



Number 21 of 1998

EMPLOYMENT EQUALITY ACT 1998

REVISED

Updated to 11 April 2012

This Revised Act is an administrative consolidation of the *Employment Equality Act 1998*. It is prepared by the Law Reform Commission in accordance with its function under the *Law Reform Commission Act 1975 (3/1975)* to keep the law under review and to undertake revision and consolidation of statute law.

All Acts up to and including *Criminal Justice (Female Genital Mutilation) Act 2012 (11/2012)*, enacted 2 April 2012, and all statutory instruments up to and including *Rules of the Superior Courts (Winding-Up of Companies and Examinership) 2012 (S.I. No. 121 of 2012)*, made 11 April 2012, were considered in the preparation of this Revised Act.

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Introduction

This Revised Act presents the text of the Act as it has been amended since enactment, and preserves the format in which it was passed.

Related legislation

Employment Equality Acts 1998 and 2008: This Act is one of a group of Acts included in this collective citation, to be construed together as one (*Civil Law (Miscellaneous Provisions) Act 2008*, s. 1(8)). The Acts in the group are:

- *Employment Equality Act 1998* (21/1998)
- *Equality Act 2004* (24/2004), Part 2
- *Protection of Employment (Exceptional Collective Redundancies and Related Matters) Act 2007* (27/2007), insofar as it relates to the previous two Acts
- *Civil Law (Miscellaneous Provisions) Act 2008* (14/2008), Part 16
- *Civil Law (Miscellaneous Provisions) Act 2011* (23/2011), ss. 18 to 26

Annotations

This Revised Act is annotated and includes textual and non-textual amendments, statutory instruments made pursuant to the Act and previous affecting provisions.

An explanation of how to read annotations is available at www.lawreform.ie/annotations.

Material not updated in this revision

Where other legislation is amended by this Act, those amendments may have been superseded by other amendments in other legislation, or the amended legislation may have been repealed or revoked. This information is not represented in this revision but will be reflected in a revision of the amended legislation if one is available. A list of legislative changes to any Act, and to statutory instruments from 2000, may be found in the Legislation Directory at www.irishstatutebook.ie.

Acts which affect or previously affected this revision

- *Civil Law (Miscellaneous Provisions) Act 2011* (23/2011)
- *Ministers and Secretaries (Amendment) Act 2011* (10/2011)

- *Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010* (24/2010)
- *Merchant Shipping Act 2010* (14/2010)
- *Civil Law (Miscellaneous Provisions) Act 2008* (14/2008)
- *Protection of Employment (Exceptional Collective Redundancies and Related Matters) Act 2007* (27/2007)
- *Equality Act 2004* (24/2004)
- *Social Welfare (Miscellaneous Provisions) Act 2004* (9/2004)
- *Public Service Management (Recruitment and Appointments) Act 2004* (33/2004)
- *Redundancy Payments Act 2003* (14/2003)
- *Equal Status Act 2000* (8/2000)
- *Parental Leave Act 1998* (30/1998)
- *Pensions Act 1990* (25/1990)

All Acts up to and including *Criminal Justice (Female Genital Mutilation) Act 2012* (11/2012), enacted 2 April 2012, were considered in the preparation of this revision.

Statutory instruments which affect or previously affected this revision

- *Finance (Transfer of Departmental Administration and Ministerial Functions) Order 2011* (S.I. No. 418 of 2011)
- *Equality, Integration, Disability and Human Rights (Transfer of Departmental Administration and Ministerial Functions) Order 2011* (S.I. No. 139 of 2011)
- *Equality, Integration, Disability and Human Rights (Transfer of Departmental Administration and Ministerial Functions) Order 2010* (S.I. No. 217 of 2010)
- *Employment Equality Act, 1998 (Section 12) (Church of Ireland College of Education) Order 2008* (S.I. No. 251 of 2008)
- *Employment Equality Act 1998 (section 12) (Church of Ireland College of Education) Order 2003* (S.I. No. 319 of 2003)
- *Employment Equality Act 1998 (Code of Practice) (Harassment) Order 2002* (S.I. No. 78 of 2002)
- *European Communities (Burden of Proof in Gender Discrimination Cases) Regulations 2001* (S.I. No. 337 of 2001)
- *Employment Equality Act, 1998 (Section 12) (Church of Ireland College of Education) Order 2000* (S.I. No. 216 of 2000)
- *Employment Equality Act, 1998 (Section 76 Right to Information) Regulations 1999* (S.I. No. 321 of 1999)
- *Employment Equality Act, 1998 (Commencement) Order 1999* (S.I. No. 320 of 1999)

All statutory instruments up to and including *Rules of the Superior Courts (Winding-Up of Companies and Examinership) 2012* (S.I. No. 121 of 2012), made 11 April 2012, were considered in the preparation of this revision.



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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 NO. 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 NO. 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 AND PROVIDE FOR THE ADMINISTRATION BY THAT BODY OF VARIOUS MATTERS PERTAINING TO THIS ACT; TO ESTABLISH PROCEDURES FOR THE INVESTIGATION AND REMEDYING OF VARIOUS MATTERS ARISING UNDER THIS ACT; TO REPEAL THE ANTI-DISCRIMINATION (PAY) ACT, 1974, AND THE EMPLOYMENT EQUALITY ACT, 1977, AND TO PROVIDE FOR RELATED MATTERS. [18th June, 1998]

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

Annotations

Modifications (not altering text):

- C1** Act included in collective citation (2.08.2011) by *Civil Law (Miscellaneous Provisions) Act 2011* (23/2011), s. 1(4), commenced on enactment.

Short title, collective citations, construction and commencement.

1.— ...

(4) The Employment Equality Acts 1998 to 2008 and sections 18 to 26 may be cited together as the Employment Equality Acts 1998 to 2011.

Acts included or previously included in collectively cited and construed *Employment Equality Acts 1998 to 2011*:

- *Civil Law (Miscellaneous Provisions) Act 2011* (23/2011), ss. 18-26 (2.08.2011) by s. 1(4), commenced on enactment.
- *Civil Law (Miscellaneous Provisions) Act 2008* (14/2008), Part 16 (20.07.2008) by s. 1(8), S.I. No. 274 of 2008.

- *Protection of Employment (Exceptional Collective Redundancies and Related Matters) Act 2007* (27/2007), insofar as it relates to collectively cited *Employment Equality Acts 1998 and 2004* (8.05.2007) by s. 1(5), commenced on enactment.
- *Equality Act 2004* (24/2004), Part 2 (18.07.2004) by s. 1(2), commenced on enactment.

C2 Certain functions in relation to Act transferred from Department of Community, Equality and Gaeltacht Affairs to Department of Justice and Law Reform and term “Minister for Community, Equality and Gaeltacht Affairs” construed (1.04.2011) by *Equality, Integration, Disability and Human Rights (Transfer of Departmental Administration and Ministerial Functions) Order 2011* (S.I. No. 139 of 2011), arts. 2 and 3, subject to transitional provisions.

2. (1) The administration and business in connection with the exercise, performance or execution of any functions transferred by Article 3 are transferred to the Department of Justice and Law Reform.

(2) References to the Department of Community, Equality and Gaeltacht Affairs contained in any Act or instrument made under such Act and relating to any administration and business transferred by paragraph (1) shall, from the commencement of this Order, be read as references to the Department of Justice and Law Reform.

3. (1) The functions vested in the Minister for Community, Equality and Gaeltacht Affairs by or under any of the Acts mentioned in the Schedule are transferred to the Minister for Justice and Law Reform.

...

(3) References to the Minister for Community, Equality and Gaeltacht Affairs contained in any Act or instrument made under such Act and relating to any functions transferred by this Article shall, from the commencement of this Order, be read as references to the Minister for Justice and Law Reform.

...

SCHEDULE

...

Employment Equality Acts 1998 to 2008, other than section 27(2) and section 37(4) (inserted by Part 2 of the Equality Act 2004 (No. 24 of 2004)) of the Employment Equality Act 1998 (No. 21 of 1998).

...

C3 Application of Act restricted (3.07.2010) by *Merchant Shipping Act 2010* (14/2010), s. 87(10), commenced on enactment.

Maritime Labour Convention 2006.

87.—...

(10) In relation to discrimination on the age or disability ground nothing in the Employment Equality Act 1998 renders unlawful any act done in compliance with this section or any regulation made under this section.

C4 Power to make regulations for purposes of Act provided (25.10.2000) by *Equal Status Act 2000* (8/2000), s. 41(2), S.I. No. 351 of 2000.

Regulations.

41.— ...

(2) The Minister may by regulations specify, in cases where provision is not otherwise made in that behalf by regulations under this Act or the Employment Equality Act, 1998 —

(a) procedures to be followed by the Director or, as the case may be, the Labour Court, in carrying out functions under this Act or the Employment Equality Act, 1998, and

(b) time limits applicable to the carrying out of such functions, including procedures for extending those limits in certain circumstances.

...

- C5** Application of Act restricted in certain circumstances by *Pensions Act 1990 (25/1990)*, s. 81H(7) as inserted (5.04.2004) by *Social Welfare (Miscellaneous Provisions) Act 2004 (9/2004)*, s. 22, S.I. No. 141 of 2004.

Redress which may be ordered.

81H.— ...

(7) Where an act constitutes victimisation both under this Part and the Employment Equality Act 1998 or the Equal Status Act 2000, redress may be provided under only one of them.

Editorial Notes:

- E1** Previous affecting provision: certain functions in relation to Act transferred from Department of Justice, Equality and Law Reform to Department of Community, Equality and Gaeltacht Affairs (1.06.2010) by *Equality, Integration, Disability and Human Rights (Transfer of Departmental Administration and Ministerial Functions) Order 2010 (S.I. No. 217 of 2010)*; re-transferred as per C-note above.

PART I

PRELIMINARY AND GENERAL

Short title and commencement.

1.—(1) This Act may be cited as the Employment Equality Act, 1998.

(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 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.

Annotations

Editorial Notes:

- E2** Power pursuant to section exercised (18.10.1999) by *Employment Equality Act, 1998 (Commencement) Order 1999 (S.I. No. 320 of 1999)*.

2. The 18th day of October, 1999, is hereby fixed as the day on which the Employment Equality Act, 1998, shall come into operation.

Interpretation.

2.—(1) In this Act, unless the context otherwise requires—

“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;

“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)*;

“the Authority” means the Equality Authority;

F1[‘civil status’ means being single, married, separated, divorced, widowed, in a civil partnership within the meaning of the Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010 or being a former civil partner in a civil partnership that has ended by death or been dissolved;]

F2[‘collective agreement’ means an agreement between an employer and a body or bodies representative of the employees to which the agreement relates;]

F3[‘contract of employment’ means, subject to subsection (3)—

(a) a contract of service or apprenticeship, or

(b) any other contract whereby—

(i) an individual agrees with another person personally to execute any work or service for that person, or

(ii) 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 the other person is a party to the contract),

whether the contract is express or implied and, if express, whether oral or written;]

F3[‘the Director’ means the Director of the Equality Tribunal;]

“disability” means—

(a) the total or partial absence of a person’s bodily or mental functions, including the absence of a part of a person’s body,

(b) the presence in the body of organisms causing, or likely to cause, chronic disease or illness,

(c) the malfunction, malformation or disfigurement of a part of a person’s body,

(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,

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

F3[F4[‘discrimination’ includes the issue of an instruction to discriminate and, in Part V and VI, includes prohibited conduct within the meaning of the Equal Status Act 2000, and cognate words shall be construed accordingly;]]

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

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

F3[‘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 and, where the context admits, includes a member or former member of a regulatory body, but, so far as regards access to employment,

does not include a person employed in another person's home for the provision of personal services for persons residing in that home where the services affect the private or family life of those persons;]

"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;

"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;

"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)*;

"family status" means responsibility—

(a) as a parent or as a person in *loco parentis* in relation to a person who has not attained the age of 18 years, or

(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;

"functions", in relation to the Authority, includes powers and duties;

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

F5[...]

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

(a) that person's spouse F6[or civil partner within the meaning of the *Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010*], or

(b) a brother, sister, uncle, aunt, nephew, niece, lineal ancestor or lineal descendant of that person or that person's spouse F6[or civil partner within the meaning of the *Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010*];

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

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

F3['proceedings' means—

(a) proceedings before the person, body or court dealing with a request or reference under this Act by or on behalf of a person, and

(b) any subsequent proceedings, including proceedings on appeal, arising from the request or reference,

but does not include proceedings for an offence under this Act;]

F2[‘personal services’, in relation to such services provided in a person’s home, includes but is not limited to services that are in the nature of services *in loco parentis* or involve caring for those residing in the home;]

F2[‘persons’, in sections 19, 22, 29 and 31 does not import the singular;]

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

F2[‘provision’ means a term in a contract of employment or a requirement, criterion, practice, regime, policy or condition relating to employment;]

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

F7[...]

“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;

“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;

F8[‘Traveller community’ means the community of people commonly so called who are identified (both by themselves and others) as people with a shared history, culture and traditions including, historically, a nomadic way of life on the island of Ireland;]

“vocational training” shall be construed in accordance with F3[*section 12(2)*]; F9[and cognate words or expressions shall be construed accordingly.]

(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.

(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,

(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, F7[...]

(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.

F9[(d) in the case of a contract mentioned in paragraph (b)(i) of the definition of ‘contract of employment’—

(i) references in this Act to an employee shall be construed as references to the party to the contract who agrees personally to execute the work or service concerned and references to an employer as references to the person for whom it is to be executed,

(ii) any comparisons to be made for any of those purposes shall be between persons personally executing work or service for the same person or an associated person under such a contract or contracts, and

(iii) in particular, and without prejudice to the generality of the foregoing, references in sections 19(4)(a) and 22(1)(a) to employees shall be construed as references to those persons.]

(4) In this Act a reference to “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”.

(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.

(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.

(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.

Annotations

Amendments:

- F1** Inserted (1.01.2011) by *Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010* (24/2010), s. 102(2)(a), S.I. No. 648 of 2010.
- F2** Inserted (18.07.2004) by *Equality Act 2004* (24/2004), s. 3(a)(iii), commenced on enactment.
- F3** Substituted (18.07.2004) by *Equality Act 2004* (24/2004), s. 3(a)(i) and (ii), commenced on enactment.
- F4** Substituted (2.08.2011) by *Civil Law (Miscellaneous Provisions) Act 2011* (23/2011), s. 19, commenced on enactment.
- F5** Deleted (1.01.2011) by *Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010* (24/2010), s. 102(2)(b), S.I. No. 648 of 2010.
- F6** Inserted (1.01.2011) by *Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010* (24/2010), s. 102(2)(c), S.I. No. 648 of 2010.
- F7** Deleted (18.07.2004) by *Equality Act 2004* (24/2004), s. 3(a)(iv) and (b)(i), commenced on enactment.
- F8** Inserted (25.10.2000) by *Equal Status Act 2000* (8/2000), s. 39 and sch. para. (a), S.I. No. 351 of 2000.
- F9** Inserted (18.07.2004) by *Equality Act 2004* (24/2004), s. 3(a)(ii) and (b)(iii), commenced on enactment.

Editorial Notes:

- E3** Previous affecting provision: definition of “discrimination” inserted (25.10.2000) by *Equal Status Act 2000* (8/2000), s. 39 and sch. para. (a)(i), S.I. No. 351 of 2000; substituted as per F-note above.

Orders and regulations. **3.—(1)** Any power under this Act to make an order, other than under *section 1(2)*, includes power to amend or revoke an order made in the exercise of that power.

(2) Where an order is proposed to be made under this Act, other than an order under *section 1(2) or subsection (3) or (5) of section 56*, 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.

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

(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 21 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.

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

Annotations

Editorial Notes:

- E4** Power pursuant to subs. (1) exercised (18.10.1999) by *Employment Equality Act, 1998 (Section 76 - Right To Information) Regulations 1999* (S.I. No. 321 of 1999).

Expenses.

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.

Repeals and consequential amendments.

5.—(1) Subject to *subsection (2)*, the Anti-Discrimination (Pay) Act, 1974, and the Employment Equality Act, 1977, are hereby repealed.

(2) F10[...]

(3) In subsection (2) of section 4 (which relates to the deputy chairman of the Labour Court) of the Industrial Relations Act, 1969, to substitute “, this Act and the *Employment Equality Act, 1998*” for “and this Act”.

Annotations

Amendments:

- F10** Deleted (2.08.2011) by *Civil Law (Miscellaneous Provisions) Act 2011 (23/2011)*, s. 20, commenced on enactment.

PART II

DISCRIMINATION: GENERAL PROVISIONS

Introductory

Discrimination for the purposes of this Act.

6.—F11[(1) For the purposes of this Act and without prejudice to its provisions relating to discrimination occurring in particular circumstances discrimination shall be taken to occur where—

- (a) a person is treated less favourably than another person is, has been or would be treated in a comparable situation on any of the grounds specified in subsection (2) (in this Act referred to as the 'discriminatory grounds') which—
- (i) exists,
 - (ii) existed but no longer exists,
 - (iii) may exist in the future, or
 - (iv) is imputed to the person concerned,
- (b) a person who is associated with another person—
- (i) is treated, by virtue of that association, less favourably than a person who is not so associated is, has been or would be treated in a comparable situation, and
 - (ii) similar treatment of that other person on any of the discriminatory grounds would, by virtue of paragraph (a), constitute discrimination.]

(2) As between any 2 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 (in this Act referred to as "the gender ground"),
- (b) that they are of different F12[civil status] (in this Act referred to as "the F12[civil status] ground"),
- (c) that one has family status and the other does not (in this Act referred to as "the family status ground"),
- (d) that they are of different sexual orientation (in this Act referred to as "the sexual orientation ground"),
- (e) that one has a different religious belief from the other, or that one has a religious belief and the other has not (in this Act referred to as "the religion ground"),
- (f) that they are of different ages, but subject to *subsection (3)* (in this Act referred to as "the age ground"),
- (g) that one is a person with a disability and the other either is not or is a person with a different disability (in this Act referred to as "the disability ground"),
- (h) that they are of different race, colour, nationality or ethnic or national origins (in this Act referred to as "the ground of race"),
- (i) that one is a member of the F13[Traveller] community and the other is not (in this Act referred to as "the F13[Traveller] community ground").

F14[(2A) Without prejudice to the generality of subsections (1) and (2), discrimination on the gender ground shall be taken to occur where, on a ground related to her pregnancy or maternity leave, a woman employee is treated, contrary to any statutory requirement, less favourably than another employee is, has been or would be treated.]

- F11[(3) (a) The age ground applies only in relation to persons above the maximum age at which a person is statutorily obliged to attend school.
- (b) Notwithstanding subsection (1) and section 37(2), an employer may set a minimum age, not exceeding 18 years, for recruitment to a post.
 - (c) Offering a fixed term contract to a person over the compulsory retirement age for that employment or to a particular class or description of employees

in that employment shall not be taken as constituting discrimination on the age ground.

- (d) Subsection (1)(b) of section 2 (exclusions) of the Unfair Dismissals Act 1977 is amended by deleting 'or who on that date was a person to whom by reason of his age the Redundancy Payments Acts 1967 to 1973, did not apply' and inserting 'or who on that date had not attained the age of 16 years'.

Annotations

Amendments:

- F11** Substituted (18.07.2004) by *Equality Act 2004* (24/2004), s. 4(a) and (c), commenced on enactment.
- F12** Substituted (1.01.2011) by *Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010* (24/2010), s. 102(3), S.I. No. 648 of 2010.
- F13** Substituted (25.10.2000) by *Equal Status Act 2000* (8/2000), s. 39 and sch. para. (b), S.I. No. 351 of 2000.
- F14** Inserted (18.07.2004) by *Equality Act 2004* (24/2004), s. 4(b), commenced on enactment.

Like work.

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—

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

(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—

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

Discrimination by employers etc.

8.—(1) In relation to—

- (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.

(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.

(3) In *subsections (4) to (8)*, 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—

- (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 (b) to (e) of subsection (1)*, or
- (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—

- (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.

(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 or she is one—

- (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,

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.

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

Provisions in certain agreements and orders.

9.—(1) In a case where—

- (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,

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 section 8(1)* then, subject to *subsection (4)*, that provision shall be null and void.

