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EMPLOYMENT EQUALITY ACT, 1998

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EMPLOYMENT EQUALITY ACT, 1998

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:

PART I

Preliminary and General

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

(2) Except in so far as any provision of this Act provides expressly for the coming into operation of any such provision, this Act shall 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.

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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;

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

(a) a contract of service or apprenticeship, or

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

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

“the Director” means the Director of Equality Investigations;

“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;

“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

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conduct of the employer, the employee was or would have been Pt.I S.2
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;

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

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

“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 sup-
port 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*;

“marital status” means single, married, separated, divorced or
widowed;

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

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

“the Minister” means the Minister for Justice, Equality and Law
Reform;

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

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“proceedings” include any referral, mediation or investigation under *Part VII* but does not include criminal proceedings for an offence under this Act;

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

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

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

“religious belief” includes religious background or outlook;

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

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

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

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

(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, and

(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.

(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”.

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(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. Pt.I S.2

(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.

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. Orders and regulations.

(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.

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

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

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

(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”.

PART II

Discrimination: General Provisions

Introductory

Discrimination for the purposes of this Act.

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

(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 marital status (in this Act referred to as “the marital 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 traveller community and the other is not (in this Act referred to as “the traveller community ground”).

(3) Where—

- (a) a person has attained the age of 65 years, or
- (b) a person has not attained the age of 18 years,

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

(4) The Minister shall review the operation of this Act, within 2 years of the date of the coming into operation of this section, with a view to assessing whether there is a need to add to the discriminatory grounds set out in this section.

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7.—(1) Subject to *subsection (2)*, for the purposes of this Act, in Pt.II
relation to the work which one person is employed to do, another Like work.
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

8.—(1) In relation to—

Discrimination by employers etc.

- (a) access to employment,
- (b) conditions of employment,
- (c) training or experience for or in relation to employment,
- (d) promotion or re-grading, or
- (e) classification of posts,

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

(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

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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.

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(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—

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- (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.

9.—(1) In a case where—

Provisions in certain agreements and orders.

- (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.

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

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(a) indicates an intention to discriminate, or

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

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

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

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

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

(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.

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

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(b) who seeks from the agency guidance as to a career or any other service (including training) related to the employment of that person. Pt.II S.11

(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.

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)— Vocational training.

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

(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—

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(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) 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 a vocational 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 considerations.

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.

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

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Procuring etc. discrimination or victimisation.

(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.

Vicarious Liability etc.

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.

Liability of employers and principals.

(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.

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

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

(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,

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- (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.

- (3) (a) For the purposes of this Act, a person who has a disability shall not be regarded as other than fully competent to undertake, and fully capable of undertaking, any duties if, with the assistance of special treatment or facilities, such person would be fully competent to undertake, and be fully capable of undertaking, those duties.
- (b) An employer shall do all that is reasonable to accommodate the needs of a person who has a disability by providing special treatment or facilities to which *paragraph (a)* relates.
- (c) A refusal or failure to provide for special treatment or facilities to which *paragraph (a)* relates shall not be deemed reasonable unless such provision would give rise to a cost, other than a nominal cost, to the employer.

(4) In *subsection (3)*—

“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 body;

“providing”, in relation to the special treatment or facilities to which *paragraph (a)* relates, includes making provision for, allowing or availing of such treatment or facilities, and “provide” shall be construed accordingly.

(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.

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17.—(1) In relation to discrimination on the marital status ground, nothing in this Act shall render unlawful any act done in compliance with any provision of the Maternity Protection Act, 1994, or the Adoptive Leave Act, 1995. Pt.II
Compliance with
statutory
requirements etc.

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

- (a) section 40(3) of the Solicitors Act, 1954, or
- (b) section 35 of the Finance Act, 1987.

(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.

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

PART III

Specific Provisions as to Equality Between Women and Men

Introductory

18.—(1) 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*. Application of
equality principles
to both men and
women.

(2) Subject to *subsection (1)*, nothing in this Act affects the operation of the Interpretation Acts, 1937 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.

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. Entitlement to
equal remuneration.

(2) In this section—

- (a) “employed” includes, in addition to employment under a contract of employment, employment under a contract personally to execute any work or labour, and
- (b) in relation to a particular time, a relevant time is any time (including a time before the commencement of this Act) during the 3 years which precede, or the 3 years which follow, the particular time.

