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Equality Act 2010

2010 CHAPTER 15

PART 5 **U.K.**

WORK

CHAPTER 3 **E+W+S**

EQUALITY OF TERMS

Sex equality

64 Relevant types of work **E+W+S**

- (1) Sections 66 to 70 apply where—
 - (a) a person (A) is employed on work that is equal to the work that a comparator of the opposite sex (B) does;
 - (b) a person (A) holding a personal or public office does work that is equal to the work that a comparator of the opposite sex (B) does.
- (2) The references in subsection (1) to the work that B does are not restricted to work done contemporaneously with the work done by A.

65 Equal work **E+W+S**

- (1) For the purposes of this Chapter, A's work is equal to that of B if it is—
 - (a) like B's work,
 - (b) rated as equivalent to B's work, or
 - (c) of equal value to B's work.
- (2) A's work is like B's work if—
 - (a) A's work and B's work are the same or broadly similar, and

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- (b) such differences as there are between their work are not of practical importance in relation to the terms of their work.
- (3) So on a comparison of one person's work with another's for the purposes of subsection (2), it is necessary to have regard to—
 - (a) the frequency with which differences between their work occur in practice, and
 - (b) the nature and extent of the differences.
- (4) A's work is rated as equivalent to B's work if a job evaluation study—
 - (a) gives an equal value to A's job and B's job in terms of the demands made on a worker, or
 - (b) would give an equal value to A's job and B's job in those terms were the evaluation not made on a sex-specific system.
- (5) A system is sex-specific if, for the purposes of one or more of the demands made on a worker, it sets values for men different from those it sets for women.
- (6) A's work is of equal value to B's work if it is—
 - (a) neither like B's work nor rated as equivalent to B's work, but
 - (b) nevertheless equal to B's work in terms of the demands made on A by reference to factors such as effort, skill and decision-making.

66 Sex equality clause **E+W+S**

- (1) If the terms of A's work do not (by whatever means) include a sex equality clause, they are to be treated as including one.
- (2) A sex equality clause is a provision that has the following effect—
 - (a) if a term of A's is less favourable to A than a corresponding term of B's is to B, A's term is modified so as not to be less favourable;
 - (b) if A does not have a term which corresponds to a term of B's that benefits B, A's terms are modified so as to include such a term.
- (3) Subsection (2)(a) applies to a term of A's relating to membership of or rights under an occupational pension scheme only in so far as a sex equality rule would have effect in relation to the term.
- (4) In the case of work within section 65(1)(b), a reference in subsection (2) above to a term includes a reference to such terms (if any) as have not been determined by the rating of the work (as well as those that have).

67 Sex equality rule **E+W+S**

- (1) If an occupational pension scheme does not include a sex equality rule, it is to be treated as including one.
- (2) A sex equality rule is a provision that has the following effect—
 - (a) if a relevant term is less favourable to A than it is to B, the term is modified so as not to be less favourable;
 - (b) if a term confers a relevant discretion capable of being exercised in a way that would be less favourable to A than to B, the term is modified so as to prevent the exercise of the discretion in that way.

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- (3) A term is relevant if it is—
- (a) a term on which persons become members of the scheme, or
 - (b) a term on which members of the scheme are treated.
- (4) A discretion is relevant if its exercise in relation to the scheme is capable of affecting—
- (a) the way in which persons become members of the scheme, or
 - (b) the way in which members of the scheme are treated.
- (5) The reference in subsection (3)(b) to a term on which members of a scheme are treated includes a reference to the term as it has effect for the benefit of dependants of members.
- (6) The reference in subsection (4)(b) to the way in which members of a scheme are treated includes a reference to the way in which they are treated as the scheme has effect for the benefit of dependants of members.
- [^{F1}(7) If the effect of a relevant matter on a person (A) differs according to the effect it has on a person of the same sex as A, according to whether A is married, in a civil partnership, or for some other reason due to A's family status, a comparison for the purposes of this section of the effect of that matter on persons of the opposite sex must be with a person of the opposite sex to A who is in the same position as A and in particular—
- (a) where A is married to someone of the opposite sex, A is to be compared to a person of the opposite sex to A (“B”) where B is married to someone of the opposite sex to B;
 - (b) where A is married to someone of the same sex as A or is in a civil partnership, A is to be compared to B where B is married to someone of the same sex as B or is in a civil partnership.]
- (8) A relevant matter is—
- (a) a relevant term;
 - (b) a term conferring a relevant discretion;
 - (c) the exercise of a relevant discretion in relation to an occupational pension scheme.
- (9) This section, so far as relating to the terms on which persons become members of an occupational pension scheme, does not have effect in relation to pensionable service before 8 April 1976.
- (10) This section, so far as relating to the terms on which members of an occupational pension scheme are treated, does not have effect in relation to pensionable service before 17 May 1990.

