

Equal Pay Act 1970

CHAPTER 41

Note: The material reproduced or annotated below is limited to what is relevant to this volume, comprising ss. 1, 2, 2A, 6 and 11.

Those sections are printed in the form in which they are set out in the Sex Discrimination Act 1975 (c.65), Sch.1, Pt.II (each subsection or paragraph omitted within that form being indicated below by a row of 5 dots), with subsequent amendments embodied and annotated.

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.

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

(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 by the rating of the work, the woman’s contract shall be treated as including such a term;
- [¹(c) where a woman is employed on work which, not being work in relation to which paragraph (a) or (b) applies, is, in terms of the demands made on her (for instance under such headings as effort, skill and decision), of equal value to that of 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.]

¹ S.I.(2)(c) inserted (1.1.84) by reg. 2(1) of S.I. 1983/1794.

S. 1

[¹(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 factor which is not the difference of sex and that factor—

- (a) in the case of an equality clause falling within subsection (2)(a) or (b) above, must be a material difference between the woman's case and the man's; and
- (b) in the case of an equality clause falling within subsection (2)(c) above, may be such a material difference.]

(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 the 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;
- (b)
- (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.

(7)

(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, ...²
- (b) ...².

(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

¹ S.I.(3) substituted (1.1.84) by reg. 2(2) of S.I. 1983/1794.

² Word “or” and s.1(9)(b) repealed (28.7.81) with saving by Armed Forces Act 1981 (c.55) Sch. 5, Pt.I

“for purposes of” a Minister of the Crown or government department does not include service if any office in Schedule 2 (Ministerial offices) to the House of Commons Disqualification Act 1975 as for the time being in force.

[¹(10A) This section applies in relation to service as a relevant member of the House of Commons staff as in relation to service for the purposes of a Minister of the Crown or government department, and accordingly applies as if references to a contract of employment included references to the terms of service of such a member.

In this subsection “relevant member of the House of Commons staff” has the same meaning as in section 139 of the Employment Protection (Consolidation) Act 1978; and subsection (4) to (9) of that section (person to be treated as employer of House of Commons staff) apply, with any necessary modifications, for the purposes of this section.]

[²(10B) This section applies in relation to employment as a relevant member of the House of Lords staff as in relation to other employment.

In this subsection “relevant member of the House of Lords staff” has the same meaning as in section 139A of the Employment Protection (Consolidation) Act 1978; and subsection (6) of that section applies for the purposes of this section.]

(11) For the purposes of this Act it is immaterial whether the law which (apart from this subsection) is the [³law applicable to] 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 [⁴sections 2 and 2A] 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.

[The provisions of s.2 below apply in varying versions, as follows:-

- (i) for purposes other than pensions;
- (ii) for equal treatment rules under s.62 of the Pensions Act 1995 relating to access to occupational pension schemes;
- (iii) for the equal treatment rules under s.62 of the Pensions Act 1995 relating to the terms on which non-pensioner members of occupational pension schemes are treated;
- (iv) for equal treatment rules under s.62 of the Pensions Act 1995 relating to the terms on which pensioner members of occupational pension schemes are treated;
- (v) for equality clauses under s.1 above relating to access to occupational pensions schemes;
- (vi) for equality clauses under s.1 above relating to the terms on which non-pensioner members of occupational pension schemes are treated;
- (vii) for equality clauses under s.1 above relating to the terms on which pensioner members of occupational pension schemes are treated.

S.2 is reproduced below successively in each of the above versions.]

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

¹ S.1(10A) inserted (16.10.92) by Trade Union and Labour Relations (Consolidation) Act 1992 (c.52), Sch. 2, para. 3(2).

² S.1.(10B) inserted (30.11.93) by Trade Union Reform and Employment Rights Act 1993 (c.19), Sch. 7, para. 8.

³ Words in s.1(11) substituted (1.4.91) by Contracts (Applicable Law) Act 1990 (c.36), Sch. 4, para 1.

⁴ Words substituted (1.1.84) in s.1(13) by reg. 3(2) of S.I. 1983/1794

S. 2

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

(i) S.2 as applying for purposes other than pensions:-

2.—(1) Any claim in respect of the contravention of a term modified or included by virtue of any 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 counterclaim 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.

