



TRISTAN DA CUNHA

REVISED EDITION OF THE LAWS, 2017

EMPLOYMENT AND COMMERCE

RACE RELATIONS (TRISTAN DA CUNHA) ORDINANCE, 1996¹

Ordinance T2 of 1996

In force 20 June 1996

No amendments to 1 November 2017

No subsidiary legislation to 1 November 2017

RACE RELATIONS (TRISTAN DA CUNHA) ORDINANCE, 1996

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¹ Under section 10 of the Revised Edition of the Laws Ordinance, 1999 this text is authoritative and is the sole authentic edition in respect of the law contained in it as at 1 November 2017.

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AN ORDINANCE to outlaw certain discrimination on racial grounds.

**PART 1
PRELIMINARY**

Short title

1. This Ordinance may be cited as the Race Relations (Tristan da Cunha) Ordinance, 1996.

Interpretation

2. (1) In this Ordinance—

“**act**” includes a deliberate omission;

“**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 is to be construed accordingly;

“**discrimination on racial grounds**” means discrimination on the grounds of colour, race, nationality, or ethnic or national origins;

“**dispose**”, in relation to premises, includes granting a right to occupy the premises, and any reference to acquiring premises is to be construed accordingly;

“**education**” includes any form of training or instruction;

“**employment**” means employment under a contract of service or of apprenticeship or a contract personally to execute any work or labour, and related expressions are to be construed accordingly;

“**firm**” has the meaning given by section 4 of the Partnership Act 1890 (UK);

“**nationality**” includes citizenship;

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

(2) References in this Ordinance to the affording by any person of access to benefits or services are not limited to benefits, facilities or services provided by that person himself or herself or itself, 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.

(3) *Omitted*

PART 2 OFFENCES

Discrimination in employment

3. (1) A person ('A') must not in relation to employment by A discriminate on racial grounds against another person ('B')—

- (a) in the arrangements A makes for the purpose of determining who should be offered that employment;
- (b) in the terms on which A offers B that employment; or
- (c) by refusing or deliberately omitting to offer B that employment.

Penalty: A fine of £500.

(2) A person ('A') must not in the case of a person ('B') employed by A discriminate on racial grounds against B—

- (a) in the terms of employment which A affords B;
- (b) in the way A affords B access to opportunities for promotion, transfer or training, or to any other benefits, facilities or services, or by refusing or deliberately omitting to afford B access to them; or
- (c) by dismissing B, or subjecting B to any other detriment.

Penalty: A fine of £500.

Discrimination against contract workers

4. (1) This section applies to any work for a person ("**the principal**") which is available for doing by individuals ("**contract workers**") who are employed not by the principal himself, herself or itself but by another person, who supplies them under a contract made with the principal.

(2) A principal ('A') must not, in relation to work to which this section applies, discriminate on racial grounds against a contract worker ('B')—

- (a) in the terms on which A allows B to do that work;
- (b) by not allowing B to do it or continue to do it;
- (c) in the way A affords B access to any benefits, facilities or services or by refusing or deliberately omitting to afford B access to them; or
- (d) by subjecting B to any other detriment.

Penalty: A fine of £500.

Partnerships

5. (1) A firm must not in relation to a position as partner in the firm discriminate on racial grounds against a person—

- (a) in the arrangements they make for the purpose of determining who should be offered that position;
- (b) in the terms on which they offer the person that position;
- (c) by refusing or deliberately omitting to offer the person that position; or
- (d) in a case where the person already holds that position—

- (i) in the way they afford the person access to any benefits, facilities or services, or by refusing or deliberately omitting to afford the person access to them; or
- (ii) by expelling the person from that position, or subjecting him or her to any other detriment.

Penalty: A fine of £500.

(2) Subsection (1) applies in relation to persons proposing to form themselves into a partnership as it applies in relation to a firm.

Trade unions, etc

6. (1) This section applies to—
- (a) an organisation of workers;
 - (b) an organisation of employers, or
 - (c) any other organisation whose members carry on a particular profession or trade for the purposes of which the organisation exists.

(2) An organisation to which this section applies must not, in the case of a person who is not a member of the organisation, discriminate on racial grounds against the person—

- (a) in the terms on which it is prepared to admit him or her to membership; or
- (b) by refusing, or deliberately omitting to accept, his or her application for membership.

Penalty: A fine of £500.

