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Country report

Gender equality



Iceland
2020

EUROPEAN COMMISSION

Directorate-General for Justice and Consumers
Directorate D — Equality and Union citizenship
Unit D.2 Gender Equality

*European Commission
B-1049 Brussels*

Country report

Gender equality

How are EU rules transposed into national law?

Iceland

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Reporting period 1 January 2019 – 31 December 2019

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Luxembourg: Publications Office of the European Union, 2020

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PDF ISBN 978-92-76-18975-6

ISSN 2600-0164

doi:10.2838/214129

DS-BD-20-016-EN-N

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1 Introduction

1.1 Basic structure of the national legal system

The Icelandic legal system is a civil law system based on the Danish model. Its most pertinent feature is that its core principles are codified in a referable system, which serves as the primary source of law. The Constitution of the Republic of Iceland No. 33/1944 is the highest source of law, followed by statutory legislation and regulatory statutes.

The judicial system in Iceland is based on the Constitution. The new Judiciary Act No. 50/2016 of 7 June 2016, replacing Judiciary Act No. 15/1998, has more specific provisions on the structure of the courts. A new court level was introduced in Iceland on 1 January 2018 with the new Act on the Judiciary, replacing the former two tiers with a three-tier system. The new court is called the Court of Appeal (*Landsréttur*) and is a court of second instance, situated between the District Court and the Supreme Court. The introduction of the Court of Appeal is part of a major restructuring of the Icelandic justice system.¹

All court actions in Iceland commence in the District Courts (*Héraðsdómstólar*), which are eight in number and are dispersed around the country. The decision of a District Court can be appealed to the Court of Appeal, provided specific conditions for an appeal are satisfied. In special cases, and after receiving permission from the Supreme Court, it will be possible to refer the conclusion of the Court of Appeal to the Supreme Court, which will continue to be the country's court of highest instance. In most instances, the judgement of the Court of Appeal will be the final resolution of the case. These changes to the judicial system will reinforce the role of the Supreme Court of Iceland in setting precedents in jurisprudence.

The administration of justice is covered by the Code of Civil Procedure No. 91/1991 and the Code of Criminal Procedure No. 19/1991. Other acts have various procedural provisions. The courts are organised into district courts with 42 judges in total, the Court of Appeal with 15 judges and the Supreme Court with seven judges. The courts are composed of lawyers with jurisdiction to deal with all legal questions.²

The Judicial Administration (*Dómstólasýsla*), a new public agency, also commenced work on 1 January 2018.³ The Judicial Administration will take care of the administrative work of all the courts and represent their interests in dealing with the Government, the media and other parties.

The current legislation on gender equality is the Act on Equal Status and Equal Rights of Women and Men No. 10/2008 with subsequent amendments (Gender Equality Act, GEA hereinafter).⁴ The aim of the act is to establish and maintain an equal status and equal opportunities for women and men, and thus to promote gender equality in all spheres of society. All individuals shall have equal opportunities to benefit from their own enterprise and to develop their skills irrespective of gender.

¹ In a judgment of 12 March 2019, the European Court of Human Rights found that the appointment of the judges to the new Court of Appeal contravened the principle of tribunal established by law (in the case of *Guðmundur Andri Ástráðsson v. Iceland*, application no. 26374/18).

² There is only one special court, the Labour Court, which has jurisdiction with respect to disputes in industrial relations. In addition, there is the Court of Impeachment which only addresses cases pertaining to alleged offences by government ministers in the opinion of the Icelandic Parliament, *Althingi*. See, for example, *Haarde v. Iceland* (application no. 66847/12), European Court of Human Rights.

³ Government of Iceland, 'The judicial system in Iceland', <https://www.government.is/topics/law-and-order/the-judicial-system-in-iceland/>.

⁴ Act on Equal Status and Equal Rights of Women and Men No. 10/2008 with later amendments (Lög um jafna stöðu og jafnan rétt kvenna og karla nr. 10/2008), <https://www.althingi.is/lagas/nuna/2008010.html>, <https://www.government.is/library/04-Legislation/Act%20on%20equal%20status%20and%20equal%20rights%20of%20women%20and%20men%20no%2010%202008%20as%20amended%20101%202018%20final.pdf>.

The task of the Gender Equality Complaints Committee, according to the GEA, is to examine cases and to deliver a ruling in writing on whether provisions have been violated. The Committee's rulings may not be referred to a higher authority. The rulings of the Complaints Committee are binding on the parties to each case. The parties may refer the Committee's ruling to the courts.

Iceland is a party to all the main international and regional human rights treaties. It ratified the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) on 18 June 1985. Iceland has been a member of the Council of Europe since 1950 and the European Convention on Human Rights was adopted into domestic law in 1994.

Iceland is a member of the European Economic Area (EEA). The EEA Agreement entered into force in 1994. The EEA Agreement provides for the inclusion of European Union (EU) legislation in all policy areas of the Single Market. The EEA Joint Committee is the forum where decisions are taken by consensus to incorporate EU legislation into the EEA Agreement. Whenever an EEA-relevant legal act is amended or a new one adopted by the EU, a corresponding amendment needs to be made to the relevant Annex of the EEA Agreement. This is essential to maintain the homogeneity of the EEA. Such an amendment to the EEA Agreement is to be made as closely as possible to the adopted legislation on the EU side, with a view to permitting simultaneous application in the EU and in the EEA EFTA States. The decisions of the EEA Joint Committee are published in the EEA Supplement to the Official Journal of the European Union.

1.2 List of main legislation transposing and implementing the directives

Directive 2004/113/EC on Equal treatment between men and women in goods and services has been fully implemented with the following legislation:

- Act No. 79/2015 amending Act No. 10/2008 on Equal Status and Equal Rights of Women and Men, adding Article 24 a (not yet translated into English);
- Act No. 62/2014 amending Act No. 10/2008 on Equal Status and Equal Rights of Women and Men (employment, jobs);
- Act No. 79/2015 amending Act No. 10/2008 on Equal Status and Equal Rights of Women and Men (goods, services).

Directive 2006/54/EC on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation:

- Act No. 62/2014 amending Act No. 10/2008 on Equal Status and Equal Rights of Women and Men;
- Act No. 10/2008 on Equal Status and Equal Rights of Women and Men.

Directive 2010/41/EU on Equal treatment between men and women engaged in a self-employed capacity has been fully implemented with the following legislation:

- Act No. 10/2008 on Equal Status and Equal Rights of Women and Men;
- The Social Security Act No. 100/2007;
- Act No. 95/2000 on Maternity/Paternity Leave and Parental Leave (MPL).

Directive 2010/18/EU on parental leave has been fully implemented with the following legislation:

- Act No. 95/200 on Maternity/Paternity Leave and Parental Leave (MPL);
- Act No. 136/2011, amending Act No. 95/2000;
- Act No. 10/2008 on Equal Status and Equal Rights of Women and Men (GEA);

- Act No. 22/2006 on Payments to Parents of Chronically Ill or Severely Disabled Children.⁵

Directives 2000/78/EC and 2000/43/EC

- Act No. 86/2018 on equal treatment in the labour market;
- Act No. 85/2018 on equal treatment irrespective of race, ethnic origin, religion/belief, disability, diminished work ability, age, sexual orientation and gender identity, biological gender characteristics and gender expression.

1.3 Sources of law

Iceland has a civil law legal system and thus Icelandic law is characterised by written law. A major source of law in Iceland is the Constitution of the Republic of Iceland, No. 33, 17 June 1944, the supreme law of the land. The Constitution has been revised as follows: 30 May 1984, 31 May 1991, 28 June 1995 and 24 June 1999. Fundamental changes were made to the human rights chapter with the Constitutional Act No. 97/1995. The bill accompanying the Act made many references to the European Convention on Human Rights (Iceland has been a Member of the Council of Europe since 1950), as well as to other Council of Europe and United Nations human rights treaties which Iceland has ratified.

Other sources of law are statutory legislation and regulatory statutes. Further legal resources are precedent and customary law. The tradition of culture is recognised (*eðli máls* in Icelandic) as referring to considerations of fairness, justice and feasibility as to the needs of society and has the same meaning as the English legal term 'equity', in particular when other sources of law have not been able to establish a rule of law. Icelandic courts rely on the 'tradition of culture' in some cases. Act No. 15/2005 stipulates how official material, including adopted acts, are published.⁶

⁵ *Lög um greiðslur til foreldra langveikra eða alvarlega fatlaðra barna, nr. 22/2006*, <https://www.althingi.is/lagas/nuna/2006022.html>; https://www.stjornarradid.is/media/velferdarraduneyti-media/media/acrobat-enskar_sidur/Act-on-payments-to-parents-of-chronically-ill-or-severely-disabled-children-No-22-2006-with-subsequent-amendments.pdf.

⁶ *Lög um Stjórnartíðindi og Lögbirtingarblað nr. 15/2005*, <https://www.althingi.is/lagas/nuna/2005015.html>.

2 General legal framework

2.1 Constitution

2.1.1 Constitutional ban on sex discrimination

Article 65 of the Constitution No. 33/1944, as amended in 1995,⁷ provides that:

'(1): Everyone shall be equal before the law and enjoy human rights irrespective of sex, religion, opinion, national origin, race, colour, property, birth or other status;

and

(2) Men and women shall enjoy equal rights in all respects.'

During the Constitutional amendment process in 1995 the latter paragraph was added to Article 65; a clear indicator of the strong emphasis on the need for affirmative action to achieve gender equality without explicitly mentioning the need for temporary, positive measures in favour of the under-represented sex.⁸ The need to guarantee substantive gender equality is emphasised by adding the special second paragraph, although equality irrespective of sex is provided for in the first paragraph. The latter paragraph is not a redundancy.

2.1.2 Other constitutional protection of equality between men and women

None.

2.2 Equal treatment legislation

The Act on Equal Status and Equal Rights of Women and Men No. 10/2008 as amended by Acts No. 162/2010, No. 126/2011, No. 62/2014, No. 79/2015, No. 117/2016, No. 56/2017 (Gender Equality Act) and No. 80/2019.

There are no other grounds provided for in the Gender Equality Act but gender. The other grounds are all covered by Article 65 of the Constitution.

In accordance with Directives 2000/78/EC and 2000/43/EC, Iceland adopted the Act on equal treatment in the labour market No. 86/2018 on 25 June 2019 and the Act on equal treatment irrespective of race, ethnic origin, religion/belief, disability, diminished work ability, age, sexual orientation and gender identity, biological gender characteristics and gender expression, No. 85/2018, on 25 June 2018, the first anti-discrimination legislation adopted in the country for grounds other than gender. Both Acts took effect on 1 September 2019,⁹ apart from provisions on differential treatment based on age, in the case of the Act on equal treatment in the labour market, which entered into force on 1 July 2019. The Act applies to both the public and private sectors. The Act does not cover differences of treatment based on nationality or statelessness or payments of any kind made by the State's social security or social protection schemes, e.g. unemployment benefits, parental leave payments and municipal social services. Measures for public

⁷ Act amending the Constitution No. 97/1995, https://www.stjornarradid.is/media/forsaetisraduneyti-media/media/stjornarskra/Skyrsla_stjornlaganefndar_seinna_bindi_skyringar.pdf. (*Stjórnskipunarlög um breyting á Stjórnarskrá Lýðveldisins Íslands, nr. 33/1944, með síðari breytingum*), <https://www.althingi.is/altext/stjt/1995.097.html>.

⁸ Law on equal treatment in the labour market, No. 86/2018 of 25 June 2019 (*Lög um jafna meðferð á vinnumarkaði nr. 86/2018 frá 25. júní 2018*), available at: <https://www.althingi.is/altext/148/s/0551.html>.

⁹ Law No. 85/2018 on equal treatment irrespective of gender and ethnic origin (*Lög nr. 85/2018 um jafna meðferð óháð kynferði og þjóðernisuppruna*), available at: <https://www.althingi.is/lagas/nuna/2018085.html>; <https://www.jafnretti.is/is/um-jafnrettisstofu/frettir/log-um-bann-vid-allri-mismunun-hafa-tekid-gildi>.

security, order, prevention of crime and protection of health and the rights and freedoms of others are exempt and justified differences of treatment on grounds of age are permitted. Employers are obliged to provide reasonable accommodation for disabled people or people with diminished working capacity and positive action is permitted.

The Directorate for Gender Equality will monitor the implementation of the new legislation.¹⁰

On 1 January 2019, the Prime Minister's Office took over the gender equality matters; prior to that, it was under the auspices of the Minister of Social Affairs. This was in accordance with a President's Decree on the division of governing issues within the administration.¹¹ The Prime Minister subsequently appointed a steering group with the mandate of revising completely the Gender Equality Act which was adopted in 2008 and which has undergone some amendments since.¹²

The transfer of gender equality matters to the Prime Minister's Office is seen as enhancing the mainstreaming of gender equality within the whole administration, as all ministries have tasks impacting the situation and development of gender equality. A special office within the ministry of the Prime Minister will work closely with other ministries with a special staff of five.

The main task of the Gender Equality Office in 2019 was to prepare a complete revision of the Gender Equality Act No. 10/2008 in close co-operation with all stakeholders. Other tasks worth mentioning were the continued implementation of the equal pay certification system.

The Gender Equality Fund, which was founded in 2015 with parliamentary resolution No. 13/144¹³ and is operated in accordance with special rules on the allocation of funding No. 340/2019,¹⁴ was transferred to Rannís (the Icelandic Centre for Research).¹⁵

¹⁰ http://www.humanrights.is/static/files/Utgafa/bann-vid-mismunun_netid.pdf.

¹¹ <https://www.jafnretti.is/is/um-jafnrettisstofu/frettir/log-um-bann-vid-allri-mismunun-hafa-tekid-gildi>.

¹² <https://www.stjornarradid.is/lisalib/getfile.aspx?itemid=7f13c41c-5323-11ea-9455-005056bc530c>, p. 19.

¹³ <https://www.althingi.is/lagas/nuna/2008010.html>.

¹⁴ <https://www.althingi.is/altext/144/s/1456.html>.

¹⁵ <https://www.stjornartidindi.is/Advert.aspx?RecordID=5464fe8a-b3e7-462d-8ac9-6766ec7df840>.

¹⁵ <https://en.rannis.is/activities/>.

3 Implementation of central concepts

3.1 General (legal) context

3.1.1 Surveys on the definition, implementation and limits of central concepts of gender equality law

Iceland has been the frontrunner in the World Economic Forum's Global Gender Gap Index for many years running.¹⁶ Iceland's performance is based on its achievements in improving gender equality; in the area of education, political participation and women's participation in the labour force. It is, however, pointed out in this report that the gender pay gap is still a concern and that women still seem to have limited representations in executive management positions.¹⁷ Statistics reveal the situation regarding the implementation of central concepts such as pay equality. The Directorate for Gender Equality published an overview on information on gender equality issues in Iceland in 2017, in an attempt to give a comprehensive overview of structures to promote gender equality and stepping stones over the last century towards increasing gender equality but, as regards the labour market, revealing the situation through statistics on the gender pay gap and economic participation.¹⁸

The Gender Equality Act adopted with law No. 10/2008¹⁹ included a provision on quotas in its Article 15 which stipulates that, when designating members for governmental or municipal committees, councils and boards, the ratio of women to men needs to be as equal as possible and where there are more than three members, the percentage cannot be below 40 % of either sex.

In 2010, an amendment to the laws on public limited companies (No. 2/1995)²⁰ and private limited companies (No. 138/1994)²¹ obliged companies with over 50 employees to have both women and men on their company boards and, if there are more than three board members, the percentage of women or men cannot be under 40 %. These amendments also included changes that will make monitoring easier. These changes took effect in 2013.

In 2015, gendered budgeting was incorporated into law No. 28/2015 on public financing.²²

In 2014, the *Althingi* approved a law (No. 62/2014)²³ which aimed to improve certain aspects of the existing law on gender equality (No. 10/2008). The law was introduced because of comments made by the EFTA supervision institution, which suggested that the

¹⁶ World Economic Forum (2017) *This is why Iceland ranks first for gender equality*:

<https://www.weforum.org/agenda/2017/11/why-iceland-ranks-first-gender-equality/>.

¹⁷ As referred to in: The Directorate for Gender Equality Iceland (2017) *Gender equality in Iceland*, available at: https://www.jafnretti.is/static/files/utgefid_efni_af_gomlu_sidu/gender_equality_in_iceland_2017.pdf:

World Economic Forum (2016) *The global gender gap report 2016*, available at:

<https://reports.weforum.org/global-gender-gap-report-2016>.

¹⁸ The Directorate for Gender Equality Iceland (2017) *Gender equality in Iceland*, available at:

https://www.jafnretti.is/static/files/utgefid_efni_af_gomlu_sidu/gender_equality_in_iceland_2017.pdf.

¹⁹ Act on Equal Status and Equal Rights of Women and Men No. 10/2008 with later amendments,

[https://www.government.is/library/04-](https://www.government.is/library/04-Legislation/Act%20on%20equal%20status%20and%20equal%20rights%20of%20women%20and%20men%20no%2010%202008%20as%20amended%20101%202018%20final.pdf)

[Legislation/Act%20on%20equal%20status%20and%20equal%20rights%20of%20women%20and%20men%20no%2010%202008%20as%20amended%20101%202018%20final.pdf](https://www.government.is/library/04-Legislation/Act%20on%20equal%20status%20and%20equal%20rights%20of%20women%20and%20men%20no%2010%202008%20as%20amended%20101%202018%20final.pdf) and

<https://www.government.is/topics/business-and-industry/establishment-of-company/company-law/>. *Lög um jafna stöðu og jafnan rétt kvenna og karla nr. 10/2008*,

<https://www.althingi.is/lagas/nuna/2008010.html>.

²⁰ Act respecting Public Limited Companies No. 2/1995 with later amendments,

<https://www.government.is/lisalib/getfile.aspx?itemid=008e5636-3900-11e8-9427-005056bc4d74>, *Lög um hlutafélög nr. 2/1995*, <https://www.althingi.is/lagas/nuna/1995002.html>.

²¹ Act respecting Private Limited Companies, No. 137/1994 (*Lög um einkahlutafélög No. 137/1994 með síðari breytingum*), [https://www.government.is/topics/business-and-industry/establishment-of-](https://www.government.is/topics/business-and-industry/establishment-of-company/company-law/)

[company/company-law/](https://www.government.is/topics/business-and-industry/establishment-of-company/company-law/).

²² <https://www.althingi.is/lagas/nuna/2015123.html>.

²³ (*Lög um breytingu á lögum nr. 10/2008*) <https://www.althingi.is/altext/stjt/2014.062.html>.

current law on gender equality did not reflect a properly well-worded account of concepts such as direct and indirect discrimination, gendered harassment and sexual harassment. Furthermore, a new article was added to the law under the section regarding wage discrimination, which allows the respective government minister to add regulations regarding the implementation of that section, including, standards regarding wage discrimination.

One study from 2013 emphasises the lack of substantive equality despite the existence of gender equality legislation for almost four decades (the first gender equality act was passed in 1976).²⁴ Disputes on wage equality and discrimination in access to employment are difficult to assess due to the complex comprehensive assessment process, despite the rules on burden of proof. The tendency of arbiters in recent decades has been to pave the way for the principles of labour law granting employers discretion in which paradigms to use when assessing the qualities of applicants, not least with regard to the clause on 'special talents' (Article 26, para. 5 of the GEA) where the scope for employers' discretion is wide. There are insufficient cases to demonstrate this tendency but better adherence to the principles of administrative law would probably be ensured if there was a legal duty imposed on the Gender Complaints Committee and courts to investigate the recruitment/appointment process.²⁵

3.1.2 Other issues

The Equal Pay Certification Standard introduced with amendment to the Gender Equality Act in 2017 is currently being implemented, albeit its impact on companies and the actual gender pay gap has not been examined.

3.1.3 General overview of national acts

Constitution of the Republic of Iceland (No. 33, 17 June 1944, as amended 30 May 1984, 31 May 1991, 28 June 1995 and 24 June 1999).²⁶

Act on Equal Status and Equal Rights of Women and Men No. 10/2008, as amended by Acts No. 162/2010, No. 126/2011, No. 62/2014, No. 79/2015, No. 117/2016 and No. 56/2017. (Gender Equality Act).²⁷

Act on Maternity/Paternity Leave and Parental Leave No. 95/2000, as amended by Acts No. 72/2003, No. 90/2004, No. 129/2004, No. 22/2006, No. 65/2006, No. 155/2006, No. 167/2006, No. 74/2008, 112/2008, No. 173/2008, No. 70/2009, No. 97/2009, No. 120/2009, No. 134/2009, No. 162/2010, No. 126/2011, No. 136/2011, No. 143/2012, No.

²⁴ https://skemman.is/bitstream/1946/13589/1/EI%C3%ADn%20Ólafsdóttir_ritgerð.pdf.

²⁵ https://skemman.is/bitstream/1946/13589/1/EI%C3%ADn%20Ólafsdóttir_ritgerð.pdf.

²⁶ Constitution of the Republic of Iceland, available at: <https://www.government.is/Publications/Legislation/Lex/?newsid=89fc6038-fd28-11e7-9423-005056bc4d74>. (*Stjórnarskrá Lýðveldisins Íslands*, Nr. 33/1944).

²⁷ Act on Equal Status and Equal Rights of Women and Men No. 10/2008 with later amendments, <https://www.government.is/library/04-Legislation/Act%20on%20equal%20status%20and%20equal%20rights%20of%20women%20and%20men%20no%2010%202008%20as%20amended%20101%202018%20final.pdf> and <https://www.government.is/topics/business-and-industry/establishment-of-company/company-law/>. *Lög um jafna stöðu og jafnan rétt kvenna og karla nr. 10/2008*, <https://www.althingi.is/lagas/nuna/2008010.html>.

140/2013, No. 85/2015, No. 88/2015, No. 18/2016,²⁸ No. 128/2018,²⁹ No. 48/2019,³⁰ No. 149/2019,³¹ and No. 150/2019.³²

Act respecting Public Limited Companies No. 2/1995 as amended by Act No. 13/2010.³³

Act respecting Private Limited Companies No. 138/1994 as amended by Act No. 13/2010.³⁴

Act No. 56/2017 amending the Act on Equal Status and Equal Rights of Women and Men No. 10/2008 with later amendments (equal pay certification).³⁵

Media Act No. 38/2011.³⁶ Article 23 on reporting by media service providers, para 1 provides that all media service providers are obliged to submit an annual report to the Media Commission containing information on the following, as appropriate: (i) Gender representation, including the proportion of men and women among people interviewed in news and current-affairs programming.

Act No. 22/2006 on Payments to Parents of Chronically Ill or Severely Disabled Children.³⁷

Social Security Act No. 100/2007.³⁸

Act No. 85/2018 on equal treatment irrespective of ethnic or racial origin (cf. Directive 2000/43/EC).³⁹

²⁸ This law No. 18/2016, which took effect 1 January 2019, amends Paragraph 1 of Article 14 of the MPLPL – so that during maternity/paternity leave, a parent shall pay a minimum of 4 % into a pension fund and the Maternity/Paternity Leave Fund shall pay a minimum of 11.5 % instead of 8 %.

²⁹ This law No. 128/2018, which took effect 26 June 2019, amends Paragraph 3 of Article 15 of the MPLPL so that the Directorate of Labour must inform the applicant about the prospective information gathering in accordance with Paragraph 1 of Article 17 of the Data Protection Act No. 90/2018, cf. Article 14 Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data.

³⁰ Law No. 48/2019 amends the third paragraph of Article 15 of the MPLPL, stipulating that the Directorate of Labour must inform applicants in relation to the processing of their personal data, cf. EU Regulation No. 2016/679.