(6)

(7) ...¹

(ii) S.2 as applying for equal treatment rules under s.62 of the Pensions Act 1995 relating to access to occupational pension schemes:-

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

2.—(1) Any claim in respect of the contravention of a term modified or included by virtue of an [²equal treatment rule], including a claim for arrears of [³benefits] 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 [²equal treatment rule] the [⁴trustees or managers of the scheme] may apply to an industrial tribunal for an order declaring the rights of the [⁴trustees or managers of the scheme] and [⁴the members, or prospective members, of the scheme] in relation to the matter in question.

(2) Where it appears to the Secretary of State that there may be a question whether the [⁴trustees or managers of the scheme] of any women [⁴are or have been] contravening the term modified or included by virtue of their⁵ [²equal treatment rules], but that it is not reasonable to expect them⁵ to take steps to have the question determined, the question may be referred by [⁴the trustees or managers of the scheme] as respects all or any of them⁵ to an industrial tribunal and shall be dealt with as if the reference were of a claim by the women or woman against the [⁴trustees or managers of the scheme].

(3) Where it appears to the court in which any proceedings are pending that a claim or counterclaim in respect of the operation of an [²equal treatment rule]

¹ S.2(7) repealed by Employment Protection (Consolidation) Act 1978 (c.44), Sch. 17.

² Words substituted (1.1.96) by virtue of s.63(4)(a) of Pensions Act 1995.

³ Word substituted (1.1.96) by virtue of reg. 2(b) of S.I. 1995/3183).

⁴ Words substituted (1.1.96) by virtue of s.63(4)(b) of the Pensions Act 1995.

⁵ The pre-modification text shows that references to "their" and "them" in this context refer to the women mentioned earlier in this subsection.

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 [¹equal treatment rule], 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.

[²(4) No claim in respect of the operation of an equal treatment rule in respect of an occupational pension scheme shall be referred to an industrial tribunal otherwise than by virtue of subsection (3) above unless the woman concerned has been employed in a description or category of employment to which the scheme relates within the six months preceding the date of the reference.]

[³(5) A woman shall not be entitled, in proceedings brought in respect of a failure to comply with an equal treatment rule (including proceedings before an industrial tribunal), to be awarded any payment by way of arrears of benefits, damages or any other financial award.]

[⁴(5A) In any proceedings brought before an industrial tribunal by a woman in respect of a failure to comply with an equal treatment rule, the employer shall, for the purposes of the rules governing procedure, be treated as a party and be entitled to appear and be heard in accordance with those rules.]

[⁵(6A) Where a court or industrial tribunal finds that there has been a breach of an equal treatment rule which relates to the terms on which persons become members of the scheme—

- (a) the court or tribunal may declare that a person has a right to be admitted to the scheme in question with effect from such date (“the deemed entry date”) as it may specify provided that such date may not be earlier than two years before the institution of the proceedings in which the order was made, and
- (b) when the court or tribunal so declares and the deemed entry date is earlier than the date of the declaration, the employer shall provide any such resources to the scheme as are specified in subsection (7A) below.

(7A) The resources referred to in subsection (6A)(b) above are such additional resources, if any, as may be necessary for the scheme to secure to the person, without contribution or further contribution by the person or by other members of the scheme, the same accrued rights in respect of the period to which the declaration by the court or tribunal relates as if that person had been a member of the scheme since—

- (a) in a case to which subsection (8A) below applies, the deemed entry date; . .
- (b) in any other case, whichever is the later of the deemed entry date and 31st May 1995.

(8A) This subsection applies to a case where the court or tribunal finds there has been a breach of an equal treatment rule which relates to terms concerning the age or length or service needed for becoming a member of the scheme.^{6]}

¹ Words substituted (1.1.96) by virtue of s.63(4)(a) of Pensions Act 1995.

² S.2(4) substituted (1.1.96) by s.63(4)(c) of Pensions Act 1995 (c.26)

³ S.2(5) substituted (1.1.96) by reg. 3 of S.I. 1995/3183.

⁴ S.2(5A) inserted (1.1.96) by reg. 4 of S.I. 1995/3183.

⁵ S.2(6A), (7A) and (8A) inserted (1.1.96) by reg. 5 of S.I. 1995/3183.

