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**AN BILLE UM CHOMHIONANNAS FOSTAÍOCHTA, 1996**  
**EMPLOYMENT EQUALITY BILL, 1996**

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*Mar a ritheadh ag Dáil Éireann*  
*As passed by Dáil Éireann*

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[No. 38b of 1996]



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ACTS REFERRED TO

Adoptive Leave Act, 1995	1995, No. 2
Air Navigation and Transport Act, 1946	1946, No. 23
Anti-Discrimination (Pay) Act, 1974	1974, No. 15
Bankruptcy Act, 1988	1988, No. 27
Civil Service Regulation Act, 1956	1956, No. 46
Companies Act, 1963	1963, No. 33
Courts Act, 1981	1981, No. 11
Defence Act, 1954	1954, No. 18
Employment Agency Act, 1971	1971, No. 27
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Health Act, 1970	1970, No. 1
Industrial Relations Act, 1946	1946, No. 26
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Irish Aviation Authority Act, 1993	1993, No. 29
Local Government Act, 1941	1941, No. 23
Maternity Protection Act, 1994	1994, No. 34
Merchant Shipping Act, 1947	1947, No. 46
Merchant Shipping (Certification of Seamen) Act, 1979	1979, No. 37
Pensions Act, 1990	1990, No. 25
Petty Sessions (Ireland) Act, 1851	14 & 15 Vict., c. 9
Protection of Employees (Employers' Insolvency) Act, 1984	1984, No. 21
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Solicitors Act, 1954	1954, No. 36
Trade Union Act, 1941	1941, No. 22
Trade Unions Acts, 1871 to 1975	
Transport (Miscellaneous Provisions) Act, 1971	1971, No. 14
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AN BILLE UM CHOMHIONANNAS FOSTAÍOCHTA, 1996  
EMPLOYMENT EQUALITY BILL, 1996

# BILL

*entitled*

5 AN ACT TO MAKE FURTHER PROVISION FOR THE PRO-  
MOTION OF EQUALITY BETWEEN EMPLOYED PER-  
SONS; TO MAKE FURTHER PROVISION WITH  
10 RESPECT TO DISCRIMINATION IN, AND IN CONNEC-  
TION WITH, EMPLOYMENT, VOCATIONAL TRAINING  
AND MEMBERSHIP OF CERTAIN BODIES; TO MAKE  
FURTHER PROVISION IN CONNECTION WITH COUN-  
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PRINCIPLE OF EQUAL TREATMENT FOR MEN AND  
20 WOMEN AS REGARDS ACCESS TO EMPLOYMENT,  
VOCATIONAL TRAINING AND PROMOTION, AND  
WORKING CONDITIONS; TO MAKE FURTHER PRO-  
VISION WITH RESPECT TO HARASSMENT IN  
EMPLOYMENT AND IN THE WORKPLACE; TO  
25 CHANGE THE NAME AND CONSTITUTION OF THE  
EMPLOYMENT EQUALITY AGENCY; TO REPEAL THE  
ANTI-DISCRIMINATION (PAY) ACT, 1974, AND TO  
AMEND THE EMPLOYMENT EQUALITY ACT, 1977;  
AND TO PROVIDE FOR RELATED MATTERS.

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

## PART I

### 30 PRELIMINARY AND GENERAL

1.—(1) This Act may be cited as the Employment Equality Act, 1997. Short title and commencement.

(2) Except in so far as any provision of this Act provides expressly for the coming into operation of any such provision, this Act shall  
35 come into operation on such day as may be fixed by order made by the Minister, and different days may be so fixed for different provisions and for different purposes.

2.—(1) In this Act, except where the context otherwise requires, — Interpretation.  
“act” includes a deliberate omission;



“advertisement” includes every form of advertisement, whether to the public or not and whether in a newspaper or other publication, on television or radio or by display of a notice or by any other means, and references to the publishing of advertisements shall be construed accordingly; 5

“agency worker” means an employee whose contract of employment is as mentioned in *paragraph (b)* of the definition of such a contract in this subsection;

“associated employer” shall be construed in accordance with *subsection (2)*; 10

“the Authority” means the Equality Authority;

“contract of employment” means, subject to *subsection (3)*—

- (a) a contract of service or apprenticeship, or
- (b) any other contract whereby an individual agrees with a person carrying on the business of an employment agency, within the meaning of the Employment Agency Act, 1971, to do or perform personally any work or service for another person (whether or not that other person is a party to the contract), 15

whether the contract is express or implied and, if express, whether it is oral or in writing; 20

“the Court” means the Labour Court;

“the Director” means the Director of Equality Investigations;

“disability” means—

- (a) the total or partial loss of a person’s bodily or mental functions, including the loss of a part of a person’s body, or 25
- (b) the presence in the body of organisms causing, or likely to cause, chronic disease or illness, or
- (c) the malfunction, malformation or disfigurement of a part of a person’s body, or 30
- (d) a condition or malfunction which results in a person learning differently from a person without the condition or malfunction, or
- (e) a condition, illness or disease which affects a person’s thought processes, perception of reality, emotions or judgement or which results in disturbed behaviour, 35

and shall be taken to include a disability which presently exists, or which previously existed but no longer exists, or which may exist in the future or which is imputed to a person;

“the discriminatory grounds” has the meaning given by *section 6 (2)*; 40

“dismissal” includes the termination of a contract of employment by the employee (whether prior notice of termination was or was not given to the employer) in circumstances in which, because of the conduct of the employer, the employee was or would have been entitled to terminate the contract without giving such notice, or it 45



was or would have been reasonable for the employee to do so, and "dismissed" shall be construed accordingly;

5 "employee", subject to *subsection (3)*, means a person who has entered into or works under (or, where the employment has ceased, entered into or worked under) a contract of employment;

"employer", subject to *subsection (3)*, means, in relation to an employee, the person with whom the employee has entered into or for whom the employee works under (or, where the employment has ceased, entered into or worked under) a contract of employment;

10 "employment agency" (when not defined by reference to the Employment Agency Act, 1971) means a person who, whether for profit or otherwise, provides services related to the finding of employment for prospective employees or the supplying of employees to employers;

15 "equality clause" means a gender equality clause, as defined in *section 21* or a non-discriminatory equality clause, as defined in *section 30*;

"equal remuneration term" means such a term of a contract as is specified in *section 19 (1)*, *20 (1)* or *29 (1)*;

20 "family status" means responsibility—

(a) as a parent or as a person in *loco parentis* in relation to a person under the age of 18, or

25 (b) as a parent or the resident primary carer in relation to a person of or over that age with a disability which is of such a nature as to give rise to the need for care or support on a continuing, regular or frequent basis,

and, for the purposes of *paragraph (b)*, a primary carer is a resident primary carer in relation to a person with a disability if the primary carer resides with the person with the disability;

30 "like work" shall be construed in accordance with *section 7*;

"marital status" means single, married, separated, divorced or widowed;

"member of the family", in relation to any person means—

(a) that person's spouse; and

35 (b) a brother, sister, uncle, aunt, nephew, niece, lineal ancestor or lineal descendant of that person or that person's spouse;

"the Minister" means the Minister for Equality and Law Reform;

40 "pension rights" means a pension or any other benefits flowing from an occupational pension scheme;

"proceedings" include any referral, mediation or investigation under *Part V*;

"provider of agency work" shall be construed in accordance with *subsection (5)*;

45 "regulatory body" means a body which falls within any of *paragraphs (a) to (c)* of *section 13*;

"relevant characteristic" shall be construed in accordance with *section 28 (3)*;



“religious belief” includes religious background or outlook;

“remuneration”, in relation to an employee, does not include pension rights but, subject to that, includes any consideration, whether in cash or in kind, which the employee receives, directly or indirectly, from the employer in respect of the employment; 5

“sexual orientation” means heterosexual, homosexual or bisexual orientation;

“trade union” means a trade union which is the holder of a negotiation licence under Part II of the Trade Union Act, 1941;

“vocational training” shall be construed in accordance with *section 12 (2)*. 10

(2) For the purposes of this Act, 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. 15

(3) For the purposes of this Act—

(a) a person holding office under, or in the service of, the State (including a member of the Garda Síochána or the Defence Forces) or otherwise as a civil servant, within the meaning of the Civil Service Regulation Act, 1956, shall be deemed to be an employee employed by the State or Government, as the case may be, under a contract of service; 20

(b) an officer or servant of a local authority for the purposes of the Local Government Act, 1941, a harbour authority, a health board or a vocational education committee shall be deemed to be an employee employed by the authority, board or committee, as the case may be, under a contract of service; and 25

(c) in relation to an agency worker, the person who is liable for the pay of the agency worker shall be deemed to be the employer. 30

(4) In this Act the expression “conditions of employment” does not include remuneration or pension rights.

(5) A person who, under a contract with an employment agency, within the meaning of the Employment Agency Act, 1971, obtains the services of one or more agency workers but is not their employer for the purposes of this Act is in this Act referred to, in relation to the agency workers, as the “provider of agency work”. 35

(6) In this Act a reference to a Part or section is to a Part or section of this Act, unless it is indicated that reference to some other enactment is intended. 40

(7) In this Act a reference to a subsection or paragraph is to the subsection or paragraph of the provision in which the reference occurs, unless it is indicated that reference to some other provision is intended. 45

(8) In this Act a reference to an enactment includes a reference to that enactment as amended by or under any other enactment, including this Act.



3.—(1) Any power under this Act to make an order includes power to amend or revoke an order made in the exercise of that power. Orders and regulations.

5 (2) Where an order is proposed to be made under this Act, other than an order under *section 1 (2)* or *subsection (3)* or *subsection (5)* of *section 69*, a draft of the order shall be laid before both Houses of the Oireachtas, and the order shall not be made until a resolution approving the draft has been passed by each such House.

10 (3) The Minister may make regulations for the purpose of giving effect to this Act.

15 (4) Every regulation made under this Act shall be laid before each House of the Oireachtas as soon as practicable after it is made and, if a resolution annulling the regulation is passed by either such House within the next twenty-one days on which that House has sat after the regulation is laid before it, the regulation shall be annulled accordingly, but without prejudice to the validity of anything previously done thereunder.

20 (5) Any order or regulation made under this Act may contain such consequential, supplementary and ancillary provisions as the Minister considers necessary or expedient.

4.—Any 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. Expenses.

5.—(1) Subject to *subsection (2)*,—

25 (a) the Anti-Discrimination (Pay) Act, 1974, and

(b) in the Employment Equality Act, 1977 (in this section referred to as “the 1977 Act”), sections 2 to 33, 36, 37 (2), 38, 39 (4), 53 (2) and 55

are hereby repealed.

30 (2) Without prejudice to the operation of section 21 of the Interpretation Act, 1937 (the effect of repeals), nothing in this section shall affect the continuing operation of orders made under section 14 of the 1977 Act (power to repeal or amend provisions of certain enactments), and, accordingly, any such orders shall have effect, after 35 the coming into operation of this section, as if that section continued in force.

(3) In section 1 (1) of the 1977 Act (definitions)—

40 (a) after the definition of “the Court” there shall be inserted “discrimination” includes both discrimination which is unlawful under the *Employment Equality Act, 1997*, and victimisation within the meaning of *Part V* of that Act, and “the discriminatory grounds” has the same meaning as in that Act’;

45 (b) for the definition of “employee” there shall be substituted— “employee” has the same meaning as in the *Employment Equality Act, 1997*;



(c) for the definition of "employer" there shall be substituted—

"employer" has the same meaning as in the *Employment Equality Act, 1997*; and

(d) in the definition of "trade union" for the words "Trade Union Acts, 1871 to 1975," there shall be substituted the words "*Employment Equality Act, 1997*". 5

(4) In section 12 of the Industrial Relations Act, 1946 (the Deputy Chairman of the Court) after the words "this Act" there shall be inserted "and the *Employment Equality Act, 1997*".

## PART II

10

### DISCRIMINATION: GENERAL PROVISIONS

#### *Introductory*

Discrimination for the purposes of this Act.

6.—(1) For the purposes of this Act, discrimination shall be taken to occur where, on any of the grounds in *subsection (2)* (in this Act referred to as "the discriminatory grounds"), one person is treated less favourably than another is, has been or would be treated. 15

(2) As between any two persons, the discriminatory grounds (and the descriptions of those grounds for the purposes of this Act) are—

(a) that one is a woman and the other is a man ("the gender ground"); 20

(b) that they are of different marital status ("the marital status ground");

(c) that one has family status and the other does not ("the family status ground");

(d) that they are of different sexual orientation ("the sexual orientation ground"); 25

(e) that one has a different religious belief from the other, or that one has a religious belief and the other has not ("the religion ground");

(f) that they are of different ages, but subject to *subsection (3)* ("the age ground"); 30

(g) that one is a person with a disability and the other either is not or is a person with a different disability ("the disability ground");

(h) that they are of different race, colour, nationality or ethnic or national origins ("the ground of race"); 35

(i) that one is a member of the travelling community and the other is not ("the travelling community ground").



(3) Where—

(a) a person is 65 or over, or

(b) a person is under 18,

5 then, subject to *section 12 (3)*, treating that person more favourably or less favourably than another (whatever that other person's age) shall not be regarded as discrimination on the age ground.

7.—(1) Subject to *subsection (2)*, for the purposes of this Act, in relation to the work which one person is employed to do, another person shall be regarded as employed to do like work if—

Like work.

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

15 (b) 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 either are of small importance in relation to the work as a whole or occur with such irregularity as not to be significant to the work as a whole; or

20 (c) the work performed by one is equal in value to the work performed by the other, having regard to such matters as skill, physical or mental requirements, responsibility and working conditions.

25 (2) In relation to the work which an agency worker is employed to do, no person except another agency worker may be regarded under *subsection (1)* as employed to do like work (and, accordingly, in relation to the work which a non-agency worker is employed to do, an agency worker may not be regarded as employed to do like work).

(3) In any case where—

30 (a) the remuneration received by one person ("the primary worker") is less than the remuneration received by another ("the comparator"), and

35 (b) the work performed by the primary worker is greater in value than the work performed by the comparator, having regard to the matters mentioned in *subsection (1) (c)*,

then, for the purposes of *subsection (1) (c)*, the work performed by the primary worker shall be regarded as equal in value to the work performed by the comparator.

#### *Discrimination in Specific Areas*

40 8.—(1) In relation to—

Discrimination by employers etc.

(a) access to employment,

(b) conditions of employment,

(c) training or experience for or in relation to employment,



(d) promotion or re-grading, or

(e) classification of posts,

an employer shall not discriminate against an employee or prospective employee and a provider of agency work shall not discriminate against an agency worker.

5

(2) For the purposes of this Act, neither an employer nor a provider of agency work shall be taken to discriminate against an agency worker unless (on one of the discriminatory grounds) that agency worker is treated less favourably than another agency worker is, has been or would be treated.

10

(3) In the following provisions of this section, references to an employee include references to an agency worker and, in relation to such a worker, references to the employer include references to the provider of agency work.

(4) A person who is an employer shall not, in relation to employees or employment,—

15

(a) have rules or instructions which would result in discrimination against an employee or class of employees in relation to any of the matters specified in *paragraphs (a) to (e) of subsection (1)*; or

20

(b) otherwise apply or operate a practice which results or would be likely to result in any such discrimination.

(5) Without prejudice to the generality of *subsection (1)*, an employer shall be taken to discriminate against an employee or prospective employee in relation to access to employment if the employer discriminates against the employee or prospective employee—

25

(a) in any arrangements the employer makes for the purpose of deciding to whom employment should be offered; or

(b) by specifying, in respect of one person or class of persons, entry requirements for employment which are not specified in respect of other persons or classes of persons, where the circumstances in which both such persons or classes would be employed are not materially different.

