



**AN BILLE IN AGHAIDH IDIRDHEALU (PA), 1974
ANTI-DISCRIMINATION (PAY) BILL, 1974**

*Mar a ritheadh ag dhá Theach an Oireachtais
As passed by both Houses of the Oireachtas*

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AN BILLE IN AGHAIDH IDIRDHEALU (PA), 1974
ANTI-DISCRIMINATION (PAY) BILL, 1974

BILL

entitled

AN ACT TO ENSURE EQUAL TREATMENT, IN RELATION 5
TO CERTAIN TERMS AND CONDITIONS OF EMPLOY-
MENT, BETWEEN MEN AND WOMEN EMPLOYED ON
LIKE WORK.

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

Interpretation.

1.—(1) In this Act—

10

“collective agreement” means an agreement relating to terms and conditions of employment made between parties who are or represent employers and parties who are or represent employees;

“the Court” means the Labour Court;

“employed” means employed under a contract of service or appren- 15
ticeship or a contract personally to execute any work or labour;

“the Minister” means the Minister for Labour;

“place” includes a city, town or locality;

“remuneration” includes any consideration, whether in cash or in kind, which an employee receives, directly or indirectly, in respect 20
of his employment from his employer.

(2) In this Act a reference to a section is to a section of this Act unless it is indicated that reference to some other enactment is intended.

(3) In this Act a reference to a subsection is to the subsection of 25
the section in which the reference occurs unless it is indicated that reference to some other section is intended.

Entitlement to
equal pay.

2.—(1) Subject to this Act, it shall be a term of the contract under which a woman is employed in any place that she shall be entitled to the same rate of remuneration as a man who is employed 30
in that place by the same employer (or by an associated employer if the employees, whether generally or of a particular class, of both

employers have the same terms and conditions of employment), if both are employed on like work.

(2) For the purposes of this section two employers shall be taken to be associated if one is a body corporate of which the other (whether directly or indirectly) has control or if both are bodies corporate of which a third person (whether directly or indirectly) has control.

(3) Nothing in this Act shall prevent an employer from paying to his employees who are employed on like work in the same place different rates of remuneration on grounds other than sex.

10 3.—Two persons shall be regarded as employed on like work— Like work.

(a) where both perform the same work under the same or similar conditions, or where each is in every respect interchangeable with the other in relation to the work, or

15 (b) where the work performed by one is of a similar nature to that performed by the other and any differences between the work performed or the conditions under which it is performed by each occur only infrequently or are of small importance in relation to the work as a whole, or

20 (c) where the work performed by one is equal in value to that performed by the other in terms of the demands it makes in relation to such matters as skill, physical or mental effort, responsibility and working conditions.

25 4.—Where a woman is employed otherwise than under a contract, or is employed under a contract which does not include (whether expressly or by reference to a collective agreement or otherwise) a term satisfying section 2, the terms and conditions of her employment shall include an implied term giving effect to that section, and such an implied term shall, where it conflicts with an express term, override it. Equal pay entitlement implied.

30 5.—(1) Where after the commencement of this Act an agreement or order to which this section applies contains a provision in which differences in rates of remuneration are based on or related to the sex of employees, such a provision shall be null and void. Collective agreements, etc., basing remuneration on sex of employees.

(2) This section applies to—

35 (a) a collective agreement made after the commencement of this Act,

(b) an employment regulation order within the meaning of Part IV of the Industrial Relations Act, 1946, made after the commencement of this Act, 1946, No. 26.

40 (c) a registered employment agreement within the meaning of Part III of the Industrial Relations Act, 1946, registered in the Register of Employment Agreements after the commencement of this Act, and

45 (d) an order made by the Agricultural Wages Board under section 17 of the Agricultural Wages Act, 1936, after the commencement of this Act. 1936, No. 53.

50 6.—(1) The Minister, after consultation with the Court and with the consent of the Minister for the Public Service, may appoint as equal pay officers of the Court, such and so many persons as he thinks fit and a person so appointed shall be known (and is in this Act referred to) as an equal pay officer. Equal pay officers.

(2) An equal pay officer shall carry out the functions assigned to him by this Act and shall hold office on such terms and receive such remuneration as the Minister for the Public Service determines.

(3) An equal pay officer may provide for the regulation of proceedings before him in relation to an investigation by him under this Act.

(4) (a) An equal pay officer may, for the purpose of obtaining any information which he may require for enabling him to exercise his functions under this Act, do any one or more of the following things :

(i) at all reasonable times enter premises,

(ii) require an employer or his representative to produce to him any records, books or documents in the employer's power or control and which the officer has reasonable grounds for believing to contain information of the kind so required and to give him such information as he may reasonably require in regard to any entries in any such records, books or documents,

(iii) inspect and copy or take extracts from any such records, books or documents,

(iv) inspect any work in progress in the premises.

(b) Any person who obstructs or impedes an equal pay officer in the exercise of his powers under this subsection or does not comply with a requirement of an equal pay officer under this subsection shall be guilty of an offence under this section and shall be liable on summary conviction to a fine not exceeding £100 or on conviction on indictment to a fine not exceeding £1,000.

