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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

MALTA

DRAFT ACT
ON EQUALITY

Draft**A Bill
entitled**

An ACT to prohibit discrimination in various spheres of life, to promote equality and prevent discrimination, inter alia, by giving effect to the relevant provisions of Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin, Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation, Council Directive 2004/113/EC of 13 December 2004 implementing the principle of equal treatment between men and women in the access to goods and services and their supply, the Communication from the European Commission (22.12.2011 C(2011) 9497) containing Guidelines on the application of Council Directive 2004/113/EC to insurance, in the light of the judgment of the Court of Justice of the European Union in Case C-236/09 (Test-Achats), Council Directive 2006/54/EC of 5 July 2006 implementing the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast), and Council Directive 2010/41/EU of 7 July 2010 on the application of the principle of equal treatment between men and women engaged in an activity in a self-employed capacity and repealing Council Directive 86/613/EEC and repeal Chapter 456 of the Laws of Malta and its subsidiary legislation.

BE IT ENACTED by the President, by and with the advice and consent of the House of Representatives in this present Parliament assembled, and by the authority of the same as follows: -

Short title and commencement.

1. (1) The short title of this Act is the Equality Act, 2018.
- (2) This Act shall come into force on such date as the Minister may by notice in the Gazette establish and different dates may be so established for different purposes and different provisions thereof.

Interpretation.

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

“advertisement” means any form of advertisement, whether to the public or not, and whether in a newspaper, magazine or other publication, on television or radio, on the internet or other means of electronic communication, by display of a notice, poster, billboard, trailer, flyer or by any other means, including the dissemination of information about a vacancy for work or the provision of a good and, or service by word of mouth from person to person, and references to the publishing or display of advertisements shall be construed accordingly;

“authorised insurance undertaking” shall have the same meaning as is assigned to it by article 2(1) of the Insurance Business Act;

“authorised reinsurance undertaking” shall have the same meaning as is assigned to it by article 2(1) of the Insurance Business Act;

“bank” shall have the same meaning assigned to it in the Banking Act;

“banking services” shall have the same meaning assigned to the term “business of banking” in the Banking Act;

“belief, creed or religion” means any religious or philosophical belief, and a reference to such belief, creed or religion shall include a reference to a lack thereof;

“civil status” means the status of being single, married, in a civil union, in a cohabitation, annulled, separated, divorced, or widowed;

“Commission” means the Human Rights and Equality Commission established in accordance with article 3 of the Human Rights and Equality Commission Act;

“Commissioner” means the Human Rights and Equality Commissioner appointed in accordance with article 4 of the Human Rights and Equality Commission Act;

“country of the commitment” shall have the same meaning as is assigned to it by article 2(1) of the Insurance Business Act;

“disability” shall have the same meaning assigned to it in the Equal Opportunities (Persons with Disability) Act;

“discrimination” refers to direct and, or indirect discrimination, based on a single ground or on multiple grounds, which may also occur as a result of association with a person having any one or a combination of any of the protected characteristics, and, or, as a result of assumptions about the characteristics of a person, which characteristics are protected by this Act, and shall include harassment, sexual harassment, victimisation, and instructions to discriminate;

“employment” means access to any gainful activity, including self-employment and includes the process of recruitment, promotion and transfer to another post, access to vocational and, or professional training, the duration of the employment or its extension or termination, as well as apprenticeships as defined by article 29 of the Employment and Training Services Act;

“employment agency” means a person, an association of persons, organisation or institution related to the purpose of finding employment for workers and, or for supplying workers to employers, and includes guidance on careers and other services directly related to employment but excludes educational establishments;

“equal treatment” means the absence of discrimination on the basis of any one or a combination of any of the protected characteristics;

“family status” includes membership in a family and the social, cultural and legal rights and expectations associated with such status;

“financial institution” shall have the same meaning assigned to it in the Financial Institutions Act;

“financial services” shall have the same meaning assigned to it in the Malta Financial Services Authority Act;

“gender expression” shall have the same meaning assigned to it in the Gender Identity, Gender Expression and Sex Characteristics Act;

“gender identity” shall have the same meaning assigned to it in the Gender Identity, Gender Expression and Sex Characteristics Act;

“genetic features” refers to observable physical traits which are derived from a person’s genetic makeup and, or, genetic traits which are observable following testing and, or, research;

“health status” refers to the bodily and, or mental wellbeing of a person, including the presence or absence of any health condition, disease and, or illness;

“insurance intermediary” shall have the same meaning as is assigned to it by article 2(1) of Insurance Intermediaries Act;

“insurance services” shall refer to the business of insurance as defined by article 2(1) of the Insurance Business Act solely in relation to risks situated in Malta or to a commitment where Malta is the country of the commitment;

