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EMPLOYMENT (EQUAL PAY) ORDINANCE 2012

An Ordinance to make provision for equal pay for men and women for the same work or work of equal value

G. E. STACEY
ADMINISTRATOR

16th July 2012.

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

PART 1

Preliminary

1. Short title and commencement

This Ordinance may be cited as the Employment (Equal Pay) Ordinance 2012 and comes into force on 1 August 2012.

2. Interpretation

(1) In this Ordinance—

“committee” means an assessment of work committee appointed under section 12 and exercising the functions specified in section 16;

“corresponding Republican law” means the Equal Pay for Men and Women for Equal Value Work Law(a), and includes any law amending or replacing this law;

“the Crown” means Her Majesty in right of Her Government in the United Kingdom and in right of Her Administration in the Areas;

“direct discrimination” has the meaning given in section 3(1);

“discriminate on grounds of sex” means direct discrimination or indirect discrimination and includes less favourable treatment of a woman due to her pregnancy or to her maternity leave;

“employment” means employment under a contract of employment, a contract of apprenticeship or a contract personally to do work;

“indirect discrimination” has the meaning given in section 3(2);

“inspector” means a person appointed under section 12 and exercising the functions specified in section 13;

“pay” means remuneration in cash or in kind which an employee receives directly or indirectly from an employer in respect of employment;

“relevant organisation” means—

- (a) a trades union;
- (b) an organisation representing the interests of employees;
- (c) an organisation whose purpose is the promotion of equality between men and women;

“Tribunal” means the Industrial Disputes Tribunal established under section 16 of the Annual Holidays with Pay Ordinance**(b)**.

- (2) A reference to an employer or an employee is to be read by reference to the definition of employment in subsection (1).
- (3) For the purpose of this Ordinance, a person (P) holding personal or public office is an employee and the person responsible for paying P is an employer.

3. Direct and indirect discrimination

- (1) An employer (A) discriminates against an employee (B) if A treats B less favourably than A would treat an employee of the opposite sex.
- (2) An employer (A) discriminates against an employee (B) if A applies to B a provision, criterion or practice which is discriminatory on grounds of sex.
- (3) For the purpose of subsection (2), a provision, criterion or practice is discriminatory on grounds of sex if—
 - (a) A applies it, or would apply it, to employees of the opposite sex to B;
 - (b) it puts, or would put, persons of the same sex as B at a particular disadvantage compared to employees of the opposite sex;
 - (c) it puts, or would put, B at that disadvantage; and
 - (d) A cannot show it to be a proportionate means of achieving a legitimate aim.

PART 2

Equal pay and equal work

CHAPTER 1

Application and principle of equal pay

4. Application

Subject to sections 26 and 27, this Ordinance applies to persons employed in the public and private sectors.

5. Principle of equal pay

- (1) An employer must not discriminate on grounds of sex as to the pay which an employee (A) receives for work which is equal to the work of a comparator (B) of the opposite sex to A.
- (2) The reference in subsection (1) to the work that B does is not restricted to work done contemporaneously with the work done by A.
- (3) Subsection (1) does not have effect in relation to provisions in—
 - (a) the Parental Leave and Leave on Grounds of Force Majeure Ordinance 2002**(c)**; and
 - (b) the Employment (Maternity) Ordinance 2009**(d)**.
- (4) A person who contravenes subsection (1) commits an offence and on conviction is liable to a fine specified in section 24.

6. Equal work

- (1) For the purpose of section 5, the work of an employee (A) is equal to that of a comparator (B) if that work is—
 - (a) like B's work;
 - (b) rated as equivalent to B's work; or
 - (c) of equal value to B's work.
- (2) A's work is like B's work if—
 - (a) A's work and B's work are the same or broadly similar; and
 - (b) such differences as there are between their work are not of practical importance in relation to the terms of their work.
- (3) So on a comparison of one person's work with another for the purposes of subsection (2), it is necessary to have regard to—
 - (a) the frequency with which differences between their work occur in practice; and
 - (b) the nature and extent of the differences.
- (4) A's work is rated as equivalent to B's work if a job evaluation study—
 - (a) gives an equal value to A's job and B's job in terms of the demands made on an employee; or
 - (b) would give an equal value to A's job and B's job in those terms were the evaluation not made on a sex-specific system.
- (5) A system is sex-specific if, for the purposes of one or more demands made on the employee, it sets values for men different from those it sets for women.
- (6) A's work is of equal value to B's work if it is—
 - (a) neither like B's work nor rated as equivalent to B's work; but
 - (b) nevertheless equal to B's work in terms of demands made on A by reference to such factors as effort, skill and decision-making.
- (7) In this section a "job evaluation study" means a study to evaluate the demands made on A and B by reference, in particular, to—
 - (a) the nature of the duties;
 - (b) the degree of responsibility;
 - (c) the qualifications, skills and seniority;
 - (d) effort and decision making required; and
 - (e) the conditions under which the work is carried out.