³¹ Taking effect on 1 January 2020, amendments to Articles 8, 18 and 19 of the MPLPL, prolonging the leave and adding an interim provision stipulating that the Minister shall submit before Parliament in October 2020 a draft law providing that parents of children born, adopted or taken into permanent foster care on 1 January 2021 or later shall be entitled to an all together 12-month period of leave and in the case of those who have not been active on the labour market the right to a 12-month grant. In this respect, each parent has an independent four-month right and a joint additional two-month right to leave or grant.

³² Act on Maternity/Paternity Leave and Parental Leave No. 95/2000, available at: https://www.government.is/media/velferdarraduneyti-media/media/acrobat-enskar_sidur/Act-on-maternity-paternity-leave-95-2000-with-subsequent-amendments.pdf. *Lög um fæðingar- og foreldraorlof nr. 95/2000 með síðari breytingum*, <https://www.althingi.is/lagas/nuna/2000095.html>.

³³ Act respecting Public Limited Companies No. 2/1995, available at: <https://www.government.is/publications/legislation/lex/?newsid=e94b6c9a-01e7-11e8-9425-005056bc530c>. (*Lög um hlutafélög nr. 2/1995*), <https://www.althingi.is/lagas/nuna/1995002.html>.

³⁴ Act No. 47/2008 on amendment to the Act respecting Public Limited Companies and Private Limited Companies, as amended up to 1 October 2008 (amendments as from Act 43/2008 indicated), available at: <https://www.stjornarradid.is/lisalib/getfile.aspx?itemid=78249169-2de3-11e9-9430-005056bc530c>. (*Lög um breytingu á lögum um hlutafélög og lögum um einkahlutafélög*), <https://www.althingi.is/altext/stjt/2008.047.html>.

³⁵ Act No. 56/2017 amending the Act on Equal Status and Equal Rights of Women and Men No. 10/2008 with later amendments (equal pay certification) (*Lög um breytingu á lögum um jafna stöðu og jafnan rétt kvenna og karla, nr. 10/2008, með síðari breytingum (jafnlaunavottun)*), available at: <https://www.althingi.is/altext/stjt/2017.056.html>.

³⁶ *Lög um fjölmiðla nr. 38/2011*, <https://www.althingi.is/lagas/nuna/2011038.html>.

³⁷ *Lög um greiðslur til foreldra langveikra eða alvarlega fatlaðra barna, nr. 22/2006*, <https://www.althingi.is/lagas/nuna/2006022.html>.

³⁸ *Lög um almannatryggingar, nr. 100/2007 með síðari breytingum*, <https://www.althingi.is/lagas/nuna/2007100.html>.

³⁹ *Lög um jafna meðferð óháð kynþætti og þjóðernisuppruna, nr. 85/2018*, <https://www.althingi.is/lagas/149c/2018085.html>.

Act No. 86/2018 on Equal Treatment in the Labour Market (cf. Directive 2000/78/EC and 2000/43/EC).⁴⁰

Excerpts from the General Penal Code, No. 19/1940, with subsequent amendments: Chapter XXII – Sexual Offences and Chapter XXIII – Homicide and Bodily Harm.⁴¹

Law in Respect of Marriage No. 31/1993.⁴²

Act No. 43/2009, Termination of Pregnancy Act, took effect on 1 September 2019.⁴³

Act No. 80/2019 on Gender Autonomy, took effect on 6 July 2019.⁴⁴

3.1.4 Political and societal debate and pending legislative proposals

The statutory certification process for companies and institutions with 25 employees or more (introduced in 2018), whereby they must prove that they pay men and women the same amount for the same job, was postponed until the end of December 2019. The mechanism moves the burden of proof from employee to employer and forces companies to develop a more transparent job evaluation system.

Although well received by many, the statutory obligation is also criticised for restricting employees' opportunities to secure pay increases and bonuses. It is furthermore criticised for being too costly for smaller firms despite the objective of the standard to eliminate the pay gap. Most recently, the Association of Medical Doctors in Iceland expressed strong opposition to the system, not objecting to the aim of eliminating wage inequality but on the basis that it is fundamentally structurally flawed, since it is based on the National Health Service system in the UK and does not take into account the profession of medical doctors.⁴⁵

3.2 Sex/gender/transgender

On 1 July 2019, Iceland passed a new law, Act No. 80/2019, on trans and intersex rights (the law took effect on 6 July of the same year),⁴⁶ potentially making the country a world leader in the area of LGBTI rights.⁴⁷ The law prohibits interventions on intersex infants. It ensures that anyone can seek trans-related healthcare and change their name and gender on official documents without a medical diagnosis, and allows people under 18 to do the same with the consent of legal guardians. It also allows for a third gender on official documents, marked by the letter 'X'.

⁴⁰ *Lög um jafna meðferð á vinnumarkaði, nr. 86/2018*, <https://www.althingi.is/lagas/149b/2018086.html>, see also: <https://www.jafnretti.is/is/um-jafnrettisstofu/frettir/log-um-bann-vid-allri-mismunun-hafa-tekid-gildi>.

⁴¹ *Kaflar úr almennum hegningarlögum nr. 19/1940 með síðari breytingum; XXII kafli, Kynferðisbrot, XXIII kafli, Manndráp og líkamsmeiðingar*, <https://www.althingi.is/lagas/nuna/1940019.html>, https://www.government.is/library/Files/General_Penal_Code_sept.-2015.pdf.

⁴² Law in respect of Marriage No. 31/1933 (*Hjúskaparlög*), <https://www.government.is/publications/legislation/lex/2018/12/07/Law%20in%20Respect%20of%20Marriage%20No%2031%201993/>. *Hjúskaparlög nr. 31/1933*, <https://www.althingi.is/lagas/nuna/1993031.html>.

⁴³ <https://www.althingi.is/lagas/150b/2019043.html>, adopted 22 May 2019 / <https://www.government.is/lisalib/getfile.aspx?itemid=60ae8fd2-0b91-11ea-9453-005056bc4d74>.

⁴⁴ The Act No. 80/2019 was amended with Law No. 159/2019, which took effect on 4 January 2020: <https://www.althingi.is/altext/stjt/2019.159.html>.

⁴⁵ <https://www.visir.is/q/2019190408810>.

⁴⁶ *Lög um kynrænt sjálfræði nr. 80/2019*, <https://www.althingi.is/altext/149/s/1866.html>. Act No. 80/2019, adopted 1 July 2019, available at: <https://www.althingi.is/altext/149/s/1866.html>. See for further reading: <https://grapevine.is/news/2019/02/12/iceland-set-to-make-major-changes-to-law-affecting-trans-intersex-and-non-binary-people/>.

⁴⁷ See for further reading: The Guardian (2019) 'On trans issues Iceland has just put Britain to shame', 21 June 2019, available at: <https://www.theguardian.com/commentisfree/2019/jun/21/trans-issues-britain-iceland-law-intersex-rights>.

3.2.1 Definition of 'gender' and 'sex'

There is really only one term in gender equality discourse (leaving aside more recent developments in LGBT concepts) to describe gender and sex, i.e. 'kyn'. However, this word is not defined in the Gender Equality Act No. 10/2008. The Icelandic term 'kyn' refers to the difference between male, female and neutral sex/gender (*karlkyn, kvenkyn, hvorugkyn*) – the term 'kyn' is both biological and sociological, while the term 'kynferði' (sex) is biological and that is the term which is translated as 'sex' in the non-discrimination clause of the Constitution. The Gender Equality Act uses both terms when translating 'kyn' without further definition.

3.2.2 Protection of transgender, intersex and non-binary persons

The Gender Autonomy Act⁴⁸ No. 80/2019, replaces Act No. 57/2012 on the legal status of individuals with gender identity disorder which took effect on 27 June 2012.⁴⁹ The Gender Autonomy Act⁵⁰ confirms the right of the individual to change their gender in the official registry in accordance with their own experience and without having to meet conditions for diagnosis or medical treatment. Trans people in Iceland will now be able to change their official gender according to their lived experience, and register as neither male nor female (denoted with an 'X' on documents). The Act also ensures that children under the age of 18 can change their registered gender and name in the National Registry with the consent of their parents or guardians.

The new act greatly expands the rights of trans people, including those who are non-binary.

3.2.3 Specific requirements

The Gender Autonomy Act ensures that children under the age of 18 can change their registered gender and name in the National Registry with the consent of their parents or guardians. If this consent is not available, the decision is put before an expert committee. The Act aims to respect and strengthen the self-determination of each individual, recognising that their own understanding of gender identity is the basis for decision-making regarding their public [gender] registration, as others are not better suited for this (so reads a government press release.⁵¹ The Act is also intended to safeguard the individual's right to bodily autonomy and a working group will be appointed to ensure the legal status of children born with atypical sex characteristics.⁵²

3.3 Direct sex discrimination

Direct sex discrimination is defined in Article 2(1) of the GEA as being when an individual receives less favourable treatment than another individual of the opposite sex receives, has received or would receive in comparable situations.

3.3.1 Explicit prohibition

Article 24 of the GEA includes a general prohibition of discrimination (Article 24(1)). All forms of discrimination, direct or indirect, on grounds of gender are prohibited. [Giving instructions to discriminate on grounds of gender also constitutes discrimination under this

⁴⁸ <https://www.stjornarradid.is/efst-a-baugi/frettir/stok-frett/2019/06/18/Island-i-fremstu-rod-i-malefnum-hinsegin-folks-efst-samthykkt-lagafrumvarps-forsaetisradherra-a-Althingi/>.

⁴⁹ https://www.government.is/media/velferdarraduneyti-media/media/acrobat-enskar_sidur/Act-on-the-legal-status-of-individuals-with-gender-identity-disorder-No-57-2012_220413.pdf.

⁵⁰ <https://www.stjornarradid.is/efst-a-baugi/frettir/stok-frett/2019/06/18/Island-i-fremstu-rod-i-malefnum-hinsegin-folks-efst-samthykkt-lagafrumvarps-forsaetisradherra-a-Althingi/>.

⁵¹ <https://www.stjornarradid.is/efst-a-baugi/frettir/stok-frett/2019/06/18/Island-i-fremstu-rod-i-malefnum-hinsegin-folks-efst-samthykkt-lagafrumvarps-forsaetisradherra-a-Althingi/>.

⁵² [https://samradsgatt.island.is/oil-mal/\\$Cases/Details/?id=1301](https://samradsgatt.island.is/oil-mal/$Cases/Details/?id=1301).

Act. Furthermore, gender-based harassment or sexual harassment constitute discrimination under this Act, as does all unfavourable treatment of an individual that may be attributed to the fact that the individual has rejected gender-based harassment or sexual harassment, or has submitted to it.] Article 24a of the GEA prohibits discrimination on grounds of sex (note that the term 'kyn' is translated alternately either as gender or sex) in relation to goods and services.

Article 25 of the GEA prohibits discrimination 'between women and men' in relation to wages and other terms. Article 26 of the GEA prohibits discrimination 'between applicants' at work and on engagement in employment. Article 27 prohibits dismissal etc., in connection with a complaint or a demand for redress. Article 28 prohibits discrimination on grounds of 'gender' in schools and other educational institutions. Article 29 prohibits the publication in the media of advertisements that are belittling or disrespectful towards either sex.

3.3.2 Prohibition of pregnancy and maternity discrimination

It is prohibited to allow maternity/paternity or parental leave, or other circumstances relating to pregnancy or childbirth, to have a negative effect on decisions regarding promotion at work, changes of position, retraining, continuing education (lifelong learning), vocational training, study leave, notice of termination, the working environment and employees' working conditions, cf. Article 26 of the GEA, paras 1 and 2.

Article 30 of the Act on Maternity/Paternity Leave and Parental Leave No. 95/2000 with later amendments (MPL) affords protection against dismissal when an employee has given notice of intended maternity/paternity leave or parental leave.

3.3.3 Specific difficulties

Specific difficulties probably concern fear in a competitive environment of losing one's job, especially among prospective fathers who intend to make use of their right to take paternity leave / parental leave. With pregnant women there is no alternative but with men it may be different; there have been accounts of men who are hesitant due to losing chances of promotion. The maximum payments from the Maternity/Paternity Leave Fund have gone down since the financial crash in 2008 and since then men have been more reluctant to abandon their well-paid jobs to take leave with lower pay.⁵³

3.4 Indirect sex discrimination

Indirect discrimination is defined in Article 2(2) of the GEA: when an apparently neutral provision, criterion or practice would put persons of either sex at a disadvantage compared with persons of the other sex, unless this can be objectively justified by a legitimate aim, and the means of achieving that aim are appropriate and necessary.

3.4.1 Explicit prohibition

Article 24 of the GEA includes a general prohibition of discrimination. Article 24(1). All forms of discrimination, direct or indirect, on grounds of gender, are prohibited. [Giving instructions to discriminate on grounds of gender also constitutes discrimination under this Act. Furthermore, gender-based harassment or sexual harassment constitute discrimination under this Act, as does all unfavourable treatment of an individual that may be attributed to the fact that the individual has rejected gender-based harassment or sexual harassment, or has submitted to it.] Article 24a of the GEA prohibits discrimination in relation to goods and services. Article 25 of the GEA prohibits against discrimination regarding wages and other terms of employment. Article 26 of the GEA prohibits

⁵³ <https://www.stjornarradid.is/lisalib/getfile.aspx?itemid=33cbc9c1-217e-11e8-9429-005056bc530c>.

discrimination at work and in recruitment for employment. Article 28 prohibits discrimination in educational institutions.

3.4.2 Statistical evidence

There is no statistical evidence on discrimination such as sexual or gender-based harassment. However, the MeToo movement revealed wide-ranging levels of sexual and gender-based harassment and abuse to which women across society in Iceland as elsewhere are exposed.

3.4.3 Application of the objective justification test

This test is acknowledged and recognised, i.e. that gender neutral rules can have discriminatory effects. The discrimination arises from the effect, and not from the treatment which does not differ. It occurs when a common and apparently neutral provision, practice or criterion applicable to everybody has a less favourable effect on a 'protected group'.

An example of applying this test regards job advertisements where no age limit is mentioned but most applicants are aware (especially women) that over the age of 50 the chances are limited and beyond 60 they are almost non-existent, even though the formal retirement age is not until 70. This is probably the greatest indirect sex discrimination in the labour market, as it impacts women earlier than men, although there are no surveys to prove it. Ageism, like racism, is so inbuilt into the national psyche that victims do not want to acknowledge that they are suffering negative effects compared to others due to their more advanced years.

Two cases before the Gender Equality Complaints Committee from 1998 tackle indirect sex discrimination without referring to the concept, which was not part of the law until the GEA no. 10/2008. One case (*No. 9/97 A og fl. gegn Hampiðjuni*) concerned a factory where a new wage system had been adopted, paying higher wages for jobs requiring special skills, operating larger machines. All the specially skilled positions were occupied by men and one woman, while the less complex machines were operated by female employees. The Committee concluded that the difference in wages was justified, albeit the factory needed a more transparent employee policy.⁵⁴ The second case (No. 3a/98) concerned complaints from female employees of two banks who were receiving lower 'car allowances' than their male colleagues.⁵⁵ The Complaints Committee held that the banks could not prove that objective reasons other than gender explained the difference in lower car allowances being paid to female employees – again there was no explicit reference to indirect discrimination.⁵⁶

3.4.4 Specific difficulties

No research has been conducted on this aspect of Icelandic jurisprudence on gender equality.

⁵⁴ Gender Equality Complaints Committee, Case No. 9/1997 from 19 June 1998.

⁵⁵ Gender Equality Complaints Committee, Case No. 3a/1998 from 30 December 1998.

⁵⁶ *Óbein mismunun á grundvelli persónulegra einkenna – réttarstaðan í Evrópurétti og íslenskum rétti* (MA thesis on indirect discrimination on grounds of personal characteristics – the legal rights in EU law and Icelandic Law), available at: https://skemman.is/bitstream/1946/2398/1/pd_fixed.pdf.

3.5 Multiple discrimination and intersectional discrimination⁵⁷

Although it is well recognised that belonging to more than one marginalised group can lead to multiple discrimination and that there is a need to take intersectionality into account (especially known in the LGBT movement),⁵⁸ this area of discrimination has not received much attention in Iceland, although this is changing. Women with disabilities, migrant women, older women and those in low-skilled, low-paid professions have not been able to organise themselves in the same way as others have.

3.5.1 Definition and explicit prohibition

The Constitution explicitly stipulates in its Article 65 that: 'Everyone shall be equal before the law and enjoy human rights irrespective of sex, religion, opinion, national origin, race, colour, property, birth or other status.' The second paragraph provides that: 'Men and women shall enjoy equal rights in all respects.'

3.5.2 Case law and judicial recognition

There is no relevant case law on multiple discrimination.

3.6 Positive action

3.6.1 Definition and explicit prohibition

The principle of equality entrenched in Article 65, para 1 of the Icelandic Constitution since 1995 provides that everyone is equal before the law irrespective of sex and other enumerated factors. Yet despite this a second paragraph was added at a later stage during the amendment process to Article 65 stating: 'Men and women shall enjoy equal rights in all respects.' This paragraph is certainly not a redundancy but was seen as a necessary addition to strengthen gender equality in society;⁵⁹ a clear indicator of the strong emphasis on the need for action to achieve gender equality without explicitly mentioning the need for temporary, positive measures in favour of the under-represented sex.

The current Gender Equality Act was adopted more than a decade later and there is no reference in the explanatory report to Article 65(2) of the Constitution, while the concept of special measures defined in Article 2 of the GEA is explained as increasing the opportunities of the under-represented sex to achieve gender equality. Article 2(7) of the GEA defines affirmative action (positive action) as special temporary measures that are intended to improve the position of, or increase the opportunities of, women or men, aimed at establishing gender equality in a specific field where either sex is at a disadvantage. In such cases it may prove necessary to give either sex temporary priority in order to achieve balance.

The newly adopted system of equal pay certification under Article 19(4) calls for positive action on the part of the employer, i.e. it is mandatory to prove that wage decisions are based on relevant considerations and not on gender.

Article 20 of the GEA (on vacancies, vocational training, retraining and continuing education / lifelong learning) stipulates that employers must take special measures to ensure that women and men have equal opportunities regarding retraining, continuing education and vocational training, and to attend courses held to enhance vocational skills

⁵⁷ See for more information Fredman, S. (2016) *Intersectional discrimination in EU gender equality and non-discrimination law*, European network of legal experts in gender equality and non-discrimination, available at: <https://www.equalitylaw.eu/downloads/3850-intersectional-discrimination-in-eu-gender-equality-and-non-discrimination-law-pdf-731-kb>.

⁵⁸ <https://otila.is/vidhorf/fordomar-og-jadarsetning/margthaett-mismunun/>.

⁵⁹ *Alpt. 1994-95, A-deild, þskj. 759, bls. 3888.*

or to prepare for other work assignments. Article 21 of the GEA stipulates that employers must take special measures to enable women and men to reconcile their professional obligations and family life, e.g. to increase flexibility in the organisation of work and working hours and thus take into account workers' family circumstances and the needs of the labour market, including facilitating the return of employees to work following maternity/paternity or parental leave or leave from work due to pressing and unavoidable family circumstances. Article 22 of the GEA stipulates that employers and directors of institutions and NGOs must take special measures to protect employees, students and clients from gender-based violence, gender-based harassment or sexual harassment in the workplace, in institutions and in their work etc.

Affirmative Action is defined in Article 3(5) of Act No. 85/2018 as special temporary measures that are intended to improve the position of individuals in the spheres outside the labour market where they fare worse because of their race or ethnic origin, to further equal treatment.

3.6.2 Conceptual distinctions between 'equal opportunities' and 'positive action' in national law

Establishing and maintaining equal status and equal opportunities for women and men are the stated aims of the Gender Equality Act No. 10/2008 (GEA) as stipulated in its Article 1. What is required to fulfil and promote these aims is specified in clauses a. to j., among them working to secure equal influence of women and men; specifically improving the situation of women and increasing their opportunities in society; working against wage discrimination; enabling women and men to reconcile their work and family life etc. Promoting equal opportunities may mean guaranteeing the absence of legal discrimination, but may also involve the implementation of substantial measures to achieve this.

The above objectives may require special measures / affirmative action which is explicitly defined in paragraph 7 of Article 2 of the GEA. The difference is that equal opportunities constitute a negative right, albeit with positive connotations, prohibiting by law gender-based discrimination, while the latter term always calls for special measures to be taken to ensure a more substantial contribution to gender equality. There is, however, an interaction between the concepts, as evident from the explanatory report where 'equal opportunities' in Article 1 of the GEA are seen in interaction with other means intended to increase the opportunities for women in society, such as gender mainstreaming.

3.6.3 Specific difficulties

Special measures to enhance gender equality are usually costly. An example is the Maternity/Paternity Leave Act (Maternity, Paternity Leave and Parental Leave Act No. 95/2000) which has *inter alia* the objective to enable both women and men to reconcile work and family life (Article 2 of the Act). This is based on a fund which is financed through the collection of an insurance levy which every employer and self-employed person must pay in the form of a tax (cf. Insurance Levy Act). This is a burden for many self-employed people. Guaranteeing rights, such as gender equality, is costly when special measures are called for.

3.6.4 Measures to improve the gender balance on company boards

Act No. 13/2010 amended the Act on Public Limited Companies No. 2/1995 as well as the Act on Private Limited Companies No. 138/1994, implementing gender quotas on company boards. The Act took effect on 1 September 2013. The law establishes that, in companies with more than 50 employees, both genders must be represented on the board. When the board is composed of more than three members, the proportion of each gender must not be lower than 40 %. The same applies to the gender ratio among alternates. In addition,

all companies falling under the scope of the Act must take gender ratio perspectives into consideration in the recruitment of CEOs, and all public limited companies with more than 25 employees must report the relevant statistics to the register of limited companies. Furthermore, both the Act on Public Limited Companies⁶⁰ and the Gender Equality Act provide that employers must take steps to avoid jobs being classified as specifically women's or men's jobs and that particular emphasis must be placed on achieving equal representation of women and men in managerial and influential positions, the beneficiary being the under-represented sex.

According to Article 63(2) of the Act on Public Limited Companies, a Board of Directors must be elected by a shareholders' meeting. It is permissible for Articles of Association to grant authorities or others the right to nominate one or more Directors. The majority of a Board of Directors must, however, at all times be elected by a shareholders' meeting. The Directors who are elected must all be elected at the same meeting.

The law covers the boards of state-owned public companies, corporations, public limited companies and private limited companies, as well as pension funds with more than 50 employees on an annual basis. In 2011 the boards of pension funds were also subject to gender quotas by amendments to the 1997 pension fund legislation (129/1997),⁶¹ to take effect 1 September 2013.

There are stricter requirements for public limited companies than private limited companies. Only 1 % of private limited companies in Iceland have more than 50 employees on an annual basis. These must observe special rules on gender equality on company boards.⁶² If the board of directors of a private limited company with more than 50 employees comprises two or three board members, each gender must have a representative. If there are three or more board members the 40 % gender ratio rule applies.

Quota rules were also adopted in the GEA No. 10/2008, Article 15, regarding participation in government and municipal committees, councils and boards where care must be taken to ensure the representation of women and men is as equal as possible and not lower than 40 % for each gender. This provision also applies to the boards of publicly-owned limited companies and enterprises in which the state or a municipality is the majority owner.

3.6.5 Positive action measures to improve the gender balance in other areas

The quota rules apply to all firms above a certain size on the labour market and there is furthermore an obligation to ensure gender-balanced appointments in government and municipal committees, councils and boards. Further to that there is a general duty imposed on all employers on the labour market to put women and men on an equal footing within their enterprise or institution and to take steps to avoid jobs being classified as specifically women's or men's jobs (cf. Article 19(1) of the GEA).

3.7 Harassment and sexual harassment

3.7.1 Definition and explicit prohibition of harassment

Article 2(3) of the GEA defines gender-based harassment as conduct which is connected with the gender of the person affected by it, is unwelcome to the person in question and

⁶⁰ Gender Equality Act No. 10/2008 and the Act on Public Limited Companies (No. 2/1995 with later amendments) <https://www.government.is/lisalib/getfile.aspx?itemid=008e5636-3900-11e8-9427-005056bc4d74>.

