



MONTSERRAT

CHAPTER 4.03

RACE RELATIONS ACT

Revised Edition

showing the law as at 1 January 2013

This is a revised edition of the law, prepared by the Law Revision Commissioner under the authority of the Revised Edition of the Laws Act.

This edition contains a consolidation of the following laws—

RACE RELATIONS ACT

Act 11 of 1999 .. in force 1 January 2000 (S.R.O. 69/1999)

Amended by Act 9 of 2011 .. in force 27 September 2011 (S.R.O. 40/2011)

Page

3



MONTSERRAT

CHAPTER 4.03

RACE RELATIONS ACT

Revised Edition

showing the law as at 1 January 2013

This is a revised edition of the law, prepared by the Law Revision Commissioner under the authority of the Revised Edition of the Laws Act.

This edition contains a consolidation of the following laws—

RACE RELATIONS ACT

Act 11 of 1999 .. in force 1 January 2000 (S.R.O. 69/1999)

Amended by Act 9 of 2011 .. in force 27 September 2011 (S.R.O. 40/2011)

Page
3

CHAPTER 4.03

RACE RELATIONS ACT

ARRANGEMENT OF SECTIONS

PART 1

GENERAL

SECTION

1. Short title
2. Interpretation

PART 2

DISCRIMINATION TO WHICH ACT APPLIES

3. Nature of racial discrimination
4. Discrimination by way of victimisation

PART 3

DISCRIMINATION IN EMPLOYMENT

5. Discrimination against applicants and employees
6. Exceptions for genuine occupational qualifications
7. Discrimination against contract workers
8. Meaning of employment at establishment in Montserrat
9. Exception for seamen recruited outside Montserrat
10. Discrimination against partners
11. Discrimination in organisations
12. Discrimination in other organisations
13. Exception in the case of certain organisations
14. Discrimination by qualifying bodies
15. Discrimination by persons concerned with provision of training
16. Discrimination by employment agencies

PART 4

DISCRIMINATION IN OTHER FIELDS

17. Discrimination in educational establishments
18. Discrimination by public authorities
19. Discrimination in provision of goods, facilities and services

20. Discrimination in disposal or management of premises
21. Exception from sections 19 and 20
22. Discrimination: consent for assignment or sub-letting

PART 5

OTHER UNLAWFUL ACTS

23. Discriminatory practices
24. Discriminatory advertisements
25. Instructions to discriminate
26. Pressure to discriminate
27. Liability of employers and principals
28. Aiding unlawful acts

PART 6

GENERAL EXCEPTIONS FROM PARTS 3 TO 5

29. Exceptions in certain cases
30. Indirect access to benefits etc.

PART 7

ENFORCEMENT

31. Claims under Parts 3 or 4
32. Non-discrimination notices
33. Period within which proceedings be brought
34. Evidence
35. Enforcement of sections 24 to 30

PART 8

SUPPLEMENTAL

36. Local authorities general statutory duty
37. Validity and revision of contracts

CHAPTER 4.03

RACE RELATIONS ACT

(Acts 11 of 1999 and 9 of 2011)

AN ACT IN RELATION TO RACE.

Commencement

[1 January 2000]

PART 1

GENERAL

Short title

1. This Act may be cited as the Race Relations Act.

Interpretation

2. (1) In this Act, unless the context otherwise requires—

“**act**” includes an omission to do an act;

“**advertisement**” includes every form of advertisement or notice, whether to the public or not, and whether in a newspaper or other publication, by television or radio, by display of notices, signs, labels, show cards or goods, by distribution of samples, circulars, catalogues, price lists or other material, by exhibition of pictures, models or films, or in any other way, and references to the publishing of advertisements shall be construed accordingly;

“**dispose**”, used in relation to premises, includes granting a right to occupy the premises;

“**employment**” means employment under a contract of service or of apprenticeship or a contract to execute personally 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;

“**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**” has the meaning given by section 6 of the Partnership Act;

“**nationality**” includes citizenship;

“**near relative**” shall be construed in accordance with subsection (2);

“**notice**” means a notice in writing;

“**profession**” includes any vocation or occupation;

“**racial grounds**” means any of the following grounds, namely – colour, race, religion, nationality or ethnic or national origins;

“**racial group**” means a group of persons defined by reference to colour, race, religion, nationality or ethnic or national origins;

“**trade**” includes any business.

(2) For the purposes of this Act 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.