7. Comparators

- (1) If A is employed, B is a comparator for the purpose of this Chapter if subsection (2) or (3) applies.
- (2) This subsection applies if—
 - (a) B is employed by A's employer or by an associate of A's employer; and
 - (b) A and B work at the same establishment.
- (3) This subsection applies if—
 - (a) B is employed by A's employer or an associate of A's employer;
 - (b) B works at an establishment other than the one at which A works; and
 - (c) common terms apply at the establishments (either generally or as between A and B).
- (4) For the purposes of this section, employers are associated if—
 - (a) one is a company of which the other (directly or indirectly) has control;
 - (b) both are companies of which a third person (directly or indirectly) has control.

8. Defence of material factor

- (1) An employer does not discriminate on grounds of sex under section 5 if the employer shows a difference in pay between A and B is because of material factor reliance on which—
 - (a) does not involve treating A less favourably because of A's sex than the employer treats B; and
 - (b) if the factor is within subsection (2), is a proportionate means of achieving a legitimate aim.
- (2) A factor is within this subsection if A shows that as a result of the factor, A and persons of the same sex doing work equal to that of A are put at a particular disadvantage compared with persons of the opposite sex doing work equal to that of A's.

9. Protection of employees

- (1) An employer (A) must not dismiss an employee (B) or otherwise treat B less favourably than another person employed by A because—
 - (a) B does a protected act;
 - (b) A believes that B has done a protected act.
- (2) Each of the following is a protected act—
 - (a) bringing proceedings under this Ordinance;
 - (b) giving evidence or information in connection with proceedings under this Ordinance;
 - (c) doing any other thing for the purposes of or in connection with this Ordinance;
 - (d) making an allegation (whether or not express) that A or another person has contravened this Ordinance.
- (3) Giving false evidence or information, or making a false allegation, is not a protected act if the evidence or information is given, or the allegation is made, in bad faith.
- (4) A person who contravenes subsection (1) commits an offence and on conviction is liable to a fine specified in section 24.

CHAPTER 2

Unenforceable terms, information and social dialogue

10. Unenforceable terms and provisions

- (1) A term of a contract (whether a contract of employment or not) is unenforceable in so far as it purports to exclude or limit the right of a person to bring proceedings under this Ordinance.
- (2) The terms and provisions specified in subsection (3) have no effect in so far as they promote or provide for treatment which is contrary to this Ordinance.
- (3) The terms and provisions referred to in subsection (2) are terms and provisions in—
 - (a) a contract (including a contract of employment);
 - (b) a collective agreement;
 - (c) rules of an undertaking, including, but not limited to, the rules of an organisation representing employers or employees.

11. Information and social dialogue

- (1) The Chief Officer may take appropriate steps to bring the provisions of this Ordinance to the notice of any relevant organisation.
- (2) Relevant organisations are to advise the persons they represent of the content of this Ordinance with a view to ensuring the application of the principle of equal pay, by means of notices posted on notice boards located in the work place, or in any other appropriate manner.
- (3) An employer must provide a relevant organisation with such assistance as it may require in order to fulfil the duty imposed on it by subsection (2).

- (4) Relevant organisations are to engage in social dialogue with employers' organisations to promote the principle of equal pay between men and women and in particular to—
 - (a) ensure that collective agreements include rules prohibiting discrimination and are compliant with the Ordinance;
 - (b) establish codes of practice;
 - (c) promote the exchange of information between workplaces.
- (5) Employers are to promote the principle of equal pay and must provide the information specified in subsection (6) to employees' representatives on an annual basis, or at an interval agreed between them and employees' representatives.
- (6) The information referred to in subsection (5) is—
 - (a) the numbers of male and female employees at various grades or ranks within the organisation;
 - (b) the differences in pay between male and female employees; and
 - (c) steps taken to reduce any differential in pay between male and female employees.
- (7) The function of the Chief Officer specified in subsection (1) is a general delegated function for the purpose of the Delegation of Functions to the Republic Ordinance 2007(e).

