

EQUAL OPPORTUNITIES ACT, 2004

Revoked by Act 2006-37 as from 1.3.2007

Principal Act

Act. No. 2004-06	<i>Commencement (LN. 2004/027)</i>	11.3.2004
	<i>Assent</i>	26.2.2004

Amending enactments	Relevant current provisions	Commencement date
None		

EU Legislation/International Agreements involved:

Directive 1997/80/EC
 Directive 2000/43/EC
 Directive 2000/78/EC

English sources:

None cited

2004-06

Revoked

Equal Opportunities

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AN ACT TO TRANSPOSE INTO THE LAW OF GIBRALTAR COUNCIL DIRECTIVE 1997/80/EC OF 15 DECEMBER 1997 ON THE BURDEN OF PROOF IN CASES OF DISCRIMINATION BASED ON SEX AS AMENDED, COUNCIL DIRECTIVE 2000/43/EC OF 29 JUNE 2000 IMPLEMENTING THE PRINCIPLE OF EQUAL TREATMENT BETWEEN PERSONS IRRESPECTIVE OF RACIAL OR ETHNIC ORIGIN, AND COUNCIL DIRECTIVE 2000/78/EC OF 27 JUNE 2000 ESTABLISHING A GENERAL FRAMEWORK FOR EQUAL TREATMENT IN EMPLOYMENT AND OCCUPATION; AND FOR CONNECTED PURPOSES:

PART I

Preliminary.

Title and commencement.

1. This Act may be cited as the Equal Opportunities Act, 2004 and shall come into operation on the day appointed by the Government by notice in the Gazette and different dates may be appointed for different provisions.

Interpretation.

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

“act” includes a deliberate omission;

“benefits” except in section 20, includes facilities and services;

“collective agreement” means any agreement or arrangement made by or on behalf of one or more trade unions and one or more employers or employers’ associations and relating to one or more of the following matters—

- (a) terms and conditions of employment, or the physical conditions in which any workers are required to work;
- (b) engagement or non-engagement, or termination or suspension of employment or the duties of employment, of one or more workers;
- (c) allocation of work or the duties of employment between workers or groups of workers;
- (d) matters of discipline;
- (e) a worker’s membership or non-membership of a trade union;
- (f) facilities for official trade unions; and

- (g) machinery for negotiation or consultation, and other procedures, relating to any of the above matters, including the recognition by employers or employers' associations of the right of a trade union to represent workers in such negotiation or consultation or in the carrying out of such procedures;

“Council Directive 2000/43/EC” means the Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin;

“Council Directive 2000/78/EC” means the Council Directive 2000/78/EC of 27 June 2000 establishing a general framework for equal treatment in employment and occupation;

“Court” means the Supreme Court;

“detriment” does not include harassment within the meaning of section 5, 8 or 10;

“discrimination” includes an instruction by a person who has authority over another person to do an act which is unlawful by virtue of Part II or Part III of this Act;

“non-discrimination rule”, in relation to an occupational pension scheme, means the rule in subsection (2) of section 20;

“prospective member”, in relation to an occupational pension scheme means any person who, under the terms of his employment or the rules of the scheme or both -

- (a) is able, at his own option, to become a member of the scheme,
- (b) shall become so able if he continues in the same employment for a sufficient period of time,
- (c) shall be admitted to it automatically unless he makes an election not to become a member, or
- (d) may be admitted to it subject to the consent of his employer;

“racial group” means a group of persons defined by reference to race or ethnic origins, and reference to a person's racial group refer to any racial group into which he falls;

“racial or ethnic grounds” means a ground based on race or ethnic origin;
“religion or belief” means any religion, religious belief or similar philosophical belief;

“school” has the meaning assigned to it by section 2(1) of the Education Act and references to a school are to an institution in so far as it is engaged in the provisions of education;

“sexual orientation” means a sexual orientation towards–

- (a) persons of the same sex;
- (b) persons of the opposite sex; or
- (c) persons of the same sex and of the opposite sex;

“the Tribunal” means the Industrial Tribunal established pursuant to section 12 of the Employment Act.

Application of the Act.

3.(1) This Act shall, in so far as it relates to equal treatment in employment and occupation pursuant to Council Directive 2000/78/EC and, equal treatment between persons irrespective of racial or ethnic origin pursuant to Council Directive 2000/43/EC apply to all persons, as regards both the public and private sectors, including public bodies, in relation to–

- (a) conditions for access to employment, to self-employment or to occupation, including selection criteria and recruitment conditions, whatever the branch of activity and at all levels of the professional hierarchy, including promotion;
- (b) access to all types and to all levels of vocational guidance, vocational training, advanced vocational training and retraining, including practical work experience;
- (c) employment and working conditions, including dismissal and pay; and
- (d) membership of, and involvement in an organisation of workers or employers, or any organisation whose members carry on a particular profession, including the benefits provided for by such organisations.

(2) This Act shall, in so far as it relates to racial or ethnic grounds, pursuant to Council Directive 2000/43/EC, apply to all persons, as regards both the public and private sectors, including public bodies, in relation to (including all matters referred to in subsection (1) above)–

- (a) social protection, including social security and healthcare;
- (b) social advantage;

- (c) education; and
- (d) access to and supply of goods and services which are available to the public, including housing.

(3) Subject to subsections (1) and (2), this Act shall apply to discrimination, harassment and victimisation caused on the ground of—

- (a) race or ethnic origins;
- (b) sex;
- (c) sexual orientation; or
- (d) religion or belief.

(4) This Act does not cover any difference of treatment based on nationality and are without prejudice to provisions and conditions relating to entry into and residence of third-country nationals and stateless persons (within the meaning of Council Directive 2000/43/EC and Council Directive 2000/78/EC) in Gibraltar, and to any treatment which arises from the legal status of the third-country nationals and stateless persons concerned.

(5) The provisions of this Act apply to an act done on behalf of the Crown as they apply to an act done by a private person.

PART II

Discrimination and harassment: Definitions.

Discrimination on the ground of racial or ethnic origin.

4.(1) A person discriminates against another person in any circumstances relevant for the purposes of any matter referred to in subsections (1) and (2) of section 3, if, on racial or ethnic grounds, that person treats that other person less favourably than the person treats or would treat other persons.

(2) A person discriminates against another person in any circumstances relevant for the purposes of any matter referred to in subsections (1) and (2) of section 3, if, on racial or ethnic grounds, that person applies to that other person a provision, criterion or practice which that person applies or would apply equally to persons not of the same race or ethnic origins as that other person, but—

- (a) which puts or would put persons of the same race or ethnic origins as that other person at a particular disadvantage when compared with other persons;

- (b) which puts that other person at that disadvantage; and
- (c) which he cannot show to be a proportionate means of achieving a legitimate aim.

Harassment on the ground of racial or ethnic origin.

5.(1) A person subjects another person to harassment in any circumstances relevant for the purposes of any matter referred to in subsections (1) and (2) of section 3, where, on the ground of race or ethnic origin, he engages in such conduct which has the purpose or effect of—

- (a) violating that other person's dignity; or
- (b) creating an intimidating, hostile, degrading, humiliating or offensive environment for him.

(2) Conduct shall be regarded as having the effect specified in paragraph (a) or (b) of subsection (1) only if, having regard to all the circumstances, including in particular the perception of that other person, it should reasonably be considered as having that effect.

Discrimination on the ground of sex.

6.(1) A person discriminates against a woman in any circumstances relevant for the purposes of this Act in so far as they apply to discrimination in the employment field, discrimination by, or in relation to, Barristers or to vocational training, if on the ground of her sex—

- (a) that person treats her less favourably than the person treats or would treat a man in a comparable situation; or
- (b) that person applies to her a provision, criterion or practice which that person applies or would apply equally to a man, but—
 - (i) which is such that it would be to the detriment of a considerably larger proportion of women than of men;
 - (ii) which he cannot show to be justifiable irrespective of the sex of the person to whom it is applied; and
 - (iii) which is to her detriment because she can not comply with it.

(2) A person's treatment of a woman, for the purposes of subsection (1), is to be compared to his treatment of a man having the like marital status if the

person treats or would treat a man differently according to the man's marital status.

(3) A person discriminates against a man in any circumstances relevant for the purposes of this Act in so far as they apply to discrimination in the employment field, discrimination by, or in relation to, Barristers or to vocational training, if on the ground of his sex—

- (a) that person treats him less favourably than the person treats or would treat a woman in a comparable situation; or
- (b) that person applies to him a provision, criterion or practice which that person applies or would apply equally to a woman, but—
 - (i) which is such that it would be to the detriment of a considerably larger proportion of men than of women;
 - (ii) which that person cannot show to be justifiable irrespective of the sex of the person to whom it is applied; and
 - (iii) which is to his detriment because he can not comply with it.

(4) In application of subsection (3) no account shall be taken of special treatment afforded to women in connection with pregnancy or childbirth.

(5) A comparison of the cases of persons of different sex under subsection (1) or (2), must be such that the relevant circumstances in the one case are the same, or not materially different, in the other.

(6) In this section, “man” includes a male of any age, and “woman” includes a female of any age.

Discrimination on the ground of sexual orientation.

7.(1) A person discriminates against another person if, on the ground of sexual orientation—

- (a) that person treats that other person less favourably than that person treats or would treat other persons; or
- (b) that person applies to that other a provision, criterion or practice which that person applies or would apply equally to persons not of the same sexual orientation as that other person, but—

- (i) which puts or would put persons of the same sexual orientation as that other person at a particular disadvantage when compared with other persons;
- (ii) which puts that other person at that disadvantage; and
- (iii) which he cannot show to be a proportionate means of achieving a legitimate aim.

(2) A comparison of the case of that other person with that of another person under subsection (1) must be such that the relevant circumstances in the one case are the same, or not materially different, in the other.

Harassment on the ground of sexual orientation.

