. The Regulations allow rolled-up holiday pay to be paid in respect of annual leave, subject to certain conditions:

- a 'relevant agreement' (see 5.8.8 above) must specify the amount or proportion of the gross pay which is in respect of a period of annual leave;
- the amount or proportion must be a genuine addition to the regular remuneration (i.e. the pay net of holiday pay); and
- a pay statement must specify the amount of remuneration in respect of the period of annual leave (even if the worker would not normally be entitled to receive a pay statement because he or she is not an employee).

5.8.10 Enforcement

The right to annual leave may be enforced, in case of the employer's failure to allow the worker to take annual leave or to make a payment due, by complaint to the Employment and Equality Tribunal within 3 months of the action in question (or the last of a series of

actions), but the Tribunal can allow a complaint out of time if there was a good reason for the delay. Where the complaint relates to the employer's failure to pay 2 or more amounts of holiday pay, the 3-month limit applies to the last of those amounts, but the Tribunal cannot consider a complaint relating to a payment which was due more than 12 months before the complaint was made. Where the complaint is successful the Tribunal makes a declaration, and may award compensation of an amount which it considers just and equitable, having regard to the employer's infringement and the worker's loss.

5.8.11 Detriment

A worker has the right not to suffer detriment for asserting the right to annual leave. Dismissal of an employee for asserting the right to annual leave is automatically unfair (see 9.3.1).

The right may be enforced by complaint to the Employment and Equality Tribunal, as for assertion of a statutory right (see 8.4.2).

5.9 Working hours

With the exception of the right to paid annual leave (see 5.8), legislation on working time is limited to young workers (see 3.4) and retail workers (see 4.3.1). However, employers have both common law health and safety duties and statutory obligations under health and safety legislation (see 17.1.1 and 17.1.2 respectively), which would be relevant in the circumstance where an employer required an employee to work excessively long hours and it was reasonably foreseeable that the work might damage the employee's health.

6. Statutory employment rights: family rights

6.1 Time off with pay for ante-natal care

(Employment Act 2006 sections 43-44)

An employer must not unreasonably refuse to allow a pregnant employee time off with pay to attend an appointment for ante-natal care, irrespective of her hours worked or length of service. Such care isn't limited to medical appointments - it can also include antenatal or parenting classes.

After her first appointment the employer can require to see a certificate issued by a doctor or midwife that the employee is pregnant, and her appointment letter or card.

The right may be enforced, in the case of the employer's failure to allow time off with pay, by complaint to the Employment and Equality Tribunal within 3 months of the appointment concerned, but the Tribunal can allow a complaint out of time if there was a good reason for the delay. If the complaint is successful, the Tribunal makes a declaration and awards the amount of pay which is due (or would have been due if time off was unreasonably refused).

6.2 Pregnancy: health and safety considerations

6.2.1 Measures to avoid risks to new or expectant mothers

(Management of Health and Safety at Work Regulations 2003 regulation 15)

Employers are required to take reasonable measures (over and above those specifically required by health and safety legislation) to avoid risks to an individual employee who is pregnant, within 6 months of having given birth or breastfeeding. This applies to risks of disease only to the extent that they are greater than those outside the place of work.

To be afforded protection the employee must have notified the employer in writing of her condition.

Breach of the above requirement is an offence under the Health and Safety at Work etc. Act 1974 punishable by a fine of up to £20,000 on summary conviction, or an unlimited fine on conviction on information. A contravention should be reported to the Health and

Safety Inspectorate (see "Useful Contacts" at Appendix 4). A breach may also give rise to a claim for damages for any injury suffered.

For the requirement for a risk assessment where a woman of child-bearing age is employed, see 3.6.

6.2.2 Suspension on maternity grounds

(Employment Act 2006 sections 74-78; see also the Suspension from Work on Maternity Grounds Order 2007 and the Management of Health and Safety at Work Regulations 2003 regulation 15)

An employee who requires protection at work because she is pregnant, has recently given birth, or is breastfeeding, is entitled to be offered suitable alternative work (on the same or no less favourable terms) or, if none is available, to be suspended on pay.

The right may be enforced, in case of the employer's failure to offer alternative work, or to pay the employee on any day during the suspension, by complaint to the Employment and Equality Tribunal. The complaint must be made within 3 months of the beginning of the suspension (in the case of failure to offer work), or 3 months of the day in question (in case of failure to pay), but the Tribunal can allow a complaint out of time if there was a good reason for the delay. If the complaint is successful, the Tribunal awards compensation of the amount which it considers just and equitable, having regard to the employer's infringement and the employee's loss (in the case of failure to offer work) or the amount of pay due (in the case of failure to pay).

6.3 Maternity rights

(Employment Act 2006 sections 65, 79-83 and 114 and the Maternity Leave Regulations 2007; Equality Act 2017 section 19 and 65-68)

Employees' statutory maternity rights are explained more fully in a separate booklet *Maternity Rights: a Guide.* A copy of the booklet can be downloaded from the employment law pages of the IOM Government website (see "Useful Contacts" at Appendix 4). This section accordingly gives only an outline of the rights.

6.3.1 Compulsory leave

(Employment Act 2006 section 80 and the Maternity Leave Regulations 2007 regulation 10)

An employer must not permit any worker to work for the 2 weeks immediately following childbirth.

Contravention of this requirement is an offence, punishable by a fine of up to £5,000, which should be reported to the Health and Safety at Work Inspectorate (see "Useful Contacts" at Appendix 4. A breach may also give rise to a claim for damages for any injury suffered.

6.3.2 Ordinary maternity leave

(Employment Act 2006 section 79 and the Maternity Leave Regulations 2007)

An employee who fulfils certain conditions is entitled to take '**ordinary maternity leave**' of up to 26 weeks without pay, irrespective of her length of service.

Eligibility

The conditions are that:

- by the 15th week before her 'expected week of childbirth' (EWC), the employee notifies the employer of her pregnancy, her EWC and when she wants her leave to start, and

- if requested, she provides a certificate from a doctor or midwife that she is pregnant.

The employee may change the starting date of her leave, provided that she tells her employer at least 28 days in advance (or as soon as reasonably practicable).

The employer must respond in writing within 28 days to an employee's notification of her planned leave, stating the date on which she is expected to return to work if she takes her full entitlement to maternity leave.

Timing

The employee can choose to start her leave at any time during the 11 weeks before the EWC. But if the employee is absent from work due to a pregnancy-related reason the maternity leave period starts automatically on the day after the first day of absence following the beginning of the 4th week before the expected week of childbirth. She must notify her employer that she is absent from work wholly or

partly because of pregnancy and of the date on which her absence for that reason began as soon as is reasonably practicable.

Employee's rights during ordinary maternity leave

The employee's contract of employment continues, and all contractual benefits, apart from pay, (such as, for example mobile phones, membership of any health club or use of a company car) are to be maintained, during ordinary maternity leave.

Whereas there is no requirement for an employer to pay an employee who is on maternity leave a woman may nevertheless be entitled under her contract of employment to be paid during maternity leave.

Annual leave

The employee's rights to statutory and contractual annual leave continue to accrue whilst she is on ordinary maternity leave (see also 5.8).

6.3.3 Additional maternity leave

An employee who fulfils certain conditions, including a minimum length of service, is entitled to take **'additional maternity leave'** of up to 26 weeks without pay, immediately after the end of her ordinary maternity leave.

Eligibility

The conditions are that:

- the employee is entitled to ordinary maternity leave (see 6.3.2), and
- at the beginning of the 14th week before her EWC, she has been continuously employed for at least 26 weeks.

Employee's rights during additional maternity leave

The employee's contract of employment continues during additional maternity leave, but only certain contractual benefits remain in force, namely the employer's obligation of trust and confidence; the employer's requirement to give notice of termination; redundancy payment provisions; and disciplinary and grievance procedures. The employee is bound by the implied obligation of good faith;

requirements for notice of termination; confidentiality; rules as to acceptance of gifts and benefits; and rules as to participation in another business.

Annual leave

During additional maternity leave there is no entitlement to contractual annual leave in excess of the statutory minimum. The employee will continue to accrue statutory annual leave whilst on additional maternity leave provided that the total leave taken or accumulated in the leave year does not exceed the 4 week statutory entitlement (see also 5.8).

6.3.4 Return to work after maternity leave

The same requirements apply to both ordinary maternity leave and additional maternity leave.

Notice

If the employee wishes to return at the end of the appropriate maternity leave period, she does not have to give notice of her intention to do so. If she wishes to return before the end of the leave period, she must give her employer at least 28 days' notice; if she does not, the employer may postpone her return by up to 28 days.

Work

The employee has the right to return to the same job in which she was employed before her absence, with the benefit of all rights as if she had not been absent, following a period of ordinary maternity leave, or a period of maternity leave which followed on from a period of ordinary maternity leave or ordinary adoption leave or a period of parental leave of up to 4 weeks. In any other case of ordinary maternity leave, or after additional maternity leave, she may return to the same job if that is reasonably practicable; otherwise a suitable alternative job must be offered. If she is made redundant during a period of ordinary or additional maternity leave, she is entitled to be offered alternative employment which is suitable and appropriate and on no less favourable terms.

Refusal to allow an employee to return to work after maternity leave constitutes dismissal, and is automatically unfair (see 12.3.1).

Part-time working

If, without justification on business grounds, an employer refuses the employee's request to return part-time, the employee may be able to bring a complaint of indirect sex discrimination under the Equality Act 2017 (see 9). See also 'flexible working' (6.7).

6.3.5 Detriment

(Employment Act 2006 sections 65 and 114; see also the Maternity Leave Regulations 2007 regulation 16)

An employee has the right not to suffer detriment (e.g. withholding benefits or opportunities for transfer, training or promotion) taken against her because she:

- is pregnant;
- has given birth to a child;
- is the subject of a requirement or recommendation which might lead to her being suspended (see 6.2.2);
- took or sought to take ordinary maternity leave or additional maternity leave;
- availed herself of any of the contractual benefits of her employment (see 6.3.2), or
- failed to return after a period of ordinary or additional maternity leave where either:
    - the employer did not notify her of the date when the period would end, and she reasonably believed that it had not ended, or
    - the employer gave her less than 29 days' notice of that date, and it was not reasonably practicable for her to return on that date.

The right does not cover dismissal for any of those reasons, but such dismissal is automatically unfair (see 12.3.1).

The right may be enforced by complaint to the Employment and Equality Tribunal within 3 months of the action in question (or the last of a series of actions), but the Tribunal can allow a complaint out of time if there was a good reason for the delay.

Where the complaint is successful the Tribunal makes a declaration, and may award compensation of an amount which the Tribunal considers just and equitable, having regard to the employer's infringement and the employee's loss. The maximum amount of compensation that can be awarded to an employee who has suffered a detriment is the sum of the basic award and the compensatory award that could be awarded on a finding of unfair dismissal (see 12.4.2).

6.3.6 Protection from discrimination under the Equality Act 2017

Pregnancy and maternity, and sex, are protected characteristics under the Equality Act (see section 9).

Rights under the Act apply not only to employees but also to persons who provide their services personally to organisations with whom they contract such as casual workers, freelance workers, employment agency staff and some independent contractors.

No qualifying period is required to enjoy any of the rights in the Equality Act.

As part of this protection, while a woman does not have a right to pay when she is on maternity leave, the Equality Act does provide some specific safeguards in respect of certain aspects of a woman's pay by means of a *'maternity equality clause'* and her occupational pension entitlements by a *'maternity equality rule'*. These are implied, respectively, into a woman's employment contract and the occupational pension scheme unless already expressly included (see section 5.6 for further details).

Employers should take care to ensure that their policies and practices concerned with pregnancy and maternity are lawful under the Equality Act (see section 3).

6.3.7 Maternity Allowance

Women who meet the qualifying conditions based on their recent employment and earnings record may claim Maternity Allowance from the Social Security Division of the Treasury for up to 39 weeks.

Maternity Allowance is payable whether or not the employee is entitled to maternity pay under the terms of her contract of employment.

For more information see the Treasury leaflet MA 5 A Guide to Maternity Allowance.

For contact details of the Treasury see Appendix 4.

6.4 Paternity rights (birth)

(Employment Act 2006 sections 65, 90-94 and 114 and the Paternity Leave (Birth) Regulations 2007)

Employees' statutory paternity rights are explained more fully in a separate booklet "Paternity Rights: a Brief Guide". A copy of the booklet can be downloaded from the employment law pages of the IOM Government website (see "Useful Contacts" at Appendix 4). This section accordingly gives only an outline of the rights.

6.4.1 Entitlement to paternity leave (birth)

An employee is entitled to take up to 2 weeks' paternity leave (birth) without pay on the birth of a child. The leave can be taken either as one week or as two consecutive weeks; if the employee returns to work after one week, the entitlement to the second week is lost. Only one period of leave may be taken in respect of a pregnancy, even if more than one child is born.

The employee must:

- have or expect to have responsibility for the child's upbringing; and
- be either the biological father of the child, or the mother's husband or partner (including a same sex partner); and
- have worked continuously for the employer for 26 weeks before the 15th week before the baby is due.

6.4.2 Notice of intention to take leave

The employee must tell the employer of his or her intention to take paternity leave by the 15th week before the baby is due and must tell the employer:

- in what week the baby is due;
- whether he or she wishes to take one or two weeks' leave; and

- when he or she wants the leave to start (the day of the birth, or a given number of days after the birth, or a particular date can be specified).

The employer can require the employee to give a written declaration as to his or her intention to take paternity leave and entitlement to do so.

The employee can change his or her mind about when he or she wants the leave to start, provided that the employer is notified at least 28 days in advance (unless this is not reasonably practicable).

6.4.3 Timing

The leave must be taken:

- within 56 days of the actual birth of the child; or
- if the child is born early, within the period from the actual date of birth up to 56 days after the expected week of birth.

The leave must begin on the day specified in the employee's notice (or last notice) to the employer. But if the employee has specified a particular date and the child is not born by that date, he or she must choose another day for the leave to begin and notify the employer as soon as practicable. If the employee has notified the employer that leave is to begin on the day of the birth and is at work on that day, the leave begins on the next day.

6.4.4 Employee's rights during leave

The employee's contract of employment continues, and all contractual benefits, apart from pay, are to be maintained, during paternity leave (birth).

6.4.5 Return to work

The employee is entitled to return to the same job following an isolated period of paternity leave (birth), or a period of paternity leave (birth) which followed on from a period of ordinary adoption leave or a period of parental leave of up to 4 weeks. In any other case the employee is entitled to return to the same job or, if that is not practicable, another job which is suitable and appropriate.

6.4.6 Detriment

An employee has the right not to suffer detriment (e.g. withholding benefits or opportunities for transfer, training or promotion) taken against him or her for taking or seeking to take paternity leave (birth). The right does not cover dismissal for any of those reasons, but such dismissal is automatically unfair (see 12.3.1). Enforcement of this right is broadly the same as for maternity leave (see 6.3.5).

6.4.7 Paternity Allowance

Paternity Allowance, a social security benefit may be payable, to people who meet the same basic qualifying conditions which apply for paternity leave (see 6.4.1 above). Paternity Allowance is payable for one or two weeks, depending on the length of leave taken. Further information is available in the *"Benefits and Contributions Guide"* published by the Social Security Division of the Treasury (see "Useful Contacts" at Appendix 4).

6.5 Adoption rights

(Employment Act 2006 sections 91 and 94-98 and the Adoption Leave Regulations 2007)

Employees' statutory adoption rights are explained more fully in a separate booklet *"Adoption Rights: a Guide".* A copy of the booklet can be downloaded from the employment law pages of the IOM Government website (see "Useful Contacts" at Appendix 4).

This section accordingly gives only an outline of the rights.

6.5.1 The three types of adoption leave

Where a child is matched with a person (or a couple) for adoption, that person (or each of the couple) is entitled to take leave without pay from his or her employment. There are 3 kinds of leave:

- **ordinary adoption leave**: the adopter of a child may take ordinary adoption leave of up to 26 weeks, irrespective of length of service; only one of a couple may be the "adopter" for this purpose, and they must agree which it is to be (but it does not matter which sex he or she is);

- **additional adoption leave**: an adopter who has taken ordinary adoption leave and, at the time he or she was matched with the child for adoption, had 26 weeks' qualifying employment, may also take additional adoption leave for a further 26 weeks;

- **paternity leave (adoption)**: where a couple matched with a child for adoption have agreed that one of them shall be the "adopter" for the purpose of adoption leave, the other (of whichever sex) is entitled to take one or two weeks' paternity leave (adoption), if he or she has 26 weeks' qualifying employment.

The system of adoption leave is analogous to maternity leave and paternity leave (birth) (see 6.3 and 6.4).

6.5.2 Ordinary adoption leave

Entitlement

An employee who adopts a child and fulfils certain conditions is entitled to ordinary adoption leave of up to 26 weeks without pay, irrespective of his or her length of service. To qualify for adoption leave, an employee must be newly matched with a child for adoption by an adoption agency. (Adoption leave is not available when the child is not placed for adoption, e.g. when the child is being adopted by a step-parent or foster parent.)

Notice of intention to take leave

The employee must tell the employer of his or her intention to take leave within 7 days of being notified of having been matched with the child for adoption, unless this is not reasonably practicable. He or she must tell the employer:

- when the child is expected to be placed; and

- when he or she wants the leave to start (he or she can specify the day when the child is actually placed, or a particular date not more than 14 days before, and not after, the date when the child is expected to be placed).

The employer can require the employee to produce a document (a 'matching certificate') from the adoption agency as evidence of entitlement to adoption leave, stating the name and address of the agency, the date when the employee was notified that the child had been matched for adoption, and the date when it expects to place the child. The employee can change the date when the leave is to start, provided that he or she tells the employer at least 28 days in advance (unless this is not reasonably practicable).

The employer must respond in writing within 28 days to an employee's notification of planned leave, stating the date on which he or she is expected to return to work if he or she takes the full entitlement to adoption leave.

Timing

The leave must begin on the date specified in the notification to the employer. But if the employee has notified the employer that the leave is to begin on the day the child is placed and he or she is at work on that day, the leave begins on the next day.

If adoption leave has begun and the employee is notified that the child will not be placed for adoption, or the child dies or is returned to the adoption agency, the adoption leave will be terminated early, normally at the end of 8 weeks after the end of the week in which the notification is given or the child dies or is returned.

6.5.3 Additional adoption leave

An employee who fulfils certain conditions, including a minimum length of service, is entitled to take 'additional adoption leave' of up to 26 weeks without pay, immediately after the end of ordinary adoption leave. The conditions are that:

- the child was placed with the employee for adoption;
- he or she took ordinary adoption leave (see 6.5.2);
- when he or she was notified of being matched with the child, he or she had been continuously employed for at least 26 weeks; and
- the ordinary adoption leave was not terminated early.

6.5.4 Paternity leave (adoption)

An employee is entitled to take up to 2 weeks' paternity leave (adoption) without pay within 56 days of the child's placement.

6.5.5 Enforcement etc

Ordinary and additional adoption leave: the rules as to the following matters are similar to those for maternity leave (see 6.3.4 and 6.3.5) in the following respects:

- preservation of the contract;

- right to return to work;
- enforcement of rights;
- obligation to give 28 days' notice of intention to return to work early;
- redundancy;
- protection from detriment or dismissal for taking leave.

Paternity leave (adoption): the rules as to the following matters are similar to those for paternity leave (birth) (see 6.4) in the following respects:

- entitlement;
- notice of intention to take leave;
- certification;
- preservation of the contract;
- right to return to work;
- enforcement of rights;
- protection from detriment or dismissal for taking leave.

6.5.6 Adoption Allowance and Paternity Allowance

An employee who meets certain qualifying conditions based on his or her recent employment and earnings record may claim Adoption Allowance or Paternity Allowance (Adoption) from the Social Security Division of the Treasury. Adoption Allowance is available for up to 39 weeks, and Paternity Allowance (Adoption) is available for one or two weeks, depending on the length of leave taken.

Further information is available in the "*Benefits and Contributions Guide*" published by the Treasury (see "Useful Contacts" at Appendix 4).

6.6 Parental leave (for parents of children with a disability only)

(Employment Act 2006 sections 65, 84 and 86-89 and the Parental Leave (Disabled Child) Regulations 2007)

Parental leave is explained more fully in a separate booklet *Parental Leave for Parents of Disabled Children: a Guide"*. A copy of the booklet can be downloaded from the employment law pages of the IOM Government website (see "Useful Contacts" at Appendix 4). This section accordingly gives only an outline of the rights.

6.6.1 Entitlement

An employee with one year's service is entitled to take 18 weeks' parental leave without pay for the purpose of caring for a disabled child for whom he or she has responsibility. For this purpose a disabled child is one who is entitled to Disability Living Allowance, and an employee has responsibility for a child if he or she has parental responsibility for the child, or he is registered as the child's father in the register of births.

The leave must be taken before the child's 18th birthday, and not more than 4 weeks' leave may be taken in any year.

One week's leave is equal to the length of time that an employee is normally required to work in a week.

Where the leave is taken in blocks of less than one week, a week is deducted from an employee's overall entitlement to 18 weeks only when the short periods of leave add up to what would be a normal or average working week.

The employee must give 21 days' notice of his or her intention to take leave and, if requested, produce evidence of entitlement. The employer has the right to postpone leave for up to 6 months on business grounds.

6.6.2 Enforcement

The employee may make a complaint to the Employment and Equality Tribunal if the employer prevents or attempts to prevent him or her taking leave, or postpones the leave unreasonably. The complaint is to be made within 3 months of the action in question (or the last of a series of actions), but the Tribunal can allow a complaint out of time if there was a good reason for the delay. Where the complaint is successful the Tribunal makes a declaration, and may award compensation of an amount which the Tribunal considers just and equitable, having regard to the employer's behaviour and the employee's loss.

The employee's right not to suffer any detriment for taking or seeking to take parental leave is broadly in line with maternity (see 6.3.5). Dismissal for taking or seeking to take parental leave is automatically unfair (see 12.3.1).

6.7 Right to request flexible working

(Employment Act 2006 sections 66, 99-102 and 122 and the Flexible Working Regulations 2020)

6.7.1 Entitlement

All employees (not just parents and carers) have the right to apply to their employer to request flexible working. A request may not be made within 12 months of a previous request.

- An 'employee' for this purpose does not include an agency worker.
- An employee can request:
  - a change in working hours;
  - a change to the times when he or she is required to work;
  - to work from home or the employer's place of business.

If a request is accepted, it will lead to a permanent change in the employee's terms and conditions of employment.

6.7.2 Procedure

A request must be made in writing and state:

- that it is an application for a change in the terms and conditions of employment;
- the change requested and the date when it is proposed it should take effect;
- what effect the employee thinks the change will have on the employer and how, in the employee's opinion, that effect might be dealt with;
- whether the employee has previously made such a request to the employer and, if so, when;
- the date of the application.

The employer must deal with the application in a reasonable manner and notify the employee within a standard period of three months (which can be extended by agreement), including any appeal that the employer allows.

The employer can treat an application as withdrawn if the employee misses two meetings to discuss an application or appeal without good reason, (for example sickness). The employer must tell the employee they are treating the request as withdrawn.

The employer may refuse a request only on one or more of the following grounds:

- the burden of additional costs;
- detrimental effect on ability to meet customer demand;
- inability to re-organise work among existing staff, or to recruit additional staff;
- detrimental impact on quality or performance;
- insufficient work at the time the employee proposes to work; and
- planned structural changes.