PART 2

DISCRIMINATION TO WHICH ACT APPLIES

Nature of racial discrimination

3. (1) A person discriminates against another in any of the circumstances specified in Parts 3 to 5 if—

- (a) on racial grounds he treats that other person less favorably than he treats or would treat other persons; or
- (b) he applies to that other person a requirement or condition which he applies or would apply equally to all persons, but—
 - (i) which is such that the proportion of persons of the same racial group as that other person who can comply with it is considerably smaller than the proportion of persons not of that racial group who can comply with it; and
 - (ii) which he cannot show to be justifiable irrespective of the colour, race, religion, nationality or ethnic or national origins of the person to who it is applied; and
 - (iii) which is to the detriment of that other because he cannot comply with it.

(2) For the purposes of this section a person is treated less favorably if he is segregated from other persons on racial grounds.

Discrimination by way of victimisation

4. (1) A person (“**the discriminator**”) discriminates against another person (“**the person victimised**”) in any of the circumstances specified in Parts 3 to 5 if he treats the person victimised less favorably than in those

circumstances he treats or would treat other persons, and so treats that person for any of the reasons specified in subsection (2).

(2) The reasons referred to in subsection (1) are that the person victimised has—

- (a) brought proceedings against the discriminator or any other person under this Act; or
- (b) given evidence or information in connection with proceedings brought by any person against the discriminator or any other person under this Act; or
- (c) otherwise done anything under or by reference to this Act 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 Act,

or that the discriminator knows that the person victimised intends to do any of those things, or suspects that he has done, or intends to do, any of them.

(3) Subsections (1) and (2) do 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.

PART 3

DISCRIMINATION IN EMPLOYMENT

Discrimination against applicants and employees

5. (1) Subject to the provisions of this Act, no person shall, with respect to any employment at an establishment in Montserrat, discriminate against another—

- (a) in the arrangements made for the purpose of determining who should be offered that employment; or
- (b) in the terms in which the offer of employment is made; or
- (c) by refusing or deliberately omitting to offer that employment to a particular person.

(2) No employer shall discriminate against an employee in relation to—

- (a) the terms of employment of that employee;
- (b) the employee's access to opportunities for promotion, transfer or training, or to any other benefits, facilities or services;
- (c) acts of dismissal, or disciplinary acts or any other act of the employer which is to the detriment of the employee.

(3) Notwithstanding section 8, for the purposes of this section “**employment at an establishment in Montserrat**” shall not include employment which substantially involves the provision of tasks within a private household.

Exceptions for genuine occupational qualifications

6. (1) There is no racial discrimination within the meaning of sections 5(1)(a), 5(1)(c) or 5(2)(b) where belonging to, or being of a particular racial group is a necessary qualification for an employment.

(2) Belonging to, or being of a particular racial group is a necessary qualification for an employment where—

- (a) the employment involves participation in a dramatic performance or other entertainment in a capacity for which a person of that racial group is required for reasons of authenticity; or
- (b) the employment involves participation as an artist’s or photographic model in the production of a work of art, visual image or sequence of visual images for which a person of that racial group is required for reasons of authenticity; or
- (c) the employment involves working in a place where food or drink is (for payment or not) provided to and consumed by members of the public or a section of the public in a particular setting for which, in that job, a person of that racial group is required for reasons of authenticity; or
- (d) the holder of that employment provides persons of that racial group with personal services promoting their welfare, and those services can most effectively be provided by a person of that racial group.

(3) Subsection (2) applies where some only of the duties of the employment fall within paragraph (a), (b), (c) or (d) of that subsection as well as where all of them do.

(4) Where an employer already has employees of the racial group in question—

- (a) who are capable of carrying out the duties specified in subsection (2)(a), (b), (c) or (d) as the case maybe; and
- (b) who 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,

the exception provided in section 6(1) shall not apply.

Discrimination against contract workers

7. (1) This section applies where work is being done by workers (“**contract workers**”) employed not by the principal himself but by another person, who supplied such workers under a contract with the principal.

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

- (a) in the terms on which the principal allows the contract worker to do that work; or
- (b) by not allowing the contract worker to do the work or to continue to do it; or
- (c) in the way the principal affords the contract worker access to any benefits, facilities or services 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.

Meaning of employment at establishment in Montserrat

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

(2) Employment—

- (a) on board a ship registered in Montserrat; or
- (b) on an aircraft or hover-craft registered in Montserrat and operated by a person who has his principal place of business, or is ordinarily resident, in Montserrat,

shall be deemed to be employed at an establishment in Montserrat except the employee does his work wholly outside Montserrat.

