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EQUALITY ACT 2004

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EQUALITY ACT 2004

AN ACT TO AMEND THE EMPLOYMENT EQUALITY ACT 1998, PENSIONS ACT 1990 AND EQUAL STATUS ACT 2000 FOR THE PURPOSE OF MAKING FURTHER AND BETTER PROVISION IN RELATION TO EQUALITY OF TREATMENT IN THE WORKPLACE AND ELSEWHERE; TO GIVE EFFECT TO COUNCIL DIRECTIVE 2000/43/EC OF 29 JUNE 2000 IMPLEMENTING THE PRINCIPLE OF EQUAL TREATMENT BETWEEN PERSONS IRRESPECTIVE OF RACIAL OR ETHNIC ORIGIN, COUNCIL DIRECTIVE 2000/78/EC OF 27 NOVEMBER 2000 ESTABLISHING A GENERAL FRAMEWORK FOR EQUAL TREATMENT IN EMPLOYMENT AND OCCUPATION AND DIRECTIVE 2002/73/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL OF 23 SEPTEMBER 2002 AMENDING COUNCIL DIRECTIVE 76/207/EEC ON THE IMPLEMENTATION OF THE PRINCIPLE OF EQUAL TREATMENT FOR MEN AND WOMEN AS REGARDS ACCESS TO EMPLOYMENT, VOCATIONAL TRAINING AND PROMOTION, AND WORKING CONDITIONS; AND TO REVOKE IN PART AND ENACT IN RESPECT OF PROCEEDINGS UNDER THIS ACT THE EUROPEAN COMMUNITIES (BURDEN OF PROOF IN GENDER DISCRIMINATION CASES) REGULATIONS 2001, WHICH GAVE EFFECT TO COUNCIL DIRECTIVE 97/80/EC OF 15 DECEMBER 1997¹ ON THE BURDEN OF PROOF IN CASES OF DISCRIMINATION BASED ON SEX. [18th July 2004]

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

PART 1

PRELIMINARY AND GENERAL

1.—(1) This Act may be cited as the Equality Act 2004.

Short title,
collective citations
and construction.

(2) *Part 2* and the Employment Equality Act 1998 may be cited as the Employment Equality Acts 1998 and 2004 and shall be construed together as one.

(3) *Part 3* and the Equal Status Acts 2000 and 2003 may be cited as the Equal Status Acts 2000 to 2004 and shall be construed together as one.

¹ OJ No. L14, 20.01.1998, p.6

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(4) *Part 4* of this Act and the Pensions Acts 1990 to 2004 may be cited together as the Pensions Acts 1990 to 2004 and shall be construed together as one.

Interpretation.

2.—In this Act, unless the context otherwise requires—

“Act of 1998” means the Employment Equality Act 1998;

“Act of 2000” means the Equal Status Act 2000.

PART 2

AMENDMENTS TO EMPLOYMENT EQUALITY ACT 1998

Amendment of section 2.

3.—Section 2 (interpretation) of the Act of 1998 is amended—

(a) in subsection (1)—

(i) by substituting the following definitions for those of “contract of employment”, “the Director”, “discrimination”, “employee” and “proceedings”:

“ ‘contract of employment’ means, subject to subsection (3)—

(a) a contract of service or apprenticeship, or

(b) any other contract whereby—

(i) an individual agrees with another person personally to execute any work or service for that person, or

(ii) an individual agrees with a person carrying on the business of an employment agency within the meaning of the Employment Agency Act 1971 to do or perform personally any work or service for another person (whether or not the other person is a party to the contract),

whether the contract is express or implied and, if express, whether oral or written;

‘the Director’ means the Director of the Equality Tribunal;

‘discrimination’ includes the issue of an instruction to discriminate and, in Parts V and VI, includes prohibited conduct within the meaning of the Equal Status Act 2000, and cognate words shall be construed accordingly;

‘employee’, subject to subsection (3), means a person who has entered into or works under (or, where the employment has ceased, entered into or worked under) a contract of employment and, where the context admits, includes a member or former member of a regulatory body, but, so far as regards access to employment, does not include a person employed

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in another person's home for the provision of personal services for persons residing in that home where the services affect the private or family life of those persons;

'proceedings' means—

(a) proceedings before the person, body or court dealing with a request or reference under this Act by or on behalf of a person, and

(b) any subsequent proceedings, including proceedings on appeal, arising from the request or reference,

but does not include proceedings for an offence under this Act;”,

(ii) by substituting “section 12(2);” for “section 12(2).” in the definition of “vocational training” and by adding after that definition “and cognate words or expressions shall be construed accordingly.”,

(iii) by inserting the following definitions:

“‘collective agreement’ means an agreement between an employer and a body or bodies representative of the employees to which the agreement relates;

‘personal services’, in relation to such services provided in a person's home, includes but is not limited to services that are in the nature of services *in loco parentis* or involve caring for those residing in the home;

‘persons’, in sections 19, 22, 29 and 31 does not import the singular;

‘provision’ means a term in a contract of employment or a requirement, criterion, practice, regime, policy or condition relating to employment;”,

and

(iv) by deleting the definition of “relevant characteristic”,

(b) in subsection (3)—

(i) by deleting “and” at the end of paragraph (b),

(ii) by substituting “employer, and” for “employer.” in paragraph (c), and

(iii) by adding the following paragraph:

“(d) in the case of a contract mentioned in paragraph (b)(i) of the definition of ‘contract of employment’—

(i) references in this Act to an employee shall be construed as references to the

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party to the contract who agrees personally to execute the work or service concerned and references to an employer as references to the person for whom it is to be executed,

(ii) any comparisons to be made for any of those purposes shall be between persons personally executing work or service for the same person or an associated person under such a contract or contracts, and

(iii) in particular, and without prejudice to the generality of the foregoing, references in sections 19(4)(a) and 22(1)(a) to employees shall be construed as references to those persons.”.

Amendment of section 6.

4.—Section 6 (discrimination for purposes of Act) of the Act of 1998 is amended—

(a) by substituting the following subsection for subsection (1):

“(1) For the purposes of this Act and without prejudice to its provisions relating to discrimination occurring in particular circumstances discrimination shall be taken to occur where—

(a) a person is treated less favourably than another person is, has been or would be treated in a comparable situation on any of the grounds specified in subsection (2) (in this Act referred to as the ‘discriminatory grounds’) which—

(i) exists,

(ii) existed but no longer exists,

(iii) may exist in the future, or

(iv) is imputed to the person concerned,

(b) a person who is associated with another person—

(i) is treated, by virtue of that association, less favourably than a person who is not so associated is, has been or would be treated in a comparable situation, and

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

(b) by inserting the following subsection after subsection (2):

“(2A) Without prejudice to the generality of subsections (1) and (2), discrimination on the gender ground shall be taken to occur where, on a ground related to her pregnancy or maternity leave, a woman employee is treated, contrary to any statutory requirement, less

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favourably than another employee is, has been or would be treated.”, Pt.2 S.4

and

(c) by substituting the following subsection for subsection (3):

“(3) (a) The age ground applies only in relation to persons above the maximum age at which a person is statutorily obliged to attend school.

(b) Notwithstanding subsection (1) and section 37(2), an employer may set a minimum age, not exceeding 18 years, for recruitment to a post.

(c) Offering a fixed term contract to a person over the compulsory retirement age for that employment or to a particular class or description of employees in that employment shall not be taken as constituting discrimination on the age ground.

(d) Subsection (1)(b) of section 2 (exclusions) of the Unfair Dismissals Act 1977 is amended by deleting ‘or who on that date was a person to whom by reason of his age the Redundancy Payments Acts 1967 to 1973, did not apply’ and inserting ‘or who on that date had not attained the age of 16 years’.”.

5.—Section 10 (advertising) of the Act of 1998 is amended by substituting the following subsection for subsection (2): Amendment of section 10.

“(2) For the purposes of subsection (1), where in an advertisement a word or phrase is used defining or describing a post and the word or phrase is one which—

(a) connotes or refers to an individual of one sex or an individual having a characteristic mentioned in any of the discriminatory grounds (other than the gender ground), or

(b) is descriptive of, or refers to, a post or occupation of a kind previously held or carried on only by the members of one sex or individuals having such a characteristic,

then, unless the advertisement indicates a contrary intention, the advertisement shall be taken as indicating an intention to discriminate on whichever discriminatory ground is relevant in the circumstances.”.