(3) An organisation to which this section applies must not, in the case of a person who is not a member of the organisation, discriminate on racial grounds against the person—

- (a) in the way it affords the person access to any benefits, facilities or services, or by refusing or deliberately omitting to afford him or her access to them;
- (b) by depriving the person of membership, or varying the terms on which he or she is a member; or
- (c) by subjecting the person to any other detriment.

Penalty: A fine of £500.

Qualifying bodies

7. (1) An authority or body which can confer an authorisation or qualification which is needed for, or facilitates, engagement in a particular profession or trade must not discriminate on racial grounds against a person—

- (a) in the terms on which it is prepared to confer on the person that authorisation or qualification;
- (b) by refusing, or deliberately omitting to grant, the person's application for it; or
- (c) by withdrawing it from the person or varying the terms on which he or she holds it.

Penalty: A fine of £500.

(2) In this section—
“authorisation or qualification” includes recognition, registration, enrollment, approval and certification;
“confer” includes renew or extend.

Vocational training bodies

8. (1) A person to whom this subsection applies must not, in the case of an individual seeking or undergoing training which would help to fit him or her for any employment, discriminate on racial grounds against the individual—

- (a) in the terms of which that person affords the individual access to any training courses or other facilities; or
- (b) by refusing or deliberately omitting to afford the individual such access; or
- (c) by terminating his or her training.

Penalty: A fine of £500.

(2) Subsection (1) applies to—

- (a) any association which comprises employers and has as its principal object, or one of its principal objects, affording their employees access to training facilities; and
- (b) any other person providing facilities for training for employment, being a person designated for the purposes of this paragraph in an order made by the Governor.

Discrimination by educational establishments

9. An educational establishment must not discriminate on racial grounds against a person—

- (a) in the terms on which it offers to admit the person to the establishment as a pupil; or
- (b) by refusing or deliberately omitting to accept an application for the person's admission to the establishment as a pupil; or
- (c) if the person is a pupil of the establishment—
 - (i) in the way it affords the person access to any benefits, facilities or services, or by refusing or deliberately omitting to afford him or her access to them; or
 - (ii) by excluding the person from the establishment or subjecting him or her to any other detriment.

Penalty: A fine of £500.

Discrimination in provision of goods, facilities or services

10. (1) A person ('A') concerned with the provision (for payment or not) of goods, facilities or services to the public or a section of the public must not discriminate on racial grounds against a person ('B') who seeks to obtain or use those goods, facilities or services—

- (a) by refusing or deliberately omitting to provide B with any of them; or
- (b) by refusing or deliberately omitting to provide B with goods, facilities or services of the like quality, in the like manner and on the like terms as are normal in the A's case in relation to other members of the public or (if B belongs to a section of the public) to other members of that section.

Penalty: A fine of £500.

- (2) The following are examples of the facilities and services mentioned in subsection (1)—
- (a) access to and use of any place which members of the public are permitted to enter;
 - (b) accommodation in a hotel, boarding house or other similar establishment;
 - (c) facilities by way of banking or insurance or for grants, loans, credit or finance;
 - (d) facilities for education;
 - (e) facilities for entertainment, recreation or refreshment;
 - (f) facilities for transport or travel;
 - (g) the services of any profession or trade, or any local or other public authority.

Discrimination in disposal or management of premises

11. (1) A person ('A'), in relation to premises of which A has power to dispose, must not discriminate on racial grounds against another person ('B')—
- (a) in the terms on which A offers B those premises; or
 - (b) by refusing B's application for those premises; or
 - (c) in A's treatment of B in relation to any list of persons in need of premises of that description.

Penalty: A fine of £500.

- (2) A person ('A'), in relation to premises managed by A, must not discriminate on racial grounds against a person ('B') occupying the premises—
- (a) in the way A affords B access to any benefits or facilities, or by refusing or deliberately omitting to afford B access to them; or
 - (b) by evicting B, or subjecting B to any other detriment.

Penalty: A fine of £500.

Discrimination: consent for assignment or sub-letting

12. If the licence or consent of the landlord or of any other person is required for the disposal to any person of premises comprised in a tenancy, the landlord or other person must not discriminate on racial grounds against a person by withholding the licence or consent for disposal of the premises to that person.

Penalty: A fine of £500.

Discrimination: associations not within section 6

13. (1) This section applies to any association of persons (however described, whether corporate or unincorporate, and whether or not its activities are carried on for profit) if—

- (a) admission to membership is regulated by its constitution and is so conducted that the members do not institute a section of the public within the meaning of section 10(1); and
- (b) it is not an organisation to which section 6 applies.

- (2) An association to which this section applies, in the case of a person who is not a member of the association, must not discriminate on racial grounds against that person—

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

membership.

