

SCHEDULES

SCHEDULE 1

Section 8.

EQUAL PAY ACT 1970

PART I

AMENDMENTS OF ACT

- 1 (1) In section 1(6), paragraph (b) is repealed and the following is inserted after paragraph (c): " and men shall be treated as in the same employment with a woman if they are men employed by her employer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 Great Britain which include that one and at which common terms and conditions of employment are observed either generally or for employees of the relevant classes ".
- (2) Section 1(7) is repealed.
- (3) The following is substituted for section 1(8)—
- “(8) 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.
- (9) Subsection (8) does not apply in relation to service in—
- (a) the naval, military or air forces of the Crown, or
 - (b) any women's service administered by the Defence Council.
- (10) In this section "statutory body" means a body set up by or in pursuance of an enactment, 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.”
- (4) The following subsections are inserted at the end of section 1—
- “(11) For the purposes of this Act it is immaterial whether the law which (apart from this subsection) is the proper law of a contract is the law of any part of the United Kingdom or not.
- (12) In this Act "Great Britain" includes such of the territorial waters of the United Kingdom as are adjacent to Great Britain.

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- (13) Provisions of this section and section 2 below 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”.
- 2 (1) The following is substituted for section 2(1)—
- “(1) Any claim in respect of the contravention of a term modified or included by virtue of an equality clause, including a claim for arrears of remuneration or damages in respect of the contravention, may be presented by way of a complaint to an industrial tribunal.”
- (2) After section 2(1) there is inserted—
- “(1A) Where a dispute arises in relation to the effect of an equality clause the employer may apply to an industrial tribunal for an order declaring the rights of the employer and the employee in relation to the matter in question.”
- (3) In section 2(2)—
- (a) for " failing to comply with their equal pay clauses " there is substituted " contravening a term modified or included by virtue of their equality clauses " , and
- (b) after " the question may be referred by him" there is inserted " as respects all or any of them " , and
- (c) after " claim by the women " there is inserted " or woman ".
- (4) Section 2(6) is repealed.
- (5) In section 2(7), the words " and there shall be paid " onwards are repealed.
- 3 In section 6 the following is substituted for subsection (1)—
- “(1) Neither an equality clause nor the provisions of section 3(4) above shall operate in relation to terms—
- (a) affected by compliance with the laws regulating the employment of women, or
- (b) affording special treatment to women in connection with pregnancy or childbirth.
- (1A) An equality clause and those provisions—
- (a) shall operate in relation to terms relating to membership of an occupational pension scheme (within the meaning of the Social Security Pensions Act 1975) so far as those terms relate to any matter in respect of which the scheme has to conform with the equal access requirements of Part IV of that Act; but
- (b) subject to this, shall not operate in relation to terms related to death or retirement, or to any provision made in connection with death or retirement.”
- 4 Section 8 is repealed.
- 5 In section 9(1), the words " Except as provided by subsection (2) below ", and sections 9(2) to (5) and 10(4) are repealed.
- 6 (1) For references to an equal pay clause in each place where they occur there are substituted references to an equality clause.

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- (2) For the words "the Industrial Court", in each place where they occur, there are substituted the words " the Industrial Arbitration Board " ; in sections 4 and 10 for the words " Court " and " Court's " in each place where they occur there are substituted respectively " Board " and " Board's ", and in section 5 for the word " Board " in each place where it occurs there is substituted " Agricultural Wages Board " and for the word " Court" in each place where it occurs there is substituted " Industrial Arbitration Board ".

PART II

ACT AS AMENDED

“1970 CHAPTER 41An Act to prevent discrimination, as regards terms and conditions of employment, between men and women.

[29th May 1970]”

“BE IT ENACTED by the Queen's most Excellent Majesty by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

- 1** (1) If the terms of a contract under which a woman is employed at an establishment in Great Britain 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

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

- (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 difference (other than the difference of sex) between her case and his.
- (4) 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.
- (5) 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.
- (6) Subject to the following subsections, for 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;
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- (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,
- 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 Great Britain which include that one and at which common terms and conditions of employment are observed either generally or for employees of the relevant classes.
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- (8) 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.
- (9) Subsection (8) does not apply in relation to service in—
- (a) the naval, military or air forces of the Crown, or
- (b) any women's service administered by the Defence Council.
- (10) In this section "statutory body" means a body set up by or in pursuance of an enactment, 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.