6.—Section 12 (vocational training) of the Act of 1998 is amended by the deletion of subsection (3). Amendment of section 12.

7.—The Act of 1998 is amended by inserting the following section after section 13: New section 13A.

“Partnerships. 13A.—(1) This Act applies to a partner in a partnership as it applies to an employee and accordingly has effect with the modification that—

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(a) references to an employee include references to such a partner, and

(b) references to an employer include references to a partnership,

and with any other necessary modifications.

(2) In subsection (1) references to a partner shall be construed, in the case of a limited partnership, as references to a general partner, as defined in section 3 of the Limited Partnerships Act 1907.”.

New section 14A.

8.—The Act of 1998 is amended by inserting the following section after section 14:

“Harassment and sexual harassment.

14A.—(1) For the purposes of this Act, where—

(a) an employee (in this section referred to as ‘the victim’) is harassed or sexually harassed either at a place where the employee is employed (in this section referred to as ‘the workplace’) or otherwise in the course of his or her employment by a person who is—

(i) employed at that place or by the same employer,

(ii) the victim’s employer, or

(iii) a client, customer or other business contact of the victim’s employer and the circumstances of the harassment are such that the employer ought reasonably to have taken steps to prevent it,

or

(b) without prejudice to the generality of paragraph (a)—

(i) such harassment has occurred, and

(ii) either—

(I) the victim is treated differently in the workplace or otherwise in the course of his or her employment by reason of rejecting or accepting the harassment, or

(II) it could reasonably be anticipated that he or she would be so treated,

the harassment or sexual harassment constitutes discrimination by the victim’s employer in relation to the victim’s conditions of employment.

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(2) If harassment or sexual harassment of the victim by a person other than his or her employer would, but for this subsection, be regarded as discrimination by the employer under subsection (1), it is a defence for the employer to prove that the employer took such steps as are reasonably practicable—

(a) in a case where subsection (1)(a) applies (whether or not subsection (1)(b) also applies), to prevent the person from harassing or sexually harassing the victim or any class of persons which includes the victim, and

(b) in a case where subsection (1)(b) applies, to prevent the victim from being treated differently in the workplace or otherwise in the course of the victim's employment and, if and so far as any such treatment has occurred, to reverse its effects.

(3) A person's rejection of, or submission to, harassment or sexual harassment may not be used by an employer as a basis for a decision affecting that person.

(4) The reference in subsection (1)(a)(iii) to a client, customer or other business contact of the victim's employer includes a reference to any other person with whom the employer might reasonably expect the victim to come into contact in the workplace or otherwise in the course of his or her employment.

(5) In this section 'employee' includes an individual who is—

(a) seeking or using any service provided by an employment agency, and

(b) participating in any course or facility referred to in paragraphs (a) to (c) of section 12(1),

and accordingly any reference to the individual's employer includes a reference to the employment agency providing the service or, as the case may be, the person offering or providing the course or facility.

(6) Where subsection (5) applies in relation to a victim, subsection (1) shall have effect as if for 'in relation to the victim's conditions of employment' there were substituted 'contrary to section 11' or, as the case may be, section 12.

(7) (a) In this section—

(i) references to harassment are to any form of unwanted conduct related to any of the discriminatory grounds, and

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- (ii) references to sexual harassment are to any form of unwanted verbal, non-verbal or physical conduct of a sexual nature,

being conduct which in either case has the purpose or effect of violating a person's dignity and creating an intimidating, hostile, degrading, humiliating or offensive environment for the person.

- (b) Without prejudice to the generality of paragraph (a), such unwanted conduct may consist of acts, requests, spoken words, gestures or the production, display or circulation of written words, pictures or other material.”.

Amendment of section 16.

9.—Section 16 (nature and extent of employer's duties in certain cases) of the Act of 1998 is amended—

- (a) by the substitution of the following subsection for subsection (3):

“(3) (a) For the purposes of this Act a person who has a disability is fully competent to undertake, and fully capable of undertaking, any duties if the person would be so fully competent and capable on reasonable accommodation (in this subsection referred to as ‘appropriate measures’) being provided by the person's employer.

- (b) The employer shall take appropriate measures, where needed in a particular case, to enable a person who has a disability—

- (i) to have access to employment,

- (ii) to participate or advance in employment,
 - or

- (iii) to undergo training,

unless the measures would impose a disproportionate burden on the employer.

- (c) In determining whether the measures would impose such a burden account shall be taken, in particular, of—

- (i) the financial and other costs entailed,

- (ii) the scale and financial resources of the employer's business, and

- (iii) the possibility of obtaining public funding or other assistance.”,

and

- (b) in subsection (4), by deleting the definition of “providing”, by substituting “body.” for “body;” in paragraph (c) of the definition of “employer” and by inserting the following definition:

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“‘appropriate measures’, in relation to a person with a disability—

- (a) means effective and practical measures, where needed in a particular case, to adapt the employer’s place of business to the disability concerned,
- (b) without prejudice to the generality of paragraph (a), includes the adaptation of premises and equipment, patterns of working time, distribution of tasks or the provision of training or integration resources, but
- (c) does not include any treatment, facility or thing that the person might ordinarily or reasonably provide for himself or herself;”.

10.—Section 17 (compliance with statutory requirements etc.) of the Act of 1998 is amended— Amendment of section 17.

(a) by substituting the following subsection for subsection (2):

“(2) In relation to discrimination on the basis of nationality, nothing in this Act shall render unlawful any action taken in accordance with the Employment Permits Act 2003.”,

(b) by substituting the following subsection for subsection (4):

“(4) In relation to discrimination on the age ground, nothing in this Act shall render unlawful any act done in compliance with—

- (a) the Protection of Young Persons (Employment) Act 1996,
- (b) the National Minimum Wage Act 2000, or
- (c) section 3 of the Redundancy Payments Act 1971, as amended by section 5 of the Redundancy Payments Act 1979.”.

11.—Section 18 (application of equality principles to both men and women) of the Act of 1998 is amended by substituting the following subsection for subsection (1): Amendment of section 18.

“(1) (a) Subject to paragraph (b), for the purposes of this Part ‘A’ and ‘B’ represent 2 persons of opposite sex so that, where A is a woman, B is a man, and *vice versa*.

(b) For the purposes of this Part (except sections 19 and 20), where the treatment of a woman on a ground related to her pregnancy or maternity leave is, by virtue of section 6(2A), in issue, ‘B’ is either a man or a woman.”.

12.—Section 19 (entitlement to equal remuneration) of the Act of 1998 is amended— Amendment of section 19.

(a) by substituting the following subsection for subsection (2):

“(2) In this section ‘relevant time’, in relation to a particular time, is any time (including a time before the commencement of this section) during the 3 years which precede, or the 3 years which follow, the particular time.”,

and

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(b) by substituting the following subsection for subsection (4), as amended by the European Communities (Burden of Proof in Gender Discrimination Cases) Regulations 2001 (S.I. No. 337 of 2001):

“(4) (a) Indirect discrimination occurs where an apparently neutral provision puts persons of a particular gender (being As or Bs) at a particular disadvantage in respect of remuneration compared with other employees of their employer.

(b) Where paragraph (a) applies, the persons referred to in that paragraph shall each be treated for the purposes of subsection (1) as complying or, as the case may be, not complying with the provision concerned, whichever results in the higher remuneration, unless the provision is objectively justified by a legitimate aim and the means of achieving the aim are appropriate and necessary.

(c) In any proceedings statistics are admissible for the purpose of determining whether this subsection applies in relation to A or B.”.

Amendment of section 22.

13.—Section 22 (indirect discrimination on the gender ground) of the Act of 1998 is amended—

(a) by substituting the following subsections for subsection (1), as amended by the European Communities (Burden of Proof in Gender Discrimination Cases) Regulations 2001 (S.I. No. 337 of 2001):

“(1) (a) Indirect discrimination occurs where an apparently neutral provision puts persons of a particular gender (being As or Bs) at a particular disadvantage in respect of any matter other than remuneration compared with other employees of their employer.

(b) Where paragraph (a) applies, the employer shall be treated for the purposes of this Act as discriminating against each of the persons referred to (including A or B), unless the provision is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary.

(1A) In any proceedings statistics are admissible for the purpose of determining whether subsection (1) applies in relation to A or B.”,

and

(b) by deleting subsection (4).

