



**AN BILL IN AGHAIDH IDIRDHEALU (FOSTAIOCHT), 1975  
ANTI-DISCRIMINATION (EMPLOYMENT) BILL, 1975**

**EXPLANATORY MEMORANDUM**

**Section 1**

Interpretation.

**Section 2**

This section states what is meant by discrimination for the purposes of the Act viz. treatment which is less favourable on grounds of sex or where a married person is treated less favourably than an unmarried person of the same sex or where there is victimisation of a person by reason of asserting a right under the Act. There is nothing in the section making discrimination unlawful—it is left to the following sections to set out the actual situations in which discrimination is unlawful.

**Section 3**

This section makes it unlawful for an employer to discriminate on grounds of sex or marriage, in regard to recruitment for employment, conditions of employment (other than remuneration or superannuation), training or work experience, promotion or re-grading, or the classification of jobs. The section also provides that discriminatory rules or instructions will be unlawful.

**Section 4**

Under this section it will be unlawful for a trade union, an organisation of employers or a professional or trade organisation to discriminate as regards admission to membership or any benefits provided.

**Section 5**

This section provides that discrimination by any person or organisation providing courses of vocational training to persons over compulsory school-leaving age will be unlawful. The section covers admission to courses and the manner in which courses are conducted.

**Section 6**

This section provides that it will be unlawful for an employment agency to discriminate in the manner in which it offers or provides its services.

**Section 7**

Discriminatory advertisements relating to employment will be unlawful. The advertiser who knowingly makes a false statement in order to secure publication or display of such advertisements commits a summary offence and will be liable to a fine.

**Section 8**

It will be unlawful for a person to procure or counsel another person to do anything which constitutes discrimination.

**Section 9**

The effect of this provision will be to render null and void any discriminatory provision in a collective agreement, an employment regulation order or a registered employment agreement made after the commencement of the Act. Any discriminatory term in a con-

tract of employment will be null and void after the commencement of this section.

#### *Section 10*

This section provides that the Act will not apply to employment in the Defence Forces, the Gárda Síochána, the prison service, in a private residence or by a close relative, by a minister of religion or a religious community. There will be power by affirmative order to bring any of these employments within the scope of the Act. The section also provides that the grievance procedures set out in Sections 15 and 17 will not apply to selection for appointment by the Local Appointments Commissioners and the Civil Service Commissioners.

#### *Section 11*

This section confirms that an employer may refuse to employ or may dismiss a person who will not undertake all the duties attached to the job or who will not accept the conditions under which it is to be carried out.

#### *Section 12*

Any action taken by an employer to comply with worker protection legislation which may place restrictions in the employment of women in the interest of their safety, health and welfare will not be regarded as discrimination for the purpose of this Act. The Minister will have power to repeal or amend by affirmative order protective legislation which is no longer relevant.

#### *Section 13*

Where it is clear that persons of one sex have generally not been engaged in work of a particular kind in the previous twelve months an employer will not be acting unlawfully if he confines training to persons of that sex for the purpose of fitting them for that work and he may encourage them to take advantage of opportunities for doing such work.

#### *Section 14*

This section provides for exclusion from the scope of the Act where sex is a bona fide occupational qualification for a particular post because of its essential nature or where personal services are provided and there is a need to have persons of both sexes employed; considerations of decency or privacy; where sleeping or sanitary accommodation is provided on a communal basis; or where the post is one of two to be held by a married couple.

#### *Section 15*

This section provides that a dispute regarding discrimination may be referred by a person concerned to the Labour Court. The Labour Court will decide whether in the first instance, to seek a settlement of the dispute by conciliation in which case the services of an industrial relations officer will be made available; alternatively, the Labour Court may refer the dispute to an equal pay officer for investigation and recommendation. Cases where efforts at conciliation fail, will likewise be referred to an equal pay officer. When the equal pay officer has investigated a dispute he will convey his recommendation to the Labour Court, to the persons concerned, and in a case referred to in Section 16, also to the Minister for Labour. Employers will not be required to disclose any reference or report relating to the character or suitability for employment of any person.

