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Comments	This is the official consolidation. The latest amendment included here is Ordinance No. 136 of 1997. The Rules are attached at the end for ease of reference. Please note that the Chinese terms appeared in the text and the forms in the Schedules are not reproduced here.
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Sex Discrimination Ordinance, Cap 480

Chapter: 480

SEX DISCRIMINATION ORDINANCE

Long title

To render unlawful certain kinds of sex discrimination, discrimination on the ground of marital status or pregnancy, and sexual harassment; to provide for the establishment of a Commission with the functions of working towards the elimination of such discrimination and harassment and promoting equality of opportunity between men and women generally; and to provide for matters incidental thereto or connected therewith.

(Enacted 1995)

[Sections 63, 64, 67 to 69 and Schedule 6	20 May 1996 L.N. 185 of 1996
The other provisions, other than Part III, sections 36(1), (2) and (4), 40(6), 46(1) and (3), 46(2) (in so far as that subsection relates to an agent who is also an employee of his principal) and 47(2) (in so far as that subsection relates to an employee or employer), Schedules 2 and 3 and any other provision of the Ordinance in so far as that provision makes reference to-	20 September 1996 L.N. 394 of 1996

(a) Part III or any section or provision contained within that Part; and	20 September 1996 L.N. 394 of 1996
(b) any section or Schedule mentioned above	
The remaining provisions	:20 December 1996] L.N. 556 of 1996

(Originally 67 of 1995)

PART I PRELIMINARY

Section: 1Short title

(1)This Ordinance may be cited as the Sex Discrimination Ordinance.

(2)(Omitted as spent)

(Enacted 1995)

Section: 2Interpretation

(1)In this Ordinance, unless the context otherwise requires-

"access" means access as construed in accordance with section 56;

"act" includes a deliberate omission;

"advertisement" includes every form of advertisement, whether to the public or not, and whether-

(a)in a newspaper or other publication;

(b)by television or radio;

(c)by display of notices, signs, labels, showcards or goods;

(d)by distribution of samples, circulars, catalogues, price lists or other material;

(e)by exhibition of pictures, models or films; or

(f)in any other way,

and references to the publishing of advertisements shall be construed accordingly;

"Chairperson" means the Chairperson of the Commission appointed under section 63(3)(a);

"club" means an association, incorporate or unincorporate, of not less than 30 persons associated together for social, literary, cultural, political, sporting, athletic or other lawful purposes that-

(a)provides and maintains its facilities, in whole or in part, from the funds of the association; and

(b)sells or supplies liquor for consumption on its premises;

"Commission" means the Equal Opportunities Commission established under section 63(1);

"commission agent" means commission agent as construed in accordance with section 20;

"committee" means a committee established under section 64(2)(a);

"committee of management", in relation to a club, means the group or body of persons (howsoever described) that manages the affairs of that club;

"conciliator" means any person engaged by the Commission under section 64(2)(e);

"contract worker" means contract worker as construed in accordance with section 13;

"discrimination" means any discrimination falling within section 5, 6, 7, 8 or 9, and related expressions shall be construed accordingly;

"dispose", in relation to premises, includes granting a right to occupy the premises, and any reference to acquiring premises shall be construed accordingly;

"dynamically supported craft" has the same meaning as in the Shipping and Port Control Ordinance (Cap 313),

"education" includes any form of training or instruction;

"educational establishment" means an educational establishment specified in column 1 of Schedule 1;

"employment" means employment under-

(a) a contract of service or of apprenticeship; or

(b) a contract personally to execute any work or labour,

and related expressions shall be construed accordingly;

"employment agency" means a person who, for profit or not, provides services for the purpose of finding employment for workers or supplying employers with workers;

"enforcement notice" means a notice under section 77(2);

"estate agent" means a person who, by way of profession or trade, provides services for the purpose of finding premises for persons seeking to acquire them or assisting in the disposal of premises;

"firm" means firm within the meaning of the Partnership Ordinance (Cap 38);

"formal investigation" means an investigation under section 70;

"general notice" in relation to any person, means a notice published by him at a time and in a manner appearing to him suitable for securing that the notice is seen within a reasonable time by persons likely to be affected by it;

"genuine occupational qualification" means genuine occupational qualification as construed in accordance with section 12(2);

"man" includes a male of any age;

"marital status" means the state or condition of being-

(a) single;

(b) married;

(c) married but living separately and apart from one's spouse;

(d) divorced; or

(e) widowed;

"notice" means a notice in writing;

"prescribed" means prescribed in rules made under section 88;

"profession" includes any vocation or occupation;

"responsible body", in relation to an educational establishment, means the body specified in column 2 of Schedule 1 opposite that establishment;

"retirement" includes retirement (whether voluntary or not) on grounds of age, length of service or incapacity,

"sex discrimination" means any discrimination falling within section 5 or 6;

"single-sex establishment" means single-sex establishment as construed in accordance with section 26;

"trade" includes any business;

"training" includes any form of education or instruction;

"woman" includes a female of any age.

(2) References in this Ordinance to the dismissal of a person from employment or to the expulsion of a person from a position as partner include references-

(a) to the termination of that person's employment or partnership by the expiration of any period (including a period expiring by reference to an event or circumstance), not being a termination immediately after which the employment or partnership is renewed on the same terms;

(b) to the termination of that person's employment or partnership by any act of his (including the giving of notice) in circumstances such that he is entitled to terminate it without notice by reason of the conduct of the employer, or the other partners, as the case may be.

(3) For the purposes of this Ordinance, an enforcement notice or a finding by the District Court becomes final when an appeal against the notice or finding is dismissed, withdrawn or abandoned or when the time for appealing expires without an appeal having been brought; and for this purpose an appeal against an enforcement notice shall be taken to be dismissed if, notwithstanding that a requirement of the notice is quashed on appeal, a direction is given in respect of it under section 78(3).

(4) For the purposes of this Ordinance, a person is a near relative of another if that person is the wife or husband, a parent or child, a grandparent or grandchild, or a brother or sister of the other (whether of full blood or half-blood or by affinity), and "child" includes an illegitimate child and the wife or husband of an illegitimate child.

(5) For the purposes of this Ordinance, a person (howsoever described) sexually harasses a woman if-

(a) the person-

(i) makes an unwelcome sexual advance, or an unwelcome request for sexual favours, to her; or

(ii) engages in other unwelcome conduct of a sexual nature in relation to her,

in circumstances in which a reasonable person, having regard to all the circumstances, would have anticipated that she would be offended, humiliated or intimidated; or

(b) the person, alone or together with other persons, engages in conduct of a sexual nature which creates a sexually hostile or intimidating work environment for her.

(6) For the avoidance of doubt, it is hereby declared that paragraph (b) of subsection (5) shall not apply for the purposes of sections 39 and 40.

(7) In subsection (5)-

"conduct of a sexual nature" includes making a statement of a sexual nature to a woman, or in her presence, whether the statement is made orally or in writing.

(8) A provision of Part III or IV framed with reference to sexual harassment of women shall be treated as applying equally to the treatment of men and for that purpose that provision, and subsections (5) and (7), shall have effect with such modifications as are necessary.

(9) Subject to subsection (10), in this Ordinance "existing statutory provision" means any provision of-

(a) any Ordinance enacted before this Ordinance was enacted;

(b) any subsidiary legislation made-

(i) under an Ordinance enacted before this Ordinance was enacted; and

(ii) before, on or after this Ordinance was enacted.

(10) Where an Ordinance enacted after this Ordinance was enacted re-enacts (with or without modifications) a provision of an Ordinance enacted before this Ordinance was enacted, then that provision as re-enacted shall be treated for the purposes of subsection (9) as if it continued to be contained in an Ordinance enacted before this Ordinance was enacted.

(Enacted 1995)

Section: 3 Application

This Ordinance binds the Government.

(Enacted 1995)

Section: 4 Act done because of sex, etc. and for other reason

If-

(a) an act is done for 2 or more reasons; and

(b) one of the reasons is the sex, marital status or pregnancy of person (whether or not it is the dominant or a substantial reason for doing the act),

then, for the purpose of this Ordinance, the act shall be taken to be done for the reason specified in paragraph (b).

(Enacted 1995)

PART II DISCRIMINATION TO WHICH ORDINANCE APPLIES

Section: 5Sex discrimination against women

(1) A person discriminates against a woman in any circumstances relevant for the purposes of any provision of this Ordinance if-

(a) on the ground of her sex he treats her less favourably than he treats or would treat a man; or

(b) he applies to her a requirement or condition which he applies or would apply equally to a man but-

(i) which is such that the proportion of women who can comply with it is considerably smaller than the proportion of men who can comply with it;

(ii) which he cannot show to be justifiable irrespective of the sex of the person to whom it is applied; and

(iii) which is to her detriment because she cannot comply with it.

(2) If a person treats or would treat a man differently according to the man's marital status, his treatment of a woman is for the purposes of subsection (1)(a) to be compared to his treatment of a man having the like marital status.

(Enacted 1995)

Section: 6Sex discrimination against men

(1) Section 5, and the provisions of Parts III and IV relating to sex discrimination against women, shall be read as applying equally to the treatment of men, and for that purpose shall have effect with such modifications as are necessary.

(2) In the application of subsection (1) no account shall be taken of special treatment afforded to women in connection with pregnancy or childbirth.

(Enacted 1995)

Section: 7Discrimination against married, etc. persons in employment field

(1) A person discriminates against a person of either sex in any circumstances relevant for the purposes of any provision of Part III or IV if-

(a) on the ground of his or her marital status ("the relevant marital status") he treats that person less favourably than he treats or would treat a person of the same sex with a different marital status; or

(b) he applies to that person a requirement or condition which he applies or would apply equally to a person with a different marital status but-

(i) which is such that the proportion of persons with the relevant marital status who can comply with it is considerably smaller than the proportion of persons of the same sex with a different marital status who can comply with it;

(ii) which he cannot show to be justifiable irrespective of the marital status of the person to whom it is applied; and

(iii) which is to that person's detriment because he or she cannot comply with it.

(2) For the purposes of subsection (1), a provision of Part III or IV framed with reference to discrimination against women shall be treated as applying equally to the treatment of men, and for that purpose shall have effect with such modifications as are necessary.

(Enacted 1995)

Section: 8 Discrimination against pregnant women in employment field

A person discriminates against a woman in any circumstances relevant for the purposes of any provision of Part III or IV if-

(a) on the ground of her pregnancy he treats her less favourably than he treats or would treat a person who is not pregnant; or

(b) he applies to her a requirement or condition which he applies or would apply to a person who is not pregnant but-

(i) which is such that the proportion of persons who are pregnant who can comply with it is considerably smaller than the proportion of persons who are not pregnant who can comply with it;

(ii) which he cannot show to be justifiable irrespective of whether or not the person to whom it is applied is pregnant; and

(iii) which is to her detriment because she cannot comply with it.

(Enacted 1995)

Section: 9 Discrimination by way of victimisation

(1) A person ("the discriminator") discriminates against another person ("the person victimised") in any circumstances relevant for the purposes of any provision of this Ordinance if he treats the person victimised less favourably than in those circumstances he treats or would treat other persons, and does so by reason that the person victimised or any other person ("the third person") has-

(a) brought proceedings against the discriminator or any other person under this Ordinance;

(b) given evidence or information in connection with proceedings brought by any person against the discriminator or any other person under this Ordinance;

(c) otherwise done anything under or by reference to this Ordinance in relation to the discriminator or any other person; or

(d) alleged that the discriminator or any other person has committed an act which (whether or not the allegation so states) would amount to a contravention of this Ordinance,

or by reason that the discriminator knows the person victimised or the third person, as the case may be, intends to do any of those things, or suspects the person victimised or the third person, as the case may be, has done, or intends to do, any of them.

(2) Subsection (1) shall not apply to treatment of a person by reason of any allegation made by him if the allegation was false and not made in good faith.

(3) For the purposes of subsection (1), a provision of Part III or IV framed with reference to discrimination against, or sexual harassment of, women shall be treated as applying equally to the treatment of men and for that purpose shall have effect with such modifications as are necessary.

(Enacted 1995)

Section: 10 Comparison of cases under sections 5(1), 7(1) and 8

A comparison of the cases of persons-

- (a) of different sex under section 5(1);
- (b) of different marital status under section 7(1);
- (c) who are pregnant and not pregnant under section 8,

shall be such that the relevant circumstances in the one case are the same, or not materially different, in the other.

(Enacted 1995)

PART III

DISCRIMINATION AND SEXUAL HARASSMENT IN EMPLOYMENT FIELD

Discrimination by employers

Section: 11 Discrimination against applicants and employees

(1) It is unlawful for a person, in relation to employment by him at an establishment in Hong Kong, to discriminate against a woman-

- (a) in the arrangements he makes for the purpose of determining who should be offered that employment;
- (b) in the terms on which he offers her that employment; or
- (c) by refusing or deliberately omitting to offer her that employment.

(2) It is unlawful for a person, in the case of a woman employed by him at an establishment in Hong Kong, to discriminate against her-

- (a) in the way he affords her access to opportunities for promotion, transfer or training, or to any other benefits, facilities or services, or by refusing or deliberately omitting to afford her access to them;
- (b) in the terms of employment he affords her; or
- (c) by dismissing her, or subjecting her to any other detriment.

(3) Except in relation to discrimination falling within section 9, subsections (1) and (2) shall not apply to employment where the number of persons employed by the employer, added to the number employed by any associated employers of his, does not exceed 5 (disregarding any persons employed for the purposes of a private home).

(4) Subject to subsection (5), subsections (1)(b) and (2) shall not apply to provision in relation to death or retirement made for a woman before 15 October 1997 in so far as any such provision continues for that woman on and after that date. (Replaced 71 of 1997 s. 2. Amended 136 of 1997 s. 2)

(5) Subsections (1)(b) and (2) shall apply to provision in relation to death or retirement of the kind mentioned in subsection (4) in so far as, in their application to such provision in relation to retirement, they render it unlawful for a person to discriminate against a woman-

(a) in such of the terms on which he offers her employment as make provision in relation to the way in which he will afford her access to opportunities for promotion, transfer or training or as provide for her dismissal or demotion;

(b) in the way he affords her opportunities for promotion, transfer or training or by refusing or deliberately omitting to afford her access to any such opportunities; or

(c) by dismissing her or subjecting her to any detriment which results in her dismissal or consists in or involves her demotion. (Replaced 71 of 1997 s. 2)

(6) Subsection (2) shall not apply to benefits, facilities or services of any description if the employer is concerned with the provision (for payment or not) of benefits, facilities or services of that description to the public, or to a section of the public comprising the woman concerned, unless-

(a) that provision differs in a material respect from the provision of the benefits, facilities or services by the employer to his employees; or

(b) the benefits, facilities or services relate to training.

(7) Subsection (3) shall expire on the 3rd anniversary of the day on which this Ordinance is enacted.

(8) For the purposes of subsection (3), 2 employers are to be treated as associated if one is a company of which the other (directly or indirectly) has control or if both are companies of which a third person (directly or indirectly) has control.

(9) The Governor in Council may, by notice in the Gazette-

(a) amend subsection (3) by substituting another number for the last number appearing in that subsection;

(b) amend subsection (7) by substituting another anniversary for the anniversary appearing in that subsection.

(Enacted 1995)

Section: 12 Exception where sex is genuine occupational qualification

(1) In relation to sex discrimination-

(a) section 11(1)(a) or (c) shall not apply to any employment where being a man is a genuine occupational qualification for the job;

(b) section 11(2)(a) shall not apply to opportunities for promotion or transfer to, or training for, such employment.