6.7.3 Enforcement

Except where the request is disposed of by agreement or withdrawn, the employee may make a complaint to the Employment and Equality Tribunal that:

- the employer didn't deal with the application in a reasonable manner;
- the employer didn't notify the employee within the decision period;
- the employer refused the application on a non-permissible ground;
- the employer's decision was based on incorrect facts; or
- the employer wrongly treated the employee's application as withdrawn.

But an employee cannot complain to the Tribunal just because their flexible working request was rejected.

A complaint may not be made:

- where the application has been dealt with by agreement or withdrawn;
- where the employer hasn't notified the employee of the decision;
- in the case where the decision period has expired and the employee hasn't been notified, before the end of that period;
- where an employer has allowed an appeal, before the decision on the final appeal; or
- where the employer and employee have agreed to extend the decision period, before the end of the extended period.

A complaint to the Tribunal must be made within 3 months of the relevant failure of the employer but the Tribunal can allow a complaint which is out of time if there was a good reason for the delay.

Where the complaint is successful the Tribunal makes a declaration, and may order the employer to reconsider the request and award compensation of up to 8 weeks' pay.

6.7.4 Detriment

The employee has a right not to suffer detriment (for example, being refused a promotion or pay rise) for seeking flexible working, bringing Tribunal proceedings, or alleging a ground for bringing proceedings.

This does not cover dismissal, but dismissal for such a reason is automatically unfair (see 9.3.1).

Where the complaint is successful the Tribunal makes a declaration, and may award compensation of an amount which the Tribunal considers just and equitable, having regard to the employer's infringement and the employee's loss. The maximum amount of compensation that can be awarded to an employee who has suffered a detriment is the sum of the basic award and the compensatory award that could be awarded on a finding of unfair dismissal (see 9.4.2).

7. Statutory employment rights: individual trade union rights

7.1 Discrimination on grounds of trade union membership or activities etc.

(Employment Act 2006 sections 1-7)

7.1.1 Grounds for refusing employment

It is unlawful to refuse employment on the grounds that a person:

- is or is not, or has been or has not been a member of a trade union;
- is or has been involved in trade union activities;
- will not agree to take steps to become or cease to be or to remain or not to become a member of a trade union;
- will not agree to cease to be involved in trade union activities.

(For the position regarding refusal of employment services by an employment agency or employment business on such grounds see 19.5.1).

7.1.2 Enforcement

The person refused employment can complain to the Employment and Equality Tribunal within 3 months of the action in question, but the Tribunal can allow a complaint out of time if there was a good reason for the delay. If successful, compensation of up to £56,000 may be awarded to the complainant. Compensation may include damages for injured feelings.

7.1.3 Joining a trade union as a party to the proceedings

Either the employer or the person refused employment can join the union or some other person as a third party to Tribunal proceedings, where it is claimed that pressure was brought on the employer by the third party to discriminate against the complainant by taking or threatening industrial action.

7.2 Detriment for union membership or activities during employment

(Employment Act 2006 sections 67 and 120)

A worker has the right not to suffer any detriment (e.g. withholding benefits, or opportunities for transfer, training or promotion):

- to prevent, deter or penalise him or her for membership of a registered trade union;
- to prevent, deter or penalise him or her for taking part in the activities of a registered trade union or for making use of its services;
- to compel him or her to be a member of a trade union;
- for the worker's failure to accept an inducement (see 7.3);
- to penalise him or her for not making a payment (e.g. a trade union subscription, or a donation to charity in lieu) if he or she is or is not a member of a particular trade union.

The right does not cover dismissal of an employee, but dismissal for any of these reasons is automatically unfair (see 12.3.1).

The right may be enforced by complaint to the Employment and Equality Tribunal within 3 months of the action in question (or the last of a series of actions) but the Tribunal can allow a complaint out of time if there was a good reason for the delay.

Where the complaint is successful, the Tribunal makes a declaration, and may award compensation of an amount which it considers just and equitable having regard to the worker's loss. The maximum amount of compensation that can be awarded to a worker who has suffered a detriment (including the termination of his or her contract) is the sum of the basic award and the compensatory award that could be awarded to an employee on a finding of unfair dismissal (see 12.4.2).

Where the employer or worker claims that the employer's behaviour was induced by actual or threatened industrial action, he or she can require the union or other person who brought the pressure, to be made a party to the Tribunal proceedings. The Tribunal may then order that union or person to pay part or all of any award of compensation.

7.3 Unlawful inducements relating to trade union membership or activities or collective bargaining

(Employment Act 2006 sections 29-34, 67 and 120)

A worker has the right not to have any offer made to him or her by the employer with a view to inducing him or her:

- not to be or become a member of a registered trade union;
- not to take part in the activities of a registered trade union or to make use of its services;
- to be or become a member of a trade union or a particular trade union; or
- where he or she is a member of a registered union recognised by the employer, to cease to have his or her terms of employment determined by a collective agreement (see 1.5) negotiated by that union.

The right may be enforced by complaint to the Employment and Equality Tribunal within 3 months of the action in question (or the last of a series of actions), but the Tribunal can allow a complaint out of time if there was a good reason for the delay. Where the complaint is successful, the Tribunal makes a declaration and may award £2,500 to the worker.

7.4 Time off with pay for trade union duties

(Employment Act 2006 sections 35-36)

An employee who is an official of a registered union which is recognised by the employer for the purpose of collective bargaining has the right to reasonable time off with pay for duties and training:

- concerned with negotiations with the employer on terms and conditions of employment, dismissal of workers, allocation of work, discipline, union membership, facilities for union officials and negotiating machinery, or
- in relation to other functions which the employer has agreed as appropriate for the union.

The *Code of Practice on Time off for Trade Union Duties and Activities* gives further information about this right. A copy of the Code can be

downloaded from the employment law pages of the IOM Government website (see "Useful Contacts" at Appendix 4).

The right may be enforced, in case of the employer's failure to allow time off or failure to make due payment for time off, by complaint to the Employment and Equality Tribunal within 3 months of the date when the failure occurred, but the Tribunal can allow a complaint out of time if there was a good reason for the delay. Where the complaint is successful, the Tribunal makes a declaration and may award compensation of an amount which the Tribunal considers just and equitable having regard to the employer's default and the employee's loss.

7.5 Time off for trade union activities

(Employment Act 2006 sections 37-38)

An employee who is a member of a registered union recognised by the employer has a right to reasonable time off without pay for union activities. (This does not include industrial action).

The Code of Practice on Time off for Trade Union Duties and Activities gives further information about this right. A copy of the Code can be downloaded from the employment law pages of the IOM Government website (see "Useful Contacts" at Appendix 4).

The right may be enforced, in case of the employer's failure to allow time off, by complaint to the Employment and Equality Tribunal within 3 months of the date when the failure occurred, but the Tribunal can allow a complaint out of time if there was a good reason for the delay. Where the complaint is successful the Tribunal makes a declaration and may award compensation of an amount which the Tribunal considers just and equitable having regard to the employer's default and the employee's loss.

7.6 Detriment for protected industrial action

(Employment Act 2006 sections 69 and 124)

An employee has the right not to suffer detriment (e.g. withholding benefits or opportunities for transfer, training or promotion) taken against him or her as an individual for taking part in 'protected industrial action'. This is industrial action which is both official (i.e. authorised by a registered trade union), and lawfully called (i.e. in accordance with the requirements of the Trade Unions Act 1991: see 16.4.4). The right applies during the four week period starting with the first day on which the action was taken by the employee (plus any lock-out beginning during

that period) or after the end of that period if the employee stopped taking industrial action before the end of that period.

The right does not cover dismissal for taking part in protected industrial action, but such dismissal is automatically unfair (see 12.3.1).

The right may be enforced by complaint to the Employment and Equality Tribunal within 6 months of the action in question (or the last of a series of actions), but the Tribunal can allow a complaint out of time if there was a good reason for the delay.

Where the complaint is successful the Tribunal makes a declaration and may award compensation of an amount which the Tribunal considers just and equitable having regard to the employee's loss. The maximum amount of compensation that can be awarded to an employee who has suffered a detriment is the sum of the basic award and the compensatory award that could be awarded on a finding of unfair dismissal (see 12.4.2).

See also 12.3.3 (Dismissal in connection with industrial action).

8. Statutory employment rights: miscellaneous rights

8.1 Time off for jury service and other public duties

(Employment Act 2006 sections 39-40; and the Employment (Time Off for Public Duties) Order 2014)

An employee has a right to:

- time off without pay for jury service during working hours;
- reasonable time off without pay to undertake other specified public duties, namely as:
    - a justice of the peace;
    - a member of a local authority;
    - a member of a statutory tribunal;
    - a governor of a school maintained by the Department of Education, Sport and Culture;
    - a member of the Isle of Man Prison Independent Monitoring Board or a member of the Parole Committee.

What is 'reasonable' depends on the circumstances, including the amount of time off required, the amount of time off the employee has already taken for public duties or trade union duties or activities, and the effect on the employer's business.

The right may be enforced, in the case of the employer's failure to allow time off, by complaint to the Employment and Equality Tribunal within 3 months of the date when the failure occurred, but the Tribunal can allow a complaint out of time if there was a good reason for the delay. Where the complaint is successful the Tribunal makes a declaration and may award compensation of an amount which the Tribunal considers just and equitable, having regard to the employer's default and the employee's loss.

8.2 Time off with pay for looking for work or training

(Employment Act 2006 sections 41-42)

An employee with 2 years' continuous service who is made redundant is entitled to reasonable time off during the period of notice, to look for work or arrange for training. The employer must pay the employee, at the appropriate hourly rate, to a maximum of two-fifths of a week's pay (see 1.16).

The right may be enforced, in the case of the employer's failure to allow time off, by complaint to the Employment and Equality Tribunal within 3 months of the date when the failure occurred, but the Tribunal can allow a complaint out of time if there was a good reason for the delay. Where the complaint is successful the Tribunal can award two-fifths of a week's pay.

8.3 Time off with pay for pension scheme trustees

(Employment Act 2006 sections 45-47, 63 and 117)

An employee who is a trustee of his or her employer's occupational pension scheme (or a director of a company which is the trustee of the scheme) has the right:

- to reasonable time off with pay to perform duties as a trustee, or to undergo relevant training;
- not to suffer detriment (e.g. withholding of benefits or opportunities for transfer, training or promotion) for performing or proposing to perform his or her duties as a trustee.

The right may be enforced, in case of the employer's failure to allow time off, failure to pay for time off, or where the employee is subjected to a detriment for exercising the right, by complaint to the Employment and Equality Tribunal within 3 months of the date when the failure occurred or the action took place, but the Tribunal can allow a complaint out of time if there was a good reason for the delay.

Where the complaint is successful, the Tribunal makes a declaration and may award compensation of the amount which the Tribunal considers just and equitable having regard to the employer's default or infringement and the employee's loss. The maximum amount of compensation that can be awarded to an employee who has suffered a detriment is the sum of the basic award and the compensatory award that could be awarded on a finding of unfair dismissal (see 12.4.2).

Dismissal for performing or proposing to perform duties as a trustee is automatically unfair (see 12.3.1).

8.4 Assertion of a statutory right

(Employment Act 2006 sections 70 and 119)

8.4.1 Right not to suffer detriment

A worker has the right not to be subjected to any detriment for exercising certain statutory rights that apply to him or her (as an employee or worker as the case may be – see 1.8) or for alleging that the employer has infringed such a right. This does not cover dismissal of an employee, but dismissal for taking any such action is automatically unfair (see 12.3.1).

The relevant rights are:

- any right under the Employment Act 2006 (or regulations under that Act), the remedy for infringement of which is a complaint or reference to the Tribunal:
  - no discrimination on grounds of trade union membership etc. at recruitment (see 3.2);
  - right to written statement of particulars of employment (see 4.2);
  - itemised pay statements (see 5.1);
  - no unlawful deduction from wages (see 5.2);
  - no unlawful inducement to relinquish trade union membership etc. (see 7.3);
  - time off with pay for trade union duties (see 7.4);
  - time off for trade union activities (see 7.5);
  - time off for jury service and other public duties (see 8.1);
  - time off for looking for work etc. (see 8.2);
  - time off for pension scheme trustees (see 8.3);
  - time off with pay for ante-natal care (see 6.1);
  - alternative work or remuneration if suspended on maternity grounds (see 6.2.2);
  - maternity leave (see 6.3);
  - paternity leave (see 6.4);

- adoption leave (see 6.5);
- parental leave for parents of children with a disability (see 6.6);
- requesting flexible working (see 6.7);
- taking action of certain kinds in the interests of health and safety (see 8.5);
- making a protected disclosure (see 8.6);
- exercising the right to be accompanied at disciplinary and grievance hearing (see 8.7);
- no less favourable treatment for being a part-time worker (see 10.1);
- written statement of reasons for dismissal (see 11.3);
- not to be unfairly dismissed (see 12);

- the right to a minimum period of notice (see 11.1); and
- the right to paid annual leave (see 5.8).

Note that workers who are not employees have fewer statutory rights (see 1.8 and Appendix 1).

It does not matter whether the worker has the right in question, or whether it has in fact been infringed, provided that the complaint is made in good faith. For example, an agency worker honestly but mistakenly believes that he is entitled to time off to take part in trade union activities and claims the right to do so; his 'employer' complains to the agency and he is laid off; he is entitled to complain to the Tribunal for the detriment he has suffered, even though only employees have the right to time off to take part in trade union activities.

8.4.2 Enforcement

The right may be enforced by complaint to the Employment and Equality Tribunal within 3 months of the action in question (or the last of a series of actions), but the Tribunal can allow a complaint out of time if there was a good reason for the delay.

The right does not cover dismissal of an employee for asserting a statutory right but such dismissal is automatically unfair (see 12.3.1).

Where the complaint is successful the Tribunal makes a declaration and may award compensation of an amount which the Tribunal considers just and equitable, having regard to the employer's infringement and the worker's loss. The maximum amount of compensation that can be awarded to a worker who has suffered a detriment (including the termination of his or her contract) is the sum of the basic award and the compensatory award that could be awarded to an employee on a finding of unfair dismissal (see 12.4.2).

In certain cases a worker who claims to have suffered detriment for claiming a statutory right has the option of making a complaint to the Tribunal either under the particular provisions relating to that entitlement or for breach of the above right. For example, a worker who has been penalised for claiming annual leave with pay may complain either under the provisions relating to annual or for infringement of the above right.

8.5 Taking actions in the interests of health and safety

(Employment Act 2006 sections 61 and 115)

A worker has the right not to be subjected to any detriment for taking action of certain kinds in the interests of health and safety.

'Worker' for this purpose is defined very widely, and includes agency workers, home workers, certain NHS practitioners, and certain categories of trainees (see further at 1.8.3). There is a corresponding wide definition of 'employer'.

The right does not cover dismissal of an employee, but dismissal of an employee for taking any such action is automatically unfair (see 12.3.1).

The kinds of action by the worker which are protected are:

- carrying out activities in connection with reducing risks to health and safety, where the worker is designated by the employer to carry out such activities;
- performing functions as an acknowledged safety representative or member of an official or recognised safety committee;
- taking reasonable steps to bring risks to health and safety to the employer's attention, where either there is no safety representative or committee or it is not practicable to contact them;

- leaving, or refusing to return to, a place of work in case of serious and imminent danger;

- taking steps to protect himself or herself or others from serious and imminent danger (unless the employer can show that the steps were negligent and deserved the action taken by the employer).

The right may be enforced by complaint to the Employment and Equality Tribunal, as for assertion of a statutory right (see 8.4.2).

Compensation that the Tribunal may award to a worker who is subject to a detriment for a health and safety reason is not subject to the usual limits.

For general information about health and safety see 17.

8.6 Disclosure in the public interest ('whistleblowing')

(Employment Act 2006 Part IV and sections 64 and 118; also the Public Interest Disclosure (Prescribed Persons) Order 2021)

Workers' statutory rights in relation to this subject are explained more fully in a separate booklet "*Whistleblowing - a Brief Guide".* A copy of the booklet can be downloaded from the employment law pages of the IOM Government website (see "Useful Contacts" at Appendix 4).

This section accordingly gives only an outline of the rights.

8.6.1 Qualifying disclosures

An employer must not take action against a worker for disclosing information about alleged wrongdoing to a specified person or body, subject to certain safeguards. The terms 'worker' and 'employer' are defined very widely for this purpose as in 8.5.

The information being disclosed must relate to one of the following - past, present or likely to happen:

- a criminal offence;

- a failure to comply with a legal obligation;

- a miscarriage of justice;

- a danger to the health or safety of an individual;

- damage to the environment;

- concealment of any of the above.

The disclosure must be to one of the following:

- the worker's employer;
- in the case of wrongdoing by a person other than the employer, the person in charge of that person;
- the worker's legal adviser (but note that whereas this provision would cover a qualified advocate protection may not extend to lay advisers);
- to the Public Services Commission, in the case of worker whose employer is (a) an individual appointed by the Public Service Commission or the Council of Ministers or (b) a body whose members are so appointed;
- the person or body responsible for regulating a particular activity (the list of regulators for this purpose is set out in *the Public Interest Disclosure (Prescribed Persons) Order 2021*);
- another person, where the disclosure is made reasonably and in good faith and there is good reason for not reporting to the employer or a regulator.

In general, where workers make disclosures other than to their employer more onerous conditions of protection will apply.

Any provision of an agreement between a worker and the worker's employer (whether or not a worker's contract), including an agreement to refrain from instituting or continuing any proceedings or any proceedings for breach of contract is void in so far as it purports to preclude any worker from a protected disclosure.

8.6.2 Detriment

A worker has the right not to be subjected to any detriment for making a protected disclosure. The right does not cover dismissal of an employee for making a protected disclosure, but such a dismissal is automatically unfair (see 12.3.1).

The right may be enforced by complaint to the Employment and Equality Tribunal, as for assertion of a statutory right (see 8.4.2).

Compensation that the Tribunal may award to a worker who is subject to a detriment for making a protected disclosure is not subject to the usual limits.

8.7 Right to be accompanied at disciplinary and grievance hearings

(Employment Act 2006 sections 68, 103-105, and 123; see also sections 35 and 36 and the Code of Practice on Disciplinary and Grievance Procedures 2007)

8.7.1 About the right

A worker is entitled to be accompanied at any grievance or disciplinary hearing by a companion who may be:

- a fellow-worker; or
- a trade-union official employed by a trade union; or
- a trade union official certified by the union as having received experience of or training in the role as a worker's companion.

A 'grievance hearing' is one concerning the performance of an employer's duty in relation to the worker, (i.e. a statutory, contractual or common law duty).

A 'disciplinary hearing' is one which could result in a formal warning, some other action or the confirmation of a warning or other action.

If the companion cannot attend, the hearing must be postponed for not more than 5 working days. The companion is entitled to time off with pay to attend, and must be allowed:

- to put the worker's case;
- to sum up that case;
- to respond on the worker's behalf to any view expressed at the hearing; and
- to confer with the worker during the hearing,

but not:

- to answer questions on behalf of the worker;
- to address the hearing against the worker's wishes;

- to obstruct the employer or any other person from explaining or contributing to their case.

The term 'worker' and 'employer' are both defined widely for the purpose of exercising the right, as in 8.5.

Section 3 of *the Code of Practice on Disciplinary and Grievance Procedures 2007* provides more detailed guidance as to the exercise of the right of accompaniment. The code can be downloaded from the employment law pages of the IOM Government website (see "Useful Contacts" at Appendix 4).

8.7.2 Enforcement

If the employer refuses or threatens to refuse to allow the worker to be accompanied, to allow the companion to act, or to postpone the hearing, the worker may make a complaint to the Employment and Equality Tribunal within 3 months of the failure or threat, but the Tribunal can allow a complaint out of time if there was a good reason for the delay. Where the complaint is successful the Tribunal may award compensation of up to 2 weeks' pay.

8.7.3 Detriment

The worker has the right not to be subjected to any detriment for exercising or seeking to exercise the right to be accompanied, or to act as companion to another worker.

This right does not cover dismissal of an employee for either of those reasons, but such a dismissal is automatically unfair (see 9.3.1).

The right may be enforced by complaint to the Employment and Equality Tribunal, as for assertion of a statutory right (see 8.4.2).

8.8 Shop workers and Sunday working

(Shops Act 2000)

For considerations at recruitment in respect of shop workers and for the definition of 'shop worker' see 4.3.

8.8.1 Protection against detriment for refusing Sunday working

Certain shop workers ('protected' and 'opted-out' workers) have the right not to be subjected to any detriment for refusing to work on a Sunday, Good Friday or Christmas Day.

The rights apply irrespective of age, length of service or hours of work, but do not apply to those who work on Sundays only.

Note that no shop may serve customers on Christmas Day.

8.8.2 Protected shop workers

The following are protected shop workers:

- any shop worker employed before 1st August 2000 (even if the contract required him or her to work on Sunday, Christmas Day or Good Friday);

- any shop worker employed on or after 1st August 2000 whose contract of employment does not require him or her to work on a Sunday, Christmas Day or Good Friday and has not 'opted out' (see 8.8.3).

8.8.3 Opted-out shop workers

A shop worker employed on or after 1st August 2000 whose contract of employment requires him or her to work on Sunday, Christmas Day or Good Friday may opt out of working on a Sunday, Good Friday or Christmas Day at any time by giving the employer an 'opting-out notice'. The notice must:

- be in writing;

- be signed and dated by the shop worker;

- say that the shop worker objects to working on Sundays, Good Friday or Christmas Day.

The worker must then serve a one-month period during which he or she will still be obliged to work on the days provided for in the contract, if so required by the employer.

8.8.4 Opting in

An employer may give a protected shop worker a written 'opting-in request' asking him or her to work on Sundays, Christmas Day or Good Friday. The request must have an attached 'opting-in notice' which the shop worker may complete and return to the employer between 7 and 21 days from the date the request is received.

An opted-out shop worker may also give an 'opting-in notice' and subsequently agree to work on a Sunday, Christmas Day or Good Friday. In that case he or she will cease to be an opted-out worker.

The prescribed forms of opting-in request and opting-in notice are set out at Appendix 6.

8.8.5 Enforcement

The right may be enforced by complaint to the Employment and Equality Tribunal, as for assertion of a statutory right (see 8.4.2). This does not cover dismissal of an employee, but such a dismissal is automatically unfair (see 12.3.2).

8.9 Bullying and harassment

All complaints of violence, bullying or harassment should be investigated fully and prompt action taken where necessary.

Whereas there is no specific legal protection against bullying, an employee who claims to have been ill-treated may, nevertheless, have several possible options open to him or her.

8.9.1 Informal resolution

An employee may wish to deal with the matter through the employer's internal grievance procedure (see 1.11).

8.9.2 Harassment based on a protected characteristic

Harassment which is based on a protected characteristic[8] under the Equality Act 2017, such as the employee's sex, will generally be unlawful under that Act (see 9).

8.9.3 Breach of contract

Employers have various contractual duties which are relevant in cases of bullying and harassment. These include the following:

- implied obligations (see 1.3) —
  - of care (see 17.1.1);
  - of mutual trust and confidence;

[8] Other than pregnancy and maternity and marriage and civil partnership.

- to render reasonable support to an employee to ensure that he or she can carry out the duties of the job without harassment and disruption by fellow workers; as well as

- duties under the Health and Safety at Work etc. Act 1974 (see 17.1.2).

Employers are responsible in law for the acts of their employees in the course of their employment. Ill-treatment by the employer or another employee may entitle the employee to claim damages for breach of contract or constructive dismissal (see 1.14 and 12.1.5). Where such ill treatment involves violence or leads to illness such as depression, the employee may be entitled to bring a personal injury claim as well.