“insurer” shall refer to an authorised insurance undertaking or an authorised reinsurance undertaking which has received authorisation pursuant to article 7 of the Insurance Business Act or any person deemed authorised under the Insurance Business Act to carry on insurance services, and includes an insurance intermediary, as well as a European insurance undertaking or a European reinsurance undertaking having its head office in a Member State or an EEA State establishing a branch or providing insurance services in Malta in exercise of a European right;

“language” means any officially recognised spoken, written and signed languages at law;

“mental disorder” refers to a significant mental or behavioural dysfunction, exhibited by signs and, or symptoms indicating a distortion of mental functioning, including disturbances in one or more of the areas of thought, mood, volition, perception, cognition, orientation or memory which are present to such a degree as to be considered pathological in accordance with internationally accepted medical and diagnostic standards, with the exclusion of any form of pathologisation of sexual orientation, gender identity and, or gender expression as may be

classified under the International Classification of Diseases or other similar internationally recognised classifications, and “mental illness” shall be construed accordingly;

“Minister” means the Minister responsible for equality;

“pay” means the ordinary basic salary and any other consideration, whether in cash or in kind, which workers receive directly or indirectly, in respect of their employment from their employer, including the conditions for such remuneration;

“person” refers to, unless expressly stated otherwise, a natural person;

“political opinion” refers to the belief and, or support of a political ideology and, or party, and includes political opinions relating to the conduct and, or government of the state and, or matters of policy;

“positive action” means the adoption of and, or maintaining specific measures to prevent and, or compensate for disadvantages linked to any of the protected characteristics;

“pregnancy” includes any condition related to pregnancy, or the intention or potential thereof;

“protected characteristics” shall refer to the characteristics as listed in article 4 of this Act;

“public administration” shall have the same meaning assigned to it in the Public Administration Act;

“reasonable accommodation” means adjustments and, or alterations not imposing a disproportionate or unjustifiable burden where needed to ensure the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms;

“risk situated in Malta” shall have the same meaning as is assigned to it by article 2(1) of the Insurance Business Act;

“self-employed workers” means workers who carry out an activity in a self-employed or self-occupied capacity, including all persons pursuing a gainful activity for their own account, and the spouses, civil union partners, and, or cohabitantes of self-employed or self-occupied workers, not being employees or business partners, where they habitually participate in the activities of the self-employed or self-occupied worker, and perform the same tasks or ancillary tasks;

“sex characteristics” shall have the same meaning assigned to it in the Gender Identity, Gender Expression and Sex Characteristics Act;

“sexual orientation” shall have the same meaning assigned to it in the Affirmation of Sexual Orientation, Gender Identity and Gender Expression Act;

“universal design” means the design of products and environments to be usable and accessible by all people to the greatest extent possible without the need for adaptation or specialised design;

“victim” means any person who has suffered harm, including physical or mental harm or economic loss which was directly caused by prohibited conduct under this Act; as well as the immediate family members of a person whose death was directly caused by prohibited conduct under this Act and who have suffered harm as a result of that person’s death;

“vocational training” includes all forms of vocational training and retraining.

Discriminatory practices following the entry into force of this Act to be null and void.

3. Without prejudice to Chapter IV of the Constitution, the European Convention Act, and any provision of this Act, any provision or practice contrary to the principle of equal treatment in any individual or collective contracts or agreements, internal rules of undertakings, or rules governing any registered organisation in terms of applicable law, enacted following the entry into force of this Act shall be considered null and void.

Protected characteristics.

4. In this Act, age; belief, creed and, or religion; colour, ethnic origin and, or race; disability; family responsibilities and, or pregnancy; family and, or civil status; gender expression and, or gender identity; genetic features; health status; language; nationality; political opinion; sex and, or sex characteristics; and sexual orientation are the protected characteristics.

Discrimination.

5. (1) It shall be unlawful to discriminate in relation to any of the protected characteristics.
- (2) Discrimination may occur:
- (a) On the basis of a single ground, which shall be deemed to occur when a person is discriminated against on the basis of only one of the protected characteristics; or
 - (b) On the basis of multiple grounds, which shall be deemed to occur when a person is discriminated against on the basis of a combination of two or more of the protected characteristics.
- (3) In any of the forms listed in sub-article (2) of this article, discrimination may be:
- (a) direct, which shall be deemed to occur where a person is treated less favourably than another person is, has been, or would be, treated in a comparable situation, on the basis of any one or a combination of any of the protected characteristics;
 - (b) indirect, which shall be deemed to occur where there is any treatment based on an apparently neutral provision, criterion or practice which would put persons having any one or a combination of any of the protected characteristics at a particular disadvantage compared with other persons, unless that provision, criterion or practice is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary;
 - (c) harassment, which shall be deemed to occur when there is unwanted conduct related to one or a combination of any of the protected characteristics, which has the purpose or effect of violating the dignity of a person and of creating an intimidating, hostile, degrading, humiliating or offensive environment;
 - (d) sexual harassment, which shall be deemed to occur when there is any form of unwanted verbal, non-verbal or physical conduct of a sexual nature, which has the purpose or effect of violating the dignity of a person, in particular when creating an intimidating, hostile, degrading, humiliating or offensive environment: Provided that this conduct shall also be a criminal offence and shall also be punishable in accordance with the Criminal Code;
 - (e) instructions to discriminate, which shall be deemed to occur in situations where a person who has the delegated authority to act on behalf of an employer is instructed by his employer, contractor, and, or superior to perform any act which is deemed to constitute discrimination under this Act:

