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Disability Discrimination Ordinance, Cap 487

Chapter: 487

DISABILITY DISCRIMINATION ORDINANCE

Long title

To render unlawful discrimination against persons on the ground of their or their associates' disability in respect of their employment, accommodation, education, access to partnerships, membership of trade unions and clubs, access to premises, educational establishments, sporting activities and the provision of goods, services and facilities; to make provision against harassment and vilification of persons with a disability and their associates; to extend the jurisdiction of the Equal Opportunities Commission to include discrimination against persons on the ground of their or their associates' disability, and for connected purposes.

(Enacted 1995)

[Sections 62, 64 and 65:

20 May 1996

L.N. 184 of 1996

The other - provisions, other than Part III, sections 33(1), (2) and(4), 39(4), 48(1) and (3), 48 (2) (in so far as that subsection relates to an agent who is also an employee of his principal), 49(2), (in so far as that subsection relates to an employee or employer) and 84, Schedule 3 and any other provision of the Ordinance in so far as that provision makes reference to-

20 September 1996

L.N. 395 of 1996

(a)Part III or any section or provision contained within that Part; and

(b)any section or Schedule mentioned above

20 September 1996

L.N. 395 of 1996

The remaining provisions

:20 December 1996

L.N. 558 of 1996]

(Originally 86 of 1995)

PART I PRELIMINARY

Section: 1 Short title

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

(2)(Omitted as spent)

(Enacted 1995)

Section: 2 Interpretation

(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, show cards 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;

"associate" in relation to a person, includes-

(a)a spouse of the person;

(b)another person who is living with the person on a genuine domestic basis;

(c)a relative of the person;

(d)a carer of the person; and

(e)another person who is in a business, sporting or recreational relationship with the person;

"carer" includes-

(a)the Director of Social Welfare;

(b)any officer of the Social Welfare Department authorized in writing by the Director of Social Welfare;

(c)any person specified in Schedule 1;

"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" has the same meaning as in the relevant Ordinance;

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

"committee" has the same meaning as in the relevant Ordinance;

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

"conciliator" has the same meaning as in the relevant Ordinance;

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

"disability" in relation to a person, means-

(a)total or partial loss of the person's bodily or mental functions;

(b)total or partial loss of a part of the person's body;

(c)the presence in the body of organisms causing disease or illness;

(d)the presence in the body of organisms capable of causing disease or illness;

(e)the malfunction, malformation or disfigurement of a part of the person's body;

(f)a disorder or malfunction that results in the person learning differently from a person without the disorder or malfunction; or

(g)a disorder, illness or disease that affects a person's thought processes, perception of reality, emotions or judgment or that results in disturbed behaviour,

and includes a disability that-

(i)presently exists;

(ii)previously existed but no longer exists;

(iii)may exist in the future; or

(iv)is imputed to a person;

"discrimination" means any discrimination falling within sections 6, 7, 9 or 10, and related expressions shall be construed accordingly;

"discriminator" includes a prospective discriminator;

"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" has the same meaning as in the relevant Ordinance;

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

"formal investigation" means an investigation under section 66;

"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(3);

"harass" shall be construed in accordance with subsection (6);

"notice" means a notice in writing;

"palliative or therapeutic device or auxiliary aid" includes a device or aid specified in Schedule 2;

"prescribed" means prescribed in rules made under section 85;

"profession" includes any vocation or occupation;

"registered" includes licensed;

"relevant Ordinance" means the Sex Discrimination Ordinance (Cap 480);

"responsible body" has the same meaning as in the relevant Ordinance;

"trade" includes any business;

"training" includes any form of education or instruction;

"unjustifiable hardship" means unjustifiable hardship as construed in accordance with section 4.

(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)References in this Ordinance to the provision of facilities shall be construed to include references to making those facilities available or making arrangements for the provision of those facilities or to the provision of those facilities in buildings or premises.

(4)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 74(3).

(5)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.

(6)For the purposes of this Ordinance, a person (howsoever described) harasses another person if that first-mentioned person engages in unwelcome conduct (which may include an oral or written statement) on account of that second-mentioned person's disability, or on account of the disability of an associate of that second-mentioned person, in circumstances in which a reasonable person, having regard to all the circumstances, would have anticipated that the second-mentioned person would be offended, humiliated or intimidated by that conduct.

(7)For the purposes of section 6(c), references in this Ordinance to-

(a)a person with a disability (or words to the like effect) shall be construed to mean a person (and whether or not he has a disability) with an associate with a disability;

(b)a person without a disability (or words to the like effect) shall be construed to mean a person without an associate with a disability.

(8)For the purposes of any of the provisions of sections 22, 23, 37, 38, 39, 46 and 47, references to a person with a disability (or words to the like effect) shall be construed to include a person (and whether or not he has a disability) with an associate with a disability.

(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

Act done because of disability and for other reason

If-

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

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

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

(Enacted 1995)

Section: 4

Unjustifiable hardship

For the purposes of this Ordinance, in determining what constitutes unjustifiable hardship, all relevant circumstances of the particular case are to be taken into account including-

(a) the reasonableness of any accommodation to be made available to a person with a disability;

(b) the nature of the benefit or detriment likely to accrue or be suffered by any persons concerned;

(c) the effect of the disability of a person concerned; and

(d) the financial circumstances of and the estimated amount of expenditure (including recurrent expenditure) required to be made by the person claiming unjustifiable hardship.

(Enacted 1995)

Section: 5

Application

This Ordinance binds the Government.

(Enacted 1995)

PART II

DISCRIMINATION TO WHICH ORDINANCE APPLIES

Section: 6

Discrimination against persons with disability, etc.

A person discriminates against another person in any circumstances relevant for the purposes of any provision of this Ordinance if-

(a) on the ground of that other person's disability he treats him less favourably than he treats or would treat a person without a disability;

(b) he applies to that other person a requirement or condition which he applies or would apply equally to a person without a disability but-

(i) which is such that the proportion of persons with a disability who can comply with it is considerably smaller than the proportion of persons without a disability who can comply with it;

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

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

(c) on the ground of the disability of an associate of that other person he treats him less favourably than he treats or would treat a person without such a disability.