PART 3

Enforcement

CHAPTER 1

Inspectors and Assessment of Work Committees

12. Inspectors and assessment of work committees

- (1) The Chief Officer may appoint inspectors and assessment of work committees to exercise the functions specified in this Chapter.
- (2) A committee is to have 3 members.
- (3) The Chief Officer must ensure that the members of a committee have specialist knowledge of matters relating to equal pay between men and women, particularly in the field of job classification, and generally of industrial relations and the labour market.
- (4) The functions and powers of an inspector and a committee specified in this Chapter are general delegated functions for the purposes of the Delegation of Functions to the Republic Ordinance 2007 (irrespective of whether an inspector or committee is appointed under subsection (1)).

13. Functions of an inspector

An inspector ("N") is to—

- (a) examine a complaint submitted under section 15(1);
- (b) investigate any matter which N believes does or may give rise to a breach of any provision of this Ordinance;
- (c) provide information and advice to employers and employees as regards more effective ways to comply with the provisions of this Ordinance;
- (d) keep the Chief Officer informed of any obstacles which may prevent the effective application of this Ordinance and submit recommendations as to how such obstacles may be overcome.

14. Powers of an inspector

- (1) An inspector ("N") may—
 - (a) subject to subsection (3), on presentation of an identity card,—
 - (i) enter at any time and without notice any work place which N reasonably believes needs to be inspected for the purpose of ensuring the effective application of this Ordinance; and

- (ii) enter during daylight hours any other place which N reasonably believes needs to be inspected for the purpose of ensuring the effective application of this Ordinance;
- (b) be accompanied by a police officer if N reasonably believes that otherwise N would be obstructed from exercising N's functions;
- (c) be accompanied by any other person N considers necessary;
- (d) carry out such inspections, investigations or examinations as N reasonably believes are necessary in order to ensure the effective application of this Ordinance, and in particular may—
 - (i) require any person whom N has reasonable cause to believe may be able to provide information relevant to the inspection, or to assist in any other way, to answer questions;
 - (ii) require a person to sign a statement confirming the truth of information provided;
 - (iii) require the production of any book, record, certificate or other document that N considers necessary and may examine them and take copies or extracts;
 - (iv) require a notice of the kind provided for by section 11(2) to be posted on a notice board within the workplace;
 - (v) require an employee, employer or any relevant organisation to provide such information or assistance as may be requested.
- (2) N must inform the employer and any relevant organisation of N's presence during an inspection unless N considers that it may adversely affect the carrying out of any of N's duties.
- (3) N may only enter a private dwelling house with the written consent of the person in occupation.

15. Complaints to an inspector

- (1) An employee may submit a complaint to an inspector ("N") in respect of an alleged breach of this Ordinance, during employment or after employment has ended.
- (2) N must investigate a complaint brought within a reasonable period of the date the act complained of, except where the complaint is the subject of any legal proceedings.
- (3) The following persons may be required by N to provide N with any information which is within that person's control, and which may facilitate the investigation and the settlement of the complaint—
 - (a) the complainant;
 - (b) the person against whom the complaint has been made; and
 - (c) any other person whom N has reasonable cause to believe may be able to assist with the investigation.
- (4) If, with the assistance of N, the complaint is settled, N is to record the details of the agreement reached between the parties to the complaint, which is then to be signed by both parties.
- (5) In the event the complaint is not settled, either of N's own volition, or further to a request of any of the interested parties, N is to forward the complaint to a committee in order for it to investigate and report in accordance with section 16.
- (6) On receipt of the report provided by the committee, N is to take all appropriate measures to settle the complaint and record an agreement in accordance with subsection (4).
- (7) In the event the complaint is not settled, N is to record all the steps taken with a view to settling the complaint and provide a copy of the record to the interested parties.
- (8) A record provided for by this section may later be used in proceedings taken under Chapter 2 of this Part.

