



TURKS AND CAICOS ISLANDS

CHAPTER 3.19

HUMAN RIGHTS COMMISSION ORDINANCE

Revised Edition

showing the law as at 31 March 2018

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

This edition contains a consolidation of the following laws—

HUMAN RIGHTS COMMISSION ORDINANCE

Ordinance 14 of 2013 .. in force 1 August 2014

Amended by Ord. 10 of 2017 in force 15 September 2017 (L.N. 32/2017)

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No Subsidiary Legislation has been made under this Ordinance.



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HUMAN RIGHTS COMMISSION ORDINANCE

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CHAPTER 3.19

HUMAN RIGHTS COMMISSION ORDINANCE

(Ordinances 14 of 2013 and 10 of 2017)

AN ORDINANCE TO MAKE PROVISION IN RELATION TO THE PERFORMANCE OF THE FUNCTIONS OF THE HUMAN RIGHTS COMMISSION AND PROVIDE FOR MATTERS CONNECTED THEREWITH OR INCIDENTAL THERETO.

Commencement

[1 August 2014]

Short title

1. This Ordinance may be cited as the Human Rights Commission Ordinance .

Interpretation

2. In this Ordinance—

“Chairman” means the Chairman of the Commission referred to in section 101(1) of the Constitution and includes any temporary chairman and any member presiding at meetings of the Commission;

“Commission” means the Human Rights Commission established under section 97 of the Constitution;

“Constitution” means the Constitution of the Turks and Caicos Islands set out in Schedule 1 to The Turks and Caicos Islands Constitution Order 2011 (S.I. 2011/1681);

“Director” means the person appointed as such under section 7;

Constitution of the Commission and term of office

3. (1) The members of the Commission shall be appointed in the manner provided in section 101(1) of the Constitution.

(2) The Commission shall consist of five members.

(3) The members of the Commission shall be appointed by instrument under the public seal for such period, not exceeding three years, as may be specified in their respective instruments of appointment.

(4) No person shall be qualified to be appointed as a member of the Commission if he is a public officer or if he is or has been within the preceding three years—

(a) a member of the House of Assembly; or

(b) the holder of an office in any political party.

- (5) The office of a member of the Commission shall become vacant—
- (a) at the expiration of the period specified in the instrument by which he was appointed;
 - (b) if he resigns his office by writing under his hand addressed to the Governor;
 - (c) if he is absent from three consecutive meetings of the Commission without excuse or leave of the Chairman;
 - (d) if he becomes a member of the House of Assembly, the holder of an office in any political party, or a public officer; or
 - (e) if the Governor, acting after consultation with the Premier and the Leader of the Opposition, directs that he shall be removed from office for inability to discharge the functions of his office (whether arising from infirmity of body or mind or any other cause).

(6) Whenever the office of the Chairman of the Commission is vacant or the holder of that office is for any reason unable to perform the functions of that office, such one of the other members of the Commission as the Governor, acting after consultation with the Premier and the Leader of the Opposition, may appoint shall act in the office of the Chairman. Any person so appointed shall, subject to subsection (5), continue so to act until he is notified by the Governor, acting after consultation with the Premier and the Leader of the Opposition, that the circumstances giving rise to the appointment have ceased to exist.

(7) If the office of a member of the Commission other than the Chairman is vacant or the holder of that office is acting as the Chairman or is for any other reason unable to perform the functions of his office, the Governor, acting after consultation with the Premier and the Leader of the Opposition, may appoint a person who is qualified for appointment as a member of the Commission to act as a member of the Commission. Any person so appointed shall, subject to subsection (5), continue so to act until he is notified by the Governor, acting after consultation with the Premier and the Leader of the Opposition, that the circumstances giving rise to the appointment have ceased to exist.

(8) Subject to section 5(3), the Commission may act notwithstanding any vacancy in its membership.

Eligibility for re-appointment

4. A member of the Commission who vacates his office, otherwise than as a result of absence under section 3(5)(c) or removal under section 3(5)(e), shall be eligible for re-appointment.

Meetings of the Commission

5. (1) The Commission shall hold such meetings as in the opinion of the Chairman, or at least three other members, are necessary for the efficient conduct of its affairs:

Provided that the Commission shall meet on not less than twelve occasions in any calendar year.

(2) The Chairman of the Commission shall preside at all meetings of the Commission, and in the event of his absence from any meeting, the members of the Commission present at such meeting shall elect one from amongst themselves to preside at such meeting.

(3) No business shall be transacted at any meeting of the Commission if there are less than three members of the Commission present.

(4) Any question proposed for decision at any meeting of the Commission shall be determined by a majority of the votes of the members present and voting. If on any question the votes are equally divided the Chairman shall have and exercise a casting vote.