8.9.4 Criminal liability and the Protection from Harassment Act 2000

Bullying involving violence may amount to criminal assault. In addition, there are criminal sanctions against harassment in both the Public Order Act 1998 and the Protection from Harassment Act 2000.

The latter Act also permits a victim or potential victim of harassment to bring civil proceedings, including application for an injunction against the harasser. An employer can be liable for the consequences of any harassment committed by an employee in the course of his or her employment in breach of the Act. An offending course of conduct under the Act must involve conduct on at least 2 occasions. An employee does not have to be employed for a year to bring a complaint.

8.10 Employees' rights on transfer of a business

(Employment Act 2006 Schedule 5 paragraph 8 – 10; Redundancy Payments Act 1990 s. 11 and 11A (read with s.2(3)-(6)))

Where a business is transferred from a transferor to a transferee, an employee's continuity of employment is preserved where, before the termination, the transferee makes an employee an offer to renew his or her contract or to re-engage him or her under a new contract and the employee accepts the offer. Preservation of continuous employment may also take place where there has been a service provision change. See further at 13.1.4.

8.11 Data protection

Abbreviations:

DPA	Data Protection Act 2018
GDPR	General Data Protection Regulation[9]
LED	Law Enforcement Directive[10]

(Data Protection Act 2018; the Data Protection (Application of GDPR) Order 2018; the Data Protection (Application of LED) Order 2018; and the GDPR and LED Implementing Regulations 2018)

The GDPR and LED Implementing Regulations 2018 ('the Regulations' in this section) impose obligations on persons ('data controllers') processing 'personal data', i.e. information that can identify a living individual from that information alone, or from other information that is in the possession of the data controller, or is likely to come into the possession of the 'data controller'. The Regulations apply to all data that is processed automatically, structured manual records, health records and education records.

A data controller must comply with the 7 data protection principles set out in the GDPR. In accordance with the principles personal data must be:

- processed fairly and lawfully;
- processed for specific and lawful purposes, in a manner that is compatible with those purposes;
- adequate, relevant and not excessive;
- accurate and where necessary kept up to date;

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[9] Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data and repealing Directive 95/46/EC (General Data Protection Regulation)

[10] Directive (EU) 2016/680 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and on the free movement of such data, and repealing Council Framework Decision 2008/977/JHA

- kept for no longer than necessary;
- processed in accordance with the rights of individuals under the DPA;
- kept secure to avoid unauthorised or unlawful processing and accidental loss, destruction, or damage.

Subject to certain exemptions, all data controllers processing personal information are required to notify the Isle of Man Information Commissioner. Failure to notify is an offence. The Regulations still apply to a data controller who is not required to notify. They also apply to the processing of an employee's personal data.

Employees have a right of access to their personal data. A request, known as a 'data subject access request', must be made verbally or in writing. An employer must comply with a request promptly and in any event within one month. Failure to comply may lead to the Information Commissioner taking enforcement action and the imposition of a penalty of up to £1,000,000; alternatively an individual whose rights have been breached may seek compensation for any distress caused (damage does not have to be shown). A court may impose a fine of up to £5,000 for an unjustifiable failure to comply with a request.

Specific provisions apply where a request would involve the disclosure of information which identifies a third party. In such circumstances, unless the third party consents to disclosure, the information identifying the third party may be removed but the employer is still obliged to provide as much information as can be provided without disclosing the identity of the third party.

As to the position regarding employment references see 8.14.

Further advice regarding the application of the Regulations in areas such as recruitment and selection, employment records and monitoring at work can be obtained from the Office of the Information Commissioner (see "Useful Contacts" at Appendix 4).

8.12 Medical reports

(Access to Health Records and Reports Act 1993 (AHRRA); Access to Health Records and Reports (Health Professionals) Regulations 1996)

For the purposes of employment or insurance the employer may obtain a report from a medical practitioner responsible for the clinical care of an employee, provided that it:

- tells the employee that it is proposing to apply for access;
- obtains his or her consent to the making of the application; and
- informs the employee of the rights under AHRRA.

The employee may:

- withhold consent to the application for or disclosure of reports;
- see the report before it is supplied, and request a copy from the medical practitioner within six months of its supply to the employer; and
- request the practitioner to amend any part of the report which the employee considers to be incorrect, misleading or complete.

A medical practitioner may refuse to allow an individual to see a report if disclosure would cause serious physical or mental harm. A person may also be denied the right of access to a report if a claim for legal professional privilege can be maintained in respect of that report.

Further advice can be obtained from the Office of the Information Commissioner (see "Useful Contacts" at Appendix 4).

8.13 Health records

(The GDPR and LED Implementing Regulations 2018 (see 8.11 above))

Individuals may exercise their right of access under the GDPR and LED Implementing Regulations 2018 by applying to a doctor or other health professional (including one appointed by an employer) to have access to all or part of their health records.

The information must be provided promptly and in any event within one month.

Access can only be refused in certain limited circumstances such as where the health professional considers the information could seriously harm the physical or mental health of the patient.

Further advice can be obtained from the Office of the Information Commissioner (see "Useful Contacts" at Appendix 4).

8.14 References

(The GDPR and LED Implementing Regulations 2018 (see 8.11 above))

An employer is under no general legal duty to provide a reference about an employee or ex-employee (although refusal to do so on certain grounds may amount to a detriment for which an employee could complain to the Employment and Equality Tribunal).

When a reference is provided, there is a legal duty both to the person to whom it is about and to the person to whom it is sent. This duty is generally satisfied if the reference is honest, fair and justifiable.

Note that under the GDPR and LED Implementing Regulations 2018 individuals have a right of access to their "personal data" which includes employment related references. A 'data subject access request' (see 8.11) may be made to the receiver of the reference. (There is an exemption from the right of access for the sender of the reference, but this does not mean that the sender cannot provide a copy of the reference if he or she wishes to do so.) The right of access can be provided by means of a summary as opposed to an actual copy of the reference and the name of any third party, i.e. the originator of the reference, or information which would identify him or her, does not have to be disclosed.

For further information contact the Office of the Isle of Man Information Commissioner (see "Useful Contacts" at Appendix 4).

9. Protection against discrimination under the Equality Act 2017

(Equality Act 2017; Equality Act 2017 (Sex Equality Rule) (Exceptions) Regulations 2018; Equality Act (Age Exceptions for Pension Schemes) Order 2019); Statutory Code of Practice on Employment (2019); Equality Act 2017 (Disability) Regulations 2019; Guidance about Matters to be taken into account in Determining the Definition of disability (2019))

Under the Equality Act 2017 ("the Act" in this section) it is unlawful to discriminate against job applicants and people in work on the ground of a 'protected characteristic'.

Note that provisions in the Act which are specifically concerned with ensuring there is no sex discrimination or pregnancy and maternity discrimination in relation to pay and terms of employment are dealt with at section 5 (statutory employment rights: pay and holidays), specifically sections 5.5 -5.7.

The Act covers not only employment but also the provision of goods and services, education, premises and other matters. Matters other than employment are, however, outside the scope of this guide.

9.1 Differences in approach between the Act and other statutes

There are some important differences in approach between the Act and other employment statutes such as the Employment Act 2006. For example:

- the Act protects not only employees but many other categories of worker (see 1.8) and even some self-employed persons; it also covers discrimination by persons other than employers, such as employment agencies (see 19.5.2), trade organisations, and bodies that confer qualifications for trades and professions;

- no qualifying period of service is necessary to bring a complaint under the Act;

- protection under the Act applies throughout employment, including at recruitment and at and even beyond the termination of employment (see 9.3);

- the Employment and Equality Tribunal has greater discretion to admit a complaint out of time in cases under the Act than in other employment cases (see 9.19);

- individual managers, either instead of or as well as the employer, can be liable for their discriminatory actions (see 9.15); and
- the remedies available to the Tribunal under the Act (see 9.19) differ to those other under other employment legislation.

9.2 The protected characteristics: an overview

(Equality Act 2017 sections 5-13)

The protected characteristics under the Act are as follows –

(1) **sex** (being male or female); (see further at 9.6 below);

(2) **pregnancy and maternity**. The period during which protection is provided *('the protected period')* is the period of the pregnancy and any statutory maternity leave to which a woman is entitled or if she has no such entitlement (because she is not an employee) the 2 weeks' compulsory maternity leave period; (see further at 9.7 below);

(3) **marriage and civil partnership** (but not being single); (see further at 9.8 below);

(5) **sexual orientation** (whether towards persons of the same sex, opposite sex, persons of both sexes or to neither sex); (see further at 9.9 below);

(4) **gender reassignment/transsexuality** (the person is undergoing, has undergone or is proposing to undergo all or part of a process to reassign his or her sex by changing physiological or other attributes); (see further at 9.10 below);

(6) **race** (including colour, nationality, ethnic or national origins and caste); (see further at 9.11 below);

(7) **religion or belief** (any religious or philosophical belief, including a lack of belief); (see further at 9.12 below);

(8) **age**, (whether by reference to a particular age or to a range of ages); (see further at 9.13 below); and

(9) **disability** (a physical or mental impairment which has a substantial and long-term adverse effect on a person's ability to carry out normal day-to-day activities); (see further at 9.14 below).

9.3 Coverage

(Equality Act 2017 section 38)

Protection against discrimination covers all aspects of the employment relationship, including –

- recruitment and selection arrangements;
- a refusal to offer employment;
- the terms of employment offered;
- the terms of employment applied;
- access to opportunities for promotion, transfer or training or to other benefits, facilities or services;
- dismissal or other detriment (e.g. demotion);
- treatment by the employer following the end of employment (see 9.16).

9.4 Types of prohibited conduct

General forms of prohibited conduct, which, with some exceptions, apply across the protected characteristics, are set out below.

There are two additional forms of prohibited discrimination in relation to the protected characteristic of disability (see further at 9.13.2).

9.4.1 Direct discrimination

(Equality Act 2017 section 14)

Direct discrimination is treating a worker less favourably than others because of a protected characteristic **(ordinary direct discrimination)**.

The wording *because of a protected characteristic* does not specify to whom the characteristic relates; this means that direct discrimination includes treating a worker less favourably because –

- the employer mistakenly thinks that the worker has a protected characteristic[11] **(direct discrimination by perception)**; or

[11] Except in relation to the protected characteristics of pregnancy and maternity or marriage and civil partnership.

- the worker associates with another person who has a protected characteristic [12] **(direct discrimination by association)**.

In most circumstances[13] the concept of direct discrimination requires a complainant to demonstrate that treatment by his or her employer was less favourable than the way the employer treats, has treated or would treat a **'comparator'**. A comparator is another of the employer's workers (or a job applicant) to whom a protected characteristic does not apply but who is otherwise in the same circumstances as the worker or applicant. In certain circumstances the complainant may construct a hypothetical comparator.

Other important points about direct discrimination are as follows -

- there is no defence of justification for direct discrimination except in relation to age discrimination (see 9.13 below);

- more favourable treatment of a disabled worker than a non – disabled worker does not constitute direct discrimination.

9.4.2 Indirect discrimination

(Equality Act 2017 section 20)

Indirect discrimination may occur when an employer applies an apparently neutral provision, criterion or practice which puts workers sharing a protected characteristic[14] at a particular disadvantage.

For indirect discrimination to take place, four requirements must be met:

- the employer applies (or would apply) the provision, criterion or practice equally to everyone within the relevant group including a particular worker;

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[12] Except in relation to the protected characteristics of marriage and civil partnership or pregnancy and maternity.

[13] Except in relation to pregnancy and maternity discrimination (see ·) and segregation on racial grounds (see 9.11). In neither case is a comparator required.

[14] The concept of indirect discrimination does not apply to pregnancy and maternity. However, in this situation, a worker may be protected under the sex discrimination provisions.

- the provision, criterion or practice puts, or would put, people who share the worker's protected characteristic at a particular disadvantage when compared with people who do not have that characteristic;

- the provision, criterion or practice puts, or would put, the worker at that disadvantage; and

- the employer cannot show that the provision, criterion or practice is objectively justified ('a proportionate means of achieving a legitimate aim').

As in the case of direct discrimination a comparative approach is required; in this case the comparison is between groups of workers with the protected characteristic and those without it.

Application of provisions, criteria or practices which disadvantage workers with childcare etc. responsibilities may be particularly susceptible to complaints of indirect sex discrimination as it is very often the case that more women than men have such responsibilities.

9.4.3 Harassment

(Equality Act 2017 section 1(8) and 27)

Harassment is –

- engaging in unwanted conduct to do with a protected characteristic[15] which has the purpose or effect of violating a person's dignity or creating an intimidating, degrading, humiliating or offensive environment;

- engaging in unwanted conduct of a sexual nature and the conduct has the same effect or purpose as that referred to above; or

[15] Except in relation to pregnancy and maternity or marriage and civil partnership. However, while the Act disapplies a prohibition on harassment in relation to these two characteristics harassment on either of these grounds may nevertheless constitute detrimental treatment under section 14 (direct discrimination) of the Equality Act 2017.

- engaging in unwanted conduct of a sexual nature, or which is related to sex or gender reassignment, that has the same effect or purpose as that referred to above and, because the person rejects or submits to that conduct, treating him or her less favourably than would otherwise have been the case.

9.4.4 Victimisation

(Equality Act 2017 section 28)

Victimisation is subjecting a person to a detriment because he or she has –

- brought legal proceedings about a protected characteristic;
- given evidence or information in connection with such proceedings; or
- made an allegation that someone has broken the law on equality.

9.5 Employers' general exemptions and defences

The Act gives employers a number of possible defences which may be used in different circumstances. Thus, as mentioned above –

- more favourable treatment of a disabled worker than a non–disabled worker does not constitute direct discrimination;
- there is a defence of objective justification in direct discrimination cases in relation to age discrimination; and
- there is a defence of objective justification in relation to indirect discrimination cases (see 9.4.2) which applies across all of the protected characteristics.

In addition, what would otherwise be unlawful discrimination is permitted in the following circumstances -

9.5.1 Occupational requirements

(Equality Act 2017 Schedule 9 para 1).

There is an exception to the normal non-discrimination rule, which applies across all the protected characteristics, whereby an employer may directly discriminate in favour of a person with a particular characteristic where discrimination can be objectively justified ('a

proportionate means of achieving a legitimate aim') as an occupational requirement. For example, someone of a particular race, sex or age might be required for a particular acting role.

There are also a number of specific exemptions which apply in relation to particular protected characteristics some of which are described at 9.6 to 9.13 below.

9.5.2 Statutory requirements

(Equality Act Schedule 20)

Conduct which would otherwise be discriminatory is exempt from the Act if it is necessary to comply with other legislation (for example maternity and health and safety legislation which is intended to safeguard an employee who is pregnant or who has recently given birth or nationality requirements imposed by immigration legislation).

Finally, certain **positive action** is permissible (see further at 9.17 below).

Particular exemptions which are related to one or more protected characteristics are discussed further below (see 9.6 to 9.13).

9.6 Issues and exemptions concerning the protected characteristic of sex

(Equality Act 2017 section 14(6)(b), schedule 9 part 1 and para. 17 and schedule 20 para (1) to (2); Equality Act 2017 (Sex Equality Rule) (Exceptions) Regulations 2018)

Key considerations -

- For discrimination on the ground of sex in respect of pay and other contractual terms of employment and occupational pensions see 5.5.

- To avoid overlap between the protected characteristics of sex and pregnancy and maternity, unfavourable treatment of a woman because of her pregnancy or maternity leave during 'the protected period' (see 9.2) constitutes unlawful pregnancy and maternity discrimination (see 9.7) and is not treated as sex discrimination.

- Any unfavourable treatment of a woman outside the protected period because she is breast-feeding may constitute indirect sex discrimination.

Exemptions where discrimination is permitted -

- Differential treatment of women in connection with pregnancy or childbirth, for example the provision of benefits to women but not men, is lawful.

- Compliance with legislation which is intended to protect women in relation to pregnancy and maternity, (for example health and safety legislation) is lawful.

- Conduct which would otherwise be discriminatory, is lawful if it is necessary to comply with other legislation.

- Provision by an employer of annuities, life assurance policies, accident insurance policies etc., which involve the assessment of risk, are exempt from the Act, if any differential treatment on the ground of sex is by reference to reliable actuarial or other data and it is reasonable in all the circumstances.

- Organised religions may discriminate to a limited extent in relation to the protected characteristic of sex in respect of certain employments where it is necessary not to offend the doctrine of the religion.

9.7 Issues and exemptions concerning the protected characteristic of pregnancy and maternity

(Equality Act 2017 sections 14(6) and 19, schedule 9 para. 17 and schedule 20 para. 2)

Key considerations -

- For discrimination on the ground of pregnancy or maternity in respect of pay and other contractual terms of employment and occupational pensions see 5.6.

- For pregnancy and maternity, the protection is against *unfavourable treatment* of a woman because of her pregnancy or maternity leave during 'the protected period' (see 9.2(2)). Because of this wording (*'unfavourable treatment'* rather than *'less favourable treatment'*) it is not necessary for a complainant to have a comparator (see section 9.4.1).

- To avoid overlap between the protected characteristic of sex and that of pregnancy and maternity such unfavourable treatment during the protected period constitutes unlawful pregnancy and maternity discrimination and cannot be treated as direct sex discrimination.

- Any unfavourable treatment of a woman outside the protected period is regarded as taking place within the protected period if it implements a decision made within the protected period (and hence it is pregnancy and maternity discrimination and not sex discrimination).

- For pregnancy and maternity, there is no express protection from direct discrimination by association or perception (see 9.4.1), indirect discrimination or harassment. However, in these situations, a worker may be protected under the sex discrimination provisions.

- Any unfavourable treatment of a woman in the protected period because she is breast-feeding is likely to constitute pregnancy and maternity discrimination.

Exemptions where discrimination is permitted:

- Provision by an employer of annuities, life assurance policies, accident insurance policies etc., which involve the assessment of risk, is exempt from the Act, if any differential treatment of a woman who is pregnant or on maternity leave is by reference to reliable actuarial or other data and it is reasonable in all the circumstances.

- Differential treatment of women in in connection with pregnancy or childbirth, for example the provision of benefits to women but not men, is lawful.

- Compliance with legislation which is intended to protect women in relation to pregnancy and maternity, (for example health and safety legislation) is lawful.

9.8 Issues and exemptions concerning the protected characteristic of marriage and civil partnership

(Equality Act 2017 schedule 9 part 1 and para. 15(4) and 17))

Exemptions where discrimination is permitted -

- It is legitimate for an employer to restrict benefits, facilities or services to married persons and civil partners.

- Provision by an employer of annuities, life assurance policies, accident insurance policies etc., which involve the assessment of risk, is exempt from the Act, if any differential treatment of persons who are or are not married or in a civil partnership, is by reference to reliable actuarial or other data and it is reasonable in all the circumstances.

- Organised religions may discriminate to a limited extent in relation to the protected characteristic of marriage and civil partnership in respect of certain employments where it is necessary not to offend the doctrine of the religion.

9.9 Issues and exemptions concerning the protected characteristic of sexual orientation

(Equality Act 2017 section 13, schedule 9 part 1 and schedule 20 para. 1)

Key considerations –

- The Act protects heterosexuals against discrimination just as it protects persons of a homosexual or bisexual orientation.

- Gender reassignment (see 9.10) is a separate protected characteristic.

Exemptions where discrimination is permitted -

- Organised religions may discriminate to a limited extent in relation to the protected characteristic of sexual orientation in respect of certain employments where it is necessary not to offend the doctrine of the religion.

- Conduct which would otherwise be discriminatory, is lawful if it is necessary to comply with other legislation.

9.10 Issues and exemptions concerning the protected characteristic of gender reassignment/transsexuality

(Equality Act section 17 and schedule 9 part 1 and para. 17)

Key considerations -

- Gender reassignment is a separate protected characteristic in its own right and is unrelated to the protected characteristic of sexual orientation. Further, it does not cover transvestites (people who dress in clothing of the opposite sex) except where cross-dressing is part of the process of a person reassigning his or his sex.

- Discrimination includes treating a transsexual person less favourably because of gender reassignment than he or she would be treated if absent -

    - because of illness or injury; or

- for some other reason in respect of which it would be unreasonable to treat the person less favourably.

Exemptions where discrimination is permitted -

- Provision by an employer of annuities, life assurance policies, accident insurance policies etc., which involve the assessment of risk, is exempt from the Act, if any differential treatment of transgender persons is by reference to reliable actuarial or other data and it is reasonable in all the circumstances.

- Organised religions may discriminate to a limited extent in relation to the protected characteristic of gender reassignment in respect of certain employments where it is necessary not to offend the doctrine of the religion.

9.11 Issues and exemptions concerning the protected characteristic of race

(Equality Act section 10, 14(5), 153 and schedule 20, para 4.)

Key considerations -

- Deliberately segregating a worker or group of workers from others of a different race automatically amounts to less favourable treatment. There is no need to identify a comparator in this case.

Exemptions where discrimination is permitted -

- An exemption applies in relation to anything which is required or authorised to be done under the Control of Employment Act 2014 (see 2) or Immigration legislation.

- There are certain employments and public offices which are restricted by a statutory requirement to persons of a particular nationality etc.

9.12 Issues and exemptions concerning the protected characteristic of religion or belief

(Equality Act section 11, Schedule 9 para. (1) to (3) and Schedule 20 para 1)

Key considerations -

- In order to be protected by the Act a religion must have a clear structure and belief system.

- The criteria for determining what is a "philosophical belief" are that it must be -
    - genuinely held;
    - a belief (as opposed to an opinion or viewpoint);
    - a belief as to a weighty and substantial aspect of human life and behaviour;
    - able to attain a certain level of cogency, seriousness, cohesion and importance; and
    - worthy of respect in a democratic society, compatible with human dignity and not in conflict with the fundamental rights of others.
- So, for example, a belief in global warming and the necessity to take action to prevent or limit this phenomenon would satisfy these criteria whereas a cult involved in illegal activities would not.

Exemptions where discrimination is permitted –

- As noted above at 9.6 and 9.8 to 9.10 organised religions may discriminate to a limited extent in relation to the protected characteristic of sex, marriage and civil partnership, sexual orientation and gender reassignment in respect of certain employments where it is necessary not to offend the doctrine of the religion. More generally, being of a particular religion or belief may be an occupational requirement (see 9.5.1) where it is proportionate to apply such a requirement in particular cases.

- Conduct which would otherwise be discriminatory, is lawful if it is necessary to comply with other legislation.

9.13 Issues and exemptions concerning the protected characteristic of age

(Equality Act sections 6, 14(2), 53(8) – (10), Schedule 9 Part 2, Schedule 20 para (1) and the Equality Act 2017 (Age Exceptions for Pension Schemes) Order 2019)

Key considerations -

- As noted above, age is the only one of the protected characteristics which allows an employer to objectively justify direct discrimination ('a proportionate means of achieving a legitimate end').

- All retirement ages are unlawful unless they can be objectively justified ('a proportionate means of achieving a legitimate end').

Exemptions where discrimination is permitted –

- Use of length of service with an employer is a permitted criterion for the employer providing a benefit (for example, paid annual leave), facility or service to workers. However, the employer may not take into account a period of service greater than 5 years unless this can be justified as a business need.

- Different minimum wage rates for young workers and apprentices, which are set by DfE, are permitted (see 5.3).

- The provision of different redundancy payments to employees by employers, is lawful, provided that each amount is calculated on the same basis.

- It is lawful for employers that provide child care to restrict such care to children of a particular age group.