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

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

- (a) applies to all the employees of a particular employer or to a particular class of such employees (including A and B),
- (b) is such that the remuneration of those employees who fulfil the term or criterion is different from that of those who do not,
- (c) is such that the proportion of employees who are disadvantaged by the term or criterion is substantially higher in the case of those of the same sex as A than in the case of those of the same sex as B, and
- (d) cannot be justified by objective factors unrelated to A’s sex,

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

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

Implied term as to equal remuneration.

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

(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—

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- (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.

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

Indirect
discrimination on
the gender ground.

- (a) applies to both A and B,
- (b) is such that the proportion of persons who are disadvantaged by the provision is substantially higher in the case of those of the same sex as A than in the case of those of the same sex as B, and
- (c) cannot be justified by objective factors unrelated to A's sex,

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

(2) *Subsection (1)* shall apply to the provision of any such services as are referred to in *paragraphs (a) and (b) of 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

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

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

Sexual harassment
in the workplace
etc.

23—(1) If, at a place where A is employed (in this section referred to as “the workplace”), or otherwise in the course of A’s employment, B sexually harasses A and either—

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

(b) B is A’s employer, or

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

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

(2) Without prejudice to the generality of *subsection (1)* in its application in relation to the workplace and the course of A’s employment, if, in a case where one of the conditions in *paragraphs (a) to (c)* of that subsection is fulfilled—

(a) B sexually harasses A, whether or not in the workplace or in the course of A’s employment, and

(b) A is treated differently in the workplace or otherwise in the course of A’s employment by reason of A’s rejection or acceptance of the sexual harassment or it could reasonably be anticipated that A would be so treated,

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

(3) For the purposes of this Act—

- (a) any act of physical intimacy by B towards A,
- (b) any request by B for sexual favours from A, or
- (c) any other act or conduct of B (including, without prejudice to the generality, spoken words, gestures or the production, display or circulation of written words, pictures or other material),

shall constitute sexual harassment of A by B if the act, request or conduct is unwelcome to A and could reasonably be regarded as sexually, or otherwise on the gender ground, offensive, humiliating or intimidating to A.

(4) According to the nature of the business of A's employer, the reference in *subsection (1)(c)* to a client, customer or other business contact includes a reference to any other person with whom A's employer might reasonably expect A to come into contact in the workplace or otherwise in the course of A's employment.

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

- (a) in a case where *subsection (2)* applies, to prevent A being treated differently in the workplace or otherwise in the course of A's employment and, if and so far as any such treatment has occurred, to reverse the effects of it, and
- (b) in a case where *subsection (1)* applies (whether or not *subsection (2)* also applies) to prevent B from sexually harassing A (or any class of persons of whom A is one).

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

- (a) seeking or using any service provided by an employment agency, and
- (b) participation in any such course or facility as is referred to in *paragraphs (a) to (c) of section 12(1)*,

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

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

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

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(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”.

Exclusion of discrimination in certain employments.

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

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

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

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

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

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

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

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

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 breastfeeding) or adoption.

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

Garda Síochána and prison service.

27.—(1) With regard to employment in the Garda Síochána or the prison service, 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—

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- (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.

PART IV

Specific Provisions as to Equality Between other Categories of Persons

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

- (a) in relation to the marital status ground, C and D have different marital 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 traveller community ground, C is a member of the 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 marital status ground, the relevant characteristic is having the same marital status as C (or, as the case may be, as D), and
- (b) in relation to the family status ground, the relevant characteristic is having the same, or the same lack of, family status as C (or, as the case may be, as D),

and so on for each of the other discriminatory grounds.

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.

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

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

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- (b) is such that the remuneration of those who fulfil the term or criterion is different from that of those who do not, Pt.IV S.29
- (c) is such that the proportion of employees who can fulfil the term or criterion is substantially smaller in the case of the employees having the same relevant characteristic as C when compared with the employees having the same relevant characteristic as D, and
- (d) cannot be justified as being reasonable in all the circumstances of the case,

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

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

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. Equality clause relating to non-gender issues.

(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.

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discrimination.

