

# Equal Pay Act 1970

## 1970 CHAPTER 41

Sweet & Maxwell Ltd.

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An Act to prevent discrimination, as regards terms and conditions of employment, between men and women.

[29th May 1970]

### 1.—

(1) If the terms of a contract under which a woman is employed at an establishment in Great Britain do not include (directly or by reference to a collective agreement or otherwise) an equality clause they shall be deemed to include one.

(2) An equality clause is a provision which relates to terms (whether concerned with pay or not) of a contract under which a woman is employed (the “woman's contract”), and has the effect that—

- (a) where the woman is employed on like work with a man in the same employment—
  - (i) if (apart from the equality clause) any term of the woman's contract is or becomes less favourable to the woman than a term of a similar kind in the contract under which that man is employed, that term of the woman's contract shall be treated as so modified as not to be less favourable, and
  - (ii) if (apart from the equality clause) at any time the woman's contract does not include a term corresponding to a term benefiting that man included in the contract under which he is employed, the woman's contract shall be treated as including such a term;
- (b) where the woman is employed on work rated as equivalent with that of a man in the same employment—
  - (i) if (apart from the equality clause) any term of the woman's contract determined by the rating of the work is or becomes less favourable to the woman than a term of a similar kind in the contract under which that man is employed, that term of the woman's contract shall be treated as so modified as not to be less favourable, and
  - (ii) if (apart from the equality clause) at any time the woman's contract does not include a term corresponding to a term benefiting that man included in the contract under which he is employed and determined by the rating of the work, the woman's contract shall be treated as including such a term.
- (c) where a woman is employed on work which, not being work in relation to which paragraph (a) or (b) above applies, is, in terms of the demands made on her (for instance under such headings as effort, skill and decision), of equal value to that of a man in the same employment—
  - (i) if (apart from the equality clause) any term of the woman's contract is or becomes less favourable to the woman than a term of a similar kind in the contract under which that man is employed, that term of the woman's contract shall be treated as so modified as not to be less favourable, and

(ii) if (apart from the equality clause) at any time the woman's contract does not include a term corresponding to a term benefiting that man included in the contract under which he is employed, the woman's contract shall be treated as including such a term.

(d) where—

(i) any term of the woman's contract regulating maternity-related pay provides for any of her maternity-related pay to be calculated by reference to her pay at a particular time,

(ii) after that time (but before the end of the statutory maternity leave period) her pay is increased, or would have increased had she not been on statutory maternity leave, and

(iii) the maternity-related pay is neither what her pay would have been had she not been on statutory maternity leave nor the difference between what her pay would have been had she not been on statutory maternity leave and any statutory maternity pay to which she is entitled,

if (apart from the equality clause) the terms of the woman's contract do not provide for the increase to be taken into account for the purpose of calculating the maternity-related pay, the term mentioned in sub-paragraph (i) above shall be treated as so modified as to provide for the increase to be taken into account for that purpose;

(e) if (apart from the equality clause) the terms of the woman's contract as to—

(i) pay (including pay by way of bonus) in respect of times before she begins to be on statutory maternity leave,

(ii) pay by way of bonus in respect of times when she is absent from work in consequence of the prohibition in section 72(1) of the Employment Rights Act 1996 (compulsory maternity leave), or

(iii) pay by way of bonus in respect of times after she returns to work following her having been on statutory maternity leave,

do not provide for such pay to be paid when it would be paid but for her having time off on statutory maternity leave, the woman's contract shall be treated as including a term providing for such pay to be paid when ordinarily it would be paid;

(f) if (apart from the equality clause) the terms of the woman's contract regulating her pay after returning to work following her having been on statutory maternity leave provide for any of that pay to be calculated without taking into account any amount by which her pay would have increased had she not been on statutory maternity leave, the woman's contract shall be treated as including a term providing for the increase to be taken into account in calculating that pay.

(3) An equality clause falling within subsection (2)(a), (b) or (c) above shall not operate in relation to a variation between the woman's contract and the man's contract if the employer proves that the variation is genuinely due to a material factor which is not the difference of sex and that factor—

(a) in the case of an equality clause falling within subsection (2)(a) or (b) above, must be a material difference between the woman's case and the man's; and

(b) in the case of an equality clause falling within subsection (2)(c) above, may be such a material difference.

(4) A woman is to be regarded as employed on like work with men if, but only if, her work and theirs is of the same or a broadly similar nature, and the differences (if any) between the things she does and the things they do are not of practical importance in relation to terms and conditions of

employment; and accordingly in comparing her work with theirs regard shall be had to the frequency or otherwise with which any such differences occur in practice as well as to the nature and extent of the differences.

