
STATUTORY INSTRUMENTS

2003 No.

SEX DISCRIMINATION

Equal Pay (Amendment) Regulations 2003

Made - - - -

Laid before Parliament

Coming into force - -

The Secretary of State, being a Minister designated^(a) for the purposes of section 2(2) of the European Communities Act 1972^(b) in relation to measures relating to discrimination, in the exercise of the powers conferred on her by that section, hereby makes the following Regulations:-

Citation, commencement, application and interpretation

1. – (1) These Regulations may be cited as the Equal Pay (Amendment) Regulations 2003.
- (2) These Regulations (except for regulation 6) shall come into force on [... July 2003].
- (3) Regulation 6 shall come into force on [... December 2003].
- (4) Each of the following provisions –
 - (a) regulation 2 (except paragraph (2)),
 - (b) regulation 4,
 - (c) regulation 5,
 - (d) regulation 6, and
 - (e) regulation 7,applies in relation to proceedings which are pending on the date on which it comes into force (as well as in relation to proceedings which are instituted on or after that date).
- (5) For the purposes of paragraph (4), proceedings are pending on any date if they have been instituted, but have not been determined, before that date.
- (6) The following provisions –
 - (a) paragraph (2) of regulation 2, and
 - (b) regulation 3,

^a See the European Communities (Designation) (No. 3) Order 2002 (S.I. 2002/1819).
^b 1972 c. 68.

apply to proceedings which had not yet been instituted on the date on which they come into force, providing that on that date those proceedings could have been heard by an employment tribunal by virtue of section 2(4) of the Act before amendment (as well as in relation to proceedings which are instituted on or after that date).

(7) In these Regulations “the Act” means the Equal Pay Act 1970(a).

Amendments to time limits in the Act

2. – (1) Section 2 of the Act (disputes as to, and enforcement of, requirement of equal treatment) is amended as follows.

(2) For subsection (4) substitute –

“(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).”.

(3) In subsection (5) for the words from “in respect of” to the end substitute –

“(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.”.

3. After section 2 of the Act insert –

“Section 2(4): “qualifying date”

2AA. – (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 –

a 1970 c. 41; section 2 was amended by the Sex Discrimination Act 1975 (c. 65) section 8(6), Schedule 1, Part I and the Employment Rights (Dispute Resolution) Act 1998 (c. 8) section 1(2)(a). Section 2A was inserted by S.I. 1983/1794 and amended by S.I. 1996/438 and the Employment Rights (Dispute Resolution) Act 1998, section 1(2)(a).

- (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(a).”.

4. After section 2AA of the Act insert –

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

2AB. – (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.

a 2000 asp 4.

(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.”.

5. After section 2AB of the Act insert –

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

2AC. - (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 the 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.”.

Amendments to the procedure before the employment tribunal in equal value cases

6. – (1) Section 2A of the Act (procedure before tribunal in certain cases) is amended as follows.

(2) In subsection (1) for paragraph (b) substitute –

“(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,”.

(3) For subsection (2) substitute –

“(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.”.

(4) After subsection (2) insert –

“(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.”.

Consequential amendment

7. In section 1(13) of the Act (application of provisions to men and women) for the words “and 2A” substitute the words “to 2A”.

[Signature]

Secretary of State for Trade and Industry

[date]

EXPLANATORY NOTE
(This note is not part of the Regulations.)

These Regulations amend two sections of the Equal Pay Act 1970 and create three new sections. The regulations which deal with the time limits applicable to equal pay claims will come into force on [... July 2003]. The regulation which deals with the procedure before the employment tribunal in equal value claims will come into force on [... December 2003].

Regulations 2 to 5 make changes to the time limit within which a woman must commence proceedings before an employment tribunal, and the time period in respect of which an employment tribunal or court is able to award any payment by way of arrears of remuneration or damages. These changes implement those aspects of the European Court of Justice's decisions in Case C-326/96 *Levez v TH Jennings (Harlow Pools) Ltd* and Case C-78/98 *Preston v Wolverhampton Healthcare NHS Trust Ltd* which relate to equal pay.

Regulation 6 amends the provisions implementing Council Directive 1975/117/EEC(a), which provides among other matters for claims for equal pay for work of equal value. The regulation alters the procedure for such claims. In every case, an employment tribunal considering such a claim will have the power to determine the question whether the work is of equal value itself, or to appoint an independent expert to prepare a report into any aspect of the question.

a OJ No. L 45, 19.2.75, p.19.