30

(6) Without prejudice to the generality of *subsection (1)*, an employer shall be taken to discriminate against an employee or prospective employee in relation to conditions of employment if, on any of the discriminatory grounds, the employer does not offer or afford to that employee or prospective employee or to a class of persons of whom he is one—

40

(a) the same terms of employment (other than remuneration and pension rights),

(b) the same working conditions, and

(c) the same treatment in relation to overtime, shift work, short time, transfers, lay-offs, redundancies, dismissals and disciplinary measures,

45



as the employer offers or affords to another person or class of persons, where the circumstances in which both such persons or classes are or would be employed are not materially different.

5 (7) Without prejudice to the generality of *subsection (1)*, an employer shall be taken to discriminate against an employee in relation to training or experience for, or in relation to, employment if, on any of the discriminatory grounds, the employer refuses to offer or afford to that employee the same opportunities or facilities for employment counselling, training (whether on or off the job) and 10 work experience as the employer offers or affords to other employees, where the circumstances in which that employee and those other employees are employed are not materially different.

(8) Without prejudice to the generality of *subsection (1)*, an employer shall be taken to discriminate against an employee in 15 relation to promotion if, on any of the discriminatory grounds,—

(a) the employer refuses or deliberately omits to offer or afford the employee access to opportunities for promotion in circumstances in which another eligible and qualified person is offered or afforded such access; or

20 (b) the employer does not in those circumstances offer or afford the employee access in the same way to those opportunities.

9.—(1) In a case where—

Provisions in certain agreements and orders.

25 (a) an agreement or order to which this section applies contains a provision in which differences in rates of remuneration are based on any of the discriminatory grounds, and

(b) in relation to a person to whom the agreement or order relates, that provision conflicts with an equal remuneration term in that person's contract of employment,

30 then, subject to *subsection (4)*, that provision shall be null and void.

(2) If an agreement or order to which this section applies contains a provision which does not fall within *subsection (1)* but which gives rise to discrimination in relation to any of the matters in *paragraphs (a) to (e) of subsection (1) of section 8*, then, subject to *subsection (4)*, that provision shall be null and void. 35

(3) This section applies to the following agreements and orders, whether made before or after the coming into operation of this section,—

(a) collective agreements;

40 (b) employment regulation orders, within the meaning of Part IV of the Industrial Relations Act, 1946; and

(c) registered employment agreements, within the meaning of Part III of that Act.

(4) In the case of a provision which—

45 (a) is contained in an agreement or order made before the coming into operation of this section, and



(b) is discriminatory on a ground other than the gender ground, subsection (1) or, as the case may be, subsection (2) shall not apply until the first anniversary of the date on which this section comes into operation; and, accordingly, until that date, the equal remuneration term or equality clause in a person's contract of employment shall not override any such provision of an agreement or order which relates to that person. 5

Advertising.

10.—(1) A person shall not publish or display, or cause to be published or displayed, an advertisement which relates to employment and which— 10

(a) indicates an intention to discriminate; or

(b) might reasonably be understood as indicating such an intention.

(2) For the purposes of subsection (1), where in an advertisement a word or phrase is used defining or describing a post and the word or phrase is one which— 15

(a) connotes an individual of a particular sex or an individual having (in terms of any of the discriminatory grounds) a particular relevant characteristic, or

(b) is descriptive of, or refers to, a post or occupation of a kind previously held or carried on only by members of one sex or only by individuals having such a particular relevant characteristic, 20

then, unless the advertisement indicates a contrary intention, the advertisement shall be taken to indicate an intention to discriminate on whichever discriminatory ground is relevant in the circumstances. 25

(3) Nothing in this section relates to an advertisement which, or to the extent to which it, specifies a requirement, restriction or other matter which relates to employment and which it would not be unlawful for the employer in question to impose, having regard to any other provision of this Part or of Part III or Part IV. 30

(4) A person who, with a view to securing publication or display of an advertisement in contravention of subsection (1), makes a statement knowing it to be false shall, upon such publication or display, be guilty of an offence. 35

(5) Without prejudice to subsection (4), if an advertisement is published or displayed and it appears to the High Court or the Circuit Court, on the motion of the Authority, that there are grounds for believing that publication or display of the advertisement may be in contravention of subsection (1), the court may grant an injunction preventing the appointment of any person to any post to which the advertisement relates until— 40

(a) the decision of the Director on a contemporaneous reference under section 49 of the publication or display of the advertisement; or 45

(b) the court otherwise orders;



and for the purpose of this subsection a reference under *section 49* shall be regarded as contemporaneous with a motion if it is made on the same day as the motion or not more than 14 days earlier or later.

- 5 (6) The jurisdiction conferred on the Circuit Court by *subsection (5)* shall be exercised by the judge for the time being assigned to the circuit where the person by whom the advertisement was published or displayed (or caused to be published or displayed) ordinarily resides or carries on any profession, business or occupation.

10 11.—(1) Without prejudice to its obligations as an employer, an employment agency shall not discriminate against any person— Employment agencies.

(a) who seeks the services of the agency to obtain employment with another person; or

- 15 (b) who seeks from the agency guidance as to a career or any other service (including training) related to the employment of that person.

(2) *Subsection (1)* does not apply to the extent that the employment in question is such that an employer could lawfully refuse to offer it to the person concerned.

20 (3) An employment agency shall not be under any liability under this section if it proves—

(a) that it acted in reliance on a statement made to it by the employer concerned to the effect that, by reason of the operation of *subsection (2)*, its action would not be unlawful; and

25 (b) that it was reasonable for it to rely on the statement.

(4) An employer who, with a view to obtaining the services of an employment agency, knowingly makes such a statement as is referred to in *subsection (3) (a)* which is false or misleading in a material respect shall be guilty of an offence.

30 (5) Nothing in this Act shall make it unlawful for an employment agency to provide services exclusively for persons with disabilities or any class or description of such persons.

35 12.—(1) Any person, including an educational or training body, who offers a course of vocational training shall not, in respect of any such course offered to persons over the age at which those persons are statutorily obliged to attend school, discriminate against a person (whether at the request of an employer, a trade union or a group of employers or trade unions or otherwise)— Vocational training.

40 (a) in the terms on which any such course or related facility is offered;

(b) by refusing or omitting to afford access to any such course or facility; or

(c) in the manner in which any such course or facility is provided.

45 (2) In this Act “vocational training” means any system of instruction which enables a person being instructed to acquire, maintain,



bring up to date or perfect the knowledge or technical capacity required for the carrying on of an occupational activity and which may be considered as exclusively concerned with training for such an activity.

(3) For the purposes of this section, *section 6 (3) (b)* shall have effect as if the reference to the age of 18 were a reference to the age referred to in *subsection (1)*. 5

(4) For the purposes of ensuring the availability of nurses to hospitals and teachers to primary schools which are under the direction or control of a body established for religious purposes or whose objectives include the provision of services in an environment which promotes certain religious values, and in order to maintain the religious ethos of the hospitals or primary schools, the prohibition of discrimination in *subsection (1)*, in so far as it relates to discrimination on the religion ground, shall not apply in respect of— 10 15

(a) the nomination of persons for admission to the School of Nursing pursuant to clause 24 (4) (a) or (c) of the Adelaide Hospital Charter as substituted by paragraph 5 (s) of the Health Act, 1970 (Section 76) (Adelaide and Meath Hospital, Dublin, incorporating the National Children's Hospital) Order, 1996, or 20

(b) places in a vocational training course specified in an order made under *subsection (5)*.

(5) Where an educational or training body applies to the Minister for Health, in the case of hospitals, or to the Minister for Education, in the case of primary schools, for an order permitting the body concerned to reserve places in a vocational training course offered by the body, the Minister for Health or the Minister for Education, as the case may be, may, with the consent of the Minister, by order allow the body to reserve places in such numbers as seem reasonably necessary to the Minister for Health or the Minister for Education, as the case may be, to meet the purposes set out in *subsection (4)*. 25 30

(6) Without prejudice to *section 3 (1)*, an order under *subsection (5)* may be revoked by a further order made by the Minister for Health, or the Minister for Education, as the case may be, with the like consent; but any such revocation order shall contain transitional provisions safeguarding any person who took advantage of the effect of the order when it was in force. 35

Membership of certain bodies.

13.—A body which—

(a) is an organisation of workers or of employers, or 40

(b) is a professional or trade organisation, or

(c) controls entry to, or the carrying on of, a profession, vocation or occupation,

shall not discriminate against a person in relation to membership of that body or any benefits, other than pension rights, provided by it or in relation to entry to, or the carrying on of, that profession, vocation or occupation. 45



14.—A person who procures or attempts to procure another person to do anything which—

Procuring etc.  
discrimination or  
victimisation.

(a) constitutes discrimination which is unlawful under this Act,  
or

5 (b) constitutes victimisation for the purposes of *Part V*,

shall be guilty of an offence under this section.

*Vicarious Liability etc.*

10 15.—(1) Anything done by a person in the course of his employment shall be treated for the purposes of this Act as done also by that person's employer, whether or not it was done with the employer's knowledge or approval.

Liability of  
employers and  
principals.

15 (2) Anything done by a person as agent for another person, with the authority (whether express or implied and whether precedent or subsequent) of that other person, shall be treated for the purposes of this Act as done also by that other person.

20 (3) In proceedings brought under this Act against an employer in respect of an act alleged to have been done by an employee of the employer, it shall be a defence for the employer to prove that the employer took such steps as were reasonably practicable to prevent the employee—

(a) from doing that act; or

(b) from doing in the course of his employment acts of that description.

*Obligations of Employers, etc.*

25 16.—(1) Nothing in this Act shall be construed as requiring any person to recruit or promote an individual to a position, to retain an individual in a position, or to provide training or experience to an individual in relation to a position, if the individual—

Nature and extent  
of employer's  
obligations in  
certain cases.

30 (a) will not undertake (or, as the case may be, continue to undertake) the duties attached to that position or will not accept (or, as the case may be, continue to accept) the conditions under which those duties are, or may be required to be, performed; or

35 (b) is not (or, as the case may be, is no longer) fully competent and available to undertake, and fully capable of undertaking, the duties attached to that position, having regard to the conditions under which those duties are, or may be required to be, performed.

(2) In relation to—

40 (a) the provision by an employment agency of services or guidance to an individual in relation to employment in a position,

45 (b) the offer to an individual of a course of vocational training or any related facility directed towards employment in a position, and



(c) the admission of an individual to membership of a regulatory body or into a profession, vocation or occupation controlled by a regulatory body,

*subsection (1)* shall apply, with any necessary modification, as it applies to the recruitment of an individual to a position. 5

(3) For the purposes of this Act, a person who has a disability shall not be regarded otherwise than as fully competent to undertake, and fully capable of undertaking, any duties if, with the assistance of special treatment or facilities, that person would be so fully competent or capable; and, subject to *section 35 (4)*, an employer shall do all that is reasonable to accommodate that person's needs, in particular, by allowing or, as the case may require, making provision for, such treatment or facilities or, by providing such treatment or facilities. 10

(4) Nothing in this Act shall be construed as requiring an employer to recruit, retain in employment or promote an individual if the employer is aware, on the basis of a criminal conviction of the individual or other reliable information, that the individual engages, or has a propensity to engage, in any form of sexual behaviour which is unlawful. 15  
20

Compliance with statutory requirements etc.

17.—(1) In relation to discrimination on the gender ground, nothing in this Act shall render unlawful any act done in compliance with section 56 of the Shops (Conditions of Employment) Act, 1938.

(2) In relation to discrimination on the marital status ground, nothing in this Act shall render unlawful any act done in compliance with any provision of the Maternity Protection Act, 1994, or the Adoptive Leave Act, 1995. 25

(3) In relation to discrimination on the ground of race, nothing in this Act shall render unlawful any act done in compliance with any provision made by or under— 30

(a) section 40 (3) of the Solicitors Act, 1954; or

(b) section 35 of the Finance Act, 1987.

(4) In relation to discrimination on the age ground or the disability ground, nothing in this Act shall render unlawful any act done in compliance with any provision made by or under— 35

(a) sections 5, 9, 11 and 16 of the Air Navigation and Transport Act, 1946;

(b) section 12 of the Merchant Shipping Act, 1947;

(c) section 29 of the Transport (Miscellaneous Provisions) Act, 1971; 40

(d) sections 3 and 8 of the Merchant Shipping (Certification of Seamen) Act, 1979; or

(e) sections 5, 14, 58 and 60 of the Irish Aviation Authority Act, 1993.

(5) In relation to discrimination on the age ground, nothing in this Act shall render unlawful any act done in compliance with paragraph 1 of Schedule 3 to the Redundancy Payments Act, 1967. 45



PART III

SPECIFIC PROVISIONS AS TO EQUALITY BETWEEN WOMEN AND MEN

*Introductory*

5 18.—(1) For the purposes of this Part “A” and “B” represent two persons of opposite sex so that, where “A” is a woman, “B” is a man, and *vice versa*. Application of equality principles to both men and women.

(2) Subject to *subsection (1)*, nothing in this Act affects the operation of the Interpretation Acts, 1937 and 1993 in so far as they provide that, unless the contrary intention appears,—

10 (a) words importing the masculine gender shall be construed as importing also the feminine gender; and

(b) words importing the feminine gender shall be construed as also importing the masculine gender.

*Remuneration*

15 19.—(1) It shall be a term of the contract under which A is employed that, subject to the provisions of this Act, A shall at any time be entitled to the same rate of remuneration for the work which A is employed to do as B who, at that or any other relevant time, is employed to do like work by the same or an associated employer. Entitlement to equal remuneration.

20 (2) In this section—

(a) “employed” includes, in addition to employment under a contract of employment, employment under a contract personally to execute any work or labour; and

25 (b) in relation to a particular time, a relevant time is any time (including a time before the commencement of this Act) during the 3 years which precede, or the 3 years which follow, the particular time.

30 (3) For the purposes of this Part, where B’s employer is an associated employer of A’s employer, A and B shall not be regarded as employed to do like work unless they both have the same or reasonably comparable terms and conditions of employment.

(4) Where a term of a contract or a criterion applied to employees (including A and B)—

35 (a) applies to all the employees of a particular employer or to a particular class of such employees (including A and B), and

(b) is such that the remuneration of those employees who fulfil the term or criterion is different from that of those who do not, and

40 (c) is such that the proportion of employees who are disadvantaged by the term or criterion is substantially higher in the case of those of the same sex as A than in the case of those of the same sex as B, and

45 (d) cannot be justified by objective factors unrelated to A’s sex, then, for the purpose of *subsection (1)*, A and B shall each be treated as fulfilling or, as the case may be, as not fulfilling the term or criterion, whichever results in the higher remuneration.



(5) Subject to *subsection (4)*, nothing in this Part shall prevent an employer from paying, on grounds other than the gender ground, different rates of remuneration to different employees.

Implied term as to equal remuneration.

20.—(1) Where a person is employed under a contract which does not include (expressly or by reference to a collective agreement or otherwise) a term satisfying *subsection (1) of section 19*, the contract shall be taken to include a term giving effect to that subsection; and, if such an implied term conflicts with an express term, it shall override the express term. 5

(2) In this section “employed” has the same meaning as in *section 19*. 10

#### Other Matters

Equality clause relating to gender issues.