8.(1) A person subjects another person to harassment where, on the ground of sexual orientation, he engages in such conduct which has the purpose or effect of—

- (a) violating that other person's dignity; or
- (b) creating an intimidating, hostile, degrading, humiliating or offensive environment for him.

(2) Conduct shall be regarded as having the effect specified in paragraph (a) or (b) of subsection (1) only if, having regard to all the circumstances, including in particular the perception of that other person, it should reasonably be considered as having that effect.

Discrimination on the ground of religion or belief.

9.(1) A person discriminates against another person if on the ground of religion or belief—

- (a) that person treats that other person less favourably than that person treats or would treat other persons; or
- (b) that person applies to that other person a provision, criterion or practice which that person applies or would apply equally to persons not of the same religion or belief as that other, but—
 - (i) which puts or would put persons of the same religion or belief as that other person at a particular disadvantage when compared with other persons;
 - (ii) which puts that other person at that disadvantage; and
 - (iii) which he cannot show to be a proportionate means of achieving a legitimate aim.

(2) The reference in subsection (1) to religion or belief does not include the religion or belief of the person against whom a complaint for an act of discrimination may be presented to the Industrial Tribunal.

(3) A comparison of the case of that other person with that of another person under subsection (1) must be such that the relevant circumstances in the one case are the same, or not materially different, in the other.

Harassment on the ground of religion or belief.

10.(1) A person subjects another person to harassment where, on the ground of religion or belief, he engages in such conduct which has the purpose or effect of –

- (a) violating that other person's dignity; or
- (b) creating an intimidating, hostile, degrading, humiliating or offensive environment for him.

(2) Conduct shall be regarded as having the effect specified in paragraph (a) or (b) of subsection (1) only if, having regard to all the circumstances, including in particular the perception of that other person, it should reasonably be considered as having that effect.

PART III

Discrimination, harassment and victimisation: General provisions.

Victimisation.

11.(1) A person discriminates against another person if that person treats that other person less favourably than that person treats or would treat other persons in the same circumstances, and does so by reason that that other person has–

- (a) brought proceedings against him or any other person under this Act;
- (b) given evidence or information in connection with proceedings brought by any person against him or any other person under this Act;
- (c) otherwise done anything under or by reference to this Act in relation to him or any other person; or
- (d) alleged that he or any other person has committed an act which (whether or not allegations so states) would amount to a contravention of this Act,

or by reason that he knows that the other person intends to do any of those things, or suspects that the other person has done or intends to do any of them.

(2) Subsection (1) does not apply to treatment of the other person by reason of any allegation made by that other person, or evidence or allegation given by that other person, if the allegation, evidence or information was false and not made or given in good faith.

Applicants and employees.

12.(1) It is unlawful for an employer, in relation to employment by him at an establishment in Gibraltar, to discriminate against a person, on any ground with respect to which this Act applies—

- (a) in the arrangements he makes for the purpose of determining to whom he should offer employment;
- (b) in the terms on which he offers that person employment; or
- (c) by refusing to offer, or deliberately not offering, him employment.

(2) It is unlawful for an employer, in relation to a person whom he employs at an establishment in Gibraltar, to discriminate against that person, on any ground with respect to which this Act applies—

- (a) in the terms of employment which he affords him;
- (b) in the opportunities which he affords him for promotion, a transfer, training, or receiving any other benefit;
- (c) by refusing to offer him, or deliberately not affording him, any such opportunity; or
- (d) by dismissing him, or subjecting him to any other detriment.

(3) Except in relation to discrimination by way of victimisation, subsection (1) and (2), in so far as they relate to the ground of racial or ethnic origin, do not apply to employment for the purposes of private household.

(4) Subsection (2) does not apply to benefits of any description if the employment is concerned with the provision of benefits of that description to the public, or to a section of the public which includes the employment in question, unless—

- (a) that provision differs in a material respect from the provision of the benefits by the employer to his employees; or
- (b) the provisions of the benefits to the employee in question is regulated by his contract of employment; or
- (c) the benefits relate to training.

(5) It is unlawful for an employer, in relation to employment by him at an establishment in Gibraltar, to subject to harassment, on any ground with respect to which this Act applies, a person whom he employs or who has applied to him for employment.

- (6) In subsection (2)(d) the reference to dismissing includes a reference—
- (a) to the termination of the appointment by the expiration of any period (including a period expiring by reference to an event or circumstance), not being a termination immediately after which the appointment is renewed on the same terms and conditions; and
 - (b) to the termination of the appointment by any act of the person appointed (including the giving of notice) in circumstances such that he is entitled to terminate the appointment without notice by reason of the conduct of the relevant person.

Requirement of equal treatment for men and women in the same employment.

13.(1) If the terms of a contract under which a woman is employed at an establishment in Gibraltar do not include (directly or by reference to a collective agreement or otherwise) an equality clause, they shall be deemed to include one.

(2) An equality clause is a provision which relates to terms (whether concerned with pay or not) of a contract under which a woman is employed (the “woman’s contract”), and has the effect that—

- (a) where the woman is employed on like work with a man in the same employment—
 - (i) if (apart from the equality clause) any term of the woman’s contract is or becomes less favourable to the woman than a term of a similar kind in the contract under which that man is employed, that term of the woman’s contract shall be treated as so modified as not to be less favourable; and
 - (ii) if (apart from the equality clause) at any time the woman’s contract does not include a term corresponding to a term benefiting that man included in the contract under which he is employed, the woman’s contract shall be treated as including such a term;
- (b) where the woman is employed on work rated as equivalent with that of a man in the same employment—
 - (i) if (apart from the equality clause) any term of the woman’s contract determined by the rating of the work is or becomes less favourable to the woman than a term of

a similar kind in the contract under which that man is employed, that term of the woman's contract shall be treated as so modified as not to be less favourable; and

- (ii) if (apart from the equality clause) at any time the woman's contract does not include a term corresponding to a term benefiting that man included in the contract under which he is employed and determined by the rating of the work, the woman's contract shall be treated as including such a term;
- (c) where a woman is employed on work which, not being work in relation to which paragraph (a) or (b) above applies, is, in terms of the demands made on her of equal value to that of a man in the same employment-
- (i) if (apart from the equality clause) any term of the woman's contract is or becomes less favourable to the woman than a term of a similar kind in the contract under which that man is employed, that term of the woman's contract shall be treated as so modified as not to be less favourable; and
 - (ii) if (apart from the equality clause) at any time the woman's contract does not include a term corresponding to a term benefiting that man included in the contract under which he is employed, the woman's contract shall be treated as including such a term.

(3) An equality clause shall not operate in relation to a variation between the woman's contract and the man's contract if the employer proves that the variation is genuinely due to a material factor which is not the difference of sex and that factor-

- (a) in the case of an equality clause falling within subsection (2)(a) or (b) above, must be a material difference between the woman's case and the man's; and
- (b) in the case of an equality clause falling within subsection (2)(c) above, may be such a material difference.

(4) A woman is to be regarded as employed on like work with men if, but only if, her work and theirs is of the same or a broadly similar nature, and the differences (if any) between the things she does and the things they do are not of practical importance in relation to terms and conditions of employment; and accordingly in comparing her work with theirs regard shall be had to the frequency or otherwise with which any such differences occur in practice as well as to the nature and extent of the differences.

(5) A woman is to be regarded as employed on work rated as equivalent with that of any men if, but only if, her job and their job have been given an equal value, in terms of the demand made on a worker under various headings (for instance effort, skill, decision), on a study undertaken with a view to evaluating in those terms the jobs to be done by all or any of the employees in an undertaking or group of undertakings, or would have been given an equal value but for the evaluation being made on a system setting different values for men and women on the same demand under any heading.

(6) In this section—

- (a) “employed” means employed under a contract of service or of apprenticeship or a contract personally to execute any work or labour, and related expressions shall be construed accordingly;
- (b) two employers are to be treated as associated if one is a company of which the other (directly or indirectly) has control or if both are companies of which a third person (directly or indirectly) has control,

and men shall be treated as in the same employment with a woman if they are men employed by an employer or any associated employer at the same establishment or at establishments in Gibraltar as the woman is employed and at which common terms and conditions of employment are observed either generally or for employees of the relevant classes.

(7) Subsection (1) above does not apply in determining for the purposes of section 12(1)(b) of this Act the terms on which employment is offered.

(8) Where a person offers a woman employment on certain terms, and if she accepted the offer then, by virtue of an equality clause, any of those terms would fall to be modified, or any additional term would fall to be included, the offer shall be taken to contravene section 12(1)(b).

(9) Where a person offers a woman employment on certain terms, and subsection (8) would apply but for the fact that, on her acceptance of the offer, subsection (3) above would prevent the equality clause from operating, the offer shall be taken not to contravene section 12(1)(b).

(10) An act does not contravene section 12(2) if—

- (a) it contravenes a term modified or included by virtue of an equality clause, or

- (b) it would contravene such a term but for the fact that the equality clause is prevented from operating by subsection (3) above.

Exception where sex is a genuine occupational qualification.

14.(1) In relation to discrimination on the ground of sex, the provisions of—

- (a) section 12 (1)(a) or (c) shall not apply to any employment where being a man is a genuine occupational qualification for the job, and
- (b) section 12(2)(b) shall not apply to opportunities for promotion or transfer to, or training for, such employment.

