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Amendment of Employment Equality Act, 1998

—————

Acts Referred to

Anti-Discrimination (Pay) Act, 1974	1974, No. 15
Child Care Act, 1991	1991, No. 17
Courts Act, 1981	1981, No. 11
Education Act, 1998	1998, No. 51
Employment Equality Act, 1977	1977, No. 16
Employment Equality Act, 1998	1998, No. 21
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Housing (Miscellaneous Provisions) Act, 1992	1992, No. 18
Licensing Acts, 1833 to 1999	
Local Authorities (Higher Education Grants) Acts, 1968 to 1992	
Petty Sessions (Ireland) Act, 1851	14 & 15 Vict., c.9
Refugee Act, 1996	1996, No. 17
Registration of Clubs Acts, 1904 to 1999	
Road Transport Act, 1932	1932, No. 2
Road Transport Act, 1933	1933, No. 8
Roads Act, 1993	1993, No. 14
Transport Act, 1958	1958, No. 19
Worker Protection (Regular Part-Time Employees) Act, 1991	1991, No. 5



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EQUAL STATUS ACT, 2000

AN ACT TO PROMOTE EQUALITY AND PROHIBIT TYPES OF DISCRIMINATION, HARASSMENT AND RELATED BEHAVIOUR IN CONNECTION WITH THE PROVISION OF SERVICES, PROPERTY AND OTHER OPPORTUNITIES TO WHICH THE PUBLIC GENERALLY OR A SECTION OF THE PUBLIC HAS ACCESS, TO PROVIDE FOR INVESTIGATING AND REMEDYING CERTAIN DISCRIMINATION AND OTHER UNLAWFUL ACTIVITIES, TO PROVIDE FOR THE ADMINISTRATION BY THE EQUALITY AUTHORITY OF VARIOUS MATTERS PERTAINING TO THIS ACT, TO AMEND THE EMPLOYMENT EQUALITY ACT, 1998, IN RELATION THERETO AND IN CERTAIN OTHER RESPECTS AND TO PROVIDE FOR RELATED MATTERS. [26th April, 2000]

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

PART I

Preliminary

- 1.**—This Act may be cited as the Equal Status Act, 2000. Short title.
- 2.**—(1) In this Act, unless the context otherwise requires— Interpretation.
- “Authority” means the Equality Authority;
- “Director” means the Director of Equality Investigations appointed under section 75(1) of the Employment Equality Act, 1998;
- “disability” means—
- (a) the total or partial absence of a person’s bodily or mental functions, including the absence of a part of a person’s body,
 - (b) the presence in the body of organisms causing, or likely to cause, chronic disease or illness,
 - (c) the malfunction, malformation or disfigurement of a part of a person’s body,

(d) a condition or malfunction which results in a person learning differently from a person without the condition or malfunction, or

(e) a condition, disease or illness which affects a person's thought processes, perception of reality, emotions or judgement or which results in disturbed behaviour;

“discriminate” means to discriminate within the meaning of *section 3(1) or 4(1)*;

“discriminatory grounds” has the meaning given by *section 3(2)*;

“family status” means being pregnant or having responsibility—

(a) as a parent or as a person in *loco parentis* in relation to a person who has not attained the age of 18 years, or

(b) as a parent or the resident primary carer in relation to a person of or over that age with a disability which is of such a nature as to give rise to the need for care or support on a continuing, regular or frequent basis,

and, for the purposes of *paragraph (b)*, a primary carer is a resident primary carer in relation to a person with a disability if the primary carer resides with the person with the disability;

“goods” means any articles of movable property;

“marital status” means being single, married, separated, divorced or widowed;

“the Minister” means the Minister for Justice, Equality and Law Reform;

“near relative” means a spouse, lineal descendant, ancestor, brother or sister;

“person”, as that term is used in or in relation to any provision of this Act that prohibits that person from discriminating or from committing any other act or that requires a person to comply with a provision of this Act or regulations made under it, includes an organisation, public body or other entity;

“premises” includes any immovable property;

“proceedings”, when used without qualification, includes any referral, mediation or investigation under *Part III* but does not include criminal proceedings under this Act;

“prohibited conduct” means discrimination against, or sexual harassment or harassment of, or permitting the sexual harassment or harassment of, a person in contravention of this Act;

“refusal” includes a deliberate omission;

“religious belief” includes religious background or outlook;

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“service” means a service or facility of any nature which is available to the public generally or a section of the public, and, without prejudice to the generality of the foregoing, includes—

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- (a) access to and the use of any place,
- (b) facilities for—
 - (i) banking, insurance, grants, loans, credit or financing,
 - (ii) entertainment, recreation or refreshment,
 - (iii) cultural activities, or
 - (iv) transport or travel,
- (c) a service or facility provided by a club (whether or not it is a club holding a certificate of registration under the Registration of Clubs Acts, 1904 to 1999) which is available to the public generally or a section of the public, whether on payment or without payment, and
- (d) a professional or trade service,

but does not include pension rights (within the meaning of the Employment Equality Act, 1998) or a service or facility in relation to which that Act applies;

“sexual orientation” means heterosexual, homosexual or bisexual orientation;

“Traveller community” means the community of people who are commonly called Travellers and who are identified (both by themselves and others) as people with a shared history, culture and traditions including, historically, a nomadic way of life on the island of Ireland.

- (2) In this Act, unless the contrary intention appears—
 - (a) a reference to a section or Part is to a section or Part of this Act,
 - (b) a reference to a subsection, paragraph or other subdivision is to the subsection, paragraph or subdivision of the provision in which the reference occurs, and
 - (c) a reference to an enactment is to that enactment as amended by or under any other enactment, including this Act.

3.—(1) For the purposes of this Act, discrimination shall be taken to occur where—

Discrimination (general).

- (a) on any of the grounds specified in *subsection (2)* (in this Act referred to as “the discriminatory grounds”) which exists at present or previously existed but no longer exists or may exist in the future, or which is imputed to the person concerned, a person is treated less favourably than another person is, has been or would be treated,
- (b) (i) a person who is associated with another person is treated, by virtue of that association, less favourably than a person who is not so associated is, has been or would be treated, and

(ii) similar treatment of that other person on any of the discriminatory grounds would, by virtue of *paragraph (a)*, constitute discrimination,

or

(c) (i) a person is in a category of persons who share a common characteristic by reason of which discrimination may, by virtue of *paragraph (a)*, occur in respect of those persons,

(ii) the person is obliged by the provider of a service (within the meaning of *section 4(6)*) to comply with a condition (whether in the nature of a requirement, practice or otherwise) but is unable to do so,

(iii) substantially more people outside the category than within it are able to comply with the condition, and

(iv) the obligation to comply with the condition cannot be justified as being reasonable in all the circumstances of the case.

(2) As between any two persons, the discriminatory grounds (and the descriptions of those grounds for the purposes of this Act) are:

(a) that one is male and the other is female (the “gender ground”),

(b) that they are of different marital status (the “marital status ground”),

(c) that one has family status and the other does not or that one has a different family status from the other (the “family status ground”),

(d) that they are of different sexual orientation (the “sexual orientation ground”),

(e) that one has a different religious belief from the other, or that one has a religious belief and the other has not (the “religion ground”),

(f) subject to *subsection (3)*, that they are of different ages (the “age ground”),

(g) that one is a person with a disability and the other either is not or is a person with a different disability (the “disability ground”),

(h) that they are of different race, colour, nationality or ethnic or national origins (the “ground of race”),

(i) that one is a member of the Traveller community and the other is not (the “Traveller community ground”),

(j) that one—

(i) has in good faith applied for any determination or redress provided for in *Part II* or *III*,

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- (ii) has attended as a witness before the Authority, the Director or a court in connection with any inquiry or proceedings under this Act, Pt.I S.3
- (iii) has given evidence in any criminal proceedings under this Act,
- (iv) has opposed by lawful means an act which is unlawful under this Act, or
- (v) has given notice of an intention to take any of the actions specified in *subparagraphs (i) to (iv)*,
- and the other has not (the “victimisation ground”).

(3) Treating a person who has not attained the age of 18 years less favourably or more favourably than another, whatever that other person’s age, shall not be regarded as discrimination on the age ground.