(5) A woman is to be regarded as employed on work rated as equivalent with that of any men if, but only if, her job and their job have been given an equal value, in terms of the demand made on a worker under various headings (for instance effort, skill, decision), on a study undertaken with a view to evaluating in those terms the jobs to be done by all or any of the employees in an undertaking or group of undertakings, or would have been given an equal value but for the evaluation being made on a system setting different values for men and women on the same demand under any heading.

(5A) For the purposes of subsection (2)(d) to (f) above—

- (a) “maternity-related pay”, in relation to a woman, means pay (including pay by way of bonus) to which she is entitled as a result of being pregnant or in respect of times when she is on statutory maternity leave, except that it does not include any statutory maternity pay to which she is entitled;
- (b) “statutory maternity leave period”, in relation to a woman, means the period during which she is on statutory maternity leave;
- (c) an increase in an amount is taken into account in a calculation if in the calculation the amount as increased is substituted for the unincreased amount.

(5B) For the purposes of subsections (2)(d) to (f) and (5A) above, “on statutory maternity leave” means absent from work—

- (a) in exercise of the right conferred by section 71(1) or 73(1) of the Employment Rights Act 1996 (ordinary or additional maternity leave), or
- (b) in consequence of the prohibition in section 72(1) of that Act (compulsory maternity leave).

(6) Subject to the following subsections, for purposes of this section—

- (a) “employed” means employed under a contract of service or of apprenticeship or a contract personally to execute any work or labour, and related expressions shall be construed accordingly;
- (c) Two employers are to be treated as associated if one is a company of which the other (directly or indirectly) has control or if both are companies of which a third person (directly or indirectly) has control,

and men shall be treated as in the same employment with a woman if they are men employed by her employer or any associated employer at the same establishment or at establishments in Great Britain which include that one and at which common terms and conditions of employment are observed either generally or for employees of the relevant classes.

[ (6A) This section applies to—

- (a) the holding of an office or post to which persons are appointed to discharge functions personally under the direction of another person, and in respect of which they are entitled to remuneration, or
- (b) any office or post to which appointments are made by (or on the recommendation of or subject to the approval of) a Minister of the Crown, a government department, the National Assembly for Wales or any part of the Scottish Administration,

as it applies to employment by a private person, and shall so apply as if references to a contract of employment included references to the terms of appointment, and as if references to the employer

included references to the person responsible for paying any remuneration that a holder of the office or post is entitled to in respect of the office or post.

(6B) For the purposes of subsection (6A), the holder of an office or post—

- (a) is to be regarded as discharging her functions under the direction of another person if that other person is entitled to direct her as to when and where she discharges those functions;
- (b) is not to be regarded as entitled to remuneration merely because she is entitled to payments—
  - (i) in respect of expenses incurred by her in carrying out the functions of the office or post, or
  - (ii) by way of compensation for the loss of income or benefits she would or might have received from any person had she not been carrying out the functions of the office or post.

(6C) For the purposes of subsection (6A)—

- (a) “office or post” does not include a political office (see section 1A), and
- (b) appointment to an office or post does not include election to an office or post.

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(8) This section shall apply to—

- (a) service for purposes of a Minister of the Crown or government department, other than service of a person holding a statutory office, or
- (b) service on behalf of the Crown for purposes of a person holding a statutory office or purposes of a statutory body,

as it applies to employment by a private person, and shall so apply as if references to a contract of employment included references to the terms of service.

(10) In this section “statutory body” means a body set up by or in pursuance of an enactment (including an enactment comprised in, or in an instrument made under, an Act of the Scottish Parliament), and “statutory office” means an office so set up; and service “for purposes of” a Minister of the Crown or government department does not include service in any office in Schedule 2 (Ministerial offices) to the House of Commons Disqualification Act 1975 as for the time being in force.

(10A) This section applies in relation to service as a relevant member of the House of Commons staff as in relation to service for the purposes of a Minister of the Crown or government department, and accordingly applies as if references to a contract of employment included references to the terms of service of such a member.

In this subsection “relevant member of the House of Commons staff” has the same meaning as in section 195 of the Employment Rights Act 1996; and subsections (6) to (12) of that section (person to be treated as employer of House of Commons staff) apply, with any necessary modifications, for the purposes of this section.

(10B) This section applies in relation to employment as a relevant member of the House of Lords staff as in relation to other employment.

In this subsection “relevant member of the House of Lords staff” has the same meaning as in section 194 of the Employment Rights Act 1996 and subsection (7) of that section applies for the purposes of this section.

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<sup>1</sup> added by Employment Equality (Sex Discrimination) Regulations 2005/2467 Reg. 35(2)

(11) For the purposes of this Act it is immaterial whether the law which (apart from this subsection) is the law applicable to a contract is the law of any part of the United Kingdom or not.