(2) Pursuant to subsection (1)(a) above, being a man is a genuine occupational qualification for a job only where—

- (a) the essential nature of the job calls for a man for reasons of physiology (excluding physical strength or stamina) or, in dramatic performances or other entertainment, for reasons of authenticity, so that the essential nature of the job would be materially different if carried out by a woman;
- (b) the job needs to be held by a man to preserve decency or privacy because—
 - (i) it is likely to involve physical contact with men in circumstances where they might reasonably object to its being carried out by a woman; or
 - (ii) the holder of the job is likely to do his work in circumstances where men might reasonably object to the presence of a woman because they are in a state of undress or are using sanitary facilities;
- (c) the job is likely to involve the holder of the job doing his work, or living, in a private home and needs to be held by a man because objection might reasonably be taken to allowing to a woman—
 - (i) the degree of physical or social contact with a person living in the home; or
 - (ii) the knowledge of intimate details of such a person's like, which is likely, because of the nature of circumstances of the job or of the home, to be allowed to, or available to, the holder of the job; or

- (d) the nature or location of the establishment makes it impracticable for the holder of the job to live elsewhere than in premises provided by the employer, and—
 - (i) the only such premises which are available for persons holding that kind of job are lived in, or normally lived in, by men and are not equipped with separate sleeping accommodation for women and sanitary facilities which could be used by women in privacy from men; and
 - (ii) it is not reasonable to expect the employer either to equip those premises with such accommodation and facilities or to provide other premises for women;
- (e) the nature of the establishment, or of the part of it within which the work is done, requires the job to be held by a man because—
 - (i) it is, or is part of, a hospital, prison or other establishment for persons requiring special care, supervision or attention;
 - (ii) those persons are all men (disregarding any woman whose presence is exceptional); and
 - (iii) it is reasonable, having regard to the essential character of the establishment or that part, that the job should not be held by a woman;
- (f) the holder of the job provides individuals with personal services promoting their welfare or education, or similar personal services, and those services can most effectively be provided by a man;
- (g) the job needs to be held by a man because it is likely to involve the performance of duties outside Gibraltar in a country whose laws or customs are such that the duties could not, or could not effectively, be performed by a woman; or
- (h) the job is one of two to be held by a married couple.

(3) Subsection (2) applies where only some of the duties of the job fall within paragraphs (a) to (g) of that subsection as well as where all of them do.

(4) Paragraph (a), (b), (d), (e), (f) or (h) of subsection (2) does not apply in relation to the filling of a vacancy at a time when the employer already has male employees—

- (a) who are capable of carrying out the duties falling within that paragraph;
- (b) whom it would be reasonable to employ on those duties; and
- (c) whose numbers are sufficient to meet the employer's likely requirements in respect of those duties without undue inconvenience.

Exceptions for genuine occupational qualifications.

15.(1) In relation to discrimination on the ground of racial or ethnic origin and, in cases where the provision of section 16, so far as it relates to such grounds, does not apply—

- (a) section 12(1)(a) or (c) does not apply to any employment where being of a particular racial group is a genuine occupational qualification for the job; and
- (b) section 12(2)(b) does not apply to opportunities for promotion or transfer to, or training for, such employment.

(2) Being of a particular racial group is a genuine occupational qualification for a job only where—

- (a) the job involves participation in a dramatic performance or other entertainment in a capacity for which a person of that racial group is required for reasons of authenticity;
- (b) the job involves participation as an artist's or photographic model in the production of a work of art, visual image or sequence of visual images for which a person of that racial group is required for reasons of authenticity;
- (c) the job involves working in a place where food or drink is (for payment or not) provided to and consumed by members of the public or a section of the public in a particular setting for which, in that job, a person of that racial group is required for reasons of authenticity; or
- (d) the holder of the job provides persons of that racial group with personal services promoting their welfare, and those services can most effectively be provided by a person of that racial group.

(3) Subsection (2) applies where only some of the duties of the job fall within paragraph (a), (b), (c) or (d) as well as where all of them do.

(4) Paragraph (a), (b), (c) or (d) of subsection (2) does not apply in relation to the filling of a vacancy at a time when the employer already has employees of the racial group in question—

- (a) who are capable of carrying out the duties falling within that paragraph;
- (b) whom it would be reasonable to employ on those duties; and
- (c) whose numbers are sufficient to meet the employer's likely requirements in respect of those duties without undue inconvenience.

Exceptions for genuine occupational requirements.

16.(1) In relation to discrimination based on race, ethnic origin, sex, sexual orientation, religion or belief, the provisions of—

- (a) section 12 (1)(a) or (c) shall not apply to any employment;
- (b) section 12(2)(b) or (c) shall not apply to promotion or transfer to, or training for, any employment; and
- (c) section 12(2)(d) shall not apply to dismissal from any employment,

where subsection (2), (3) or (4) applies.

(2) This subsection applies where, having regard to the nature of the employment or the context in which it is carried out being of a particular race or ethnic origin, religion or belief or of a particular sex or sexual orientation is a genuine and determining occupational requirement and it is—

- (a) proportionate to apply that requirement in the particular case; and
- (b) either—
 - (i) the person to whom that requirement is applied does not meet it; or
 - (ii) the employer is not satisfied, and in all the circumstances it is reasonable for him not to be satisfied, that that person meets it,

and so far as the provision of this subsection relates to sex or sexual orientation, it applies whether or not the employment is for purposes of an organised religion.

(3) This subsection applies where—

- (a) the employment is for purposes of an organised religion; and
- (b) the employer applies a requirement related to sex or sexual orientation—
 - (i) so as to comply with the doctrines of the religion; or
 - (ii) because of the nature of the employment and the context in which it is carried out, so as to avoid conflicting with the strongly held religious convictions of a significant number of the religion's followers; and
- (c) either—
 - (i) the person to whom that requirement is applied does not meet it, or
 - (ii) the employer is not satisfied, and in all the circumstances it is reasonable for him not to be satisfied, that that person meets it.

(4) This subsection applies where an employer has an ethos based on religion or belief and, having regard to that ethos and to the nature of the employment or the context in which it is carried out—

- (a) being of a particular sex, sexual orientation, religion or belief is a genuine occupational requirement for the job;
- (b) it is proportionate to apply that requirement in the particular case; and
- (c) either—
 - (i) the person to whom that requirement is applied does not meet it; or
 - (ii) the employer is not satisfied, and in all the circumstances it is reasonable for him not to be satisfied, that that person meets it.

(5) Nothing in sections 12, 13, 14, 17, 19, 22, 23, 24, 26 and 27 of this Act apply to employment for purposes of an organised religion where the

employment is limited to one sex so as to comply with the doctrines of the religion or avoid offending the religious susceptibilities of a significant number of its followers.

Contract workers.

17.(1) It is unlawful for a principal to discriminate against a contract worker on any ground with respect to which this Act applies, in relation to contract work at an establishment in Gibraltar—

- (a) in the terms on which he allows him to do that work;
- (b) by not allowing him to do it or continue to do it;
- (c) in the way he affords him access to any benefits or by refusing or deliberately not affording him access to them; or
- (d) by subjecting him to any other detriment.

(2) A principal does not contravene subsection (1)(b) by doing any act in relation to a contract worker where, if the work were to be done by a person taken into the principal's employment, that act would be lawful by virtue of section 15 or 16.

(3) Subsection (1) does not apply to benefits of any description if the principal is concerned with the provision (for payment or not) of benefits of that description to the public, or to a section of the public to which the contract worker in question belongs, unless that provision differs in a material respect from the provision of the benefits by the principal to his contract workers.

(4) In this section—

“principal” means a person (“A”) who makes work available for doing by individuals who are employed by another person who supplies them under a contract made with A;

“contract work” means work so made available; and

“contract worker” means any individual who is supplied to the principal under such a contract.

Trade organisations.

18.(1) It is unlawful for a trade organisation to discriminate against a person on any ground with respect to which this Act applies—

- (a) in the terms on which it is prepared to admit him to membership of the organisation;
- (b) by refusing to accept, or deliberately not accepting, his application for membership.

(2) It is unlawful for a trade organisation, in relation to a member of the organisation, to discriminate against him on any ground with respect to which this Act applies—

- (a) in the way it affords him access to any benefits or by refusing or deliberately omitting to afford him access to them;
- (b) by depriving him of membership, or varying the terms on which he is a member; or
- (c) by subjecting him to any other detriment.

(3) It is unlawful for a trade organisation, in relation to a person's membership or application for membership of that organisation, to subject that person to harassment on any ground with respect to which this Act applies.

(4) In this section—

“trade organisation” means an organisation of workers, an organisation of employers, or any other organisation whose members carry on a particular profession or trade for the purposes of which the organisation exists;

“profession” includes any vocation or occupation; and

“trade” includes any business.

Meaning of employment and contract work at establishment in Gibraltar.

19.(1) For the purposes of this Act, employment is to be regarded as being at an establishment in Gibraltar if the employee—

- (a) does his work wholly or partly in Gibraltar; or
- (b) does his work wholly outside Gibraltar and subsection (2) applies.

(2) This subsection applies if—

- (a) the employer has a place of business at an establishment in Gibraltar;

- (b) the work is for the purposes of the business carried on at that establishment; and
- (c) the employee is ordinarily resident in Gibraltar–
 - (i) at the time when the employee applies for or is offered the employment; or
 - (ii) at any time during the course of the employment.

Trustees and managers of occupational pension schemes.

20.(1) It is unlawful, except in relation to rights accrued or benefits payable in respect of periods of service prior to the coming into operation of this Act, for the trustees or managers of an occupational pension scheme to discriminate against a member or prospective member of the scheme, on the ground of race or ethnic origin, religion or belief or sexual orientation, in carrying out any of their functions in relation to it (including in particular their functions relating to the admission of members to the scheme and the treatment of members of it).

(2) It is unlawful for the trustees or managers of an occupational pension scheme, in relation to the scheme, to subject to harassment a member or prospective member of it on the ground of race or ethnic origin religion or belief or sexual orientation.

(3) Every occupational pension scheme shall be treated as including a provision (“the non-discrimination rule”) containing a requirement that the trustees or managers of the scheme refrain from doing any act which is unlawful by virtue of this section and the other provisions of the scheme are to have effect subject to the non-discrimination rule.

(4) The trustees or managers of an occupational pension scheme may–

- (a) if they do not (apart from this subsection) have power to make such alterations to the scheme as may be required to secure conformity with the non-discrimination rule, or
- (b) if they have such power but the procedure for doing so–
 - (i) is liable to be unduly complex or protracted, or
 - (ii) involves the obtaining of consents which cannot be obtained, or can only be obtained with undue delay or difficulty,

by resolution make such alterations to the scheme.