Textual Amendments

- F1** S. 67(7) substituted (16.12.2014) by [The Marriage and Civil Partnership \(Scotland\) Act 2014 and Civil Partnership Act 2004 \(Consequential Provisions and Modifications\) Order 2014 \(S.I. 2014/3229\)](#), art. 1(2), [Sch. 5 para. 19\(2\)](#)

68 Sex equality rule: consequential alteration of schemes **E+W+S**

- (1) This section applies if the trustees or managers of an occupational pension scheme do not have power to make sex equality alterations to the scheme.

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- (2) This section also applies if the trustees or managers of an occupational pension scheme have power to make sex equality alterations to the scheme but the procedure for doing so—
 - (a) is liable to be unduly complex or protracted, or
 - (b) involves obtaining consents which cannot be obtained or which can be obtained only with undue delay or difficulty.
- (3) The trustees or managers may by resolution make sex equality alterations to the scheme.
- (4) Sex equality alterations may have effect in relation to a period before the date on which they are made.
- (5) Sex equality alterations to an occupational pension scheme are such alterations to the scheme as may be required to secure conformity with a sex equality rule.

69 **Defence of material factor** E+W+S

- (1) The sex equality clause in A's terms has no effect in relation to a difference between A's terms and B's terms if the responsible person shows that the difference is because of a material factor reliance on which—
 - (a) does not involve treating A less favourably because of A's sex than the responsible person treats B, and
 - (b) if the factor is within subsection (2), is a proportionate means of achieving a legitimate aim.
- (2) A factor is within this subsection if A shows that, as a result of the factor, A and persons of the same sex doing work equal to A's are put at a particular disadvantage when compared with persons of the opposite sex doing work equal to A's.
- (3) For the purposes of subsection (1), the long-term objective of reducing inequality between men's and women's terms of work is always to be regarded as a legitimate aim.
- (4) A sex equality rule has no effect in relation to a difference between A and B in the effect of a relevant matter if the trustees or managers of the scheme in question show that the difference is because of a material factor which is not the difference of sex.
- (5) “Relevant matter” has the meaning given in section 67.
- (6) For the purposes of this section, a factor is not material unless it is a material difference between A's case and B's.

70 **Exclusion of sex discrimination provisions** E+W+S

- (1) The relevant sex discrimination provision has no effect in relation to a term of A's that—
 - (a) is modified by, or included by virtue of, a sex equality clause or rule, or
 - (b) would be so modified or included but for section 69 or Part 2 of Schedule 7.
- (2) Neither of the following is sex discrimination for the purposes of the relevant sex discrimination provision—
 - (a) the inclusion in A's terms of a term that is less favourable as referred to in section 66(2)(a);

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- (b) the failure to include in A's terms a corresponding term as referred to in section 66(2)(b).
- (3) The relevant sex discrimination provision is, in relation to work of a description given in the first column of the table, the provision referred to in the second column so far as relating to sex.

<i>Description of work</i>	<i>Provision</i>
Employment	Section 39(2)
Appointment to a personal office	Section 49(6)
Appointment to a public office	Section 50(6)

71 Sex discrimination in relation to contractual pay **E+W+S**

- (1) This section applies in relation to a term of a person's work—
- (a) that relates to pay, but
- (b) in relation to which a sex equality clause or rule has no effect.
- (2) The relevant sex discrimination provision (as defined by section 70) has no effect in relation to the term except in so far as treatment of the person amounts to a contravention of the provision by virtue of section 13 or 14.

