

EQUALITY ACT 2010

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 5: Work

Chapter 3: Equality of terms

Section 69: Defence of material factor

Examples

- An employer introduces a bonus payment to encourage staff doing the same work to work a new night shift to maximise production. Only a small number of female staff can work at night and the bonus payments go almost entirely to male employees. Despite the disparate effect on the female employees, the employer's aim is legitimate and the payment of a bonus to night workers is a proportionate way of achieving it.
- A firm of accountants structures employees' pay on the basis of success in building relationships with clients (including at after-hours client functions). Because of domestic responsibilities, fewer women than men can maintain regular client contact and women's pay is much lower. The employer is unable to show the way it rewards client relationship building is proportionate, taking into account the disadvantage to women employees.
- In imposing a new pay structure which seeks to remove pay inequalities between men and women employees, and to accommodate the interests of all the various groups, an employer includes measures which seek to protect the pay of the higher paid group for a short period of time. The intention to remove pay inequalities is a legitimate aim, and the question will be whether the imposition of the particular temporary pay protection arrangements is a proportionate means of achieving it.