21.—(1) If and so far as the terms of a contract of employment do not include (expressly or by reference to a collective agreement or otherwise) a gender equality clause, they shall be taken to include one. 15

(2) A gender equality clause is a provision relating to the terms of a contract of employment, other than a term relating to remuneration or pension rights, which has the effect that if—

(a) A is employed in circumstances where the work done by A is not materially different from that done by B in the same employment, and 20

(b) at any time A’s contract of employment would (but for the gender equality clause)—

(i) contain a term which is or becomes less favourable to A than a term of a similar kind in B’s contract of employment, or 25

(ii) not include a term corresponding to a term in B’s contract of employment which benefits B,

then the terms of A’s contract of employment shall be treated as modified so that the term in question is not less favourable to A or, as the case may be, so that they include a similar term benefiting A. 30

(3) A gender equality clause shall not operate in relation to a difference between A’s contract of employment and B’s contract of employment if the employer proves that the difference is genuinely based on grounds other than the gender ground. 35

(4) Without prejudice to the generality of *section 8 (1)*, where a person offers A employment on certain terms and, were A to accept the offer on those terms, the gender equality clause in A’s contract of employment would have the effect of modifying the terms in either of the ways specified in *subsection (2)*, the making of the offer shall be taken to amount to discrimination against A on the gender ground in relation to A’s conditions of employment. 40

Indirect discrimination on the gender ground.

22.—(1) Where a provision (whether in the nature of a requirement, practice or otherwise) which relates to any of the matters specified in *paragraphs (a) to (e) of subsection (1) of section 8* or to membership of a regulatory body— 45



(a) applies to both A and B, and

(b) is such that the proportion of persons who are disadvantaged by the provision is substantially higher in the case of those of the same sex as A than in the case of those of the same sex as B, and

(c) cannot be justified by objective factors unrelated to A's sex,

then, for the purposes of this Act, A's employer or, as the case may be, the regulatory body shall be regarded as discriminating against A on the gender ground contrary to *section 8* or, as the case may require, *section 13*.

(2) *Subsection (1)* shall apply to the provision of any such services as are referred to in *paragraphs (a) and (b) of subsection (1) of section 11* subject to the following modifications—

(a) for the words "any of the matters specified in *paragraphs (a) to (e) of subsection (1) of section 8*" there shall be substituted the words "a person seeking any such services or guidance as are referred to in *paragraphs (a) and (b) of subsection (1) of section 11*";

(b) the reference to the employer shall be construed as a reference to the employment agency; and

(c) the reference to *section 8* shall be construed as a reference to *section 11*.

(3) *Subsection (1)* shall apply to participation in any such course or facility as is referred to in *paragraphs (a) to (c) of subsection (1) of section 12* subject to the following modifications—

(a) the reference to *paragraphs (a) to (e) of subsection (1) of section 8* shall be construed as a reference to *paragraphs (a) to (c) of subsection (1) of section 12*;

(b) the reference to the employer shall be construed as a reference to the person offering the course or facility; and

(c) the reference to *section 8* shall be construed as a reference to *section 12*.

(4) The reference in *subsection (1) (b)* to persons who are disadvantaged by a provision includes not only those who are so disadvantaged because of their sex but also those who are so disadvantaged by reference to their marital status or family status.

(5) *Subsection (3) of section 8* applies for the purposes of *subsection (1)* as it applies for the purposes of *subsections (4) to (8)* of that section.

23.—(1) If, at a place where A is employed, or otherwise in the course of A's employment, B sexually harasses A and either—

Sexual harassment in the workplace etc.

(a) A and B are both employed at that place or by the same employer, or

(b) B is A's employer, or



- (c) B is a client, customer or other business contact of A's employer and the circumstances of the harassment are such that A's employer ought reasonably to have taken steps to prevent it,

then, for the purposes of this Act, the sexual harassment constitutes discrimination by A's employer, on the gender ground, in relation to A's conditions of employment. 5

(2) For the purposes of this Act, each of the following acts constitutes sexual harassment of A by B—

- (a) any act of physical intimacy by B towards A, other than an act which no reasonable person could consider to be sexually offensive, humiliating or intimidating to A; 10

(b) any express request by B for sexual favours from A; and

- (c) any other act or conduct of B (including, without prejudice to the generality, spoken words, gestures or the production, display or circulation of written words, pictures or other material) which a reasonable person would consider to be sexually offensive, humiliating or intimidating to A. 15

(3) According to the nature of the business of A's employer, the reference in *subsection (1) (c)* to a client, customer or other business contact includes a reference to any other person with whom A's employer might reasonably expect A to come into contact at the place where A is employed or otherwise in the course of A's employment. 20  
25

(4) If, as a result of any act or conduct of B, another person ("the Employer") who is A's employer would, apart from this subsection, be regarded by virtue of *subsection (1)* as discriminating against A, it shall be a defence for the Employer to prove that the Employer took such steps as are reasonably practicable to prevent B from sexually harassing A (or any class of persons of whom A is one). 30

(5) In this section "employed", in relation to an individual (whether A or B), includes—

- (a) seeking or using any service provided by an employment agency; and 35

(b) participation in any such course or facility as is referred to in *paragraphs (a) to (c) of subsection (1) of section 12*;

and, accordingly, any reference to that individual's employer includes a reference to the employment agency providing the service or, as the case may be, the person offering the course of training. 40

(6) Where *subsection (5)* applies in relation to A, *subsection (1)* shall have effect as if for the words "in relation to A's conditions of employment" there were substituted "contrary to *section 11* or, as the case may be, *section 12*".

Positive action on equal opportunities.

24.—(1) The provisions of this Act are without prejudice to measures to promote equal opportunity for men and women, in particular by removing existing inequalities which affect women's opportunities in the areas of access to employment, vocational training and promotion, and working conditions. 45



(2) In the Defence Act, 1954, in section 289 (2) (the Army Nursing Service limited to women) for the word "women" there shall be inserted "persons".

5 25.—(1) Nothing in this Part or *Part II* applies to discrimination against A in respect of employment in a particular post if the discrimination results from preferring B on the ground that, by reference to one or more of *subsections (2) to (4)* the sex of B is or amounts to an occupational qualification for the post in question.

Exclusion of discrimination in certain employments.

10 (2) For the purposes of this section, the sex of B shall be taken to be an occupational qualification for a post where, on grounds of physiology (excluding physical strength or stamina) or on grounds of authenticity for the purpose of entertainment, the nature of the post—

(a) requires a person of the same sex as B; and

15 (b) would be materially different if filled by a person of the same sex as A.

20 (3) For the purposes of this section, the sex of B shall be taken to be an occupational qualification for a post where it is necessary that the post should be held by B because it is likely to involve the performance of duties outside the State in a place where the laws or customs are such that those duties could not reasonably be performed by a person who is of the same sex as A.

(4) For the purposes of this section, the sex of B shall be taken to be an occupational qualification for a post—

25 (a) where the duties of the post involve personal services and it is necessary to have persons of both sexes engaged in such duties; or

30 (b) where, because of the nature of the employment it is necessary to provide sleeping and sanitary accommodation for employees on a communal basis and it would be unreasonable to expect the provision of separate accommodation of that nature or impracticable for an employer so to provide.

35 26.—(1) Nothing in this Act shall make it unlawful for an employer to arrange for or provide treatment which confers benefits on women in connection with pregnancy and maternity (including breastfeeding) or adoption.

Exceptions relating to family and personal matters.

40 (2) This Act does not apply to discrimination on the gender ground in employment which consists of the performance of services of a personal nature, such as the care of an elderly or incapacitated person in that person's home, where the sex of the employee constitutes a determining factor.

27.—(1) With regard to employment in the Garda Síochána or the prison service, nothing in this Act—

Garda Síochána and prison service.

45 (a) applies to the assignment of a man or, as the case may require, a woman to a particular post where this is essential—



- (i) in the interests of privacy or decency; or
  - (ii) in order to guard, escort or control violent individuals or quell riots or violent disturbances; or
  - (iii) in order, within the Garda Síochána, to disarm or arrest violent individuals, to control or disperse violent crowds or to effect the rescue of hostages or other persons held unlawfully; or
- (b) prevents the application of one criterion as to height for men and another for women, if the criteria chosen are such that the proportion of women in the State likely to meet the criterion for women is approximately the same as the proportion of men in the State likely to meet the criterion for men.
- (2) If—
- (a) in the opinion of the Minister for Justice there are insufficient numbers of either men or women serving in the Garda Síochána or the prison service to be assigned to such posts as are for the time being referred to in subsection (1) (a), and
  - (b) the Minister for Justice, with the consent of the Minister, by order under this subsection so provides,

this Act shall not apply to such competitions for recruitment to the Garda Síochána or the prison service, or both, as may be specified in the order.

#### PART IV

25

#### SPECIFIC PROVISIONS AS TO EQUALITY BETWEEN OTHER CATEGORIES OF PERSONS

The comparators.

28.—(1) For the purpose of this Part, “C” and “D” represent two persons who differ as follows—

- (a) in relation to the marital status ground, C and D have different marital status; 30
- (b) in relation to the family status ground, C has family status and D does not, or *vice versa*;
- (c) in relation to the sexual orientation ground, C and D are of different sexual orientations; 35
- (d) in relation to the religion ground, C and D have different religious beliefs or C has a religious belief and D does not, or *vice versa*;
- (e) in relation to the age ground, C and D are of different ages;
- (f) in relation to the disability ground, C is a person with a disability and D is not, or *vice versa*, or C and D are persons with different disabilities; 40
- (g) in relation to the ground of race, C and D differ as to race, colour, nationality or ethnic or national origins or any combination of those factors; 45



(h) in relation to the travelling community ground, C is a member of the travelling community and D is not, or *vice versa*.

5 (2) In the following provisions of this Part, any reference to C and D which does not apply to a specific discriminatory ground shall be treated as a reference to C and D in the context of each of the discriminatory grounds (other than the gender ground) considered separately.

10 (3) Any reference in this Act to persons having the same relevant characteristic as C (or as D) shall be construed by reference to the discriminatory ground in relation to which the reference applies or, as the case may be, in relation to each of the discriminatory grounds (other than the gender ground) separately, so that,—

15 (a) in relation to the marital status ground, the relevant characteristic is having the same marital status as C (or, as the case may be, as D); and

(b) in relation to the family status ground, the relevant characteristic is having the same, or the same lack of, family status as C (or, as the case may be, as D);

20 and so on for each of the other discriminatory grounds.

25 29.—(1) It shall be a term of the contract under which C is employed that, subject to the provisions of this Act, C shall at any time be entitled to the same rate of remuneration for the work which C is employed to do as D who, at that or any other relevant time, is employed to do like work by the same or an associated employer. Entitlement to equal remuneration.

(2) For the purposes of *subsection (1)*, in relation to a particular time, a relevant time is any time (on or after the commencement of this section) which falls during the 3 years which precede, or the 3 years which follow, the particular time.

30 (3) For the purposes of this Part, where D's employer is an associated employer of C's employer, C and D shall not be regarded as employed to do like work unless they both have the same or reasonably comparable terms and conditions of employment.

35 (4) Where a term of a contract of employment or a criterion applied to employees (including C and D)—

(a) applies to all employees of a particular employer or to a particular class of such employees (including C and D), and

40 (b) is such that the remuneration of those who fulfil the term or criterion is different from that of those who do not, and

45 (c) is such that the proportion of employees who can fulfil the term or criterion is substantially smaller in the case of the employees having the same relevant characteristic as C when compared with the employees having the same relevant characteristic as D, and

(d) cannot be justified as being reasonable in all the circumstances of the case,



then, for the purpose of *subsection (1)*, C and D shall each be treated as fulfilling or, as the case may be, as not fulfilling the term or criterion, whichever results in the higher remuneration.

(5) Subject to *subsection (4)*, nothing in this Part shall prevent an employer from paying, on grounds other than the discriminatory grounds, different rates of remuneration to different employees. 5

Equality clause relating to non-gender issues.

30.—(1) If and so far as the terms of a contract of employment do not include (expressly or by reference to a collective agreement or otherwise) a non-discriminatory equality clause, they shall be taken to include one. 10

(2) A non-discriminatory equality clause is a provision relating to the terms of a contract of employment, other than a term relating to remuneration or pension rights, which has the effect that if—

(a) C is employed in circumstances where the work done by C is not materially different from that done by D in the same employment, and 15

(b) at any time C's contract of employment would (but for the non-discriminatory equality clause)—

(i) contain a term which is or becomes less favourable to C than a term of a similar kind in D's contract of employment, or 20

(ii) not include a term corresponding to a term in D's contract of employment which benefits D,

then the terms of C's contract of employment shall be treated as modified so that the term in question is not less favourable to C or, as the case may be, so that they include a similar term benefiting C. 25

(3) A non-discriminatory equality clause shall not operate in relation to a difference between C's contract of employment and D's contract of employment if the employer proves that the difference is genuinely based on grounds which are not among those specified in *paragraphs (a) to (h) of subsection (1) of section 28*. 30

(4) Without prejudice to the generality of *section 8 (1)*, where a person offers C employment on certain terms and, were C to accept the offer on those terms, the non-discriminatory equality clause in C's contract of employment would have the effect of modifying the terms in either of the ways specified in *subsection (2)*, the making of the offer shall be taken to amount to discrimination against C in relation to C's conditions of employment on whichever of the discriminatory grounds is (or are) relevant to the difference (or differences) between C and D. 40

Indirect discrimination.

31.—(1) Where a provision (whether in the nature of a requirement, practice or otherwise) relating to employment—

(a) applies to all the employees or prospective employees of a particular employer who include C and D or, as the case may be, to a particular class of those employees or prospective employees which includes C and D, and 45

(b) operates to the disadvantage of C, as compared with D, in relation to any of the matters specified in *paragraphs (a) to (e) of subsection (1) of section 8*, and



5 (c) in practice can be complied with by a substantially smaller proportion of the employees or prospective employees having the same relevant characteristic as C when compared with the employees or prospective employees having the same relevant characteristic as D, and

(d) cannot be justified as being reasonable in all the circumstances of the case,

10 then, subject to *subsections (4) and (5)*, for the purposes of this Act the employer shall be regarded as discriminating against C, contrary to *section 8*, on whichever of the discriminatory grounds gives rise to the relevant characteristics referred to in *paragraph (c)*.

(2) Where a provision (whether in the nature of a requirement, practice or otherwise) relating to membership of a regulatory body—

15 (a) applies to all members or potential members or to a particular class of member or potential member which includes C and D, and

(b) operates to the disadvantage of C, as compared with D, in relation to any of the matters specified in *paragraphs (a) to (e) of subsection (1) of section 8*, and

20 (c) in practice can be complied with by a substantially smaller proportion of the members or potential members having the same relevant characteristic as C when compared with the members or potential members having the same relevant characteristic as D, and

25 (d) cannot be justified as being reasonable in all the circumstances of the case,

30 then, subject to *subsections (4) and (5)*, for the purposes of this Act the regulatory body shall be regarded as discriminating against C, contrary to *section 13*, on whichever of the discriminatory grounds gives rise to the relevant characteristics referred to in *paragraph (c)*.

(3) *Subsection (1)* shall apply with the necessary modifications in relation to—

35 (a) the provision of any such services of an employment agency as are referred to in *paragraphs (a) and (b) of subsection (1) of section 11*; and

(b) participation in any such course or facility as is referred to in *paragraphs (a) to (c) of subsection (1) of section 12*.

40 (4) *Subsection (3) of section 8* applies for the purposes of *subsection (1)* as it applies for the purposes of *subsections (4) to (8)* of that section.

(5) If a provision is such that, apart from this subsection, an employer or regulatory body would be regarded,—

45 (a) by virtue of *subsection (1) or subsection (2)*, as discriminating against an individual on the marital status ground or the family status ground, and

(b) by virtue of *section 22*, also as discriminating against the same individual on the gender ground,



the employer or regulatory body shall not be regarded as discriminating against that individual by virtue of *subsection (1)* or, as the case may be, *subsection (2)*.