(5) Alterations made by a resolution such as is referred to in subsection (4) may have effect in relation to a period before the alterations are made (but may not have effect in relation to any time before the coming into operation of this Act).

(6) For the purposes of this section and other provisions of this Act in so far as they relate to any occupational pension scheme, “active member”, “deferred member”, “employer”, “member”, “occupational pension scheme”, “pensioner member” and “trustees or managers”, shall have the meanings given to them by section 52J of the Employment Act.

Office-holders, etc.

21.(1) It is unlawful for a relevant person, in relation to an appointment to an office or post to which this section applies, to discriminate against a person on any ground with respect to which this Act applies—

- (a) in the arrangements which he makes for the purpose of determining to whom the appointment should be offered;
- (b) in the terms on which he offers him the appointment; or
- (c) by refusing to offer him the appointment.

(2) It is unlawful, in relation to an appointment to an office or post to which this section applies and which is an office or post referred to in subsection (8)(b) below, for a relevant person on whose recommendation (or subject to whose approval) appointments to the office or post are made, to discriminate against a person on any ground with respect to which this Act applies—

- (a) in the arrangements which he makes for the purpose of determining who should be recommended or approved in relation to the appointment; or
- (b) in making or refusing to make a recommendation, or giving or refusing to give an approval, in relation to the appointment.

(3) It is unlawful for a relevant person, in relation to a person who has been appointed to an office or post to which this section applies, to discriminate against him on any ground with respect to which this Act applies—

- (a) in the terms of the appointment;
- (b) in the opportunities which he affords him for promotion, a transfer, training or receiving any other benefit, or by refusing to afford him any such opportunity;

- (c) by terminating the appointment; or
- (d) by subjecting him to any other detriment in relation to the appointment.

(4) It is unlawful for a relevant person, in relation to an office or post to which this section applies, to subject to harassment a person on any ground with respect to which this Act applies—

- (a) who has been appointed to the office or post;
- (b) who is seeking or being considered for appointment to the office or post; or
- (c) who is seeking or being considered for a recommendation or approval in relation to an appointment to an office or post referred to in subsection (8)(b).

(5) Subsections (1) and (3) do not apply to any act in relation to an office or post where, if the office or post constituted employment, that act would be lawful by virtue of section 15 or 16; and subsection (2) does not apply to any act in relation to an office or post where, if the office or post constituted employment, it would be lawful by virtue of section 15 or 16, to refuse to offer the person such employment.

(6) Subsection (3) does not apply to benefits of any description if the relevant person is concerned with the provision (for payment or not) of benefits of that description to the public, or a section of the public to which the person appointed belongs, unless—

- (a) that provision differs in a material respect from the provision of the benefits by the relevant person to persons appointed to offices or posts which are the same as, or not materially different from, that which the person appointed holds; or
- (b) the provision of the benefits to the person appointed is regulated by the terms and conditions of his appointment; or
- (c) the benefits relate to training.

(7) In subsection (3)(c) the reference to the termination of the appointment includes a reference—

- (a) to the termination of the appointment by the expiration of any period (including a period expiring by reference to an event or circumstance), not being a termination immediately after which the appointment is renewed on the same terms and conditions; and

- (b) to the termination of the appointment by any act of the person appointed (including the giving of notice) in circumstances such that he is entitled to terminate the appointment without notice by reason of the conduct of the relevant person.

(8) This section applies to—

- (a) any office or post to which persons are appointed to discharge functions personally under the direction of another person, and in respect of which they are entitled to remuneration; and
- (b) any office or post to which appointments are made by, or on the recommendation of or subject to the approval of a Minister, the Government, the Governor or the House of Assembly,

but not a political office or a case where section 12, 17, 22 or 25 applies or would apply but for the operation of other provisions of this Act.

(9) For the purposes of subsection (8)(a) the holder of an office or post—

- (a) is to be regarded as discharging his functions under the direction of another person if that other person is entitled to direct him as to when and where he discharges those functions;
- (b) is not to be regarded as entitled to remuneration merely because he is entitled to payments—
 - (i) in respect of expenses incurred by him in carrying out the functions of the office or post, or
 - (ii) by way of compensation for the loss of income or benefits he would or might have received from any person had he not been carrying out the functions of the office or post.

(10) In this section—

- (a) appointment to an office or post does not include election to an office or post;
- (b) “political office” means—
 - (i) any office of the House of Assembly held by a member of it; or
 - (ii) any office of a political party;

- (c) “relevant person”, in relation to an office or post, means—
- (i) any person with power to make or terminate appointments to the office or post, or to determine the terms of appointment;
 - (ii) any person with power to determine the working conditions of a person appointed to the office or post in relation to opportunities for promotion, a transfer, training or for receiving any other benefit; and
 - (iii) any person or body referred to in subsection (8)(b) on whose recommendation or subject to whose approval appointments are made to the office or post.

Partnerships.

22.(1) It is unlawful for a firm, in relation to a position as a partner in that firm, to discriminate against a person on any ground with respect to which this Act applies—

- (a) in the arrangements they make for the purpose of determining to whom they should offer that position;
- (b) in the terms on which they offer him that position;
- (c) by refusing to offer, or deliberately not offering, him that position; or
- (d) in a case where the person already holds that position—
 - (i) in the way they afford him access to any benefits or by refusing to afford, or deliberately not affording, him access to them; or
 - (ii) by expelling him from that position, or subjecting him to any other detriment.

(2) It is unlawful for a firm, in relation to a position as partner in the firm, to subject to harassment a person who holds or has applied for that position on any ground with respect to which this Act applies.

(3) Subsections (1)(a) to (c) and (2) apply in relation to persons proposing to form themselves into a partnership as they apply in relation to a firm.

(4) Subsection (1) does not apply to any act in relation to a position as partner where, if the position were employment, that act would be lawful by virtue of section 15 or 16.

(5) In this section, “firm” has the meaning given by section 6 of the Partnership Act.

(6) In subsection (1)(d) reference to the expulsion of a person from a position as partner includes reference–

- (a) to the termination of that person’s partnership by the expiration of any period (including a period expiring by reference to an event or circumstance), not being a termination immediately after which the partnership is renewed on the same terms; and
- (b) to the termination of that person’s partnership by any act of his (including the giving of notice) in circumstances such that he is entitled to terminate it without notice by reason of the conduct of the other partners.

Vocational training.

23.(1) It is unlawful, in relation to a person seeking or undergoing training which would help fit him for any employment, for any training provider to discriminate against him on any grounds with respect to which this Act applies—

- (a) in the terms on which the training provider affords him access to any training;
- (b) by refusing or deliberately not affording him such access;
- (c) by terminating his training; or
- (d) by subjecting him to any other detriment during his training.

(2) It is unlawful for a training provider, in relation to a person seeking or undergoing training which would help fit him for any employment, to subject him to harassment on any ground with respect to which this Act applies.

(3) Subsection (1) does not apply if the discrimination only concerns training for employment which, by virtue of section 15 or 16, the employer could lawfully refuse to offer the person seeking training.

(4) In this section—

“training” includes—

- (a) facilities for training; and
- (b) practical work experience provided by an employer to a person whom he does not employ;

“training provider” means any person who provides, or makes arrangements for the provision of, training which would help fit another person for any employment, but it does not include—

- (a) an employer in relation to training for persons employed by him; or
- (b) a school.

Police.

24.(1) For the purposes of this Act, the holding of the office of a police officer shall be treated as employment by the Commissioner as respects any act done by him in relation to a police officer.

(2) For the purposes of section 37–

- (a) the holding of the office of police officer shall be treated as employment by the Commissioner; and
- (b) anything done by a person holding such an office in the performance, or purported performance, of his functions shall be treated as done in the course of that employment.

(3) Any proceedings under this Act which, by virtue of subsection (1), would lie against the Commissioner shall be brought against the Commissioner for the time being or, in the case of a vacancy in his office, against the person for the time being performing the functions of the Commissioner.

(4) Subsections (1) to (3) apply to the Gibraltar Services Police as they apply to the Royal Gibraltar Police, and in such a case “the Commissioner” shall be read as the person or body responsible for the management and control of the Gibraltar Services Police.

(5) In this section–

“Commissioner” means the Commissioner of Police;

“Royal Gibraltar Police” means the police force established pursuant to section 3 of the Police Act;

“police officer” means any member of the Royal Gibraltar Police.

Barristers.

25.(1) It is unlawful for a barrister, in relation to any offer of a pupillage, to discriminate against a person on any ground with respect to which this Act applies–

- (a) in the arrangements which are made for the purpose of determining to whom the pupillage should be offered;
- (b) in respect of any terms on which it is offered; or
- (c) by refusing, or deliberately not offering, it to him.

(2) It is unlawful for a barrister, in relation to a pupil in the set of chambers in question, to discriminate against him on any ground with respect to which this Act applies–

- (a) in respect of any terms applicable to him as a pupil;
- (b) in the opportunities for training, or gaining experience, which are afforded or denied to him;

- (c) in the benefits which are afforded or denied to him; or
- (d) by terminating his pupillage, or by subjecting him to any pressure to leave the chambers or other detriment.

(3) It is unlawful for a barrister, in relation to a pupillage in the set of chambers in question, to subject to harassment a person who is, or has applied to be, a pupil on any ground with respect to which this Act applies.

(4) It is unlawful for any person, in relation to the giving, withholding or acceptance of instructions to a barrister, to discriminate against any person by subjecting him to a detriment, or to subject him to harassment on any grounds with respect to which this Act applies.

(5) In this section—

“pupil” and “pupillage” have the meanings commonly associated with their use in the context of barristers practising in independent practice.

Qualifications bodies.

