



## **FALKLAND ISLANDS**

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### **Equal Employment Rights Ordinance 1998**

**(ORDINANCE No. 22 OF 1998)**

#### **ARRANGEMENT OF PROVISIONS**

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### Equal Employment Rights Ordinance 1998

AN ORDINANCE To prevent discrimination, as regards terms and conditions of employment, between men and women.

*[DATE OF COMMENCEMENT: 1ST JULY 1999]*

#### **1 Short title, interpretation and commencement**

(1) This Ordinance may be cited as the Equal Employment Rights Ordinance 1998 and comes into force on 1st July 1999.

(2) In this Ordinance the expressions "**man**" and "**woman**" shall be construed as applying to persons of whatever age.

(3) Section 5 governs the question of whether for the purposes of this Ordinance a person's employment is to be regarded as being at an establishment in the Falkland Islands.

*[Revision w.e.f. 31/07/2017]*

#### **2 Requirement of equal treatment for men and women in same employment**

(1) If the terms of a contract under which a woman is employed at an establishment in the Falkland Islands do not include (directly or by reference to a collective agreement or otherwise) an equality clause they shall be deemed to include one.

(2) An equality clause is a provision which relates to terms (whether concerned with pay or not) of a contract under which a woman is employed (the "woman's contract"), and has the effect that-

(a) where the woman is employed on like work with a man in the same employment-

(i) if (apart from the equality clause) any term of the woman's contract is or becomes less favourable to the woman than a term of a similar kind in the contract under which that man is employed, that term of the woman's contract shall be treated as so modified as not to be less favourable, and

- (ii) if (apart from the equality clause) at any time the woman's contract does not include a term corresponding to a term benefiting that man included in the contract under which he is employed, the woman's contract shall be treated as including such a term;
  - (b) where the woman is employed on work rated as equivalent with that of a man in the same employment-
    - (i) if (apart from the equality clause) any term of the woman's contract determined by the rating of the work is or becomes less favourable to the woman than a term of a similar kind in the contract under which that man is employed, that term of the woman's contract shall be treated as so modified as not to be less favourable, and
    - (ii) if (apart from the equality clause) at any time the woman's contract does not include a term corresponding to a term benefiting that man included in the contract under which he is employed and determined by the rating of the work, the woman's contract shall be treated as including such a term.
- (3) An equality clause shall not operate in relation to a variation between the woman's contract and the man's contract if the employer proves that the variation is genuinely due to a material difference (other than the difference of sex) between her case and his.
- (4) A woman is to be regarded as employed on like work with men if, but only if, her work and theirs is of the same or a broadly similar nature, and the differences (if any) between the things she does and the things they do are not of practical importance in relation to terms and conditions of employment; and accordingly in comparing her work with theirs regards shall be had to the frequency or otherwise with which any such differences occur in practice as well as to the nature and extent of the differences.
- (5) A woman is to be regarded as employed on work rated as equivalent with that of any men if, but only if, her job and their job have been given an equal value, in terms of the demand made on a worker under various headings (for instance effort, skill and decision), on a study undertaken with a view to evaluating in those terms the jobs to be done by all or any of the employees in an undertaking or group of undertakings, or would have been given an equal value but for the evaluation being made on a system setting different values for men and women on the same demand under any heading.
- (6) Subject to the following subsections, for the purposes of this section-
- (a) **"employed"** means employed under a contract of service or of apprenticeship or a contract personally to execute any work or labour, and related expressions shall be construed accordingly; and
  - (b) two 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,

and men shall be treated as in the same employment with a woman if they are men employed by her employer or any associated employer at the same establishment or at establishments in the Falkland Islands which include that one and at which common terms and conditions of employment are observed either generally or for employees of the relevant classes.

(7) This section applies to-

- (a) service under Her Majesty in right of Her Government of the Falkland Islands, other than service of a person holding a statutory office, and
- (b) service under Her Majesty in right of Her Government of the Falkland Islands for purposes of a person holding a statutory office or purposes of a statutory body,

as it applies to employment by a private person, and so applies as if references to a contract of employment included references to the terms of service.

(8) This section does not apply in relation to service under Her Majesty in right of Her Government of the United Kingdom.

(9) In this section "statutory body" means a body set up by or in pursuance of the Constitution or of an Ordinance, and "statutory office" means an office so set up.

(10) For the purposes of this Ordinance it is immaterial whether the law which (apart from this subsection) is the proper law of a contract is the law of the Falkland Islands or not.

(11) Provisions of this section and section 3 framed with reference to women and their treatment relative to men are to be read as applying equally to a converse case to men and their treatment relative to women.

### **3 Disputes as to, and enforcement of, requirement of equal treatment**

(1) Any claim in respect of the contravention of a term modified or included by virtue of an equality clause, including a claim for arrears of remuneration or damages in respect of the contravention, may be presented by way of a complaint to the Summary Court.

(2) Where a dispute arises in relation to the effect of an equality clause the employer may apply to the

Summary Court for an order declaring the rights of the employer and the employee in relation to the matter in question.

(3) Where it appears to the Governor that there may be a question whether the employer of any women is or has been contravening a term modified or included by virtue of their equality clauses, but that it is not reasonable to expect them to take steps to have the question determined, the question may be referred by him as respects all or any of them to the Summary Court and shall be dealt with as if the reference were of a claim by the women or woman against the employer.

(4) Where it appears to the court in which any proceedings are pending that a claim or counter-claim in respect of the operation of an equality clause could more conveniently be disposed of separately by the Summary Court under the provisions of this Ordinance, the court may direct that the claim or counter-claim shall be struck out; and (without prejudice to the foregoing) where in proceedings before any court a question arises as to the operation of an equality clause, the court may on the application of any party to the proceedings or otherwise refer that question, or direct it to be referred by a party to the proceedings, to the Summary Court for determination by that court pursuant to the provisions of this Ordinance, and may stay the proceedings in the mean time.

(5) No claim in respect of the operation of an equality clause relating to a woman's employment shall be referred to the Summary Court otherwise than by virtue of subsection (3) of this section, if she has not been employed in the employment within the six months preceding the date of the reference.

(6) A woman shall not be entitled, in proceedings brought in respect of a failure to comply with an equality clause (including proceedings before the Summary Court), to be awarded any payment by way of arrears of remuneration or damages in respect of a time earlier than two years before the date on which the proceedings were instituted.

#### **4 Exclusions from sections 2 and 3**

Neither an equality clause nor the provisions of section 3(4) operate in relation to terms-

- (a) affected by compliance with the laws regulating the employment of women, or
- (b) affording special treatment to women in connection with pregnancy or child birth.

#### **5 Meaning of employment at establishment in the Falkland Islands**

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

(2) Subsection (1) does not apply-

- (a) to employment on board a ship registered in the Falkland Islands; or
- (b) to employment on aircraft registered in the Falkland Islands and operated by a person who has his principal place of business, or is ordinarily resident, in the Falkland Islands;

but such employment is to be regarded as being at an establishment in the Falkland Islands unless the employee does his work wholly outside the Falkland Islands.

(3) In the case of employment on board a ship registered in the Falkland Islands (except where the employee does his work wholly outside the Falkland Islands, and outside any area added under subsection (5)) 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.

(5) In relation to employment concerned with exploration of the sea-bed or sub-soil or the exploitation of their natural resources, the Governor may by Order provide that subsections (1) and (2) shall each have effect as if the last reference in each of those subsections include any area which is a designated area for the purposes of the Offshore Minerals Ordinance 1994.