⁶¹ Act No. 129H/1997 on Mandatory Pension Insurance and on the Activities of Pension Funds. *Lög um skyldutryggingu lífeyrissréttinda og starfsemi lífeyrissjóða, nr. 129/1997*, <https://www.althingi.is/lagas/nuna/1997129.html>.

⁶² <https://www.atvinnuvegaraduneyti.is/media/Acrobat/felog.stofnun.thyding.22.1.2013.pdf>.

is intended to impair the self-respect of the person in question and create a situation that is threatening, hostile, degrading, humiliating or insulting for the person in question, or which has this effect. Article 22 of the GEA prohibits gender-based violence, gender-based harassment and sexual harassment.

3.7.2 Scope of the prohibition of harassment

Employers and directors of institutions and NGOs must take special measures to protect employees, students and clients from gender-based violence, gender-based harassment and sexual harassment in the workplace, in institutions, in their work for, or the functions of, their organisations or in schools, as stipulated in Article 22(1). If a superior is charged with any of the above forms of conduct, they will not be entitled to take decisions regarding the working conditions of the claimant during the examination of the case, and the immediate superior must take such decisions, (cf. Article 22(2)). (See Act No. 62/2014, Article 3 amending the GEA Article 22.)

3.7.3 Definition and explicit prohibition of sexual harassment

Article 2(4) of the GEA defines sexual harassment as any type of sexual behaviour, which is unwelcome to the person affected by it and is intended to impair the self-respect of the person concerned, or which has this effect, particularly when the behaviour results in a threatening, hostile, degrading, humiliating or insulting situation. The behaviour may be verbal, symbolic or physical. This definition complies with the EU definition found in Article 2(1)(d) of Directive 2006/54/EC.

3.7.4 Scope of the prohibition of sexual harassment

As stipulated in Article 22 of the GEA as amended by Act. No. 62/2014, Article 3: employers and directors of institutions and NGOs must take special measures to protect employees, students and clients from gender-based violence, gender-based harassment and sexual harassment in the workplace, in institutions, in their work for, or the functions of, their organisations or in schools. If a superior is charged with any of the above forms of conduct, they will not be entitled to take decisions regarding the working conditions of the claimant during the examination of the case, and the immediate superior must take such decisions.

Regulation on measures against sexual harassment, gender-based harassment and violence in workplaces No. 1009/2015 provides that an employer must react swiftly when receiving notice of such conduct or circumstances in the workplace and immediately take action to prevent such incidents. Employers must accordingly, cf. Chapter II of the said regulation, produce a written plan regarding safety and health in the workplace to reduce the likelihood of circumstances that can foster harassment, sexual as well as gender-based harassment and violence.⁶³

3.7.5 Understanding of (sexual) harassment as discrimination

The #MeToo revolution has altered the general understanding of sexual harassment; setting it in context with women so often exposed to harassment due to their inferior position within their enterprises or institutions.

In September 2019, the first major international #MeToo conference, organised as part of Iceland's presidency of the Nordic Council of Ministers, was hosted by Prime Minister Ms Katrín Jakobsdóttir in Reykjavík. The three-day gathering was intended to create a

⁶³ <https://www.reglugerd.is/reglugerdir/eftir-raduneytum/velferdarraduneyti/nr/19859>.

platform for an international and in-depth conversation about the impact of this kind of harassment, to push for policies and create transformative change.⁶⁴

3.7.6 Specific difficulties

There are no surveys and no case law relating to gender-based harassment; it is not really a phenomenon that has been adequately discussed: what forms it takes, e.g. bullying etc. It is evident that bullying and harassment are characteristic for relations within many workplaces, for example where there is stiff competition and where women may be more prone to being harassed due to their often inferior position and gender.⁶⁵

3.8 Instruction to discriminate

3.8.1 Explicit prohibition

Article 24 of the Gender Equality Act No. 10/2008 (general prohibition of discrimination) stipulates explicitly that giving instructions to discriminate on the ground of gender also constitutes discrimination under the act, as do gender-based harassment or sexual harassment.

3.8.2 Specific difficulties

The author is not aware of any.

3.9 Other forms of discrimination

Apart from Article 65 of the Constitution already discussed and Article 14 of the European Convention on Human Rights adopted into the domestic legal system in 1994, other forms of discrimination are covered by the legal provisions listed below.

Article 1 of the Law on Part-time Work, No. 10/2004.⁶⁶

Article 37 of Act No. 38/2011 (Media Act).⁶⁷

As provided for in Article 1 of the Law on Part-time Work the objective of that act is to prevent part-time workers from being discriminated against.

Article 37 of the Media Act prohibits subliminal techniques in audiovisual commercial communications that include or promote any discrimination based on gender, racial or ethnic origin, nationality, religion, belief, disability, age or sexual orientation.

Act No. 27/2000 on the prohibition on termination of employment due to family responsibilities states in Article 1: 'No person's employment may be terminated solely because of his or her family responsibilities. "Family responsibilities" here refers to the employee's responsibilities towards his or her children, spouse or close relatives who live in the employee's home and clearly need his or her care or custody, for example as a result of illness or disability.'

3.10 Evaluation of implementation

No research exists into how the above legislation has prevented discrimination in this field.

⁶⁴ https://icelandmonitor.mbl.is/news/news/2019/09/17/metoo_conference_opens_in_iceland/.

⁶⁵ Thorgeirsdóttir, H. K. (2019) 'Protection from victimisation in the workplace: Comparative EU-Icelandic perspectives', *Equality Law Review* 2019/1, p. 44-59.

⁶⁶ *Lög um starfsmenn í hlutastörfum nr. 10/2004*, <https://www.althingi.is/lagas/nuna/2004010.html>.

⁶⁷ *Media Act No. 38/2011 (Lög um fjölmiðla, nr. 38 20. apríl 2011)*.

3.11 Remaining issues

Although internet use in Iceland is widespread, no surveys have been conducted on sexual harassment on the internet.⁶⁸

⁶⁸ Ministry of Social Affairs and Equal Opportunities (2018) *Skýrsla félags- og jafnréttismálaráðherra um stöðu og þróun jafnréttismála 2015–2017* (Report of the Minister of Social Affairs and Equal Opportunities on the status and development of gender equality 2015-2017), available at: <https://www.stjornarradid.is/lisalib/getfile.aspx?itemid=33cbc9c1-217e-11e8-9429-005056bc530c>.

4 Equal pay and equal treatment at work (Article 157 of the Treaty on the Functioning of the European Union (TFEU) and Recast Directive 2006/54)

The current GEA adopted in 2008 incorporates the provisions set out in the EU Recast Directive 2006/54/EC. The GEA No. 10/2008 makes it mandatory for all employers to work expressly to put women and men on an equal footing within their enterprise or institution and to take steps to avoid jobs being classified as specifically women's or men's jobs (Article 18). Article 19 protects wage equality for women and men working for the same employer doing the same jobs or jobs of equal value. The wage equality clause was amended by law No. 56/2017 on equal pay certification which took effect on 1 January 2018. The obligatory equal pay certification applies to employers with 25 or more employees.

4.1 General (legal) context

4.1.1 Surveys on the gender pay gap and the difficulties of realising equal pay

The uncorrected gender pay gap in Iceland was 18.3 % in 2014, according to Statistics Iceland, and had decreased from 19.9 % since 2013. The gender pay gap is reported to be widest in the financial and insurance sectors (37.5 %) and narrowest in health and social services (7.4 %). The gap is also wider in the private sector (19.9 %) than in the public sector (13.2 %). The corrected gender-based pay gap in the Commercial Workers' Union in 2016 was 10 %.⁶⁹

Average annual income from work in 2017 for women with tertiary education was 72 % of the income of men at the same education level or ISK 6.7 million (EUR 48 750)⁷⁰ compared with ISK 9.3 million (EUR 67 660).⁷¹ Average income from work for women with upper secondary education was 65 % of men's income or ISK 4.1 million (EUR 29 830) compared with men's income of ISK 6.4 million (EUR 46 560). Women with only basic education received 69 % of men's income or ISK 3.2 million (EUR 23 280) compared with men's income of ISK 4.7 million (EUR 34 195).⁷²

4.1.2 Surveys on the difficulties of realising equal treatment at work

One out of two women aged 25-64 years had tertiary education compared with one out of three men at the same age in 2018. Around 27 % of women and 41 % of men had upper and post-secondary education and 20 % of women and 24 % of men only had compulsory education.⁷³

In 2018, the labour force participation rate was 78 % for women and 85 % for men. The unadjusted gender pay gap was 15 % in 2017, but 14 % for full-time employees. Women are now 38 % of elected members of the *Althingi* and 47 % of local government members but their share in many other positions of influence is lower. At the beginning of 2019, women made up 36 % of municipal managers (mayors) and close to 42 % of managers of state institutions. Of the eight judges in the Supreme Court one is a woman but the proportion of women among the 42 district judges was 38 % in 2018 and they made up 47 % of the 15 judges in the newly formed Appeal Court. The proportion of women who are managers of enterprises was 22 % in 2017. At the same time they represented 24 % of chairs of boards of directors of active enterprises and 26 % of members of boards of directors.⁷⁴

⁶⁹ See: <https://www.hagstofa.is/utgafur/frettasafn/laun-og-tekjur/launamunur-kynjanna-var-183-arid-2014/>; <https://www.vr.is/jafnretti/>.

⁷⁰ Current rate: <https://www.islandsbanki.is>.

⁷¹ All rates given in this paragraph are current rates per. 18 December 2019.

⁷² <https://www.statice.is/publications/news-archive/social-affairs/women-and-men-in-iceland-2019/>.

⁷³ <https://www.statice.is/publications/news-archive/social-affairs/women-and-men-in-iceland-2019/>.

⁷⁴ <https://www.statice.is/publications/news-archive/social-affairs/women-and-men-in-iceland-2019/>.

4.1.3 Other issues

Statistics Iceland published a leaflet on *Women and men in Iceland 2019* in cooperation with the Directorate of Equality and the Prime Minister's Office. The leaflet contains information on the status of women and men in society. It covers information on population, the media, education, the labour market, wages and income and positions of influence presented in figures and diagrams. The leaflet is published in both Icelandic and English. Key figures on women and men have been updated as well. They show the variety of statistics by sex available on Statistics Iceland's website.⁷⁵

According to the coalition agreement between the current government parties when the government was formed 30 November 2017, one of the means to eliminate the gender-based pay gap is the use of annual reports which will shed light on the prevailing gender pay gap.⁷⁶

4.1.4 Political and societal debate and pending legislative proposals

An equal pay standard was in progress for many years following collective agreements between the main parties in the private labour market in 2008. It contained a clause on the development of a certification scheme for gender pay equality and was followed by a provisional clause on the same subject in the Act on Gender Equality No. 10/2008. The equal pay certification system was adopted with Act No. 56/2017 amending Article 19 of the GEA on wage equality and took effect on 1 January 2018. During the legislative process implementing the Equal Pay Standard, Icelandic Standards (*Staðlaráð Íslands* / IST, an independent association and the only national standards body in Iceland, whose role is to publish Icelandic standards and represent Iceland in international and regional standards bodies) was critical in its opinion on the draft law.⁷⁷ It proclaimed that the Ministry of Welfare had never been in contact with Icelandic Standards to ask for comment, advice or information regarding the Ministry's intention to make the use of the equal pay standard mandatory for all companies with 25 or more employees. Icelandic Standards criticised that the Ministry had not consulted them as their stance was clear as evident from their opinion on the matter. Icelandic Standards reiterated that compliance with standards should not be mandatory; standards should be voluntary tools of the market, referring to EU Regulation no. 1025/2012 of the European Parliament and the Council on standardisation, which was transformed into Regulation no. 798/2014, and also referring to the Standard ÍST 85:2012 itself.⁷⁸

4.2 Equal pay

4.2.1 Implementation in national law

The Gender Equality Act No. 10/2008 (the GEA) protects wage equality for women and men working for the same employer doing the same jobs or jobs of equal value. The first gender equality act was adopted in 1976 and, before that, a law was adopted in 1961 on equal pay for men and women – on the basis of wage equality being a fundamental human right.

⁷⁵ <http://hagstofan.s3.amazonaws.com/media/public/2019/bee89182-0e8e-4072-a164-cd7e13cee176.pdf>.

⁷⁶ <https://www.stjornarradid.is/lisalib/getfile.aspx?itemid=7f13c41c-5323-11ea-9455-005056bc530c>.

⁷⁷ See the opinion of Icelandic Standards on the draft bill implementing the Standard, 5 May 2017 (*Umsögn Staðlaráðs Íslands um frumvarp til laga um breytingu á lögum um jafna stöðu og jafnan rétt kvenna og karla, nr. 10/2008, með síðari breytingum (jafnlaunavottun)*, Reykjavík 5. maí 2017), available at: <https://www.althingi.is/altext/erindi/146/146-1156.pdf>. <https://kjarninn.is/frettir/2017-05-08-stadlarad-vill-ekki-loqfesta-jafnlaunavottun/>.

⁷⁸ *Jafnlaunastaðallinn ÍST 85:2012*, <https://www.stadlar.is/thjonusta/nyjustu-frettir/stadlamal-frettabref-stadlarads/2017/06/jafnlaunastadallinn-ist-85-um-hvad-er-hann-og-til-hvers.aspx>. ÍST 85:2012 Equal Wage Management System – Requirements and guidance (normally called the Equal Pay Standard), on which equal pay certification is to be based under the Gender Equality Act. *Reglugerð um gildistöku reglugerðar Evrópuþingsins og ráðsins nr. 1025/2012 frá 25. október 2012, um evrópska stöðlun*.

Women and men working for the same employer must be paid equal wages and enjoy equal terms of employment for the same jobs or jobs of equal value. 'Equal wages' means that wages must be determined in the same way for women and men. The criteria on the basis of which wages are determined must not involve gender discrimination.

Workers must at all times, if they so choose, be permitted to disclose their wage terms.

Article 25 of the GEA provides that employers are prohibited from discriminating between women and men in wages and other terms of employment on grounds of their gender. If it is shown to be likely that a woman and a man working for the same employer receive different wages for the same work, or work of equal value, then the employer must demonstrate, if there is a difference in their wages, that the difference is explained on grounds other than their gender.

A bill of law (amendments to Article 19 of the Gender Equality Act No. 10/2008) was passed by the Icelandic Parliament (*Althingi*) with a substantial majority on 1 June 2017 (Law No. 56/2017) and came into force on 1 January 2018.⁷⁹ Companies and institutions employing 25 or more workers, on an annual basis, are required to obtain equal pay certification of their equal pay systems and the implementation thereof. The purpose of this obligatory certification is to enforce the current legislation prohibiting discriminatory practices based on gender and requiring women and men working for the same employer to be paid equal wages and enjoy equal terms of employment for the same jobs or jobs of equal value.⁸⁰

Law No. 56/2017⁸¹ amends the Gender Equality Act No. 10/2008, adding two definitions to Article 2 of that Act.

(10) Certification: A written statement from the certifying body which is provided with a certification certificate, following the certifying body's audit of a company's or an institution's equal pay system, in which it is stated that the equal pay system and its implementation meet the requirements of the ÍST 85 standard (cf. item c of Article 1 of that standard); (11) Confirmation: A written statement from a stakeholder⁸² which is provided with a confirmation certificate, following the stakeholder's audit of a company's or institution's equal pay system, in which it is stated that the equal pay system and its implementation meet the requirements of the ÍST 85 standard (cf. item b of Article 1 of that standard).⁸³

The process of implementation is thoroughly described in seven new paragraphs that have been added to the equal pay clause (Article 19) of the GEA.⁸⁴ The equal pay standard describes the process that companies and public institutions can follow in order to ensure equal pay within their organisation. A company adopting the standard would start with an assessment of its current pay policies, classify jobs according to equal value and conduct a wage study on the basis of this classification, as well as formalise policies and processes related to pay decisions. These changes will need to be reviewed regularly, checked and

⁷⁹ On 1 June 2017 Act No. 56/017 amending the GEA No. 10/2008 with later amendments (equal pay certification / *jafnlaunavottun*) was passed by the Althing (Parliament) with a majority vote. The Act, which took effect on 1 January 2018, applies to 1 180 employers in Iceland and around 147 000 employees which amounts to 80 % of the labour market. The time allowed to complete the equal certification process depends on the size of the workplace (number of employees), with the largest companies expected to complete it first. A new regulation of the certification process on the basis of ÍST 85 Standard was confirmed on 13 November 2017 of the then Minister of Welfare and Gender Equality.

⁸⁰ See 4.1.1. sup: <https://www.hagstofa.is/utgafur/frettasafn/laun-og-tekjur/launamunur-kynjanna-var-183-arid-2014/>; <https://www.vr.is/jafnretti/>.

⁸¹ <https://www.althingi.is/altext/146/s/1054.html>.

⁸² A stakeholder is, for example, an employees' representative. See here: <https://www.althingi.is/altext/erindi/146/146-1230.pdf>.

⁸³ Article 1 of Act No. 56/2017.

⁸⁴ In accordance with Act No. 56/2017.

validated by management. Once the company has implemented these changes it can apply for certification of its pay system.⁸⁵

Once a certification has been finalised it must be sent to the Directorate for Gender Equality, which maintains a register of companies and institutions that have acquired certifications. It subsequently awards equal pay recognition to the company or institution. The social partners organisation must conduct monitoring to ensure that companies which employ on average 25 or more employees on an annual basis acquire certification. If the companies/institutions fail to comply they may be reported to the Directorate of Gender Equality. Per diem fines amounting to up to ISK 50 000 (EUR 300) may be imposed by the Directorate on those who fail to comply (cf. Article 18, para. 6 of the GEA). Appeals lodged with the Minister or litigation before the ordinary courts contesting such decisions defer enforcement action.⁸⁶

An interim provision was added to the GEA with Article 4 of Act No. 56/2017 describing in detail the deadlines for acquiring certification for companies of different sizes; with the largest companies having to acquire certifications first. The Minister, by means of regulation No. 1030/2017,⁸⁷ is authorised to lengthen the period granted for companies or institutions to acquire certification or confirmation by up to 12 months and this was done by the end of 2018.⁸⁸ The time limit was extended as follows: Those with 250 or more employees, by 31 December 2019. Those with fewer employees got longer deadlines.⁸⁹ Some institutions received the certification early in the year of 2019, like the Ministry of Foreign Affairs.⁹⁰

4.2.2 Definition in national law

Article 19 defines equal wages in its first two paragraphs:

Women and men working for the same employer must be paid equal wages and enjoy equal terms of employment for the same jobs or jobs of equal value. 'Equal wages' means that wages must be determined in the same way for women and men. The criteria on the basis of which wages are determined must not involve gender discrimination.

In assessing whether the work is of 'equal value' the criteria are based on a contextual and coherent evaluation. The underlying premise is that when this assessment or evaluation takes place the individuals in question are working for the same employer as provided in the first paragraph of Article 19 of the GEA.

Significant changes have taken place in recent years and hence 'the same employer' covers employment in the same ownership, such as in the case of subsidiaries or branches. A job classification system has been used at the municipal level in Iceland. When such a system is used it is confirmed that the evaluation does not assess the performance of the employee

⁸⁵ <http://www.kvenrettindafelaq.is/wp-content/uploads/2015/03/The-Equal-Pay-Standard-%C3%8DST-85-www.vel.is.pdf>.

⁸⁶ Per diem fines may amount to up to ISK 50 000 (EUR 399) per day. When determining the amount of per diem fines, factors including the number of employees of the enterprise or institution and the scope of the business involved must be taken into account. Per diem fines accrue to the Treasury. The party to whom the instructions of the Directorate for Gender Equality are addressed [under this Article and Article 19] may appeal [to the Minister] against the Directorate for Gender Equality's decision. Decisions by the Directorate for Gender Equality to impose per diem fines may be enforced. Appeals lodged with [the Minister] or litigation before the ordinary courts defer enforcement action. (See: <https://www.government.is/library/04-Legislation/Act%20on%20equal%20status%20and%20equal%20rights%20of%20women%20and%20men%20no%2010%202008%20as%20amended%20101%202018%20final.pdf>).

⁸⁷ Regulation No. 1030/2017, available at <https://www.stjornartidindi.is/Advert.aspx?RecordID=6b3020ba-0391-49db-a14e-e7b8892fba0e>.

⁸⁸ Act No. 56/2017, Article 4.

⁸⁹ <https://www.jafnretti.is/is/vinumarkadur/jofn-laun-og-jafnir-moguleikar/hvad-er-jafnlaunavottun>.

⁹⁰ <https://www.stjornarradid.is/efst-a-baugi/frettir/stok-frett/2019/03/25/Utanrikisraduneytid-hlytur-jafnlaunavottun/>.

but entails an analysis of the basic requirements that apply to those carrying out the job.⁹¹ This has changed now after the adoption of the Equal Pay Certification Standard with the amendment of Article 19 of the GEA which became effective on 1 January 2018. Companies with 25 or more employees are now obliged to obtain equal pay certification which meets the so-called equal pay standard and prove that their wage decisions are relevant considerations and are not based on gender.

4.2.3 Explicit implementation of Article 4 of Recast Directive 2006/54

Article 19 of the GEA is an explicit implementation of Article 4 of the Recast Directive and, after the latest amendments, goes further than the EU legal framework requires.

4.2.4 Related case law

There were no equal pay cases in 2019. The general principles in jurisprudence regarding equal pay originate from the first main cases in the early 21st century, where the Supreme Court was faced with the issue of whether jobs at the same level in the municipal hierarchy were of equal value; the job of an equality officer in the municipality where wages were based on a job evaluation linked to collective agreements as opposed to the job of an employment officer with higher wages as the post was held by an engineer and the evaluation was linked to the collective agreements for engineers. The Gender Equality Complaints Committee had ruled prior to the case going to a court of law that the job evaluation was based on gender considerations and that the municipality had not respected the wage equality clause of the Gender Equality Act. The Supreme Court held that, in order for jobs to be considered of equal value, an all-inclusive evaluation was needed; although aspects of the jobs were different, the Court considered the aim of the Gender Equality Act would not be achieved if wage equality was only to reach people within the same class of work, as freedom of contract on the labour market was subject to the wage equality provided for in the GEA. In this case the claimant had shown that she had been discriminated against as the jobs were comparable in substance and form.⁹²

4.2.5 Permissibility of pay differences

Equal pay certification does not prevent a company from implementing a pay roll system that is 100 % performance based if the different wages are based on relevant considerations and not gender.

4.2.6 Requirement for comparators

The prevailing comparator is the equal pay certification, which is now required for all employers with 25 or more employees, confirming that they meet the equal pay standards.

4.2.7 Existence of parameters for establishing the equal value of the work performed

One of the biggest challenges Icelandic enterprises face in the implementation of the Standard is classifying which jobs are of the same or equal value. Equal wage analysis requires that jobs are classified by evaluating them against each other and assigning them weight.

The Equal Pay Standard is intended to make pay, and any differences in pay for similar work, more transparent but it does not demand the same uniformed pay system for all companies and institutions. Instead, it requires each workplace to introduce the same four to five key criteria and sub-criteria under each. The Standard highlights four main criteria

⁹¹ Report by a working group on the equal rights pay policy in the general labour market (2008), p. 40, http://www.velferdarraduneyti.is/media/08frettir/Skyrsla_starfshops_um_jafnlaunastefnu_a_almenum_vinumarkadi.pdf.

⁹² Supreme Court case No. 11/2000, judgment of 31 May 2000.

(IST 85: 2012, Annex B): expertise /competence, responsibility, strain and working conditions.

These must be elaborated with specific content. Companies may have different (sub)criteria that make sense for each business, but the Standard obliges them to work out a more formalised system for their pay decisions, e.g. by carrying out wage analysis. These are then used as a uniformed measure to classify all jobs, so that the jobs within each workplace are comparable to each other on the basis of the uniform classification and salary system.

