

CONS.01/2015



**Consultation Paper on
the creation of a draft set of regulations to establish the
Equal Opportunities Commission.**

**by Command of Her Majesty
12th October 2015**

Comments on this Consultation Paper should be sent by email to

consultation.papers@gibraltar.gov.gi or delivered to

Consultation Papers Consultation c/o Kevin Warwick, Ministry of Education, Justice and International Exchange of Information, Suite 771, Europort, Gibraltar, no later than the 26th October 2015.

Any comments received later than the 26th October 2015 may not be taken into account for the purposes of the relevant consultation.

**SECOND SUPPLEMENT TO THE GIBRALTAR
GAZETTE**

No. 0000 of 00 September, 2015

LEGAL NOTICE NO. OF 2015.

EQUAL OPPORTUNITIES ACT 2006

**EQUAL OPPORTUNITIES (EQUAL OPPORTUNITIES
COMMISSION) REGULATIONS 2015**

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LEGAL NOTICE NO. OF 2015.

EQUAL OPPORTUNITIES ACT 2006

**EQUAL OPPORTUNITIES (EQUAL OPPORTUNITIES
COMMISSION) REGULATIONS 2015**

In exercise of the powers conferred upon it by section 79 of the Equal Opportunities Act 2006, the Government has made the following Regulations—

Title.

1. These Regulations may be cited as the Equal Opportunities (Equal Opportunities Commission) Regulations 2015.

Commencement.

2. These Regulations come into operation on the day of publication.

Establishment and general duty.

3.(1) There will be a body corporate known as the Equal Opportunities Commission (the “Commission”).

(2) The Office of the Public Services Ombudsman is appointed by the Minister with responsibility for Equality (henceforth known as “Minister”) to act as the Commission and the Ombudsman will be the Commissioner.

(3) The Commission will exercise its functions under these Regulations with a view to encouraging and supporting the development of a society in which—

(a) people’s ability to achieve their potential is not limited by prejudice or discrimination;

(b) there is respect for the dignity and worth of each individual;

(c) each individual has an equal opportunity to participate in society; and

(d) there is mutual respect between groups based on understanding

and valuing of diversity and on shared respect for equality.

(4) The Schedules to these Regulations will have effect.

Disclosure.

4.(1) A person who is or was the Commissioner or an employee of the Commission commits an offence if he discloses information to which this regulation applies unless subregulation (3) authorises the disclosure.

(2) This regulation applies to information acquired by the Commission by way of representations made in relation to, or otherwise in the course of, an investigation under regulation 10 or an assessment under regulation 11.

(3) This subregulation authorises a disclosure made-

(a) for the purpose of the exercise of a function of the Commission under any of regulations 10 and 11;

(b) in a report of an investigation or assessment published by the Commission;

(c) in pursuance of an order of a court or tribunal;

(d) with the consent of each person to whom the disclosed information relates;

(e) in a manner that ensures that no person to whom the disclosed information relates can be identified;

(f) for the purpose of civil or criminal proceedings to which the Commission is party; or

(g) if the information was acquired by the Commission more than 70 years before the date of the disclosure.

(4) But subregulation (3) does not authorise, nor may the Commission make, a disclosure of information provided by or relating to national security unless authorised to do so by the Chief Minister.

(5) In this regulation “national security” has the same meaning as in the Data Protection Act 2004.

(6) A person guilty of an offence under subregulation (1) shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.

Equality and diversity.

5.(1) The Commission will, by exercising its powers -

- (a) promote understanding of the importance of equality and diversity;
- (b) encourage good practice in relation to equality and diversity;
- (c) promote equality of opportunity;
- (d) promote awareness and understanding of rights under equality legislation;
- (e) enforce equality legislation;
- (f) work towards the elimination of unlawful discrimination; and
- (g) work towards the elimination of unlawful harassment.

(2) In promoting equality of opportunity between disabled persons and others, the Commission may, in particular, promote the favourable treatment of disabled persons.

Groups.