(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;
- (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—

- (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.

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—

- (a) indicates an intention to discriminate, or
- (b) might reasonably be understood as indicating such an intention.

F15[(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—

(a) connotes or refers to an individual of one sex or an individual having a characteristic mentioned in any of the discriminatory grounds (other than the gender ground), or

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

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

(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*.

(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.

(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—

(a) the decision of the Director on a contemporaneous reference under *section 85* of the publication or display of the advertisement, or

(b) the court otherwise orders,

and, for the purpose of this subsection, a reference under *section 85* 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.

(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.

Annotations

Amendments:

F15 Substituted (18.07.2004) by *Equality Act 2004 (24/2004)*, s. 5, commenced on enactment.

Employment agencies.

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

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

(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.

(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

(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.

(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.

Vocational training.

12.—(1) Subject to *subsection (7)* 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 maximum 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)—

(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.

(2) In this section “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) F16[...]

(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—

(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

(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 and Children, in the case of hospitals, or to the Minister for Education and Science, 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 and Children or the Minister for Education and Science, 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 and Children or the Minister for Education and Science, as the case may be, to meet the purposes set out in *subsection (4)*.

(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 and Children or the Minister for

Education and Science, 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.

(7) F17[Without prejudice to section 3 of the Refugee Act, 1996, nothing in subsection (1)] shall make unlawful discrimination on the age ground or the ground of race in respect of any course of vocational training offered by F18[an educational] or training body where—

(a) it provides different treatment in relation to—

(i) the fees for admission or attendance at any such course by persons who are citizens of Ireland or nationals of another Member State of the European Union, or

(ii) the allocation of places on any such course to those citizens or nationals, or

(b) it offers assistance to particular categories of persons by way of sponsorships, scholarships, bursaries or other awards, which assistance is reasonably justifiable, having regard to traditional or historical F19[considerations, or]

F20[(c) in the case of a university or other third-level institution, it provides different treatment in the allocation of places on any such course to mature students (within the meaning of the Local Authorities (Higher Education Grants) Acts, 1968 to 1992).]

Annotations

Amendments:

- F16** Deleted (18.07.2004) by *Equality Act 2004 (24/2004)*, s. 6, commenced on enactment.
- F17** Substituted (25.10.2000) by *Equal Status Act 2000 (8/2000)*, s. 39 and sch. para. (c)(i), S.I. No. 351 of 2000.
- F18** Substituted (25.10.2000) by *Equal Status Act 2000 (8/2000)*, s. 39 and sch. para. (c)(i), S.I. No. 351 of 2000.
- F19** Substituted (25.10.2000) by *Equal Status Act 2000 (8/2000)*, s. 39 and sch. para. (c)(ii), S.I. No. 351 of 2000.
- F20** Inserted (25.10.2000) by *Equal Status Act 2000 (8/2000)*, s. 39 and sch. para. (c)(iii), S.I. No. 351 of 2000.

Editorial Notes:

- E5** Power pursuant to section exercised (2.07.2008) by *Employment Equality Act, 1998 (Section 12) (Church of Ireland College of Education) Order 2008* (S.I. No. 251 of 2008).
- E6** Power pursuant to section exercised (15.07.2003) by *Employment Equality Act 1998 (section 12) (Church of Ireland College of Education) Order 2003* (S.I. No. 319 of 2003).
- E7** Power pursuant to section exercised (30.06.2000) by *Employment Equality Act, 1998 (Section 12) (Church of Ireland College of Education) Order 2000* (S.I. No. 216 of 2000).

Membership of certain bodies.

13.—A body which—

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

(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.

F21[Partnerships. **13A.**—(1) This Act applies to a partner in a partnership as it applies to an employee and accordingly has effect with the modification that—

- (a) references to an employee include references to such a partner, and
- (b) references to an employer include references to a partnership,

and with any other necessary modifications.

(2) In subsection (1) references to a partner shall be construed, in the case of a limited partnership, as references to a general partner, as defined in section 3 of the Limited Partnerships Act 1907.]

Annotations

Amendments:

F21 Inserted (18.07.2004) by *Equality Act 2004 (24/2004)*, s. 7, commenced on enactment.

Procuring etc.
discrimination or
victimisation.

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

- (a) constitutes discrimination which is unlawful under this Act, or
- (b) constitutes victimisation for the purposes of *Part VII*,

shall be guilty of an offence.

F22[Harassment
and sexual
harassment.

14A.—(1) For the purposes of this Act, where—

(a) an employee (in this section referred to as ‘the victim’) is harassed or sexually harassed either at a place where the employee is employed (in this section referred to as ‘the workplace’) or otherwise in the course of his or her employment by a person who is—

- (i) employed at that place or by the same employer,
- (ii) the victim’s employer, or

(iii) a client, customer or other business contact of the victim’s employer and the circumstances of the harassment are such that the employer ought reasonably to have taken steps to prevent it,

or

(b) without prejudice to the generality of paragraph (a)—

- (i) such harassment has occurred, and
- (ii) either—

(I) the victim is treated differently in the workplace or otherwise in the course of his or her employment by reason of rejecting or accepting the harassment, or

(II) it could reasonably be anticipated that he or she would be so treated,

the harassment or sexual harassment constitutes discrimination by the victim's employer in relation to the victim's conditions of employment.

(2) If harassment or sexual harassment of the victim by a person other than his or her employer would, but for this subsection, be regarded as discrimination by the employer under subsection (1), it is a defence for the employer to prove that the employer took such steps as are reasonably practicable—

(a) in a case where subsection (1)(a) applies (whether or not subsection (1)(b) also applies), to prevent the person from harassing or sexually harassing the victim or any class of persons which includes the victim, and

(b) in a case where subsection (1)(b) applies, to prevent the victim from being treated differently in the workplace or otherwise in the course of the victim's employment and, if and so far as any such treatment has occurred, to reverse its effects.

(3) A person's rejection of, or submission to, harassment or sexual harassment may not be used by an employer as a basis for a decision affecting that person.

(4) The reference in subsection (1)(a)(iii) to a client, customer or other business contact of the victim's employer includes a reference to any other person with whom the employer might reasonably expect the victim to come into contact in the workplace or otherwise in the course of his or her employment.

(5) In this section 'employee' includes an individual who is—

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

(b) participating in any course or facility referred to in paragraphs (a) to (c) of section 12(1),

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 or providing the course or facility.

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

(7) (a) In this section—

(i) references to harassment are to any form of unwanted conduct related to any of the discriminatory grounds, and

(ii) references to sexual harassment are to any form of unwanted verbal, non-verbal or physical conduct of a sexual nature,

being conduct which in either case has the purpose or effect of violating a person's dignity and creating an intimidating, hostile, degrading, humiliating or offensive environment for the person.

(b) Without prejudice to the generality of paragraph (a), such unwanted conduct may consist of acts, requests, spoken words, gestures or the production, display or circulation of written words, pictures or other material.]

Annotations

Amendments:

F22 Inserted (18.07.2004) by *Equality Act 2004* (24/2004), s. 8, commenced on enactment.

Liability of employers and principals.

15.—(1) Anything done by a person in the course of his or her employment shall, in any proceedings brought under this Act, 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.

(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, in any proceedings brought under this Act, be treated for the purposes of this Act as done also by that other person.

(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 or her employment acts of that description.

Obligations of Employers etc.

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

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—

(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

(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—

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

(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.

F23[(3) (a) For the purposes of this Act a person who has a disability is fully competent to undertake, and fully capable of undertaking, any duties if the person would be so fully competent and capable on reasonable accommodation (in this subsection referred to as 'appropriate measures') being provided by the person's employer.

(b) The employer shall take appropriate measures, where needed in a particular case, to enable a person who has a disability—

(i) to have access to employment,

(ii) to participate or advance in employment, or

(iii) to undergo training,

unless the measures would impose a disproportionate burden on the employer.

(c) In determining whether the measures would impose such a burden account shall be taken, in particular, of—

- (i) the financial and other costs entailed,
- (ii) the scale and financial resources of the employer's business, and
- (iii) the possibility of obtaining public funding or other assistance.]

(4) In *subsection (3)*—

F24['appropriate measures', in relation to a person with a disability—

- (a) means effective and practical measures, where needed in a particular case, to adapt the employer's place of business to the disability concerned,
- (b) without prejudice to the generality of paragraph (a), includes the adaptation of premises and equipment, patterns of working time, distribution of tasks or the provision of training or integration resources, but
- (c) does not include any treatment, facility or thing that the person might ordinarily or reasonably provide for himself or herself;]

"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 a person who has a disability include—

- (a) such a person who is seeking or using any service provided by the employment agency,
- (b) such a person who is participating in any such course or facility as is referred to in *paragraphs (a) to (c) of section 12(1)*, and
- (c) such a person who is a member of or is seeking membership of the regulatory F23[body.]

F25[...]

(5) 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.

(6) Without prejudice to the generality of *subsection (5)*, that subsection applies in particular where the employment concerned involves access to minors or to other persons who are vulnerable.

Annotations

Amendments:

F23 Substituted (18.07.2004) by *Equality Act 2004 (24/2004)*, s. 9(a) and (b), commenced on enactment.

F24 Inserted (18.07.2004) by *Equality Act 2004 (24/2004)*, s. 9(b), commenced on enactment.

F25 Deleted (18.07.2004) by *Equality Act 2004 (24/2004)*, s. 9(b), commenced on enactment.

Compliance with statutory requirements etc.

17.—(1) In relation to discrimination on the F26[civil 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.

F27[(2) In relation to discrimination on the basis of nationality, nothing in this Act shall render unlawful any action taken in accordance with the Employment Permits Act 2003.]

(3) 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—

(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,

(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.

F28[(4) In relation to discrimination on the age ground, nothing in this Act shall render unlawful any act done in compliance with—

(a) the Protection of Young Persons (Employment) Act 1996, or

(b) the National Minimum Wage Act 2000.]

Annotations

Amendments:

F26 Substituted (1.01.2011) by *Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010* (24/2010), s. 102(3), S.I. No. 648 of 2010.

F27 Substituted (18.07.2004) by *Equality Act 2004* (24/2004), s. 10(a), commenced on enactment.

F28 Substituted (8.05.2007) by *Protection of Employment (Exceptional Collective Redundancies and Related Matters) Act 2007* (27/2007), s. 27(2), commenced on enactment.

Modifications (not altering text):

C6 Numbering of section clarified (18.07.2004) by *Protection of Employment (Exceptional Collective Redundancies and Related Matters) Act 2007* (27/2007), s. 27(1), in effect retrospectively to commencement of *Equality Act 2004*, commenced on enactment.

27.— (1) The amendment of section 17 of the Employment Equality Act 1998 made by paragraph (b) of section 10 of the Equality Act 2004 is deemed to have had effect from the commencement of that paragraph as if “inserting the following subsection after subsection (3)” had appeared instead of “substituting the following subsection for subsection (4)”.

Editorial Notes:

E8 Previous affecting provision: subs. (4) substituted (18.07.2004) by *Equality Act 2004* (24/2004), s. 10(b), commenced on enactment.

E9 Previous affecting provisions: subs. (4) repealed (25.05.2003) by *Redundancy Payments Act 2003* (14/2003), s. 16, S.I. No. 194 of 2003.

SPECIFIC PROVISIONS AS TO EQUALITY BETWEEN WOMEN AND MEN

Introductory

Application of equality principles to both men and women.

18.—F29[(1) (a) Subject to paragraph (b), for the purposes of this Part 'A' and 'B' represent 2 persons of opposite sex so that, where A is a woman, B is a man, and *vice versa*.

(b) For the purposes of this Part (except sections 19 and 20), where the treatment of a woman on a ground related to her pregnancy or maternity leave is, by virtue of section 6(2A), in issue, 'B' is either a man or a woman.]

(2) Subject to *subsection (1)*, nothing in this Act affects the operation of the Interpretation Acts, 1937 to 1997, in so far as they provide that, unless the contrary intention appears—

(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.

Annotations**Amendments:**

F29 Substituted (18.07.2004) by *Equality Act 2004* (24/2004), s. 11, commenced on enactment.

Remuneration

Entitlement to equal remuneration.

19.—(1) It shall be a term of the contract under which A is employed that, subject to 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.

F30[(2) In this section 'relevant time', in relation to a particular time, is any time (including a time before the commencement of this section) during the 3 years which precede, or the 3 years which follow, the particular time.]

(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.

F31[(4) (a) Indirect discrimination occurs where an apparently neutral provision puts persons of a particular gender (being As or Bs) at a particular disadvantage in respect of remuneration compared with other employees of their employer.

(b) Where paragraph (a) applies, the persons referred to in that paragraph shall each be treated for the purposes of subsection (1) as complying or, as the case may be, not complying with the provision concerned, whichever results in the higher remuneration, unless the provision is objectively justified by a legitimate aim and the means of achieving the aim are appropriate and necessary.

(c) In any proceedings statistics are admissible for the purpose of determining whether this subsection applies in relation to A or B.]

(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.

Annotations**Amendments:**

F30 Substituted (18.07.2004) by *Equality Act 2004 (24/2004)*, s. 12(a), commenced on enactment.

F31 Substituted (18.07.2004) by *Equality Act 2004 (24/2004)*, s. 12(b), commenced on enactment.

Editorial Notes:

E10 Previous affecting provision: subs. (4)(d) substituted (18.07.2001) by *European Communities (Burden of Proof in Gender Discrimination Cases) Regulations 2001* (S.I. No. 337 of 2001), reg. 4(a); superseded as per F-note above.

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.

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

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.

(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

(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

(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.

(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.

(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.

Indirect discrimination on the gender ground.

22.—F32[(1) (a) Indirect discrimination occurs where an apparently neutral provision puts persons of a particular gender (being As or Bs) at a particular disadvantage in respect of any matter other than remuneration compared with other employees of their employer.

(b) Where paragraph (a) applies, the employer shall be treated for the purposes of this Act as discriminating against each of the persons referred to (including A or B), unless the provision is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary.

(1A) In any proceedings statistics are admissible for the purpose of determining whether subsection (1) applies in relation to A or B.]

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

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

(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 section 12(1) subject to the following modifications:

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

(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) F33[...]

(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.

Annotations

Amendments:

F32 Substituted and inserted (18.07.2004) by *Equality Act 2004* (24/2004), s. 13(a), commenced on enactment.

F33 Deleted (18.07.2004) by *Equality Act 2004* (24/2004), s. 13(b), commenced on enactment.

Editorial Notes:

E11 Previous affecting provision: subs. (1)(c) substituted (18.07.2001) by *European Communities (Burden of Proof in Gender Discrimination Cases) Regulations 2001* (S.I. No. 337 of 2001), reg. 4(b); superseded as per F-note above.

Sexual harassment in the workplace etc.

23.—F34[...]

Annotations**Amendments:**

F34 Repealed (18.07.2004) by *Equality Act 2004* (24/2004), s. 14, commenced on enactment.

Positive action on equal opportunities.

24.—F35[(1) This Act is without prejudice to any measures—

(a) maintained or adopted with a view to ensuring full equality in practice between men and women in their employments, and

(b) providing for specific advantages so as—

(i) to make it easier for an under-represented sex to pursue a vocational activity, or

(ii) to prevent or compensate for disadvantages in professional careers.]

(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”.

Annotations**Amendments:**

F35 Substituted (18.07.2004) by *Equality Act 2004* (23/2004), s. 15, commenced on enactment.

Exclusion of discrimination in certain employments.

F36 **25.—(1)** A difference of treatment which is based on a characteristic related to the gender ground in respect of access to employment in a particular post shall not constitute discrimination under this Part or Part II where, by reason of the particular occupational activities concerned or of the context in which they are carried out—

(a) the characteristic constitutes a genuine and determining occupational requirement for the post, and

(b) the objective is legitimate and the requirement proportionate.

(2) In subsection (1) the reference to employment includes a reference to any training leading to it.]

Annotations**Amendments:**

F36 Substituted (18.07.2004) by *Equality Act 2004* (24/2004), s. 16, commenced on enactment.

Exceptions relating to family and personal matters.

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 breast feeding) or adoption.

(2) F37[...]

Annotations**Amendments:**

F37 Deleted (18.07.2004) by *Equality Act 2004* (24/2004), s. 17, commenced on enactment.

Garda Síochána
and prison
service.

27.—(1) With regard to employment in the Garda Síochána or the prison service F38[and without prejudice to section 25], nothing in this Act—

(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,

(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) (a) If—

(i) in the opinion of the Minister there are insufficient numbers of either men or women serving in the Garda Síochána to be assigned to such posts as are for the time being referred to in *subsection (1)(a)*, and

(ii) the Minister by order under this subsection so provides,

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

(b) If—

(i) in the opinion of the Minister there are insufficient numbers of either men or women serving in the prison service to be assigned to such posts as are for the time being referred to in *subsection (1)(a)*, and

(ii) the Minister by order under this subsection so provides,

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

Annotations**Amendments:**

F38 Inserted (18.07.2004) by *Equality Act 2004* (24/2004), s. 18, commenced on enactment.

PART IV

SPECIFIC PROVISIONS AS TO EQUALITY BETWEEN OTHER CATEGORIES OF PERSONS

The comparators. **28.**—(1) For the purpose of this Part, “C” and “D” represent 2 persons who differ as follows:

- (a) in relation to the F39[civil status] ground, C and D have different F39[civil status];
- (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;
- (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;
- (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;
- (h) in relation to the F40[Traveller] community ground, C is a member of the F40[Traveller] community and D is not, or *vice versa*.

(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.

(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—

- (a) in relation to the F39[civil status] ground, the relevant characteristic is having the same F39[civil 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),

and so on for each of the other discriminatory grounds.

Annotations

Amendments:

F39 Substituted (1.01.2011) by *Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010* (24/2010), s. 102(3), S.I. No. 648 of 2010.

F40 Substituted (25.10.2000) by *Equal Status Act 2000* (8/2000), s. 39 and sch. para. (d), S.I. No. 351 of 2000.

Entitlement to equal remuneration.

29.—(1) It shall be a term of the contract under which C is employed that, subject to 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.

(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.

(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.

F41[(4) Section 19(4) applies in relation to C and D as it applies in relation to A and B, with the modification that the reference in it to persons of a particular gender (being As or Bs) is a reference to persons (being Cs or Ds) who differ in a respect mentioned in any paragraph of section 28(1) and with any other necessary modifications.]

(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.

Annotations

Amendments:

F41 Substituted (18.07.2004) by *Equality Act 2004 (24/2004)*, s. 19, commenced on enactment.

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.

(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
- (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
 - (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.

(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 section 28(1)*.

(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.

Indirect discrimination.

31.—F42[(1) Subsections (1) and (1A) (inserted by section 13 of the Equality Act 2004) of section 22 apply, in relation to C and D as they apply in relation to A and B, with the modification that the reference in subsection (1) to persons of a particular gender (being As or Bs) is a reference to persons (being Cs or Ds) who differ in a respect mentioned in any paragraph of section 28(1) and with any other necessary modifications.]

(2) F43[...]

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

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

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

(4) *Subsection (3) of section 8* applies for the purposes of *subsection (1)* and, in so far as it relates to an employer, *subsection (5)* 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—

(a) by virtue of *subsection (1) F44[...]*, as discriminating against an individual on the F45[civil 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) F44[...]*.

Annotations

Amendments:

F42 Substituted (18.07.2004) by *Equality Act 2004 (24/2004)*, s. 20(a), commenced on enactment.

F43 Deleted (18.07.2004) by *Equality Act 2004 (24/2004)*, s. 20(a), commenced on enactment.

F44 Deleted (18.07.2004) by *Equality Act 2004 (24/2004)*, s. 20(b), commenced on enactment.

F45 Substituted (1.01.2011) by *Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010 (24/2010)*, s. 102(3), S.I. No. 648 of 2010.

Harassment in the workplace etc.

32.—F46[...]

Annotations

Amendments:

F46 Repealed (18.07.2004) by *Equality Act 2004 (24/2004)*, s. 21, commenced on enactment.

Positive action permitted.