Repeal of section 23.

14.—Section 23 (sexual harassment in the workplace etc.) of the Act of 1998 is repealed.

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15.—The following subsection is substituted for subsection (1) of section 24 (positive action on equal opportunities) of the Act of 1998: PT.2
Amendment of
section 24.

“(1) This Act is without prejudice to any measures—

(a) maintained or adopted with a view to ensuring full equality in practice between men and women in their employments, and

(b) providing for specific advantages so as—

(i) to make it easier for an under-represented sex to pursue a vocational activity, or

(ii) to prevent or compensate for disadvantages in professional careers.”.

16.—The following section is substituted for section 25 (exclusion of discrimination in certain employments) of the Act of 1998: Substitution of
section 25.

“25.—(1) A difference of treatment which is based on a characteristic related to the gender ground in respect of access to employment in a particular post shall not constitute discrimination under this Part or Part II where, by reason of the particular occupational activities concerned or of the context in which they are carried out—

(a) the characteristic constitutes a genuine and determining occupational requirement for the post, and

(b) the objective is legitimate and the requirement proportionate.

(2) In subsection (1) the reference to employment includes a reference to any training leading to it.”.

17.—Section 26 (exceptions relating to family and personal matters) of the Act of 1998 is amended by deleting subsection (2). Amendment of
section 26.

18.—Section 27 (Garda Síochána and prison service) of the Act of 1998 is amended in subsection (1) by inserting “and without prejudice to section 25” after “prison service”. Amendment of
section 27.

19.—Section 29 (entitlement to equal remuneration) of the Act of 1998 is amended by substituting the following subsection for subsection (4): Amendment of
section 29.

“(4) Section 19(4) applies in relation to C and D as it applies in relation to A and B, with the modification that the reference in it to persons of a particular gender (being As or Bs) is a reference to persons (being Cs or Ds) who differ in a respect mentioned in any paragraph of section 28(1) and with any other necessary modifications.”.

20.—Section 31 (indirect discrimination) of the Act of 1998 is amended— Amendment of
section 31.

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(a) by substituting the following subsection for subsections (1) and (2):

“(1) Subsections (1) and (1A) (inserted by *section 13* of the *Equality Act 2004*) of section 22 apply, in relation to C and D as they apply in relation to A and B, with the modification that the reference in subsection (1) to persons of a particular gender (being As or Bs) is a reference to persons (being Cs or Ds) who differ in a respect mentioned in any paragraph of section 28(1) and with any other necessary modifications.”,

and

(b) in subsection (5), by deleting “or (2)” and “or, as the case may be, subsection (2)”.

Repeal of section 32.

21.—Section 32 (harassment in the workplace etc.) of the Act of 1998 is repealed.

Substitution of section 33.

22.—The following section is substituted for section 33 (positive action permitted) of the Act of 1998:

“33.—Nothing in this Part or Part II shall render unlawful measures maintained or adopted with a view to ensuring full equality in practice between employees, being measures—

- (a) to prevent or compensate for disadvantages linked to any of the discriminatory grounds (other than the gender ground),
- (b) to protect the health or safety at work of persons with a disability, or
- (c) to create or maintain facilities for safeguarding or promoting the integration of such persons into the working environment.”.

Amendment of section 34.

23.—Section 34 (savings and exceptions related to family, age or disability) of the Act of 1998 is amended—

(a) by substituting the following subsections for subsection (3):

“(3) In an occupational benefits scheme it shall not constitute discrimination on the age ground for an employer—

- (a) to fix ages for admission to such a scheme or for entitlement to benefits under it,
- (b) to fix different such ages for all employees or a category of employees,
- (c) to use, in the context of such a scheme, age criteria in actuarial calculations, or
- (d) to provide different rates of severance payment for different employees or groups or categories of employees, being rates based on or taking into account the period between the age

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of an employee on leaving the employment and his or her compulsory retirement age, Pt.2 S.23

provided that that does not constitute discrimination on the gender ground.

(3A) In subsection (3)—

‘occupational benefits scheme’ includes any scheme (whether statutory or non-statutory) providing for benefits to employees or any category of employees on their becoming ill, incapacitated or redundant but does not include any occupational pension scheme providing for pensions, gratuities or other allowances payable on retirement or death;

‘severance payment’ means a sum paid voluntarily by an employer to an employee otherwise than as pay when the employee leaves the employment.”,

and

(b) by inserting the following subsection after subsection (7):

“(7A) Nothing in this Act invalidates any term in a collective agreement, whenever made, to the effect that in particular circumstances, where length of service would otherwise be regarded as equal, seniority in a particular post or employment may be determined by reference to the relative ages of employees on their entry to that post or employment.”.

24.—Section 35 (special provisions related to persons with disabilities) of the Act of 1998 is amended— Amendment of section 35.

(a) by substituting the following subsection for subsection (1):

“(1) Nothing in this Part or Part II shall make it unlawful for an employer to provide, for an employee with a disability, a particular rate of remuneration for work of a particular description if, by reason of the disability, the amount of that work done by the employee during a particular period is less than the amount of similar work done, or which could reasonably be expected to be done, during that period by an employee without the disability.”,

and

(b) by adding the following subsection:

“(4) References in this section to a particular rate of remuneration are to a rate of remuneration which is not below the minimum rate to which the employee concerned is entitled under the National Minimum Wage Act 2000.”.

25.—Section 37 (exclusion of discrimination on particular grounds in certain occupations) of the Act of 1998 is amended by the substitution of the following subsections for subsections (2) to (6): Amendment of section 37.

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“(2) For the purposes of this Part a difference of treatment which is based on a characteristic related to any of the discriminatory grounds (except the gender ground) shall not constitute discrimination where, by reason of the particular occupational activities concerned or of the context in which they are carried out—

- (a) the characteristic constitutes a genuine and determining occupational requirement, and
- (b) the objective is legitimate and the requirement proportionate.

(3) It is an occupational requirement for employment in the Garda Síochána, prison service or any emergency service that persons employed therein are fully competent and available to undertake, and fully capable of undertaking, the range of functions that they may be called upon to perform so that the operational capacity of the Garda Síochána or the service concerned may be preserved.

(4) If—

- (a) the Minister is of opinion that the age profile of members of the Garda Síochána, prison service or any emergency service is such that its operational capacity is or is likely to be adversely affected, and
- (b) he or she by order so declares,

the age ground shall not apply in relation to such competitions for recruitment to that service as are specified in the order.

(5) In relation to discrimination on the age ground or disability ground, nothing in this Part or Part II applies in relation to employment in the Defence Forces.

(6) In subsection (4)(a) the reference to the Minister, in relation to an emergency service, is a reference to the Minister of the Government with official functions in regard to that service.”.

Amendment of section 44.

26.—Section 44 (ordinary members of Authority) of the Act of 1998 is amended by substituting the following subsection for subsection (4):

“(4) Each ordinary member of the Authority shall be paid, out of moneys provided by the Oireachtas, such remuneration (if any) and allowances and expenses as the Minister, with the consent of the Minister for Finance, may sanction.”.

Amendment of section 51.

27.—Section 51 (staff) of the Act of 1998 is amended by substituting the following subsection for subsection (3):

“(3) Each appointment under this section or section 49 shall—

- (a) be on such terms as the Minister, after consultation with the Authority and with the consent of the Minister for Finance, may determine, and
- (b) be subject to the Civil Service Commissioners Act 1956 and the Civil Service Regulation Acts 1956 to 1996.”.

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28.—Section 67 (assistance by Authority in connection with certain references) of the Act of 1998 is amended by adding the following subsections: PT.2
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section 67.

“(5) The relationship between a solicitor employed by the Authority or any barrister retained by him or her and a person requesting assistance under this section shall be the same as the relationship between a solicitor or barrister and a client who is not such a person.

(6) Subsection (5) is without prejudice to the rights and responsibilities of the Authority and the obligations arising out of the relationship between the Authority and the solicitors employed by it.

(7) For the avoidance of doubt, it is declared that sections 59 (prohibition of solicitor acting as agent for unqualified person) and 64 (bodies corporate) of the Solicitors Act 1954 do not apply in relation to the provision by a solicitor employed by the Authority of assistance under this section.

(8) In this section—

‘person requesting assistance’ includes a person to whom assistance is being, or has been, provided under this section;

‘relationship’ includes rights and privileges arising from the relationship.”.