- The provision of insurance or related financial services to or in respect of employees who have attained the higher of either the state pension age or 65 years is lawful. Conversely, employers may also offer insurance or related financial services only to employees who have not attained the higher of either the state pension age or 65 years.

- The use of practices, actions or decisions relating to age in respect of occupational pension schemes and employer contributions to personal pension schemes as prescribed in the Equality Act 2017 (Age Exceptions for Pension Schemes) Order 2019 is lawful.

- Conduct which would otherwise be discriminatory, is lawful if it is necessary to comply with other legislation.

9.14 Issues and exemptions concerning the protected characteristic of disability

(Equality Act – see in particular sections 7, 16, 21-23, 52 and Schedules 1 and 8; Equality Act 2017 (Disability) Regulations 2018; Equality Act 2017 Guidance: Guidance on matters to be taken into account in determining questions relating to the definition of disability).

9.14.1 Definition of disability

A person must meet the Act's definition of disability to be protected under the Act.

A person has a disability if he or she has a physical or mental impairment which has a *substantial and long-term* adverse effect on his or her ability to carry out normal day-to-day activities.

'Long-term' means the impairment has lasted for at least 12 months, is likely to last for at least 12 months, or is likely to last for the rest of the life of the person affected.

'Substantial' means more than minor or trivial.

In addition, the following points should be noted -

- cancer, HIV, multiple sclerosis, blindness and sight impairment are all treated as disabilities;
- a severe disfigurement is treated as having a substantial adverse effect on the ability of the person concerned to carry out normal day-to-day activities (and hence that person will be protected under the Act);
- addiction to alcohol, nicotine or any other substance (except an addiction which was the result of medically prescribed drugs or other medical treatment) is not treated as a disability;
- a person who previously had a disability will be protected by the Act even if he or she no longer has the disability;.
- a progressive condition which does not have a substantial adverse effect in the present but which is likely to do so in the future is treated as a disability;
- recurring conditions which are likely to have a substantial adverse effect are to be taken as continuing to have that affect during periods of remission;
- in determining whether a condition has a substantial adverse effect any medical treatment or aids (other than spectacles or contact lenses) are to be disregarded (which means that 'hidden' impairments (for example, mental illness or mental health conditions, diabetes and epilepsy) may count as disabilities.

9.14.2 Additional types of prohibited conduct

In addition to direct and indirect discrimination, harassment and victimisation (see 9.4 above) there are two additional forms of prohibited behaviour which apply to the protected characteristic of disability. These are as follows -

- **Discrimination arising from a disability.**

  The Act says that treatment of a disabled person amounts to discrimination where:

  - an employer treats a disabled person unfavourably;
  - this treatment is *because of something arising in consequence of the disabled person's disability*; and
  - the employer cannot show that this treatment is a proportionate means of achieving a legitimate aim,

  unless the employer does not know, and could not reasonably be expected to know, that the person has the disability.

  Under this form of prohibited conduct there is no need for a comparator; a worker will be protected simply by demonstrating a causal connection between his or her disability and any detrimental treatment by the employer (such as, for example, disciplinary action for taking disability-related sickness absence).

- **Failure to make a reasonable adjustment**

Failure to comply with the duty to make a reasonable adjustment (see 9.14.3 below) is unlawful discrimination.

9.14.3 Duty to make reasonable adjustments

The Act imposes a duty on employers of all sizes to make reasonable adjustments to assist workers with disabilities. The duty relates to all disabled workers of an employer throughout employment and to any disabled applicant for employment. What is reasonable may vary according to the circumstances of the employer.

The duty imposes three requirements on employers -

- where a provision, criterion or practice (PCP) applied by or on behalf of the employer puts a disabled person at a substantial disadvantage compared to those who are not disabled, to take reasonable steps to avoid the substantial disadvantage;

- where a physical feature puts a disabled person at a substantial disadvantage compared to those who are not disabled, to take reasonable steps to avoid the disadvantage.

- where a disabled person would, but for the provision of an auxiliary aid (or service), be put at a substantial disadvantage compared to those who are not disabled to take reasonable steps to provide the aid (or service).

The duty does not apply unless the employer knows or could reasonably be expected to know that the worker has a disability and is or is likely to be placed at a substantial disadvantage.

The Statutory Employment Code of Practice gives many examples of such reasonable steps including the following -

- making adjustments to premises;

- providing information in accessible formats;

- allocating some of the disabled person's duties to another worker;

- transferring the disabled worker to fill an existing vacancy;

- altering the disabled worker's hours of work or training;

- assigning the disabled worker to a different place of work or training or arranging home working;

- allowing the disabled worker to be absent during working or training hours for rehabilitation, assessment or treatment;

- giving, or arranging for, training or mentoring for the disabled worker;

- acquiring or modifying equipment;

- modifying procedures for testing or assessment;

- providing a reader or interpreter;

- providing supervision or other support;

- allowing a disabled worker to take a period of disability leave;

- employing a support worker to assist a disabled worker;
- modifying disciplinary or grievance procedures for a disabled worker;
- adjusting redundancy selection criteria for a disabled worker;
- modifying performance-related pay arrangements for a disabled worker.

Factors determining what is reasonable include -

- how effective the measures would be;
- practicability;
- financial and other costs and the employer's financial or other resources; and
- the type and size of the employer.

9.14.4 Pre-employment health enquiries

(Equality Act s. 52)

Save for the exceptions below, it is unlawful for an employer or for an agent or employee of an employer to ask any job applicant about their health, including any previous sickness absence, or whether or not that person has a disability until -

- the applicant has been offered a job (on a conditional or unconditional basis); or
- has been included in a pool of successful candidates to be offered a job when a position becomes available.

This includes asking such questions as part of the application process or during an interview.

But It is lawful for an employer to ask questions related to disability or health if they are for any of the following purposes -

- establishing whether the applicant is able to comply with a requirement to undergo an assessment or establishing whether a duty to make reasonable adjustments applies in relation to such a requirement to undergo an assessment;

- establishing whether the applicant will be able to carry out a function that is intrinsic to the work concerned;
- monitoring the diversity of applicants;
- taking positive action (see 9.17); or
- if the job requires a the applicant to have a particular disability, establishing whether the applicant has the disability.

Although job offers can be made conditional on satisfactory responses to pre-employment disability or health enquiries or satisfactory health checks, employers must ensure they do not discriminate against a disabled job applicant on the basis of any such response. An employer can avoid discriminating against applicants to whom they have offered jobs subject to satisfactory health checks by ensuring that any health enquiries are relevant to the job in question and that reasonable adjustments are made for disabled applicants

9.14.5 Other key considerations -

- (As discussed elsewhere) more favourable treatment of a disabled worker than a non–disabled worker does not constitute direct discrimination.
- Non-disabled people are protected against direct disability discrimination where they suffer discrimination because they are perceived to have a disability or are associated with a disabled person.
- Discrimination against persons with disabilities is permitted if it is pursuant to a requirement of legislation or to a requirement imposed by legislation.

9.15 Liability / vicarious liability

9.15.1 Liability of employers and principals

(Equality Act section 97)

Employers and principals are (vicariously) liable for acts of discrimination, harassment and victimisation carried out by their employees in the course of employment or by their agents acting under their authority. It does not matter whether or not the employer or principal knows about or approves of those acts.

Employers who can show that they took all reasonable steps to prevent their employees from acting unlawfully (for example, providing equality training and implementing an equality policy) will not be held liable.

Employers and principals cannot be held liable for any criminal offences under the Act that are committed by their employees or agents.

9.15.2 Liability of employees and agents

(Equality Act section 98)

Employees and agents are personally liable for unlawful acts of discrimination committed in the course of employment and can be named as respondents in their own capacity.

But an employee or agent will not be liable if he or she has been told by the employer or principal that the act is lawful and he or she reasonably believes this to be true.

9.15.3 Other unlawful acts

(Equality Act sections 99- 100)

It is also unlawful for a person to:

- instruct, cause or induce someone to discriminate against, harass or victimise another person, or to attempt to do so;
- help someone carry out an act which he or she knows is unlawful under the Act.

9.16 Discrimination following the end of the employment relationship

(Equality Act section 96)

It is unlawful to discriminate against or harass someone after a work relationship has ended. Any conduct which would be unlawful if it occurred during an existing work relationship will also be unlawful if it arises out of and is closely connected to a former working relationship.

9.17 Positive action

(Equality Act section 147)

Employers are permitted to take certain positive action measures relating to recruitment and promotion of persons sharing a protected characteristic where:

- such persons suffer a disadvantage connected to the particular characteristic, or
- their participation in an activity is disproportionately low.

Action aimed at enabling or encouraging persons who share the protected characteristic to overcome or minimise that disadvantage, or participate in that activity will be lawful provided that:

- it does not disadvantage other candidates for recruitment or promotion who are more qualified;
- the employer does not have a policy of treating people who share the protected characteristic more favourably than other persons; and
- the positive action is a proportionate means of achieving those aims which are mentioned above.

9.18 Public sector equality duty

(Equality Act sections 143 - 145)

The Act imposes a duty, known as the public sector equality duty, on public authorities. Under this duty public authorities and persons exercising public functions must have due regard to the following three matters —

- eliminating discrimination, harassment, victimisation and any other conduct that is prohibited by the Act;
- advancing equality of opportunity between people who share a protected characteristic and people who do not share it[16]; and
- fostering good relations between people who share a protected characteristic and people who do not share it.[17]

Having due regard to the second matter involves considering —

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[16] other than the protected characteristic of marriage and civil partnership.

[17] other than the protected characteristic of marriage and civil partnership.

- removing or minimising disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic;

- taking 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; and

- encouraging 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.

The intention of the duty is to shift the onus from individuals to organisations, removing or reducing the need for individuals to bring discrimination complaints. Application of the duty requires careful consideration as to how policies and services impact upon different groups and taking appropriate actions.

Failure to perform an aspect of the public sector equality duty does not create any private law rights for individuals. These duties are, however, enforceable by way of a petition of doleance.

9.19 Enforcement

(Equality Act sections 113 – 114)

The right not to suffer discrimination may be enforced by complaint to the Employment and Equality Tribunal within 3 months of the act complained of, but the Tribunal can allow a complaint out of time if thinks it just and equitable to do so. Where the complaint is successful the Tribunal may:

- make an order declaring the rights of the parties;

- award compensation, up to a limit of £56,000 which may include loss of earnings and an amount for injury to feelings[18];

- make a recommendation as to action to be taken by the employer to remove or reduce the adverse effect on the complainant.

9.20 Overlapping protection afforded by the Equality Act and other legislation

[18] An injury to feelings award in this case is limited only to the extent that the total compensation may not exceed £56,000.

(Employment Act section 124A and 128(11A) and Regulations referred to below)

In certain cases a complainant may make a complaint under the Equality Act, as well as or instead of the Employment Act 2006 (and regulations made under that Act), in respect of the same matter, for example:

- it is possible to make a complaint of unfair dismissal or unlawful selection for redundancy on the ground of a protected characteristic under the Employment Act[19] (see 12.3.1 and 13.3) as well as or instead of a complaint of discrimination under the Equality Act;

- refusal to allow flexible working may be susceptible to a complaint of indirect sex discrimination (see 9.4.2) under the Equality Act as a well as or instead of a complaint under the Flexible Working Regulations 2007 (see 6.7);

- since, typically, more women than men work part-time, any provision, criterion or practice which adversely impact on part-time workers may be susceptible to a complaint of indirect sex discrimination (see 9.4.2) under the Equality Act as well as or instead of a complaint under the Part-time Workers (Prevention of Less Favourable Treatment) Regulations 2007 (see 10.1);

- any unfavourable treatment of a woman (or job applicant) for pregnancy or maternity reasons may be susceptible to a complaint of pregnancy and maternity discrimination or sex discrimination as well as or instead of a complaint under the Maternity Leave Regulations 2007 or other relevant legislation such as the right to paid time off for ante-natal care (see 6).

9.21 Equality Adviser /further information

(Equality Act section 159)

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[19] The usual one year qualifying period does not apply in either case.

The Equality Adviser, who is based in the Cabinet Office, provides general advice and information about the Equality Act 2017.

Further information on equality issues including the Employment Code of practice, which provides much more detailed information on the Equality Act than this guide, can be found on web pages maintained by the Equality Adviser, the Manx Industrial Relations Service and the Department for Enterprise (see "Useful Contacts" at Appendix 4 in each case).

10. Protection against discrimination under legislation other than the Equality Act 2017

10.1 Part-time workers

(Part-time Workers (Prevention of Less Favourable Treatment) Regulations 2007)

10.1.1 Discrimination against part-time workers

The Regulations give part-time workers a general right not to be less favourably treated than full-time workers, where a part-time worker and full-time worker:

- are engaged by the same employer;
- are employed under the same type of contract. Different contracts are as follows:
  - employees employed under a contract that is neither for a limited term (see 1.9.5) nor a contract of apprenticeship;
  - employees employed under a contract for a limited-term that is not a contract of apprenticeship;
  - employees employed under a contract of apprenticeship;
  - workers who are neither employees nor employed under a contract for a limited-term;
  - workers who are not employees but are employed under a contract for a limited-term; and
  - any other description of worker that it is reasonable for the employer to treat differently from other workers on the ground that workers of that description have a different type of contract.
- are engaged to do the same or broadly similar work, having regard where appropriate to the worker's qualifications, skills and experience; and
- work at the same workplace or, where there is no full-time worker at the same workplace, works for the same employer at a different workplace.

Where there are full-time workers and part-time workers meeting all the criteria, the part-time workers should receive a proportion of the

remuneration or other benefits received by the full-time workers, calculated according to the different number of hours they each work in a week (this is called the "**pro-rata principle**"), unless there are objective grounds for treating the part-time workers differently from the full-time workers.

If a contractual benefit is difficult or impossible to apply and there is no alternative way of dealing with the particular dilemma, then the employer may consider whether there is **objective justification** for not providing the benefit. (Excluding part-time workers from a share option scheme where the value of the share options is so small that the potential benefit to the part-timer of the options is less than the likely cost of realising them is an example where such objective justification could be argued).

Objective justification may involve the employer considering whether any less favourable treatment is:

- to achieve a legitimate objective, for example a genuine business objective;
- necessary to achieve that objective; and
- an appropriate way to achieve that objective.

Where there is no objective justification for not providing the benefit the employer should grant the part-time worker the equivalent benefit to that that enjoyed by comparable full-time workers.

The Regulations make the custom and practice of each employer the determining factor as to whether the worker is a part-time worker or not. Any worker whose working hours are fewer than the standard full-time working hours in the particular organisation will be treated as a part-time worker.

The Regulations make special provision for workers who go from full-time to part-time work, or go on part-time work after an absence from full-time work so that in each case the worker will be protected against any less favourable treatment on account of his or her new part-time status even though there may be no actual full-time comparator.

10.1.2 Scope of matters affected by the Regulations

The Regulations apply to all benefits conferred by a worker's contract including any of the following:

- hourly rates of pay;
- overtime rates (but a part-time worker will not be entitled to overtime until he or she has worked more than the normal hours of the comparable full-time worker);
- benefits under any contractual sick pay, maternity pay or paternity pay schemes. Where such schemes are operated for full-time workers, part-time workers should be entitled to receive the same rate of sick pay, maternity pay or paternity pay (on a pro rata basis), to qualify for payment after the same length of service, and to be paid for the same length of time;
- any annual leave entitlement beyond the statutory minimum of 4 weeks conferred by the Annual Leave Regulations 2007 (see 5.8);
- public holidays;
- any contractual maternity, paternity or parental leave beyond the minimum provided by the Employment Act 2006 and associated Regulations;
- access to any occupational pension schemes and pension scheme benefits;
- access to and benefits from any profit sharing scheme or share-option scheme operated by the employer;
- any other contractual benefits such as private medical insurance, staff discounts, subsidised loans, company cars etc.;

The Regulations also apply to any other type of less favourable treatment on the ground of a worker's part-time status including:

- access to training;
- access to promotion; and
- fairness of treatment vis-à-vis full time workers when workers are selected for redundancy.

10.1.3 The right to receive a written statement of reasons for less favourable treatment

A part-timer worker who believes he or she has been treated less favourably than a comparable full-timer can make a request to his or her employer for a written statement of reasons for such less favourable treatment. The employer must respond to the request within 21 days. Where the employer fails to provide a statement or where the statement that is provided appears to be evasive or equivocal the Employment and Equality Tribunal will be entitled to draw an inference that the employer has infringed the worker's rights under the Regulations.

10.1.4 Detriment

A worker has the right not to suffer detriment for seeking to enforce the right to be no less favourably treated, assisting another worker to do so, or alleging that the employer has infringed that right. This does not cover dismissal of an employee, but such a dismissal is automatically unfair (see 12.3.1).

10.1.5 Enforcement

The right not to be treated less favourably, and the right not to suffer detriment, may be enforced by complaint to the Employment and Equality Tribunal within 3 months of the treatment or detriment (or the last of them), but the Tribunal can allow a complaint out of time if there was a good reason for the delay. Where the complaint is successful the Tribunal makes a declaration, and may award compensation of an amount which the Tribunal considers just and equitable having regard to the employer's infringement and the worker's loss. It may also make a recommendation as to action to be taken by the employer to remove or reduce the adverse effect on the complainant; if the employer fails to comply with the recommendation it may make or increase an award of compensation.

10.1.6 Sex discrimination

Discrimination against part-time workers may also amount to indirect sex discrimination under the Equality Act 2017 (see 9.4.2)

10.2 Employees' past criminal convictions

(Rehabilitation of Offenders Act 2001; Rehabilitation of Offenders Act 2001 (Exceptions) Order 2018; Rehabilitation of Offenders Act 2001

(Amendment) Order 2019; Employment Act 2006 section 124B and 128(11B); also the GDPR and LED Implementing Regulations 2018)

10.2.1 Spent convictions

After a period of good behaviour ('rehabilitation period') certain convictions are 'spent', that is, treated as if they had never occurred, depending on the sentence imposed.

A job applicant does not have to disclose a spent conviction. Failure to disclose a spent conviction by an applicant is not a proper ground for an employer to refuse to engage that person while the dismissal of an employee because of a spent conviction will be automatically unfair unless the particular employment is excluded from protection (see further below and 12.3.1).

It is a criminal offence to require a job applicant or employee to use a subject access request to obtain a copy of their own criminal record, which will include spent convictions, in connection with their recruitment or continued employment (a practice known as enforced subject access). The only exceptions to this rule are where -

- the imposition of the requirement was required under any statutory provision or by a court order; or
- where in the particular circumstances the imposition of the requirement was justified as being in the public interest.

10.2.2 Rehabilitation periods

The rehabilitation periods for particular sentences (including suspended sentences) from the date of conviction are as follows:

Penalty	*Rehabilitation period for offenders aged 18 or over*	*Rehabilitation period for offenders aged under 18*
A custodial sentence of over 6 months but not exceeding 30 months	48 months from the date on which the sentence (including any licence period) is completed	24 months from the date on which the sentence (including any licence period) is completed
A custodial sentence of up to 6 months	24 months from the date on which the sentence (including any licence period) is completed	18 months from the date on which the sentence (including any licence period) is completed
Fine	12 months from the date of the conviction in respect of which the fine was imposed	6 months from the date of the conviction in respect of which the fine was imposed
Community order	12 months from the last day on which the order has effect	6 months from the last day on which the order has effect
Compensation order	On discharge of the order (i.e. when it is paid in full)	On discharge of the order (i.e. when it is paid in full)

Note that the Act does not cover cautions so these must be disclosed.

10.2.3 Exceptions

A conviction for which any of the following sentences is imposed is never spent**:**

- a life sentence;
- custody for a term of more than 30 months; and

- detention during His Majesty's pleasure (in relation to certain young offenders).

In addition, the Rehabilitation of Offenders Act 2001 (Exceptions) Order 2018 contain lists of excepted professions, offices, employments, work and occupations in respect of which *all* convictions must be disclosed, even those which are 'spent'. These include: health care professionals; advocates; accountants; vets; pharmaceutical chemists; police; teachers; traffic wardens; security staff; social care workers and youth workers.

For further information see "Rehabilitation of Offenders Act 2001" at Appendix 4).

10.3 Discrimination against trade unionists etc.

There is comprehensive protection against any discrimination on trade union grounds which covers recruitment, rights during employment and rights at termination of employment. This subject is dealt with at section 7.

11. Terminating the contract: notice and dismissal

(Employment Act 2006 Parts IX and X)

11.1 Notice to terminate a contract of employment

11.1.1 Minimum period of notice

(Employment Act 2006 section 106)

Where an employee has at least one month's continuous employment, both the employer and the employee are required to give a minimum period of notice to terminate the contract. The minimum period depends on which party is giving the notice and how long the employee has been continuously employed:

Period of continuous employment	*Minimum notice to be provided by* ***employer***
Less than 2 years	one week
2 years or more but less than 12 years	one week for each complete year of continuous employment
12 years or more	12 weeks

Period of continuous employment	*Minimum notice to be provided by* ***employee***
Less than 2 years	one week
2 years or more but less than 4 years	one week for each complete year of continuous employment
4 years or more	4 weeks

If the contract of employment requires a longer period of notice, then the contractual notice prevails. An employer or employee is not required to give the minimum notice if the other party's conduct amounts to repudiation of the contract. In the case of the employer, that includes gross misconduct or gross incompetence on the part of the employee.

The employer can make a payment in lieu of notice if:

- the contract specifically provides for payment of a sum in lieu of notice; or

- the employer and employee mutually agree that employment is to end immediately on the payment of a specified sum.

A payment in lieu of notice should be distinguished from one where the employee's employment is treated as continuing during the notice period and the employee is paid wages in the normal way but is not required to work, sometimes described as 'garden leave'. Such leave is commonly used to protect the employer's business by preventing executives from joining rival competitors or from starting their own businesses during the leave period.

11.1.2 Rights of the employee in the notice period

(Employment Act 2006 section 107 and Schedule 2).

An employee who has been employed for one month or more is entitled to all contractual payments and benefits during the statutory period of notice if:

- the employee is ready and willing to work but no work is provided for him or her by the employer; or

- the employee is incapable of work because of sickness or injury (even if any contractual entitlement he or she may have to sick pay has been exhausted); or

- the employee is absent from work because of pregnancy or childbirth or on adoption leave, parental leave or paternity leave; or

- the employee is absent from work in accordance with the terms of his or her employment relating to holidays.

This does not apply where the employer is obliged to give at least 2 weeks more than the statutory minimum period of notice (see 11.1.1). In that case, whether the employer or the employee has given notice, the employee's rights during the notice period will be governed solely by the contract of employment except in the case where the employee has an entitlement to the benefit of his or her terms and conditions of employment, despite his or her absence, by virtue of any other enactment.

11.2 Wrongful dismissal

(Employment Act 2006 section 108 and Schedule 2).

11.2.1 The concept of wrongful dismissal

If an employer dismisses an employee in breach of a contractual or statutory obligation to give the employee notice, the employer may become liable to pay the employee damages for wrongful dismissal; these would normally be the remuneration due in the period of notice, subject to the employee's duty to 'mitigate' his or her loss, e.g. by finding another job (except where he or she has a contractual entitlement to the whole sum).

Examples of wrongful dismissal are:

- summary dismissal by the employer without the employee's agreement and without the employee being in fundamental breach of contract;
- dismissal on inadequate notice;
- dismissal in breach of a contractual disciplinary procedure;
- in the case of a limited-term contract (see 1.9.5), early termination by the employer of the contract where there is no right to do so;
- 'constructive dismissal', (see 12.1.5).