F47[**33.**—Nothing in this Part or Part II shall render unlawful measures maintained or adopted with a view to ensuring full equality in practice between employees, being measures—

- (a) to prevent or compensate for disadvantages linked to any of the discriminatory grounds (other than the gender ground),
- (b) to protect the health or safety at work of persons with a disability, or
- (c) to create or maintain facilities for safeguarding or promoting the integration of such persons into the working environment.]

Annotations**Amendments:**

F47 Substituted (18.072004) by *Equality Act 2004* (24/2004), s. 22, commenced on enactment.

Modifications (not altering text):**Editorial Notes:**

E12 Previous affecting provision: word 'traveller' in subs. (1)(c) capitalised (25.10.2000) *Equal Status Act 2000* (8/2000), s. 39 and sch. para. (e), S.I. No. 351 of 2000; superseded as per F-note above.

Savings and exceptions related to the family, age or disability.

34.—(1) In relation to the discriminatory grounds specified in *paragraphs (a) to (h) of section 28(1)*, nothing in this Part or *Part II* shall make it unlawful for an employer to provide—

- (a) a benefit to an employee in respect of events related to members of the employee's family or any description of those members,
- (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 F48[civil status] of the employee, or
- (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)*.

(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,
- (b) a person participating in any such course or facility as is referred to in *paragraphs (a) to (c) of section 12(1)*, and
- (c) a person who is a member of the regulatory body.

F49[(3) In an occupational benefits scheme it shall not constitute discrimination on the age ground for an employer—

- (a) to fix ages for admission to such a scheme or for entitlement to benefits under it,
- (b) to fix different such ages for all employees or a category of employees,
- (c) to use, in the context of such a scheme, age criteria in actuarial calculations, or
- (d) to provide different rates of severance payment for different employees or groups or categories of employees, being rates based on or taking into account

the period between the age of an employee on leaving the employment and his or her compulsory retirement age,

provided that that does not constitute discrimination on the gender ground.]

F50[(3A) In subsection (3)—

‘occupational benefits scheme’ includes any scheme (whether statutory or non-statutory) providing for benefits to employees or any category of employees on their becoming ill, incapacitated or redundant but does not include any occupational pension scheme providing for pensions, gratuities or other allowances payable on retirement or death;

‘severance payment’ means a sum paid voluntarily by an employer to an employee otherwise than as pay when the employee leaves the employment.]

(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—

- (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
- (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 3 years beginning on the relevant day.

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

- (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.

F50[(7A) Nothing in this Act invalidates any term in a collective agreement, whenever made, to the effect that in particular circumstances, where length of service would otherwise be regarded as equal, seniority in a particular post or employment may be determined by reference to the relative ages of employees on their entry to that post or employment.]

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

Annotations

Amendments:

F48 Substituted (1.01.2011) by *Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010* (24/2010), s. 102(3), S.I. No. 648 of 2010.

F49 Substituted (18.07.2004) by *Equality Act 2004* (24/2004) s. 23(a), commenced on enactment.

F50 Inserted (18.07.2004) by *Equality Act 2004* (24/2004) s. 23(a) and (b), commenced on enactment.

Special provisions related to persons with disabilities.

35.—F51[(1) Nothing in this Part or Part II shall make it unlawful for an employer to provide, for an employee with a disability, a particular rate of remuneration for work of a particular description if, by reason of the disability, the amount of that work done by the employee during a particular period is less than the amount of similar work done, or which could reasonably be expected to be done, during that period by an employee without the disability.]

(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—

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

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

F52[(4) References in this section to a particular rate of remuneration are to a rate of remuneration which is not below the minimum rate to which the employee concerned is entitled under the *National Minimum Wage Act 2000*.]

Annotations

Amendments:

F51 Substituted (18.07.2004) by *Equality Act 2004* (24/2004), s. 24(a), commenced on enactment.

F52 Inserted (18.07.2004) by *Equality Act 2004* (24/2004), s. 24(b), commenced on enactment.

Imposition of certain requirements to be lawful.

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—

- (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
- (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.

(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.

(3) 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) in relation to proficiency in the Irish language with respect to teachers in primary and post-primary schools.

(4) 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
- (b) the production and evaluation of information about any qualification other than such a specified qualification.

(5) 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.

(6) Nothing in 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—

- (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.

F53[(2) For the purposes of this Part a difference of treatment which is based on a characteristic related to any of the discriminatory grounds (except the gender ground) shall not constitute discrimination where, by reason of the particular occupational activities concerned or of the context in which they are carried out—

- (a) the characteristic constitutes a genuine and determining occupational requirement, and
- (b) the objective is legitimate and the requirement proportionate.

(3) It is an occupational requirement for employment in the Garda Síochána, prison service or any emergency service that persons employed therein are fully competent and available to undertake, and fully capable of undertaking, the range of functions that they may be called upon to perform so that the operational capacity of the Garda Síochána or the service concerned may be preserved.

(4) If—

- (a) the Minister is of opinion that the age profile of members of the Garda Síochána, prison service or any emergency service is such that its operational capacity is or is likely to be adversely affected, and
- (b) he or she by order so declares,

the age ground shall not apply in relation to such competitions for recruitment to that service as are specified in the order.

(5) In relation to discrimination on the age ground or disability ground, nothing in this Part or Part II applies in relation to employment in the Defence Forces.

(6) In subsection (4)(a) the reference to the Minister, in relation to an emergency service, is a reference to the Minister of the Government with official functions in regard to that service.]

Annotations

Amendments:

F53 Substituted (18.07.2004) by *Equality Act 2004* (24/2004), s. 25, commenced on enactment.

PART V

EQUALITY AUTHORITY

Annotations

Modifications (not altering text):

C7 Potential liability in relation to Part V (ss. 38-67) excluded (25.10.2000) by *Equal Status Act 2000* (8/2000), s. 36(1), S.I. No. 351 of 2000.

Supplementary provisions as to information.

36.—(1) Where, in the course or for the purposes of any investigation, mediation or hearing under this Part, or of any inquiry under Part V of the Employment Equality Act, 1998, any person discloses information to the Authority, the Director or any other person entitled to obtain it, the disclosure shall not give rise to any liability (in contract, tort or otherwise) on the part of the person making it.

...

General

Continuation of
Employment
Equality Agency
as Equality
Authority.

38.—(1) The Employment Equality Agency established by section 34 of the Employment Equality Act, 1977, shall continue as a body corporate with perpetual succession and power to sue and be sued in its corporate name and to acquire, hold and dispose of land and on and after the coming into operation of this section 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.

(2) Every person who, immediately before the day of the coming into operation of this section, held office as the chairman or as an ordinary member of the Agency shall cease to hold the office on that day.

Functions of
Authority.

39.—The Authority shall have, in addition to the functions assigned to it by any other provision of this Act or of any other Act, the following general functions:

- (a) to work towards the elimination of discrimination in relation to employment;
- (b) to promote equality of opportunity in relation to the matters to which this Act applies;

F54[(bb) to provide information to the public on the working of the Parental Leave Act, 1998,]

(c) to provide information to the public on and to keep under review the working of this Act, the Maternity Protection Act, 1994, and the Adoptive Leave Act, 1995, and, whenever it thinks necessary, to make proposals to the Minister for amending any of those Acts; and

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

Annotations

Amendments:

F54 Inserted (3.12.1998) by *Parental Leave Act 1998* (30/1998), s. 25(5), commenced as per s. 1(2).

Strategic Plans. **40.**—(1) As soon as practicable after the coming into operation of *section 38* and thereafter within 6 months before each third anniversary of such coming into operation, the Authority shall prepare and submit to the Minister, for approval by the Minister with or without amendment, a strategic plan for the ensuing 3 year period.

(2) A strategic plan shall—

(a) comprise the key objectives, outputs and related strategies, including use of resources, of the Authority,

(b) be prepared in a form and manner in accordance with any directions issued from time to time by the Minister, and

(c) have regard to the need to ensure the most beneficial, effective and efficient use of the resources of the Authority.

(3) The Minister shall, as soon as practicable after the strategic plan has been approved, cause a copy of the strategic plan to be laid before each House of the Oireachtas.

Membership. **41.**—F55[(1) The Authority shall consist of not less than 12 and not more than 16 members appointed by the Minister—

(a) of whom one shall be appointed as the chairperson of the Authority, and

(b) of whom, of the number appointed at any one time, the difference between the number of males appointed and the number of females appointed shall be not more than 2.]

(2) F56[...]

(3) The Authority may act notwithstanding any vacancy or vacancies among its members.

Annotations

Amendments:

F55 Substituted (20.07.2008) by *Civil Law (Miscellaneous Provisions) Act 2008* (14/2008), s. 82, S.I. No. 274 of 2008.

F56 Deleted (20.07.2008) by *Civil Law (Miscellaneous Provisions) Act 2008* (14/2008), s. 82, S.I. No. 274 of 2008.

Chairperson.

42.—(1) The chairperson shall be appointed either in a whole-time or a part-time capacity and shall hold office for not more than 4 years on such terms and conditions as the Minister, with the consent of the Minister for Finance, may determine.

(2) The chairperson shall be paid, out of moneys provided by the Oireachtas, such remuneration and allowances and expenses as the Minister, with the consent of the Minister for Finance, may determine.

(3) The chairperson may at any time resign that office by letter addressed to the Minister and the resignation shall take effect on the date of the receipt of the letter by the Minister.

(4) The Minister may at any time, for stated reasons, remove the chairperson from office.

Annotations**Modifications (not altering text):**

C8 Functions of Minister for Finance under subs. (1) and (2) transferred to Minister for Public Expenditure and Reform (29.07.2011) by *Finance (Transfer of Departmental Administration and Ministerial Functions) Order 2011* (S.I. No. 418 of 2011), art. 3(a) and sch. 1.

3. The functions conferred on the Minister for Finance by or under the provisions of —

(a) the enactments specified in Schedule 1, and ...

are transferred to the Minister for Public Expenditure and Reform.

Disqualification.

43.—(1) Where a person who is the chairperson or an ordinary member of the Authority is—

(a) nominated as a member of Seanad Éireann,

(b) elected as a member of either House of the Oireachtas or to the European Parliament, or

(c) regarded pursuant to section 19 of the European Parliament Elections Act, 1997, as having been elected to the European Parliament to fill a vacancy,

the person shall thereupon cease to be chairperson or an ordinary member of the Authority.

(2) A person who is for the time being entitled under the Standing Orders of either House of the Oireachtas to sit therein or who is a member of the European Parliament shall, while so entitled or such a member, be disqualified from becoming chairperson or an ordinary member of the Authority.

(3) A person who is a member of the Authority shall be disqualified from holding and shall cease to hold office if that person is adjudged bankrupt or makes a composition or arrangement with creditors or, on conviction on indictment by a court of competent jurisdiction, is sentenced to imprisonment, or if he or she ceases to be ordinarily resident in the State.

Ordinary members.

44.—(1) Of the ordinary members of the Authority—

(a) two, one male and one female, shall be persons appointed on the nomination by such organisations representative of employees as the Minister considers appropriate,

(b) two, one male and one female, shall be persons appointed on the nomination by such organisations representative of employers as the Minister considers appropriate, and

(c) the remaining number shall be such persons as appear to the Minister to be persons who have knowledge of, or experience in—

- (i) consumer, social affairs or equality issues, including issues related to the experience and circumstances of groups who are disadvantaged by reference to gender, F57[civil status], family status, sexual orientation, religion, age, disability, race, colour, nationality, ethnic or national origin or membership of the F58[Traveller] community,
- (ii) issues related to the provision of goods or services, or
- (iii) such other subject-matter (including law, finance, management or administration) as appears to the Minister to be relevant to the issues to which the functions of the Authority relate.

(2) Each ordinary member of the Authority shall be a part-time member and, subject to this Act, shall hold office for not more than 4 years on such terms and conditions as the Minister, with the consent of the Minister for Finance, may determine.

(3) The Minister may at any time, for stated reasons, remove an ordinary member of the Authority from office.

F59[(4) Each ordinary member of the Authority shall be paid, out of moneys provided by the Oireachtas, such remuneration (if any) and allowances and expenses as the Minister, with the consent of the Minister for Finance, may sanction.]

(5) An ordinary member of the Authority may resign as such a member by letter addressed to the Minister and the resignation shall take effect on the date of the receipt of the letter by the Minister.

(6) Where a casual vacancy occurs among any members of the Authority nominated as mentioned in *subsection (1)(a) or (b)*, the Minister shall forthwith invite the organisation which made the nomination concerned to nominate a person (being a person of the same sex as the former member concerned) for appointment to fill the vacancy and the Minister shall appoint to fill the vacancy the person so nominated.

(7) Where a person is appointed a member of the Authority to fill a casual vacancy, such member shall hold office for the unexpired period of offices of the person that he or she replaced as a member.

Annotations

Amendments:

F57 Substituted (1.01.2011) by *Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010* (24/2010), s. 102(3), S.I. No. 648 of 2010.

F58 Substituted (25.10.2000) by *Equal Status Act 2000* (8/2000), s. 39 and sch. para. (f), S.I. No. 351 of 2000.

F59 Substituted (18.07.2004) by *Equality Act 2004* (24/2004), s. 26, commenced on enactment.

Modifications (not altering text):

C9 Functions of Minister for Finance under subss. (2) and (4) transferred to Minister for Public Expenditure and Reform (29.07.2011) by *Finance (Transfer of Departmental Administration and Ministerial Functions) Order 2011* (S.I. No. 418 of 2011), art. 3(a) and sch. 1.

3. The functions conferred on the Minister for Finance by or under the provisions of —

(a) the enactments specified in Schedule 1, and ...

are transferred to the Minister for Public Expenditure and Reform.

Chairperson and ordinary members may be re-appointed. **45.**—The chairperson and an ordinary member of the Authority whose term of office expires by effluxion of time shall be eligible for re-appointment as the chairperson or an ordinary member.

Vice-chairperson. **46.**—(1) The Minister shall appoint one of the ordinary members of the Authority to be vice-chairperson of the Authority with the function of acting as chairperson in the absence of the chairperson.

(2) The vice-chairperson shall be paid, out of moneys provided by the Oireachtas, such remuneration and allowances and expenses as the Minister, with the consent of the Minister for Finance, may determine.

Annotations

Modifications (not altering text):

C10 Functions of Minister for Finance under subs. (2) transferred to Minister for Public Expenditure and Reform (29.07.2011) by *Finance (Transfer of Departmental Administration and Ministerial Functions) Order 2011* (S.I. No. 418 of 2011), art. 3(a) and sch. 1.

3. The functions conferred on the Minister for Finance by or under the provisions of —

(a) the enactments specified in Schedule 1, and ...

are transferred to the Minister for Public Expenditure and Reform.

Meetings and business. **47.**—(1) The Authority shall hold such and so many meetings as may be necessary for the performance of its functions and subject to this Act may make arrangements for the conduct of its meetings and business.

(2) Arrangements referred to in *subsection (1)* may, with the approval of the Minister, provide for the discharge, under the general direction of the Authority, of any of its functions by a sub-committee of the Authority.

(3) The Minister may fix or sanction the date, time and place of the first meeting of the Authority to take place after the coming into operation of this subsection.

F60[(4) The quorum for a meeting of the Authority shall be—

(a) if there are 12 or 13 members appointed, 6 members,

(b) in any other case, 7 members.]

(5) At a meeting of the Authority—

(a) the chairperson shall, if present, take the chair,

(b) in the absence of the chairperson or, if the office of chairperson is vacant, the vice-chairperson of the Authority shall take the chair, and

(c) if and so long as—

(i) the chairperson is not present or the office of chairperson is vacant, and

(ii) the vice-chairperson of the Authority is not present or the office of vice-chairperson is vacant,

the members of the Authority shall choose one of their number to take the chair at the meeting.

(6) The chairperson and each ordinary member of the Authority attending a meeting of the Authority shall have one vote.

(7) Every question at a meeting of the Authority shall be determined by a majority of the votes cast on the question and, in the case of an equal division of votes, the person who chairs the meeting shall have a second or casting vote.

Annotations

Amendments:

F60 Substituted (20.07.2008) by *Civil Law (Miscellaneous Provisions) Act 2008 (14/2008)*, s. 83, S.I. No. 274 of 2008.

Advisory committees.

48.—(1) The Authority may from time to time appoint such and so many advisory committees as it thinks fit to advise it on matters relating to its functions, for such period and subject to such terms of reference as it thinks appropriate.

(2) Where the Authority has appointed an advisory committee, it shall appoint one of the members of the committee as the presiding member and another as a vice presiding member who shall act in the absence of the presiding member.

(3) The presiding member of an advisory committee shall be paid out of moneys at the disposal of the Authority such fee for attendance at meetings of the committee as the Minister, with the consent of the Minister for Finance, may sanction.

(4) Each member of an advisory committee shall be paid out of moneys at the disposal of the Authority such allowance for expenses incurred by the member as the Minister, with the consent of the Minister for Finance, may sanction.

Annotations

Modifications (not altering text):

C11 Functions of Minister for Finance under subss. (3) and (4) transferred to Minister for Public Expenditure and Reform (29.07.2011) by *Finance (Transfer of Departmental Administration and Ministerial Functions) Order 2011 (S.I. No. 418 of 2011)*, art. 3(a) and sch. 1.

3. The functions conferred on the Minister for Finance by or under the provisions of —

(a) the enactments specified in Schedule 1, and ...

are transferred to the Minister for Public Expenditure and Reform.

Chief Executive Officer.

49.—(1) There shall be a chief executive officer of the Authority (who shall be known, and is referred to in this Act as the “Chief Executive Officer”).

(2) The Chief Executive Officer shall manage and control generally the staff, administration and business of the Authority and perform such other functions as may be conferred on him or her by or under this Act or determined by the Authority.

(3) The Chief Executive Officer shall be responsible to the Authority for the performance of his or her functions and the implementation of the Authority’s policies.

(4) The Chief Executive Officer shall provide to the Authority such information, including financial information, in relation to the performance of his or her functions as the Authority may from time to time require.

(5) Such of the functions of the Chief Executive Officer as may from time to time be specified by him or her may, with the consent of the Authority, be performed by such member of the staff of the Authority as may be authorised by the Chief Executive Officer.

(6) The functions of the Chief Executive Officer may be performed during his or her absence or when the position of Chief Executive Officer is vacant by such member of the staff of the Authority as may from time to time be designated for that purpose by the Authority.

(7) The first Chief Executive Officer shall be appointed, and may be removed from office at any time, by the Minister; each subsequent Chief Executive Officer (including any person re-appointed as Chief Executive Officer) shall be appointed, and may be removed from office at any time, by the Authority with the consent of the Minister.

Accountability of
Chief Executive
Officer.

50.—(1) The Chief Executive Officer of the Authority shall, whenever required by the Committee of Dáil Éireann established under the Standing Orders of Dáil Éireann to examine and report to Dáil Éireann on the appropriation accounts and reports of the Comptroller and Auditor General, give evidence to that committee on—

- (a) the regularity and propriety of the transactions recorded or required to be recorded in any book or other record of account subject to audit by the Comptroller and Auditor General which the Chief Executive Officer or the Authority is required by or under statute to prepare,
- (b) the economy and efficiency of the Authority in the use of its resources,
- (c) the systems, procedures and practices employed by the Authority for the purpose of evaluating the effectiveness of its operations, and
- (d) any matter affecting the Authority referred to in a special report of the Comptroller and Auditor General under section 11(2) of the Comptroller and Auditor General (Amendment) Act, 1993, or in any other report of the Comptroller and Auditor General (in so far as it relates to a matter specified in *paragraph (a), (b) or (c)*) that is laid before Dáil Éireann.

(2) In the performance of duties under this section, the Chief Executive Officer shall not question or express an opinion on the merits of any policy of the Government or a Minister of the Government or on the merits of the objectives of such a policy.

Staff.

51.—(1) The Minister may, after consultation with the Authority, appoint such number of persons to be members of the staff of the Authority as may be approved by the Minister for Finance.

(2) The Minister shall, after consultation with the Authority and with the consent of the Minister for Finance, determine the grades of staff of the Authority and the numbers of staff in each grade.