(2) Being a man is a genuine occupational qualification for a job only where-

(a) the essential nature of the job calls for a man for reasons of physiology (excluding physical strength or stamina) or, in dramatic performances or other entertainment, for reasons of authenticity, so that the essential nature of the job would be materially different if carried out by a woman;

(b) the job needs to be held by a man to preserve decency or privacy because-

(i) it is likely to involve physical contact with men in circumstances where they might reasonably object to its being carried out by a woman; or

(ii) the holder of the job is likely to do his work in circumstances where men might reasonably object to the presence of a woman because they are in a state of undress or are using sanitary facilities;

(c) the job is likely to involve the holder of the job doing his work, or living, in a private home and needs to be held by a man because objection might reasonably be taken to allowing to a woman-

(i) the degree of physical or social contact with a person living in the home; or

(ii) the knowledge of intimate details of such a person's life,

which is likely, because of the nature or circumstances of the job or of the home, to be allowed to, or available to, the holder of the job;

(d) the nature or location of the establishment makes it impracticable for the holder of the job to live elsewhere than in premises provided by the employer, and-

(i) the only such premises which are available for persons holding that kind of job are lived in, or normally lived in, by men and are not equipped with separate sleeping accommodation for women and sanitary facilities which could be used by women in privacy from men; and

(ii) it is not reasonable to expect the employer to equip those premises with such accommodation and facilities or to provide other premises for women;

(e) the nature of the establishment, or of the part of it within which the work is done, requires the job to be held by a man because-

(i) it is, or is part of, a hospital, prison or other establishment for persons requiring special care, supervision or attention;

(ii) those persons are all men (disregarding any woman whose presence is exceptional); and

(iii) it is reasonable, having regard to the essential character of the establishment or that part, that the job should not be held by a woman;

(f) the holder of the job provides individuals with personal services promoting their welfare or education, or similar personal services, and those services can most effectively be provided by a man;

(g) the job needs to be held by a man because of restrictions imposed by a provision specified in Schedule 3;

(h) the job needs to be held by a man because it is likely to involve the performance of duties outside Hong Kong in a place the laws or customs of which are such that the duties could not, or could not effectively, be performed by a woman; or

(i) the job is one of 2 to be held by a married couple.

(3) Subsection (2) applies where some only of the duties of the job fall within any paragraph of that subsection (except paragraph (i)) as well as where all of them do.

(4) Paragraph (a), (b), (d), (e), (f), (g) or (h) of subsection (2) shall not apply in relation to the filling of a vacancy at a time when the employer already has male employees-

(a) who are capable of carrying out the duties falling within that paragraph;

(b) whom it would be reasonable to employ on those duties; and

(c) whose numbers are sufficient to meet the employer's likely requirements in respect of those duties without undue inconvenience.

(Enacted 1995)

Section: 13 Discrimination against contract workers

(1) This section applies to any work for a person ("the principal") which is available for doing by individuals ("contract workers") who are employed not by the principal himself but by another person, who supplies them under a contract made with the principal.

(2) It is unlawful for the principal, in relation to work to which this section applies, to discriminate against a woman who is a contract worker-

(a) in the terms on which he allows her to do that work;

(b) by not allowing her to do it or continue to do it;

(c) in the way he affords her access to any benefits, facilities or services or by refusing or deliberately omitting to afford her access to them; or

(d) by subjecting her to any other detriment.

(3) The principal does not contravene subsection (2)(b) by doing any act in relation to a woman at a time when if the work were to be done by a person taken into his employment being a man would be a genuine occupational qualification for the job.

(4) Subsection (2)(c) shall not apply to benefits, facilities or services of any description if the principal is concerned with the provision (for payment or not) of benefits, facilities or services of that description to the public, or to a section of the public to which the woman belongs, unless that provision differs in a material respect from the provision of the benefits, facilities or services by the principal to his contract workers.

(Enacted 1995)

Section: 14 Meaning of employment at establishment in Hong Kong

(1) For the purposes of this Ordinance ("the relevant purposes"), employment is to be regarded as being at an establishment in Hong Kong unless the employee does his work wholly or mainly outside Hong Kong.

(2) Subsection (1) shall not apply to-

(a) employment on board a ship registered in Hong Kong; or

(b) employment on aircraft or dynamically supported craft registered in Hong Kong and operated by a person who has his principal place of business, or is ordinarily resident, in Hong Kong,

but for the relevant purposes such employment is to be regarded as being at an establishment in Hong Kong unless the employee does his work wholly outside Hong Kong.

(3) In the case of employment on board a ship registered in Hong Kong (except where the employee does his work wholly outside Hong Kong) the ship shall for the relevant purposes be deemed to be the establishment.

(4) Where work is not done at an establishment it shall be treated for the relevant purposes as done at the establishment from which it is done or (where it is not done from any establishment) at the establishment with which it has the closest connection.

(Enacted 1995)

Discrimination by other bodies**Section: 15 Partnerships**

(1) It is unlawful for a firm consisting of not less than 6 partners, in relation to a position as partner in the firm, to discriminate against a woman-

(a) in the arrangements the firm makes for the purpose of determining who should be offered that position;

(b) in the terms on which the firm offers her that position;

(c) by refusing or deliberately omitting to offer her that position; or

(d) in a case where the woman already holds that position-

(i) in the way the firm affords her access to any benefits, facilities or services, or by refusing or deliberately omitting to afford her access to them; or

(ii) by expelling her from that position or subjecting her to any other detriment.

(2) Subsection (1) shall apply in relation to persons proposing to form themselves into a partnership as it applies in relation to a firm.

(3) Subsection (1)(a) and (c) shall not apply to a position as partner where, if it were employment, being a man would be a genuine occupational qualification for the job.

(4) Subject to subsection (5), subsection (1)(b) and (d) shall not apply to provision in relation to death or retirement made for a woman before 15 October 1997 in so far as any such provision continues for that woman on and after that date. (Replaced 71 of 1997 s. 3. Amended 136 of 1997 s. 3)

(5) Subsection (1)(b) and (d) shall apply to provision made in relation to death or retirement of the kind mentioned in subsection (4) in so far as, in their application to such provision made in relation to retirement, they render it unlawful for a firm to discriminate against a woman-

(a) in such of the terms on which the firm offers her a position as partner as provide for her expulsion from that position; or

(b) by expelling her from a position as partner or subjecting her to any detriment which results in her expulsion from such a position. (Replaced 71 of 1997 s. 3)

(6) In the case of a limited partnership references in subsection (1) to a partner shall be construed as references to a general partner within the meaning of section 2 of the Limited Partnerships Ordinance (Cap 37).

(7) The Governor in Council may, by notice in the Gazette, amend subsection (1) by-

(a) substituting another number for the number appearing in that subsection; or

(b) repealing the words and number appearing after "for a firm" and before", in relation to".

(Enacted 1995)

Section: 16 Trade unions, etc.

(1) This section applies to an organization of workers, an organization of employers, or any other organization whose members carry on a particular profession or trade for the purposes of which the organization exists.

(2) It is unlawful for an organization to which this section applies, in the case of a woman who is not a member of the organization, to discriminate against her-

(a) in the terms on which it is prepared to admit her to membership; or

(b) by refusing, or deliberately omitting to accept, her application for membership.

(3) It is unlawful for an organization to which this section applies, in the case of a woman who is a member of the organization, to discriminate against her-

(a) in the way it affords her access to any benefits, facilities or services, or by refusing or deliberately omitting to afford her access to them;

(b) by depriving her of membership, or varying the terms on which she is a member; or

(c) by subjecting her to any other detriment.

(4) This section shall not apply to provision in relation to the death or retirement from work of a member made before 15 October 1997 in so far as any such provision continues for that member on and after that date. (Replaced 71 of 1997 s. 4. Amended 136 of 1997 s. 4)

(5) (Repealed 71 of 1997 s. 4)

(Enacted 1995)

Section: 17 Qualifying bodies

(1) It is unlawful for an authority or body which can confer an authorization or qualification which is needed for, or facilitates, engagement in a particular profession or trade to discriminate against a woman-

(a) in the terms on which it is prepared to confer on her that authorization or qualification;

(b) by refusing or deliberately omitting to grant her application for it; or

(c) by withdrawing it from her or varying the terms on which she holds it.

(2) Where an authority or body is required by law to satisfy itself as to his good character before conferring on a person an authorization or qualification which is needed for, or facilitates, his engagement in any profession or trade then, without prejudice to any other duty to which it is subject, that requirement shall be taken to impose on the authority or body a duty to have regard to any evidence tending to show that he, or any of his employees or agents (whether past or present), has-

(a) practised unlawful discrimination; or

(b) engaged in unlawful sexual harassment,

in, or in connection with, the carrying on of any profession or trade.

(3) Subsection (1) shall not apply to discrimination which is rendered unlawful by section 25.

(4) In this section-

"authorization or qualification" includes recognition, licensing, registration, enrolment, approval and certification;

"confer" includes renew or extend.

(Enacted 1995)

Section: 18Persons concerned with provision of vocational training

(1)It is unlawful, in the case of a woman seeking or undergoing training which would help fit her for any employment, for any person who provides, or makes arrangements for the provision of, facilities for such training to discriminate against her-

(a)in the terms on which that person affords her access to any training course or other facilities concerned with such training;

(b)by refusing or deliberately omitting to afford her such access;

(c)by terminating her training; or

(d)by subjecting her to any other detriment during the course of her training.

(2)Subsection (1) shall not apply to-

(a)discrimination which is rendered unlawful by any of the provisions of section 11 (1) or (2) or 25; or

(b)discrimination which would be rendered unlawful by any of those provisions but for the operation of any other provision of this Ordinance.

(Enacted 1995)

Section: 19Employment agencies

(1)It is unlawful for an employment agency to discriminate against a woman-

(a)in the terms on which the agency offers to provide any of its services;

(b)by refusing or deliberately omitting to provide any of its services; or

(c)in the way it provides any of its services.

(2)References in subsection (1) to the services of an employment agency include guidance on careers and any other services related to employment.

(3)This section shall not apply if the discrimination only concerns employment which the employer could lawfully refuse to offer the woman.

(4)An employment agency shall not be subject to any liability under this section if it proves-

(a)that it acted in reliance on a statement made to it by the employer to the effect that, by reason of the operation of subsection (3), its action would not be unlawful; and

(b)that it was reasonable for it to rely on the statement.

(5)A person who knowingly or recklessly makes a statement of the kind referred to in subsection (4)(a) which in a material respect is false or misleading commits an offence and is liable on conviction to a fine at level 4.

(Enacted 1995)

Section: 20Discrimination against commission agents

(1)This section applies to any work for a person ("the principal") which is available for doing by individuals ("commission agents") as the agents of the principal and who are remunerated, whether in whole or in part, by commission.

(2) It is unlawful for the principal, in relation to work to which this section applies, to discriminate against a woman who is a commission agent-

(a) in the terms on which he allows her to do that work;

(b) by not allowing her to do it or continue to do it;

(c) in the way he affords her access to any benefits, facilities or services or by refusing or deliberately omitting to afford her access to them; or

(d) by subjecting her to any other detriment.

(3) The principal does not contravene subsection (2)(b) by doing any act in relation to a woman at a time when if the work were to be done by a person taken into his employment being a man would be a genuine occupational qualification for the job.

(4) Subsection (2)(c) shall not apply to benefits, facilities or services of any description if the principal is concerned with the provision (for payment or not) of benefits, facilities or services of that description to the public, or to a section of the public to which the woman belongs, unless that provision differs in a material respect from the provision of the benefits, facilities or services by the principal to his commission agents.

(Enacted 1995)

Government

Section: 21 Government

(1) Subject to subsection (2), without prejudice to the operation of the other provisions of this Part in relation to the Government, it is unlawful for the Government to discriminate against a woman in the performance of its functions or the exercise of its powers.

(2) Subsection (1) shall not render unlawful-

(a) as regards a woman not having the right to enter and remain in Hong Kong, any act done under any immigration legislation governing entry into, stay in and departure from Hong Kong; or

(b) any act done in relation to a woman if it was necessary for that act to be done in order to comply with a requirement of an existing statutory provision.

(Enacted 1995)

Special cases

Section: 22 Ministers of religion, etc.

(1) Nothing in this Part applies to employment for the purposes of an organized religion where the employment is limited to one sex so as to comply with the doctrines of the religion or to avoid offending the religious susceptibilities common to its followers.

(2) Nothing in section 17 applies to an authorization or qualification (within the meaning of that section) for the purposes of an organized religion where the authorization or qualification is limited to one sex so as to comply with the doctrines of the religion or to avoid offending the religious susceptibilities common to its followers.

(Enacted 1995)

Sexual harassment

Section: 23 Employees, etc.

(1) It is unlawful for a person, in relation to employment by him at an establishment in Hong Kong, to sexually harass a woman who is seeking to be employed by the person.

(2) It is unlawful for a person, in the case of a woman employed by him at an establishment in Hong Kong, to sexually harass her.

(3) It is unlawful for a person who is employed by another person at an establishment in Hong Kong to sexually harass a woman who is seeking to be, or who is, employed by that second-mentioned person.

(4) It is unlawful for the principal, in relation to work to which section 13 applies, to sexually harass a woman who is a contract worker.

(5) It is unlawful for a contract worker to sexually harass a woman who is a fellow contract worker.

(6) It is unlawful for a partner in a firm to sexually harass a woman who is seeking to be, or who is, a partner in the firm.

(7) Subsection (6) shall apply in relation to persons proposing to form themselves into a partnership as it applies in relation to a firm.

(8) Section 15(6) shall apply to subsection (6) as it applies to section 15(1).

(9) It is unlawful for the principal, in relation to work to which section 20 applies, to sexually harass a woman who is a commission agent.

(10) It is unlawful for a commission agent to sexually harass a woman who is a fellow commission agent.

(11) It is unlawful for a person who is seeking to be, or who is, employed by a woman at an establishment in Hong Kong to sexually harass her.

(12) It is unlawful for a person residing in any premises to sexually harass a woman-

(a) employed by another person at an establishment in Hong Kong (and whether or not that other person also resides in those premises or those premises are that establishment); and

(b) carrying out in those premises all or part of her work in relation to her employment (and whether or not she also resides in those premises).

(Enacted 1995)

Section: 24 Other sexual harassment

(1) It is unlawful for a member of an organization to which section 16 applies to sexually harass a woman who is seeking to be, or who is, a member of the organization.

(2) It is unlawful for a member of an authority or body referred to in section 17 to sexually harass a woman seeking an authorization or qualification (within the meaning of that section) which can be conferred by the authority or body, as the case may be.

(3) It is unlawful for a person to sexually harass a woman seeking or undergoing training which would help fit her for any employment if that person provides, or makes arrangements for the provision of, facilities for such training.

(4) It is unlawful for a person who-

(a) operates an employment agency; or

(b) is a member of the staff of an employment agency,

to sexually harass a woman in the course of offering to provide, or providing, any of the agency's services to her.

(Enacted 1995)

PART IV

DISCRIMINATION AND SEXUAL HARASSMENT IN OTHER FIELDS

Education

Section: 25 Discrimination by responsible bodies for educational establishments

It is unlawful for the responsible body for an educational establishment to discriminate against a woman-

(a) in the terms on which it offers to admit her to the establishment as a student;

(b) by refusing or deliberately omitting to accept an application for her admission to the establishment as a student; or

(c) where she is a student of the establishment-

(i) in the way it affords her access to any benefits, facilities or services, or by refusing or deliberately omitting to afford her access to them; or

(ii) by excluding her from the establishment or subjecting her to any other detriment.

(Enacted 1995)

Section: 26 Exceptions for single-sex establishments

(1) Section 25(a) and (b) shall not apply to the admission of students to any educational establishment ("single-sex establishment") which admits students of one sex only, or which would be taken to admit students of one sex only if there were disregarded students of the opposite sex-

(a) whose admission is exceptional; or

(b) whose numbers are comparatively small and whose admission is confined to particular courses of instruction or teaching classes.

(2) Where an educational establishment which is not a single-sex establishment has some students as boarders and others as non-boarders, and admits as boarders students of one sex only (or would be taken to admit as boarders students of one sex only if there were disregarded boarders of the opposite sex whose numbers are comparatively small), section 25(a) and (b) shall not apply to the admission of boarders and section 25(c)(i) shall not apply to boarding facilities.

(3) Where an educational establishment is a single-sex establishment by reason of its inclusion in subsection (1)(b), the fact that students of one sex are confined to particular courses of instruction or teaching classes shall not be taken to contravene section 25(c)(i).

(Enacted 1995)

Section: 27 Exceptions for single-sex establishments turning co-educational

(1) Where at any time-

(a) the responsible body for an educational establishment which is a single-sex establishment determines to alter its admissions arrangements so that the establishment will cease to be a single-sex establishment; or

(b) section 26(2) applies to the admission of boarders to an educational establishment but the responsible body for the establishment determines to alter its admissions arrangements so that that section will cease so to apply,

then the responsible body may, by notice served on the Commission, specify the date on which that determination is to take effect.

(2) Where the responsible body for an educational establishment has served a notice referred to in subsection (1), then if the responsible body, at any time during the period of 3 years beginning on the date specified in that notice as the date on which the determination concerned referred to in that subsection is to take effect (or such longer period not exceeding 3 years as the Commission may allow in any particular case), refuses or deliberately omits to accept an application for the admission of a person to the establishment as a student, that refusal or omission, as the case may be, shall not be taken to contravene any provision of this Ordinance.

(3) This section shall not operate to afford any exemption from liability under this Ordinance except as provided for in subsection (2).