(12) In this Act “Great Britain” includes such of the territorial waters of the United Kingdom as are adjacent to Great Britain.

(13) Provisions of this section and sections 2 to 2A below framed with reference to women and their treatment relative to men are to be read as applying equally in a converse case to men and their treatment relative to women.

**[1A. Meaning of “political office” in section 1(6C)(a)]**

The following are political offices for the purposes of section 1(6C)(a)—

- (a) any office of the House of Commons held by a member of it,
- (b) a life peerage within the meaning of the Life Peerages Act 1958, or any office of the House of Lords held by a member of it,
- (c) any office mentioned in Schedule 2 (Ministerial offices) to the House of Commons Disqualification Act 1975,
- (d) the offices of Leader of the Opposition, Chief Opposition Whip or Assistant Opposition Whip within the meaning of the Ministerial and other Salaries Act 1975,
- (e) any office of the Scottish Parliament held by a member of it,
- (f) a member of the Scottish Executive within the meaning of section 44 of the Scotland Act 1998, or a junior Scottish Minister within the meaning of section 49 of that Act,
- (g) any office of the National Assembly for Wales held by a member of it,
- (h) in England, any office of a county council, a London borough council, a district council or a parish council held by a member of it,
- (i) in Wales, any office of a county council, a county borough council or a community council held by a member of it,
- (j) in relation to a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994, or a community council established under section 51 of the Local Government (Scotland) Act 1973, any office of such a council held by a member of it,
- (k) any office of the Greater London Authority held by a member of it,
- (l) any office of the Common Council of the City of London held by a member of it,
- (m) any office of the Council of the Isles of Scilly held by a member of it, and
- (n) any office of a political party.

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**2.— Disputes as to, and enforcement of, requirement of equal treatment.**

(1) Any claim in respect of the contravention of a term modified or included by virtue of an equality clause, including a claim for arrears of remuneration or damages in respect of the contravention, may be presented by way of a complaint to an employment tribunal.

(1A) Where a dispute arises in relation to the effect of an equality clause the employer may apply to an employment tribunal for an order declaring the rights of the employer and the employee in relation to the matter in question.

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<sup>2</sup> added by Employment Equality (Sex Discrimination) Regulations 2005/2467 Reg. 35(3)

(2) Where it appears to the [Minister]<sup>3</sup> that there may be a question whether the employer of any women is or has been contravening a term modified or included by virtue of their equality clauses, but that it is not reasonable to expect them to take steps to have the question determined, the question may be referred by him as respects all or any of them to an employment tribunal and shall be dealt with as if the reference were of a claim by the women or woman against the employer.

(3) Where it appears to the court in which any proceedings are pending that a claim or counterclaim in respect of the operation of an equality clause could more conveniently be disposed of separately by an employment tribunal, the court may direct that the claim or counterclaim shall be struck out; and (without prejudice to the foregoing) where in proceedings before any court a question arises as to the operation of an equality clause, the court may on the application of any party to the proceedings or otherwise refer that question, or direct it to be referred by a party to the proceedings, to an employment tribunal for determination by the tribunal, and may stay or sist the proceedings in the meantime.

(4) No determination may be made by an employment tribunal in the following proceedings—

- (a) on a complaint under subsection (1) above,
- (b) on an application under subsection (1A) above, or
- (c) on a reference under subsection (2) above,

unless the proceedings are instituted on or before the qualifying date (determined in accordance with section 2ZA below).

(5) A woman shall not be entitled, in proceedings brought in respect of a contravention of a term modified or included by virtue of an equality clause (including proceedings before an employment tribunal), to be awarded any payment by way of arrears of remuneration or damages—

- (a) in proceedings in England and Wales, in respect of a time earlier than the arrears date (determined in accordance with section 2ZB below), and
- (b) in proceedings in Scotland, in respect of a time before the period determined in accordance with section 2ZC below.

(5A) In this section “employer”, in relation to the holder of an office or post to which section 1 above applies by virtue of subsection (6A) of that section, shall be construed in accordance with that subsection.

#### **[2ZA.— “Qualifying date” under section 2(4)]**

(1) This section applies for the purpose of determining the qualifying date, in relation to proceedings in respect of a woman's employment, for the purposes of section 2(4) above.