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

- (a) applies to all the employees or prospective employees of a particular employer who include C and D or, as the case may be, to a particular class of those employees or prospective employees which includes C and D,
- (b) operates to the disadvantage of C, as compared with D, in relation to any of the matters specified in *paragraphs (a) to (e) of section 8(1)*,
- (c) in practice can be complied with by a substantially smaller proportion of the employees or prospective employees having the same relevant characteristic as C when compared with the employees or prospective employees having the same relevant characteristic as D, and
- (d) cannot be justified as being reasonable in all the circumstances of the case,

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

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

- (a) applies to all members or potential members or to a particular class of member or potential member which includes C and D,
- (b) operates to the disadvantage of C, as compared with D, in relation to any of the matters specified in *paragraphs (a) to (e) of section 8(1)*,
- (c) in practice can be complied with by a substantially smaller proportion of the members or potential members having the same relevant characteristic as C when compared with the members or potential members having the same relevant characteristic as D, and
- (d) cannot be justified as being reasonable in all the circumstances of the case,

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

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

- (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)*.

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(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. Pt.IV S.31

(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) or (2)*, as discriminating against an individual on the marital status ground or the family status ground, and
- (b) by virtue of *section 22*, also as discriminating against the same individual on the gender ground,

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

32.—(1) If, at a place where C is employed (in this section referred to as “the workplace”), or otherwise in the course of C’s employment, another individual (“E”) harasses C by reference to the relevant characteristic of C and— Harassment in the workplace etc.

- (a) C and E are both employed at that place or by the same employer,
- (b) E is C’s employer, or
- (c) E is a client, customer or other business contact of C’s employer and the circumstances of the harassment are such that C’s employer ought reasonably to have taken steps to prevent it,

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

(2) Without prejudice to the generality of *subsection (1)* in its application in relation to the workplace and the course of C’s employment, if, in a case where one of the conditions in *paragraphs (a) to (c)* of that subsection is fulfilled—

- (a) E harasses C by reference to the relevant characteristic of C, whether or not in the workplace or in the course of C’s employment, and
- (b) C is treated differently in the workplace or otherwise in the course of C’s employment by reason of C’s rejection or acceptance of the harassment or it could reasonably be anticipated that C would be so treated,

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

(3) *Section 23(4)* applies in relation to *subsection (1)(c)* with the substitution for any reference to A of a reference to C.

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

- (a) stands as D in relation to C, or
- (b) has the same relevant characteristic as C,

and any reference in this section to the relevant characteristic of C (or the same relevant characteristic as C) includes a reference to what E believes to be the relevant characteristic of C.

(5) For the purposes of this Act, any act or conduct of E (including, without prejudice to the generality, spoken words, gestures or the production, display or circulation of written words, pictures or other material) constitutes harassment of C by E if the action or other conduct is unwelcome to C and could reasonably be regarded, in relation to the relevant characteristic of C, as offensive, humiliating or intimidating to C.

(6) If, as a result of any act or conduct of E another person (“F”) who is C’s employer would, apart from this subsection, be regarded by virtue of *subsection (1)* as discriminating against C, it shall be a defence for F to prove that F took such steps as are reasonably practicable—

- (a) in a case where *subsection (2)* applies, to prevent C being treated differently in the workplace or otherwise in the course of C’s employment and, if and so far as any such treatment has occurred, to reverse the effects of it, and
- (b) in a case where *subsection (1)* applies (whether or not *subsection (2)* also applies), to prevent E from harassing C (or any class of persons of whom C is one).

(7) In this section “employed”, in relation to an individual, includes—

- (a) seeking or using any service provided by an employment agency, and
- (b) participating in any such course or facility as is referred to in *paragraphs (a) to (c) of 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 the course or facility.

(8) Where *subsection (7)* applies in relation to C, *subsection (1)* shall have effect as if for the words “in relation to C’s conditions of employment” there were substituted “contrary to *section 11* or, as the case may be, *section 12*”.

Positive action permitted.

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

- (a) persons who have attained the age of 50 years,
- (b) persons with a disability or any class or description of such persons, or

(c) members of the traveller community.

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

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

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—

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

(a) a benefit to an employee in respect of events related to members of the employee's family or any description of those members,

(b) a benefit to or in respect of a person as a member of an employee's family,

(c) a benefit to an employee on or by reference to an event occasioning a change in the marital status of the employee, or

(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.