Exception for seamen recruited outside Montserrat

9. (1) Nothing in section 5 shall render unlawful an act done by an employer in connection with the employment by him on any ship of a person who applied or was engaged for that employment outside Montserrat.

(2) Nothing in section 7 shall render unlawful an act done by the principal in connection with work to which that section applies, on any ship by a worker who was engaged outside Montserrat by the person by whom he was supplied.

Discrimination against partners

10. (1) It is unlawful for a firm consisting of four or more partners, in relation to a position as a partner in the firm, to discriminate against a person—

- (a) in the arrangements made for the purpose of determining who should be offered that position; or
- (b) in the terms on which that position is offered; or
- (c) by refusing or deliberately omitting to offer that position; or
- (d) in a case where the person already holds that position—
 - (i) in the way he is afforded access to any benefits, facilities or services, or by refusing or deliberately omitting to afford him access to them; or
 - (ii) by expelling him from that position, or by 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.

Discrimination in organisations

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

(2) It is unlawful for an organisation to which this section applies to discriminate against a person who is not a member of the organisation—

- (a) in the terms on which the organisation is prepared to admit that person to membership; or
- (b) by refusing, or deliberately omitting to accept, that person's application for membership.

(3) It is unlawful for an organisation to which this section applies to discriminate against a person who is a member of the organisation—

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

(4) For the purposes of this section a person is a member of an organisation if he belongs to it by virtue of his admission to any type or category of membership provided by its Constitution.

Discrimination in other organisations

12. (1) It is lawful for an association of persons, whether corporate or incorporate, charitable or otherwise to discriminate against a person who is not a member of that organisation—

- (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.
- (2) Where the person is a member or associate of the organisation, it is unlawful to discriminate against him—
- (a) in the way it affords him access to any benefits, facilities or services, or by refusing or deliberately omitting to afford him access to them; or
 - (b) in the case of a member, by depriving him of membership, or varying terms on which he is a member; or
 - (c) in the case of an associate, by depriving him of his rights as an associate, or varying those rights; or
 - (d) in either case, by subjecting him to any other detriment.
- (3) For the purposes of this section—
- (a) a person is a member of an organisation if he belongs to it by virtue of his admission to any type or category of membership provided for by its Constitution;
 - (b) a person is an associate of an organisation to which this section applies if, not being a member, he has under its Constitution all or some of the rights enjoyed by members.

Exception in the case of certain organisations

13. (1) An organisation to which section 12 applies is within this section if the main object of the organisation is to enable the benefits of membership to be enjoyed by members of a particular racial group defined otherwise than by reference to colour, and in determining whether that is the main object of the association regard shall be had to the essential character of the organisation and to all relevant circumstances including, in particular, the extent to which the affairs of the organisation are so conducted that the persons primarily enjoying the benefits of membership are of the racial group in question.

(2) In the case of an organisation within subsection (1), nothing in section 12 shall render unlawful an act not involving discrimination on the ground of colour.

Discrimination by qualifying bodies

14. (1) It is unlawful for an authority or body which can confer an authorisation or qualification which is needed for, or facilitates, engagement in a particular profession or trade to discriminate against a person—

- (a) in the terms on which it is prepared to confer or renew or extend that authorisation or qualification; or
- (b) by refusing, or deliberately omitting to grant, an application for it; or
- (c) by withdrawing the qualification or authorisation or varying the terms on which it is held.

(2) In this section—

“authorisation or qualification” includes recognition, registration, enrollment, approval and certification.

Discrimination by persons concerned with provision of training

15. It is unlawful, in the case of an individual seeking or undergoing training which would help fit him for an employment, for a person who provides, or makes arrangements for the provision of facilities for such training to discriminate against him—

- (a) in the terms on which that person affords him access to any training course or other facilities connected with such training; or
- (b) by refusing or deliberately omitting to afford him such access; or
- (c) by terminating his training; or
- (d) by subjecting him to any detriment during the course of his training.

Discrimination by employment agencies

16. (1) It is unlawful for an employment agency to discriminate against any person—

- (a) in the terms on which the agency offers to provide any of its services; or
- (b) by refusing or deliberately omitting to provide any of its services; or
- (c) in the way it provides any of its services.

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

(3) This section does not apply if the discrimination only concerns employment which the employer could lawfully refuse to offer the person who alleges that there has been discrimination.

