



**EQUALITY BILL 2016**

**LEGISLATIVE COUNCIL**

**AMENDMENTS MOVED BY MR CRETNEY MLC AT THE CLAUSES STAGE**

**ON BEHALF OF CABINET OFFICE / DEPARTMENT OF ECONOMIC DEVELOPMENT WHICH NOW STAND PART OF THE  
BILL**

<b>Clause</b>	<b>Amendment</b>	<b>Purpose of amendment</b>
Clause 3	1. Page 31, for line 12 substitute — «“relevant officer” has the meaning given in section 100(1);».	The amendment corrects an error due to a broken internal cross-reference.
Schedule 6 para. 4 (Introduced by Clause 46)	Page 183, leave out lines 5 to 11 (which comprise paragraph 4 of the Schedule).	The inclusion of paragraph 4 in the Schedule is unnecessary because the Bishop is appointed by Her Majesty the Queen rather than a member of the Executive in the Island. The appointment is therefore subject to the UK Equality Act 2010 rather than this Bill.
Clause 65	Page 77, for lines 31 to 36 substitute — “(3) The second condition is that the maternity-related pay is not what her pay would have been had she not been on maternity leave.”.	The amendment substitutes a new subsection (3) to replace the existing subsection in which the second condition had two discrete limbs. This amendment was requested by officers from Treasury’s Social Security Division who have advised that because the structure of maternity benefits in the Island does not precisely mirror the structure in Great Britain the second limb of the current provision is inappropriate.

<p>Clause 100</p>	<p>Page 103, line 7, after “industrial relations officer;” (but before “and”) insert —  “(b) in relation to proceedings under section 105, a person appointed by DEC to conciliate in proceedings under that section;”.</p> <p><i>Renumber the existing paragraph (b) of the subsection as paragraph (c) and adjust cross-references accordingly.</i></p>	<p>The function of a “relevant officer” is to try to promote a settlement through conciliation and other means so that complaints of discrimination do not have to be determined by the Employment and Equality Tribunal. Under the Bill there are three conciliation bodies or persons. These are industrial relations officers for cases with an employment element, officers of the Office of Fair Trading for goods and services complaints while in addition the Department of Education and Children must appoint an independent person to assist with the resolution of disputes involving schools with a view to avoiding claims being made to the Tribunal.</p> <p>The definition of “relevant officer” in clause 100 presently only comprises the first two categories of conciliators. The purpose of the amendment is to include persons appointed by the DEC to conciliate in relation to education cases within the definition.</p>
<p>Clause 110</p>	<p>Page 111, for lines 9 to 12 substitute —  “(1) If proceedings are pending in the Court and it appears that a claim or counter-claim relates to a non-discrimination rule, the Court must strike out the claim or counter-claim, unless it proceeds as mentioned in</p>	<p>These amendments reflect a difference of approach between the Equality Act 2010 and the Island’s Equality Bill. In England certain cases may be determined by either the civil courts or Employment Tribunals whereas in the Island all proceedings will be dealt with by the Employment</p>

	<p>subsection (2).”.</p> <p>Page 111 after line 18 insert —  “(3) On a reference under subsection (2)(a) the Tribunal must determine whether the claim or counter-claim is to be accepted as having been made within the time limit which applies to it under section 111.  For the purposes of this subsection, the Tribunal must—  (a) in the case of a claim, treat a complaint as having been made to the Tribunal at the time when the proceedings in the Court were commenced; and  (b) in the case of a counter-claim, treat a complaint as having been made to the Tribunal at the time when the counter-claim was asserted in the proceedings before the Court.”.</p>	<p>and Equality Tribunal. The effect of the amendment is to require the High Court to either strike out a claim or counter-claim relating to a non-discrimination rule or to refer the claim to the Tribunal. Where a claim is referred to the Tribunal the Tribunal must, for the purposes of establishing whether it should be accepted, ascertain whether the claim was submitted within the appropriate time limit. For this purpose the date the claim was submitted to the High Court is the appropriate date.</p>
<p>Clause 117</p>	<p>Page 117, line 8 omit “(a)”.</p> <p>Page 117, after line 14 insert —  “(3) On a reference under subsection (2)(a) the Tribunal must determine whether the claim or counter-claim is to be accepted as having been made within the time limit which applies to it under section 118.  For the purposes of this subsection, the Tribunal must—  (a) in the case of claim, treat a complaint as having been made to the Tribunal at the time when the proceedings in</p>	<p>These amendments have a very similar effect to the amendments moved in respect of clause 110. As in that clause the High Court will be required to either strike out a claim or counter-claim relating to a non-discrimination rule or to refer the claim to the Tribunal. Where a claim is referred to the Tribunal the Tribunal must, for the purposes of ascertaining whether it should be accepted, establish whether the claim was submitted within the appropriate time limit. For this purpose the date the claim was submitted to the High Court is the appropriate date.</p>