F61[(3) Each appointment under this section or section 49 shall—

- (a) be on such terms as the Minister, after consultation with the Authority and with the consent of the Minister for Finance, may determine, and
- (b) be subject to the F62[Public Service Management (Recruitment and Appointments) Act 2004] and the Civil Service Regulation Acts 1956 to 1996.]

Annotations

Amendments:

F61 Substituted (18.07.2004) by *Equality Act 2004 (24/2004)*, s. 27, commenced on enactment.

F62 Substituted (6.10.2004) by *Public Service Management (Recruitment and Appointments) Act 2004 (33/2004)*, s. 61(1), sch. 2 part 1, commenced on enactment.

Modifications (not altering text):

- C12** Functions of Minister for Finance under section transferred to Minister for Public Expenditure and Reform (29.07.2011) by *Finance (Transfer of Departmental Administration and Ministerial Functions) Order 2011* (S.I. No. 418 of 2011), art. 3(a) and sch. 1.

3. The functions conferred on the Minister for Finance by or under the provisions of —

(a) the enactments specified in Schedule 1, and ...

are transferred to the Minister for Public Expenditure and Reform.

- C13** Functions of Minister for Finance under subs. (2) transferred to Minister for Public Expenditure and Reform (6.07.2011) by *Ministers and Secretaries (Amendment) Act 2011* (10/2011), s. 9(2) and sch. 2 part 1, S.I. No. 401 of 2011.

Transfer of certain other functions to Minister.

9.— ...

(2) The functions conferred on the Minister for Finance by or under any of the provisions specified in Part 1 of Schedule 2 are transferred to the Minister.

...

SCHEDULE 2**Functions Transferred To Minister****PART 1****Functions performable with consent of Minister for Finance STATUTES**

...

No. 21 of 1998 — Employment Equality Act 1998 — Section 55(2)

...

Seal of Authority. **52.—**(1) The Authority shall provide itself with a seal which shall be authenticated by the chairperson or some other member of the Authority authorised by it to act on its behalf and by the signature of an officer of the Authority authorised by it to act in that behalf.

(2) Judicial notice shall be taken of the seal of the Authority and any document sealed with the seal shall be admissible in evidence.

Accounts and audits.

53.—(1) The Chief Executive Officer, following the agreement of the Authority, shall—

(a) submit estimates of income and expenditure to the Minister in such form in respect of such periods and at such times as may be required by the Minister, and

(b) furnish to the Minister any information which the Minister may require in relation to such estimates, including proposals and future plans relating to the discharge by the Authority of its functions over a period of years.

(2) The Chief Executive Officer, under the direction of the Authority, shall cause to be kept all proper and usual books or other records of account of—

(a) all income and expenditure of the Authority,

(b) the sources of such income and the subject matter of such expenditure, and

(c) the property, assets and liabilities of the Authority,

and shall keep and account to the Authority for all such special accounts as the Minister or the Authority, with the consent of the Minister, may from time to time direct to be kept.

(3) The financial year of the Authority shall be the period of 12 months ending on the 31st day of December in any year.

(4) The Authority, the Chief Executive Officer and the other officers of the Authority shall, whenever so requested by the Minister, permit any person appointed by the Minister to examine the books or other records of account of the Authority in respect of any financial year or other period and shall facilitate any such examination, and the Authority shall pay such fee therefor as may be fixed by the Minister.

(5) The accounts of the Authority for each financial year shall—

(a) be prepared in such form and manner as may be specified by the Minister, and

(b) be prepared by the Chief Executive Officer and approved by the Authority as soon as practicable but not later than 3 months after the end of the financial year to which they relate for submission to the Comptroller and Auditor General for audit,

and a copy of the accounts and the auditor's report thereon shall be presented, as soon as practicable, to the Authority and to the Minister.

(6) The Minister shall cause a copy of the accounts and the auditor's report referred to in *subsection (5)* to be laid before each House of the Oireachtas.

Annual report and provision of information to Minister.

54.—(1) The Authority shall, within 6 months of the commencement of every calendar year, make a report to the Minister on the activities of the Authority in respect of the previous calendar year, or in the case of the first calendar year during which *section 38* came into operation, that part of the calendar year in which *section 38* was in operation.

(2) A report under *subsection (1)* shall include information on the performance of the functions of the Authority during the period to which the report relates and, without prejudice to the generality of the foregoing, shall include in the report—

(a) an account of any equality review made in that period,

(b) such information as the Authority considers appropriate concerning the implementation of equality action plans in that period, and

(c) such other information in such form as the Authority thinks fit or the Minister may direct.

(3) The Authority shall, if so requested by the Minister, furnish to the Minister such information as the Minister may request relating to—

(a) any matter concerning the policy and activities of the Authority generally,

(b) any specific matter or account prepared by it, or

(c) any report specified in *subsection (1)*,

and the information shall be furnished by the Chief Executive Officer acting under the general authority of the Authority.

(4) The Minister shall cause a copy of every report under *subsection (1)* to be laid before each House of the Oireachtas.

(5) In *subsection (2)* "equality review" and "equality action plan" have the same meanings as in *Part VI*.

Grants and borrowing powers.

55.—(1) In each financial year there may be paid to the Authority out of moneys provided by the Oireachtas a grant of such amount as the Minister, with the consent of the Minister for Finance, may sanction towards the expenses of the Authority in the performance of its functions.

(2) The Authority may, with the consent of the Minister given with the concurrence of the Minister for Finance, borrow temporarily such sums of money as it may require for the purpose of providing for current expenditure.

Annotations

Modifications (not altering text):

C14 Functions of Minister for Finance under subs. (1) transferred to Minister for Public Expenditure and Reform (29.07.2011) by *Finance (Transfer of Departmental Administration and Ministerial Functions) Order 2011* (S.I. No. 418 of 2011), art. 3(a) and sch. 1.

3. The functions conferred on the Minister for Finance by or under the provisions of —

(a) the enactments specified in Schedule 1, and ...

are transferred to the Minister for Public Expenditure and Reform.

Codes of practice. 56.—(1) The Authority may, or if requested to do so by the Minister shall, prepare for submission to the Minister draft codes of practice in furtherance of either or both of the following aims:

F63[(a) the elimination of discrimination; and

(b) the promotion of equality of opportunity in employment and in relation to the matters to which the Equal Status Act, 2000, applies.]

(2) Before submitting a draft code of practice under *subsection (1)* to the Minister, 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.

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

(a) is an approved code of practice for the purposes of this Act, or

(b) as amended by the Minister after consultation with the Authority, is an approved code of practice for the purposes of this Act,

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

(4) An approved code of practice shall be admissible in evidence and, if any provision of the code appears to be relevant to any question arising in any criminal or other proceedings, it shall be taken into account in determining that question; and for this purpose “proceedings” includes, in addition to proceedings before a court and under *Part VII* F64[or under *Part III of the Equal Status Act, 2000*], proceedings before the Labour Court, the Labour Relations Commission, the Employment Appeals Tribunal, the Director and a rights commissioner.

(5) The Minister may, by order, after consultation with the Authority, revoke or amend an approved code of practice.

(6) Every order made under *subsection (3)* or *(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 21 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 thereunder.

Annotations**Amendments:**

F63 Substituted (25.10.2000) by *Equal Status Act 2000* (8/2000), s. 39 and sch. para. (g)(i), S.I. No. 351 of 2000.

F64 Inserted (25.10.2000) by *Equal Status Act 2000* (8/2000), s. 39 and sch. para. (g)(ii), S.I. No. 351 of 2000.

Editorial Notes:

E13 Power pursuant to subs. (3) exercised (8.03.2002) by *Employment Equality Act 1998 (Code of Practice) (Harassment) Order 2002* (S. I. No. 78 of 2002).

Research and information.

57.—(1) The Authority may undertake or sponsor such research and undertake or sponsor such activities relating to the dissemination of information as it considers necessary and as appear expedient for the purpose of performing any of its functions.

(2) The Authority may make charges for any services provided by it under *subsection (1)*.

(3) For the purpose of assisting it in the performance of its functions under this section the Authority may, with the approval of the Minister, employ any person or persons having qualifications which in the opinion of the Authority relate to those functions.

Inquiries by Authority

Inquiries.

58.—(1) Subject to *subsection (4)*, the Authority may, for any purpose connected with the performance of its functions, conduct an inquiry, and shall do so where required by the Minister.

(2) An inquiry may be conducted—

(a) by a member of the Authority, or

(b) by a member of its staff as may be delegated by the Authority for the purpose, or

(c) by a person duly employed under *subsection (3)* as may be delegated by the Authority for the purpose, or

(d) by more than one person, to each of whom *paragraph (a), (b) or (c)* relates,

and the person or persons conducting the inquiry shall, for the purposes of the inquiry, have all the functions of the Authority.

(3) For the purposes of an inquiry provided for by this section, the Authority may, with the approval of the Minister, employ one or more persons having qualifications which, in the opinion of the Authority, are relevant to the conduct of the inquiry.

(4) The Authority shall not conduct an inquiry until—

(a) terms of reference for the inquiry have been drawn up by the Authority or, if the inquiry is one which the Minister has required, by the Minister after consultation with the Authority, and

(b) notice of intention to conduct the inquiry has been given by the Authority—

(i) by publishing it in at least one daily newspaper circulating generally in the State, or

(ii) where the terms of reference refer to a specified person, by providing the person with a copy of the notice in writing.

Obtaining information etc. for purposes of inquiry.

59.—(1) The Authority may, for the purposes of an inquiry under *section 58*, do all or any of the following:

(a) require any person, by notice delivered to that person, to supply to the Authority such information as it specifies in the notice and requires for the purpose of the inquiry;

(b) require any person, by notice delivered to that person, to produce to the Authority or to send to it, any document specified in the notice and in that person's power or control;

(c) summon witnesses, by notice delivered to them, to attend before the Authority;

(d) administer oaths and affirmations to witnesses and examine witnesses attending before the Authority.

(2) A notice shall not be regarded as delivered to a person for the purposes of any paragraph of *subsection (1)* unless it is delivered to the person—

(a) personally, or

(b) by registered post,

and the notice shall be signed by at least one member of the Authority.

(3) No notice under *subsection (1)* shall be delivered unless—

(a) the Authority has obtained the Minister's consent to the delivery, or

F65 (b) the Authority believes that a person named in the terms of reference of the inquiry to which the notice relates—

(i) has discriminated or is discriminating,

(ii) has contravened or is contravening *section 8(4)* or *10(1)*,

(iii) has failed or is failing to comply with an equality clause or an equal remuneration term, or

(iv) has contravened *section 12(1)* (prohibited advertising) of the *Equal Status Act, 2000*.]

(4) The Authority may make, to a person who attends before it as a witness, such payments in respect of subsistence and travelling expenses as the Minister, with the consent of the Minister for Finance, may determine.

Annotations

Amendments:

F65 Substituted (25.10.2000) by *Equal Status Act 2000 (8/2000)*, s. 39 and sch. para. (h), S.I. No. 351 of 2000.

Modifications (not altering text):

C15 Functions of Minister for Finance under subs. (4) transferred to Minister for Public Expenditure and Reform (29.07.2011) by *Finance (Transfer of Departmental Administration and Ministerial Functions) Order 2011* (S.I. No. 418 of 2011), art. 3(a) and sch. 1.

3. The functions conferred on the Minister for Finance by or under the provisions of —

(a) the enactments specified in Schedule 1, and ...

are transferred to the Minister for Public Expenditure and Reform.

Offences relating to inquiries etc.

60.—(1) Every person who—

(a) fails or refuses to supply to the Authority information required by it and specified in a notice under *section 59(1)(a)*,

(b) fails or refuses to produce or send to the Authority any document in that person's power or control as required by a notice under *section 59(1)(b)*,

(c) on being duly summoned as a witness by a notice under *section 59(1)(c)*, fails or refuses to attend before the Authority,

(d) being in attendance as a witness before the Authority, refuses to take an oath or affirmation when required by the Authority to do so or to answer any question to which the Authority may require an answer, or

(e) does anything which, if the Authority were a court of justice having power to commit for contempt of court, would be contempt of court,

shall be guilty of an offence.

(2) The court by which a person is convicted of an offence under *paragraph (a)*, *(b)* or *(c)* of *subsection (1)* may require the person to comply with the notice referred to in that paragraph.

(3) A person to whom a notice has been delivered under *section 59(1)(a)* who—

(a) makes a false statement when supplying to the Authority information specified in the notice, or

(b) alters, suppresses, conceals or destroys a document specified in the notice,

shall be guilty of an offence.

Recommendations arising out of and reports of inquiries.

61.—F66[(1) After it has conducted an inquiry under *section 58*, or in the course of such an inquiry, the Authority may make to any person, including the Minister, recommendations arising out of the inquiry for the purpose of promoting either or both of the general functions of the Authority specified in paragraphs (a) and (b) of *section 39* or, as appropriate, in paragraphs (a) and (b) of *section 39* of the *Equal Status Act, 2000*.]

(2) As soon as practicable after it has conducted an inquiry under *section 58* the Authority shall prepare or cause to be prepared a report of the inquiry and the report shall contain any findings of the Authority arising out of the inquiry.

(3) Where the inquiry under *section 58* was one required by the Minister, a copy of the report under *subsection (2)* shall be sent to the Minister as soon as practicable after its preparation.

(4) As soon as practicable after—

(a) the preparation of a report under *subsection (2)* that is not required to be sent to the Minister under *subsection (3)*, the Authority, or

(b) the receipt of a copy of a report sent to the Minister under *subsection (3)*, the Minister,

shall cause the report to be published or otherwise made available and give notice to the public of the publication or availability.

(5) Any information obtained by the Authority in the exercise of its powers under *section 59* concerning any organisation or person or the business carried on by any organisation or person, which is not available otherwise, shall not—

(a) be included in a report under this section without the consent of the organisation or the person concerned, unless the non-inclusion would be inconsistent with the duties of the Authority and the object of the report, and

(b) without such consent, be disclosed by any person concerned in any criminal or other proceedings under this Act.

Annotations

Amendments:

F66 Substituted (25.10.2000) by *Equal Status Act 2000 (8/2000)*, s. 39 and sch. para. (i), S.I. No. 351 of 2000.

Non-discrimination notices.

62.—(1) Where, in the course of the conduct of an inquiry or after such an inquiry has been conducted, the Authority is satisfied that any person—

(a) has discriminated or is discriminating,

F67[(b) has contravened or is contravening section 8(4) or 10(1) or section 12(1) of the Equal Status Act, 2000, or]

(c) has failed or is failing to comply with an equality clause or an equal remuneration term,

the Authority may serve a non-discrimination notice on that person, either by personal delivery or by registered post.

(2) Where the Authority proposes to serve a non-discrimination notice on any person, it shall, before the notice is served, notify the person in writing of its proposal to do so.

(3) Notification under *subsection (2)* of a proposal to serve a non-discrimination notice shall—

(a) specify the act or omission constituting the discrimination, contravention or failure referred to in *subsection (1)* to which the notification relates, and

(b) inform the person concerned of the right to make representations to the Authority in accordance with *subsection (4)*.

(4) A person who has received a notification under *subsection (2)* may, within 28 days of the receipt, make representations to the Authority regarding the proposal, and where any such representations are made, the Authority shall consider them before serving a non-discrimination notice on the person.

(5) A non-discrimination notice shall—

(a) specify the act or omission constituting the discrimination, contravention or failure referred to in *subsection (1)* to which the non-discrimination notice relates,

- (b) require the person on whom it is served not to commit the act or omission constituting the discrimination or contravention or, where appropriate, to comply with the equality clause or equal remuneration term,
- (c) specify, in the case of a discrimination, what steps the Authority requires to be taken by the person on whom it is served in order not to commit the discrimination,
- (d) require the person on whom it is served, within a period specified in the non-discrimination notice, to inform the Authority and any other persons so specified of the steps taken in order to comply with the notice, and
- (e) require the person on whom it is served, within a period specified in the non-discrimination notice, to supply the Authority with any additional information so specified.

Annotations**Amendments:**

- F67** Substituted (25.10.2000) by *Equal Status Act 2000* (8/2000), s. 39 and sch. para. (j), S.I. No. 351 of 2000.

Appeal against non-discrimination notice.

63.—F68[(1) Subject to subsection (6), a person on whom a non-discrimination notice has been served may appeal to the Labour Court within 42 days of the date of service against the notice or any requirement of the notice.]

(2) Where an appeal under *subsection (1)* is not made, a non-discrimination notice shall come into operation on the expiry of the 42 day period referred to in that subsection.

(3) Where the Labour Court has heard an appeal under *subsection (1)*, it may either confirm the notice in whole or in part, with or without an amendment of the notice, or allow the appeal.

(4) Where the Labour Court confirms a non-discrimination notice, the notice, as so confirmed in whole or in part, shall come into operation on such date as it shall fix.

(5) Where the Labour Court allows an appeal under *subsection (1)*, the non-discrimination notice appealed against shall cease to have effect.

F69[(6) Where a non-discrimination notice relates to prohibited conduct within the meaning of the *Equal Status Act, 2000*, or to a contravention of *section 12(1)* of that Act, the person on whom the notice has been served may appeal to the District Court, and for that purpose references in this section to the Labour Court shall be construed as references to the District Court.

(7) The jurisdiction of the District Court under this section shall be exercised by a judge of that Court for the time being assigned to the district court district in which the person on whom the non-discrimination notice has been served ordinarily resides or carries on any profession, business or occupation.]

Annotations**Amendments:**

- F68** Substituted (25.10.2000) by *Equal Status Act 2000* (8/2000), s. 39 and sch. para. (k)(i), S.I. No. 351 of 2000.

F69 Inserted (25.10.2000) by *Equal Status Act 2000* (8/2000), s. 39 and sch. para. (k)(ii), S.I. No. 351 of 2000.

Register of non-discrimination notices.

64.—The Authority shall keep and maintain a register of every non-discrimination notice which has come into operation and the register shall be open to inspection by any person at all reasonable times.

Injunctions for failure to comply with non-discrimination notice.

65.—(1) Subject to *subsection (2)*, the High Court or the Circuit Court may, on the motion of the Authority, grant an injunction to prevent discrimination by a person specified in the order of the court concerned of a type so specified.

(2) *Subsection (1)* applies to a case where, in the period of 5 years beginning on the date on which a non-discrimination notice came into operation, the Authority satisfies the High Court or the Circuit Court, as the case may be, that there is a likelihood of a further discrimination, contravention or failure referred to in *section 62 (1)* by the person on whom the notice was served.

(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 non-discrimination notice was served ordinarily resides or carries on any profession, business or occupation.

Offence relating to failure to comply with non-discrimination notice.

66.—A person on whom a non-discrimination notice is served who, at any time within the period of 5 years beginning on the date on which the notice comes into operation, does not comply with the notice, shall be guilty of an offence.

Assistance by Authority in connection with certain references.

67.—F70[(1) A person who considers—

(a) that discrimination has been directed against the person by another person,
(b) that he or she has been adversely affected by the failure or refusal by another person—

(i) to comply with an equality clause or an equal remuneration term,

(ii) to implement a decision, order or determination under this Part or under *Part III* of the *Equal Status Act, 2000*, or

(iii) to implement a mediated settlement under *section 78* or under *section 24* of that Act,

or

(c) that a club referred to in *section 8* of that Act is a discriminating club within the meaning of that section,

may make a request to the Authority for assistance in taking proceedings in respect of which redress is provided for under this Act or that Act or, as the case may be, in making an application to the District Court under *section 8(3)* of that Act.]

(2) Where, having considered a request under *subsection (1)*, the Authority is satisfied that the case to which the request relates raises an important matter of principle, or it appears to the Authority that it is not reasonable to expect the person making the request adequately to present the case without assistance, the Authority may at its discretion, and at any stage, provide assistance to the person—

(a) in making the reference or application, and

(b) in any proceedings resulting from or arising out of the reference or application.

(3) Assistance under this section shall be in such form as the Authority at its discretion thinks fit.

(4) Any function of the Authority under this section may be exercised by an officer of the Authority to whom the function is delegated and any such delegation may specify criteria or other guidelines by reference to which the Authority considers that the delegated function should be exercised.