(5) An investigation by an equal pay officer shall be conducted in private.

Investigation
by equal pay
officers.

7.—(1) A dispute between an employer and an employee in relation to the existence or operation of a term (in this section referred to as an equal pay clause) included by virtue of *section 2* in a contract of employment or implied by virtue of *section 4* in terms and conditions of employment may be referred by a party to the dispute to an equal pay officer for investigation and recommendation and shall upon such reference be investigated in accordance with this Act and not under any other existing provision or arrangement.

(2) Where it appears to the Minister that an employer has failed to comply with an equal pay clause but that either no dispute has arisen in relation thereto or it is not reasonable to expect the employee concerned to refer a dispute in relation to such a clause to an equal pay officer, the matter may be referred to an equal pay officer by the Minister and shall thereupon be dealt with as if it were a reference under *subsection (1)* of a dispute by an employee.

(3) Where a dispute is referred under this section to an equal pay officer he shall investigate the dispute and issue a recommendation thereon.

(4) A recommendation under this section shall be conveyed to the Court, to the parties to the dispute and, in the case of a dispute referred to in *subsection (2)*, also to the Minister.

Investigation
by Labour
Court.

8.—(1) (a) A party to a dispute in relation to which an equal pay officer has made a recommendation may appeal to the Court against the recommendation or may appeal to the Court for a determination that the recommendation has not been implemented.

- (b) The Court shall hear and decide an appeal under this subsection and shall convey its determination to the parties and, in the case of a dispute mentioned in section 7 (2), also to the Minister.
- 5 (c) (i) A hearing under this subsection shall be held in private, but the Court shall, if requested to do so by a party to the dispute, hold the hearing in public.
- 10 (ii) Where a hearing under this subsection is being held in public the Court may, if it is satisfied that any part of the hearing concerns a matter that should, in the interests of any party to the dispute, be treated as confidential, hold that part of the hearing in private.
- 15 (d) Sections 14 and 21 of the Industrial Relations Act, 1946, shall apply to an appeal under this section.
- 20 (e) An appeal under this section shall be lodged in the Court not later than 42 days after the date of the equal pay officer's recommendation and the notice shall specify the grounds of the appeal.

(2) Any information obtained by an equal pay officer or by the Court in the course of an investigation or appeal under this Act as to any trade union or person or as to the business carried on by any person which is not available otherwise shall not be included
25 in any recommendation or determination without the consent of the trade union or person concerned, nor shall any person concerned in proceedings before an equal pay officer or the Court disclose any such information without such consent.

(3) A party to a dispute determined by the Court under subsection
30 (1) may appeal to the High Court on a point of law.

(4) (a) Where an employee complains to the Court that an employer has failed or neglected to implement a determination of the Court under this section, the following provisions shall have effect:

- 35 (i) the Court shall consider the complaint and shall hear all persons appearing to the Court to be interested and desiring to be heard,
- 40 (ii) if after such consideration the Court is satisfied that the complaint is well founded, the Court may by order direct the employer to do such things as will in the opinion of the Court result in the determination being implemented by the employer.

(b) If, where an order is made by the Court under paragraph (a),
45 the direction contained in the order is not carried out within two months from the date of the making of the order (or, where there is an appeal under subsection (3), within two months of the date of the order of the High Court on the appeal) the person to whom the direction is given shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding £100 and, in the case of a continuing offence, a further fine not exceeding
50 £10 for every day during which the offence is continued.

(c) (i) Where on a conviction for an offence under this section
55 the court is satisfied that a person (in this paragraph referred to as the plaintiff) would be entitled to recover in a civil action arrears of remuneration, the court may, if it thinks fit and the plaintiff present or

represented consents, impose on the convicted person, in addition to any other punishment, a fine not exceeding the amount which in the opinion of the court the plaintiff would be entitled to recover against the convicted person in respect of such arrears of remuneration. 5

(ii) The amount of a fine imposed under *subparagraph (i)* shall be paid to the plaintiff.

(iii) The payment by a convicted person of a fine imposed under *subparagraph (i)* shall be a good defence to any civil action brought by the plaintiff in respect of the arrears of remuneration referred to in that subparagraph. 10

(iv) Without prejudice to any right of appeal by any other person, the plaintiff shall have a right of appeal limited to the amount of the fine, either (as the case may be) to the High Court or to the judge of the Circuit Court in whose circuit the district (or any part thereof) of the Justice of the District Court by whom the fine was imposed is situated, and the decision on such an appeal shall be final. 15 20

(5) In any proceedings brought by a person to recover arrears of remuneration to which he is entitled under this Act the person shall not be entitled to be awarded any payment by way of such arrears in respect of a time earlier than three years before the date on which the relevant dispute was referred under *section 7* to an equal pay officer. 25

Dismissal because of equal pay claim.

9.—(1) Where a woman claims from her employer the same rate of remuneration as a man employed by the same employer (or by an associated employer within the meaning of *section 2*) in the same place on like work and subsequent to the making of the claim the employer dismisses the woman from her employment solely or mainly because she made the claim, the employer shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding £100 or on conviction on indictment to a fine not exceeding £1,000. 30 35

(2) In a prosecution for an offence under this section the onus shall be on the employer to satisfy the court that the making of the claim was not the sole or principal reason for the dismissal.