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

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

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

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(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.

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

Special provisions related to persons with disabilities.

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

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—

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(a) holding office under, or in the service of, the State Pt.IV S.36
(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 appli-
cation 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 pro-
fessional qualification which is a generally accepted quali-
fication 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 cir-
cumstances.

(6) Nothing in this section shall render lawful discrimination on
the gender ground.

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—

Exclusion of
discrimination on
particular grounds
in certain
employments.

(a) it gives more favourable treatment, on the religion ground,
to an employee or a prospective employee over that per-
son 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.

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

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

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

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

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

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

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

PART V

Equality Authority

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:

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- (a) to work towards the elimination of discrimination in relation to employment; Pt.V S.39
- (b) to promote equality of opportunity in relation to the matters to which this Act applies;
- (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.

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. Strategic Plans.

(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.

41.—(1) Subject to *subsection (2)*, the Authority shall consist of 12 members appointed by the Minister (one of whom shall be appointed as its chairperson) of whom at least 5 shall be male and 5 shall be female. Membership.

(2) For the 4 years immediately following the first appointment by the Minister of members of the Authority, the Authority shall consist of not more than 12 members so appointed (one of whom shall be its chairperson) of whom, other than 2, at least half shall be male and half shall be female.

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

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. Chairperson.

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(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.

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, marital status, family status, sexual orientation, religion, age, disability, race, colour, nationality, ethnic or national origin or membership of the traveller community,

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(ii) issues related to the provision of goods or services, or Pt.V S.44

(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.

(4) Each ordinary member of the Authority shall be paid out of moneys provided by the Oireachtas such 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 office of the person that he or she replaced as a member.

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.

Chairperson and ordinary members may be re-appointed.

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.

Vice-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.

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.

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.

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(4) The quorum for a meeting of the Authority shall be 5 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.

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.

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.

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(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. Pt.V S.49

(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.

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—

Accountability of
Chief Executive
Officer.

- (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.

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Pt.V
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.

(3) Each appointment under this section or *section 49* shall be—

(a) on such terms as the Minister may, with the consent of the Minister for Finance, determine and shall be subject to the Civil Service Commissioners Act, 1956, and the Civil Service Regulation Acts, 1956 to 1996, or

(b) on such other terms and conditions as may be determined by the Authority and approved by the Minister with the consent of the Minister for Finance.

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

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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. Pt.V S.53

- (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.

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. Annual report and provision of information to Minister.

(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.

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(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.

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:

- (a) the elimination of discrimination in employment;
- (b) the promotion of equality of opportunity in employment.

(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*, 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.

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. Pt.V
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information.

(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

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. Inquiries.

(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.

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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
- (b) the Authority believes that a person named in the terms of reference for the inquiry to which the notice relates—
 - (i) has discriminated or is discriminating,
 - (ii) has contravened or is contravening *section 8(4), 10 or 14*, or
 - (iii) has failed or is failing to comply with an equality clause or an equal remuneration term.

(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.

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)*,

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- (c) on being duly summoned as a witness by a notice under *section 59(1)(c)*, fails or refuses to attend before the Authority, Pt.V S.60
- (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.

61.—(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*. Recommendations arising out of and reports of inquiries.

(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—

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- (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.

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,
- (b) has contravened or is contravening *section 8(4), 10 or 14*, 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

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(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. Pt.V S.62

63.—(1) 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. Appeal against non-discrimination 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.

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. Register of non-discrimination notices.

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. Injunctions for failure to comply with non-discrimination notice.

(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.

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

67.—(1) A person who considers that—

(a) discrimination has been directed against the person by another person, or

(b) 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, or

Assistance by Authority in connection with certain references.

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- (ii) to implement a decision, order or determination under this Part or a mediated settlement under *section 78*,

may make a request to the Authority for assistance in taking proceedings in respect of which redress is provided for under this 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.

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 under *section 71(3)*.

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 in employment 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 to that employment 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 in employment in a business or businesses to further the promotion of equality of opportunity in that employment.

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

- (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. Pt.VI S.69

(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 in an employment.

(7) For the purposes of this section—

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

(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.

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: Enforcement powers in respect of equality reviews and action plans.

