



# Equal Pay Act (Northern Ireland) 1970

## 1970 CHAPTER 32

### **1 Requirement of equal treatment for men and women in same employment.**

<sup>F1</sup>(1 <sup>F2</sup> If the terms of a contract under which a woman is employed at an establishment in Northern Ireland do not include (directly or by reference to a collective agreement or otherwise) an equality clause they shall be deemed to include one.

(2) An equality clause is a provision which relates to terms (whether concerned with pay or not) of a contract under which a woman is employed (the “woman's contract” ), and has the effect that—

(a) where the woman is employed on like work with 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

(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;

(b) where the woman is employed on work rated as equivalent with that of a man in the same employment—

(i) if (apart from the equality clause) any term of the woman's contract determined by the rating of the work 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

(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 and determined by the rating of the work, the woman's contract shall be treated as including such a term.

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- [<sup>F3</sup>(c) where a woman is employed on work which, not being work in relation to which paragraph (a) or (b) 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
  - (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.]
- [<sup>F4</sup>(d) where—
- (i) any term of the woman's contract regulating maternity-related pay provides for any of her maternity-related pay to be calculated by reference to her pay at a particular time,
  - (ii) after that time (but before the end of the statutory maternity leave period) her pay is increased, or would have increased had she not been on statutory maternity leave, and
  - (iii) the maternity-related pay is neither what her pay would have been had she not been on statutory maternity leave nor the difference between what her pay would have been had she not been on statutory maternity leave and any statutory maternity pay to which she is entitled,
- if (apart from the equality clause) the terms of the woman's contract do not provide for the increase to be taken into account for the purpose of calculating the maternity-related pay, the term mentioned in sub-paragraph (i) above shall be treated as so modified as to provide for the increase to be taken into account for that purpose;
- (e) if (apart from the equality clause) the terms of the woman's contract as to—
- (i) pay (including pay by way of bonus) in respect of times before she begins to be on statutory maternity leave,
  - (ii) pay by way of bonus in respect of times when she is absent from work in consequence of the prohibition in Article 104(1) of the Employment Rights (Northern Ireland) Order 1996[23] (compulsory maternity leave), or
  - (iii) pay by way of bonus in respect of times after she returns to work following her having been on statutory maternity leave,
- do not provide for such pay to be paid when it would be paid but for her having time off on statutory maternity leave, the woman's contract shall be treated as including a term providing for such pay to be paid when ordinarily it would be paid;
- (f) if (apart from the equality clause) the terms of the woman's contract regulating her pay after returning to work following her having been on statutory maternity leave provide for any of that pay to be calculated without taking into account any amount by which her pay would have increased had she not been on statutory maternity leave, the woman's contract shall be treated as including a term providing for the increase to be taken into account in calculating that pay.]

[<sup>F3</sup>(3) [<sup>F4</sup>An equality clause falling within subsection (2)(a), (b) or (c) 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), 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), may be such a material difference.]

(4) ...

(5) A woman is to be regarded as employed on like work with men if, but only if, her work and theirs is of the same or a broadly similar nature, and the differences (if any) between the things she does and the things they do are not of practical importance in relation to terms and conditions of employment; and accordingly in comparing her work with theirs regard shall be had to the frequency or otherwise with which any such differences occur in practice as well as to the nature and extent of the differences.

[<sup>F4</sup>(5A) For the purposes of subsection (2)(d) to (f)—

- (a) “maternity-related pay”, in relation to a woman, means pay (including pay by way of bonus) to which she is entitled as a result of being pregnant or in respect of times when she is on statutory maternity leave, except that it does not include any statutory maternity pay to which she is entitled;
- (b) “statutory maternity leave period”, in relation to a woman, means the period during which she is on statutory maternity leave;
- (c) an increase in an amount is taken into account in a calculation if in the calculation the amount as increased is substituted for the unincreased amount.

(5B) For the purposes of subsections (2)(d) to (f) and (5A), “on statutory maternity leave” means absent from work—

- (a) in exercise of the right conferred by Article 103(1) or 105(1) of the Employment Rights (Northern Ireland) Order 1996 (ordinary or additional maternity leave), or
- (b) in consequence of the prohibition in Article 104(1) of that Order (compulsory maternity leave).]