In July 2019 a new pay-analysis tool called Embla was designed for public institutions. A special department within the Ministry of Finance dealing with terms and human resources developed Embla in co-operation with Advania (a Nordic information technology corporation). Embla is directly connected with human resources and is based on a mathematical model in the tool box on the government website. It will be launched in 2020.⁹³

4.2.8 Other relevant rules or policies

With the adoption of the new GEA in 2008 a clause permitting workers to disclose their wage terms was adopted (Article 19, para 3). In a competitive environment it is unlikely that such disclosures will occur.

4.2.9 Job evaluation and classification systems

The equal pay certification process on the basis of a management requirement standard (in this case, the Standard ÍST 85 Equal Pay Management Systems – Requirements and guidance) to prove they offer equal pay for work of equal value regardless of gender does not demand the same uniform pay system for all companies and institutions. Instead, the Equal Pay Standard requires each workplace to introduce the same four to five key criteria and sub-criteria under each. These are then used as a uniform measure to classify all jobs, making all the jobs within a single workplace comparable with each other based on the uniform job classification and salary system. By the same token, the implementation of the law does not require an employer to pay everyone performing in the same or equal job the same. Difference in pay, however, needs to be justified by relevant considerations (use of the criteria and the sub-criteria) as opposed to irrelevant ones including gender (which could constitute discrimination). In short, each employer needs to apply its Equal Pay System (criteria and sub-criteria) equally to all its positions (employees). The employer also needs to document and qualify why one employee serving in the same position as another gets a higher salary when they otherwise have the same qualifications and credentials and are doing a job of same or equal value.⁹⁴

4.2.10 Wage transparency

Equal pay certification is intended to provide wage transparency to guarantee that gender is not the ruling factor in deciding wages. By the end of 2019, 135 companies and institutions had undergone the evaluation; the issuing of regulation No. 933/2019, which authorised the Directorate of Gender Equality to impose fines for breaches of the Gender Equality Act No. 10/2008, in order to ensure a better implementation of the GEA.⁹⁵ According to Statistics Iceland, the whole workforce is around 200 000. The pay certification system is expected to reach around 80 % of the workforce.⁹⁶

⁹³ <https://www.stjornarradid.is/lisalib/getfile.aspx?itemid=7f13c41c-5323-11ea-9455-005056bc530c>
https://www.fjs.is/media/2019/03-Throun-i-mannaudskerfum-rikisins_ny_utgafa.pdf.

⁹⁴ Herdís Kjerulf Thorgeirsdóttir, Equal Pay discussion paper at the EU Learning Programme in Gender Equality in Iceland, 27-28 May, 2019: https://herdis.is/wp-content/uploads/2019/06/Discussion-paper_IS-2019.pdf.

⁹⁵ <https://www.reglugerd.is/reglugerdir/allar/nr/933-2019>.

⁹⁶ <https://www.stjornarradid.is/lisalib/getfile.aspx?itemid=7f13c41c-5323-11ea-9455-005056bc530c>.

4.2.11 Implementation of the transparency measures set out by the European Commission's Recommendation of 7 March 2014 on strengthening the principle of equal pay between men and women

This recommendation did not play a role in the establishment of the equal pay certification system, which had been under development for many years and is the result of a thorough collaboration between various stakeholders.

4.2.12 Other measures, tools or procedures

Equal pay certification is the tool Icelandic authorities consider the ultimate guarantor in existence to date, a game changer for wage equality between women and men.

4.3 Access to work, working conditions and dismissal

4.3.1 Definition of the personal scope (Article 14 of Recast Directive 2006/54)

Article 24 of the GEA concerns the general prohibition of discrimination, direct or indirect, on grounds of gender. Giving instructions to discriminate on grounds of gender also constitutes discrimination under the Act.

The GEA applies to everyone, both in the public sector and on the private market, including public bodies. It applies to men and women who are workers or employees (and civil servants) and candidates for work or employment.

Article 1 c of the GEA provides that the aim of gender equality legislation is specifically to improve the position of women and to increase their opportunities in society.

There are a few terms used for an employee in Icelandic labour law: labourer, wage earner and worker.⁹⁷

The concept of a 'worker' is not defined in the GEA but Act No. 46/1980 on the working environment and health and safety in workplaces defines employees and their obligations. The Unemployment Insurance Act No. 54/2006 defines wage earners and self-employed workers. Article 1 of the Government Employees Act No. 70/1996 defines its application and also refers to the types of post and contract that are covered.

Article 24 of Act No. 46/1980, with subsequent amendments, provides:

'Employee signifies, in this Act, each individual who holds a job for services paid by someone else. Students and apprentices shall also be considered as employees, even though they work without payment, providing that their work constitutes part of formal studies.'

Article 3 of the Unemployment Insurance Act⁹⁸ contains definitions of a wage earner and a self-employed individual:

'a. Wage earner: Any person who engages in paid employment in the service of others in at least 25 % of full job capacity (full-time employment) each month, and for whom social security tax is paid according to the Social Security Tax Act.

⁹⁷ Wage Guarantee Fund Act / Lög nr 88/2003 um ábyrgðasjóð lána, available at: https://www.government.is/media/velferdarraduneyti-media/media/acrobat-enskar_sidur/Wage-Guarantee-Fund-Act-No-88-2003-with-subsequent-amendments_March2016.pdf; see also: https://skemman.is/bitstream/1946/2921/1/BSritqerd_ReynirSvavar_vor2009_fixed.pdf; Act Respecting Labourers' Rights to Advance Notice of Termination of Employment and to Wages on account of Absence through Illness and Accidents https://www.asi.is/media/253001/l-19_1979.pdf / Lög nr. 19/1979 um rétt verkafólks til uppsagnarfrests frá störfum.

⁹⁸ Lög um atvinnuleystryggingar nr. 54/2006, <https://www.althingi.is/alttext/stjt/2006.054.html>.

b. Self-employed individual: Any person who works in his/her own business or independent activity to the extent that he himself/she herself is obliged to pay tax deductions at source in respect of calculated wages and social insurance tax in respect of his/her work, either every month or in another regular manner according to rules set by [the Director of Internal Revenue] on calculated remuneration.⁹⁹

The Government Employees Act No. 70/1996 applies to anyone who is hired in the service of the government for a period exceeding one month, either with an indefinite contract, a fixed-term contract or temporarily, regardless of whether the person is a member of a labour union or to which union they are affiliated, as long as their job is considered to be their main occupation.

The Icelandic definition of a 'worker' withstands the requirement set out in the jurisprudence of the CJEU, where the concept may not be interpreted too restrictively.¹⁰⁰ The Court of Justice of the EU determines three elements of the definition of a 'worker': (1) employment performance, which must be effective and genuine;¹⁰¹ (2) relationship of subordination; (3) remuneration, even when the pay received for part-time work (25 %) is below the state's subsistence standard. The term 'worker' covers people who pursue an activity as employees on a part-time basis only, even though the employment yields a lower income than the minimum required for subsistence¹⁰² or does not exceed 18 hours a week,¹⁰³ 12 hours a week¹⁰⁴ or even 10 hours a week.¹⁰⁵ Even work for so few hours per week do not prevent someone in such employment from being regarded as a 'worker' within the meaning of Article 45 TFEU (see the *Levin* and *Kempf* cases). The Icelandic legislation appears to be in line with these requirements.

4.3.2 Definition of the material scope (Article 14(1) of Recast Directive 2006/54)

According to Article 26(1) of the GEA, employers are prohibited from discriminating between applicants for jobs on grounds of their gender. The same applies regarding promotion, changes of position, retraining, continuing education (lifelong learning), vocational training, study leave, notice of termination, the working environment and employees' working conditions.

Article 26(2) prohibits allowing maternity/paternity leave, or other circumstances relating to pregnancy and childbirth, from having a negative effect on decisions under Paragraph 1.

4.3.3 Implementation of the exception on occupational activities (Article 14(2) of Recast Directive 2006/54)

Article 26 para. 3 of the GEA provides that it is prohibited to advertise, or publish an advertisement for, a vacant position indicating that an employee of one sex is preferred over the other. However, this provision does not apply if the aim of the advertiser is to promote a more equal representation of women and men within an occupational sector, in which case this must be stated in the advertisement. The same applies if there are valid reasons for advertising for a man or a woman only.

⁹⁹ Act No. 142/2012, Article 1 and Iceland, amending the law on the Unemployment Insurance Act (*Lög um breytingu á lögum um atvinnuleysisstryggingar, Nr.142/2012*, <https://www.althingi.is/altext/stjt/2012.142.html>); See also regulation No. 37/2009, Article 1 / *Reglugerð um hámarksfjárhæð innheimtukostnaðar o. fl.*, <https://www.reglugerd.is/reglugerdir/allar/nr/37-2009>.

¹⁰⁰ CJEU 23 March 1982, C-52/81 (*Levin*). The interpretation of the definition of a 'worker' is important, as it determines the width of the application of the principle of free movement of workers that is fundamental to the EU.

¹⁰¹ Judgment of the ECJ in *Lawrie-Blum*, 66/85, EU:C:1986:284, paragraph 21.

¹⁰² Judgment of the ECJ in *Levin*, 53/81, EU:C:1982:105, paragraphs 15 et seq.

¹⁰³ Judgment of the ECJ of 13 December 1989, *M. L. Ruzius-Wilbrink v Bestuur van de Bedrijfsvereniging voor Overheidsdiensten*, C-102/88, EU:C:1989:639, paragraphs 7 and 17.

¹⁰⁴ Judgment of the ECJ in *Kempf*, 139/85, EU:C:1986:23, paragraphs 2 and 16.

¹⁰⁵ Judgment of the ECJ in *Rinner-Kuhn*, 171/88, EU:C:1989:328, paragraph 16.

Nevertheless, there are conflicting views on how the above principle should work in practice as the example below shows.

In 2017, the Directorate of Fisheries wanted to advertise for women to do the job of fisheries surveillance as there were far more men doing that job within the institution than women. The aim of the advertisement was to increase the number of women in this field. Before advertising, the Directorate of Fisheries sought advice from the Directorate for Gender Equality, which confirmed that advertising for women only was in accordance with Article 26, paragraph 3 of the GEA in light of the objective of increasing the number of women.

However, the Ministry of Finance, which operates the jobs forum within the executive, did not agree with the Directorate for Gender Equality, as the latter tried to persuade the Gender Equality Complaints Committee to rule on the question but the latter declined to do so, reasoning that the GEA did not permit the Directorate to seek the ruling of the Complaints Committee without connection to an alleged violation of the GEA concerning the legally defended rights of specific parties.¹⁰⁶ The Directorate of Fisheries withdrew the contested advertisement and the question still remains unresolved.¹⁰⁷

In a letter to the Gender Complaints Committee, the Directorate for Gender Equality highlighted the fact that a home for the elderly in the town of Akureyri had advertised for men as care assistants, in order to alter prevailing gender stereotypes about the roles of men and women in a nursing home where most employees are women. The Directorate for Gender Equality pointed to Norway where municipalities promote advertising for male care assistants.

The human rights policy of the municipality of Reykjavík prescribes that job advertisements must be gender neutral, yet underscores the need for exceptions which are not to be regarded as discriminatory when, for example, advertising for staff in the women's changing rooms at municipal swimming pools and vice versa.

4.3.4 Protection against the non-hiring, non-renewal of a fixed-term contract, non-continuation of a contract and dismissal of women connected to their state of pregnancy and/or maternity

An employee seeking a job is not obliged to inform her potential employer about her pregnancy. It is only in the case of intended maternity/paternity leave that employees need to give notice to their employer (cf. Article 30 of the MPL). In such cases employers are prohibited from dismissing employees due to their intention to go on maternity leave.

The employment relationship between an employee and her employer should remain unchanged during maternity leave, cf. Article 29 MPL. The provision confirms that rights established in working relations cannot be altered. As regards fixed contracts, which are not mentioned anywhere in the law or explanatory notes, it must be presumed, based on the above provision, that the protection afforded to pregnant workers on a fixed contract is the same. This means that, in the case of a fixed term contract which ends after they return from maternity leave, they are entitled to return to the same job and finish working the contract. As regards contract renewal, the right of the employer to make necessary changes in the working environment cannot be curtailed due to the rights of employees, as stated in the explanatory notes on Article 29 of the MPL.

Changes in the working environment may not lead to pay cuts or curtailment of job-related rights.

¹⁰⁶ Gender Equality Complaints Committee case No. 6/2017, 4 May 2017, regarding the Directorate of Gender Equality request.

¹⁰⁷ <http://www.ruv.is/frett/taldi-fiskistofu-ekki-mega-auglysa-eftir-konum>.

4.3.5 Implementation of the exception on the protection for women in relation to pregnancy and maternity (Article 28(1) of Recast Directive 2006/54)

The health and safety of a pregnant worker or a woman who has recently given birth to a child or a woman who is breastfeeding a child is guaranteed by Article 11 of the Act on MPL as further stipulated in regulation 931/2000 and the Act on the working environment and health and safety in workplaces No. 46/1980 with later amendments.¹⁰⁸ Employers must take special measures to ensure the above. Those changes which are considered necessary in a woman's working conditions and/or working time (cf. first paragraph of Article 11 MPL) must not affect her wages so as to reduce them or limit her other job-related rights. Furthermore, if it is necessary to grant a woman leave due to health and safety, she is entitled to payment (cf. Article 13 of the MPL).

4.3.6 Particular difficulties

There are conflicting views regarding the exemptions provided for in paragraph 3 of Article 26 of the GEA which prohibits 'to advertise, or publish an advertisement for, a vacant position indicating that an employee of one sex is preferred over the other. This provision shall not apply if the aim of the advertiser is to promote a more equal representation of women and men within an occupational sector, in which case this shall be stated in the advertisement. The same shall apply if there are valid reasons for advertising for a man or a woman only.'

An example is advertising for a woman when women are obviously under-represented in a given occupational field as the fishing industry where men are in the majority or advertising for male nurses where women are in the majority.¹⁰⁹

4.3.7 Positive action measures (Article 3 of Recast Directive 2006/54)

Iceland has clearly abided by the principle set out in Article 3 of the Recast Directive as regards positive action measures when adopting the equal pay certification system.

4.4 Evaluation of implementation

It is too soon to assess the impact of the adoption of the equal pay certification system as the process for obtaining certification for all enterprises that fall under the law has been postponed for 12 months, from December 2019 until December 2020 for, depending on the number of employees.

4.5 Remaining issues

It has been pointed out that cases where pregnant women and men intending to take maternity/paternity leave are dismissed are not necessarily contested in a formal process, which is the paradigm that the legislator looks at when assessing the effectiveness of the law. In some cases, employees reluctantly accept dismissal without making a formal complaint. It appears that in such cases the employee manages to find a new job and hence decides not to proceed with their case, which would have been costly and time-consuming. Some dismissal cases are presented to the relevant trade union which may have an impact on the course of events and some end up in the pages of the newspapers without any conclusion before a court of law.¹¹⁰

¹⁰⁸ Act on the working environment and health and safety in workplaces No. 46/1980 with later amendments, (Lög nr. 46/1980 um aðbúnað, hollustuhætti og öryggi á vinnustöðum), <https://www.government.is/library/04-Legislation/Act%20No%2046%201980%20with%20subsequent%20amendments%202018.pdf>.

¹⁰⁹ <http://www.ruv.is/frett/taldi-fiskistofu-ekki-mega-auglysa-eftir-konum>.

¹¹⁰ <https://skemman.is/bitstream/1946/25539/1/Loka%20utgafa%20til%20prentunar.pdf>.

5 Pregnancy, maternity, and leave related to work-life balance for workers (Directive 92/85, relevant provisions of Directives 2006/54, 2010/18 and 2019/1158)¹¹¹

5.1 General (legal) context

5.1.1 Surveys and reports on the practical difficulties linked to work-life balance

The Ministry of Welfare issued a report on balancing family responsibilities and working life.¹¹² An MSc thesis on work and family life balance involved a survey supported by the Equality Fund, which was conducted in 2013 among employees from the Icelandic labour market. Participants were asked about work and family life balance; work-family conflict, family policy and support as well as some control variables. Responses were collected from 635 participants. The main conclusions were that the employees did not find it difficult to balance work and family life, however many of them would like to reduce their number of working hours per week.¹¹³

A piece of research published in 2011 by Guðbjörg Linda Rafnsdóttir and Tamar M. Hejstra looked at balancing work and family life in academia. The authors concluded that, although they were not dealing with a gender division of labour where men often have jobs with more autonomy than women, they nevertheless discovered, through researching this issue among highly educated women, i.e. in academia, that men still seem to have more personal autonomy.¹¹⁴

5.1.2 Other issues

Creating a family-friendly workplace is seen as being partly the responsibility of employees' initiatives. They, as well as employers, are encouraged to come up with a family policy¹¹⁵ in line with the gender equality policy. Employees are encouraged to discuss these matters and ask questions, for example whether a worker's contribution is measured by their daily length of stay in the workplace and what matters more – the content of the hours spent at work or the quality of the employee's contribution. Employees are encouraged to come up with recommendations to improve the quality of the working environment, contributing to a more family-friendly workplace and working conditions. Employees are seen as the key to finding the best solutions. Currently, an experiment is under way, with five public institutions cutting the working week of their employees from 40 to 36 hours without cutting their wages or their services. Prima facie the results seem to be better morale among the workers, although the full analysis has not yet been completed.¹¹⁶

¹¹¹ See Masselot, A. (2018) *Family leave: enforcement of the protection against dismissal and unfavourable treatment*, European network of legal experts in gender equality and non-discrimination, available at: <https://www.equalitylaw.eu/downloads/4808-family-leave-enforcement-of-the-protection-against-dismissal-and-unfavourable-treatment-pdf-962-kb> and McColgan, A. (2015) *Measures to address the challenges of work-life balance in the EU Member States, Iceland, Liechtenstein and Norway*, European network of legal experts in gender equality and non-discrimination, available at: <https://www.equalitylaw.eu/downloads/3631-reconciliation>.

¹¹² https://www.stjornarradid.is/media/velferdarraduneyti-media/media/rit_2013/samraeming-fjolskyldu--og-atvinnulifs-lokaskjal.pdf.

¹¹³ <https://skemman.is/bitstream/1946/16358/1/Ragnheidure-Lokaritgerð.pdf>.

¹¹⁴ See: Report of the Minister of Equality and Welfare 2015-2017, available at:

<https://www.stjornarradid.is/lisalib/getfile.aspx?itemid=33cbc9c1-217e-11e8-9429-005056bc530c>.

¹¹⁵ Directorate of Gender Equality: <https://www.jafnretti.is/is/um-jafnrettisstofu/greinar/hid-gullna-jafnvaegi-draumsyn-eda-veruleiki>.

¹¹⁶ Report of the Minister of Equality and Welfare 2015-2017, available at:

<https://www.stjornarradid.is/lisalib/getfile.aspx?itemid=33cbc9c1-217e-11e8-9429-005056bc530c>.

5.1.3 Overview of national acts on work-life balance issues

Article 21 of the GEA provides that employers must take measures to enable women and men to reconcile their professional obligations and family responsibilities. Amongst other things, such measures should be aimed at increasing flexibility in the organisation of work and working hours in such a way as to take account of both workers' family circumstances and the needs of the labour market, including facilitating the return of employees to work following maternity/paternity or parental leave or leave from work due to pressing and unavoidable family circumstances.

5.1.4 Political and societal debate and pending legislative proposals

It has been almost two decades since the Act on Maternity/Paternity and Parental Leave No.95/2000 with later amendments (MPL) was adopted and since then there has been a growing and prevailing consensus on the need for this law.

5.2 Pregnancy and maternity protection

5.2.1 Definition in national law

The GEA protects pregnant employees and those embarking on maternity, paternity or parental leave from discrimination as regards terms of employment, promotion and other factors, as stipulated by Article 26(2).

The security measures employers must take with regard to pregnant women are listed in Article 11 of the MPL, i.e. to make the necessary arrangements to ensure the woman's safety by temporarily changing her working conditions and/or working hours. Regulation No. 931/2000 provides in its Article 2 that the concepts 'pregnant woman', 'woman who has just given birth' and 'woman who is breastfeeding' only apply to women who have notified their employer about their condition.

Article 6 of Regulation No. 931/2000 stipulates that it is prohibited to oblige an employee who is pregnant to work at night and this also applies for the six months after she gives birth, if it is necessary for her health and safety and is confirmed with a medical certificate.

The Act on Maternity/Paternity Leave and Parental Leave No. 95/2000¹¹⁷ with later amendments covers the rights of parents working in the domestic labour market to be granted maternity/paternity leave and parental leave. The Act applies to parents who are employed by others or are self-employed.

Article 7 of the MPL defines the terms maternity/paternity and parental leave occasioned by birth, adoption or foster care.

Article 7(2) provides that, for the purposes of the Act on Maternity/Paternity and Parental Leave, an employee refers to 'anybody who is employed in a salaried position in the service of others amounting to at least 25 % of a full-time position each month. A self-employed individual refers to anybody who works for themselves, irrespective of the type of company, to the effect that she/he is obliged to pay an insurance levy every month, or in another manner decided by the tax authorities.'

Parents each have an independent entitlement to maternity/paternity leave for up to four¹¹⁸ months due to the birth, primary adoption or reception of a child into permanent foster care (Article 8). This entitlement is not transferable. In addition, the parents have

¹¹⁷ https://www.government.is/media/velferdarraduneyti-media/media/acrobat-enskar_sidur/Act-on-maternity-paternity-leave-95-2000-with-subsequent-amendments.pdf (the most recent English translation with amendments until 2016).

¹¹⁸ Act No. 149/2019, adopted 23 December 2019.

a joint entitlement to an additional three months of leave, which either parent may draw in its entirety or the parents may divide between them. The parent is permitted to start the leave up to one month prior to the birth of the child, as confirmed by a medical certificate. The mother must take at least the first two weeks after the birth of her child. If the other parent dies during the gestation period the remaining parent acquires 10 months of leave. The same applies in the case of a single mother who has undergone assisted fertilisation or adopted a child. The right to maternity/paternity leave is conditioned on custody and the beginning of the leave. In the case of a non-custodial parent the consent of the parent exercising custody is needed.

5.2.2 Obligation to inform employer

There is no mention in the MPL of informing the employer of pregnancy unless the prospective parent intends to take a period of leave. Article 9 of the MPL requires employees to notify their employers of their intention to exercise the right to maternity/paternity leave as soon as possible and at least eight weeks prior to the estimated due date of the child. Notice must be given in writing. Evidently this notification period does not apply should the child be born prior to the estimated date. In such a case the maternal right to leave is established on the day the child is born. The father's right to take leave earlier, if the child is born prematurely, is also granted. The employer has the right to request proof of custody.

5.2.3 Case law on the definition of a pregnant worker, a worker who has recently given birth and/or a worker who is breastfeeding

There is no case law on the above.

5.2.4 Implementation of protective measures (Article 4-6 of Directive 92/85)

Article 11 of the MPL concerns health and safety in the workplace, stipulating that if the health and safety of a pregnant woman, a woman who has recently given birth to a child, or a woman who is breastfeeding a child, is considered to be in danger, according to a special assessment, her employer must make the necessary arrangements to ensure the woman's safety by temporarily changing her working conditions and/or working hours. If this is not possible for technical reasons, or other valid reasons, the woman's employer must entrust her with other tasks. If this is not possible, they employer must grant her leave of absence for the length of time necessary to protect her health and safety. A woman who is granted leave on the basis of Article 11 is entitled to payment.

5.2.5 Case law on issues addressed in Article 4 and 5 of Directive 92/85

No case law is available concerning these issues.

5.2.6 Prohibition of night work

The security measures employers must take with regard to pregnant women are listed in Article 11 of the MPL, i.e. to make the necessary arrangements to ensure the woman's safety by temporarily changing her working conditions and/or working hours.