Penalty: A fine of £500.

(3) An association to which this section applies, in the case of a person who is a member or associate of the association, must not discriminate on racial grounds against that person—

- (a) in the way it affords the person access to any benefits, facilities or services, or by refusing or deliberately omitting to afford him or her access to them; or
- (b) in the case of a member, depriving the person of membership, or varying the terms on which he or she is a member; or
- (c) in the case of an associate, by depriving the person of his or her rights as an associate, or varying those rights; or
- (d) in either case, by subjecting the person to any other detriment.

Penalty: A fine of £500.

(4) For the purposes of this section—

- (a) a person is a member of an association if the person belongs to it by virtue of his or her admission to any sort of membership provided for by its constitution (and is not merely a person with certain rights under its constitution by virtue of his or her membership of some other association), and references to membership of an association are to be construed accordingly;
- (b) a person is an associate of an association to which this section applies if, not being a member of it, the person has under its constitution some or all of the rights enjoyed by members (or would have apart from any provision in its constitution authorising the refusal of those rights in particular cases).

Discriminatory advertisements

14. A person must not publish or cause to be published an advertisement which indicates, or might reasonably be understood as indicating, an intention by a person to do an act of discrimination on racial grounds, whether the doing of that act by that person would be lawful or, by virtue of this Part, an offence.

Penalty: A fine of £500

PART 3 EXEMPTIONS

Sports and competitions

15. It is not an offence under Part 2 for a person to discriminate against another on the basis of that other's nationality or place of birth or the length of time for which he or she other has been resident in a particular area or place, if the act of discrimination is done—

- (a) in selecting one or more persons to represent a country, place or area, or any related association, in any sport or game; or
- (b) pursuant to the rules of any competition so far as they relate to eligibility to compete in any sport or game.

Acts done under statutory authority, etc.

16. (1) It is not an offence under Part 2 for a person to discriminate against another if the act of discrimination is done—

- (a) pursuant to any Ordinance or Order in Council;
- (b) pursuant to any instrument made under an Ordinance by the Governor; or
- (c) in order to comply with any condition or requirement imposed by the Governor (whether before or after the passing of this Ordinance) by virtue of any Ordinance.

(2) References in this section to an Ordinance, Order in Council or instrument include an Ordinance, Order in Council or instrument passed or made after the passing of this Ordinance.

(3) It is not an offence under Part 2 for a person to discriminate against another on the basis of that other's nationality or place of ordinary residence or the length of time for which he or she has been present or resident in or outside Tristan da Cunha if the act of discrimination is done—

- (a) pursuant to any arrangements made (whether before or after the passing of this Ordinance) by or with the approval of, or for the time being approved by, the Governor; or
- (b) in order to comply with any condition imposed (whether before or after the passing of this Ordinance) by the Governor.

PART 4 MISCELLANEOUS PROVISIONS

Civil action

17. (1) A claim by any person that another person has committed an act of discrimination on racial grounds against the claimant which is an offence by virtue of Part 2 may be made the subject of civil proceedings in like manner as any other claim in tort.

(2) Damages in respect of an act of discrimination on racial grounds may include compensation for injury to feelings whether or not they include compensation under any other head.

Validity and revision of contracts

- 18. (1)** A term of a contract is void if—
- (a) its inclusion renders the making of the contract an offence by virtue of Part 2;
 - (b) it is included in furtherance of an act rendered an offence by Part 2; or
 - (c) it provides for the doing of an act which would be an offence by virtue of Part 2.

(2) Subsection (1) does not apply to a term the inclusion of which constitutes, or is in furtherance of, or provides for, discrimination against a party to the contract which is an offence by virtue of Part 2, but the term is unenforceable against the party.

(3) A term in a contract which purports to exclude or limit any provision of this Ordinance is unenforceable by any person in whose favour the term would operate apart from this subsection.

(4) On the application of any person interested in a contract to which subsection (2) applies, the Magistrates' Court may make such order as it thinks just for removing or modifying any term made unenforceable by that subsection; but such an order is not to 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.

(5) An order under subsection (4) may include provision as respects any period before the making of the order.

Application to Crown

19. (1) Subject to subsection (2), this Ordinance applies—
(a) to an act done by or for the purposes of the Crown or a government department; or
(b) to an act done on behalf of the Crown by a statutory body, or a person holding a statutory office,
as it applies to an act done by a private person.

(2) Nothing in subsection (1) renders the Crown criminally liable for an offence under Part 2.