(Enacted 1995)

Goods, facilities, services and premises**Section: 28 Discrimination in provision of goods, facilities or services**

(1) It is unlawful for any person concerned with the provision (for payment or not) of goods, facilities or services to the public or a section of the public to discriminate against a woman who seeks to obtain or use those goods, facilities or services-

(a) by refusing or deliberately omitting to provide her with any of them; or

(b) by refusing or deliberately omitting to provide her with goods, facilities or services of the like quality, in the like manner and on the like terms as are normal in his case in relation to male members of the public or (where she belongs to a section of the public) to male members of that section,

(2) The following are examples of the facilities and services referred to in subsection (1)-

(a) access to and use of any place which members of the public or a section of the public are permitted to enter;

(b) accommodation in a hotel, guesthouse or other similar establishment;

(c) facilities by way of banking or insurance or for grants, loans, credit or finance;

(d) facilities for education;

(e) facilities for entertainment, recreation or refreshment;

(f) facilities for transport or travel;

- (g)the services of any profession or trade;
- (h)the services of-
- (i)the Urban Council;
- (ii)the Regional Council;
- (iii)any department of the Government; or
- (iv)any undertaking by or of the Government.

(3)For the avoidance of doubt, it is hereby declared that where a particular skill is commonly exercised in a different way for men and for women it shall not be a contravention of subsection (1) for a person who does not normally exercise it for women to insist on exercising it for a woman only in accordance with his normal practice or, if he reasonably considers it impracticable to do that in her case, to refuse or deliberately omit to exercise it.

(Enacted 1995)

Section: 29Discrimination in disposal or management of premises

(1)It is unlawful for a person, in relation to premises in Hong Kong of which he has power to dispose, to discriminate against a woman-

- (a)in the terms on which he offers her those premises;
- (b)by refusing her application for those premises; or
- (c)in his treatment of her in relation to any list of persons in need of premises of that description.

(2)It is unlawful for a person, in relation to premises managed by him, to discriminate against a woman occupying the premises-

- (a)in the way he affords her access to any benefits or facilities, or by refusing or deliberately omitting to afford her access to them; or
- (b)by evicting her, or subjecting her to any other detriment.

(3)Subsection (1) shall not apply to a person who owns an estate or interest in the premises and wholly occupies them unless he uses the services of an estate agent for the purposes of the disposal of the premises, or publishes or causes to be published an advertisement in connection with the disposal.

(4)In this section in relation to premises, "power to dispose" includes the power to sell, rent, let, sub-let or otherwise part with possession of those premises.

(Enacted 1995)

Section: 30Discrimination: consent for assignment or sub-letting

(1)Where the licence or consent of the landlord or of any other person is required for the disposal to any person of premises in Hong Kong comprised in a tenancy, it is unlawful for the landlord or other person to discriminate against a woman by withholding the licence or consent for disposal of the premises to her.

(2)Subsection (1) shall not apply if-

(a) the person withholding a licence or consent, or a near relative of his ("the relevant occupier") resides, and intends to continue to reside, on the premises;

(b) there is on the premises, in addition to the accommodation occupied by the relevant occupier, accommodation (not being storage accommodation or means of access) shared by the relevant occupier with other persons residing on the premises who are not members of his household; and

(c) the premises are small premises as construed in accordance with section 31(2).

(3) For the avoidance of doubt, it is hereby declared that this section applies to tenancies created before the enactment of this Ordinance as well as to tenancies created on or after the enactment of this Ordinance.

(4) In this section-

"disposal", in relation to premises comprised in a tenancy, includes assignment of the tenancy and sub-letting or parting with possession of the premises or any part of the premises;

"tenancy" means a tenancy created-

(a) by a lease or sub-lease;

(b) by an agreement for a lease or sub-lease;

(c) by a tenancy agreement; or

(d) pursuant to any enactment.

(Enacted 1995)

Section: 31 Exceptions for small dwellings

(1) Sections 28(1) and 29 shall not apply to the provision by a person of accommodation in any premises, or the disposal of premises by him, if-

(a) that person or a near relative of his ("the relevant occupier") resides, and intends to continue to reside, on the premises;

(b) there is on the premises, in addition to the accommodation occupied by the relevant occupier, accommodation (not being storage accommodation or means of access) shared by the relevant occupier with other persons residing on the premises who are not members of his household; and

(c) the premises are small premises.

(2) Premises shall be treated for the purposes of subsection (1) as small premises if-

(a) in the case of premises comprising residential accommodation for one or more households (under separate letting or similar agreements) in addition to the accommodation occupied by the relevant occupier, there is not normally residential accommodation for more than 2 such households and only the relevant occupier and any member of his household reside in the accommodation occupied by him;

(b) in the case of premises not falling within paragraph (a), there is not normally residential accommodation on the premises for more than 6 persons in addition to the relevant occupier and any members of his household.

(3)The Governor in Council may, by notice in the Gazette, amend subsection (2)(b) by substituting another number for the number appearing in that subsection.

(Enacted 1995)

Section: 32Exceptions from section 28(1) for health and safety considerations

Section 28(1) shall not be construed as rendering unlawful discrimination falling within section 8 if the discrimination is imposed in order to comply with health and safety considerations which are reasonable in the circumstances.

(Enacted 1995)

Section: 33Exceptions for voluntary bodies

(1)This section applies to a body the activities of which are carried on otherwise than for profit.

(2)Sections 28(1) and 29 shall not be construed as rendering unlawful-

(a)the restriction of membership of any body to which this section applies to persons of one sex (disregarding any minor exceptions); or

(b)the provision of benefits, facilities or services to members of any body to which this section applies where the membership is so restricted,

even though membership of the body is open to the public, or to a section of the public.

(3)Nothing in section 28 or 29 shall-

(a)be construed as affecting a provision to which this subsection applies; or

(b)render unlawful an act which is done in order to give effect to such a provision.

(4)Subsection (3) applies to a provision for conferring benefits on persons of one sex only (disregarding any benefits to persons of the opposite sex which are exceptional or are relatively insignificant), being a provision which constitutes the main object of a body to which this section applies.

(Enacted 1995)

Section: 34Further exceptions from sections 28(1) and 29

(1)A person who provides at any place facilities or services restricted to men does not for that reason contravene section 28(1) if-

(a)the place is, or is part of, a hospital, reception centre or other establishment for persons requiring special care, supervision or attention;

(b)the place is (permanently or for the time being) occupied or used for the purposes of an organized religion, and the facilities or services are restricted to men so as to comply with the doctrines of that religion or to avoid offending the religious susceptibilities of common to its followers; or

(c)the facilities or services are provided for, or are likely to be used by, 2 or more persons at the same time, and-

(i)the facilities or services are such, or those persons are such, that male users are likely to suffer serious embarrassment at the presence of a woman; or

(ii) the facilities or services are such that a user is likely to be in a state of undress and a male user might reasonably object to the presence of a female user.

(2) A person who provides facilities or services restricted to men shall not for that reason contravene section 28(1) if the services or facilities are such that physical contact between the user and any other person is likely, and that other person might reasonably object if the user were a woman.

(3) Sections 28(1) and 29 shall not apply-

(a) to discrimination which is rendered unlawful by any provision or Part of this Ordinance specified in column 1 of Schedule 4; or

(b) to discrimination which would be so unlawful but for any provision or Part of this Ordinance specified in column 2 of that Schedule.

(Enacted 1995)

Advisory bodies

Section: 35 Discrimination in eligibility to vote for and to be elected or appointed to advisory bodies

(1) In this section, a reference to a relevant body means a public body, a public authority, a statutory advisory body, or a prescribed body.

(2) In this section, a reference to a relevant position includes membership of a public body, a public authority, and a prescribed position, and the positions of Village Representative or member or office-holder of a Rural Committee within the meaning of the Heung Yee Kuk Ordinance (Cap 1097).

(3) It is unlawful for a person to discriminate against another person in-

(a) determining the eligibility of a person to stand for election to a relevant body or relevant position, or to be selected for a relevant position;

(b) the terms or conditions on which a person is considered eligible to stand for election to a relevant body or relevant position, or to be selected for a relevant position;

(c) determining the eligibility of a person to vote in elections of members of a relevant body or the holder of a relevant position, or to take part in the selection of the holder of a relevant position;

(d) the terms or conditions on which a person is considered eligible to vote in elections of members of a relevant body or the holder of a relevant position, or to take part in the selection of the holder of a relevant position;

(e) considering whether a person should be appointed as a member of a relevant body, where some or all of the members of that body are appointed; or

(f) considering whether a person should be appointed to a relevant position, approved as a member of a relevant body or recognized as holding a relevant position.

(4) This section shall have effect, notwithstanding the provisions of any Ordinance which provide that a person of a particular sex or marital status is not eligible to stand for election, or to be select for, a relevant body or position, or to vote in elections for or to take part in the selection of members of a relevant body or the holder of a relevant position.

(5) Notwithstanding anything in the Heung Yee Kuk Ordinance (Cap 1097) or in any other Ordinance, the Secretary for Home Affairs shall not-

- (a)approve a person as a Village Representative;
- (b)issue a certificate recognizing a body as a Rural Committee;
- (c)approve a person as a Special or Co-opted Councillor,

where that person or body (or any of its members) has been elected or otherwise chosen by a procedure in which women have not been able to participate on equal terms with men, whether as candidates, nominees, electors or in some other relevant capacity.

(Enacted 1995)

Barristers

Section: 36Discrimination by, or in relation to, barristers

(1)It is unlawful for a barrister or barrister's clerk, in relation to any offer of a pupillage or tenancy, to discriminate against a woman-

- (a)in the arrangements which are made for the purpose of determining to whom it should be offered;
- (b)in respect of any terms on which it is offered; or
- (c)by refusing, or deliberately omitting, to offer it to her.

(2)It is unlawful for a barrister or barrister's clerk, in relation to a woman who is a pupil or tenant in the chambers concerned, to discriminate against her-

- (a)in respect of any terms applicable to her as a pupil or tenant;
- (b)in the opportunities for training, or gaining experience, which are afforded or denied to her;
- (c)in the benefits, facilities or services which are afforded or denied to her; or
- (d)by terminating her pupillage or by subjecting her to any pressure to leave the chambers or other detriment.

(3)It is unlawful for any person, in relation to the giving, withholding or acceptance of instructions to a barrister, to discriminate against a woman.

(4)In this section-

"barrister's clerk" includes any person carrying out any of the functions of a barrister's clerk;

"pupil" "pupillage" "tenancy" and "tenant" have the meanings commonly associated with their use in the context of a set of barristers' chambers.

(Enacted 1995)

Clubs

Section: 37Discrimination by clubs

(1)It is unlawful for a club, the committee of management of a club or a member of the committee of management of a club to discriminate against a woman who is not a member of the club-

- (a)by refusing or failing to accept her application for membership; or

(b) in the terms or conditions on which the club is prepared to admit her to membership.

(2) It is unlawful for a club, the committee of management of a club or a member of the committee of management of a club to discriminate against a woman who is a member of the club-

(a) in the terms or conditions of membership that are afforded to her,

(b) by refusing or failing to accept her application for a particular class or type of membership;

(c) by denying her access, or limiting her access, to any benefit, service or facility provided by the club;

(d) by depriving her of membership or varying the terms of membership; or

(e) by subjecting her to any other detriment.

(3) Nothing in subsection (1)(b) or (2) renders it unlawful to discriminate against a woman if the discrimination occurs in relation to the use or enjoyment of any benefit provided by the club where-

(a) it is not practicable for the benefit to be used or enjoyed-

(i) simultaneously; or

(ii) to the same extent,

by both men and women; and

(b) either-

(i) the same, or an equivalent, benefit is provided for the use of men and women separately from each other; or

(ii) men and women are each entitled to a fair and reasonable proportion of use enjoyment of the benefit.

(Enacted 1995)

Government

Section: 38 Government

(1) Subject to subsection (2), without prejudice to the operation of the other provisions of this Part in relation to the Government, it is unlawful for the Government to discriminate against a woman in the performance of its functions or the exercise of its powers.

(2) Subsection (1) shall not render unlawful-

(a) as regards a woman not having the right to enter and remain in Hong Kong, any act done under any immigration legislation governing entry into, stay in and departure from Hong Kong; or

(b) any act done in relation to a woman if it was necessary for that act to be done in order to comply with a requirement of an existing statutory provision.

(Enacted 1995)

Sexual harassment

Section: 39 Educational establishments

(1) It is unlawful for a person who is, or is a member of, the responsible body for an educational establishment to sexually harass a woman who is seeking to be, or who is, a student of the establishment.

(2) It is unlawful for a person who is a member of the staff of an educational establishment to sexually harass a woman who is seeking to be, or who is, a student of the establishment.

(3) It is unlawful for a person who is a student of an educational establishment to sexually harass a woman who is seeking to be, or who is, a student of the establishment.

(4) It is unlawful for a person who is seeking to be, or who is, a student of an educational establishment to sexually harass a woman-

(a) who is, or is a member of, the responsible body for; or

(b) who is a member of the staff of,
the establishment.

(Enacted 1995)

Section: 40 Other sexual harassment

(1) It is unlawful for a person to sexually harass a woman in the course of offering to provide, or providing goods, facilities or services to her.

(2) It is unlawful for a person, in relation to premises in Hong Kong of which he has power to dispose, to sexually harass a woman in the course of offering to provide, or providing, those premises to her.

(3) It is unlawful for a person, in relation to premises managed by him, to sexually harass a woman occupying the premises.

(4) Where the licence or consent of the landlord or of any other person is required for the disposal to any person of premises in Hong Kong comprised in a tenancy, it is unlawful for the landlord or other person to sexually harass a woman seeking the licence or consent for disposal of the premises to her.

(5) Section 30(4) shall apply to subsection (4) as it applies to section 30.

(6) It is unlawful for a barrister or barrister's clerk, in relation to any chambers, to sexually harass a woman-

(a) in the course of offering to provide to her pupillage or tenancy in the chambers; or

(b) who is a pupil or tenant in the chambers.

(7) It is unlawful for any person, in the course of the giving, withholding or acceptance of instructions to a barrister, to sexually harass a woman who is a barrister.

(8) Section 36(4) shall apply to subsections (6) and (7) as it applies to section 36.

(Enacted 1995)

Extent**Section: 41**Extent of Part IV

(1)Section 28(1)

(a)shall not apply to goods, facilities or services outside Hong Kong except as provided in subsections (2) and (3); and

(b)shall not apply to facilities by way of banking or insurance or for grants, loans, credit or finance, where the facilities are for a purpose to be carried out, or in connection with risks wholly or mainly arising, outside Hong Kong.

(2)Section 28(1) applies to the provision of facilities for travel outside Hong Kong where the refusal or omission occurs in Hong Kong or on a ship, aircraft or dynamically supported craft referred to in subsection (3).

(3)Section 28(1) applies on and in relation to-

(a)any ship registered in Hong Kong;

(b)any aircraft or dynamically supported craft registered in Hong Kong and operated by a person who has his principal place of business, or is ordinarily resident, in Hong Kong;

(c)any ship, aircraft or dynamically supported craft belonging to or possessed by the Government, even if the ship, aircraft or dynamically supported craft is outside Hong Kong.

(4)This section shall not render unlawful an act done in or over a place outside Hong Kong, or in or over that place's territorial waters, if any, for the purpose of complying with the laws of that place.

(5)Section 25 shall not apply to benefits, facilities or services outside Hong Kong except-

(a)travel on a ship registered in Hong Kong;

(b)benefits, facilities or services provided on a ship so registered.

(Enacted 1995)

PART V**OTHER UNLAWFUL ACTS****Section: 42**Discriminatory practices

(1)In this section "discriminatory practice" means the application of a requirement or condition which results in an act of discrimination which is unlawful by virtue of any provision of Part III or IV as read with section 5(1)(b), 7(1)(b) or 8(b) or which would be likely to result in such an act of discrimination if the persons to whom it is applied were not all of one sex.

(2)A person acts in contravention of this section if and so long as-

(a)he applies a discriminatory practice; or

(b)he operates practices or other arrangements which in any circumstances would call for the application by him of a discriminatory practice.

(3)Proceedings in respect of a contravention of this section shall be brought only by the Commission in accordance with the provisions of sections 77, 78, 79, 80 and 81.

(Enacted 1995)

Section: 43Discriminatory advertisements

(1)It is unlawful to publish or cause to be published an advertisement which indicates, or might reasonably be understood as indicating, an intention by a person to do any act which is or might be unlawful by virtue of Part III or IV.

(2)Subsection (1) shall not apply to an advertisement if the intended act would not in fact be unlawful.