Article 6 of Regulation No. 931/2000 stipulates that it is prohibited to oblige an employee who is pregnant to work at night. This also applies for the six months after she gives birth, if it is necessary for her health and safety and is confirmed with a medical certificate.

5.2.7 Case law on the prohibition of night work

None.

5.2.8 Prohibition of dismissal

Article 30 grants protection against dismissal without reasonable cause, both when a woman is pregnant and during maternity or paternity leave. Of course, protection from the beginning of a woman's pregnancy cannot be warranted unless her condition is known to the employer.

The objective of the MPL is to grant greater redundancy protection to pregnant workers and expectant parents whose position on the labour market is vulnerable.

5.2.9 Redundancy and payment during maternity leave

Employee rights are secured in the labour law legislation and collective agreements, which are the most important pillars of employment contracts. Employers have a strict obligation when it comes to terminating the contract of a pregnant woman or parents who are on or going on parental leave. They need to provide a reasonable cause for the termination to be legal. In case of dismissal for other reasons than the ones prohibited by the MPL, the employee is entitled to payments in accordance with the contract governing the conditions of their job or the trade union agreement.

A pregnant worker granted leave for health and safety reasons is entitled to payment during the period of leave. Payments during maternity leave are in accordance with Article 13 of the MPL guaranteeing the right to payments to those who have been active on the domestic labour market for six consecutive months prior to the birth of a child. The monthly payment amounts to 80 % of the average total wages.

5.2.10 Employer's obligation to substantiate a dismissal

Article 26 of the GEA provides that the employer must demonstrate that their decision to dismiss an employee was based on other grounds than the employee's taking of maternity/paternity leave or parental leave, or other circumstances relating to pregnancy and childbirth. Article 30 of the MPL provides the same.

5.2.11 Case law on the protection against dismissal

In Supreme Court case No. 11/2010, a financial institution appealed the ruling of a district court which had confirmed the preferential status of a former employee's claim who had been dismissed during bankruptcy proceedings in the wake of the collapse of the banking system in Iceland in 2008. The claimant held that his dismissal was in breach of Article 30 of the MPL. The Supreme Court ruled in favour of the financial institution. The Court reasoned that, due to a huge deficit during the year when the employee was dismissed prior to the financial crash in October 2008 and due to the subsequent essential reorganisation of the operation, the employer had been permitted, despite the provision in Article 30 of the MPL, to dismiss the employee. The dismissed employee's preferential claim during the bankruptcy proceedings was hence rejected.

In Supreme Court case 257/2011 the claimant held that her dismissal had been illegitimate on the basis of Article 30 of the MPL. It was undisputed that her dismissal was not in connection with her giving notice to her employer of her intended maternity leave but rather the parties to the case disagreed on whether there were valid reasons behind the dismissal in light of the legal provision. The employee did not have the special training required for the job and it had previously been announced to her and others that an employee with this special training would be hired. The company was hence acquitted of the employee's claim of an illegitimate breach of contract.

In Supreme Court case No. 61/2004, a woman was dismissed after giving notice to her employer in a private firm in line with the Maternity, Paternity Leave Act No. 95/2000. She

had been recently employed and was still in her probationary period of three months when dismissed. The employer claimed that the reason for the dismissal was legitimate as she had difficulties doing her job because of a language barrier. The Supreme Court found the employer was liable on the basis of Article 31 as he had been unable to prove that there were necessary and relevant considerations underlying the dismissal. The employee was awarded damages from the employer.¹¹⁹ With this judgment, the Supreme Court underlined that the discretion of the employer regarding the dismissal of a pregnant worker is restricted by Article 30 of the MPL and the employer must be able to prove that there were weighty reasons underlying the dismissal other than pregnancy.

5.3 Maternity leave

5.3.1 Length

Maternity leave is four¹²⁰ months (Article 8 of the MPL). The right to maternity leave is established upon the birth of a child. The right is not transferable. Despite this clause, however, a parent acquires the right to a 10-month period of leave (maternity, paternity and the right to a 2-month joint additional period of leave combined) if the other parent dies during the gestation period and the child is born alive (Article 8, Paragraph 4).¹²¹ The same shall apply in the case of a single mother who has undergone assisted fertilisation or a single parent who has adopted a child or taken a child into permanent foster care.¹²²

5.3.2 Obligatory maternity leave

A mother must take maternity leave for at least the first two weeks after the birth of her child (Article 8(3) of the MPL).

5.3.3 Legal protection of employment rights (Article 5, 6 and 7 of Directive 92/85)

Article 11 of the MPL concerns the health and safety conditions in the workplace which the employer must ensure and this is further elaborated on in Regulation No.931/2000. Article 3 of Regulation No. 931/2000 further stipulates that the changes considered necessary in the working conditions or working time of the woman in accordance with the provision may not impact her wages, i.e. reducing them, or other job-related rights. The regulation further says that if it is necessary to grant a pregnant woman leave from work in accordance with Article 11 then she is entitled to pay in accordance with Articles 11 and 13 of the MPL.

This provision does not apply to self-employed individuals, cf. the ruling of the Welfare Appeals Committee in rulings nos. 43/2007, 56/2008 and 36/2011.

5.3.4 Legal protection of rights ensuing from the employment contract

The accumulation and protection of rights is guaranteed under the MPL (Article 14). Maternity and paternity leave counts as working time for the purpose of assessing work-related rights and this also applies in cases where pregnant employees are granted leave for health and safety reasons, cf. Article 3 of Regulation No. 931/2000 which further stipulates that the changes considered necessary in the working conditions or working

¹¹⁹ Grétarsdóttir, S. (2016) *Réttur til uppsagnaverndar á meðgöngu og í fæðingarorlofi* (an LLM thesis on the right not to be dismissed when pregnant or taking maternity/paternity leave), *ML ritgerð HR 2016*, available at:

https://skemman.is/bitstream/1946/25539/1/Loka%C3%BAtg%C3%A1fa%20til%20prentunar_pdf.pdf.

¹²⁰ Act No. 149/2019 (adopted 23 December 2019). https://www.government.is/media/velferdarraduneyti-media/media/acrobat-enskar_sidur/Act-on-maternity-paternity-leave-95-2000-with-subsequent-amendments.pdf.

¹²¹ Act No. 74/2008, Article 5.

¹²² Act No. 143/2012, Article 1.

time of the woman in accordance with the provision may not impact her wages, i.e. reducing them, or other job-related rights.

5.3.5 Level of pay or allowance

The monthly payment from the MPL Fund (2018) for a parent that has been active on the domestic labour market for six consecutive months prior to a birth of a child, or the date on which a child enters the home in the case of adoption or permanent foster care is 80 % of their salary or maximum ISK 500 000 (EUR 3 770).¹²³

5.3.6 Additional statutory maternity benefits

None.

5.3.7 Conditions for eligibility (Article 11(4) of Directive 92/85)

The employee must have been active on the labour market for six consecutive months prior to the birth of the child or the date on which a child enters the home in the case of adoption or permanent foster care, cf. Article 13(1) of the MPL.

5.3.8 Right to return to the same or an equivalent job (Article 15 of Directive 2006/54)

Article 29 of the MPL stipulates:

'The employment relations between an employee and her/his employer shall remain unchanged during maternity/paternity leave and parental leave. The employee shall be entitled to return to her/his job upon the completion of maternity/paternity leave or parental leave. Should this not be possible, she/he shall be entitled to a comparable position with the employer according to a contract of employment.'

In Supreme Court case No. 199/2006, the facts of the case concerned a woman who had been on leave for 13 months and was supposed to return to her job on 1 February 2005. During her leave new owners took over the company and general changes were made in her job area and she was offered another job. This led the woman to conclude that her job no longer existed. She subsequently decided not to work during what she perceived as the three-month period of notice of employment termination. The Supreme Court held that, as she had not turned up for work when she was supposed to, she was not in a position to assess whether the new job offered to her was different from the previous one and that hence she was at fault, according to the terms of agreement with the company which was acquitted of her claims.¹²⁴

5.3.9 Legal right to share maternity leave

The right to maternity leave is an independent, non-transferable right. The other parent has the same right.

5.3.10 Case law

There is no case law concerning transfer / sharing of rights.

¹²³ <http://www.faedingarorlof.is/upphaedir-faedingarorlofs-og-faedingarstyrks/>.

¹²⁴ Supreme Court case No. 199/2006.

5.4 Adoption leave

5.4.1 Existence of adoption leave in national law

The MPL refers to leave from salaried employment in case of a primary adoption of a child under the age of eight years (Article 7(b)) or permanent foster care of a child under the age of eight (Article 7(c)). In the case of adoption or permanent foster care the time reference is based on the date that the child enters the home, provided that it is confirmed by the relevant competent bodies. If the parents have to fetch the child from another country, the maternity/paternity leave may begin at the start of the journey, providing the relevant authorities or institutions have confirmed that permission has been granted for the adoption of a child.

5.4.2 Protection against dismissal (Article 16 of Directive 2006/54)

Parents fulfilling the requirements set out in Article 7(b) and (c) may not be dismissed due to their intention to exercise their right to take a period of leave, according to Article 8 of the MPL, as provided for in its Article 30.

5.4.3 Case law

There is no case law on dismissal during adoption leave.

5.5 Parental leave

5.5.1 Implementation of Directive 2010/18

Article 24 of the MPL concerns parental leave, where each parent (cf. the first paragraph of Article 1 of the MPL) has an independent right to parental leave, which is not transferable. Parental leave is not accompanied by payment from the Maternity/Paternity Leave Fund.

Parental leave can be taken for four months and is established upon the birth of a child. In the case of adoption, or permanent foster care of a child, account must be taken of the time when the child enters the home, providing this is confirmed by the child welfare committee in question, or other competent bodies. If a parent has to fetch the child from another country, parental leave may begin at the start of the journey, providing the relevant authorities or institutions have confirmed that permission has been granted for the adoption of a child.

5.5.2 Applicability to public and private sectors (Clause 1 of Directive 2010/18)

The right to parental leave applies to all parents working on the domestic labour market irrespective of whether the employer is public or private, cf. Article 1 of the MPL.

5.5.3 Scope of the transposing legislation

The MPL applies to working parents, those who are not active on the labour market and parents attending full-time educational programmes.

5.5.4 Length of parental leave

Up to four months, as provided for in Article 24(1).

5.5.5 Age limits

The right to parental leave shall lapse when the child reaches the age of eight years. An entitlement to parental leave that expires without being used, in part or entirely, when the child reaches the age of eight years, becomes valid once again if the child is later diagnosed as suffering from a serious and chronic illness or severe disability, if this happens before the child attains, in full, the age of 18 years, cf. the third paragraph of Article 24.

5.5.6 Individual nature of the right to parental leave

The parental leave can be taken by either parent until the child reaches the age of eight and for a maximum of 13 weeks for each parent. The right of a parent without custody to take parental leave is not conditional on the agreement of the other parent as in the case of paternity leave. The number of single parents, mothers in particular, in Iceland is high, hence this leave provides an opportunity for parents without custody to spend time with their children, as it is also possible to take such a period of leave for less than a week. Parental leave is not accompanied by any payment from the Maternity/Paternity Leave Fund.

5.5.7 Transferability of the right to parental leave

Parents cannot transfer the right to parental leave to one another.

5.5.8 Form of parental leave

Parental leave may be taken in one session. It may be divided up into shorter periods, or it may be taken with a reduced full-time/part-time ratio.

5.5.9 Work and/or length of service requirements (Clause 3(b) of Directive 2010/18)

The parent must have been active on the domestic labour market for six consecutive months prior to the child entering the home in case of adoption or permanent foster care, as provided for in Article 26 of the MPL. This applies irrespective of whether the employee was engaged on a permanent or a temporary basis.

5.5.10 Notice period

An employee who intends to exercise their right to parental leave must notify their employer thereof as soon as possible and at the latest six weeks prior to the intended first day of the leave. Notice of parental leave must be given in writing and must state the intended starting day of the leave, its length and its structure. The employer must sign the notification with the date of receiving it and deliver a copy to the employee. The employer must record the taking of parental leave, enabling the employee to obtain a certificate stating the number of days of parental leave if they wish to do so.

5.5.11 Postponement of parental leave (Clause 3(c) of Directive 2010/18)

If the employer is unable to grant the employee's wishes regarding the structure of the parental leave, they must, in consultation with the employee, propose a different arrangement within one week from the day of receipt of the notification (cf. the second paragraph of Article 26). This must be done in writing, stating the reasons and, if it involves a postponement, the length of the postponement.

As stated in Article 27 of the MPL, postponement is only permitted in the case of extraordinary circumstances in the operations of the company/institution which necessitate it. Postponement is possible, e.g. in the case of seasonal work, or if no qualified substitute can be found, or if a considerable number of the employees apply to take

parental leave simultaneously, or if the employee in question holds a key position in the top management of the company or institution. At no time may an employer postpone parental leave by more than six months from the time it was to start, according to the employee's request, without the employee's approval.

Parental leave directly following maternity/paternity leave, or in the case where serious illness of the child renders the parent's presence necessary, may never be postponed. Furthermore, postponement is not permitted when the employer has already agreed to the taking of parental leave, or the period of notice under the first paragraph has passed without a response from the employer. If a parent is not enabled to take the leave before the child reaches the age of eight years, the period during which parental leave may be taken is extended to the child's ninth birthday.

5.5.12 Special arrangements for small firms (Clause 3(d) of Directive 2010/18)

There are no special arrangements indicated in the MPL for small firms. The Gender Equality Act, however, makes a distinction between firms with 25 or more employees and firms with fewer employees. It must be presumed that small firms (micro undertakings cf. Directive 2013/34/EU)¹²⁵ with fewer than three employees¹²⁶ may, at least some of them, encounter a problem when faced with the requirements to grant an employee a parental leave.

5.5.13 Special rules and exceptional conditions for parents of children with a disability or long-term illness (Clause 3(3) of Directive 2010/18)

Parental leave taken in the case where a child's serious illness renders the parent's presence necessary may never be postponed. Furthermore, postponement is not permitted when the employer has already agreed to the taking of parental leave, or the period of notice under the first paragraph has passed without a response from the employer, cf. Article 27 paragraph 4.

5.5.14 Measures addressing the specific needs of adoptive parents (Clause 4 of Directive 2010/18)

Clause 4 of the Directive 2010/18/EU has been fully transposed in the MPL.

5.5.15 Provisions protecting workers against less favourable treatment or dismissal (Clause 5(4) of Directive 2010/18)

The protection against dismissal or less favourable treatment applies to all parents who are covered by the MPL (see 5.2.8).

5.5.16 Right to return to the same or an equivalent job (Clause 5(1) of Directive 2010/18)

This right is protected under Article 29 of the MPL, which provides that the employment relations between an employee and their employer shall remain unchanged during maternity/paternity leave and parental leave. An employee is thus entitled to return to their job after the completion of the leave and, if that job is no longer available, they are entitled to a comparable position with the employer according to a contract of employment.

¹²⁵ <https://www.fle.is/static/files/2015/Mblgreinar/runar-bjarnason-29.-januar-2015.pdf>; a large proportion of Icelandic firms would be categorised as micro undertakings in line with Directive 2013/34/EU).

¹²⁶ There are a large number of such companies in Iceland. <http://samidn.is/frettir/frettir/page-158-274>.

5.5.17 Maintenance of rights acquired or in the process of being acquired by the worker (Clause 5(2) of Directive 2010/18)

Article 28 of the MPL covers the protection of accumulated rights which an employee has gained, or is gaining, at the start of parental leave and which remain unchanged until the end of the leave. At the end of the leave, these rights are valid, as are any changes which may have been made on the basis of the law or wage agreements.

5.5.18 Status of the employment contract or relationship during parental leave

The status of the employment contract or relationship during parental leave remains unchanged, cf. Article 29 of the MPL.

5.5.19 Continuity of entitlement to social security benefits

As stipulated in Article 28, accumulated rights are protected during parental leave and, if the individual is receiving social security benefits, the parental leave does not change that.

5.5.20 Remuneration

Parental leave is not accompanied by payment from the Maternity/Paternity Leave Fund. Employers are under no obligation to partially pay an employee who is on parental leave and no collective agreements contain such requirements, as the law is clear that this is an unpaid leave.

5.5.21 Social security allowance

There are no special social security allowances for parental leave.

5.5.22 More favourable provisions (Clause 8 of Directive 2010/18)

With the non-transferable paternity leave and also the parental leave enabling non-custodial parents as well as parents with sick children or with difficult circumstances to take a period of leave, the MPL aims to enable working parents to reconcile work and family life as well as enhancing equality between men and women in sharing family responsibilities.

5.5.23 Case law

There is no case law available.

5.6 Paternity leave

5.6.1 Existence of paternity leave in national law

There is an independent entitlement to paternity leave for up to four¹²⁷ months – available to any father with custody or joint custody with the other parent in the case of the birth of his child, primary adoption or reception of a child into permanent foster care, cf. Article 8 of the MPL. A non-custodial parent is entitled to paternity leave if the consent of the parent exercising custody is obtained. This right to paternity leave is non-transferable, hence if the father does not make use of it, no-one else can. In addition, parents have a joint entitlement to an additional two months leave, which either parent may draw in its entirety or the parents may divide between them.¹²⁸

¹²⁷ Act No. 149/2019, adopted 23 December 2019.

¹²⁸ Statistics show that Icelandic fathers use 30 % of the total permissible leave. See: <https://secure.mbl.is/bladid-pdf/2020-10-10/A2020-10-10.pdf?7b0af1145d913f213df00c183b82d0b9>.

5.6.2 Protection against unfavourable treatment and/or dismissal (Article 16 of Directive 2006/54)

The father/other parent is protected against dismissal as stipulated in Article 30 of the MPL when exercising their lawful right.

The right to employment is also protected under Article 29 of the MPL stipulating:

'The employment relations between an employee and her/his employer shall remain unchanged during maternity/paternity leave and parental leave. The employee shall be entitled to return to her/his job upon the completion of maternity/paternity leave or parental leave. Should this not be possible, she/he shall be entitled to a comparable position with the employer according to a contract of employment.'

5.6.3 Case law

In a case before the Supreme Court in 2011 the Court overturned the decision of a lower court which had confirmed a priority claim of a certain amount by a former employee in the bankruptcy of a financial institution.¹²⁹ The complainant had been dismissed a week before the start of his paternity leave. His plan had been to divide his leave into four periods during the next 18 months. The firm held that the dismissal was necessary due to the need for re-organisation in the wake of the financial collapse (October 2008). The employee was told that there was no need for his working contribution during the probation period and he received his termination pay. The employee claimed his dismissal from the firm violated his right to take paternity leave in accordance with Article 30 of the MPL. The Supreme Court accepted the reasoning of the firm and rejected his priority claim in the insolvency process.

5.7 Time off for *force majeure*

Parents have a joint right to the extension of maternity/paternity leave by three months due to exceptional circumstances and these are enumerated in Article 16 of the MLPL: in the case of multiple births (three extra months for each child after the first); and when a child is stillborn after 22 weeks. There is no mention of *force majeure* in the MLPL otherwise.

5.7.1 Time off for *force majeure*

No mention of *force majeure* in the law.

5.7.2 Case law

No case law in this respect.

5.8 Care leave

5.8.1 Existence of care (or carers') leave in national law

Act No. 22/2006 on Payments to Parents of Chronically Ill or Severely Disabled Children¹³⁰ covers the right of parents to financial assistance when they are not able to pursue employment or studies due to the special care required by their children who have been diagnosed as suffering from chronic illnesses or severe disabilities.

¹²⁹ Supreme Court case H 11/2010.

¹³⁰ Lög um fjölmíðla nr. 38/2011, <https://www.althingi.is/lagas/nuna/2011038.html>.

¹³⁰ Lög um greiðslur til foreldra langveikra eða alvarlega fatlaðra barna, nr. 22/2006, <https://www.althingi.is/lagas/nuna/2006022.html>.

Article 8 of the above act provides that a parent (a wage earner or a self-employed person) who withdraws from paid employment due to the pressing circumstances that arise when their child is diagnosed as suffering from a serious and chronic illness or a severe disability may have a joint right, with the child's other parent, to income-related payments.

According to Article 11 of the act, the amount is 80 % of the employee's average aggregate wages, based on a 12-month period ending two months prior to the diagnosis of the child.

When determining the length of time during which parents are jointly entitled to receive payments under Articles 8 or 14, the executive body must make a comprehensive assessment of the family's circumstances in the light of the pressing circumstances that arose when a child was diagnosed as suffering from a serious and chronic illness or a severe disability, as stipulated in Article 18 of the act. The frame of reference is the family's circumstances at the time when it is requested that payments begin, and attention must be given, amongst other things, to the degree of illness or disability suffered by the child, cf. Articles 26 and 27, the extent of services provided by a diagnostic and treatment institution, the child's care requirements as defined in a certificate issued by a specialist at the diagnostic and care institution that is providing the child with services, cf. also Article 25, and the placement services available from public bodies.¹³¹

5.8.2 Case law

There is no relevant case law.

5.9 Leave in relation to surrogacy

A draft law on altruistic surrogacy was put before the *Althingi* (the national Parliament) during its 144th session in 2014-2015 but has not yet been adopted. It appears to be 'stuck' in the Parliament's Welfare Committee, where it is still being discussed.

According to the draft, the surrogate mother while pregnant has all the same rights as any pregnant woman with regard to health services. According to Article 23 of the draft law, the surrogate mother and her spouse are entitled to maternity/paternity leave and parental leave under the Act on Maternity/Paternity Leave and Parental Leave No. 95/2000.

5.10 Flexible working time arrangements

5.10.1 Right to reduce or extend working time

The Gender Equality Act No. 10/2008 in its provision on the reconciliation of work and family life (Article 21) provides that employers shall take the measures which are necessary to enable women and men to reconcile their professional obligations and family responsibilities. Amongst other things, such measures shall be aimed at increasing flexibility in the organisation of work and working hours in such a way as to take account of both workers' family circumstances and the needs of the labour market, including facilitating the return of employees to work following maternity/paternity or parental leave or leave from work due to pressing and unavoidable family circumstances. The requirement that employers take measures to enable women and men to reconcile work and family life entails that they must try to meet the requests of their employees to reduce working hours when needed. As regards extending working hours, such a request seems to derive from another need, i.e. to increase income.

¹³¹ Cf. Act No. 158/2007, Article 14.

5.10.2 Right to adjust working time patterns

The Government Employees Act No. 70/1996 is explicit with regard to reconciling work and family life, as it provides in its Article 13 that employees have a right to flexible working hours. The head of an agency must agree to the wishes of employees in this respect, cf. Article 17, Paragraph 1, provided that this does not interfere with the agency's services to the public. If the head of an agency rejects the request of an employee the decision may be referred to the Minister responsible.

The concept of flexibility can be taken to mean both a shorter working day or different working hours. From the standpoint of the private labour market there is an understanding of the need to meet the wishes of employees to reconcile work and family life, providing that switching from fixed to flexible hours serves the interests of the employer as well. The SA Confederation of Icelandic Enterprise does not want to adopt a law reducing working hours from the normal 40-hour work week to 37 hours, as this would instantly increase the employer's wage costs by 25 %.¹³²

Most collective agreements include provisions on flexible arrangements in accordance with the GEA stipulation that employers must take measures to enable employees to reconcile work and family life. The Commercial and Office Workers' Union (the VR) has almost 30 000 members (almost 10 % of the population of Iceland). From the VR standpoint, reconciling work and family life means that it is permissible to arrange flexible working hours; e.g. to start before 9 am but never earlier than 7 am¹³³ and if a worker skips the 30-minute coffee break they can leave 30 minutes earlier. Other kinds of flexible arrangements are subject to freedom of contract between the employer and employee.

5.10.3 Right to work from home or remotely

There are no legal provisions concerning the right to work from home or remotely. This is subject to collective agreements and freedom of contract.