(5) Subject to subsection (6), questions may be decided by the Commission without a meeting by circulation of the relevant papers among members and the expression of their views in writing and in such case the decision shall be the view of the majority of members expressing a view.

(6) If any member requires that a matter or question being dealt with by circulation of the relevant papers shall be reserved for consideration at the next following meeting of the Commission, no decision shall be made on that matter or question except at a meeting of the Commission.

(7) A meeting may be held using a method of communication, or a combination of methods of communication, that allows a member taking part to hear what each other member taking part says without the members being present in each other's presence.

(8) A member who takes part in a meeting conducted under subsection (7) is taken, for all purposes, to be present at the meeting.

(9) The Commission shall ensure that minutes of all meetings of the Commission and all decisions taken at such meetings are recorded in the minutes and that copies of such minutes are presented for confirmation by the Commission as soon as practicable, to allow adequate time for consideration at the next following meeting of the Commission. Such minutes once confirmed by the Commission shall be signed by the Chairman.

Funding, accounts and audit

6. (1) The funds of the Commission shall consist of—

- (a) such funds as shall be provided to the Commission by or under any appropriation law; and
- (b) donations and grants made to the Commission which have been accepted by the Commission.

(2) The Commission shall keep proper accounts of all its transactions to the satisfaction of the Permanent Secretary, Finance, in a form that conforms to internationally recognised standards.

(3) The Commission shall have regard to and comply with its obligation to prepare and submit its annual budget and its financial statements for auditing within the timeframe required under the Public Finance Management Ordinance and National Audit Ordinance.

(4) Section 43A of the Public Finance Management Ordinance shall apply in relation to the unexpended balance of moneys appropriated to the Commission for any financial year. (*Inserted by Ord. 10/2017*)

Director, officers and employees of the Commission

7. (1) The Commission may, acting with the funds and resources available to it—

- (a) appoint a Director to the Commission, who shall be responsible for the day to day management and administration of the Commission;
- (b) employ such officers and employees as are required for the proper performance of the functions of the Commission; and
- (c) retain the services of professional persons.

(2) The remuneration and other terms and conditions of employment of the Director, officers and employees of the Commission employed under subsection (1) and the professional persons retained under that subsection shall be such as may be determined or varied by the Commission from time to time.

(3) For the purpose of the performance of the functions conferred on the Commission, it may, with the consent of the appropriate authority, utilize the services of any public officer or other employee of Government.

(4) The Director shall be entitled to attend meetings of the Commission and to take part in discussion on any matter other than such matters as may concern him personally, but shall not be entitled to vote.

(5) In subsection (3) “appropriate authority”, in relation to any public officer or other employee of the Government, means the person or authority vested by law with power to appoint such public officer or employee of the Government to the position he held in the Government at the time when his service is sought to be utilised by the Commission

Delegation of powers

8. The Commission may delegate to any member of the Commission, the Director, officer or employee any of its powers or functions and the member, Director, officer or employee to whom such powers or functions are delegated may exercise those powers and functions subject to the direction of the Commission.

Authentication of documents

9. Any notice, release, instrument or other documents which the Commission is authorised or required to give, make or issue may be signed on behalf of the Commission—

- (a) by the Chairman; or
- (b) by any member of the Commission authorised in that behalf.

Additional functions of the Commission

10. (1) In addition to any other powers, duties and functions conferred on or assigned to it by section 101 of the Constitution, this Ordinance or any other law, the Commission shall—

- (a) advise and assist the Government in formulating legislation and administrative directions and procedures in furtherance of the promotion and protection of fundamental rights;
- (b) make recommendations to the Government regarding measures which should be taken to ensure that national laws and administrative practices are in accordance with international human rights norms and standards;
- (c) make recommendation to the Government on treaties and other international instruments in the field of human rights;
- (d) promote general awareness of, and provide education, in relation to, human rights, including by making public statements and educating public opinion and public officials, co-ordinating human rights programmes and acting as a source of human rights information;
- (e) consult and co-operate with other persons and bodies concerned with the promotion and protection of human rights;
- (f) inquire generally into any matter, including any enactment or law, or any procedure or practice whether governmental or non-governmental, if it appears to the Commission that human rights are, or may be, infringed thereby;
- (g) make recommendations on the implications of any proposed Ordinance or regulations or any proposed policy of the Government that may affect human rights;
- (h) advise on any human rights matter referred to it by Government;
- (i) promote an understanding of, and compliance with the Equality Ordinance 2012;
- (j) promote equality of opportunity and good relations between persons of different racial groups;
- (k) monitor the welfare of persons in prison, police detention and detention centres or immigration detention by regular visits to their places of detention or placement in accordance with procedures as prescribed by the law relating to the place of detention or placement and make such recommendations as may be necessary for improving their conditions of detention or placement;
- (l) undertake research into, and promote awareness of human rights by conducting programmes, seminars, workshops and to disseminate and distribute the results of such research;
- (m) work towards the elimination of discrimination; and

- (n) take part in international meetings and other activities on human rights and to cooperate with other regional and international human rights bodies.