⁶ Section 118 of the Pension Schemes Act 1993 and the Occupational Pension Schemes (Equal Access to Membership) Regulations 1976 (S.I. 1976/142) provided that schemes must be open to men and women on terms which were the same as to age and length of service needed for becoming a member. These requirements were known as “the equal access requirements”. The Occupational Pension Schemes (Equal Access to Membership) Amendment Regulations 1995 (S.I. 1995/1215) came into force on 31st May 1995. They extended the equal access requirements to cases other than those concerning age and length of service. They also extended the obligation on employers to provide any necessary additional resources arising out of breach of the requirements as extended. However this obligation was limited to periods of membership falling after 31st May 1995. Section 118 was repealed by para. 29 of Schedule 3 to the Pensions Act 1995 and the Pensions Act 1995 (Commencement No. 2) Order 1995 (S.I. 1995/3104 (C.71)).

S. 2

(iii) S.2 as applying for equal treatment rules under s.62 of the Pensions Act 1995 relating to the terms on which non-pensioner members of occupational pension schemes are treated:-

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

2.—(1) Any claim in respect of the contravention of a term modified or included by virtue of an [1equal treatment rule], including a claim for arrears of [2benefits] 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 [1equal treatment rule] the [3trustees or managers of the scheme] may apply to an industrial tribunal for an order declaring the rights of the [3trustees or managers of the scheme] and [3the members, or prospective members, of the scheme] in relation to the matter in question.

(2) Where it appears to the Secretary of State that there may be a question whether the [3trustees or managers of the scheme] of any women [3are or have been] contravening the term modified or included by virtue of their⁴ [1equal treatment rules], but that it is not reasonable to expect them⁴ to take steps to have the question determined, the question may be referred by [3the trustees or managers of the scheme] as respects all or any of them⁴ to an industrial tribunal and shall be dealt with as if the reference were of a claim by the women or woman against the [3trustees or managers of the scheme].

(3) Where it appears to the court in which any proceedings are pending that a claim or counterclaim in respect of the operation of an [1equal treatment rule] 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 [1equal treatment rule], 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.

[5(4) No claim in respect of the operation of an equal treatment rule in respect of an occupational pension scheme shall be referred to an industrial tribunal otherwise than by virtue of subsection (3) above unless the woman concerned has been employed in a description or category of employment to which the scheme relates within the six months preceding the date of the reference.]

[6(5) A woman shall not be entitled, in proceedings brought in respect of a failure to comply with an equal treatment rule (including proceedings before an industrial tribunal), to be awarded any payment by way of arrears of benefits, damages or any other financial award.]

[7(5A) In any proceedings brought before [7an industrial tribunal] by a woman in respect of a failure to comply with an equal treatment rule, the employer shall, for the purposes of the rules governing procedure, be treated as a party and be entitled to appear and be heard in accordance with those rules.]

[8(6B) Where a court or industrial tribunal finds that there has been a breach of an equal treatment rule which relates to the terms on which members of a scheme are treated—

¹ Words substituted (1.1.96) by virtue of s.63(4)(a) of Pensions Act 1995.

² Word substituted (1.1.96) by virtue of reg. 2(b) of S.I. 1995/3183.

³ Words substituted (1.1.96) by virtue of s.63(4)(b) of the Pensions Act 1995.

⁴ The pre-modification text shows that references to “their” and “them” in this context refer to the women mentioned earlier in this subsection.

⁵ S.2(4) substituted (1.1.96) by s.63(4)(c) of Pensions Act 1995 (c.26).

⁶ S.2(5) substituted (1.1.96) by reg. 3 of S.I. 1995/3183.

⁷ S.2(5A) inserted (1.1.96) by reg. 4 of S.I. 1995/3183.

⁸ S.2(6B) and (7B) inserted (1.1.96) by reg. 6 of S.I. 1995/3183.

- (a) the court or tribunal may declare that a member has a right to equal treatment in respect of such a period as it may specify provided that the period does not begin before 17th May 1990, and
- (b) if the court or tribunal declares that a member has a right to equal treatment in relation to a period falling before the date of the declaration, the employer shall provide any such resources to the scheme as are specified in subsection (7B) below.

(7B) The resources referred to in subsection (6B)(b) above are such additional resources, if any, as may be necessary for the scheme to secure to the member, without contribution or further contribution by the member or by other members of the scheme, the same accrued rights in respect of the period falling before the date of declaration as if that member had been treated equally in respect of that period.]