5.10.4 Other legal rights to flexible working arrangements

Act no. 27/2000 prohibits the termination of employment due to family responsibilities.

5.10.5 Case law

The Gender Complaints Committee in case No. 1/2018¹³⁴ (21 June 2018) ruled that the Fisk Seafood company had violated the right of an employee regarding reconciliation of work and family life (Article 21 of the GEA). The company rejected the employee's request to temporarily reduce her working hours in the wake of her maternity leave due to difficulties in finding day care for her infant child. The Committee ruled that the complainant had proven that she had undertaken the measures she deemed necessary to return to her job after the maternity leave without success. Hence the employer was to blame for not having accommodated the needs of the employee with temporary measures and hence was liable for violating Article 21 of the GEA.

5.10.6 Does national legislation entitle workers to time off from work on grounds of *force majeure* for urgent family reasons in case of sickness or accident (see Clause 7 of Directive 2010/18)?

The Welfare Appeals Committee rules on appeals lodged in connection with administrative decisions as provided for in laws which allow for appeals to be made to the committee.

¹³² <https://www.sa.is/sa-confederation-of-icelandic-enterprise>.

¹³³ VR collective agreement 2015, https://www.vr.is/media/3568/collective_agreement_vr_sa_2015.pdf.

¹³⁴ Gender Equality Complaints Committee No. 1/2018, 21 June 2018, *A v Fisk Seafood ehf.*

The Appeals Committee is independent and autonomous in its work. Its method of work and procedures are based on the Welfare Appeals Committee Act, No. 85/2015.¹³⁵

5.11 Evaluation of implementation

The case against Fisk Seafood (see Section 5.10.5 above) was the first case assessing the obligation of the employer to meet the request of an employee in relation to reconciling work and family life. The Gender Equality Complaints Committee affirmed that it is the employer's responsibility to resolve such issues if parties cannot initially reach an agreement. In order to meet the requirement of the law (Article 21 of the GEA), the employer must offer temporary measures, such as changing working hours or enabling employees to work outside the workstation, so that they are able to reconcile their job with their responsibilities to their families.

5.12 Remaining issues

An experiment was conducted, shortening working hours in four public institutions for one year without reducing the services they provide. This entailed reducing the working week from 40 to 36 hours on the same salary. This experiment was monitored by a publicly appointed task group which assessed the result of the experiment. The result was that morale among the employees was much better and they appreciated the ability to better reconcile work and family life.¹³⁶

¹³⁵ See here: https://www.government.is/media/velferdarraduneyti-media/media/acrobat-enskar_sidur/Welfare-Appeals-Committee-Act-No-85-2015.pdf.

¹³⁶ <https://www.stjornarradid.is/lisalib/getfile.aspx?itemid=33cbc9c1-217e-11e8-9429-005056bc530c>.

6 Occupational social security schemes (Chapter 2 of Directive 2006/54)

6.1 General (legal) context

The pension system is based on three pillars. The first pillar is a tax-financed public pension (minimal social security benefits). The second pillar consists of mandatory occupational pension funds which are the dominant feature of the system. The third pillar is based on voluntary individual pension savings with tax incentives. The second pillar, i.e. the private pension is the dominant feature of the Icelandic pension system,¹³⁷ accounts for two thirds of total pension income.

The occupational pension system is based on mandatory contributions from employees between the ages of 16 and 70. These are mainly industry-wide pension funds where membership is governed by labour contracts. Managers, specialists and the self-employed are free to choose pension funds ('free pension funds'). These are regulated and fiscally stimulated by the authorities. Contributions are tax exempt up to a certain limit (percentage of wages). The fund system covers the whole working population. The minimum contribution used to be 12 % by law (4 % +8 %) but now, after the latest collective agreements, is now generally 15.5 % with an employer's contribution of 11.5 %.

The Act on Mandatory Insurance of Pension Rights and on the Activities of Pension Funds, otherwise known as the Pension Act No. 129/1997,¹³⁸ was passed into law in 1997 (the basis of this system goes back to 1969 when employer's associations and other parties to the labour market set out to adopt this system) and is intended to provide a comprehensive legal framework for all general pension funds. In the Pension Act the rights of pension fund members are clearly defined, the obligations of pension funds, both as payers of pensions and investors, are spelled out and the transfer of members from one fund to another is facilitated without a loss of accumulated rights. In addition to the Pension Act, several pension funds – notably the Government Employees' Pension Fund – are subject to special legislation, Act. No. 1/1997.¹³⁹

The Pension Act is designed to protect the rights of individuals' pensions, even if they change jobs and membership of pension funds throughout their working lives. It sets a framework for the operation of pension funds to provide for a pension fund system that is to carry the bulk of pension needs in Iceland.

Both employees and employers are required to pay premiums into pension funds: collectively a minimum of 15.5 % of the gross salary. The employee pays 4 %, deductible from the income tax base, and the employer provides a minimum of 11.5 %.

Furthermore, employees may choose to make additional payments of up to 4 % into pension funds. If employees choose to make the additional payments, the employer is obliged to pay an additional 2 % premium to the pension funds for the benefit of these employees.

¹³⁷ Total pension income: Pillar II 67%, Pillars I 23 % and Pillar III 10 % (Information from the Icelandic Pension Fund Association: <https://www.lifeyrismal.is/en>.
<https://www.lifeyrismal.is/static/files/Fundargogn/2017pensions-in-iceland.pdf>.)

¹³⁸ Act on Mandatory Insurance of Pension Rights and on the Activities of Pension Funds, (Lög um skyldutryggingu lífeyrisréttinda og starfsemi lífeyrissjóða, nr. 129/1997), <https://www.althingi.is/altext/lagasofn/131b/1997129.html>.

¹³⁹ Lög um lífeyrissjóð starfsmanna ríkisins, nr. 1/1997, <https://www.althingi.is/lagas/nuna/1997001.html>.

6.1.1 Surveys and reports on the practical difficulties linked to occupational and/or statutory social security issues

Retirement savings adequacy is addressed by a project supported by the European Union Programme for Employment and Social Solidarity – PROGRESS (2007-2013)¹⁴⁰ – and concerns the adequacy of private mandatory pension savings. There is high labour market participation in Iceland among both men and women. In Iceland, employment participation among the 65-69 age groups is by far the highest among OECD countries.

A general overview of the Icelandic pension system is provided in a publication by the National Pension Fund Association.¹⁴¹

6.1.2 Other issues related to gender equality and social security

The prevailing gender pay gap goes hand in hand with the segregated labour market and subsequently the gender pension gap. Women have hitherto carried more responsibility in family life, household work and child rearing and hence are often part-time workers. There has also been a huge increase in women who are classified as having disabilities, or 9.9 % as opposed to 6.4 % men, according to Statistics Iceland for 2018.¹⁴² This influences their participation in the labour market and access to social security.

6.1.3 Political and societal debate and pending legislative proposals

There are no pending legislative proposals concerning the pension fund system, despite criticism of how the pension funds are operated. The occupational funds have been subject to constant criticism since the financial collapse in 2008 for their investment decisions in various private projects etc.¹⁴³ It is furthermore criticised that the board of directors are not chosen by the funds' members but appointed by the directors of the union of the relevant fund, (half employers and half representatives of the employees), whereas there is a growing request that the actual members of the fund should elect the board directly.¹⁴⁴ Hence, the 40 % gender quota rule is not viewed as sufficiently serving the democratic/egalitarian interest of the general fund members.¹⁴⁵

6.2 Direct and indirect discrimination

Direct and indirect discrimination on grounds of sex are prohibited, albeit this is not codified as such in the Pension Act No. 129/1997, which provides for a mandatory affiliation to the pension fund provided for in the applicable collective agreement for all workers between the ages of 16 to 70. Participation in workers' pension schemes is determined by the collective agreement by means of which the basic wages for each worker are fixed. The general pension age is 67 and the qualifying condition is to have resided in Iceland for at least 40 years (three years for a reduced pension) between the ages of 16 and 67, and to have an annual income below EUR 25 423 (ISK 4 148 420). A pension supplement is granted if the insured person's annual income does not exceed a certain amount. Social allowances (means-tested) are paid for living expenses such as housing and medicine costs if the insured person's annual income is below a certain amount.

Article 24 of the Gender Equality Act prohibits all forms of discrimination, direct or indirect, on grounds of gender, albeit affirmative action is not seen as being contrary to the GEA if

¹⁴⁰ <https://www.lifeyrismal.is/static/files/Skyrslur/final-report-rsa-iceland.pdf>.

¹⁴¹ <https://www.lifeyrismal.is/static/files/Fundargogn/2017pensions-in-iceland.pdf>.

¹⁴² https://www.hagstofa.is/media/51002/konur_og_karlar_2018_net.pdf. See also here: <https://www.obi.is/static/files/skjol/pdf-skjol/2019/file-25-.pdf>.

¹⁴³ https://www.lifeyrismal.is/static/files/old/Bindi_1.pdf.

¹⁴⁴ http://styrmir.is/entry.html?entry_id=2236805.

¹⁴⁵ <https://www.vr.is/kannanir/launakonnun-2017/launamunur-kynjanna/>.

there are valid reasons behind a decision and special considerations regarding women with pregnancy and childbirth shall not be regarded as discrimination.

6.3 Personal scope

The personal scope specified in Directive 2006/54 is covered by the Act on Working Terms and Pension Rights Insurance, No. 55/1980, as amended by Acts No. 58/1985, No. 33/1987, No. 21/1991, No. 69/1993, No. 129/1997, No. 145/2004 and No. 76/2010.

The mandatory insurance of pension rights means everyone active in the labour market is obliged to belong to a pension fund and pay contributions to a pension fund and, as appropriate, to other parties pursuant to an agreement on supplementary insurance benefits. All employees and employers or self-employed people are obliged to insure their pension rights through membership of a pension fund between the ages of 16 and 70. Membership of a pension fund, the payment of pension contributions and the division of the contributions between the employee and employer respectively is set out in the collective bargaining agreement which determines the minimum terms of employment in the occupation concerned, or in a specific Act, as appropriate.

No-one may be refused membership of a pension fund for reasons of health, age, marital status, family size or gender, as stated in Article 2 of the Pension Act. All employers are required to deduct pension contributions from their employees' wages (4 %) and submit them to the respective pension funds together with their corresponding contributions (now 11.5 % after the latest collective agreements – previously 8 %). In addition, an employee can pay 2 % into a private pension fund where the employer's corresponding contribution would then be 2 %.

Chapter I of the Pension Act No. 129/1997 provides for compulsory pension fund membership for all employed people. The minimum pension premium is 10 % of wages. Membership of a pension fund may be determined in a collective bargaining agreement, by special legislation or through an employment contract. Along with compulsory membership, a minimum benefit right is also defined. Individuals are accorded the right to establish individual retirement accounts, either with the pension fund where they pay the compulsory minimum premium or with any other qualified financial institution.

Chapter II of the Act stipulates that all employed people aged 16 to 70 years may establish individual retirement contracts with banks or other financial institutions for supplementary pensions. The premiums may accumulate in a blocked account or be used to purchase an annuity life insurance.

6.4 Material scope

Everyone employee has access to a pension fund and is obliged to contribute to it. Through contributions to acquire pension rights in mutual pension funds, pension fund members obtain the right to an old-age pension, disability pension and spouse's and children's pensions, for themselves, their spouse and children, as appropriate, which may not be less extensive than provided for in Chapter III of the Pension Act.

The rules on pension rights are defined in Chapter III of the Pension Act, where all mandatory pensions go into a common pool in each pension fund, and the right to an old-age pension may start at the age of 60 and will be life-long. The minimum rights to disability, spouse's and children's benefits are also defined. Chapter IV of the Act deals with qualifications for pension funds. They must reach a critical minimum size, based on the number of pension fund members and their ability to provide a financial base for their commitments. The Act incorporates 12 chapters on the following matters: Chapter I. Compulsory insurance, contribution and insurance protection. Chapter II. Pension savings. Chapter III. Pension rights in pension funds. Chapter IV. General conditions for the

operation of a pension fund. Chapter V. Operating licences for pension funds. Chapter VI. Function and internal surveillance. Chapter VII. Pension fund investment policy.

6.5 Exclusions

The exclusions listed in Article 8 of the Recast Directive are not explicitly laid down in the Social Security Act No. 100/2007. Its material scope, according to Article 1, is social security pension insurance and social security occupational injury insurance. Social security health insurance is covered by the Health Insurance Act.

6.6 Laws and case law falling under the examples of sex discrimination mentioned in Article 9 of Directive 2006/54

No such laws or subsequent court cases exist.

6.7 Actuarial factors

Payments after retirement age (67) is reached are in proportion to the employee's contribution to the fund throughout the years. It takes on average 13.3 years to get back from the fund the amount of the total contribution of the employee.

The employee pays 4 % of their wages to the relevant fund while the employer, according to the latest collective agreements, must pay 11.5 %. Exceptions are seamen, where the trawler industry pays 8 %. Self-employed individuals, according to the law, must usually pay 12 %.

6.8 Difficulties

The Supreme Court held in a case before it in 2012 that the pension rights of a man in a divorce case did not fall into the category of 'matrimonial property' under the Law in Respect of Marriage No. 31/1993.¹⁴⁶ The claimant in this case referred to Article 102(2) of the Marriage Act which states that pension rights should not be excluded from divorce settlements if this appears to be unreasonable. The couple in this case had been married for 35 years. His income had been considerably higher than hers and subsequently he was expecting a higher old-age pension, although there was no concrete calculation presented with regard to their expected pension.

6.9 Evaluation of implementation

As evident from the case mentioned in Section 6.8 above, women who married in the 1960s, 1970s or 1980s and whose careers have been interrupted by having children or working part-time, or who started working outside the home later in life, have not been able to add much to the modest income provided by social security through the mandatory occupational fund. There are no advantages granted to people (women) who have brought up children, specifically concerning periods of interruption to employment.

Although the Pension Act of 1997 allows couples to split the earnings accrual for the cohabitation period to provide homemakers (in most cases women) with a correction for the period they stay at home without wages and pension rights accrual, this is not likely to benefit the homemaker in case of divorce as it is not mandatory.

6.10 Remaining issues

As mentioned in Section 6.1.3, there is growing frustration among many with the obligation to pay monthly sums into the occupational funds which are subject to criticism

¹⁴⁶ Supreme Court case No. 568/2012.

of unwise investments, especially in the wake of the financial crisis in 2008. This led to huge losses from pension funds, seriously curtailing the rights of fund members, while their contributions had no price index guarantees.¹⁴⁷

¹⁴⁷ <https://www.vlfa.is/index.php/um-felagidh/annadh/frettir/item/1980-lifeyrir-launafolks-a-almennum-vinumarkadhi-er-vart-verdhtryggdur>.

7 Statutory schemes of social security (Directive 79/7)

The public minimum pension system is based on a tax-financed public pension (social security benefits). The social security system applies to those with low or no second pillar pension. It is organised by the authorities. Each year of residence is equal to one fortieth of the full basic amount (income-tested and inflation-protected) after 40 years. Three years of residence is the basic requirement for access to social security. The basic amount of old age pension per person per month (2019) is ISK 248 000 (EUR 1 798). All other income reduces social security pension by 45 % (first ISK 25 000 / EUR 203 exempt).¹⁴⁸

7.1 General (legal) context

The Social Security Act No. 100/2007, with later amendments, covers social security pension insurance and social security occupational injury insurance. Social security health insurance is covered by the Health Insurance Act. Under Act No. 100/2007 any person who is resident in Iceland is regarded as being insured providing that other conditions of the Act are met, unless other provisions are made in international agreements. Residence, for the purpose of the first paragraph, refers to a legal domicile in the sense of the Legal Domicile Act. In order to enjoy full benefits, individuals must have lived in the country for at least 40 years between the ages of 16 and 67 (i.e. a minimum of 40 out of 52 years). The right to partial benefits is gained after residency for at least 3 calendar years and is calculated pro rata from 3 to 40 years.

Pension insurance includes old-age pensions, disability pensions, age-related disability supplements, pension supplements, disability allowances and child pensions, cf. Article 16 of the Social Security Act. The Unemployment Insurance Act No. 54/2006 provides for unemployment insurance covering wage earners and self-employed individuals on the domestic labour market in the event of their becoming unemployed. Unemployment benefit are paid from the Unemployment Insurance Fund, which is financed by the employment insurance tax (cf. the Social Security Tax Act) and interest on the balance held in the fund, cf. Article 5.

7.1.1 Surveys and reports on the practical difficulties linked to statutory schemes of social security (Directive 79/7)

General information on social security in Iceland is available on the Government website.¹⁴⁹

The Financial Supervisory Authority in Iceland published a study entitled *Retirement savings adequacy – measurement in Iceland* (December 2014).¹⁵⁰ This report describes the results of a research project, 'Retirement Savings Adequacy in Iceland', which was carried out from May to November 2014, after preparations that began in September 2012. The goal of the project was to assess pension savings in Iceland and to examine the role that private pensions can and do play in the retirement readiness of the Icelandic working age population. This is the first study of its kind for Iceland.

The study illustrates a marked difference in pension income by gender with men receiving a 24 % higher income, on average, than women. The difference is more or less constant across all age groups.

¹⁴⁸ <https://www.tr.is/asset/2372/ellilifeyrir-uttreikningur-lifeyris-og-tengdra-bota-nytt-19122018-.pdf>.

¹⁴⁹ <https://www.government.is/topics/social-security-and-pensions/>.

¹⁵⁰ Financial Supervisory Authority (2014) *Retirement savings adequacy. Measurement in Iceland*, available at: <https://en.fme.is/media/news/Retirement-Savings-Adequacy---Iceland.pdf>. General information on social security in Iceland.

The main debate concerning the social security system is whether the payments should be measured with regard to occupational pension fund payments, which most employees receive, and therefore proportionally reduced or whether they should constitute an additional bonus to the payments from the occupational fund. Those who are in favour of unreduced social security payments reason that taxpayers deserve the public payments after paying taxes all their adult lives, while the opposing view is that payments from public social security should be like unemployment benefits, i.e. paid to those who need it and do not receive adequate payments from the occupational funds.

7.1.2 Other relevant issues

None apart from those mentioned above.

7.1.3 Overview of national acts

Social Security Act No. 100/2007.¹⁵¹

Pension Act No. 129/1997.¹⁵²

7.1.4 Political and societal debate and pending legislative proposals

The general debate concerns the criticism directed at the social security payments after retirement – the fact that they are linked and reduced with regard to payments from the occupational pension fund. Furthermore, there is criticism of the fact that these social security payments are cut if individuals continue with small tasks with some extra pay. The opposing view is that the social security scheme is meant to guarantee payments to those in need, as this is public money, instead of being an additional bonus at old age.

7.2 Implementation of the principle of equal treatment for men and women in matters of social security

There are no derived benefits. The determination of the pensionable age is the same for both sexes, 67 years.

Article 2(9) of the GEA No. 10/2008 defines terms such as wages together with pension rights, holiday rights and entitlement to wages in the event of illness and all other terms of employment or entitlements that can be evaluated in monetary terms. Article 25 of the GEA prohibits discrimination regarding terms on grounds of gender.

7.3 Personal scope

The Social Security Act No. 100/2007, with later amendments, covers social security pension insurance and social security occupational injury insurance. Social security health insurance is covered by the Health Insurance Act. Under Act No. 100/2007 any person who is resident in Iceland is regarded as being insured (cf., however, Article 29), providing that other conditions of this Act are met, unless other provisions are made in international agreements. Residence, for the purpose of the first paragraph, refers to a legal domicile in the sense of the Legal Domicile Act.

7.4 Material scope

Pension insurance includes old-age pensions, disability pensions, age-related disability supplements, pension supplements, disability allowances and child pensions, cf. Article 16 of the Social Security Act. The Unemployment Insurance Act No. 54/2006 provides for

¹⁵¹ *Lög um almannatryggingar, nr. 100/2007*, <https://www.althingi.is/lagas/nuna/2007100.html>. See also: Administration for Social Insurance <https://www.tr.is/en>.

¹⁵² *Lög um skyldutryggingu lífeyrisréttinda og starfsemi lífeyrissjóða, nr. 129/1997*, <https://www.althingi.is/altxt/lagasofn/131b/1997129.html>.

unemployment insurance covering wage earners and self-employed individuals on the domestic labour market in the event of their becoming unemployed. Unemployment benefit are paid from the Unemployment Insurance Fund, which is financed by the employment insurance tax (cf. the Social Security Tax Act) and interest on the balance held in the fund, cf. Article 5.

7.5 Exclusions

There are no derived benefits. The determination of the pensionable age is the same for both sexes.

7.6 Actuarial factors

The social security system is financed directly from taxes, without contributions.

Adjustments of pension amounts are made through the state budget. By law, the amounts are determined so as to take account of wage trends, though in such a way that they will never rise less than prices as reflected in the consumer price index. In order to enjoy full benefits, individuals must have lived in the country for at least 40 years between the ages of 16 and 67 (i.e. a minimum of 40 out of 52 years). The minimum age for receiving the old age pension is 67 years. The right to partial benefits is gained after residency for at least 3 calendar years and is calculated pro rata from 3 to 40 years. The system provides a base old-age pension to everyone and, if needed, three types of supplementary pensions, fully income-tested, with considerable differences in reduction rates and income thresholds across pension categories.

Actuarial factors come into play when pension fund savings reduce the funding from the social security system. The public pension social security system compensates for low pension income.

The main pension payments come from supplementary pensions:

- An income supplement of ISK 111 330 (EUR 675) is income-tested, with a 38.35 % reduction applied above a specific income threshold: ISK 21 600 (EUR 130).
- A household supplement of ISK 32 809 for people living alone is income-tested, with a reduction above a specific income threshold.
- In addition, the system provides for a 'minimum subsistence guarantee', securing individuals living alone and receiving a household allowance a minimum total payment of ISK 218 515 (EUR 1 874) per month and individuals sharing a household a minimum payment of ISK 188 313 (EUR 1 143) per month. This is 100 % income-tested against all other incomes, given its nature as a minimum guarantee.
- Additional pension supplements can be granted if, for example, a pensioner pays a high price for medicine, needs care from other people, has cohabitation costs, etc. A criterion is that income or wealth must be less than a given amount.
- A child pension is paid for children under the age of 18 if one of the parents receives an old-age pension. A double child pension may be paid if both parents are entitled to an old-age pension.

For an individual living alone and with no other income, the full pension from the social security system was ISK 218 515 per month in 2014 (EUR 1 874), approximately 45 % of the median income (2013 data).¹⁵³

Recently, higher pension payments from the Pillar II pension funds have substantially reduced the proportional share of tax-financed benefits from the Pillar I system. In 2013,

¹⁵³ Financial Supervisory Authority (2014) *Retirement savings adequacy. Measurement in Iceland*, available at: <https://en.fme.is/media/news/Retirement-Savings-Adequacy---Iceland.pdf>.

Icelandic pension funds accounted for 62 %¹⁵⁴ of old-age pensions from the mandatory components (Pillar I and Pillar II) of the pension system.

7.7 Difficulties

The question is constantly raised as to whether it is fair that lifelong pension fund savings reduce pensions from the social security system.

7.8 Evaluation of implementation

Social security complements other pension pillars. Projected replacement rates and absolute pension payments are the main indicators of retirement savings adequacy.

7.9 Remaining issues

The social security system compensates for low pension income; however, first-generation immigrants will probably lack contribution years in the private pension fund system, which will curtail their rights in comparison with others. A study illustrates a marked difference in pension income by gender, with men receiving 24 % higher income, on average, than women. The difference is more or less constant across all age groups.¹⁵⁵

¹⁵⁴ <https://www.lifeyrismal.is/static/files/Fundargogn/2017pensions-in-iceland.pdf>. Old-age pensions only from Pillar II pension funds and old-age base pension, income supplement, household supplement and minimum subsistence guarantee supplement from Pillar I social security.