(4) The Minister shall, not later than two years after the commencement of this section, review the operation of this Act to assess whether there is a need to add to the discriminatory grounds specified in *subsection (2)*.

4.—(1) For the purposes of this Act discrimination includes a refusal or failure by the provider of a service to do all that is reasonable to accommodate the needs of a person with a disability by providing special treatment or facilities, if without such special treatment or facilities it would be impossible or unduly difficult for the person to avail himself or herself of the service. Discrimination on ground of disability.

(2) A refusal or failure to provide the special treatment or facilities to which *subsection (1)* refers shall not be deemed reasonable unless such provision would give rise to a cost, other than a nominal cost, to the provider of the service in question.

(3) A refusal or failure to provide the special treatment or facilities to which *subsection (1)* refers does not constitute discrimination if, by virtue of another provision of this Act, a refusal or failure to provide the service in question to that person would not constitute discrimination.

(4) Where a person has a disability that, in the circumstances, could cause harm to the person or to others, treating the person differently to the extent reasonably necessary to prevent such harm does not constitute discrimination.

(5) This section is without prejudice to the provisions of sections 7(2)(a), 9(a) and 15(2)(g) of the Education Act, 1998, in so far as they relate to functions of the Minister for Education and Science, recognised schools and boards of management in regard to students with a disability.

(6) In this section—

“provider of a service” means—

- (a) the person disposing of goods in respect of which *section 5(1)* applies,
- (b) the person responsible for providing a service in respect of which *section 5(1)* applies,

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- (c) the person disposing of any estate or interest in premises in respect of which *section 6(1)(a)* applies,
- (d) the person responsible for the provision of accommodation or any related services or amenities in respect of which *section 6(1)(c)* applies,
- (e) an educational establishment within the meaning of *subsection (1) of section 7* in relation to any of the matters referred to in *subsection (2)* of that section, or
- (f) a club within the meaning of *section 8(1)* in respect of admission to membership or a service offered to its members,

as the case may be, and “service” shall be construed accordingly;

“providing”, in relation to the special treatment or facilities to which *subsection (1)* refers, includes making provision for or allowing such treatment or facilities, and cognate words shall be construed accordingly.

PART II

Discrimination and Related Activities

Disposal of goods and provision of services.

5.—(1) A person shall not discriminate in disposing of goods to the public generally or a section of the public or in providing a service, whether the disposal or provision is for consideration or otherwise and whether the service provided can be availed of only by a section of the public.

(2) *Subsection (1)* does not apply in respect of—

- (a) an activity referred to in *section 7(2)*,
- (b) a service related to a matter provided for under *section 6*, or a service offered to its members by a club in respect of which *section 8* applies,
- (c) differences in the treatment of persons on the gender ground in relation to services of an aesthetic, cosmetic or similar nature, where the services require physical contact between the service provider and the recipient,
- (d) differences in the treatment of persons in relation to annuities, pensions, insurance policies or any other matters related to the assessment of risk where the treatment—

(i) is effected by reference to—

(I) actuarial or statistical data obtained from a source on which it is reasonable to rely, or

(II) other relevant underwriting or commercial factors,

and

(ii) is reasonable having regard to the data or other relevant factors,

- (e) differences in the treatment of persons on the religion ground in relation to goods or services provided for a religious purpose, Pt.II S.5
- (f) differences in the treatment of persons on the gender, age or disability ground or on the basis of nationality or national origin in relation to the provision or organisation of a sporting facility or sporting event to the extent that the differences are reasonably necessary having regard to the nature of the facility or event and are relevant to the purpose of the facility or event,
- (g) differences in the treatment of persons on the gender ground where embarrassment or infringement of privacy can reasonably be expected to result from the presence of a person of another gender,
- (h) differences in the treatment of persons in a category of persons in respect of services that are provided for the principal purpose of promoting, for a *bona fide* purpose and in a *bona fide* manner, the special interests of persons in that category to the extent that the differences in treatment are reasonably necessary to promote those special interests,
- (i) differences in the treatment of persons on the gender, age or disability ground or on the ground of race, reasonably required for reasons of authenticity, aesthetics, tradition or custom in connection with a dramatic performance or other entertainment,
- (j) an age requirement for a person to be an adoptive or foster parent, where the requirement is reasonable having regard to the needs of the child or children concerned,
- (k) a disposal of goods by will or gift, or
- (l) differences, not otherwise specifically provided for in this section, in the treatment of persons in respect of the disposal of goods, or the provision of a service, which can reasonably be regarded as goods or a service suitable only to the needs of certain persons.

6.—(1) A person shall not discriminate in—

- (a) disposing of any estate or interest in premises,
- (b) terminating any tenancy or other interest in premises, or
- (c) providing accommodation or any services or amenities related to accommodation or ceasing to provide accommodation or any such services or amenities.

Disposal of premises and provision of accommodation.

(2) *Subsection (1)* does not apply in respect of—

- (a) the disposal of any estate or interest in premises by will or gift,
- (b) the disposal otherwise of such an estate or interest where—
- (i) the person making the disposal or another person who has an estate or interest in the premises or a person who is a near relative of either of them

intends to continue to reside, or in the immediate future to take up residence, in the premises or a part thereof, and

- (ii) the premises in question are small premises,
- (c) any disposal of such an estate or interest, or any provision of accommodation or of any services or amenities relating to accommodation, which is not available to the public generally or a section of the public,
- (d) the provision of accommodation in premises where—
 - (i) the person providing the accommodation or a person who is a near relative of that person intends to continue to reside, or in the immediate future to take up residence, in the premises or a part thereof, and
 - (ii) the premises in question are small premises,
- or
- (e) the provision of accommodation to persons of one gender where embarrassment or infringement of privacy can reasonably be expected to result from the presence of a person of another gender.

(3) References in *subsection (2)* to the disposal of an estate or interest in premises or the provision of accommodation or of any services or amenities relating to accommodation include references to the termination of any tenancy or other interest in those premises or ceasing to provide such accommodation, services or amenities.

(4) Premises shall be treated for the purposes of *paragraphs (b)* and *(d)* of *subsection (2)* as small premises if—

- (a) in the case of premises comprising residential accommodation for more than one household, there is not normally accommodation in the premises for more than three households, or
- (b) in any other case, there is not normally residential accommodation in the premises for more than six persons in addition to a person mentioned in those paragraphs and any persons residing with that person.

(5) Where any premises or accommodation are reserved for the use of persons in a particular category of persons for a religious purpose or as a refuge, nursing home, retirement home, home for persons with a disability or hostel for homeless persons or for a similar purpose, a refusal to dispose of the premises or provide the accommodation to a person who is not in that category does not, for that reason alone, constitute discrimination.

(6) Nothing in *subsection (1)* shall be construed as prohibiting—

- (a) a housing authority, pursuant to its functions under the Housing Acts, 1966 to 1998, or
- (b) a body approved under section 6 of the Housing (Miscellaneous Provisions) Act, 1992,

from providing, in relation to housing accommodation, different treatment to persons based on family size, family status, marital status, disability, age or membership of the Traveller community. Pt.II S.6

7.—(1) In this section “educational establishment” means a pre-school service within the meaning of Part VII of the Child Care Act, 1991, a primary or post-primary school, an institution providing adult, continuing or further education, or a university or any other third-level or higher-level institution, whether or not supported by public funds. Educational establishments.

(2) An educational establishment shall not discriminate in relation to—

- (a) the admission or the terms or conditions of admission of a person as a student to the establishment,
- (b) the access of a student to any course, facility or benefit provided by the establishment,
- (c) any other term or condition of participation in the establishment by a student, or
- (d) the expulsion of a student from the establishment or any other sanction against the student.

