



# Equality Act 2010

## 2010 CHAPTER 15

### PART 5

#### WORK

### CHAPTER 3

#### EQUALITY OF TERMS

##### *Sex equality*

#### **64 Relevant types of work**

- (1) Sections 66 to 70 apply where—
  - (a) a person (A) is employed on work that is equal to the work that a comparator of the opposite sex (B) does;
  - (b) a person (A) holding a personal or public office does work that is equal to the work that a comparator of the opposite sex (B) does.
- (2) The references in subsection (1) to the work that B does are not restricted to work done contemporaneously with the work done by A.

#### **65 Equal work**

- (1) For the purposes of this Chapter, A's work is equal to that of B if it is—
  - (a) like B's work,
  - (b) rated as equivalent to B's work, or
  - (c) of equal value to B's work.
- (2) A's work is like B's work if—
  - (a) A's work and B's work are the same or broadly similar, and

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- (b) such differences as there are between their work are not of practical importance in relation to the terms of their work.
- (3) So on a comparison of one person's work with another's for the purposes of subsection (2), it is necessary to have regard to—
  - (a) the frequency with which differences between their work occur in practice, and
  - (b) the nature and extent of the differences.
- (4) A's work is rated as equivalent to B's work if a job evaluation study—
  - (a) gives an equal value to A's job and B's job in terms of the demands made on a worker, or
  - (b) would give an equal value to A's job and B's job in those terms were the evaluation not made on a sex-specific system.
- (5) A system is sex-specific if, for the purposes of one or more of the demands made on a worker, it sets values for men different from those it sets for women.
- (6) A's work is of equal value to B's work if it is—
  - (a) neither like B's work nor rated as equivalent to B's work, but
  - (b) nevertheless equal to B's work in terms of the demands made on A by reference to factors such as effort, skill and decision-making.

## 66 Sex equality clause

- (1) If the terms of A's work do not (by whatever means) include a sex equality clause, they are to be treated as including one.
- (2) A sex equality clause is a provision that has the following effect—
  - (a) if a term of A's is less favourable to A than a corresponding term of B's is to B, A's term is modified so as not to be less favourable;
  - (b) if A does not have a term which corresponds to a term of B's that benefits B, A's terms are modified so as to include such a term.
- (3) Subsection (2)(a) applies to a term of A's relating to membership of or rights under an occupational pension scheme only in so far as a sex equality rule would have effect in relation to the term.
- (4) In the case of work within section 65(1)(b), a reference in subsection (2) above to a term includes a reference to such terms (if any) as have not been determined by the rating of the work (as well as those that have).

## 67 Sex equality rule

- (1) If an occupational pension scheme does not include a sex equality rule, it is to be treated as including one.
- (2) A sex equality rule is a provision that has the following effect—
  - (a) if a relevant term is less favourable to A than it is to B, the term is modified so as not to be less favourable;
  - (b) if a term confers a relevant discretion capable of being exercised in a way that would be less favourable to A than to B, the term is modified so as to prevent the exercise of the discretion in that way.

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- (3) A term is relevant if it is—
  - (a) a term on which persons become members of the scheme, or
  - (b) a term on which members of the scheme are treated.
- (4) A discretion is relevant if its exercise in relation to the scheme is capable of affecting—
  - (a) the way in which persons become members of the scheme, or
  - (b) the way in which members of the scheme are treated.
- (5) The reference in subsection (3)(b) to a term on which members of a scheme are treated includes a reference to the term as it has effect for the benefit of dependants of members.
- (6) The reference in subsection (4)(b) to the way in which members of a scheme are treated includes a reference to the way in which they are treated as the scheme has effect for the benefit of dependants of members.
- [<sup>F1</sup>(7) If the effect of a relevant matter on a person (A) differs according to the effect it has on a person of the same sex as A, according to whether A is married, in a civil partnership, or for some other reason due to A's family status, a comparison for the purposes of this section of the effect of that matter on persons of the opposite sex must be with a person of the opposite sex to A who is in the same position as A and in particular—
  - (a) where A is married to someone of the opposite sex, A is to be compared to a person of the opposite sex to A (“B”) where B is married to someone of the opposite sex to B;
  - (b) where A is married to someone of the same sex as A or is in a civil partnership, A is to be compared to B where B is married to someone of the same sex as B or is in a civil partnership.]
  - (8) A relevant matter is—
    - (a) a relevant term;
    - (b) a term conferring a relevant discretion;
    - (c) the exercise of a relevant discretion in relation to an occupational pension scheme.
  - (9) This section, so far as relating to the terms on which persons become members of an occupational pension scheme, does not have effect in relation to pensionable service before 8 April 1976.
  - (10) This section, so far as relating to the terms on which members of an occupational pension scheme are treated, does not have effect in relation to pensionable service before 17 May 1990.

