
EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the time limit within which a person must institute proceedings before an employment tribunal in respect of a breach of the Equal Pay Act 1970 (“the Act”). The Regulations also amend the time period in respect of which an employment tribunal or court is able to award any payment by way of arrears of remuneration or damages in such proceedings.

These changes are necessary to reflect requirements of European Community law, specifically Article 141 of the Treaty of Rome (equal pay), as applied in a number of recent cases before the European Court of Justice and the domestic courts⁽¹⁾.

Regulation 3 amends the current rules which appear in sections 2(4) and 2(5) of the Act. Under the new rules, proceedings in the employment tribunal must be instituted on or before the “qualifying date”. If proceedings are successful, the employment tribunal or court may award a payment in respect of any time when unequal pay was paid back to the “arrears date” (in proceedings in England and Wales) or in respect of any unequal pay within the relevant “period” (in proceedings in Scotland).

The rules for determining the “qualifying date”, “arrears date” and “period” are contained in three new sections, which are inserted into the Act by regulations 4 and 5. The “qualifying date” in a standard case is the date falling six months after the last day of the employment in question. There are different rules where the employee and the employer had a stable employment relationship (even though one or more individual contracts of employment had ended), where the employer deliberately concealed relevant facts from the employee, or where the employee was under a disability.

For proceedings in England and Wales, the “arrears date” in a standard case is the date falling six years before the day on which the proceedings are instituted. There is a different arrears date where the employer deliberately concealed relevant facts from the employee, or where the employee was under a disability. For proceedings in Scotland, the relevant “period” is the period of five years ending on the day on which the proceedings are instituted. When calculating the five year period, any time when the employee was induced by the employer to refrain from commencing the proceedings by reason of fraud or error, or when the employee was under a disability, is ignored. However, the period may never exceed twenty years in total.

Section 7A of the Act contains separate rules for claims by service personnel in the armed forces. Regulations 6 to 8 make changes to the time limits and arrears periods which apply for such claims. The differences between the rules for service personnel and the rules described above are that the standard time limit for instituting proceedings is nine months rather than six, that there is no provision relating to stable employment relationships, and that the “arrears date” and “period” are generally calculated by reference to the day on which a complaint was made under the service redress procedures which members of the armed forces are usually obliged to follow before bringing proceedings.

The Regulations come into force on 19th July 2003. Regulation 2 makes provision for how the new rules will apply to proceedings or facts which already exist at that time.

A copy of the Regulatory Impact Assessment and the Transposition Note relating to these Regulations has been placed in the libraries of both Houses of Parliament, and can be obtained from

(1) See the European Court of Justice’s decisions in *Levez v T.H. Jennings (Harlow Pools) Ltd* (Case C-326/96, judgment of 1st December 1998) and *Preston and others v Wolverhampton Healthcare NHS Trust Ltd and others* (Case C-78/98, judgment of 16th May 2000); the decision of the Employment Appeal Tribunal in *Levez v T.H. Jennings (Harlow Pools) Ltd* (decision of 1st October 1999) and the ruling of the House of Lords in *Preston and others v Wolverhampton Healthcare NHS Trust Ltd and others* (ruling of 8th February 2001).

Status: *This is the original version (as it was originally made). This item of legislation is currently only available in its original format.*

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