

SUBSIDIARY LEGISLATION 460.15**EQUAL TREATMENT OF PERSONS ORDER**

3rd April, 2007

LEGAL NOTICE 85 of 2007, as amended by Legal Notices 267 and 427 of 2007.

1. The title of this Order is the Equal Treatment of Persons Order. Citation.

2. (1) In this Order, unless the context otherwise requires:

Interpretation.
Amended by:
L.N. 267 of 2007.

"advertisement" means any form of advertisement, whether to the public or not and whether in a newspaper, magazine or other publication, on television or radio or on the internet or by display of a notice, poster, billboard, trailer or flyer or by any other means, and references to the publishing or display of advertisements shall be construed accordingly;

"Equality Commission" means the National Commission for the Promotion of Equality for Men and Women set up under article 11 of the Equality for Men and Women Act, and "the Commissioner" shall have the same meaning assigned to it by article 2 of the same Act; Cap. 456.

"discrimination" means direct or indirect discrimination based on racial or ethnic origin and "discriminate" and "discriminatory" shall be construed accordingly;

"harassment" of a person means to subject the person to any unwelcome act, request or conduct, including spoken words, gestures or the production, display or circulation of written words, pictures or other material and "to harass" a person shall be construed accordingly;

"the Minister" means the minister responsible for equality;

"the Directive" 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;

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

(2) For the purposes of these regulations, but saving the provisions of sub-article (3) -

- (a) direct discrimination shall be taken to occur where a person is treated less favourably than another person is, has been, or would be, treated in a comparable situation;
- (b) indirect discrimination shall be taken to occur where an apparently neutral provision, criterion or practice would put a person at a particular disadvantage compared with other persons, unless that provision, criterion or practice is objectively justified by a legitimate aim and the means of achieving that aim are

appropriate and necessary;

- (c) harassment shall be deemed to be discrimination when it is related racial or ethnic origin and takes place with the purpose or effect of violating the dignity of a person and of creating an intimidating, hostile, degrading, humiliating or offensive environment;
- (d) an instruction to discriminate against persons on any ground mentioned in paragraph (c) shall be deemed to be discrimination.

(3) A less favourable treatment which is based on a characteristic related to any of the grounds mentioned in sub-article (2)(c) shall not constitute discrimination where by reason of the particular occupational activities concerned, or of the context in which they are carried out, the treatment is legitimate and the characteristic constitutes a genuine and determining occupational requirement which is proportionate in the circumstances:

Provided that the burden of proving a genuine and determining occupational requirement shall lie on the person who alleges its existence.

(4) This Order shall not apply to any differences of treatment based on nationality and are without prejudice to laws and conditions relating to the entry into and residence of third country nationals and stateless persons in Malta and to any treatment which arises from the legal status of these individuals concerned.

Scope.

3. The object of this Order is to implement the provisions of the Directive.

Non-discrimination by persons etc.

4. (1) No person, establishment or entity, whether in the private or public sector and including public bodies, shall discriminate against any other person in relation to:

- (a) social protection, including social security and healthcare;
- (b) social advantages;
- (c) education;
- (d) access to and supply of goods and services which are available to the public, including housing;
- (e) access to any other service as may be designated by law for the purposes of this regulation.

(2) The failure by any person responsible for any establishment and, or entity to fulfil his obligation to suppress harassment as provided under article 6(2) shall, for the purposes of sub-article (1), constitute discrimination.

Non-discrimination by banks etc.

5. (1) No bank or financial institution or insurance company shall discriminate against any person in the grant of any facility in respect of the establishment, equipment or in the launching or extension of any business or the launching or extension of any form of self employment or the insurance of that business or the person in self employment.

(2) Nothing in sub-article (1) shall be deemed to constitute discrimination in so far as the conditions under which the facility or the insurance cover is offered or withheld reflect genuine considerations based on the financial risk in the grant of such facilities or of such insurance cover.

6. (1) Without prejudice to the provisions of any other law, whosoever subjects another person to harassment deemed to be discrimination for the purposes of this Order, or treats less favourably another person by reason of such person having rejected or submitted to such harassment, shall be guilty of an offence against this article and shall, without prejudice to any other liability under any other law, be liable on conviction to a fine (*multa*) of not more than two thousand and three hundred and twenty-nine euro and thirty-seven cents (€2,329.37) or to imprisonment for not more than six months, or to both such fine and imprisonment.

Penalty.
Amended by:
L.N. 427 of 2011.

(2) (a) Persons responsible for any establishment or entity referred to in article 4(1) shall not permit the harassment of persons who have a right to be present in such establishment or entity, or to avail themselves of any facility, goods or service provided at such establishment or entity.

(b) It shall be a defence for persons responsible as aforesaid to prove that they took such steps as are reasonably practicable to prevent such harassment.

7. It shall not be lawful to victimise any person 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 acts of discrimination or discriminatory treatment.

Victimisation of complainant.

8. (1) It shall not be lawful for persons to publish or display, or cause to be published or displayed, any advertisement which promotes discrimination or which is discriminatory or which might reasonably be understood as indicating an intention to discriminate.

