

SUBSIDIARY LEGISLATION 460.16

**EQUAL TREATMENT IN SELF-EMPLOYMENT
AND OCCUPATION ORDER**

3rd April, 2007

*LEGAL NOTICE 86 of 2007, as amended by Legal Notices 379 of 2009
and 260 of 2012.*

- 1.** The title of this Order is the Equal Treatment in Self-Employment and Occupation Order. Citation.
- 2.** In this Order, unless the context otherwise requires: Interpretation.
- "the Directives" means 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 November 2000 establishing a general framework for equal treatment in employment and occupation;
- "discriminatory treatment" shall have the same meaning assigned to it by regulation 2(1) of the relevant regulations;
- "the relevant regulations" means the Equal Treatment in Employment Regulations. S.L. 452.95
- 3.** The object of this Order is to further implement the provisions of the Directives. Scope.
- 4.** Regulations 1 to 8, both inclusive, 12, 12A, 13 and 14 of the relevant regulations, shall be applicable to all persons, also in relation to conditions for access to self-employment or to occupation, including the spouses of persons in self-employment or occupation, not being employees or business partners, where they habitually participate in the activities of the self-employed or occupied person and perform the same tasks or ancillary tasks, and the provisions of regulation 1(3) and (4) of the relevant regulations shall be understood and construed accordingly. Applicability of provisions of the relevant regulations.
*Substituted by:
L.N. 379 of 2009.
Amended by:
L.N. 260 of 2012.*
- 4A.** (1) No person in self-employment or occupation shall be discriminated against in relation to the establishment, equipment or extension of a business or the launching or extension of any other form of self-employed activity or occupation. Prohibition of discrimination in relation to establishment, etc., of self-employed activity or occupation.
*Added by:
L.N. 260 of 2012.*
- (2) For the purpose of this Order, a person in self-employment or occupation shall also be deemed to have been discriminated against if in relation to the establishment, equipment or extension of a business or the launching or extension of any other form of self-employed activity or occupation he is subject to harassment or sexual harassment, or if any person is instructed to discriminate against a self-employed or occupied person.
- 5.** (1) Where an allegation is made that some form of discriminatory treatment has occurred, the person making the allegation, or the competent authority, if either deems fit, shall have the right to send a written notification to any person or organisation Proceedings following an allegation.
*Added by:
L.N. 379 of 2009.*

to whom this Order applies, hereafter referred to as the respondent, of the alleged discriminatory treatment received, giving any relevant details and requesting a reply. On receipt of such notification, the respondent shall submit a written reply within ten working days of the date of receipt of such notification, giving his version of events and any grounds for disputing the allegations, as well an explanation of any relevant procedures adopted by the respondent to prevent discriminatory treatment.

(2) Any correspondence referred to in sub-article (1) shall be admissible in proceedings brought before any Court, and if it appears to the court that the respondent deliberately, and without reasonable excuse, omitted to reply within ten working days of the date of receipt of such notification or that his reply was evasive or equivocal, the court may draw any inference from that fact that it considers just and equitable to draw, including an inference that he committed an unlawful act.

(3) The provisions of sub-article (1) requiring the respondent to submit a reply shall not apply if, on the date that the request was made, proceedings had already been initiated on the matter before the Court.

Right of action
before competent
court.
Added by:
L.N. 379 of 2009.

6. (1) Any person claiming to have been subjected to discriminatory treatment, whether direct or indirect, in relation to conditions for access to self-employment or to occupation in terms of this Order or any person alleging that any other person has committed in his or her regard any unlawful act under this Order shall, within 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, where applicable, to order the payment of compensation for such damage suffered through such unlawful act.

(2) In any proceedings mentioned in sub-article (1), where persons who consider themselves wronged because the principle of equal treatment has not been applied to them establish before the Court 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 shall uphold the complaint if the defendant does not prove that he did not commit that unlawful act.

Support that may
be given to the
complainant.
Added by:
L.N. 379 of 2009.

7. (1) Nothing shall prevent any association, organization or other legal entity, having a legitimate interest in ensuring that this Order is complied with, to engage itself either on behalf of or in support of the complainant, with his or her approval, in any judicial or administrative procedure which is provided for the enforcement of obligations under this Order.

(2) The provisions of article 6(2) shall apply to any proceedings commenced in accordance with this article.
