

Consultation on the draft Equality Bill

Addendum

1. At the end of paragraph 4.17 (Limit of compensation) add:

“However, in line with the current position under the Employment (Sex Discrimination) Act 2000, this limit will not apply to cases relating to equality of terms (i.e. equal pay cases).”.

2. After paragraph 4.20 insert:

“Qualifying period for unfair dismissal

4.21 The existing position in the Isle of Man differs from that in the UK¹ as the normal qualifying period for claims of unfair dismissal in the Island under the Employment Act 2006 (“the 2006 Act”) is one year’s continuous employment whereas in the UK the period was increased from one year to two years in 2012. In addition, whilst no qualifying period applies in the case of “automatically unfair dismissals” in both the Isle of Man and the UK there are some differences between the categories of such dismissals. Of particular relevance to the Equality Bill is the fact that presently under the 2006 Act dismissal on the grounds of race, religious belief or sexual orientation (but not on the ground of sex) are included in the categories of automatically unfair dismissals and are thus not subject to any qualifying period. The position in the UK is that an employee who is dismissed on the ground of a protected characteristic but who does not have two years’ continuous employment cannot bring a claim of unfair dismissal under the Employment Rights Act 1996 though he or she is able to bring a claim of discrimination under the Equality Act 2010.²

4.22 The Bill maintains the thrust of the Island’s existing employment law so that dismissal on the grounds of any of the protected characteristics will be automatically unfair under the Employment Act 2006 and thus not subject to the usual one year qualifying period which applies for claims of unfair dismissal. This means that an employee with less than a year’s continuous employment who alleges dismissal on the ground of a protected characteristic will be able to make a claim of unfair dismissal instead of, or in addition to³, a claim of unlawful discrimination under the Bill. It should be noted that the remedies under the 2006 Act and the Equality Bill differ and, in particular, where a claim of unfair dismissal under the 2006 Act is successful the Tribunal has the power to order reinstatement of an employee but this remedy is not available under the Equality Bill.

¹ The Employment Rights Act 1996 – <http://www.legislation.gov.uk/ukpga/1996/18/contents> – is the main UK statute which contains individual employment rights; the Isle of Man equivalent of which is the Employment Act 2006.

² Similarly, in the Isle of Man an employee who is dismissed on the ground of sex discrimination but who does not have one year’s continuous employment cannot bring a claim of unfair dismissal under the Employment Act 2006 though he or she is able to bring a claim of discrimination under the Employment (Sex Discrimination) Act 2000.

³ However, if a person brought both a claim of unfair dismissal and a claim of unlawful discrimination to the Tribunal and the claims were successful, it should be emphasised that the person would not be eligible for two sets of compensation for the same loss.

- 4.23 By treating dismissal on the ground of a protected characteristic as automatically unfair and not subject to any qualifying period the Bill removes an anomaly in UK employment law which means that the rights and remedies of employees who do not have the requisite period of continuous employment are different to those of employees who do despite the overall intention of the legislation to offer comprehensive protection against discrimination on the ground of a protected characteristic.”
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