29.—Section 74 (interpretation (Part VII)) of the Act of 1998 is amended— Amendment of
section 74.

(a) by the substitution of the following definition for that of “equality mediation officer” and “equality officer”:

“‘equality mediation officer’ and ‘equality officer’ mean officers appointed as such under subsection (4) or (4A) of section 75;”,

and

(b) by the substitution of the following subsections for subsection (2):

“(2) For the purposes of this Part victimisation occurs where dismissal or other adverse treatment of an employee by his or her employer occurs as a reaction to—

(a) a complaint of discrimination made by the employee to the employer,

(b) any proceedings by a complainant,

(c) an employee having represented or otherwise supported a complainant,

(d) the work of an employee having been compared with that of another employee for any of the purposes of this Act or any enactment repealed by this Act,

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- (e) an employee having been a witness in any proceedings under this Act or the Equal Status Act 2000 or any such repealed enactment,
- (f) an employee having opposed by lawful means an act which is unlawful under this Act or the said Act of 2000 or which was unlawful under any such repealed enactment, or
- (g) an employee having given notice of an intention to take any of the actions mentioned in the preceding paragraphs.

(3) For the purposes of sections 77, 78, 83, 87 and 90 the date on which a case is referred, or an appeal made, under those provisions is the date on which the reference or appeal is received by the Director, Labour Court or Circuit Court, as the case may be.”.

Amendment of section 75.

30.—Section 75 (equality investigations) of the Act of 1998 is amended—

(a) in subsection (1), by substituting “Director of the Equality Tribunal” for “Director of Equality Investigations”,

(b) in subsection (2)—

(i) by inserting “shall be known as the Equality Tribunal and” after “The office of the Director”, and

(ii) by deleting “, subject to subsection (3),”,

(c) by inserting the following subsection after subsection (2):

“(2A) (a) On the commencement of *section 30* of the *Equality Act 2004*—

(i) the person who is the Director of Equality Investigations shall be known as the Director of the Equality Tribunal, and

(ii) the office of the Director shall be known as the Equality Tribunal.

(b) References in any enactment to the Director of Equality Investigations shall be construed as references to the Director of the Equality Tribunal.”,

(d) by deleting subsections (3) and (4) and inserting the following subsections:

“(3) The Director may from time to time issue guidelines or guidance notes governing the carrying out of their duties by equality officers and equality mediation officers.

(4) From among the Director’s staff the Director may—

(a) appoint persons to be equality officers, and

(b) appoint persons, including equality officers, to be equality mediation officers.

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(4A) Other persons with relevant qualifications or experience may, with the approval of the Minister and the consent of the Minister for Finance, be appointed to be equality mediation officers on such terms and conditions as may be so approved. Pt.2 S.30

(4B) The Director may delegate to an equality officer or an equality mediation officer any functions conferred on him or her under this Act or any other enactment.”,

and

(e) in subsection (7), by deleting “subsection (4)” and inserting “subsection (4B)”.

31.—Section 76 (right to information) of the Act of 1998 is amended in subsection (2) by substituting the following paragraph for paragraph (c): Amendment of section 76.

“(c) other information which is not confidential information or information about the scale or financial resources of the employer’s business and which, in the circumstances of the case in question, it is reasonable for X to require.”.

32.—Section 77 (forum for seeking redress) of the Act of 1998 is amended— Amendment of section 77.

(a) in subsection (4), by deleting the opening words up to and including “and” in paragraph (a) and inserting:

“(4) In this Part, in relation to a claim referred under any provision of this section—

(a) ‘the complainant’ means—

- (i) the person by whom it is referred, or
- (ii) where such a person is unable, by reason of an intellectual or a psychological disability, to pursue it effectively, his or her parent, guardian or other person acting in place of a parent, and”,

(b) by substituting the following subsections for subsections (5) and (6):

“(5) (a) Subject to paragraph (b), a claim for redress in respect of discrimination or victimisation may not be referred under this section after the end of the period of 6 months from the date of occurrence of the discrimination or victimisation to which the case relates or, as the case may be, the date of its most recent occurrence.

(b) On application by a complainant the Director or Circuit Court, as the case may be, may, for reasonable cause, direct that in relation to the complainant paragraph (a) shall have effect as if for the reference to a period of 6 months there were substituted a reference to such

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period not exceeding 12 months as is specified in the direction; and, where such a direction is given, this Part shall have effect accordingly.

- (c) This subsection does not apply in relation to a claim not to be receiving remuneration in accordance with an equal remuneration term.

(6) Where a delay by a complainant in referring a case under this section is due to any misrepresentation by the respondent, subsection (5)(a) shall be construed as if the references to the date of occurrence of the discrimination or victimisation were references to the date on which the misrepresentation came to the complainant's notice.

(6A) For the purposes of this section—

(a) discrimination or victimisation occurs—

(i) if the act constituting it extends over a period, at the end of the period,

(ii) if it arises by virtue of a term in a contract, throughout the duration of the contract, and

(iii) if it arises by virtue of a provision which operates over a period, throughout the period,

(b) a deliberate omission by a person to do something occurs when the person decides not to do it, and

(c) a respondent is presumed, unless the contrary is shown, to decide not to do something when the respondent either—

(i) does an act inconsistent with doing it, or

(ii) the period expires during which the respondent might reasonably have been expected to do it.”,

(c) by substituting the following subsection for subsection (9):

“(9) Where a claim for redress under this Act (other than on the age or disability ground)—

(a) relates to employment in the Defence Forces, and

(b) is made by a member thereof,

the claim shall, in the first instance, be referred for redress under the procedure set out in section 104.”,

and

(d) by adding the following subsections:

“(11) A party to any proceedings under this Act before the Director or Labour Court may be represented by any individual or body authorised by the party in that behalf.

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- (12) (a) Not later than 42 days from the date of a decision of the Director on an application by a complainant for an extension of time under subsection (6), the complainant or respondent may appeal against the decision to the Labour Court on notice to the Director specifying the grounds of the appeal. Pt.2 S.32
- (b) On the appeal the Labour Court may affirm, quash or vary the decision.
- (c) Unless otherwise agreed by the complainant and respondent, effect shall not be given to a decision of the Director on such an application until—
- (i) the period of 42 days mentioned in paragraph (a) has expired, or
- (ii) any appeal against it has been determined, whichever first occurs.
- (13) This section is subject to section 104.”.

33.—The Act of 1998 is amended by inserting the following section after section 77: New section 77A.

“Dismissal of claim.

77A.—(1) The Director may dismiss a claim at any stage if of opinion that it has been made in bad faith or is frivolous, vexatious or misconceived or relates to a trivial matter.

- (2) (a) Not later than 42 days after the Director dismisses a claim under this section, the complainant may appeal against the decision to the Labour Court on notice to the Director specifying the grounds of the appeal.
- (b) On the appeal the Labour Court may affirm or quash the decision.”.

34.—Section 78 (mediation) of the Act of 1998 is amended in subsection (7)— Amendment of section 78.

- (a) by substituting “case, and” for “case,” in paragraph (a),
- (b) by inserting “in writing” after “application” and substituting “case,” for “case, and” in paragraph (b), and
- (c) by deleting paragraph (c).

35.—Section 79 (investigation by Director or Labour Court) of the Act of 1998 is amended— Amendment of section 79.

- (a) by inserting the following subsection after subsection (1):

“(1A) (a) Claims to have been discriminated against on more than one of the discriminatory grounds shall be investigated as a single case, and

(b) claims both to have been discriminated against on one or more than one of such grounds and to have been penalised in circumstances amounting to victimisation may, in an appropriate case, be so investigated,

but a decision shall be made on each of the claims.”,

(b) by inserting the following subsection after subsection (3):

“(3A) If, in a case which is referred to the Director under section 77, a question arises relating to the entitlement of any party to bring or contest proceedings under that section, including:

- (a) whether the complainant has complied with the statutory requirements relating to such referrals,
- (b) whether the discrimination or victimisation concerned occurred on or after 18 October 1999,
- (c) whether the complainant is an employee, or
- (d) any other related question of law or fact,

the Director may direct that the question be investigated as a preliminary issue and shall proceed accordingly.”,

(c) in subsection (6), by substituting—

- (i) “make a decision” for “issue a decision”, and
- (ii) “subsection (3) or (3A)” for “subsection (3)”,

and

(d) by adding the following subsection:

“(7) Without prejudice to section 83, the complainant or respondent may appeal to the High Court on a point of law from a decision made by the Director under this section.”.