(Enacted 1995)

Section: 7

Discrimination by way of victimisation

(1) A 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.

(Enacted 1995)

Section: 8

Comparison of cases under section 6

A comparison of the cases of persons with or without a disability under section 6 shall be such that the relevant circumstances in the one case are the same, or not materially different, in the other.

(Enacted 1995)

Section: 9**Discrimination (palliative or therapeutic devices and auxiliary aids)**

For the purposes of this Ordinance, a discriminator discriminates against another person on the ground of that other person's disability if the discriminator treats that other person less favourably because of-

(a) the fact that other person is accompanied by, or possesses a palliative or therapeutic device or auxiliary aid that is used by that other person; or

(b) any matter related to that fact, whether or not it is the discriminator's practice to treat less favourably any person who is accompanied by, or is in possession, and is the user, of such a palliative or therapeutic device or auxiliary aid.

(Enacted 1995)

Section: 10**Discrimination (interpreters, readers and assistants)**

For the purposes of this Ordinance, a discriminator discriminates against another person on the ground of that other person's disability if the discriminator treats that other person less favourably because of-

(a) the fact that other person is accompanied by-

(i) an interpreter;

(ii) a reader;

(iii) an assistant; or

(iv) a carer,

who provides interpretive, reading or other services to that other person because of the disability; or-

(b) any matter related to that fact, whether or not it is the discriminator's practice to treat less favourably any person who is accompanied by such-

(i) an interpreter;

(ii) a reader;

(iii) an assistant; or

(iv) a carer.

(Enacted 1995)

PART III**DISCRIMINATION AND HARASSMENT IN EMPLOYMENT FIELD****Section: 11****Discrimination against applicants and employees**

(1) It is unlawful for a person ("the employer"), in relation to employment by him at an establishment in Hong Kong, to discriminate against another person with a disability-

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

(b) in the terms on which the employer offers that other person that employment; or

(c) by refusing or deliberately omitting to offer that other person that employment.

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

(a) in the way he affords that person access to opportunities for promotion, transfer or training, or to any other benefits, services or facilities, or by refusing or deliberately omitting to afford that person access to them; or

(b) in the terms of employment he affords that person; or

(c) by dismissing that person, or subjecting him to any other detriment.

(3) Except in relation to discrimination falling within section 7, 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) Subsection (2) shall not apply to benefits, services or facilities of any description if the employer is concerned with the provision (for payment or not) of benefits, services or facilities of that description to the public, or to a section of the public comprising the person with a disability concerned, unless-

(a) that provision differs in a material respect from the provision of the benefits, services or facilities by the employer to his employees without a disability; or

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

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

(6) 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.

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

(Enacted 1995)

Section: 12

Exception where absence of disability is genuine occupational qualification

(1) In relation to discrimination-

(a) section 11(1)(a) or (c) shall not apply to any employment where being a person without a disability 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)Section 11(1)(a) and (c) and (2)(c) shall not apply to an employer who discriminates against a person with a disability, if taking into account-

(a)the person's past training, qualifications and experience relevant to the particular employment;

(b)where the person is already employed by the employer, the person's performance as an employee; and

(c)all other relevant factors that it is reasonable to so take into the account,
the person because of the person's disability-

(i)would be unable to carry out the inherent requirements of the particular employment; or

(ii)would, in order to carry out those requirements, require services or facilities that are not required by persons without a disability and the provision of which would impose an unjustifiable hardship on the employer.

(3)Being a person without a disability is a genuine occupational qualification for a job only where-

(a)the essential nature of the job calls for a person without a disability for reasons of physiology 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 person with a disability;

(b)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 the only such premises which are available for persons holding that kind of job are lived in, or normally lived in, by persons without a disability and, subject to subsection (5), are not equipped with accommodation and facilities for persons with a disability where the alteration of those premises to be so equipped would impose an unjustifiable hardship on the employer; or

(c)the job needs to be held by a person without a disability because of restrictions imposed by a provision specified in Schedule 3.

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

(5)Paragraph (b) of subsection (3) shall not apply in relation to the filling of a vacancy where the applicant for that vacancy, being a person with a disability, proposes to the employer that, on appointment to the vacancy, he will make reasonable alterations to that part of the premises to be occupied by him as accommodation if-

(a)the applicant undertakes to restore the premises to their condition before alteration on leaving the premises;

(b)in all the circumstances it is likely that the applicant will perform the undertaking;

(c)in all the circumstances, the action required to restore the premises to their condition before alteration is reasonably practicable;

(d)the alteration is at that applicant's expense; and

(e)the alteration does not involve alteration of other premises occupied by any other person.

(6)Paragraph (a), (b) or (c) of subsection (3) shall not apply in relation to the filling of a vacancy at a time when the employer already has employees without a disability-

(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)Subject to subsections (3) and (4), it is unlawful for the principal, in relation to work to which this section applies, to discriminate against a contract worker with a disability-

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

(b)by not allowing the contract worker to do it or continue to do it;

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

(d)by subjecting the contract worker to any other detriment.

(3)Subsection (2)(b) shall not apply to a principal who does any act in relation to a contract worker with a disability at a time when if the work were to be done by a person taken into his employment being a contract worker without a disability would be a genuine occupational qualification for the job.

(4)Subsection (2)(b) shall not apply to a principal who discriminates against a contract worker with a disability, if taking into account-

(a)the contract worker's past training, qualifications and experience relevant to working as a contract worker;

(b)where the person is already working for the principal as a contract worker, the contract worker's performance as a contract worker; and

(c)all other relevant factors that it is reasonable to so take into the account,

the contract worker because of the contract worker's disability-

(i)would be unable to carry out the inherent requirements of a contract worker; or

(ii)would, in order to carry out those requirements, require services or facilities that are not required by persons without a disability and the provision of which would impose an unjustifiable hardship on the principal.