(3)For the purposes of subsection (1), use of a job description which is sex specific shall be taken to indicate an intention to discriminate, unless the advertisement contains an indication to the contrary.

(4)The publisher of an advertisement made unlawful by subsection (1) shall not be subject to any liability under that subsection in respect of the publication of the advertisement if he proves-

(a)that the advertisement was published in reliance on a statement made to him by the person who caused it to be published to the effect that, by reason of the operation of subsection (2), the publication would not be unlawful; and

(b)that it was reasonable for him to rely on the statement.

(5)A person who knowingly or recklessly makes a statement of the kind referred to in subsection (4) which in a material respect is false or misleading commits an offence and is liable on conviction to a fine at level 4.

(Enacted 1995)

Section: 44Instructions to discriminate

It is unlawful for a person-

(a)who has authority over another person; or

(b)in accordance with whose wishes that other person is accustomed to act, to instruct him to do any act which is unlawful by virtue of Part III or IV, or procure or attempt to procure the doing by him of any such act.

(Enacted 1995)

Section: 45Pressure to discriminate

(1)It is unlawful to induce, or attempt to induce, a person to do any act which contravenes Part III or IV by-

(a)providing or offering to provide him with any benefit; or

(b)subjecting or threatening to subject him to any detriment.

(2)An offer or threat is not prevented from falling within subsection (1) because it is not made directly to the person concerned, if it is made in such a way that he is likely to hear of it.

(Enacted 1995)

Section: 46 Liability of employers and principals

(1) Anything done by a person in the course of his employment shall be treated for the purposes of this Ordinance as done by his employer as well as by him, whether or not it was done with the employer's knowledge or approval.

(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 be treated for the purposes of this Ordinance as done by that other person as well as by him.

(3) In proceedings brought under this Ordinance against any person in respect of an act alleged to have been done by an employee of his it shall be a defense for that person to prove that he took such steps as were reasonably practicable to prevent the employee from doing that act, or from doing in the course of his employment acts of that description.

(4) For the avoidance of doubt, it is hereby declared that this section shall not apply for the purposes of any criminal proceedings.

(Enacted 1995)

Section: 47 Aiding unlawful acts

(1) A person who knowingly aids another person to do an act made unlawful by this Ordinance shall be treated for the purposes of this Ordinance as himself doing an unlawful act of the like description.

(2) For the purposes of subsection (1), an employee or agent for whose act the employer or principal is liable under section 46 (or would be so liable but for section 46 (3)) shall be deemed to aid the doing of the act by the employer or principal.

(3) A person does not under this section knowingly aid another to do an unlawful act if-

(a) he acts in reliance on a statement made to him by that other person that, by reason of any provision of this Ordinance, the act which he aids would not be unlawful; and

(b) it is reasonable for him to rely on the statement.

(4) A person who knowingly or recklessly makes a statement of the kind referred to in subsection (3)(a) which in a material respect is false or misleading commits an offence and is liable on conviction to a fine at level 4.

(Enacted 1995)

**PART VI
GENERAL EXCEPTIONS FROM PARTS III TO V****Section: 48 Special measures**

Nothing in Part III, IV or V shall render unlawful an act that is reasonably intended to-

(a) ensure that persons of a particular sex or marital status, or who are pregnant, have equal opportunities with other persons in circumstances in relation to which a provision is made by this Ordinance.

(b) afford persons of a particular sex or marital status, or who are pregnant, goods or access to services, facilities or opportunities to meet their special needs in relation to-

(i) employment, education, clubs or sport; or

(ii) the provision of premises, goods, services or facilities;

(c) afford persons of a particular sex or marital status, or who are pregnant, grants, benefits or programmes, whether direct or indirect, to meet their special needs in relation to-

(i) employment, education, clubs or sport; or

(ii) the provision of premises, goods, services or facilities.

(Enacted 1995)

Section: 49 Charities

(1) Nothing in Part III, IV or V shall-

(a) be construed as affecting a provision to which this subsection applies; or

(b) render unlawful an act which is done in order to give effect to such a provision.

(2) Subsection (1) applies to a provision for conferring benefits on persons of one sex only (disregarding any benefits to persons of the opposite sex which are exceptional or are relatively insignificant), being a provision which is contained in a charitable instrument.

(3) In applying this section, account shall be taken of section 88 of the Inland Revenue Ordinance (Cap 112).

(4) In this section

"charitable instrument" means an enactment or other instrument so far as it relates to charitable purposes;

"charitable purposes" means purposes which are exclusively charitable according to any enactment or rule of law.

(Enacted 1995)

Section: 50 Sport, etc.

Nothing in Part III, IV or V shall, in relation to any sport, game or other activity of a competitive nature where the physical strength, stamina or physique of the average woman puts her at a disadvantage to the average man, render unlawful any act related to the participation of a person as a competitor in events involving that activity which are confined to competitors of one sex.

(Enacted 1995)

Section: 51 Insurance, etc.

Nothing in Part III, IV or V shall render unlawful the treatment of a person in relation to any class of insurance business, or similar matter involving the assessment of risk, where the treatment-

(a) was effected by reference to actuarial or other data from a source on which it was reasonable to rely; and

(b) was reasonable having regard to the data and any other relevant factors.

(Enacted 1995)

Section: 52 Communal accommodation

(1) In this section "communal accommodation" means residential accommodation which includes dormitories or other shared sleeping accommodation which for reasons of privacy or decency should be used by men only, or by women only (but which may include some shared sleeping accommodation for men, and some for women, or some ordinary sleeping accommodation).

(2) In this section "communal accommodation" also includes residential accommodation all or part of which should be used by men only, or by women only, because of the nature of the sanitary facilities serving the accommodation.

(3) Nothing in Part III or IV shall render unlawful sex discrimination in the admission of persons to communal accommodation if the accommodation is managed in a way which, given the exigencies of the situation, comes as near as may be to fair and equitable treatment of men and women.

(4) In applying subsection (3) account shall be taken of-

(a) whether and how far it is reasonable to expect that the accommodation should be altered or extended, or that further alternative accommodation should be provided; and

(b) the frequency of the demand or need for use of the accommodation by men as compared with women.

(5) Nothing in Part III or IV shall render unlawful sex discrimination against a woman, or against a man, in respect of the provision of any benefit, facility or service if-

(a) the benefit, facility or service cannot properly and effectively be provided except for those using communal accommodation; and

(b) in the relevant circumstances the woman or the man, as the case may be, could lawfully be refused the use of the accommodation by virtue of subsection (3).

(6) Neither subsection (3) nor subsection (5) is a defense to an act of sex discrimination under Part III unless such arrangements as are reasonably practicable are made to compensate for the detriment caused by the discrimination; but in considering under subsection (5)(b) whether the use of communal accommodation could lawfully be refused (in a case based on Part III), it shall be assumed that the requirements of this subsection have been complied with in respect of subsection (3).

(7) This section is without prejudice to the generality of section 34(1)(c).

(Enacted 1995)

Section: 53 Discriminatory training by certain bodies

(1) Nothing in Part III, IV or V shall render unlawful any act done in relation to particular work by any person in, or in connection with-

(a) affording women only, or men only, access to facilities for training which would help to fit them for that work; or

(b) encouraging women only, or men only, to take advantage of opportunities for doing that work, where it reasonably appears to that person that at any time within the 12 months immediately preceding the doing of the act there were no persons of the sex concerned doing that work in Hong Kong, or the number of persons of that sex doing the work in Hong Kong was comparatively small.

(2) Nothing in Part III, IV or V shall render unlawful any act done by any person in, or in connection with, affording persons access to facilities for training which would help to fit them for employment, where it reasonably appears to that person that those persons are in special need of training by reason of the period for which they have been discharging domestic or family responsibilities to the exclusion of regular full time employment.

(3) For the avoidance of doubt, it is hereby declared that the discrimination in relation to which subsection (2) applies may result from confining the training to persons who have been discharging domestic or family responsibilities, or from the way persons are selected for training, or both.

(4) This section shall not apply in relation to any discrimination which is rendered unlawful by section 11.

(Enacted 1995)

Section: 54 Other discriminatory training, etc.

(1) Nothing in Part III, IV or V shall render unlawful any act done by an employer in relation to particular work in his employment, being an act done in, or in connection with-

(a) affording his female employees only, or his male employees only, access to facilities for training which would help to fit them for that work; or

(b) encouraging women only, or men only, to take advantage of opportunities for doing that work, where at any time within the 12 months immediately preceding the doing of the act there were no persons of the sex concerned among those doing that work or the number of persons of that sex doing the work was comparatively small.

(2) Nothing in section 16 shall render unlawful any act done by an organization to which that section applies in, or in connection with-

(a) affording female members of the organization only, or male members of the organization only, access to facilities for training which would help to fit them for holding a post of any kind in the organization; or

(b) encouraging female members only, or male members only, to take advantage of opportunities for holding such posts in the organization,

where at any time within the 12 months immediately preceding the doing of the act there were no persons of the sex concerned among persons holding such posts in the organization or the number of persons of that sex holding such posts was comparatively small.

(3) Nothing in Part III, IV or V shall render unlawful any act done by an organization to which section 16 applies in, or in connection with, encouraging women only, or men only, to become members of the organization where at any time within the 12 months immediately preceding the doing of the act there were no persons of the sex concerned among those members or the number of persons of that sex among the members was comparatively small.

(Enacted 1995)

Section: 55 Trade unions, etc.: elective bodies

(1) If an organization to which section 16 applies comprises a body the membership of which is wholly or mainly elected, nothing in that section shall render unlawful provision which ensures that a minimum number of persons of one sex are members of the body-

(a) by reserving seats on the body for persons of that sex; or

(b) by making extra seats on the body available (by election or co-option or otherwise) for persons of that sex on occasions when the number of persons of that sex in the other seats is below the minimum, where in the opinion of the organization the provision is in the circumstances needed to secure a reasonable lower limit to the number of members of that sex serving on the body; and nothing in Part III, IV or V shall render unlawful any act done in order to give effect to such a provision.

(2) This section shall not be taken as making lawful-

(a) discrimination in the arrangements for determining the persons entitled to vote in an election of members of the body, or otherwise to choose the persons to serve on the body; or

(b) discrimination in any arrangements concerning membership of the organization itself.

(Enacted 1995)

Section: 56 Indirect access to benefits, etc.

(1) References in this Ordinance to the affording by any person of access to benefits, facilities or services are not limited to benefits, facilities or services provided by that person himself, but include any means by which it is in that person's power to facilitate access to benefits, facilities or services provided by any other person ("actual provider").

(2) Where by any provision of this Ordinance the affording by any person of access to benefits, facilities or services in a discriminatory way is in certain circumstances prevented from being unlawful, the effect of the provision shall extend also to the liability under this Ordinance of any actual provider.

(Enacted 1995)

Section: 56A Double benefits for married persons

(1) For avoidance of doubt, it is hereby declared that nothing in Part III, IV or V renders it unlawful for a person to refuse or omit to provide a benefit or allowance relating to housing, education, air-conditioning, passage or baggage to a married person if the married person's spouse receives or has received the same or a similar benefit or allowance, whether from the first-mentioned person or from another.

(2) In this section-

"allowance" includes part of an allowance;

"benefit" includes part of a benefit.

(Added 71 of 1997 s.5)

Section: 56B Reproductive technology

(1) Nothing in Part IV or V renders unlawful any discrimination between persons of different marital status arising from the provision of any reproductive technology procedure.

(2) In this section, "reproductive technology procedure" means any medical treatment or scientific intervention directed at assisting human reproduction by artificial means, and includes in vitro fertilization, artificial insemination, gender selection and manipulation of gametes or embryos outside the body.

(Added 71 of 1997 s.5)

Section: 56C Adoption

Nothing in Part III, IV or V renders unlawful any discrimination between persons of different marital status arising from the provision of any facilities or services relating to the adoption of any infant within the meaning of section 2 of the Adoption Ordinance (Cap 290).

(Added 71 of 1997 s.5)

Section: 57 Acts done for purposes of protection of women

(1) Nothing in-

(a) the provisions of Part III,

(b) the provisions of Part IV so far as it applies to vocational training; or

(c) the provisions of Part V so far as it has effect in relation to any of the provisions referred to in paragraph (a) or (b), shall render unlawful any act done by a person in relation to a woman if-

(i) it was necessary for that person to do it in order to comply with a requirement of an existing statutory provision concerning the protection of women; or

(ii) it was necessary for that person to do it in order to comply with a requirement of a provision specified in Schedule 3 and it was done by that person for the purpose of the protection of the woman concerned (or of any class of women that included that woman).

(2) In subsection (1)-

(a) the reference in paragraph (i) of that subsection to an existing statutory provision concerning the protection of women is a reference to any such provision having effect for the purpose of protecting women as regards-

(i) pregnancy or maternity; or

(ii) other circumstances giving rise to risks specifically affecting women, whether the provision relates only to such protection or to the protection of any other class of persons as well;

(b) the reference in paragraph (ii) of that subsection to the protection of a particular woman or class of women is a reference to the protection of that woman or those women as regards any circumstances falling within paragraph (a) (i) or (ii).

(3) Subject to subsection (4), the provisions of section 12(2) (g), subsections (1)(ii) and (2)(b) and Schedule 3 shall expire on the 2nd anniversary of the day on which this Ordinance is enacted. (Amended L. N. 305 of 1996)

(4) Prior to the expiry of the provisions referred to in subsection (3), the Legislative Council may, by resolution, amend that subsection to extend those provisions for a period of one year.

(Enacted 1995)

Section: 58 Acts done under statutory authority to be exempt from certain provisions of Part IV

(1) Nothing in-

(a) the relevant provisions of Part IV; or

(b)Part V so far as it has effect in relation to those provisions,

shall render unlawful any act done by a person if it was necessary for that person to do it in order to comply with a requirement of an existing statutory provision.

(2)In subsection (1), "the relevant provisions of Part IV" means the provisions of Part IV except so far as they apply to vocational training or sexual harassment.

(Enacted 1995)

Section: 59Acts safeguarding security of Hong Kong

(1)Nothing in Part III, IV or V shall render unlawful an act done for the purpose of safeguarding the security of Hong Kong.

(2)A certificate purporting to be signed by or on behalf of the Chief Secretary and certifying that an act specified in the certificate was done for the purpose of safeguarding the security of Hong Kong shall be conclusive evidence that it was done for that purpose.

(3)A document purporting to be a certificate referred to in subsection (2) shall be received in evidence and, in the absence of evidence to the contrary, shall be deemed to be such a certificate.

(4)Subsections (2) and (3) shall not have effect in relation to the determination of the question whether any act is rendered unlawful by-

(a)Part III;

(b)Part IV so far as it applies to vocational training; or

(c)Part V as read with-

(i)Part III; or

(ii)Part IV so far as it applies to vocational training.

(Enacted 1995)

Section: 60Construction of references to vocational training

In sections 57 and 58, "vocational training" includes-

(a)retraining; and

(b)vocational guidance.

(Enacted 1995)

Section: 61Application to New Territories land

Nothing in Part IV or V shall-

(a)be construed as affecting the operation of any of the provisions of-

(i)the New Territories Ordinance (Cap 97); or

(ii)the New Territories Leases (Extension) Ordinance (Cap 150); or

(b) render unlawful any act done by any person in, or in connection with, the operation of any of those provisions.

(Enacted 1995)

Section: 62 Further exceptions

(1) No provision or Part of this Ordinance specified in column 1 of Part 2 of Schedule 5 shall render unlawful any discrimination specified opposite thereto in column 2 of that Part.

(2) Nothing in Part III, IV or V shall render unlawful any act done by any person-

(a) in connection with any discrimination which is not unlawful by virtue of the operation of subsection (1); and

(b) to the extent that it is done for the purposes of that discrimination.

(Enacted 1995)

PART VII EQUAL OPPORTUNITIES COMMISSION

General

Section: 63 Establishment of Commission

(1) There is hereby established a body corporate to be called the Equal Opportunities Commission.

(2) The Commission shall have perpetual succession and a common seal and shall be capable of suing and being sued.

(3) The Governor shall appoint to be members of the Commission-

(a) a Chairperson; and

(b) not less than 4 or more than 16 other members,

each being an individual who is not a public officer.

(4) The members of the Commission shall form its governing body with authority, in the name of the Commission, to perform the functions and exercise the powers of the Commission.

(5) The members of the Commission may be appointed on a full-time or part-time basis as the Governor thinks fit except that the Chairperson shall be appointed on a full-time basis.

(6) The relevant provisions of Schedule 6 shall have effect with respect to the Commission and its members.