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

- (a) that it acted in reliance on a statement made by the employer to the effect that, by reason of the operation of subsection (3), its action would not be unlawful; and
 - (b) that it was reasonable for it to rely on the statement.
- (5) A person who knowingly or recklessly makes a statement such as is referred to in subsection (4)(a) which in a material respect is false or misleading commits an offence and shall be liable on summary conviction to a fine of \$10,000 or to a term of imprisonment of one year.

PART 4

DISCRIMINATION IN OTHER FIELDS

Discrimination in educational establishments

17. (1) No person shall, in relation to an educational establishment in Montserrat, discriminate against a person—

- (a) in the terms of admission to that establishment; or
- (b) by refusing or deliberately omitting to accept an application for admission to that establishment.

(2) No person being a student of an educational establishment in Montserrat shall be discriminated against—

- (a) in the way he is afforded access to any benefits, facilities or services, or by refusing or deliberately omitting to afford him access to them; or
- (b) by excluding him from the establishment or subjecting him to any other detriment.

Discrimination by public authorities

18. It is unlawful for a public authority to discriminate against any person in the exercise of its powers and functions conferred by law.

Discrimination in provision of goods, facilities and services

19. (1) No person, being a person concerned with the provision of goods, facilities or services to the public or a section of the public, to discriminate against a person who seeks to obtain or use those goods, facilities or services, by refusing or deliberately omitting to provide him with such goods or services or with services of the like quality, in the like manner and on the like terms as are being provided to other members of the public.

(2) Subsection (1)—

- (a) does not apply to goods, facilities or services outside Montserrat except as provided in subsections (3) and (4); and
- (b) does 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 Montserrat.

(3) Section (1) applies to the provision of facilities for travel outside Montserrat where the refusal or omission occurs in Montserrat or on a ship, aircraft or hovercraft within subsection (4).

(4) Subsection (1) applies on and in relation to—

- (a) any ship registered in Montserrat; and
- (b) any aircraft or hover-craft registered in Montserrat and operated by a person who has his principal place of business, or is ordinarily resident in Montserrat, even if the ship, aircraft or hover-craft is outside Montserrat.

(5) This section shall not render unlawful an act done in or over a country outside Montserrat, or in or over that country's territorial waters, for the purpose of complying with the laws of that country.

Discrimination in disposal or management of premises

20. (1) No person shall, in relation to premises in Montserrat of which he has power to dispose, discriminate against another—

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

(2) No person, being the Manager of a premises shall discriminate against a person occupying the premises—

- (a) in relation to access to any benefits or facilities, or by refusing or deliberately omitting to afford such access to them; or
- (b) by evicting him, or subjecting him to any other detriment.

(3) Subsection (1) does 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.

Exception from sections 19 and 20

21. (1) Sections 19 and 20 do not apply to the provision by a person of accommodation in any premises, or the disposal of any 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; and
- (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) For the purposes of subsection (1)(c), premises are 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 two such households and only the relevant occupier and any member of his household reside in the accommodation occupied by him;
- (b) in the case of premises not falling within paragraph (a) there is not normally residential accommodation on the premises for more than six persons in addition to the relevant occupier and members of his household.

(3) Section 19 does not apply to anything done by a person as a participant in arrangements under which he (for reward or not) takes into his home, and treats as if they were members of his family, children, elderly persons, or persons requiring a special degree of care and attention.

Discrimination: consent for assignment or sub-letting

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

(2) Subsection (1) does not apply if the person withholding the licence or consent, or a near relative of his, (“**the relevant occupier**”) resides, and intends to continue to reside, on the premises; and the premises are “**small premises**” within the meaning of section 21(2).

PART 5

OTHER UNLAWFUL ACTS

Discriminatory practices

23. (1) No person shall apply a practice or other arrangement which in any circumstance would call for the application by him of a discriminatory practice.

(2) 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 3 or 4 taken with section 3(1)(b), or which would be likely to result in an act of discrimination if the persons to whom it is applied included persons of a particular racial group in relation to which there has been no occasion for applying it.

(3) Proceedings in respect of a contravention of this section shall be brought only by the Attorney General in accordance with section 32.

Discriminatory advertisements

24. (1) It is unlawful to publish or cause to be published an advertisement which indicates, or might reasonably be understood to indicate, an intention by a person to do an act of discrimination.

(2) Subsection (1) does not apply to an advertisement—

- (a)* if the intended act would not be unlawful under this Act;
- (b)* if the advertisement relates to the services of an employment agency within the meaning of section 16(1) and the intended act only concerns employment which the employer could by virtue of section 6 lawfully refuse to offer to persons against whom the advertisement indicates an intention to discriminate.