An employee who has been wrongfully dismissed may claim damages in proceedings in the High Court (see 1.14).

The employee may instead make a complaint to the Employment and Equality Tribunal of unlawful deduction from wages provided that the particular damages sought fall within the definition of 'wages' (see 5.2.1). Notably the Tribunal has express powers to order payment of an amount owed in lieu of either statutory or contractual notice.

11.2.2 Distinction between wrongful dismissal and unfair dismissal

Dismissal of an employee may give rise to a claim for wrongful dismissal and / or for unfair dismissal (see 12).

- Wrongful dismissal is a dismissal in breach of the employee's contract of employment;

- Unfair dismissal is a breach of the statutory right not to be unfairly dismissed.

Some differences between the two concepts are as follows:

- A claim for wrongful dismissal is made to the High Court (though certain debts, including pay in lieu of notice may be recoverable by an unlawful deductions complaint to the Employment and Equality Tribunal – see 11.2.1). A complaint of unfair dismissal must be made to the Employment and Equality Tribunal.

- No qualifying period is required to bring a High Court claim whereas one year's continuous employment is usually required to bring a complaint of unfair dismissal.

- The time limit for bringing a complaint to the Tribunal is much shorter than for bringing a claim to the High Court (see 1.17).

- Damages for wrongful dismissal are based only on strict contractual rights and are limited to the notice period. Compensation for unfair dismissal may allow for other benefits and heads of loss; it may also extend beyond the notice period to cover any future losses (e.g. pension benefits, unemployment, reduced wages).

- There is no limit to the damages that the High Court may award for wrongful dismissal whereas compensation for unfair dismissal is limited to the statutory maximum (see 12.4.2).

A dismissal will sometimes be 'unfair' but not 'wrongful' (i.e. not a breach of contract), in which case a complaint may be brought to the Employment and Equality Tribunal alone, and not in the High Court. Equally, dismissal can also be wrongful but not unfair - a decision to dismiss may be reasonable even if it involves a breach of contract. Where both claims for wrongful dismissal and complaints of unfair dismissal are brought, compensation will not be recoverable twice in respect of the same loss.

The possibility of a claim for wrongful dismissal and complaint of unfair dismissal extends to "constructive dismissal" (see 12.1.5).

11.3 Statement of reason for dismissal

(Employment Act 2006 section 110)

11.3.1 Right to written statement

An employee who has been dismissed can, irrespective of length of service, request a written statement of the reasons for dismissal, which must be given within 14 days.

If an employee is dismissed while pregnant, or while on ordinary or additional maternity leave (see 6.3) or ordinary or additional adoption leave (see 6.5), he or she must be given such a statement without request.

The statement is admissible in any proceedings in the High Court or the Employment and Equality Tribunal.

11.3.2 Enforcement

The right to a statement may be enforced, in case of the employer's failure to give a statement, or a statement giving reasons which are inadequate or untrue, by complaint to the Employment and Equality Tribunal. The complaint must be made within the same time as that allowed for a complaint of unfair dismissal in respect of the same termination (normally within 3 months of the 'effective date of termination': see 12.1.6), but the Tribunal can allow a complaint out of time if there was a good reason for the delay. Where the complaint is successful, the Tribunal may make a declaration as to the true reason for dismissal, and awards compensation of 2 weeks' pay. (This is not subject to the usual limit of a week's pay (see 1.16)).

12. Terminating the contract: unfair dismissal

(Employment Act 2006 Part X)

12.1 General regime

12.1.1 The right not to be unfairly dismissed

Employees have the right not to be unfairly dismissed. An employee who is unfairly dismissed may make a complaint to the Employment and Equality Tribunal, which may order the employee to be reinstated or re-engaged and / or award compensation.

12.1.2 Time limit for complaint

A complaint of unfair dismissal must generally be made within 3 months of the 'effective date of termination' (see 12.1.6). However, where the reason for dismissal was that the employee took industrial action (see 12.3.1 and 12.3.3), a complaint must be made within 6 months of the date of dismissal.

The Tribunal can allow a complaint out of time if there was a good reason for the delay.

12.1.3 Eligibility

The right is limited to employees who have been continuously employed (see 1.10) for one year at the 'effective date of termination' (see 12.1.6).

But even those employees can claim the right if they allege that their dismissal was:

- automatically unfair for a reason listed at 12.3.1 or 12.3.2;
- victimisation because of industrial action (see 12.3.3);
- because of their membership of a reserve force (see 12.3.4) or
- connected with the their political affiliations or opinions (see 12.3.5).

A worker other than an employee who is unfairly dismissed may have a remedy in certain cases: see 1.8.2 to 1.8.4).

12.1.4 What constitutes dismissal?

For the purpose of the right not to be unfairly dismissed, an employee is dismissed if:

- the contract under which he or she is employed is terminated by the employer, with or without notice; or
- where the employee is employed for a limited-term (see 1.9.5) the contract terminates by virtue of the limiting event without being renewed under the same contract; or
- the employee terminates the contract with or without notice, in circumstances such that he or she is entitled to terminate it without notice by reason of the employer's conduct (this is known as 'constructive dismissal' - see further at 12.1.5 below).

12.1.5 Constructive dismissal

Constructive dismissal is a type of dismissal whereby the employee terminates the contract with or without notice, as a result of treatment by the employer which is so bad that the employee is entitled to treat the contract as having been terminated by the employer. Examples of such treatment might include:

- a serious breach of contract (e.g. not paying an employee or demoting an employee for no reason);
- forcing an employee to accept unreasonable changes to his or her conditions of employment without agreement;
- bullying, harassment or violence by work colleagues;
- making the employee work in dangerous conditions.

In order to bring a successful complaint of constructive dismissal the employee must establish that:

- the employer was in breach of an express or implied term of the contract of employment;
- the breach (or series of breaches) was so serious as to entitle the employee to treat the contract as having been repudiated by the employer; and
- the employee resigned because of that breach of contract (and did not delay resigning for too long).

A complaint of unfair constructive dismissal is dealt with in the same way as other unfair dismissal complaints (see 12); in most cases one year's service is required.

Note that it is also possible to bring a claim of wrongful constructive dismissal, which is a claim for breach of contract made to the High Court (see 1.14, 11.2).

12.1.6 The effective date of termination

In cases of unfair dismissal it is necessary to establish the 'effective date of termination' in order to:

- calculate whether the employee has completed the necessary period of continuous employment;
- decide whether the application has been made to the Tribunal within the specified time limit; and
- calculate any compensation award.

The effective date of termination is:

- where the employee's contract of employment is terminated by notice (by either the employer or employee), the date on which the notice expires;
- where the employee's contract of employment is terminated without notice, the date on which the termination takes effect; and
- in relation to an employee who is employed under a contract for a limited-term (see 1.9.5), which terminates by virtue of the limiting event without being renewed under the same contract, the date on which the termination takes effect.

Where the employee is entitled to the statutory minimum period of notice (see 11.1.1) and is dismissed without notice or with less than the minimum, the date on which the minimum period of notice would have expired is the effective date of termination for the purpose of calculating:

- the length of the employee's continuous employment, and
- the amount of the basic award of compensation

but NOT the time limit within which a complaint may be made to the Employment and Equality Tribunal.

12.2 Fairness of dismissal

12.2.1 Overview

An employee does not have to prove that his or her dismissal was unfair. It is for the employer to show (a) what the reason for the dismissal was, and (b) that the dismissal was justified. (Note that the employer must provide the employee with a statement of the reason for dismissal on request: see 11.3.)

A dismissal will be potentially admissible if the reason for it:

- related to the capability or qualifications of the employee to do the work he or she was employed to do;
- related to the employee's conduct;
- was that the employee was redundant;
- was that continued employment in the particular position would be illegal; or
- was some other substantial reason justifying the dismissal of an employee holding the position which the employee held.

Except in a case where the dismissal is automatically unfair (see 12.3.1, 12.3.2) the Tribunal must decide whether the dismissal was fair or unfair, having regard to the reason shown by the employer. The Tribunal is to consider whether, in all the circumstances (including the employer's size and administrative resources), the dismissal was reasonable. This involves considering both:

- the decision to dismiss (did the circumstances justify it?); and
- the process used in reaching it (did the employer act fairly?).

The Tribunal is to determine the case 'in accordance with equity [i.e. common sense and fairness] and the substantial merits of the case [i.e. not on legal technicalities].

12.2.2 The Code of Practice on Disciplinary and Grievance Procedures in Employment 2007

In establishing whether or not a dismissal was fair any provision of *the Code of Practice on Disciplinary and Grievance Procedures in Employment 2007* (or any other code of practice – see 1.19) which appears to the Tribunal to be relevant to any question arising in the proceedings may be taken into account. The Code includes information as to:

- fair disciplinary procedures, (especially relevant to dismissals relating to misconduct);
- fair capability procedures; and
- the exercise of the right of accompaniment (see 8.7).

(A copy of the Code can be downloaded from the employment law pages of the IOM Government website (see "Useful Contacts" at Appendix 4).

12.2.3 Relevant factors in relation to potentially admissible reasons

In arriving at a judgment as to whether or not a dismissal was fair the Employment and Equality Tribunal may consider a range of factors, some of which are derived from the Code. Depending upon the reason for the dismissal, relevant factors are:

- **In all cases**
  - hearing / appeal;
  - right of accompaniment; (see 8.7)
- **Capability (performance)**
  - warnings;
  - opportunity to improve / targets;
  - training / coaching / assistance;
  - consideration of alternative employment;
- **Capability (health)**
  - Compliance with the requirements of the Equality Act 2017 as regards the protected characteristic of disability (see 9.2 and 9.14);
  - consultation;
  - medical report / information;

- consideration of reasonable adjustments (see 9.14.3) and alternative employment;

- **Misconduct (disciplinary)**
  - investigation;
  - previous warnings (or gross misconduct);
  - notice of charges and evidence;
  - whether the employer may have acted in a discriminatory way;
  - previous disciplinary record;
  - precedents set in dealing with other employees;
  - compliance with *the Code of Practice on Disciplinary and Grievance Procedures in Employment 2007* (see 12.2.2).
- **Redundancy (see 13.3)**
  - consultation;
  - selection criteria (and, in particular, avoidance of criteria which may constitute unlawful discrimination (see 9.2);
  - consideration of alternative employment;
- **Illegality**

  Possible reasons include disqualification from driving, expiry or lack of a work permit (see 1.18) and breach of health and safety legislation.

  - discussion with the employee;
  - consideration of alternative employment;
- **Some other substantial reason**

  Possible reasons include the end of a limited term contract (see 1.9.5); a change in the contract of employment (see 1.4); or pressure to dismiss from an employee or customer (see also 12.2.5).

  - discussion / consultation with the employee;
  - exploration of compromises or alternative employment opportunities.

12.2.4 Dismissal of a temporary replacement

Dismissal of a temporary replacement engaged because another employee is absent due to pregnancy, childbirth or adoption leave is justified, provided that the replacement is informed of this in writing on engagement.

12.2.5 Pressure to dismiss

In determining the employer's reason for dismissing an employee, the Tribunal is to ignore any pressure brought on the employer by any industrial action or threat of industrial action.

Either the employer or the employee can join the union or some other person as a third party to the proceedings, where it is claimed that pressure was brought on the employer by the third party to dismiss the employee by taking or threatening industrial action.

12.3 Automatically unfair dismissals and other special cases

12.3.1 When dismissal is automatically unfair under the Employment Act 2006

Under the Employment Act 2006 dismissal for certain reasons or in certain circumstances is always unfair:

- for certain reasons connected with:
  - pregnancy, childbirth or maternity leave (see 6.3.5);
  - adoption leave (see 6.5.5);
  - paternity leave (see 6.4.6 and 6.5.5); or
  - parental leave (6.6.2);

  (Note that both the Equality Act 2017 (see 9) and regulation 15 of the Management of Health and Safety at Work Regulations 2003 (see 6.2) may also be relevant in cases of unfair dismissal for any of the above reasons.)

- for taking action of certain kinds in the interests of health and safety (see 8.5);

- for asserting a right to annual leave (see 5.8);

- for performing or proposing to perform functions or activities as a trustee of an occupational pension scheme (see 8.3);

- for making a protected disclosure ('whistleblowing') (see 8.6.2);

- for asserting a statutory employment right (see 8.4.1);

- for membership, or taking part in the activities or using the services, of a registered trade union, or non-membership of a trade union, or refusing an employer's inducement to be or not to be a union member, not to take part in union activities or use a union's services, or not to have terms of employment negotiated by collective bargaining, or refusing to make payments or objecting to deductions from pay required because of non-membership of a union (see 7.2 and 7.3);

- for seeking to enforce a right to the minimum wage, or taking action resulting in the prosecution of the employer for a minimum wage offence, or because the employee qualifies or will or might qualify for the minimum wage (see 5.3.7);

- for requesting flexible working, or exercising any right against the employer, bringing Tribunal proceedings or alleging a ground for bringing proceedings in connection with flexible working, or accompanying, or seeking to accompany, an employee who wishes to exercise the right to seek flexible working (see 6.7);

- for exercising or seeking to exercise the right to be accompanied at a disciplinary or grievance hearing, to have a meeting postponed, or to be accompanied by or to seek to accompany another worker (see 8.7);

- for taking 'protected industrial action' (see 7.6) where the employee is dismissed either within the protected period (4 weeks from the first day on which the action was taken by the employee (plus any lock-out beginning during the 4 weeks), or after the end of that period if he or she stopped taking industrial action before the end of that period (see 7.6)

- on the ground of a protected characteristic (see 9.2) under the Equality Act 2017, if the reason for the dismissal would constitute unlawful discrimination under that Act;

- for exercising the right as a part-time employee not to be treated less favourably than a comparable full-time employee, assisting another employee to do so, or alleging that the employer has infringed that right (see 10.1.4);

- on the ground of the employee's 'spent' conviction within the meaning of the Rehabilitation of Offenders Act 2001, though

there are exceptions where protection does not apply (see further at 3.3);

- where the employee is selected for redundancy on any of the above grounds (and see also 13.3).

12.3.2 When dismissal is automatically unfair under other employment legislation

(Shops Act sections 9 and 10)

Additionally, dismissal for certain other reasons is always unfair:

- for refusing to work on a Sunday, Good Friday or Christmas Day, in the case of a protected or opted-out shop worker, or giving or proposing to give a notice to opt out (see 8.8);

- where the employee is selected for redundancy on any of those grounds.

12.3.3 Dismissal in connection with industrial action

(Employment Act 2006 section 130)

Apart from dismissal for taking 'protected industrial action' (see 12.3.1), dismissal of an employee during or following a lock-out or industrial action is not of itself unfair, unless the employee is victimised. The employee cannot claim unfair dismissal if the employer:

- has dismissed all those who were taking part in the action at the same establishment; and

- has not offered re-engagement to any of them within 3 months of the date of dismissal.

This does not apply if the reason for the dismissal (or selection for redundancy) was:

- for certain reasons connected with pregnancy, childbirth or maternity leave (see 6.3.5), adoption leave (see 6.5.5), paternity leave (see 6.4.6 and 6.5.5) or parental leave (see 6.6.2);

- taking action of certain kinds in the interests of health and safety (see 8.5);

- for making a protected disclosure ('whistleblowing') (see 8.6.2); or

- for requesting flexible working, or exercising any right against the employer, bringing Tribunal proceedings or alleging a ground for bringing proceedings in connection with flexible working (see 6.7).

12.3.4 Dismissal for membership of the reserve forces etc.

(Employment Act 2006 s. 132(4); the Reserve Forces (Safeguard of Employment) Act 1985 (of Parliament, as extended to the Island); the Reserve Forces Act 1996 (of Parliament, as extended to the Island); the Reserve (Isle of Man) Regulations 2010) (SI 2010/2643, as amended by SI 2018/991); the Reserve Forces (Payments to Employers and Partners) (Isle of Man) Regulations 2018 (SI 2018/992))

The usual eligibility restrictions (see 9.1.3) do not apply if it is shown that the reason for the dismissal is, or is connected with, the employee's membership of a reserve force (as defined in section 374 of the Armed Forces Act 2006 (of Parliament).

Further, it is a criminal offence, punishable by a fine, to terminate a person's employment because of his or her entering upon a period of service in the reserve forces or for a related reason.

Note: the employer of a reservist who has to go on active service may be able to claim some financial assistance from the British Government. For further information about the rights and responsibilities of reservists and employers see: https://www.gov.uk/employee-reservist

12.3.5 Dismissal because of an employee's political affiliations etc.

The usual eligibility restrictions as regards the qualifying period and upper age limit (see 12.1.3) do not apply if it is shown that the reason for the dismissal is, or is connected with, the employee's political affiliations or opinions. But a dismissal for such a reason will not be automatically unfair.

12.4 Remedies for unfair dismissal

12.4.1 Reinstatement or re-engagement

If the Employment and Equality Tribunal finds that the employee was unfairly dismissed, it asks the employee whether he or she wishes one of the following orders to be made:

- an order for the employee's **reinstatement**, i.e. that the employee be treated for all purposes as if he or she had not been dismissed; the Tribunal is to specify what payments the employer is to make for this purpose (e.g. arrears of pay), and what rights and privileges are to be restored, and by what date;

- an order for the employee's **re-engagement**, i.e. that the employee be re-engaged by the employer (or a successor or associated employer) in a comparable job; the Tribunal is to specify who is to employ the employee, in what job and at what rate of pay, what payments the employer is to make for this purpose (e.g. arrears of pay), and what rights and privileges are to be restored, and by what date.

In deciding whether to make such an order, the Tribunal is to consider first whether to make an order for reinstatement, and if not, whether to make an order for re-engagement. In each case it is to have regard as to the employee's wishes, and as to whether reinstatement or re-engagement is practicable and (if the employee caused or contributed to the dismissal) just. The fact that the employer has engaged a permanent replacement is not relevant, unless this was the only practicable way to get the work done, or it was reasonable to do so having regard to the lapse of time since the dismissal.

Where an employee was dismissed on account of taking industrial action, the Tribunal may not order reinstatement or re-engagement while industrial action is continuing.

For compensation where an order for reinstatement or re-engagement is not complied with, see below.

12.4.2 Compensation for unfair dismissal

Where the Employment and Equality Tribunal does not make an order for reinstatement or re-engagement, it is to make an award of compensation, calculated as follows:

- a **basic award** of one week's pay (see 1.16) for each completed year of continuous employment (see 1.10) up to the effective date of termination (see 12.1.6).

- a **compensatory award** based on the employee's loss, including any expenses reasonably incurred in consequence of the dismissal and any other benefits including pensions that might reasonably have been expected but for the dismissal; the award must not exceed a fixed maximum (currently £56,000) except in health and safety and whistleblowing cases (see 12.3.1); and

- a compensation for **injury to feelings award**, if the Tribunal thinks it just and equitable, up to a fixed maximum of £5,000.

In calculating the award the Tribunal must:

- ignore industrial action or any threat of industrial action against the employer;

- reduce the award to take into account of any conduct or action by the employee which caused or contributed to the dismissal (other than being or refusing to be a union member, taking part in union activities, using union services, refusing to make payments or objecting to deductions from pay required because of non-membership of a union, or refusing a related inducement);

- reduce the award to take account of any redundancy payment; and

- apply the ordinary rules as to a complainant's duty to mitigate his or her loss.

Where the Employment and Equality Tribunal makes an order for reinstatement or re-engagement:

- if the employee is reinstated or re-engaged but the order is not fully complied with, it is to make a compensatory award based on the employee's loss, up to a the same statutory maximum as the compensatory award (see above), save that the usual limit may be exceeded to the extent necessary to enable the award fully to reflect any sums which ought to have been paid pursuant to the original order (see 12.4.1);

- if the employee is not reinstated or re-engaged in accordance with the order, it is to make an award of compensation as above (i.e. a basic award, compensatory award and a possible award for compensation for injured feelings), plus **an additional award** of between 26 and 52 weeks' pay (see 1.16) (but no additional award is to be made if it was impracticable for the employee to be reinstated or re-engaged). Again, in this case the usual limit of the compensatory award may be exceeded to the extent necessary to enable the aggregate of the compensatory and additional awards fully to reflect any sums which ought to have been paid under the Tribunal's original order,

but if the employee has unreasonably prevented his or her reinstatement or re-engagement, the award is to be reduced according to the rules as to mitigation of loss.

In addition, where the Tribunal finds in favour of the employee, and the employer was in breach of his or her duty to issue written particulars of the employee's contract of employment (see 4.2), it will order the employer to pay the employee 2-4 weeks' pay (see 1.16).

Where a trade union or other person has been joined as a third party (see 12.2.5) the award of compensation may be made against the third party in whole or in part.

12.4.3 Recoupment by Treasury

(Equality Act 2017 s. 117; Employment (Recoupment of Jobseeker's Allowance and Income Support) Regulations 2010

The employer may be required to pay part of the compensatory award to reimburse the Treasury for any jobseeker's allowance or income support paid to the employee as a consequence of the dismissal.

13. Terminating the contract: redundancy

(Redundancy Payments Act 1990; Employment Act 2006 s.128)

13.1 The right to a redundancy payment

An employee who is:

- dismissed because of redundancy; or
- laid off or kept on short time for a certain time,

is in certain cases entitled to be paid a lump sum (a 'redundancy payment') by his or her employer.

13.1.1 Eligibility

To be eligible for a redundancy payment an employee must be:

- an employee (see 1.8);
- continuously employed for at least 2 years (see 1.10);
- dismissed (this includes both non-renewal of a limited-term contract (see 1.9.5) and constructive dismissal (see 12.1.4). It also includes the case where an employee is given notice by the employer and then gives notice to terminate the employment on a date earlier than the employer's notice).

The dismissal must be wholly or mainly by reason of redundancy, i.e.:

- the employer has ceased, or intends to cease, the business, overall or in a particular place; or
- the demand has diminished, or is expected to diminish, for an employee to do work of that kind, overall or in a particular place.

Dismissal is presumed to be by reason of redundancy, so if the employer wishes to avoid making a redundancy payment, he must be able to show another reason for dismissal.

The following employees are excluded from the right to claim a redundancy payment:

- share fishermen;

- an employee who ordinarily works outside the Island (although there are exceptions);
- certain public sector employees (who are covered by separate arrangements); and
- a domestic servant employed by a relative.

13.1.2 The relevant date

The entitlement to, and amount of, a redundancy payment are determined by reference to the 'relevant date', which is:

- where the contract of employment is terminated by notice, the date the notice expires;
- where the contract of employment is terminated without notice, the date when it terminates;
- where the employee is employed under a contract for a limited-term (see 1.9.5) and that contract terminates by virtue of a limiting event without being renewed under the same contract the date when it expires;
- where an employee is given notice by the employer and then gives notice to terminate the employment on a date earlier than the expiry of the employer's notice, the date when the employee's notice expires;
- where the employee gives notice during a trial period (see 13.1.4), the date when the new contract is terminated (for the purpose of calculating the time within which a claim for a redundancy payment can be made: see 13.2.2), or the date when the original contract terminated (for any other purpose).

13.1.3 Lay-off and short time

An employee is 'laid-off' if he or she receives no work and no pay of any kind from the employer. An employee is on 'short time' if in any week, because of a shortage of work, he or she receives less than half a week's pay (see 1.16).

Where an employee is laid-off or on short time for:

- 4 consecutive weeks, or

- any 6 weeks (of which not more than 3 are consecutive) in a 13-week period,

the employee is entitled to give a notice in writing to the employer stating that he or she intends to claim a redundancy payment. If within 4 weeks of doing so the employee gives notice to terminate the employment, he or she is entitled to a redundancy payment, unless the employer serves a counter-notice.