(2) In this section—

“concealment case” means a case where—

- (a) the employer deliberately concealed from the woman any fact (referred to in this section as a “qualifying fact”)—
  - (i) which is relevant to the contravention to which the proceedings relate, and
  - (ii) without knowledge of which the woman could not reasonably have been expected to institute the proceedings, and

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<sup>3</sup> words substituted subject to transitional provisions specified in SI 2007/2914 art.7 by Transfer of Functions (Equality) Order 2007/2914 Sch. 1 para. 3(a)

(b) the woman did not discover the qualifying fact (or could not with reasonable diligence have discovered it) until after–

- (i) the last day on which she was employed in the employment, or
- (ii) the day on which the stable employment relationship between her and the employer ended,

(as the case may be);

“disability case” means a case where the woman was under a disability at any time during the six months after–

- (a) the last day on which she was employed in the employment,
- (b) the day on which the stable employment relationship between her and the employer ended, or
- (c) the day on which she discovered (or could with reasonable diligence have discovered) the qualifying fact deliberately concealed from her by the employer (if that day falls after the day referred to in paragraph (a) or (b) above, as the case may be),

(as the case may be);

“stable employment case” means a case where the proceedings relate to a period during which a stable employment relationship subsists between the woman and the employer, notwithstanding that the period includes any time after the ending of a contract of employment when no further contract of employment is in force;

“standard case” means a case which is not–

- (a) a stable employment case,
- (b) a concealment case,
- (c) a disability case, or
- (d) both a concealment and a disability case.

(3) In a standard case, the qualifying date is the date falling six months after the last day on which the woman was employed in the employment.

(4) In a case which is a stable employment case (but not also a concealment or a disability case or both), the qualifying date is the date falling six months after the day on which the stable employment relationship ended.

(5) In a case which is a concealment case (but not also a disability case), the qualifying date is the date falling six months after the day on which the woman discovered the qualifying fact in question (or could with reasonable diligence have discovered it).

(6) In a case which is a disability case (but not also a concealment case), the qualifying date is the date falling six months after the day on which the woman ceased to be under a disability.

(7) In a case which is both a concealment and a disability case, the qualifying date is the later of the dates referred to in subsections (5) and (6) above.

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<sup>4</sup> added by Equal Pay Act 1970 (Amendment) Regulations 2003/1656 Reg. 4

**[2ZB.— “Arrears date” in proceedings in England and Wales under section 2(5)**

(1) This section applies for the purpose of determining the arrears date, in relation to an award of any payment by way of arrears of remuneration or damages in proceedings in England and Wales in respect of a woman's employment, for the purposes of section 2(5)(a) above.

(2) In this section—

“concealment case” means a case where—

- (a) the employer deliberately concealed from the woman any fact—
  - (i) which is relevant to the contravention to which the proceedings relate, and
  - (ii) without knowledge of which the woman could not reasonably have been expected to institute the proceedings, and
- (b) the woman instituted the proceedings within six years of the day on which she discovered the fact (or could with reasonable diligence have discovered it);

“disability case” means a case where—

- (a) the woman was under a disability at the time of the contravention to which the proceedings relate, and
- (b) the woman instituted the proceedings within six years of the day on which she ceased to be under a disability;

“standard case” means a case which is not—

- (a) a concealment case,
- (b) a disability case, or
- (c) both.

(3) In a standard case, the arrears date is the date falling six years before the day on which the proceedings were instituted.

(4) In a case which is a concealment or a disability case or both, the arrears date is the date of the contravention.

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**[2ZC.— Determination of “period” in proceedings in Scotland under section 2(5)**

(1) This section applies, in relation to an award of any payment by way of arrears of remuneration or damages in proceedings in Scotland in respect of a woman's employment, for the purpose of determining the period mentioned in section 2(5)(b) above.

(2) Subject to subsection (3) below, that period is the period of five years which ends on the day on which the proceedings were instituted, except that the five years shall not be regarded as running during—

- (a) any time when the woman was induced, by reason of fraud on the part of, or error induced by the words or conduct of, the employer or any person acting on his behalf, to refrain from commencing proceedings (not being a time after she could with reasonable diligence have discovered the fraud or error), or
- (b) any time when she was under a disability.

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<sup>5</sup> added by Equal Pay Act 1970 (Amendment) Regulations 2003/1656 Reg. 5

(3) If, after regard is had to the exceptions in subsection (2) above, that period would include any time more than twenty years before the day mentioned in that subsection, that period is instead the period of twenty years which ends on that day.

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## **2A.— Procedure before tribunal in certain cases.**

(1) Where on a complaint or reference made to an employment tribunal under section 2 above, a dispute arises as to whether any work is of equal value as mentioned in section 1(2)(c) above the tribunal

may either—

- (a) proceed to determine that question; or
- (b) require a member of the panel of independent experts to prepare a report with respect to that question;

(1A) Subsections (1B) and (1C) below apply in a case where the tribunal has required a member of the panel of independent experts to prepare a report under paragraph (b) of subsection (1) above.