(iv) S.2 as applying for equal treatment rules under s.62 of the Pensions Act 1995 relating to the terms on which pensioner members of occupational pension schemes are treated—

2.—(1) Any claim in respect of the contravention of a term modified or included by virtue of an [1equal treatment rule], including a claim for arrears of [2benefits] or damages in respect of the contravention, may be presented by way of a complaint to an industrial tribunal.

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

(1A) Where a dispute arises in relation to the effect of an [1equal treatment rule] the [3trustees or managers of the scheme] may apply to an industrial tribunal for an order declaring the rights of the [3trustees or managers of the scheme] and [3the members, or prospective members, of the scheme] in relation to the matter in question.

(2) Where it appears to the Secretary of State that there may be a question whether the [3trustees or managers of the scheme] of any women [3are or have been] contravening the term modified or included by virtue of their⁴ [1equal treatment rules], but that it is not reasonable to expect them⁴ to take steps to have the question determined, the question may be referred by [3the trustees or managers of the scheme] as respects all or any of them⁴ to an industrial tribunal and shall be dealt with as if the reference were of a claim by the women or woman against the [3trustees or managers of the scheme].

(3) Where it appears to the court in which any proceedings are pending that a claim or counterclaim in respect of the operation of an [1equal treatment rule] 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 [1equal treatment rule], 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.

[5(4) No claim in respect of the operation of an equal treatment rule in respect of an occupational pension scheme shall be referred to an industrial tribunal otherwise than by virtue of subsection (3) above unless the woman concerned has been employed in a description or category of employment to which the scheme relates within the six months preceding the date of the reference.]

¹ Words substituted (1.1.96) by virtue of s.63(4)(a) of Pensions Act 1995.

² Word substituted (1.1.96) by virtue of reg. 2(b) of S.I. 1995/3183.

³ Words substituted (1.1.96) by virtue of s.63(4)(b) of the Pensions Act 1995.

⁴ The pre-modification text shows that references to “their” and “them” in this context refer to the women mentioned earlier in this subsection.

⁵ S.2(4) substituted (1.1.96) by s.63(4)(c) of Pensions Act 1995 (c.26).

S. 2

(5) A woman shall not be entitled, in proceedings brought in respect of a failure to comply with an [¹equal treatment rule] (including proceedings before an industrial tribunal), to be awarded any payment by way of arrears of [²benefits] [³, damages or any other financial award] in respect of a time earlier than two years before the date on which the proceedings were instituted.

[⁴(5A) In any proceedings brought before an industrial tribunal by a woman in respect of a failure to comply with an equal treatment rule, the employer shall, for the purposes of the rules governing procedure, be treated as a party and be entitled to appear and be heard in accordance with those rules.]

[⁵(6C) Where a court or industrial tribunal awards a payment by way of arrears of benefit, damages or makes any other financial award, the employer shall provide any such resources to the scheme as are specified in subsection (7C) below.

(7C) The resources referred to in subsection (6C) above are such additional resources, if any, as may be necessary for the scheme to secure the payment of those arrears of benefits, damages or that financial award to the member, without contribution or further contribution by the member or by other members of the scheme.]

(v) S.2 as applying for equality clauses under s.1 above relating to access to occupational pension schemes:-

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

2.—(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 [⁶benefits] 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 counterclaim 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.

¹ Words substituted (1.1.96) by virtue of s.63(4)(a) of Pensions Act 1995.

² Word substituted (1.1.96) by virtue of reg. 2(b) of S.I. 1995/3183.

³ Words substituted (1.1.96) in s.2(5) by reg. 7 of S.I. 1995/3183.

⁴ S.2(5A) inserted (1.1.96) by reg. 4 of S.I. 1995/3183.

⁵ S.2(6C) and (7C) inserted (1.1.96) by reg. 7 of S.I. 1995/3183

⁶ Word substituted (1.1.96) by virtue of reg 8(b) of S.I. 1995/3183.

[¹(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 benefits or damages.]

[²(6D) Where a court or industrial tribunal finds that there has been a breach of an equality clause which relates to the terms on which persons become members of the scheme—

- (a) the court or tribunal may declare that a person has a right to be admitted to the scheme in question with effect from such date (“the deemed entry date”) as it may specify provided that such date may not be earlier than two years before the institution of the proceedings in which the order was made, and
- (b) when the court or tribunal so declares and the deemed entry date is earlier than the date of the declaration, the employer shall provide any such resources to the scheme as are specified in subsection (7D) below.