36.—Section 82 (redress which may be ordered) of the Act of 1998 is amended by adding the following subsections:

“(6) (a) The maximum amount of compensation specified in subsection (4) applies notwithstanding that conduct the subject of the investigation by the Director constituted—

- (i) discrimination on more than one of the discriminatory grounds, or
- (ii) both discrimination on one or more than one of such grounds and harassment or sexual harassment.

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(b) In paragraph (a) ‘discrimination’ does not include non-compliance with an equal remuneration term. Pt.2 S.36

(7) An order for compensation under this section may not be made in favour of the Authority in a case referred by it to the Director under section 85(1).

(8) Where an act constitutes victimisation under both this Act and the Equal Status Act 2000, redress may be provided under only one of them.

(9) Where a delay in referring a case under this Act to the Director or Circuit Court is attributable to the respondent’s having misrepresented to the complainant the facts of the case, references in this section to the date of referral shall be construed as references to the date of the misrepresentation.”.

37.—Section 85 (enforcement powers of the Authority) of the Act of 1998 is amended by the insertion of the following subsection after subsection (5): Amendment of section 85.

“(5A) Where the Authority refers, or is considering whether to refer, a matter to the Director under subsection (1) in relation to a person referred to in any of paragraphs (a) to (c) of that subsection, subsections (5) to (8) of section 67 shall apply and have effect in relation to that person as those subsections do in relation to a person requesting assistance under that section.”.

38.—The Act of 1998 is amended by inserting the following section after section 85: New section 85A.

“Burden of proof.

85A.—(1) Where in any proceedings facts are established by or on behalf of a complainant from which it may be presumed that there has been discrimination in relation to him or her, it is for the respondent to prove the contrary.

(2) This section is without prejudice to any other enactment or rule of law in relation to the burden of proof in any proceedings which may be more favourable to a complainant.

(3) Where, in any proceedings arising from a reference of a matter by the Authority to the Director under section 85(1), facts are established by or on behalf of the Authority from which it may be presumed that an action or a failure mentioned in a paragraph of that provision has occurred, it is for the respondent to prove the contrary.

(4) In this section ‘discrimination’ includes—

(a) indirect discrimination,

(b) victimisation,

(c) harassment or sexual harassment,

(d) the inclusion in a collective agreement to which section 9 applies of a provision

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which, by virtue of that section, is null and void.

(5) The European Communities (Burden of Proof in Gender Discrimination Cases) Regulations 2001 (S.I. No. 337 of 2001), in so far as they relate to proceedings under this Act, are revoked.”.

Amendment of section 91.

39.—Section 91 (enforcement of determinations, decisions and mediated settlements) of the Act of 1998 is amended—

(a) by substituting the following subsection for subsection (2):

“(2) If a person who is a party to a settlement to which section 78(5) 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 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 82.”.

(b) by substituting the following subsection for subsection (4):

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

(a) in any case, by the complainant,

(b) in a case where the Authority is not the complainant but considers that the determination, decision or settlement is unlikely to be implemented without its intervention, by the Authority with the consent of the complainant, or

(c) in the case of a mediated settlement, by the respondent.”.

(c) in subsection (5)(b), by substituting “any person” for “the person affected”, and

(d) by substituting the following subsection for subsection (7):

“(7) (a) Where an application to the Circuit Court is made by the Authority under this section, the Court may make an order for costs in favour of the Authority.

(b) Paragraph (a) is without prejudice to the power of the Court to make an order for costs in favour of the person affected or, as the case may be, a party to a settlement referred to in subsection (2).”.

Amendment of section 98.

40.—Section 98 (penalty for dismissal of employee for exercising rights) of the Act of 1998 is amended in subsection (1)(b) by deleting “paragraphs (a) to (d)” and substituting “paragraphs (a) to (g)”.

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41.—The Act of 1998 is amended by inserting the following section after section 99:

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New section 99A.

“Award of expenses.

99A.—(1) Without prejudice to section 99, the Labour Court or the Director may, if of opinion that a person is obstructing or impeding an investigation or appeal under this Act, order that the person pay to another person a specified amount in respect of the travelling or other expenses reasonably incurred by that other person in connection with the investigation or appeal.

(2) Notwithstanding subsection (1), expenses shall not be payable in respect of the attendance at the investigation or appeal of any person representing a complainant or respondent.

(3) The amount of any expenses ordered to be paid under this section may be recovered as a simple contract debt.”.

42.—Section 101 (alternative avenues of redress) of the Act of 1998 is amended—

Amendment of section 101.

(a) in paragraph (b) of subsection (2) (as substituted by *reference number 30* of the *Schedule to the Equality Act 2004*), by the insertion after “dismissal” of “, unless the Director, having completed the investigation and in an appropriate case, directs otherwise and so notifies the complainant and respondent”, and

(b) by the substitution of the following subsection for subsection (5):

“(5) Where the Director issues a direction under subsection (2)(b), the resulting entitlement of the employee under that subsection is deemed to have effect from the date of the direction.”.

43.—The Act of 1998 is amended by inserting the following section after section 101:

New section 101A.

“Parallel claims.

101A.—Where the conduct of an employer constitutes both a contravention of Part III or IV and a contravention of either the Protection of Employees (Part-Time Work) Act 2001 or the Protection of Employees (Fixed-Term Work) Act 2003, relief may not be granted to the employee concerned in respect of the conduct under both this Act and either of the said Acts.”.

44.—Section 102 (striking out cases not pursued) of the Act of 1998 is amended—

Amendment of section 102.

(a) in subsection (1), by substituting the following paragraphs for paragraphs (a) to (c):

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“(a) a case is referred to the Director under section 77,

(b) a matter is referred to the Director under section 85,

(c) a collective agreement is referred to the Director under section 86, or

(d) a case is referred to the Director under the Anti-Discrimination (Pay) Act 1974 or the Employment Equality Act 1977,”

and

(b) in subsection (2), by substituting the following paragraphs for paragraphs (a) and (b):

“(a) an appeal is brought to the Labour Court under this Part, or

(b) a case is referred to the Labour Court under the said Act of 1974 or 1977,”.

Amendment of section 105.

45.—Section 105 (amendment of Industrial Relations Act 1990) is amended in paragraphs (a) and (d) by substituting “Director of the Equality Tribunal” for “Director of Equality Investigations”.

Cesser of Labour Court jurisdiction to deal with claims for redress.

46.—(1) Subject to *subsection (2)* and section 83 of the Act of 1998, the Labour Court shall cease to have jurisdiction under Part VII of that Act in cases of dismissal in circumstances amounting to discrimination or victimisation, and accordingly the amendments set out in the *Schedule* to this Act shall have effect.

(2) A case which was referred to the Labour Court before the commencement of this section and which, but for *subsection (1)*, would fall to be investigated by the Court under section 79(1) of the Act of 1998 shall—

(a) if, on the date of such commencement, the Court has not begun to investigate the case, be transferred by the Court to the Director as if it had been referred to him or her in the first instance, and the *Employment Equality Acts 1998* and *2004* shall apply accordingly in relation to it, with any necessary modifications, and

(b) in any other case, be treated for all purposes as if *subsection (1)* had not been enacted.

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PART 3

AMENDMENTS TO EQUAL STATUS ACT 2000

47.—Section 2 (interpretation) of the Act of 2000 is amended— Amendment of section 2.

(a) in subsection (1)—

(i) by substituting the following definition for the definition of “proceedings”:

“‘proceedings’ means—

(a) proceedings before the person, body or court dealing with a request or reference under this Act by or on behalf of a person, and

(b) any subsequent proceedings, including proceedings on appeal, arising from the request or reference,

but does not include proceedings for an offence under this Act;”,

and

(ii) by inserting the following definition:

“‘provision’ means a term in a contract or a requirement, criterion, practice, regime, policy or condition affecting a person;”,

and

(b) by adding the following subsection:

“(3) In any proceedings a respondent is presumed, unless the contrary is shown, to fail to do something when—

(a) the respondent does an act inconsistent with doing it, or

(b) the period expires during which the respondent might reasonably have been expected to do it.”.

48.—Section 3 (discrimination (general)) of the Act of 2000 is amended— Amendment of section 3.