16. Functions and powers of an assessment of work committee

- (1) On receipt of a complaint submitted to it in accordance with section 15(5), a committee is to carry out an inspection of the work place concerned and perform such investigations as may be necessary for the preparation of its report.
- (2) A committee may require any person—
 - (a) to produce a record or document which the committee reasonably believes to contain information directly related to the complaint under consideration; and
 - (b) whom the committee reasonably believes to be in a position to provide information relating to the complaint under consideration to answer any question put by the committee.
- (3) For the purpose of assessing whether the complainant's work is equal to the work of a person of the opposite sex, the committee must apply the principles of equal work prescribed in section 6.
- (4) The committee is to prepare and submit a report of its findings on the complaint to the inspector and all interested parties within 3 months of the referral of the complaint to it.
- (5) The committee's report may later be used in proceedings taken under Chapter 2 of this Part.

17. Confidentiality

- (1) An inspector and the members of a committee must not disclose any information obtained in the exercise of their functions to any person, otherwise than as provided for by this Ordinance.
- (2) If an inspector or a member of a committee acts in breach of subsection (1), a person who has been prejudiced by such breach has an enforceable right to compensation.

18. Offences in relation to an investigation

- (1) A person commits an offence if that person—
 - (a) intentionally obstructs an inspector or a committee in the exercise of their duties;
 - (b) without reasonable cause refuses to answer questions put by an inspector or a committee;
 - (c) without reasonable cause refuses to produce any evidence, certificate or other document requested by an inspector or a committee;
 - (d) intentionally damages, defaces or interferes with a document required by an inspector or a committee;
 - (e) intentionally obstructs or attempts to obstruct a person providing a statement (either oral or written) to an inspector or a committee.
- (2) A person convicted of an offence under this section is liable to a fine specified in section 24.

CHAPTER 2

Claims to a Tribunal

19. Jurisdiction of the Tribunal

- (1) Subject to subsection (2), the Tribunal has exclusive jurisdiction to determine any disputes of a civil nature (including any ancillary or incidental matter relating to such a dispute) arising from the provisions of this Ordinance.
- (2) Part 3 of the Citizens of the Republic (Jurisdiction of Courts) Ordinance 1960(f) applies to disputes of a civil nature arising from the provisions of this Ordinance, and for this purpose—
 - (a) proceedings in connection with such a dispute are to be treated as civil proceedings and, as appropriate, as an action or an appeal;
 - (b) the Tribunal is to be treated as a Court of the Areas, and the Industrial Disputes Court of the Republic is to be treated as a District Court of the Republic; and
 - (c) any corporation, company or other body corporate established in the Republic under the provisions of any Law of the Republic, is to be treated as a Cypriot.

20. Bringing a claim to the Tribunal

- (1) A claim in respect of a contravention of section 5(1) or 9(1), or in relation to section 10, may be brought to the Tribunal.
- (2) Subject to subsection (3), a claim to the Tribunal may not be brought after the end of the period of 12 months starting with the date of the act to which the claim relates.
- (3) Where a complaint is investigated by an inspector, the period of 12 months specified in subsection (2) does not include the period starting with the date the complaint is referred to the inspector and ending with the date the employee receives the record referred to in section 15(7).
- (4) For the purpose of subsection (2), conduct extending over a period is to be treated as done at the end of the period.

21. Burden of proof

- (1) This section applies to proceedings relating to a contravention of this Ordinance, except to proceedings for an offence.
- (2) If there are facts from which the Tribunal could decide, in the absence of any other explanation, that an employer (A) contravened the provision concerned, the Tribunal must hold the contravention occurred.
- (3) But subsection (2) does not apply if A shows that A did not contravene the provision.

22. Powers of the Tribunal

- (1) The Tribunal is to have regard to the record of an inspector referred to in section 15, and a report of a committee prepared in accordance with section 16 in determining a claim.
- (2) Where the Tribunal upholds a claim, the Tribunal must make such of the following orders as it considers just and equitable—
 - (a) an order declaring the rights of the claimant and the respondent in relation to the act to which the claim relates;
 - (b) an order requiring the respondent to pay compensation to the claimant of such amount as the Tribunal considers just and equitable in the circumstances having regard to—
 - (i) the act complained of; and
 - (ii) any loss sustained by the claimant which is attributable to that act.
- (3) Interest determined in accordance with section 16A of the Annual Holidays with Pay Ordinance(g) is payable by the respondent on any compensation awarded by the Tribunal under subsection (2)(b).
- (4) An award made by the Tribunal or the Industrial Disputes Court of the Republic under the provisions of the Ordinance is recoverable as a civil debt.