Provided that such action shall be deemed to have also been made by the employer, contractor, and, or superior who instructed that person to perform such discriminatory act;
 - (f) victimisation, which shall be deemed to occur where a person is treated less favourably for having made a complaint to the management, and, or, to the competent authorities, or for having initiated or participated in proceedings for redress on grounds of alleged breach of the provisions of this Act, or for having disclosed information, confidential or otherwise, to a designated public regulating body, regarding alleged illegal or corrupt activities committed falling within the scope of this Act or by persons acting in such person's name and interests.
- (4) Discrimination in any of the forms listed in sub-articles (2) and (3) of this article may also occur:
- (a) by association with a person having a combination of any of the protected characteristics;
 - (b) on the basis of assumptions regarding the protected characteristics of a person.

Exceptions.

6. Notwithstanding any provision of this Act, the following shall not be deemed to constitute discrimination:

- (a) Special protection, benefits or schemes granted to persons by any law in relation to any one or more protected characteristic, where such special protection is reasonable, proportionate and legitimate;
- (b) Less favourable treatment by any policy on the grounds of any one or more protected characteristic, where such less favourable treatment is reasonable, proportionate and legitimate;
- (c) Measures of positive action or reasonable accommodation for the purpose of achieving substantive equality by maintaining and, or adopting specific measures to prevent or compensate for disadvantages linked to any of the protected characteristics;

(d) Less favourable treatment on the grounds of age, health status and, or disability in the Armed Forces of Malta;

(e) Less favourable treatment in relation to employment which is based on any of the protected characteristics where by reason of the particular occupational activities concerned or of the context in which they are carried out, such a characteristic constitutes a genuine and determining occupational requirement, and the application of the requirement must be a proportionate means of achieving a legitimate aim:

Provided that the burden of proving a genuine and determining occupational requirement shall lie on whosoever alleges its existence;

(f) Measures taken at the workplace and, or any educational environment with regard to persons with disability and persons with mental disorders aimed at creating or maintaining provisions or facilities for safeguarding or promoting their integration into the working and, or educational environment;

(g) Any conditions under which banking or insurance services are offered or withheld by banks, insurers, and, or other financial services, as long as such conditions reflect genuine considerations based on the assessment of the financial or insurance risk in the grant of such services:

Provided that the burden of proving such a genuine consideration shall lie on whosoever alleges its existence;

(h) Less favourable treatment on the grounds of belief, creed or religion in relation to access to the internal structure of any institution or community, the ethos of which is based on that belief, creed or religion, and any of the religious services provided by such an institution or community:

Provided that this sub-paragraph shall not apply in relation to the provision of goods and services by that institution or community, as defined in article 7 of this Act;

(i) The enforcement of policies for teachers within educational establishments, the ethos of which is based on a belief, creed or religion, and the requirement for teachers to act in good faith and in line with the said policies:

Provided that such requirement shall not interfere with the private life of teachers outside of that establishment:

Provided further that such policies constitute a genuine and determining occupational requirement, and the application of the requirement must be a proportionate means of achieving a legitimate aim:

Provided further that the burden of proving that such policies are in line with, and adequately reflect, that belief, creed or religion shall lie on whosoever alleges it;

(j) Less favourable treatment on the grounds of belief, creed or religion in access to the teaching of the subject of religion and educational activities related thereto in any

educational establishment the ethos of which is based on a belief, creed or religion, and only where such less favourable treatment constitutes a genuine, legitimate and justified requirement:

Provided that the teaching of the subject of religion is the primary function of that teacher:

Provided further that the burden of proving such a genuine consideration shall lie on whosoever alleges its existence;

- (k) The display of religious symbols in public places when such symbols are deemed to have a cultural value, or temporary display thereof during religious events;
- (l) The display of content relating to belief, creed or religion for the purpose of the dissemination of such belief, creed or religion;
- (m) The display of content relating to political opinion for the purpose of political campaigning and, or messaging; and
- (n) Less favourable treatment on the basis of nationality, in relation to laws and conditions relating to entry into, and residence of persons who are not Maltese nationals in Malta, and to any treatment which arises from the legal status of these individuals concerned.