(a) by substituting the following subsection for subsection (1):

“(1) For the purposes of this Act discrimination shall be taken to occur—

(a) where a person is treated less favourably than another person is, has been or would be treated in a comparable situation on any of the grounds specified in subsection (2) (in this Act referred to as the ‘discriminatory grounds’) which—

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(i) exists,

(ii) existed but no longer exists,

(iii) may exist in the future, or

(iv) is imputed to the person concerned,

(b) where a person who is associated with another person—

(i) is treated, by virtue of that association, less favourably than a person who is not so associated is, has been or would be treated in a comparable situation, and

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

or

(c) where an apparently neutral provision puts a person referred to in any paragraph of section 3(2) at a particular disadvantage compared with other persons, unless the provision is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary.”,

(b) by substituting the following subsections for subsection (3):

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

(b) Paragraph (a) does not apply in relation to the provision of motor vehicle insurance to licensed drivers under that age.

(3A) In any proceedings statistics are admissible for the purpose of determining whether discrimination has occurred by virtue of subsection (1)(c).”.

Amendment of section 6.

49.—Section 6 (disposal of premises and provision of accommodation) of the Act of 2000 is amended—

(a) by deleting subsections (2)(b) and (4), and

(b) in subsection (2), by substituting the following paragraph for paragraph (d):

“(d) the provision of accommodation by a person in a part (other than a separate and self-contained part) of the person’s home, or where the provision of the accommodation affects the person’s private or family life or that of any other person residing in the home, or”,

and

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(c) by adding the following subsection:

“(7) (a) Nothing in subsection (1) shall be construed as prohibiting, in relation to housing accommodation provided by or on behalf of the Minister, different treatment to persons on the basis of nationality, gender, family size, family status, marital status, disability, age or membership of the Traveller community.

(b) Nothing in paragraph (a) shall derogate from any of the obligations of the State under the treaties governing the European Communities within the meaning of the European Communities Acts 1972 to 2003 or any Act adopted by an institution of those Communities.”.

50.—Section 7 (educational establishments) of the Act of 2000 is amended by the addition of the following subsection: Amendment of section 7.

“(5) (a) In this subsection ‘grants’ means grants to assist persons to attend or continue to attend—

(i) an institution providing adult, continuing or further education,

(ii) a university, or

(iii) any other third-level or higher-level institution,

whether or not supported by public funds.

(b) The Minister for Education and Science does not discriminate where he or she—

(i) requires grants to be restricted to persons who are nationals of a member state of the European Union, or

(ii) requires such nationals and other persons to be treated differently in relation to the making of grants.”.

51.—Section 11 (sexual and other harassment) of the Act of 2000 is amended by substituting the following subsections for subsections (4) and (5): Amendment of section 11.

“(4) A person’s rejection of, or submission to, sexual or other harassment may not be used by any other person as a basis for a decision affecting that person.

(5) (a) In this section—

(i) references to harassment are to any form of unwanted conduct related to any of the discriminatory grounds, and

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(ii) references to sexual harassment are to any form of unwanted verbal, non-verbal or physical conduct of a sexual nature,

being conduct which in either case has the purpose or effect of violating a person's dignity and creating an intimidating, hostile, degrading, humiliating or offensive environment for the person.

(b) Without prejudice to the generality of paragraph (a), such unwanted conduct may consist of acts, requests, spoken words, gestures or the production, display or circulation of written words, pictures or other material.”.

Amendment of section 14.

52.—Section 14 (certain measures or activities not prohibited) of the Act of 2000 is amended—

(a) by inserting the following paragraph after “State,” in paragraph (a):

“(aa) on the basis of nationality—

(i) any action taken by a public authority in relation to a non-national—

(I) who, when the action was taken, was either outside the State or, for the purposes of the Immigration Act 2004, unlawfully present in it, or

(II) in accordance with any provision or condition made by or under any enactment and arising from his or her entry to or residence in the State,

or

(ii) any action taken by the Minister in relation to a non-national where the action arises from an action referred to in subparagraph (i),”

and

(b) by adding the following subsections:

“(2) In subsection (1)(aa)—

‘non-national’ has the meaning given to it by the Immigration Act 1999 and includes a category of non-nationals;

‘public authority’ means—

(a) a Minister of the Government,

(b) an immigration officer appointed or deemed to have been appointed under section 3 of the Immigration Act 2004,

(c) the Commissioners of Public Works in Ireland,

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- (d) a local authority within the meaning of the Local Government Act 2001, Pt.3 S.52
- (e) the Eastern Regional Health Authority,
- (f) an area health board within the meaning of the Health (Eastern Regional Health Authority) Act 1999,
- (g) a health board,
- (h) a harbour authority within the meaning of the Harbours Act 1946,
- (i) a board or other body (not being a company) established by or under statute,
- (j) a company in which all the shares are held by, or on behalf of, or by directors appointed by, a Minister of the Government, or
- (k) a company in which all the shares are held by a board or other body referred to in paragraph (i), or by a company referred to in paragraph (j).

(3) Nothing in subsection (1)(aa) shall derogate from any of the obligations of the State under the treaties governing the European Communities within the meaning of the European Communities Acts 1972 to 2003 or any act adopted by an institution of those Communities.”

53.—Section 20 (definitions) of the Act of 2000 is amended by substituting the following definition for the definition of “complainant”: Amendment of section 20.

“‘complainant’ means—

- (a) a person referred to in section 21(1), or
- (b) where such a person is unable, by reason of an intellectual or psychological disability, to pursue effectively a claim for redress under this Part, his or her parent, guardian or other person acting in place of a parent;”.

54.—Section 21 (redress in respect of prohibited conduct) of the Act of 2000 is amended— Amendment of section 21.

- (a) in subsection (2)(a)(ii), by substituting “to seek redress under this Act” for “to seek redress by referring the case to the Director”,
- (b) by inserting the following subsection after subsection (2):

“(2A) For the purposes of subsection (2) the date of notification is the date on which the notification is sent, unless it is shown that the notification was not received by the respondent.”,

(c) by substituting the following subsection for subsection (3):

“(3) (a) On application by a complainant the Director may—

- (i) for reasonable cause, direct that in relation to the complainant 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, or
- (ii) exceptionally, where satisfied that it is fair and reasonable in the particular circumstance of the case to do so direct that subsection (2) shall not apply in relation to the complainant to the extent specified in the direction,

and, where such a direction is given, this Part shall have effect accordingly.

(b) In deciding whether to give a direction under paragraph (a)(ii) the Director shall have regard to all the relevant circumstances, including—

- (i) the extent to which the respondent is, or is likely to be, aware of the circumstances in which the prohibited conduct occurred, and
- (ii) the extent of any risk of prejudice to the respondent’s ability to deal adequately with the complaint.”,

(d) by substituting the following subsections for subsections (6) and (7):

“(6) (a) Subject to subsections (3)(a)(ii) and (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.

(b) On application by a complainant the Director may, for reasonable cause, direct that in relation to the complainant paragraph (a) 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, where such a direction is given, this Part shall have effect accordingly.

(7) Where a delay by a complainant in referring a case under this Act is due to any misrepresentation by the respondent, subsection (6)(a) shall apply as if the references to the date of occurrence of prohibited conduct

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were references to the date on which the misrepresentation came to the complainant's notice.”, Pt.3 S.54

(e) by inserting the following subsection after subsection (7):

“(7A) (a) Not later than 42 days from the date of a decision of the Director on an application by a complainant for an extension of time under subsection (3) or (7), the complainant or respondent may appeal against the decision to the Circuit Court on notice to the Director specifying the grounds of the appeal.

(b) On the appeal the Court may affirm, quash or vary the decision.

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

(d) Unless otherwise agreed by the complainant and respondent, effect shall not be given to a decision of the Director on such an application until—

(i) the period of 42 days mentioned in paragraph (a) has expired, or

(ii) any appeal against it has been determined, whichever first occurs.”,

and

(f) by adding the following subsection:

“(11) For the purposes of this section prohibited conduct occurs—

(a) if the act constituting it extends over a period, at the end of the period,

(b) if it arises by virtue of a provision which operates over a period, throughout the period.”.

55.—The Act of 2000 is amended by inserting the following section after section 21: New section 21A.

“Date of claim for redress, etc.