Pregnancy and maternity equality

72 Relevant types of work **E+W+S**

- Sections 73 to 76 apply where a woman—
- (a) is employed, or
- (b) holds a personal or public office.

73 Maternity equality clause **E+W+S**

- (1) If the terms of the woman's work do not (by whatever means) include a maternity equality clause, they are to be treated as including one.
- (2) A maternity equality clause is a provision that, in relation to the terms of the woman's work, has the effect referred to in section 74(1), (6) and (8).
- (3) In the case of a term relating to membership of or rights under an occupational pension scheme, a maternity equality clause has only such effect as a maternity equality rule would have.

74 Maternity equality clause: pay **E+W+S**

- (1) A term of the woman's work that provides for maternity-related pay to be calculated by reference to her pay at a particular time is, if each of the following three conditions is satisfied, modified as mentioned in subsection (5).
- (2) The first condition is that, after the time referred to in subsection (1) but before the end of the protected period—

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- (a) her pay increases, or
 - (b) it would have increased had she not been on maternity leave.
- (3) The second condition is that the maternity-related pay is not—
- (a) what her pay would have been had she not been on maternity leave, or
 - (b) the difference between the amount of statutory maternity pay to which she is entitled and what her pay would have been had she not been on maternity leave.
- (4) The third condition is that the terms of her work do not provide for the maternity-related pay to be subject to—
- (a) an increase as mentioned in subsection (2)(a), or
 - (b) an increase that would have occurred as mentioned in subsection (2)(b).
- (5) The modification referred to in subsection (1) is a modification to provide for the maternity-related pay to be subject to—
- (a) any increase as mentioned in subsection (2)(a), or
 - (b) any increase that would have occurred as mentioned in subsection (2)(b).
- (6) A term of her work that—
- (a) provides for pay within subsection (7), but
 - (b) does not provide for her to be given the pay in circumstances in which she would have been given it had she not been on maternity leave,
- is modified so as to provide for her to be given it in circumstances in which it would normally be given.
- (7) Pay is within this subsection if it is—
- (a) pay (including pay by way of bonus) in respect of times before the woman is on maternity leave,
 - (b) pay by way of bonus in respect of times when she is on compulsory maternity leave, or
 - (c) pay by way of bonus in respect of times after the end of the protected period.
- (8) A term of the woman's work that—
- (a) provides for pay after the end of the protected period, but
 - (b) does not provide for it to be subject to an increase to which it would have been subject had she not been on maternity leave,
- is modified so as to provide for it to be subject to the increase.
- (9) Maternity-related pay is pay (other than statutory maternity pay) to which a woman is entitled—
- (a) as a result of being pregnant, or
 - (b) in respect of times when she is on maternity leave.
- (10) A reference to the protected period is to be construed in accordance with section 18.

75 **Maternity equality rule** E+W+S

- (1) If an occupational pension scheme does not include a maternity equality rule, it is to be treated as including one.

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- (2) A maternity equality rule is a provision that has the effect set out in subsections (3) and (4).
- (3) If a relevant term does not treat time when the woman is on maternity leave as it treats time when she is not, the term is modified so as to treat time when she is on maternity leave as time when she is not.
- (4) If a term confers a relevant discretion capable of being exercised so that time when she is on maternity leave is treated differently from time when she is not, the term is modified so as not to allow the discretion to be exercised in that way.
- (5) A term is relevant if it is—
 - (a) a term relating to membership of the scheme,
 - (b) a term relating to the accrual of rights under the scheme, or
 - (c) a term providing for the determination of the amount of a benefit payable under the scheme.
- (6) A discretion is relevant if its exercise is capable of affecting—
 - (a) membership of the scheme,
 - (b) the accrual of rights under the scheme, or
 - (c) the determination of the amount of a benefit payable under the scheme.
- (7) This section does not require the woman's contributions to the scheme in respect of time when she is on maternity leave to be determined otherwise than by reference to the amount she is paid in respect of that time.
- (8) This section, so far as relating to time when she is on ordinary maternity leave but is not being paid by her employer, applies only in a case where the expected week of childbirth began on or after 6 April 2003.
- (9) This section, so far as relating to time when she is on additional maternity leave but is not being paid by her employer—
 - (a) does not apply to the accrual of rights under the scheme in any case;
 - (b) applies for other purposes only in a case where the expected week of childbirth began on or after 5 October 2008.
- (10) In this section—
 - (a) a reference to being on maternity leave includes a reference to having been on maternity leave, and
 - (b) a reference to being paid by the employer includes a reference to receiving statutory maternity pay from the employer.