Application.

7. (1) Without prejudice to any provision in this Act, no person, establishment or entity, whether in the private sector or within the public administration, shall discriminate against any other person in relation to:

- (a) access to goods and services;
- (b) advertising;
- (c) banking services, insurance services, and, or other financial services;
- (d) educational and vocational guidance;
- (e) access to employees' and employers' associations;
- (f) employment;
- (g) employment agency services; and
- (h) self-employment and occupation.

Access to goods and services.

8. (1) Discrimination in the access to goods and services, be they of a commercial nature or otherwise, shall include less favourable treatment in:

- (a) the supply of goods or services to the general public;
- (b) the provision of health and medical care and other medical services;
- (c) social security and social services;
- (d) police services;
- (e) transport;
- (f) housing;
- (g) sports;
- (h) the participation in an event or activity which is open to the public; and
- (i) entertainment and recreational activities.

(2) The provision of subarticle (1) of this article shall only be applicable to the supply of goods and services to the general public, and outside the private and family sphere.

Advertising.

9. The publication, display or broadcasting of, or the causing to be published, displayed or broadcast of any advertisement which promotes discrimination or which is discriminatory or which might reasonably be understood as indicating an intention to discriminate shall be unlawful:

Provided that, in relation to any advertising related to recruitment, any difference in treatment must be related to a genuine and determining occupational requirement and the application of the requirement must be a proportionate means of achieving a legitimate aim:

Provided further that the burden of proving such a genuine and determining occupational requirement shall lie on the person who alleges its existence.

Banks and other financial service providers.

10. No bank or other financial service provider shall discriminate against any person in the access to any service provided by it:

Provided that nothing shall be deemed to constitute discrimination in so far as the conditions under which the services are offered or withheld reflect genuine considerations based on the financial risk in the grant of such facilities.

Insurances.

11. (1) No insurer shall discriminate against any person in the access to and grant of any insurance service and, or service provided by it:

Provided that nothing in this article shall be deemed to constitute discrimination in so far as the conditions under which the insurance service is offered or withheld reflect genuine considerations based on the assessment of the insurance risk:

Provided further that the burden of proving a genuine consideration shall lie on whosoever alleges its existence.

(2) For the purposes of subarticle (1) of this article, insurers who use any protected characteristic as a determining factor for the conditions under which an insurance service is offered or withheld shall present an annual notification to the Commission, which notification shall include the following details:

- (a) the insurer's name;
- (b) the relevant insurance service for which the notification shall have been presented;
- (c) the rationale for which the protected characteristic is being used as a determining factor;
- (d) the statistical or actuarial information upon which that rationale is being based.

(3) Without prejudice to article 12 of this Act, and any other Act, the provisions of this article shall begin to apply from five years within the coming into force of this Act.

Where the use of sex is a factor in the calculation of premiums and benefits.

12. (1) Subject to subarticle (2) of this article, the use of sex as a factor in the calculation of premiums and benefits for the purpose of an insurance service and, or, to any matter connected or ancillary thereto shall not result in differences in the premiums and benefits relating to a person with respect to insurance contracts concluded after 21st December 2007 where the policyholder is a person.

(2) The provisions of subarticle (1) shall not apply with respect to insurance contracts concluded before 21st December 2012, where the use of sex is a determining factor in the assessment of risk, if the resulting differences in the premiums and benefits relating to a person are proportionate, and where this assessment is based on relevant and accurate actuarial statistical data.

(3) For the purposes of subarticle (2), an insurance contract shall be deemed to have been concluded before 21st December 2012 notwithstanding that:

- (a) the said insurance contract is extended automatically on or after 21st December 2012 on the basis of terms and conditions in an insurance contract concluded before 21st December 2012 (hereinafter referred as a “pre-existing contract”); or
- (b) the said insurance contract is amended on or after 21st December 2012 on the basis of individual elements of a pre-existing contract, such as premium changes, based on predefined parameters terms and conditions in a pre-existing contract, where the consent of the policyholder is not required; or
- (c) the said insurance contract is a top-up or follow-on insurance policy whose terms were agreed in a pre-existing contract concluded before 21st December 2012, where such insurance contract is activated by the unilateral decision of the policyholder; or
- (d) a pre-existing contract is amended on or after 21st December 2012 on the request and with the consent of the policyholder, on condition that such amendment does not result in any increase in premium; or
- (e) the said insurance contract is part of a scheme under which an insurance company transfers to another insurance company all rights and obligations arising from pre-existing contracts in accordance with the provisions of the Insurance Business Act.

Insurance practices which remain possible.