(7) The Commission shall not be regarded as a servant or agent of the Government or as enjoying any status, immunity or privilege of the Government.

(8) Part VII of the Interpretation and General Clauses Ordinance (Cap 1) shall apply to the Commission and appointments to the Commission except in so far as that Part is inconsistent with the provisions of this Ordinance.

(9) Every appointment under subsection (3) shall be notified in the Gazette.

(10) The Governor in Council may, by notice in the Gazette, amend subsection (3)(b) by substituting another number for any number appearing in that subsection.

(Enacted 1995)

Section: 64 Functions and powers of Commission

(1) The Commission shall-

- (a) work towards the elimination of discrimination;
- (b) promote equality of opportunity between men and women generally;
- (c) work towards the elimination of sexual harassment;
- (d) in the case of any act alleged to be unlawful by virtue of this Ordinance, encourage persons who are concerned with the matter to which the act relates to effect a settlement of the matter by conciliation, whether under section 84 or otherwise;
- (e) keep under review the working of this Ordinance and, when it is so required by the Governor or otherwise thinks it necessary, draw up and submit to the Governor proposals for amending this Ordinance; and
- (f) perform such other functions as are imposed on it under this Ordinance or any other enactment.

(2) The Commission may do all such things as are necessary for, or incidental or conducive to, the better performance of its functions and in particular but without prejudice to the generality of the foregoing, may-

- (a) establish such committees as it thinks fit;
- (b) acquire and hold property of any description if in the opinion of the Commission such property is necessary for-
 - (i) the accommodation of the Commission or of any committee; or
 - (ii) the performance of any function which the Commission may perform,
 and, subject to the terms and conditions upon which such property is held, dispose of it;
- (c) enter into, carry out, assign or accept the assignment of, vary or rescind, any contract, agreement or other obligation;
- (d) employ such persons as it thinks fit to carry out any matter relating to the performance of its functions or the exercise of its powers;
- (e) without prejudice to the generality of paragraph (d), engage the services of such persons as it thinks fit to carry out any matter relating to the performance of its functions or the exercise of its powers under section 84,
- (f) engage the services of such technical and professional advisers as it thinks fit to advise the Commission on any matter relating to the performance of its functions or the exercise of its powers;
- (g) undertake and execute any lawful trust which has as an object the furtherance of any function which the Commission is required or is permitted by this Ordinance to perform or any other similar object;
- (h) accept and solicit gifts and donations, whether subject to any trust or not;

(i)with the prior approval of the Governor, become a member of or affiliate to any international body concerned with (whether in whole or in part) the elimination of discrimination;

(j)exercise such other powers as are conferred on it under this Ordinance or any other enactment.

(3)The relevant provisions of Schedule 6 shall have effect with respect to a committee and its members.

(4)Part VII of the Interpretation and General Clauses Ordinance (Cap 1) shall apply to a committee and appointments to the committee except in so far as that Part is inconsistent with the provisions of this Ordinance.

(Enacted 1995)

Section: 65Research and education

(1)The Commission may undertake or assist (financially or otherwise) the undertaking by other persons of any research, and any educational activities, which appear to the Commission necessary or expedient for the performance of its functions.

(2)The Commission may impose reasonable charges for educational or other facilities or services made available by it.

(3)The Commission shall not provide any financial assistance under subsection (1) except with the prior approval of the Secretary for Home Affairs given, after consulting with the Secretary for the Treasury, generally or in any particular case.

(Enacted 1995)

Section: 66Review of Schedules 3 and 5

(1)Without prejudice to the generality of section 64(1), the Commission, pursuant to its functions under paragraphs (a) and (b) of that section, shall keep Schedules 3 and 5 under review.

(2)Whenever the Commission thinks it necessary, it shall draw up and submit to the Governor proposals for-

(a)amending the provisions specified in Schedule 3;

(b)amending Schedule 5.

(Enacted 1995)

Section: 67Delegations

(1)Subject to subsection (2), the Commission may, with or without restrictions as it thinks fit, delegate in writing any of its functions or powers to-

(a)any member of the Commission;

(b)any committee;

(c)any employee of the Commission;

(d)any conciliator.

(2)The Commission shall not delegate any of its functions or powers under-

(a)subsection (1) or section 64(2)(a) or 88,

(b)any provisions of any regulations made under section 89 which are specified in the regulations as provisions which shall not be subject to subsection (1);

(c)any provisions of any rules made under section 88 which are specified in the rules as provisions which shall not be subject to subsection (1);

(d)any provisions of Schedule 6 which are specified in that Schedule as provisions which shall not be subject to subsection (1).

(3)A delegate of the Commission-

(a)shall perform the delegated functions and may exercise the delegated powers as if the delegate were the Commission; and

(b)shall be presumed to be acting in accordance with the relevant delegation in the absence of evidence to the contrary.

(Enacted 1995)

Section: 68Protection of members of Commission, etc.

(1)No person to whom this subsection applies, acting in good faith, shall be personally liable in damages for any act done or default made in the performance or purported performance of any function, or the exercise or purported exercise of any power, imposed or conferred on the Commission under this Ordinance.

(2)The protection conferred under subsection (1) on any person to whom that subsection applies in respect of any act or default shall not in any way affect the liability of the Commission for that act or default.

(3)The persons to whom subsection (1) applies are-

(a)any member of the Commission or a committee;

(b)any employee of the Commission;

(c)any conciliator.

(Enacted 1995)

Codes of practice

Section: 69Codes of practice

(1)The Commission may issue codes of practice containing such practical guidance as it thinks fit for the purposes of-

(a)the elimination of discrimination;

(b)the promotion of equality of opportunity between men and women generally;

(c)the elimination of sexual harassment.

(2)When the Commission proposes to issue a code of practice, it shall prepare and publish (otherwise than in the Gazette) the code, shall consider any representations made to it about the code and may modify the code accordingly.

(3) In the course of preparing any code of practice for eventual publication under subsection (2), the Commission shall, where the code relates (whether in whole or in part) to the elimination of discrimination in the field of employment, consult with-

(a) such organizations or associations of organizations representative of employers or of workers; and

(b) such other organizations, or bodies,

as appear to the Commission to be appropriate.

(4) If the Commission determines to proceed with a code of practice published under subsection (2), it shall cause the code to be-

(a) published in the Gazette; and

(b) laid on the table of the Legislative Council at the next sitting after its publication in the Gazette.

(5) Where a code of practice has been laid on the table of the Legislative Council under subsection (4), the Legislative Council may, by resolution passed at a sitting of the Legislative Council held before the expiration of a period of 28 days after the sitting at which it was so laid, provide that the code of practice shall be amended in any manner consistent with this section.

(6) If the period referred to in subsection (5) would but for this subsection expire-

(a) after the end of a session of the Legislative Council or a dissolution thereof, but

(b) on or before the day of the second sitting of the Legislative Council in the next following session thereof,

that period shall be deemed to extend to and expire on the day after that second sitting.

(7) Before the expiration of the period referred to in subsection (5) or that period as extended by virtue of subsection (6), the Legislative Council may by resolution in relation to a code of practice specified therein extend that period or that period as so extended to the next sitting.

(8) A resolution passed by the Legislative Council in accordance with this section shall be published in the Gazette not later than 14 days after the passing thereof or within such further period as the Governor may allow in any particular case.

(9) A code of practice issued under this section shall come into operation-

(a) in the case where before the expiration of the period referred to in subsection (5), or before the expiration of that period as extended under subsection (6) or (7), the Legislative Council does not pass a resolution amending the code of practice, upon the expiration of that period, or upon the expiration of that period as so extended, as the case may be; and

(b) in the case where the Legislative Council passes a resolution amending the code of practice, upon the expiration of the day next preceding the day of the publication in the Gazette of such resolution under subsection (8).

(10) A code of practice issued under this section may contain such transitional provisions or savings as appear to the Commission to be necessary or expedient in connection with the matters the subject of the code.

(11) The Commission may from time to time revise the whole or any part of a code of practice issued under this section and issue that revised code, and subsections (2) to (10)

shall apply (with appropriate modifications) to such a revised code as they apply to the first issue of a code.

(12) Without prejudice to the generality of subsection (1), a code of practice issued under this section may include such practical guidance as the Commission thinks fit as to what steps it is reasonably practicable for employers to take for the purpose of preventing their employees from doing in the course of their employment acts made unlawful by this Ordinance.

(13) Without prejudice to the generality of subsection (1), a code of practice issued under this section, in so far as it relates to the elimination of discrimination between men and women as regards terms of employment, may-

(a) make reference to any of the provisions of any enactment (howsoever described) of any place outside Hong Kong where such enactment relates (whether in whole or in part) to the elimination of such discrimination;

(b) incorporate any of those provisions;

(c) both make reference to and incorporate any of those provisions,

as the Commission thinks fit and subject to such modifications, if any, to those provisions as the Commission thinks fit and specified in the code.

(14) A failure on the part of any person to observe any provision of a code of practice shall not of itself render him liable to any proceedings; but in any proceedings under this Ordinance before any court any code of practice issued under this section shall be admissible in evidence, and if any provision of such a code appears to the court to be relevant to any question arising in the proceedings it shall be taken into account in determining that question.

(15) In this section, "sitting", when used to calculate time, means the day on which the sitting commences and only includes a sitting at which subsidiary legislation is included on the order paper.

(Enacted 1995)

Investigations

Section: 70 Power to conduct formal investigations

Without prejudice to the generality of section 64(1), the Commission may if it thinks fit, and shall if required by the Chief Secretary, conduct a formal investigation for any purpose connected with the carrying out of any of its functions under that section.

(Enacted 1995)

Section: 71 Terms of reference

(1) The Commission shall not embark on a formal investigation unless the requirements of this section have been complied with.

(2) Terms of reference for the formal investigation shall be drawn up by the Commission or, if the Commission was required by the Chief Secretary to conduct the investigation, by the Chief Secretary after consulting the Commission.

(3) It shall be the duty of the Commission to give general notice of the holding of the formal investigation unless the terms of reference confine it to activities of persons named in them,

but in such a case the Commission shall in the prescribed manner give those persons notice of the holding of the investigation.

(4) Where the terms of reference of the formal investigation confine it to activities of persons named in them and the Commission in the course of it proposes to investigate any act made unlawful by this Ordinance which it believes that a person so named may have done, the Commission shall-

(a) inform that person of its belief and of its proposal to investigate the act; and

(b) offer him an opportunity of making oral or written representations with regard to it (or both oral and written representations if he thinks fit),

and a person so named who avails himself of an opportunity under this subsection of making oral representations may be represented-

(i) by counsel or a solicitor; or

(ii) by some other person of his choice, not being a person to whom the Commission objects on the ground that he is unsuitable.

(5) The Commission or, if the Commission was required by the Chief Secretary to conduct the formal investigation, the Chief Secretary after consulting the Commission may from time to time revise the terms of reference; and subsections (1), (3) and (4) shall apply to the revised investigation and terms of reference as they applied to the original.

(Enacted 1995)

Section: 72 Power to obtain information

Remarks:

Amendments retroactively made-see 25 of 1998 s.2

(1) For the purposes of a formal investigation the Commission, by a notice in the prescribed form served on him in the prescribed manner-

(a) may require any person to furnish such written information as may be described in the notice, and may specify the time at which, and the manner and form in which, the information is to be furnished;

(b) may require any person to attend at such time and place as is specified in the notice and give oral information about, and produce all documents in his possession or control relating to, any matter specified in the notice.

(2) Except as provided by section 79, a notice shall be served under subsection (1) only where -

(a) service of the notice was authorized in writing by or on behalf of the Chief Secretary; or

(b) the terms of reference of the formal investigation state that the Commission believes that a person named in them may have done or may be doing acts of all or any of the following descriptions-

(i) unlawful discriminatory acts;

(ii) unlawful acts of sexual harassment;

(iii) contravention of section 42;

(iv) contravention of section 43, 44 or 45, and confine the investigation to those acts.

(3) A notice under subsection (1) shall not require a person-

(a) to give information, or produce any documents, which he could not be compelled to give in evidence, or produce, in civil proceedings before the Court of First Instance; or (Amended 25 of 1998 s.2)

(b) to attend at any place unless the necessary expenses of his journey to and from that place are paid or tendered to him.

(4) If a person fails to comply with a notice served on him under subsection (1) or the Commission has reasonable cause to believe that he intends not to comply with it, the Commission may apply to the District Court for an order requiring him to comply with it or with such directions for the like purpose as may be contained in the order; and section 66A of the District Court Ordinance (Cap 336) shall apply to failure without reasonable excuse to comply with any such order as it applies in the cases there provided.

(5) A person commits an offence if he-

(a) willfully alters, suppresses, conceals or destroys a document which he has been required by a notice or order under this section to produce; or

(b) in complying with such a notice or order, knowingly or recklessly makes any statement which in a material respect is false or misleading,

and is liable on conviction to a fine at level 4.

Section: 73 Recommendations and reports on formal investigations

(1) If in the light of any of its findings in a formal investigation it appears to the Commission necessary or expedient, whether during the course of the investigation or after its conclusion -

(a) to make to any persons, with a view to promoting equality of opportunity between men and women who are affected by any of their activities, recommendations for changes in their policies or procedures, or as to any other matters; or

(b) to make to the Chief Secretary any recommendations, whether for changes in the law or otherwise, the Commission shall make those recommendations accordingly.

(2) The Commission shall prepare a report of its findings in any formal investigation conducted by it.

(3) If the formal investigation is one required by the Chief Secretary-

(a) the Commission shall deliver the report to the Chief Secretary; and

(b) the Chief Secretary shall cause the report to be published in such manner as he thinks fit, and unless required by the Chief Secretary the Commission shall not publish the report.

(4) If the formal investigation is not one required by the Chief Secretary, the Commission shall publish the report or make it available for inspection in accordance with subsection (5).

(5) Where under subsection (4) a report is to be made available for inspection, any person shall be entitled, on payment of such reasonable fee, if any, as may be determined by the Commission-

(a) to inspect the report during ordinary office hours and take copies of all or any part of the report; or

(b) to obtain from the Commission a copy, certified by the Commission to be correct, of the report.

(6) The Commission may if it thinks fit determine that the right conferred by subsection (5)(a) shall be exercisable in relation to a copy of the report instead of, or in addition to, the original.

(7) The Commission shall give general notice of the place or places where, and the times when, reports may be inspected under subsection (5).

(Enacted 1995)

Section: 74 Restrictions on disclosure of information

(1) No information given to the Commission by any person ("the informant") in connection with a formal investigation shall be disclosed by the Commission, any member of the Commission or a committee, any employee of the Commission, any conciliator, or any person who has been such a member, employee or conciliator, except-

(a) on the order of any court;

(b) with the informant's consent;

(c) in the form of a summary or other general statement published by the Commission which does not identify the informant or any other person to whom the information relates;

(d) in a report of the investigation published by the Commission or made available for inspection under section 73(5);

(e) to members of the Commission or a committee, employees of the Commission or conciliators or, so far as may be necessary for the proper performance of the functions of the Commission, to other persons;

(f) for the purpose of any civil proceedings under this Ordinance to which the Commission is a party, or any criminal proceedings.

(2) Any person who discloses information in contravention of subsection (1) commits an offence and is liable on conviction to a fine at level 4.

(3) In preparing any report for publication or for inspection the Commission shall exclude, so far as is consistent with its functions and the object of the report, any matter which relates to the private affairs of any individual or business interests of any person where the publication of that matter might, in the opinion of the Commission, prejudicially affect that individual or person.

(Enacted 1995)

PART VIII ENFORCEMENT

General

Section: 75 Restrictions of proceedings for contravention of Ordinance

(1) Except as provided by this Ordinance no proceedings, whether civil or criminal, shall lie against any person in respect of an act by reason that the act is unlawful by virtue of a provision of this Ordinance.

(2) Subsection (1) shall not preclude the making of an order of certiorari, mandamus or prohibition.

(Enacted 1995)

Section: 76 Claims under Part III or IV

Remarks:

Amendments retroactively made-see 25 of 1998 s.2

(1) A claim by any person ("the claimant") that another person ("the respondent")-

(a) has committed an act of discrimination against the claimant which is unlawful by virtue of Part III or IV;

(b) is by virtue of section 46 or 47 to be treated as having committed such an act of discrimination against the claimant; or

(c) has committed an act of sexual harassment against the claimant which is unlawful by virtue of Part III or IV,

may be made the subject of civil proceedings in like manner as any other claim in tort.

(2) Subsection (1) shall not apply to a claim under section 17(1) of an act in respect of which an appeal, or proceedings in the nature of an appeal, may be brought under any enactment.