Advertisements.

(2) Any person who acts in breach of sub-article (1) shall be guilty of an offence and shall, on conviction, be liable to the penalties established for contraventions.

9. (1) Upon a request made by a person claiming to have been harassed or discriminated against, or upon a request made by the Equality Commission acting upon a complaint or otherwise, the person to whom or against whom the complaint of the harassment or the discriminatory treatment has been made or who has taken any steps whatsoever to verify or investigate the complaint shall, within ten working days of such request, provide the complainant or the Equality Commission, as the case may be, with a report of the complaint and, or a report on the steps taken to verify or investigate the complaint.

Person causing harassment etc. to provide report.

(2) The person requested to provide the report referred to in

sub-article (1) shall be entitled to claim from the person requesting the report or the Equality Commission, as the case may be, reimbursement of such reasonable expenses incurred in drawing up and making the report:

Provided that such expenses may be recovered from the person responsible for such harassment or discrimination if it is found that such harassment or discrimination did in fact take place.

Review by the
Commissioner.
Amended by:
L.N. 267 of 2007.

10. (1) The Commissioner, with the assistance of the Equality Commission, shall keep under review the working of the provisions of this Order.

(2) The Commissioner may also conduct independent surveys, publish independent reports and make recommendations on any issue relating to discrimination.

(3) Subject to the other provisions of this Order, the functions of the Commissioner under article 12(1) of the relevant Act shall extend, and shall also apply *mutatis mutandis*, to issues of equal treatment of persons within the meaning of the provisions of this Order and to issues of compliance with, and the enforcement of rights under, the provisions of this Order, which functions shall continue to be exercised with the assistance of the Equality Commission.

Commissioner may
initiate
investigations.
Amended by:
L.N. 267 of 2007.

11. (1) The Commissioner may initiate investigations on any matter involving an act or omission that is allegedly unlawful under the provisions of this Order.

(2) The Commissioner may also initiate investigations on the receipt of a complaint in writing by persons who claim to be the victims of an act or omission contrary to the provisions of this Order.

(3) If it appears to the Commissioner that persons who wish to make a complaint under sub-article (2) require assistance to formulate the complaint, the Commissioner shall take or order the taking of such reasonable steps as may be necessary to assist such persons in making the complaint.

(4) The Commissioner may also provide independent assistance to victims of discrimination to enable them to pursue their complaints

Provisions of the
relevant Act.

12. The provisions of article 18 of the relevant Act and of any regulations made thereunder, as well as any arrangements made under those regulations in respect of references of a matter by the Commission to the competent civil court for redress, shall apply to investigations under this Order:

Provided that nothing in this article shall prevent any person having a legal interest from himself taking action for redress or, where action has been taken by the Commission, from joining in and becoming a party to the suit.

Burden of proof.

13. (1) If a person who considers that he or she has been discriminated against establishes, before a court or other competent authority, facts from which it may be presumed that there has been

direct or indirect discrimination against him or her, the burden of proving that there has been no discrimination shall lie on the person, establishment or entity against whom the allegation of discrimination is directed.

(2) The provisions of sub-article (1) shall also apply where the Commission itself takes action to refer an allegation of discrimination to the competent court on behalf of the person discriminated against or where it intervenes in support of a person alleging discrimination and taking action for redress.

14. Where an offence against the provisions of this Order is committed by a partnership, company, association or other body of persons, every person who, at the time of the commission of the offence, was a director, manager, secretary or other similar officer of such partnership, company, association or other body of persons or was purporting to act in any such capacity shall be deemed to be guilty of that offence unless he proves that the offence was committed without his knowledge and that he exercised all due diligence to prevent the commission of the offence.

Offence committed by company, etc.

15. (1) Without prejudice to the provisions of article 30 of the Employment and Industrial Relations Act, a person who alleges that any other person has committed in his or her regard any act which under any of the provisions of this Order is unlawful, shall have a right of action before the competent court of civil jurisdiction requesting the court to order the defendant to desist from such unlawful acts and, where applicable, to order the payment of compensation for such damage suffered through such unlawful act.

Right of action before competent court. Cap. 452.

(2) In any proceedings under sub-article (1) it shall be sufficient for the plaintiff to prove that he or she has been treated less favourably in terms of the provisions of this Order and it shall be incumbent on the defendant to prove that such less favourable treatment was justified in accordance with the provisions of this Order.

(3) In any such action as is provided in sub-article (1) the plaintiff shall, over and above and in addition to such damages and costs as may have been actually suffered and be due according to law, be entitled to recover by way of compensation such sum of money as the court in its discretion may consider reasonable taking into account all the circumstances of the case and as the court on the trial of the cause shall award and assess.

16. (1) Nothing in this Order or in any other law shall prevent any association, organization or other legal entity, having a legitimate interest in ensuring that this Order is 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 provided for the enforcement of obligations under this Order.

Complainant may be assisted by entity enforcing this Order.

(2) The provisions of articles 13(1) and 15(2) shall *mutatis mutandis* apply to any proceedings instituted in accordance with sub-article (1).