

EMPLOYMENT ACT 2002

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 4: Miscellaneous and General

Miscellaneous

Section 42: Equal pay questionnaire

91. A ‘questionnaire’ procedure is currently available in individuals’ disputes over matters of sex, race and disability discrimination, but not in the area of equal pay disputes. The procedure has proved useful in discrimination claims, since it assists applicants to set out their cases with the key facts. The question and answer format can help to identify whether the case is weak or strong. The process is familiar to tribunals, as the procedure has been in place for some time under the Sex Discrimination Act 1975, the Race Relations Act 1976, and the Disability Discrimination Act 1995.
92. The proposal to introduce a questionnaire procedure into the Equal Pay Act 1970 (EqPA) was included in the consultation document “Towards Equal Pay for Women” (December 2000) which set out proposals to speed up and simplify equal pay employment tribunal cases. On 8 May Tessa Jowell, then Minister for Women, announced that the Government planned to legislate in this area.
93. Equal pay claims are dealt with under the EqPA, which effectively implements the Equal Pay Directive. The introduction of an equal pay questionnaire to provide a procedure in equal pay disputes will include: prescribed forms, questions and answers as case evidence, a time period for serving questions, and the manner in which these questions and answers can be served.
94. The objective is to bring the questionnaire procedure currently available in disputes over matters of sex, race and disability discrimination, into the area of equal pay disputes. The questionnaire enables the key facts to be settled early, and can encourage not only the establishment of evidence, but also the settlement of cases before they proceed to tribunal.
95. This section inserts a new section 7B in the EqPA, which brings about the following:
 - The Secretary of State is given the power to prescribe forms that may be used both by the claimant or potential claimant and by the respondent or potential respondent.
 - The questions and replies can be admitted as evidence in subsequent tribunal proceedings, subject to any other rules relating to evidence before the tribunal. The questions and replies may be admitted in evidence whether or not they are in the form prescribed by the Secretary of State. This is the same as in sex and race discrimination questionnaires, as opposed to disability discrimination questions and replies, which can only be admitted in evidence if they are made in the prescribed form.

*These notes refer to the Employment Act 2002
(c.22) which received Royal Assent on 8 July 2002*

- The Secretary of State is provided with the power to prescribe, by order, a time period within which questions must be served in order to be admissible as evidence in tribunal proceedings. This is intended to encourage the applicant to pursue a case swiftly.
- If the tribunal considers that the respondent deliberately, and without reasonable excuse, failed to reply within a period prescribed by order, it can draw any inference it considers just or equitable. The tribunal can also draw such an inference if it considers that the respondent's reply was evasive or equivocal. The existing questionnaire procedures under the other discrimination Acts refer to a response within a 'reasonable time'. By contrast, this section allows the Secretary of State to prescribe a time within which a response should be given, which is intended to provide greater certainty for parties and tribunals. At present the intention is to make this eight weeks, but by providing a power to prescribe the period, it can be changed in the future as appropriate. Where the respondent has failed to reply within the prescribed period, the tribunal is only allowed to draw inferences if that failure was deliberate and without reasonable excuse. The respondent therefore has the opportunity to explain if, in the circumstances, he had a reasonable excuse for failing to reply. This is designed to ensure that the provision does not operate unfairly for respondents.
- The Secretary of State is given the power to prescribe the manner in which any question and reply may be duly served. Consideration may well be given to the option of providing that service electronically.

96. An order under this section is subject to the negative procedure.