76 Exclusion of pregnancy and maternity discrimination provisions **E+W+S**

- (1) The relevant pregnancy and maternity discrimination provision has no effect in relation to a term of the woman's work that is modified by a maternity equality clause or rule.

[^{F2}(1A) The relevant pregnancy and maternity discrimination provision has no effect in relation to a term of the woman's work—

- (a) that relates to pay, but
- (b) in relation to which a maternity equality clause or rule has no effect.]

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- (2) The inclusion in the woman's terms of a term that requires modification by virtue of section 73(2) or (3) is not pregnancy and maternity discrimination for the purposes of the relevant pregnancy and maternity discrimination provision.
- (3) The relevant pregnancy and maternity discrimination provision is, in relation to a description of work given in the first column of the table, the provision referred to in the second column so far as relating to pregnancy and maternity.

<i>Description of work</i>	<i>Provision</i>
Employment	Section 39(2)
Appointment to a personal office	Section 49(6)
Appointment to a public office	Section 50(6)

Textual Amendments

- F2** S. 76(1A) inserted (30.10.2010) by [The Equality Act 2010 \(Amendment\) Order 2010 \(S.I. 2010/2622\)](#), [art. 2](#)

Disclosure of information

77 Discussions about pay E+W+S

- (1) A term of a person's work that purports to prevent or restrict the person (P) from disclosing or seeking to disclose information about the terms of P's work is unenforceable against P in so far as P makes or seeks to make a relevant pay disclosure.
- (2) A term of a person's work that purports to prevent or restrict the person (P) from seeking disclosure of information from a colleague about the terms of the colleague's work is unenforceable against P in so far as P seeks a relevant pay disclosure from the colleague; and "colleague" includes a former colleague in relation to the work in question.
- (3) A disclosure is a relevant pay disclosure if made for the purpose of enabling the person who makes it, or the person to whom it is made, to find out whether or to what extent there is, in relation to the work in question, a connection between pay and having (or not having) a particular protected characteristic.
- (4) The following are to be treated as protected acts for the purposes of the relevant victimisation provision—
 - (a) seeking a disclosure that would be a relevant pay disclosure;
 - (b) making or seeking to make a relevant pay disclosure;
 - (c) receiving information disclosed in a relevant pay disclosure.
- (5) The relevant victimisation provision is, in relation to a description of work specified in the first column of the table, section 27 so far as it applies for the purposes of a provision mentioned in the second column.

<i>Description of work</i>	<i>Provision by virtue of which section 27 has effect</i>
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Employment	Section 39(3) or (4)
Appointment to a personal office	Section 49(5) or (8)
Appointment to a public office	Section 50(5) or (9)