(5)Subsection (2)(c) shall not apply to benefits, services or facilities of any description if the principal is concerned with the provision (for payment or not) of benefits, services or facilities of that description to the public, or to a section of the public to which the contract worker with a disability belongs, unless that provision differs in a material respect from the provision of the benefits, services or facilities by the principal to his contract workers without a disability.

(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 person with a disability-

(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 him that position;

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

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

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

(ii) by expelling him from that position or subjecting him 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 person without a disability would be a genuine occupational qualification for the job.

(4) Subsection (1)(a), (c) and (d)(ii) shall not apply to a person who discriminates against another person with a disability, if taking into account-

(a)that other person's past training, qualifications and experience relevant to the proposed firm or firm, as the case may be;

(b)where that other person is already a partner, that other person's performance as a partner; and

(c)all other relevant factors that it is reasonable to so take into account,

that other person because of that other person's disability-

(i)would be unable to carry out the inherent requirements of a partner in the proposed firm or firm, as the case may be; or

(ii)would, in order to carry out those inherent requirements, require services or facilities that are not required by partners without a disability and the provision of which would impose an unjustifiable hardship on the proposed firm or firm, as the case may be.

(5)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).

(6)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 person with a disability who is not a member of the organization, to discriminate against him-

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

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

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

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

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

(c)by subjecting him to any other detriment.

(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 person with a disability-

- (a) in the terms on which it is prepared to confer on him that authorization or qualification;
- (b) by refusing or deliberately omitting to grant his application for it; or
- (c) by withdrawing it from him or varying the terms on which he 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;
- (b) engaged in unlawful harassment; or
- (c) engaged in acts which contravene section 46 or 47,

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

(3) Subsection (1) shall not apply to an authority or body which discriminates against a person on the ground of the person's disability, if taking into account-

- (a) that person's past training, qualifications and experience relevant to the particular profession, trade or occupation;
- (b) where that person is already a member of the profession, carrying on the trade or engaged in the occupation, that person's performance in the profession, trade or occupation; and-
- (c) all other relevant factors that it is reasonable to so take into the account,

that person because of that person's disability, would be unable to carry out the inherent requirements of the profession, trade or occupation.

(4) Subsection (1) shall not apply to discrimination which is rendered unlawful by section 24.

(5) In this section-

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

"confer" includes renew or extend.

(Enacted 1995)

Section: 18

Persons concerned with provision of vocational training

(1) It is unlawful, in the case of a person with a disability seeking or undergoing training which would help fit him for any employment, for any person ("the trainer") who provides facilities for such training to discriminate against him-

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

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

(c) by terminating his training; or

(d) by subjecting him to any other detriment during the course of his 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 24; 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: 19

Employment agencies

(1) It is unlawful for an employment agency to discriminate against a person with a disability-

(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) Subsection (1) shall not apply if the discrimination only concerns employment which the employer could lawfully refuse to offer the person with a disability concerned.

(4) Subsection (1) shall not apply to an employment agency which discriminates against a person with a disability, if taking into account-

(a) that person's past training, qualifications and experience relevant to the work sought; and

(b) all other relevant factors that it is reasonable to take into account,

that person because of that person's disability, would be unable to carry out the inherent requirements of the employment sought.

(5) 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.

(6) A person who knowingly or recklessly makes a statement of the kind referred to in subsection (5)(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: 20**Discrimination 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 person with a disability who is a commission agent-

(a) in the terms on which he allows the person with a disability to do that work;

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

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

(d) by subjecting that person to any other detriment.

(3) The principal does not contravene subsection (2)(b) by doing any act in relation to a person with a disability at a time when if the work were to be done by a person taken into his employment being a person without a disability would be a genuine occupational qualification for the job.

(4) Subsection (2)(b) shall not apply to a principal who discriminates against a commission agent with a disability, if taking into account-

(a) the commission agent's past training, qualifications and experience relevant to working as a commission agent,

(b) where the person is already working for the principal as a commission agent, the commission agent's performance as a commission agent; and

(c) all other relevant factors that it is reasonable to so take into the account,

the commission agent because of the commission agent's disability-

(i) would be unable to carry out the inherent requirements of a commission agent; or

(ii) would, in order to carry out those requirements, require services or facilities that are not required by persons without a disability and the provision of which would impose an unjustifiable hardship on the principal.

(5) Subsection (2)(c) shall not apply to benefits, services or facilities of any description if the principal is concerned with the provision (for payment or not) of benefits, services or facilities of that description to the public, or to a section of the public to which the person with a disability belongs, unless that provision differs in a material respect from the provision of the benefits, services or facilities 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 person with a disability in the performance of its functions or the exercise of its powers.

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

(a) as regards a person with a disability 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 person with a disability if it was necessary for that act to be done in order to comply with a requirement of an existing statutory provision.

(Enacted 1995)

Harassment

Section: 22

Employees, etc.

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

(2) It is unlawful for a person, in the case of a person with a disability employed by him at an establishment in Hong Kong, to harass that second-mentioned person.

(3) It is unlawful for a person who is employed by another person at an establishment in Hong Kong to harass a third person with a disability 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 harass a person with a disability who is a contract worker.

(5) It is unlawful for a contract worker to harass a person with a disability who is a fellow contract worker.

(6) It is unlawful for a partner in a firm to harass a person with a disability 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(5) 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 harass a person with a disability who is a commission agent.

(10) It is unlawful for a commission agent to harass a person with a disability who is a fellow commission agent.

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

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

(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 that person's work in relation to that person's employment (and whether or not that person also resides in those premises).

(Enacted 1995)

Section: 23
Other harassment

(1) It is unlawful for a member of an organization to which section 16 applies to harass a person with a disability 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 harass a person with a disability 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 harass a person with a disability seeking or undergoing training which would help fit the second-mentioned person for any employment if that first-mentioned person provides 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 harass a person with a disability in the course of offering to provide, or providing, any of the agency's services to him.

