

*This is a consolidated version of this legislation i.e. it incorporates all amendments made since the legislation was enacted as set out in the table below. It has been produced by the SBAA as an aid to transparency and easier access to SBA law. However, it is not the official version of SBA legislation and, although every effort has been made to check the document, its accuracy cannot be guaranteed. The official version of legislation is published in the SBA Gazette.*

<b>Legislation incorporated in this Consolidation</b>	<b>Ordinance</b>	<b>Date in Force</b>
Equal Treatment Ordinance 2004	22/04	28/09/2004
Equal Treatment Ordinance 2006	25/06	22/12/2006
Annual Holiday with Pay (Amendment) Ordinance 2013	1/13	01/02/2013

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## E Q U A L T R E A T M E N T O R D I N A N C E 2 0 0 4

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## SCHEDULE 1

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## E Q U A L T R E A T M E N T O R D I N A N C E 2 0 0 4

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An Ordinance  
to provide for Equal Treatment for Men and Women in Employment and Vocational Training

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

### **Short Title**

1. This Ordinance may be cited as the Equal Treatment Ordinance, 2004.(i)

### **Definition of Employment**

- 2.—(1) In this Ordinance, “employment” means—
  - (a) employment under a contract of service or of apprenticeship or a contract personally to execute any work or labour in any sector or branch of activity, whether private or public; and
  - (b) any office or post to which a person is appointed to discharge functions personally under the direction of another person in respect of which he is entitled to remuneration (other than payments in respect of expenses incurred by him in carrying out the functions of the office or post), and related expressions shall be construed accordingly.
- (2) A person is to be regarded as an employee—
  - (a) whether he is employed on a full or part-time basis;
  - (b) whether he is employed under a contract for a fixed or indefinite period of time;
  - (c) whether he is employed under a contract which is express or implied and (if it is express) whether oral or in writing; and
  - (d) irrespective of the place of employment.

### **Interpretation**

3. In this Ordinance, unless the context otherwise requires—

“Committee” means the Committee established under section 22 of the corresponding Republican Law;

“corresponding Republican Law” means the Equal Treatment for Men and Women in Employment and Vocational Training Law of the Republic No. 205(I)/2002 and includes any legislation of the Republic amending or substituting that Law and any subordinate legislation made under that Law or under any such amending or substituting legislation;

“dismissal” means the termination of the employment by the employer for any reason and includes—
  - (a) any resignation by the employee because of the conduct of his employer;
  - (b) the expiry of a fixed term contract;

“Inspector” and “Chief Inspector” means the persons appointed as such in accordance with section 23;

“positive act” means an act done by an employer, for the purpose of achieving equality in the work place, in relation to particular work in that employment, for his female employees only, or his male employees only, which affords specific assistance in relation to training for that

work or encourages such persons to take advantage of opportunities for doing that work, where the number of persons of that sex doing the work is comparatively smaller. Measures for the protection of women due to pregnancy or child birth do not constitute positive acts;

“principle of equal treatment” means that there shall be no discrimination on the grounds of sex, either directly or indirectly, by reference in particular to marital or family status, in any circumstances relevant for any provision of this Ordinance;

“protective rule” means a rule of any nature, wherever specified, which is intended to protect a female employee from being employed in certain employments or to protect her from any specified condition of employment, in circumstances where such employment or condition of employment gives rise to risks specifically affecting women, but excluding any rule connected with pregnancy or child birth;

“relevant organisation” means any organisation which represents an employer and any organisation which represents employees of the work place concerned;

“Tribunal” means the Industrial Disputes Tribunal established under section 16 of the Annual Holidays with Pay Ordinance 1973; **(a)**

“vocational training” means any form of training which aims to improve the skills required of an employee in relation to his employment or to equip him with such skills, whether or not such training is intended to improve the general standard of education of the employee.

