



SUPPLEMENT No. 2
TO
THE SOVEREIGN BASE AREAS GAZETTE
No. 1440 of 22nd December 2006
LEGISLATION

ORDINANCE 25 OF 2006

AN ORDINANCE
TO AMEND THE EQUAL TREATMENT ORDINANCE 2004

R. H. LACEY
ADMINISTRATOR

12th December 2006.

BE it enacted by the Administrator of the Sovereign Base Areas of Akrotiri and Dhekelia as follows:—

1. This Ordinance may be cited as the Equal Treatment (Amendment) Ordinance 2006. Short title.
2. In this Ordinance, Interpretation.
“the principal Ordinance” means the Equal Treatment Ordinance 2004. Ordinance 22/04.
3. For section 4(1)(b) of the principal Ordinance substitute – Section 4(1)(b) of principal Ordinance substituted.
“(b) he applies to that person a provision, practice or criterion which he applies or would apply equally to another person of the opposite sex, but –
 - (i) which puts or would put a person at a particular disadvantage when compared with a person of the opposite sex;
 - (ii) which puts that person at that disadvantage; and
 - (iii) which he cannot show to be a proportionate means of achieving a legitimate aim.”.
4. For section 5(1)(b) of the principal Ordinance substitute– Section 5(1)(b) of principal Ordinance substituted.
“(b) he applies to that person a provision, practice or criterion which he applies or would apply equally to an unmarried person, but –
 - (i) which puts or would put a married person at a particular disadvantage when compared with an unmarried person of the same sex;

- (ii) which puts that person at that disadvantage; and
- (iii) which he cannot show to be a proportionate means of achieving a legitimate aim.”.

New section 5A and 5B inserted.

5. There is inserted immediately after section 5 of the principal Ordinance—

“Discrimination on the grounds of pregnancy.

5A.—(1) In any circumstances relevant for the purposes of any provision of this Ordinance, a person discriminates against a woman if –

- (a) at a time in a protected period, and on the ground of the woman’s pregnancy, the person treats her less favourably than he would treat her had she not become pregnant; or
- (b) on the ground that the woman is exercising or seeking to exercise, or has exercised or sought to exercise, a right to maternity leave, the person treats her less favourably than he would treat her if she were neither exercising nor seeking to exercise, and had neither exercised nor sought to exercise, such a right.

(2) For the purposes of this section –

- (a) in relation to a woman, a protected period begins each time she becomes pregnant and the protected period associated with any particular pregnancy of hers ends at the end of her period of maternity leave or, if earlier, when she returns to work after the end of her pregnancy;
- (b) where a person’s treatment of a woman is on grounds of illness suffered by the woman as a consequence of a pregnancy of hers, that treatment is taken to be on the ground of the pregnancy;
- (c) maternity leave has the same meaning as in the Protection of Maternity Ordinance.

Ordinance 21/99.

Instruction to discriminate.

5B.— It is unlawful for a person who has authority over another person to instruct him to do any act which contravenes any provision of this Ordinance or to procure or attempt to procure the doing by him of any such act.”.

6. For section 6 of the principal Ordinance substitute –

Section 6 of the principal Ordinance substituted.

“Harassment.

6. In any circumstances relevant for the purposes of any provision of this Ordinance, a person subjects another person to harassment if –

- (a) on the grounds of that other person’s sex, he engages in unwanted conduct that has the purpose or effect –
 - (i) of violating that person’s dignity, or
 - (ii) of creating an intimidating, hostile, degrading, humiliating or offensive environment for that person;

- (b) he engages in any form of unwanted verbal, non-verbal or physical conduct of a sexual nature that has the purpose or effect –
 - (i) of violating that person’s dignity, or
 - (ii) of creating an intimidating, hostile, degrading, humiliating or offensive environment for that person; or
- (c) on the grounds of that person’s rejection of or submission to unwanted conduct of a kind mentioned in paragraph (a) or (b), he treats that person less favourably than he would treat that person had that person not rejected, or submitted to, the conduct.”.

7. For section 8 of the principal Ordinance, substitute –

“Exclusion of certain types of work

8.—(1) In relation to discrimination on the grounds of sex, sections 9(1)(a), 10(1)(a) and 12(1)(a) do not apply in relation to work of the kind which is listed in the Schedule.

Section 8 of the principal Ordinance substituted.

(2) Any work of the kind listed in the Schedule shall be included there only where –

- (a) by reason of the nature of the work to be performed or the context in which it is carried out, the sex of the worker constitutes a determining factor; and
- (b) the inclusion of work of that nature in the Schedule is a proportionate means of achieving a legitimate aim.