The employer may serve a counter-notice within 7 days, contesting the employee's notice on the ground that there is a reasonable prospect of resumption of work. Unless the employee continues to be laid off or on short time for a further 4 weeks, the employer can dispute the claim to a redundancy payment, and the employee will not be entitled to it unless the Tribunal so decides.

13.1.4 Offer of alternative work

Entitlement to a redundancy payment may be extinguished if a new job is offered with -

- the same employer;

- a successor or associated employer who takes over the business. This applies regardless of whether the person transferring the business is the person's employer and includes a service provision change.

But the new job must -

- be offered before the old employment contract expires;

- start within 4 weeks of the termination;

- be suitable and unreasonable for the employee to refuse it.

In such cases the employee can put off the decision as to whether to accept the new job for a four week trial period. The period may be extended beyond four weeks by written agreement between the parties where retraining is necessary. If at the end of the trial period the employee is still in the job, he or she will be regarded as having accepted it.

If the employee rejects the new job before the end of the trial period, because it turns out not be a suitable alternative to the old job, or for good personal reasons, he or she will be considered to be

redundant from the date the original employment ended. But if a redundant employee unreasonably refuses a suitable offer of alternative employment no redundancy payment will be due. It would not be reasonable for the employee to refuse an offer, or to terminate a new contract, simply because the transferee is substituted for the transferor as his employer.

Whether alternative work is suitable (and whether it is reasonable to refuse it) depends on factors such as how the terms and conditions of the new job compare with the previous one, and the location of the new job in relation to the previous one.

Where an employee transfers over to a new employer in accordance with the principles set out in this section he or she will not be entitled to a redundancy payment but his or her continuity of employment with the previous employer will be preserved.

13.1.5 Entitlement when an employee wishes to leave early

If an employee wishes to leave before his or her notice ends and the employer has no objection, a redundancy payment may still be payable. Where an employee gives the employer written notice that he or she wishes to leave early (for example, because he or she has got another job) and the employer objects to this, the employer may issue a written request to the employee asking him or her to withdraw the notice and warning that if he or she does not, the employer may contest any right to a redundancy payment.

13.2 Complaints and payments

13.2.1 Reference of complaint to Tribunal

The employee may refer to the Employment and Equality Tribunal the question:

- whether he or she is entitled to a redundancy payment, or
- how much the payment should be.

Where the employer has refused to make a payment because the employee left before the end of the notice period despite the employer's objection), the Tribunal will consider the employee's reasons for wanting to leave early, and the reasons given by the employer for refusing his or her request, and will determine whether the employee should receive all, some or none of the redundancy payment.

13.2.2 Time limit for complaints

The right to a redundancy payment lapses 12 months after the relevant date (see 13.1.2) unless within that time:

- a redundancy payment has been agreed and paid;
- the employee has made a claim for the payment to the employer in writing;
- the employee has referred the claim to the Employment and Equality Tribunal; or
- the employee has made a complaint of unfair dismissal to the Tribunal.

However, the Tribunal may allow the right to be enforced if such a claim, reference or complaint is made within the following 12 months, and it considers it just and equitable that the employee should receive a payment having regard to the reason why it was not made within the first 12 months.

13.2.3 Calculation of redundancy payment

The amount of a redundancy payment is one week's pay up to a maximum amount of £540 (see 1.16) for each complete year for which the employee has been continuously employed (see 1.10). Not more than 26 years can be taken into consideration.

13.2.4 Notification of payment

Where a redundancy payment is made without a reference by the employee to the Employment and Equality Tribunal, the employer must give the employee a written statement indicating how it is calculated.

Failure to give a statement without reasonable cause is an offence carrying a maximum fine on summary conviction of £200 (or, if the employee made a request in writing for a statement, £1,000).

13.2.5 Redundancy rebates

A small employer who makes a statutory redundancy payment to an employee is entitled to a rebate from the Manx National Insurance Fund of a certain proportion of the payment, subject to certain administrative requirements. A rebate should be claimed within 12 months of the date of the payment, or entitlement may be lost. A

rebate may be claimed even where the employee's claim was out of time (see 13.2.1), if the Treasury is satisfied that it was just and equitable to make the payment.

A small employer is one whose workforce, with that of any associated employers, is not more than 40. The amount of the rebate depends on the size of the workforce of the employer and any associated employers:

Employees	*Rebate*
up to 5	60%
6 – 10	50%
11 – 20	40%
21 – 30	35%
31 – 40	30%

Where the employer is a company, no rebate may be claimed in respect of a redundancy payment to a director, or a beneficial owner of one half or more of the issued share capital, of the company or any other company which had control of it.

Where an employer intends to claim a rebate on redundancy payments made to employees, he or she should give advance written notice to the Redundancy Payments Unit of the Social Security Division of the Treasury (see "Useful Contacts" at Appendix 4). Written notice should reach the Department not less than 14 days before the proposed termination, or where 10 or more employees are to be made redundant within a week of each other, not less than 21 days. In cases where an employer has failed to provide the advance notice required, the amount of rebate to which he or she may be entitled may be reduced.

Any question as to whether the employer was liable to make the redundancy payment, or as to the amount of the rebate due may be referred to the Employment and Equality Tribunal.

13.3 Unfair dismissal and redundancy

(Employment Act 2006 section 128)

Dismissal on grounds of redundancy is automatically unfair if the employee is selected for any of the reasons set out at 12.3.1 or 12.3.2 above.

Dismissal on grounds of redundancy may also be unfair where:

- the employer has failed to give the employee as much warning or opportunity for consultation as practicable; or

- the selection criteria are discriminatory, particularly with regard to the protected characteristics in the Equality Act 2017 (see 9.2), are unreasonable or are applied unreasonably; or

- the employer has failed to offer the employee suitable alternative employment which was available.

Note that selecting employees for redundancy on the basis that Isle of Man workers are to be retained is unjustified where those selected have the requisite permits and, if it is the sole or principal determinant of a decision to dismiss a particular employee for redundancy, is likely to cause the dismissal to be unfair.

13.4 Further information

Further information is available in a leaflet produced by the Manx Industrial Relations Service (MIRS), entitled *"A Guide to Redundancies"* which can be downloaded from the MIRS website (see "Useful Contacts" at Appendix 4).

14. Employees' rights on employer's insolvency etc.

14.1 Preferential debts

(Preferential Payments Act 1908)

On an employer's insolvency certain debts to employees have priority over the debts of ordinary creditors, including:

- arrears of pay for 8 weeks (maximum of £250 per week);
- accrued holiday pay;
- unpaid pension contributions;
- arrears of payment for time off for trade union duties (see 7.4), looking for work (see 8.2), carrying out duties as a pension scheme trustee (see 8.3) or ante-natal care (see 6.1);

However, other preferential debts may have priority over these debts.

14.2 Payment of debts by the Treasury

(Employment Act 2006 sections 147-155 and Redundancy Payments Act 1990 sections 25-28)

Where an employer has become insolvent or ceased carrying on business in the Isle of Man and, in either case, the employment of the employee has been terminated, the Treasury may pay certain debts of the employer out of the Manx National Insurance Fund.

14.2.1 Debts which may be paid

The Treasury may pay the following debts to an employee whose employment has been terminated:

- arrears of pay for between 1 to 8 weeks;
- pay during any period of statutory minimum notice (see 11.1);
- up to 6 weeks' holiday pay accrued in the preceding 12 months;
- an unpaid basic award of compensation for unfair dismissal (see 12.4.2);

- arrears of payment for time off for: trade union duties (see 7.4); looking for work (see 8.2); ante-natal care (see 6.1); or carrying out duties as a pension scheme trustee (see 8.3);

- an unpaid statutory redundancy payment (see 13.1).

These debts are subject to the maximum amount of a week's pay (see 1.16).

The Treasury may pay to the managers of an occupational pension scheme or personal pension plan any employer's or employee's contributions to the scheme unpaid in the 12 months before the employer's insolvency:

- in the case of the employer's contributions, up to the lesser of (a) 10% of the total remuneration (including holiday pay and payments for time off with pay) and (b) the amount certified by an actuary as required to pay the benefits due in respect of the employees;

- in the case of the employee's contributions, up to the amount deducted from the employee's pay in that period.

Where the employer is a company, no payment may be made in respect of a debt to, or contributions in respect of, a director, or a beneficial owner of one half or more of the issued share capital, of the company or any other company which had control of it.

14.2.2 Employer's insolvency

An employer is treated as insolvent for this purpose where:

- in the case of an individual:
  - he or she has become bankrupt or made a deed of arrangement;
  - he or she is dead and his or her estate is being administered according to the rules for insolvent estates;
- in the case of a company:
  - a winding up order has been made or a creditors' resolution for voluntary winding up has been passed;
  - a receiver or manager of its undertaking has been appointed; or

- debenture-holders have taken possession of any of its property; or

- any event similar to the above has happened outside the Isle of Man.

The employee or pension scheme managers must make an application in writing to the Treasury within 12 months of the employer's insolvency or the date of termination, whichever is later.

14.2.3 Employer ceasing business

An employee may claim payment from the Treasury of an unpaid debt only where he or she has taken all reasonable steps, short of legal proceedings, to recover it from the employer.

The employee must make an application in writing to the Treasury within 12 months of the date of termination.

14.2.4 Disputes

Where there is a dispute over the entitlement to or amount of payments from the Treasury, the employee or scheme managers may make a complaint to the Employment and Equality Tribunal within 3 months of the date of the decision of the Treasury on the application, but the Tribunal can allow a complaint out of time if that was not reasonably practicable.

14.2.5 Subrogation

Where the Treasury pays a debt as above, it takes over the rights and duties of the employee ("subrogation") so that it may claim from the employer the amount paid, and "stand in the shoes of the employee" for this purpose (e.g. as to priority of debts, enforcement of decisions of Tribunal etc.).

15. Resolution of disputes relating to individual employment rights

(Equality Act 2017 Part 9 and Schedule 17; Employment and Equality Tribunal Rules 2018 as amended by the Employment and Equality Tribunal (Amendment) Rules 2019)

15.1 Conciliation

(Equality Act 2017 section 104)

Where a person has a potential ground for complaint to the Employment and Equality Tribunal an industrial relations officer will to seek to resolve it by conciliation.

Where a complaint has been made to the Tribunal an industrial relations officer will to seek to resolve it by conciliation, either on his or her initiative, or, if requested to do so by the complainant and the other party to the dispute.

Where the employment has ceased, the industrial relations officer is to seek to get the complainant reinstated or re-engaged, or, if he or she does not want his or her job back, to seek to negotiate compensation.

Where appropriate, an industrial relations officer may use alternative procedures for dispute resolution such as mediation or arbitration.

Anything communicated to an industrial relations officer in the course of conciliation is not admissible in evidence before the Tribunal, without the consent of the party which communicated the information.

For the legal status of such settlements see 1.15.

15.2 The Employment and Equality Tribunal

(Employment Act 2006 section 156 and Schedule 3; also the Employment and Equality Tribunal Rules 2018)

15.2.1 Administration

The Employment and Equality Tribunal is administered by the Isle of Man Tribunals Service, which is part of the General Registry. For contact details of the Tribunal Office see "Useful Contacts" at Appendix 4.

15.2.2 Composition of the Tribunal

The Tribunal usually consists of three members: a chairperson (who is usually legally qualified), a member drawn from a panel nominated by employers' organisations and a member drawn from a panel nominated by employees' organisations. This makes a majority decision possible.

The chairperson may sit alone in certain circumstances which are set out at 15.2.9, 15.2.10, and 15.2.12.

15.2.3 Proceedings before the Tribunal

The Tribunal tries to keep its proceedings as simple and informal as possible. Many complainants and respondents put their own cases to the Tribunal although some may choose to have a representative who may be an advocate, trade union official, representative of an employer's organisation or simply a friend or colleague.

In work of equal value complaints (see 5.5 and 5.5.4) a special procedure applies, which is set out in set out in Schedule 3 of the Rules.

There is no fee for making a complaint to the Tribunal.

Legal aid is not available.

15.2.4 Making a complaint to the Tribunal

Before a complaint to the Tribunal is accepted it must meet certain conditions. It must be in writing and in the officially prescribed form.

Complaints to the Tribunal must be made within very strict time limits (see 1.17).

15.2.5 Responding to the complaint

Where a complaint has been accepted by the Tribunal, the Tribunal office will send a copy to the person or persons against whom the complaint is made ('the respondent'), together with a prescribed response form, which the respondent must complete in writing and return within 28 days.

There is provision for a respondent to seek an extension of the 28 day time limit for the submission of the response. The Chairperson may extend the time, on an application by the respondent before or at the same time as a response is lodged. The application must state

the full reasons why the response cannot or could not be presented in time.

A respondent who has not responded, or whose response has not been accepted, will generally not be allowed to take any part in the case.

The Chairperson has powers to issue a judgment without a hearing where a response has not been received or accepted (and no application for a review or an extension of time is pending) or is uncontested.

15.2.6 Involvement of the Manx Industrial Relations Service

The Tribunal office will send copies of the complaint and response forms to the Manx Industrial Relations Service (see 15.1 above) which will try to help both sides settle the case and avoid the need for a hearing.

15.2.7 The Tribunal's powers

Before the case is heard, the Tribunal may order either party to provide further particulars of the case or to give documents (or copies) to the other party. Failure to provide further particulars can result in the case being struck out, whilst failure to comply with an order can result in the case being struck out or a fine, or both.

The Tribunal can also order the attendance of a witness. Failure to comply without reasonable excuse can result in a costs or preparation time order.

15.2.8 The three different types of hearing

There are three different types of hearing open to the Chairperson or, as the case may be, the full Tribunal which are as follows:

- a **pre-hearing review** (see 15.2.9);
- A **full hearing** (see 15.2.10); and
- A **review hearing** (see 15.2.12).

15.2.9 Pre-hearing Review

A pre-hearing review is used to deal with any question of entitlement to bring or defend a complaint or whether the complaint or response should be struck out. It may also be used for case

management purposes, including the issue of Directions to progress a case. A pre-hearing review will usually be conducted by the Chairperson sitting alone.

The complainant may need to show that the Tribunal has jurisdiction to hear the case, and for this purpose may need to prove (if any of these matters is disputed) that:

- he or she is or was an employee or worker (see 1.8) of that employer;
- (where applicable) he or she has sufficient length of service (see 1.10) and is not in an excluded class of employment;
- he or she has submitted his or her application in time (see 1.17);
- if applicable, he or she was dismissed (see 12.1.4).

Although the primary purpose of a pre-hearing review is to determine matters of a preliminary nature, the Chairperson can nevertheless, at this review stage, make judgments or rulings that may result in proceedings being struck out or dismissed, with the result that a full hearing then becomes unnecessary.

15.2.10 Full hearings

A full hearing determines any matter not already disposed of in earlier hearings or disposes of the proceedings altogether. In particular, the full hearing is the hearing that:

- decides whether the complaint succeeds or fails and,
- if it succeeds, what remedy is appropriate.

There may be more than one full hearing in any particular proceedings, and there may be different types of hearing (e.g. on liability, remedies, or costs). With certain exceptions hearings must be held in public.

A full hearing must be heard by the Tribunal consisting of a Chairperson and two members except in respect of the following types of complaints, where the Chairperson may hear the case alone –

- deductions from wages (see 5.2);

- insolvency etc. (see 14);
- holidays and holiday pay (see 5.8);
- written particulars of employment (see 4.2);
- pay statements (see 5.1);
- redundancy payments (see 13); and
- the right to be accompanied at a disciplinary or grievance hearing (see 8.7).

The Chairperson may also hear a case alone where -

- both the parties consent;
- the complainant does not intend to pursue the complaint; or
- the respondent does not intend to contest the complaint or is not entitled to do so (see 15.2.5).

15.2.11 Procedure for full hearing

The Tribunal may conduct the hearing in whatever way it considers most suitable to clarify the issues in the particular case.

In an unfair dismissal case it would be for the respondent to go first to show the reason for the dismissal[20] unless the case involved constructive dismissal. Evidence is presented through relevant witnesses (who take an oath or affirmation) and supporting documentation. Each witness is open to cross-examination by the other side and questioning by the Tribunal. The same process is followed when the other party takes turn to present its case.

On completion of the evidence, each party normally makes a closing statement to the Tribunal. (The complainant generally has the last word).

The Tribunal may give its decision on the day, or later as a reserved judgment. The decision may be unanimous or by a majority. The decision, together with reasons, is always confirmed in writing.

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[20] in accordance with Section 113(1) of the Employment Act 2006.

15.2.12 Review hearings

Parties to a case can apply to have certain Tribunal decisions reviewed. The grounds for review are where -

- the decision was wrongly made as a result of an administrative error (including an error by a party);
- the decision was based on a mistaken view of the applicable law;
- a party did not receive notice of the proceedings;
- a decision was made in the absence of a party;
- new evidence has emerged since the end of the hearing (provided that its existence could not have been reasonably known of or foreseen at that time); or
- the interests of justice require a review.

A decision not to accept a complaint or response may only be reviewed on the first, second and sixth of these grounds.

An application for a review, if not made at the hearing, should be made within 14 days of the decision being sent to the parties, and must be in writing and state the grounds for the review in full.

Reviews are normally undertaken by the Chairperson or Tribunal that made the original decision.

15.2.13 Costs and preparation time

In certain circumstances the Tribunal or the Chairperson can make a "costs order" or a "preparation time order".

- A **"costs order"** is an order requiring a complainant or respondent to make a payment in respect of costs incurred by another party in respect of a legal representative or a lay representative (other than that party's own employee) or a payment to a party or witness to cover their expense of attending the Tribunal.
- A **"preparation time order"** is an order requiring a complainant or respondent to make a payment to another party, who is not legally represented, in respect of their preparation costs.

A costs order or preparation time order will not normally be made. However, the Tribunal or the Chairperson may make a costs order or preparation time order and must consider whether to do so where -

- in the Tribunal's or Chairperson's opinion a party has acted vexatiously, abusively, disruptively or otherwise unreasonably in bringing or (either personally or through a representative) conducting the proceedings;

- a complaint or response had no real prospect of success; or

- a party had made a false or exaggerated allegation.

Costs may also be awarded -

- against a party who has not complied with an order;

- in respect of costs incurred or time spent where a hearing has been postponed or adjourned at the request of a party; or

- where the Chairperson decided that a complaint or response should not be accepted but the complainant or respondent took that decision to review and the original decision was confirmed.

There are four ways in which a costs order against a party can be determined. A costs order may -

- specify the sum payable, where that sum is no greater than £2,000;

- order the costs to be determined by way of detailed assessment, either in the High Court in accordance with the procedure set out in the rules of court, or by the Chairperson applying the same principles. (This may be appropriate e.g. where misconduct by one party has caused another to incur costs exceeding £2,000).

- order the paying party to pay another party or a witness an amount in respect of expenses in connection with an individual's attendance as a witness at the Tribunal; or

- be an amount agreed between the parties.

Where the Tribunal determines to make a preparation time order, it is to do so on the basis of information provided by the relevant party as regards time which may be lawfully claimed together with its own

assessment of what it considers to be a reasonable and proportionate amount of time in relation to the particular case. The amount of a preparation time order is the number of hours assessed multiplied by an hourly rate of £25, to a maximum of £2,000.

The Tribunal or Chairperson may take into account a party's ability to pay when determining whether or not to make a costs order or preparation time order against him or her and in setting the amount.

In some circumstances the Tribunal or the Chairperson may make an order (a "wasted costs order") against a party's representative, requiring the representative to pay the costs incurred by any party (including his or her own client) as a result of the representative's misconduct.

15.2.14 Appeals against Tribunal decision

An appeal from a decision of the Employment and Equality Tribunal may be made to the High Court, in accordance with the Rules of the High Court. An appeal can only be made on a point of law. The appeal must be made within 42 days of the final judgment or order.

15.2.15 Further information

For further information see the Employment and Equality Tribunal webpages and also *"Employment and Equality Tribunal Rules 2018 - Explanatory Notes"*, downloadable from the employment law pages of the IOM Government website (in each case see "Useful Contacts" at Appendix 4).

16. Collective labour law

16.1 Registration of trade unions and employers' associations

(Trade Unions Act 1991 sections 1-7; Trade Union and Employers' Associations Regulations 1992; Trade Union and Employers' Associations (Amendment) Regulations 1994)

No trade union or employers' association, and no official or member of a trade union or employers' association, may act in furtherance of its purposes unless it is first registered. (For the consequences of a breach of this requirement in case of industrial action, see 16.4.3 below).

An authorised official or any 7 members of union or association may make an application to the Chief Registrar for registration on a prescribed form (see "Useful Contacts" at Appendix 4). A fee of £40 is payable. An application from a United Kingdom union must include an undertaking to comply with any court order etc.

The Chief Registrar must refuse to register a union if:

- the purposes of the union or association are unlawful, or it is not in fact a trade union or employers' association;
- the applicants lack the authority to make an application or, in the case of a United Kingdom union, to give the required undertaking;
- the name of the union or association is the same as or similar to that of one already in existence; or
- the application does not conform to statutory requirements.

If the application is successful, the union or association is entered on the appropriate register and issued with a certificate of registration.

The union or association must nominate a 'registered official' who is resident in the Isle of Man and his or her name and address is entered on the register, along with an address in the Isle of Man for service of proceedings on the union or association.

There is provision for amendment of the register on payment of a fee of £10, and for cancellation of registration in certain circumstances.

A registered trade union or employers' association must make an annual return to the Chief Registrar, which must include the number of its members.

16.2 Legal status of trade unions and employers' associations

(Trade Unions Act 1991 sections 8-9)

A registered trade union or employers' association, even if unincorporated, has the following attributes:

- it has the capacity to make contracts;
- its property must be vested in trustees;
- it may sue or be sued, or prosecuted for a criminal offence, in its own name;
- judgments, orders and awards are enforceable against its property;
- as respects industrial relations, it is not subject to the legal rules on restraint of trade.

An unregistered trade union or employers' association cannot sue (but can be sued) in its own name.

16.3 Procedure for resolution of trade disputes

(Trade Disputes Act 1985; the Courts of Inquiry Rules 1995)

The Trade Disputes Act 1985 lays down a procedure for resolving a 'trade dispute', which for this purpose is a dispute between workers and their employer, or between groups of workers, relating wholly or mainly to such matters as pay, conditions, discipline, jobs, union membership and union recognition.

Where a trade dispute exists or is apprehended, an industrial relations officer (IRO) may, or at the request of any party to the dispute must, inquire into the dispute and offer the parties assistance by way of conciliation, arbitration or other means, with a view to securing a settlement.

If the dispute is not settled, an IRO may, or if required by any party to the dispute must, request the Council of Ministers to establish a Court of Inquiry. Where the Council agrees to the request, a Court investigates the dispute and reports its findings to the Council of Ministers, making recommendations for settlement where practicable. An IRO is to take steps to secure a settlement in accordance with those recommendations.

Special procedures apply where there is a trade dispute affecting services designated as 'essential services'. No services have yet been designated for this purpose.

16.4 Industrial action

(Trade Disputes (Regulation) Act 1936; Trade Unions Act 1991 sections 10-21)

16.4.1 Breach of contract

Industrial action normally constitutes a breach of the contract of employment between the employee and employer. However, an employee who takes part in industrial action has immunity from being sued for damages for breach of contract, provided that the industrial action is taken 'in contemplation or furtherance of a trade dispute'. This does not protect an employee from being dismissed for taking industrial action. However, an employee has limited protection from dismissal or other detrimental action in the case of 'protected industrial action', and also from victimisation (see 7.6, 12.3.1 and 12.3.3).