26.(1) It is unlawful for a qualifications body to discriminate against a person on any ground with respect to which this Act applies—

- (a) in the terms on which it is prepared to confer a professional or trade qualification on him;
- (b) by refusing or deliberately not granting any application by him for such a qualification; or
- (c) by withdrawing such a qualification from him or varying the terms on which he holds it.

(2) It is unlawful for a qualifications body, in relation to a professional or trade qualification conferred by it, to subject to harassment on any ground with respect to which this Act applies a person who holds or applies for such a qualification on any ground with respect to which this Act applies.

(3) In this section—

“qualifications body” means any authority or body which can confer a professional or trade qualification, but it does not include—

- (a) an educational establishment to which section 28 applies, or would apply but for the operation of any other provision of this Act, or

- (b) a school;

“confer” includes renew or extend;

“professional or trade qualification” means any authorisation, qualification, recognition, registration, enrolment, approval or certification which is needed for, or which facilitates engagement in, a particular profession or trade;

“profession” and “trade” have the meanings assigned to them by section 18.

Employment agencies, careers guidance, etc.

27.(1) It is unlawful for an employment agency to discriminate against a person on any ground with respect to which this Act applies—

- (a) in the terms on which the agency offers to provide any of its services;
- (b) by refusing or deliberately not providing any of its services; or
- (c) in the way it provides any of its services.

(2) It is unlawful for an employment agency, in relation to a person to whom it provides its services, or who has requested it to provide its services, to subject that person to harassment on any ground with respect to which this Act applies.

(3) Subsection (1) does not apply to discrimination, if it only concerns employment which, by virtue of section 15 or 16, the employer could lawfully refuse to offer the person in question.

(4) An employment agency shall not be subject to any liability under this section if it proves that

- (a) it acted in reliance on a statement made to it by the employer to the effect that, by reason of the operation of subsection (3), its action would not be unlawful, and
- (b) it was reasonable for it to rely on the statement.

(5) A person who knowingly or recklessly makes a statement such as is referred to in subsection (4)(a) which in a material respect is false or misleading commits an offence, and shall be liable, on summary conviction, to a fine not exceeding level 5 on the standard scale.

(6) For the purposes of this section—

- (a) “employment agency” means a person who, for profit or not, provides services for the purpose of finding employment for workers or supplying employers with workers, but it does not include—
 - (i) an educational establishment to which section 28 applies, or would apply but for the operation of any other provision of this Act; or
 - (ii) a school; and
- (b) references to the services of an employment agency include guidance on careers and any other services related to employment.

Institutions of further education.

28.(1) It is unlawful, in relation to an educational establishment to which this section applies, for the committee of that establishment or the Director to discriminate against a person on any ground with respect to which this Act applies—

- (a) in the terms on which it offers to admit him to the establishment as a student;
- (b) by refusing or deliberately not accepting an application for his admission to the establishment as a student; or
- (c) where he is a student of the establishment—
 - (i) in the way it affords him access to any benefits;
 - (ii) by refusing or deliberately not affording him access to them; or
 - (iii) by excluding him from the establishment or subjecting him to any other detriment.

(2) It is unlawful, in relation to an educational establishment to which this section applies, for the committee of that establishment or the Director to subject to harassment on any ground with respect to which this Act applies a person who is a student at the establishment, or who has applied for admission to the establishment as a student on any ground with respect to which this Act applies.

(3) Subsection (1) does not apply if the discrimination only concerns training which would help fit a person for employment which, by virtue of

section 15 or 18, as the case may be, the employer could lawfully refuse to offer the person in question.

(4) This section applies to every college of further education established under section 28 of the Education Act.

(5) In this section—

“committee” means a committee established under section 29(1) of the Education Act;

“Director” means the Director of Education;

“further education” shall have the meaning assigned to it by section 2(1) of the Education Act.

Bodies in charge of educational establishments.

29.(1) It is unlawful for the responsible body to discriminate against a person on the ground of race or ethnic origin in relation to an educational establishment—

- (a) in the terms on which it offers to admit him to the establishment as a pupil; or
- (b) by refusing or deliberately omitting to accept an application for his admission to the establishment as a pupil; or
- (c) where he is a pupil of the establishment—
 - (i) in the way it affords him access to any benefits, facilities or services, or by refusing or deliberately omitting to afford him access to them; or
 - (ii) by excluding him from the establishment or subjecting him to any other detriment.

(2) The provisions of this Act so far as they relate to sex discrimination do not apply to the admission of pupils to any establishment (a “single-sex establishment”) which admits pupils of one sex only, or which would be taken to admit pupils of one sex only if there were disregarded pupils of the opposite sex—

- (a) whose admission is exceptional; or
- (b) whose numbers are comparatively small and whose admission is confined to a particular course of instruction or teaching classes.

(3) It is unlawful for the responsible body, in relation to an educational establishment, to subject to harassment on the ground of race or ethnic origin—

- (a) a person who applies for admission to the educational establishment as a pupil; or
- (b) a pupil at the educational establishment.

(4) In this section—

“educational establishment” means an establishment responsible for providing primary education or secondary education in Gibraltar; and

“responsible body” includes a person or body who is responsible for educational establishment in Gibraltar.

Public authorities.

30.(1) It is unlawful for a public authority in carrying out any functions of the authority to do any act which constitutes discrimination on the ground of race or ethnic origin.

(2) It is unlawful for a public authority to subject a person to harassment, on the ground of race or ethnic origin, in the course of carrying out any functions of the authority which consists of the provisions of—

- (a) any form of social security;
- (b) healthcare;
- (c) any other form of social protection; or
- (d) any form of social advantage,

which does not fall within section 32.

(3) In this section “public authority” includes any person some of whose functions are functions of a public nature, but it does not include any person mentioned in subsection (4).

(4) The persons mentioned in subsection (3) are—

- (a) the Members of the House of Assembly; and
- (b) a person exercising functions in connection with proceedings in the House of Assembly.

(5) In relation to a particular act, a person is not a public authority by virtue only of subsection (3) if the nature of the act is private.

(6) This section is subject to section 31.

(7) Nothing in this section makes unlawful any act of discrimination or harassment which—

- (a) is made unlawful by virtue of any other provision of this Act; or
- (b) would be so made but for any provision made by or under this Act.

Exceptions to section 30.

31.(1) Section 30 does not apply to—

- (a) any judicial act (whether done by a court, tribunal or other person); or
- (b) any act done on the instructions, or on behalf, of a person acting in a judicial capacity.

(2) Section 30 does not apply to—

- (a) any act of, or relating to, making, confirming or approving any enactment;
- (b) any act of, or relating to, making or approving arrangements, or imposing requirements or conditions done under the authority of an enactment;
- (c) any act of, or relating to, imposing a requirement, or giving an express authorisation, of a kind mentioned in subsection (5) below in relation to the carrying out of immigration and nationality functions.

(3) Section 30 does not make it unlawful for a relevant person to discriminate against another person on the ground of nationality or ethnic or national origin in carrying out immigration and nationality functions.

(4) For the purposes of subsection (3), “relevant person” means—

- (a) any Minister acting personally; or

(b) any other person acting in accordance with a relevant authorisation.

(5) In subsection (4), “relevant authorisation” means a requirement imposed or express authorisation given—

(a) with respect to a particular case or class of case, by a Minister acting personally;

(b) with respect to a particular class of case—

(i) by any of the enactments mentioned in subsection (7); or

(ii) by any subsidiary legislation made under or by virtue of any of those enactments.

(6) For the purposes of subsection (3), “immigration and nationality functions” means functions exercisable by virtue of any of the enactments mentioned in subsection (7).

(7) Those enactments are—

(a) the Immigration Control Act;

(b) the British Nationality Act 1981;

(c) the Gibraltar Status Act,

and include any provision of Community law, which relates to the subject-matter of any of the enactments mentioned above.

(8) Section 30 does not apply to—

(a) a decision not to institute criminal proceedings and, where such a decision has been made, any act done for the purpose of enabling the decision whether to institute criminal proceedings to be made;

(b) where criminal proceedings are not continued as a result of a decision not to continue them, the decision and, where such a decision has been made—

(i) any act done for the purpose of enabling the decision whether to continue the proceedings to be made; and

(ii) any act done for the purpose of securing that the proceedings are not continued.

Provision of goods, facilities or services.

32.(1) It is unlawful for any person concerned with the provision (for payment or not) of goods, facilities or services to the public or a section of the public to discriminate against a person, on the ground of race or ethnic origin, who seeks to obtain or use those goods, facilities or services—

- (a) by refusing or deliberately omitting to provide him with any of them; or
- (b) by refusing or deliberately omitting to provide him with goods, facilities or services of the like quality, in the like manner and on the like terms as are normal in the first-mentioned person's case in relation to other members of the public or (where the person so seeking belongs to a section of the public) to other members of that section.

(2) The following are examples of the facilities and services mentioned in subsection (1)—

- (a) access to and use of any place which members of the public are permitted to enter;
- (b) accommodation in a hotel, boarding house or other similar establishment;
- (c) facilities by way of banking or insurance or for grants, loans, credit or finance;
- (d) facilities for education;
- (e) facilities for entertainment, recreation or refreshment;
- (f) facilities for transport or travel;
- (g) the services of any profession or trade, or any local or other public authority.

(3) It is unlawful for any person concerned with the provisions of goods, facilities or services as mentioned in subsection (1), in relation to such provision, to subject to harassment on the ground of race or ethnic origin—

- (a) a person who seeks to obtain or use those goods, facilities or services; or
- (b) a person to whom he provides those goods, facilities or services.

Disposal or management of premises.

33.(1) It is unlawful for a person, in relation to premises in Gibraltar of which he has power to dispose, to discriminate against another on the ground of race or ethnic origin—

- (a) in the terms on which he offers him those premises;
- (b) by refusing his application for those premises; or
- (c) in his treatment of him in relation to any list of persons in need of premises of that description.

