

Unique Reference Number 02/1370

Sections 2 to 2A Equal Pay Act 1970 – consolidated version incorporating the changes that would be made if the Equal Pay (Amendment) regulations were made as drafted.

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.

(2) Where it appears to the Secretary of State 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 proceedings are pending that a claim or counter-claim 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 counter-claim 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 any 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 in respect of the operation of an equality clause –

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

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

(5) A woman shall not be entitled, in proceedings brought in respect of a failure to comply with an equality clause (including proceedings before an employment tribunal), to be awarded any payment by way of arrears of remuneration or damages –

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

(6) ... [repealed by Sex Discrimination Act 1975, section 8(6), Sch 1, Pt I]

(7) ... [repealed by the Employment Protection (Consolidation) Act 1978, s. 159(3), Sch 17]

2AA Section 2(4): “qualifying date”

(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) Unless subsection (4), (6) or (9) below applies, the qualifying date is the date falling six months after the last date on which the woman was employed in the employment.

(3) Subsection (4) below applies in a case where the proceedings relate to a period during which there was a stable employment relationship between the woman and the employer.

(4) If this subsection applies (and neither subsection (6) nor (9) below applies), the qualifying date is the date falling six months after the date on which the stable employment relationship ended.

(5) Subsection (6) below applies in a case where –
(a) any fact relevant to the claim was deliberately concealed from the woman by the employer; and
(b) the woman did not discover the concealment (or could not with reasonable diligence have discovered it) until after –
(i) the last date on which the woman was employed in the employment; or
(ii) the date on which the stable employment relationship ended,
(as the case may be).

(6) If this subsection applies, the qualifying date is the date falling six months after the date on which the woman discovered the concealment (or could with reasonable diligence have discovered it).

(7) Subject to subsection (8) below, subsection (9) applies in a case where, at any time during the period in which a complaint or reference could have been presented or made (apart from this subsection), the woman was under a disability.

(8) Subsection (9) below does not apply in a case where the woman ceased to be under a disability on or before –

- (a) the last date on which the woman was employed in the employment; or
- (b) the date on which the stable employment relationship ended, (as the case may be).

(9) If this subsection applies, the qualifying date is the date falling six months after the date on which the woman ceased to be under a disability.

(10) For the purposes of this section, a stable employment relationship does not exist between the woman and the employer unless she has been employed by him under two or more contracts of employment in succession (whether or not there is an interval between the contracts being in force).

(11) In England and Wales, a woman is for the purposes of this section under a disability if she is a minor or of unsound mind.

(12) In Scotland, a woman is for the purposes of this section under a disability who has not attained the age of sixteen years or who is incapable within the meaning of the Adults with Incapacity (Scotland) Act 2000.

2AB Section 2(5): “arrears date” in England and Wales

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

(2) Subject to subsections (4) and (6) below, the arrears date is the date falling six years before the date on which the proceedings were instituted.

(3) Subsection (4) below applies in a case where the employer deliberately concealed from the woman any fact relevant to the contravention of a term modified or included by virtue of an equality clause to which the proceedings relate.

(4) If this subsection applies, and the proceedings were instituted within six years of the date on which the woman discovered the concealment (or could with reasonable diligence have discovered it), the arrears date is the date of the contravention.

(5) Subsection (6) below applies in a case where the woman was under a disability at the time of the contravention of a term modified or included by virtue of an equality clause to which the proceedings relate.

(6) If this subsection applies, and the proceedings were instituted within six years of the date on which the woman ceased to be under a disability, the arrears date is the date of the contravention.

(7) Subsection (11) of section 2AA of this Act applies in relation to this section as it does in relation to that section.

2AC Section 2(5): determination of “period” in Scotland

(1) This section applies in Scotland, in relation to the award of arrears or damages in proceedings 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 date on which proceedings were instituted, except that the five years should 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.

(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 date mentioned in that subsection, that period is instead the period of twenty years which ends on that date.

(4) Subsection (12) of section 2AA of this Act applies in relation to this section as it does in relation to that section.

Section 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 –
 - (i) that question; or
 - (ii) any matter to be determined for the purposes of paragraph (a) or (b) of subsection (2A) below,

and, if it requires the preparation of a report under paragraph (b) of this subsection, it shall not determine that question unless it has received the report.

(2) Subsection (2A) below applies where –

- (a) an employment 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) If this subsection applies, the tribunal shall determine that the work of the woman and that of the man are not of equal value unless the material before it causes the tribunal to have a reasonable suspicion that the evaluation contained in that 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 paragraph (b) of subsection (1) above the 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 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.