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

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(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.

Appeal against substantive notice.

71.—(1) 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.

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.

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(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. Pt.VI S.73

(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

Introductory

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

Interpretation (*Part VII*).

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

“equality mediation officer” and “equality officer” shall be construed in accordance with *subsections (3) and (4) 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)*.

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

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

Equality Investigations

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

Director of Equality Investigations and other officers.

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(2) The office of the Director shall consist of the Director and such staff as, subject to *subsection (3)*, 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 Civil Service Commissioners Act, 1956, and the Civil Service Regulation Acts, 1956 to 1996.

(3) Any person who, immediately before the commencement of this subsection, was holding office as an equality officer of the Labour Relations Commission shall, on that commencement and by virtue of this subsection, become as an equality officer, a member of the staff of the Director.

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

(a) appoint persons to be equality officers, and

(b) appoint persons, including those who are equality officers (whether by virtue of *subsection (3)* or of appointment under *paragraph (a)*) to be equality mediation officers,

and the Director may delegate any function conferred on the Director by or under this Act or any other enactment to an equality officer or equality mediation officer.

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

(6) Subject to *subsection (7)*, the delegation of a function under *subsection (4)* 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 *subsection (4)*, the Director has delegated to an officer the function of hearing a case referred to the Director under *section 77*—

(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.

Redress

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

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or otherwise penalised X in circumstances amounting to Pt.VII S.76
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
- (c) other information which is not confidential information and which, in the circumstances of the case in question, it is reasonable for X to require.

(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—

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

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- (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.

The forum for seeking redress.

77.—(1) A person who claims—

- (a) to have been discriminated against by another in contravention of this Act,
- (b) not to be receiving remuneration in accordance with an equal remuneration term,
- (c) not to be receiving a benefit under an equality clause, or
- (d) to have been penalised in circumstances amounting to victimisation,

may, subject to *subsections (2) to (8)*, seek redress by referring the case to the Director.

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

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

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

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

- (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,

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then, subject to *subsections (4) to (8)*, the person making the claim may seek redress by referring the case to the Circuit Court, instead of referring it to the Director under *subsection (1)* or, as the case may be, to the Labour Court under *subsection (2)*. Pt.VII S.77

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

- (a) “the complainant” means the person by whom it is referred, 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.

(5) Subject to *subsection (6)*, 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 the occurrence or, as the case may require, the most recent occurrence of the act of discrimination or victimisation to which the case relates.

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

- (a) the Director, the Labour Court or the Circuit Court, as the case may be, may direct that, in relation to that case, *subsection (5)* shall have effect as if for the reference to a period of 6 months there were substituted a reference to such period not exceeding 12 months as is specified in the direction, and
- (b) where such a direction is given, this Part shall have effect accordingly.

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

- (a) the Civil Service Commissioners in the course of such a recruitment or selection process as is referred to in *section 76(5)(a)*,
- (b) the Local Appointments Commissioners in the course of such a recruitment or selection process as is referred to in *section 76(5)(b)*,
- (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,

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

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(8) Where *subsection (7)* applies to a claim for redress in respect of discrimination, the complainant may not refer the case under *subsection (1), (2) or (3)* unless—

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

(9) Where—

- (a) a claim for redress relating to employment in the Defence Forces arises under *Part III* or in any other circumstances (including circumstances amounting to victimisation) to which the Equal Pay Directive or the Equal Treatment Directive is relevant, and
- (b) the complainant is a member of the Defence Forces,

then 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), (2) 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.

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. Pt.VII
Mediation.

(2) Subject to *subsection (3)*, if at any time after a case has been referred to the Labour Court under *section 77(2)* it appears to the Labour Court that the case is one which could be resolved by mediation, the Labour Court shall either—

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

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

(3) If the complainant or the respondent objects to a case being dealt with by way of mediation, the Director or, as the case may be, the Labour Court shall not exercise their powers under this section but shall deal with the case under *section 79*.

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

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

(a) the equality mediation officer concerned or, as the case may be, the Labour Court shall prepare a written record of the terms of the settlement,

(b) the written record of the terms of the settlement shall be signed by the complainant and the respondent,

(c) the equality mediation officer concerned or, as the case may be, the Labour Court shall send a copy of the written record, as so signed, to the complainant and the respondent, and

(d) a copy of the written record shall be retained by the Director or the Labour Court, as the case may require.