#### **Discrimination on the grounds of sex**

**4.—(1)** In any circumstances relevant for the purposes of any provision of this Ordinance, a person discriminates against another person if—

(a) on the ground of that person’s sex, he treats that person less favourably than he treats or would treat a person of the opposite sex; or

~~(b) he applies to that person a provision, practice or criterion which he applies or would apply to another person of the opposite sex, but—~~

~~(i) which is such that it would be to the detriment of a substantially higher proportion of persons of one particular sex, and~~

~~(ii) which he cannot show to be justifiable irrespective of the sex of the person to which it is applied, and~~

~~(iii) is to the detriment of that person. **(b)**~~

*(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.*

(2) Direct discrimination as set out in subsection (1)(a) above is not capable of justification.

(3) In the application of subsection (1) no account shall be taken of—

(a) special treatment afforded to women in connection with pregnancy or maternity;

(b) any positive act taken by an employer;

(c) any protective rule.

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(a) Ordinance 10/1973 as amended

(b) Section 4(1)(b) repealed and replaced by Ordinance 25/2006 – came into force on 22 December 2006

## **Discrimination on the grounds of marital status**

5.—(1) In any circumstances relevant for the purposes of any provision of this Ordinance, a person discriminates against a married person of either sex if—

- (a) on the grounds of his or her marital status he treats that person less favourably than he treats or would treat an unmarried person of the same sex; or
- ~~(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 is such that it would be to the detriment of a substantially higher proportion of married persons than of unmarried persons of the same sex, and~~
  - ~~(ii) which he cannot show to be justifiable irrespective of the marital status of the person to whom it is applied, and~~
  - ~~(iii) which is to that person's detriment. (a)~~
    - (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.*

(2) Direct discrimination as set out in subsection (1)(a) above is not capable of justification.

## **Discrimination on the grounds of pregnancy (b)**

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.(c)*

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(a) Section 5(1)(b) repealed and replaced by Ordinance 25/2006 – came into force on 22 December 2006  
(b) Section 5A & 5B inserted by Ordinance 25/2006 – came into force on 22 December 2006  
(c) Ordinance 21/1999 as amended

### ***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.*

### **Harassment (a)**

~~6. In any circumstances relevant for the purposes of any provision of this Ordinance, a person subjects another person to harassment where, on the grounds of that other person's sex, he engages in unwanted conduct which has the purpose or effect of violating that other person's dignity.~~

*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.*

### **Purpose of the Ordinance**

7. The purpose of this Ordinance is to ensure the application of the principle of equal treatment for men and women with regard to—

- (a) access to vocational guidance, vocational training and education and the terms and conditions of their provision,
- (b) access to employment and the terms and conditions of employment, including promotion, and the basis for any dismissal from that employment.

### **Exclusion of certain types of employment (b)**

~~8.—(1) In relation to sex discrimination—~~

- ~~(a) section 10(1)(a) does not apply to any employment of the kind listed in the Schedule; and~~
- ~~(b) section 9(1)(a) does not apply to any opportunities for promotion or transfer to, or vocational guidance, training or education for, such employment.~~

~~(2) Any employment listed in the Schedule shall be included there only where, by reason of the nature of the employment or the context in which it is carried out, the sex of the worker constitutes a determining factor.~~

~~(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 coming into force of this Ordinance,~~

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(a) Section 6 repealed and replaced by Ordinance 25/2006 – came into force on 22 December 2006  
(b) Section 8 repealed and replaced by Ordinance 25/2006 – came into force on 22 December 2006

~~examine the categories of employment listed in the Schedule, for the purpose of deciding whether, having regard to social development, their appearance in the Schedule remains justified.~~

### ***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.*

*(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.*

### **Unlawful discrimination in access to training etc.**

**9.—(1)** It is unlawful for a person to discriminate against another person—

(a) in the way he affords that person access to all types and levels of vocational guidance, vocational training or education, or apprenticeship, including training for a different Occupation or employment to that which he or she is currently employed to do, general programmes which may contribute to the financial and social development of that person and the provision of information about such training to that person, and

(b) as to the terms on which the services referred to in subsection (1)(a) are provided, and the content of such services.