(1B) The tribunal may—

- (a) withdraw the requirement, and
- (b) request the member of the panel of independent experts to provide it with any documentation specified by it or make any other request to him connected with the withdrawal of the requirement.

(1C) If the requirement has not been withdrawn under paragraph (a) of subsection (1B) above, the tribunal shall not make any determination under paragraph (a) of subsection (1) above unless it has received the report.

(2) Subsection (2A) below applies in a case where—

- (a) a tribunal is required to determine whether any work is of equal value as mentioned in section 1(2)(c) above, and
- (b) the work of the woman and that of the man in question have been given different values on a study such as is mentioned in section 1(5) above.

(2A) The tribunal shall determine that the work of the woman and that of the man are not of equal value unless the tribunal has reasonable grounds for suspecting that the evaluation contained in the study—

- (a) was (within the meaning of subsection (3) below) made on a system which discriminates on grounds of sex, or
- (b) is otherwise unsuitable to be relied upon.

(3) An evaluation contained in a study such as is mentioned in section 1(5) above is made on a system which discriminates on grounds of sex where a difference, or coincidence, between values set by that system on different demands under the same or different headings is not justifiable irrespective of the sex of the person on whom those demands are made.

(4) [In this section a] <sup>7</sup> reference to a member of the panel of independent experts is a reference to a person who is for the time being designated by the Advisory, Conciliation and Arbitration

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<sup>6</sup> added by Equal Pay Act 1970 (Amendment) Regulations 2003/1656 Reg. 5

<sup>7</sup> words substituted by Equal Pay Act 1970 (Amendment) Regulations 2004/2352 Reg. 2(6)

Service for the purposes of that paragraph as such a member, being neither a member of the Council of that Service nor one of its officers or servants.

3. [...]<sup>8</sup>

4. [...]<sup>9</sup>

### 5.— Agricultural wages orders.

(1) Where an agricultural wages order made before or after the commencement of this Act contains any provision applying specifically to men only or to women only, the order may be referred by the Minister to the Central Arbitration Committee to declare what amendments need to be made in the order, in accordance with the like rules as apply under section 3(4) above to the amendment under that section of a collective agreement, so as to remove that discrimination between men and women; and when the Central Arbitration Committee have declared the amendments needing to be so made, it shall be the duty of the Agricultural Wages Board, by a further agricultural wages order coming into operation not later than five months after the date of the Central Arbitration Committee's decision, either to make those amendments in the order referred to the Central Arbitration Committee or otherwise to replace or amend that order so as to remove the discrimination.

(2) Where the Agricultural Wages Board certify that the effect of an agricultural wages order is only to make such amendments of a previous order as have under this section been declared by the Central Arbitration Committee to be needed, or to make such amendments as aforesaid with minor modifications or modifications of limited application, or is only to revoke and reproduce with such amendments a previous order, then the Agricultural Wages Board may instead of complying with paragraphs 1 and 2 of Schedule 4, or in the case of Scotland paragraphs 1 and 2 of Schedule 3, to the Agricultural Wages Act give notice of the proposed order in such manner as appears to the Agricultural Wages Board expedient in the circumstances, and may make the order at any time after the expiration of seven days from the giving of the notice.

(3) An agricultural wages order shall be referred to the Central Arbitration Committee under this section if the [Minister]<sup>10</sup> is requested so to refer it either—

(a) by a body for the time being entitled to nominate for membership of the Agricultural Wages Board persons representing employers (or, if provision is made for any of the persons representing employers to be elected instead of nominated, then by a member or members representing employers); or

(b) by a body for the time being entitled to nominate for membership of the Agricultural Wages Board persons representing workers (or, if provision is made for any of the persons representing workers to be elected instead of nominated, then by a member or members representing workers);

or if in any case it appears to the [Minister]<sup>11</sup> that the order may be amendable under this section.

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<sup>8</sup> Note not available

<sup>9</sup> Note not available

<sup>10</sup> words substituted subject to transitional provisions specified in SI 2007/2914 art.7 by Transfer of Functions (Equality) Order 2007/2914 Sch. 1 para. 3(b)

<sup>11</sup> words substituted subject to transitional provisions specified in SI 2007/2914 art.7 by Transfer of Functions (Equality) Order 2007/2914 Sch. 1 para. 3(b)

(4) In this section “the Agricultural Wages Board” means the Agricultural Wages Board for England and Wales or the Scottish Agricultural Wages Board, “the Agricultural Wages Act” means the Agricultural Wages Act 1948 or the Agricultural Wages (Scotland) Act 1949 and “agricultural wages order” means an order of the Agricultural Wages Board under the Agricultural Wages Act.

