

# EQUALITY ACT 2010

---

## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### **Part 5: Work**

#### *Chapter 3: Equality of terms*

#### *Section 64: Relevant types of work*

#### **Effect**

217. **Chapter 3** of Part 5 of the Act contains provisions designed to achieve equality between men and women in pay and other terms of employment where the work of an employee and his or her comparator – a person of the opposite sex - is equal. It does so by providing for a sex equality clause to be read into the employee's contract of employment. This is designed to ensure parity of terms between the employee and his or her comparator. A similar provision – referred to as a sex equality rule – is implied into the terms of pension schemes.
218. This section explains that the sections mentioned which impose the equality clause and equality rule apply to employees, office-holders and, by virtue of subsection (3) of section 83, members of the armed forces, where one person's work is equal to the work of another.

#### **Background**

219. This is a new provision that is designed to clarify to whom the equality clause and equality rule provisions of the Act apply. It should be read together with section 79. The references to comparator (and its definition in section 79) clarify, but do not widen the choice of comparator available in previous legislation for the purpose of a claim for breach of an equality clause or rule. As was the case under previous law, a comparator has to be a real person and not a hypothetical one. Section 64(2) is a new provision which is intended to ensure that the effect of pre-existing case law *Macarthy's Ltd v Smith (C 129/79; [1981] 1 All ER 111; [1980] ECR 1275)* is maintained: that a comparator need not be someone who is employed at the same time as the person making a claim under these provisions, but could be a predecessor in the job.

#### **Examples**

- A female employee can compare her work with that of a male colleague employed by the same employer.
- A male police officer can compare his work with that of a female police officer in the same force.