(6) If after—

(a) a case has been referred to an equality mediation officer under *subsection (1)* or *(2)(b)*, or

(b) the Labour Court has attempted to resolve a case under *subsection (2)(a)*,

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

(7) Where—

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

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

the Director or the Labour Court, as the case may require, shall proceed or, as the case may be, continue to deal with the case under *section 79*.

Investigations by
Director or the
Labour Court.

79.—(1) Where a case which has been referred to the Director or the Labour Court under *section 77*—

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

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

(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.

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

- (a) procedures to be followed by the Director or, as the case may be, the Labour Court in carrying out investigations (or any description of investigations) under this section, and
- (b) time limits applicable to such investigations, including procedures for extending those limits in certain circumstances,

but, before making any such regulations, the Minister shall consult the Labour Court, the Authority and the Director; and any such regulations relating to functions of the Labour Court shall be made only with the consent of the Minister for Enterprise, Trade and Employment.

(5) Unless the Director or the Labour Court considers it necessary to do so in order to bring an investigation to a proper conclusion, information shall be neither sought nor relied upon for the purpose of an investigation under this section (or of any appeal subsequent

thereto) if it relates to or is derived from communications with external advisers to any of the persons referred to in *paragraphs (a) to (d) of section 76(5)*. Pt.VII S.79

(6) At the conclusion of an investigation under this section (including an investigation of a preliminary issue under *subsection (3)*), the Director shall issue a decision or, as the case may be, the Labour Court shall make a determination and, if the decision or determination 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 *subsection (3)*, it shall be followed by an investigation of the substantive issue.

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. References to the Circuit Court.

(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.

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, the Director or the Labour Court, as the case may be— Consequences of failure to supply information etc.

(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

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

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 specified.

(2) The types of redress for which a determination of the Labour Court 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) the orders referred to in *paragraphs (c) to (e) of subsection (1)*;
- (b) an order for re-instatement or re-engagement, with or without an order for compensation.

(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;

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(c) the orders referred to in *paragraphs (c) to (e) of subsection (1)*; Pt.VII S.82

(d) an order for re-instatement or re-engagement, with or without an order for compensation,

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

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

(a) the amount of that remuneration, determined on a weekly basis, or

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

and in any other case, shall be £10,000.

(5) Where the case for which the redress is to be provided is referred to the Director or the Labour Court 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 or the Labour Court, as the case may be, may, in addition to making an order for compensation, also order the payment of interest, at the rate which is applicable under section 22(1) of the 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)*.

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.

Appeals from the Director to the Labour Court.

(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.

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(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 under *section 79(3)* is in favour of the complainant, the case shall be referred back to the Director for an investigation of the substantive issue.

(6) Subject to *subsection (2)*, the Minister, with the consent of the Minister for Enterprise, 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.

References by the Labour Court to the Director.

84.—(1) Where a case is referred to the Labour Court under *section 77* and that Court considers that it would be assisted in making its determination by an investigation conducted by the Director, the Labour Court may refer all or any of the matters in issue in the case to the Director; and, where such a reference is made, the Director shall investigate the matters so referred and submit a report thereon to the Labour Court.

(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 *subsection (1)* or *(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*. Pt.VII S.84

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

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powers of 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.

(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.

Collective Agreements

Reference of collective agreements to Director.

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)*,

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(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

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(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)*”.

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

Mediation, decisions and appeals relating to collective agreements.

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

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(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*.

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 or determination 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

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(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*. Pt.VII S.88

(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)*.

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

Supply and publication of decisions and determinations.

(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.

90.—(1) Not later than 42 days, or such longer period as the Circuit Court may allow, from the date of a determination of the Labour Court under *section 79*, the complainant or the respondent may appeal against the determination to the Circuit Court.

Appeals and references from the Labour Court.

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

(3) Where a determination is made by the Labour Court under *section 79* or on an appeal under this Part, either of the parties may appeal to the High Court on a point of law.

(4) During the investigation of a case by the Labour Court under *section 79* or in the course of an appeal to it under this Part, the Labour Court may—

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

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

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

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

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.