¹⁵⁵ Financial Supervisory Authority (2014) *Retirement savings adequacy. Measurement in Iceland*, available at: <https://en.fme.is/media/news/Retirement-Savings-Adequacy---Iceland.pdf>.

8 Self-employed workers (Directive 2010/41/EU and some relevant provisions of the Recast Directive)

8.1 General (legal) context

Self-employed workers (around 18 % of the working population 2016) are obliged to pay 12 % of their wages to a pension fund.¹⁵⁶ A self-employed individual must declare as employment income an amount comparable to the remuneration they would receive if similarly employed by an unrelated person (presumptive employment income).¹⁵⁷ The same applies if an individual works for a partnership in which they participate directly or indirectly as an owner. If a spouse or children of a self-employed person are employed in the business, their remuneration must be calculated.¹⁵⁸

An amount equal to the individual's own presumptive employment income, or to that of their spouse or children, is deductible as operating expenses from the income of the private or partnership business. If the self-employed worker declares an income much lower than their presumptive employment income, i.e. the income they would be earning if employed by an unrelated person, their pension savings are accordingly reduced. Each January, the Ministry of Finance publishes rules about 'reference incomes' for self-employed individuals and independent activities.¹⁵⁹

Anyone (both employees and the self-employed) who is age 16 during the income year or older is entitled to a personal tax credit of ISK 56 447 (EUR 411.42) per month (2019)¹⁶⁰ to reduce the tax deducted from their wages. The same applies to other income, such as pension, benefits etc., where unused credit may be transferred to an individual's spouse. Mandatory employee pension insurance is 4 % of gross income (the employer provides a minimum of 8 %) and another 4 % of total income may be deducted for private pension insurance (if so, the employer is obliged to pay an additional 2 % premium for the benefit of the employee).

Taxable income includes all income from past and present employment, businesses and professions, and capital. All income received by the taxpayer in money or in kind is subject to tax, unless it is exempt. The collection of individual income taxes (state and municipal) on employment income takes place at source each month during the income year.¹⁶¹

8.1.1 Surveys and reports on the specific difficulties of self-employed workers

According to one survey,¹⁶² self-employed workers tend to pay themselves lower wages than the market average, although the Directorate for Internal Revenue¹⁶³ publishes a paradigm of wages to be paid by those who are self-employed according to their professions or type of work (presumptive employment income).¹⁶⁴ The motivation behind lower wages seems to be an attempt to avoid paying higher mandatory insurance fund fees as well as taxes. For this reason the self-employed are not investing in their pensions to the same extent as those who work for others.

¹⁵⁶ <https://www.lifeyrismal.is/is/frettir/category/959/einyrkjar-hafa-meira-frelsi-en-launafolk>.

¹⁵⁷ Published on the homepage of the Directorate for Internal Revenue:
<https://www.rsk.is/atvinnurekstur/stadgreidsla-og-reiknad-endurgjald/reiknad-endurgjald/2019/#tab2>.

¹⁵⁸ https://www.island.is/en/business_and_industry/business/self-employed/.

¹⁵⁹ Directorate of Internal Revenue (2019) *Reiknað endurgjald 2019* (Presumptive income 2019), available in Icelandic at: <https://www.rsk.is/atvinnurekstur/stadgreidsla-og-reiknad-endurgjald/reiknad-endurgjald/2019>.

¹⁶⁰ <https://www.rsk.is/einstaklingar/stadgreidsla/personuafslattur/>.

¹⁶¹ <https://www.rsk.is/english/individuals/taxable-income/>.

¹⁶² <https://www.lifeyrismal.is/is/frettir/category/959/einyrkjar-hafa-meira-frelsi-en-launafolk>.

¹⁶³ <https://www.rsk.is/english/individuals/>.

¹⁶⁴ <https://www.rsk.is/atvinnurekstur/stadgreidsla-og-reiknad-endurgjald/reiknad-endurgjald/2019>.

8.1.2 Other issues

Self-employed workers running their own individual enterprises tend to draw lower wages for two main reasons: their business may be earning less or be more unstable or they are avoiding paying the 36.94 % income tax,¹⁶⁵ even though it is required that they declare an employment income of an amount comparable to the remuneration they would receive if similarly employed by an unrelated person (presumptive employment income). For this reason self-employed people have lesser pension rights.

8.1.3 Overview of national acts

The Income Tax Act No. 90/2003 (Article 58 of that Act provides that: 'Remuneration for the work of a person that is to declare remuneration for itself, in accordance with paragraph 2 of point 1 in section A of Article 7, is not to be lower than its wages would have been, if the person had been employed by an unconnected or unrelated party. The same applies for remuneration for the work of a person's spouse, its child under 16 years of age in the income year, related persons or close relative. [Each year, the Director of Internal Revenue shall, at the beginning of the income year, set and issue a regulation on presumptive income, having received the confirmation of the Minister of Finance. In deciding the minimum presumptive income, regard shall be had of actual income for comparable occupations in addition to any further emoluments, regardless of how they are paid or in what form they are. The decision on the presumptive income according to this paragraph is independent of the decision on income according to paragraph 11.]'¹⁶⁶

8.1.4 Political and societal debate and pending legislative proposals

There are no pending legislative proposals in this respect.

8.2 Implementation of Directive 2010/41/EU

Directive 2010/41/EU on equal treatment between men and women engaged in a self-employed capacity has been fully implemented with the following legislation:

- Act No. 10/2008 on Equal Status and Equal Rights of Women and Men;¹⁶⁷
- Social Security Act No. 100/2007;
- Act No. 95/200 on Maternity/Paternity Leave and Parental Leave.

8.3 Personal scope

8.3.1 Scope

While employees are covered by labour law and the protection it affords, the self-employed are, in principle, covered (only) by the provisions of general civil law, as there is no actual employment relationship based on a contract. However, self-employed workers enjoy

¹⁶⁵ Unless their wages go beyond ISK 893 000 (EUR 5 400):
<https://www.rsk.is/einstaklingar/stadgreidsla/stadgreidsla/2018/#tab2>.

¹⁶⁶ Lög um tekjuskatt nr. 90/2003,
<https://skattalagasafn.rsk.is/?loq=90.2003.0&alagningar=2020&tab=&cat=42>,
https://www.government.is/media/fjarmalaraduneyti-media/media/Act_no_90_2003_01022012.pdf,
<https://www.rsk.is/atvinnurekstur/stadgreidsla-og-reiknad-endurgjald/reiknad-endurgjald/2019>.

¹⁶⁷ The Gender Equality Act No. 10/2008 gives effect to Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation, to which reference is made in Annex XVIII of the Agreement on the European Economic Area as amended by the Decision of the EEA Joint Committee No. 33/2008. In addition, this Act gives effect to Directive 2010/41/EU of the European Parliament and of the Council 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, to which reference is made in Annex XVIII of the Agreement on the European Economic Area as amended by the Decision of the EEA Joint Committee No. 84/2011.

protection as parents just like other parents, as evident from Article 1 covering the scope of the MPL which applies to parents who are employed by others or are self-employed.

8.3.2 Definitions

The Unemployment Insurance Act, No. 54/2006,¹⁶⁸ Article 3(b) defines a self-employed individual as any person who works in their own business or independent activity to the extent that they are obliged to pay tax deductions at source in respect of calculated wages and social insurance tax in respect of their work, either every month or in another regular manner according to rules set by the Director of Internal Revenue on calculated remuneration.

8.3.3 Categorisation and coverage

Not all self-employed workers are considered to be part of the same category with regard to unemployment. There is a special unemployment fund for benefit payments to farmers, small fishing-vessel owners and lorry drivers.¹⁶⁹ Other self-employed individuals, just like wage earners, are entitled to apply to the Directorate of Labour for unemployed benefit if they become unemployed.

8.3.4 Recognition of life partners

Under the Unemployment Insurance Act No. 54/2006 cohabiting partners, if registered, are covered like spouses. Under the Social Security Act No. 100/2007 (see Article 49) two unmarried individuals have the same rights to benefits as couples if registered in Registers Iceland, providing that they have a child together or are expecting a child together or have been cohabitating together consecutively for more than one year. The same applies to the benefit entitlements of an individual who survives their spouse. This provision was amended subsequent to amendments to the Law in Respect of Marriage, No. 31/1993 with law No. 65/2010 where the term 'two individuals' replaced 'a man and a woman'.

With regard to tax rules, cohabiting same-sex partners may request to be taxed together, in the same way as married couples and cohabiting couples of the opposite sex, who have registered their cohabitation, who have lived together for at least one year or have or are expecting a child together (Act 90/2003 on Income Tax). Furthermore, a rule providing for a tax-free personal allowance that is transferable between spouses has been extended so that it is also transferable between cohabiting partners (Act 45/1987 on the Settlement of Taxes).

8.4 Material scope

8.4.1 Implementation of Article 4 of Directive 2010/41/EU

Article 1 of the Gender Equality Act No. 10/2008 provides: 'All individuals shall have equal opportunities to benefit from their own enterprise and to develop their skills irrespective of gender'. The act states that this aim will be reached, amongst other means as stated in 1(c), by specifically improving the position of women and increasing their opportunities in society. The material scope covers the same issues as in Article 4 of Directive 2010/41/EU.

8.4.2 Material scope

The self-employed are not excluded from protection as regards equal treatment, although their workplace conditions are different from those who are employed by others.

¹⁶⁸ Unemployment Insurance Act (*Lög um atvinnuleysistryggingarsjóð nr. 54/2006*).

¹⁶⁹ Unemployment Insurance Act No. 54/2006, Article 7.

8.5 Positive action

A loan insurance fund for women (called Svanni) was established in 1995 with an agreement by the mayor of Reykjavik, the Minister of Social Affairs and Minister of Industry.¹⁷⁰ It is intended to enable women to get backup when needing loans for implementing solid business ideas and is especially aimed at women with smaller companies to enable them to access financing.¹⁷¹ There is an Innovation Centre within the Ministry of Industries, which provides opportunities for start-up companies looking for service support and assistance in their financing.¹⁷² Tourism was, in 2019, a growing industry in Iceland and so was the shared economy, such as Airbnb, where the share of women taking advantage of this way of earning an income was probably large. A new law was passed in 2016¹⁷³ setting specific limits for renting out property (for example, through Airbnb), with stiff penalties for breaking them. The new law has made it very difficult for small entrepreneurs to rent out their property through agencies like Airbnb. Self-employed hosts who were previously able to rent out part of their housing or their property on a short-term basis are now faced with limits of renting out for no more than 90 days per year and never for a higher amount than ISK 2 million / EUR 12 000. This measure is questionable considering the constitutional right to peaceful enjoyment of property, right to work and right to privacy of home and family.¹⁷⁴

8.6 Social protection

The whole population in Iceland is covered by the national social security scheme. The whole working population is covered by the Pension Fund Act No. 129/1997.

Each self-employed individual (including those who do not have any other employees apart from themselves) must pay a social security contribution, which is 6.60 % in 2019, from their own total wages and that of their employees.

Under Act No. 100/2007 on Social Security any person who is resident in Iceland is regarded as being insured, provided that other conditions of the Act are met. Residence refers to legal domicile in the Legal Domicile Act. Pension insurance includes old-age pensions, disability pensions, age-related disability supplements, pension supplements, disability allowances and child pensions.¹⁷⁵

Two unmarried individuals have the same rights to benefits as couples if their cohabitation is registered in Registers Iceland, a special institution which is part of the Ministry of Interior,¹⁷⁶ providing that they have a child together or are expecting a child together or have been cohabitating together consecutively for more than one year. The same applies to the benefit entitlements of an individual who survives their spouse. Confirmed cohabitation (same-sex couples) has the same legal effect as a marriage with regard to social security, social care and insurance, housing and healthcare.

¹⁷⁰ Ministry of Industry and Innovation, as it is now called: <https://www.government.is>.

¹⁷¹ <https://reykjavik.is/radognefndir/stjorn-svanna-lanategyggingasjods-kvenna>; see also: Agreement renewed between Prime Minister, <https://www.stjornarradid.is/efst-a-baugi/frettir/stok-frett/2020/05/31/Samkomulag-um-Svanna-lanategyggingasjod-kvenna-undirritad-til-naestu-fjoqurra-ara/>.

¹⁷² <http://www.nmi.is/english>.

¹⁷³ Act No. 67/2016 amending Act No. 85/2007 (*lög um veitingastaði, gististaði og skemmtanahald, nr. 85/2007 sbr. breytingu á þeim lögum með lögum nr. 67/2016*); Regulation 1277/2016.

¹⁷⁴ For further information: <https://grapevine.is/news/2018/06/11/icelands-parliament-to-begin-cracking-down-on-airbnb/>.

¹⁷⁵ Act No. 100/2007, Article 16.

¹⁷⁶ *Þjóðskrá Íslands*, Registers Iceland: <https://www.skra.is/default.aspx?PageID=45a0835b-e7ab-11e6-9442-005056851dd2>.

8.7 Maternity benefits

The Act on Maternity/Paternity Leave and Parental Leave No. 95/2000 with subsequent amendments applies to self-employed parents as well as those employed by others. The Act defines a 'self-employed' individual as referring to anybody who works for themselves, irrespective of the type of company, to the effect that it is mandatory for them to pay an insurance levy every month, or in another manner decided by the tax authorities.¹⁷⁷

The Maternity/Paternity Leave Fund is financed through the collection of an insurance levy in addition to interest on the Fund's deposits.¹⁷⁸

The Maternity/Paternity Leave Fund (the Fund) makes payments to parents who have entitlements to payments during maternity/paternity leave. Each parent, including self-employed, is entitled to leave for up to three months due to a birth, primary adoption or reception of a child into permanent foster care. This right is not transferable. In addition, parents have a joint entitlement to an additional three months, which either parent may use in its entirety or the parents may divide it between them. Parents acquire the right to payments from the Fund after they have been active on the domestic labour market for six consecutive months prior to the birth of a child or the date on which a child enters the home in the case of adoption or permanent foster care. The work contribution of a self-employed parent is based on the payment of the insurance levy on calculated remuneration for the same period. The monthly payment amounts to 80 % of the self-employed worker's average total wages during the reference period. The maximum payment per month in 2015 was ISK 370 000 (EUR 2 584).

Maternity allowance is granted on a mandatory basis to parents working in the domestic labour market, employed by others or self-employed. The Maternity/Paternity Leave Fund makes the payments to parents who are entitled to it. The Fund is financed through the collection of an insurance levy and the Minister of Welfare ensures that the Fund has sufficient funds at all times to meet its obligations.

There are various recruitment agencies from which anyone can seek assistance, but always on their own initiative, or they can seek assistance from the municipalities. The Directorate of Labour has 8 service centres in various parts of the country to provide information / advise on payments from the MPL Fund etc.¹⁷⁹

8.8 Occupational social security

The Act on Mandatory Occupational Pension Funds No. 129/1997 (Pension Act) applies.

8.8.1 Implementation of provisions regarding occupational social security

The Act on Mandatory Occupational Pension Funds No. 129/1997 (Pension Act) requires that all employees and self-employed workers between the ages of 16 and 70 must be members of an approved pension fund. The mandatory contribution is currently a minimum of 12 % of total earnings (all types of taxable wages). If the self-employed person is using their own identification number they pay the whole 12 % and the same applies if they are working as a contractor. If the self-employed person has a private limited company then they pay 4 % as an employee and the company pays 8 %. If there is a supplement payment then the self-employed employee's share is 2-4 % and the private limited company's share is 2 %. In addition, it is mandatory to pay 0.10 % to a vocational rehabilitation fund.

¹⁷⁷ See Act No. 45/1987 on the withholding of public levies at source.

¹⁷⁸ Insurance Levy Act No. 113/1990.

¹⁷⁹ <https://vinnumalastofnun.is/um-okkur/thjonustuskristofur>.

A business operator or self-employed person, as well as others who make payments subject to contributions, must, upon the conclusion of the revenue year, specify on their wage payment slips, or by other means prescribed by the Directorate of Internal Revenue, the amount upon which each person's contributions were based, together with the total amount of contributions paid to a pension fund.

The contribution can be split into two parts. The first part ensures a minimum benefit for the member. This minimum provides the individual who has paid for 40 years a lifelong old-age pension every month amounting to at least 56 % of the monthly wages from which the contribution was paid. Furthermore, it ensures a minimum disability and survivor's pension, which are defined in the Act. The second part can go either towards acquiring additional pension rights in a pension fund or into individual pension plans (accounts). The funds define the minimum benefit. For example, one fund might define it so that all of the 12 % contribution goes to cover minimum benefits, while another might only need 10 % for the minimum and then the extra 2 % can be saved elsewhere. Banks, insurance companies, securities undertakings and pension funds can receive contributions for supplementary insurance benefits.

According to Act No. 113/1990, all employers are required to pay a social security contribution based on the total wages/salaries they pay to their employees or, in the case of the self-employed, based on their own presumptive employment income. This contribution is a wage-related tax. The contribution for 2019 is 6.60 % of wages paid, of which 6.04 % goes into the funding of the social security system, 1.45 % goes to the unemployment fund, 0.05 % to the Wage Guarantee Fund and 0.05 % to the Export Office. This social security contribution must be paid every month.

Income is defined in the Income Tax Act No. 90/2003. In the case of a couple, income as a basis for calculating the old-age and disability pension is divided equally between the partners when benefits are calculated. Which of the couple is the owner of the assets forming the income, or whether it constitutes individual property or matrimonial property, is of no significance. People who are aged 67 or older, and who have been resident in Iceland for at least three calendar years between the ages of 16 and 67, are entitled to old-age pensions.

8.8.2 Application of exceptions for self-employed persons regarding matters of occupational social security (Article 11 of Recast Directive 2006/54)

None.

8.9 Prohibition of discrimination

Prohibition of discrimination is firmly entrenched in the GEA No. 10/2008. Article 1 of the GEA explicitly states that all individuals shall have equal opportunities to benefit from their own enterprise and to develop their skills irrespective of gender. Article 1 c. states that the aim of the GEA is specifically to improve the position of women and increase their opportunities in society. Article 24 of the GEA is a general prohibition of all forms of discrimination on grounds of gender.

8.10 Evaluation of implementation

No cases have been found to substantiate this question.

8.11 Remaining issues

Being self-employed can be difficult when the going gets tough. However, no research has been conducted on the situation of self-employed women in Iceland, whether the gender

pay gap is larger in their case on average or how much less they earn than their male counterparts.

9 Goods and services (Directive 2004/113)¹⁸⁰

9.1 General (legal) context

The Goods and Services Directive 2004/113/EC of 13 December 2004 was transposed into national law by amending the existing Gender Equality Act No. 10/2008 with Act No. 79/2015.

9.1.1 Surveys and reports about the difficulties linked to equal access to and supply of goods and services

As the Goods and Services Directive was rather recently transposed into domestic law no surveys, about potential difficulties linked to access and supply of services, have been undertaken.

9.1.2 Specific problems of discrimination in the online environment/digital market/collaborative economy

There are no examples concerning specific problems of discrimination in the online environment or collaborative economy where there are many self-employed women (Airbnb hosts, for example).

9.1.3 Political and societal debate

There is nothing significant to report.

9.2 Prohibition of direct and indirect discrimination

Article 24a, inserted into the Gender Equality Act No. 10/2008 by Act No. 79/2015 (not yet translated into English)¹⁸¹, prohibits all forms of discrimination, hence both direct and indirect, regarding access to or supply of goods as well as access to or provision of services. If it shown to be likely that discrimination under this provision has occurred, direct or indirect, the alleged discriminating party must demonstrate that the grounds for the treatment are not sex-based, unless it can be justified by a legitimate aim and the means of achieving that aim are appropriate and necessary, cf. Article 24, para 3 of the GEA.

9.3 Material scope

Article 24a of the GEA, prohibiting discrimination in relation to goods and services, does not apply to access to or supply of goods or to access to or provision of services in the area of private and family life. Furthermore, this provision does not apply to matters concerning work in the labour market. Service in the public interest and which is not profit-driven is excluded from the material scope, as are the services of financial institutions, health, telecommunications and other areas enumerated in the Directive.¹⁸² The limitation in the material scope of directive 2004/113 as regards financial institutions, health and telecommunications has not been discussed in Iceland, although it does not seem in adherence with the general principle of non-discrimination as a fundamental right in EU law.¹⁸³

¹⁸⁰ See e.g. Caracciolo di Torella, E. and McLellan, B (2018), *Gender equality and the collaborative economy*, European network of legal experts in gender equality and non-discrimination, available at: <https://www.equalitylaw.eu/downloads/4573-gender-equality-and-the-collaborative-economy-pdf-721-kb>.

¹⁸¹ *Lög um breytingu á lögum um jafnan rétt og jafna stöðu kvenna og karla nr. 10/2008, með síðari breytingum (vörukaup, þjónusta)*, <https://www.althingi.is/altxt/stjt/2015.079.html>.

¹⁸² See in particular a recent report: <https://www.stjornarradid.is/lisalib/getfile.aspx?itemid=013b2f1a-e447-11e9-944d-005056bc4d74>.

¹⁸³ See e.g. Xenidis, R.: 'Shaking the Normative Foundations of EU Equality Law: Evolution and Hierarchy between Market Integration and Human Rights Rationales', EUI Working Paper LAW 2017/04 ERC ERPL

9.4 Exceptions

Article 37 of the Media Law No. 38/2011 prohibits subliminal techniques in audio-visual commercial communications that include or promote any discrimination based on gender, racial or ethnic origin, nationality, religion, belief, disability, age or sexual orientation.

Article 29 of the Gender Equality Act No. 10/2008 provides that, 'advertisers and those who design or publish advertisements shall ensure that the advertisements are not belittling or disrespectful towards either sex and that they do not run contrary to gender equality in any way. Such advertisements may not be published in the media or any other public venue.' This provision does not apply to the content of the media or to education.

9.5 Justification of differences in treatment

There is nothing significant to report.

9.6 Actuarial factors

Article 24a(2) of GEA No. 10/2008.

Article 24a explicitly states in Paragraph 2 that any discrimination regarding the calculation of premiums and benefits for the purposes of insurance and related financial services is prohibited.

9.7 Interpretation of exception contained in Article 5(2) of Directive 2004/113

This exception is not relevant.

9.8 Positive action measures (Article 6 of Directive 2004/113)

There are none in particular.

9.9 Specific problems related to pregnancy, maternity or parenthood

No.

9.10 Evaluation of implementation

As the Goods and Services Directive was not transposed into the GEA until relatively recently, the evaluation of the implementation is not timely.

9.11 Remaining issues

There are none at present.

10 Violence against women and domestic violence in relation to the Istanbul Convention

Iceland was one of the first states in Europe to sign the Council of Europe Convention on preventing and combating violence against women and domestic violence on 11 May 2011. Iceland ratified the Istanbul Convention on 26 April 2018.¹⁸⁴

10.1 General (legal) context

Icelandic law does not include a specific penal clause that covers all components of domestic violence although various provisions both in the General Penal Code No. 19/1940 as well as other acts of law render violations punishable. Most cases of domestic violence fall under Article 217, Paragraph 1, of the General Penal Code on minor assault. According to Article 217, Paragraph 2, the victim must request an official prosecution as criminal proceedings will not be instituted unless this is required in the public interest. Hence if a public interest issue is not considered to be at stake the victim must press charges against the assailant.¹⁸⁵

10.1.1 Surveys and reports on issues of violence against women and domestic violence

Reykjavík municipality has published various brochures on domestic violence (in Icelandic, English and Polish, which is the largest ethnic minority in Iceland).¹⁸⁶

10.1.2 Overview of national acts on violence against women, domestic violence and issues related to the Istanbul Convention

General Penal Code No.19/1940 with subsequent amendments Chapter XXII – Sexual Offences and Chapter XXIII – Homicide and Bodily Harm.¹⁸⁷

In 2010 ‘the purchasing of sexual services’ was made punishable by law, through changes in the General Penal Code (Article No. 206). It is illegal to advertise and to benefit from prostitution, e.g. through pimping and other means.