Harassment in the workplace etc.

32.—(1) If, at a place where C is employed, or otherwise in the course of C's employment, another individual ("E") harasses C by reference to the relevant characteristic of C and either— 5

(a) C and E are both employed at that place or by the same employer, or

(b) E is C's employer, or

(c) E is a client, customer or other business contact of C's employer and the circumstances of the harassment are such that C's employer ought reasonably to have taken steps to prevent it, 10

then, for the purposes of this Act, the harassment constitutes discrimination by C's employer, in relation to C's conditions of employment, on whichever discriminatory ground is relevant to persons having the same relevant characteristic as C. 15

(2) It is immaterial for the purposes of this section whether E—

(a) stands as D in relation to C; or

(b) has the same relevant characteristic as C. 20

(3) For the purposes of this Act, any act or conduct of E (including, without prejudice to the generality, spoken words, gestures or the production, display or circulation of written words, pictures or other material) constitutes harassment of C by E if a reasonable person would consider the action or other conduct to be, in relation to the relevant characteristic of C, offensive, humiliating or intimidating to C. 25

(4) If, as a result of any act or conduct of E another person ("F") who is C's employer would, apart from this subsection, be regarded by virtue of *subsection (1)* as discriminating against C, it shall be a defence for F to prove that F took such steps as are reasonably practicable to prevent E from harassing C (or any class of persons of whom C is one). 30

(5) In this section "employed", in relation to an individual, includes— 35

(a) seeking or using any service provided by an employment agency; and

(b) participating in any such course or facility as is referred to in *paragraphs (a) to (c) of subsection (1) of section 12*;

and, accordingly, any reference to the individual's employer includes a reference to the employment agency providing the service or, as the case may be, the person offering the course or facility. 40

(6) Where *subsection (5)* applies in relation to C, *subsection (1)* shall have effect as if for the words "in relation to C's conditions of employment" there were substituted "contrary to *section 11* or, as the case may be, *section 12*". 45



33.—(1) Nothing in this Part or *Part II* shall prevent the taking of such measures as are specified in *subsection (2)* in order to facilitate the integration into employment, either generally or in particular areas or a particular workplace, of— Positive action permitted.

- 5 (a) persons over the age of 50;
- (b) persons with a disability or any class or description of such persons; or
- (c) members of the travelling community.

10 (2) The measures mentioned in *subsection (1)* are those intended to reduce or eliminate the effects of discrimination against any of the persons referred to in *paragraphs (a) to (c)* of that subsection.

15 (3) Nothing in this Part or *Part II* shall render unlawful the provision, by or on behalf of the State, of training or work experience for a disadvantaged group of persons if the Minister certifies that, in the absence of the provision in question, it is unlikely that that disadvantaged group would receive similar training or work experience.

20 34.—(1) In relation to the discriminatory grounds specified in *paragraphs (a) to (h)* of *subsection (1)* of *section 28*, nothing in this Part or *Part II* shall make it unlawful for an employer to provide— Savings and exceptions related to the family, age or disability.

- (a) a benefit to an employee in respect of events related to members of the employee's family or any description of those members;
- 25 (b) a benefit to or in respect of a person as a member of an employee's family;
- (c) a benefit to an employee on or by reference to an event occasioning a change in the marital status of the employee; or
- 30 (d) to an employee who has family status a benefit intended directly to provide or assist in the provision, during working hours, of care for a person for whom the employee has responsibility as mentioned in *paragraphs (a) and (b)* of the definition of "family status" in *section 2 (1)*.

35 (2) In *subsection (1)* "employer" includes an employment agency, a person offering a course of vocational training as mentioned in *section 12 (1)* and a regulatory body; and accordingly references to an employee include—

- (a) a person seeking or using any service provided by the employment agency;
- 40 (b) a person participating in any such course or facility as is referred to in *paragraphs (a) to (c)* of *subsection (1)* of *section 12*; and
- (c) a person who is a member of the regulatory body.

45 (3) Nothing in this Part or *Part II* shall make unlawful discrimination on the age ground or the disability ground in circumstances where it is shown that there is clear actuarial or other evidence that significantly increased costs would result if the discrimination were not permitted in those circumstances.



(4) Without prejudice to *subsection (3)*, it shall not constitute discrimination on the age ground to fix different ages for the retirement (whether voluntarily or compulsorily) of employees or any class or description of employees.

(5) Without prejudice to the generality of *subsection (3)*, it shall not constitute discrimination on the age ground to set, in relation to any job, a maximum age for recruitment which takes account of— 5

(a) any cost or period of time involved in training a recruit to a standard at which the recruit will be effective in that job; and 10

(b) the need for there to be a reasonable period of time prior to retirement age during which the recruit will be effective in that job.

(6) Where, immediately before the relevant day, arrangements are in force in any employment for age-related remuneration, it shall be a sufficient compliance with this Part and *Part II* if those arrangements are brought to an end within the period of three years beginning on the relevant day. 15

(7) It shall not constitute discrimination on the age ground for an employer to provide for different persons— 20

(a) different rates of remuneration, or

(b) different terms and conditions of employment,

if the difference is based on their relative seniority (or length of service) in a particular post or employment.

(8) In this section “the relevant day” means the day appointed for the coming into operation of *section 29*. 25

Special provisions related to persons with disabilities.

35.—(1) Nothing in this Part or *Part II* shall make it unlawful for an employer to provide, for an employee with a disability, a special rate of remuneration for particular work if, by reason of that disability, the employee is restricted in his capacity to do the same amount of work (or to work the same hours) as a person who is employed to do the work but who is without that disability. 30

(2) Nothing in this Part or *Part II* shall make it unlawful for an employer or any other person to provide, for a person with a disability, special treatment or facilities where the provision of that treatment or those facilities— 35

(a) enables or assists that person to undertake vocational training, to take part in a selection process or to work; or

(b) provides that person with a training or working environment suited to the disability; or 40

(c) otherwise assists that person in relation to vocational training or work.

(3) Where, by virtue of *subsection (1)* or *subsection (2)*, D, as a person with a disability, receives a special rate of remuneration or, as the case may be, special treatment or facilities, C, as a person 45



without a disability, or with a different disability, shall not be entitled under this Act to that rate of remuneration, that treatment or those facilities.

5 (4) Nothing in this Part or *Part II* applies to discrimination against a person on the disability ground in relation to employment of any description if—

(a) that person needs special treatment or facilities in order satisfactorily to take part in a selection process or to undertake that employment, and

10 (b) the employer does all that is reasonable to accommodate the needs of that person,

15 unless, having regard to all the relevant circumstances, including, without prejudice to the generality, the matters specified in *subsection (5)*, the cost of the provision of such treatment or facilities for that person would give rise to undue hardship to the employer.

(5) The matters referred to in *subsection (4)* are—

(a) the nature of the treatment or facilities that would be required;

20 (b) the cost of the treatment or facilities and the number of persons who would benefit from them;

(c) the financial circumstances of the employer;

(d) the disruption that would be caused by the provision of the treatment or facilities; and

25 (e) the nature of any benefit or detriment which would accrue to any persons likely to be affected by the provision of the treatment or facilities.

(6) Except in *subsection (1)*, in this section “employer” includes—

(a) an employment agency;

30 (b) any person offering a course of vocational training as mentioned in *section 12 (1)*; and

(c) a regulatory body.

35 36.—(1) Nothing in this Part or *Part II* shall make unlawful the application of any provision (whether in the nature of a requirement, practice or otherwise) such as is mentioned in *subsection (2)* with respect to—

Imposition of certain requirements to be lawful.

(a) holding office under, or in the service of, the State (including the Garda Síochána and the Defence Forces) or otherwise as a civil servant, within the meaning of the Civil Service Regulation Act, 1956; or

40 (b) officers or servants of a local authority, for the purposes of the Local Government Act, 1941, a harbour authority, a health board or vocational education committee; or

(c) teachers in primary and post-primary schools.



(2) The provisions referred to in *subsection (1)* are those relating to all or any of the following—

- (a) residence;
- (b) citizenship;
- (c) proficiency in the Irish language. 5

(3) Nothing in this Part or *Part II* shall make it unlawful to require, in relation to a particular post,—

- (a) the holding of a specified educational, technical or professional qualification which is a generally accepted qualification in the State for posts of that description; or 10
- (b) the production and evaluation of information about any qualification other than such a specified qualification.

(4) Nothing in this Part or *Part II* shall make it unlawful for a body controlling the entry to, or carrying on of, a profession, vocation or occupation to require a person carrying on or wishing to enter that profession, vocation or occupation to hold a specified educational, technical or other qualification which is appropriate in the circumstances. 15

(5) Nothing in the preceding provisions of this section shall render lawful discrimination on the gender ground.

Exclusion of discrimination on particular grounds in certain employments.

**37.—**(1) A religious, educational or medical institution which is under the direction or control of a body established for religious purposes or whose objectives include the provision of services in an environment which promotes certain religious values shall not be taken to discriminate against a person for the purposes of this Part or *Part II* if— 20  
25

- (a) it gives more favourable treatment, on the religion ground, to an employee or a prospective employee over that person where it is reasonable to do so in order to maintain the religious ethos of the institution; or
- (b) it takes action which is reasonably necessary to prevent an employee or a prospective employee from undermining the religious ethos of the institution. 30

(2) Nothing in this Part or *Part II* applies to discrimination against C in respect of employment in a particular post if the discrimination results from preferring D on the ground that the relevant characteristic of D is or amounts to an occupational qualification for the post in question. 35

(3) Without prejudice to the generality of *subsection (2)*, in relation to discrimination on the age ground, the disability ground or the ground of race, the relevant characteristic of D shall be taken to be an occupational qualification for a post where on grounds of physiology or on grounds of authenticity for the purpose of entertainment, the nature of the post— 40

- (a) requires a person having the same relevant characteristic as D; and
- (b) would be materially different if filled by a person not having that relevant characteristic. 45



5 (4) Without prejudice to the generality of *subsection (2)*, in relation to discrimination on the religion ground or the ground of race, the relevant characteristic of D shall be taken to be an occupational qualification for a post where it is necessary that the post should be held by D because it is likely to involve the performance of duties outside the State in a place where the laws or customs are such that those duties could not reasonably be performed by a person who does not have that relevant characteristic or, as the case may require, by a person who has a relevant characteristic of C.

10 (5) In relation to the discriminatory grounds specified in *paragraphs (a) to (h) of subsection (1) of section 28*, nothing in this Part or *Part II* applies to the employment of any person for the purposes of a private household.

15 (6) In relation to discrimination on the age ground or the disability ground, nothing in this Part or *Part II* applies to employment—

- (a) in the Defence Forces; or
- (b) in the Garda Síochána; or
- (c) in the prison service.

20

## PART V

### REMEDIES AND ENFORCEMENT

#### *Introductory*

25 38.—(1) On and after the coming into force of this subsection, the Employment Equality Agency established by section 34 of the Employment Equality Act, 1977, shall be known as An tÚdarás Comhionannais or, in the English language the Equality Authority, and references in any enactment or other document to the Employment Equality Agency shall be construed accordingly.

The Authority, the Director of Equality Investigations and other officers.

30 (2) At the end of section 32 of the Industrial Relations Act, 1990 (appointment of staff of the Labour Relations Commission), there shall be added the following subsection—

35 “(3) In relation to the appointment of staff of any of the descriptions in paragraphs (a) to (c) of subsection (1) of section 37, subsections (1) and (2) shall have effect as if after the words ‘with the consent of’ there were inserted the words ‘the Minister for Equality and Law Reform and’.”

40 (3) In section 37 of the Industrial Relations Act, 1990 (appointment of equality officers by the Labour Relations Commission) for subsection (1) there shall be substituted the following subsection—

“(1) With the consent of the Minister, the Minister for Equality and Law Reform and the Minister for Finance, the Commission may—

- 45 (a) appoint a member of its staff to be the Director of Equality Investigations;
- (b) appoint other members of its staff to be equality officers; and



(c) appoint members of its staff, including persons who are equality officers, to be equality mediation officers.”

(4) For subsection (3) of the said section 37 there shall be substituted—

“(3) The Director of Equality Investigations, equality mediation officers and equality officers shall be independent in the performance of their functions.” 5

(5) The Director may delegate any function conferred on the Director by or under this Act or any other enactment to an officer of the Labour Relations Commission whom the Commission may assign to the Director for the purpose. 10

(6) Subject to *subsection (7)*, the delegation of a function under *subsection (5)* shall not affect the continuing power of the Director to exercise that function concurrently with the officer to whom it is delegated. 15

(7) Where, under *subsection (5)*, the Director has delegated to an officer the function of hearing a case referred to the Director under *section 41*—

(a) the delegation shall be taken to include the power to issue a decision in the case; 20

(b) the function may not be exercised concurrently by the Director; and

(c) the delegation may not be revoked or varied except at the request of the officer to whom the function was delegated or if there are exceptional circumstances preventing that officer from acting (or continuing to act). 25

Intepretation of  
*Pari V.*

39.—(1) In this Part, except where the context otherwise requires,—

“the complainant” has the meaning given by *section 41 (4)*;

“equality mediation officer” and “equality officer” have the same meaning as in the Industrial Relations Act, 1990 (as amended by *section 38*); 30

“the Equal Pay Directive” means Council Directive 75/117/EEC on the approximation of the laws of the Member States relating to the application of the principle of equal pay for men and women;

“the Equal Treatment Directive” means Council Directive 76/207/EEC 35 on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions;

“the respondent” has the meaning given by *section 41 (4)*; and

“victimisation” shall be construed in accordance with *subsection (2)*. 40

(2) For the purposes of this Part, victimisation occurs where the dismissal or other penalisation of the complainant was solely or mainly occasioned by the complainant having, in good faith,—



- (a) sought redress under this Act or any enactment repealed by this Act for discrimination or for a failure to comply with an equal remuneration term or an equality clause (or a similar term or clause under any such repealed enactment);
- 5 (b) opposed by lawful means an act which is unlawful under this Act or which was unlawful under any such repealed enactment;
- (c) given evidence in any proceedings under this Act or any such repealed enactment; or
- 10 (d) given notice of an intention to do anything within paragraphs (a) to (c).

*Redress*

40.—(1) With a view to assisting a person (“X”) who considers— Right to information.

- 15 (a) that another person (“Y”) may have discriminated against X in contravention of this Act or may have dismissed or otherwise penalised X in circumstances amounting to victimisation, or
- 20 (b) that another person (“Y”) who is responsible for providing remuneration to X is not providing that remuneration as required by an equal remuneration term, or
- (c) that another person (“Y”) with whom X has a contract of employment has not provided X with a benefit under an equality clause in that contract,

25 to decide whether to refer the matter under any provision of section 41 and, in the event of such a reference, to formulate and present X’s case in the most effective manner, the Minister may by regulations prescribe—

- (i) forms by which X may question Y so as to obtain material information; and
- 30 (ii) forms by which Y may, if Y so wishes, reply to any questions.

(2) Subject to the following provisions of this section, information is for the purposes of this section “material information” if it is—

- 35 (a) information as to Y’s reasons for doing or omitting to do any relevant act and as to any practices or procedures material to any such act; or
- (b) information, other than confidential information, about the remuneration or treatment of other persons who stand in relation to Y in the same or a similar position as X; or
- 40 (c) other information which is not confidential information and which, in the circumstances of the case in question, it is reasonable for X to require.

45 (3) In subsection (2), “confidential information” means any information which relates to a particular individual, which can be identified as so relating and to the disclosure of which that individual does not agree.