(Enacted 1995)

PART IV
DISCRIMINATION AND HARASSMENT IN OTHER FIELDS

Section: 24
Education

(1) Subject to subsections (3), (4) and (5), it is unlawful for an educational establishment to discriminate against a person with a disability-

(a) by refusing or failing to accept that person's application for admission as a student; or

(b) in the terms or conditions on which it is prepared to admit that person as a student.

(2) Subject to subsections (3), (4) and (5), it is unlawful for an educational establishment to discriminate against a student with a disability-

(a) by denying that student's access, or limiting that student's access, to any benefit, service or facility provided by the educational establishment;

(b) by expelling that student; or

(c) by subjecting that student to any other detriment.

(3) Subsections (1) and (2) shall not apply to an educational establishment which discriminates against a person with a disability in respect of admission to an educational establishment established wholly or primarily for students who have a particular disability where that person does not have that particular disability.

(4) Subsections (1) and (2) shall not apply to an educational establishment which refuses or fails to accept a person's application for admission as a student at an educational establishment where that person, if admitted as a student by the educational establishment, would require services or facilities that are not required by students who do not have a

disability and the provision of which would impose unjustifiable hardship on the educational establishment.

(5) Subsections (1) and (2) shall not apply to an educational establishment which discriminates against a person with a disability-

(a) if that person is not reasonably capable of performing the actions or activities reasonably required by the educational establishment in relation to students at that educational establishment; or

(b) if the students who participate in or are to participate in those actions or activities are selected by a method which is reasonable on the basis of their skills and abilities relevant to those actions or activities and relative to each other.

(Enacted 1995)

Premises, goods, services and facilities

Section: 25

Access to premises

(1) Subject to subsection (2), it is unlawful for a person to discriminate against another person with a disability-

(a) by refusing to allow that other person access to, or the use of, any premises that the public or a section of the public is entitled or allowed to enter or use (whether for payment or not);

(b) in the terms or conditions on which the first-mentioned person is prepared to allow that other person access to, or the use of, any such premises;

(c) in relation to the provision of means of access to such premises;

(d) by refusing to allow that other person the use of any facilities in such premises that the public or a section of the public is entitled or allowed to use (whether for payment or not);

(e) in the terms or conditions on which the first-mentioned person is prepared to allow that other person the use of any such facilities; or

(f) by requiring the other person to leave such premises or cease to use such facilities.

(2) Subsection (1) shall not apply to a person who discriminates against another person with a disability in relation to the provision of access to premises if-

(a) the premises are so designed or constructed as to be inaccessible to a person with a disability; and

(b) any alteration to the premises to provide such access would impose unjustifiable hardship on the first-mentioned person who would have to provide that access.

(Enacted 1995)

Section: 26

Goods, services and facilities

(1) Subject to subsection (2), it is unlawful for a person who, whether for payment or not, provides goods, services or facilities, to discriminate against another person with a disability-

(a) by refusing to provide that other person with those goods, services or facilities;

(b) in the terms or conditions on which the first-mentioned person provides that other person with those goods, services or facilities; or

(c) in the manner in which the first-mentioned person provides that other person with those goods, services or facilities.

(2) Subsection (1) shall not apply to a person who discriminates against another person with a disability if-

(a) the provision of the goods, services or facilities would impose unjustifiable hardship on the person who would have to provide those goods, services or facilities; and

(b) in the case of the facilities described in paragraphs (c), (d), (e) or of section 27 (or facilities of a like nature to the facilities so described) and to the extent that those facilities are physical in nature, those facilities are so designed or constructed as to be inaccessible to a person with a disability.

(Enacted 1995)

Section: 27

Examples of services and facilities

The following are examples of the services and facilities referred to in section 26-

(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, including the conduct of public examinations;

(e) facilities for entertainment, recreation or refreshment;

(f) facilities for transport or travel;

(g) the services relating to transport or travel;

(h) the services relating to telecommunications;

(i) the services of any profession or trade;

(j) 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.

(Enacted 1995)

Section: 28

Discrimination in disposal or management of premises

(1) It is unlawful for a person ("the disposer"), in relation to premises in Hong Kong of which he has power to dispose, to discriminate against another person with a disability or any other

person providing, or intending to provide, services or facilities on those premises (and who for this purpose is to be treated as an associate of that other person with a disability) to persons with a disability-

(a) in the terms on which the disposer offers him those premises;

(b) by refusing his application for those premises; or

(c) in his treatment of him in relation to any list of persons in need of premises of that description.

(2) It is unlawful for a person ("the manager"), in relation to premises managed by him, to discriminate against another person with a disability occupying the premises-

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

(b) by evicting him, or subjecting him 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) Subsection (2) shall not apply to a person who discriminates against another person with a disability if the affording of access to any benefits or facilities would impose unjustifiable hardship on the person affording such access.

(5) 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: 29

Discrimination: consent for assignment or sub-letting

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

(2) It is unlawful for the disposer to discriminate against another person with a disability-

(a) by evicting that other person from the premises occupied by that other person;

(b) by subjecting that other person to any other detriment in relation to the premises occupied by that other person; or

(c) by refusing to permit that other person to make reasonable alterations to the premises occupied by that person if-

(i) that other person has undertaken to restore the premises to their condition before alteration on leaving the premises;

(ii) in all the circumstances it is likely that that other person will perform the undertaking;

(iii) in all the circumstances, the action required to restore the premises to their condition before alteration is reasonably practicable;

(iv) the alteration is at that other person's own expense; and

(v) the alteration does not involve alteration of other premises occupied by any other person.

(3) Sub-section (1) shall not apply-

(a) if-

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

(ii) 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

(iii) the premises are small premises as construed in accordance with section 30(2); or

(b) to a disposer who discriminates against another person with a disability if the granting of the licence or consent for disposal of the premises by the disposer would impose unjustifiable hardship on the disposer.

(4) 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.

(5) 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: 30

Exceptions for small dwellings

(1) Sections 26(1) and 28 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 members 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: 31

Exceptions for voluntary bodies

(1) Subject to subsection (5), this section applies to a body the activities of which are carried on otherwise than for profit.

