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STATUTORY INSTRUMENTS

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**1993 No. 2798**

**SEX DISCRIMINATION**

**The Sex Discrimination and Equal Pay (Remedies) Regulations 1993**

<i>Made</i>	- - - -	<i>11th November 1993</i>
<i>Laid before Parliament</i>		<i>16th November 1993</i> <i>22nd November</i>
<i>Coming into force</i>	- -	<i>1993</i>

The Secretary of State, being a Minister designated for the purposes of section 2(2) of the European Communities Act 1972<sup>(1)</sup> in relation to measures relating to equal pay for men and women and to equal treatment for men and women in matters of employment, self-employment and vocational training<sup>(2)</sup>, in exercise of the powers conferred by that section, hereby makes the following Regulations:

**Citation, commencement, interpretation and consequential provisions**

1.—(1) These Regulations may be cited as the Sex Discrimination and Equal Pay (Remedies) Regulations 1993 and shall come into force on 22nd November 1993.

(2) In these Regulations—

“an award under the sex discrimination legislation” means:

- (a) an award under the Equal Pay Act 1970<sup>(3)</sup> of arrears of remuneration or damages, or
- (b) an order under section 65(1)(b) of the Sex Discrimination Act 1975<sup>(4)</sup> for payment of compensation;

but does not include an award of costs or expenses under rule 11 in the Schedule to the Industrial Tribunals (Rules of Procedure) Regulations 1985<sup>(5)</sup> or rule 11 in the Schedule to the Industrial Tribunals (Rules of Procedure) (Scotland) Regulations 1985 <sup>(6)</sup>, even if made in the same proceedings as an award under the sex discrimination legislation;

“the 1975 Act” means the Sex Discrimination Act 1975.

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(1) 1972 c. 68.  
(2) The European Communities (Designation) (No.3) Order 1993 (S.I.1993/2661).  
(3) 1970 c. 41.  
(4) 1975 c. 65.  
(5) S.I. 1985/16.  
(6) S.I. 1985/17.

(3) The amendments and repeals in the Schedule to these Regulations, which are consequential on regulation 2, shall have effect.

### **Abolition of limit on compensation in the 1975 Act**

2. Section 65(2) of the 1975 Act is repealed.

### **Interest in awards under the sex discrimination legislation**

3.—(1) Where, at any time after the commencement of these Regulations, an industrial tribunal makes an award under the sex discrimination legislation—

- (a) it may, subject to the following provisions of these Regulations, include interest on the sums awarded; and
- (b) it shall consider whether to do so, without the need for any application by a party in the proceedings.

(2) Nothing in paragraph (1) shall prevent the tribunal from making an award or decision, with regard to interest, in terms which have been agreed between the parties.

### **Rate of interest**

4.—(1) Interest shall be calculated as simple interest which accrues from day to day.

(2) Subject to paragraph (3), the rate of interest to be applied shall be, in England and Wales, the rate from time to time prescribed for the Special Investment Account under rule 27(1) of the Court Funds Rules 1987 (7) and, in Scotland, the rate fixed, for the time being, by the Act of Sederunt (Interest in Sheriff Court Decrees or Extracts) 1975 (8).

(3) Where the rate of interest in paragraph (2) has varied during a period for which interest is to be calculated, the tribunal may, if it so desires in the interests of simplicity, apply such median or average of those rates as seems to it appropriate.

### **Calculation of interest**

5. In this regulation and regulations 6 and 7

- “day of calculation” means the day on which the amount of interest is calculated by the tribunal;
- “the mid-point date” means the date half-way through the period beginning on the date of the contravention or act of discrimination complained of and ending on the day of calculation.

6. No interest shall be included in respect of any sum awarded for a loss or matter which will occur after the day of calculation, or in respect of any time before the contravention or act of discrimination complained of.

7.—(1) Subject to the following paragraphs of this regulation—

- (a) in the case of any sum for injury to feelings, interest shall be for the period beginning on the date of the contravention or act of discrimination complained of and ending on the day of calculation;
- (b) in the case of all other sums of damages or compensation in the award (other than any sum referred to in regulation 6), and all arrears of remuneration, interest shall be for the period beginning on the mid-point date and ending on the day of calculation.