(4) Nothing in this Act shall be construed as requiring Y or any other person—

(a) to furnish any reference (or any copy thereof or extract therefrom) or any report (or copy thereof or extract therefrom) relating to the character or the suitability for employment of any person (including X); or 5

(b) to disclose the contents of such a reference or report.

(5) In a case where a person considers that he may have been discriminated against by, or in the course of an interview conducted on behalf of,— 10

(a) the Civil Service Commissioners in the course of a recruitment or selection process, other than one designed to recruit or select only from and for their own staff,

(b) the Local Appointments Commissioners in the course of a recruitment or selection process, other than one designed to recruit or select only from and for their own staff, 15

(c) the Minister for Defence in the course of a recruitment process for the Defence Forces, or

(d) the Commissioner of the Garda Síochána in the course of a recruitment process for the Garda Síochána, 20

information shall not be regarded as material information for the purposes of this section if it relates to communications with external advisers to any of the persons referred to in *paragraphs (a) to (d)* or if it goes beyond the permitted information specified in *subsection (6)*. 25

(6) For the purposes of *subsection (5)*, in relation to a recruitment or selection process, information is permitted information if it identifies the successful and the unsuccessful candidates—

(a) by reference to their sex; or

(b) in terms of the discriminatory grounds in *section 28 (1)*, by reference to those who have the same relevant characteristic as C or the same relevant characteristic as D. 30

The forum for seeking redress.

41.—(1) A person who claims—

(a) to have been discriminated against by another in contravention of this Act, or 35

(b) not to be receiving remuneration in accordance with an equal remuneration term, or

(c) not to be receiving a benefit under an equality clause, or

(d) to have been penalised in circumstances amounting to victimisation, 40

may, subject to the following provisions of this section, seek redress by referring the case to the Director.



(2) If a person claims to have been dismissed—

(a) in circumstances amounting to discrimination by another in contravention of this Act, or

(b) in circumstances amounting to victimisation,

5 then, subject to *subsection (3)*, a claim for redress for the dismissal may be brought to the Court, and not to the Director.

(3) If the grounds for such a claim as is referred to in *subsection (1)* or *subsection (2)* arise—

(a) under *Part III*, or

10 (b) in any other circumstances (including circumstances amounting to victimisation) to which the Equal Pay Directive or the Equal Treatment Directive is relevant,

then, subject to the following provisions of this section, the person making the claim may seek redress by referring the case to the Circuit Court, instead of referring it to the Director under *subsection (1)* or, as the case may be, to the Court under *subsection (2)*.

(4) In this Part, in relation to a case referred under any provision of this section, —

20 (a) “the complainant” means the person by whom it is referred; and

25 (b) “the respondent” means the person who is alleged to have discriminated against the complainant, or, as the case may be, who is responsible for providing the remuneration to which the equal remuneration term relates or who is responsible for providing the benefit under the equality clause or who is alleged to be responsible for the victimisation.

(5) Subject to *subsection (6)*, a claim for redress in respect of discrimination or victimisation may not be referred under this section 30 after the end of the period of six months from the date of the occurrence or, as the case may require, the most recent occurrence of the act of discrimination or victimisation to which the case relates.

35 (6) If, on an application made by the complainant, the Director, the Court or, as the case may be, the Circuit Court is satisfied that exceptional circumstances prevented the complainant’s case (other than a claim not to be receiving remuneration in accordance with an equal remuneration term) being referred within the time limit in *subsection (5)*,—

40 (a) the Director, the Court or the Circuit Court, as the case may be, may direct that, in relation to that case, *subsection (5)* shall have effect as if for the reference to a period of six months there were substituted a reference to such period not exceeding twelve months as is specified in the direction; and

45 (b) where such a direction is given, the provisions of this Part shall have effect accordingly.



(7) Where the complainant's claim for redress is in respect of discrimination by—

(a) the Civil Service Commissioners, in the course of such a recruitment or selection process as is referred to in *section 40 (5) (a)*, or 5

(b) the Local Appointments Commissioners in the course of such a recruitment or selection process as is referred to in *section 40 (5) (b)*, or

(c) the Minister for Defence in the course of a recruitment process for the Defence Forces, or 10

(d) the Commissioner of the Garda Síochána in the course of a recruitment process for the Garda Síochána, 15

the complainant shall in the first instance refer the claim for redress to the Commissioners concerned or, as the case may be, to the Minister for Defence or the Commissioner of the Garda Síochána.

(8) Where *subsection (7)* applies to a claim for redress in respect of discrimination, the complainant may not refer the case under any of *subsections (1) to (3)* unless—

(a) the Commissioners concerned or, as the case may be, the Minister for Defence or the Commissioner of the Garda Síochána have failed to give a decision on the claim on or before the twenty-eighth day after it was referred; or 20

(b) the complainant is not satisfied with the decision given on the claim;

and in such a case, the period of time which is applicable under *subsection (5)* shall not expire earlier than 28 days from the day referred to in *paragraph (a)* or, as the case may be, the date of the decision referred to in *paragraph (b)*. 25

Mediation.

**42.—**(1) Subject to *subsection (3)*, if, at any time after a case has been referred to the Director under *section 41 (1)*, it appears to the Director that the case is one which could be resolved by mediation, the Director shall refer the case for mediation to an equality mediation officer. 30

(2) Subject to *subsection (3)*, if, at any time after a case has been referred to the Court under *section 41 (2)*, it appears to the Court that the case is one which could be resolved by mediation, the Court shall either— 35

(a) attempt to resolve the case in that way itself, or

(b) refer the case to the Director for mediation by an equality mediation officer. 40

(3) If the complainant or the respondent objects to a case being dealt with by way of mediation, the Director or, as the case may be, the Court shall not exercise their powers under this section but shall deal with the case under *section 43*.

(4) Mediation, whether by an equality mediation officer or by the Court, shall be conducted in private. 45



(5) Where a case referred under *section 41* is resolved by mediation,—

- 5 (a) the equality mediation officer concerned or, as the case may be, the Court shall prepare a written record of the terms of the settlement;
- (b) the written record of the terms of the settlement shall be signed by the complainant and the respondent;
- 10 (c) the equality mediation officer shall send a copy of the written record, as so signed, to the complainant and the respondent; and
- (d) a copy of the written record shall be retained by the Director or the Court, as the case may require.

(6) If, after—

- 15 (a) a case has been referred to an equality mediation officer under *subsection (1)* or *subsection (2) (b)*, or
- (b) the Court has attempted to resolve a case under *subsection (2) (a)*,

20 it appears to the equality mediation officer or, as the case may be, the Court that the case cannot be resolved by mediation, the officer or the Court shall issue a notice to that effect to the complainant and the respondent.

(7) Where—

- (a) a notice has been issued under *subsection (6)* with respect to a case, and
- 25 (b) within 28 days from the issue of that notice the complainant makes an application to the Director or, as the case may be, the Court for the resumption of the hearing of the case, and
- 30 (c) if the notice was issued by an equality mediation officer, a copy of that notice accompanies the application under *paragraph (b)*,

the Director or the Court, as the case may require, shall proceed or, as the case may be, continue to deal with the case under *section 43*.

35 43.—(1) Where a case which has been referred to the Director or the Court under *section 41*—

Investigations by  
Director or the  
Court.

- (a) does not fall to be dealt with by way of mediation under *section 42*, or
- (b) falls to be dealt with under this section by virtue of *section 42 (7)*,

40 the Director or the Court, as the case may be, shall investigate the case and hear all persons appearing to the Director or the Court to be interested and desiring to be heard.



(2) An investigation under this section shall be held in private unless, at the request of one of the parties to an investigation by the Court, the Court determines to hold the investigation, or so much of it as the Court does not consider should be treated as confidential, in public.

5

(3) If, in a case which is referred on the ground that the complainant is not receiving remuneration in accordance with an equal remuneration term, a question arises whether the different rates of remuneration to which the case relates are lawful by virtue of *section 19 (5)* or *section 29 (5)*, the Director may direct that that question shall be investigated as a preliminary issue and shall proceed accordingly.

10

(4) Subject to *subsections (2) and (3)*, the Minister, with the consent of the Minister for Enterprise and Employment, may by regulations specify—

15

(a) procedures to be followed by the Director or, as the case may be, the Court in carrying out investigations (or any description of investigations) under this section; and

(b) time limits applicable to such investigations, including procedures for extending those limits in certain circumstances;

20

but, before making any such regulations, the Minister shall consult the Court, the Authority and the Labour Relations Commission.

(5) Unless the Director or the Court considers it necessary to do so in order to bring an investigation to a proper conclusion, information shall be neither sought nor relied upon for the purpose of an investigation under this section (or of any appeal subsequent thereto) if it relates to or is derived from communications with external advisers to any of the persons referred to in *paragraphs (a) to (d) of subsection (5) of section 40*.

25

30

(6) At the conclusion of an investigation under this section (including an investigation of a preliminary issue under *subsection (3)*)

(a) the Director shall issue a decision, and

(b) the Court shall make a determination,

35

and, if the decision or determination is in favour of the complainant, the decision or determination shall provide for redress in accordance with *section 46* or, in the case of a decision of a preliminary issue under *subsection (3)*, shall be followed by an investigation of the substantive issue.

40

References to the  
Circuit Court.

44.—(1) The provisions of this section apply where a case is referred to the Circuit Court under *section 41 (3)*; and any reference in the following provisions of this section to the proceedings is a reference to the proceedings on the reference.

(2) The jurisdiction of the Circuit Court shall be exercised by the judge for the time being assigned to the circuit where the respondent resides or ordinarily carries on any profession, business or occupation.

45



(3) With the substitution of a reference to the Circuit Court for the reference to the Director, *section 43 (3)* shall apply in relation to a reference to the Circuit Court as it applies in relation to a reference to the Director.

5 (4) If requested to do so by the Circuit Court, the Director shall nominate an equality officer to investigate, and prepare a report on, any question specified by the Circuit Court and arising on the reference (including, in particular, any question whether persons are employed to do like work).

10 (5) Where a report is prepared for the Circuit Court under *subsection (4)*, then, subject to any directions of the Circuit Court,—

(a) the equality officer shall furnish a copy of the report to the complainant and the respondent and to any other person to whom it relates;

15 (b) the report shall be received in evidence in the proceedings; and

20 (c) without prejudice to the power of the Circuit Court to require the equality officer by whom the report was prepared to attend and give evidence in the proceedings, the equality officer may be called as a witness in the proceedings by the complainant or the respondent.

45.—If, in the course of proceedings on a reference under *section 41 (3)* or of an investigation under *section 43*, it appears to the Circuit Court, the Director, or the Court, as the case may be,— Consequences of failure to supply information etc.

25 (a) that the respondent failed to supply information which the complainant sought by questions under *section 40* and which was in the respondent's possession or power, or

30 (b) that the information supplied by the respondent in response to any such questions was false or misleading or was otherwise not such as the complainant might reasonably have required in order to make the decision referred to in *section 40 (1)*,

35 the Circuit Court, the Director, or the Court (as the case may require) may draw such inferences as seem appropriate from the failure to supply the information or, as the case may be, from the supply of information as mentioned in *paragraph (b)*.

40 46.—(1) Subject to the provisions of this section, the types of redress for which a decision of the Director under *section 43* may provide are such one or more of the following as may be appropriate in the circumstances of the particular case— Redress which may be ordered.

45 (a) an order for compensation in the form of arrears of remuneration (attributable to a failure to provide equal remuneration) in respect of so much of the period of employment as begins not more than three years before the date of the referral under *section 41 (1)* which led to the decision;

(b) an order for equal remuneration from the date referred to in *paragraph (a)*;



- (c) an order for compensation for the effects of acts of discrimination or victimisation which occurred not earlier than six years before the date of the referral of the case under *section 41*;
- (d) an order for equal treatment in whatever respect is relevant to the case; and 5
- (e) an order that a person or persons specified in the order take a course of action which is so specified.

(2) The types of redress for which a determination of the Court under *section 43* may provide are such one or more of the following as may be appropriate in the circumstances of the particular case— 10

- (a) the orders referred to in *paragraphs (c) to (e) of subsection (1)*; and
- (b) an order for re-instatement or re-engagement, with or without an order for compensation. 15

(3) The types of redress for which the Circuit Court may provide on a reference under *section 41 (3)* are such one or more of the following as may be appropriate in the circumstances of the particular case—

- (a) an order for compensation in the form of arrears of remuneration (attributable to a failure to provide equal remuneration) in respect of so much of the period of employment as begins not more than six years before the date of the referral; 20
- (b) an order for equal remuneration from the date of the referral; 25
- (c) the orders referred to in *paragraphs (c) to (e) of subsection (1)*; and
- (d) an order for re-instatement or re-engagement, with or without an order for compensation; 30

and no enactment relating to the jurisdiction of the Circuit Court shall be taken to limit the amount of compensation or remuneration which may be ordered by the Circuit Court by virtue of this subsection.

(4) The maximum amount which may be ordered by the Director or the Court by way of compensation under *subsection (1) (c)* or by the Court under *subsection (2) (b)*, in any case where the complainant was in receipt of remuneration at the date of the reference of the case, or if it was earlier, the date of dismissal, shall be an amount equal to 104 times either— 35 40

- (a) the amount of that remuneration, determined on a weekly basis, or,
- (b) where it is greater, the amount, determined on a weekly basis, which the complainant would have received at that date but for the act of discrimination or victimisation in question, and 45

in any other case, shall be £10,000.



(5) Where the case for which the redress is to be provided is referred to the Director or the Court and arises—

(a) under *Part III*, or

5 (b) in any other circumstances (including circumstances amounting to victimisation) to which the Equal Pay Directive or the Equal Treatment Directive is relevant,

the Director or the Court, as the case may be, may, in addition to making an order for compensation, also order the payment of interest, at the rate which is applicable under section 22 (1) of the  
10 Courts Act, 1981,—

(i) in respect of the whole or any part of the amount of the compensation; and

(ii) in respect of the period beginning on the relevant date and ending on the date of the payment;

15 and, for the purposes of *sub-paragraph (ii)*, “the relevant date” means the first day of the period (if any) to which the compensation is expressed to be referable or, if there is no such period, the date of the reference under *section 41 (1)*.

20 47.—(1) Not later than 42 days from the date of a decision of the Director under *section 43*, the complainant or the respondent may appeal to the Court by notice in writing specifying the grounds of the appeal.

Appeals from the Director to the Court.

25 (2) The Court shall hear an appeal under this section in private unless, at the request of one of the parties, the Court determines to hold the appeal, or so much of it as the Court does not consider should be treated as confidential, in public.

(3) The following enactments shall apply to an appeal under this section—

30 (a) section 14 of the Industrial Relations Act, 1946 (appointment of technical assessors); and

(b) section 21 of that Act and section 56 of the Industrial Relations Act, 1990 (summoning of witnesses etc.).

35 (4) In its determination of an appeal under this section, the Court may provide for any redress for which provision could have been made by the decision appealed against (substituting the discretion of the Court for the discretion of the Director).

40 (5) If the Court’s determination of an appeal against a decision of the Director on a preliminary issue under *section 43 (3)* is in favour of the complainant, the case shall be referred back to the Director for an investigation of the substantive issue.

(6) Subject to *subsection (2)*, the Minister, with the consent of the Minister for Enterprise and Employment, may by regulations specify—

45 (a) procedures to be followed by the Court in conducting appeals under this section; and



- (b) time limits applicable to such appeals, including procedures for extending those limits in certain circumstances;

but, before making any such regulations, the Minister shall consult the Court, the Authority and the Labour Relations Commission.