(2) Sections 26(1), 28 and 29 shall not be construed as rendering unlawful-

(a) the restriction of membership of any body to which this section applies to persons without a disability (disregarding any minor exceptions) where such restriction is reasonable having regard to the main object of the body; or

(b) the provision of benefits, services or facilities 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 26, 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 without a disability (disregarding any benefits to persons with a disability which are exceptional or are relatively insignificant), being a provision which constitutes the main object of a body to which this section applies.

(5) This section shall not apply to a body whose recurrent expenditure is funded wholly or in part by the Government.

(Enacted 1995)

Section: 32

Further exceptions from sections 26(1) and 28

Sections 26(1) and 28 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)

Barristers

Section: 33

Discrimination 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 person with a disability-

(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 him.

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

(a) in respect of any terms applicable to him as a pupil or tenant;

(b) in the opportunities for training, or gaining experience, which are afforded or denied to him;

(c) in the benefits, services or facilities which are afforded or denied to him; or

(d) by terminating his pupillage or by subjecting him 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 person with a disability.

(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 and sporting activities

Section: 34

Clubs

(1) Subject to subsection (4), 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 person with a disability who is not a member of the club-

(a) by refusing or failing to accept that person's application for membership; or

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

(2) Subject to subsections (3) and (4), 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 person with a disability who is a member of the club-

(a) in the terms or conditions of membership that are afforded to that member;

(b)by refusing or failing to accept that member's application for a particular class or type of membership;

(c)by denying that member's access, or limiting that member's access, to any benefit, service or facility provided by the club;

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

(e)by subjecting that member to any other detriment.

(3)Subsection (2)(c) shall not apply to a club, the committee of management of a club or a member of the committee of management of a club which discriminates against a person with a disability where, because of that person's disability, that person requires the benefit, service or facility to be provided in a special manner and the benefit, service or facility cannot without unjustifiable hardship be so provided by the club.

(4)Subsections (1) and (2) shall not apply to a club, the committee of management of a club or a member of the committee of management of a club which discriminates against a person with a disability if membership (however described) of the club is restricted only to persons who have a particular disability and that first-mentioned person does not have that disability.

(Enacted 1995)

Section: 35

Sport

(1)Subject to subsection (3), it is unlawful for a person to discriminate against another person with a disability by excluding that other person from a sporting activity.

(2)In subsection (1), a reference to a sporting activity includes a reference to an administrative or coaching activity in relation to any sport.

(3)Subsection (1) shall not apply to a person who discriminates against another person with a disability-

(a)if that other person is not reasonably capable of performing the actions reasonably required in relation to the sporting activity;

(b)if the persons who participate or are to participate in the sporting activities are selected by a method which is reasonable on the basis of their skills and abilities relevant to the sporting activity and relative to each other; or

(c)if a sporting activity is conducted only for persons who have a particular disability and that other person does not have that disability.

(Enacted 1995)

Government

Section: 36

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 person with a disability in the performance of its functions or the exercise of its powers.

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

(a)as regards a person with a disability 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 person with a disability if it was necessary for that act to be done in order to comply with a requirement of an existing statutory provision.

(Enacted 1995)

Harassment

Section: 37

Educational establishments

(1)It is unlawful for a student of an educational establishment, or a person who is, or is a member of, the responsible body for an educational establishment, as the case may be, to harass a person with a disability who is seeking to be, or who is, a student of that educational establishment.

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

(3)It is unlawful for a person who is seeking to be, or who is, a student of an educational establishment to harass a person with a disability-

(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: 38

Harassment in relation to the provision of goods, services and facilities

(1)It is unlawful for a person who, whether for payment or not, provides goods, services or facilities, to harass another person with a disability who wants to acquire the goods or services or to make use of the facilities.

(2)It is unlawful for a person to-

(a)interfere with the provision of goods, services or facilities to another person with a disability; or

(b)prevent or to attempt to prevent another person who, whether for payment or not, provides goods, services or facilities, or wishes to provide goods, services or facilities from providing those goods, services or facilities to a third person with a disability.

(Enacted 1995)

Section: 39

Other harassment

(1)It is unlawful for a person, in relation to premises managed by him, to harass a person with a disability occupying the premises.

(2) 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 harass a person with a disability seeking the licence or consent for disposal of the premises to him.

(3) Section 29(5) shall apply to subsection (2) as it applies to section 29.

(4) It is unlawful for a barrister or barrister's clerk, in relation to any chambers, to harass a person with a disability-

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

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

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

(6) Section 33(4) shall apply to subsections (4) and (5) as it applies to section 33.

(Enacted 1995)

Extent

Section: 40

Extent of Part IV

(1) Section 26(1)-

(a) shall not apply to goods, services or facilities 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 26(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 26(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 24 shall not apply to benefits, services or facilities outside Hong Kong except-

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

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

(Enacted 1995)

PART V OTHER UNLAWFUL ACTS

Section: 41 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 6(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 persons with a disability.

(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 73, 74, 75, 76 and 77.

(Enacted 1995)

Section: 42 Requests for information

(1) If, because of another provision of Part III or IV, it would be unlawful, in particular circumstances, for a person to discriminate against another person, in doing a particular act, it is unlawful for the first-mentioned person to request or require that other person to provide, in connection with or for the purposes of the doing of the act, information (whether by completing a form or otherwise) that persons who do not have a disability would not, in circumstances that are the same or are not materially different, be requested or required to provide.

(2) Subject to subsection (3), if, because of section 11(1), it would be unlawful, in particular circumstances, for a person to discriminate against another person, in doing a particular act, it is unlawful for the first-mentioned person to request or require that other person to provide information of a medical nature (whether by completing a form or otherwise) in connection with or for the purposes of the doing of the act.

(3) Nothing in subsection (2) shall render it unlawful for a person to request or require another person to provide information of a medical nature that is necessary to determine if that other person would be unable to carry out the inherent requirements of the job or would require services or facilities that are not required by persons without a disability.