(2) It is unlawful for a person, in relation to premises managed by him, to discriminate against a person occupying the premises on the ground of race or ethnic origin—

- (a) in the way he affords him access to any benefits or facilities, or by refusing or deliberately omitting to afford him access to them; or
- (b) by evicting him, or subjecting him to any other detriment.

(3) It is unlawful for a person, in relation to such premises as are referred to in subsection (1) or (2), to subject to harassment a person, on the ground of race or ethnic origin, who applies for or, occupies such premises.

Exception from sections 32 and 33.

34.(1) Sections 32 and 33 do not apply to discrimination, on grounds, other than those of race or ethnic origins in either the provision by a person of accommodation in any premises, or the disposal of premises by him, if—

- (a) that person or a near relative of his (“the relevant occupier”) resides, and intends to continue to reside, on the premises; and
- (b) there is on the premises, in addition to the accommodation occupied by the relevant occupier, accommodation (not being storage accommodation or means of access) shared by the relevant occupier with other persons residing on the premises who are not members of his household; and
- (c) the premises are small premises.

(2) Premises shall be treated for the purposes of this section as small premises if—

- (a) in the case of premises comprising residential accommodation for one or more households (under separate letting or similar

agreements) in addition to the accommodation occupied by the relevant occupier, there is not normally residential accommodation for more than two such households and only the relevant occupier and any member of his household reside in the accommodation occupied by him;

- (b) in the case of premises not falling within paragraph (a) above, there is not normally residential accommodation on the premises for more than six persons in addition to the relevant occupier and any members of his household.

(3) Sections 32 and 33 do not apply–

- (a) to discrimination or harassment which is rendered unlawful by any provision of Part III ; or
- (b) to discrimination which would be rendered unlawful by any provision of Part II but for any provisions sections 12(3), 14(1)(b) and 26(3).

(4) Section 32 does not apply to anything done by a person as a participant in arrangements under which he (for reward or not) takes into his home, and treats as if they were members of his family, children, elderly persons, or person requiring a special degree of care and attention.

Consent for assignment or sub-letting.

35.(1) Where the licence or consent of the landlord or of any other person is required for the disposal to any person of premises in Gibraltar comprised in a tenancy, it is unlawful for the landlord or other person–

- (a) to discriminate against a person, on the ground of race or ethnic origin, by withholding the licence or consent for disposal of the premises to him;
- (b) in relation to such licences or consent, to subject to harassment a person, on the ground of race or ethnic origin, who applies for the licence or consent, or from whom the licence or consent is withheld.

(2) Subsection (1) does not apply to discrimination on grounds, other than those of race or ethnic origins, if–

- (a) the person withholding a licence or consent, or a near relative of his (“the relevant occupier”) resides, and intends to continue to reside, on the premises; and

- (b) there is on the premises, in addition to the accommodation occupied by the relevant occupier, accommodation (not being storage accommodation or means of access) shared by the relevant occupier with other persons residing on the premises who are not members of his household; and
- (c) the premises are small premises.

(3) Section 32(2) shall apply for the purposes of this as well as of that section.

(4) In this section “tenancy” means a tenancy created by a lease or sub-lease, by an agreement for a lease or sub-lease or by a tenancy agreement or in pursuance of any enactment; and “disposal”, in relation to premises comprised in a tenancy, includes assignment or assignation of the tenancy and sub-letting or parting with possession of the premises or any part of the premises.

(5) This section applies to tenancies created before the coming into force of this Act.

Relationships which have come to an end.

36.(1) In this section a “relevant relationship” is a relationship during the course of which an act of discrimination against, or harassment of, one party (“B”) to the relationship by the other party (“A”) to it is unlawful by virtue of any preceding provision of Part II and Part III.

(2) Where a relevant relationship has come to an end, it is unlawful for A—

- (a) to discriminate against B by subjecting him to a detriment; or
- (b) to subject B to harassment,

on any ground with respect to which this Act applies, where the discrimination or harassment arises out of and is closely connected to that relationship.

(3) In subsection (1), reference to an act of discrimination or harassment which is unlawful includes, in the case of a relationship which has come to an end before the coming into force of this Act, reference to an act of discrimination or harassment which would, after the coming into force of this Act, be unlawful.

PART IV

Other unlawful acts.

Liability of employers and principals.

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

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

(3) In proceedings brought under this Act against any person in respect of an act alleged to have been done by an employee of his it shall be a defence for that person to prove that he took such steps as were reasonably practicable to prevent the employee from doing that act, or from doing in the course of his employment acts of that description.

Aiding unlawful acts.

38.(1) A person who knowingly aids another person to do an act made unlawful by this Act shall be treated for the purposes of this Act as himself doing an unlawful act of the like description.

(2) For the purposes of subsection (1) an employee or agent for whose act the employer or principal is liable under section 37 (or would be so liable but for section 37(3)) shall be deemed to aid the doing of the act by the employer or principal.

(3) A person does not under this section knowingly aid another to do an unlawful act if—

- (a) he acts in reliance on a statement made to him by that other person that, by reason of any provision of this Act, the act which he aids would not be unlawful; and
- (b) it is reasonable for him to rely on the statement.

(4) A person who knowingly or recklessly makes a statement such as is referred to in subsection (3)(a) which in a material respect is false or misleading commits an offence, and shall be liable, on summary conviction, to a fine not exceeding level 5 on the standard scale.

PART V

General exceptions.

Exception for public security, etc.

39. This Act shall be without prejudice to any statutory provision or rule of law relating to public security, the maintenance of public order, the prevention of criminal offences, the protection of health or the protection of the rights and freedoms of others.

Exception for benefits dependent on marital status.

40. Nothing in Part II, III or IV shall render unlawful anything which prevents or restricts access to a benefit by reference to marital status.

Exceptions for positive action.

41.(1) Nothing in this Act shall render unlawful any act done in or in connection with—

- (a) affording persons of a particular race or ethnic origin, religion or belief or sex or sexual orientation access to facilities for training which would help fit them for particular work; or
- (b) encouraging persons of a particular race or ethnic origin, religion or belief or sex or sexual orientation to take advantage of opportunities for doing particular work,

where it reasonably appears to the person doing the act that it prevents or compensates for disadvantages linked to race or ethnic origin, religion or belief or sex or sexual orientation suffered by persons of that race or ethnic origin, religion or belief or sex or sexual orientation doing that work or likely to take up that work.

(2) Nothing in this Act shall render unlawful any act done by a trade organisation within the meaning of section 18 in or in connection with—

- (a) affording only members of the organisation who are of a particular race or ethnic origin, religion or belief or sex or sexual orientation access to facilities for training which would help fit them for holding a post of any kind in the organisation; or
- (b) encouraging only members of the organisation who are of a particular race or ethnic origin, religion or belief or sex or sexual orientation to take advantage of opportunities for holding such posts in the organisation,

where it reasonably appears to the organisation that the act prevents or compensates for disadvantages linked to race or ethnic origin, religion or belief or sex, sexual orientation suffered by those of that race or ethnic

origin, religion or belief or sex, sexual orientation holding such posts or likely to hold such posts.

(3) Nothing in this Act shall render unlawful any act done by a trade organisation within the meaning of section 18 in or in connection with encouraging only persons of a particular race or ethnic origin, religion or belief or sex or sexual orientation to become members of the organisation where it reasonably appears to the organisation that the act prevents or compensates for disadvantages linked to race or ethnic origin, religion or belief or sex or sexual orientation suffered by persons of that religion or belief or sexual orientation who are, or are eligible to become, members.

PART VI

Enforcement.

Restriction of proceedings for breach of this Act.

42.(1) Except as provided by this Act no proceedings, whether civil or criminal, shall lie against any person in respect of an act by reason that the act is unlawful by virtue of a provision of this Act.

(2) Subsection (1) does not prevent the making of an application for judicial review.

Jurisdiction of the Industrial Tribunal.

43.(1) A complaint by any person (“the complainant”) that another person (“the respondent”)—

- (a) has committed against the complainant an act to which this section applies; or
- (b) is by virtue of section 37 or 38 to be treated as having committed against the complainant such an act,

may be presented to the Industrial Tribunal.

(2) This section applies to any act of discrimination or harassment which is unlawful by virtue of any provision of section 12, 13, 17, 18, 20, 22, 23 or 27 other than—

- (a) where the act is one in respect of which an appeal or proceedings in the nature of an appeal may be brought under any enactment;
- (b) where the act arises out of and is closely connected to a relationship between the complainant and the respondent which has come to an end but during the course of which an act of discrimination against, or harassment of, the complainant by

the respondent would have been unlawful by virtue of section 28 or 36.

(3) In subsection (2)(c), reference to an act of discrimination or harassment which would have been unlawful includes, in the case of a relationship which has come to an end before the coming into force of this Act, reference to an act of discrimination or harassment which would, after the coming into force of this Act applies, have been unlawful.

(4) Where under this section a member or prospective member of an occupational pension scheme presents a complaint to the Industrial Tribunal that the trustees or managers of the scheme—

- (a) have committed against him an act which is unlawful by virtue of section 21 or 36; or
- (b) are by virtue of section 37 or 38 to be treated as having committed against him such an act,

the employer in relation to the scheme shall, for the purposes of the rules governing procedure, be treated as a party and be entitled to appear and be heard in accordance with those rules.

Burden of proof: Industrial Tribunal.

44.(1) This section applies to any complaint presented under section 43 to the Industrial Tribunal.

(2) Where, on the hearing of the complaint, the complainant proves facts from which the Tribunal could, apart from this section, conclude in the absence of an adequate explanation that the respondent—

- (a) has committed against the complainant an act to which section 43 applies; or
- (b) is by virtue of section 37 or 38 to be treated as having committed against the complainant such an act,

the Tribunal shall uphold the complaint unless the respondent proves that he did not commit, or as the case may be, is not to be treated as having committed, that act.

Remedies on complaints in the Industrial Tribunal.