(3) Subsection (1) does not apply to an advertisement which indicates that persons defined otherwise than by reference to colour, race or ethnic or national origins are required for employment outside the Territory.

(4) The publisher of an advertisement made unlawful by subsection (1) shall not be liable under this Act 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 another person that, by reason of the operation of subsection (2) or (3), the publication would not be unlawful; and
- (b)* that it was reasonable for him to rely on the statement.

(5) A person who knowingly or recklessly makes a statement such as is mentioned in subsection (4)(a) which in a material respect is false or misleading commits an offence and is liable on summary conviction to a fine of \$10,000 or to a term of imprisonment of one year.

Instructions to discriminate

25. 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 an act which is unlawful under this Act, or procure or attempt to procure the doing by him of any such an act.

Pressure to discriminate

26. (1) It is unlawful to induce, or attempt to induce, a person to do any act which contravenes a provision of this Act.

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

Liability of employers and principals

27. (1) Anything done by an employee in the course of his employment shall be treated for the purposes of this Act (except as regards offences thereunder) as done by the employer as well as by the employee 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 of that other person shall be treated for the purposes of this Act (except as regards offences thereunder) as done by that other person as well as by him.

(3) In proceedings brought under this Act against an employer in respect of an act alleged to have been done by an employee it shall be a defence for the employer to prove that he took such steps as were reasonably necessary to prevent the employee from doing that act, or acts of that description.

Aiding unlawful acts

28. (1) A person who knowingly aids another person to do an act which contravenes any provision by this Act shall be treated for the purposes of this Act as having done that act.

(2) For the purposes of subsection (1) an employee or agent for whose act the employer or principal is liable under section 27 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 Act, 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 such as is mentioned in subsection (3)(a) which in a material respect is false or misleading commits an offence, and is liable on summary conviction to a fine of \$10,000 or to a term of imprisonment of one year.

PART 6

GENERAL EXCEPTIONS FROM PARTS 3 TO 5

Exceptions in certain cases

29. Nothing in Parts 3 to 5 shall render unlawful any act done—

- (a) in affording persons of a particular racial group access to facilities or services to meet the special needs of persons of that group, that is, in relation to their education and general welfare;
- (b) by a person for the benefit of persons not ordinarily resident in Montserrat in affording them access to facilities for education or training or any ancillary benefits, where it appears to him that the persons in question do not intend to remain in Montserrat after their period of education or training;
- (c) whereby a person discriminates against another on the basis of that other's nationality or place of birth or the length of time for which he has been resident in a particular area or place, if the act is done—
 - (i) in selecting one or more persons to represent Montserrat, or a place or area, or any related association, in any sport or game; or
 - (ii) in pursuance of the rules of any competition so far as they relate to eligibility to compete in any sport or game;
- (d) shall render unlawful any act whereby a person discriminates against another on the basis of that other's nationality or place of ordinary residence or the length of time for which he has been present or resident in or outside Montserrat or an area within Montserrat, if that act is done—
 - (i) in pursuance of any arrangements made (whether before or after the enactment of this Act) by or with the

approval of, or for the time being approved by the Governor acting on the advice of Cabinet; or

- (ii) in order to comply with any condition imposed by the Governor acting on the advice of Cabinet whether before or after the enactment of this Act;

(Amended by Act 9 of 2011)

- (e) in the interests of defence or internal security or for securing public safety or public order.

Indirect access to benefits, etc.

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

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

PART 7

ENFORCEMENT

Claims under Parts 3 or 4

31. (1) A claim by any person ("**the claimant**") that another person ("**the respondent**")—

- (a) has committed an act of discrimination against the claimant;
- (b) is by virtue of section 27 or 28 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) Proceedings under subsection (1) shall be commenced only in the High Court.

(3) As respects an unlawful act of discrimination falling within section 3(1)(b), no award of damages shall be made if the respondent proves that the requirement or condition in question was not applied with the intention of treating the claimant unfavorably on racial grounds.

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

Non-discrimination notices

32. (1) This section applies to—

- (a) an unlawful discriminatory act; and
- (b) an act contravening section 25; and
- (c) an act contravening sections 26, 27 or 28, and so applies whether or not proceedings have been brought in respect of the act.