#### **6.— Exclusion from ss. 1 to 5 of pensions etc.**

(1) An equality clause shall not operate in relation to terms—

- (a) affected by compliance with the laws regulating the employment of women, or
- (b) affording special treatment to women in connection with pregnancy or childbirth.

[ (1AA) Subsection (1)(b) does not affect the operation of an equality clause falling within section 1(2)(d), (e) or (f). ]<sup>12</sup>

(1B) An equality clause shall not operate in relation to terms relating to a person's membership of, or rights under, an occupational pension scheme, being terms in relation to which, by reason only of any provision made by or under sections 62 to 64 of the Pensions Act 1995 (equal treatment), an equal treatment rule would not operate if the terms were included in the scheme.

(1C) In subsection (1B), “occupational pension scheme” has the same meaning as in the Pension Schemes Act 1993 and “equal treatment rule” has the meaning given by section 62 of the Pensions Act 1995.

**7.—** [...] <sup>13</sup>

#### **7A.— Service pay and conditions.**

(1) Sections 1 and 6 above shall apply, with the modifications mentioned in subsection (2) below and any other necessary modifications, to service by a woman in any of the armed forces as they apply to employment by a private person.

(2) In the application of those sections to service by a woman in any of the armed forces—

- (a) references to a contract of employment shall be regarded as references to the terms of service;
- (b) in section 1, in subsection (6), paragraph (c) and the words “or any associated employer” and subsections (6A) to (11) (which have no application) and subsection (13) shall be omitted; and
- (c) references to an equality clause shall be regarded as referring to a corresponding term of service capable of requiring the terms of service applicable in her case to be treated as modified or as including other terms.

(3) Any claim in respect of the contravention of a term of service modified or included, in relation to a woman's service in any of the armed forces, by a term corresponding to an equality clause in a contract of employment (including a claim for arrears of pay or damages in respect of the contravention) may be presented by way of complaint to an employment tribunal.

Any such contravention shall be regarded for the purposes of a claim under this subsection as if it were a breach of contract.

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<sup>12</sup> added by Employment Equality (Sex Discrimination) Regulations 2005/2467 Reg. 36(5)

<sup>13</sup> s.7A substituted for s7 by Armed Forces Act 1996 c. 46 s. 24(2)

- (4) Subsections (5) to (10) below apply in relation to any claim by a woman (“the claimant”) arising from a contravention of a term of service referred to in subsection (3) above.
- (5) No complaint in respect of the claim shall be presented to an employment tribunal unless—
- (a) the claimant has made a service complaint in respect of the claim; and
  - (b) the Defence Council have made a determination with respect to the service complaint.
- (6) Regulations may make provision enabling a complaint in respect of the claim to be presented to an employment tribunal in such circumstances as may be specified by the regulations, notwithstanding that subsection (5) above would otherwise preclude its presentation.
- (7) Where a complaint is presented to an employment tribunal by virtue of regulations under subsection (6) above, [the service complaint procedures]<sup>14</sup> may continue after the complaint is presented.
- (8) No determination may be made by an employment tribunal in proceedings on a complaint in respect of the claim unless the complaint is presented on or before the qualifying date (determined in accordance with section 7AA below).
- (9) A woman shall not be entitled, in proceedings on a complaint in respect of the claim, to be awarded any payment by way of arrears of pay or damages—
- (a) in proceedings in England and Wales, in respect of a time earlier than the arrears date (determined in accordance with section 7AB below), and
  - (b) in proceedings in Scotland, in respect of a time before the period determined in accordance with section 7AC below.
- (10) Section 2A above shall apply in relation to a complaint in respect of the claim as it applies to a complaint presented to an employment tribunal under section 2(1) above.
- (11) Regulations under subsection (6) above shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (12) In this section sections 7AA to 7AC—
- “armed forces” means the naval, military or air forces of the Crown; and
  - “service complaint” means a complaint under section 334 of the Armed Forces Act 2006;
  - “the service complaint procedures” means the procedures prescribed by regulations under that section.
- (13) Provisions of this section and sections 7AA to 7AC below, and provisions applied by this section, framed with reference to women and their treatment relative to men are to be read as applying equally in a converse case to men and their treatment relative to women.

