



# Enterprise and Regulatory Reform Act 2013

## 2013 CHAPTER 24

### PART 6

#### MISCELLANEOUS AND GENERAL

##### *Equal pay audits*

#### **98 Power to provide for equal pay audits**

- (1) The Equality Act 2010 is amended as follows.
- (2) After section 139 insert—

##### **“139A Equal pay audits**

- (1) Regulations may make provision requiring an employment tribunal to order the respondent to carry out an equal pay audit in any case where the tribunal finds that there has been an equal pay breach.
- (2) An equal pay breach is—
  - (a) a breach of an equality clause, or
  - (b) a contravention in relation to pay of section 39(2), 49(6) or 50(6), so far as relating to sex discrimination.
- (3) An equal pay audit is an audit designed to identify action to be taken to avoid equal pay breaches occurring or continuing.
- (4) The regulations may make further provision about equal pay audits, including provision about—
  - (a) the content of an audit;
  - (b) the powers and duties of a tribunal for deciding whether its order has been complied with;

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*Status: This is the original version (as it was originally enacted).*

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- (c) any circumstances in which an audit may be required to be published or may be disclosed to any person.
- (5) The regulations must provide for an equal pay audit not to be ordered where the tribunal considers that—
- (a) an audit completed by the respondent in the previous 3 years meets requirements prescribed for this purpose,
  - (b) it is clear without an audit whether any action is required to avoid equal pay breaches occurring or continuing,
  - (c) the breach the tribunal has found gives no reason to think that there may be other breaches, or
  - (d) the disadvantages of an equal pay audit would outweigh its benefits.
- (6) The regulations may provide for an employment tribunal to have power, where a person fails to comply with an order to carry out an equal pay audit, to order that person to pay a penalty to the Secretary of State of not more than an amount specified in the regulations.
- (7) The regulations may provide for that power—
- (a) to be exercisable in prescribed circumstances;
  - (b) to be exercisable more than once, if the failure to comply continues.
- (8) The first regulations made by virtue of subsection (6) must not specify an amount of more than £5,000.
- (9) Sums received by the Secretary of State under the regulations must be paid into the Consolidated Fund.
- (10) The first regulations under this section must specify an exemption period during which the requirement to order an equal pay audit does not apply in the case of a business that—
- (a) had fewer than 10 employees immediately before a specified time, or
  - (b) was begun as a new business in a specified period.
- (11) For the purposes of subsection (10)—
- (a) “specified” means specified in the regulations, and
  - (b) the number of employees a business had or the time when a business was begun as a new business is to be determined in accordance with the regulations.
- (12) Before making regulations under this section, a Minister of the Crown must consult any other Minister of the Crown with responsibility for employment tribunals.”
- (3) In section 207(6) (exercise of power to make subordinate legislation: power to amend enactments) after “37,” and after “in the case of section” insert “139A,”.
- (4) In section 208(5) (subordinate legislation by Ministers of the Crown etc: affirmative procedure) after paragraph (e) insert—
- “(ea) regulations under section 139A (equal pay audits);”.