

**SECOND SUPPLEMENT TO THE GIBRALTAR
GAZETTE**

No. 4183 of 10 July, 2015

LEGAL NOTICE NO. 108 OF 2015.

INTERPRETATION AND GENERAL CLAUSES ACT

**EQUAL OPPORTUNITIES ACT 2006 (AMENDMENT)
REGULATIONS 2015**

In exercise of the powers conferred upon it by section 23(g) of the Interpretation and General Clauses Act, and in order to transpose, in part, into the law of Gibraltar Council Directive 2004/113/EC of 13 December 2004 implementing the principle of equal treatment between men and women in the access to and supply of goods and services and Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal treatment of men and women in matters of employment and occupation (recast), the Government has made the following Regulations-

Title and commencement.

1. These Regulations may be cited as the Equal Opportunities Act 2006 (Amendment) Regulations 2015 and come into operation on the day of publication.

Amendment of Act.

2.(1) The Equal Opportunities Act 2006 is amended in accordance with the provisions of this Regulation.

(2) In section 2(1), in the definition of “benefit”, insert “includes non-contractual remuneration, benefits in kind and,” before “in relation to occupational pension schemes”.

(3) In section 3(1)-

(a) in paragraph (h), for the full stop substitute a semicolon; and

(b) after paragraph (h), insert-

“(i) gender reassignment.”.

- (4) In section 3(2)-
- (a) in paragraph (g), for the full stop substitute a semicolon; and
 - (b) after paragraph (g), insert-
 - “(h) who are proposing to undergo, are undergoing or have undergone gender reassignment.”.
- (5) In section 3(3)-
- (a) after the definition of “disabled person”, insert the following definition-
 - ““gender reassignment” means a process for the purpose of reassigning a person’s sex by changing physiological or other attributes of sex;”; and
 - (b) after the definition of “sexual orientation”, insert the following definition-
 - ““transgender person” means a person who forms part of the equal opportunities category prescribed in subsection (2)(h) as evidenced by a statement by a medical practitioner.”.
- (6) In section 6-
- (a) in subsection (1)-
 - (i) for “her sex if”, substitute “sex”; and
 - (ii) for “men”, substitute “another person”;
 - (b) in subsection (2), after “if he applies” insert “or would apply” and in paragraphs (b) and (c), insert “, or would put,” after “puts”; and
 - (c) in subsection (3), for “the same, or not materially different, in” substitute “comparable to”.
- (7) After section 7, insert the following-

“Meaning of discrimination on the grounds of gender reassignment.”

7A.(1) A person (“A”) discriminates against a transgender person (“B”) if, on the grounds of gender reassignment, A treats B less favourably than A treats or would treat other persons.

(2) A person (“A”) discriminates against a transgender person (“B”) if A applies or would apply to B a provision, criterion or practice—

- (a) which A applies or would apply equally to persons who are not transgender;
- (b) which puts, or would put, transgender persons at a disadvantage compared to persons who are not transgender;
- (c) which puts, or would put, B at that disadvantage; and
- (d) which A cannot show to be an appropriate and necessary means of achieving a legitimate aim.

(3) A comparison of the case of B with that of another person under subsections (1) or (2) must be such that the relevant circumstances in the one case are comparable to the other.

(4) Where a person is able to provide evidence that that person is transgender, he or she is the acquired gender for the purposes of this Act, and related expressions (“man”, “male”, “woman”, “female” and “sex”) shall be construed accordingly.

Gender reassignment discrimination: absence from work

7B.(1) This section has effect for the purposes of the application of Parts III and IV to the equal opportunities ground of gender reassignment.

(2) A person (“A”) discriminates against a transgender person (“B”) if, in relation to an absence of B’s that is because of gender reassignment, A treats B less favourably than A would treat B if—

- (a) B’s absence was because of sickness or injury; or

(b) B's absence was for some other reason and it is not reasonable for B to be treated less favourably.

(3) A person's absence is because of gender reassignment if it is because the person is proposing to undergo, is undergoing or has undergone the process (or part of the process) of gender reassignment.”.

(8) In section 14-

(a) in subsection (2)-

- (i) insert “or transgender person” after “woman”; and
- (ii) insert “or that is related to gender reassignment or sex” after “sexual nature”; and

(b) in subsection (3) insert “or transgender person” after “woman”.

(9) In section 38-

(a) in subsection (1)-

- (i) in paragraph (d), for the full stop, substitute a semicolon; and
- (ii) after paragraph (d) insert the following-

“(e) gender reassignment.”;

(b) in subsection (3)-

- (i) in the frontispiece, insert “gender reassignment,” after “sex.”; and
- (ii) in paragraph (c), insert “non-commercial” before “services”.

(10) In section 45A-

(a) in subsection (2)(b), insert “or gender reassignment” after “sex”; and

(b) in subsection (3)-

- (i) in paragraph (a)(i), insert “or to transgender persons” after “sex”; and
- (ii) in paragraph (b), insert “or to transgender persons” before “, being a provision”.

(11) In section 45B(1), insert “or to transgender persons” before “, being a provision”.

(12) In section 45D, insert “or gender reassignment” after “sex”.

(13) In section 55-

(a) in subsection (3)(a), insert “but before 21 December 2012” after “the appropriate date”; and

(b) after subsection (4), insert the following-

“(5) Despite subsection (2), the treatment under subsection (1) is not unlawful under section 43(1) except in circumstances prescribed by subsection (6).

(6) The prescribed circumstances are-

(a) where a contract of insurance or related financial services is concluded after 21 December 2012; and

(b) in the calculation of premiums and benefits for that contract, actuarial or other data relating to the following factors are used-

- (i) sex;
- (ii) gender reassignment; or
- (iii) costs related to pregnancy or to the fact that a woman has given birth at any time in a period of 26 weeks ending on the day the treatment occurs or begins; and

(c) these calculations result in differences in an individual's premiums or benefits.”.

(14) In section 70(2), insert “7A(2)” after “6(2),”.

(15) In section 74 after subsection (2) insert-

“(3) In the case of a complaint alleging discrimination of the grounds of the complainant's sex, subsection (2) shall apply as though for the words “the complainant proves facts” there are substituted the words “the complainant establishes facts”.”.

(16) In section 77 after subsection (2) insert-

“(3) In the case of a claim alleging discrimination of the grounds of the claimant's sex, subsection (2) shall apply as though for the words “the claimant proves facts” there are substituted the words “the claimant establishes facts”.”.

(17) In section 80-

(a) in subsections (1) and (2)(b) insert “or gender reassignment” after “sex”; and

(b) in subsection (4), after “sex discrimination”, insert “or discrimination on grounds of gender reassignment”.

Dated 10th July, 2015.

S SACRAMENTO,
for the Government.

EXPLANATORY MEMORANDUM

These Regulations transpose, in part, into the law of Gibraltar Council Directive 2004/113/EC of 13 December 2004 implementing the principle of equal treatment between men and women in the access to and supply of goods and services and Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal treatment of men and women in matters of employment and occupation (recast).