(3) Proceedings under subsection (1) shall be brought in the District Court but all such remedies shall be obtainable in such proceedings as, apart from this subsection and section 75(1), would be obtainable in the Court of First Instance. (Amended 25 of 1998 s.2)

(3A) Without limiting the generality of the power conferred by subsection (3), the District Court may-

(a) make a declaration that the respondent has engaged in conduct, or committed an act, that is unlawful under this Ordinance, and order that the respondent shall not repeat or continue such unlawful conduct or act;

(b) order that the respondent shall perform any reasonable act or course of conduct to redress any loss or damage suffered by the claimant;

(c) order that the respondent shall employ or re-employ the claimant;

(d) order that the respondent shall promote the claimant;

(e) order that the respondent pay to the claimant damages by way of compensation for any loss or damage suffered by reason of the respondent's conduct or act;

(f) order that the respondent shall pay to the claimant punitive or exemplary damages; or

(g) make an order declaring void in whole or part and either ab initio or from such date as may be specified in the order, any contract or agreement made in contravention of this Ordinance. (Added 71 of 1997 s.7)

(4) By virtue of this subsection and notwithstanding any law, the District Court shall have jurisdiction to hear and determine any proceedings under subsection (1) and shall have all such powers as are necessary or expedient for it to have in order to provide, grant or make any remedy, injunction or order mentioned in this Ordinance. (Replaced 71 of 1997 s.6).

(5) In respect of an unlawful act of discrimination falling within section 5 (1)(b), 7(1)(b) or 8 (b), no award of damages shall be made if the respondent proves that the requirement or condition concerned was not applied with the intention of treating the claimant unfavorable on the ground of the claimant's sex, marital status or pregnancy, as the case may be.

(6) For the avoidance of doubt, it is hereby declared that damages in respect of an unlawful act of discrimination or sexual harassment may include compensation for injury to feelings whether or not they include compensation under any other head.

(7)-(8) (Repealed 71 of 1997 s.6)

Enforcement notices

Section: 77 Issue of enforcement notices

(1) This section applies to any act which is-

- (a) an unlawful discriminatory act;
- (b) an unlawful act of sexual harassment;
- (c) a contravention of section 42; or
- (d) a contravention of section 43, 44 or 45,

and so applies whether or not proceedings have been brought in respect of the act.

(2) If in the course of a formal investigation the Commission becomes satisfied that a person is committing, or has committed, any acts to which this section applies, the Commission may in the prescribed manner serve on him a notice in the prescribed form requiring him-

(a) not to commit any such acts (which may include discontinuing or changing any of his practices or other arrangements which occasioned those acts, in particular to avoid any repetition thereof); and

(b) where compliance with paragraph (a) involves changes in any of his practices or other arrangements-

(i) to inform the Commission that he has effected those changes and what those changes are; and

(ii) to take such steps as may be reasonably required by the notice for the purpose of affording that information to other persons concerned.

(3) An enforcement notice may also require the person on whom it is served to furnish the Commission with such other information as may be reasonably required by the notice in order to verify that the notice has been complied with.

(4) An enforcement notice may specify the time at which, and the manner and form in which, any information is to be furnished to the Commission, but the time at which any information is to be furnished in compliance with the notice shall not be later than 5 years after the notice has become final.

(5) Section 72(4) shall apply to requirements under subsections (2)(b), (3) and (4) contained in an enforcement notice which has become final as it applies to requirements in a notice served under section 72(1).

(Enacted 1995)

Section: 78Appeal against enforcement notice

(1) Not later than 45 days after an enforcement notice is served on any person he may appeal against any requirement of the notice to the District Court.

(2) Where the District Court considers a requirement in respect of which an appeal is brought under subsection (1) to be unreasonable because it is based on an incorrect finding of fact or for any other reason, the Court shall quash the requirement.

(3) On quashing a requirement under subsection (2), the District Court may direct that the enforcement notice shall be treated as if, in place of the requirement quashed, it had contained a requirement in terms specified in the direction.

(4) Subsection (1) shall not apply to a requirement treated as included in an enforcement notice by virtue of a direction under subsection (3).

(Enacted 1995)

Section: 79Investigation as to compliance with enforcement notice

(1) If-

(a) the terms of reference of a formal investigation state that its purpose is to determine whether any requirements of an enforcement notice are being or have been carried out, but section 72(2)(b) does not apply; and

(b) section 71(3) is complied with in relation to the investigation on a date ("the commencement date") not later than the expiration of the period of 5 years beginning when the enforcement notice became final,

the Commission may within the relevant period serve notices under section 72(1) for the purposes of the investigation without needing to obtain the consent of the Chief Secretary.

(2) In subsection (1), "relevant period" means the period beginning on the commencement date and ending on the later of the following dates-

(a) the date on which the period of 5 years referred to in subsection (1)(b) expires;

(b) the date 2 years after the commencement date.

(Enacted 1995)

Section: 80Register of enforcement notices

(1) The Commission shall establish and maintain a register ("the register") of enforcement notices which have become final.

(2) Any person shall be entitled, on payment of such reasonable fee, if any, as may be determined by the Commission-

(a) to inspect the register during ordinary office hours and take copies of any entry; or

(b) to obtain from the Commission a copy, certified by the Commission to be correct, of any entry in the register.

(3) The Commission may, if it thinks fit, determine that the right conferred by subsection (2) (a) shall be exercisable in relation to a copy of the register instead of, or in addition to, the original.

(4)The Commission shall give general notice of the place or places where, and the times when, the register or a copy of it may be inspected.

(Enacted 1995)

Other enforcement by Commission

Section: 81Persistent discrimination or sexual harassment

If, during the period of 5 years beginning on the date on which either of the following became final in the case of any person, namely-

(a)an enforcement notice served on him;

(b)a finding by the District Court under section 76 that he has done an unlawful discriminatory act or unlawful act of sexual harassment,

it appears to the Commission that unless restrained he is likely to do one or more acts falling within paragraph (b), or contravening section 42, the Commission may apply to the District Court for an injunction restraining him from doing so; and the District Court, if satisfied that the application is well-founded, may grant the injunction in the terms applied for or in more limited terms.

(Enacted 1995)

Section: 82Enforcement of sections 43, 44 and 45

(1)Proceedings in respect of a contravention of section 43, 44 or 45 shall be brought only by the Commission in accordance with the provisions of this section.

(2)The proceedings shall be-

(a)an application for a decision whether the alleged contravention occurred; or

(b)an application under subsection (4),

or both.

(3)An application under subsection (2)(a) shall be made to the District Court.

(4)If it appears to the Commission-

(a)that a person has done an act which by virtue of section 43, 44 or 45 was unlawful; and

(b)that unless restrained he is likely to do further acts which by virtue of that section are unlawful, the Commission may apply to the District Court for an injunction restraining him from doing so; and the District Court, if satisfied that the application is well-founded, may grant the injunction in the terms applied for or in more limited terms.

(5)Without prejudice to subsection (4), if it appears to the Commission that a person has done an act which was unlawful by virtue of section 43, the Commission may apply to the District Court for an order imposing a financial penalty on such person; and the District Court, if satisfied that the application is well-founded, may make such an order.

(6)The financial penalty imposed under subsection (5) shall not exceed \$10000 for the first occasion on which a penalty is imposed, and \$30000 for the second and any subsequent occasion on which a penalty is imposed in respect of the same person.

(Enacted 1995)

Help for persons suffering discrimination or sexual harassment

Section: 83 Help for aggrieved persons in obtaining information, etc.

(1) With a view to helping a person ("the person aggrieved") who considers he may have been discriminated against or sexually harassed in contravention of this Ordinance to decide whether to institute proceedings and, if he does so, to formulate and present his case in the most effective manner, the Commission may prescribe-

(a) forms by which the person aggrieved may question the respondent on his reasons for doing any relevant act, or on any other matter which is or may be relevant;

(b) forms by which the respondent may if he so wishes reply to any questions.

(2) Where the person aggrieved questions the respondent (whether or not in accordance with forms referred to in subsection (1))-

(a) the question, and any reply by the respondent (whether or not in accordance with such a form) shall, subject to subsections (3), (4) and (5), be admissible as evidence in the proceedings;

(b) if it appears to the District Court that the respondent deliberately, and without reasonable excuse, omitted to reply within a reasonable period or that his reply is evasive or equivocal, the Court may draw any inference from that fact it considers it just and equitable to draw, including an inference that he committed an unlawful act.

(3) The Commission may-

(a) prescribe the period within which questions must be served in order to be admissible under subsection (2)(a);

(b) prescribe the manner in which a question, and any reply by the respondent, may be served.

(4) Rules under the District Court Ordinance (Cap 336) may enable the District Court entertaining a claim under section 76 to determine, before the date fixed for the hearing of the claim, whether a question or reply is admissible under this section or not.

(5) This section is without prejudice to any other enactment or rule of law regulating interlocutory and preliminary matters in proceedings before the District Court, and has effect subject to any enactment or rule of law regulating the admissibility of evidence in such proceedings.

(6) In this section, "respondent" includes a prospective respondent.

(Enacted 1995)

Section: 84 Assistance by way of conciliation

(1) A person may lodge with the Commission a complaint in writing alleging that another person has done an act which is unlawful by virtue of a provision of this Ordinance.

(2) A representative complaint may be lodged under subsection (1) in accordance with rules made under section 88.

(3) Subject to subsection (4), where a complaint is lodged under subsection (1), the Commission shall-

(a) conduct an investigation into the act the subject of the complaint; and

(b)endeavour, by conciliation, to effect a settlement of the matter to which the act relates.

(4)The Commission may decide not to conduct, or to discontinue, an investigation into an act the subject of a complaint lodged under subsection (1) if-

(a)it is satisfied that the act is not unlawful by reason of a provision of this Ordinance;

(b)it is of the opinion that the person aggrieved by the act does not desire (or, in a case to which subsection (2) applies, none of the persons aggrieved by the act desires) that the investigation be conducted or continued;

(c)a period of more than 12 months has elapsed beginning when the act was done;

(d)in a case to which subsection (2) applies, it determines, in accordance with rules made under section 88, that the complaint should not be a representative complaint; or

(e)it is of the opinion that the complaint is frivolous, vexatious, misconceived or lacking in substance.

(5)Where the Commission decides not to conduct, or to discontinue, an investigation into an act the subject of a complaint lodged under subsection (1), it shall by notice served on the person who lodged the complaint advise him of-

(a)that decision; and

(b)the reasons for that decision.

(6)Evidence of anything said or done by any person in the course of conciliation under this section (including anything said or done at any conference held for the purposes of such conciliation) is not admissible in evidence in any proceedings under this Ordinance except with the consent of that person.

(7)For the avoidance of doubt, it is hereby declared that subsection (6) shall not apply where -

(a)a complaint is lodged under subsection (1); and

(b)a settlement has been effected of the matter to which the act the subject of the complaint relates.

(Enacted 1995)

Section: 85 Assistance other than by way of conciliation

(1)Where a complaint has been lodged under section 84(1) but, for whatever reason, there has not been a settlement of the matter to which the act the subject of the complaint relates, then any person who may institute proceedings under this Ordinance in respect of that act may make an application to the Commission for assistance in respect of those proceedings.

(2)The Commission shall consider an application under subsection (1) and may grant it if it thinks fit to do so, in particular where-

(a)the case raises a question of principle; or

(b)it is unreasonable, having regard to the complexity of the case or the applicant's position in relation to the respondent or another person involved or any other matter, to expect the applicant to deal with the case unaided.

(3)Assistance by the Commission under this section may include-

(a)giving advice;

(b)arranging for the giving of advice or assistance by a solicitor or counsel;

(c)arranging for representation by any person including all such assistance as is usually given by a solicitor or counsel in the steps preliminary or incidental to any proceedings, or in arriving at or giving effect to a compromise to avoid or bring to an end any proceedings,

(d)any other form of assistance which the Commission may consider appropriate,

but paragraph (c) shall not affect the law and practice regulating the descriptions of persons who may appear in, conduct, defend and address a court in, any proceedings except to the extent permitted under rules made in accordance with section 73B of the District Court Ordinance (Cap 336).

(4)In so far as expenses are incurred by the Commission in providing the applicant with assistance under this section the recovery of those expenses (as taxed or assessed in such manner as may be prescribed by relevant rules) shall constitute a first charge for the benefit of the Commission-

(a)on any costs or expenses which (whether by virtue of a judgment or order of the District Court or an agreement or otherwise) are payable to the applicant by any other person in respect of the matter in connection with which the assistance is given; and

(b)so far as relates to any costs or expenses, on his rights under any compromise or settlement arrived at in connection with that matter to avoid or bring to an end any proceedings.

(5)The charge conferred by subsection (4) shall be subject to any charge under the Legal Aid Ordinance (Cap 91) and to any provision in that Ordinance for payment of any sum into the Supplementary Legal Aid Fund established under that Ordinance.

(6)In this section-

"relevant rules" means any rules made under the District Court Ordinance (Cap 336),

"respondent" includes a prospective respondent.

(Enacted 1995)

Period within which proceedings to be brought

Section: 86Period within which proceedings to be brought

(1)The District Court shall not consider a claim under section 76 unless proceedings in respect of the claim are instituted before the end of the period of 24 months beginning-

(a)when the act complained of was done; or

(b)if there is a relevant report in relation to that act, with the day on which the report is published or made available for inspection under section 73,

whichever is the later.

(2)The District Court shall not consider an application under-

(a)section 82(2)(a) unless it is made before the end of the period of 24 months beginning when the act to which it relates was done;

(b)section 82(4) unless it is made before the end of the period of 5 years so beginning.

(2A) For the purposes of determining the period under subsection (1) within which proceedings may be brought, where an act to which the claim relates was the subject of a complaint lodged under section 84(1), then the period that elapsed between the date when the complaint was lodged and the date when conciliation under section 84 was concluded, as certified in writing by the Commission, shall be disregarded. (Added 71 of 1997 s. 8)

(3) Notwithstanding subsections (1) and (2), the District Court may consider any claim or application which is out of time if, in all the circumstances of the case, it considers that it is just and equitable to do so.

(4) For the purposes of subsection (3), the circumstances of the case include, in relation to any claim, whether the act to which the claim relates was the subject of a complaint lodged under section 84(1) and, if so, the period that elapsed between when the act was done and when that complaint was so lodged.

(5) For the purposes of this section-

(a) where the inclusion of any term in a contract renders the making of the contract an unlawful act, that act shall be treated as extending throughout the duration of the contract;

(b) any act extending over a period shall be treated as done at the end of that period; and

(c) a deliberate omission shall be treated as done when the person concerned decided upon it, and, in the absence of evidence to the contrary, a person shall be taken for the purposes of this section to decide upon an omission when he does an act inconsistent with doing the omitted act or, if he has done no such inconsistent act, when the period expires within which he might reasonably have been expected to do the omitted act if it was to be done.

(6) The Governor in Council may, by notice in the Gazette, amend subsection (1) by substituting a longer period for any period specified in that subsection.

(7) In this section, "relevant report", in relation to an act referred to in subsection (1), means a report-

(a) published or made available for inspection under section 73; and

(b) from which it can reasonably be construed (and whether or not the report mentions, or was in any way prepared in consequence of, the act) that the Commission is of the opinion that the act, or the class of acts to which the act belongs, is unlawful under a provision of Part III, IV or V.

(Enacted 1995)

PART IX MISCELLANEOUS

Section: 87 Validity and revision of contracts

(1) A term of a contract is void where-

(a) its inclusion renders the making of the contract unlawful by virtue of this Ordinance;

(b) it is included in furtherance of an act rendered unlawful by this Ordinance; or

(c) it provides for the doing of an act which would be rendered unlawful by this Ordinance.

(2) Subsection (1) shall not apply to a term the inclusion of which constitutes, or is in furtherance of, or provides for, unlawful discrimination against a party to the contract, but the term shall be unenforceable against that party.

(3) A term in a contract which purports to exclude or limit any provision of this Ordinance is unenforceable by any person in whose favour the term would operate apart from this subsection.

(4) Subsection (3) shall not apply to a contract settling a claim to which section 76 applies.

(5) On the application of any person interested in a contract to which subsection (2) applies, the District Court may make such order as it thinks just for removing or modifying any term made unenforceable by that subsection; but such an order shall not be made unless all persons affected have been given notice of the application (except where under rules made under the District Court Ordinance (Cap 336) notice may be dispensed with) and have been afforded an opportunity to make representations to the Court.

(6) An order under subsection (5) may include provision as respects any period before the making of the order.