(2) Access to the services referred to in subsection (1) include but are not limited to the selection criteria for the service, any existing qualifications required to be held by the candidate and the conditions of participation in the selection procedure.

(3) It is unlawful for a person to publish or cause to be published an advertisement for any of the services referred to in subsection (1)(a) which indicates an intention to do any act which is or might be unlawful by virtue of this section.

(4) 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 his right as set out in that section has been contravened.

(5) The provisions of this section apply to a person who participates in any manner in the organisation (including the issue of any advertisements relevant to the service), provision or financing of a service of the kind referred to in subsection (1).

### **Unlawful discrimination in access to employment etc.**

**10.—(1)** It is unlawful for a person to discriminate against another person—

(a) in the arrangements he makes in relation to access to employment, and

(b) as to the terms on which the person is offered employment, including but not limited to—

(i) the qualifications necessary for such employment,

(ii) the basis on which such employment may be made permanent,

(iii) the terms applicable to any change of post, the location of the post or promotion,

(iv) the working hours,

- (v) the benefits granted to the holder of any particular post, and
- (vi) the basis on which any leave may be taken, whether paid or unpaid.

(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 his right as set out in this section has been contravened.

(3) It is unlawful for a person to publish or cause to be published an advertisement for any of the matters referred to in subsection (1) which indicates an intention to do any act which is or might be unlawful by virtue of this section.

#### **Unlawful discrimination in relation to dismissal**

**11.**—(1) It is unlawful for a person to discriminate against another person in relation to the dismissal of that person from his or her employment.

(2) In considering whether there has been any breach of subsection (1), regard shall be had both to the reasons for the dismissal and the procedure followed in reaching that decision.

#### **Unlawful discrimination in access etc. to independent occupation**

**12.**—(1) It is unlawful for a person to discriminate against another person—

- (a) in the arrangements he makes in relation to access to an independent occupation or profession, and
- (b) as to the terms on which that person is offered such occupation or profession, including but not limited to—
  - (i) the terms on which the right to exercise the occupation or profession can be terminated, and
  - (ii) access to training or education, including any vocational training which that person is obliged to undertake as a result of any rules governing the exercise of his occupation or profession.

(2) It is unlawful for a person to publish or cause to be published an advertisement for any of the matters referred to in subsection (1) which indicates an intention to do any act which is or might be unlawful by virtue of this section.

#### **Unlawful discrimination connected with pregnancy etc.**

**13.** Any less favourable treatment of a woman who is pregnant or is returning to work following child-birth, in relation to any of the matters provided for by sections 9, 10, 11 or 12 shall be presumed, unless the contrary is proved, to be unlawful discrimination.

#### **Unlawful harassment (a)**

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

~~(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 or provider of training shall—~~

- ~~(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 any harassment which does occur is prevented from reoccurring.~~

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(a) Section 14 repealed and replaced by Ordinance 25/2006 – came into force on 22 December 2006

~~(4) If an employer or provider of training 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) In this section, “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.~~

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

*(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.*

### **Provision of information to employers and employees**

**15.—(1)** The Chief Officer shall take all appropriate steps to bring the provisions of this Ordinance to the notice of all employees, employers and relevant organisations.

(2) Every relevant organisation shall advise the persons whom it represents of the contents of this Ordinance with a view to ensuring the application of the principle of equal treatment, by means of notices posted on notice boards located in the working place, or in any other appropriate manner.

(3) An employer shall provide an organisation of the type mentioned in subsection (2) with such assistance as it may require in order to fulfil the duty imposed on it by that subsection.

### **Complaint to Tribunal**

**16.—(1)** A claim in respect of the contravention of any provision of this Ordinance may be presented by way of complaint to the Tribunal.