(3) An educational establishment does not discriminate under *subsection (2)* by reason only that—

- (a) where the establishment is not a third-level institution and admits students of one gender only, it refuses to admit as a student a person who is not of that gender,
- (b) where the establishment is an institution established for the purpose of providing training to ministers of religion and admits students of only one gender or religious belief, it refuses to admit as a student a person who is not of that gender or religious belief,
- (c) where the establishment is a school providing primary or post-primary education to students and the objective of the school is to provide education in an environment which promotes certain religious values, it admits persons of a particular religious denomination in preference to others or it refuses to admit as a student a person who is not of that denomination and, in the case of a refusal, it is proved that the refusal is essential to maintain the ethos of the school,
- (d) without prejudice to section 3 of the Refugee Act, 1996, where the establishment is an institution providing adult, continuing or further education or a university or other third-level institution—

(i) it provides different treatment in relation to—

- (I) fees for admission or attendance by persons who are nationals of a member state of the European Union and persons who are not, or
- (II) the allocation of places at the establishment to those nationals and other nationals,

or

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(ii) it offers assistance to particular categories of persons—

(I) by way of sponsorships, scholarships, bursaries or other awards, being assistance which is justifiable, having regard to traditional and historical considerations, or

(II) in relation to the allocation of places at the establishment, where the allocation is made pursuant to an agreement concerning the exchange of students made between the establishment and an educational institution or authority in a jurisdiction other than the State,

or

(e) where the establishment is a university or other third-level institution, it provides different treatment in the allocation of places at the establishment to mature students (within the meaning of the Local Authorities (Higher Education Grants) Acts, 1968 to 1992).

(4) *Subsection (2)* does not apply—

(a) in respect of differences in the treatment of students on the gender, age or disability ground in relation to the provision or organisation of sporting facilities or sporting events, to the extent that the differences are reasonably necessary having regard to the nature of the facilities or events, or

(b) to the extent that compliance with any of its provisions in relation to a student with a disability would, by virtue of the disability, make impossible, or have a seriously detrimental effect on, the provision by an educational establishment of its services to other students.

Discriminating clubs.

8.—(1) In this section—

“certificate of registration”, in relation to a club, means the certificate of registration of the club under the Registration of Clubs Acts, 1904 to 1999;

“club” means a club that has applied for or holds a certificate of registration.

(2) For the purposes of this section—

(a) a club shall be considered to be a discriminating club if—

(i) it has any rule, policy or practice which discriminates against a member or an applicant for membership, or

(ii) a person involved in its management discriminates against a member or an applicant for membership in relation to the affairs of the club,

(b) without prejudice to the generality of *paragraph (a)*, any of the following acts, if done by a club or a person involved in its management on any of the discriminatory grounds, is evidence that the club is a discriminating club:

(i) refusing to admit a person to membership;

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- (ii) providing different terms and conditions of membership for members or applicants for membership; Pt.II S.8
- (iii) terminating the membership of a person or subjecting a member to any other sanction; or
- (iv) refusing or failing, in contravention of *section 4(1)*, to do all that is reasonable to accommodate the needs of a member, or an applicant for membership, with a disability.

(3) Any person, including the Authority (in this section referred to as “the applicant”), may, on application to the District Court (in this section referred to as “the Court”), request that the Court make a determination as to whether a club is a discriminating club.

(4) An application may be dismissed by the Court if it is found to have been brought in bad faith or to be frivolous or vexatious or to relate to a trivial matter.

(5) A copy of the application shall be served by the applicant, by personal service or by post, on the club and on such members, officers and employees of the club (if any) and such other persons (if any) as the Court may by order direct and the application shall be considered by the Court, providing to the applicant, the club and to any such members, officers, employees and other persons a reasonable opportunity to make representations.

(6) After considering the representations, the Court shall—

- (a) make an order in writing setting out its determination as to whether or not the club is a discriminating club, and
- (b) cause a copy of the order to be transmitted to the Minister.

(7) (a) Where—

- (i) the Court makes an order under *subsection (6)(a)* setting out its determination that a club is a discriminating club, and
- (ii) the order is the first such order in relation to the club,
- the Court shall include in the order a provision suspending the certificate of registration of the club for a period not exceeding 30 days.

(b) Where the Court makes any subsequent such order, *section 10* shall apply and have effect in relation to it.

(8) (a) The applicant, the club or any other person on whom a copy of the application under *subsection (3)* was served may, within 42 days after the order, appeal to the Circuit Court against the order or a provision of the order suspending the certificate of registration.

- (b) On an appeal against the order the Circuit Court may by order—
- (i) in case the District Court has determined that the club is not a discriminating club, either—

(I) affirm the order, or

- (II) allow the appeal, make a determination that the club is a discriminating club and, if the determination is the first such determination in relation to the club, suspend the certificate of registration of the club for a period not exceeding 30 days,
- (ii) in any other case—
- (I) affirm the order,
- (II) where the order includes a provision suspending the certificate of registration, affirm the determination of the District Court but vary the period of suspension, or
- (III) allow the appeal.
- (c) On an appeal which is only against a provision of the order suspending the certificate of registration, the Circuit Court may by order vary the period of suspension.
- (d) The Circuit Court shall cause a copy of its order to be sent to the Minister.
- (9) A period of suspension of a certificate of registration provided for in an order under *subsection (6)(a)* shall commence—
- (a) if no appeal is made against the order or the period of suspension, on the 50th day after the order is made, or
- (b) if such an appeal is made and the order is affirmed, or the period of suspension is affirmed or varied, on the 50th day after the order is made on the appeal,
- and shall end—
- (i) if no appeal is made against the order or the period of suspension, on the expiration of the period of suspension provided for in the order,
- (ii) if such an appeal is made and the order or period of suspension is affirmed, on the expiration of the period of suspension so provided for, or
- (iii) if on appeal the period of suspension is varied, on the expiration of the period as so varied.
- (10) Where an appeal against an order under *subsection (6)(a)* (other than an order referred to in *subsection (7)(a)*) is not brought, the order shall come into effect on the 50th day after it is made.
- (11) An order under this section suspending the certificate of registration of a club shall, while it is in force, have effect for the purposes of the Registration of Clubs Acts, 1904 to 1999, as if no certificate under those Acts had been granted in respect of the club for the period of suspension.
- (12) No employee who is working in a club during any period of suspension of the club's certificate of registration shall be disadvantaged by reason of the suspension in his or her employment during that period.

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(13) For the purposes of *subsection (12)* “employee” means any person who works under a contract of employment with an employer or is a regular part-time employee as defined in section 1 of the Worker Protection (Regular Part-Time Employees) Act, 1991. Pt.II S.8

(14) The Minister shall cause particulars of an order under *subsection (6)(a)* and of any order made by the Circuit Court on appeal to be published or made available in such form and manner as the Minister considers appropriate in the circumstances—

- (a) after the expiration of 50 days from the making of the order under *subsection (6)(a)*, or
- (b) if the order has been appealed against, after the appeal has been finally determined.

(15) A club that is determined by the District Court under this section to be a discriminating club may at any time, on application to that Court, request that it make a determination as to whether the club continues to be a discriminating club and, where an application is made, the provisions of this section shall apply in the same manner and to the same extent as if the application were made under *subsection (3)*, except that a copy of the application shall, unless the Court otherwise directs, be served by the club, by personal service or by post, on the person who was the original applicant, if possible, and on such other persons as the Court may by order direct.

9.—(1) For the purposes of *section 8*, a club shall not be considered to be a discriminating club by reason only that— Non-discriminating clubs.

- (a) if its principal purpose is to cater only for the needs of—
 - (i) persons of a particular gender, marital status, family status, sexual orientation, religious belief, age, disability, nationality or ethnic or national origin,
 - (ii) persons who are members of the Traveller community, or
 - (iii) persons who have no religious belief,it refuses membership to other persons,
- (b) it confines access to a membership benefit or privilege to members within the category of a particular gender or age, where—
 - (i) it is not practicable for members outside the category to enjoy the benefit or privilege at the same time as members within the category, and
 - (ii) arrangements have been made by the club which offer the same or a reasonably equivalent benefit or privilege both to members within the category and to members outside the category,
- (c) it has different types of membership, access to which is not based on any discriminatory ground,
- (d) for the purpose of reducing or eliminating the effect of any rule or practice of the club (whether adopted before or after the commencement of this section) restricting access

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to particular types of membership to persons of a particular gender it offers concessionary rates, fees or membership arrangements to persons who were or are disadvantaged by any such rule or practice, or

- (e) it provides different treatment to members in the category of a particular gender, age, disability, nationality or national origin in relation to sporting facilities or events and the different treatment is relevant to the purpose of the facilities or events and is reasonably necessary.