- (11) For the purposes of this Act it is immaterial whether the law which (apart from this subsection) is the proper law of a contract is the law of any part of the United Kingdom or not.
- (12) In this Act " Great Britain " includes such of the territorial waters of the United Kingdom as are adjacent to Great Britain.
- (13) Provisions of this section and section 2 below 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.

2 Disputes as to, and enforcement of, requirement of equal treatment.

- (1) Any claim in respect of the contravention of a term modified or included by virtue of an equality clause, including a claim for arrears of remuneration or damages in respect of the contravention, may be presented by way of a complaint to an industrial tribunal.
- (1A) Where a dispute arises in relation to the effect of an equality clause the employer may apply to an industrial tribunal for an order declaring the rights of the employer and the employee in relation to the matter in question.
- (2) Where it appears to the Secretary of State that there may be a question whether the employer of any women is or has been contravening a term modified or included by virtue of their equality clauses, but that it is not reasonable to expect them to take steps to have the question determined, the question may be referred by him as respects all or any of them to an industrial tribunal and shall be dealt with as if the reference were of a claim by the women or woman against the employer.
- (3) Where it appears to the court in which any proceedings are pending that a claim or counterclaim¹ in respect of the operation of an equality clause could more conveniently be disposed of separately by an industrial tribunal, the court may direct that the claim or counterclaim shall be struck out; and (without prejudice to the foregoing) where in proceedings before any court a question arises as to the operation of an equality clause, the court may on the application of any party to the proceedings or otherwise refer that question, or direct it to be referred by a party to the proceedings, to an industrial tribunal for determination by the tribunal, and may stay or sist the proceedings in the meantime.
- (4) No claim in respect of the operation of an equality clause relating to a woman's employment shall be referred to an industrial tribunal otherwise than by virtue of subsection (3) above, if she has not been employed in the employment within the six months preceding the date of the reference.
- (5) A woman shall not be entitled, in proceedings brought in respect of a failure to comply with an equality clause (including proceedings before an industrial tribunal), to be awarded any payment by way of arrears of remuneration or damages in respect of a time earlier than two years before the date on which the proceedings were instituted.
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- (7) In this section "industrial tribunal" means a tribunal established under section 12 of the Industrial Training Act 1964 . .

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3 Collective agreements and pay structures.

- (1) Where a collective agreement made before or after the commencement of this Act contains any provision applying specifically to men only or to women only, the agreement may be referred, by any party to it or by the Secretary of State, to the Industrial Arbitration Board constituted under Part I of the Industrial Courts Act 1919 to declare what amendments need to be made in the agreement, in accordance with subsection (4) below, so as to remove that discrimination between men and women.
- (2) Where on a reference under subsection (1) above the Industrial Arbitration Board have declared the amendments needing to be made in a collective agreement in accordance with that subsection, then—
 - (a) in so far as the terms and conditions of a person's employment are dependent on that agreement, they shall be ascertained by reference to the agreement as so amended, and any contract regulating those terms and conditions shall have effect accordingly ; and
 - (b) if the Industrial Arbitration Board make or have made, under section 8 of the Terms and Conditions of Employment Act 1959 or any other enactment, an award or determination requiring an employer to observe the collective agreement, the award or determination shall have effect by reference to the agreement as so amended.
- (3) On a reference under subsection (1) above the Industrial Arbitration Board may direct that all or any of the amendments needing to be made in the collective agreement shall be treated as not becoming effective until a date after their decision, or as having been effective from a date before their decision but not before the reference to them, and may specify different dates for different purposes ; and subsection (2) above and any such contract, award or determination as is there mentioned shall have or be deemed to have had effect accordingly.
- (4) Subject to section 6 below, the amendments to be made in a collective agreement under this section shall be such as are needed—
 - (a) to extend to both men and women any provision applying specifically to men only or to women only; and
 - (b) to eliminate any resulting duplication in the provisions of the agreement in such a way as not to make the terms and conditions agreed for men, or those agreed for women, less favourable in any respect than they would have been without the amendments ;