(2) Subject to section 26(5) the Tribunal shall not consider a complaint made under this Ordinance unless it is presented to the Tribunal before the end of the period of ~~six months~~ *twelve months* (a) beginning with when the act complained of was done:

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(a) Amended by Ordinance 1/2013 – came into force on 01 February 2013

*Provided, the Tribunal may consider any complaint presented to it which is out of time if, in all the circumstances of the case, it considers that it is just and equitable to do so. (a)*

*(2A) Despite subsection (2) and subject to section 26(5), where the act complained of was done before 1 February 2013, the Tribunal must not consider a complaint brought after the expiry of 6 months after the date on which the act complained of was done unless, in all the circumstances of the case, the Tribunal considers it just and equitable to do so.(b)*

*(2B) For the purposes of subsections (2) and (2A), conduct extending over a period is to be treated as done at the end of the period.*

(3) Where, on the hearing of the complaint, the complainant proves facts from which the Tribunal could, apart from this section, conclude in the absence of an adequate explanation that the respondent has acted in contravention of any provision of this Ordinance, the Tribunal shall uphold the complaint unless the respondent proves that he did not commit that act.

(4) Where the Chief Inspector or an Inspector has investigated and reported on the matter which is the subject of the claim in accordance with section 26, the complainant is entitled to call such person to give evidence as to his findings. If the findings of that person conclude that the respondent has acted in contravention of any provision of this Ordinance, the Tribunal shall uphold the complaint unless the respondent proves that he did not commit that act.

### **Jurisdiction of Tribunal**

**17.**—(1) Subject to the provisions of this section, the Tribunal shall have 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 III of the Citizens of the Republic (Jurisdiction of Courts) Ordinance 1960(c) shall apply to disputes of a civil nature arising from the provisions of this Ordinance, and for such purpose—

- (a) any proceedings in connection with such a dispute shall be treated as civil proceedings and, as appropriate, as an action or an appeal;
- (b) the Tribunal shall be treated as a Court of the Areas, and the Industrial Disputes Court of the Republic shall 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, shall be treated as a Cypriot.

(3) An award by the Tribunal or by the Industrial Disputes Court or the District Court of the Republic under the provisions of this Ordinance shall be recoverable as a civil debt.

### **Powers of Tribunal**

**18.**—(1) Where the Tribunal finds that a complaint presented to it under this Ordinance is well-founded, the Tribunal shall make such of the following orders as it considers just and equitable—

- (a) an order declaring the rights of the complainant in relation to the act to which the complaint relates;
- (b) an order requiring the respondent to pay compensation to the complainant of such amount as the Tribunal considers just and equitable in the circumstances having regard to the act complained of and to any loss sustained by the complainant which is attributable to the act or omission which infringed his right.

(2) Interest at the rate provided for by the Interest Ordinance 1983((d) shall be payable by the respondent on any compensation awarded in accordance with subsection (1) from the date the

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(a) Proviso deleted by Ordinance 1/2013 – came into force on 01 February 2013  
(b) Section (2A) and (2B) inserted by Ordinance 1/2013 – came into force on 01 February 2013  
(c) Ordinance 6/1960  
(d) Ordinance 6/1983

unlawful act occurred until the date the full amount of compensation due is paid to the complainant.

(3) Where an employee is dismissed in contravention of any provision of this Ordinance, the Tribunal may, where requested to do so by the complainant, order the re-instatement of the complainant in addition to any order it makes in accordance with subsection (1):

Provided, that where the complainant has been awarded damages in accordance with subsection (1)(b) to cover any loss of salary or other benefits during the period he was unlawfully dismissed, he shall not, by virtue of any order of re-instatement in accordance with this subsection, be entitled to retrospective payment of salary or other benefits to cover the period during which he was unlawfully dismissed.

(4) Subject to the proviso to subsection (3), where an employee is re-instated in accordance with an order made under that subsection, the period during which he was unlawfully dismissed shall be regarded as service for all purposes.

### **Void provisions**

**19.** A provision contained—

- (a) in an Ordinance or public instrument; or
- (b) in an agreement (whether a contract of employment or not),

other than a provision relating to the time limit within which a complaint must be submitted, is void in so far as it purports to exclude or limit the right of a person to bring proceedings under this Ordinance in the Tribunal.