CHAPTER 3

Representation

23. Representation by a relevant organisation

- (1) Subject to subsection (2), a relevant organisation may, on behalf of an employee alleging a contravention of this Ordinance—
 - (a) submit a complaint to an inspector under section 15(1);
 - (b) bring a claim to the Tribunal in the name of the employee under section 20(1); and
 - (c) represent the employee—
 - (i) during the investigation of the complaint under Chapter 1 of this Part; and
 - (ii) in proceedings before the Tribunal.
- (2) The employee must consent to the relevant organisation doing an act specified in subsection (1).

PART 4

General

24. Criminal offences: further provisions

- (1) Subject to subsection (2), a person convicted of an offence is liable to a fine not exceeding—
 - (a) €3, 417 for the offence specified in section 5;
 - (b) €1,708 for the offences specified in sections 9 and 18.
- (2) A body corporate convicted of an offence is liable to a fine not exceeding—
 - (a) €6,834 for the offence specified in section 5;
 - (b) €1,708 for the offences specified in sections 9 and 18.
- (3) If an offence committed by a body corporate is committed with the consent of, or is attributable to the negligence of, an officer of that body corporate, the officer also commits an offence and is liable, on conviction, to a fine specified in subsection (1).

25. Regulations

The Chief Officer may make regulations for the more effective application of this Ordinance.

26. Application to the Crown

- (1) Subject to the provisions of this section, this Ordinance binds the Crown.
- (2) This Ordinance does not apply to the Crown in relation to—
 - (a) service of a member of Her Majesty's Forces;
 - (b) its employment of a member of the Civilian Component as defined in paragraph 1(b) of section 1 of Annex C of the Treaty of Establishment;
 - (c) a person enjoying the rights and facilities of members of Her Majesty's Forces by virtue of paragraph 3 of section 9 of Part II of Annex B of the Treaty of Establishment, other than as a dependent.
- (3) Sections 15, 23(1)(a) and 23(1)(c)(i) do not apply to an employee of the Crown.
- (4) Proceedings for a criminal offence may not be brought against—
 - (a) the Crown;
 - (b) an employee of the Crown acting in the course of employment of the Crown;
 - (c) a member of Her Majesty's Forces acting in the course of service of the Crown.

27. Application to Authorised Service Organisations

- (1) This Ordinance does not apply to Authorised Service Organisations in relation to their employment of members of the Civilian Component.
- (2) In this section "Civilian Component" has the same meaning as in section 26(2)(b).

28. Transitional provisions

This Ordinance applies if—

- (a) the act complained of occurred before 1 August 2012 and was unlawful under the Equal Pay Ordinance 2004(h); and
- (b) the act continues on or after 1 August 2012 and is unlawful under this Ordinance.

29. Repeals and savings

- (1) The following Ordinances are repealed—
 - (a) The Equal Pay Ordinance 2004; and
 - (b) The Equal Pay (Amendment) Ordinance 2006**(i)**.
- (2) Despite subsection (1), these Ordinances continue to have effect in so far as they relate to an act which occurred before 1 August 2012 and does not continue after that date.

Notes

- (a)** Law N.177(I)/2002, amended by Law N.38(I)/2009.
- (b)** Ordinance 10/73, to which there are amendments, but which are not relevant to the definition of the Tribunal.
- (c)** Ordinance 39/02, amended by Ordinances 3/08 and 14/10.
- (d)** Ordinance 20/09, amended by Ordinance 17/11.
- (e)** Ordinance 17/07.
- (f)** Ordinance 6/60.
- (g)** Ordinance 10/73, section 16A was inserted by section 2 of the Annual Holidays with Pay (Amendment) Ordinance 2002 (Ordinance 40/02).
- (h)** Ordinance 26/04.
- (i)** Ordinance 23/06.

EXPLANATORY NOTE

(This note is not part of the Ordinance)

Introduction

1. This explanatory note relates to the Employment (Equal Pay) Ordinance 2012. It has been prepared by the Office of the Attorney General and Legal Adviser in order to assist the reader of the Ordinance. It does not form part of the Ordinance.

2. This note should be read in conjunction with the Ordinance. It is not, and is not meant to be, a comprehensive description of the Ordinance. So, when a section or part of a section does not seem to require any explanation or comment, none is given.

Particular points

3. This Ordinance prohibits discrimination on grounds of sex as to the pay which employees receive for the same work or work of equal value. It repeals the Equal Pay Ordinance 2004 (as amended). It replicates the effect of the Republican Equal Pay between Men and Women for Equal Work or Work of Equal Value Law 177(I)/2002 as amended by Law 38(I)/2009 (“corresponding Republican law”).