(2) For the purposes of *section 8*, a club shall not be considered to be a discriminating club by reason only that it—

- (a) has, for the principal purpose of promoting equality, a reserved place or places on its board or committee of management for persons who are members of a particular category, or
- (b) takes other measures for the principal purpose of obtaining a more equal involvement in club matters of persons who are members of a particular category.

Further provision in relation to discriminating clubs.

10.—(1) Notwithstanding anything in the Registration of Clubs Acts, 1904 to 1999—

- (a) subject to *paragraph (b)*, while an order under *section 8* determining that a club is a discriminating club remains in effect, no certificate of registration under those Acts shall be granted to or renewed for the benefit of the club, or
- (b) where an order under *section 8* has been made determining that a club is a discriminating club and an application under *subsection (15)* of that section in respect of the club is pending, the certificate of registration of the club under those Acts may be renewed in accordance with those Acts but shall cease to be in force—
- (i) on the expiration of one year after the date of the renewal, if no determination under *section 8* has been made within that period in respect of the club, or
- (ii) on the date of a determination under *section 8* that the club has not ceased to be a discriminating club,

whichever first occurs.

(2) In this section “order under *section 8*” does not include an order under that section providing for the suspension of the certificate of registration of the club concerned under the Registration of Clubs Acts, 1904 to 1999.

Sexual and other harassment.

11.—(1) A person shall not sexually harass or harass (within the meaning of *subsection (4)* or *(5)*) another person (“the victim”) where the victim—

- (a) avails or seeks to avail himself or herself of any service provided by the person or purchases or seeks to purchase any goods being disposed of by the person, Pt.II S.11
- (b) is the proposed or actual recipient from the person of any premises or of any accommodation or services or amenities related to accommodation, or
- (c) is a student at, has applied for admission to or avails or seeks to avail himself or herself of any service offered by, any educational establishment (within the meaning of *section 7*) at which the person is in a position of authority.

(2) A person (“the responsible person”) who is responsible for the operation of any place that is an educational establishment or at which goods, services or accommodation facilities are offered to the public shall not permit another person who has a right to be present in or to avail himself or herself of any facilities, goods or services provided at that place, to suffer sexual harassment or harassment at that place.

(3) It shall be a defence for the responsible person to prove that he or she took such steps as are reasonably practicable to prevent the sexual harassment or harassment, as the case may be, of the other person referred to in *subsection (2)* or of a category of persons of which that other person is a member.

(4) Sexual harassment takes place where a person—

- (a) subjects another person (“the victim”) to an act of physical intimacy,
- (b) requests sexual favours from the victim, or
- (c) subjects the victim to any act or conduct with sexual connotations, including spoken words, gestures or the production, display or circulation of written words, pictures or other material,

where—

- (i) the act, request or conduct is unwelcome to the victim and could reasonably be regarded as offensive, humiliating or intimidating to him or her, or
- (ii) the victim is treated differently by reason of his or her rejection of or submission to, as the case may be, the act, request or conduct or it could reasonably be anticipated that the victim would be so treated.

(5) Harassment takes place where a person subjects another person (“the victim”) to any unwelcome act, request or conduct, including spoken words, gestures or the production, display or circulation of written words, pictures or other material, which in respect of the victim is based on any discriminatory ground and which could reasonably be regarded as offensive, humiliating or intimidating to him or her.

12.—(1) A person shall not publish or display or cause to be published or displayed an advertisement which indicates an intention to engage in prohibited conduct or might reasonably be understood as indicating such an intention.

Prohibited
advertising.

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(2) A person who makes a statement which the person knows to be false with a view to securing a publication or display in contravention of *subsection (1)* shall, upon the publication or display being made, be guilty of an offence.

(3) In *subsection (1)*, “advertisement” includes every form of advertisement, whether to the public or not and whether in a newspaper or other publication, on television or radio or by display of a notice or by any other means, and references to the publishing or display of advertisements shall be construed accordingly.

Procurement of prohibited conduct.

13.—(1) A person shall not procure or attempt to procure another person to engage in prohibited conduct.

(2) A person who contravenes *subsection (1)* shall be guilty of an offence.

Certain measures or activities not prohibited.

14.—Nothing in this Act shall be construed as prohibiting—

(a) the taking of any action that is required by or under—

(i) any enactment or order of a court,

(ii) any act done or measure adopted by the European Union, by the European Communities or institutions thereof or by bodies competent under the Treaties establishing the European Communities, or

(iii) any convention or other instrument imposing an international obligation on the State,

or

(b) preferential treatment or the taking of positive measures which are *bona fide* intended to—

(i) promote equality of opportunity for persons who are, in relation to other persons, disadvantaged or who have been or are likely to be unable to avail themselves of the same opportunities as those other persons, or

(ii) cater for the special needs of persons, or a category of persons, who, because of their circumstances, may require facilities, arrangements, services or assistance not required by persons who do not have those special needs.

Certain activities not discrimination.

15.—(1) For greater certainty, nothing in this Act prohibiting discrimination shall be construed as requiring a person to dispose of goods or premises, or to provide services or accommodation or services and amenities related to accommodation, to another person (“the customer”) in circumstances which would lead a reasonable individual having the responsibility, knowledge and experience of the person to the belief, on grounds other than discriminatory grounds, that the disposal of the goods or premises or the provision of the services or accommodation or the services and amenities related to accommodation, as the case may be, to the customer would produce a substantial risk of criminal or disorderly conduct or behaviour or damage to property at or in the vicinity of the place in which the

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goods or services are sought or the premises or accommodation are located. Pt.II S.15

(2) Action taken in good faith by or on behalf of the holder of a licence or other authorisation which permits the sale of intoxicating liquor, for the sole purpose of ensuring compliance with the provisions of the Licensing Acts, 1833 to 1999, shall not constitute discrimination.

16.—(1) Imposing or maintaining a reasonable preferential fee, charge or rate in respect of anything offered or provided to or in respect of persons together with their children, married couples, persons in a specific age group or persons with a disability does not constitute—

Other non-discriminatory activities.

(a) discrimination for the purposes of *section 5* or *6*, or

(b) a discriminatory rule, policy or practice for the purposes of *section 8(2)(a)*.

(2) Treating a person differently does not constitute discrimination where the person—

(a) is so treated solely in the exercise of a clinical judgment in connection with the diagnosis of illness or his or her medical treatment, or

(b) is incapable of entering into an enforceable contract or of giving an informed consent and for that reason the treatment is reasonable in the particular case.

17.—(1) The Minister may, with the agreement of the Minister for Public Enterprise, make regulations requiring that new road or rail passenger vehicles which—

Regulations relating to vehicle equipment.

(a) are purchased or leased by an operator of a passenger road service or passenger rail service, and

(b) are to be used for the purposes of either such service,

shall be equipped so as to be readily accessible to and usable by persons with a disability.

(2) Regulations under *subsection (1)* shall not apply to an operator whose principal place of business is outside the State.

(3) Regulations under *subsection (1)* may be of general application or may be made in respect of any category of operator or vehicle and may specify—

(a) the number or proportion of an operator's vehicles, or any category thereof, to which the regulations apply,

(b) when the regulations come into effect in respect of an operator's vehicles or any category thereof, and

(c) the terms and conditions to which an operator shall be subject in order for the Minister to ascertain whether the operator is complying with the regulations.

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(4) In *subsection (1)* “operator of a passenger road service” means an operator of a passenger road service, within the meaning of section 2 of the Road Transport Act, 1932, as amended by section 66 of the Road Transport Act, 1933, including an operator who is, by virtue of the Transport Act, 1958, exempt from the requirement to hold a passenger licence under the first-mentioned Act.

Regulations relating to station equipment.

18.—(1) The Minister may, with the agreement of the Minister for Public Enterprise, make regulations requiring operators of bus and rail stations to provide facilities at those stations so that they are readily accessible to and usable by persons with a disability.

(2) In *subsection (1)* “stations” does not include any premises at those stations that are not normally used by bus or rail passengers.