(Enacted 1995)

Section: 88 Rules

(1) The Commission may make rules-

(a) prescribing the persons, or persons belonging to a class of persons, who may lodge a representative complaint under section 84(1),

(b) prescribing the bodies and positions for the purposes of section 35;

(c) prescribing the matters to be taken into account by the Commission for the purposes of a determination under section 84(4)(d);

(d) to enable the Commission to require such persons, or persons belonging to such class of persons, as are specified in the rules to furnish information to the Commission for the purposes of section 84;

(e) restricting the disclosure of any information referred to in paragraph (d) furnished to the Commission;

(f) to enable the Commission to direct persons to attend any conference held for the purposes of section 84;

(g) regulating the procedure of any conference held for the purposes of section 84;

(h) prescribing any other thing that is required or permitted to be prescribed under this Ordinance.

(2) Any rules made under subsection (1) may-

(a) make different provisions for different circumstances and provide for a particular case or class of cases;

(b) be made so as to apply only in such circumstances as are prescribed by the rules;

(c) specify forms for the purposes of the rules;

(d) be made generally for the better or more effectual carrying out of the provisions of this Ordinance, including incidental, consequential, evidential and supplemental provisions.

(3) Any rules made under this section may prescribe offences in respect of contraventions of the rules, and may provide for the imposition of a fine not exceeding level 4 and of imprisonment for a period not exceeding 2 years.

(Enacted 1995)

Section: 89 Regulations to empower Commission to bring certain proceedings

(1) The Secretary for Home Affairs may make regulations-

(a) where any person may bring proceedings under section 76(1) but has not done so, empowering the Commission, in such circumstances as are specified in the regulations, to bring and maintain those proceedings as if the Commission were that person;

(b) specifying which of the remedies referred to in section 76(3) shall be obtainable by the Commission in any such proceedings;

(c) for the purposes of enabling the Commission to bring and maintain any such proceedings (including any related purposes), specifying modifications to which any provisions of this Ordinance (including any subsidiary legislation) shall be read.

(2) Any regulations made under this section shall be subject to the approval of the Legislative Council.

(3) This section is without prejudice to the Commission's power to bring proceedings by way of judicial review, in relation to this Ordinance or any other law, pursuant to its functions under section 64(1). (Added 71 of 1997 s. 9)

(Enacted 1995)

Section: 90 Amendment of Schedules

(1) The Governor in Council may, by notice in the Gazette, amend Schedule 1, 3, 4 or 5 but any notice to amend Schedule 5 shall be subject to the approval of the Legislative Council. (Amended 71 of 1997 s. 10)

(2) The Legislative Council may, by resolution, amend Schedule 6.

(Enacted 1995)

Section: 91 Transitional provisions

(1) The provisions of Schedule 7 shall have effect as transitional provisions for the purposes of this Ordinance.

(2) (Omitted as spent)

(Enacted 1995)

Schedule: 1 EDUCATIONAL ESTABLISHMENTS AND THEIR RESPONSIBLE BODIES

[sections 2(1) & 90]

Educational establishment	Responsible body
1. The University of Hong Kong established by the University of Hong Kong Ordinance (Cap 1053)	The Court, the Council, the Senate or the Convocation, within the meaning of section 2 of the University of Hong Kong Ordinance (Cap 1053), according to

		which of them has the function concerned
2.	The Chinese University of Hong Kong established by The Chinese University of Hong Kong Ordinance (Cap 1109)	The Council, the Senate, the Convocation, the Faculties, the School of Studies or the Board of Studies, within the meaning of section 2 of The Chinese University of Hong Kong Ordinance (Cap 1109), according to which of them has the function concerned
3.	The Hong Kong Polytechnic established by the Hong Kong Polytechnic Ordinance (Cap 1075)	The Council of the Hong Kong Polytechnic established under section 5 of the Hong Kong Polytechnic Ordinance (Cap 1075)
4.	Any post secondary college registered under the Post Secondary Colleges Ordinance (Cap 320)	The Board of Governors (or Board of Trustees where no Board of Governors exists) or the College Council, according to which of them has the function concerned
5.	Any technical college or technical institute defined in section 2 of the Vocational Training Council Ordinance (Cap 1130)	The Vocational Training Council established by section 4 of the Vocational Training Council Ordinance (Cap 1130)
6.	Any industrial training centre or skills centre defined in section 2 of the Vocational Training Council Ordinance (Cap 1130)	The Vocational Training Council established by section 4 of the Vocational Training Council Ordinance (Cap 1130)
7.	The Hong Kong Baptist College established by the Hong Kong Baptist College Ordinance (Cap 1126)	The Board of Governors or the Council, within the meaning of section 2 of the Hong Kong Baptist College Ordinance (Cap 1126), according to which of them has the function concerned
8.	The City Polytechnic of Hong Kong established by the City Polytechnic of Hong Kong Ordinance (Cap 1132)	The Council or the Academic Board, within the meaning of section 2 of the City Polytechnic of Hong Kong Ordinance (Cap 1132), according to which of them has the function concerned
9.	The Hong Kong Academy for Performing Arts established by The Hong Kong Academy for Performing Arts Ordinance (Cap 1135)	The Council or the Academic Board, within the meaning of section 2 of The Hong Kong Academy for Performing Arts Ordinance (Cap 1135), according to which of them has the function concerned

10.	The Hong Kong University of Science and Technology established by The Hong Kong University of Science and Technology Ordinance (Cap 1141)	The Court, the Council, the Senate or the Convocation, within the meaning of section 2 of The Hong Kong University of Science and Technology Ordinance (Cap 1141), according to which of them has the function concerned
11.	The Open University of Hong Kong established by The Open University of Hong Kong Ordinance (Cap 1145)	The Council or the Senate, within the meaning of section 2 of The Open University of Hong Kong Ordinance (Cap 1145), according to which of them has the function concerned (Replaced 50 of 1997 s. 29)
12.	Lingnan College as incorporated by the Lingnan College Ordinance (Cap 422)	The Board of Governors, the Council or the Academic Board, within the meaning of section 2 of the Lingnan College Ordinance (Cap 422), according to which of them has the function concerned
13.	The Hong Kong Institute of Education established by The Hong Kong Institute of Education Ordinance (Cap 444)	The Council or the Academic Board, within the meaning of section 2 of The Hong Kong Institute of Education Ordinance (Cap 444), according to which of them has the function concerned
14.	Any school which is registered or provisionally registered under the Education Ordinance (Cap 279)	The management committee, within the meaning of section 3 of the Education Ordinance (Cap 279), of the school
15.	Any school, within the meaning of section 3 of the Education Ordinance (Cap 279), entirely maintained and controlled by the Government	The Director of Education

(Enacted 1995)

Schedule: 2(Repealed)

(Repealed 71 of 1997 s. 11)

Schedule: 3PROVISIONS SPECIFIED FOR PURPOSES OF SECTION 12(2)(g)

[sections 12, 57, 66 & 90]

1.Regulations 4, 5, 6, 8, 10, 11, 13 and 14 of the Women and Young Persons (Industry) Regulations (Cap 57 sub. leg.).

2.Regulation 25 of the Factories and Industrial Undertakings Regulations (Cap 59 sub. leg.).

3.Regulation 46 of the Construction Sites (Safety) Regulations (Cap 59 sub. leg.).

4.Regulation 29 of the Dutiable Commodities (Liquor) Regulations (Cap 109 sub. leg.).

(Enacted 1995)

Schedule: 4DISCRIMINATION TO WHICH SECTIONS 28(1) AND 29 SHALL NOT APPLY
[sections 34(3) & 90]

Provision creating illegality	Exception
Part III	Sections 11(3), 12(1)(b), 19(3) and 22
	Sections 1 and 2 of Schedule 7
Section 25	Sections 26 and 27
	Section 3 of Schedule 7

(Enacted 1995)

Schedule: 5FURTHER EXCEPTIONS TO THIS ORDINANCE
(sections 62, 66 & 90)

PART I
INTERPRETATION

1.Interpretation

In this Schedule-

"allowance" includes part of an allowance;

"benefit" includes part of a benefit,

"indigenous villager" means indigenous villager within the meaning of section 2 of the Government Rent (Assessment and Collection) Ordinance (Cap 515); (Amended 53 of 1997 s. 60)

"relevant office" means any office (howsoever described) of-

(a)the police force (including any office of police cadet within the meaning of the Police Force Ordinance (Cap 232));

(b)the Royal Hong Kong Auxiliary Police Force within the meaning of the Royal Hong Kong Auxiliary Police Force Ordinance (Cap 233);

(c)the Immigration Service within the meaning of the Immigration Service Ordinance (Cap 331);

(d)the Fire Services Department within the meaning of the Fire Services Ordinance (Cap 95);

(e)the Correctional Services Department within the meaning of the Prisons Ordinance (Cap 234);

(f)the Customs and Excise Service within the meaning of the Customs and Excise Service Ordinance (Cap 342);

"reproductive technology procedure" means any medical treatment or scientific intervention directed at assisting human reproduction by artificial means, and includes in vitro fertilisation, artificial insemination, gender selection and manipulation of gametes or embryos outside the body.

PART 2 EXCEPTIONS

	Provision creating illegality	Exception
1.	Parts III, IV and V	Any discrimination between men and women seeking to hold, or holding, any relevant office-
		(a) as to requirements relating to height, uniform, weight or equipment;
		(b) so far as there is a difference between the total number of persons of each sex recruited to, or holding, any such office or class of such office;
		(c) so far as any such office or class of such office which falls within that part of the police force known as the Police Tactical Unit is reserved for men;
		(d) so far as training in the use of weapons is concerned where any such office or class of such office falls within paragraph (a), (b), (e) or (f) of the definition of "relevant office".
2.	Part IV	Any discrimination between men and women arising from that policy of the Government-
		(a) known as the small house policy; and
		(b) pursuant to which benefits relating to land in the New Territories are granted to indigenous villagers who are men.

3.	Parts III, IV and V	Any discrimination between persons of different marital status (but excluding any discrimination against a person who is not single as compared with a person who is single) arising from a provision -
		(a) of-
		(i) the Civil Service Regulations
		(ii) any contract of service or apprenticeship; or
		(iii) any contract personally to execute any work; and
		(b) relating to-
		(i) housing;
		(ii) education;
		(iii) air-conditioning;
		(iv) passage; or
		(v) baggage,
		benefits or allowances.
4.	Parts IV and V	Any discrimination between persons of different marital status arising from the provision of any reproductive technology procedure.
5.	Parts III, IV and V	Any discrimination between persons of different marital status arising from the provision of any facilities or services relating to the adoption of any infant within the meaning of section 2 of the Adoption Ordinance (Cap 290).
6.	Parts IV and V	Any discrimination between persons of different marital status arising from the public housing scheme known as the Home Ownership Scheme or Private Sector Participation Scheme.

7.	Parts III, IV and V	Any discrimination between men and women arising from-
		(a) section 2(5)(a) of the Surviving Spouses' and Children's Pensions Ordinance (Cap 79);
		(b) section 18(1A) of the Pensions Ordinance (Cap 89);
		(c) section 19 of the Widows and Orphans Pension Ordinance (Cap 94);
		(d) section 19(4) of the Pension Benefits Ordinance (Cap 99); or
		(e) section 20(4) of the Pension Benefits (Judicial Officers) Ordinance (Cap 401);
8.	Parts III, IV and V	Any discrimination between persons of different marital status arising from the proviso to regulation 4(1) of the Royal Hong Kong Auxiliary Police Force (Pensions) Regulations (Cap 233 sub. leg.).

(Enacted 1995)

Schedule: 6Members and procedure of Commission
[sections 63, 64, 67 & 90]

PROVISIONS WITH RESPECT TO THE COMMISSION AND COMMITTEES AND THEIR MEMBERS

1.Terms and conditions of appointment of Chairperson, etc.

(1)Subject to subsection (2), the Governor shall determine the remuneration and the terms and conditions of appointment of the Chairperson.

(2)The Chairperson shall not, without the specific approval of the Governor-

(a)hold any office of profit other than his office as Chairperson; or

(b)engage in any occupation for reward outside the functions of his office.

(3)This section shall apply to any other member of the Commission who is appointed on a full-time basis as it applies to the Chairperson.

2.Terms of appointment of members of Commission

(1)Subject to sections 1 and 5 and subsection (2), a member of the Commission shall hold and vacate his office in accordance with the terms of his appointment and shall, on ceasing to be a member, be eligible for reappointment.

(2)A member of the Commission shall be appointed for a term not exceeding 5 years.

(3)A member of the Commission may at any time by notice in writing to the Governor resign his office.

3.Members of Commission to disclose interests in respect of certain contracts

(1)A member of the Commission who is in any way directly or indirectly interested in a contract made or proposed to be made by-

(a)the Commission;

(b)a committee; or

(c)an employee or agent of the Commission, shall disclose the nature of his interest at a meeting of the Commission.

(2)The Commission shall record the disclosure in the minutes of the meeting of the Commission.

(3)A member who has an interest in a contract referred to in subsection (1)-

(a)shall not without the permission of the Chairperson or other member presiding take any part in any deliberation of the Commission with respect to that contract, and

(b)shall not in any event vote on any matter concerning it.

(4)For the purposes of subsection (1), a member may give a notice in writing at a meeting of the Commission to the effect that he is a member of a company or firm and is to be regarded as interested in any contract which may, after the date of the notice, be made with the company or firm and the notice shall be regarded as a sufficient disclosure of his interest in relation to any contract so made or proposed to be so made.

(5)A member of the Commission need not attend in person at a meeting of the Commission to make a disclosure which he is required to make under this section if he takes reasonable steps to secure that the disclosure is made by a notice in writing which is brought up and read at the meeting.

4.Fees and allowances payable to members of Commission

The Commission may pay its members such fees and allowances as the Secretary for Home Affairs, after consulting with the Secretary for the Treasury, determines.

5.Governor may in certain circumstances declare office of member of Commission to be vacant

If the Governor is satisfied that a member of the Commission-

(a)has been absent from 3 consecutive meetings of the Commission without the permission of the Commission,

(b)has become bankrupt or made an arrangement with his creditors;

(c) is incapacitated by physical or mental illness; or

(d) is otherwise unable or unfit to discharge the functions of a member,

the Governor may declare his office as a member of the Commission to be vacant, and shall notify the fact in such manner as the Governor thinks fit; and upon such declaration the office shall become vacant.

6. Quorum of Commission, etc.

(1) The quorum of the Commission shall be not less than half the members thereof for the time being and, while a member is disqualified from taking part in a decision or deliberation of the Commission in respect of a matter, he shall be disregarded for the purpose of constituting a quorum of the Commission for deciding, or deliberating on, that matter.

(2) All matters for determination at a meeting of the Commission shall be decided by a majority of votes of the members present and voting and where there is an equality of votes the Chairperson or other member presiding shall have a casting vote in addition to his original vote.

7. Fixing of seal of Commission

The fixing of the seal of the Commission shall be-

(a) authorized by the Commission; and

(b) authenticated by the signatures of-

(i) the Chairperson; and

(ii) any other member of the Commission authorized by the Commission, either generally or specifically, to act for that purpose.

8. Documents of Commission

(1) The Commission may make and execute any document in the performance of its functions or the exercise of its powers or in connection with any matter reasonably incidental to or consequential upon the performance of its functions or the exercise of its powers.

(2) Any document purporting to be executed under the seal of the Commission shall be admitted in evidence and shall, in the absence of evidence to the contrary, be deemed to have been duly executed.

9. Certain documents not required to be sealed

Any contract or instrument which, if entered into or executed by a person not being a body corporate, would not be required to be under seal may be entered into or executed on behalf of the Commission by any member of the Commission generally or specifically authorized by the Commission for that purpose.

10. Procedure of Commission

Subject to the provisions of this Schedule, the Commission shall have power to regulate its own procedure including the manner in which decisions of the Commission may be made by a quorum of its members otherwise than at a meeting of the Commission.

Staff of Commission

11. Employees, etc. of Commission

(1) The Commission shall determine-

- (a) the remuneration and the terms and conditions of employment of its employees; and
- (b) the standards of work and conduct of its employees, and matters relating to their suspension or dismissal from office.

(2) The Commission shall determine the remuneration and the terms and conditions of engagement of technical and professional advisers, and of conciliators, and the manner of their engagement.

(3) The Commission may-

- (a) grant, or make provision for the grant of, pensions, gratuities and retirement benefits to employees;
- (b) provide other benefits for the welfare of employees and their dependants,-
- (c) authorize payments, whether or not legally due, to the personal representatives of a deceased employee or to any person who was dependent on such employee at his death.