References by the Court to the Director.

48.—(1) Where a case is referred to the Court under *section 41* 5 and the Court considers that it would be assisted in making its determination by an investigation conducted by the Director, the Court may refer all or any of the matters in issue in the case to the Director; and, where such a reference is made, the Director shall investigate the matters so referred and submit a report thereon to the Court. 10

(2) Where an appeal is brought to the Court under *section 47* and the Court considers that its determination on the appeal would be assisted by the exercise of its powers under this subsection, the Court may refer all or any of the matters in issue on the appeal to the Director for further investigation or, as appropriate, re-investigation; 15 and, where such a reference is made, the Director shall conduct the further or new investigation of the matters so referred and submit a report thereon to the Court.

(3) Where the Court refers any matters to the Director under *sub-section (1)* or *subsection (2)*,— 20

- (a) the Court may suspend, in whole or in part, or adjourn its investigation of the case in question or, as the case may be, its hearing of the appeal, pending the receipt of a report from the Director; and

- (b) the Court shall take account of the Director's report on the matters referred in reaching its determination. 25

(4) Where, on an appeal under *section 47*, the Court determines that the decision of the Director which is in question should be set aside, the Court may, by its determination, also refer the matter in issue back to the Director for a new investigation and decision under *section 43*. 30

Enforcement powers of the Authority.

49.—(1) Where it appears to the Authority—

- (a) that discrimination or victimisation is being generally practised against persons or that a practice referred to in *section 8 (4)* is being applied or operated, or 35

- (b) that discrimination or victimisation has occurred in relation to a particular person who has not made a reference under *section 41* in relation to the discrimination or victimisation and that it is not reasonable to expect that person to make such a reference, or 40

- (c) that there is a failure to comply with an equal remuneration term or an equality clause either generally in a business or in relation to a particular person who has not made a reference under *section 41* in relation to the failure and whom it is not reasonable to expect to make such a reference, or 45

- (d) that a publication or display has been made in contravention of *section 10*, or



(e) that, contrary to *section 14*, a person has procured or attempted to procure another to do anything which constitutes discrimination or victimisation, or

5 (f) that a person has procured or attempted to procure another to break an equal remuneration term or an equality clause,

the Authority may refer the matter to the Director.

(2) Where the Authority refers a matter to the Director under *subsection (1)*, the preceding provisions of this Part shall apply as if  
10 it were a case referred under *section 41* except that—

(a) any reference to the complainant shall be construed as a reference to the Authority;

15 (b) any reference to the respondent shall be construed as a reference to the person who, in the opinion of the Authority, practised the discrimination or, as the case may require, was responsible for the failure to comply with the equal remuneration term or equality clause or for the victimisation or the publication or display or for the procurement or attempted procurement; and

20 (c) any reference to the parties shall be taken to include, in the case of a matter referred by virtue of any of *paragraphs (a) to (c)* of *subsection (1)*, any person who was discriminated against or victimised or suffered from the failure to comply as mentioned in the paragraph concerned.

25 (3) In a decision under *section 43*, as applied by *subsection (2)*, the following types of redress shall be available—

(a) redress as under *section 46* (construing references in that section to the complainant as references to the person referred to in *subsection (2) (c)*);

30 (b) where the reference was by virtue of *paragraph (d)* of *subsection (1)*, a decision that a publication or display was or was not made in contravention of *section 10*; and

35 (c) where the reference was by virtue of *paragraph (e)* or *paragraph (f)* of *subsection (1)*, a decision that the person concerned has or has not procured or attempted to procure as mentioned in that paragraph.

40 (4) *Subsection (5)* applies in a case where the Authority satisfies the High Court or, as the case may be, the Circuit Court that, following a decision under *section 43*, as applied by *subsection (2)*, in a matter referred by virtue of any paragraph of *subsection (1)*, there is a likelihood of—

(a) further discrimination or victimisation, or

(b) a further failure to comply with an equal remuneration term or equality clause, or

45 (c) a further publication or display in contravention of *section 10*, or

(d) further procuring or attempting to procure as mentioned in *paragraph (e)* or *paragraph (f)* of *subsection (1)*,



by a person in relation to whom the decision was made, and of the type the subject of the decision.

(5) In a case to which this subsection applies, the High Court or the Circuit Court, on the motion of the Authority specifying the person in question, may grant an injunction to prevent that person from continuing any conduct (such as is mentioned in *subsection (4)*) of a type so specified. 5

(6) The jurisdiction conferred on the Circuit Court by this section shall be exercised by the judge for the time being assigned to the circuit where the person specified in the Authority's motion ordinarily resides or carries on any profession, business or occupation. 10

### Collective Agreements

Reference of collective agreements to Director.

50.—(1) If the Authority or a person who is affected by a collective agreement claims that a provision of that agreement is null and void by virtue of *section 9*, the Authority or that person may refer the question of that agreement to the Director; and in this section (and *section 51*) the Authority or the person making such a reference is referred to as "the complainant". 15

(2) For the purposes of this section (and *section 51*)—

(a) the expression "collective agreement" shall be taken to include an order or agreement falling within *paragraph (b)* or *paragraph (c)* of *subsection (3)* of *section 9*; 20

(b) a person is affected by a collective agreement if that person is an employee whose remuneration or whose conditions of employment are, in whole or in part, governed by the agreement (or any part of it); and 25

(c) "the respondents" means the parties to the agreement, other than (where relevant) the complainant.

(3) Subject to *subsection (4)*, where a collective agreement is referred to the Director under this section, the Director shall consider whether the question of the possible nullity of a provision of the agreement appears to be one which could be resolved by mediation and— 30

(a) if the Director considers that the question could be so resolved, the Director shall refer the agreement to an equality mediation officer for mediation in accordance with *section 51*; and 35

(b) if the Director considers that the question could not be so resolved, the Director shall proceed in accordance with *paragraphs (b)* and *(c)* of *subsection (4)*. 40

(4) If the complainant or the respondents object to a reference under *subsection (3) (a)* (or if *section 42 (7)* applies in accordance with *subsection (6)*) the Director—

(a) shall not exercise the powers under *subsection (3) (a)*; and

(b) shall investigate the agreement and, for that purpose, hear all persons appearing to the Director to be interested and desiring to be heard; and 45

(c) shall issue a decision in accordance with *section 51*;



and subsections (3) and (4) of section 43 shall apply in relation to an investigation by the Director under this subsection as they apply in relation to an investigation by the Director under that section.

5 (5) Mediation under subsection (3) or an investigation under subsection (4) shall be conducted in private.

(6) Where a collective agreement is referred for mediation under subsection (3), the provisions of subsections (5) to (7) of section 42 shall apply as they apply where a case which has been referred to an equality mediation officer under section 42 (1) but, for the purpose  
10 of that application,—

(a) references in those provisions to the complainant and the respondent shall be construed as references to the complainant and the respondents, within the meaning of this section; and

15 (b) section 42 (7) shall have effect as if, for the words following paragraph (c) thereof, there were substituted “the Director shall investigate the matter of the agreement under subsection (4) of section 50.”.

20 51.—(1) Where a collective agreement is referred to the Director under section 50, it shall be the purpose of—

Mediation, decisions and appeals relating to collective agreements.

(a) mediation by an equality mediation officer under subsection (3) of that section, or

(b) a decision of the Director under subsection (4) of that section,

25 to identify which (if any) provisions of the agreement are null and void by virtue of section 9 and, if the equality mediation officer or, as the case may be, the Director thinks it appropriate, to provide guidance to the parties to the agreement as to how alternative or amended provisions might be devised which it would be lawful to  
30 include in the agreement.

(2) Not later than 42 days from the date of such a decision as is referred to in subsection (1) (b), the complainant or the respondents may appeal to the Court by notice in writing specifying the grounds of the appeal.

35 (3) The Court shall hear an appeal under subsection (2) in private unless, at the request of one of the parties, the Court determines to hold the appeal, or so much of it as the Court does not consider should be treated as confidential, in public; and the enactments specified in subsection (3) of section 47 shall apply to such an appeal as  
40 they apply to an appeal under that section.

(4) In its determination of an appeal under subsection (2), the Court shall seek to achieve the purpose specified in subsection (1).

(5) In this section “collective agreement”, “the complainant” and “the respondents” have the same meanings as in section 50.

45 *Decisions and Determinations Generally*

52.—(1) Every decision of the Director or determination of the Court under this Part shall be in writing and,—

Form and content of decisions and determinations.

(a) if the Director or the Court thinks fit, or



(b) if any of the parties so requests, the decision or determination shall include a statement of the reasons why the Director reached that decision or, as the case may be, why the Court reached that determination.

(2) By notice in writing to the parties, the Director or, as the case may be, the Chairman of the Court may correct any mistake (including an omission) of a verbal or formal nature in a decision or determination under this Part. 5

(3) In this section "the parties" means—

(a) in the case of a decision or determination under *section 43*; the complainant and the respondent as defined in *section 41 (4)*; 10

(b) in the case of a determination under *section 47*, the parties to the appeal;

(c) in the case of a decision under *section 49*, the Authority and the persons referred to in *paragraphs (b) and (c) of subsection (2)* of that section; and 15

(d) in the case of a decision under *section 50* or a determination under *section 51*, the complainant and the respondents, within the meaning of *section 50*. 20

(4) If any person who participated in an investigation under *section 43* or *section 50* is not correctly identified in the resulting decision or determination, the correction of that error shall be regarded as falling within *subsection (2)*.

Supply and publication of decisions and determinations.

**53.—**(1) A copy of every decision of the Director under this Part shall be given— 25

(a) to each of the parties; and

(b) to the Court;

and every such decision shall be published and a copy thereof made available for inspection at the office of the Labour Relations Commission. 30

(2) A copy of every determination of the Court under this Part shall be given to each of the parties; and every such determination shall be published and a copy thereof made available for inspection at the office of the Court. 35

(3) In this section "the parties" has the same meaning as in *section 52*.

(4) Any reference in this section to a decision or determination includes a reference to any statement of reasons included in the decision or determination as mentioned in *section 52 (1)*. 40

(5) The contents of any document which is published or made available by virtue of this section shall be protected by absolute privilege.

Appeals and references from the Court.

**54.—**(1) Not later than 42 days, or such longer period as the Circuit Court may allow, from the date of a determination of the Court under *section 43*, the complainant or the respondent may appeal against the determination to the Circuit Court. 45



5 (2) On an appeal under *subsection (1)*, the Circuit Court may order any form of redress for which provision could have been made by the determination appealed against (substituting the discretion of the Circuit Court for the discretion of the Labour Court) and, subject to any appeal to the High Court on a point of law, the decision of the Circuit Court on an appeal under *subsection (1)* shall be final and conclusive.

10 (3) Where a determination is made by the Court under *section 43* or on an appeal under this Part, either of the parties may appeal to the High Court on a point of law.

(4) During the investigation of a case by the Court under *section 43* or in the course of an appeal to the Court under this Part, the Court may—

15 (a) refer to the High Court a point of law arising in the course of the investigation or appeal; and

(b) adjourn the investigation or appeal (if the Court thinks it appropriate) pending the outcome of the reference.

20 (5) The jurisdiction conferred on the Circuit Court by this section shall be exercised by the judge for the time being assigned to the circuit where the respondent ordinarily resides or carries on any profession, business or occupation.

(6) The provisions of this Part relating to appeals shall have effect notwithstanding *section 17* of the Industrial Relations Act, 1946 (which prohibits appeals from the Court).

25 *Enforcement by Circuit Court*

55.—(1) If an employer or any other person who is bound by the terms of—

Enforcement of determinations, decisions and mediated settlements.

(a) a final determination of the Court under this Part, or

(b) a final decision of the Director under this Part,

30 fails to comply with the terms of the determination or decision then, on an application under this section, the Circuit Court shall make, subject to *section 57*, an order directing the person affected (that is to say, the employer or other person concerned) to carry out the determination or decision in accordance with its terms.

35 (2) If an employer or the person who is a party to a settlement to which *section 42 (5)* applies fails to give effect, in whole or in part, to the terms of the settlement, then, on an application under this section, the Circuit Court may make, subject to *section 57*, an order directing the person affected (that is to say, the employer or the person who is a party to the settlement) to carry out those terms or, as the case may be, the part of those terms to which the application relates; but the Circuit Court shall not, by virtue of this subsection, direct any person to pay any sum or do any other thing which (had the matter been dealt with otherwise than by mediation) could not  
40 have been provided for by way of redress under *section 46*.

(3) An application under this section may not be made before the expiry of the “relevant period”, that is to say,—

50 (a) in the case of a determination or decision, the period within which an appeal might be brought against the determination or decision; and



(b) in the case of a settlement reached as a result of mediation, the period of 42 days from the date of the written record of the settlement.

(4) An application under this section may be made—

(a) by the complainant; 5

(b) in a case where the Authority is not the complainant, then, by the Authority with the consent of the complainant if the Authority considers that the determination, decision or settlement is unlikely to be implemented without its intervention. 10

(5) On an application under this section, the Circuit Court shall exercise its functions under *subsection (1)* or *subsection (2)* on being satisfied—

(a) of the existence and terms of the determination, decision or settlement; and 15

(b) of the failure by the person affected to comply with those terms.

(6) For the purposes of this section, a determination or decision is final if no appeal lies from it under this Part or if the time for bringing an appeal has expired and either— 20

(a) no appeal has been brought; or

(b) any appeal which was brought has been abandoned.

(7) Without prejudice to the power of the Circuit Court to make an order for costs in favour of the complainant or the person affected, where an application is made by the Authority by virtue of *subsection (4) (b)*, the costs of the Authority may be awarded by the Circuit Court. 25

(8) The jurisdiction conferred on the Circuit Court by this section shall be exercised by the judge for the time being assigned to the circuit where the person affected ordinarily resides or carries on any profession, business or occupation. 30

Additional powers of Circuit Court on enforcement.

56.—(1) Where the Circuit Court makes an order under *section 55 (1)*, it may, if in all the circumstances it considers it appropriate to do so, include in the order the additional direction referred to in *subsection (2)* or, as the case may require, *subsection (3)*. 35

(2) Where the order under *section 55 (1)* relates to a determination or decision requiring the payment of compensation to any person, the order may direct the employer or other person concerned to pay interest on the compensation at the rate referred to in *section 22* of the Courts Act, 1981, in respect of the whole or any part of the period ending on the date of the order and beginning— 40

(a) 42 days after the date of the determination or decision; or

(b) if it is later, on the date on which the compensation was required to be paid under the determination or decision.



5 (3) Where the order under *section 55 (1)* relates to a determination requiring an employer to re-instate or re-engage an employee, the order may direct the employer to pay to the employee compensation of such amount as the Circuit Court considers reasonable in respect of the failure of the employer to comply with the determination.

10 57.—(1) On an application under *section 55* which relates to a determination requiring an employer to re-instate or re-engage an employee, the Circuit Court may, if in all the circumstances it considers it appropriate to do so, instead of making an order under *subsection (1)* of that section, make a compensation order under this section. Compensation in lieu of re-instatement or re-engagement.

15 (2) A compensation order under this section is an order directing the employer (in lieu of re-instatement or re-engagement) to pay compensation to the employee.

20 (3) The maximum amount of compensation which may be ordered under this section is an amount equal to 104 times the amount of the employee's weekly remuneration at the rate which the employee was receiving at the date of the reference of the case under *section 41* or would have received at that date but for the discrimination in question.

#### Information

25 58.—(1) Subject to *subsection (3)*, this section has effect for the purpose of enabling information to be obtained which the Director or the Court may require to enable them to exercise their functions under this Part; and in this section— Powers to enter premises, obtain information etc.