**[7AA.— “Qualifying date” under section 7A(8)]**

- (1) This section applies for the purpose of determining the qualifying date, in relation to proceedings on a complaint in respect of a woman's service in any of the armed forces, for the purposes of section 7A(8) above.
- (2) In this section—
- “concealment case” means a case where—

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<sup>14</sup> words substituted by Armed Forces Act 2006 c. 52 Sch. 16 para. 54(3)

- (a) the employer deliberately concealed from the woman any fact (referred to in this section as a “qualifying fact”)–
  - (i) which is relevant to the contravention to which the complaint relates, and
  - (ii) without knowledge of which the woman could not reasonably have been expected to present the complaint, and
- (b) the woman did not discover the qualifying fact (or could not with reasonable diligence have discovered it) until after the last day of the period of service during which the claim arose;

“disability case” means a case where the woman was under a disability at any time during the nine months after–

- (a) the last day of the period of service during which the claim arose, or
- (b) the day on which she discovered (or could with reasonable diligence have discovered) the qualifying fact deliberately concealed from her by the employer (if that day falls after the day referred to in paragraph (a) above),

(as the case may be);

“standard case” means a case which is not–

- (a) a concealment case,
- (b) a disability case, or
- (c) both.

(3) In a standard case, the qualifying date is the date falling nine months after the last day of the period of service during which the claim arose.

(4) In a case which is a concealment case (but not also a disability case), the qualifying date is the date falling nine months after the day on which the woman discovered the qualifying fact in question (or could with reasonable diligence have discovered it).

(5) In a case which is a disability case (but not also a concealment case), the qualifying date is the date falling nine months after the day on which the woman ceased to be under a disability.

(6) In a case which is both a concealment and a disability case, the qualifying date is the later of the dates referred to in subsections (4) and (5) above.

]<sup>15</sup>

#### **7AB.— “Arrears date” in proceedings in England and Wales under section 7A(9)**

(1) This section applies for the purpose of determining the arrears date, in relation to an award of any payment by way of arrears of pay or damages in proceedings in England and Wales on a complaint in respect of a woman's service in any of the armed forces, for the purposes of section 7A(9)(a) above.

(2) In this section–

“concealment case” means a case where–

- (a) the employer deliberately concealed from the woman any fact–
  - (i) which is relevant to the contravention to which the proceedings relate, and

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<sup>15</sup> added by Equal Pay Act 1970 (Amendment) Regulations 2003/1656 Reg. 7

- (ii) without knowledge of which the woman could not reasonably have been expected to institute the proceedings, and
  - (b) the woman made a service complaint within six years of the day on which she discovered the fact (or could with reasonable diligence have discovered it);
- “disability case” means a case where—
- (a) the woman was under a disability at the time of the contravention to which the proceedings relate, and
  - (b) the woman made a service complaint within six years of the day on which she ceased to be under a disability;
- “standard case” means a case which is not—
- (a) a concealment case,
  - (b) a disability case, or
  - (c) both.

(3) In a standard case, the arrears date is the date falling six years before the day on which the service complaint was made.

(4) In a case which is a concealment or a disability case or both, the arrears date is the date of the contravention.

(5) Subsection (6) below applies in a case where, in accordance with regulations made under section 7A(6) above, proceedings are instituted without a service complaint having been made.

(6) In that case, references in this section to the making of a [service complaint]<sup>16</sup> shall be read as references to the institution of proceedings.

#### **7AC.— Determination of “period” in proceedings in Scotland under section 7A(9)**

(1) This section applies, in relation to an award of any payment by way of arrears of pay or damages in proceedings in Scotland on a complaint in respect of a woman's service in any of the armed forces, for the purposes of determining the period mentioned in section 7A(9)(b) above.

(2) Subject to subsection (3) below, that period is the period of five years which ends on the day on which the service complaint was made, except that the five years shall not be regarded as running during—

- (a) any time when the woman was induced, by reason of fraud on the part of, or error induced by the words or conduct of, the employer or any person acting on his behalf, to refrain from instituting the proceedings (not being a time after she could with reasonable diligence have discovered the fraud or error), or
- (b) any time when she was under a disability.

(3) If, after regard is had to the exceptions in subsection (2) above, that period would include any time more than twenty years before the day mentioned in that subsection, that period is instead the period of twenty years which ends on that day.

(4) Subsection (5) below applies in a case where, in accordance with regulations made under section 7A(6) above, proceedings are instituted without a service complaint having been made.

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<sup>16</sup> words substituted by Armed Forces Act 2006 c. 52 Sch. 16 para. 55(d)

(5) In that case, the reference in subsection (2) above to the making of the [service complaint]<sup>17</sup> shall be read as a reference to the institution of proceedings.

## 7B Questioning of employer

(1) For the purposes of this section—

- (a) a person who considers that she may have a claim under section 1 above is referred to as “the complainant”, and
- (b) a person against whom the complainant may decide to make, or has made, a complaint under section 2(1) or 7A(3) above is referred to as “the respondent”.

(2) With a view to helping a complainant to decide whether to institute proceedings and, if she does so, to formulate and present her case in the most effective manner, the Minister shall by order prescribe—

- (a) forms by which the complainant may question the respondent on any matter which is or may be relevant, and
- (b) forms by which the respondent may if he so wishes reply to any questions.

