

2003 No. 1656

SEX DISCRIMINATION

The Equal Pay Act 1970 (Amendment) Regulations 2003

<i>Made</i> - - - -	<i>26th June 2003</i>
<i>Laid before Parliament</i>	<i>27th June 2003</i>
<i>Coming into force</i>	<i>19th July 2003</i>

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

Citation, commencement and interpretation

- 1.—(1) These Regulations may be cited as the Equal Pay Act 1970 (Amendment) Regulations 2003.
- (2) These Regulations shall come into force on 19th July 2003 (“the commencement date”).
- (3) In these Regulations “the Act” means the Equal Pay Act 1970^(c).

Application

- 2.—(1) The following provisions—
- (a) paragraph (2) of regulation 3, and
 - (b) regulation 4,

apply for the purpose of determining whether an employment tribunal may make a determination in proceedings instituted on or after the commencement date (subject to paragraph (2) below).

(2) Those provisions do not so apply if the last day on which the woman was employed in the employment falls more than six months before the commencement date.

(3) If those provisions do so apply so as to enable an employment tribunal to make a determination in proceedings in a stable employment case (within the meaning given by virtue of regulation 4), the determination may not relate to any non-qualifying contract of employment forming part of the stable employment relationship.

(4) For the purposes of paragraph (3) above a contract of employment is a non-qualifying contract of employment if it ended more than six months before the commencement date.

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

^(b) 1972 c.68.

^(c) 1970 c.41; section 2 was amended by the Sex Discrimination Act 1975 (c.65) section 8(6), and Schedule 1, Part I, and the Employment Rights (Dispute Resolution) Act 1998 (c.8) section 1(2)(a). Section 7A was inserted by the Armed Forces Act 1996 (c.46) section 24(2) and amended by the Employment Rights (Dispute Resolution) Act 1998, section 1(2)(a).

- (5) The following provisions—
 - (a) paragraph (3) of regulation 3,
 - (b) regulation 5,
 - (c) paragraph (4) of regulation 6, and
 - (d) regulation 8,

apply in relation to proceedings instituted on or after the commencement date.

- (6) The following provisions—
 - (a) paragraph (3) of regulation 6, and
 - (b) regulation 7,

apply for the purpose of determining whether an employment tribunal may make a determination on a complaint presented to it on or after the commencement date (subject to paragraph (7) below).

(7) Those provisions do not so apply if the last day of the woman’s period of service falls more than nine months before the commencement date.

Amendments to the time limits under section 2 of the Act

3.—(1) Section 2 of the Act (disputes as to, and enforcement of, requirement of equal treatment) is amended as follows.

- (2) For subsection (4) substitute—

“(4) No determination may be made by an employment tribunal in the following proceedings—

- (a) on a complaint under subsection (1) above,
- (b) on an application under subsection (1A) above, or
- (c) on a reference under subsection (2) above,

unless the proceedings are instituted on or before the qualifying date (determined in accordance with section 2ZA below).”

- (3) For subsection (5) substitute—

“(5) A woman shall not be entitled, in proceedings brought in respect of a contravention of a term modified or included by virtue of an equality clause (including proceedings before an employment tribunal), to be awarded any payment by way of arrears of remuneration or damages—

- (a) in proceedings in England and Wales, in respect of a time earlier than the arrears date (determined in accordance with section 2ZB below), and
- (b) in proceedings in Scotland, in respect of a time before the period determined in accordance with section 2ZC below.”

- 4. After section 2 of the Act insert—

““Qualifying date” under section 2(4)

2ZA.—(1) This section applies for the purpose of determining the qualifying date, in relation to proceedings in respect of a woman’s employment, for the purposes of section 2(4) above.

- (2) In this section—

“concealment case” means a case where—

- (a) the employer deliberately concealed from the woman any fact (referred to in this section as a “qualifying fact”)—
 - (i) which is relevant to the contravention to which the proceedings relate, and
 - (ii) without knowledge of which the woman could not reasonably have been expected to institute the proceedings, and

- (b) the woman did not discover the qualifying fact (or could not with reasonable diligence have discovered it) until after—
 - (i) the last day on which she was employed in the employment, or
 - (ii) the day on which the stable employment relationship between her and the employer ended,(as the case may be);

“disability case” means a case where the woman was under a disability at any time during the six months after—

- (a) the last day on which she was employed in the employment,
- (b) the day on which the stable employment relationship between her and the employer ended, or
- (c) the day on which she discovered (or could with reasonable diligence have discovered) the qualifying fact deliberately concealed from her by the employer (if that day falls after the day referred to in paragraph (a) or (b) above, as the case may be),

(as the case may be);

“stable employment case” means a case where the proceedings relate to a period during which a stable employment relationship subsists between the woman and the employer, notwithstanding that the period includes any time after the ending of a contract of employment when no further contract of employment is in force;

“standard case” means a case which is not—

- (a) a stable employment case,
- (b) a concealment case,
- (c) a disability case, or
- (d) both a concealment and a disability case.