but the amendments shall not extend the operation of the collective agreement to men or to women not previously falling within it, and where accordingly a provision applying specifically to men only or to women only continues to be required for a category of men or of women (there being no provision in the agreement for women or, as the case may be, for men of that category), then the provision shall be limited to men or women of that category but there shall be made to it such amendments, if any, as are needed to secure that the terms and conditions of the men or women of that category are not in any respect less favourable than those of all persons of the other sex to whom the agreement applies.
- (5) For purposes of this section " collective agreement" means any agreement as to terms and conditions of employment, being an agreement between—
 - (a) parties who are or represent employers or organisations of employers or associations of such organisations ; and

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- (b) parties who are or represent organisations of employees or associations of such organisations ;
but includes also any award modifying or supplementing such an agreement.
- (6) Subsections (1) to (4) above (except subsection (2)(b) and subsection (3) in so far as it relates to subsection (2)(b)) shall have effect in relation to an employer's pay structure as they have effect in relation to a collective agreement with the adaptation that a reference to the Industrial Arbitration Board may be made by the employer or by the Secretary of State ; and for this purpose " pay structure " means any arrangements adopted by an employer (with or without any associated employer) which fix common terms and conditions of employment for his employees or any class of his employees, and of which the provisions are generally known or open to be known by the employees concerned.
- (7) In this section the expression "employment" and related expressions, and the reference to an associated employer, shall be construed in the same way as in section 1 above, and section 1(8) shall have effect in relation to this section as well as in relation to that section.

4 Wages regulation orders.

- (1) Where a wages regulation order made before or after the commencement of this Act contains any provision applying specifically to men only or to women only, the order may be referred by the Secretary of State to the Industrial Arbitration Board to declare what amendments need to be made in the order, in accordance with the like rules as apply under section 3(4) above to the amendment under that section of a collective agreement, so as to remove that discrimination between men and women; and when the Board have declared the amendments needing to be so made, the Secretary of State may by order made by statutory instrument coming into operation not later than five months after the date of the Board's decision direct that (subject to any further wages regulation order) the order referred to the Board shall have effect subject to those amendments.
- (2) A wages regulation order shall be referred to the Industrial Arbitration Board under this section if the Secretary of State is requested so to refer it either—
- (a) by a member or members of the wages council concerned with the order who was or who were appointed as representing employers ; or
 - (b) by a member or members of that wages council who was or who were appointed as representing workers ;
- or if in any case it appears to the Secretary of State that the order may be amendable under this section.
- (3) Where by virtue of section 12(1) of the Wages Councils Act 1959 a contract between a worker and an employer is to have effect with modifications specified in section 12(1), then (without prejudice to the general saving in section 11(7) of that Act for rights conferred by or under other Acts) the contract as so modified shall have effect subject to any further term implied by virtue of section 1 above.
- (4) In this section " wages regulation order" means an order made or having effect as if made under section 11 of the Wages Councils Act 1959.

5 Agricultural wages orders.

- (1) Where an agricultural wages order made before or after the commencement of this Act contains any provision applying specifically to men only or to women only, the order

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may be referred by the Secretary of State to the Industrial Arbitration Board to declare what amendments need to be made in the order, in accordance with the like rules as apply under section 3(4) above to the amendment under that section of a collective agreement, so as to remove that discrimination between men and women; and when the Industrial Arbitration Board have declared the amendments needing to be so made, it shall be the duty of the Agricultural Wages Board, by a further agricultural wages order coming into operation not later than five months after the date of the Industrial Arbitration Board's decision, either to make those amendments in the order referred to the Industrial Arbitration Board or otherwise to replace or amend that order so as to remove the discrimination.