F71[(5) The relationship between a solicitor employed by the Authority or any barrister retained by him or her and a person requesting assistance under this section shall be the same as the relationship between a solicitor or barrister and a client who is not such a person.

(6) Subsection (5) is without prejudice to the rights and responsibilities of the Authority and the obligations arising out of the relationship between the Authority and the solicitors employed by it.

(7) For the avoidance of doubt, it is declared that sections 59 (prohibition of solicitor acting as agent for unqualified person) and 64 (bodies corporate) of the Solicitors Act 1954 do not apply in relation to the provision by a solicitor employed by the Authority of assistance under this section.

(8) In this section—

‘person requesting assistance’ includes a person to whom assistance is being, or has been, provided under this section;

‘relationship’ includes rights and privileges arising from the relationship.]

Annotations

Amendments:

F70 Substituted (25.10.2000) by *Equal Status Act 2000* (8/2000), s. 39 and sch. para. (l), S.I. No. 351 of 2000.

F71 Inserted (18.07.2004) *Equality Act 2004* (24/20004), s. 28, commenced on enactment.

PART VI

EQUALITY REVIEWS AND ACTION PLANS AND REVIEW OF LEGISLATION

Definition (*Part VI*).

68.—In this Part “substantive notice” means a notice under *subsection (1) or (2) of section 70* or such a notice as confirmed (with or without amendment) by the Labour Court **F72**[, or the District Court, under *section 71*].

Annotations

Amendments:

F72 Substituted (25.10.2000) by *Equal Status Act 2000* (8/2000), s. 39 and sch. para. (m), S.I. No. 351 of 2000.

Equality reviews and action plans.

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

- (a) an audit of the level of equality of opportunity which exists F73[...] in a particular business, group of businesses or the businesses making up a particular industry or sector thereof, and
- (b) an examination of the practices, procedures and other relevant factors (including the working environment) of, in and material F74[to that business or those businesses] to determine whether those practices, procedures or other factors are conducive to the promotion of equality of opportunity in that employment.

(2) For the purposes of this Part, an equality action plan is a programme of actions to be undertaken F75[...] in a business or businesses to further the promotion of equality of opportunity F74[therein].

F76[(2A) An equality review or an equality action plan which relates to matters governed both by this Act and by the *Equal Status Act, 2000*, shall deal separately with those matters, and the separate portions of the review or plan shall be treated, for the purposes of this Part, as an equality review or an equality action plan.]

(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:

- (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.

(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.

(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 F73[...].

F74[(7) For the purposes of this section:

(a) 'business' includes—

- (i) 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
- (ii) subject to clause (II) of this subparagraph, the provision of services by the provider of a service (within the meaning of *section 4(6)* of the *Equal Status Act, 2000*), and accordingly this section shall apply in relation to the provision of such services with the modifications that—
 - (I) the reference in *subsection (1)(a)* to a particular business shall be construed as including a reference to the provision of particular services, and
 - (II) the references in *subsections (4)* and *(5)* to a business shall be construed as including references to a provider of a service (within the meaning of the said *section 4(6)*), other than *paragraph (f)* thereof),

and any other necessary modifications;

(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.]

Annotations

Amendments:

- F73** Deleted (25.10.2000) by *Equal Status Act 2000* (8/2000), s. 39 and sch. para. (n)(i) and (v), S.I. No. 351 of 2000.
- F74** Substituted (25.10.2000) by *Equal Status Act 2000* (8/2000), s. 39 and sch. para. (n)(ii), (iii) and (vi), S.I. No. 351 of 2000.
- F75** Deleted (25.10.2000) by *Equal Status Act 2000* (8/2000), s. 39 and sch. para. (n)(iii), S.I. No. 351 of 2000.
- F76** Inserted (25.10.2000) by *Equal Status Act 2000* (8/2000), s. 39 and sch. para. (n)(iv), S.I. No. 351 of 2000.

Enforcement powers in respect of equality reviews and action plans.

70.—(1) Subject to *subsections (3) and (4)*, 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:

- (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 F77[is] required 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,

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 (3) and (4)*, 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—

- (a) is specified in the notice,
- (b) is reasonably required for the implementation of the plan, and
- (c) it is within that person's power to take.

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

(4) 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.

Annotations**Amendments:**

- F77** Inserted (25.10.2000) by *Equal Status Act 2000 (8/2000)*, s. 39 and sch. para. (o), S.I. No. 351 of 2000.

Appeal against substantive notice.

71.—F78[(1) Subject to subsection (6), a person on whom a substantive notice has been served may appeal to the Labour Court within 42 days of the date of service against the notice or any requirement of the notice.]

(2) Where an appeal under *subsection (1)* is not made, a substantive notice shall come into operation on the expiry of the 42 day period referred to in that subsection.

(3) Where the Labour Court has heard an appeal under *subsection (1)*, it may either confirm the notice in whole or in part (with or without an amendment of the notice) or allow the appeal.

(4) Where the Labour Court confirms a substantive notice, the notice (as so confirmed in whole or in part) shall come into operation on such date as it shall fix.

(5) Where the Labour Court allows an appeal under *subsection (1)*, the substantive notice appealed against shall cease to have effect.

F79[(6) Where a substantive notice concerns an equality review or equality action plan, or a proposed such review or plan, which relates to matters governed by the Equal Status Act, 2000, the person on whom the notice has been served may appeal to the District Court against the notice, and for that purpose references in this section to the Labour Court shall be construed as references to the District Court.

(7) The jurisdiction of the District Court under this section shall be exercised by a judge of that Court for the time being assigned to the district court district in which the person on whom the substantive notice was served ordinarily resides or carries on any profession, business or occupation.]

Annotations**Amendments:**

- F78** Substituted (25.10.2000) by *Equal Status Act 2000 (8/2000)*, s. 39 and sch. para. (p)(i), S.I. No. 351 of 2000.
- F79** Inserted (25.10.2000) by *Equal Status Act 2000 (8/2000)*, s. 39 and sch. para. (p)(ii), S.I. No. 351 of 2000.

Enforcement of substantive notices.

72.—(1) 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.

(2) 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.

Review of legislation.

73.—(1) Where, in the opinion of the Authority, the working or effect of any of the enactments for the time being specified in *subsections (1) to (4) 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—

(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.

PART VII

OTHER REMEDIES AND ENFORCEMENT

Annotations

Modifications (not altering text):

C16 Application of Part VII (ss. 74-105) restricted (18.07.2004) by *Equality Act 2004* (24/2004), s. 46(1) subject to transitional provisions in subs. (2).

Cesser of Labour Court jurisdiction to deal with claims for redress.

46.—(1) Subject to *subsection (2)* and section 83 of the Act of 1998, the Labour Court shall cease to have jurisdiction under Part VII of that Act in cases of dismissal in circumstances amounting to discrimination or victimisation, and accordingly the amendments set out in the Schedule to this Act shall have effect.

...

Introductory

Interpretation
(Part VII).

74.—(1) In this Part, unless the context otherwise requires:

“the complainant” has the meaning given by *section 77(4)*;

F80 [‘equality mediation officer’ and ‘equality officer’ mean officers appointed as such under *subsection (4)* or *(4A)* of *section 75*;]

“the Equal Pay Directive” means Council Directive No. 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 No. 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;

“the respondent” has the meaning given by *section 77(4)*;

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

F80[(2) For the purposes of this Part victimisation occurs where dismissal or other adverse treatment of an employee by his or her employer occurs as a reaction to—

- (a) a complaint of discrimination made by the employee to the employer,
- (b) any proceedings by a complainant,
- (c) an employee having represented or otherwise supported a complainant,
- (d) the work of an employee having been compared with that of another employee for any of the purposes of this Act or any enactment repealed by this Act,
- (e) an employee having been a witness in any proceedings under this Act or the Equal Status Act 2000 or any such repealed enactment,
- (f) an employee having opposed by lawful means an act which is unlawful under this Act or the said Act of 2000 or which was unlawful under any such repealed enactment, or
- (g) an employee having given notice of an intention to take any of the actions mentioned in the preceding paragraphs.

(3) For the purposes of sections 77, 78, 83, 87 and 90 the date on which a case is referred, or an appeal made, under those provisions is the date on which the reference or appeal is received by the Director, Labour Court or Circuit Court, as the case may be.]

Annotations

Amendments:

F80 Substituted and inserted (18.07.2004) by *Equality Act 2004* (24/2004), s. 29(a) and (b), commenced on enactment.

Modifications (not altering text):

C17 Application of section extended with modifications by *Pensions Act 1990* (25/1990), s. 81J and sch. 4, as inserted (5.04.2004) by *Social Welfare (Miscellaneous Provisions) Act 2004* (9/2004), s. 22, S.I. No. 141 of 2004, as amended (18.07.2004) by *Equality Act 2004* 24/2004), s. 66(3)(e), commenced on enactment.

Application of Employment Equality Act 1998.

81J.—(1) In this section ‘the Act of 1998’ means the Employment Equality Act 1998.

(2) Sections 74, [76, 77A], 78 to 81, 83 to 85 and 86 to 104 of the Act of 1998 shall, where appropriate, apply in relation to this Part as they apply in relation to that Act but with the following modifications.

(3) Those modifications are that for the words set out in column (3) of the Fourth Schedule at a particular reference number, being words appearing in a section or sections of the Act of 1998 specified in column (2) of that Schedule at that reference number, there shall be substituted in the place or, as the case may be, each place where those words occur in that section or sections the words set out in column (4) of that Schedule at that reference number.

Equality Investigations

Director of Equality Investigations and other officers.

75.—(1) The Minister, with the consent of the Minister for Finance, shall appoint a person to be the F81[**Director of the Equality Tribunal**] to perform the functions conferred on the Director by or under this Act or any other enactment.

(2) The office of the Director F82[**shall be known as the Equality Tribunal and**] shall consist of the Director and such staff as F83[...] may be appointed by the Minister,

with the consent of the Minister for Finance, to assist the Director in carrying out the Director's functions; and the Director and the persons so appointed to the staff of the Director shall be subject to the F84[Public Service Management (Recruitment and Appointments) Act 2004], and the Civil Service Regulation Acts, 1956 to 1996.

F82[(2A) (a) On the commencement of *section 30* of the Equality Act 2004—

(i) the person who is the Director of Equality Investigations shall be known as the Director of the Equality Tribunal, and

(ii) the office of the Director shall be known as the Equality Tribunal.

(b) References in any enactment to the Director of Equality Investigations shall be construed as references to the Director of the Equality Tribunal.]

F85[(3) The Director may from time to time issue guidelines or guidance notes governing the carrying out of their duties by equality officers and equality mediation officers.

(4) From among the Director's staff the Director may—

(a) appoint persons to be equality officers, and

(b) appoint persons, including equality officers, to be equality mediation officers.]

F82[F86[(4A) Other persons with relevant qualifications or experience may, with the approval of the Minister and the consent of the Minister for Public Expenditure and Reform, be appointed to be equality officers or equality mediation officers on such terms and conditions as may be so approved.]

(4B) The Director may delegate to an equality officer or an equality mediation officer any functions conferred on him or her under this Act or any other enactment.]

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

(6) Subject to *subsection (7)*, F86[the delegation of a function under *subsection (4B)*] shall not affect the continuing power of the Director to exercise that function concurrently with the officer to whom it is delegated.

(7) Where, under F87[*subsection (4B)*], the Director has delegated to an officer the function of hearing a case referred to the Director F86[under *section 77* or *86*, or under *section 21* of the Equal Status Act 2000—]

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

(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).

(8) The Director shall, within 6 months of the commencement of every calendar year, make a report to the Minister on the activities of the office of the Director in respect of the previous calendar year, or in the case of the first calendar year of operation, that part of the calendar year in which the office was in operation.

Annotations

Amendments:

F81 Substituted (18.07.2004) by *Equality Act 2004* (24/2004), s. 30(a), commenced on enactment.

- F82** Inserted (18.07.2004) by *Equality Act 2004 (24/2004)*, s. 30(b)(i), (c) and (d), commenced on enactment.
- F83** Deleted (18.07.2004) by *Equality Act 2004 (24/2004)*, s. 30(b)(ii), commenced on enactment.
- F84** Substituted (6.10.2004) by *Public Service Management (Recruitment and Appointments) Act 2004 (33/2004)*, s. 61(1) and sch. 2 part 1, commenced on enactment.
- F85** Substituted (18.07.2004) by *Equality Act 2004 (24/2004)*, s. 30(d), commenced on enactment.
- F86** Substituted (2.08.2011) by *Civil Law (Miscellaneous Provisions) Act 2011 (23/2011)*, s. 21, commenced on enactment.
- F87** Substituted (18.07.2004) by *Equality Act 2004 (24/2004)*, s. 30(e), commenced on enactment.

Redress

Right to information.

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

- (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,
- (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,

to decide whether to refer the matter under any provision of *section 77* 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 forms by which—

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

(2) Subject to *subsections (3) to (7)*, information is for the purposes of this section “material information” if it is—

- (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,
- (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

F88[(c) other information which is not confidential information or information about the scale or financial resources of the employer’s business and which, in the circumstances of the case in question, it is reasonable for X to require.]

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

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

F89[(a) the holder of a recruitment licence under the Public Service Management (Recruitment and Appointments) Act 2004 in the course of a recruitment or selection process, other than one designed to recruit or select only from and for the holder's own staff,]

(b) F90[...]

(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,

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).

(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.

(7) This section is without prejudice to the other provisions of this Act relating to the obtaining of information.

Annotations

Amendments:

F88 Substituted (18.07.2004) by *Equality Act 2004* (24/2004), s. 31, commenced on enactment.

F89 Substituted (6.10.2004) by *Public Service Management (Recruitment and Appointments) Act 2004* (33/2004), s. 61(1) and sch. 2 part 1, commenced on enactment.

F90 Deleted (6.10.2004) by *Public Service Management (Recruitment and Appointments) Act 2004* (33/2004), s. 61(1) and sch. 2 part 1, commenced on enactment.

Modifications (not altering text):

C18 Application of section extended with modifications by *Pensions Act 1990* (25/1990), s. 81J and sch. 4, as inserted (5.04.2004) by *Social Welfare (Miscellaneous Provisions) Act 2004* (9/2004), s. 22, S.I. No. 141 of 2004, as amended (18.07.2004) by *Equality Act 2004* 24/2004), s. 66(3)(e), commenced on enactment.

Application of Employment Equality Act 1998.

81J.—(1) In this section 'the Act of 1998' means the Employment Equality Act 1998.

(2) Sections 74, [76, 77A], 78 to 81, 83 to 85 and 86 to 104 of the Act of 1998 shall, where appropriate, apply in relation to this Part as they apply in relation to that Act but with the following modifications.

(3) Those modifications are that for the words set out in column (3) of the Fourth Schedule at a particular reference number, being words appearing in a section or sections of the Act of 1998 specified in column (2) of that Schedule at that reference number, there shall be substituted in

the place or, as the case may be, each place where those words occur in that section or sections the words set out in column (4) of that Schedule at that reference number.

Editorial Notes:

- E14** Power pursuant to subs. (1) exercised (18.10.1999) by *Employment Equality Act, 1998 (Section 76 - Right To Information) Regulations 1999* (S.I. No. 321 of 1999).

The forum for seeking redress.

77.—F91[(1) A person who claims—

- (a) to have been discriminated against or subjected to victimisation,
- (b) to have been dismissed in circumstances amounting to discrimination or victimisation,
- (c) not to be receiving remuneration in accordance with an equal remuneration term, or
- (d) not to be receiving a benefit under an equality clause,

in contravention of this Act may, subject to subsections (3) to (9), seek redress by referring the case to the Director.]

(2) F92[...]

F91[(3) If the grounds for such a claim arise—

- (a) under Part III, or
- (b) in any other circumstances (including circumstances amounting to victimisation) to which the Equal Pay Directive or Equal Treatment Directive is relevant,

then, subject to subsections (4) to (9), the person making the claim may seek redress by referring the case to the Circuit Court instead of to the Director.]

F93[(4) In this Part, in relation to a claim referred under any provision of this section—

- (a) ‘the complainant’ means—
 - (i) the person by whom it is referred, or
 - (ii) where such a person is unable, by reason of an intellectual or a psychological disability, to pursue it effectively, his or her parent, guardian or other person acting in place of a parent, and]
- (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.

F93[(5) (a) Subject to paragraph (b), a claim for redress in respect of discrimination or victimisation may not be referred under this section after the end of the period of 6 months from the date of occurrence of the discrimination or victimisation to which the case relates or, as the case may be, the date of its most recent occurrence.

- (b) On application by a complainant the Director or Circuit Court, as the case may be, may, for reasonable cause, direct that in relation to the complainant paragraph (a) shall have effect as if for the reference to a period of 6 months there were substituted a reference to such period not exceeding 12 months

as is specified in the direction; and, where such a direction is given, this Part shall have effect accordingly.

(c) This subsection does not apply in relation to a claim not to be receiving remuneration in accordance with an equal remuneration term.

(6) Where a delay by a complainant in referring a case under this section is due to any misrepresentation by the respondent, subsection (5)(a) shall be construed as if the references to the date of occurrence of the discrimination or victimisation were references to the date on which the misrepresentation came to the complainant's notice.]

F94[(6A) For the purposes of this section—

(a) discrimination or victimisation occurs—

- (i) if the act constituting it extends over a period, at the end of the period,
- (ii) if it arises by virtue of a term in a contract, throughout the duration of the contract, and
- (iii) if it arises by virtue of a provision which operates over a period, throughout the period,

(b) a deliberate omission by a person to do something occurs when the person decides not to do it, and

(c) a respondent is presumed, unless the contrary is shown, to decide not to do something when the respondent either—

- (i) does an act inconsistent with doing it, or
- (ii) the period expires during which the respondent might reasonably have been expected to do it.]

F95[(7) Where the complainant's claim for redress is in respect of discrimination—

(a) by the holder of a recruitment licence under the *Public Service Management (Recruitment and Appointments) Act 2004* in the course of such a recruitment or selection process as is referred to in section 76(5)(a),

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

(c) by the Commissioner of the Garda Síochána in the course of a recruitment process for the Garda Síochána,

the complainant shall in the first instance refer the claim for redress to the holder of the recruitment licence 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 *subsection (1)*F92[...] or (3) unless—

(a) F95[the holder of the recruitment licence 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

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

and in a case to which *paragraph (a)* or *(b)* relates, the end of the period of time which is applicable under *subsection (5)* (including, where appropriate, applicable under that subsection by reference to *subsection (6)*) shall be construed as—

- (i) the end of that period, or
- (ii) the end of the period of 28 days from the expiration of the period referred to in *paragraph (a)* or the date of the decision referred to in *paragraph (b)*,

whichever last occurs.

F93[(9) Where a claim for redress under this Act (other than on the age or disability ground)—

- (a) relates to employment in the Defence Forces, and
- (b) is made by a member thereof,

the claim shall, in the first instance, be referred for redress under the procedure set out in section 104.]

(10) Where *subsection (9)* applies to a claim for redress, the complainant shall not refer a case under *subsection (1)F92[...]* or (3) unless—

- (a) a period of 12 months has elapsed after the referral under *section 104* to which the claim relates and the procedures under *section 104(2)(a)* have not been requested or have not been completed, or
- (b) the complainant is not satisfied with the recommendation given under *section 104(2)(b)* on the claim,

and in a case to which *paragraph (a)* or *(b)* relates, the end of the period of time which is applicable under *subsection (5)* (including, where appropriate, applicable under that subsection by reference to *subsection (6)*) shall be construed as—

- (i) the end of that period, or
- (ii) the end of the period of 28 days from the expiration of the period referred to in *paragraph (a)* or the date of the recommendation referred to in *paragraph (b)*,

whichever last occurs.

F94[(11) A party to any proceedings under this Act before the Director or Labour Court may be represented by any individual or body authorised by the party in that behalf.

(12) F96[(a) Not later than 42 days from the date of a decision of the Director on an application by a complainant for an extension of time under *subsection (5)*, the complainant or respondent may appeal against the decision to the Labour Court on notice to the Director specifying the grounds of the appeal.]

(b) On the appeal the Labour Court may affirm, quash or vary the decision.

