SUBSIDIARY LEGISLATION 456.01

ACCESS TO GOODS AND SERVICES AND THEIR SUPPLY (EQUAL TREATMENT) REGULATIONS

1st August, 2008

LEGAL NOTICE 181 of 2008, as amended by Legal Notice 417 of 2012.

Title and scope.

1. (1) The title of these regulations is the Access to Goods and Services and their Supply (Equal Treatment) Regulations.

(2) (*a*) These regulations give effect to the relevant provisions of Council Directive 2004/113/EC implementing the principle of equal treatment between men and women in the access to goods and services and their supply.

(*b*) These regulations also give effect to the Communication from the European Commission (22.12.2011 C(2011) 9497) containing Guidelines on the application of Council Directive 2004/113/EC to insurance, in the light of the judgment of the Court of Justice of the European Union in Case C-236/09 (Test-Achats).

(3) These regulations shall apply to all persons who provide goods and services made available to the public irrespective of the person concerned as regards both the public and private sectors, including public bodies, and which are offered outside the area of private and family life, and to all transactions carried out in this context.

(4) These regulations do not prejudice the freedom of an individual to choose a contractual partner as long as such choice of a contractual partner is not based on the gender of that person.

(5) These regulations shall not apply to matters of employment and occupation, nor to matters of self-employment, insofar as these matters are covered by other laws and regulations.

(6) These regulations shall be without prejudice to more favourable provisions concerning the protection of women as regards pregnancy and maternity.

Interpretation.

2. In these regulations unless the context otherwise requires:

"the Act" means the Equality for Men and Women Act; Cap. 456.

"the Commission" means the National Commission for the Promotion of Equality for Men and Women established in terms of article 11 of the Act and includes any officer of the Commission duly authorised by it to act on its behalf for any specific purpose under the Act, and the term "Commissioner" shall be construed accordingly;

"equal treatment" means the absence of discrimination, whether direct or indirect, on grounds of sex, by reference in particular to

marital or family status.

Purpose.

3. The purpose of these regulations is to lay down a framework for combating discrimination based on gender in the access to and supply of goods and services, with a view to putting into effect in the access to such goods and services and their supply the principle of equal treatment between men and women.

Concept of discriminatory treatment.

4. (1) It shall be unlawful for a person to subject another person to discriminatory treatment, whether directly or indirectly, on the grounds of sex, including discriminatory treatment related to pregnancy or maternity.

Cap. 452.

(2) Without prejudice to the provisions of the Act and of the Employment and Industrial Relations Act:

"direct discrimination" shall be deemed to occur where one person is treated less favourably, on grounds of sex, than another is, has been or would be treated in a comparable situation; and

"indirect discrimination" shall be deemed to occur where an apparently neutral provision, criterion or practice would put persons of one sex at a particular disadvantage compared with persons of the other sex, unless that provision, criterion or practice is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary.

(3) Harassment and sexual harassment shall also be deemed to constitute discrimination for the purposes of these regulations. A person's rejection or submission to harassment or sexual harassment may not be used as a basis for a decision affecting that person.

Cap. 452.

(4) Without prejudice to the provisions of the Act and of the Employment and Industrial Relations Act:

"harassment" shall be deemed to occur where an unwanted conduct related to the sex of a person occurs with the purpose or effect of violating the dignity of a person and of creating an intimidating, hostile, degrading, humiliating or offensive environment; and

"sexual harassment" shall be deemed to occur where any form of unwanted physical, verbal, non-verbal or physical conduct of a sexual nature occurs, with the purpose or effect of violating the dignity of a person, in particular when creating an intimidating, hostile, degrading, humiliating or offensive environment.

(5) For the purposes of these regulations, any person or organisation to whom these regulations apply shall also be deemed to have discriminated against a person if they neglect their obligation to prevent any form of harassment or sexual harassment within their organisation.

(6) Instruction to direct or indirect discrimination on the grounds of sex shall be deemed to be discrimination within the meaning of these regulations.

(7) Discrimination shall also be deemed to have occurred when a person is victimised for having made a complaint to the lawful authorities or for having initiated or participated in proceedings for redress on grounds of alleged breach of the provisions of these regulations, or for having disclosed information, confidential or otherwise, to a designated public regulating body, regarding alleged illegal or corrupt activities being committed by any person falling within the scope of these regulations or by persons acting in such person's name and interests.

(8) These regulations shall not preclude differences in treatment, if the provision of the goods and services exclusively or primarily to members of one sex is justified by a legitimate aim and the means of achieving that aim are appropriate and necessary.

Actuarial factors. *Amended by: L.N. 417 of 2012.*

5. (1) Subject to sub-regulation (2), the use of sex as a factor in the calculation of premiums and benefits for the purposes of insurance and related financial services shall not result in differences in the premiums and benefits relating to an individual with respect to insurance contracts concluded after 21st December 2007 where the policyholder is an individual.