(2) The visit by the Commission to any place of detention under subsection (1)(k) shall not be refused by the person in charge of such place of detention if the procedures provided in the law regulating such places of detention are complied with.

Guidelines

11. (1) The Commission may prepare and publish guidelines for the information of the public in relation to any matter relevant to its functions.

(2) Before publishing guidelines under subsection (1), the Commission may consult any organisation it considers to have an interest in the matter.

(3) The guidelines do not have the force of law but may be received as evidence of matters set out in them.

Making a complaint

12. (1) A complaint to the Commission—

- (a) may be made by an aggrieved person or a person acting on behalf of an aggrieved person or a group of persons;
- (b) may be made orally, electronically or in writing; and
- (c) shall be made within six months after the alleged contravention takes place:

Provided that the Commission may entertain a complaint up to two years after an alleged contravention if it is satisfied that there are good reasons for the delay and that no one will be prejudiced by it.

(2) Where a complaint is made to the Commission, it shall record—

- (a) the complainant's name and contact information;
- (b) the subject matter of the complaint; and
- (c) the date when the complaint was made.

Preliminary inquiries

13. For the purpose of determining whether to undertake an investigation, the Commission may, through any of its members, conduct such preliminary inquiries as it thinks appropriate.

Investigation of complaints

14. (1) Where—

- (a) any person complains to the Commission upon grounds which appear to be genuine that he has suffered by reason of any alleged contravention of any right or freedom contained in Part I of the Constitution or in international human rights treaties that have been extended to the Islands; or

(b) the Commission has reasonable grounds for believing that any person has breached or infringed any provision of Part I of the Constitution or of international human rights treaties that have been extended to the Islands,

the Commission shall, as soon as is reasonably possible, investigate and, by mediation or conciliation, endeavour to settle the causes of the complaint; or to cause the contravention to cease, as the case may be.

(2) The Commission shall not investigate any complaint relating to any allegation of infringement of any right or freedom which—

(a) is the subject matter of any proceedings pending in any court, including any appeals; or

(b) has been finally determined by any court.

(3) If the Commission is investigating an allegation under subsection (1) and during the investigation the allegation becomes the subject matter of any proceedings in any court, the Commission shall immediately cease the investigation.

(4) The Commission shall, before commencing an investigation under subsection (1), comply with the requirements of subsections (5), (7) and (8).

(5) The Commission shall give notice in writing of the complaint or belief, as the case may be, to the person against whom the complaint was made or in relation to whom the belief arose, and the notice shall state the Commission intends to investigate the complaint or the belief.

(6) Where pursuant to subsection (5), the Commission gives notice to any person that it believes that that person has contravened any provision of Part I of the Constitution or of an international human rights treaty that has been extended to the Islands, the notice shall specify the grounds for that belief.

(7) The Commission shall determine the terms of reference for any investigation.

(8) Where the terms of reference of the investigation relate to the activities of persons named in them or to the activities of any employer or organisation, the Commission shall offer such person, employer or organisation so named an opportunity of making oral or written representations with regard to it (or both oral and written representatives if it thinks fit). A person, employer or organisation who avails himself or itself of an opportunity under this subsection of making oral or written representations may be represented—

(a) by an attorney; or

(b) by some other person of their choice, not being a person to whom the Commission objects on the ground that he is unsuitable.

(9) The Commission may, if it thinks fit—

(a) from time to time revise the terms of reference of an investigation; or

(b) unless a person affected by a complaint objects, consolidate two or more complaints,

and, when the Commission exercises a power under this subsection, subsections (1) to (8) shall have effect in relation to the case.

(10) If, in the opinion of the Commission, a complaint is without merit, the Commission may dismiss the complaint at any stage of the investigation after it has given the complainant an opportunity to be heard.

(11) In any case where it is made to appear to the Commission that a complaint which it is investigating is also under active investigation by some department or agency of the Government, the Commission may suspend or discontinue its own investigation into that complaint.

(12) At any stage a complainant may withdraw a complaint made pursuant to subsection (1).

Decision not to investigate

15. (1) The Commission may decide not to investigate a complaint if it is satisfied that—

- (a) the law or existing administrative procedure provides a remedy adequate in the circumstances for the complainant and, if the complainant has not availed himself of the remedy, there is no reasonable justification for the failure to do so; or
- (b) the complaint is frivolous, vexatious or not made in good faith.