(4) The Commission may-

- (a) establish, manage and control; or
- (b) enter into an arrangement with any company or association for the establishment, management and control by that company or association either alone or jointly with the Commission of,

any fund or scheme for the purpose of providing for the pensions, gratuities, benefits and payments referred to in subsection (3).

(5) The Commission may make contributions to and may require employees to make contributions to any fund or scheme referred to in subsection (4).

(6) In this section "employees" includes any class of employee which the Commission specifies and in subsection (3) includes former employees.

Committees

12. Members of committees

The Commission-

- (a) may appoint members of the Commission, and persons who are not such members, to be members of a committee; and
- (b) shall appoint the chairman of a committee and determine the number of members of a committee.

13. Members of committee to disclose interests in respect of certain contracts

(1) A member of a committee who is in any way directly or indirectly interested in a contract made or proposed to be made by-

(a)the Commission;

(b)the committee; or

(c)an employee or agent of the Commission,

shall disclose the nature of his interest at a meeting of the committee.

(2)The committee shall record the disclosure in the minutes of the meeting of the committee.

(3)A member who has an interest in a contract referred to subsection (1)-

(a)shall not without the permission of the chairperson of the committee or other member presiding take any part in any deliberation of the committee with respect to that contract; and

(b)shall not in any event vote on any matter concerning it.

(4)For the purposes of subsection (1), a member may give a notice in writing at a meeting of a committee to the effect that he is a member of a company or firm and is to be regarded as interested in any contract which may, after the date of the notice, be made with the company or firm and the notice shall be regarded as a sufficient disclosure of his interest in relation to any contract so made or proposed to be so made.

(5)A member of a committee need not attend in person at a meeting of the committee to make a disclosure which he is required to make under this section if he takes reasonable steps to secure that the disclosure is made by a notice in writing which is brought up and read at the meeting.

14.Fees and allowances payable to members of committee

(1)The Commission may pay to the members of a committee such fees and allowances as the Secretary for Home Affairs, after consulting with the Secretary for the Treasury, determines.

(2)The provisions of this section shall-

(a)not apply in the case of any member of a committee who is a public officer; and

(b)apply in the case of a member of a committee who is a member of the Commission only to such extent as the Secretary for Home Affairs, after consulting with the Secretary for the Treasury, determines.

Finances, etc. of Commission

15.Resources of Commission

(1)The resources of the Commission shall consist of-

(a)all money-

(i)paid by the Government to the Commission and appropriated for that purpose by the Legislative Council; and

(ii)otherwise provided to the Commission by the Government; and

(b)all other money and property, including gifts, donations, fees, rent, interest and accumulations of income received by the Commission.

(2)The Secretary for the Treasury may give directions in writing of a general or specific character to the Commission in relation to the amount of money which may be expended by the Commission in any financial year and the Commission shall comply with those directions.

16.Borrowing powers

(1)Subject to subsection (2), the Commission may borrow by way of overdraft such money as it may require for meeting its obligations or performing its functions under this Ordinance.

(2)The Secretary for Home Affairs may, after consulting with the Secretary for the Treasury, give directions in writing of a general or specific character to the Commission in relation to the amount of money which may be borrowed under subsection (1) and the Commission shall comply with those directions.

(3)The Commission may with the approval of the Secretary for Home Affairs given after the Secretary has consulted with the Secretary for the Treasury borrow, otherwise than by way of overdraft, such money as it may require for meeting its obligations or performing its functions under this Ordinance.

(4)A person lending money to the Commission shall not be concerned to inquire whether the borrowing of the money is legal or regular or whether the money raised has been properly applied and shall not be prejudiced by any illegality or irregularity or by misapplication or non-application of the money.

17.Investment of surplus funds

(1)Subject to subsection (2), the Commission may invest money that is not immediately required to be expended.

(2)The Commission shall not invest money pursuant to subsection (1) except in such forms of investment as the Secretary for Home Affairs, after consulting with the Secretary for the Treasury, approves.

18.Accounts, audit and annual report of Commission

(1)The Commission shall cause proper accounts to be kept of all its financial transactions.

(2)The Commission shall, as soon as practicable after the expiry of a financial year, prepare a statement of the accounts of the Commission, which statement shall include an income and expenditure account and a balance sheet.

(3)The Commission shall appoint an auditor who shall, as soon as practicable, audit the accounts required under subsection (1) and the statement of accounts required under subsection (2) and shall submit a report on the statement to the Commission.

(4)The Commission shall, as soon as practicable and in any case not later than 9 months after the expiry of a financial year (or such further period as the Chief Secretary allows), furnish-

(a)a report on the activities of the Commission during that year including a general survey of developments, during that year, in respect of matters falling within the scope of the Commission's functions;

(b)a copy of the statement of accounts required under subsection (2); and

(c)the auditor's report on the statement,

to the Chief Secretary who shall cause the same to be tabled in the Legislative Council.

19. Director of Audit's examination

(1) The Director of Audit may, in respect of any financial year, conduct an examination into the economy, efficiency and effectiveness with which the Commission has expended its resources in performing its functions and exercising its powers.

(2) Subject to subsection (3), the Director of Audit shall have a right of access at all reasonable times to all such documents as he may reasonably require for conducting an examination under this section and shall be entitled to require from any person holding or being accountable for any such document such information and explanation as he considers reasonably necessary for that purpose.

(3) Subsection (2) applies only to documents in the custody and control of the Commission.

(4) Without prejudice to the power of the Director of Audit to conduct an examination under this section, this section applies to any sum of money paid by the Commission in the exercise of its power under section 65(1) of this Ordinance.

(5) Subsection (1) shall not operate to entitle the Director of Audit to question the merits of the policy objectives of the Commission.

20. Exemption from taxation

The Commission shall be exempt from taxation under the Inland Revenue Ordinance (Cap 112).

Delegations**21. Provisions to which section 67(1) shall not apply**

Sections 4, 11(1)(a), (4) and (5), 16(1) and (3), 17(1) and 18 shall not be subject to section 67(1) of this Ordinance.

(Enacted 1995)

Schedule: 7 TRANSITIONAL PROVISIONS

[section 91(1) & Schedule 4]

1. Section 16 of this Ordinance shall not apply, in respect of any organization-

(a) to contributions or other payments falling to be made to the organization by its members or by persons seeking membership; or

(b) to financial benefits accruing to members of the organization by reason of their membership, where the payment falls to be made, or the benefit accrues, as the case may be-

(i) under rules of the organization made before this Ordinance was enacted; and

(ii) before the 3rd anniversary of the day on which that section comes into operation.

2. Until the 3rd anniversary of the day on which section 16 of this Ordinance comes into operation, section 16(2) of this Ordinance shall not apply to any organization of members of the teaching profession where on the enactment of this Ordinance-

(a) the organization is an incorporated company with articles of association;

(b)the articles of association restrict membership to persons of one sex (disregarding any minor exceptions); and

(c)there exists another organization to which paragraphs (a) and (b) apply which is for persons of the opposite sex and has objects, as set out in the memorandum of association, which are substantially the same as those of the first-mentioned organization, subject only to differences consequential on the difference of sex.

3.If the responsible body for any educational establishment which (apart from this section) would be required to comply with the provisions of section 25(b) of this Ordinance from the commencement of those provisions, is of the opinion that it would be impracticable for it to do so, it may before that commencement serve on the Commission a notice referred to in section 27(1) of this Ordinance as if that opinion were a determination referred to in section 27(1) of this Ordinance and, in any such case, the provisions of section 27 of this Ordinance shall, with all necessary modifications, apply as if such opinion were such a determination.

(Enacted 1995)

Schedule: 8(Omitted as spent)

(Omitted as spent)

(Enacted 1995)

Chapter: 480A

SEX DISCRIMINATION (FORMAL INVESTIGATIONS) RULES

Empowering section

(Cap 480 section 88)

(20 December 1996)

(L.N. 472 of 1996)

Section: 1(Omitted as spent)

(Omitted as spent)

(Enacted 1996)

Section: 2Interpretation

Where, under section 67 of the Ordinance, the Commission has delegated its functions or powers relating to a formal investigation, any reference in these Rules to the Commission is a reference to the delegate to whom the relevant function or power has been delegated.

(Enacted 1996)

Section: 3Service of notices

In these Rules, a reference to a person being served with a notice is a reference to service on that person being effected-

(a)by delivering it to him personally;

(b)by sending it by ordinary post to his last known residence or place of business;

(c) where the person is a body (whether corporate or unincorporate), by delivering it to the secretary or an officer of the body at its registered office or principal office or by sending it by ordinary post to that secretary or such an officer at that office; or

(d) where the person is acting by a solicitor, by delivering it at, or by sending it by ordinary post to, the solicitor's address for service.

(Enacted 1996)

Section: 4 Notice of holding of formal investigation

Where, under section 71 of the Ordinance, the Commission is required to give notice of the holding of a formal investigation-

(a) to any person named in the terms of reference for the investigation; or

(b) where the terms of reference are revised, to any person named in the revised terms of reference, the notice served on such person shall set out the terms of reference.

(Enacted 1996)

Section: 5 Requirement to furnish or give information or produce documents

Where, under section 72(1) of the Ordinance, the Commission requires a person to furnish written information or give oral information or produce documents, the notice served on him shall be in the form set out in Schedule 1 or in a form to the like effect with such modifications or variations as the circumstances may require.

(Enacted 1996)

Section: 6 Enforcement notice

An enforcement notice served on a person for the purposes of section 77(2) of the Ordinance shall be in the form set out in Schedule 2 or in a form to the like effect with such modifications or variations as the circumstances may require.

(Enacted 1996)

Schedule: 1 NOTICE TO FURNISH WRITTEN INFORMATION OR GIVE ORAL INFORMATION AND PRODUCE DOCUMENTS

[section 5]

(Under section 72(1) of the Sex Discrimination Ordinance (Cap 480))

[form not reproduced here]

Schedule: 2 ENFORCEMENT NOTICE

[section 6]

SCHEDULE TERMS OF REFERENCE OF INVESTIGATION

(Enacted 1996)

(Issued under section 77 of the Sex Discrimination Ordinance (Cap 480))

[form not reproduced here]

Chapter: 480B**SEX DISCRIMINATION (INVESTIGATION AND CONCILIATION) RULES****Empowering section**

(Cap 480 section 88)

(20 December 1996)

(L.N. 473 of 1996)

Section: 1(Omitted as spent)

(Omitted as spent)

(Enacted 1996)

Section: 2 Interpretation

(1) In these Rules-

"class member", in relation to a representative complaint, means any person on whose behalf that complaint is lodged;

"conference" means a conference held for the purposes of section 84 of the Ordinance;

"representative complaint" means a representative complaint referred to in section 84(2) of the Ordinance.

(2) Where, under section 67 of the Ordinance, the Commission has delegated its functions or powers under section 84 of the Ordinance, any reference in these Rules to the Commission is a reference to the delegate to whom the relevant function or power has been delegated.

(Enacted 1996)

Section: 3 Representative complaints

(1) A representative complaint alleging that another person has done an unlawful act may be lodged by-

(a) a person aggrieved by the act, on behalf of that person and another person or other persons also aggrieved by the act;

(b) 2 or more persons aggrieved by the act, on behalf of themselves and another person or other persons also aggrieved by the act; or

(c) a person on behalf of another person or other persons aggrieved by the act.

(2) A representative complaint may be lodged only with the consent of the class members and, where there is more than one class member, only-

(a) if the class members have complaints against the same person;

(b) if all the complaints are in respect of, or arise out of, the same, similar or related circumstances; and

(c) if all the complaints give rise to a substantial common issue of law or fact. (L.N. 629 of 1997)

(3)A representative complaint shall-

- (a)describe or otherwise identify and state the number of class members;
- (b)specify the nature of the complaints made on behalf of the class members;
- (c)specify the questions of law and fact that are common to the complaints of the class members.

(Enacted 1996)

Section: 4Determination of representative complaints

(1)The Commission may determine that any complaint lodged with it should not be a representative complaint.

(2)The Commission may make a determination under subsection (1) only if it is satisfied that it is in the interests of justice to do so for any of the following reasons-

- (a)the costs that would be incurred (whether by the Commission or class members) if the complaint were to continue as a representative complaint are likely to exceed the costs that would be incurred if each class member lodged a separate complaint;
- (b)the representative complaint will not provide an efficient and effective means of dealing with the complaints of the class members;
- (c)the complaint was not brought in good faith as a representative complaint; or
- (d)it is otherwise inappropriate that the complaints be pursued by means of a representative complaint.

(Enacted 1996)

Section: 5Commission may require information

(1)The Commission may, for the purposes of investigating into an act and in endeavouring to settle the matter to which the act relates, by notice in writing served on a person require that person to furnish such information as specified in the notice, and in the notice specify a place, time, period or date for furnishing such information.

(2)Any person who, without reasonable excuse, refuses or fails to comply with a notice served on him under subsection (1) commits an offence and is liable on conviction to a fine at level 4.

(Enacted 1996)

Section: 6Restriction on disclosure of information

(1)The information furnished to the Commission by a person ("the informant") in response to a notice served on him under section 5 shall not be disclosed by the Commission, any member of the Commission or a committee, employee of the Commission, conciliator or any person who has been such a member, employee or conciliator, except-

- (a)with the informant's consent;
- (b)in the form of a summary or other general statement published by the Commission which does not identify the informant or any other person to whom the information relates;
- (c)in a report under section 8(4);

(d)to members of the Commission or a committee, employees of the Commission or conciliators or, so far as may be necessary for the proper performance of the functions of the Commission, to other persons; or

(e)subject to section 84(6) of the Ordinance, for the purposes of any court proceedings.

(2)Any person who discloses information in contravention of subsection (1) commits an offence and is liable on conviction to a fine at level 4.

(Enacted 1996)

Section: 7Directions to attend conference

(1)The Commission may, for the purposes of investigating into an act and in endeavouring to settle the matter to which the act relates, direct, by notice in writing, any person referred to in subsection (2) to attend a conference at a time and place specified in the notice.

(2)The persons the Commission may, under subsection (1), direct to attend a conference are-

(a)any person, who in the opinion of the Commission is likely to be able to provide information relevant to the investigation; or

(b)any person whose presence at the conference is, in the opinion of the Commission, likely to be conducive to the settlement of the matter.

(3)The Commission may pay the reasonable and necessary expenses of the journey to and from the place of the conference, of a person directed to attend under subsection (1).

(4)Where a body of persons, whether corporate or unincorporate, is directed under subsection (1) an officer or employee of that body may attend on behalf of that body.

(5)A person who, without reasonable excuse, refuses or fails to attend a conference as directed under subsection (1) commits an offence and is liable on conviction to a fine at level 4.

(Enacted 1996)

Section: 8Procedure at conference

(1)A conference is to be held in private.

(2)The person presiding at a conference may determine its order of proceedings and the manner of conducting it.

(3)Unless the person presiding at a conference consents-

(a)an individual is not entitled to be represented at the conference by another person (unless otherwise provided in any provision in the Disability Discrimination Ordinance (Cap 487) which is applicable to the particular case);

(b)a body of persons, whether corporate or unincorporate, is not entitled to be represented at the conference by a person other than an officer or employee of that body.

(4)Where the person presiding at a conference-

(a)is of the opinion that a matter cannot be settled by conciliation;

(b)has endeavoured to settle a matter by conciliation but has not been successful; or

(c) is of the opinion that the nature of a matter is such that it should be referred to the Commission, he shall refer the matter to the Commission together with a report relating to any investigation made into the matter.

(5) A report for the purposes of subsection (4) shall not include or describe anything said or done in the course of the conference.

(Enacted 1996)

Chapter: 480C

SEX DISCRIMINATION (PROCEEDINGS BY EQUAL OPPORTUNITIES COMMISSION) REGULATION

Empowering section

(Cap 480 section 89)

(20 December 1996) (L.N. 557 of 1996)

(L.N. 539 of 1996)

Section: 1(Omitted as spent)

(Omitted as spent)

(Enacted 1996)

Section: 2Circumstances in which Commission may bring proceedings

The circumstances in which the Commission may bring proceedings for the purposes of section 76(1) of the Ordinance (as if it were a person who may have brought proceedings under that section but has not done so) are where-

(a) the case raises a question of principle; and

(b) it is in the interests of justice to do so, and it appears to the Commission that the claim of the person is well founded.

(Enacted 1996)

Section: 3Remedies Commission may seek in proceedings brought by it

In any proceedings brought under section 2, the Commission may apply for any remedy available to a claimant under section 76(3) of the Ordinance including a declaration that the act which is the subject of the proceedings is an unlawful act or an injunction in respect of such act or both a declaration and an injunction.

(Enacted 1996)
