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STATUTORY INSTRUMENTS

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**2004 No. 2352**

**SEX DISCRIMINATION**

**The Equal Pay Act 1970 (Amendment) Regulations 2004**

*Made* - - - - *7th September 2004*  
*Laid before Parliament* *9th September 2004*  
*Coming into force* - - *1st October 2004*

The Secretary of State, being a Minister designated<sup>(1)</sup> for the purposes of section 2(2) of the European Communities Act 1972<sup>(2)</sup> in relation to measures relating to discrimination, in exercise of the powers conferred by that section, hereby makes the following Regulations:

**Citation, commencement and application**

1.—(1) These Regulations may be cited as the Equal Pay Act 1970 (Amendment) Regulations 2004 and shall come into force on 1st October 2004.

(2) These Regulations apply to proceedings instituted on or after 1st October 2004.

(3) Paragraphs (2), (3) and (6) of regulation 2 also apply to proceedings instituted before 1st October 2004 if before that date an employment tribunal in proceedings before it has not required a member of the panel of independent experts (within the meaning of subsection (4) of section 2A of the Equal Pay Act 1970<sup>(3)</sup>) to prepare a report under subsection (1)(b) of that section.

**Amendments to section 2A of the Equal Pay Act 1970**

2.—(1) Section 2A of the Equal Pay Act 1970 is amended as follows.

(2) In subsection (1) –

(a) in paragraph (b), omit the words from the beginning to “so mentioned,”; and

(b) omit the words from “and, if it requires” to the end.

(3) After subsection (1) insert –

“(1A) Subsections (1B) and (1C) below apply in a case where the tribunal has required a member of the panel of independent experts to prepare a report under paragraph (b) of subsection (1) above.

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(1) See the European Communities (Designation)(No. 3) Order 2002 (S.I.2002/1819).

(2) 1972 c. 68.

(3) 1970 c. 41. Section 2A was inserted into the Act by the Equal Pay (Amendment) Regulations 1983 (S.I. 1983/1794), regulation 3(1). It has been amended by the Sex Discrimination and Equal Pay (Miscellaneous Amendments) Regulations 1996 (S.I. 1996/438), regulation 3 and the Employment Rights (Dispute Resolution) Act 1998 (c. 8), section 1(2)(a).

(1B) The tribunal may –

- (a) withdraw the requirement, and
- (b) request the member of the panel of independent experts to provide it with any documentation specified by it or make any other request to him connected with the withdrawal of the requirement.

(1C) If the requirement has not been withdrawn under paragraph (a) of subsection (1B) above, the tribunal shall not make any determination under paragraph (a) of subsection (1) above unless it has received the report.”.

(4) For subsection (2) substitute –

“(2) Subsection (2A) below applies in a case where –

- (a) a tribunal is required to determine whether any work is of equal value as mentioned in section 1(2)(c) above, and
- (b) the work of the woman and that of the man in question have been given different values on a study such as is mentioned in section 1(5) above.”.

(5) After subsection (2) insert –

“(2A) The tribunal shall determine that the work of the woman and that of the man are not of equal value unless the tribunal has reasonable grounds for suspecting that the evaluation contained in the study –

- (a) was (within the meaning of subsection (3) below) made on a system which discriminates on grounds of sex, or
- (b) is otherwise unsuitable to be relied upon.”.

(6) In subsection (4) for the words “In paragraph (b) of subsection (1) above the” substitute “In this section a”.

7th September 2004

*Jacqui Smith,*  
Minister for Industry and the Regions and  
Deputy Minister for Women and Equality,  
Department of Trade and Industry

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## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations, which amend the Equal Pay Act 1970, come into force on 1st October 2004.

Section 2A of the Act requires the employment tribunal to follow a particular procedure when determining proceedings where there is a question as to whether the claimant and the comparator are doing work of equal value. Section 2A partly implements Council Directive [75/117/EEC\(4\)](#), which provides among other matters for claims to equal pay for work of equal value.

Regulation 2 alters the procedure for such claims. It allows the employment tribunal to choose to determine the question of equal value itself or to appoint an independent expert to prepare a report on that question. In a case where there has already been a job evaluation study which has given different values to the work of the claimant and the comparator, the employment tribunal must determine that the work is not of equal value unless it has reasonable grounds for suspecting that the study discriminated on the grounds of sex, or there are other reasons why it is not suitable to be relied upon.

A full regulatory impact assessment of the effect that these Regulations will have on the costs of business has been placed in the libraries of both Houses of Parliament, and can be obtained from the Women and Equality Unit, Department of Trade and Industry, 35 Great Smith Street, London SW1P 3BQ.

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(4) OJ No. L45, 19.2.75, p. 19.