

1983 No. 1794

SEX DISCRIMINATION

The Equal Pay (Amendment) Regulations 1983

Laid before Parliament in draft

Made - - - - 6th December 1983
Coming into Operation 1st January 1984

Whereas a draft of these regulations has been approved by resolution of each House of Parliament in pursuance of paragraph 2(2) of Schedule 2 to the European Communities Act 1972 (a) :

Now, therefore, the Secretary of State, being a Minister designated for the purposes of section 2(2) of that Act in relation to measures to prevent discrimination between men and women as regards terms and conditions of employment (b), in exercise of the powers conferred by that section, hereby makes the following Regulations—

Citation, commencement and extent

1.—(1) These Regulations may be cited as the Equal Pay (Amendment) Regulations 1983.

(2) These Regulations shall come into operation on 1st January 1984.

(3) These Regulations do not extend to Northern Ireland.

New form of equality clause

2.—(1) In subsection (2) of section 1 of the Equal Pay Act 1970 (c) (equality clauses to be implied into contracts of employment), after paragraph (b) there shall be inserted the following paragraph:—

“(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

(a) 1972 c.68.

(b) The European Communities (Designation) (No.3) Order 1982 (S.I. 1982/1675).

(c) 1970 c.41; section 1 was amended by the Sex Discrimination Act 1975 (c.65), section 8 and Schedule 1, paragraph 1 and was applied by the Employment Protection Act 1975 (c.71), section 122(2), as amended by the Race Relations Act 1976 (c.74), Schedule 3, paragraph 1(5).

- (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."

(2) For subsection (3) of the said section 1 (defence of genuine material difference) there shall be substituted the following subsection:—

"(3) An equality clause 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."

Procedure before industrial tribunal

3.—(1) After section 2 of the said Act of 1970 (disputes as to, and enforcement of, requirement of equal treatment), there shall be inserted the following section:—

"Procedure before tribunal in certain cases.

2A.—(1) Where on a complaint or reference made to an industrial 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 shall not determine that question unless—

- (a) it is satisfied that there are no reasonable grounds for determining that the work is of equal value as so mentioned; or
- (b) it has required a member of the panel of independent experts to prepare a report with respect to that question and has received that report.

(2) Without prejudice to the generality of paragraph (a) of subsection (1) above, there shall be taken, for the purposes of that paragraph, to be no reasonable grounds for determining that the work of a woman is of equal value as mentioned in section 1(2)(c) above if—

- (a) that work and the work of the man in question have been given different values on a study such as is mentioned in section 1(5) above; and
- (b) there are no reasonable grounds for determining that the evaluation contained in the study was (within the meaning of subsection (3) below) made on a system which discriminates on grounds of sex.

(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.”.

(2) Accordingly, in subsection (13) of section 1 of the said Act of 1970 (application in relation to men as well as to women), for the words “section 2” there shall be substituted the words “sections 2 and 2A”.

(3) In paragraph 1(2) of Schedule 9 to the Employment Protection (Consolidation) Act 1978 (a) (regulations with respect to proceedings before industrial tribunals), after paragraph (g) there shall be inserted the following paragraph:—

“(ga) for authorising an industrial tribunal to require persons to furnish information and produce documents to a person required for the purposes of section 2A(1)(b) of the Equal Pay Act 1970 to prepare a report;”;

and, accordingly, in paragraph 1(7) of that Schedule (offences for failure to comply with requirements imposed by the regulations), after the words “sub-paragraph (2)(d)” there shall be inserted the words “or (ga)”.

(4) In paragraph 10 of the said Schedule 9 (remuneration etc. for members of industrial tribunals and for assessors and other persons), after the word “tribunals”, in the second place where it occurs, there shall be inserted the words “and to any persons required for the purposes of section 2A(1)(b) of the Equal Pay Act 1970 to prepare reports”.

Signed by order of the Secretary of State.

Alan Clark,
Parliamentary Under Secretary of State,
Department of Employment.

6th December 1983.

(a) 1978 c.44.

EXPLANATORY NOTE

(This Note is not part of the Regulations.)

These Regulations further implement Council Directive No. 75/117/EEC. They come into operation on 1st January 1984.

Regulation 2 amends section 1 of the Equal Pay Act 1970 to enable a woman to take advantage of an equality clause where she is employed on work of equal value to that of a man in the same employment. The Regulation also enables the employer to rely, by way of defence, in proceedings in respect of such a clause, on matters that go beyond personal differences between the woman in question and the man with whose work her work is compared.

Regulation 3 makes provision for the procedure before industrial tribunals in cases in which the question arises whether any work is of equal value. The Regulation includes amendments of Schedule 9 to the Employment Protection (Consolidation) Act 1978 to enable there to be additional amendments of regulations under that Schedule with respect to proceedings before industrial tribunals and to enable payments to be made to independent experts required to prepare reports for the purposes of such proceedings.

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