(3) In a standard case, the qualifying date is the date falling six months after the last day on which the woman was employed in the employment.

(4) In a case which is a stable employment case (but not also a concealment or a disability case or both), the qualifying date is the date falling six months after the day on which the stable employment relationship ended.

(5) In a case which is a concealment case (but not also a disability case), the qualifying date is the date falling six months after the day on which the woman discovered the qualifying fact in question (or could with reasonable diligence have discovered it).

(6) In a case which is a disability case (but not also a concealment case), the qualifying date is the date falling six months after the day on which the woman ceased to be under a disability.

(7) In a case which is both a concealment and a disability case, the qualifying date is the later of the dates referred to in subsections (5) and (6) above.”

5. After section 2ZA of the Act (inserted by regulation 4) insert—

““Arrears date” in proceedings in England and Wales under section 2(5)

2ZB.—(1) This section applies for the purpose of determining the arrears date, in relation to an award of any payment by way of arrears of remuneration or damages in proceedings in England and Wales in respect of a woman’s employment, for the purposes of section 2(5)(a) above.

(2) In this section—

“concealment case” means a case where—

- (a) the employer deliberately concealed from the woman any fact—
 - (i) which is relevant to the contravention to which the proceedings relate, and
 - (ii) without knowledge of which the woman could not reasonably have been expected to institute the proceedings, and

- (b) the woman instituted the proceedings within six years of the day on which she discovered the fact (or could with reasonable diligence have discovered it);

“disability case” means a case where—

- (a) the woman was under a disability at the time of the contravention to which the proceedings relate, and
- (b) the woman instituted the proceedings within six years of the day on which she ceased to be under a disability;

“standard case” means a case which is not—

- (a) a concealment case,
- (b) a disability case, or
- (c) both.

(3) In a standard case, the arrears date is the date falling six years before the day on which the proceedings were instituted.

(4) In a case which is a concealment or a disability case or both, the arrears date is the date of the contravention.

Determination of “period” in proceedings in Scotland under section 2(5)

2ZC.—(1) This section applies, in relation to an award of any payment by way of arrears of remuneration or damages in proceedings in Scotland in respect of a woman’s employment, for the purpose of determining the period mentioned in section 2(5)(b) above.

(2) Subject to subsection (3) below, that period is the period of five years which ends on the day on which the proceedings were instituted, except that the five years shall not be regarded as running during—

- (a) any time when the woman was induced, by reason of fraud on the part of, or error induced by the words or conduct of, the employer or any person acting on his behalf, to refrain from commencing proceedings (not being a time after she could with reasonable diligence have discovered the fraud or error), or
- (b) any time when she was under a disability.

(3) If, after regard is had to the exceptions in subsection (2) above, that period would include any time more than twenty years before the day mentioned in that subsection, that period is instead the period of twenty years which ends on that day.”

Amendments to the time limits under section 7A of the Act etc.

6.—(1) Section 7A of the Act (service pay and conditions) is amended as follows.

(2) In subsection (2)(b), after “application” insert “and subsection (13)”.

(3) For subsection (8) substitute—

“(8) No determination may be made by an employment tribunal in proceedings on a complaint in respect of the claim unless the complaint is presented on or before the qualifying date (determined in accordance with section 7AA below).”

(4) In subsection (9) for the words from “in respect of a time” to the end substitute—

- “(a) in proceedings in England and Wales, in respect of a time earlier than the arrears date (determined in accordance with section 7AB below), and
- (b) in proceedings in Scotland, in respect of a time before the period determined in accordance with section 7AC below.”

(5) In subsection (12) after the words “this section” insert “and sections 7AA to 7AC below”.

(6) After subsection (12) insert—

“(13) Provisions of this section and sections 7AA to 7AC below, and provisions applied by this section, 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.”

7. After section 7A of the Act insert—

““Qualifying date” under section 7A(8)

7AA.—(1) This section applies for the purpose of determining the qualifying date, in relation to proceedings on a complaint in respect of a woman’s service in any of the armed forces, for the purposes of section 7A(8) above.