VALID FROM 22/08/2016

78 Gender pay gap information **E+W+S**

- (1) Regulations may require employers to publish information relating to the pay of employees for the purpose of showing whether, by reference to factors of such description as is prescribed, there are differences in the pay of male and female employees.
- (2) This section does not apply to—
 - (a) an employer who has fewer than 250 employees;
 - (b) a person specified in Schedule 19;
 - (c) a government department or part of the armed forces not specified in that Schedule.
- (3) The regulations may prescribe—
 - (a) descriptions of employer;
 - (b) descriptions of employee;
 - (c) how to calculate the number of employees that an employer has;
 - (d) descriptions of information;
 - (e) the time at which information is to be published;
 - (f) the form and manner in which it is to be published.
- (4) Regulations under subsection (3)(e) may not require an employer, after the first publication of information, to publish information more frequently than at intervals of 12 months.
- (5) The regulations may make provision for a failure to comply with the regulations—
 - (a) to be an offence punishable on summary conviction by a fine not exceeding level 5 on the standard scale;
 - (b) to be enforced, otherwise than as an offence, by such means as are prescribed.
- (6) The reference to a failure to comply with the regulations includes a reference to a failure by a person acting on behalf of an employer.

Supplementary

79 Comparators **E+W+S**

- (1) This section applies for the purposes of this Chapter.
- (2) If A is employed, B is a comparator if subsection (3) or (4) applies.
- (3) This subsection applies if—
 - (a) B is employed by A's employer or by an associate of A's employer, and

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- (b) A and B work at the same establishment.
- (4) This subsection applies if—
 - (a) B is employed by A's employer or an associate of A's employer,
 - (b) B works at an establishment other than the one at which A works, and
 - (c) common terms apply at the establishments (either generally or as between A and B).
- (5) If A holds a personal or public office, B is a comparator if—
 - (a) B holds a personal or public office, and
 - (b) the person responsible for paying A is also responsible for paying B.
- (6) If A is a relevant member of the House of Commons staff, B is a comparator if—
 - (a) B is employed by the person who is A's employer under subsection (6) of section 195 of the Employment Rights Act 1996, or
 - (b) if subsection (7) of that section applies in A's case, B is employed by the person who is A's employer under that subsection.
- (7) If A is a relevant member of the House of Lords staff, B is a comparator if B is also a relevant member of the House of Lords staff.
- (8) Section 42 does not apply to this Chapter; accordingly, for the purposes of this Chapter only, holding the office of constable is to be treated as holding a personal office.
- (9) For the purposes of this section, employers are associated if—
 - (a) one is a company of which the other (directly or indirectly) has control, or
 - (b) both are companies of which a third person (directly or indirectly) has control.

80 Interpretation and exceptions E+W+S

- (1) This section applies for the purposes of this Chapter.
- (2) The terms of a person's work are—
 - (a) if the person is employed, the terms of the person's employment that are in the person's contract of employment, contract of apprenticeship or contract to do work personally;
 - (b) if the person holds a personal or public office, the terms of the person's appointment to the office.
- (3) If work is not done at an establishment, it is to be treated as done at the establishment with which it has the closest connection.
- (4) A person (P) is the responsible person in relation to another person if—
 - (a) P is the other's employer;
 - (b) P is responsible for paying remuneration in respect of a personal or public office that the other holds.
- (5) A job evaluation study is a study undertaken with a view to evaluating, in terms of the demands made on a person by reference to factors such as effort, skill and decision-making, the jobs to be done—
 - (a) by some or all of the workers in an undertaking or group of undertakings, or
 - (b) in the case of the armed forces, by some or all of the members of the armed forces.

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(6) In the case of Crown employment, the reference in subsection (5)(a) to an undertaking is to be construed in accordance with section 191(4) of the Employment Rights Act 1996.

^{F3}(7)

(8) Schedule 7 (exceptions) has effect.

Textual Amendments

F3 S. 80(7) omitted (13.3.2014) by virtue of [The Marriage \(Same Sex Couples\) Act 2013 \(Consequential and Contrary Provisions and Scotland\) Order 2014 \(S.I. 2014/560\)](#), art. 1(2), **Sch. 1 para. 35(3)**

Commencement Information

I1 S. 80 wholly in force; s. 80 not in force at Royal Assent see s. 216; s. 80(8) in force for certain purposes at 4.8.2010 by [S.I. 2010/1966](#), **art. 2**; s. 80 in force at 1.10.2010 in so far as not already in force by [S.I. 2010/2317](#), **art. 2(1)(5)(e)** (with [art. 15](#))

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