#### Textual Amendments

- F1** S. 67(7) substituted (13.3.2014) by [The Marriage \(Same Sex Couples\) Act 2013 \(Consequential and Contrary Provisions and Scotland\) Order 2014 \(S.I. 2014/560\)](#), art. 1(2), [Sch. 1 para. 35\(2\)](#)

## 68 Sex equality rule: consequential alteration of schemes

- (1) This section applies if the trustees or managers of an occupational pension scheme do not have power to make sex equality alterations to the scheme.

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- (2) This section also applies if the trustees or managers of an occupational pension scheme have power to make sex equality alterations to the scheme but the procedure for doing so—
  - (a) is liable to be unduly complex or protracted, or
  - (b) involves obtaining consents which cannot be obtained or which can be obtained only with undue delay or difficulty.
- (3) The trustees or managers may by resolution make sex equality alterations to the scheme.
- (4) Sex equality alterations may have effect in relation to a period before the date on which they are made.
- (5) Sex equality alterations to an occupational pension scheme are such alterations to the scheme as may be required to secure conformity with a sex equality rule.

## 69 Defence of material factor

- (1) The sex equality clause in A's terms has no effect in relation to a difference between A's terms and B's terms if the responsible person shows that the difference is because of a material factor reliance on which—
  - (a) does not involve treating A less favourably because of A's sex than the responsible person treats B, and
  - (b) if the factor is within subsection (2), is a proportionate means of achieving a legitimate aim.
- (2) A factor is within this subsection if A shows that, as a result of the factor, A and persons of the same sex doing work equal to A's are put at a particular disadvantage when compared with persons of the opposite sex doing work equal to A's.
- (3) For the purposes of subsection (1), the long-term objective of reducing inequality between men's and women's terms of work is always to be regarded as a legitimate aim.
- (4) A sex equality rule has no effect in relation to a difference between A and B in the effect of a relevant matter if the trustees or managers of the scheme in question show that the difference is because of a material factor which is not the difference of sex.
- (5) "Relevant matter" has the meaning given in section 67.
- (6) For the purposes of this section, a factor is not material unless it is a material difference between A's case and B's.

## 70 Exclusion of sex discrimination provisions

- (1) The relevant sex discrimination provision has no effect in relation to a term of A's that—
  - (a) is modified by, or included by virtue of, a sex equality clause or rule, or
  - (b) would be so modified or included but for section 69 or Part 2 of Schedule 7.
- (2) Neither of the following is sex discrimination for the purposes of the relevant sex discrimination provision—
  - (a) the inclusion in A's terms of a term that is less favourable as referred to in section 66(2)(a);

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- (b) the failure to include in A's terms a corresponding term as referred to in section 66(2)(b).
- (3) The relevant sex discrimination provision is, in relation to work of a description given in the first column of the table, the provision referred to in the second column so far as relating to sex.

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<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)

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## **71 Sex discrimination in relation to contractual pay**

- (1) This section applies in relation to a term of a person's work—
- that relates to pay, but
  - in relation to which a sex equality clause or rule has no effect.
- (2) The relevant sex discrimination provision (as defined by section 70) has no effect in relation to the term except in so far as treatment of the person amounts to a contravention of the provision by virtue of section 13 or 14.

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