(6) A woman is to be regarded as employed on work rated as equivalent with that of any men if, but only if, her job and their job have been given an equal value, in terms of the demand made on a worker under various headings (for instance effort, skill, decision), on a study undertaken with a view to evaluating in those terms the jobs to be done by all or any of the employees in an undertaking or group of undertakings, or would have been given an equal value but for the evaluation being made on a system setting different values for men and women on the same demand under any heading.

(7) Subject to [<sup>F5</sup> the following subsections], for the purposes of this section—

- (a) “employed” means employed under a contract of service or of apprenticeship or a contract personally to execute any work or labour, and related expressions shall be construed accordingly;

*Para.(b) rep. by 1976 NI 15*

- (c) two employers are to be treated as associated if one is a company of which the other (directly or indirectly) has control or if both are companies of which a third person (directly or indirectly) has control;

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[<sup>F6</sup> and men shall be treated as in the same employment with a woman if they are men employed by her employer or any associated employer at the same establishment or at establishments in Northern Ireland which include that one and at which common terms and conditions of employment are observed either generally or for employees of the relevant classes.]

[<sup>F4</sup>(7A) This section applies to—

- (a) the holding of an office or post to which persons are appointed to discharge functions personally under the direction of another person, and in respect of which they are entitled to remuneration, or
- (b) any office or post to which appointments are made by (or on the recommendation of or subject to the approval of) a Minister of the Crown, a Northern Ireland Minister, the Assembly or a government department,

as it applies to employment by a private person, and shall so apply as if references to a contract of employment included references to the terms of appointment, and as if references to the employer included references to the person responsible for paying any remuneration that a holder of the office or post is entitled to in respect of the office or post.

(7B) For the purposes of subsection (7A) the holder of an office or post—

- (a) is to be regarded as discharging her functions under the direction of another person of that other person is entitled to direct her as to when and where she discharges those functions,
- (b) is not to be regarded as entitled to remuneration merely because she is entitled to payments—
  - (i) in respect of expenses incurred by her in carrying out the functions of the office or post, or
  - (ii) by way of compensation for the loss of income or benefits she would or might have received from any person had she not been carrying out the functions of the office or post.

(7C) For the purposes of subsection (7A)—

- (a) “office or post” does not include a political office, and
- (b) appointment to an office or post does not include election to an office or post.]

*Subs.(8) rep. by 1976 NI 15*

[<sup>F5</sup>(9) This section shall apply to—

- (a) service for purposes of a Minister of the Crown or government department, other than service of a person holding a statutory office, or
- (b) service on behalf of the Crown for purposes of a person holding a statutory office or purposes of a statutory body,

as it applies to employment by a private person, and shall so apply as if references to a contract of employment included references to the terms of service.

*Para. (10) rep. by 1996 c. 46*

(11) In this section “statutory body” means a body set up by or in pursuance of a statutory provision (as defined by section 1( f) of the Interpretation Act (Northern Ireland) 1954), and “statutory office” means an office so set up; and service “for purposes of” a Minister of the Crown or government department does not include service in any office in Schedule 2 (Ministerial offices) to the House of Commons Disqualification Act 1975 as for the time being in force.]

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- <sup>F6</sup>(12) For the purposes of this Act it is immaterial whether the law which (apart from this subsection) is the<sup>F7</sup> law applicable to] a contract is the law of any part of the United Kingdom or not.
- (13) In this Act “Northern Ireland” includes such of the territorial waters of the United Kingdom as are adjacent to Northern Ireland.
- (14) Provisions of this section and<sup>F3</sup> sections 2<sup>F8</sup> to 2A]] framed with reference to women and their treatment relative to men are to be read as applying equally in a converse case to men and their treatment relative to women.]

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| <b>F1</b> | <a href="#">1976 NI 15</a>  |
| <b>F2</b> | <a href="#">1976 NI 15</a>  |
| <b>F3</b> | <a href="#">SR 1984/16</a>  |
| <b>F4</b> | <a href="#">SR 2005/426</a> |
| <b>F5</b> | <a href="#">1976 NI 15</a>  |
| <b>F6</b> | <a href="#">1976 NI 15</a>  |
| <b>F7</b> | <a href="#">1990 c. 36</a>  |
| <b>F8</b> | <a href="#">SR 2004/171</a> |

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