(3) (a) Where on a conviction for an offence under this section the court is satisfied that a person (in this subsection referred to as the plaintiff) would be entitled to recover in a civil action arrears of remuneration, the court may, if it thinks fit and the plaintiff present or represented consents, impose on the convicted person, in addition to any other punishment, a fine not exceeding the amount which in the opinion of the court the plaintiff would be entitled to recover against the convicted person in respect of such arrears of remuneration. 40 45

(b) The amount of a fine imposed under *paragraph (a)* shall be paid to the plaintiff. 50

(c) The payment by a convicted person of a fine imposed under *paragraph (a)* shall be a good defence to any civil action brought by the plaintiff in respect of the arrears of remuneration referred to in that paragraph.

5 (d) Without prejudice to any right of appeal by any other person, the plaintiff shall have a right of appeal limited to the amount of the fine, either (as the case may be) to the High Court or to the judge of the Circuit Court in whose circuit the district (or any part thereof) of the Justice of the District Court by whom the fine was imposed is situated, and the decision on such an appeal shall be final.

10.—(1) Where a woman, in respect of whose dismissal a prosecution for an offence under *section 9* has not been brought, complains to the Court that she has been dismissed from her employment solely or mainly because she had claimed from her former employer the same rate of remuneration as a man employed by the same employer (or by an associated employer within the meaning of *section 2*) in the same place on like work, the following provisions shall apply:

Provisions applying to dismissal because of equal pay claim.

15 (a) the Court shall investigate the complaint, and shall hear all persons appearing to the Court to be interested and desiring to be heard;

20 (b) an investigation under this subsection shall be held in private, but the Court shall, if requested to do so by a party to the dispute, hold the investigation in public;

25 (c) where an investigation under this subsection is being held in public the Court may, if it is satisfied that any part of the investigation concerns a matter that should, in the interests of any party to the dispute, be treated as confidential, hold that part of the investigation in private;

30 (d) if after such investigation the Court is satisfied that the complaint is well founded, the Court may by order direct the employer to pay to the woman a sum by way of compensation equal to the remuneration she would have received to the date of the order of the Court if she had not been dismissed, but not in any such case more than 104 weeks' remuneration and may recommend her reinstatement in her former position.

35 (2) Subject to *subsection (5)*, if where an order is made by the Court under *subsection (1)* the direction contained in the order is not carried out within two months of the date of the making of the order (or, where there is an appeal under *subsection (5)* against the order, within two months of the date of the order of the Circuit Court on the appeal), the person to whom the direction is given shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding £100 and, in the case of a continuing offence, to a further fine not exceeding £10 for every day during which the offence is continued.

45 (3) (a) Where on a conviction for an offence under this section the court is satisfied that a person (in this paragraph referred to as the plaintiff) would be entitled to recover in a civil action arrears of remuneration, the court may, if it thinks fit and the plaintiff present or represented consents, impose on the convicted person, in addition to any other punishment, a fine not exceeding the amount which in the opinion of the court the plaintiff would be entitled to recover against the convicted person in respect of such arrears of remuneration.

50 (b) The amount of a fine imposed under *paragraph (a)* shall be paid to the plaintiff.

55 (c) The payment by a convicted person of a fine imposed under *paragraph (a)* shall be a good defence to any civil action brought by the plaintiff in respect of the arrears of remuneration referred to in that paragraph.

(d) Without prejudice to any right of appeal by any other person, the plaintiff shall have a right of appeal limited to the amount of the fine, either (as the case may be) to the High Court or to the judge of the Circuit Court in whose circuit the district (or any part thereof) of the Justice of the District Court by whom the fine was imposed is situated, and the decision on such an appeal shall be final. 5

(4) Save only where no reasonable cause can be shown a complaint under this section shall be lodged not later than six months from the date of dismissal. 10

(5) A person to whom a direction is given in an order under subsection (1) may, notwithstanding section 17 of the Industrial Relations Act, 1946, appeal against the order to the judge of the Circuit Court in whose circuit the person carries on business. 15

Application of Act to men.

11.—Sections 2 (1), 4, 9 (1) and 10 (1) shall be construed as applying equally, in a case converse to that referred to in those sections, to a man in relation to his remuneration relative to that of a woman.

Expenses.

12.—The expenses incurred in the administration of this Act shall, to such extent as may be sanctioned by the Minister for Finance, be paid out of moneys provided by the Oireachtas. 20

Commencement.

13.—This Act shall come into operation on the 31st day of December, 1975.

Short title.

14.—This Act may be cited as the Anti-Discrimination (Pay) Act, 1974. 25

BILL

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to amend the law relating to the employment of persons in the public service...

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*Rite ag dhá Theach an Oireachtais,
25 Meitheamh, 1974*

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entitled

An Act to ensure equal treatment, in relation to certain terms and conditions of employment, between men and women employed on like work.

*Passed by both Houses of the Oireachtas,
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