(2) The provisions of sub-regulation (1) shall not apply with respect to insurance contracts concluded before 21st December 2012, where the use of sex is a determining factor in the assessment of risk, if the resulting differences in the premiums and benefits relating to an individual are proportionate, and where this assessment is based on relevant and accurate actuarial statistical data.

(3) For the purposes of sub-regulation (2), providers of insurance and related financial services who use such a determining factor shall file an annual notification to such effect with the Commission.

(4) Such notification shall include the following details:

(*a*) the name of the service provider;

(*b*) the product or service in relation to which the notification is being filed;

(*c*) a rationale as to why the use of sex is a determining factor; and

(*d*) the actuarial statistical data on which this rationale is based.

(5) For the purposes of sub-regulation (2), an insurance contract shall be deemed to have been concluded before 21st December 2012 notwithstanding that:

(*a*) the said insurance contract is extended automatically on or after 21st December 2012 on the basis of terms and conditions in an insurance contract concluded before 21st December 2012 (hereinafter referred as a "pre-existing contract"); or

(*b*) the said insurance contract is amended on or after 21st December 2012 on the basis of terms and conditions in a pre-existing contract, where the consent of the policyholder is not required; or

(*c*) the said insurance contract is a top-up or follow-on insurance policy whose terms were agreed in a pre-existing contract, where such insurance contract is activated by the unilateral decision of the policyholder; or

(*d*) a pre-existing contract is amended on or after 21st December 2012 on the request and with the consent of the policyholder, on condition that such amendment does not result in any increase in premium; or

(*e*) the said insurance contract is part of a scheme under which an insurance company transfers to another insurance company all rights and obligations arising from pre-existing contracts in accordance with the provisions of the Insurance Business Act.

Cap. 403.

Positive action.

6. With a view to ensuring full equality in practice between men and women, the principle of equal treatment shall not prevent any person from maintaining or adopting specific measures to prevent or compensate for disadvantages linked to sex.

Judicial and adminstrative proceedings.

7. (1) Persons who feel that the principle of equal treatment within the scope of these regulations has not been applied to them, shall have a right to file a complaint with the Commissioner and the Commissioner shall initiate the proceedings prescribed in the Act or in any other applicable law or regulation.

(2) Without prejudice to subregulation (1), a person who alleges that any other person has committed in his or her regard any unlawful act under these regulations shall, within twenty-four months of the alleged breach, have a right of action before the competent court of civil jurisdiction requesting the court to order the defendant to desist from such unlawful act and to order the payment of compensation for such damage suffered through such unlawful act.

(3) In any proceedings mentioned in subregulations (1) and (2) hereof, where persons who consider themselves wronged since the principle of equal treatment has not been applied to them, establish before any competent Court or Tribunal facts from which it may be presumed that there has been direct or indirect discrimination, it shall be for the defendant to prove that there has been no breach of the principle of equal treatment on the hearing of the complaint, and the Court or Tribunal shall uphold the complaint if the defendant does not prove that he did not commit that unlawful act.

(4) In any such action as is provided under subregulation (2), the plaintiff shall moreover and in addition to such damages and costs as may have been actually suffered and as may be due according to law, be entitled to recover by way of compensation such sum of money as the court may in its discretion consider reasonable taking into account all the circumstances of the case. The court shall however ensure that compensation is dissuasive and proportionate to the damage suffered.

Defence of rights.

8. Nothing shall prevent any association, organisation or

other legal entity, having a legitimate interest in ensuring that the provisions of these regulations are complied with, from engaging itself either on behalf or in support of the complainant, with his or her approval, in any judicial or administrative procedure as is provided for the enforcement of obligations under these regulations.

Functions of the Commission.

9. For the purposes of these regulations, and without prejudice to article 12 of the Act, the functions of the Commission shall include:

(*a*) providing independent assistance to victims of discrimination in pursuing their complaints about discrimination;

(*b*) conducting independent surveys concerning discrimination; and

(*c*) publishing independent reports and making recommendations on any issue relating to such discrimination.

Compliance.

10. (1) Persons and organisations to whom these regulations apply shall take the necessary measures to ensure that the principle of equal treatment is respected in relation to the access to and supply of goods and services within the scope of these regulations, and in particular that administrative provisions contrary to the principle of equal treatment are abolished and that any contractual provisions, internal rules of undertakings and rules governing profit-making or non-profit-making associations contrary to the principle of equal treatment are abolished or amended.

(2) In any case, any provision or practice contrary to the principle of equal treatment shall be null and void.

Offences.

11. Any person who sexually harasses any other person in breach of the provisions of these regulations shall be guilty of an offence and shall, on conviction, be liable to a fine (*multa*) not exceeding two thousand three hundred euro (€2,300) or to imprisonment for a period not exceeding six months, or to both such fine and imprisonment.