### **Contrary provisions in Ordinances etc. to be of no effect.**

**20.**—(1) Subject to subsection (2) any—

- (a) provision of an Ordinance or public instrument;
- (b) term of a contract under which an employee is employed (directly or by reference to a collective agreement or otherwise);
- (c) term governing a relationship of the kind mentioned in section 2(1)(b);
- (d) term governing the provision of any vocational guidance, training or education,

which is contrary to any provision of this Ordinance shall be of no effect.

(2) If the provision referred to in subsection (1) relates to the granting of a right or other benefit which is conferred only on an employee of one sex, that provision or term shall be treated as modified so as to extend such right or benefit to an employee of the other sex.

#### ***Representation of victims (a)***

**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.** *Relevant organisations shall work together to promote the principle of equal treatment by taking steps such as—*

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(a) Section 20A and 20B inserted by Ordinance 25/2006 – came into force on 22 December 2006

- (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.*

### **Review of protective rules**

**21.**—(1) The Chief Officer shall, at intervals of not less than five years beginning with the coming into force of this Ordinance, examine and review any protective rule contained in an Ordinance or public instrument, in order to determine, following consultation with the Labour Advisory Body of the Republic, whether the retention of such rule remains justified.

(2) If, following a review of the kind mentioned in subsection (1) the Chief Officer concludes that the rule as it exists is no longer justified, he shall recommend to the Administrator that it should be amended or repealed as appropriate.

(3) The Chief Officer shall invite, at intervals of not less than five years beginning with the coming into force of this Ordinance, any relevant organisation to examine and review any protective rule contained in a collective agreement in order to determine whether the retention of such rule remains justified.

(4) If, following a review of the kind mentioned in subsection (3) an organisation concludes that the rule as it exists is no longer justified it shall, within twelve months of the conclusion of the review, amend or repeal such provision as appropriate.

### **Recognition of Republican Committee**

**22.** The Committee shall be recognised in the Areas as if it had been established under the provisions of this Ordinance and shall have the same powers in the Areas as those conferred upon it under the corresponding Republican Law for the purpose of carrying out its objects as specified in the same enactment.

### **Appointment of Chief Inspector and Inspectors**

**23.**—(1) The Chief Officer may, subject to subsection (3), appoint a Chief Inspector and such other Inspectors as he may deem necessary for the more effective application of this Ordinance.

(2) The Chief Inspector shall be responsible for regulating the manner in which an Inspector exercises any power or performs any duty imposed on him by this Ordinance.

(3) The Chief Officer shall ensure that any person appointed in accordance with subsection (1)—

- (a) is suitably qualified to perform the duties imposed on him by this Ordinance;
- (b) receives adequate training for the carrying out of such duties;
- (c) is provided with a suitable office, which is accessible to the public, and which is equipped with adequate secretarial and other support; and
- (d) is provided with a card identifying his role under this Ordinance<sup>(a)</sup> *in relation to employment other than employment by the Crown (as defined by section 32).*

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(a) Text inserted by Ordinance 25/2006 – came into force on 22 December 2006

## **Main duties of Inspectors**

**24.**—(1) For the purposes of sections 24 to 27, references to an Inspector shall be taken to include a reference to the Chief Inspector.

(2) The main duties of an Inspector shall be to—

- (a) take such steps as are appropriate and necessary with a view to achieving the effective application of this Ordinance;
- (b) provide information and advice to employers and employees and any other person affected by this Ordinance as regards more effective ways to comply with the provisions of this Ordinance;
- (c) keep the Chief Officer informed of any obstacles which may prevent the effective application of this Ordinance and to submit recommendations as to how such obstacles may be overcome.