13. (1) Without prejudice to the foregoing provisions, insurers may make use of sex as a risk-rating factor in the calculation of premiums and benefits at the aggregate level, provided that it does not lead to differentiation at individual level.

(2) After the 21st December 2012, insurers may still collect, store, and use sex status or sex-related information for the purpose of:

- (a) reserving and internal pricing in connection with monitoring the composition of the insurer's financial assets from the point of view of total pricing;
- (b) pricing reinsurance contracts provided they do not lead to sex differentiation at individual level;
- (c) marketing and advertisement; and
- (d) risk assessment in connection with life and health insurance policies:

Provided that insurers shall be permitted in the assessment of insured risks in sickness insurance to take into account the risks, which are characteristic only of persons of one sex, and to differentiate, if necessary, to the extent of the specified risks the insurance premiums and insurance indemnities of different sexes:

Provided further that insurers may offer gender-specific insurance products provided it is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary.

(3) Without prejudice to the foregoing provisions of this article, costs related to pregnancy and parenthood shall not result in differences in individuals' premiums and benefits.

Educational and vocational training or guidance.

14. (1) Discrimination in education, vocational training or guidance shall include less favourable treatment in the:

- (a) access to education, including any course, vocational training and, or guidance of all types and at all levels, including practical work experience;
- (b) award of educational support for students or trainees;
- (c) selection and implementation of the curricula; and
- (d) assessment of the skills or knowledge of the students or trainees.

(2) It shall be the duty of educational establishments and entities providing vocational training, within the limits of their competence to:

- (a) ensure that curricula and textbooks do not propagate discrimination; and
- (b) promote diversity and respect towards all persons, paying particular attention to the diversity and particular combinations of protected characteristics.

Employees and Employers Associations.

15. Without prejudice to any relevant provisions of the Employment and Industrial Relations Act, and the statutes of the organisations registered under that Act, it shall be unlawful for the governing body or any officer or official representative of such organisation:

- (a) to subject a person to discriminatory treatment -
 - (i) in the assessment of an application for membership; or
 - (ii) in the terms and, or conditions on which such organisation is prepared to accept applications for membership; and
- (b) to subject a member to discriminatory treatment by -
 - (i) Denying access to any benefit provided by the organisation or limiting access to such benefit;
 - (ii) Depriving membership of the organisation or varying the terms of such membership; or
 - (iii) Subjecting the member to any other detriment.

Employment.

16. (1) Discrimination in employment shall include less favourable treatment in the:

- (a) Access to employment;
- (b) Assessment of work applications;
- (c) Conduction of interviews, including requesting from job seekers information concerning their private life or family plans;
- (d) Determination of selection criteria;
- (e) Recruitment conditions;
- (f) Provision of promotions;
- (g) Granting of access to vocational guidance and, or training, including practical work experience;
- (h) Conditions of employment;
- (i) Pay;
- (j) Management of work, including distribution of tasks;
- (k) Membership of, and involvement in, any organisation of employees and employers, or any organisation whose members carry on a particular profession, including the benefits provided for by such organisations;
- (l) Redundancy; and
- (m) Dismissal.

(2) The prohibition of discrimination in employment shall be applicable to all types of employees amongst all levels of the professional hierarchy, including job applicants, trainees, temporary workers and self-employed workers.

Right to information from employer.

17. (1) Prospective employers shall provide job applicants, prior to an interview, adequate information on the selection criteria to be examined.
- (2) A job applicant who is rejected shall have a right to request and receive from the prospective employer information in writing regarding the criteria upon which the applicant was rejected.
- (3) An employee who is denied access to promotion or training opportunities shall have a right to request and receive from the employer information in writing regarding the criteria upon which the employee was rejected.

Equal pay for equal work.

18. Employees in the same class of employment are entitled to the same rate of pay for work of equal value:
- Provided that an employer or a union of employers and a worker or a union of workers may agree on different salary scales, annual increments and other conditions of employment that are different for those workers who are employed at different times, where such salary scales have a maximum that is achieved within a specified period of time as a result of negotiations for a collective agreement:
- Provided further that any distinction between classes of employment based on treatment which is not in accordance with the provisions of this Act or any other law shall be null and of no effect.

Employment Agencies.

19. (1) It shall be unlawful for an employment agency to subject a person to discriminatory treatment:
- (a) by refusing to provide any of its services;
 - (b) in the terms or conditions it offers to provide any of its services; or
 - (c) in the manner in which it provides any of its services.
- (2) For the purposes of this article, an employment agency shall not be deemed to discriminate against a person if, taking into account training, qualifications and experience relevant to the work sought and all other relevant factors that it finds reasonable to take into account, such person would be unable to carry out the inherent requirements of the work sought.

Request for information from employment agencies.

20. Where an application has been refused by an employment agency, the applicant shall have a right to request and receive from the employment agency information in writing regarding the criteria upon which the applicant was rejected.