(3) Regulations under this section may be of general application or may be made in respect of any category of operator or station and may specify—

- (a) the bus or rail stations of an operator, or the number or proportion of an operator’s stations or any category thereof, to which the regulations apply,
- (b) when the regulations come into effect in respect of an operator’s stations or category of stations, and
- (c) the terms and conditions to which an operator shall be subject in order for the Minister to ascertain whether the operator is complying with the regulations.

Provision of kerb ramps, etc.

19.—Where a road authority, within the meaning of section 2 of the Roads Act, 1993, constructs or alters, or consents to the construction or alteration of, any public footway or other public pavement, it shall, for the purpose of facilitating the mobility of persons with a disability, provide, or require the provision of, ramps, dished kerbs or other sloped areas at appropriate places at or in the vicinity of any pedestrian crossing or intersection used by pedestrians in that part of the footway or pavement so constructed or altered.

PART III

Enforcement

Definitions.

20.—In this Part, unless the context otherwise requires—

“complainant” means a person referred to in *section 21(1)*;

“equality mediation officer” and “equality officer” shall be construed in accordance with Part VII of the Employment Equality Act, 1998;

“respondent” means a person who is alleged by a complainant in a case under *section 21(1)* to have engaged in prohibited conduct.

Redress in respect of prohibited conduct.

21.—(1) A person who claims that prohibited conduct has been directed against him or her may, subject to this section, seek redress by referring the case to the Director.

(2) Before seeking redress under this section the complainant—

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(a) shall, within 2 months after the prohibited conduct is alleged to have occurred, or, where more than one incident of prohibited conduct is alleged to have occurred, within 2 months after the last such occurrence, notify the respondent in writing of—

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(i) the nature of the allegation,

(ii) the complainant's intention, if not satisfied with the respondent's response to the allegation, to seek redress by referring the case to the Director,

and

(b) may in that notification, with a view to assisting the complainant in deciding whether to refer the case to the Director, question the respondent in writing so as to obtain material information and the respondent may, if the respondent so wishes, reply to any such questions.

(3) If, on application by the complainant, the Director is satisfied—

(a) that exceptional circumstances prevented the complainant from notifying the respondent in accordance with *subsection (2)*, and

(b) that it is just and equitable, having regard to the nature of the alleged conduct and to any other relevant circumstances, that the period for doing so should be extended beyond the period of 2 months provided for in that subsection,

the Director may direct that, in relation to that case, *subsection (2)* shall have effect as if for the reference to 2 months there were substituted a reference to such period not exceeding 4 months as is specified in the direction; and where such a direction is given, this Part shall have effect accordingly.

(4) The Director shall not investigate a case unless he or she is satisfied either that the respondent has replied to the notification or that at least one month has elapsed after it was sent to the respondent.

(5) The Minister may by regulations prescribe the form to be used by a complainant and respondent for the purposes of *subsection (2)*.

(6) Subject to *subsection (7)*, a claim for redress in respect of prohibited conduct may not be referred under this section after the end of the period of 6 months from the date of the occurrence of the prohibited conduct to which the case relates or, as the case may be, the date of its most recent occurrence.

(7) If, on application by the complainant, the Director is satisfied that exceptional circumstances prevented the complainant's case from being referred within the time limit specified in *subsection (6)*—

(a) the Director may direct that, in relation to that case, *subsection (6)* shall have effect as if for the reference to a period of 6 months there were substituted a reference to such period not exceeding 12 months as is specified in the direction, and

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(b) where such a direction is given, this Part shall have effect accordingly.

(8) Information is material information for the purposes of this section if it is—

(a) information as to the respondent's reasons for doing or omitting to do any relevant act and as to any practices or procedures material to any such act,

(b) information, other than confidential information, about the treatment of other persons who stand in relation to the respondent in the same or a similar position as the complainant, or

(c) other information which is not confidential information and which, in the circumstances of the case in question, it is reasonable for the complainant to require.

(9) In *subsection (8)* "confidential information" means any information which relates to a particular individual, which can be identified as so relating and to the disclosure of which that individual does not agree.

(10) This section is without prejudice to the other provisions of this Act relating to the obtaining of information.

Dismissal of claims.

22.—The Director may dismiss a claim at any stage in the investigation if he or she is of opinion that the claim has been made in bad faith or is frivolous or vexatious or relates to a trivial matter.

References of certain matters to Director.

23.—(1) Where it appears to the Authority that—

(a) prohibited conduct—

(i) is being generally directed against persons, or

(ii) has been directed against a person who has not made a claim under *section 21(1)* in respect of the prohibited conduct and it is not reasonable to expect that the person will do so,

or

(b) a person has contravened or is contravening *section 12(1)* or *19* or regulations made under *section 17* or *18*,

the matter may be referred by the Authority to the Director.

(2) Where a matter is referred to the Director under *subsection (1)* it shall be dealt with in the same manner and to the same extent as if—

(a) it were a claim referred to the Director under *section 21(1)*,

(b) the Authority were the complainant and the person alleged to have engaged in the prohibited conduct or to have committed the contravention referred to in *subsection (1)(b)*, as the case may be, were the respondent, and

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(c) where the matter involves a contravention referred to in *subsection (1)(b)*, the contravention were prohibited conduct. Pt.III S.23

(3) Where, on application to the High Court or the Circuit Court, the Authority satisfies the Court that the Director, pursuant to *section 25(4)*, has decided that a person has—

(a) engaged in prohibited conduct, or

(b) contravened *section 12(1)* or *19* or regulations made under *section 17* or *18*,

and that there is a likelihood of a further occurrence of the prohibited conduct or a further contravention by the person, the Court may grant an injunction or such other relief as the Court deems necessary to prevent the further occurrence or contravention.

24.—(1) Subject to *subsection (2)*, if at any time after a case has been referred to the Director under *section 21* it appears to the Director that the case is one which could be resolved by mediation, the Director shall refer the case for mediation to an equality mediation officer. Mediation.

(2) If the complainant or the respondent objects to a case being dealt with by way of mediation, the Director shall not exercise his or her powers under this section but shall deal with the case under *section 25*.

(3) Mediation shall be conducted in private.

(4) Where a case referred under *section 21* is resolved by mediation—

(a) the equality mediation officer concerned shall prepare a written record of the terms of the settlement,

(b) the written record of the terms of the settlement shall be signed by the complainant and the respondent,

(c) the equality mediation officer shall send a copy of the written record, as so signed, to the complainant and the respondent, and

(d) a copy of the written record shall be retained by the Director.

(5) If, after a case has been referred to an equality mediation officer, it appears to the equality mediation officer that the case cannot be resolved by mediation, the officer shall issue a notice to that effect to the complainant and the respondent.

(6) Where—

(a) a notice has been issued under *subsection (5)* with respect to a case,

(b) within 28 days from the issue of that notice the complainant makes an application to the Director for the resumption of the hearing of the case, and

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(c) a copy of that notice accompanies the application under paragraph (b),

the Director shall deal with the case in accordance with section 25.

Investigation by Director.

25.—(1) Where a case which has been referred to the Director under section 21—

(a) does not fall to be dealt with by way of mediation under section 24, or

(b) falls to be dealt with under this section by virtue of section 24(6),

the Director shall investigate the case and hear all persons appearing to the Director to be interested and desiring to be heard.

(2) An investigation under this section shall be held in private.

(3) The Minister may by regulations specify—

(a) procedures to be followed by the Director in carrying out investigations (or any description of investigation) under this section, and

(b) time limits applicable to such investigations, including procedures for extending those limits in certain circumstances,

but before making any such regulations the Minister shall consult the Director and the Authority.

(4) At the conclusion of an investigation under this section the Director shall make a decision on the case, and the decision, if it is in favour of the complainant, shall provide for redress in accordance with section 27.

Inferences from failure to supply information, etc.

26.—If, in the course of an investigation under section 25, it appears to the Director—

(a) that the respondent did not reply to a notification under section 21(2)(a) or to any question asked by the complainant under section 21(2)(b),

(b) that the information supplied by the respondent in response to the notification or any such question was false or misleading, or

(c) that the information supplied in response to any such question was not such as would assist the complainant in deciding whether to refer the case to the Director,

the Director may draw such inferences, if any, as seem appropriate from the failure to reply or, as the case may be, the supply of information as mentioned in paragraph (b) or (c).

