



SUPPLEMENT No. 2
TO
THE SOVEREIGN BASE AREAS GAZETTE
No. 1350 of 20th October 2004
LEGISLATION

ORDINANCE 26 OF 2004

AN ORDINANCE
TO PROVIDE FOR EQUAL PAY FOR MEN AND WOMEN FOR
THE SAME WORK OR FOR WORK OF AN EQUAL VALUE

P. T. C. Pearson CBE
ADMINISTRATOR

15th October 2004.

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

1. This Ordinance may be cited as the Equal Pay Ordinance 2004.

Short title.

2.—(1) In this Ordinance, “employment” means—

Definition of employment.

- (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; or
- (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 any payment 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.

(3) Two employers are to be treated as associated if one is a company of which the other (directly or indirectly) has control or if both are companies of which a third person (directly or indirectly) has control.

Interpretation.

3. In this Ordinance,

“Committee” means the Committee appointed in accordance with section 14;

“inspector” means a person appointed by the Chief Officer in accordance with section 10;

“pay” includes the normal basic remuneration and any additional allowances payable directly or indirectly either in cash or in kind, by the employer to the employee in return for work provided;

“principle of equal pay” means the elimination of all discrimination on the grounds of sex with regard to all aspects and conditions of pay for the same work or for work of an equal value;

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

“same work or work of an equal value” means work, which is carried out by a male and a female employee employed by the same employer or by an associated employer, which is of the same or of a broadly similar nature or which has been given an equal value in accordance with section 16;

“Technical Committee” means the Technical Committee appointed in accordance with section 19;

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

Ordinance 10/73 as amended by Ordinances 12/79, 21/80 and 40/02.

Purpose of this Ordinance.

4. The purpose of this Ordinance is to ensure the application of the principle of equal pay.

Discrimination.

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

- (a) on the ground of the employee’s sex, he treats that employee less favourably than he treats or would treat an employee of the opposite sex; or
- (b) he applies to the employee a provision, practice, criterion or term which he applies or would apply to an employee of the opposite sex, but—
 - (i) which is such that it would be to the detriment of a substantially higher proportion of employees 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 employee.

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

Principle of equal pay.

6.—(1) An employer shall ensure that an employee, when compared with an employee of the opposite sex, receives equal pay for the same work or for work of an equal value.

(2) Without prejudice to the generality of subsection (1), where an employer relies on a job classification system to determine the level of pay due to any of his employees, that system shall be based on the same criteria for both men and women and shall be formulated in such a manner that any discrimination is excluded.

(3) The comparison between employees shall be made in relation to male and female employees who are or were employed by the same employer, or by an associated employer.

7.—(1) The Chief Officer shall take all appropriate steps to bring the provisions of this Ordinance to the notice of any relevant organisation.

Information to employees and employers.

(2) Every relevant organisation shall advise the persons whom it represents 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 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.

8.—(1) Subject to subsection (2), any —

- (a) provision of an Ordinance or public instrument in force at the date of commencement of this Ordinance;
- (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),

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

Invalidity of contrary provisions.

(2) If the provision or term 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 extend such right or benefit to an employee of the other sex.

9.—(1) No employee shall be dismissed or treated by his employer less favourably than any other employee is or would be treated by reason of his having reported a breach or possible breach of any provision of this Ordinance or for giving evidence or contributing to the prosecution of any person or for taking any other measure which would reasonably assist in the enforcement of this Ordinance.

Protection of employees.

(2) An employer who contravenes subsection (1) shall be guilty of an offence and shall be liable, on conviction, to a fine not exceeding one thousand pounds.

(3) Where an offence under subsection (1), 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 shall be liable to be proceeded against and punished as provided for by subsection (2).

Appointment of inspectors.

10.—(1) The Chief Officer may, subject to subsection (2), appoint inspectors and such other officials as he may deem necessary for the more effective application of this Ordinance.

(2) The Chief Officer shall ensure that a 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.

Major duties of inspectors.

11. An inspector shall—

- (a) examine any complaint submitted to him in accordance with section 13;
- (b) of his own volition, investigate any matter which he believes is 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.

Powers of inspectors.

12.—(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 10, 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 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 7 to be posted on a notice board within the work place;
 - (iv) require any employee or employer or any relevant organisation to provide such information or assistance as may be requested by the inspector.
- (2) The inspector shall inform the employer or any relevant organisation of his presence during an inspection unless he considers that it may adversely affect the carrying out of any of his duties.

13.—(1) An 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.

Complaints to an inspector.

(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 the 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, either of his own volition or further to a request of any of the interested parties, forward the complaint to the Committee in order for it to investigate and report on the same.

(5) On receipt of any report provided by the Committee in accordance with section 15(2), the inspector shall take all appropriate measures to settle the complaint and if the complaint is settled, he shall record the details of the agreement reached between the parties and such record shall be signed by both parties.

(6) In the event the complaint is not settled following a report from the Committee, the inspector shall record all the steps taken with a view to settling 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.

(7) The time limit for submission of a 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 (6) is prepared and submitted to the interested parties.

Appointment of
the Committee.

14.—(1) The Chief Officer shall appoint a Committee to consider any complaint referred to it under section 13(4).

(2) The Committee shall be composed of three members selected from a list prepared by the Chief Officer in consultation with any relevant organisation.

(3) The members of the Committee shall 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) Members of the Committee shall be entitled to remuneration of such amount as shall be determined by the Chief Officer as payment for each complaint considered.