(c) Unless otherwise agreed by the complainant and respondent, effect shall not be given to a decision of the Director on such an application until—

- (i) the period of 42 days mentioned in *paragraph (a)* has expired, or
- (ii) any appeal against it has been determined,

whichever first occurs.

(13) This section is subject to section 104.]

Annotations**Amendments:**

- F91** Substituted (18.07.2004) by *Equality Act 2004* (24/2004), s. 46 and sch. paras. 1 and 2, commenced on enactment.
- F92** Deleted (18.07.2004) by *Equality Act 2004* (24/2004), s. 46 and sch. paras. 1 and 3, commenced on enactment.
- F93** Substituted (18.07.2004) by *Equality Act 2004* (24/2004), s. 32(a), (b) and (c), commenced on enactment.
- F94** Inserted (18.07.2004) by *Equality Act 2004* (24/2004), s. 32(b) and (d), commenced on enactment.
- F95** Substituted (6.10.2004) by *Public Service Management (Recruitment and Appointments) Act 2004* (33/2004), s. 61(1) and sch. 2 part 1, commenced on enactment.
- F96** Substituted (2.08.2011) by *Civil Law (Miscellaneous Provisions) Act 2011* (23/2011), s. 22, commenced on enactment.

F97 [Dismissal of claim.

77A.—(1) The Director may dismiss a claim at any stage if of opinion that it has been made in bad faith or is frivolous, vexatious or misconceived or relates to a trivial matter.

(2) (a) Not later than 42 days after the Director dismisses a claim under this section, the complainant may appeal against the decision to the Labour Court on notice to the Director specifying the grounds of the appeal.

(b) On the appeal the Labour Court may affirm or quash the decision.]

Annotations**Amendments:**

- F97** Inserted (18.07.2004) by *Equality Act 2004* (24/2004), s. 33, commenced on enactment.

Modifications (not altering text):**Modifications (not altering text):**

- C19** Application of section extended with modifications by *Pensions Act 1990* (25/1990), s. 81J and sch. 4, as inserted (5.04.2004) by *Social Welfare (Miscellaneous Provisions) Act 2004* (9/2004), s. 22, S.I. No. 141 of 2004, as amended (18.07.2004) by *Equality Act 2004* (24/2004), s. 66(3)(e), commenced on enactment.

Application of Employment Equality Act 1998.

81J.—(1) In this section ‘the Act of 1998’ means the Employment Equality Act 1998.

(2) Sections 74, [76, 77A], 78 to 81, 83 to 85 and 86 to 104 of the Act of 1998 shall, where appropriate, apply in relation to this Part as they apply in relation to that Act but with the following modifications.

(3) Those modifications are that for the words set out in column (3) of the Fourth Schedule at a particular reference number, being words appearing in a section or sections of the Act of 1998 specified in column (2) of that Schedule at that reference number, there shall be substituted in the place or, as the case may be, each place where those words occur in that section or sections the words set out in column (4) of that Schedule at that reference number.

Mediation.

78.—(1) Subject to *subsection (3)*, if at any time after a case has been referred to the Director under *section 77(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.

(2) F98[...]

F99[(3) If the complainant or respondent objects to a case being dealt with by way of mediation, the Director shall not exercise his or her powers under this section but shall deal with the case under section 79.]

(4) Mediation F98[...] shall be conducted in private.

(5) Where a case referred under *section 77* is resolved by mediation—

(a) the equality mediation officer concerned F98[...] 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,

(c) the equality mediation officer concerned F98[...] 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 F98[...].

F99[(6) If, after a case has been referred to an equality mediation officer under subsection (1), it appears to the officer that the case cannot be resolved by mediation, he or she shall issue a notice to that effect to the complainant and respondent.]

(7) Where—

(a) a notice has been issued under *subsection (6)* with respect to a F100[case, and]

(b) within F101[42 days] from the issue of that notice the complainant makes an application F102[in writing] to the Director F98[...] for the resumption of the hearing of the F100[case,]

(c) F103[...]

the Director F98[...] shall proceed or, as the case may be, continue to deal with the case under *section 79*.

Annotations

Amendments:

F98 Deleted (18.07.2004) by *Equality Act 2004 (24/2004)*, s. 46 and sch. paras. 4, 6, 7(a), (b) and 9, commenced on enactment.

F99 Substituted (18.07.2004) by *Equality Act 2004 (24/2004)*, s. 46 and sch. paras. 5 and 8, commenced on enactment.

F100 Substituted (18.07.2004) by *Equality Act 2004 (24/2004)*, s. 34(a) and (b), commenced on enactment.

F101 Substituted (2.08.2011) by *Civil Law (Miscellaneous Provisions) Act 2011 (23/2011)*, s. 23, commenced on enactment.

F102 Inserted (18.07.2004) by *Equality Act 2004 (24/2004)*, s. 34(b), commenced on enactment.

F103 Deleted (18.07.2004) by *Equality Act 2004 (24/2004)*, s. 34(c), commenced on enactment.

- (a) does not fall to be dealt with by way of mediation under section 78, or
- (b) falls to be dealt with under this section by virtue of section 78(7),

the Director shall investigate the case and may, as part of that investigation and if the Director considers it appropriate, hear persons appearing to the Director to be interested.]

F105[(1A) (a) Claims to have been discriminated against on more than one of the discriminatory grounds shall be investigated as a single case, and

- (b) claims both to have been discriminated against on one or more than one of such grounds and to have been penalised in circumstances amounting to victimisation may, in an appropriate case, be so investigated,
- but a decision shall be made on each of the claims.]

(2) An investigation under this section shall be held in private F106[...].

F107[(2A)(a) Where the Director considers that the case may be dealt with on the basis of written submissions only, the Director shall notify the parties in writing of his or her proposal to do so.

- (b) A notification under paragraph (a) shall inform the parties of the right to make representations to the Director in accordance with paragraph (c).
- (c) A person who receives a notification under paragraph (a) may, within 28 days from the issue of the notification, make representations to the Director as to why the case should not be dealt with on the basis of written submissions only.
- (d) Where, in representations made pursuant to paragraph (c), objection is made to the Director dealing with the matter on the basis of written submissions only, the Director shall not determine the matter in that manner.]

(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 *29(5)*, the Director may direct that that question shall be investigated as a preliminary issue and shall proceed accordingly.

F105[(3A) If, in a case which is referred to the Director under section 77, a question arises relating to the entitlement of any party to bring or contest proceedings under that section, including:

- (a) whether the complainant has complied with the statutory requirements relating to such referrals,
- (b) whether the discrimination or victimisation concerned occurred on or after 18 October 1999,
- (c) whether the complainant is an employee, or
- (d) any other related question of law or fact,

the Director may direct that the question be investigated as a preliminary issue and shall proceed accordingly.]

(4) Subject to *subsections (2)* and *(3)*, the Minister may by regulations specify—

- (a) procedures to be followed by the Director F106[...] 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,

but, before making any such regulations, the Minister shall consult F106[...] the Authority and the Director F106[...].

(5) Unless the Director F106[...] 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 section 76(5)*.

F107[(5A) In the course of an investigation under this section the Director may—

(a) refer to the High Court a point of law arising in the investigation, and

(b) adjourn the investigation (if he or she thinks it appropriate to do so) pending the outcome of the reference.]

(6) At the conclusion of an investigation under this section (including an investigation of a preliminary issue under F108[subsection (3) or (3A)]), the Director shall F108[make a decision] F106[...] and, if the decision F106[...] is in favour of the complainant—

(a) it shall provide for redress in accordance with *section 82*, or

(b) in the case of a decision on a preliminary issue under F104[subsection (3) or (3A)], it shall be followed by an investigation of the substantive issue.

F105[(7) Without prejudice to *section 83*, the complainant or respondent may appeal to the High Court on a point of law from a decision made by the Director under this section.]

Annotations

Amendments:

F104 Substituted (2.08.2011) by *Civil Law (Miscellaneous Provisions) Act 2011* (23/2011), s. 24(a) and (d), commenced on enactment.

F105 Inserted (18.07.2004) by *Equality Act 2004* (24/2004), s. 35 (a), (b) and (d), commenced on enactment.

F106 Deleted (18.07.2004) by *Equality Act 2004* (24/2004), s. 46 and sch. paras. 10(a)-(c), 11, 12(a)-(c), 13 and 14(a) and (b), commenced on enactment.

F107 Inserted (2.08.2011) by *Civil Law (Miscellaneous Provisions) Act 2011* (23/2011), s. 24(b) and (c), commenced on enactment.

F108 Substituted (18.07.2004) by *Equality Act 2004* (24/2004), s. 35(c)(i) and (ii), commenced on enactment.

References to the Circuit Court.

80.—(1) This section applies where a case is referred to the Circuit Court under *section 77(3)*; and any reference in *subsections (2) to (5)* 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.

(3) With the substitution of a reference to the Circuit Court for the reference to the Director, *section 79(3)* shall apply in relation to a reference to the Circuit Court as it applies in relation to a reference to the Director.

(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).

(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,
- (b) the report shall be received in evidence in the proceedings, and
- (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.

Annotations

Modifications (not altering text):

C20 Application of section extended with modifications by *Pensions Act 1990 (25/1990)*, s. 81J and sch. 4, as inserted (5.04.2004) by *Social Welfare (Miscellaneous Provisions) Act 2004 (9/2004)*, s. 22, S.I. No. 141 of 2004, as amended (18.07.2004) by *Equality Act 2004 24/2004*, s. 66(3)(e), commenced on enactment.

Application of Employment Equality Act 1998.

81J.—(1) In this section ‘the Act of 1998’ means the Employment Equality Act 1998.

(2) Sections 74, [76, 77A], 78 to 81, 83 to 85 and 86 to 104 of the Act of 1998 shall, where appropriate, apply in relation to this Part as they apply in relation to that Act but with the following modifications.

(3) Those modifications are that for the words set out in column (3) of the Fourth Schedule at a particular reference number, being words appearing in a section or sections of the Act of 1998 specified in column (2) of that Schedule at that reference number, there shall be substituted in the place or, as the case may be, each place where those words occur in that section or sections the words set out in column (4) of that Schedule at that reference number.

Consequences of failure to supply information etc.

81.—If, in the course of proceedings on a reference under *section 77(3)* or of an investigation under *section 79*, it appears to the Circuit Court F109[or the Director] as the case may be—

- (a) that the respondent failed to supply information which the complainant sought by questions under *section 76* and which was in the respondent’s possession or power, or
- (b) that the information supplied by the respondent in response to any such question 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 76(1)*,

the Circuit Court F109[or the Director] (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, for the supply of information as mentioned in *paragraph (b)*.

Annotations

Amendments:

F109 Substituted (18.07.2004) by *Equality Act 2004 (24/2004)*, s. 46 and sch. para. 15, commenced on enactment.

Modifications (not altering text):

C21 Application of section extended with modifications by *Pensions Act 1990* (25/1990), s. 81J and sch. 4, as inserted (5.04.2004) by *Social Welfare (Miscellaneous Provisions) Act 2004* (9/2004), s. 22, S.I. No. 141 of 2004, as amended (18.07.2004) by *Equality Act 2004* 24/2004), s. 66(3)(e), commenced on enactment.

Application of Employment Equality Act 1998.

81J.—(1) In this section ‘the Act of 1998’ means the Employment Equality Act 1998.

(2) Sections 74, [76, 77A], 78 to 81, 83 to 85 and 86 to 104 of the Act of 1998 shall, where appropriate, apply in relation to this Part as they apply in relation to that Act but with the following modifications.

(3) Those modifications are that for the words set out in column (3) of the Fourth Schedule at a particular reference number, being words appearing in a section or sections of the Act of 1998 specified in column (2) of that Schedule at that reference number, there shall be substituted in the place or, as the case may be, each place where those words occur in that section or sections the words set out in column (4) of that Schedule at that reference number.

Redress which may be ordered.

82.—(1) Subject to this section, the types of redress for which a decision of the Director under *section 79* may provide 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 3 years before the date of the referral under *section 77(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 6 years before the date of the referral of the case under *section 77*;
- (d) an order for equal treatment in whatever respect is relevant to the case;
- (e) an order that a person or persons specified in the order take a course of action which is so F110[specified;]

F111[(f) an order for re-instatement or re-engagement, with or without an order for compensation.]

(2) F112[...]

(3) The types of redress for which the Circuit Court may provide on a reference under *section 77(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 6 years before the date of the referral;
- (b) an order for equal remuneration from the date of the referral;
- (c) the orders referred to in F110[paragraphs (c) to (f)] of *subsection (1)*;
- (d) F112[...]

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.

F113[(4) The maximum amount which may be ordered by the Director by way of compensation under subsection (1)(c) or (1)(f) shall be—

(a) 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, an amount equal to the greatest of—

(i) 104 times the amount of that remuneration, determined on a weekly basis,

(ii) 104 times the amount, determined on a weekly basis, which the complainant would have received at that date but for the act of discrimination or victimisation concerned, or

(iii) €40,000,

or

(b) in any other case, €13,000.]

(5) Where the case for which the redress is to be provided is referred to the Director F112[...] and arises—

(a) under *Part III*, or

(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 F112[...] 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 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,

and, for the purposes of *subparagraph (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 77(1)*.

F114[(6) (a) The maximum amount of compensation specified in subsection (4) applies notwithstanding that conduct the subject of the investigation by the Director constituted—

(i) discrimination on more than one of the discriminatory grounds, or

(ii) both discrimination on one or more than one of such grounds and harassment or sexual harassment.

(b) In paragraph (a) ‘discrimination’ does not include non-compliance with an equal remuneration term.

(7) An order for compensation under this section may not be made in favour of the Authority in a case referred by it to the Director under section 85(1).

(8) Where an act constitutes victimisation under both this Act and the Equal Status Act 2000, redress may be provided under only one of them.

(9) Where a delay in referring a case under this Act to the Director or Circuit Court is attributable to the respondent’s having misrepresented to the complainant the facts of the case, references in this section to the date of referral shall be construed as references to the date of the misrepresentation.]

Annotations**Amendments:**

- F110** Substituted (18.07.2004) by *Equality Act 2004* (24/2004), s. 46 and sch. paras. 16(a) and 18(a), commenced on enactment.
- F111** Inserted (18.07.2004) by *Equality Act 2004* (24/2004), s. 46 and sch. paras. 16(b) and 19(a), commenced on enactment.
- F112** Deleted (18.07.2004) by *Equality Act 2004* (24/2004), s. 46 and sch. paras. 17, 18(b), 19(b) and 20(a) and (b), commenced on enactment.
- F113** Substituted (2.08.2012) by *Civil Law (Miscellaneous Provisions) Act 2011* (23/2011), s. 25(1), commenced on enactment, subject to transitional provisions in subs. (2).
- F114** Inserted (18.07.2004) by *Equality Act 2004* (24/2004), s. 36, commenced on enactment.

Appeals from the
Director to the
Labour Court.

83.—(1) Not later than 42 days from the date of a decision of the Director under *section 79*, the complainant or the respondent may appeal to the Labour Court by notice in writing specifying the grounds of the appeal.

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

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

- (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.).

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

(5) If the Labour Court's determination of an appeal against a decision of the Director on a preliminary issue F115[*under section 79(3) or (3A)*] 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, Trade and Employment, may by regulations specify—

- (a) procedures to be followed by the Labour 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 Labour Court, the Authority and the Director.

Annotations**Amendments:**

F115 Substituted (2.08.2011) by *Civil Law (Miscellaneous Provisions) Act 2011* (23/2011), s. 26, commenced on enactment.

Modifications (not altering text):

C22 Application of section extended with modifications by *Pensions Act 1990* (25/1990), s. 81J and sch. 4, as inserted (5.04.2004) by *Social Welfare (Miscellaneous Provisions) Act 2004* (9/2004), s. 22, S.I. No. 141 of 2004, as amended (18.07.2004) by *Equality Act 2004* 24/2004), s. 66(3)(e), commenced on enactment.

Application of Employment Equality Act 1998.

81J.—(1) In this section ‘the Act of 1998’ means the Employment Equality Act 1998.

(2) Sections 74, [76, 77A], 78 to 81, 83 to 85 and 86 to 104 of the Act of 1998 shall, where appropriate, apply in relation to this Part as they apply in relation to that Act but with the following modifications.

(3) Those modifications are that for the words set out in column (3) of the Fourth Schedule at a particular reference number, being words appearing in a section or sections of the Act of 1998 specified in column (2) of that Schedule at that reference number, there shall be substituted in the place or, as the case may be, each place where those words occur in that section or sections the words set out in column (4) of that Schedule at that reference number.

References by the Labour Court to the Director.

84.—(1) F116[...]

(2) Where an appeal is brought to the Labour Court under *section 83* and it considers that its determination on the appeal would be assisted by the exercise of its powers under this subsection, the Labour 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; 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 Labour Court.

(3) Where the Labour Court refers any matters to the Director under F117[**subsection (2)**]

(a) it 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) it shall take account of the Director’s report on the matters referred in reaching its determination.

(4) Where, on an appeal under *section 83*, the Labour Court determines that the decision of the Director which is in question should be set aside, it may, by its determination, also refer the matter in issue back to the Director for a new investigation and decision under *section 79*.

Annotations**Amendments:**

F116 Deleted (18.07.2004) by *Equality Act 2004* (24/2004), s. 46 and sch. para. 21, commenced on enactment.

F117 Substituted (18.07.2004) by *Equality Act 2004* (24/2004), s. 46 and sch. para. 22, commenced on enactment.

Modifications (not altering text):

C23 Application of section extended with modifications by *Pensions Act 1990* (25/1990), s. 81J and sch. 4, as inserted (5.04.2004) by *Social Welfare (Miscellaneous Provisions) Act 2004* (9/2004), s. 22, S.I. No. 141 of 2004, as amended (18.07.2004) by *Equality Act 2004* 24/2004, s. 66(3)(e), commenced on enactment.

Application of Employment Equality Act 1998.

81J.—(1) In this section ‘the Act of 1998’ means the Employment Equality Act 1998.

(2) Sections 74, [76, 77A], 78 to 81, 83 to 85 and 86 to 104 of the Act of 1998 shall, where appropriate, apply in relation to this Part as they apply in relation to that Act but with the following modifications.

(3) Those modifications are that for the words set out in column (3) of the Fourth Schedule at a particular reference number, being words appearing in a section or sections of the Act of 1998 specified in column (2) of that Schedule at that reference number, there shall be substituted in the place or, as the case may be, each place where those words occur in that section or sections the words set out in column (4) of that Schedule at that reference number.

Enforcement
powers of the
Authority.

85.—(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,
- (b) that discrimination or victimisation has occurred in relation to a particular person who has not made a reference under *section 77* in relation to the discrimination or victimisation and that it is not reasonable to expect that person to make such a reference,
- (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 77* in relation to the failure and whom it is not reasonable to expect to make such a reference,
- (d) that a publication or display has been made in contravention of *section 10*,
- (e) that, contrary to *section 14*, a person has procured or attempted to procure another to do anything which constitutes discrimination or victimisation, or
- (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 it were a case referred under *section 77*, except that—

- (a) any reference to the complainant shall be construed as a reference to the Authority,
- (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
- (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.

(3) In a decision under *section 79*, as applied by *subsection (2)*, the following types of redress shall be available:

- (a) redress as under *section 82* (construing references in that section to the complainant as references to the person referred to in *subsection (2)(c)*);
- (b) where the reference was by virtue of *subsection (1)(d)*, a decision that a publication or display was or was not made in contravention of *section 10*; and
- (c) where the reference was by virtue of *paragraph (e) or (f) of subsection (1)*, a decision that the person concerned has or has not procured or attempted to procure as mentioned in the paragraph concerned.

(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 79*, 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,
- (b) a further failure to comply with an equal remuneration term or equality clause,
- (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 (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.

F118[(5A) Where the Authority refers, or is considering whether to refer, a matter to the Director under *subsection (1)* in relation to a person referred to in any of paragraphs (a) to (c) of that subsection, subsections (5) to (8) of *section 67* shall apply and have effect in relation to that person as those subsections do in relation to a person requesting assistance under that section.]

(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.

Annotations

Amendments:

F118 Inserted (18.07.2004) by *Equality Act 2004* (24/2004), s. 37, commenced on enactment.