Self-employment and occupation.

21. (1) No person in self-employment or occupation shall be discriminated against in relation to the establishment, equipment or extension of a business or the launching or extension of any other form of self-employed activity or occupation.
- (2) Spouses, civil union partners or cohabitees of self-employed workers not being employees or partners, who participate in the activities of the self employed workers and perform the same or ancillary tasks as their spouse, civil union partner, or cohabitee shall be entitled to receive from their spouse, civil union partner, or cohabitee a fair compensation for their activity commensurate to the value of their contribution:

Provided that this subarticle shall not apply where the system of community of acquests or community of the residue under separate administration subsists between the spouses or civil union partners:

Provided further that this subarticle shall not apply where the obligations arising from a contract of cohabitation registered in terms of the Cohabitation Act already provide for measures which give the cohabitee of the self-employed worker fair compensation for their activity, or where such contract establishes a community of acquests of the cohabitees.

Persons responsible for any workplace, educational establishment or vocational training.

22. (1) Persons responsible for any workplace, educational establishment or entity providing vocational training or guidance or for any establishment at which goods, services or accommodation facilities are offered to the public shall take measures to ensure that no other persons who have a right to be present in, or to avail themselves of any facility, goods or service provided suffer any form of discrimination at such workplace, educational establishment or entity providing vocational training.

(2) Where discrimination does take place, it shall be a defence for persons responsible as aforesaid to prove that they took such necessary steps to prevent such discrimination.

(3) The failure by any person responsible as aforesaid to fulfil the obligation to suppress any form of discrimination as provided under subarticle (2) shall also be deemed to constitute discrimination.

Duties of employers and providers of goods and services.

23. (1) It shall be the duty of employers and providers of goods and, or services to take, within their capacity, effective measures to prevent all forms of discrimination.

(2) Upon a request made by the Commission acting upon any complaint or *ex officio* investigation, it shall be the duty of employers and providers of goods and, or services to provide the Commission with any information required in accordance with the procedure set in the Human Rights and Equality Commission Act.

(3) It shall be the duty of the employer to use appropriate means to bring the provisions of this Act as well as of any measure taken to further the aim of these provisions to the attention of all employees or to any other persons who may be affected by the actions of the employer concerned:

Provided that it shall also be the duty of employers and providers of goods and, or services to adopt adequate preventive measures, which should be fully implemented and monitored effectively:

Provided further that it shall also be the duty of employers and providers of goods and, or services to ensure that if discrimination does take place there are remedial measures in place.

Equality Duty.

24. Whosoever falls within the scope of applicability of this Act shall:

- (a) take the necessary measures to ensure that the principle of equal treatment is respected;
- (b) ensure that any administrative provisions, contractual provisions, internal rules of undertakings and rules governing profit-making or non-profit-making organisations contrary to the principle of equal treatment are abolished or amended; and
- (c) implement measures in conformity with the concept of universal design.

Public administration and equality duty.

25. (1) The public administration must, in the exercise of its functions, have due regard to the need to -

- (a) Eliminate discrimination and any other conduct that is prohibited under this Act;
- (b) Advance equality of opportunity between persons who share a protected characteristic and persons who do not share it;
- (c) Ensure equality mainstreaming when formulating and implementing laws, regulations, administrative provisions, policies and activities in all areas; and
- (d) Foster good relations between persons regardless of their protected characteristics by having due regard in particular to the need to tackle prejudice and promote equal treatment.

(2) The public administration shall:

- (a) create and adopt, within one year from the coming into force of this Act, an Action Plan which includes effective, measurable, comprehensive and co-ordinated policies encompassing all relevant measures to promote equality and the protection of human rights;
- (b) ensure the implementation of the aforementioned Action Plan by way of effective co-operation among other relevant Ministries, Commissions, agencies, authorities, institutions, organisations, civil society and any relevant bodies;
- (c) allocate appropriate financial and human resources for the adequate implementation of this Action Plan, including those actions carried out by non-governmental organisations, agencies and civil society;
- (d) review the Action Plan periodically and at least once every three years; and
- (e) publish a report, at least once every three years, detailing the progress and status of the Action Plan.

(3) A person who is not a public authority but who exercises public functions must, in the exercise of those functions, have due regard to the matters mentioned in subarticle (1) of this article.

(4) Having due regard to the need to advance equality of opportunity for all persons, the public administration shall -

- (a) Remove disadvantages suffered by persons related to any one or a combination of more protected characteristics;
- (b) Ensure that all appointments made to officially appointed bodies consist of at least forty per cent female appointees, and forty per cent male appointees:
Provided that this provision shall only apply to all appointments made following the coming into force of this Act;
- (c) Take steps to meet the needs of persons with a protected characteristic who would be disadvantaged unless such measures are implemented; and
- (d) Implement measures to enable the participation in public life or in any other activity by persons who share a protected characteristic when participation by such persons is disproportionately low.