Powers of
Committee.

15.—(1) The Committee shall, on receipt of a complaint submitted to it in accordance with section 13, have the power to –

- (a) carry out an inspection of the work place concerned and perform such investigations as may be necessary for the preparation of its report;
- (b) require any person to produce any record or document which the Committee reasonably believes to contain information directly related to the complaint under consideration;
- (c) require any person, whom the Committee reasonably believes to be in a position to provide information relating to the complaint under consideration, to answer any question put to him by the Committee.

(2) The Committee shall prepare and submit a report of its findings on the complaint to the inspector and all interested parties within three months from the referral of the complaint to it.

Criteria for
comparison and
assessment of
equal value work.

16. Where an inspector, or the Committee on referral of the complaint to it, is required to consider whether an employee of one sex is employed on the same work or work of an equal value as an employee of the opposite sex, regard shall be had to any published criteria regarding the field of comparison in a particular category of profession and—

- (a) the nature of the duties performed by such employees;
- (b) the degree of responsibility in each position;
- (c) the qualifications, skills and seniority of such employees;
- (d) the efforts required and decisions required to be taken by them;
- (e) the conditions under which the work is carried out;
- (f) whether the differences (if any) in relation to the work carried out or the terms under which it is carried out are of any practical importance in comparison with the totality of work carried out and regard shall be had to the frequency or otherwise with which any such differences occur in practice as well as to the nature and extent of the differences.

17.—(1) An inspector and the members of the Committee shall treat all information which comes to their knowledge during the performance of their duties and exercise of their powers under this Ordinance, whether such information is provided orally or in writing, as confidential, and must not disclose or transmit any such information to any person otherwise than as provided for by this Ordinance.

Duty of confidentiality.

(2) If an inspector or member of the Committee acts in breach of subsection (1), a person who has been prejudiced by such breach shall have an enforceable right to compensation.

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

Complaint to the Tribunal.

(2) Subject to section 13(7), the Tribunal shall not consider a complaint presented to it under this Ordinance unless it is presented to the Tribunal before the end of the period of six months beginning with when the act complained of was done:

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 it just and equitable to do so.

(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 of the provisions of this Ordinance, the Tribunal shall uphold the complaint unless the respondent proves that he did not commit that act.

(4) Where an inspector has investigated and reported on the matter which is the subject of the claim in accordance with section 13, the complainant is entitled to call the inspector to give evidence as to his findings. If the findings of the inspector 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.

19.—(1) The Tribunal may have regard to any report prepared by the Committee in accordance with section 15, and, if it considers it appropriate, may appoint a Technical Committee composed of members taken from the list prepared by the Chief Officer in accordance with section 14 in order to assist it in determining whether an employee is employed on the same work or work of an equal value as an employee of the opposite sex.

Power of Tribunal to appoint Technical Committee.

(2) Members of the Technical Committee shall be entitled to remuneration of such amount as shall be determined by the Chief Officer as payment for each complaint considered.

(3) The powers and duties of the Technical Committee shall be as provided for by sections 15 and 16.

20.—(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.

Jurisdiction of Tribunal.

(2) Part III of the Citizens of the Republic (Jurisdiction of Courts) Ordinance 1960 shall apply to disputes of a civil nature arising from the provisions of this Ordinance, and for such purpose—

Ordinance 6/60.

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

(4) 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 and the respondent 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 failure which infringed his right.

Ordinance 6/83.

(5) Interest at the rate provided for by the Interest Ordinance 1983 shall be payable by the respondent on any compensation awarded in accordance with subsection (4) from the date the unlawful act occurred until the date the full amount of compensation due is paid to the complainant.

Void provisions.

21. A provision contained—

- (a) in an Ordinance or public instrument in force at the date of commencement of this Ordinance; 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.

Offence of breach of section 5.

22.—(1) An employer who discriminates against an employee in the circumstances set out in section 5 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).

23.—(1) Any person who—

Offence.

- (a) wilfully obstructs an inspector, a member of the Committee, or a member of the Technical Committee during the exercise of any of the powers or performance of any of the duties conferred upon them by this Ordinance; or
- (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; or
- (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; or
- (d) wilfully defaces, damages, alters or otherwise interferes with any document required for any purpose under this Ordinance; or
- (e) wilfully obstructs or attempts to obstruct any person from providing a statement or presenting himself before an inspector, the Committee or the Technical Committee,

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 to both such penalties.

(2) Where an offence under subsection (1) 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 in any case shall be a fine not exceeding one thousand pounds.

24.—An inspector shall submit to the Chief Officer an annual report concerning any complaints submitted to him under the provisions of this Ordinance and which shall contain the following information—

Annual report.

- (a) details of any obstacles of a legal or administrative nature which may limit the application of the principle of equal pay and recommendations for overcoming such obstacles;
- (b) the number of cases submitted and investigated, the details of any contraventions of the provisions of this Ordinance and any penalties imposed.

Regulations.

25. The Administrator may make regulations for the more effective application of the provisions of this Ordinance.

Repeal.
Ordinance 14/93
as amended by
Ordinance 11/01.

26. The Equal Pay Ordinance 1993 and the regulations made under it are repealed.

Application to the
Crown.

27.—(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 9(2) and (3), 22 and 23 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,
- (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.

Commencement.

28. This Ordinance shall come into force on the date of its publication in the Gazette.

19th October 2004
(128/67)

P. D. Draycott
Chief Officer.