(3) Where the complainant questions the respondent (whether in accordance with an order under subsection (2) above or not), the question and any reply by the respondent (whether in accordance with such an order or not) shall, subject to the following provisions of this section, be admissible as evidence in any proceedings under section 2(1) or 7A(3) above.

(4) If in any proceedings under section 2(1) or 7A(3) above it appears to the employment tribunal that the complainant has questioned the respondent (whether in accordance with an order under subsection (2) above or not) and that—

- (a) the respondent deliberately and without reasonable excuse omitted to reply within such period as the [Minister]<sup>18</sup> may by order prescribe, or
- (b) the respondent's reply is evasive or equivocal,

it may draw any inference which it considers it just and equitable to draw, including an inference that the respondent has contravened a term modified or included by virtue of the complainant's equality clause or corresponding term of service.

(5) Where the [Minister]<sup>19</sup> questions an employer in relation to whom he may decide to make, or has made, a reference under section 2(2) above, the question and any reply by the employer shall, subject to the following provisions of this section, be admissible as evidence in any proceedings under that provision.

(6) If in any proceedings on a reference under section 2(2) above it appears to the employment tribunal that the [Minister]<sup>20</sup> has questioned the employer to whom the reference relates and that—

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<sup>17</sup> words substituted by Armed Forces Act 2006 c. 52 Sch. 16 para. 56(c)

<sup>18</sup> words substituted subject to transitional provisions specified in SI 2007/2914 art.7 by Transfer of Functions (Equality) Order 2007/2914 Sch. 1 para. 3(c)

<sup>19</sup> words substituted subject to transitional provisions specified in SI 2007/2914 art.7 by Transfer of Functions (Equality) Order 2007/2914 Sch. 1 para. 3(c)

<sup>20</sup> words substituted subject to transitional provisions specified in SI 2007/2914 art.7 by Transfer of Functions (Equality) Order 2007/2914 Sch. 1 para. 3(c)

- (a) the employer deliberately and without reasonable excuse omitted to reply within such period as the [Minister]<sup>21</sup> may by order prescribe, or
- (b) the employer's reply is evasive or equivocal,

it may draw any inference which it considers it just and equitable to draw, including, an inference that the employer has contravened a term modified or included by virtue of the equality clause of the woman, or women, as respects whom the reference is made.

(7) The [Minister]<sup>22</sup> may by order—

- (a) prescribe the period within which questions must be duly served in order to be admissible under subsection (3) or (5) above, and
- (b) prescribe the manner in which a question, and any reply, may be duly served.

(8) This section is without prejudice to any other enactment or rule of law regulating interlocutory and preliminary matters in proceedings before an employment tribunal, and has effect subject to any enactment or rule of law regulating the admissibility of evidence in such proceedings.

(9) Power to make orders under this section is exercisable by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.

(10) An order under this section may make different provision for different cases.

**8. [...]**<sup>23</sup>

#### **9.— Commencement.**

(1) [...] <sup>24</sup> the foregoing provisions of this Act shall come into force on the 29th December 1975 and references in this Act to its commencement shall be construed as referring to the coming into force of those provisions on that date.

**10. [...]**<sup>25</sup>

#### **11.— Short title, interpretation and extent.**

(1) This Act may be cited as the Equal Pay Act 1970.

(2) In this Act the expressions “man” and “woman” shall be read as applying to persons of whatever age.

(2A) For the purposes of this Act a woman is under a disability—

- (a) in the case of proceedings in England and Wales, if she is a minor or of unsound mind (which has the same meaning as in section 38(2) of the Limitation Act 1980); or
- (b) in the case of proceedings in Scotland, if she has not attained the age of sixteen years or is incapable within the meaning of the Adults with Incapacity (Scotland) Act 2000.

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<sup>21</sup> words substituted subject to transitional provisions specified in SI 2007/2914 art.7 by Transfer of Functions (Equality) Order 2007/2914 Sch. 1 para. 3(c)

<sup>22</sup> words substituted subject to transitional provisions specified in SI 2007/2914 art.7 by Transfer of Functions (Equality) Order 2007/2914 Sch. 1 para. 3(c)

<sup>23</sup> Note not available

<sup>24</sup> Note not available

<sup>25</sup> Note not available

[ (2B) In this Act “the Minister” means the Lord Privy Seal. ]<sup>26</sup>

(3) This Act shall not extend to Northern Ireland.

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<sup>26</sup> inserted subject to transitional provisions specified in SI 2007/2914 art.7 by Transfer of Functions (Equality) Order 2007/2914 Sch. 1 para. 2