(2) In this section—

“concealment case” means a case where—

- (a) the employer deliberately concealed from the woman any fact (referred to in this section as a “qualifying fact”)—
 - (i) which is relevant to the contravention to which the complaint relates, and
 - (ii) without knowledge of which the woman could not reasonably have been expected to present the complaint, and
- (b) the woman did not discover the qualifying fact (or could not with reasonable diligence have discovered it) until after the last day of the period of service during which the claim arose;

“disability case” means a case where the woman was under a disability at any time during the nine months after—

- (a) the last day of the period of service during which the claim arose, or
- (b) the day on which she discovered (or could with reasonable diligence have discovered) the qualifying fact deliberately concealed from her by the employer (if that day falls after the day referred to in paragraph (a) above),

(as the case may be);

“standard case” means a case which is not—

- (a) a concealment case,
- (b) a disability case, or
- (c) both.

(3) In a standard case, the qualifying date is the date falling nine months after the last day of the period of service during which the claim arose.

(4) In a case which is a concealment case (but not also a disability case), the qualifying date is the date falling nine months after the day on which the woman discovered the qualifying fact in question (or could with reasonable diligence have discovered it).

(5) In a case which is a disability case (but not also a concealment case), the qualifying date is the date falling nine months after the day on which the woman ceased to be under a disability.

(6) In a case which is both a concealment and a disability case, the qualifying date is the later of the dates referred to in subsections (4) and (5) above.”

8. After section 7AA of the Act (inserted by regulation 7) insert—

““Arrears date” in proceedings in England and Wales under section 7A(9)

7AB.—(1) This section applies for the purpose of determining the arrears date, in relation to an award of any payment by way of arrears of pay or damages in proceedings in England and Wales on a complaint in respect of a woman’s service in any of the armed forces, for the purposes of section 7A(9)(a) above.

(2) In this section—

“concealment case” means a case where—

- (a) the employer deliberately concealed from the woman any fact—
 - (i) which is relevant to the contravention to which the proceedings relate, and
 - (ii) without knowledge of which the woman could not reasonably have been expected to institute the proceedings, and

- (b) the woman made a complaint under the service redress procedures within six years of the day on which she discovered the fact (or could with reasonable diligence have discovered it);

“disability case” means a case where—

- (a) the woman was under a disability at the time of the contravention to which the proceedings relate, and
- (b) the woman made a complaint under the service redress procedures within six years of the day on which she ceased to be under a disability;

“standard case” means a case which is not—

- (a) a concealment case,
- (b) a disability case, or
- (c) both.

(3) In a standard case, the arrears date is the date falling six years before the day on which the complaint under the service redress procedures was made.

(4) In a case which is a concealment or a disability case or both, the arrears date is the date of the contravention.

(5) Subsection (6) below applies in a case where, in accordance with regulations made under section 7A(6) above, proceedings are instituted without a complaint having been made under the service redress procedures.

(6) In that case, references in this section to the making of a complaint under the service redress procedures shall be read as references to the institution of proceedings.

Determination of “period” in proceedings in Scotland under section 7A(9)

7AC.—(1) This section applies, in relation to an award of any payment by way of arrears of pay or damages in proceedings in Scotland on a complaint in respect of a woman’s service in any of the armed forces, for the purposes of determining the period mentioned in section 7A(9)(b) above.

(2) Subject to subsection (3) below, that period is the period of five years which ends on the day on which the complaint under the service redress procedures was made, except that the five years shall not be regarded as running during—

- (a) any time when the woman was induced, by reason of fraud on the part of, or error induced by the words or conduct of, the employer or any person acting on his behalf, to refrain from instituting the proceedings (not being a time after she could with reasonable diligence have discovered the fraud or error), or
- (b) any time when she was under a disability.

(3) If, after regard is had to the exceptions in subsection (2) above, that period would include any time more than twenty years before the day mentioned in that subsection, that period is instead the period of twenty years which ends on that day.

(4) Subsection (5) below applies in a case where, in accordance with regulations made under section 7A(6) above, proceedings are instituted without a complaint having been made under the service redress procedures.

(5) In that case, the reference in subsection (2) above to the making of the complaint under the service redress procedures shall be read as a reference to the institution of proceedings.”

Meaning of “under a disability”

9. In section 11 of the Act (short title, interpretation and extent) after subsection (2) insert—
- “(2A) For the purposes of this Act a woman is under a disability—
- (a) in the case of proceedings in England and Wales, if she is a minor or of unsound mind (which has the same meaning as in section 38(2) of the Limitation Act 1980^(a)); or
 - (b) in the case of proceedings in Scotland, if she has not attained the age of sixteen years or is incapable within the meaning of the Adults with Incapacity (Scotland) Act 2000^(b).”

Consequential amendment

10. In section 1(13) of the Act (application of provisions to men and women) for the words “and 2A” substitute “to 2A”.

26th June 2003

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

^(a) 1980 c.58.
^(b) 2000 asp 4.

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^(a).

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 the Women and Equality Unit, Department of Trade and Industry, Second Floor, 35 Great Smith Street, London, SW1P 3BQ.

^(a) 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).

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