45.(1) Where the Industrial Tribunal finds that a complaint presented to it under section 43 is well-founded, the Tribunal shall make such of the following as it considers just and equitable—

- (a) an order declaring the rights of the complainant and the respondent in relation to the act to which the complaint relates;
- (b) an order requiring the respondent to pay to the complainant compensation of an amount corresponding to any damages he could have been ordered by the Supreme Court to pay to the complainant if the complaint had fallen to be dealt with under section 46;
- (c) a recommendation that the respondent take within a specified period action appearing to the Tribunal to be practicable for the purpose of obviating or reducing the adverse effect on the complainant of any act of discrimination or harassment to which the complaint relates.

(2) As respects an unlawful act of discrimination falling within sections 4(2), 6(1)(b), 6(2)(b), 7(1)(b) or 9(1)(b) if the respondent proves that the provision, criterion or practice was not applied with the intention of treating the complainant unfavourably on grounds of sex, race or ethnic origins or sexual orientation or religion or belief an order may be made under subsection (1)(b) only if the Industrial Tribunal—

- (a) makes such order under subsection (1)(a) (if any) and such recommendation under subsection(1)(c) (if any) as it would have made if it had no power to make an order under subsection (1)(b); and
- (b) (where it makes an order under subsection (1)(a) or a recommendation under subsection (1)(c) or both) considers that it is just and equitable to make an order under subsection (1)(b) as well.

(3) If without reasonable justification the respondent to a complaint fails to comply with a recommendation made by the Industrial Tribunal under subsection (1)(c), then, if it thinks it just and equitable to do so—

- (a) the Tribunal may increase the amount of compensation required to be paid to the complainant in respect of the complaint by an order made under subsection (1)(b); or
- (b) if an order under subsection (1)(b) was not made, the Tribunal may make such an order.

(4) Where an amount of compensation falls to be awarded under subsection (1)(b), the Tribunal may include in the award interest subject to, and in accordance with, the provisions of section 52H of the Employment Act.

(5) This subsection applies where—

- (a) under section 43 a member or prospective member of an occupational pension scheme (“the complainant”) presents a complaint to the Industrial Tribunal against the trustees or managers of the scheme or an employer;
- (b) the complainant is not a pensioner member of the scheme;
- (c) the complaint relates to the terms on which persons become members of the scheme, or the terms on which members of the scheme are treated; and
- (d) the Tribunal finds the complaint to be well-founded.

(6) Where subsection (5) applies, the Industrial Tribunal may, without prejudice to the generality of its power under subsection (1)(a), make an order declaring that the complainant has a right—

- (a) where the complaint relates to the terms on which persons become members of the scheme, to be admitted to the scheme;
- (b) where the complaint relates to the terms on which members of the scheme are treated, to membership of the scheme without discrimination.

(7) An order under subsection (6)—

- (a) may be made in respect of such period as is specified in the order (but may not be made in respect of any time before the coming into operation of this Act);
- (b) may make such provision as the Industrial Tribunal considers appropriate as to the terms on which, or the capacity in which, the complainant is to enjoy such admission or membership.

(8) Where the provisions of subsections (5), (6) and (7) apply, the Industrial Tribunal may not make an order for compensation under subsection (1)(b), whether in relation to arrears of benefits or otherwise, except—

- (a) for injury to feelings; or
- (b) by virtue of subsection (3) above.

(9) Notwithstanding the provisions of this Act and of Parts VA and VB of the Employment Act, in so far as they relate to the ground of sex discrimination in the employment field, it shall be open to a person to

present a complaint to the Industrial Tribunal either under section 43 of this Act or under section 52E of the Employment Act, and in such a case, the Tribunal shall exclusively follow the provisions of the respective Act.

Jurisdiction of the Supreme Court.

46.(1) A claim by any person (“the claimant”) that another person (“the respondent”)–

- (a) has committed against the claimant an act to which this section applies;
- (b) is by virtue of section 37 or 38 to be treated as having committed against the claimant such an act,

may be made the subject of civil proceedings in the Supreme Court in like manner as any other claim in tort.

(2) Proceedings brought under subsection (1) shall be brought only in the Supreme Court.

(3) For the avoidance of doubt it is hereby declared that damages in respect of an unlawful act to which this section applies may include compensation for injury to feelings whether or not they include compensation under any other head.

(4) This section applies to any act of discrimination or harassment which is unlawful by virtue of–

- (a) section 21, 25, 26, 28, 29, 30, 32, 33, 35 or 36; or
- (b) where the act arises out of and is closely connected to a relationship between the claimant and the respondent which has come to an end but during the course of which an act of discrimination against, or harassment of, the claimant by the respondent would have been unlawful by virtue of section 28 or section 36.

(5) In subsection (4)(b), reference to an act of discrimination or harassment which would have been unlawful includes, in the case of a relationship which has come to an end before the coming into force of this Act, reference to an act of discrimination or harassment which would, after the coming into force of this Act, have been unlawful.

Burden of proof in the Supreme Court.

47.(1) This section applies to any claim brought under section 46 in the Supreme Court.

(2) Where, on the hearing of the claim, the claimant proves facts from which the Court could, apart from this section, conclude in the absence of an adequate explanation that the respondent—

- (a) has committed against the claimant an act to which section 46 applies; or
- (b) is by virtue of section 37 or 38 to be treated as having committed against the claimant such an act,

the Court shall uphold the claim unless the respondent proves that he did not commit, or as the case may be, is not to be treated as having committed, that act.

Help for persons in obtaining information, etc.

48.(1) In accordance with this section, a person (“the person aggrieved”) who considers he may have been discriminated against, or subjected to harassment, in contravention of this Act may serve questions on the respondent to a complaint presented under section 43 or a claim brought under section 46 and the respondent may if he so wishes reply to such questions.

(2) Where the person aggrieved questions the respondent—

- (a) the questions, and any reply by the respondent shall, subject to the following provisions of this section, be admissible as evidence in the proceedings;
- (b) if it appears to the Court or the Tribunal that the respondent deliberately, and without reasonable excuse, omitted to reply within eight weeks of service of the questions or that his reply is evasive or equivocal, the Court or the Tribunal may draw any inference from that fact that it considers it just and equitable to draw, including an inference that he committed an unlawful act.

(3) In proceedings before the Supreme Court, a question shall only be admissible as evidence in pursuance of subsection (2)(a)—

- (a) where it was served before those proceedings had been instituted, if it was so served within the period of six months beginning when the act complained of was done;

- (b) where it was served when those proceedings had been instituted, if it was served with the leave of, and within a period specified by, the Court.

(4) In proceedings before the Industrial Tribunal, a question shall only be admissible as evidence in pursuance of subsection (2)(a)–

- (a) where it was served before a complaint had been presented to the Tribunal, if it was so served within the period of six months beginning when the act complained of was done;
- (b) where it was served when a complaint had been presented to the Tribunal, either–
 - (i) if it was so served within the period of twenty-one days beginning with the day on which the complaint was presented; or
 - (ii) if it was so served later with leave given, and within a period specified, by a direction of the Tribunal.

(5) A question and any reply thereto shall be in the form set out in the Schedule and may be served on the respondent or, as the case may be, on the person aggrieved–

- (a) by delivering it to him;
- (b) by sending it by post to him at his usual or last-known residence or place of business;
- (c) where the person to be served is a body corporate or is a trade union or employers' association, by delivering it to the secretary or clerk of the body, union or association at its registered or principal office or by sending it by post to the secretary or clerk at that office;
- (d) where the person to be served is acting by a solicitor, by delivering it at, or by sending it by post to, the solicitor's address for service; or
- (e) where the person to be served is the person aggrieved, by delivering the reply, or sending it by post, to him at his address for reply as stated by him in the document containing the questions.

(6) This section is without prejudice to any other provisions of law regulating interlocutory and preliminary matters in proceedings before the Supreme Court or the Industrial Tribunal, and has effect subject to any other

provisions of law regulating the admissibility of evidence in such proceedings.

(7) In this section “respondent” includes a prospective respondent.

Period within which proceedings to be brought.

49.(1) The Industrial Tribunal shall not consider a complaint under section 43 unless the complaint is presented to the Tribunal within the period of six months beginning when the act complained of is alleged to have been done.

(2) The Supreme Court shall not consider a claim brought under section 46 unless proceedings in respect of the claim are instituted within the period of six months beginning when the act complained of was done.

(3) The Supreme Court or the Tribunal may nevertheless consider any such complaint or claim which is out of time if, in all the circumstances of the case, it considers that it is just and equitable to do so.

(4) For the purposes of this section and section 48–

- (a) when the making of a contract is, by reason of the inclusion of any term, an unlawful act, that act shall be treated as extending throughout the duration of the contract; and
- (b) any act extending over a period shall be treated as done at the end of that period; and
- (c) a deliberate omission shall be treated as done when the person in question decided upon it,

and in the absence of evidence establishing the contrary a person shall be taken for the purposes of this section to decide upon an omission when he does an act inconsistent with doing the omitted act or, if he has done no such inconsistent act, when the period expires within which he might reasonably have been expected to do the omitted act if it was to be done.

Notifying the provisions of this Act.

50. In so far as this Act applies to employment, it shall be the duty of every employer to bring the provisions of this Act to the attention of employees by appropriate means, including posting at the place of employment.

Promotion of equal treatment.

51.(1) The Government shall, unless or until Regulations are made pursuant to section 54(1)(a) and (b) below, as soon as possible after coming into operation of this Act, designate a body or bodies by notice in the Gazette,

for the promotion of equal treatment of all persons without discrimination on grounds of sex or racial or ethnic origins.

(2) A body designated under subsection (1) or established by Regulations pursuant to section 54(1) shall have, without prejudice to any other powers conferred on it by any enactment or otherwise, and the rights of victims and of associations, organisations or other legal entities, powers to—

- (a) provide independent assistance to victims of discrimination in pursuing their complaints about discrimination;
- (b) conduct independent surveys concerning discrimination; and
- (c) publish independent reports and make recommendations on any issue relating to such discrimination.