(a) a "designated officer" means the Director, the Chairman of the Court, an equality officer or a person authorised in that behalf by the Director or the Chairman; and

30 (b) "material information" means information which a designated officer has reasonable grounds for believing to be relevant for the purpose set out above.

(2) For the purpose set out in *subsection (1)*, a designated officer may do any one or more of the following—

35 (a) at all reasonable times, peaceably enter premises;

40 (b) require any person to produce to the designated officer any records, books, documents or other things which are in that person's power or control and which the designated officer has reasonable grounds for believing to contain material information and to give the designated officer such information and access as he may reasonably require in relation to the contents of any such records, books, documents or other things;

45 (c) inspect and copy or take extracts from any such records, books, documents or other things;

(d) inspect any work in progress at any premises.

(3) An equality officer who is nominated by the Director under *section 44 (4)* to investigate and prepare a report on a question specified by the Circuit Court may, for the purpose of that investigation



and report, exercise any of the powers in *paragraphs (a) to (d) of subsection (2)*; and, for the purpose of the application of provisions of this section in such a case—

(a) any reference in *subsections (2), (5) and (6)* to a designated officer shall be construed as a reference to the equality officer who is so nominated; and 5

(b) “material information” shall be construed as information which that equality officer has reasonable grounds for believing to be relevant for the purpose of the investigation and report. 10

(4) The powers conferred by *subsection (2)* shall not be exercised in respect of a dwelling or any person, record, book, document or other thing in a dwelling unless—

(a) where the powers are to be exercised by virtue of *subsection (1)*, the Minister (or an officer of the Minister authorised by the Minister in that behalf) certifies in writing that there are reasonable grounds for believing that there is in the dwelling information which is material to the investigation of a case, or the consideration of an appeal, under this Part; or 15  
20

(b) where the powers are to be exercised by virtue of *subsection (3)*, the Circuit Court is satisfied that there are reasonable grounds for believing that there is in the dwelling information which is material to the equality officer’s investigation. 25

(5) If a judge of the District Court is satisfied by information on oath of a designated officer that there is reasonable cause for suspecting that any records, books, documents or other things containing material information are to be found at any premises, the judge may issue a search warrant under this section. 30

(6) A search warrant issued under this section shall be expressed and operate to authorise a named designated officer, accompanied by such other persons as the named designated officer thinks necessary, at any time or times within one month from the date of issue of the warrant, on production if so requested of the warrant, 35

(a) to enter the premises named in the warrant, if necessary by force;

(b) to search these premises; and

(c) to exercise any such power as is described in *paragraph (b) or paragraph (c) of subsection (2)* in relation to persons and records, books, documents or other things found at the premises. 40

Requirements on persons to provide information.

59.—(1) For the purpose of enabling the Director or the Court to exercise their functions under this Part, the Director or the Chairman of the Court— 45

(a) may require any person who, in the opinion of the Director or the Chairman (as the case may be) is in possession of, or has in his power or control, any information that is relevant to the exercise of those functions to furnish that information to the Director or the Chairman; and 50



(b) where appropriate, may require any such person to attend before the Director or the Chairman for that purpose;

and it shall be the duty of any such person to comply with any requirements so made.

5 (2) A requirement under *subsection (1)* may specify a time and place at which information is to be furnished or a person is to attend; and if no such time or place is specified in the requirement, it shall be the duty of the person to whom the requirement is addressed to comply with it as soon as is reasonably practicable.

10 (3) It shall be the duty of any persons required to attend before the Director or the Chairman of the Court under *subsection (1) (b)*—

(a) to answer fully and truthfully any questions put to them by the Director or the Chairman (other than any question tending to incriminate the person asked); and

15 (b) if so requested by the Director or the Chairman, to sign a declaration of the truth of their answers to any such questions.

(4) For the purpose of enabling an equality officer nominated by the Director under *section 44 (4)* to perform the functions of investigating and preparing a report on a question specified by the Circuit Court, the preceding provisions of this section shall apply with the substitution of a reference to the equality officer for any reference to the Director.

25 60.—(1) If it appears to the Director, the Chairman of the Court or an equality officer that any person has failed to comply with—

Sanctions for failure or refusal to supply documents, information etc.

(a) a requirement under *section 58 (2) (b)*, or

(b) a requirement under *section 59 (1)*,

30 then, according as the case may require, the Director, the Chairman or the equality officer may apply to the Circuit Court for an order under this section.

(2) Subject to *subsection (3)* if, on an application under this section, the Circuit Court is satisfied as to the failure of the person concerned to comply with the requirement in question, the Circuit Court may make an order requiring that person to comply with the requirement.

(3) If, on an application under this section, the Circuit Court is of the opinion that the requirement in question purports to require the person concerned—

(a) to produce any record, book, document or other thing, or

40 (b) to furnish any information,

for which that person is entitled to claim legal professional privilege, the Circuit Court shall set aside the requirement.

(4) The jurisdiction conferred on the Circuit Court by this section shall be exercised by the judge for the time being assigned to the circuit where the person concerned ordinarily resides or carries on any profession, business or occupation.



Supplementary provisions as to information.

61.—(1) Where, in the course, or for the purposes, of any investigation, mediation or hearing under this Part, any person discloses information to the Court, the Director, an equality mediation officer or any other person entitled to obtain it, the making of the disclosure shall not give rise to any liability (in contract, tort or otherwise) on the part of the person making it. 5

(2) No information furnished to, or otherwise acquired by, the Court, the Director or any other person, by virtue of any provision of sections 58 to 60, or otherwise in the course, or for the purposes, of any investigation, mediation or hearing under this Part shall be published or otherwise disclosed except— 10

(a) for the purposes of such an investigation, mediation or hearing; or

(b) on the order of the High Court or the Circuit Court; or

(c) with the consent of the person furnishing the information and of any other person to whom the information may relate; or 15

(d) in a decision of the Director or a determination of the Court which is published or made available under section 53 and to which the disclosure of the information is relevant; or 20

(e) for the purposes of an application under section 60.

(3) In subsection (2) any reference to information includes any record, book, document or other thing in which the information is contained.

(4) Any person who discloses information in contravention of subsection (2) shall be guilty of an offence under this section. 25

#### Offences

Penalty for dismissal of employee for exercising rights.

62.—(1) If an employee is dismissed in circumstances amounting to victimisation the employee's employer shall be guilty of an offence and if, in a prosecution for an offence under this section, it is proved— 30

(a) that the employee was dismissed, and

(b) that the employee, in good faith, did one or more of the acts specified in paragraphs (a) to (d) of subsection (2) of section 39, 35

that proof shall, without more, be evidence until the contrary is proved that the sole or main reason for the dismissal of the employee was that the employee, in good faith, did one or more of those acts.

(2) Subject to subsection (4), on a conviction of an offence under this section, the court may, if it thinks fit and considers that the Court would have power to do so,— 40

(a) make an order for the re-instatement of the employee by the employer; or

(b) make an order for the re-engagement of the employee by the employer. 45



(3) Subject to *subsection (4)*, if the court by which a person is convicted of an offence under this section does not make an order under *paragraph (a)* or *paragraph (b)* of *subsection (2)*, it may, if it thinks fit, in addition to imposing a fine for the offence, order the employer to pay to the employee concerned such amount of compensation as, subject to *subsection (5)*, the court considers appropriate, having regard to any evidence and to any representations that are made by or on behalf of the employer or the employee concerned.

(4) The court shall not exercise its powers under *subsection (2)* or *subsection (3)* unless the employee concerned consents.

(5) The amount of compensation which may be ordered under *subsection (3)* shall not exceed either—

(a) the amount which, having regard to *subsections (4)* and *(5)* of *section 46*, the Court could order by way of compensation under *subsection (2)* of that section on a claim for redress in respect of the dismissal; or

(b) if the order is made by the District Court, £5,000 or such other amount as may stand prescribed for the time being by law as the limit of that court's jurisdiction in tort;

and, in applying any provision of *section 46* for the purposes of *paragraph (a)*, any reference to the date of the reference shall be construed as a reference to the date of the dismissal and any reference to the date of the Court's determination shall be construed as a reference to the date of the conviction of the offence.

(6) Where, on conviction of an employer for an offence under this section, the court makes an order under *paragraph (a)* or *paragraph (b)* of *subsection (2)* or under *subsection (3)*—

(a) whether or not the employer appeals against the conviction or sentence, the employer may appeal against the order to the court to which an appeal lies against the conviction; and

(b) the court hearing an appeal against the conviction or sentence, or an appeal against the order alone, may revoke or vary the order and, in particular, where the order was made under *subsection (3)*, may vary the amount of the compensation.

(7) Where the court makes an order under *subsection (3)* for the payment of an amount of compensation,—

(a) without prejudice to any right of appeal by any other person, the employee concerned shall have a right of appeal, limited to the amount of the compensation, either to the High Court or, as the case may be, to the judge of the Circuit Court in whose circuit is situated the district (or any part thereof) of the judge of the District Court by whom the compensation was ordered; and

(b) to the extent of the amount of compensation paid, the payment by the employer of the compensation shall be a good defence in any civil proceedings brought by the employee concerned in respect of the remuneration which the employee would have received if the dismissal had not occurred.



(8) Where an appeal is brought under *subsection (7) (a)*, the decision of the High Court or, as the case may be, the judge of the Circuit Court shall be final.

Obstruction etc. of Director and other officers.

63.—(1) Any person who—

(a) obstructs or impedes the Court, the Director or an equality officer in the exercise of powers under this Part, or 5

(b) fails to comply with a requirement of the Court, the Director or an equality officer given under this Part,

shall be guilty of an offence under this section.

(2) Any reference in *subsection (1)* to an equality officer includes a reference to a person authorised under *section 58 (1) (a)*. 10

(3) In any proceedings for an offence under this section, a document purporting to be certified by the Director or to be sealed with the seal of the Court and relating to the circumstances in which the offence is alleged to have occurred shall be received as *prima facie* evidence of the facts stated therein. 15

Offences: general provisions.

64.—(1) A person who is guilty of an offence under any provision of this Act shall be liable—

(a) on summary conviction, to a fine not exceeding £1,500 or to imprisonment for a term not exceeding one year or both; 20  
or

(b) on conviction on indictment, to a fine not exceeding £15,000 or to imprisonment for a term not exceeding two years or both.

(2) If the contravention in respect of which a person is convicted of an offence under any provision of this Act is continued after the conviction, that person shall be guilty of a further offence on every day on which the contravention continues and for each such offence shall be liable on summary conviction to a fine not exceeding £250 or, on conviction on indictment, to a fine not exceeding £1,500. 25 30

(3) Summary proceedings for an offence under any provision of this Act may be instituted by the Minister or the Authority.

(4) Notwithstanding *section 10 (4)* of the Petty Sessions (Ireland) Act, 1851, summary proceedings for an offence under any provision of this Act may be instituted within twelve months from the date of the offence. 35

(5) Where an offence under any provision of this Act which is committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any person who, when the offence was committed, was a director, manager, secretary or other similar officer of the body corporate or a person who was purporting to act in any such capacity, that person (as well as the body corporate) shall be guilty of an offence and liable to be proceeded against and punished as if guilty of the offence committed by the body corporate. 40 45



(6) In relation to a body corporate whose affairs are managed by its members, *subsection (5)* has effect as if "director" included a member of the body corporate.

### Supplementary

5     **65.**—(1) If an individual has instituted proceedings for damages at common law in respect of a failure, by an employer or any other person, to comply with an equal remuneration term or an equality clause, then, if the hearing of the case has begun, the individual may not seek redress (or exercise any other power) under this Part in  
10 respect of the failure to comply with the equal remuneration term or the equality clause, as the case may be.

Alternative avenues  
of redress.

(2) If an individual has referred a case to the Director under *section 41 (1)* in respect of such a failure as is mentioned in *subsection (1)*, and either a settlement has been reached by mediation or the  
15 Director has begun an investigation under *section 43*, the individual shall not be entitled to recover damages at common law in respect of that failure.

(3) If an individual has referred a case to the Circuit Court under *section 41 (3)* in respect of such a failure as is mentioned in *subsection (1)*, the individual shall not be entitled to recover damages at common law in respect of that failure.

(4) An employee who has been dismissed shall not be entitled to seek redress (or to exercise, or continue to exercise, any other power) under this Part if, as a result of the dismissal,—

25     (a) the employee has instituted proceedings for damages at common law for wrongful dismissal and the hearing of the case has begun; or

(b) in the exercise of powers under the Unfair Dismissals Acts, 1977 to 1993, a rights commissioner has issued a recommendation in respect of the dismissal; or  
30

(c) the Employment Appeals Tribunal has begun a hearing into the matter of the dismissal.

(5) If an employee who has been dismissed has referred the case of the dismissal to the Court under *section 41* and either a settlement  
35 has been reached by mediation or the Court has begun an investigation under *section 43*,—

(a) the employee shall not be entitled, as a result of the dismissal, to recover damages at common law for wrongful dismissal; and

40     (b) the employee shall not be entitled to seek redress (or to exercise, or continue to exercise, any other power) under the Unfair Dismissals Acts, 1977 to 1993, in respect of the dismissal.

(6) The reference in *subsection (5)* to an investigation under  
45 *section 43* does not include an investigation where—

(a) after the reference of the case under *section 41*, the Court exercises its power under *section 42 (2) (a)*;



- (b) subsequently the Court issues a notice under *section 42 (6)*; and
- (c) no application is made under *section 42 (7) (b)* for the resumption of the hearing of the case.

Striking out cases which are not pursued.

66.—(1) Where— 5

- (a) a case is referred to the Director under *section 41*, or
- (b) a matter is referred to the Director under *section 49*, or
- (c) a collective agreement is referred to the Director under *section 50*,

and, at any time after the expiry of one year from the date of the reference, it appears to the Director that the complainant has not pursued, or has ceased to pursue, the reference, the Director may strike out the reference. 10

(2) Where—

- (a) a case is referred to the Court under *section 41*, or 15
- (b) an appeal is brought to the Court under this Part,

and, at any time after the expiry of one year from the date of the reference or, as the case may be, the bringing of the appeal, it appears to the Court that the complainant or, as the case may be, the appellant has not pursued, or has ceased to pursue, the matter, the Court may strike out the reference or, as the case may be, the appeal. 20

(3) As soon as practicable after striking out a reference, the Director or, as the case may be, the Court shall give notice in writing to the complainant and the respondent or respondents. 25

(4) As soon as practicable after striking out an appeal, the Court shall give notice in writing to the appellant and the other party to the appeal.

(5) Where a reference or appeal is struck out under this section, no further proceedings may be taken in relation to that reference or appeal; but nothing in this section prevents any person from making a further reference in relation to the same matters (subject to any applicable time limit). 30

(6) In this section “the complainant”, “the respondent” and “the respondents” have the same meanings as in *section 41*, *section 49* or *section 50* according to the nature of the reference concerned. 35

Provisions relating to insolvency.

67.—(1) There shall be included among the debts which, under section 285 of the Companies Act, 1963, are, in the distribution of the assets of a company being wound up, to be paid in priority to all other debts, all relevant compensation payable under this Part by the company, and that Act shall have effect accordingly, and formal proof of the debts to which priority is given under this subsection shall not be required except in cases where it may otherwise be provided by rules made under that Act. 40



5 (2) There shall be included among the debts which, under section 81 of the Bankruptcy Act, 1988, are, in the distribution of the property of a bankrupt or arranging debtor, to be paid in priority to all other debts, all relevant compensation payable under this Part by the bankrupt or arranging debtor, as the case may be, and that Act shall have effect accordingly, and formal proof of the debts to which priority is given under this subsection shall not be required except in cases where it may otherwise be provided by general orders made under that Act.