(2) If the Attorney General, after such inquiry as he thinks appropriate in the circumstances, is satisfied that a person is committing or has committed an act to which this section applies, he may serve on that person a notice (“**a non-discrimination notice**”) requiring him—

- (a) not to commit any such act; and
- (b) where compliance with paragraph (a) involves changes in any of his practices or other arrangements—
 - (i) to inform the Attorney General that he has effected those changes and what those changes are; and
 - (ii) to take such steps as may reasonably be required by the notice for the purpose of affording that information to other persons concerned.

(3) A non-discrimination notice may also require the person on whom it is served to furnish the Attorney General with such other information as may reasonably be required by the notice in order to verify that the notice has been complied with.

(4) The Attorney General shall not serve a non-discrimination notice on any person unless he has first—

- (a) given that person notice that he is minded to issue a non-discrimination notice in that person’s case, specifying the grounds on which he contemplates doing so; and
- (b) offered that person an opportunity of making oral or written representations in the matter (or both oral and written representations if that person thinks fit) within a period of not less than twenty eight days specified in the notice; and
- (c) taken account of any representations so made by that person.

(5) If, after the expiry of a period of three months from the date on which the non-discrimination notice was served on the person concerned, the Attorney General is not satisfied that the requirements of that notice have been fully complied with, he may, at any time before the expiry of a period of six months from the date on which the notice was so served, apply to the High Court for an order directing compliance with such of the requirements of the non-discrimination notice as are specified in the application.

(6) On the hearing of an application by the Attorney General under subsection (5) the court may make an order directing compliance with the requirements specified in the Attorney General's application (including any substituted in accordance with subsection (7)) or with such of them as it considers appropriate in all the circumstances of the case or may refuse to make any order.

(7) In making an order under subsection (6) the court may substitute for any requirement specified in the Attorney General's application such other requirement as it considers appropriate in all the circumstances of the case.

(8) The Chief Justice may make rules of procedure regulating the making and determination of applications under this section.

Enforcement of sections 24 to 26

33. (1) Proceedings in respect of a contravention of sections 24, 25 or 26 shall be brought only by the Attorney General and shall be so brought before the High Court.

(2) The proceedings shall be—

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

(b) an application under subsection (3),

or both.

(3) If it appears to the Attorney General—

(a) that a person has done an act which by virtue of sections 24, 25 and 26 was unlawful; and

(b) that unless restrained he is likely to do further acts which by virtue of that section are unlawful,

the Attorney General may apply to the court for an order restraining him from doing such acts; and the court, if satisfied that the application is well-founded, may grant the injunction in the terms applied for or in more limited terms.

Period within which proceedings be brought

34. (1) A court shall not consider a claim under section 31 unless proceedings in respect of the claim are instituted before the end of the period of six months beginning when the act complained of was done.

(2) A court shall not consider an application under section 33(2)(a) unless it is made before the end of the period of six months beginning when the act to which it relates was done; and a court shall not consider an application under section 33(3) unless it is made before the end of the period of five years so beginning.

(3) A court may nevertheless consider such a 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 this section—

- (a) when 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; and
- (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 in question decided upon it,

and in the absence of evidence establishing the contrary a person shall be taken for the purposes of this section to decide upon the 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.

Evidence

35. (1) In any proceedings under this Act a certificate signed by or on behalf of the Governor certifying—

- (a) that any arrangements or condition specified in the certificate were made, approved or imposed by the Governor or a Minister and were in operation at a time or throughout a period so specified; or
- (b) that an act specified in the certificate was done in the interests of defence or internal security or for securing public safety or public order,

shall be conclusive of the matters certified.

(2) A document purporting to be a certificate such as is mentioned in subsection (1) shall be received in evidence and, unless the contrary is proved, shall be deemed to be such a certificate.

PART 8

SUPPLEMENTAL

Local authorities general statutory duty

36. Without prejudice to their obligation to comply with any other provision of this Act it shall be the duty of every public authority to make appropriate arrangements with a view to securing that their various functions are carried out with due regard to the need—

- (a) to eliminate unlawful racial discrimination; and
- (b) to promote equality of opportunity, and good relations, between persons of different racial groups.

Validity and revision of contracts

37. (1) A term of a contract is void where—

- (a) its inclusion renders the making of the contract unlawful by virtue of this Act; or
- (b) it is included in the furtherance of an act rendered unlawful by this Act; or
- (c) it provides for the doing of an act which would be rendered unlawful by this Act.

(2) Subsection (1) does 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 Act is unenforceable by any person in whose favour the term would operate apart from this subsection.

(4) Subsection (3) does not apply to a contract settling a claim to which section 31 applies.

(5) On the application of any person interested in a contract to which subsection (2) applies the High 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 of court 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.