## **Powers of Inspectors**

**25.**—(1) An Inspector may, in exercise of the powers and performance of the duties conferred on him by this Ordinance—

- (a) on presentation of the identity card provided for in section 23, enter at any time and without notice, any work place which he reasonably believes needs to be inspected for the purpose of ensuring the effective application of this Ordinance:

Provided that entry to a private dwelling house may be made only with the written agreement of the person in occupation of such premises;

- (b) enter during daylight hours any other place which he reasonably believes needs to be inspected for the purpose of ensuring the effective application of this Ordinance:

Provided that entry to a private dwelling house may be made only with the written agreement of the person in occupation of such premises;

- (c) be accompanied by a police officer if he reasonably believes that he will otherwise be obstructed from exercising his powers or performing his duties;
- (d) be accompanied by any other person if he deems it necessary;
- (e) carry out such inspections, investigations or examinations as he deems necessary in order to ensure the effective application of this Ordinance, and in particular may—
  - (i) require any person whom he has reasonable cause to believe may be able to provide information relevant to the inspection or to assist him in any other way to answer any question put to him and require that person to sign a statement confirming the truth of the information he has provided;
  - (ii) require the production of any book, record, certificate or other document that he may deem necessary and may examine them and take copies or extracts of the same;
  - (iii) require a notice of the kind provided for by section 15 to be posted on a notice board within the work place;
  - (iv) require any person affected by this Ordinance to provide such information or assistance as may be requested by the Inspector;
  - (v) require any officer of a public authority to provide such assistance within the scope of his powers as the Inspector may reasonably require.

(2) The Inspector shall inform the employer or any relevant organisation of his presence during any inspection provided for by subsection (1), unless he considers that it may adversely affect the carrying out of any of his duties.

## **Complaints to Inspectors**

**26.**—(1) Any employee (or relevant organisation acting on behalf of such employee) may submit a complaint to an Inspector if he believes that he has been discriminated against in any circumstances relevant for the purposes of any provision of this Ordinance.

(2) On receipt of such a complaint the Inspector shall, provided the complaint is not the subject of any legal proceedings, investigate the complaint and shall require the employee, the person against whom the complaint has been made and any other person whom he has reasonable cause to believe may be able to assist with his investigation, to provide him with any information or any evidence he may have or which is within his control and which may facilitate the investigation and settlement of the complaint.

(3) If, with the assistance of the Inspector, the complaint is settled, the Inspector shall record the details of the agreement reached between the parties to the complaint and such record shall be signed by both parties.

(4) In the event the complaint is not settled, the Inspector shall record all the steps taken to settle the complaint and shall provide a copy of such record to the interested parties. A record provided for by this subsection may later be used in any proceedings taken under this Ordinance.

(5) The time limit for submission of any claim to the Tribunal in accordance with this Ordinance shall not, where a complaint is submitted to an Inspector in accordance with subsection (1), begin to run until any record as provided for by subsection (4) is prepared and submitted to the interested parties.

## **Responsibilities of Inspectors**

**27.** An Inspector—

- (a) shall not have any direct or indirect financial or other interest in any work place in relation to which he exercises any of the functions provided for by this Ordinance;
- (b) shall treat all information which comes to his knowledge during the performance of his duties or exercise of his powers under this Ordinance as confidential and shall not disclose or transmit any such information to any person except—
  - (i) where the person who is responsible for the premises or work place from where the information was obtained gives his consent to such disclosure;
  - (ii) for the purposes of the application of any provision of this Ordinance;
  - (iii) for the purposes of criminal proceedings for an offence which is provided for by this Ordinance; or
  - (iv) for the purposes of any investigation which is carried out in accordance with this Ordinance.

## **Offences of breach of sections 9 to 14**

**28.**—(1) Any person who discriminates against another person in the circumstances set out in sections 9, 10, 11, 12, 13 or 14 shall be guilty of an offence and shall be liable, on conviction, to a fine not exceeding four thousand pounds or to imprisonment for a term not exceeding six months or to both such penalties:

Provided, that where the offence arises through gross negligence, the maximum penalty to be imposed shall be a fine not exceeding two thousand pounds.

(2) Where such an offence is committed by a body corporate, it shall be liable, on conviction, to a fine not exceeding seven thousand pounds:

Provided, that where the offence arises through gross negligence, the maximum penalty to be imposed shall be a fine not exceeding four thousand pounds.