(Enacted 1995)

Section: 43 Discriminatory 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) 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.

(4) A person who knowingly or recklessly makes a statement of the kind referred to in subsection (3) 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: 44 **Instructions 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: 45 **Pressure 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, service or facility; 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 **Vilification**

(1) It is unlawful for a person, by any activity in public, to incite hatred towards, serious contempt for, or severe ridicule of, another person with a disability or members of a class of persons with a disability.

(2) Nothing in this section renders unlawful-

(a) a fair report of an activity in public-

(b)an activity in public being a communication for the distribution or dissemination of any matter comprising a publication which is subject to a defence of absolute privilege in proceedings for defamation; or

(c)an activity in public done reasonably and in good faith, for academic, artistic, scientific or research purposes in the public interest, including discussions about and expositions of any matter.

(3)In this section and section 47, "activity in public" includes-

(a)any form of communication to the public, including speaking, writing, printing, displaying notices, broadcasting, screening and playing of tapes or other recorded material;

(b)any conduct (not being a form of communication referred to in paragraph (a)) observable by the public, including actions and gestures and the wearing or display of clothing, signs, flags, emblems and insignia;

(c)the distribution or dissemination of any matter to the public.

(Enacted 1995)

Section: 47

Offence of serious vilification

A person who, by any activity in public, incites hatred towards, serious contempt for, or severe ridicule of, another person with a disability or members of a class of persons with a disability which include-

(a)threatening physical harm towards, or towards any premises or property of, that second-mentioned person or the members of that class of persons or the premises or property of any other person to which that second-mentioned person or the members of that class of persons have access; or

(b)inciting others to threaten physical harm towards, or towards any premises or property of, that second-mentioned person or the members of that class of persons or the premises or property of any other person to which that second-mentioned person or the members of that class of persons have access,

commits an offence and is liable to a fine at level 6 and to imprisonment for 2 years.

(Enacted 1995)

Section: 48

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 defence 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: 49

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 48 (or would be so liable but for section 48(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: 50

Special measures

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

(a) ensure that persons with a disability have equal opportunities with other persons in circumstances in relation to which a provision is made by this Ordinance;

(b) afford persons with a disability or a particular disability, goods or access to services, facilities or opportunities to meet their special needs in relation to-

(i) employment, education, clubs or sport;

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

(iii) their capacity to live independently;

(c) afford persons with a disability or a particular disability, grants, benefits or programmes, whether direct or indirect, to meet their special needs in relation to-

(i) employment, education, clubs or sport;

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

(iii) their capacity to live independently.

(Enacted 1995)

Section: 51
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 who have a disability or a particular disability (disregarding any benefits to other persons 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: 52
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: 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 persons with a disability only, or persons without a disability only, access to facilities for training which would help to fit them for that work; or

(b) encouraging persons with a disability only, or persons without a disability 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 with or without a disability, as the case may be, doing that work in Hong Kong, or the number of persons with or without a disability, respectively, doing the work in Hong Kong was comparatively small.

(2) 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 employees with a disability only, or his employees without a disability only, access to facilities for training which would help to fit them for that work; or

(b) encouraging persons with a disability only, or persons without a disability 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 with or without a disability, as the case may be, among those doing that work or the number of persons with or without a disability, respectively, 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 members with a disability of the organization only, or members without a disability 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 members with a disability only, or members without a disability 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 with or without a disability, as the case may be, among persons holding such posts in the organization or the number of persons with or without a disability, respectively, 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 persons with a disability only, or persons without a disability 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 with or without a disability, as the case may be, among those members or the number of persons with or without a disability, respectively, among the members was comparatively small.

(Enacted 1995)

Section: 55

Elections in respect of trade unions, etc.

(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 with or without a disability are members of the body-

(a) by reserving seats on the body for those persons respectively; or

(b) by making extra seats on the body available (by election or co-option or otherwise) for those persons respectively on occasions when the number of those persons respectively 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 with or without a disability, as the case may be, 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, services or facilities are not limited to benefits, services or facilities provided by that person himself, but include any means by which it is in that person's power to facilitate access to benefits, services or facilities provided by any other person ("actual provider").

(2) Where by any provision of this Ordinance the affording by any person of access to benefits, services or facilities 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: 57

Acts done for purposes of protection of persons with disability

(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 person with a disability if-

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

(ii) it was necessary for that first-mentioned 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 second-mentioned person (or of any class of persons with a disability that included that second-mentioned person).

(2) In subsection (1)-

(a) the reference in paragraph (i) of that subsection to an existing statutory provision concerning the protection of persons with a disability is a reference to any such provision having effect for the purpose of protecting those persons as regards circumstances giving rise

to risks specifically affecting those persons (or any class of those persons) whether the provision relates only to such protection or to the protection of any other persons as well;

(b) the reference in paragraph (ii) of that subsection to the protection of a particular person with a disability or class of persons with a disability is a reference to the protection of that person or those persons as regards any circumstances falling within paragraph (a).

(3) Subject to subsection (4), the provisions of subsections (1)(ii) and (2)(b), section 12(3)(c) and Schedule 3 shall expire on the 1st anniversary of the day on which this Ordinance is enacted.

(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 1 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 harassment.

(Enacted 1995)

Section: 59

Construction of references to vocational training

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

(a) retraining; and

(b) vocational guidance.

(Enacted 1995)

Section: 60

Further exceptions

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

(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)

Section: 61
Infectious diseases

(1) Subject to subsection (2), nothing in this Ordinance shall apply to a person who discriminates against another person with a disability if-

- (a) that person's disability is an infectious disease; and
- (b) the discriminatory act is reasonably necessary to protect public health.

(2) For the avoidance of doubt, it is hereby declared that subsection (1) has no application to a person who is HIV-positive or has acquired immune deficiency syndrome (commonly known as "AIDS") merely because of the fact that the person has such a condition.