6.(1) The Commission will, by exercising the powers conferred by these Regulations-

- (a) promote understanding of the importance of good relations-
 - (i) between members of different groups; and
 - (ii) between members of groups and others,
- (b) encourage good practice in relation to relations-
 - (i) between members of different groups; and

(ii) between members of groups and others,

(c) work towards the elimination of prejudice against, hatred of and hostility towards members of groups; and

(d) work towards enabling members of groups to participate in society.

(2) In these Regulations “group” means a group or class of persons who share a common attribute in respect of any of the grounds of discrimination in the Equal Opportunities Act 2006.

(3) In pursuance of its duties under these Regulations the Commission may do anything specified in this regulation (without prejudice to the generality of regulation 8).

Monitoring legislation and progress.

7.(1) The Commission will monitor the effectiveness of equality related legislation.

(2) The Commission may-

(a) advise the Minister about the effectiveness of any policies and legislation on equality matters;

(b) recommend to the Minister the amendment, repeal, consolidation (with or without amendments) or replication (with or without amendments) of any equality legislation; and

(c) advise the Minister about the likely effect of a proposed change of law.

(3) The Commission will from time to time identify-

(a) changes in society that have occurred or are expected to occur and are relevant to the aim specified in regulation 3;

(b) results at which to aim for the purpose of encouraging and supporting the development of the society described in regulation 3 (“outcomes”); and

(c) factors by reference to which progress towards those results may be measured (“indicators”).

(4) In identifying outcomes and indicators the Commission will-

(a) consult such persons having knowledge or experience relevant to the Commission’s functions as the Commission thinks appropriate;

(b) consult such other persons as the Commission thinks appropriate;

(c) issue a general invitation to make representations, in a manner likely in the Commission’s opinion to bring the invitation to the attention of as large a class of persons who may wish to make representations as is reasonably practicable; and

(d) take account of any representations made.

(5) The Commission will from time to time monitor progress towards each identified outcome by reference to any relevant identified indicator.

(6) The Commission will publish a report on progress towards the identified outcomes by reference to the identified indicators within the period of 3 years beginning with the date on which these Regulations come into force and every three years thereafter.

(7) The Commission will send each report to the Minister, who may lay a copy before Parliament.

Information and advice.

8. (1) In pursuance of its duties under regulations 5 and 6 the Commission may-

(a) publish or otherwise disseminate ideas or information;

(b) undertake research;

(c) provide education or training;

(d) give advice or guidance (whether about the effect or operation of legislation or otherwise);

(e) arrange for a person to do anything within paragraphs (a) to (d);
and

(f) act jointly with, co-operate with or assist a person doing
anything within paragraphs (a) to (d).

(2) The reference to giving advice in subregulation (1)(d) does not include a reference to preparing, or assisting in the preparation of, a document to be used for the purpose of legal proceedings.

Codes of practice.

9.(1) Subject to the provisions of this regulation the Commission may prepare codes of practice in connection with matters addressing areas of equality or discrimination to be issued by the Minister.

(2) A code of practice under subregulation (1) will contain a provision designed to-

(a) ensure or facilitate compliance with equality legislation;
and

(b) promote equality of opportunity.

(3) The Commission will comply with a direction of the Minister to issue a code under this regulation in connection with a specific matter of equality or discrimination.

(4) Before finalising a draft code of practice under this regulation the Commission will-

(a) publish proposals; and

(b) consult such persons as it thinks appropriate.

(5) The Commission must submit a draft of the code of practice to the Minister for her approval.

(6) The Minister may modify any draft submitted under subregulation (5) and must notify the Commission on whether she approves the draft or not.

(7) Pursuant to subregulation (6) if the Minister does not approve the draft she must give the Commission written reasons as to why she does not approve.

(8) Before issuing a code of practice the Minister must lay a code of practice in Parliament and if the Parliament has not passed a motion disapproving the code within 30 days of the commencement of the next sitting, it will be deemed to be approved by the Parliament and may be issued by the Minister.

(9) Upon being issued by the Minister, a code of practice-

(a) must be published in the Gazette;

(b) does not come into operation until the Minister by order so provides.

(10) An order bringing a code of practice into operation may include transitional or saving provisions.