(7D) The resources referred to in subsection (6D)(b) above are such additional resources, if any, as may be necessary for the scheme to secure to the person, without contribution or further contribution by the person or by other members of the scheme, the same accrued rights in respect of the period to which the declaration by the court or tribunal relates as if that person had been a member of the scheme since—

- (a) in a case to which subsection (8D) below applies, the deemed entry date; . .
- (b) in any other case, whichever is the later of the deemed entry date and 31st May 1995.

(8D) This subsection applies to a case where the court or tribunal finds there has been a breach of an equality clause which relates to terms concerning the age or length or service needed for becoming a member of the scheme.^{3]}

(vi) S.2 as applying for equality clauses under s.1 above relating to the terms on which non-pensioner members of occupational pension schemes are treated-

2.—(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 [⁴benefits] or damages in respect of the contravention, may be presented by way of a complaint to an industrial tribunal.

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

(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.

¹ S.2(5) substituted (1.1.96) by reg. 9 of S.I. 1995/3183.

² S.2(6D), (7D) and (8D) inserted (1.1.96) by reg. 10 of S.I. 1995/3183.

³ Section 118 of the Pension Schemes Act 1993 and the Occupational Pension Schemes (Equal Access to Membership) Regulations 1976 (S.I. 1976/142) provided that schemes must be open to men and women on terms which were the same as to age and length of service needed for becoming a member. These requirements were known as “the equal access requirements”. The Occupational Pension Schemes (Equal Access to Membership) Amendment Regulations 1995 (S.I. 1995/1215) came into force on 31st May 1995. They extended the equal access requirements to cases other than those concerning age and length of service. They also extended the obligation on employers to provide any necessary additional resources arising out of breach of the requirements as extended. However this obligation was limited to periods of membership falling after 31st May 1995. Section 118 was repealed by para. 29 of Schedule 3 to the Pensions Act 1995 and the Pensions Act 1995 (Commencement No. 2) Order 1995 (S.I. 1995/3104 (C.71)).

⁴ Word substituted (1.1.96) by virtue of reg 8(b) of S.I. 1995/3183.

S. 2

(3) Where it appears to the court in which any proceedings are pending that a claim or counterclaim 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.

[¹(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 benefits or damages.]

[²(6E) Where a court or industrial tribunal finds that there has been a breach of an equality clause which relates to the terms on which members of a scheme are treated—

- (a) the court or tribunal may declare that a member has a right to equal treatment in respect of such a period as it may specify provided that the period does not begin before 17th May 1990, and
- (b) if the court or tribunal declares that a member has a right to equal treatment in relation to a period falling before the date of the declaration, the employer shall provide any such resources to the scheme as are specified in subsection (7E) below.

(7E) The resources referred to in subsection (6E)(b) above are such additional resources, if any, as may be necessary for the scheme to secure to the member, without contribution or further contribution by the member or by other members of the scheme, the same accrued rights in respect of the period falling before the date of the declaration as if that member had been treated equally in respect of that period.]

(vii) S.2 applying for equality clauses under s.1 above relating to the terms on which pensioner members of occupational pension schemes are treated:-

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

2.—(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 [³benefits] 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 counterclaim in respect of the operation of an equality clause could

¹ S.2(5) substituted (1.1.96) by reg. 9 of S.I. 1995/3183.

² S.2(6E) and (7E) inserted (1.1.96) by reg. 11 of S.I. 1995/3183.

³ Word substituted (1.1.96) by virtue of reg. 8(b) of S.I. 1995/3183.

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 [¹benefits] or damages in respect of a time earlier than two years before the date on which the proceedings were instituted.

[²(6F) Where a court or industrial tribunal awards a payment by way of arrears of benefits or damages, the employer shall provide any such resources to the scheme as are specified in subsection (7F) below.

(7F) The resources referred to in subsection (6F) above are such additional resources, if any, as may be necessary for the scheme to secure the payment of those arrears of benefits or damages to the member, without contribution or further contribution by the member or by other members of the scheme.]

[³2A.—(1) Where on a complaint or reference made to an industrial tribunal under section 2 above, a dispute arises as to whether any work is of equal value as mentioned in

Procedure before tribunal in certain cases.