10 (3) For the purposes of this section "relevant compensation" means sums ordered to be paid by way of redress by virtue of—

- (a) an order of the Circuit Court on a reference under *section 41 (3)*;
- 15 (b) a decision or determination under *section 43 (6)* (including that provision as applied by *section 49 (2)*);
- (c) a determination of an appeal under *section 47 (4)*; or
- (d) an order of the Circuit Court under *section 54, section 55 or section 57*.

20 (4) In the Protection of Employees (Employers' Insolvency) Act, 1984, section 6 (which provides for certain amounts to be paid out of the Social Insurance Fund) shall be amended in accordance with *subsections (5) and (6)*.

25 (5) At the end of subsection (2) (a) (viii) (II) there shall be inserted "or (III) which an employer is required to pay by virtue of a decision, determination or order of a court falling within *section 67 (3) of the Employment Equality Act, 1997*".

(6) In subsection (4) (c), after sub-paragraph (v) there shall be inserted—

30 "(vi) A payment shall not be made under this section in respect of an amount to which a decision or determination under any provision of the *Employment Equality Act, 1997*, applies unless—

35 (I) in case an appeal from the decision or determination is brought under that Part, the appeal is withdrawn, or

(II) in case there is no such appeal, the time for bringing such an appeal has expired".

40 68.—(1) Nothing in this Part shall enable a member of the Defence Forces to refer any case to the Director, the Court or the Circuit Court or to exercise any other power conferred by the preceding provisions of this Part. Special provision as to Defence Forces.

(2) If requested to do so by an officer, within the meaning of the Defence Act, 1954, who is authorised in that behalf, the Director shall—

- 45 (a) investigate any matter which has been complained of in accordance with section 114 of that Act and which, apart from this section, would be a matter within the scope of an investigation by the Director or the Court under this Part or of proceedings before the Circuit Court under
- 50 *section 41 (3)*; and



(b) make a recommendation in respect of that matter to the officer concerned.

(3) A recommendation under *subsection (2) (b)* shall be in writing and shall include a statement of the reasons why the Director made the recommendation and, in deciding what action is to be taken on the complaint, regard shall be had to the recommendation. 5

(4) The Director shall give a copy of any recommendation made under *subsection (2) (b)* to the member of the Defence Forces who made the complaint which gave rise to the recommendation.

## PART VI 10

### FURTHER PROVISIONS RELATING TO THE AUTHORITY

Provision of codes of practice.

69.—(1) If it appears to the Authority appropriate to do so, or if requested to do so by the Minister, the Authority shall prepare, for submission to the Minister, draft codes of practice in furtherance of either or both of the following aims— 15

(a) the elimination of discrimination in employment; and

(b) the promotion of equality of opportunity in employment.

(2) Before submitting a draft code of practice to the Minister under *subsection (1)*, the Authority shall consult such other Minister of the Government or other person or body as the Authority considers appropriate or as the Minister may direct. 20

(3) After a draft code of practice has been submitted under *subsection (1)*, the Minister may—

(a) by order declare that the draft is an approved code of practice for the purposes of this Act; or 25

(b) by order declare that the draft, as amended by the Minister after consultation with the Authority, is such an approved code of practice;

and an order under this subsection shall set out the text of the approved code of practice to which it relates. 30

(4) An approved code of practice shall be admissible in evidence and, if any provision of such a code appears to be relevant to any question arising in any proceedings, it shall be taken into account in determining that question.

(5) At the request of the Authority or, as the case may be, after consultation with the Authority, the Minister may by order— 35

(a) revoke an order under *subsection (3)*, or

(b) amend an approved code of practice as set out in an order under that subsection.

(6) Every order made under *subsection (3)* or *subsection (5)* shall be laid before each House of the Oireachtas as soon as practicable after it is made and, if a resolution annulling the order is passed by either such House within the next twenty-one days on which that House has sat after the order is laid before it, the order shall be annulled accordingly, but without prejudice to the validity of anything previously done in reliance on the order. 45



70.—(1) For the purposes of this Part, an equality review is—

Equality reviews  
and action plans.

5 (a) an audit of the level of equality of opportunity which exists in employment in a particular business, group of businesses or the businesses making up a particular industry or sector thereof; and

10 (b) an examination of the practices, procedures and other relevant factors (including the working environment) of, in and material to that employment to determine whether those practices, procedures or other factors are conducive to the promotion of equality of opportunity in that employment.

15 (2) For the purposes of this Part, an equality action plan is a programme of actions to be undertaken in employment in a business or businesses to further the promotion of equality of opportunity in that employment.

(3) The Authority may invite a particular business, group of businesses or the businesses making up a particular industry or sector thereof to do either or both of the following—

20 (a) carry out an equality review in relation to their business or businesses;

(b) prepare and implement an equality action plan in respect of that business or those businesses.

25 (4) The Authority may, if it thinks it appropriate, itself carry out an equality review and prepare an equality action plan in relation to a particular business, group of businesses or the businesses making up a particular industry or sector thereof; and, for the purpose of assisting in the conduct of such an audit or examination as is referred to in *subsection (1)*, the Authority may, with the approval of the Minister, employ one or more persons having qualifications which, in the opinion of the Authority, relate to that examination.

30 (5) The powers conferred by *subsection (4)* do not apply in relation to any business which has less than 50 employees (and, accordingly, references to a group of businesses or the businesses making up a particular industry or sector thereof do not include such a business).

(6) An equality review and an action plan may be directed at the generality of equality of opportunity or at a particular aspect of discrimination in an employment.

(7) For the purposes of this section—

40 (a) “business” includes an activity giving rise to employment, whether or not in the industrial or commercial field, and whether or not with a view to profit; and

45 (b) a “group of businesses” may be defined by reference to geographical location instead of (or as well as) by reference to control or any other factor.

71.—(1) Subject to *subsections (4) and (5)*, if it appears to the Authority appropriate to do so for the purpose of an equality review or the preparation of an equality action plan, the Authority may do either or both of the following—

Enforcement  
powers in respect of  
equality reviews  
and action plans.



(a) require any person, by notice served personally or by registered post, to supply to the Authority such information as it specifies in the notice and requires for the purpose;

(b) require any person, by notice so served, to produce to the Authority or send to it such document as it specifies in the notice and is in that person's power or control; 5

but nothing in this subsection shall entitle the Authority to require the supply of information, or the production or sending of a document, relating to a business which has less than 50 employees.

(2) Subject to *subsections (4) and (5)*, if it appears to the Authority that there is a failure in any business or businesses to implement any provision of an equality action plan, the Authority may require any person, by notice served personally or by registered post, to take such action as— 10

(a) is specified in the notice; and 15

(b) is reasonably required for the implementation of the plan; and

(c) it is within that person's power to take.

(3) In the following provisions of this section, a notice under *subsection (1) or subsection (2)* is referred to as a "substantive notice". 20

(4) Before serving a substantive notice on any person, the Authority shall give that person notice in writing (in the following provision of the section referred to as an "advance notice") of the proposal to serve the substantive notice and of the proposed contents of that notice. 25

(5) Where—

(a) the Authority has given an advance notice to any person, and

(b) within 28 days from the date of receipt of the advance notice, that person makes representations to the Authority about the proposed substantive notice, the Authority shall have regard to those representations before deciding whether or not to proceed with service of the proposed substantive notice and, if so, as to its contents. 30

(6) Section 45 of the Employment Equality Act, 1977 (appeal against non-discrimination notice) shall apply in relation to a substantive notice as it applies in relation to a non-discrimination notice. 35

(7) If, on an application made by the Authority, the High Court or, as the case may be, the Circuit Court is satisfied that a person on whom a substantive notice has been served has failed to comply with the notice, the court may make an order directing that person to comply with the notice. 40

(8) The jurisdiction conferred on the Circuit Court by this section shall be exercised by the judge for the time being assigned to the circuit where the person on whom the substantive notice was served ordinarily resides or carries on any profession, business or occupation. 45



72.—(1) Where, in the opinion of the Authority, the working or effect of any of the enactments for the time being specified in any of subsections (1) to (5) of section 17 or of any provision contained in or made under any such enactment is likely to affect or impede the elimination of discrimination in relation to employment or the promotion of equality of opportunity in relation to employment—

Review of  
legislation.

(a) between men and women, or

(b) between persons who differ in terms of any of the other discriminatory grounds,

the Authority may, if it thinks fit, and shall if so required by the Minister, carry out a review of that enactment or provision or of its working or effect.

(2) For the purpose of assisting it in making a review under this section, the Authority shall consult such organisations of trade unions and of employers as it considers appropriate.

(3) Where the Authority makes a review under this section, it may make to the Minister a report of the review, and shall do so where the review was required by the Minister.

(4) A report under subsection (3) may contain recommendations for amending any enactment or provision reviewed.

73.—(1) In the Employment Equality Act, 1977 (in this section referred to as the "1977 Act"), in section 35 (general functions of the Authority)—

Amendments to  
functions and  
constitution of the  
Authority.

(a) in paragraph (b) the words "between men and women" shall be omitted and after the word "employment" there shall be inserted "between persons who differ in terms of any of the discriminatory grounds";

(b) in paragraph (c) for the words "the Act of 1974" there shall be substituted "the Maternity Protection Act, 1994, the Adoptive Leave Act, 1995, the *Employment Equality Act, 1997*," and for the words "either or both" there shall be substituted "all or any"; and

(c) after paragraph (c) there shall be inserted—

"(d) to keep under review the working of the Pensions Act, 1990, as regards the principle of equal treatment and, whenever it thinks it necessary, to make proposals to the Minister for Social Welfare for amending that Act."

(2) In section 39 of the 1977 Act (the Authority's power to conduct investigations), in subsection (3) after the words "a member of the Agency" there shall be inserted "or its officers".

(3) In subsection (2) of section 41 of the 1977 Act (notices for the purposes of investigations) and in subsection (1) of section 44 of that Act (non-discrimination notice)—

(a) in paragraph (b) for the words "under section 4" there shall be substituted "within the meaning of the *Employment Equality Act, 1997*";



- (b) in paragraph (c) for the words “section 8 (1) or section 9” there shall be substituted “section 10 or section 14 of that Act”;
- (c) in paragraph (d) for the words “section 3(2)” there shall be substituted “section 8 (4) of that Act”; and 5
- (d) in paragraph (e) for the words from “equal pay clause” to the end of the paragraph there shall be substituted “equal remuneration term, within the meaning of that Act”.
- (4) In subsection (3) of section 44 of the 1977 Act, in paragraph (b) for the words from “equal pay clause” to the end of the paragraph there shall be substituted “equal remuneration term or an equality clause, each within the meaning of the *Employment Equality Act, 1997*”. 10
- (5) In section 47 of the 1977 Act (power of the Authority to seek injunctions through the High Court)— 15
- (a) in subsection (1) after the words, “High Court”, in the first place where they occur, there shall be inserted “or the Circuit Court”;
- (b) in subsection (1) for the words “High Court”, in the second place where they occur, there shall be substituted “court concerned”; 20
- (c) in subsection (2) after the words “High Court” there shall be inserted “or, as the case may be, the Circuit Court”; and
- (d) after subsection (2) there shall be inserted the following subsection— 25
- “(3) The jurisdiction conferred on the Circuit Court by this section shall be exercised by the judge for the time being assigned to the circuit where the person on whom the notice was served ordinarily resides or carries on any profession, business or occupation.”. 30
- (6) In section 48 of the 1977 Act (assistance by Authority in certain references to the Court or equality officer)—
- (a) in subsection (1), after the word “discrimination” there shall be inserted “or victimisation” and for the words from “equal pay clause” to the end of the subsection there shall be substituted “equal remuneration term or an equality clause, each within the meaning of the *Employment Equality Act, 1997*, or to implement a decision or determination under *Part V* of that Act or a mediation settlement reached under that Part, may apply to the Authority for assistance in taking proceedings for redress under that Act.”; 35 40
- (b) in subsection (2), for the word “reference”, in both places where it occurs, there shall be substituted “proceedings”; and 45
- (c) after subsection (3) there shall be inserted the following subsection—
- “(4) In this section, ‘proceedings’ has the same meaning as in the *Employment Equality Act, 1997*.”. 50



(7) At the end of section 50 of the 1977 Act (annual report etc. of the Authority) there shall be inserted the following subsections—

5 “(3) Without prejudice to the generality of subsection (1), the Authority shall include in its report in respect of any period of twelve months—

(a) information about any equality review made in that period; and

10 (b) such information as the Authority considers appropriate about the implementation of equality action plans in that period.

(4) In subsection (3) ‘equality review’ and ‘equality action plan’ have the same meanings as in *Part VI* of the *Employment Equality Act, 1997*.”

15 (8) In paragraph 9 of the Schedule to the 1977 Act (the ordinary members of the Authority) in paragraph (c) for “three” there shall be substituted “two”; but nothing in this subsection shall be taken to affect the term of office of any person who is a member of the Authority at the commencement of this Act.



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**BILLE**

*dá ngairtear*

Acht do dhéanamh socrú breise chun comhionannas idir daoine fostaithe a chur chun cinn; do dhéanamh socrú breise maidir le hidirdhealú i bhfostaíocht, i ngairmoiliúint agus i gcomhaltas de chomhlachtaí áirithe agus idirdhealú i dtaobh na nithe sin; do dhéanamh socrú breise i dtaobh Threoir 75/117/CEE ón gComhairle faoi chomhfhogasú dhlíthe na mBallstát a bhaineann le feidhmiú an phrionsabail um pá comhionann d'fhir agus do mhná agus Threoir 76/207/CEE ón gComhairle faoi chur i ngníomh an phrionsabail um chóir chomhionann a chur ar fhir agus ar mhná i dtaca le rochtain ar fhostaíocht, gairmoiliúint agus ardú céime, agus coinníollacha oibre; do dhéanamh socrú breise maidir le ciapadh i bhfostaíocht agus san áit oibre; d'athrú ainm agus chomhdhéanamh na Gníomhaireachta um Chomhionannas Fostaíochta; d'aisghairm an Achta in aghaidh Idirdhealú (Pá), 1974, agus do leasú an Achta um Chomhionannas Fostaíochta, 1977; agus do dhéanamh socrú le haghaidh nithe gaolmhara.

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*An tAire Comhionannais agus Athchóirithe  
Dlí a thfolaic*

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*Ritheadh ag Dáil Éireann,  
5 Feabhra, 1997*

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**BILL**

*entitled*

An Act to make further provision for the promotion of equality between employed persons; to make further provision with respect to discrimination in, and in connection with, employment, vocational training and membership of certain bodies; to make further provision in connection with Council Directive 75/117/EEC on the approximation of the laws of the Member States relating to the application of the principle of equal pay for men and women and Council Directive 76/207/EEC on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions; to make further provision with respect to harassment in employment and in the workplace; to change the name and constitution of the Employment Equality Agency; to repeal the Anti-Discrimination (Pay) Act, 1974, and to amend the Employment Equality Act, 1977; and to provide for related matters.

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*Presented by the Minister for Equality  
and Law Reform*

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*Passed by Dáil Éireann,  
5th February, 1997*

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BAILE ÁTHA CLIATH  
ARNA FHOILSIÚ AG OIFIG AN tSOLÁTHAIR  
Le ceannach díreach ón  
OIFIG DHÍOLTA FOILSEACHÁN RIALTAIS,  
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£7.00

Wt. P45468/B/2. 850. 2/97. Cahill. (X30015). G.16.

ISBN 0-7076-4028-8



9 780707 640280