



# Equality Act 2010

## 2010 CHAPTER 15

### PART 5

#### WORK

### CHAPTER 3

#### EQUALITY OF TERMS

##### *Pregnancy and maternity equality*

#### **72 Relevant types of work**

Sections 73 to 76 apply where a woman—

- (a) is employed, or
- (b) holds a personal or public office.

#### **73 Maternity equality clause**

- (1) If the terms of the woman's work do not (by whatever means) include a maternity equality clause, they are to be treated as including one.
- (2) A maternity equality clause is a provision that, in relation to the terms of the woman's work, has the effect referred to in section 74(1), (6) and (8).
- (3) In the case of a term relating to membership of or rights under an occupational pension scheme, a maternity equality clause has only such effect as a maternity equality rule would have.

*Status: Point in time view as at 30/10/2010.*

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#### 74 **Maternity equality clause: pay**

- (1) A term of the woman's work that provides for maternity-related pay to be calculated by reference to her pay at a particular time is, if each of the following three conditions is satisfied, modified as mentioned in subsection (5).
- (2) The first condition is that, after the time referred to in subsection (1) but before the end of the protected period—
  - (a) her pay increases, or
  - (b) it would have increased had she not been on maternity leave.
- (3) The second condition is that the maternity-related pay is not—
  - (a) what her pay would have been had she not been on maternity leave, or
  - (b) the difference between the amount of statutory maternity pay to which she is entitled and what her pay would have been had she not been on maternity leave.
- (4) The third condition is that the terms of her work do not provide for the maternity-related pay to be subject to—
  - (a) an increase as mentioned in subsection (2)(a), or
  - (b) an increase that would have occurred as mentioned in subsection (2)(b).
- (5) The modification referred to in subsection (1) is a modification to provide for the maternity-related pay to be subject to—
  - (a) any increase as mentioned in subsection (2)(a), or
  - (b) any increase that would have occurred as mentioned in subsection (2)(b).
- (6) A term of her work that—
  - (a) provides for pay within subsection (7), but
  - (b) does not provide for her to be given the pay in circumstances in which she would have been given it had she not been on maternity leave,
 is modified so as to provide for her to be given it in circumstances in which it would normally be given.
- (7) Pay is within this subsection if it is—
  - (a) pay (including pay by way of bonus) in respect of times before the woman is on maternity leave,
  - (b) pay by way of bonus in respect of times when she is on compulsory maternity leave, or
  - (c) pay by way of bonus in respect of times after the end of the protected period.
- (8) A term of the woman's work that—
  - (a) provides for pay after the end of the protected period, but
  - (b) does not provide for it to be subject to an increase to which it would have been subject had she not been on maternity leave,
 is modified so as to provide for it to be subject to the increase.
- (9) Maternity-related pay is pay (other than statutory maternity pay) to which a woman is entitled—
  - (a) as a result of being pregnant, or
  - (b) in respect of times when she is on maternity leave.
- (10) A reference to the protected period is to be construed in accordance with section 18.

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## **75 Maternity equality rule**

- (1) If an occupational pension scheme does not include a maternity equality rule, it is to be treated as including one.
- (2) A maternity equality rule is a provision that has the effect set out in subsections (3) and (4).
- (3) If a relevant term does not treat time when the woman is on maternity leave as it treats time when she is not, the term is modified so as to treat time when she is on maternity leave as time when she is not.
- (4) If a term confers a relevant discretion capable of being exercised so that time when she is on maternity leave is treated differently from time when she is not, the term is modified so as not to allow the discretion to be exercised in that way.
- (5) A term is relevant if it is—
  - (a) a term relating to membership of the scheme,
  - (b) a term relating to the accrual of rights under the scheme, or
  - (c) a term providing for the determination of the amount of a benefit payable under the scheme.
- (6) A discretion is relevant if its exercise is capable of affecting—
  - (a) membership of the scheme,
  - (b) the accrual of rights under the scheme, or
  - (c) the determination of the amount of a benefit payable under the scheme.
- (7) This section does not require the woman's contributions to the scheme in respect of time when she is on maternity leave to be determined otherwise than by reference to the amount she is paid in respect of that time.
- (8) This section, so far as relating to time when she is on ordinary maternity leave but is not being paid by her employer, applies only in a case where the expected week of childbirth began on or after 6 April 2003.
- (9) This section, so far as relating to time when she is on additional maternity leave but is not being paid by her employer—
  - (a) does not apply to the accrual of rights under the scheme in any case;
  - (b) applies for other purposes only in a case where the expected week of childbirth began on or after 5 October 2008.
- (10) In this section—
  - (a) a reference to being on maternity leave includes a reference to having been on maternity leave, and
  - (b) a reference to being paid by the employer includes a reference to receiving statutory maternity pay from the employer.

## **76 Exclusion of pregnancy and maternity discrimination provisions**

- (1) The relevant pregnancy and maternity discrimination provision has no effect in relation to a term of the woman's work that is modified by a maternity equality clause or rule.

[<sup>F1</sup>(1A) The relevant pregnancy and maternity discrimination provision has no effect in relation to a term of the woman's work—

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- (a) that relates to pay, but
  - (b) in relation to which a maternity equality clause or rule has no effect.]
- (2) The inclusion in the woman's terms of a term that requires modification by virtue of section 73(2) or (3) is not pregnancy and maternity discrimination for the purposes of the relevant pregnancy and maternity discrimination provision.
- (3) The relevant pregnancy and maternity discrimination provision is, in relation to a description of work given in the first column of the table, the provision referred to in the second column so far as relating to pregnancy and maternity.

| <i>Description of work</i>       | <i>Provision</i> |
|----------------------------------|------------------|
| Employment                       | Section 39(2)    |
| Appointment to a personal office | Section 49(6)    |
| Appointment to a public office   | Section 50(6)    |

#### **Textual Amendments**

- F1** S. 76(1A) inserted (30.10.2010) by [The Equality Act 2010 \(Amendment\) Order 2010 \(S.I. 2010/2622\)](#), [art. 2](#)

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