[⁴section 1(2)(c) above]

[⁵section 62(3)(c) of the Pensions Act 1995]

the tribunal

[⁶shall not determine that question unless—

- (a) it is satisfied that there are no reasonable grounds for determining that the work is of equal value as so mentioned: or
- (b) it has required a member of the panel of independent experts to prepare a report with respect to that question and has received that report.]

[⁷may either—

- (a) proceed to determine that question; or
- (b) unless it is satisfied that there are no reasonable grounds for determining that the work is of equal value as so mentioned, require a member of the panel of independent experts to prepare a report with respect to that question:

and, if it requires the preparation of a report under paragraph (b) of this subsection, it shall not determine that question unless it has received the report.]

¹ Word substituted (1.1.96) by virtue of reg. 8(b) of S.I. 1995/3183.

² S.2(6F) and (7F) inserted (1.1.96) by reg. 12 of S.I. 1995/3183.

³ S.2A inserted (1.1.84) by reg. 3(1) of S.I. 1983/1794.

⁴ Words used in original s.2A as set out in S.I. 1983/1794, and as continuing to apply for purposes of s.1 (equality clauses) above.

⁵ Words having effect (1.1.96), for purposes of s.62 of the Pensions Act 1995 (c.26) (equal treatment rules) in substitution (by virtue of s.63(4)(d) *ibid.*) for original words.

⁶ Words in s.2A(1) (including paras. (a) and (b) as in force until 30.7.96.

⁷ Words in s.2A(1) (including paras. (a) and (b) substituted (31.7.96) by reg. 3(2) of S.I. 1996/438.

Ss. 2A–11

(2) Without prejudice to the generality of ..¹ subsection (1) above, there shall be taken, for the purposes of [²that subsection], to be no reasonable grounds for determining that the work of a woman is of equal value as mentioned in [³section 1(2)(c) above] [⁴section 62(3)(c) of the Pensions Act 1995]

if–

- (a) that work and the work of the man in question have been given different values on a study such as is mentioned in section 1(5) above; and
- (b) there are no reasonable grounds for determining that the evaluation contained in the study was (within the meaning of subsection (3) below) made on a system which discriminates on grounds of sex.

(3) An evaluation contained in a study such as is mentioned in section 1(5) above is made on a system which discriminates on grounds of sex where a difference, or coincidence, between values set by that system on different demands under the same or different headings is not justifiable irrespective of the sex of the person on whom those demands are made.

(4) In paragraph (b) of subsection (1) above the reference to a member of the panel of independent experts is a reference to a person who is for the time being designated by the Advisory, Conciliation and Arbitration Service for the purposes of that paragraph as such a member, being neither a member of the Council of that Service nor one of its officers or servants.]

Exclusion from ss. 1 to 5 of pensions etc.

6.—(1) [⁵An equality clause shall not] 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) ...⁶

[⁶(1B)An equality clause shall not operate in relation to terms relating to a person’s membership of, or rights under, an occupational pension scheme, being terms in relation to which, by reason only of any provision made by or under sections 62 to 64 of the Pensions Act 1995 (equal treatment), an equal treatment rule would not operate if the terms were included in the scheme.

(1C) In subsection (1B), “occupational pension scheme” has the same meaning as in the Pension Schemes Act 1993 and “equal treatment rule” has the meaning given by section 62 of the Pensions Act 1995.]

(2) ...⁶

Short title, interpretation and extent.

11.—(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.

¹ Words “paragraph (a) of” deleted (31.7.96) by reg. 3(3) of S.I. 1996/438.

² Words substituted (31.7.96) for “that paragraph” by reg. 3(3) of S.I. 1996/438.

³ Words used in original s.2A as set out in S.I. 1983/1794 and as continuing to apply for purposes of s.1 (equality clauses) above.

⁴ Words having effect (1.1.96), for purposes of s.62 of the Pensions Act 1995 (c.26) (equal treatment rules), in substitution (by virtue of s.63(4)(d) *ibid.*) for original words.

⁵ Words in s.6(1) substituted (7.2.87) by s.9(1) of Sex Discrimination Act 1986 (c.59).

⁶ S.6(1B) and (1C) substituted (1.1.96) for s.6(1A) and (2) by s.66(1) of Pensions Act 1995 (c.26).