Redress which may be ordered.

27.—(1) Subject to this section, the types of redress for which a decision of the Director under section 25 may provide are either or both of the following as may be appropriate in the circumstances:

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(a) an order for compensation for the effects of discrimination; Pt.III S.27
or

(b) an order that a person or persons specified in the order take
a course of action which is so specified.

(2) The maximum amount which may be ordered by the Director
by way of compensation under *subsection (1)(a)* shall be the
maximum amount that could be awarded by the District Court in
civil cases in contract.

28.—(1) Not later than 42 days from the date of a decision of the
Director under *section 25*, the complainant or respondent involved
in the claim may appeal against the decision to the Circuit Court by
notice in writing specifying the grounds of the appeal. Appeal against
decision of
Director.

(2) In its determination of the appeal, the Circuit Court may pro-
vide for any redress for which provision could have been made by
the decision appealed against (substituting the discretion of the Cir-
cuit Court for the discretion of the Director).

(3) No further appeal lies, other than an appeal to the High Court
on a point of law.

29.—(1) Every decision of the Director under this Part shall be in Form and contents
of decision.
writing and—

(a) if the Director thinks fit, or

(b) if any of the parties so requests,

shall include a statement of the reasons why the Director reached
the decision.

(2) By notice in writing to the complainant and the respondent
the Director may correct any mistake (including an omission) of a
verbal or formal nature in a decision under this Part.

(3) If any person who participated in an investigation is not cor-
rectly identified in the resulting decision, the correction of that error
shall be regarded as falling within *subsection (2)*.

30.—(1) A copy of every decision of the Director under this Part
shall be given to the complainant and the respondent and every such
decision shall be published and a copy thereof made available for
inspection at the office of the Director. Supply and
publication of
decision.

(2) Any reference in this section to a decision includes a reference
to any statement of reasons included in the decision as mentioned in
section 29(1).

(3) The contents of any document published or made available by
virtue of this section shall be protected by absolute privilege.

31.—(1) If a person who is bound by the terms of a decision of the
Director under this Part fails to comply with those terms, then, on
an application under this section, the Circuit Court shall, subject to
section 32, make an order directing the person affected to carry out
the decision in accordance with its terms. Enforcement of
decisions and
mediated
settlements.

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(2) If a person who is a party to a settlement to which *section 24* applies fails to give effect, in whole or in part, to the terms of the settlement, then, on an application under this section, the Circuit Court may make an order directing that person to carry out those terms or, as the case may be, the part of those terms to which the application relates, but the Circuit Court shall not, by virtue of this subsection, direct any person to pay any sum or do any other thing which (had the matter been dealt with otherwise than by mediation) could not have been provided for by way of redress under *section 27*.

(3) An application under this section may not be made within 42 days of the date of the decision or the date of the written record of the settlement, as the case may be.

(4) An application under this section may be made—

(a) by the complainant, or

(b) where the Authority is not the complainant and it considers that the decision or settlement is unlikely to be implemented without its intervention, by the Authority with the consent of the complainant.

(5) On an application under this section, the Circuit Court shall exercise its functions under *subsection (1)* or *(2)* on being satisfied of—

(a) the existence and terms of the decision or settlement, and

(b) the failure by the person affected to comply with those terms.

(6) Without prejudice to the power of the Circuit Court to make an order for costs in favour of the complainant or the person affected, where an application is made by the Authority by virtue of *subsection (4)*, the costs of the Authority may be awarded by the Circuit Court.

Additional powers of Circuit Court on enforcement.

32.—(1) Where the Circuit Court makes an order under *section 31(1)*, it may, if in all the circumstances it considers it appropriate to do so, include in the order the additional direction referred to in *subsection (2)*.

(2) Where the order under *section 31(1)* relates to a decision requiring the payment of compensation to any person, the order may direct the respondent concerned to pay interest on the compensation at the rate referred to in *section 22* of the Courts Act, 1981, in respect of the whole or any part of the period ending on the date of the order and beginning—

(a) 42 days after the date of the decision, or

(b) if it is later, on the date on which the compensation was required to be paid under the decision.

Powers to enter premises, obtain information, etc.

33.—(1) In this section—

“designated officer” means the Director, an equality officer or a person authorised in that behalf by the Director;

“material information” means information which a designated officer has reasonable grounds for believing to be relevant for the purpose set out in *subsection (2)*. Pt.III S.33

(2) For the purpose of enabling information to be obtained which the Director may require to enable him or her to exercise his or her functions under this Part, a designated officer may do any one or more of the following:

- (a) at all reasonable times, peaceably enter premises;
- (b) require a person to produce to the designated officer any records, books, documents or other things which are in that person’s power or control and which the designated officer has reasonable grounds for believing to contain material information, and to give the designated officer such information and access as the designated officer may reasonably require in relation to the contents of any such records, books, documents and other things;
- (c) inspect and copy or take extracts from any such records, books, documents or other things;
- (d) inspect any work in progress at any premises.

(3) The powers conferred by *subsection (2)* shall not be exercised in respect of a dwelling or any person, record, book, document or other thing in a dwelling unless the Minister (or an officer of the Minister authorised by the Minister in that behalf) certifies in writing that there are reasonable grounds for believing that there is in the dwelling information which is material to the investigation of a case, or the consideration of an appeal, under this Part.

(4) If a judge of the District Court is satisfied by information on oath of a designated officer that there is reasonable cause for suspecting that any records, books, documents or other things containing material information are to be found at any premises, the judge may issue a search warrant under this section.

(5) A search warrant issued under this section shall be expressed and operate to authorise a named designated officer, accompanied by such other persons as the named designated officer thinks necessary, at any time or times within one month from the date of issue of the warrant, on production if so requested of the warrant—

- (a) to enter the premises named in the warrant, if necessary by force,
- (b) to search those premises, and
- (c) to exercise any such power as is described in *subsection (2)(b)* or *(c)* in relation to persons and records, books, documents or other things found at the premises.

34.—(1) For the purpose of enabling the Director to exercise his or her functions under this Part, the Director— Requirement to provide information.

- (a) may require a person who, in the opinion of the Director is in possession of, or has in his or her power or control, any information relevant to the exercise of those functions, to furnish that information to the Director, and

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(b) where appropriate, may require such person to attend before the Director for that purpose,

and the person shall comply with the requirement accordingly.

(2) A requirement under *subsection (1)* may specify a time and place at which information is to be furnished or a person is to attend, and if no such time or place is specified in the requirement, the person to whom the requirement is addressed shall comply with it as soon as is reasonably practicable.

(3) A person required to attend before the Director under *subsection (1)(b)*—

(a) shall answer fully and truthfully any question put to him or her by the Director (other than a question the answer to which might incriminate the person), and

(b) if so requested by the Director, shall sign a declaration of the truth of his or her answers to any such question.

Failure to supply documents, information, etc.

35.—(1) If it appears to the Director or an equality officer that a person has failed to comply with—

(a) a requirement under *section 33(2)(b)*, or

(b) a requirement under *section 34(1)*,

then, according as the case may require, the Director or the equality officer may apply to the Circuit Court for an order under this section.

(2) Subject to *subsection (3)* if, on an application under this section, the Circuit Court is satisfied as to the failure of the person concerned to comply with the requirement in question, the Circuit Court may make an order requiring that person to comply with the requirement.

(3) If, on an application under this section, the Circuit Court is of the opinion that the requirement in question purports to require the person concerned—

(a) to produce any record, book, document or other thing, or

(b) to furnish any information,

for which that person is entitled to claim legal professional privilege, the Circuit Court shall set aside the requirement.

Supplementary provisions as to information.

36.—(1) Where, in the course or for the purposes of any investigation, mediation or hearing under this Part, or of any inquiry under Part V of the Employment Equality Act, 1998, any person discloses information to the Authority, the Director or any other person entitled to obtain it, the disclosure shall not give rise to any liability (in contract, tort or otherwise) on the part of the person making it.

