

Equal Pay Act 1970

1970 CHAPTER 41

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

[29th May 1970]

Be it enacted by the authority of the same, as follows: —

1 Requirement of equal treatment for men and women in same employment

(1) The provisions of this section shall have effect with a view to securing that employers give equal treatment as regards terms and conditions of employment to men and to women, that is to say that (subject to the provisions of this section and of section 6 below) —

(a) for men and women employed on like work the terms and conditions of one sex are not in any respect less favorable than those of the other; and

(b) for men and women employed on work rated as equivalent (within the meaning of subsection (5) below) the terms and conditions of one sex are not less favorable than those of the other in any respect in which the terms and conditions of both are determined by the rating of their work. The following provisions of this section and section 2 below are framed with reference to women and their treatment relative to men but are to be read as applying equally in a converse case to men and their treatment relative to women.

(2) It shall be a term of the contract under which a woman is employed at an establishment in Great Britain that she shall be given equal treatment with men in the same employment, that is to say 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 class.

(3) Where a woman is employed at an establishment in Great Britain otherwise than under a contract which includes (directly or by reference to a collective agreement or otherwise) a term satisfying

subsection (2) above, the terms and conditions of her employment shall include an implied term giving effect to that subsection.

(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 labor, and related expressions shall be construed accordingly;

(b) a person is to be regarded as employed at an establishment if he is employed to work in the establishment or, in the case of a person employed to work otherwise than in an establishment, if his employment is carried out from the establishment;

(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.

(7) A person is not to be regarded for purposes of this section as employed at an establishment in Great Britain if his employment is wholly or mainly outside Great Britain; but—

(a) employment on aircraft or hovercraft registered in Great Britain shall not be regarded as employment outside Great Britain, unless it is wholly outside Great Britain;

(b) persons employed to work on board a ship registered in Great Britain, unless the employment is wholly outside Great Britain, are to be regarded as employed at an establishment in Great Britain, and the ship shall be deemed to be the establishment.

(8) This section shall apply to persons employed under or for purposes of a Minister of the Crown or government department, otherwise than as members of the naval, military or air forces of the Crown or of any women's service administered by the Defense Council, as it would apply if they were employed by a private person.

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

(1) Any claim in respect of the operation of a term included in a woman's contract of employment or implied in her terms and conditions of employment as mentioned in section 1(3) above (in this section referred to as an "equal pay clause"), including a claim for arrears of remuneration or damages in respect of a failure to comply with an equal pay clause, may be referred to and determined by an industrial tribunal, and may be so referred either by the person making the claim or by the person against whom it is made.

(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 failing to comply with their equal pay 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 to an industrial tribunal and shall be dealt with as if the reference were of a claim by the women against the employer.

(3) Where it appears to the court in which any proceedings are pending that a claim or counter-claim in respect of the operation of an equal pay 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 equal pay 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 sursit the proceedings in the meantime.

(4) No claim in respect of the operation of an equal pay 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 equal pay 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.

(6) Where a woman ought to be or to have been given equal treatment with a man as required by her equal pay clause, and he enjoys or has enjoyed by comparison with her any greater remuneration or other advantage, then it shall be for the woman's employer to show that this advantage is not the result of his terms and conditions of employment being in any respect more favorable than hers, but is genuinely due to a material difference (other than the difference of sex) between her case and his.

(7) In this section " industrial tribunal" means a tribunal established under section 12 of the Industrial Training Act 1964 ; and there shall be paid out of moneys provided by Parliament any additional amounts which by virtue of this section are so payable under section 12(3) of that Act, as amended by section 46(5) of the Redundancy Payments Act 1965.

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 Court 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 Court 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 Court 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 Court 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 favorable 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 favorable 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 organizations of employers or associations of such organizations; and

(b) parties who are or represent organizations of employees or associations of such organizations;

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 Court 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 are 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 Court 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 Court 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 Court's decision direct that (subject to any further wages regulation order) the order referred to the Court shall have effect subject to those amendments.

(2) A wages regulation order shall be referred to the Industrial Court under this section if the Secretary of State is requested so to refer it either—

(a) by a member or members of the wage's 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.

5Agricultural 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 may be referred by the Secretary of State to the Industrial Court 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 Court 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 Court's decision, either to make those amendments in the order referred to the Court 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 Court 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 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 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 Court 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 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) In so far as—

(a) the terms and conditions of a woman's employment are, in any respect, affected by compliance with the law regulating the employment of women; or

(b) any special treatment is accorded to women in connection with the birth or expected birth of a child;

then to that extent the requirement of equal treatment for men and women as mentioned in section 1(1) of this Act shall not apply (but without prejudice to its operation as regards other matters), nor shall that requirement extend to requiring equal treatment as regards terms and conditions related to retirement, marriage or death or to any provision made in connection with retirement, marriage or death; and the requirements of section 3(4) of this Act shall be subject to corresponding restrictions.

(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 Defense 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 Defense 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 Defense Council may refer to the Industrial Court 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.

8Police pay

Regulations made—

(a)under section 33, 34 or 35 of the Police Act 1964; or

(b)under section 26 or 27 of the Police (Scotland) Act 1967;

shall not make any distinction between men and women as regards their hours of duty, leave, pay or allowances except in so far as special treatment is accorded to women in connection with the birth or expected birth of a child or different provision is made for marriage.

9Commencement

(1)Except as provided by subsection (2) below, 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.

(2)If it appears to the Secretary of State expedient so to do in order to secure orderly progress before the commencement of this Act towards equal treatment for men and women, the Secretary of State may, by order made to come into operation on the 31st December 1973, provide for the provisions of sections 1 and 2 of this Act, other than any provisions excluded by the order, to have effect so as to require, as regards the period beginning with that date and ending with the 28th December 1975, that in any respect specified by the order differences in the treatment as regards terms and conditions of employment given to men and women shall be subject to such limitations as may be so specified, and may make corresponding provision with respect to sections 3 to 5; and as regards that period, if provision is so made by an order under this subsection, sections 1 and 2 above (apart from any provisions excepted by the order) shall have effect as if references to equal treatment were references to treatment as near to equal as is required by the order.

(3)Any order under subsection (2) above shall provide, in respect of rates of pay, that the rate to be paid to a person in accordance with the term referred to in section 1(2) or (3) above shall be not less than nine-tenths of the rate paid to those with whom comparison is required by that term; but the fraction specified by the order may be greater than nine-tenths.

(4) The power to make an order under subsection (2) above shall be exercisable by statutory instrument, but an order shall not be so made unless a draft of the order has been approved by resolution of each House of Parliament.

(5) Before laying before Parliament a draft of an order under subsection (2) above the Secretary of State shall consult such bodies appearing to him to represent the interests of employers or of employees as he considers appropriate.

10 Preliminary references to Industrial Court

(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 Court 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 Court 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 authorized 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 Court 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 Court under this section may after the commencement of this Act be again referred to the Court under section 3, 4 or 5; but at that commencement any reference under this section (if still pending) shall lapse.

(4) If an order is made under section 9(2) above for section 3, 4 or 5 to have effect from 31st December 1973 (with or without modifications), then, without prejudice to the operation of subsections (1) to (3) above apart from this subsection, the order may make corresponding provision for those subsections to apply, with such adaptations as may be provided for by the order, so as to authorize the making of references to the Industrial Court during a year (or any less period specified in the order) preceding 31st December 1973; and for that purpose the order may be made so as to come into operation before that date.

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.