
EMPLOYMENT (EQUALITY) ORDINANCE 2012

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.

Legislation incorporated in this Consolidation	Ordinance	Date in Force
Employment (Equality) Ordinance 2012	04/2013	01/03/2013
Immigration Ordinance 2020	34/2020	12/10/2020

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EMPLOYMENT (EQUALITY) ORDINANCE 2012

An Ordinance to provide for equal treatment in relation to race and other protected characteristics in employment

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

PART 1 Preliminary

Short Title and commencement

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

Interpretation

2.—(1) In this Ordinance—

“age” in relation to the protected characteristic of age is a reference to a person of a particular age group;

“age group” is a group of persons defined by reference to their age whether by reference to a particular age or a range of ages;

“belief” means any religious or philosophical belief and a reference to belief includes a reference to a lack of belief;

“Chief Inspector” and “inspector” mean those persons who may be appointed as such under section 18;

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

“direct discrimination” has the meaning given by section 4(1);

“dismissal” means the termination of employment by the employer including—

- (a) a resignation by the employee because of the conduct of the employer;
- (b) the expiry of a fixed term contract;

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

“harassment” has the meaning given by section 5;

“indirect discrimination” has the meaning given by section 4(3);

“less favourable treatment” has the meaning given by section 6;

“pensionable age” means the pensionable age defined in the Social Insurance (Facilitation of Republican Social Insurance Scheme) Ordinance 1980 (a);

“positive act” is an act which, even though it may appear to be discriminatory,—

(a) Ordinance 16/80, this definition was inserted by section 2 of Ordinance 1/93

- (a) is carried out by or on behalf of the employer for the purpose of achieving equality in the workplace for all individuals employed by the employer who have one or more protected characteristics;
- (b) affords specific assistance in relation to training for work or encourages such individuals to take advantage of opportunities for doing the work; and
- (c) is a proportionate and legitimate means of preventing or compensating for disadvantages on the grounds of that or those protected characteristics;

“protected characteristics” has the meaning given by section 3;

“race” includes ethnic origin but does not include nationality;

“religion” means any religion and a reference to religion includes a reference to a lack of religion;

“relevant organisation” means—

- (a) a trades union,
- (b) an organisation representing the interests of employees,
- (c) an organisation whose purpose is the promotion or the protection of one or more protected characteristics;

“sexual orientation” means a person’s sexual orientation towards persons—

- (a) of the same sex,
- (b) of the opposite sex, or
- (c) of either sex;

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

(2) A reference to an employer or employee is to be read by reference to the definition of employment in subsection (1).

(3) A person holding personal or private office is an employee for the purpose of this Ordinance and the person responsible for paying that person is an employer.

Protected characteristics

3. The following are protected characteristics—

- (a) race;
- (b) age;
- (c) religion or belief; and
- (d) sexual orientation.

Discrimination

4.—(1) A person (A) discriminates against another (B) if, because of a protected characteristic, A treats B less favourably than A treats or would treat a person who does not have that protected characteristic.

(2) If the protected characteristic is age, there is no direct discrimination if A can show A’s treatment of B is a proportionate means of achieving a legitimate aim.

(3) A person (A) discriminates against another (B) if A applies to B, who has a protected characteristic, a provision, criterion or practice which A applies or would apply to other persons with whom B does not share the protected characteristic but—

- (a) which places or would place persons with whom B shares the protected characteristic at a particular disadvantage when compared with persons who do not share the characteristic;

(a) Ordinance 10/73 to which there are amendments but they are not relevant to the definition of Tribunal

- (b) which places B, or would place B, at that disadvantage; and
- (c) which A cannot show is a proportionate means of achieving a legitimate aim.

(4) In relation to a person ~~who is not a recognised resident or who does not lawfully reside in the Republic, who does not lawfully reside in the Areas or the Republic~~ (a) this section does not apply to any difference of treatment, which would otherwise be discriminatory, relating to the person's legal status or conditions with regard to entry or residence.

~~(5) For the purpose of this section, a "recognised resident" has the meaning given in the Control (Entry, Settlement and Commercial Enterprises) Ordinance 1960 (b)- (c)~~

Harassment

5.—(1) A person (A) harasses another (B) if—

- (a) A engages in unwanted conduct related to a protected characteristic; and
- (b) the conduct has the purpose or effect of—
 - (i) violating B's dignity; or
 - (ii) creating an intimidating, hostile, degrading, humiliating or offensive environment for B.

(2) In deciding whether conduct has the purpose or effect referred to in subsection (1)(b), each of the following must be taken into account—

- (a) the perception of B;
- (b) the other circumstances of the case; and
- (c) whether it is reasonable for the conduct to have that effect

Less favourable treatment

6.—(1) A person (A) treats another (B) less favourably if A subjects B to a detriment because—

- (a) B does a protected act; or
- (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.

PART 2

Equal Treatment in Employment

Filed of application

7. Subject to section 26 and 27, this Ordinance applies to employees or applicants for employment in the private or public sectors.