	the Court were commenced; and (b) in the case of a counter-claim, treat a complaint as having been made to the Tribunal at the time when the counter-claim was asserted in the proceedings before the Court.”.	
Clause 131	Page 126, line 13, omit “40(1)”.	The amendment omits a reference to contract workers which had originally been requested by the Department of Economic Development in error. <sup>1</sup>
Clause 136	Page 130, line 14, after “industrial relations officer;” insert — “(b) settles a claim under section 105 with the assistance of a person appointed by DEC to conciliate in proceedings under that section;”  <i>Renumber the existing paragraph (b) of the subsection as paragraph (c) and adjust cross-references accordingly.</i>	This amendment is based on the same premise as the earlier amendment to clause 100.  The clause sets out exceptions to the non contracting-out rule which protects workers and service providers from being able to give up the rights provided for in the Bill. The clause makes exceptions to the non contracting-out rule in the case of settlements reached with the assistance of either an

<sup>1</sup> Clause 131 concerns equal pay audits. Subject to DED making regulations, an employer may be ordered to carry out an equal pay audit where the Tribunal finds there has been an equal pay breach. Whereas an employer can properly be held to account for a breach relating to his own employees and also certain office holders it would be inappropriate to hold the employer to account over the pay of contract workers under clause 40(1) who are paid by a third party.

		<p>industrial relations officer or an officer of the Office of Fair Trading. The amendment takes into account that there is a third class of conciliator, provided for within the Bill, that is an independent person appointed by the Department of Education and Children to assist with the resolution of disputes involving schools. Any agreement reached with the assistance of such a person will be an additional exception to the non contracting-out rule.</p>
<p>Clause 163</p>	<p>Page 148, at the end of line 20 insert — “(2) If a provision of this Act confers a power to make an order or regulations, but does not specify by whom the power to make the order or regulations is exercisable, the power is exercisable by the Council of Ministers.”.</p> <p><i>Renumber succeeding subsections and adjust cross-references accordingly.</i></p> <p>Page 149, for lines 4 to 10 substitute — “(6) If section 30 of the <i>Legislation Act 2015</i> does not</p>	<p>The purpose of the amendments is twofold –</p> <p>Firstly, there are some places in the Bill where the authority to make an order or regulations is not attributed. The amendment number 10 clarifies that where this is the case the power rests with the Council of Ministers.</p> <p>Secondly, the amendment number 11 clarifies that where an order or regulations are made using multiple enabling powers in the Bill, as permitted by this clause, if none of the individual</p>

	apply to any of the statutory document’s authorising legislation, section 32 of that Act (Tynwald procedure – negative) applies to the statutory document.”.	enabling powers require the approval of Tynwald then the negative resolution procedure <sup>2</sup> is to apply.			
Schedule 24 (Introduced ny Clause 167)	<p>2. Page 270, for the entry in the table relating to “relevant officer” substitute –</p> <table border="1"> <tr> <td>“relevant officer”</td> <td>Section 100(1)</td> <td>The whole Act.</td> </tr> </table>	“relevant officer”	Section 100(1)	The whole Act.	The amendment corrects an error due to a broken internal cross reference.
“relevant officer”	Section 100(1)	The whole Act.			

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<sup>2</sup> Under the procedure the responsible authority for the document must cause the document to be laid before Tynwald as soon as practicable after it is made and if Tynwald at the sitting at which it was laid or the next subsequent sitting resolves that the document is to be annulled it ceases to have effect. The procedure is set out at section 32 of the Legislation Act 2015.