(11) The Commission may revise a code of practice issued under this regulation; and a reference in these Regulations to the issue of a code of practice will be treated as including a reference to the revision of a code of practice.

(12) A code of practice issued under this regulation may be revoked by the Minister, at the request of the Commission, by order.

(13) A failure to comply with a provision of a code of practice will not of itself make a person liable to criminal or civil proceedings; but a code of practice-

(a) will be admissible in evidence in criminal or civil proceedings;
and

(b) will be taken into account by a court or tribunal in any case in which it appears to the court or tribunal to be relevant.

Investigations.

10.(1) The Commission may investigate whether or not a person has committed an unlawful act.

(2) The Commission may conduct an investigation under subregulation (1) only if it suspects that the person concerned may have committed an unlawful act.

(3) Before settling a report of an investigation recording a finding that a person has committed an unlawful act or has failed to comply with a requirement or undertaking the Commission will-

(a) send a draft of the report to the person,

(b) specify a period of at least 28 days during which he may make written representations about the draft, and

(c) consider any representations made.

Assessments.

11.(1) The Commission may assess the extent to which or the manner in which a person has complied with a duty under the Equal Opportunities Act.

(2) Schedule 2 makes supplemental provision about investigations and assessments.

SCHEDULE 1

THE EQUAL OPPORTUNITIES COMMISSION

Membership.

1.(1) The relevant matters in respect of which the Commission has functions include but are not limited to discrimination (whether on grounds of age, disability, gender, nationality, race, religion or belief, sexual orientation or otherwise).

(2) The Commissioner may resign by notice in writing to the Minister.

(3) The Minister may dismiss the Commissioner if in her opinion the Commissioner is unable, unfit or unwilling to perform his functions.

Procedure.

2. The Commission may regulate its own proceedings (subject to these Regulations).

SCHEDULE 2

INVESTIGATIONS AND ASSESSMENTS

Introduction.

1. This Schedule applies to-
 - (a) investigations under regulation 10; and
 - (b) assessments under regulation 11.

2. Before conducting an investigation the Commission will-
 - (a) prepare terms of reference specifying the person to be investigated and the nature of the unlawful act which the Commission suspects;
 - (b) give the person to be investigated notice of the proposed terms of reference;
 - (c) give the person to be investigated an opportunity to make representations about the proposed terms of reference;
 - (d) consider any representations made; and
 - (e) publish the terms of reference once settled.

3. Before conducting an assessment of a person's compliance with a duty the Commission will-
 - (a) prepare terms of reference;
 - (b) give the person notice of the proposed terms of reference;
 - (c) give the person an opportunity to make representations about the proposed terms of reference;
 - (d) consider any representations made; and

(e) publish the terms of reference once settled.

Representations.

4.(1) The Commission will make arrangements for giving persons an opportunity to make representations in relation to investigations and assessments.

(2) In particular, in the course of an investigation or assessment the Commission will give any person specified in the terms of reference an opportunity to make representations.

(3) Arrangements under this paragraph may (but need not) include arrangements for oral representations.

(4) The Commission will consider representations made in relation to an investigation or assessment, but may where they think it appropriate, refuse to consider representations-

(a) made neither by nor on behalf of a person specified in the terms of reference; or

(b) made on behalf of a person specified in the terms of reference by a person who is not a barrister, an advocate or a solicitor.

(5) If the Commission refuse to consider representations in reliance on subparagraph (4) they will give the person who makes them written notice of the Commission's decision and the reasons for it.

Evidence.

5.(1) In the course of an investigation or assessment the Commission may make a request under this paragraph to any person.

(2) A request made to a person under this paragraph may require him-

(a) to provide information in his possession,

(b) to produce documents in his possession, or

(c) to give oral evidence.

(3) A request made under this paragraph may include provision about-

(a) the form of information, documents or evidence;

(b) timing.

Reports and recommendations.

6.(1) The Commission will publish a report of its findings on an investigation or assessment.

(2) The Commission may make recommendations-

(a) as part of a report of an investigation or assessment; or

(b) in respect of a matter arising in the course of an investigation or assessments.

(3) A recommendation may be addressed to any class of person.