(2) No information furnished to or otherwise acquired by the Authority, the Director or any other person by virtue of *sections 33 to 35*, or otherwise in the course or for the purposes of any investigation, mediation, hearing or inquiry aforesaid, shall be published or otherwise disclosed except—

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- (a) for the purposes of such an investigation, mediation, hearing or inquiry, Pt.III S.36
- (b) on the order of the High Court or the Circuit Court,
- (c) with the consent of the person furnishing the information and of any other person to whom the information may relate,
- (d) in a decision of the Director published or made available under *section 30* and to which the disclosure of the information is relevant, or
- (e) for the purposes of an application under *section 35*.

(3) In this section “information” includes any record, book, document or other thing in which the information is contained.

(4) A person who discloses information in contravention of *subsection (2)* shall be guilty of an offence.

37.—(1) A person who—

Obstruction of Director, etc.

- (a) obstructs or impedes the Director or an equality officer in the exercise of powers under this Part, or
- (b) fails to comply with a requirement of the Director or an equality officer given under this Part,

shall be guilty of an offence.

(2) A reference in *subsection (1)* to an equality officer includes a reference to a person authorised as described in the definition of “designated officer” in *section 33(1)*.

38.—(1) Where a case is referred to the Director and, at any time after the expiry of one year from the date of the reference, it appears to the Director that the complainant has not pursued, or has ceased to pursue, the reference, the Director may dismiss the reference.

Dismissal of cases not pursued.

(2) As soon as practicable after dismissing a reference, the Director shall give notice in writing of that fact to the complainant and the respondent.

(3) Where a reference is dismissed under this section, no further proceedings may be taken in relation to that reference, but nothing in this section prevents a person from making a further reference in relation to the same matter (subject to any applicable time limit).

PART IV

Equality Authority

39.—The Authority shall have, in addition to the functions assigned to it by any other provision of this Act or by any other Act, the following general functions:

Additional functions of Authority.

- (a) to work towards the elimination of prohibited conduct;

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(b) to promote equality of opportunity in relation to the matters to which this Act applies; and

(c) to provide information to the public on and to keep under review the working of this Act and, whenever the Authority thinks it necessary, to make proposals to the Minister for its amendment;

and accordingly the Employment Equality Act, 1998, shall apply and have effect with the amendments specified in the *Schedule* to this Act.

PART V

General

Expenses.

40.—Any expenses incurred in the administration of this Act shall, to such extent as may be sanctioned by the Minister for Finance, be paid out of moneys provided by the Oireachtas.

Regulations.

41.—(1) The Minister may make regulations for the purpose of giving effect to this Act including regulations prescribing forms and the information to be contained in any notice to be used for any purpose under this Act.

(2) The Minister may by regulations specify, in cases where provision is not otherwise made in that behalf by regulations under this Act or the Employment Equality Act, 1998—

(a) procedures to be followed by the Director or, as the case may be, the Labour Court, in carrying out functions under this Act or the Employment Equality Act, 1998, and

(b) time limits applicable to the carrying out of such functions, including procedures for extending those limits in certain circumstances,

but before making any such regulations the Minister shall—

(i) in the case of any such regulations relating to the functions of the Labour Court, consult with the Authority and the Labour Court and obtain the consent of the Minister for Enterprise, Trade and Employment, and

(ii) in any other case, consult with the Authority and the Director.

(3) Every regulation made under this Act shall be laid before each House of the Oireachtas as soon as practicable after it is made and, if a resolution annulling the regulation is passed by either House within the next 21 days on which that House has sat after the regulation is laid before it, the regulation shall be annulled accordingly, but without prejudice to the validity of anything previously done under it.

(4) Any regulation made under this Act may contain such consequential, supplementary and ancillary provisions as the Minister considers necessary or expedient.

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42.—(1) Anything done by a person in the course of his or her employment shall, in any proceedings brought under this Act, be treated for the purposes of this Act as done also by that person's employer, whether or not it was done with the employer's knowledge or approval. Pt.V
Vicarious liability.

(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, in any proceedings brought under this Act, be treated for the purposes of this Act as done also by that other person.

(3) In proceedings brought under this Act against an employer in respect of an act alleged to have been done by an employee of the employer, it shall be a defence for the employer to prove that the employer took such steps as were reasonably practicable to prevent the employee—

(a) from doing that act, or

(b) from doing in the course of his or her employment acts of that description.

43.—(1) A person guilty of an offence under any provision of this Act shall be liable— Offences generally.

(a) on summary conviction, to a fine not exceeding £1,500 or imprisonment for a term not exceeding one year or both, or

(b) on conviction on indictment, to a fine not exceeding £25,000 or imprisonment for a term not exceeding 2 years or both.

(2) If the contravention in respect of which a person is convicted of an offence under any provision of this Act is continued after the conviction, the person shall be guilty of a further offence on every day on which the contravention continues and for each such offence shall be liable on summary conviction to a fine not exceeding £250 or, on conviction on indictment, to a fine not exceeding £1,500.

44.—(1) Summary proceedings for an offence under any provision of this Act may be instituted by the Minister or the Authority. Offence-related provisions.

(2) Where an offence under this Act which is committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any person who, when the offence was committed, was a director, manager, secretary or other similar officer of the body corporate or a person who was purporting to act in any such capacity, that person, as well as the body corporate, shall be guilty of an offence and be liable to be proceeded against and punished as if guilty of the offence committed by the body corporate.

(3) Where the affairs of a body corporate are managed by its members, *subsection (2)* applies as if the reference to a director in that subsection were a reference to a member of the body corporate.

(4) Notwithstanding section 10(4) of the Petty Sessions (Ireland) Act, 1851, summary proceedings for an offence under any provision of this Act may be instituted within 12 months from the date of the offence.

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Court jurisdiction.

45.—The jurisdiction conferred on the Circuit Court or District Court in proceedings under this Act shall be exercised by a judge of that Court for the time being assigned to the circuit or, as the case may be, the district in which the defendant ordinarily resides or carries on any profession, business or occupation.

Application of Act.

46.—(1) The provisions of this Act shall extend to and apply in respect of any ship or aircraft registered in the State that is operated by a person who has a principal place of business or ordinary place of residence in the State, whether or not the ship or aircraft is outside the State.

(2) An act which—

(a) is done on or in respect of such a ship or aircraft while subject to the jurisdiction of a country outside the State, and

(b) is required to be done to comply with the law of that country,

shall not constitute discrimination for the purposes of this Act.

Amendment of
Employment
Equality Act, 1998.

47.—The Employment Equality Act, 1998, is hereby amended by the insertion of the following section after section 105:

“Transitional
provision.

106.—(1) This section applies to a claim for redress under a repealed enactment—

(a) which is made on or after the commencement of Part VII (the ‘commencement date’), and

(b) which relates—

(i) only to conduct before the commencement date, or

(ii) to conduct both before and after that date.

(2) In this section—

‘commencement date’ means the 18th day of October, 1999;

‘conduct’ means conduct alleged to have occurred;

‘repealed enactment’ means the Anti-Discrimination (Pay) Act, 1974, or the Employment Equality Act, 1977.

(3) A claim for redress to which this section applies shall—

(a) as regards the substance of the claim—

(i) if or in so far as the claim relates to conduct before the commencement date, be dealt with as if the enactment concerned had not been repealed, and

(ii) in so far as it may relate to conduct after that date, be dealt with under this Act,

and

(b) in all other respects, be dealt with as if it were a claim under section 77.

(4) For the purposes of subsection (3)—

(a) the claim concerned shall be referred or brought to the Director, the Labour Court or the Circuit Court, as appropriate, and

(b) Part VII shall apply in relation to it, with the modification that sections 76 and 82 shall not apply in relation to a case referred to in paragraph (a)(i) of that subsection and with any other necessary modifications.

(5) A claim for redress under a repealed enactment which is pending on the commencement date shall, if the conduct to which it relates also occurs after that date, be treated as if it were a claim for redress to which this section applies, and accordingly subsections (3) and (4) shall apply in relation to it.

(6) A decision or determination on a claim for redress referred to in this section may, and at the request of the claimant shall, where appropriate, specify separate findings in relation to conduct before and after the commencement date.

(7) The Director or a person appointed under section 75(4)(a) to be an equality officer may exercise the powers of an equality officer under a repealed enactment.