(3) Where an offence, committed by a body corporate, is proved to have been committed with the consent or the connivance of, or to have been attributable to any neglect on the part of, any

director, manager, secretary or other similar officer of the body corporate, he as well as the body corporate shall be guilty of that offence and he shall be liable to be proceeded against and punished as provided for by subsection (1).

### **Other offences**

**29.**—(1) Any person wh—

- (a) wilfully obstructs the Chief Inspector or any Inspector during the exercise of any of the powers or performance of any of the duties conferred upon them by this Ordinance;
- (b) without reasonable cause refuses to answer any question put to him or knowingly makes an inaccurate statement during any investigation authorised by this Ordinance;
- (c) without reasonable cause fails to present any evidence, certificate, book, or other document or particular which he is required to present in accordance with this Ordinance;
- (d) wilfully defaces, damages, alters or otherwise interferes with any document required for any purpose under this Ordinance;
- (e) wilfully obstructs or attempts to obstruct any person from providing a statement or presenting himself before the Chief Inspector or an Inspector,

shall be guilty of an offence and shall be liable, on conviction, to a fine not exceeding three thousand pounds or to imprisonment for a term not exceeding three months or to both such penalties.

(2) Where such an offence is committed by a body corporate, it shall be liable, on conviction, to a fine not exceeding five thousand pounds.

(3) Where an offence, committed by a body corporate, is proved to have been committed with the consent or the connivance of, or to have been attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate, he as well as the body corporate shall be guilty of that offence and he shall be liable to be proceeded against and punished as provided for by subsection (1).

(4) If the offence under subsection (1) arises through gross negligence, the maximum penalty to be imposed shall—

- (a) where the offence is committed by a body corporate, be a fine not exceeding three thousand pounds; and
- (b) in any other case, be a fine not exceeding one thousand pounds.

### **Annual Report**

**30.** The Chief Inspector shall submit to the Chief Officer an annual report which shall contain the following—

- (a) a copy of the current version of this Ordinance together with any Regulations made under it and any other relevant legislation;
- (b) the number of Inspectors appointed and the field of duties of each such Inspector;
- (c) information in respect of—
  - (i) the work places, training establishments, and any other premises which are the responsibility of each Inspector;
  - (ii) the number of inspections carried out and the results of such inspections;
  - (iii) the number and type of complaints submitted and investigated, the details of any contraventions of the provisions of this Ordinance and any penalties imposed;
- (d) details of any obstacles of a legal or administrative nature which may limit the application of the principle of equal treatment and recommendations for overcoming such obstacles.

## Regulations

**31.**—(1) The Administrator may make regulations for the more effective application of the provisions of this Ordinance.

(2) Without prejudice to the generality of subsection (1), the Administrator may make regulations in relation to the basis on which any positive act may be taken in accordance with this Ordinance, the type of act to be permitted and the duration of such act.

## Application to the Crown

**32.**—(1) Subject to subsections (3) and (4), this Ordinance, and any regulations made under it, shall bind the Crown and employees of the Crown.

(2) For the purposes of this Ordinance and of any regulations made under it, persons in the service of the Crown shall be treated as employees of the Crown, whether or not they would otherwise be so treated apart from this subsection.

~~(3) Sections 28 and 29 shall not bind the Crown or any employee of the Crown. (a)~~

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

(4) This Ordinance shall not bind the Crown in relation to its employment of—

- (a) a member of Her Majesty's Forces,
- (b) a member of a Civilian Component as defined in paragraph 1(b) of section 1 of Annex C of the Treaty of Establishment, or
- (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.

(5) For the purposes of this section "the Crown" means Her Majesty in right of Her Government in the United Kingdom and in right of Her Administration in the Areas.

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(a) Subsection (3) repealed and replaced by Ordinance 25/2006 – came into force on 22 December 2006

## SCHEDULE 1(a)

(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.