(a) Text deleted and new text inserted by Ordinance 34/2020 – came into force on 12 October 2020
 (b) Ordinance 5/60, this definition was inserted by section 2 of Ordinance 11/82 and amended by section 3 of Ordinance 13/09
 (c) Section 4(5) repealed by Ordinance 34/2020 – came into force on 12 October 2020

Employment: discrimination

8.—(1) An employer (A) must not subject a person (B) to direct or indirect discrimination—

- (a) in the arrangements A makes for deciding to whom to offer employment;
- (b) as to the terms on which A offers B employment; or
- (c) by not offering B employment.

(2) An employer (A) must not subject A's employee (B) to direct or indirect discrimination—

- (a) as to B's terms of employment;
- (b) in the way A affords B access, or by not affording B access, to opportunities for promotion, transfer or training or for receiving any other benefit, facility or service;
- (c) by dismissing B; or
- (d) by subjecting B to any other detriment.

(3) Subsection (2)(c) does not apply if, immediately after the dismissal, the employment is renewed on the same terms.

(4) This section is subject to Part 3.

(5) Subject to section 24, an employer who contravenes subsection (1) or (2) commits an offence and, on conviction, is liable to a fine not exceeding €3,417.

Employment: harassment

9.—(1) An employer (A) must not, in relation to employment by A, subject a person to harassment—

- (a) who is an employee of A's; or
- (b) who has applied to A for employment.

(2) Subject to section 24, an employer who contravenes subsection (1) commits an offence and, on conviction, is liable to a fine not exceeding €3,417.

Protection of employees

10.—(1) An employer (A) must not subject a person (B) to less favourable treatment—

- (a) in the arrangements A makes for deciding to whom to offer employment;
- (b) as to the terms on which A offers B employment; or
- (c) by not offering B employment.

(2) An employer (A) must not subject A's employee (B) to less favourable treatment—

- (a) as to B's terms of employment;
- (b) in the way A affords B access, or by not affording B access, to opportunities for promotion, transfer or training or for any other benefit, facility or service;
- (c) by dismissing B; or
- (d) by subjecting B to any other detriment.

(3) Subsection (2)(c) does not apply if, immediately after the dismissal, the employment is renewed on the same terms.

(4) Subject to section 24, an employer who contravenes subsection (1) or (2) commits an offence and, on conviction, is liable to a fine not exceeding €3,417.

Membership of an organisation

11.—(1) An employer (A) must not discriminate against, harass or subject A's employee (B) to less favourable treatment because of B's membership of, or involvement in (including access to benefits)—

- (a) an organisation of employees or employers; or
- (b) an organisation whose members carry on a particular profession.

(2) Subject to section 24, an employer who contravenes subsection (1) commits an offence and, on conviction, is liable to a fine of €3,417.

Unenforceable terms and provisions

12.—(1) Subject to section 14, the terms and provisions specified in subsection (2) have no effect in so far as they promote or provide for treatment which is contrary to this Ordinance.

(2) The terms and provisions referred to in subsection (1) are terms and provisions—

- (a) in a contract (including a contract of employment);
- (b) in a collective agreement;
- (c) in rules of an undertaking including, but not limited to, the rules of an organisation representing employers or employees.

PART 3

Exceptions on limited grounds

CHAPTER 1

Exceptions on limited grounds

Positive act

13. An employer does not contravene section 8 if the employer carries out a positive act.

Race exception on national security and other grounds

14. The Ordinance does not prevent any measures being taken on the grounds of race which are provided for by legislation and which are necessary for safeguarding—

- (a) national security;
- (b) public order;
- (c) the prevention of criminal conduct;
- (d) the protection of health; or
- (e) the rights and freedoms of others.

Genuine and determining occupational requirements

15. An employer does not contravene section 8 if—

- (a) due to the nature of the work or the framework within which it is carried out, a protected characteristic constitutes a genuine and determining occupational requirement; and
- (b) it is a proportionate means of achieving a legitimate aim.

Exception due to religion or belief

16. An employer does not contravene section 8 if there is any difference of treatment by an organisation which would otherwise be unlawful under this Ordinance but the difference of treatment is a proportionate means of achieving a legitimate aim and occurs—

- (a) as a result of the activities of the organisation; and
- (b) because of the organisation's belief or religious doctrines which are a fundamental requirement of the organisation.

CHAPTER 2

Age

Provisions and exceptions due to age

17.—(1) An employer does not contravene section 8 if the employer subjects an employee or an applicant for employment to a difference of treatment which—

- (a) occurs due to a person's age; and
- (b) is a proportionate means of achieving a legitimate aim.

(2) A legitimate aim may be—

- (a) an employment policy;
- (b) labour market objectives;
- (c) a vocational training objective; or
- (d) another similar objective.