(8) This section shall be deemed to have come into operation on the commencement date.”.

48.—This Act shall come into operation on such day as may be fixed by order made by the Minister, and different days may be so fixed for different provisions and for different purposes. Commencement.

SCHEDULE

Section 39.

Amendment of Employment Equality Act, 1998

The Employment Equality Act, 1998, is hereby amended—

- (a) in section 2(1) (interpretation), by the insertion—
- (i) after the definition of “disability”, of:

“‘discrimination’, in Parts V and VI, includes prohibited conduct within the meaning of the *Equal Status Act, 2000*, and cognate words shall be construed accordingly;”, and
 - (ii) after the definition of “trade union”, of:

“‘Traveller community’ means the community of people commonly so called who are identified (both by themselves and others) as people with a shared history, culture and traditions including, historically, a nomadic way of life on the island of Ireland;”,
- (b) in section 6 (discrimination), by the substitution in subsection (2)(i) of “Traveller” for “traveller” on both occasions where it occurs,
- (c) in section 12 (vocational training)—
- (i) by the substitution, in the opening words of subsection (7), of “Without prejudice to section 3 of the Refugee Act, 1996, nothing in subsection (1)” for “Nothing in subsection (1)” and “an educational” for “a vocational”,
 - (ii) by the substitution, in subsection (7)(b), of “considerations, or” for “considerations.”, and
 - (iii) by the insertion of the following paragraph:

“(c) in the case of a university or other third-level institution, it provides different treatment in the allocation of places on any such course to mature students (within the meaning of the Local Authorities (Higher Education Grants) Acts, 1968 to 1992).”,
- (d) in section 28 (comparators), by the substitution in subsection (1)(h) of “Traveller” for “traveller” on both occasions where it occurs,
- (e) in section 33 (positive action permitted), by the substitution in subsection (1)(c) of “Traveller” for “traveller”,
- (f) in section 44 (ordinary members of Authority), by the substitution in subsection (1)(c) of “Traveller” for “traveller”,
- (g) in section 56 (codes of practice)—
- (i) by the substitution of the following paragraphs for paragraphs (a) and (b) of subsection (1):
 - “(a) the elimination of discrimination; and
 - (b) the promotion of equality of opportunity in employment and in relation to the matters to which the *Equal Status Act, 2000*, applies.”, and
 - (ii) by the insertion in subsection (4), after “Part VII”, of “or under *Part III* of the *Equal Status Act, 2000*”,
- (h) in section 59 (obtaining information etc. for purposes of inquiry), by the substitution of the following paragraph for paragraph (b) of subsection (3):

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“(b) the Authority believes that a person named in Sch. the terms of reference of the inquiry to which the notice relates—

(i) has discriminated or is discriminating,

(ii) has contravened or is contravening section 8(4) or 10(1),

(iii) has failed or is failing to comply with an equality clause or an equal remuneration term, or

(iv) has contravened *section 12(1)* (prohibited advertising) of the *Equal Status Act, 2000.*”,

(j) in section 61 (recommendations arising out of and reports of inquiries), by the substitution of the following subsection for subsection (1):

“(1) After it has conducted an inquiry under section 58, or in the course of such an inquiry, the Authority may make to any person, including the Minister, recommendations arising out of the inquiry for the purpose of promoting either or both of the general functions of the Authority specified in paragraphs (a) and (b) of section 39 or, as appropriate, in *paragraphs (a) and (b) of section 39 of the Equal Status Act, 2000.*”,

(j) in section 62 (non-discrimination notices), by the substitution of the following paragraph for paragraph (b) of subsection (1):

“(b) has contravened or is contravening section 8(4) or 10(1) or *section 12(1)* of the *Equal Status Act, 2000, or*”,

(k) in section 63 (appeal against non-discrimination notice)—

(i) by the substitution of the following subsection for subsection (1):

“(1) Subject to subsection (6), a person on whom a non-discrimination notice has been served may appeal to the Labour Court within 42 days of the date of service against the notice or any requirement of the notice.”,

and

(ii) by the addition of the following subsections:

“(6) Where a non-discrimination notice relates to prohibited conduct within the meaning of the *Equal Status Act, 2000*, or to a contravention of *section 12(1)* of that Act, the person on whom the notice has been served may appeal to the District Court, and for that purpose references in this section to the Labour Court shall be construed as references to the District Court.

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(7) The jurisdiction of the District Court under this section shall be exercised by a judge of that Court for the time being assigned to the district court district in which the person on whom the non-discrimination notice has been served ordinarily resides or carries on any profession, business or occupation.”,

(j) in section 67 (assistance by Authority in connection with certain references), by the substitution of the following subsection for subsection (1):

“(1) A person who considers—

(a) that discrimination has been directed against the person by another person,

(b) that he or she has been adversely affected by the failure or refusal by another person—

(i) to comply with an equality clause or an equal remuneration term,

(ii) to implement a decision, order or determination under this Part or under *Part III* of the *Equal Status Act, 2000*, or

(iii) to implement a mediated settlement under section 78 or under *section 24* of that Act,

or

(c) that a club referred to in *section 8* of that Act is a discriminating club within the meaning of that section,

may make a request to the Authority for assistance in taking proceedings in respect of which redress is provided for under this Act or that Act or, as the case may be, in making an application to the District Court under *section 8(3)* of that Act.”,

(m) in section 68 (definition (Part VI)), by the deletion of “under section 71(3)” and the substitution of “, or the District Court, under section 71”,

(n) in section 69 (equality reviews and action plans) by—

(i) the deletion in subsection (1)(a) of “in employment”,

(ii) the substitution in subsection (1)(b) of “to that business or those businesses” for “to that employment” and “therein” for “in that employment”,

(iii) the deletion in subsection (2) of “in employment” and the substitution of “therein” for “in that employment”,

(iv) the insertion of the following subsection after subsection (2):

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“(2A) An equality review or an equality action Sch.
plan which relates to matters governed both by this
Act and by the *Equal Status Act, 2000*, shall deal
separately with those matters, and the separate por-
tions of the review or plan shall be treated, for the
purposes of this Part, as an equality review or an
equality action plan.”,

- (v) the deletion in subsection (6) of “in an employment”,
and
- (vi) the substitution of the following subsection for sub-
section (7):

“(7) For the purposes of this section:

(a) ‘business’ includes—

(i) an activity giving rise to employment,
whether or not in the industrial or
commercial field and whether or not
with a view to profit, and

(ii) subject to clause (II) of this subpara-
graph, the provision of services by the
provider of a service (within the mean-
ing of *section 4(6)* of the *Equal Status
Act, 2000*), and accordingly this section
shall apply in relation to the provision
of such services with the modifications
that—

(I) the reference in subsection (1)(a)
to a particular business shall be
construed as including a reference
to the provision of particular ser-
vices, and

(II) the references in subsections (4)
and (5) to a business shall be con-
strued as including references to a
provider of a service (within the
meaning of the said *section 4(6)*,
other than *paragraph (f)* thereof),

and any other necessary modifications;

(b) a ‘group of businesses’ may be defined by
reference to geographical location instead
of (or as well as) by reference to control or
any other factor.”,

(o) in section 70(1)(a) (enforcement powers in respect of
equality reviews and action plans) by the insertion of “is”
before “required”, and

(p) in section 71 (appeal against substantive notice) by—

- (i) the substitution of the following subsection for sub-
section (1):

“(1) Subject to subsection (6), a person on whom
a substantive notice has been served may appeal to

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the Labour Court within 42 days of the date of service against the notice or any requirement of the notice.”,

and

- (ii) the insertion of the following subsections after subsection (5):

“(6) Where a substantive notice concerns an equality review or equality action plan, or a proposed such review or plan, which relates to matters governed by the *Equal Status Act, 2000*, the person on whom the notice has been served may appeal to the District Court against the notice, and for that purpose references in this section to the Labour Court shall be construed as references to the District Court.

(7) The jurisdiction of the District Court under this section shall be exercised by a judge of that Court for the time being assigned to the district court district in which the person on whom the substantive notice was served ordinarily resides or carries on any profession, business or occupation.”.