4. Subject to three exceptions, the Ordinance applies to all persons employed in the Areas. The first exception is that although the Ordinance applies to the Crown, it does not apply to service personnel, or to UK based civilians. The second exception is that the provisions in Part 3 of Chapter 1 (enforcement by inspector and an assessment of work committee) do not apply to the Crown or employees of the Crown. The third exception is that it does not apply to UK based civilians working for authorised service organisations.

5. Although the effect and the extent of the Ordinance is in the main the same as the corresponding Republican law some of the provisions are more detailed than those in the Republican law and based on provisions in the UK Equality Act 2010; in particular, those relating to work of equal value and the defence of ‘material factor’ in response to a claim for equal pay.

Part 1

6. Part 1 defines terms used in the Ordinance. Section 3 defines direct and indirect discrimination on grounds of sex. Direct discrimination occurs where one person is treated less favourably than another by reason of a person’s sex. Indirect discrimination occurs when a policy which applies in the same way for persons of both sexes particularly disadvantages a person of one sex. Where one sex is disadvantaged in this way, a person of that sex is indirectly discriminated against if he or she is put at that disadvantage, unless the person applying the policy can justify it.

Part 2

7. Part 2 sets out the principles of equal pay for the same work or equal work, and makes detailed provision about how these principles are to be applied.

8. Section 5 prohibits direct or indirect discrimination on grounds of sex in relation to the pay a person receives for the same work or work of equal value. It is a criminal offence to intentionally discriminate on grounds of sex in relation to pay.

9. Section 6 sets out that for work to be the same work or work of equal value, a claimant must establish that he or she is doing like work, work rated as equivalent or work of equal value to a comparator’s work. The section also sets out the factors which determine whether a person’s work is within one of these categories. The fact that a discriminatory job evaluation study has been carried out which gives different values to the work of men and women is not an obstacle work being of equal value, if an evaluation that set the same values for men and women would have found the jobs to be of equal value.

10. Section 7 sets out the circumstances in which employees and others are taken to be comparators for the purposes of this Ordinance. A person who claims that the principle of equal pay has been contravened must be able to show that his or her work is equal to that of the chosen comparator.

11. Section 8 provides that the employer does not discriminate if the employer can show that the difference in pay is due to a material factor, and does not directly or indirectly discriminate against the employee because of his or her sex. If there is evidence that the factor which explains the difference in terms is not directly discriminatory but would have an adverse impact on people of his or her sex (that is, without more, it would be indirectly discriminatory), the employer must show that it is a proportionate means of meeting a legitimate aim.

12. Section 9 protects employees by making it a criminal offence for an employer to dismiss an employee or treat him or her less favourably for bringing proceedings (i.e. making a complaint or

bringing a claim) in respect of a contravention of the Ordinance. There is a similar protection for employees who support another person bringing proceedings.

13. Section 10 provides, inter alia, that terms and contracts (including contracts of employment) are unenforceable if they purport to limit the right to bring proceedings under the Ordinance. Provisions in Ordinances (including public instruments), contracts, collective agreements, rules etc. are unenforceable if they promote or provide for treatment which contravenes the principle of equal pay of the same work or work of equal value.

14. Section 11 requires organisations representing both employees and employers to work together to promote the principle of equal pay. It also requires employers to provide information about rates of pay of their workforce to organisations representing employees.

Part 3

15. Part 3 establishes the enforcement regime. The functions of inspectors and assessment of work committees in Chapter 1 are modelled on the regime in Republican law and may be carried out by Republican officials who have the same functions in the corresponding Republican law. These functions are delegated to the Republic under the Delegation of Functions to the Republic Ordinance 2007.

16. The functions of inspectors are set out in section 13. In addition to resolving individual complaints they have a general duty to promote the effective application of the Ordinance. Section 14 gives inspectors the necessary powers to investigate a complaint including entry to a workplace, and to require the disclosure of information.

17. Section 15 sets out the role of an inspector in resolving a complaint submitted about equal pay. If an inspector is unable to resolve a complaint the matter may be referred to an assessment of work committee. The members of this committee are required to have specialist skills in job classification and the labour market to enable them to assess whether work is of equal value. An inspector is to record all the steps taken to resolve a complaint. The inspector's record may be used in subsequent proceedings before a Tribunal.