(5) The measures required to meet the needs of persons with disability shall include, in particular, measures which take account of the specific needs of such persons.

(6) Any action necessary for the compliance with the duties in this article, including positive action, shall not be considered to be tantamount to discrimination under this Act.

Annual Report.

26. (1) The Minister shall compile an annual report on the work done by the public administration in pursuance of article 25 of this Act as soon as practicable after the end of every

calendar year, but in any case by no later than the end of March of the following year (such report shall hereinafter in this article be referred to as the 'annual report').

(2) A copy of the annual report shall be laid on the Table of the House of Representatives by no later than one month from the date of its compiling.

(3) A copy of the annual report shall also be sent to the Commission for its review by not later than one month from the date of compiling, and the Commission shall have one month to present its review to the House of Representatives.

(4) Once the Commission has laid its review of the annual report on the Table of the House, both the annual report and the Commission's review shall be jointly discussed by the Social Affairs Committee of the House of Representatives or any other committee substituting the same:

Provided that the Commission shall be invited to attend the Committee's meetings and shall be allowed to make its representations to the same Committee.

Right of action before the First Hall, Civil Court.

27. (1) Without prejudice to the provisions of the Employment and Industrial Relations Act, the Human Rights and Equality Commission Act, and any other applicable law, any person who alleges that any other person, establishment or entity has committed in that person's regard any act which is deemed to be unlawful under this Act may, by application filed before the First Hall of the Civil Court, request the Court to order the defendant to desist from such unlawful acts and, or, to order the payment of damages suffered as a direct result of such unlawful act:

Provided that nothing in this subarticle shall prevent the Commission, following the termination of an investigation, from filing an application before the Court requesting the Court to order the defendant to comply with the Commission's decision.

(2) In any action, as is provided in subarticle (1) of this article, the plaintiff shall, over and above and in addition to such damages and costs as may have been actually incurred, be entitled to recover by way of compensation such sum of money as the competent Court in its discretion may consider reasonable, taking into account all the circumstances of the case, including any non-pecuniary damages suffered by the plaintiff:

Provided that such compensation for non-pecuniary damages shall be dissuasive and proportionate to the damage suffered, and shall in no case exceed the sum of ten thousand Euro (EUR 10,000).

(3) Without prejudice to the provisions of the Code of Civil Organisation and Civil Procedure and any other relevant law, any registered association, organisation or legal entity having a juridical interest in ensuring that the provisions of this Act are complied with may engage themselves either on behalf of, or in support of the applicant, with the applicant's consent, in any judicial or administrative procedure provided for the enforcement of obligations under this Act.

(4) Without prejudice to the provisions of the Code of Civil Organisation and Civil Procedure and any other relevant law, nothing in this article shall prevent any person having a juridical interest from joining in and becoming a party to intervene as third party intervener in the suit, even when the action has been filed by the Commission.

(5) Without prejudice to the provisions of the Code of Organization and Civil Procedure, indirect discrimination may be proved by any means of evidence, including relevant, accurate and statistical evidence based on actuarial principles.

Right of action before the Commission.

28. (1) Any person who alleges that any other person, establishment or entity has committed in that person's regard any act which is unlawful under this Act may file a complaint to the Commission, requesting the Commission to order the defendant to desist from such unlawful acts and, where applicable, to order the payment of compensation for such damages, including non-pecuniary damages, suffered through such unlawful act.

(2) Any registered association, organisation or legal entity having an interest in ensuring that the provisions of this Act are complied with may engage themselves either on behalf of, or in support of the applicant, with the applicant's consent, in any procedure provided for the enforcement of obligations under this Act.

(3) Without prejudice to the provisions of the Code of Organization and Civil Procedure, indirect discrimination may be proved by any means of evidence, including relevant, accurate and statistical evidence based on actuarial principles.

Action to be made within two years.

29. Any action instituted in accordance with article 28 of this Act shall be filed within two years from when the alleged unlawful act occurred or became known to the victim, or if the said act is of a continuous nature, from when the act stopped occurring or when it stopped having a discriminatory effect on the victim, whichever is the earliest.

Burden of proof.

30. (1) In any proceedings under articles 27 and 28 of this Act, it shall be sufficient for the plaintiff to establish before the Court or before the Commission those facts from which it may be reasonably presumed that the alleged victim has been discriminated against on the basis of one or more of the protected characteristics.

(2) It shall be incumbent on the defendant to prove that there has been no breach of the principle of equal treatment, or that such less favourable treatment was justified in accordance with the provisions of this Act and the Court or Commission shall uphold the complaint if the defendant fails to prove that the unlawful act was not committed.