(3) In this section, "infectious disease" includes-

- (a) any disease specified in the First Schedule to the Quarantine and Prevention of Disease Ordinance (Cap 141); and
- (b) any communicable disease specified by the Director of Health by notice in the Gazette.

(Enacted 1995)

PART VII
COMMISSION

Section: 62
Functions and powers of Commission

(1) The Commission shall-

- (a) work towards the elimination of discrimination;
- (b) promote equality of opportunity between persons with a disability and persons without a disability;
- (c) work towards the elimination of harassment and vilification;
- (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 80 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) 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;
- (b) exercise such other powers as are conferred on it under this Ordinance.

(Enacted 1995)

Section: 63**Review of Schedules 2, 3 and 5**

(1) Without prejudice to the generality of section 62(1), the Commission, pursuant to its functions under paragraphs (a) and (b) of that section, shall keep Schedules 2, 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 Schedules 2 and 5;

(b) amending the provisions specified in Schedule 3.

(Enacted 1995)

Section: 64**Delegations**

The Commission shall not under section 67 of the relevant Ordinance delegate any of its functions or powers under-

(a) section 85;

(b) any provisions of any regulations made under section 86 which are specified in the regulations as provisions which shall not be subject to section 67 of the relevant Ordinance;

(c) any provisions of any rules made under section 85 which are specified in the rules as provisions which shall not be subject to section 67 of the relevant Ordinance.

(Enacted 1995. Amended 80 of 1997 s. 102)

Codes of practice**Section: 65****Codes 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 persons with a disability and persons without a disability generally;

(c) the elimination of harassment and vilification.

(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 consult with such associations, organizations, associations of organizations or bodies as appear to the Commission to be appropriate, including any of the associations, organizations, associations of organizations or bodies specified by the Secretary for Health and Welfare by notice in the Gazette.

(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) 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.

(14) 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: 66

Power to conduct formal investigations

Without prejudice to the generality of section 62(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: 67

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: 68**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 75, 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 harassment;

(iii)contraventions of section 41, 42, 43, 44, 45, 46 or 47,

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.

(Enacted 1995)

Section: 69

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 persons with a disability and persons without a disability 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: 70

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 69(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 of 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

Section: 71

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: 72

Claims under Part III or IV

Remarks:

Amendments retroactively made-see 25 of 1998 s. 2

(1)A claim by or on behalf of 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)has committed an act of harassment against the claimant which is unlawful by virtue of Part III or IV;

(c)has committed an act which is unlawful by virtue of section 46; or

(d) is by virtue of section 48 or 49 to be treated as having committed such an act of discrimination against the claimant;

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 71 (1), would be obtainable in the Court of First Instance. (Replaced 71 of 1997 s. 12. Amended 25 of 1998 s. 2)

(4) 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 shall 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 in part either ab initio or from such date as may be specified in the order, any contract or agreement made in contravention of this Ordinance.

(4A) 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. (Added 71 of 1997 s. 12)

(5) For the avoidance of doubt, it is hereby declared that damages in respect of an unlawful act of discrimination or harassment, or an act which is unlawful under section 46, may include compensation for injury to feelings whether or not they include compensation under any other head.

(Enacted 1995)

Enforcement notices

Section: 73

Issue of enforcement notices

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

(a) an unlawful discriminatory act;

(b) an unlawful act of harassment; or

(c) a contravention of section 42, 43, 44, 45, 46 or 47,

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 68(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 68(1).

(Enacted 1995)

Section: 74

Appeal 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: 75

Investigation 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 68(2)(b) does not apply; and

(b) section 67(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 68(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: 76

Register 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: 77

Persistent discrimination, harassment or vilification

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 72 that he has done an unlawful discriminatory act, an unlawful act of harassment or acts contravening section 46 or 47,

it appears to the Commission that unless restrained he is likely to do one or more acts falling within paragraph (b), or contravening section 41, 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: 78

Enforcement of sections 42, 43, 44 and 45

(1) Proceedings in respect of a contravention of section 42, 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 42, 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, harassment or vilification

Section: 79

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 harassed in contravention of this Ordinance, or the subject of an unlawful act under section 46 or 47, 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 72 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: 80

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 85.

(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 85, 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: 81

Assistance other than by way of conciliation

(1) Where a complaint has been lodged under section 80(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 73C 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: 82

Period within which proceedings to be brought

(1) The District Court shall not consider a claim under section 72 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 69,

whichever is the later.

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

(a) section 78(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 78(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 80(1), then the period that elapsed between the date when the complaint was lodged and the date when conciliation under section 80 was concluded, as certified in writing by the Commission, shall be disregarded. (Added 71 of 1997 s. 13)

(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 80(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 the 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 69; 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: 83

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 72 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: 84 **Building approvals**

(1) Notwithstanding any provision in any other Ordinance (whether enacted before or after the commencement of this Ordinance) but subject to subsection (3), a public authority which has the power to approve building works shall not, in respect of those works, approve building plans, whether for a new building or for the alterations or additions to an existing building unless the person seeking approval satisfies the public authority that such access as is reasonable in the circumstances to the building or premises will be provided for persons with a disability.

(2) In considering whether reasonable access will be provided under subsection (1), the public authority may take into account-

(a) whether it is practicable to provide such access within the curtilage of the building, bearing in mind the physical location and immediate environs of the building; and

(b) whether providing such access would impose unjustifiable hardship on the person seeking approval or on any other person.

(3) Subsection (1) has no application to-

(a) buildings of 13 m or less in height above ground level which are used, or intended to be used, for occupation by a single family; or

(b) temporary buildings or contractor's sheds referred to in Part VII of the Building (Planning) Regulations (Cap 123 sub. leg.).

(4) In this section, "public authority" includes-

(a) the Director of Lands;

(b) the Building Authority;

(c) the Housing Authority;

(d) the Director of Architectural Services.