Modifications (not altering text):

C24 Application of section extended with modifications by *Pensions Act 1990* (25/1990), s. 81J and sch. 4, as inserted (5.04.2004) by *Social Welfare (Miscellaneous Provisions) Act 2004* (9/2004), s. 22, S.I. No. 141 of 2004, as amended (18.07.2004) by *Equality Act 2004* 24/2004), s. 66(3)(e), commenced on enactment.

Application of Employment Equality Act 1998.

81J.—(1) In this section 'the Act of 1998' means the Employment Equality Act 1998.

(2) Sections 74, [76, 77A], 78 to 81, 83 to 85 and 86 to 104 of the Act of 1998 shall, where appropriate, apply in relation to this Part as they apply in relation to that Act but with the following modifications.

(3) Those modifications are that for the words set out in column (3) of the Fourth Schedule at a particular reference number, being words appearing in a section or sections of the Act of 1998 specified in column (2) of that Schedule at that reference number, there shall be substituted in the place or, as the case may be, each place where those words occur in that section or sections the words set out in column (4) of that Schedule at that reference number.

F119[Burden
of proof.

85A.—(1) Where in any proceedings facts are established by or on behalf of a complainant from which it may be presumed that there has been discrimination in relation to him or her, it is for the respondent to prove the contrary.

(2) This section is without prejudice to any other enactment or rule of law in relation to the burden of proof in any proceedings which may be more favourable to a complainant.

(3) Where, in any proceedings arising from a reference of a matter by the Authority to the Director under section 85(1), facts are established by or on behalf of the Authority from which it may be presumed that an action or a failure mentioned in a paragraph of that provision has occurred, it is for the respondent to prove the contrary.

(4) In this section ‘discrimination’ includes—

(a) indirect discrimination,

(b) victimisation,

(c) harassment or sexual harassment,

(d) the inclusion in a collective agreement to which section 9 applies of a provision which, by virtue of that section, is null and void.

(5) The European Communities (Burden of Proof in Gender Discrimination Cases) Regulations 2001 (S.I. No. 337 of 2001), in so far as they relate to proceedings under this Act, are revoked.]

Annotations

Amendments:

F119 Inserted (18.07.2004) by *Equality Act 2004* (24/2004), s. 38, commenced on enactment.

Collective Agreements

Reference of
collective agree-
ments to Direc-
tor.

86.—(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 87*) the Authority or the person making such a reference is referred to as “the complainant”.

(2) For the purposes of this section (and *section 87*)—

(a) the expression “collective agreement” shall be taken to include an order or agreement falling within *paragraph (b) or (c) of section 9 (3)*,

(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

(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—

(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 87*, and

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

(4) If the complainant or the respondents object to a reference under *subsection (3)(a)* (or if *section 78(7)* applies in accordance with *subsection (6)*) the Director—

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

(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

(c) shall issue a decision in accordance with *section 87*,

and *subsections (3) and (4) of section 79* 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) 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)*, *subsections (5) to (7) of section 78* shall apply as they apply where a case which has been referred to an equality mediation officer under *section 78(1)* but, for the purpose of that application—

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

(b) *section 78(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 *section 86(4)*”.

Annotations

Modifications (not altering text):

C25 Application of section extended with modifications by *Pensions Act 1990 (25/1990)*, s. 81J and sch. 4, as inserted (5.04.2004) by *Social Welfare (Miscellaneous Provisions) Act 2004 (9/2004)*, s. 22, S.I. No. 141 of 2004, as amended (18.07.2004) by *Equality Act 2004 24/2004*, s. 66(3)(e), commenced on enactment.

Application of Employment Equality Act 1998.

81J.—(1) In this section ‘the Act of 1998’ means the Employment Equality Act 1998.

(2) Sections 74, [76, 77A], 78 to 81, 83 to 85 and 86 to 104 of the Act of 1998 shall, where appropriate, apply in relation to this Part as they apply in relation to that Act but with the following modifications.

(3) Those modifications are that for the words set out in column (3) of the Fourth Schedule at a particular reference number, being words appearing in a section or sections of the Act of 1998

specified in column (2) of that Schedule at that reference number, there shall be substituted in the place or, as the case may be, each place where those words occur in that section or sections the words set out in column (4) of that Schedule at that reference number.

Mediation, decisions and appeals relating to collective agreements.

87.—(1) Where a collective agreement is referred to the Director under *section 86*, it shall be the purpose of—

(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,

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 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 respondent may appeal to the Labour Court by notice in writing specifying the grounds of the appeal.

(3) The Labour Court shall hear an appeal under *subsection (2)* in private unless, at the request of one of the parties, it determines to hold the appeal, or so much of it as it does not consider should be treated as confidential, in public, and the enactments specified in *section 83 (3)* shall apply to such an appeal as they apply to an appeal under *section 83*.

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

(5) In this section “collective agreement”, “the complainant” and “the respondent” have the same meaning as in *section 86*.

Annotations

Modifications (not altering text):

C26 Application of section extended with modifications by *Pensions Act 1990* (25/1990), s. 81J and sch. 4, as inserted (5.04.2004) by *Social Welfare (Miscellaneous Provisions) Act 2004* (9/2004), s. 22, S.I. No. 141 of 2004, as amended (18.07.2004) by *Equality Act 2004* 24/2004, s. 66(3)(e), commenced on enactment.

Application of Employment Equality Act 1998.

81J.—(1) In this section ‘the Act of 1998’ means the Employment Equality Act 1998.

(2) Sections 74, [76, 77A], 78 to 81, 83 to 85 and 86 to 104 of the Act of 1998 shall, where appropriate, apply in relation to this Part as they apply in relation to that Act but with the following modifications.

(3) Those modifications are that for the words set out in column (3) of the Fourth Schedule at a particular reference number, being words appearing in a section or sections of the Act of 1998 specified in column (2) of that Schedule at that reference number, there shall be substituted in the place or, as the case may be, each place where those words occur in that section or sections the words set out in column (4) of that Schedule at that reference number.

Decisions and Determinations Generally

Form and content of decisions and determinations.

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

- (a) if the Director or the Labour 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 Labour Court reached that determination.

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

(3) In this section “the parties” means—

- (a) in the case of a decision F120[...] under *section 79*, the complainant and the respondent as defined in *section 77(4)*,
- (b) in the case of a determination under *section 83*, the parties to the appeal,
- (c) in the case of a decision under *section 85*, the Authority and the persons referred to in *subsections (2) (b) and (c)* of that section, and
- (d) in the case of a decision under *section 86* or a determination under *section 87*, the complainant and the respondents, within the meaning of *section 86*.

(4) If any person who participated in an investigation under *section 79* or *86* is not correctly identified in the resulting decision or determination, the correction of that error shall be regarded as falling within *subsection (2)*.

Annotations

Amendments:

F120 Deleted (18.07.2004) by *Equality Act 2004 (24/2004)*, s. 46 and sch. para. 23, commenced on enactment.

Modifications (not altering text):

C27 Application of section extended with modifications by *Pensions Act 1990 (25/1990)*, s. 81J and sch. 4, as inserted (5.04.2004) by *Social Welfare (Miscellaneous Provisions) Act 2004 (9/2004)*, s. 22, S.I. No. 141 of 2004, as amended (18.07.2004) by *Equality Act 2004 24/2004*, s. 66(3)(e), commenced on enactment.

Application of Employment Equality Act 1998.

81J.—(1) In this section ‘the Act of 1998’ means the Employment Equality Act 1998.

(2) Sections 74, [76, 77A], 78 to 81, 83 to 85 and 86 to 104 of the Act of 1998 shall, where appropriate, apply in relation to this Part as they apply in relation to that Act but with the following modifications.

(3) Those modifications are that for the words set out in column (3) of the Fourth Schedule at a particular reference number, being words appearing in a section or sections of the Act of 1998 specified in column (2) of that Schedule at that reference number, there shall be substituted in the place or, as the case may be, each place where those words occur in that section or sections the words set out in column (4) of that Schedule at that reference number.

Supply and publication of decisions and determinations.

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

- (a) to each of the parties, and
- (b) to the Labour Court,

and every such decision shall be published and a copy thereof made available for inspection at the office of the Director.

(2) A copy of every determination of the Labour 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 Labour Court.

(3) In this section “the parties” has the same meaning as in *section 88*.

(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 88(1)*.

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

Annotations

Modifications (not altering text):

C28 Application of section extended with modifications by *Pensions Act 1990* (25/1990), s. 81J and sch. 4, as inserted (5.04.2004) by *Social Welfare (Miscellaneous Provisions) Act 2004* (9/2004), s. 22, S.I. No. 141 of 2004, as amended (18.07.2004) by *Equality Act 2004* 24/2004), s. 66(3)(e), commenced on enactment.

Application of Employment Equality Act 1998.

81J.—(1) In this section ‘the Act of 1998’ means the Employment Equality Act 1998.

(2) Sections 74, [76, 77A], 78 to 81, 83 to 85 and 86 to 104 of the Act of 1998 shall, where appropriate, apply in relation to this Part as they apply in relation to that Act but with the following modifications.

(3) Those modifications are that for the words set out in column (3) of the Fourth Schedule at a particular reference number, being words appearing in a section or sections of the Act of 1998 specified in column (2) of that Schedule at that reference number, there shall be substituted in the place or, as the case may be, each place where those words occur in that section or sections the words set out in column (4) of that Schedule at that reference number.

Appeals and references from the Labour Court.

90.—F121[(1) Where a determination is made by the Labour Court on an appeal under this Part, either of the parties may appeal to the High Court on a point of law.

(2) The Labour Court may—

(a) refer to the High Court a point of law arising in the course of such an appeal, and

(b) if it thinks it appropriate, adjourn the appeal pending the outcome of the reference.]

Annotations

Amendments:

F121 Substituted and subss. (3) to (6) deleted (18.07.2004) by *Equality Act 2004* (24/2004), s. 46 and sch. para. 24, commenced on enactment.

Modifications (not altering text):

C29 Application of section extended with modifications by *Pensions Act 1990* (25/1990), s. 81J and sch. 4, as inserted (5.04.2004) by *Social Welfare (Miscellaneous Provisions) Act 2004* (9/2004), s. 22,

S.I. No. 141 of 2004, as amended (18.07.2004) by *Equality Act 2004 24/2004*, s. 66(3)(e), commenced on enactment.

Application of Employment Equality Act 1998.

81J.—(1) In this section ‘the Act of 1998’ means the Employment Equality Act 1998.

(2) Sections 74, [76, 77A], 78 to 81, 83 to 85 and 86 to 104 of the Act of 1998 shall, where appropriate, apply in relation to this Part as they apply in relation to that Act but with the following modifications.

(3) Those modifications are that for the words set out in column (3) of the Fourth Schedule at a particular reference number, being words appearing in a section or sections of the Act of 1998 specified in column (2) of that Schedule at that reference number, there shall be substituted in the place or, as the case may be, each place where those words occur in that section or sections the words set out in column (4) of that Schedule at that reference number.

Enforcement by Circuit Court

Enforcement of determinations, decisions and mediated settlements.

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

- (a) a final determination of the Labour Court under this Part, or
- (b) a final decision of the Director under this Part,

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 93*, 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.

F122[(2) If a person who is a party to a settlement to which section 78(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 an order directing that person to carry out those terms or, as the case may be, the 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 have been provided for by way of redress under section 82.]

(3) An application under this section may not be made before the expiry of—

- (a) in the case of a F123[...] decision, the period within which an appeal might be brought against the F123[...] decision, and
- (b) in the case of a settlement reached as a result of mediation, 42 days from the date of the written record of the settlement.

F122[(4) An application under this section may be made—

- (a) in any case, by the complainant,
- (b) in a case where the Authority is not the complainant but considers that the determination, decision or settlement is unlikely to be implemented without its intervention, by the Authority with the consent of the complainant, or
- (c) in the case of a mediated settlement, by the respondent.]

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

- (a) of the existence and terms of the determination, decision or settlement, and
- (b) of the failure by F122[any person] 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—

- (a) no appeal has been brought, or
- (b) any appeal which was brought has been abandoned.

F122[(7) (a) Where an application to the Circuit Court is made by the Authority under this section, the Court may make an order for costs in favour of the Authority.

(b) Paragraph (a) is without prejudice to the power of the Court to make an order for costs in favour of the person affected or, as the case may be, a party to a settlement referred to in subsection (2).]

(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 respondent ordinarily resides or carries on any profession, business or occupation.

Annotations

Amendments:

F122 Substituted (18.07.2004) by *Equality Act 2004* (24/2004), s. 39(a)-(d), commenced on enactment.

F123 Deleted (18.07.2004) by *Equality Act 2004* (24/2004), s. 46 and sch. para. 25, commenced on enactment.

Modifications (not altering text):

C30 Application of section extended with modifications by *Pensions Act 1990* (25/1990), s. 81J and sch. 4, as inserted (5.04.2004) by *Social Welfare (Miscellaneous Provisions) Act 2004* (9/2004), s. 22, S.I. No. 141 of 2004, as amended (18.07.2004) by *Equality Act 2004* 24/2004), s. 66(3)(e), commenced on enactment.

Application of Employment Equality Act 1998.

81J.—(1) In this section ‘the Act of 1998’ means the Employment Equality Act 1998.

(2) Sections 74, [76, 77A], 78 to 81, 83 to 85 and 86 to 104 of the Act of 1998 shall, where appropriate, apply in relation to this Part as they apply in relation to that Act but with the following modifications.

(3) Those modifications are that for the words set out in column (3) of the Fourth Schedule at a particular reference number, being words appearing in a section or sections of the Act of 1998 specified in column (2) of that Schedule at that reference number, there shall be substituted in the place or, as the case may be, each place where those words occur in that section or sections the words set out in column (4) of that Schedule at that reference number.

Additional powers of Circuit Court on enforcement.

92.—(1) Where the Circuit Court makes an order under *section 91(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)*.

(2) Where the order under *section 91(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—

- (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.

(3) Where the order under *section 91(1)* relates to a determination F124[or decision] 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 F124[or decision].

Annotations

Amendments:

F124 Inserted (18.07.2004) by *Equality Act 2004* (24/2004), s. 46 and sch. para. 26, commenced on enactment.

Modifications (not altering text):

C31 Application of section extended with modifications by *Pensions Act 1990* (25/1990), s. 81J and sch. 4, as inserted (5.04.2004) by *Social Welfare (Miscellaneous Provisions) Act 2004* (9/2004), s. 22, S.I. No. 141 of 2004, as amended (18.07.2004) by *Equality Act 2004* 24/2004), s. 66(3)(e), commenced on enactment.

Application of Employment Equality Act 1998.

81J.—(1) In this section ‘the Act of 1998’ means the Employment Equality Act 1998.

(2) Sections 74, [76, 77A], 78 to 81, 83 to 85 and 86 to 104 of the Act of 1998 shall, where appropriate, apply in relation to this Part as they apply in relation to that Act but with the following modifications.

(3) Those modifications are that for the words set out in column (3) of the Fourth Schedule at a particular reference number, being words appearing in a section or sections of the Act of 1998 specified in column (2) of that Schedule at that reference number, there shall be substituted in the place or, as the case may be, each place where those words occur in that section or sections the words set out in column (4) of that Schedule at that reference number.

Compensation *in lieu* of re-instatement or re-engagement.

93.—(1) On an application under *section 91* which relates to a determination F125[or decision] 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.

(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.

(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 77* or would have received at that date but for the discrimination in question.

Annotations

Amendments:

F125 Inserted (18.07.2004) by *Equality Act 2004* (24/2004), s. 46 and sch. para. 27, commenced on enactment.

Modifications (not altering text):

C32 Application of section extended with modifications by *Pensions Act 1990* (25/1990), s. 81J and sch. 4, as inserted (5.04.2004) by *Social Welfare (Miscellaneous Provisions) Act 2004* (9/2004), s. 22,

S.I. No. 141 of 2004, as amended (18.07.2004) by *Equality Act 2004 24/2004*, s. 66(3)(e), commenced on enactment.

Application of Employment Equality Act 1998.

81J.—(1) In this section ‘the Act of 1998’ means the Employment Equality Act 1998.

(2) Sections 74, [76, 77A], 78 to 81, 83 to 85 and 86 to 104 of the Act of 1998 shall, where appropriate, apply in relation to this Part as they apply in relation to that Act but with the following modifications.

(3) Those modifications are that for the words set out in column (3) of the Fourth Schedule at a particular reference number, being words appearing in a section or sections of the Act of 1998 specified in column (2) of that Schedule at that reference number, there shall be substituted in the place or, as the case may be, each place where those words occur in that section or sections the words set out in column (4) of that Schedule at that reference number.

Information

Powers to enter premises, obtain information, etc.

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

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

(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:

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

(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 may reasonably be required in relation to the contents of any such records, books, documents or other things;

(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 80(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 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

(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.

(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

(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.

(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.

(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 1 month from the date of issue of the warrant, on production if so requested of the warrant—

(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 *subsection (2) (b) or (c)* in relation to persons and records, books, documents or other things found at the premises.

Annotations

Modifications (not altering text):

C33 Application of section extended with modifications by *Pensions Act 1990 (25/1990)*, s. 81J and sch. 4, as inserted (5.04.2004) by *Social Welfare (Miscellaneous Provisions) Act 2004 (9/2004)*, s. 22, S.I. No. 141 of 2004, as amended (18.07.2004) by *Equality Act 2004 24/2004*, s. 66(3)(e), commenced on enactment.

Application of Employment Equality Act 1998.

81J.—(1) In this section 'the Act of 1998' means the Employment Equality Act 1998.

(2) Sections 74, [76, 77A], 78 to 81, 83 to 85 and 86 to 104 of the Act of 1998 shall, where appropriate, apply in relation to this Part as they apply in relation to that Act but with the following modifications.

(3) Those modifications are that for the words set out in column (3) of the Fourth Schedule at a particular reference number, being words appearing in a section or sections of the Act of 1998 specified in column (2) of that Schedule at that reference number, there shall be substituted in the place or, as the case may be, each place where those words occur in that section or sections the words set out in column (4) of that Schedule at that reference number.

Requirements on persons to provide information.

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

(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 or her 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

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

and the person shall comply with any requirement so made.

(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, the person to whom the requirement is addressed shall comply with it as soon as is reasonably practicable.

(3) Any persons required to attend before the Director or the Chairman of the Labour Court under *subsection (1)(b)* shall—

(a) 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

(b) if so requested by the Director or the Chairman, 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 80(4)* to perform the functions of investigating and preparing a report on a question specified by the Circuit Court, *subsections (1) to (3)* shall apply with the substitution of a reference to the equality officer for any reference to the Director.

Annotations

Modifications (not altering text):

- C34** Application of section extended with modifications by *Pensions Act 1990 (25/1990)*, s. 81J and sch. 4, as inserted (5.04.2004) by *Social Welfare (Miscellaneous Provisions) Act 2004 (9/2004)*, s. 22, S.I. No. 141 of 2004, as amended (18.07.2004) by *Equality Act 2004 24/2004*, s. 66(3)(e), commenced on enactment.

Application of Employment Equality Act 1998.

81J.—(1) In this section ‘the Act of 1998’ means the Employment Equality Act 1998.

(2) Sections 74, [76, 77A], 78 to 81, 83 to 85 and 86 to 104 of the Act of 1998 shall, where appropriate, apply in relation to this Part as they apply in relation to that Act but with the following modifications.

(3) Those modifications are that for the words set out in column (3) of the Fourth Schedule at a particular reference number, being words appearing in a section or sections of the Act of 1998 specified in column (2) of that Schedule at that reference number, there shall be substituted in the place or, as the case may be, each place where those words occur in that section or sections the words set out in column (4) of that Schedule at that reference number.

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

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

(a) a requirement under *section 94(2)(b)*, or

(b) a requirement under *section 95(1)*,

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

(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 respondent ordinarily resides or carries on any profession, business or occupation.