21A.—(a) A claim for redress under section 21,

(b) an appeal to the Circuit Court under section 28, or

(c) an application to that Court under section 31,

is deemed to have been made on the date on which the claim, notice of appeal or application is received, and those sections shall be construed accordingly.”.

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Substitution of
section 22.

56.—The following section is substituted for section 22 (dismissal of claims) of the Act of 2000:

“Dismissal of
claims.

22.—(1) The Director may dismiss a claim at any stage if of opinion that it has been made in bad faith or is frivolous, vexatious or misconceived or relates to a trivial matter.

(2) Not later than 42 days after the Director dismisses a claim under this section, the complainant may appeal against the decision to the Circuit Court on notice to the Director specifying the grounds of the appeal.

(3) On appeal the Court may affirm or quash the decision.

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

Amendment of
section 23.

57.—Section 23 (references of certain matters to Director) of the Act of 2000 is amended by the addition of the following subsections:

“(4) The relationship between a solicitor employed by the Authority or any barrister retained by him or her and a person referred to in subsection (1)(a) shall be the same as the relationship between a solicitor or barrister and a client who is not such a person.

(5) Subsection (4) is without prejudice to the rights and responsibilities of the Authority and the obligations arising out of the relationship between the Authority and the solicitors employed by it.

(6) For the avoidance of doubt, it is declared that sections 59 (prohibition of solicitor acting as agent for unqualified person) and 64 (bodies corporate) of the Solicitors Act 1954 do not apply in regard to the relationship between a solicitor employed by the Authority and a person referred to in the said subsection (1)(a).”.

Amendment of
section 24.

58.—Section 24 (mediation) of the Act of 2000 is amended in subsection (6)—

(a) by substituting “case, and” for “case,” in paragraph (a),

(b) by inserting “in writing” after “application” and substituting “case,” for “case, and” in paragraph (b), and

(c) by deleting paragraph (c).

Amendment of
section 25.

59.—Section 25 (investigation by Director) of the Act of 2000 is amended by inserting the following subsection after subsection (1):

“(1A) (a) Claims to have been discriminated against on more than one of the discriminatory grounds (other than the victimisation ground) shall be investigated as a single case, and

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(b) claims to have been discriminated against on discriminatory grounds which include the victimisation ground may, in an appropriate case, be so investigated,

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but a decision shall be made on each of the claims.”.

60.—The Act of 2000 is amended by inserting the following section after section 25: New section 25A.

“Representation in proceedings under section 24 or 25.

25A.—A party (whether complainant or respondent) to proceedings under section 24 or 25 may be represented by any individual or body authorised by the party in that behalf.”.

61.—Section 27 (redress which may be ordered) of the Act of 2000 is amended— Amendment of section 27.

(a) in subsection (1)(a), by substituting “the prohibited conduct concerned” for “discrimination”, and

(b) by adding the following subsections:

“(3) The maximum amount specified in subsection (2) applies notwithstanding that conduct the subject of the investigation constituted—

(a) discrimination on more than one of the discriminatory grounds (other than the victimisation ground), or

(b) both discrimination on one or more than one of those grounds (other than the victimisation ground) and harassment or sexual harassment.

(4) An order for compensation under this section may not be made in favour of the Authority in a case referred by it to the Director under section 23(1).”.

62.—Section 31 (enforcement of decisions and mediated settlements) of the Act of 2000 is amended— Amendment of section 31.

(a) in subsection (1), by substituting “person” for “person affected”,

(b) by substituting the following subsection for subsection (2):

“(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 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.”.

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(c) by substituting the following subsection for subsection (4):

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

(a) in any case, by the complainant,

(b) in any case where the Authority is not the complainant but considers that the decision or settlement is unlikely to be implemented without its intervention, by the Authority with the consent of the complainant, or

(c) in the case of a settlement, by the respondent.”,

(d) in subsection (5)(b), by substituting “any person” for “person affected”, and

(e) by substituting the following subsection for subsection (6):

“(6) (a) Where an application is made to the Circuit Court by the Authority under this section, the Court may make an order for costs in favour of the Authority.

(b) Paragraph (a) is without prejudice to the power of the Court to make an order for costs in favour of a person who is bound by the terms of the decision or, as the case may be, a person who is a party to the settlement.”.

New section 37A.

63.—The Act of 2000 is amended by inserting the following section after section 37:

“Award of expenses.

37A.—(1) Without prejudice to section 37, the Director may, if of opinion that a person is obstructing or impeding an investigation, order that the person pay to another person a specified amount in respect of the travelling or other expenses incurred by that other person in connection with the investigation.

(2) Notwithstanding subsection (1), expenses shall not be payable in respect of the attendance at the investigation of any person representing a complainant or respondent.

(3) The amount of any expenses ordered to be paid under this section may be recovered as a simple contract debt.”.

New section 38A.

64.—The Act of 2000 is amended by inserting the following section after section 38, but in Part III:

“Burden of proof.

38A.—(1) Where in any proceedings facts are established by or on behalf of a person from which it may be presumed that prohibited conduct has occurred in relation to him or her, it is for the respondent to prove the contrary.

(2) This section is without prejudice to any

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other enactment or rule of law in relation to the burden of proof in any proceedings which may be more favourable to the person. Pt.3 S.64

(3) Where, in any proceedings arising from a reference of a matter by the Authority to the Director under section 23(1), facts are established by or on behalf of the Authority from which it may be presumed that prohibited conduct or a contravention mentioned in that provision has occurred, it is for the respondent to prove the contrary.”.

65.—Section 41 (regulations) of the Act of 2000 is amended in subsection (2) by deleting the words after “any such regulations the Minister” and inserting “shall consult with the Authority and the Director”. Amendment of section 41.

PART 4

AMENDMENT OF PENSIONS ACT 1990

66.—(1) Subject to *subsection (2)* and section 83 (as applied by section 81J(2) (inserted by section 22 of the Social Welfare (Miscellaneous Provisions) Act 2004) of the Pensions Act 1990) of the Act of 1998, the Labour Court shall cease to have jurisdiction under Part VII (as so inserted) of the said Act of 1990 in cases of dismissal in circumstances amounting to discrimination or victimisation. Amendment of Pensions Act 1990.

(2) A case which was referred to the Labour Court before the commencement of this section and which, but for *subsection (1)*, would fall to be investigated by the Court under section 79(1) (as so applied) of the Act of 1998 shall—

(a) if, on the date of such commencement, the Court has not begun to investigate the case, be transferred by the Court to the Director as if it had been referred to him or her in the first instance, and the Pensions Acts 1990 to 2004 shall apply accordingly in relation to it, with any necessary modifications, and

(b) in any other case, be treated for all purposes as if *subsection (1)* had not been enacted.

(3) The Pensions Act 1990 is amended—

(a) in section 65 (inserted by section 22 of the said Act of 2004), by substituting “Director of the Equality Tribunal” for “Director of Equality Investigations” in subsection (1),

(b) in section 81E (as so inserted)—

(i) by substituting “subsections (3) to (6)” for “subsections (2) to (6)” in subsection (1),

(ii) by deleting subsection (2),

(iii) by substituting the following subsection for subsection (3):

“(3) If the grounds for such a claim arise in relation to a breach of the principle of equal pension

treatment on the gender ground, the person making the claim may, subject to subsections (4) to (7) and section 81F(1), seek redress by referring the case to the Circuit Court instead of to the Director.”,

- (iv) by substituting the following for the definition of “the complainant” in subsection (4):

“ ‘the complainant’ means—

- (i) the person by whom it is referred, or
- (ii) where such a person is unable, by reason of an intellectual or a psychological disability, to pursue it effectively, his or her parent, guardian or other person acting in place of a parent;”

and

- (v) by deleting “, the Labour Court” in subsection (6),

(c) in section 81F (as so inserted)—

- (i) by deleting “, (2)” in subsection (2),
- (ii) by deleting “Effect” in subsection (4)(c) and inserting “Unless otherwise agreed by the complainant and respondent, effect”, and
- (iii) by deleting subsection (5),

(d) in section 81H (as so inserted)—

- (i) by substituting “section 81E;” for “section 81E.” in subsection (1),
- (ii) by adding the following paragraph to that subsection:

“(e) an order for re-instatement or re-engagement, with or without an order for compensation.”,
- (iii) by deleting subsection (2),

- (iv) by substituting the following subsection for subsection (3):