16.4.2 Definition of 'trade dispute'

'Trade dispute' for this purpose means only a dispute between workers and their employer relating wholly or mainly to such matters as pay, conditions, discipline, jobs, union membership and union recognition. It does not include disputes between different groups of workers (e.g. a demarcation dispute), or disputes between a union and an employer where none of that employer's workers are in dispute. (Compare the wider definition at 16.3 above).

16.4.3 Immunity from legal action for organising industrial action

A person or body, such as a trade union or union official, organising industrial action would normally be liable to civil legal action by an employer or third party for inducing a breach of contract by the employees, and could also be prosecuted for the offence of conspiracy. Civil action might result in an award of substantial damages for loss suffered by the employer or third party, injunctions and orders for legal costs against the union or official.

However, subject to important exceptions (see 16.4.4 to 16.4.8 below), a registered trade union and its officials have statutory

immunity from civil or criminal liability if the action is 'in contemplation or furtherance of a trade dispute' (see 16.4.2).

An unregistered trade union or employers' association has no immunity for acts done by the union or association or its officials.

16.4.4 Ballots and notification requirements

A trade union loses immunity for organising 'official' industrial action if it is not supported by the majority of those voting in a ballot. The rules for lawful ballots, which must be conducted by post, are contained in the Trade Unions Act 1991.

The trade union must also notify both the employer and an Industrial Relations Officer at three distinct stages:

- of its intention to hold an industrial action ballot (at least 7 days' notice required);
- of the result of the ballot (as soon as is reasonably practicable after the result is known);
- of planned industrial action (at least 7 days' notice required, as a 'cooling off period', which can be extended to 14 days by an Industrial Relations Officer).

In addition, industrial action must not commence later than 5 weeks from the date of the ballot (or 6 weeks if an Industrial Relations Officer has extended the 'cooling off' period).

Special procedures will apply where there is a trade dispute affecting services designated as 'essential services'. No services have yet been designated for this purpose.

16.4.5 Secondary action

There is no immunity for 'secondary action' i.e. industrial action against an employer who is not a party to the trade dispute. (There is an exception for lawful 'secondary picketing': see 16.4.8 below).

16.4.6 Action in support of a closed shop

There is no immunity for organising industrial action because the employer employs or intends to employ non-union members, or to induce the employer to dismiss or take other action against non-union members.

16.4.7 Protest action

There is no immunity for action in support of a trade dispute which relates wholly or mainly to dismissals of those taking part in previous industrial action, unless those dismissals could give rise to complaints of unfair dismissal because they were in respect of 'protected industrial action' or amounted to victimisation (see 12.3.1 and 12.3.3).

16.4.8 Picketing

Picketing a place of work is unlawful, except by the following (to a maximum of 6 persons per entrance) for the purpose of peacefully obtaining or communicating information or persuading another person to work or not to work:

- workers attending at or near their own place of work; or
- a union official accompanying a union member whom he or she represents at or near the member's place of work; or
- an unemployed person attending his or her former place of work in furtherance of a dispute connected with his or her dismissal, resignation or redundancy.

Secondary picketing (i.e. picketing a place other than one's present or former place of work) is unlawful, but not secondary action in the course of lawful picketing (e.g. persuading a delivery driver employed by a third party to turn back).

There is no immunity from civil legal action for unlawful picketing.

Certain kinds of unlawful picketing are criminal offences punishable by a fine or custody:

- intimidation of a worker or his or her family;
- persistently following a worker from place to place;
- hiding a worker's tools or clothing;
- 'watching or besetting' a worker's home or place of business;
- with 2 or more other persons, following a worker in a disorderly manner in a road or street;

- mobbing a worker's home or place of business, in such numbers as to intimidate.

16.4.9 Liability of trade union for actions of its officials

A trade union is legally responsible for industrial action which is authorised or endorsed by its principal committee, president, general secretary or any other official (including the 'registered official' (see 16.1) or a shop steward), committee or any other person with authority under the union's rules.

Where industrial action is authorised or endorsed by an official or committee, the union can avoid liability if it repudiates the action by giving written notice as soon as reasonably practicable to the official or committee and to the union members and employers involved in the dispute. The repudiation must be made by:

- either the registered official or a principal committee or official of the union (e.g. the national executive committee or general secretary); or

- where the action was authorised or endorsed by persons some or all of whom are not resident in the Isle of Man, by both the registered official and a principal committee or official.

The upper limit on damages awarded against a trade union in a single set of legal proceedings for unlawful industrial action is £10,000. This does not apply to damages for personal injury or for breach of duty in connection with any property.

16.5 Recognition of trade unions for collective bargaining

16.5.1 The law on recognition

The law neither gives trade unions a right to be recognised for any purpose by an employer nor places an obligation on employers to recognise a union. However, where a trade union is recognised, employees have certain rights to take time off to carry out union duties or take part in union activities (see 7.4 and 7.5).

16.5.2 Code of practice on union recognition

The *Code of Practice on the Recognition of Trade Unions 2001* provides guidance as to those circumstances in which it is considered reasonable for an employer to recognise one or more trade unions for collective bargaining purposes and on related matters.

Disputes about recognition which cannot be voluntarily resolved between the parties should be referred to the Manx Industrial Relations Service which may make recommendations to either or both of the parties on the issues. Failing resolution the procedure for resolving a trade dispute contained in the Trade Disputes Act 1985 may be invoked (see 16.3).

Copies of the Code can be downloaded from the employment law pages of the IOM Government website (see "Useful Contacts" at Appendix 4).

17. Health and Safety at Work: General

A detailed description of the applicable law on health and safety at work is outside the scope of this guide. This section accordingly gives only an outline of some of the most relevant rights and responsibilities.

For further information contact the Health and Safety at Work Inspectorate (see "Useful Contacts" at Appendix 4).

(For health and safety in relation to working time issues see 5.9; in relation to bullying and harassment see 8.9; and in relation to detriment and dismissal for health and safety activities see respectively, 8.5 and 12.3.1).

17.1.1 Employers' common law duty

Employers have a common law duty of care to their employees to take steps that are reasonably necessary to ensure their safety whilst they are at work. This composite duty is often sub-divided as follows:

- a duty to take reasonable care to provide a safe system of work;
- a duty to take reasonable care to provide safe premises and / or place of work;
- a duty of care to provide safe plant and equipment;
- a duty to take reasonable care to provide competent and safe fellow employees.

The duty of care is both an implied term (see 1.3) under the contract of employment and may arise in the tort (civil wrong) of negligence. Breach of contract by the employer may entitle the employee to claim damages (see 1.14 and 12.1.4).

The duty to take care for the well-being of employees extends to mental as well as to physical health.

17.1.2 Duties under health and safety legislation

(Health and Safety at Work etc. Act 1974 of Parliament as applied to the Island by the Health and Safety at Work Order 1998. In addition there are various regulations in force under the Act, including the Management of Health and Safety at Work Regulations 2003.)

The UK Health and Safety at Work etc. Act 1974 as applied to the Island is the basis of health and safety law in the Isle of Man. The Act sets out the general duties both which employers have towards employees and members of the public, and which employees have to themselves and to each other. These duties are qualified in the Act by the principle of 'so far as is reasonably practicable'. In other words, an employer does not have to take measures to avoid or reduce the risk if they are technically impossible or if the time, trouble or cost of the measures would be grossly disproportionate to the risk.

What the law requires is what good management and common sense would lead employers to do anyway, that is, to look at what the risks are and to take sensible measures to tackle them.

The Management of Health and Safety at Work Regulations 2003 generally make more explicit what employers are required to do to manage health and safety under the Health and Safety at Work Act. Like the Act, they apply to every work activity.

The main requirement on employers is to carry out a risk assessment. Employers with five or more employees need to record the significant findings of the risk assessment.

Besides carrying out a risk assessment, employers also need to:

- make arrangements for implementing the health and safety measures identified as necessary by the risk assessment;
- provide employees with appropriate health surveillance;
- appoint competent people (often themselves or company colleagues) to help them to implement the arrangements;
- set up emergency procedures;
- arrange for necessary contact with emergency services;
- provide clear information and training to employees;
- work together with other employers sharing the same workplace;
- provide information to workers from outside with information about risks and health and safety measures;

- comply with special measures to protect children and young persons (see 3.5); new or expectant mothers (see 3.6); and temporary workers (see 3.7); and

- take certain fire precautions.

Other regulations require action in response to particular hazards or in industries where hazards are particularly high. Many are not qualified by 'reasonable practicability'.

With some exceptions, (such as those at 3.5 and 3.6) a breach of an employer's statutory duty imposes criminal but not civil liability.

Failure by an employer to comply with statutory requirements related to health and safety may also in certain circumstances constitute a fundamental breach of contract (the remedy for which is as at 17.1.1 above).

18. Compulsory insurance by employers

18.1 The Employers' Liability (Compulsory Insurance) Act 1976 (ELCIA)

This Act obliges every employer carrying on a business in the Isle of Man to have insurance under one or more approved policies with an authorised insurer against liability for bodily injury or disease sustained by employees and arising out of and in the course of their employment in the Isle of Man. An employer is not obliged to insure members of his own family.

Insurance provides greater security to an employer against awards of damages which could otherwise result in financial difficulty, and to employees that resources will be available for compensation even where the employer has become insolvent.

An employer which does not have this insurance commits an offence, punishable by a fine of up to £5,000.

18.2 The Employers' Liability (Compulsory Insurance) Regulations 2004

These Regulations, which are made under ELCIA, fix the sum to be insured at not less than £5 million in respect of any one claim. The Regulations also impose a requirement that certificates of insurance be kept for 40 years and provide for authorised inspectors of the Department for Enterprise to inspect both past and current certificates (see "Useful Contacts" at Appendix 4).

18.3 The Employer's Liability (Defective Equipment) Act 1981

This Act make further provision with respect to the liability of an employer for injury to his employee which is attributable to any defect in equipment provided by the employer for the purposes of the employer's business. The Act provides that -

- where an employee suffers personal injury in the course of his or her employment in consequence of a defect in equipment provided by his employer for the purposes of the employer's business, and

- the defect is attributable wholly or partly to the fault of a third party,

the injury will be deemed to be also attributable to negligence on the part of the employer (but without prejudice to the law relating to contributory negligence and to any remedy by way of contribution or in contract or otherwise which is available to the employer in respect of the injury).

19. Employment agencies and employment businesses

(Employment Agencies Act 1975 (EAA); Employment Agencies and Employment Business (Applications for Licences) Regulations 1977; EAA (Charging Fees to Workers) Regulations 1977); Conduct of Employment Agencies and Employment Business Regulations 1977; Employment Agencies (Fees) Regulations 1988)

(Note: for information on individual employment rights of workers supplied by an employment business ('agency workers') see 1.9.1).

19.1 Distinction between employment agencies and employment businesses

Workers supplied by an agency may simply be introduced by the agency to an employer or alternatively they may be temporarily seconded or supplied by the agency to a client employer. For the purposes of the EAA the former type of agency is called an 'employment agency' whereas the latter is called an 'employment business'.

An **employment agency** means the business (whether or not carried on with a view to profit and whether or not carried on in conjunction with any other business) of providing services (whether by the provision of information or otherwise) for the purpose of finding workers employment with employers or of supplying employers with workers for employment by them.

The 'providing of services....by the provision of information' does not include:

- publishing a newspaper or other publication unless it is published wholly or mainly for the purpose mentioned above;
- the display of advertisements by any person on premises which he or she occupies for purposes other than those of an employment agency; or
- sound or television broadcasting.

An **employment business** means the business (whether or not carried on with a view to profit and whether or not carried on in conjunction with any other business) of supplying persons employed by the person carrying on the business, to act for, and under the control of, other persons in any capacity.

19.2 Requirement to be licensed

The EAA requires all employment agencies and employment businesses to be licensed by the Department for Enterprise, whether or not they are carried on for profit or in conjunction with any other business. 'Employment' in this context covers both employees under a contact of employment and workers under a contract for services (see 1.8). This will include, for example, modelling agencies. Coverage of the Act also extends to persons working in private households such as au pairs.

Authorised officers of the Department have powers to inspect any premises which are used for carrying on employment agencies and employment businesses.

Anyone who carries on an employment agency or employment business covered by the Act without a current licence issued by the Department is liable on conviction to a fine.

The main exclusions from the requirement to be licensed are:

- services for the supply of qualified nurses and certified midwives (in respect of which there are separate requirements to be licensed by the Department of Health and Social Care under the Regulation of Care Act 2013) but not any other service involving other categories of workers carried out at the same premises;

- the business carried on by any county or district nursing association or other similar organisation, which is an association or organisation established and existing wholly or mainly for the purpose of providing patients with the services of a nurse to visit them in their own homes (but not living in their homes);

- services which are ancillary to the hiring out of any aircraft, vessel, vehicle, plant or equipment;

- the making of arrangements for finding seamen for persons seeking to employ seamen or find employment for them;

- the exercise by a local authority of any of its functions;

- services provided by any employers' or workers' organisation for its members;

- services provided by a Statutory Board or Department.

Application forms for a license should be obtained from and returned to the Department for Enterprise (for contact details see Appendix 4).There are a number of procedural requirements, which are set out in the Schedule to the EAA. The annual license fee is £108.

The Department may refuse or revoke a licence on the grounds that:

- the applicant is under 21 years of age;
- the applicant, or any other person concerned with the carrying on of the business, is unsuitable because of misconduct or for other sufficient reason, to hold a licence or be associated with a business of the kind in question;
- the premises are unsuitable for the type of business concerned;
- the employment agency or employment business has been, or is being, improperly conducted.

An applicant or licence holder may appeal to the Work Permit Appeal Tribunal constituted under the Control of Employment Act 2014 (see 2.15). A decision of the Tribunal can be appealed to the Staff of Government Division but only on a point of law.

All licence holders must display on their premises, in a position easily seen by people who use their services, the licence and a copy of the regulations made under the Act. Failure to comply is an offence and the licence holder is liable on conviction to a fine.

19.3 Conduct of employment agencies and employment businesses

(Conduct of Employment Agencies and Employment Business Regulations 1977)

The Regulations impose various duties on persons carrying on employment agencies and employment businesses in order to ensure that such agencies and businesses are properly conducted, and to protect the interests of persons using their services.

Part II of the Regulations imposes duties on persons carrying on **employment agencies** including:

- prescribed record keeping requirements in respect of applications from both employers and workers;
- the contents of advertisements;

- a requirement to obtain requisite information from employers and potential workers;

- a requirement to notify clients of their terms of business;

- certain additional duties where employment for young persons is to be arranged;

- certain additional duties where employment for workers coming to the Island to work or for workers going to work abroad is to be arranged including:

    - restrictions on both the agency and the employer charging the worker the fare; and

    - the requirement to issue a written statement containing prescribed details to both the employer and the worker before the departure of the worker;

- safeguards in the case where agencies receive money on behalf of workers who are their clients including a prescribed method of operation of worker client accounts.

Part III of the Regulations imposes duties on persons carrying on **employment businesses** including:

- prescribed record keeping requirements in respect of applications from both employers (referred to in the Regulations as 'hirers') and workers;

- the contents of advertisements;

- a requirement to obtain requisite information from employers and potential workers;

- a requirement to notify clients of their terms of business including the proposed employment status of the worker to be supplied and the provision of a written statement with prescribed details to the worker;

- additional duties where employment for workers going to work abroad is to be arranged including:

    - ensuring there are arrangements in place for the return fare of the worker; and

- the requirement to issue a written statement containing prescribed details to both the employer and the worker before the departure of the worker.

19.4 Prohibition on charging workers fees

(Employment Agencies Act 1975 section 6)

Employment agencies and employment businesses are prohibited from demanding, or directly or indirectly receiving from any person a fee for finding or seeking to find him or her employment. A person who contravenes the general provision is, on conviction, liable to a fine not exceeding £5,000.

The only exceptions to this rule are that it is permissible for employment agencies to charge fees to workers for finding or seeking to find them employment in the entertainment industry or as photographic and fashion models.

Note that the deduction or payment of an employment agency's fees from a worker's wages is also unlawful (see 5.2.2).

19.5 Prohibition on discrimination

Certain provisions in Isle of Man employment law which prohibit discrimination apply specifically to employment agencies and employment businesses.

19.5.1 Discrimination on trade union grounds

(Employment Act 2006 section 2)

It is unlawful for an employment agency or employment business to refuse employment on the grounds that a person:

- is or is not, or has been or has not been a member of a trade union;
- is or has been involved in trade union activities;
- will not agree to take steps to become, or cease to be or to remain or not to become a member of a trade union;
- will not agree to cease to be involved in trade union activities.

A person is taken to be refused a service by an employment agency if the agency:

- refuses or deliberately omits to make the service available; or
- causes the person not to, or to cease to, use the service; or
- does not provide the same service, on the same terms as is provided to others.

Trade unions are not to be regarded as employment agencies or employment businesses by reason of services provided only for or in relation to their members.

Enforcement and remedies are similar to those set out at 7.1.

19.5.2 Discrimination on the ground of a protected characteristic

(Equality Act 2017 section 49)

The Act places obligations on employment service providers that are similar to those placed on employers. In addition to employment agencies and employment businesses, this includes the provision of vocational training, vocational guidance, guidance on careers and any other services related to employment

An employment service provider must not discriminate against or victimise a person in relation to the provision of an employment service -

- in the arrangements that it makes for selecting people to whom it provides, or offers to provide, the service;
- in the terms on which it offers to provide the service to that person;
- by not offering to provide the service to that person.

For further information as to protected characteristics, enforcement etc. see 9.

19.6 Health and safety requirements

For employers' health and safety responsibilities to employment business employees see 3.8.

Appendix 1 — Main Categories of workers and the rights to which they are entitled

	Applicants for work	EMPLOYEES	Other workers contracted to employer	NHS primary care providers	Trainees & work experience	Self-employed	Partners
No discrimination on grounds of protected characteristic (3.1, 9)	✓	✓	✓		✓	✓	✓
No discrimination on grounds of trade union membership etc. at recruitment (3.2)	✓						
No discrimination for past criminal convictions etc. (3.3)		✓					
Written statement of particulars of employment (4.2)		✓	✓				
Itemised pay statements (5.1)		✓	✓				
No unlawful deduction from wages (5.2)		✓	✓				
No detriment for trade union membership and activities etc. (7.2)		✓	✓				
No detriment for unlawful inducement re trade union membership etc.		✓	✓				

	Applicants for work	EMPLOYEES	Other workers contracted to employer	NHS primary care providers	Trainees & work experience	Self-employed	Partners
(7.3)							
Time off with pay for trade union duties (7.4)		✓					
Time off for trade union activities (7.5)		✓					
No detriment for taking 'protected industrial action' (7.6)		✓					
Time off for jury service and other public duties (8.1)		✓					
Time off to look for work etc. (8.2)		✓					
Time off with pay for pension scheme trustees (and no detriment) 8.3		✓					
Time off with pay for ante- natal care (6.1)		✓					
Right to alternative work or remuneration if suspended on maternity grounds (6.2.2)		✓					

	Applicants for work	EMPLOYEES	Other workers contracted to employer	NHS primary care providers	Trainees & work experience	Self-employed	Partners
Maternity leave (and no detriment) (6.3)		✓					
Paternity leave (and no detriment) (6.4)		✓					
Adoption leave (and no detriment) (6.5)		✓					
Parental leave for parents of children with a disability (and no detriment) (6.6)		✓					
Requesting flexible working (and no detriment) (6.7)		✓					
No detriment for exercising certain statutory rights (8.4)		✓	✓				
No detriment for taking actions in the interests of health and safety (8.5)		✓	✓	✓	✓		
Right to make a protected disclosure (and no detriment) (8.6)		✓	✓	✓	✓		
Right to be accompanied at disciplinary and grievance hearing (and no detriment)		✓	✓	✓	✓		

	Applicants for work	EMPLOYEES	Other workers contracted to employer	NHS primary care providers	Trainees & work experience	Self-employed	Partners
(8.7)							
Right to paid annual leave (and no detriment) (5.8)		✓	✓		✓		
Right to minimum wage (and no detriment) (5.3)		✓	✓				
Right not to work on Sundays (and no detriment) (shop workers only): (8.8)		✓					
Right of part-time worker to no less favourable treatment (and no detriment) (10.1)		✓	✓				
Equal pay etc. (5.5)		✓	✓		✓	✓	✓
Right to minimum period of notice on termination of employment (11.1.1)		✓					
Right to written statement of reasons for dismissal (11.3)		✓					
Right not to be unfairly dismissed		✓					

	Applicants for work	EMPLOYEES	Other workers contracted to employer	NHS primary care providers	Trainees & work experience	Self-employed	Partners
(12)							
Right to redundancy payment (13.1)		✓					
Right to claim arrears etc. from Treasury on employer's insolvency (14.2)		✓					

Appendix 2 — Qualifying periods and time limits

Right	*Qualifying period of continuous employment*	*Time limit to bring a complaint to the Employment and Equality Tribunal*
Written statement of particulars of employment (4.2)	4 weeks	3 months from date employment ceased*
Itemised pay statements (5.1)	None	3 months from date employment ceased*
No unlawful deduction from wages (5.2)	None	3 months from the last date the employer was contractually permitted to make the payment or the last in a series of payments*
No detriment for trade union membership and activities etc. (7.2)	None	3 months from date of last act or failure to act complained of*
No detriment for unlawful inducement re trade union membership etc. (7.3)	None	3 months from date the offer or last offer was made*
Time off with pay for trade union duties (7.4)	None	3 months from date of failure to give time off or to pay remuneration*
Time off for trade union activities (7.5)	None	3 months from date of failure to give time off *
No detriment for taking 'protected industrial action' (7.6)	None	6 months from date of the act or failure to act*
Time off for jury service and	None	3 months from date of failure to give time

Right	*Qualifying period of continuous employment*	*Time limit to bring a complaint to the Employment and Equality Tribunal*
other public duties (8.1)		off *
Time off to look for work etc. (8.2)	2 years	3 months from date of failure to give time off or to pay remuneration*
Time off for pension scheme trustees (and no detriment) (8.3)	None	3 months from date of failure to give time off or to pay remuneration*
Time off with pay for ante-natal care (6.1)	None	3 months from date of failure to give time off or to pay remuneration*
Right to alternative work or remuneration if suspended on maternity grounds (6.2.2)	None	3 months from date of failure to give pay or from the first day of suspension*
Ordinary maternity leave (6.3.2)	None	3 months from the date or last date of act or failure to act complained of*
Additional maternity leave (6.3.3)	26 weeks	3 months from the date or last date of act or failure to act complained of*
Paternity leave (birth) (6.4)	26 weeks	3 months from the date or last date of act or failure to act complained of*
Ordinary adoption leave (6.5.2)	None	3 months beginning with the date or last

Right	*Qualifying period of continuous employment*	*Time limit to bring a complaint to the Employment and Equality Tribunal*
		date of act or failure to act complained of*
Additional adoption leave (6.5.3)	26 weeks	3 months from the date or last date of act or failure to act complained of*
Paternity leave (adoption) (6.5.4)	26 weeks	3 months from the date or last date of act or failure to act complained of*
Parental leave for parents of children with a disability (6.6)	1 year	3 months beginning with the date or last date of matters complained of*
Requesting flexible working (6.7)	26 weeks	3 months from the date or last date of matters complained of*
No detriment for exercising certain statutory rights (8.4)	None	3 months from the date or last date of matters complained of*
No detriment for taking actions in the interests of health and safety (8.5)	None	3 months from the date or last date of matters complained of*
Right to make a protected disclosure (8.6)	None	3 months from the date or last date of matters complained of*

Right	*Qualifying period of continuous employment*	*Time limit to bring a complaint to the Employment and Equality Tribunal*
Right to be accompanied at disciplinary and grievance hearing (8.7)	None	3 months from the date or last date of matters complained of*
Right to paid annual leave (5.8)	None	3 months from the date or last date the exercise of the right should have been permitted*
Right to minimum wage (5.3)	None	3 months from the date or last date of act or failure to act complained of*
Right not to work on Sundays (shop workers only) (8.8)	None	3 months from the date or last date of act or failure to act complained of*
Right of part-time worker to no less favourable treatment (10.1)	None	3 months from the less favourable treatment or detriment **
No discrimination on grounds of a protected characteristic (9)	None	3 months from when the act complained of was done**
Equal pay etc. (5.5)	None	(with some exceptions) 6 months from date employment ceased**
Right to minimum period of notice on termination of	1 month	3 months from when the notice payment should have been

Right	*Qualifying period of continuous employment*	*Time limit to bring a complaint to the Employment and Equality Tribunal*
employment (11.1.1)		made (unlawful deductions complaint)*
Right to written statement of reasons for dismissal (11.3)	None	3 months from the effective date of termination*
Right not to be unfairly dismissed where reason for dismissal is automatically unfair (12.3.1, 12.3.2)	None	3 months from the effective date of termination*
Right not to be unfairly dismissed where reason for dismissal is a political reason etc. or membership of the reserve forces (see 12.3.4 and 12.3.5)	None	3 months from the effective date of termination*
Right not to be unfairly dismissed for other reason (12.2)	1 year	3 months from the effective date of termination*
Right not be unfairly dismissed for taking 'protected industrial action' (12.3.1)	1 year	6 months from the effective date of dismissal*
Protection against discriminatory dismissal in relation to industrial action (12.3.3)	None	6 months from the effective date of dismissal*
Right to redundancy payment (13.1)	2 years	12 months from "the relevant date" (see 13.2.2)***
Right to claim arrears etc. from Treasury on employer's insolvency (14.2.2)	None	12 months from the date on which the employer became insolvent or the date

Right	*Qualifying period of continuous employment*	*Time limit to bring a complaint to the Employment and Equality Tribunal*
		the employee's employment was terminated, whichever is the latter
Right to claim arrears etc. from Treasury on employer's cessation of business (14.2.3)	None	12 months from the date the employee's employment was terminated.
Failure by the Treasury to make a payment in lieu of specified debts on the event of the employer's insolvency or his leaving the Island	None	3 months from the date of the Department' decision in respect of an application for payment.