Annotations

Modifications (not altering text):

- C35** Application of section extended with modifications by *Pensions Act 1990* (25/1990), s. 81J and sch. 4, as inserted (5.04.2004) by *Social Welfare (Miscellaneous Provisions) Act 2004* (9/2004), s. 22, S.I. No. 141 of 2004, as amended (18.07.2004) by *Equality Act 2004* 24/2004, s. 66(3)(e), commenced on enactment.

Application of Employment Equality Act 1998.

81J.—(1) In this section ‘the Act of 1998’ means the Employment Equality Act 1998.

(2) Sections 74, [76, 77A], 78 to 81, 83 to 85 and 86 to 104 of the Act of 1998 shall, where appropriate, apply in relation to this Part as they apply in relation to that Act but with the following modifications.

(3) Those modifications are that for the words set out in column (3) of the Fourth Schedule at a particular reference number, being words appearing in a section or sections of the Act of 1998 specified in column (2) of that Schedule at that reference number, there shall be substituted in the place or, as the case may be, each place where those words occur in that section or sections the words set out in column (4) of that Schedule at that reference number.

Supplementary provisions as to information.

97.—(1) Where, in the course, or for the purposes, of any investigation, mediation or hearing under this Part, any person discloses information to the Labour 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.

(2) No information furnished to, or otherwise acquired by, the Labour Court, the Director or any other person, by virtue of *sections 94 to 96*, 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—

- (a) for the purposes of such an investigation, mediation or hearing,
- (b) on the order of the High Court or the Circuit Court,
- (c) with the consent of the person furnishing the information and of any other person to whom the information may relate,
- (d) in a decision of the Director or a determination of the Labour Court which is published or made available under *section 89* and to which the disclosure of the information is relevant, or
- (e) for the purposes of an application under *section 96*.

(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.

Annotations**Modifications (not altering text):**

- C36** Application of section extended with modifications by *Pensions Act 1990* (25/1990), s. 81J and sch. 4, as inserted (5.04.2004) by *Social Welfare (Miscellaneous Provisions) Act 2004* (9/2004), s. 22, S.I. No. 141 of 2004, as amended (18.07.2004) by *Equality Act 2004* 24/2004), s. 66(3)(e), commenced on enactment.

Application of Employment Equality Act 1998.

81J.—(1) In this section ‘the Act of 1998’ means the Employment Equality Act 1998.

(2) Sections 74, [76, 77A], 78 to 81, 83 to 85 and 86 to 104 of the Act of 1998 shall, where appropriate, apply in relation to this Part as they apply in relation to that Act but with the following modifications.

(3) Those modifications are that for the words set out in column (3) of the Fourth Schedule at a particular reference number, being words appearing in a section or sections of the Act of 1998 specified in column (2) of that Schedule at that reference number, there shall be substituted in the place or, as the case may be, each place where those words occur in that section or sections the words set out in column (4) of that Schedule at that reference number.

Offences

Penalty for dismissal of employee for exercising rights.

98.—(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—

(a) that the employee was dismissed, and

(b) that the employee, in good faith, did one or more of the acts specified in F126[paragraphs (a) to (g)] of section 74(2),

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 F127[Director] would have power to do so—

(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.

(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 *subsection (2) (a) or (b)*, 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 (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 82*, the F127[Director] could order by way of compensation under F127[paragraph (c) or (f) of section 81(1)] 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 82* 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 F127[Director's decision] 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 *subsection (2) (a) or (b) or 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, to either 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.

Annotations

Amendments:

F126 Substituted (18.07.2004) by *Equality Act 2004 (24/2004)*, s. 40, commenced on enactment.

F127 Substituted (18.07.2004) by *Equality Act 2004 (24/2004)*, s. 46 and sch. paras. 28 and 29, commenced on enactment.

Modifications (not altering text):

C37 Application of section extended with modifications by *Pensions Act 1990 (25/1990)*, s. 81J and sch. 4, as inserted (5.04.2004) by *Social Welfare (Miscellaneous Provisions) Act 2004 (9/2004)*, s. 22, S.I. No. 141 of 2004, as amended (18.07.2004) by *Equality Act 2004 24/2004*, s. 66(3)(e), commenced on enactment.

Application of Employment Equality Act 1998.

81J.—(1) In this section 'the Act of 1998' means the Employment Equality Act 1998.

(2) Sections 74, [76, 77A], 78 to 81, 83 to 85 and 86 to 104 of the Act of 1998 shall, where appropriate, apply in relation to this Part as they apply in relation to that Act but with the following modifications.

(3) Those modifications are that for the words set out in column (3) of the Fourth Schedule at a particular reference number, being words appearing in a section or sections of the Act of 1998 specified in column (2) of that Schedule at that reference number, there shall be substituted in the place or, as the case may be, each place where those words occur in that section or sections the words set out in column (4) of that Schedule at that reference number.

Obstruction etc.
of Director and
other officers.

99.—(1) Any person who—

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

(b) fails to comply with a requirement of the Labour 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 94(1)(a)*.

Annotations

Modifications (not altering text):

C38 Application of section extended with modifications by *Pensions Act 1990* (25/1990), s. 81J and sch. 4, as inserted (5.04.2004) by *Social Welfare (Miscellaneous Provisions) Act 2004* (9/2004), s. 22, S.I. No. 141 of 2004, as amended (18.07.2004) by *Equality Act 2004* 24/2004), s. 66(3)(e), commenced on enactment.

Application of Employment Equality Act 1998.

81J.—(1) In this section ‘the Act of 1998’ means the Employment Equality Act 1998.

(2) Sections 74, [76, 77A], 78 to 81, 83 to 85 and 86 to 104 of the Act of 1998 shall, where appropriate, apply in relation to this Part as they apply in relation to that Act but with the following modifications.

(3) Those modifications are that for the words set out in column (3) of the Fourth Schedule at a particular reference number, being words appearing in a section or sections of the Act of 1998 specified in column (2) of that Schedule at that reference number, there shall be substituted in the place or, as the case may be, each place where those words occur in that section or sections the words set out in column (4) of that Schedule at that reference number.

F128[Award of
expenses.]

99A.—(1) Without prejudice to section 99, the Labour Court or the Director may, if of opinion that a person is obstructing or impeding an investigation or appeal under this Act, order that the person pay to another person a specified amount in respect of the travelling or other expenses reasonably incurred by that other person in connection with the investigation or appeal.

(2) Notwithstanding subsection (1), expenses shall not be payable in respect of the attendance at the investigation or appeal of any person representing a complainant or respondent.

(3) The amount of any expenses ordered to be paid under this section may be recovered as a simple contract debt.]

Annotations

Amendments:

F128 Inserted (18.07.2004) by *Equality Act 2004* (24/2004), s. 41, commenced on enactment.

Offences: general provisions.

100.—(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 1 year or both, or

(b) on conviction on indictment, to a fine not exceeding £25,000 or to imprisonment for a term not exceeding 2 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.

(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 12 months from the date of the offence.

(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.

(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.

Annotations

Modifications (not altering text):

C39 Application of section extended with modifications by *Pensions Act 1990* (25/1990), s. 81J and sch. 4, as inserted (5.04.2004) by *Social Welfare (Miscellaneous Provisions) Act 2004* (9/2004), s. 22, S.I. No. 141 of 2004, as amended (18.07.2004) by *Equality Act 2004* 24/2004), s. 66(3)(e), commenced on enactment.

Application of Employment Equality Act 1998.

81J.—(1) In this section ‘the Act of 1998’ means the Employment Equality Act 1998.

(2) Sections 74, [76, 77A], 78 to 81, 83 to 85 and 86 to 104 of the Act of 1998 shall, where appropriate, apply in relation to this Part as they apply in relation to that Act but with the following modifications.

(3) Those modifications are that for the words set out in column (3) of the Fourth Schedule at a particular reference number, being words appearing in a section or sections of the Act of 1998 specified in column (2) of that Schedule at that reference number, there shall be substituted in the place or, as the case may be, each place where those words occur in that section or sections the words set out in column (4) of that Schedule at that reference number.

Supplementary

Alternative avenues of redress.

101.—(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

respect of the failure to comply with the equal remuneration term or the equality clause, as the case may be.

F129[(2) Where an individual has referred a case to the Director under section 77(1) and either a settlement has been reached by mediation or the Director has begun an investigation under section 79, the individual—

(a) shall not be entitled to recover damages at common law in respect of the case, and

(b) if he or she was dismissed before so referring the case, 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 F130[, unless the Director, having completed the investigation and in an appropriate case, directs otherwise and so notifies the complainant and respondent].]

(3) If an individual has referred a case to the Circuit Court under *section 77(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) F129[An employee who has been dismissed shall not be entitled to seek redress under this Part in respect of the dismissal if]—

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

(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

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

F131[(5) Where the Director issues a direction under subsection (2)(b), the resulting entitlement of the employee under that subsection is deemed to have effect from the date of the direction.]

(6) F132[...]

Annotations

Amendments:

F129 Substituted (18.07.2004) by *Equality Act 2004* (24/2004), s. 46 and sch. paras. 30 and 31, commenced on enactment.

F130 Inserted (18.07.2004) by *Equality Act 2004* (24/2004), s. 42(a), commenced on enactment.

F131 Substituted (18.07.2004) by *Equality Act 2004* (24/2004), s. 42(b), commenced on enactment.

F132 Deleted (18.07.2004) by *Equality Act 2004* (24/2004), s. 46 and sch. para. 32, commenced on enactment.

Modifications (not altering text):

C40 Application of section extended with modifications by *Pensions Act 1990* (25/1990), s. 81J and sch. 4, as inserted (5.04.2004) by *Social Welfare (Miscellaneous Provisions) Act 2004* (9/2004), s. 22, S.I. No. 141 of 2004, as amended (18.07.2004) by *Equality Act 2004* (24/2004), s. 66(3)(e), commenced on enactment.

Application of Employment Equality Act 1998.

81J.—(1) In this section ‘the Act of 1998’ means the Employment Equality Act 1998.

(2) Sections 74, [76, 77A], 78 to 81, 83 to 85 and 86 to 104 of the Act of 1998 shall, where appropriate, apply in relation to this Part as they apply in relation to that Act but with the following modifications.

(3) Those modifications are that for the words set out in column (3) of the Fourth Schedule at a particular reference number, being words appearing in a section or sections of the Act of 1998 specified in column (2) of that Schedule at that reference number, there shall be substituted in the place or, as the case may be, each place where those words occur in that section or sections the words set out in column (4) of that Schedule at that reference number.

F133[Parallel claims.

101A.—Where the conduct of an employer constitutes both a contravention of Part III or IV and a contravention of either the Protection of Employees (Part-Time Work) Act 2001 or the Protection of Employees (Fixed-Term Work) Act 2003, relief may not be granted to the employee concerned in respect of the conduct under both this Act and either of the said Acts.]

Annotations

Amendments:

F133 Inserted (18.07.2004) by *Equality Act 2004 (24/2004)*, s. 43, commenced on enactment.

Modifications (not altering text):

C41 Application of section adapted for purposes of *Pensions Act 1990*, Part VII by *Pensions Act 1990*, s. 81J and sch. 4 ref. no. 30A (as inserted (5.04.2004) by *Social Welfare (Miscellaneous Provisions) Act 2004 (9/2004)*, s. 22, S.I. No. 141 of 2004, ref. no. 30A providing for alternative application of s. 101A as inserted (18.07.2004) by *Equality Act 2004 (24/2004)*, s. 66(3)(f)(vii), commenced on enactment.

Table heading: Substituted words for the purposes of Part VII

(2) Where the conduct of an employer constitutes both a contravention of Part VII of the Pensions Act 1990 and a contravention of either the Protection of Employees (Part-Time Work) Act 2001 or the Protection of Employees (Fixed-Term Work) Act 2003, relief may not be granted to the employee concerned in respect of the conduct under both this Act as it applies to Part VII of the Pensions Act 1990 and either of the said Acts.

Striking out cases which are not pursued.

102.—(1) Where—

F134[(a) a case is referred to the Director under section 77,

(b) a matter is referred to the Director under section 85,

(c) a collective agreement is referred to the Director under section 86, or

(d) a case is referred to the Director under the AntiDiscrimination (Pay) Act 1974 or the Employment Equality Act 1977,]

(2) Where—

F134[(a) an appeal is brought to the Labour Court under this Part, or

(b) a case is referred to the Labour Court under the said Act of 1974 or 1977,]

and, at any time after the expiry of 1 year from the date of the reference or, as the case may be, the bringing of the appeal, it appears to the Labour Court that the complainant or, as the case may be, the appellant has not pursued, or has ceased to pursue, the matter, the Labour Court may strike out the reference or, as the case may be, the appeal.

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

(4) As soon as practicable after striking out an appeal, the Labour 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).

(6) In this section “the complainant”, “the respondent” and “the respondents” have the same meanings as in *section 77, 85 or 86* according to the nature of the reference concerned.

Annotations

Amendments:

F134 Substituted and inserted (18.07.2004) by *Equality Act 2004 (24/2004)*, s. 44(a) and (b), commenced on enactment.

Modifications (not altering text):

C42 Application of section extended with modifications by *Pensions Act 1990 (25/1990)*, s. 81J and sch. 4, as inserted (5.04.2004) by *Social Welfare (Miscellaneous Provisions) Act 2004 (9/2004)*, s. 22, S.I. No. 141 of 2004, as amended (18.07.2004) by *Equality Act 2004 24/2004*, s. 66(3)(e), commenced on enactment.

Application of Employment Equality Act 1998.

81J.—(1) In this section ‘the Act of 1998’ means the Employment Equality Act 1998.

(2) Sections 74, [76, 77A], 78 to 81, 83 to 85 and 86 to 104 of the Act of 1998 shall, where appropriate, apply in relation to this Part as they apply in relation to that Act but with the following modifications.

(3) Those modifications are that for the words set out in column (3) of the Fourth Schedule at a particular reference number, being words appearing in a section or sections of the Act of 1998 specified in column (2) of that Schedule at that reference number, there shall be substituted in the place or, as the case may be, each place where those words occur in that section or sections the words set out in column (4) of that Schedule at that reference number.

Provisions relating to insolvency.

103.—(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.

(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.

(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 77(3)*,

(b) a decision F135[...] under *section 79(6)* (including that provision as applied by *section 85(2)*),

(c) a determination of an appeal under *section 83(4)*, or

(d) an order of the Circuit Court under *section F135[...] 91 or 93*.

(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)*.

(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 103(3)* of the *Employment Equality Act, 1998*,".

(6) In subsection (4)(c), after subparagraph (v) there shall be inserted—

"(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, 1998*, applies unless—

(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."

Annotations

Amendments:

F135 Deleted (18.07.2004) by *Equality Act 2004 (24/2004)*, s. 46 and sch. para. 33(a) and (b), commenced on enactment.

Modifications (not altering text):

C43 Application of section extended with modifications by *Pensions Act 1990 (25/1990)*, s. 81J and sch. 4, as inserted (5.04.2004) by *Social Welfare (Miscellaneous Provisions) Act 2004 (9/2004)*, s. 22, S.I. No. 141 of 2004, as amended (18.07.2004) by *Equality Act 2004 24/2004*, s. 66(3)(e), commenced on enactment.

Application of Employment Equality Act 1998.

81J.—(1) In this section 'the Act of 1998' means the Employment Equality Act 1998.

(2) Sections 74, [76, 77A], 78 to 81, 83 to 85 and 86 to 104 of the Act of 1998 shall, where appropriate, apply in relation to this Part as they apply in relation to that Act but with the following modifications.

(3) Those modifications are that for the words set out in column (3) of the Fourth Schedule at a particular reference number, being words appearing in a section or sections of the Act of 1998 specified in column (2) of that Schedule at that reference number, there shall be substituted in the place or, as the case may be, each place where those words occur in that section or sections the words set out in column (4) of that Schedule at that reference number.

Special provision
as to Defence
Forces.

104.—(1) Save as provided for by *section 77(10)*, nothing in this Part shall enable a member of the Defence Forces to refer any case relating to employment as a member of the Defence Forces to the Director F136[...] or the Circuit Court or to exercise any other power conferred by the preceding provisions of this Part.

(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—

(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 F136[...] under this Part or of proceedings before the Circuit Court under *section 77(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.

(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.

Annotations

Amendments:

F136 Deleted (18.07.2004) by *Equality Act 2004 (24/2004)*, s. 46 and sch. paras. 34 and 35, commenced on enactment.

Modifications (not altering text):

C44 Application of section extended with modifications by *Pensions Act 1990 (25/1990)*, s. 81J and sch. 4, as inserted (5.04.2004) by *Social Welfare (Miscellaneous Provisions) Act 2004 (9/2004)*, s. 22, S.I. No. 141 of 2004, as amended (18.07.2004) by *Equality Act 2004 24/2004*, s. 66(3)(e), commenced on enactment.

Application of Employment Equality Act 1998.

81J.—(1) In this section ‘the Act of 1998’ means the Employment Equality Act 1998.

(2) Sections 74, [76, 77A], 78 to 81, 83 to 85 and 86 to 104 of the Act of 1998 shall, where appropriate, apply in relation to this Part as they apply in relation to that Act but with the following modifications.

(3) Those modifications are that for the words set out in column (3) of the Fourth Schedule at a particular reference number, being words appearing in a section or sections of the Act of 1998 specified in column (2) of that Schedule at that reference number, there shall be substituted in the place or, as the case may be, each place where those words occur in that section or sections the words set out in column (4) of that Schedule at that reference number.

Amendment of
Industrial Relations
Act, 1990.

105.—The Industrial Relations Act, 1990, is hereby amended—

(a) in section 9 (application of provision of Part II of that Act), by the substitution in subsection (4) for “an equality officer” of “the F137[**Director of the Equality Tribunal**]”,

(b) in section 25 (functions of the Labour Relations Commission)—

(i) by the deletion, in subsection (1), of paragraph (e), and

(ii) by the deletion, in subsection (8), of “section 8(2) of the Anti-Discrimination (Pay) Act, 1974, or”,

(c) by the deletion of section 37 (equality officers), and

(d) in section 42 (codes of practice), by the substitution in subsection (4) for “a rights commissioner or an equality officer” of “the F137[**Director of the Equality Tribunal**] or a rights commissioner”.

Annotations**Amendments:**

F137 Substituted (18.07.2004) by *Equality Act 2004* (24/2004), s. 45, commenced on enactment.

F138 [Transitional provision.

106.—(1) This section applies to a claim for redress under a repealed enactment—

(a) which is made on or after the commencement of Part VII (the ‘commencement date’), and

(b) which relates—

(i) only to conduct before the commencement date, or

(ii) to conduct both before and after that date.

(2) In this section—

‘commencement date’ means the 18th day of October, 1999;

‘conduct’ means conduct alleged to have occurred;

‘repealed enactment’ means the Anti-Discrimination (Pay) Act, 1974, or the Employment Equality Act, 1977.

(3) A claim for redress to which this section applies shall—

(a) as regards the substance of the claim—

(i) if or in so far as the claim relates to conduct before the commencement date, be dealt with as if the enactment concerned had not been repealed, and

(ii) in so far as it may relate to conduct after that date, be dealt with under this Act,

and

(b) in all other respects, be dealt with as if it were a claim under section 77.

(4) For the purposes of subsection (3)—

(a) the claim concerned shall be referred or brought to the Director, the Labour Court or the Circuit Court, as appropriate, and

(b) Part VII shall apply in relation to it, with the modification that sections 76 and 82 shall not apply in relation to a case referred to in paragraph (a)(i) of that subsection and with any other necessary modifications.

(5) A claim for redress under a repealed enactment which is pending on the commencement date shall, if the conduct to which it relates also occurs after that date, be treated as if it were a claim for redress to which this section applies, and accordingly subsections (3) and (4) shall apply in relation to it.

(6) A decision or determination on a claim for redress referred to in this section may, and at the request of the claimant shall, where appropriate, specify separate findings in relation to conduct before and after the commencement date.

(7) The Director or a person appointed under section 75(4)(a) to be an equality officer may exercise the powers of an equality officer under a repealed enactment.

(8) This section shall be deemed to have come into operation on the commencement date.]

Annotations**Amendments:**

F138 Inserted (18.10.1999) by *Equal Status Act 2000* (8/2000), s. 47, S.I. No. 351 of 2000 and subs. (8).