In June of 2011 the parliament approved a law (No. 85 2011) that improves the powers authorities have to protect victims of domestic violence. This law contains provisions authorising the removal from the household of the party accused of domestic violence and putting in place a specific restraining order should there be a suspicion of domestic violence.¹⁸⁸

Gender Equality Act No. 10/2008.

10.1.3 National provisions on online violence and online harassment

The Penal Code No. 19/1940 with later amendments prohibits hate speech in the media; incitement to criminal conduct (Article 27); the use of social media and the internet to make contact with children under the age of 15 etc (Article 202). Article 233a criminalises the conduct of mocking, defaming, threatening an individual or group of individuals with verbal or any other kind of expression, due to ethnicity, race, colour, religion, sexual orientation or gender identity.¹⁸⁹

¹⁸⁴ <https://www.ruv.is/frett/radherra-fullgildir-istanbulsamninginn>.

¹⁸⁵ <https://www.stjornarradid.is/verkefni/almannaoryggi/adgerdir-gegn-brotastarfsemi/adgerdir-gegn-ofbeldi/>; https://www.althingi.is/pdf/wip/Gender_Equality_in_Iceland_2012.pdf.

¹⁸⁶ See here: <https://reykjavik.is/baeklingarupplýsingar-um-ofbeldi>.

¹⁸⁷ https://www.government.is/library/Files/General_Penal_Code_sept.-2015.pdf, see also here: <https://evaw-global-database.unwomen.org/en/countries/europe/iceland/1940/general-penal-code-no-19-1940>.

¹⁸⁸ <https://www.jafnretti.is/is/um-jafnrettisstofu/greinar/ny-nalgun-a-islandi-i-barattunni-gegn-heimilisofbeldi>.

¹⁸⁹ Skarphéðinsdóttir, Inga (2013) *Kynferðisleg áreitni skv. 199. gr. almennra hegningarlaga* (Sexual harassment in view of Article 199 of the General Penal Code No. 19/1940), an LLM thesis at the University

10.1.4 Political and societal debate

Violence against women probably ranks the highest of all issues in relation to gender equality. The MeToo movement, or revolution as some call, it has had an immense impact in Iceland. In January 2018, all of Iceland's political parties met to discuss the issues raised by the MeToo movement and to formulate a plan to combat the systemic problem. Stories of sexual harassment had been published in the media taken from a closed Facebook group for women in politics called 'In the Shadow of Power'. The accounts varied from those women having their drinks drugged to being publicly humiliated by sexual comments of co-workers. Soon after, similar reports came to light.

MeToo has become a rallying cry for many within the power elite – and perhaps an excuse for not tackling issues like growing inequality or corruption. MeToo is focused on finding perpetrators, while campaigning against inequality implies criticism of the establishment itself. The MeToo movement has certainly shed light on the impact that corruptive governance and tactics in the business environment and labour market have on women in particular and may gradually change the negative stereotypes regarding the roles of women.

10.2 Ratification of the Istanbul Convention

Iceland ratified the Istanbul Convention on 26 April 2018.¹⁹⁰

of Iceland (in Icelandic only), available at:
<https://skemman.is/bitstream/1946/14709/1/Inga%20Skarphe%CC%81%C3%B0insdo%CC%81ttir-ritger%C3%B0.pdf>.

¹⁹⁰ <https://www.ruv.is/frett/radherra-fullgildir-istanbulsamninginn>; <https://www.jafnretti.is/is/samfelag-og-vinumarkadur/kynbundid-ofbeldi/istanbulsamningurinn>.

11 Compliance and enforcement aspects (horizontal provisions of all directives)

11.1 General (legal) context

The role of the Gender Equality Complaints Committee is to examine cases and to deliver a ruling in writing on whether provisions of the GEA No. 10/2008 have been violated and similarly the provisions of the recently adopted Act No. 86/2018 on the Equal Treatment on the Labour Market and Act No. 85/2019 on Equal Treatment Irrespective of Race and Ethnic Origin. The Committee's rulings may not be referred to a higher authority. The rulings of the Complaints Committee shall be binding for the parties to each case. The parties may refer the Committee's rulings to the courts, cf. Article 5 of the GEA.

The Prime Minister shall appoint three members of the Gender Equality Complaints Committee for periods of three years at a time in accordance with nominations by the Supreme Court. They shall all be qualified lawyers, and at least one of them shall have expert knowledge of gender equality issues. The chairman and vice-chairman shall meet the conditions set for serving as a district court judge. Alternates shall be appointed in the same way. The Committee may summon experts to give it advice and assistance if it deems necessary.

In 2019, the Gender Equality Complaints Committee dealt with seven cases; three concerned employment matters, where in one case the Committee found a breach of the GEA while not in the two others.¹⁹¹ Another case concerned equal treatment in the labour market (no violation was found); two cases were dismissed and one complaint was appealed and revoked.¹⁹²

11.1.1 Surveys and reports about the particular difficulties related to obtaining legal redress

There is no academic research on this particular topic in English.

11.1.2 Other issues related to the pursuit of a discrimination claim

Two main issues are the cost of legal proceedings (lawyer's fees) and the uncertainty of outcome: fear of retaliation or risking future chances of finding a job and being labelled a trouble-maker or a loser.

11.1.3 Political and societal debate and pending legislative proposals

There are no pending legislative proposals that are being debated in the public forum.

11.2 Victimisation

Article 27 of GEA No. 10/2008 (prohibition of dismissal, etc., in connection with a complaint or a demand for redress); Article 30 (prohibition of a waiver).

Article 27 prohibits employers from dismissing employees for demanding redress on the basis of the GEA. Furthermore, employers must ensure that employees are not subjected to injustice in their work, e.g. as regards job security, terms of employment or performance assessment, on the grounds of having submitted a complaint or provided information regarding gender-based or sexual harassment or sexual discrimination. In addition, if it is shown to be likely that the employer has violated this provision, they must demonstrate that the dismissal, or the alleged injustice, is not based on the employee's

¹⁹¹ <https://www.stjornarradid.is/lisalib/getfile.aspx?itemid=7f13c41c-5323-11ea-9455-005056bc530c>, p. 37.

¹⁹² <https://www.stjornarradid.is/lisalib/getfile.aspx?itemid=7f13c41c-5323-11ea-9455-005056bc530c>, p. 37.

demand for redress, complaint or provision of information regarding gender-based or sexual harassment or sexual discrimination. This does not apply if the dismissal takes place more than one year after the employee has made their demand for redress under the GEA.

Article 30 of the GEA stipulates that 'no person may waive the rights set forth in this Act'.

The above Article 27 complies with Article 24 (victimisation) of the Recast Directive.

11.3 Access to courts

Most discrimination cases initially go before the Gender Equality Complaints Committee. Submitting a case to the Gender Equality Committee appears to be an effective remedy in light of the relatively large number of cases. Following a ruling by the Committee, the complainant, if they have been successful, can commence an action for damages before a court of law. It may be assumed that the most common violations of the Gender Equality Act are regarding wage equality as the gender-based pay gap remains. This means that, although the burden of proof rests on the employer, it is still difficult for the claimant to gather enough evidence to bring a case before the Complaints Committee. The clause permitting workers to disclose their wage terms is anything but a guarantee of transparency. Indeed, it may serve as a scapegoat for not rectifying the problem. It is not enough to codify principles into law if they exist mostly in theory and are not practical and effective. This dubious clause has not been contested before a court of law.

The complainants must pay their legal fees themselves (most attorneys charge ISK 20 000 / EUR 150 or more per hour). Should the Complaints Committee rule in their favour they can take their case to a court of law and seek compensation. The rulings of the Gender Equality Complaints Committee are binding for both parties to each case. The Complaints Committee may decide that the party against whom the complaint is directed must pay the complainant the costs of bringing the complaint before the Complaints Committee, providing that the Committee's conclusion is in the complainant's favour. The parties may refer the Committee's rulings to the courts.

11.3.1 Difficulties and barriers related to access to courts

Legal fees are high (most attorneys charge ISK 20 000 / EUR 150 or more per hour) and outcomes are uncertain.

11.3.2 Availability of legal aid

Legal aid is provided for all individuals involved in judicial proceedings in Iceland who fulfil the strict requirements to receive it. Foreign nationals who are involved in judicial proceedings in Iceland may therefore be eligible for legal aid, as legal aid is granted regardless of nationality. Article 126 of the Act on Civil Procedure No. 91/1991 states that any person involved in judicial proceedings in Iceland may be entitled to legal aid.

Legal aid is granted by the Ministry of the Justice. However, the Minister is bound by the opinion of an independent committee, the Legal Aid Committee, which recommends or denies legal aid depending on the circumstances in each case. The committee is composed of three lawyers. The chair is appointed by the Minister, one member is nominated by the Icelandic Bar Association and one member by the Judge's Association.

An individual sends a detailed application for legal aid (most often with the assistance of a lawyer), with information about the case, the individual's finances and other relevant information, to the Ministry before the case goes to court. The Legal Aid Committee assesses applications for legal aid on the merits of the case and the income of the applicant. The income threshold for eligibility for legal aid is ISK 2 million (EUR 12 000)

per individual per year before taxes. For a married or cohabiting couple it is ISK 3 million. An additional ISK 250 000 is allowed for each child supported by the applicant. These criteria are not definitive. The committee may look at other factors than just income when deciding on the eligibility of the applicant. These factors are outlined in the Regulation on Legal Aid No. 45/2008. Legal aid may be granted to an individual who has income above the threshold under particular circumstances, such as when the cost of living is especially high for some reason. The committee may deny legal aid to someone who fulfils the criteria in particular circumstances, for example due to the value of the property owned by the individual.

If an individual has been granted legal aid they are exempt from all legal fees payable to the state treasury. Other legal costs, including the lawyer's remuneration, according to the judge's decision, are paid by the Ministry. Legal aid can be restricted to a certain amount of money in cases which should be settled out of court and it is sometimes restricted to legal fees and the evaluation of one court-appointed specialist. The restriction is decided by the Legal Aid Committee on the basis of the application from the individual.

11.4 Horizontal effect of the applicable law

11.4.1 Horizontal effect of relevant gender equality law

The horizontal direct effect of the gender equality legislation (GEA, No. 10/2008) is that it can be relied on by individuals before domestic courts, not only against public institutions but also against private employers.

11.4.2 Impact of horizontal direct effects of the charter after *Bauer*

Established case law of the EFTA Court confirms that fundamental rights form part of the general principles of EEA law; the provisions of the European Convention on Human Rights and the case law of the European Court of Human Rights have an important role.¹⁹³ The EU Charter of Fundamental Rights is not applicable as such within the EFTA pillar of the EEA.

Iceland, like Norway, has a dualistic approach to international law. In order to be applicable in domestic law, EEA legislation has to be transposed into Icelandic legislation. EEA law that has not been transposed is not applicable as such in Icelandic courts. EEA law, as opposed to EU law, does not call for the direct effect or for the supremacy of EEA law within the domestic legal system of the EFTA States (Article 7, EEA Agreement and Protocol 35 to the Agreement).¹⁹⁴ All the same, Iceland is obliged to transpose the EU directives into domestic law on the basis of the EEA Agreement as well as interpreting the provisions of the EEA Agreement in accordance with the judgments of the EU courts, i.e. those from before the signature of the Agreement.¹⁹⁵

The successful operation of the EEA depends on uniform implementation and application of the common rules in all EEA States. To this end, a two-pillar system of supervision has been devised: the EU Member States are monitored by the EU Commission and the EFTA States party to the EEA Agreement by the EFTA Surveillance Authority. The latter has been

¹⁹³ The entry into force of the Charter of Fundamental Rights as a binding legal act in 2009 did not deprive the ECHR of its role in the EU legal system as a source of fundamental rights in the form of general principles: http://www.europarl.europa.eu/thinktank/en/document.html?reference=EPRS_BRI%282017%29607298.

¹⁹⁴ For further reading on this topic: <https://www.domstol.no/globalassets/upload/hret/artikler-og-foredrag/fundamental-rights-in-eea-law---bardsen-03062015.pdf>.

¹⁹⁵ Article 6 of the EEA: 'Without prejudice to future developments of case law, the provisions of this Agreement, in so far as they are identical in substance to corresponding rules of the Treaty establishing the European Economic Community and the Treaty establishing the European Coal and Steel Community and to acts adopted in application of these two Treaties, shall, in their implementation and application, be interpreted in conformity with the relevant rulings of the Court of Justice of the European Communities given prior to the date of signature of this Agreement.'

given powers corresponding to those of the Commission in the exercise of its surveillance role. A two-pillar structure has also been established in respect of judicial control; the EFTA Court operates in parallel to the Court of Justice of the European Union.

Because of the above, the evolution of Icelandic legislation in the sphere of gender equality is heavily influenced by EU law.

11.5 Burden of proof

GEA No. 10/2008 provides for a shift in the burden of proof. An alleged victim of discrimination has to establish, before a court or other competent authority, facts from which it may be presumed that there has been direct or indirect discrimination. It is, however, for the respondent to prove that there has been no breach of the principle of equal treatment.

In Section IV of the GEA No. 10/2008: Prohibition against discrimination on grounds of gender – the burden of proof is placed on the employer (Article 25: Prohibition against discrimination regarding terms; Article 26: Prohibition against discrimination at work and on engagement in employment; Article 27: Prohibition against dismissal).

If it is shown to be likely that the above provisions have been violated, the employer must demonstrate that the difference or decision was based on grounds other than the gender of the claimant. Article 26(4) of the GEA concerns the burden of proof. The employer must demonstrate that their decision on assigning, employing, promoting or changing the position of an employee is based on other grounds than gender. The same goes for terminating a working contract or letting maternity/paternity or parental leave or other circumstances relating to pregnancy or childbirth have a negative impact on working opportunities. In all these cases the employer must prove that other factors than gender determined the decision.

11.6 Remedies and sanctions

Section V of the Gender Equality Act No. 10/2008 deals with sanctions (Article 31) and fines (Article 32). Article 31 on compensation for financial and non-financial loss provides that, 'Anyone who deliberately or through negligence violates this Act shall be liable to pay compensation according to the ordinary rules. Furthermore, the party in question may be ordered to pay the party affected by the violation compensation for non-financial loss, if appropriate, in addition to compensation for financial loss.'

Article 32 stipulates that, 'Violations of this Act, or of regulations hereunder, may be punishable by fines unless heavier penalties are prescribed in other statutes. Fines shall be paid to the State Treasury. Cases involving violations of this Act, or of regulations issued hereunder, shall be handled as criminal cases.'

11.6.1 Types of remedies and sanctions

Compensation may be awarded for non-financial loss as well as financial loss. Violations are punishable by fines unless heavier penalties are prescribed by other statutes.

According to Regulation No. 933/2019, the Directorate of Gender Equality can impose per diem fines on the basis of violations of the GEA, to ensure better compliance with the law.¹⁹⁶

¹⁹⁶ <https://www.stjornarradid.is/lisalib/getfile.aspx?itemid=7f13c41c-5323-11ea-9455-005056bc530c>.

11.6.2 Effectiveness, proportionality and dissuasiveness

The Gender Equality Complaints Committee has the task of examining cases submitted to it by individuals, enterprises, institutions or NGOs either in their own name or on behalf of their members. The Committee delivers a ruling on whether provisions of the GEA have been violated. Its rulings are binding for each party. If a party is unsatisfied with the Committee's rulings they can take the case before a court of law. If a ruling by the Gender Equality Complaints Committee is in the complainant's favour but the respondent does not accept it and brings an action to have it annulled by the courts, the complainant's legal costs, at all court levels, will be paid by the Treasury (cf. Article 5(6)).

The most common complaints submitted to the Gender Equality Complaints Committee and subsequently to the courts regards appointments in the public sphere. Employers in the private sector have free choice in whom they hire unless the hiring concerns provisions of collective agreements or jobs (the most common complaint).¹⁹⁷ Where both the Gender Complaints Committee and later the Supreme Court have found a violation, there have been some discrepancies as to the scope of the employer to assess qualifications where the Supreme Court has overturned the rulings of the Complaints Committee providing that the latter had embarked on an independent assessment process of the qualifications of the applicants.¹⁹⁸ However, it is clear in the law (Article 26(5)) that, when assessing whether individuals have been discriminated against on grounds of their gender, the educational qualifications, work experience, specialist knowledge or other special talents demanded for the relevant position, according to law or regulations, or which must otherwise be considered as being of relevance to the position, must be taken into account.

The above rulings judgments give reason to question effectiveness of the GEA. Employers have wide discretion when choosing between applicants.

The National Church of Iceland was ordered to pay a minister ISK 1.6 million (EUR 11 675) after the Supreme Court found the Church in violation of gender discrimination.¹⁹⁹ Her original claim was ISK 14 million (EUR 102 153). In another case from 2004, a private company in the majority ownership of the state was ordered to pay a woman applicant who was discriminated against damages for financial loss and for non-financial loss.²⁰⁰

The dissuasive factors against seeking justice are probably fewer now than before – as public employers as well as private ones are more aware of the negative public relations impact of facing claims of discrimination. It can however be difficult to claim discrimination when applying for a job as employers have been granted wide scope in choosing between applicants from subjective paradigms.

11.7 Equality body

In Iceland the Directorate for Gender Equality (Jafnréttisstofa; website: www.jafnretti.is) fulfils the role of an equality body. The staff consists of eight people: six women and two men. Its tasks are listed in in Article 4 of the GEA No. 10/2008, where monitoring the application of the GEA is listed first, hence its concerns are all the grounds which form the basis of the prohibition of discrimination. Its role includes, amongst other things, to advise authorities, institutions, NGOs and individuals on gender equality issues; to provide assistance to gender equality committees, gender equality counsellors and representatives of local authorities, institutions and companies; to mediate in cases of disputes referred

¹⁹⁷ https://skemman.is/bitstream/1946/13589/1/EI%C3%ADn%20Ólafsdóttir_ritgerð.pdf.

¹⁹⁸ In Supreme Court decisions H 25/2009, H 330/2003 and H 121/2002 the Supreme Court over-ruled the rulings of the Complaints Committee, maintaining that the employer should have discretion to decide the weight of emphasis but the Committee had made an independent assessment. In this regard the Supreme Court and the Complaints Committee are not in agreement on the methodology in assessing whether there has been gender discrimination in the appointment / hiring process.

¹⁹⁹ Supreme Court H 195/2006.

²⁰⁰ Supreme Court H 39/2004.

to the Directorate for Gender Equality on the basis of the GEA; and to investigate whether there is a reason to request the Gender Equality Complaints Committee to examine a matter when there is a suspicion of a breach of the GEA by an institution or enterprise. It also has competence to request information from organisations, institutions etc. regarding matters in a case of an alleged breach. Such parties are obliged to provide the Directorate with the requested information and the Directorate may fine them if they do not obey (which, to date, has never been done).

Since the GEA was adopted in 2009, the Directorate for Gender Equality has never resorted to the measure of imposing per diem fines (cf. Paragraph 6 of Article 4 of the GEA) to ensure compliance with the rulings of the Gender Equality Complaints Committee (the law also stipulates that when determining the amount of per diem fines, factors including the number of employees of the enterprise, institution or non-governmental organisation and the business involved shall be taken into account). At the Directorate for Gender Equality's request, this provision of the law was made more explicit with Regulation No. 933/2019 on imposing fines on institutions, enterprises, NGOs subject to the law, if these breach:

1. The duty to provide the Directorate for Gender Equality with any type of information necessary within a reasonable time limit if there is reason to believe that the institution, enterprise or a non-governmental organisation has violated the GEA.
2. The duty to react to the instructions of the Directorate for Gender Equality to resort to measures to remedy a situation in accordance with the ruling of the Gender Equality Complaints Committee within a reasonable time limit.
3. The duty to react to the Directorate for Gender Equality instructions to provide a gender equality action plan on how to work on gender mainstreaming in all spheres in employment policy.
4. The duty to react to the instruction of the Directorate for Gender Equality to remedy its pay certification process within a reasonable time limit.

The Directorate for Gender Equality can impose per diem fines on those subject to these legal obligations on the basis of a special decision.

11.8 Social partners

The social partners include the Icelandic Confederation of Labour (ASÍ), SA – Confederation of Icelandic Employers, the Federation of State and Municipal Employees, the Association of Academics, various civil society organisations / NGOs involved in women's rights, campaigning against sexual abuse and violence and human trafficking, and other civil society organisations working on gender equality.²⁰¹

11.9 Other relevant bodies

Other bodies include educational programmes and institutions. Furthermore, the Gender Equality Council, which consists of 11 representatives, is appointed after each parliamentary election, cf. Article 8 of the GEA. Its role is to work in close cooperation with the Directorate for Gender Equality and advise the Prime Minister on gender equality issues.

11.10 Evaluation of implementation

The Gender Equality Complaints Committee issued seven rulings in 2019. In three of those cases, where men were the plaintiffs, the Committee did not rule in their favour. In two cases, where women were the plaintiffs, the Committee ruled that the GEA had been violated. In one of those (not published amongst the other rulings on the Committee's website), a man was appointed the manager of the Thingvellir National Park in 2018 while

²⁰¹ https://www.jafnretti.is/static/files/Gender_Equality_in_Iceland_2017.pdf.

the woman had better qualifications. She was awarded ISK 20 million (EUR 122 000) in pecuniary damages for not having been given the post, while the evaluation committee (politically appointed) did not suffer any consequences. The woman, a former member of parliament, got the damages after negotiations with the state attorney and without going to court.²⁰²

11.11 Remaining issues

Both the GEA (Article 32) and the MPL (Article 31) include provisions allowing the imposition of fines on those who violate these acts or regulations issued hereunder. Such fines must be paid to the State Treasury. However, these provisions appear to be an under-utilised resource, as there are no instances where such fines have been imposed.

²⁰² https://www.visir.is/g/2019190408753?fb_comment_id=2675434275861143_2675583282512909.

12 Overall assessment

The following specific transposition problems were mentioned in this report:

1. The number of women on the boards of companies, that are registered as public limited companies with employees on their pay roll, has not increased despite the quota laws, adopted in 2010.²⁰³ In 2019, the percentage of women was 26.5 %, the same proportion as in recent years. In public limited companies with more than 50 employees, the proportion of women in 2019 was 34.7 %, which is 1.1 % increase from the previous year. At the end of 2019 women CEOs made up 23 % of public limited companies and 24.3 % of those in board chairperson roles.²⁰⁴
2. By the end of 2019, 135 companies and institutions had undergone the obligatory evaluation of the equal pay certification system which is to prevent discriminatory practices based on gender. It is important to note that passing the certification and receiving the symbol does not mean that a company has achieved the objective of no pay discrimination but rather that it is implementing the standard with the objective of reaching the goal. It may be questioned whether this system will have the side effect of lowering wages (hence the income of average homes) in the attempt to make them equal, i.e. serving the principle and the companies. This is a valid question, as when discrepancies are detected, the wages of the one discriminated against will most likely not be brought up – it is more probable that the wages of the higher paid will be lowered to make them equal.²⁰⁵
3. There is no surveillance, follow up or active pressure on companies or institutions (with 25 or more employees) to implement their mandatory gender equality programmes which means that these are often just empty promises, lofty declarations put into the drawer to be taken out when the time comes to provide the Directorate of Gender Equality with a new copy, cf. Article 18 of the GEA.

²⁰³ Act No. 13/2010 amended the Act on Public Limited Companies No. 2/1995 as well as the Act on Private Limited Companies No. 138/1994, implementing gender quotas on company boards. The Act took effect on 1 September 2013.

²⁰⁴ https://www.mbl.is/vidskipti/frettir/2020/05/06/hlutfall_kvenna_i_stjornum_haekkar_litillega/.

²⁰⁵ There is no information regarding this issue.

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