- (2) Where the Agricultural Wages Board certify that the effect of an agricultural wages order is only to make such amendments of a previous order as have under this section been declared by the Industrial Arbitration Board to be needed, or to make such amendments as aforesaid with minor modifications or modifications of limited application, or is only to revoke and reproduce with such amendments a previous order, then the Agricultural Wages Board may instead of complying with paragraphs 1 and 2 of Schedule 4, or in the case of Scotland paragraphs 1 and 2 of Schedule 3, to the Agricultural Wages Act give notice of the proposed order in such manner as appears to the Agricultural Wages Board expedient in the circumstances, and may make the order at any time after the expiration of seven days from the giving of the notice.
- (3) An agricultural wages order shall be referred to the Industrial Arbitration Board under this section if the Secretary of State is requested so to refer it either—
- (a) by a body for the time being entitled to nominate for membership of the Agricultural Wages Board persons representing employers (or, if provision is made for any of the persons representing employers to be elected instead of nominated, then by a member or members representing employers); or
 - (b) by a body for the time being entitled to nominate for membership of the Agricultural Wages Board persons representing workers (or, if provision is made for any of the persons representing workers to be elected instead of nominated, then by a member or members representing workers);

or if in any case it appears to the Secretary of State that the order may be amendable under this section.

- (4) In this section "the Agricultural Wages Board" means the Agricultural Wages Board for England and Wales or the Scottish Agricultural Wages Board, " the Agricultural Wages Act" means the Agricultural Wages Act 1948 or the Agricultural Wages (Scotland) Act 1949 and " agricultural wages order " means an order of the Agricultural Wages Board under the Agricultural Wages Act.

6 Exclusion from ss. 1 to 5 of pensions etc.

- (1) Neither an equality clause nor the provisions of section 3(4) above shall operate in relation to terms—
- (a) affected by compliance with the laws regulating the employment of women, or
 - (b) affording special treatment to women in connection with pregnancy or childbirth.
- (1A) An equality clause and those provisions—
- (a) shall operate in relation to terms relating to membership of an occupational pension scheme (within the meaning of the Social Security Pensions Act 1975)

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so far as those terms relate to any matter in respect of which the scheme has to conform with the equal access requirements of Part IV of that Act; but

- (b) subject to this, shall not operate in relation to terms related to death or retirement, or to any provision made in connection with death or retirement.
- (2) Any reference in this section to retirement includes retirement, whether voluntary or not, on grounds of age, length of service or incapacity.

7 Service pay.

- (1) The Secretary of State or Defence Council shall not make, or recommend to Her Majesty the making of, any instrument relating to the terms and conditions of service of members of the naval, military or air forces of the Crown or of any women's service administered by the Defence Council, if the instrument has the effect of making a distinction, as regards pay, allowances or leave, between men and women who are members of those forces or of any such service, not being a distinction fairly attributable to differences between the obligations undertaken by men and those undertaken by women as such members as aforesaid.
- (2) The Secretary of State or Defence Council may refer to the Industrial Arbitration Board for their advice any question whether a provision made or proposed to be made by any such instrument as is referred to in subsection (1) above ought to be regarded for purposes of this section as making a distinction not permitted by that subsection.

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9 Commencement.

- (1) . . . the foregoing provisions of this Act shall come into force on the 29th December 1975 and references in this Act to its commencement shall be construed as referring to the coming into force of those provisions on that date.

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10 Preliminary references to Industrial Arbitration Board.

- (1) A collective agreement, pay structure or order which after the commencement of this Act could under section 3, 4 or 5 of this Act be referred to the Industrial Arbitration Board to declare what amendments need to be made as mentioned in that section may at any time not earlier than one year before that commencement be referred to the Board under this section for their advice as to the amendments needing to be so made.
- (2) A reference under this section may be made by any person authorised by section 3, 4 or 5, as the case may be, to make a corresponding reference under that section, but the Secretary of State shall not under this section refer an order to the Industrial Arbitration Board unless requested so to do as mentioned in section 4(2) or 5(3), as the case may be, nor be required to refer an order if so requested.
- (3) A collective agreement, pay structure or order referred to the Industrial Arbitration Board under this section may after the commencement of this Act be again referred to the Board under section 3, 4 or 5 ; but at that commencement any reference under this section (if still pending) shall lapse.

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11 Short title, interpretation and extent.

- (1) This Act may be cited as the Equal Pay Act 1970.
- (2) In this Act the expressions " man " and " woman " shall be read as applying to persons of whatever age.
- (3) This Act shall not extend to Northern Ireland.”