(Enacted 1995)

Section: 85 **Rules**

(1) The Commission may make rules-

(a) to enable the Commission to make any arrangements necessary to assist any person with a disability to attend before it and provide information pursuant to section 68;

- (b)prescribing the persons, or persons belonging to a class of persons, who may lodge a representative complaint under section 80(1);
- (c)prescribing the matters to be taken into account by the Commission for the purposes of a determination under section 80(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 80;
- (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 80;
- (g)regulating the procedure of any conference held for the purposes of section 80;
- (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: 86

Regulations to empower Commission to bring certain proceedings

(1)The Secretary for Health and Welfare may make regulations-

- (a)where any person may bring proceedings under section 72(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 72(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 62(1). (Added 71 of 1997 s. 14)

(Enacted 1995)

Section: 87
Amendment of Schedules

(1) The Secretary for Health and Welfare may, by notice in the Gazette, amend Schedule 1 or 2.

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

(Enacted 1995)

Section: 88
(Omitted as spent)

(Omitted as spent)

(Enacted 1995)

Schedule: 1
PERSONS SPECIFIED AS CARERS
[sections 2 & 87]

(Enacted 1995)

Schedule: 2
DEVICES OR AIDS SPECIFIED AS PALLIATIVE OR THERAPEUTIC DEVICES OR AUXILIARY AIDS
[sections 2, 63 & 87]

Item	Description of device or aid (including trade or manufacturer's name if applicable)
1.	Optacon reading aid for persons with visual impairment
2.	Braille writing device
3.	Low vision aid
4.	Hearing aid
5.	A telecommunications device for persons with hearing impairment
6.	Wheelchair or buggy

7.	Prosthesis
8.	Orthosis
9.	Walking aid
10.	Aid for dialysis therapy
11.	Speech aid
12.	Oxygen unit
13.	Aid for any activities of a personal nature, including a feeding aid and an aid in respect of toilet needs
14.	Urinary bag
15.	Stoma bag

(Enacted 1995)

Schedule: 3

PROVISIONS SPECIFIED FOR PURPOSES OF SECTION 12(3)©

[sections 12, 57, 63 & 87]

(Enacted 1995)

Schedule: 4

DISCRIMINATION TO WHICH SECTIONS 26(1) AND 28 SHALL NOT APPLY

[sections 32 & 87]

Provision creating illegality	Exception
Part III	Sections 11(3), 12(1)(b) and 19(3)

(Enacted 1995)

Schedule: 5
FURTHER EXCEPTIONS TO THIS ORDINANCE
 [sections 60, 63 & 87]

Provision creating illegality	Exception
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(Enacted 1995)

Schedule: 6
(Omitted as spent)

(Omitted as spent)

(Enacted 1995)

Chapter: 487A
DISABILITY DISCRIMINATION (FORMAL INVESTIGATIONS) RULES

Empowering section
 (Cap 487 section 85)

(20 December 1996)

(L.N. 474 of 1996)

Section: 1
(Omitted as spent)

(Omitted as spent)

(Enacted 1996)

Section: 2
Interpretation

Where, under section 67 of the Sex Discrimination Ordinance (Cap 480), 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: 3
Service 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 67 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 68(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 73(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 68(1) of the Disability Discrimination Ordinance (Cap 487))

[form not reproduced here]

Schedule: 2

ENFORCEMENT NOTICE

SCHEDULE

TERMS OF REFERENCE OF INVESTIGATION

(Enacted 1996. L.N. 540 of 1996)

[section 6]

(Issued under section 73 of the Disability Discrimination Ordinance (Cap 487)

[form not reproduced here]

Chapter: 487B

DISABILITY DISCRIMINATION (INVESTIGATION AND CONCILIATION) RULES

Empowering section

(Cap 487 section 85)

(20 December 1996)

(L.N. 475 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 80 of the Ordinance;

“representative complaint” means a representative complaint referred to in section 80(2) of the Ordinance.

(2) Where, under section 67 of the Sex Discrimination Ordinance (Cap 480), the Commission has delegated its functions or powers under section 80 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. 630 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: 4

Determination 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: 5

Commission 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: 6**Restriction 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 80(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: 7**Directions 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: 8**Procedure 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 Ordinance 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: 487C

DISABILITY DISCRIMINATION (PROCEEDINGS BY EQUAL OPPORTUNITIES COMMISSION) REGULATION

Empowering section (Cap 487 Section 86)

[12 December 1997]

(L.N. 597 of 1997)

Section: 1

Circumstances in which Commission may bring proceedings

The circumstances in which the Commission may bring proceedings for the purposes of section 72(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 Commission has reason to believe that a person has committed an act of discrimination, harassment, vilification or which is otherwise unlawful under the Ordinance as described in section 72(1) of the Ordinance;

(b)the case raises a question of principle and the Commission considers that it is in the interests of justice to do so;

(c)the Commission has offered assistance to the person aggrieved by way of conciliation under section 80 of the Ordinance but failed to effect a settlement;

(d)the Commission has in accordance with section 2 served on the person aggrieved a written notice-

(i)informing him of its intention to bring proceedings as if the Commission were that person; and

(ii)requesting the person aggrieved to reply in writing to the Commission within 21 days of the date of the notice as to whether he intends to bring proceedings in his own name, otherwise he shall be deemed to have indicated that he does not wish to bring proceedings in his own name; and

(e)the Commission has established that the person aggrieved does not wish to bring proceedings in his own name, and he shall be deemed to have indicated that he does not wish to bring proceedings in his own name if he failed to reply under paragraph (d)(ii).

Section: 2

Service of notice

Service of a notice under section 1(d) shall be effected by-

(a)delivering it to the person aggrieved personally; or

(b)sending it by ordinary post addressed to him at his last known address if personal service is not practicable, and such service shall be deemed to have been effected 7 days after delivery.

Section: 3

Remedies Commission may seek in proceedings brought by it

In any proceedings brought under section 1, the Commission may apply for any remedy available to a claimant under section 72(3) of the Ordinance including a declaration that the act which is the subject of the proceedings is an unlawful act, an injunction in respect of such act or an order declaring void in whole or in part either abinitio or from such date as may be specified in the order, any contract or agreement made in contravention of the Ordinance.