(3) The Chief Officer, in consultation with the Labour Advisory Body of the Republic shall, at intervals of not less than five years beginning with the commencement of the Ordinance, examine the categories of work listed in the Schedule for the purpose of deciding whether, having regard to social development, their appearance in the Schedule remains justified.”.

8. For section 14 substitute –

“Unlawful harassment

14.—(1) It is unlawful for a person to subject another person to harassment.

Section 14 of principal Ordinance substituted.

(2) It is unlawful for a person to subject another person to less favourable treatment on the grounds of any complaint made by that other person, however that complaint was made and whoever it was made to, that he has been subjected to harassment.

(3) An employer shall, as appropriate –

- (a) take all appropriate measures to protect an employee or applicant for employment from any act of harassment;
- (b) investigate any complaint of harassment which is made to him;

(c) take any appropriate measure necessary to ensure that any harassment which does occur is prevented from reoccurring.

(4) If an employer fails to take any step of the kind set out in subsection (3), he shall be regarded as jointly liable for the harassment with the person who committed the said act of harassment.

(5) An employer shall introduce and make available to all employees of his a code of conduct aimed at preventing the commission of any act of harassment.

(6) For the purposes of this section -

“employee” shall include a person engaged in or seeking access to an independent occupation or profession;

“employer” shall include a person responsible for any matter set out in section 12;

“provider of training” means any person who participates in any manner in the organisation (including the issue of any advertisements relevant to the training), provision or financing of the training.”.

New sections 20A
and 20B inserted

9. There is inserted immediately after section 20 of the principal Ordinance the following –

“Representation
of victims

20A.— An association, relevant organisation or other legal entity which has a legitimate interest in ensuring compliance with the Ordinance may, with the consent of an individual who has been the victim of behaviour contrary to the Ordinance, take steps to enforce that person’s rights including by –

- (a) issuing or defending proceedings;
- (b) facilitating the settlement of the dispute.

Promotion of
principle of equal
treatment

20B.—(1) Relevant organisations shall work together to promote the principle of equal treatment by taking steps such as –

- (a) establishing codes of conduct to ensure or facilitate compliance with the Ordinance;
- (b) at regular intervals, publishing statistical information relating to the proportion of men and women holding posts at each level within the organisation;
- (c) monitoring the content of collective agreements and ensuring that such agreements contain rules prohibiting discrimination contrary to the Ordinance; and
- (d) researching and sharing examples of best practice.

(2) The Chief Officer shall, on request, facilitate dialogue with any association, relevant organisation

or other legal entity which has a legitimate interest in ensuring compliance with the Ordinance in order to facilitate the promotion and implementation of the principle of equal treatment.”.

10. Section 23 of the principal Ordinance (Appointment of Chief Inspector and Inspectors) is amended by inserting at the end of that section immediately after the word “Ordinance” the words “in relation to employment other than employment by the Crown (as defined by section 32)”.

Section 23
of principal
Ordinance
amended.

11. For subsection (3) of section 32 of the principal Ordinance (Application to the Crown) there is substituted –

Section 32
of principal
Ordinance
amended.

“(3) Sections 24 to 29 shall not bind the Crown or any employee of the Crown.”.

12. For the Schedule substitute –

Schedule
to principal
Ordinance
substituted.

“SCHEDULE

(section 8(1))

Work excluded from the application of sections 9(1)(a), 10(1)(a) and 12(1)(a):

- (a) Where the essential nature of the post calls for a person of one particular sex for reasons of physiology (excluding physical strength or stamina) or for reasons of authenticity for artistic performances so that the essential nature of the post would be materially different if carried out by a person of the opposite sex.
- (b) Where the duties of a specific post include the provision of services outside the Areas in a state where the legislation and customs are such that the specific services may not reasonably be provided by a person of the opposite sex.
- (c) Where the duties of a specific post include personal services and it is necessary for that work to be performed by a person of the same sex as the person to whom the services are to be provided.
- (d) Where the duties of a specific post concern the provision of services of a personal nature, such as house care of an elderly or disabled person and it is necessary for that work to be performed by a person of the same sex as to the person to whom the services are to be provided.
- (e) The employment of a male employee for the post of prison guard in a male prison and the employment of a female employee for the post of prison guard in a female prison.
- (f) In a private security body where the essential nature of the post calls for an employee of one particular sex because –
 - (i) the post concerns the control and disarmament of violent persons, the suppression of nuisance and the liberation of hostages or other persons who are being illegally kept; or

(ii) of moral reasons connected with any person detained by the private security body.

(g) The employment of women in underground works in mines.”.

Commencement

13. This Ordinance shall come into force on the day of its publication in the Gazette.

18th December 2006
(SBA/AG/2/EM/299)

P. D. Draycott
Chief Officer.