(3) This article shall not apply in criminal proceedings or where the Commission is investigating a case which it has commenced *ex officio*.

Application of this Act.

31. (1) This Act applies to the public administration and the private sector.

(2) The provisions of this Act shall be without prejudice to any measures laid down in any other law which are necessary for public security, for the maintenance of public order and the prevention of criminal offences, for the protection of health and for the protection of the rights and freedoms of others.

(3) If any conflict relating to a matter dealt with in this Act arises between this Act and the provisions of any other law other than the Constitution or an Act of Parliament expressly amending this Act, the provisions of this Act must prevail.

(4) The Equality for Men and Women Act and all subsidiary legislation promulgated hereunder are hereby repealed.

Power of the Minister to make regulations.

32. The Minister may issue regulations in order to give better effect to any provision of this Act and generally to regulate equality in conformity with the provisions of this Act.

Consequential Amendments

Amendment to the Criminal Code, Cap. 9.

33. Article 82A of the Criminal Code shall be substituted as follows:

"Incitement to hatred.

82A. (1) Whosoever uses any threatening, abusive or insulting words or behaviour, or displays any written or printed material which is threatening, abusive or insulting, or otherwise conducts

himself in such a manner, with intent thereby to stir up violence or hatred against any another person or group on the grounds of age; belief, creed and, or religion; colour, ethnic origin and, or race; disability; family responsibilities and, or pregnancy; family and, or civil status; gender expression and, or gender identity; genetic features; health status; language; nationality; political opinion; sex and, or sex characteristics; and sexual orientation, or whereby such violence or hatred is likely, having regard to all the circumstances, to be stirred up shall, on conviction, be liable to imprisonment for a term from six to eighteen months.

(2) For the purposes of the foregoing sub-article “violence or hatred” means violence or hatred against any person or against a group of persons in Malta defined by reference to their age; belief, creed and, or religion; colour, ethnic origin and, or race; disability; family responsibilities and, or pregnancy; family and, or civil status; gender expression and, or gender identity; genetic features; health status; language; nationality; political opinion; sex and, or sex characteristics; and sexual orientation.”

Amendment to the European Convention Act. Cap. 319.

34. The European Convention Act shall be amended as follows:

(a) Article 2 of the Act shall be amended as follows:

(i) for the definition “Convention” there shall be substituted the following:

“ “Convention” means the Convention for the Protection of Human Rights and Fundamental Freedoms signed in Rome on the 4th November, 1950 and the First, Second, Third, Fourth, Fifth, Sixth, Seventh and Twelfth Protocols thereto signed in Paris on the 20th March 1952, and in Strasbourg on the 6th May 1963, 6th May 1963, 16th September 1963, 20th January 1966, 18th April 1983, 22nd November 1984 and in Rome on the 4th November 2000, respectively;” and

(ii) for the definition “Human Rights and Fundamental Freedoms” there shall be substituted the following:

“ “Human Rights and Fundamental Freedoms” means those rights and freedoms as set out in articles 2 to 18 (inclusive) of the Convention and articles 1 to 3 (inclusive) of the First Protocol, articles 1 to 4 (inclusive) of the Fourth Protocol, articles 1 and 2 of the Sixth Protocol and articles 1 to 5 (inclusive) of the Seventh Protocol, and article 1 of the Twelfth Protocol to the Convention, which articles are reproduced in the First Schedule to this Act;”.

(b) Article 7 of the Act shall be substituted by the following:

“Transitory provision.

7. No contravention of articles 2 to 18 (inclusive) of the Convention or of articles 1 to 3 (inclusive) of the First Protocol committed before the 30th April 1987 or of articles 1 to 4 (inclusive) of the Fourth Protocol, articles 1 and 2 of the Sixth Protocol or of articles 1 to 5 (inclusive) of the Seventh Protocol committed before the 1st April 2002 or of article 1 of the Twelfth Protocol committed before the 1st April 2016, shall give rise to an action under article 4 of this Act.”

(c) Immediately at the end of the First Schedule to the Act there shall be added the following:

“Article 1 of the Twelfth Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms.

Article 1 – General prohibition of discrimination

1. The enjoyment of any right set forth by law shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

2. No one shall be discriminated against by any public authority on any ground such as those mentioned in paragraph 1.”

Amendment to the Gender Identity, Gender Expression and Sex Characteristics Act, Cap. 540.

35. Subarticle (2) of Article 11 of the Act shall be deleted.

Objects and Reasons

The aim of this Bill is to incorporate all legislation dealing with equality in order to ensure legal certainty and elevate the principle of equality to a right in itself, and makes it applicable to all spheres of life. The Bill also transposes the Twelfth Protocol to the European Convention for the Protection of Human Rights and Fundamental Freedoms into national law.