(2) The Commission may decide not to further investigate a complaint if—

- (a) the complainant has abandoned the complaint—
 - (i) by failing to advise the Commission of a current address or a telephone number at which the Commission can contact him; or
 - (ii) by failing to respond after a reasonable number of attempts by the Commission to contact him;
- (b) the complainant withdraws the complaint under section 14(12); or
- (c) the complaint is settled or is successfully dealt with by mediation.

(3) Where the Commission decides not to investigate or further investigate a complaint, it shall, where possible, notify the complainant.

Procedure where infringement is not disclosed or is disclosed

16. (1) Where an investigation conducted by the Commission does not disclose the infringement of a fundamental right or freedom, the Commission shall record the findings and shall forthwith inform the person making the complaint.

(2) Where an investigation conducted by the Commission discloses the infringement of a fundamental right or freedom, the Commission shall refer the matter, where appropriate, to the relevant authority or person with the necessary recommendations.

(3) Where an investigation conducted by the Commission discloses the infringement of a fundamental right or freedom and the Commission believes a

peaceful reconciliation can be achieved, the Commission shall, with the consent of all parties involved, seek an amicable solution.

(4) Where an investigation conducted by the Commission discloses the infringement of a fundamental right or freedom, the Commission shall recommend that the matter be referred to the Supreme Court, if –

- (a) it is of an irreconcilable nature; or
- (b) the Commission fails to resolve it amicably,

Powers of the Commission

17. (1) For the purposes of an investigation under section 14 the Commission may, subject to any claim of privilege, request from the person who is the subject of an investigation the production for inspection and examination of records, documents and papers that are relevant to the investigation and a member of the Commission acting as such may either—

- (a) take copies or extracts at the premises where they are produced for inspection or examination; or
- (b) upon giving a receipt therefore remove the records, documents or papers for the purpose of making copies or extracts; but in that case the member shall permit the person in charge of them to accompany him while the copies or extract are being made, and shall, whether that person accompanies him or not, return them to the premises from which they were removed as soon as possible and in any case within forty-eight hours:

Provided that nothing in this subsection shall be taken to authorise the Commission or any member of the Commission to require the production of or to take copies or extracts of anything in the possession of any department of the Government, except with the prior permission of the Minister charged with responsibility for the administration of that department.

(2) If the Commission believes that a person has failed without reasonable excuse to comply with a request under subsection (1) or is likely to fail without reasonable excuse to comply with the request the Commission may apply to the Supreme Court for an order requiring the person to take such steps as are required in the order to comply with the request.

(3) No such order shall be issued unless the Commission has made a genuine effort to secure compliance with a request under subsection (1) by conciliation, and the party resisting has been given notice and opportunity to appear before the Court to oppose the application.

(4) Any person who refuses to obey the order issued under subsection (2) shall be guilty of an offence and liable to a fine of \$10,000 or imprisonment for 6 months, or both.

(5) Any person who hinders, obstructs, molests or interferes with a member of the Commission in the lawful exercise of a power of the lawful performance of a duty under this Ordinance shall be guilty of an offence and liable to a fine of \$10,000 or imprisonment for 6 months, or both.

Confidentiality

18. (1) Every member, officer (including the Director) and employee of the Commission shall preserve confidentiality with respect to all matters relating to the affairs of any person that may come to their knowledge in the course of their functions.

(2) Any member, officer (including the Director) or employee of the Commission who, in contravention of subsection (1) —

(a) communicates any matter; or

(b) suffers or permits any unauthorised person to have access to any books, papers or records relating to any person,

commits an offence and is liable on summary conviction to a fine of \$10,000 or imprisonment for 6 months, or both.

(3) Without prejudice to subsections (1) and (2), the Commission may disclose to any Government Department or agency or to the public generally any information the Commission considers relevant to increase public awareness and understanding of issues related to human rights.

(4) The Commission shall not disclose information under subsection (3) identifying the persons involved in any complaint or investigation, unless required to do so under any other law.

(5) Nothing in this section shall be construed to prevent the Commission from disclosing non-identifying statistical and educational data.

Protection

19. (1) No action, suit, prosecution or proceeding shall be instituted against the Commission or any member of the Commission, the Director or any officer or employee of the Commission, for any act done or omitted to be done in good faith in the exercise or discharge of any duty or function of the Commission.

(2) No action or proceeding, civil or criminal shall be instituted in any court against any member of the Commission in respect of any report made by the Commission under the Constitution or against any other person in respect of the publication by such person of a substantially true account of such report.

Further reporting

20. The Commission shall, at least every three months in each calendar year, publish a report about its activities during the preceding three months.

Code of Conduct

21. Members of the Commission shall have regard to their obligations under the Code of Conduct for Persons in Public Life issued by the Integrity Commission pursuant to section 102 of the Constitution.

Procedure

22. Subject to this Ordinance, the Commission may regulate its own procedure.