18. Section 16 sets out the functions of an assessment of work committee in resolving a complaint referred to it under section 15. As with an inspector's record, a report of a committee may be used in subsequent proceedings before a Tribunal.

19. Section 17 provides for a general duty of confidentiality in the exercise of the functions of an inspector and a committee. Section 18 makes it an offence to obstruct, or refuse to assist, an inspector or a committee.

20. Chapter 2 relates to proceedings before the Area's Industrial Disputes Tribunal and section 19 provides that the Tribunal has exclusive jurisdiction to hear civil claims. Under provisions in section 20 a claim must be brought within 12 months of the date the act complained of occur. A complaint to an inspector stops time running, so the period during which an inspector and a technical committee (if the complaint is referred) investigate the complaint does not count towards the 12-month time limit for bringing a claim.

21. Section 21 applies a reverse burden of proof. Where a claimant proves facts from which, in the absence of any other explanation, the Tribunal could conclude that there has been a contravention of the Ordinance then the Tribunal must uphold a claim.

22. Section 22 sets out the orders a Tribunal must make if it upholds a claim. This may be an order declaring the rights of the claimant and an order for compensation.

23. Chapter 3 (section 23) provides that an organisation representing an employee alleging a breach of the Ordinance may submit a complaint to an inspector on behalf of the employee and bring proceedings in the name of an employee. The organisation may also represent the employee during the conduct of the investigation or in proceedings. The employee must consent to the organisation acting on his or her behalf.

Part 4

24. Part 4 makes various miscellaneous provisions and sets out the application to the Crown.

25. Section 24 sets out the penalties for a person convicted of a criminal offence. Section 26 provides for application to the Crown as explained in paragraph 4 above.

26. Section 28 makes transitional provisions in relation to continuing acts, and section 29 repeals the Equal Pay Ordinance 2004 and the Equal Pay (Amendment) Ordinance 2006, subject to savings in relation to acts occurring before 1 August 2012.

Transposition table

Section	Equal Pay between Men and Women for Equal Work or Work of Equal Value Law	Section	Employment (Equal Pay) Ordinance
1	Short Title	1	Short title and commencement
2	Interpretation	2 3	Interpretation Direct and indirect discrimination
3	Purpose of law		Not replicated
4	Field of application	4	Application
5	Provision of equal payment between men and women for equal value work	5 6 7 8	Principle of equal pay Equal work Comparators Defence of material factor
6 6A*	Information for employers and employees Social Dialogue	11	Information and social dialogue
6B	Dialogue with NGOs		Not replicated
7 8	Repeal or invalidity of contrary provisions Examination and amendment or repeal of provisions of collective employment agreements.	10	Unenforceable terms and conditions
9	Protection of employees	9	Protection of employees
10	Application of the law and inspectors	12	Inspectors and assessment of work committees
11	Major tasks of inspectors	13	Functions of inspectors
12	Powers of inspectors	14	Powers of inspectors
13 14	Actions of inspectors in case of complaints Duty to provide information	15	Complaints to an inspector
15 16	Composition of the investigation and assessment of work committee Composition of committee	12	Inspectors and assessment of work committees
17	Terms of reference and powers of committee	16	Functions of assessment of work committees
18	Criteria for comparison of assessment of equal value work	6	Equal work
19	Obligation for confidentiality	17	Confidentiality
20	Technical committee		Not replicated
21	Judicial protection and burden of proof	20	Burden of proof
22	Competent court and penalties	19 20 22	Jurisdiction of the Tribunal Bringing a claim to the Tribunal Powers of the Tribunal
23	Liability of offender not subject to certain pre-conditions		Not replicated
23A	Out of court protection*		Not replicated
23B	Representation by organisations*	23	Representation by organisations
23C	Provision of independent assistance to victims*		Not replicated

24	Offences and penalties, contravention of the principle of equal pay	5 24	Principles of equal pay Criminal offences: – further provisions
25	Offences and penalties – obstruction of an inspector, committee or a technical committee	18 24	Offences in relation to an investigation Criminal offences: – further provisions
26	Annual reports		Not replicated
26A	Transmission of information to the European Commission*		Not replicated
27	Regulations	25	Regulations
28	Repeals	29	Repeals
29	Commencement	1	Short title and commencement

(*) These sections were inserted by Law 38(I)/2009.

(SBA/AG/2/EM/67)