PART VII

Validity of contracts, collective agreements and rules of undertakings.

Validity and revision of contracts.

52.(1) A term of a contract is void where—

- (a) the making of the contract is, by reason of the inclusion of the term, unlawful by virtue of this Act;
- (b) it is included in furtherance of an act which is unlawful by virtue of this Act; or
- (c) it provides for the doing of an act which is unlawful by virtue of this Act.

(2) Subsection (1) does not apply to a term the inclusion of which constitutes, or is in furtherance of, or provides for, unlawful discrimination against, or harassment of, a party to the contract, but the term shall be unenforceable against that party.

(3) A term in a contract which purports to exclude or limit any provision of this Act is unenforceable by any person in whose favour the term would operate apart from this section.

(4) Subsections (1), (2) and (3) shall apply whether the contract was entered into before or after the date on which this Act comes into operation; but in the case of a contract made before that date, those subsections do not apply in relation to any period before that date.

(5) Subsection (3) does not apply—

- (a) to a contract settling a complaint to which section 43(1) applies where the contract is made with the assistance of any conciliation officer;
- (b) to a contract settling a complaint to which section 43(1) applies if the conditions regulating compromise contracts under subsection (6) below are satisfied in relation to the contract; or
- (c) to a contract settling a claim to which section 46 applies.

(6) The conditions regulating compromise contracts under this section are that—

- (a) the contract must be in writing;
- (b) the contract must relate to the particular complaint;
- (c) the complainant must have received advice from a relevant independent adviser as to the terms and effect of the proposed contract and in particular its effect on his ability to pursue a complaint before the Industrial Tribunal;
- (d) there must be in force, when the adviser gives the advice, a contract of insurance, or an indemnity provided for members of a profession or professional body, covering the risk of a claim by the complainant in respect of loss arising in consequence of the advice;
- (e) the contract must identify the adviser; and
- (f) the contract must state that the conditions regulating compromise contracts under this section are satisfied.

(7) A person is a relevant independent adviser for the purposes of subsection (6)(c)—

- (a) if he is a qualified lawyer;
- (b) if he is an officer, official, employee or member of an independent trade union who has been certified in writing by the trade union as competent to give advice and as authorised to do so on behalf of the trade union; or
- (c) if he works at an advice centre (whether as an employee or a volunteer) and has been certified in writing by the centre as competent to give advice and as authorised to do so on behalf of the centre.

(8) But a person is not a relevant independent adviser for the purposes of subsection (6)(c) in relation to the complainant—

- (a) if he is, is employed by or is acting in the matter for the other party or a person who is connected with the other party;
- (b) in the case of a person within subsection (7)(b) or (c), if the trade union or advice centre is the other party or a person who is connected with the other party; or
- (c) in the case of a person within subsection (3)(c), if the complainant makes a payment for the advice received from him.

(9) For the purposes of subsection (8)(a) any two persons are to be treated as connected—

- (a) if one is a company of which the other (directly or indirectly) has control; or
- (b) if both are companies of which a third person (directly or indirectly) has control.

(10) On the application of a person interested in a contract to which subsection (1) or (2) applies, the Supreme Court may make such order as it thinks fit for—

- (a) removing or modifying any term rendered void by subsection (1); or
- (b) removing or modifying any term made unenforceable by subsection 1(2);

but such an order shall not be made unless all persons affected have been given notice in writing of the application (except where under rules of court notice may be dispensed with) and have been afforded an opportunity to make representations to the court.

(11) An order under subsection (10) may include provision as respects any period before the making of the order.

Collective agreements and rules of undertakings.

53.(1) This section applies to—

- (a) any term of a collective agreement, including an agreement which was not intended, or is presumed not to have been intended, to be a legally enforceable contract;

- (b) any rule made by an employer for application to all or any of the persons who are employed by him or who apply to be, or are, considered by him for employment;
- (c) any rule made by a trade organisation (within the meaning of section 18) for application to all or any of its members or prospective members.

(2) Any term or rule to which this section applies is void where—

- (a) the making of the collective agreement is, by reason of the inclusion of the term, unlawful by virtue of this Act;
- (b) the term or rule is included or made in furtherance of an act which is unlawful by virtue of this Act; or
- (c) the term or rule provides for the doing of an act which is unlawful by virtue of this Act.

(3) Subsection (2) shall apply whether the agreement was entered into, or the rule made, before or after the date on which this Act comes into operation; but in the case of an agreement entered into, or a rule made, before the date on which this Act comes into operation, that subsection does not apply in relation to any period before that date.

(4) A person to whom this section applies may present a complaint to the Industrial Tribunal that a term or rule is void by virtue of subsections (1) to (3) if he has reason to believe—

- (a) that the term or rule may at some future time have effect in relation to him; and
- (b) where he alleges that it is void by virtue of subsection (2)(c), that—
 - (i) an act for the doing of which it provides, may at some such time be done in relation to him; and
 - (ii) the act would be unlawful by virtue of this Act if done in relation to him in present circumstances.

(5) In the case of a complaint about—

- (a) a term of a collective agreement made by or on behalf of—
 - (i) an employer,
 - (ii) an organisation of employers of which an employer is a member, or

(iii) an association of such organisations of one of which an employer is a member; or

(b) a rule made by an employer within the meaning of subsection (1)(b),

subsection (4) applies to any person who is, or is genuinely and actively seeking to become, one of his employees.

(6) In the case of a complaint about a rule made by an organisation or body to which subsection (1)(c) applies, subsection (4) applies to any person who is, or is genuinely and actively seeking to become, a member of the organisation or body.

(7) When the Industrial Tribunal finds that a complaint presented to it under subsection (4) is well-founded the Tribunal shall make an order declaring that the term or rule is void.

(8) An order under subsection (7) may include provision as respects any period before the making of the order.

(9) The avoidance by virtue of subsection (2) of any term or rule which provides for any person to be discriminated against shall be without prejudice to the following rights (except in so far as they enable any person to require another person to be treated less favourably than himself), namely—

(a) such of the rights of the person to be discriminated against; and

(b) such of the rights of any person who will be treated more favourably in direct or indirect consequence of the discrimination,

as are conferred by or in respect of a contract made or modified wholly or partly in pursuance of, or by reference to, that term or rule.

PART VIII

Miscellaneous.

Powers to make Regulations.

54.(1) The Government may make Regulations for all or any of the following purposes–

- (a) establishment of an Equal Opportunities Commission and prescribing the duties and powers as are necessary for the effective function of the commission, if any, in Gibraltar; and
- (b) designating such commission to promote equal treatment and to exercise such powers as are necessary to discharge obligations under sections 51; or
- (c) giving effect in Gibraltar to the law of the European Community or to any provision of a relevant International Agreement or Convention ratified by the United Kingdom and the application of which has been extended to Gibraltar, relating to any of the matters contained in or dealt with under this Act and this power shall include the power to provide for the provision to come into force although the law, Agreement or Convention, as the case may be, has not yet come into force;
- (d) prescribing anything which under the Act may be prescribed;
- (e) providing for such other matters as are reasonably necessary for or incidental to the due administration of this Act.

(2) Regulations made under this Act, may–

- (a) make exceptions to any matter prescribed in such Regulations;
- (b) provide for the delegation of functions, either generally or specifically, exercisable by virtue of the regulation making power in this Act or by virtue of the regulations;
- (c) make provisions relating to the standard of approval or application for the purpose of giving effect to the provisions of any relevant International Convention or Agreement; and
- (d) make such other provisions as may be necessary for carrying out the general purposes of this Act.

SCHEDULE

section 48(5)

PART I

Questionnaire of person aggrieved

To

(name of person to be questioned) of

(address)

1. (1) I

(name of questioner) of

(address)

consider that you may have discriminated against me [subjected me to harassment] contrary to the Equal Opportunities Act, 2004.

(2) (Give date, approximate time and a factual description of the treatment received and of the circumstances leading up to the treatment.)

(3) I consider that this treatment may have been unlawful [because

(complete if you wish to give reasons, otherwise delete)].

2. Do you agree that the statement in paragraph 1(2) above is an accurate description of what happened? If not, in what respect do you disagree or what is your version of what happened?

3. Do you accept that your treatment of me was unlawful discrimination/harassment?

If not—

- (a) why not,
- (b) for what reason did I receive the treatment accorded to me, and
- (c) how far did considerations of religion or belief/racial or ethnic origin/sex/sexual orientation affect your treatment of me?

4. (Any other questions you wish to ask.)

5. My address for any reply you may wish to give to the questions raised above is [that set out in paragraph 1(1) above] [the following address

-----].

(signature of questioner)

(date)

N.B.– By virtue of section 48 of the Equal Opportunities Act, 2004 this questionnaire and any reply are (subject to the provisions of that section) admissible in proceedings under this Act. The Supreme Court or the Tribunal may draw any such inference as is just and equitable from a failure without reasonable excuse to reply within eight weeks of service of this questionnaire, or from an evasive or equivocal reply, including an inference that the person questioned has committed an unlawful act.

PART II
Reply by respondent

To

(name of questioner) of

(address)

1. I

(name of person questioned) of

(address)

hereby acknowledge receipt of the questionnaire signed by you and dated

which was served on me on

(date).

2. [I agree that the statement in paragraph 1(2) of the questionnaire is an accurate description of what happened.]

[I disagree with the statement in paragraph 1(2) of the questionnaire in that

-----]

3. I accept/dispute that my treatment of you was unlawful discrimination [harassment].

[My reasons for so disputing are

The reason why you received the treatment accorded to you and the answers to the other questions in paragraph 3 of the questionnaire are
-----]

4. (*Replies to questions in paragraph 4 of the questionnaire.*)

5. I have deleted (in whole or in part) the paragraph(s) numbered

above, since I am unable/unwilling to reply to the relevant questions in the correspondingly numbered paragraph(s) of the questionnaire for the following reasons

(*signature of person questioned*)

(*date*)