* The Employment and Equality Tribunal can extend the time limit where it was not reasonably practicable to present the complaint in time.

** The Employment and Equality Tribunal can extend the time limit where it considers it 'just and equitable' to do so.

*** The Employment and Equality Tribunal can extend the time limit by up to a further 12 months where it considers it 'just and equitable' to do so.

Appendix 3: Equality Act 2017: Complaints that can be made in respect of each protected characteristic

The table below shows the types of complaint (listed across the table) which can be made in respect of each protected characteristic (listed down the table). (The table does not include complaints relating to breach of an equality clause (see 5.5) or a maternity equality clause (see 5.6)).

	Direct discrimination	**Indirect discrimination**	**Harassment**	**Victimisation**
Sex	✓	✓	✓(also specifically includes conduct of a sexual nature)	✓
Pregnancy and maternity[1]	Direct covered (but not by association or perception)	Not covered	Not covered	✓
Marriage and civil partnership	Direct covered (but not by association or perception)	✓	Not covered[2]	✓
Gender reassignment	✓	✓	✓(also specifically includes conduct of a sexual nature)	✓
Sexual orientation	✓	✓	✓	✓
Race	✓	✓	✓	✓
Religion or belief	✓	✓	✓	✓

	Direct discrimination	Indirect discrimination	Harassment	Victimisation
Disability[3]	✓	✓	✓	✓
Age	✓	✓	✓	✓

[1] The Employment Code of Practice states -

> For pregnancy and maternity, there is no express protection from direct discrimination by association or perception; indirect discrimination; or harassment. However, in these three situations, a worker may be protected under the sex discrimination provisions.

Further, the Act protects pregnancy and maternity in a considerably different and stronger way than for most of the other protected characteristics. For pregnancy and maternity, the protection is against *unfavourable* treatment.

While the Act disapplies a prohibition on harassment in relation to pregnancy and maternity, harassment on this ground may nevertheless constitute detrimental treatment under section 14 (direct discrimination) of the Equality Act 2017.

[2] While the Act disapplies a prohibition on harassment in relation to marriage and civil partnership, harassment on this ground may nevertheless constitute detrimental treatment under section 14 (direct discrimination) of the Equality Act 2017.

Further, harassment related to civil partnership or marriage of a same sex couple would amount to harassment related to sexual orientation.

[3] Also includes 'Discrimination arising from a disability' and 'Failure to make reasonable adjustments' – see 9.14.2 for further information.

Appendix 4 — Useful contacts

Role or (where apparent) the name of organisation and contact details	Functions
Agricultural Wages Board for the Isle of Man G. N. Davison, Secretary Agricultural Wages Board, Department of Environment, Food and Agriculture, Foxdale Road, St John's, Isle of Man. IM4 3AS. Telephone: 695703 Fax: 685851 Email: nicky.davison@gov.im Web: www.gov.im/categories/business-and-industries/agriculture/agricultural-wages-board/	The Board has power to fix minimum rates of wages and minimum holiday entitlements for workers employed in agriculture including horticulture. The Board also defines the value of tied cottages for employees which can be taken as part of their pay.
Benefits Treasury Social Security Division Markwell House Market Street Douglas IM1 2RZ Tel.: 685106 Fax: 685120 Email: generalbenefits@gov.im Web: www.gov.im/categories/benefits-and-financial-support/	For information on: • Maternity Allowance, • Paternity Allowance, • Adoption Allowance, and • other family benefits.
Chamber of Commerce Isle of Man Chamber of Commerce Queen Victoria House, Victoria Street, Douglas, Isle of Man, IM1 2LF Tel.: 674941 Email: enquiries@iomchamber.org.im Web: www.iomchamber.org.im/	The Chamber supports businesses on the Isle of Man.

Children, Employment of Corporate Services Division Department of Education, Sport and Culture Hamilton House Peel Road Douglas IM1 5EZ Tel.: 685820 Web: www.gov.im/about-the-government/departments/education-sport-and-culture/policies-and-procedures-a-to-z/e/employment-of-children/	For information on the law concerning employment of children.
Craftsmen's and Craftswomen's skill cards Department for Enterprise Nivison House Prospect Hill Douglas IM1 1ET Tel.: 682392 Email: crafts@gov.im Web: https://www.gov.im/categories/business-and-industries/construction/register-of-craftsmen-and-craftswomen/	Registration on the Register of Craftsmen and Craftswomen is a requirement for any craftsman or craftswoman wishing to work on publically funded construction contracts. In addition, any craftsman or craftswoman who is not an Isle of Man worker should be registered prior to applying for a work permit, if they do not already hold another recognised skills card.
Disability - Access issues Crossroads Care Access Office Unit B5 & B6 Eden Business Park, Cooil Road Braddan IM4 2AY Tel: 673103 Email: mail@crossroadsiom.org Web: www.crossroadsiom.org	Assistance with any access issues from disability awareness training to building audits.
Disability Employment Service (DES) Disability Employment Service Treasury Job Centre Nivison House	The Service assists individuals with disabilities to gain and retain employment, which may be paid or unpaid. DES also assists employers by

Prospect Hill Douglas IM1 1ET Tel.: 686209 / 687021 Email: disabilities@gov.im Web: www.gov.im/categories/working-in-the-isle-of-man/disability-employment-services/	providing guidance, assistance and equipment where appropriate. DES advisers work closely with the Job Centre which is located in the same building.
Employment Agencies and Employment Businesses Department for Enterprise Nivison House Prospect Hill Douglas IM1 1ET Tel.: 682386 Fax.: 682388 Email: dedinspectors@gov.im Web: www.gov.im/categories/working-in-the-isle-of-man/employment-agencies/	For information and inquiries concerning the operation of employment agencies and employment businesses in the Island.
Employment Inspectorate Department for Enterprise Nivison House Prospect Hill Douglas IM1 1ET Tel.: 682385 / 682386 / 689344 Fax.: 682388 Email: dedinspectors@gov.im	For guidance and enforcement in respect of matters such as: • written statements, • pay statements, • paid annual leave, • work permits, • the minimum wage, and • employers' liability compulsory insurance
Employment Legislation Policy Legislation Manager Department for Enterprise St Georges Court Upper Church Street Douglas IM1 1EX Tel.: 682371 Email: emplaw@gov.im Web: http://www.gov.im/categories/working-in-the-isle-of-man/employment-rights	For enquiries about the Department for Enterprise's employment legislation programme.

Employment and Equality Tribunal The Clerk to the Employment and Equality Tribunal Tribunals Office Isle of Man Courts of Justice Deemsters Walk Bucks Road Douglas IM1 3AR Tel.: 685941 Mon – Thu 9.30 to 16.30 (Fri. 16:00). Fax.: 685573 Email: tribunals@gov.im Web: https://www.courts.im/court-procedures/tribunals-service/tribunals/	You may wish to discuss the matter before making a complaint. In such circumstances the Manx Industrial Relations Service, provide a free and impartial service for work related issues and are available to talk to individuals and employers with regard to matters such as employment rights and employment disputes. They can seek to resolve matters through conciliation either prior to a complaint being made to the Tribunal, or after a complaint and response have been submitted.
The Equality Adviser Dawn Kinnish Equality Adviser Cabinet Office 3rd Floor Central Government Offices Bucks Road Douglas IM1 3PG Tel.: 687580 Email Equality@gov.im Web /about-the-government/equality-act/	For general information about the Equality Act 2017.
Health and Safety at Work Inspectorate Regulation Directorate Department of Environment Food & Agriculture Thie Slieau Whallian Foxdale Road St. John's IM4 3AS Tel.: 685881 / 313626 (for urgent matters) Email: worksafe@gov.im Web: www.gov.im/hswi/	For guidance and enforcement in respect of health and safety issues. The legislation page of the HSWI website contains links to health and safety legislation that has been adopted by the Isle of Man.

Information Commissioner Prospect House Prospect Hill Douglas IM1 1ET Tel.: 693260 Email: ask@inforights.im Web: http://www.inforights.im	The Information Commissioner is the independent authority responsible for upholding the public's information rights and promoting and enforcing compliance with the Island's information rights legislation, which includes data protection legislation, the Unsolicited Communications Regulations and the Freedom of Information Act.
Insolvency Claims Treasury Markwell House Market Street Douglas IM1 2RZ Tel.: 685103 Email: Incapacitybenefits@gov.im Fax.: 685120	For claims from the National Insurance Fund due to the employer's insolvency etc.
Isle of Man Constabulary – Subject Access Requests Police Headquarters Douglas Isle of Man IM2 4RG Tel.: 631409 Email: PoliceVetting@gov.im	For information and assistance concerning applications for police certificates and Data Subject Access Requests relating to criminal records.
Isle of Man Construction Federation 23A The Village Walk Onchan Isle of Man IM3 4EB Tel.: 660188 Fax.: 660189 Email: info@iomcf.im Web: https://www.iomcf.im/	Services to members include advice on employment issues. The Federation also administers the Manx Accredited Construction Contractors Scheme.

Isle of Man Government website https://www.gov.im/ **Isle of Man Government website pages on employment law** Web: https://www.gov.im/categories/working-in-the-isle-of-man/employment-rights/ **Isle of Man Government website pages on work permits** Web: https://www.gov.im/categories/working-in-the-isle-of-man/work-permits/ **Isle of Man Government website pages on immigration** https://www.gov.im/categories/travel-traffic-and-motoring/immigration/ **Isle of Man Government website pages on the employment of children** https://www.gov.im/about-the-government/departments/education-sport-and-culture/policies-and-procedures-a-to-z/e/employment-of-children/	Webpages on • employment law, • work permits • immigration • employment of children
Isle of Man Vetting Bureau Chief Executive's Office Department of Home Affairs Headquarters Tromode Road Douglas IM2 5PA Tel.: 694302 (vetting bureau) and 694306 (general enquiries). Email: paula.hay@gov.im or generalenquiries.dha@gov.im Web: https://www.gov.im/categories/working-in-	For information and assistance concerning police checks for recruitment purposes on the Island.

the-isle-of-man/vetting-and-safer-recruitment/	
Manx Industrial Relations Service (MIRS) Ground Floor Imperial Buildings Bath Place Douglas Isle of Man IM1 2BY Tel.: 672942 E-mail: iro@mirs.org.im Web: www.mirs.org.im	Industrial Relations Officers (IROs) provide advice and guidance about employment rights and help to settle disputes between employers and workers. IROs will also attempt to promote a settlement where a complaint has been made or could be made to the Tribunal.
Passports, Immigration and Nationality Office Government Office Bucks Road Douglas IM1 3PN Public counter opening times - Monday to Thursday 9:30am to 4:30pm Friday 9:30am to 4pm Tel.: 685203 Fax.: 685210 Email: immigration@gov.im Web: : https://www.gov.im/categories/travel-traffic-and-motoring/immigration/	For enquiries about immigration matters (for workers from outside the European Economic Area).
Redundancy Rebates The Treasury Markwell House Market Street Douglas IM1 2RZ Tel.: 685103 Email: Incapacitybenefits@gov.im Fax.: 685120	For information and forms on redundancy rebates.

Rehabilitation of Offenders Act 2001 Department of Home Affairs Tromode Road Douglas IM2 5PA Tel.: 694305 Web: https://www.gov.im/categories/working-in-the-isle-of-man/rehabilitation-of-offenders/	For advice on the Rehabilitation of Offenders Act 2001
Trades Union Council c/o Transport House 25 Fort Street Douglas IM1 2LJ Tel.: 621156 Email: iomtuc@gmail.com Web: http://www.iomtuc.com/	Umbrella organisation for many Isle of Man based trade unions.
Trade Union registration etc Finance Section Central Registry The Registries Deemsters Walk Bucks Road Douglas IM1 3AR Tel.: 685979 Fax.: 685976 Email: finance@registry.gov.im Web: https://www.gov.im/about-the-government/departments/enterprise/central-registry/	For registration of trade unions and employers' associations in accordance with the Trade Unions Act 1991.
Work Permit Appeal Tribunal The Clerk to the Work Permit Appeal Tribunal Isle of Man Courts of Justice Deemsters Walk Bucks Road Douglas IM1 3AR Tel.: 685941 Mon – Thu 9.30 to 16.30 (Fri. 16:00) Fax.: 685573 Email: tribunals@gov.im	The Tribunal hears appeals from decisions of the Department for Enterprise.

Web: https://www.courts.im/court-procedures/tribunals-service/tribunals/	
Work Permit Office Nivison House 31 Prospect Hill Douglas IM1 1ET Tel.: 682393 (work permit helpline) Fax.: 682388 Email: workpermit@gov.im Web: https://www.gov.im/categories/working-in-the-isle-of-man/work-permits/ Applications for online renewals: www.gov.im/onlineservices/ **Compliance** The Work Permit Inspectorate Address as above Tel.: 682385 / 682386 / 689344 Fax: 682388 Email: dedinspectors@gov.im	For information on work permits under the Control of Employment Act 2014.

Appendix 5: —List of selected Publications

Codes of Practice

- Code of Practice (Time off for Trade Union Duties and Activities) 1992
- Code of Practice on the Recognition of Trade Unions 2001
- Code of Practice on Disciplinary and Grievance Procedures 2007
- (Equality Act) Code of Practice on Employment (2019)

Department for Enterprise Guides

- Isle of Man Employment Rights - a Summary
- Whistleblowing - a Brief Guide
- A Guide to Work Permits
- Holidays and Holiday Pay
- Maternity Rights - a Guide
- Parental Leave for Parents of Disabled Children: a Guide
- Paternity Rights: a Brief Guide
- Adoption rights - a Guide
- Flexible working: the right to request and the duty to consider: a Guide

Department for Enterprise Explanatory Notes

- Equality Act 2017 - Explanatory Notes
- Employment and Equality Tribunal Rules 2018 - Explanatory Notes

Manx Industrial Relations Service Guides

- A Guide to preparing written statements of the terms and conditions of employment
- A Guide to Redundancies
- Written Statement of terms and conditions of employment [template for employers' use]

- A Guide to conciliation
- A Guide to conciliation [in Polish]
- Various guides relating to the Equality Act 2017

Tribunal Service Guides

- Guidance about the Employment and Equality Tribunal and the Work Permit Appeal Tribunal is available on the Tribunal Service homepage https://www.courts.im/court-procedures/tribunals-service/tribunals/

Treasury (Social Security Division) Guides

- A Guide to Social Security Benefits in the Isle of Man
- A Guide to Maternity Allowance (Leaflet MA5)

Appendix 6 —The Shops Act 2000 – Prescribed Forms

EMPLOYERS' DUTY TO GIVE EXPLANATORY STATEMENT

The following explanatory statement must be given to all shop workers commencing employment after 1st August 2000.

"Statutory Rights in Relation to Shop Work on Sundays, Christmas Day and Good Friday

You have become employed as a shop worker and are or can be, required under your contract of employment to do shop work on Sundays, Good Friday and Christmas Day.

However, if you wish, you can give a notice, as described in the next section, to your employer and you will then have the right not to do shop work on any of those days once one month has passed from the date on which you gave the notice.

Your notice must –

- be in writing;
- be signed and dated by you;
- say that you object to working on those days.

For one month after you give the notice, your employer can still require you to do all the work on those days your contract provides for. After the one month period has ended, you have the right to complain to the Employment and Equality Tribunal if, because of your refusal to do shop work on those days, your employer –

- dismisses you, or
- does something else detrimental to you, for example failing to promote you.

Once you have the rights described, they cannot be taken away without your agreement. You can surrender them only if –

- your employer gives you a written request asking you to work on those days; and
- you respond with a further notice, signed and dated by you, saying that you wish to work on those days or that you do not object to working on those days; and
- you then agree with your employer to do shop work on those or on any particular one of those days."

PRESCRIBED FORM OF OPTING-IN REQUEST

To *[insert Name of employee]*

Request for you to opt-in to working on *[insert Sundays or date(s) of particular Sunday(s) and / or Good Friday and / or Christmas Day].*

I would like you to consider working on *[insert Sundays or date(s) of particular Sunday(s) and / or Good Friday and / or Christmas Day].* If you have no objection to this proposal I would request that you complete and return to me the enclosed "opting-in notice".

An "opting-in notice" is a written form signed and dated by you, in which you give your consent to my request and state that you wish to work on those days or that you do not object to working on those days.

The law states that, unless you are willing to sign an opting-in notice, you cannot be obliged to work on those days and you would have the right to complain to the Employment and Equality Tribunal if because of your refusal to work on those days *[insert name of (sole trader) (partnership) or (company)]* were to dismiss you or do something else detrimental to you, such as, for example, fail to promote you. If you do not wish to work on those days or object to working on those days you should not complete the opting-in notice. (However, for administrative purposes it would be helpful if you would let me know if this is your decision).

Please note that if you decide to complete the opting-in notice and then change your mind at some point in the future you may give me an "opting-out notice", a signed and dated letter from you which states that you object to working on those days. You will then have the right not to do shop work on those days once one month has passed from the date on which the notice is given.

If you intend to give me an opting-in notice the law states that it must be given no earlier than a week after you receive this request and no later than three weeks after you receive it.

[insert date (which must be on or after the employee's commencement date)]

[insert signature]

[insert name of employee's manager] on behalf of [insert name of (sole trader) (partnership) or (company)]

Enclosures: 1. Opting-in notice; 2. Proposed terms and conditions for your working on [insert Sundays or date(s) of particular Sunday(s) and / or Good Friday and / or Christmas Day].

PRESCRIBED FORM OF OPTING-IN NOTICE

To *[insert name of employee's manager]*

My Consent to Working on *[insert Sundays or date(s) of particular Sunday(s) and / or Good Friday and / or Christmas Day.]*

I received your written request on *[insert date]* that I complete and return to you this "opting in notice".

I agree to opting-in to working on *[insert Sundays or date(s) of particular Sunday(s) and / or Good Friday and / or Christmas Day]* and confirm that I do not object to working on those days.

I understand that, should it be my wish in the future, I can give an "opting-out notice" to you and I will then have the right not to do shop work on those days once one month has passed from the date on which the notice is given.

[insert date]

(NOTE: if you decide to opt-in, the law states that this form must be given to your employer between 7 and 21 days from the date you receive his request).

[insert signature]

[insert name of employee]

Appendix 7 — Meaning of 'construction operations'

(from section 2 of the Construction Contracts Act 2004)

(1) In this Act "**construction operations**" means, subject as follows, operations of any of the following descriptions —

(a) construction, alteration, repair, maintenance, extension, demolition or dismantling of buildings, or structures forming, or to form, part of the land (whether permanent or not);

(b) construction, alteration, repair, maintenance, extension, demolition or dismantling of any works forming, or to form, part of the land, including (without prejudice to the foregoing) walls, roadworks, power-lines, telecommunication apparatus, aircraft runways, docks and harbours, railways, inland waterways, pipe-lines, reservoirs, water-mains, wells, sewers, industrial plant and installations for purposes of land drainage, coast protection or defence;

(c) installation in any building or structure of fittings forming part of the land, including (without prejudice to the foregoing) systems of heating, lighting, air-conditioning, ventilation, power supply, drainage, sanitation, water supply or fire protection, or security or communications systems;

(d) external or internal cleaning of buildings and structures, so far as carried out in the course of their construction, alteration, repair, extension or restoration;

(e) operations which form an integral part of, or are preparatory to, or are for rendering complete, such operations as are previously described in this subsection, including site clearance, earth-moving, excavation, tunnelling and boring, laying of foundations, erection, maintenance or dismantling of scaffolding, site restoration, landscaping and the provision of roadways and other access works;

(f) painting or decorating the internal or external surfaces of any building or structure.

(2) The following operations are not construction operations within the meaning of this Act —

(a) drilling for, or extraction of, oil or natural gas;

(b) extraction (whether by underground or surface working) of minerals; tunnelling or boring, or construction of underground works, for this purpose;

(c) assembly, installation or demolition of plant or machinery, or erection or demolition of steelwork for the purposes of supporting or providing access to plant or machinery, on a site where the primary activity is —

(i) nuclear processing, power generation, or water or effluent treatment, or

(ii) the production, transmission, processing or bulk storage (other than warehousing) of chemicals, pharmaceuticals, oil, gas, steel or food and drink;

(d) manufacture or delivery to site of —

(i) building or engineering components or equipment,

(ii) materials, plant or machinery, or

(iii) components for systems of heating, lighting, air-conditioning, ventilation, power supply, drainage, sanitation, water supply or fire protection, or for security or communications systems,

except under a contract which also provides for their installation;

(e) the making, installation and repair of artistic works, being sculptures, murals and other works which are wholly artistic in nature.

Employment law developments

You can find out about developments to employment law on the What's new? page of the IOM Government website (see "Useful Contacts" at Appendix 4).

Feedback

How helpful was this booklet to you? Did it answer your questions? Was it detailed enough? Was it clear? Does it contain any typographical errors? Do you have any comments or suggestions as to how to the Department might further improve future editions? Please e mail your feedback to **emplaw@gov.im**

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