#### *Section 16*

Under this section the Minister for Labour may refer certain cases to the Labour Court which will then be dealt with as if they had been referred under Section 15. References by the Minister will be in respect of cases coming to his notice, involving discriminatory advertisements or where a general policy of discrimination is being pursued by a firm or organisation or where any person is exerting pressure on another person to discriminate. The Minister will also be able to refer cases to the Labour Court where it appears to him that

there has been discrimination and where it is not reasonable to expect the person concerned to refer the case to the Labour Court.

#### *Section 17*

A person concerned or the Minister for Labour in the case of a reference under Section 16 may appeal to the Labour Court against an equal pay officer's recommendation or may complain that the recommendation has not been implemented, provided he does so within 42 days after the date of issue of the recommendation. The Labour Court will hear the appeal and will convey its determination to the persons concerned and where appropriate, also to the Minister.

The Labour Court hearing will be in private but if requested by a person concerned the hearing will be in public.

There is provision for appeal to the High Court on a point of law.

#### *Section 18*

This section provides that the determination of the Labour Court could be one or more of the following: decide whether or not there was discrimination, recommend a particular course of action, make an award of compensation.

#### *Section 19*

Compensation will be of such amount as the Labour Court thinks reasonable, having regard to all the circumstances of the case, and will not in any case exceed 104 weeks' remuneration at the rate the person concerned was receiving at the date of the discrimination or would have received but for the discrimination.

#### *Section 20*

Any failure to comply with a determination under Section 18 may be referred back to the Labour Court and having considered the matter the Labour Court may, by order, direct the person concerned to implement the determination. A person who fails to carry out the direction in the order within two months will be guilty of an offence and liable on conviction to a fine. The court may if it thinks fit award a sum in respect of damages which would then be paid to the person who had been discriminated against and there is provision for appeal to a higher court against the award.

#### *Section 21*

This section provides that it will be an offence for an employer to dismiss an employee because of action taken bona fide with a view to securing a legal remedy which the Act provides in cases of discrimination. In a prosecution for an offence under this section the onus will be on the employer to satisfy the court that the dismissal did not arise solely or principally because of the employee's action. An employer found guilty of an offence under this section will be liable to a fine. The court may if it thinks fit impose an additional fine in respect of compensation which would then be paid to the employee. There is provision for appeal to a higher court as regards the amount of the additional fine.

Dismissal includes "constructive dismissal" which means that termination of the employment contract by an employer because the employer makes it intolerable to remain, will be deemed to be dismissal by the employer.

#### *Section 22*

A person who has not already brought a prosecution under Section 21 for an offence in respect of dismissal may complain to the Labour Court. The Labour Court will investigate the complaint (which normally must be lodged within six months of the date of dismissal). There is provision about hearings in private or in public. If the Labour Court is satisfied that the complaint is well founded it may, by order, direct the employer concerned to pay to the person concerned a sum equal to the remuneration which the employee would have received

subject to a maximum of 104 weeks' remuneration. The Labour Court may also recommend the reinstatement of the employee. There is provision for appeal to the High Court on a point of law. An employer who fails to carry out the direction in the order within two months will be guilty of an offence and will be liable to a fine. There is a provision similar to that in Section 21 for an additional fine and for appeal to a higher court.

#### Section 23

This section is intended to assist persons who have been discriminated against, in seeking their rights under the Act. The Minister may prescribe forms to enable an employee to obtain certain information from the employer for the purpose of referring a case to the Labour Court.

#### Section 24

This section amends section 10 (4) of the Anti-Discrimination (Pay) Act 1974.

#### Section 25

This section is intended to give a period of grace of five years in respect of the provision of accommodation in cases where there would be difficulty in providing the additional accommodation necessary to comply with the Office Premises Act 1958 e.g. in firms which previously employed mainly or wholly persons of one sex.

#### Section 26

This section provides that the Minister may seek an injunction where it appears to him that there is a likelihood that discrimination would continue in certain cases notwithstanding a determination of the Labour Court.

#### Section 27

The Minister will have power to make regulations for the purpose of giving effect to the Act.

#### Section 28

Expenses.

#### Section 29

This section provides for bringing the Act into operation by order of the Minister.

#### Section 30

Short title, collective citation and construction.

*An Roinn Saothair,*

*Deireadh Fómhair, 1975.*