(3) The difference in treatment may include—

- (a) promoting the vocational integration or ensuring the protection of young or older persons and those who have caring responsibilities for young or older persons, by imposing special conditions on—
 - (i) access to employment;
 - (ii) vocational training;
 - (iii) remuneration; or
 - (iv) dismissal;
- (b) conditions concerning a minimum age, professional experience or seniority with regard to—
 - (i) access to employment; or
 - (ii) certain advantages linked to employment;
- (c) a requirement for a maximum age for recruitment which is based on—
 - (i) the training requirements for a post; or
 - (ii) the need for a reasonable period of employment before retirement.

(4) An employer does not contravene section 8 if there is any difference of treatment which would otherwise be unlawful under this Ordinance but the difference of treatment occurs because—

- (a) an employee has reached pensionable age;
- (b) the employee is dismissed; and
- (c) the reason for the dismissal is retirement.

(5) Provided that this does not result in discrimination on the grounds of sex, with regard to occupational social security schemes, an employer does not contravene section 8 if there is any difference of treatment which would otherwise be unlawful under this Ordinance but the difference of treatment is in respect of age requirements concerning admission to a scheme or entitlement to retirement or invalidity benefits, including—

- (a) the fixing under these schemes of different ages for employees or groups or categories of employees; or
- (b) the use of age criteria in actuarial calculations.

PART 4
Enforcement
CHAPTER 1
Inspectors

Appointment of Chief Inspector and Inspectors

18.—(1) The Chief Officer may appoint a Chief Inspector and such other inspectors as the Chief Officer may consider necessary for the more effective application of this Ordinance.

(2) The powers and duties of the Chief Inspector and inspectors may be prescribed by regulations.

(3) The functions of the Chief Inspector and an inspector are general delegated functions for the purposes of the Delegation of Functions to the Republic Ordinance 2007(a) (irrespective of whether a Chief Inspector or an inspector is appointed under subsection (1)).

CHAPTER 2
Claims to a Tribunal

Jurisdiction of the Tribunal

19.—(1) Subject to subsection (2), the Tribunal has exclusive jurisdiction to determine any dispute 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 (b) 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 treated as a Cypriot.

Bringing a claim to the Tribunal

20.—(1) A claim in respect of a contravention of section 8(1), 8(2), 9(1), 10(1), 10(2), 11(1) or in relation to section 12 may be brought to the Tribunal during employment or before or after the employment has ended and, where the claim relates to an offer of employment, irrespective of whether or not there is or was an employment relationship.

(2) Proceedings on 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) For the purpose of subsection (2), conduct extending over a period is to be treated as done at the end of the period.

Burden of proof

21.—(1) This section applies to proceedings relating to a contravention of this Ordinance except proceedings relating to a criminal offence.

(a) Ordinance 17/07
(b) Ordinance 6/60

(2) If there are facts from which the Tribunal could decide, in the absence of any other explanation, that the employer (A) contravened the provision concerned, the Tribunal must hold that the contravention occurred.

(3) Subsection (2) does not apply if A proves that A did not contravene the provision.

Powers of the Tribunal

22.—(1) 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 in relation to the act to which the claim relates;
- (b) an order requiring the employer 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.

(2) Interest determined in accordance with section 16A of the Annual Holidays with Pay Ordinance 1973 (a) is payable by the respondent on any compensation awarded by the Tribunal under subsection (1)(b).

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

CHAPTER 3

Relevant organisations

Representation by a relevant organisation

23.—(1) Subject to subsection (2), a relevant organisation may, on behalf of an employee alleging a contravention of this Ordinance,—

- (a) bring a claim to the Tribunal in the name of the employee under section 20(1); and
- (b) represent the employee—
 - (i) during the investigation of the complaint; or
 - (ii) in proceedings before the Tribunal.

(2) The employee must consent to the relevant organisation doing an act specified in subsection (1).

PART 5

General

Offences

24.—(1) Where an offence under this Ordinance is committed by a body corporate it is liable, on conviction, to a fine not exceeding €6,834.

(2) 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 not exceeding €3,417.

(a) Ordinance 10/73, section 16A was inserted by section 2 of Ordinance 40/02

Regulations

25.—(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 provision 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

26.—(1) Subject to the provisions of this section, this Ordinance applies to the Crown.

(2) In relation to race, as regards the Crown, this Ordinance does not affect—

- (a) the United Kingdom's rights and obligations as a party to the Treaty of Establishment; or
- (b) the application of section 5(1)(f) of the Employment (Termination) Ordinance 2010 (a).

(3) 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 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 2 of Annex B of the Treaty of Establishment, other than as a dependent.

(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 for the Crown; or
- (c) a member of Her Majesty's Forces acting in the course of service to the Crown.

Application to Authorised Service Organisations and contractors

27.—(1) In relation to race, as regards Authorised Service Organisations and contractors working for the Crown, this Ordinance does not affect any obligations imposed on them, the purpose of which is to give effect to the United Kingdom's rights and obligations as a party to the Treaty of Establishment.

(2) This Ordinance does not apply to Authorised Service Organisations in relation to their employment of a member of the Civilian Component.

(3) In this section Civilian Component has the same meaning given in section 26(3)(b).

(a) Ordinance 3/10 to which there are amendments but they are not relevant