“(3) The types of redress for which the Circuit Court may provide on a reference under section 81E(3) are such one or more of the orders referred to in subsection (1) as may be appropriate in the circumstances of the case, and no enactment relating to the jurisdiction of the Circuit Court shall be taken to limit the amount of compensation which may be ordered by the Circuit Court by virtue of this subsection.”,

- (v) by inserting “or (1)(e)” after “(1)(d)” in subsection (4) and by deleting “or the Labour Court” and “or by that Court under subsection (2)(b)” in that subsection,
- (vi) by deleting “or the Labour Court” and “or the Labour Court, as the case may be,” in subsection (5), and
- (vii) by deleting “, Labour Court” in subsection (8),

(e) in section 81J (as so inserted), by substituting “76, 77A” for “76” in subsection (2),

(f) in the Fourth Schedule (as so inserted)—

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- (i) by substituting “74(3), 76(1), 78(5), 79(1), 79(3A)” for “76(1), 78(5), 79(1),” and deleting “84(1)”, “101(5), 101(6)(a)” in column (2) opposite reference number 4,
- (ii) by deleting reference number 7,
- (iii) by substituting “Section 83(6)” for “Sections 79(4) and 83(6)” in column (2) opposite reference number 9,
- (iv) by substituting “85(1) to 85(5), 85(6)” for “85” in column (2), and substituting “Authority” for “authority” in column (3), opposite reference number 12,
- (v) by substituting “‘paragraph (c) or (f) of section 82(1)’ ” for “‘section 82(2)’ ” in column (3) opposite reference number 27,
- (vi) by substituting “section 81H(1)” for “section 81H(2)” in column (4) opposite reference number 27, and
- (vii) by inserting the following after reference number 30:

“30A.	Section 101A(2)	Where the conduct of an employer constitutes both a contravention of Part III or IV and a contravention of either the Protection of Employees (Part-Time Work) Act 2001 or the Protection of Employees (Fixed-Term Work) Act 2003, relief may not be granted to the employee concerned in respect of the conduct under both this Act and either of the said Acts.	Where the conduct of an employer constitutes both a contravention of Part VII of the Pensions Act 1990 and a contravention of either the Protection of Employees (Part-Time Work) Act 2001 or the Protection of Employees (Fixed-Term Work) Act 2003, relief may not be granted to the employee concerned in respect of the conduct under both this Act as it applies to Part VII of the Pensions Act 1990 and either of the said Acts.”.
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SCHEDULE

AMENDMENTS OF ACT OF 1998 REFERRED TO IN SECTION 46

Section of Act of 1998	<i>Amendment</i>
Section 77.	<p>1. Substitution of following subsection for subsections (1) and (2):</p> <p style="padding-left: 40px;">“(1) A person who claims—</p> <p style="padding-left: 80px;">(a) to have been discriminated against or subjected to victimisation,</p> <p style="padding-left: 80px;">(b) to have been dismissed in circumstances amounting to discrimination or victimisation,</p> <p style="padding-left: 80px;">(c) not to be receiving remuneration in accordance with an equal remuneration term, or</p> <p style="padding-left: 80px;">(d) not to be receiving a benefit under an equality clause,</p> <p style="padding-left: 40px;">in contravention of this Act may, subject to subsections (3) to (9), seek redress by referring the case to the Director.”.</p> <p>2. Substitution of following subsection for subsection (3):</p> <p style="padding-left: 40px;">“(3) If the grounds for such a claim arise—</p> <p style="padding-left: 80px;">(a) under Part III, or</p> <p style="padding-left: 80px;">(b) in any other circumstances (including circumstances amounting to victimisation) to which the Equal Pay Directive or Equal Treatment Directive is relevant,</p> <p style="padding-left: 40px;">then, subject to subsections (4) to (9), the person making the claim may seek redress by referring the case to the Circuit Court instead of to the Director.”.</p> <p>3. In subsections (8) and (10), deletion of “, (2)”.</p>
Section 78.	<p>4. Deletion of subsection (2).</p> <p>5. Substitution of the following subsection for subsection (3):</p> <p style="padding-left: 40px;">“(3) If the complainant or 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 79.”.</p>

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6. In subsection (4), deletion of “, whether by an SCH. equality mediation officer or by the Labour Court.”.

7. In subsection (5), deletion of—

(a) “or, as the case may be, the Labour Court” where it occurs in paragraphs (a) and (c), and

(b) “or the Labour Court, as the case may require” in paragraph (d).

8. Substitution of following subsection for subsection (6):

“(6) If, after a case has been referred to an equality mediation officer under subsection (1), it appears to the officer that the case cannot be resolved by mediation, he or she shall issue a notice to that effect to the complainant and respondent.”.

9. In subsection (7) (as amended by *section 34*), deletion of “or, as the case may be, the Labour Court” and “or the Labour Court, as the case may require.”.

Section 79.

10. In subsection (1), deletion of—

(a) “or the Labour Court”,

(b) “or the Labour Court, as the case may be”, and

(c) “or that Court”.

11. In subsection (2), deletion of words after “in private”.

12. In subsection (4), deletion of—

(a) “or, as the case may be, the Labour Court”,

(b) “the Labour Court”, and

(c) the words from “; and any such” to “Employment”.

13. In subsection (5), deletion of “or the Labour Court”.

14. In subsection (6) (as amended by *section 35(b)*), deletion of—

(a) “or, as the case may be, the Labour Court shall make a determination”, and

(b) “or determination”.

Section 81.

15. Substitution of “or the Director” for each reference to “, the Director or the Labour Court”.

Section 82.

16. In subsection (1)—

(a) substitution of “specified;” for “specified.” in paragraph (e), and

(b) addition of following paragraph:

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“(f) an order for re-instatement or re-engagement, with or without an order for compensation.”.

17. Deletion of subsection (2).

18. In subsection (3)—

(a) substitution of “paragraphs (c) to (f)” for “paragraphs (c) to (e)”, and

(b) deletion of paragraph (d).

19. In subsection (4)—

(a) insertion of “or (1)(f)” after “(1)(c)”, and

(b) deletion of “or the Labour Court” and “or by that Court under subsection (2)(b)”.

20. In subsection (5), deletion of—

(a) “or the Labour Court”, and

(b) “or the Labour Court, as the case may be,”.

Section 84.

21. Deletion of subsection (1).

22. In subsection (3), substitution of “subsection (2)” for “subsection (1) or (2)”.

Section 88.

23. In subsection (3)(a), deletion of “or determination”.

Section 90.

24. Substitution of following subsections for subsections (1) to (6):

“(1) Where a determination is made by the Labour Court on an appeal under this Part, either of the parties may appeal to the High Court on a point of law.

(2) The Labour Court may—

(a) refer to the High Court a point of law arising in the course of such an appeal, and

(b) if it thinks it appropriate, adjourn the appeal pending the outcome of the reference.”.

Section 91.

25. In subsection (3)(a), deletion of each reference to “determination or”.

Section 92.

26. In subsection (3), insertion of “or decision” after each reference to “determination”.

Section 93.

27. In subsection (1), insertion of “or decision” after “determination”.

Section 98.

28. In subsection (2), substitution of “Director” for “Labour Court”.

29. In subsection (5), substitution of—

(a) “Director” for “Labour Court”,

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(b) “paragraph (c) or (f) of section 81(1)” for SCH.
“section 82(2)”, and

(c) “Director’s decision” for “Labour Court’s
determination”.

Section 101.

30. Substitution of subsection (2) by the
following:

“(2) Where an individual has referred a case
to the Director under section 77(1) and either
a settlement has been reached by mediation or
the Director has begun an investigation under
section 79, the individual—

(a) shall not be entitled to recover dam-
ages at common law in respect of
the case, and

(b) if he or she was dismissed before so
referring the case, shall not be
entitled to seek redress (or to exer-
cise, or continue to exercise, any
other power) under the Unfair Dis-
missals Acts 1977 to 1993 in respect
of the dismissal.”.

31. In subsection (4), deletion of opening words
to and including “the dismissal” and insertion of
“An employee who has been dismissed shall not be
entitled to seek redress under this Part in respect of
the dismissal if”.

32. Deletion of subsection (6).

Section 103.

33. In subsection (3), deletion of—

(a) “or determination” in paragraph (b), and

(b) “90,” in paragraph (d).

Section 104.

34. In subsection (1), deletion of “, the Labour
Court”.

35. In subsection (2)(a), deletion of “or the Lab-
our Court”.