(2) If an employer or the 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 the person affected (that is to say, the employer or the person who is a party to the settlement) to carry out those terms or, as the case may be, the part of those terms to which the application relates; but the Circuit Court shall not, by virtue of this subsection, direct any person to pay any sum or do any other thing which (had the matter been dealt with otherwise than by mediation) could not 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 determination or decision, the period within which an appeal might be brought against the determination or decision, and

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

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

(a) by the complainant, or

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

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(5) On an application under this section, the Circuit Court shall exercise its functions under *subsection (1)* or *(2)* on being satisfied— Pt.VII S.91

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

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

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

(a) no appeal has been brought, or

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

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

(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.

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)*. Additional powers of Circuit Court on enforcement.

(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 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.

93.—(1) On an application under *section 91* which relates to a determination requiring an employer to re-instate or re-engage an employee, the Circuit Court may, if in all the circumstances it considers it appropriate to do so, instead of making an order under *subsection (1)* of that section, make a compensation order under this section. Compensation *in lieu* of re-instatement or re-engagement.

(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.

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(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.

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—

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(a) where the powers are to be exercised by virtue of *subsection* Pt.VII S.94

(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.

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— Requirements on persons to provide information.

(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.

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(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.

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.

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—

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- (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.

Offences

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—

Penalty for dismissal of employee for exercising rights.

- (a) that the employee was dismissed, and
- (b) that the employee, in good faith, did one or more of the acts specified in *paragraphs (a) to (d)* of *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 Labour Court 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

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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 Labour Court could order by way of compensation under *section 82(2)* 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 Labour Court's determination shall be construed as a reference to the date of the conviction of the offence.

(6) Where, on conviction of an employer for an offence under this section, the court makes an order under *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.

99.—(1) Any person who—

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

Obstruction etc. of Director and other officers.

(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)*.

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

Offences: general provisions.

(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.

Supplementary

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.

Alternative avenues of redress.

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(2) If an individual has referred a case to the Director under *section 77(1)* in respect of such a failure as is mentioned in *subsection (1)*, and either a settlement has been reached by mediation or the Director has begun an investigation under *section 79*, the individual shall not be entitled to recover damages at common law in respect of that failure.

(3) If an individual has referred a case to the Circuit Court under *section 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) An employee who has been dismissed shall not be entitled to seek redress (or to exercise, or continue to exercise, any other power) under this Part if, as a result of the dismissal—

- (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.

(5) If an employee who has been dismissed has referred the case of the dismissal to the Labour Court under *section 77* and either a settlement has been reached by mediation or the Labour Court has begun an investigation under *section 79*—

- (a) the employee shall not be entitled, as a result of the dismissal, to recover damages at common law for wrongful dismissal, and
- (b) the employee shall not be entitled to seek redress (or to exercise, or continue to exercise, any other power) under the Unfair Dismissals Acts, 1977 to 1993, in respect of the dismissal.

(6) The reference in *subsection (5)* to an investigation under *section 79* does not include an investigation where—

- (a) after the reference of the case under *section 77*, the Labour Court exercises its power under *section 78(2)(a)*,
- (b) subsequently the Labour Court issues a notice under *section 78(6)*, and
- (c) no application is made under *section 78(7)(b)* for the resumption of the hearing of the case.

Striking out cases which are not pursued.

102.—(1) Where—

- (a) a case is referred to the Director under *section 77*,
- (b) a matter is referred to the Director under *section 85*, or
- (c) a collective agreement is referred to the Director under *section 86*,

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and, at any time after the expiry of 1 year from the date of the reference, it appears to the Director that the complainant has not pursued, or has ceased to pursue, the reference, the Director may strike out the reference. Pt.VII S.102

(2) Where—

(a) a case is referred to the Labour Court under *section 77*, or

(b) an appeal is brought to the Labour Court under this Part,

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.

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. Provisions relating to insolvency.

(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)*,

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- (b) a decision or determination 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 90, 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.”.

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, the Labour Court 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 or the Labour Court 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.

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105.—The Industrial Relations Act, 1990, is hereby amended— Pt.VII

Amendment of
Industrial Relations
Act, 1990.

(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 Director of Equality Investigations”,

(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 Director of Equality Investigations or a rights commissioner”.