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(7) S.I. 1987/821.

(8) S.I. 1975/948.

(2) Where any payment has been made before the day of calculation to the complainant by or on behalf of the respondent in respect of the subject matter of the award, interest in respect of a corresponding part of the award shall be calculated as if the references in paragraph (1), and in the definition of “mid-point date” in regulation 5, to the day of calculation were to the date on which the payment was made.

(3) Where the tribunal is of the opinion that—

- (a) there are exceptional circumstances, whether relating to the case as a whole or to a particular sum in an award, and
- (b) those circumstances have the effect that serious injustice would be caused if interest were to be awarded in respect of the period or periods in paragraphs (1) or (2),

it may—

- (i) calculate interest, or as the case may be interest on the particular sum, for such different period, or
- (ii) calculate interest for such different periods in respect of various sums in the award,

as it considers appropriate in the circumstances, having regard to the provisions of these Regulations.

### **Decision in writing**

**8.**—(1) The tribunal’s written statement of reasons for its decision shall contain a statement of the total amount of any interest awarded under regulation 3 and, unless this amount has been agreed between the parties, either a table showing how it has been calculated or a description of the manner in which it has been calculated.

(2) The tribunal’s written statement of reasons shall include reasons for any decision not to award interest under regulation 3.

### **Appeal**

**9.** For the purposes of section 136 of the Employment Protection (Consolidation) Act 1978<sup>(9)</sup> (appeal to the Employment Appeal Tribunal), any question of law relating to an award or decision of an industrial tribunal under regulation 3 arises in proceedings under the Equal Pay Act 1970 or the 1975 Act, as the case may be.

### **Interest for period after award**

**10.** In relation to an award under the sex discrimination legislation (including interest under regulation 3)—

- (a) the Industrial Tribunals (Interest) Order 1990<sup>(10)</sup> shall apply as if, in article 3, references to the calculation day were references to the day immediately following the relevant decision day and accordingly, subject to paragraph (b), interest shall accrue under the Order from that day onwards (including that day); but
- (b) notwithstanding paragraph (a), no interest shall be payable by virtue of that Order if payment of the full amount of the award (including interest under regulation 3) is made within 14 days after the relevant decision day.

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<sup>(9)</sup> 1978 c. 44.

<sup>(10)</sup> S.I. 1990/479.

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Signed by order of the Secretary of State.

Department of Employment  
11th November 1993

*Ann Widdecombe*  
Parliamentary Under Secretary of State,

## SCHEDULE

### CONSEQUENTIAL PROVISIONS

1. The following are repealed:
  - paragraph 18(2) of Part IV of Schedule 16 to the Employment Protection Act 1975<sup>(11)</sup>.
  - in section 65(3)(a) of the 1975 Act, the words “(subject to the limit in subsection (2))”.
  - section 56(3) of, and paragraph 4 of Schedule 4 to, the Race Relations Act 1976<sup>(12)</sup>.
  - paragraph 20(1) of Schedule 16 to the Employment Protection (Consolidation) Act 1978.
2. In section 76(2) of the Employment Protection (Consolidation) Act 1978—
  - (a) the words “section 65 of the Sex Discrimination Act 1975 or” and paragraph (a) are repealed, and
  - (b) for the words “in a case to which subsection (1) applies,” there are substituted “in a case where compensation falls to be awarded in respect of any act both under the provisions of this Act relating to unfair dismissal and under the Race Relations Act 1976.”.

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### EXPLANATORY NOTE

*(This note is not part of the Regulation)*

These Regulations, which are made under section 2(2) of the European Communities Act 1972, are made for the purpose of ensuring that the remedies available under legislation in Great Britain relating to sex discrimination and to equal pay for men and women comply with the requirements of Council Directives [1975/117/EEC](#)<sup>(13)</sup> and [1976/207/EEC](#)<sup>(14)</sup> (following the judgment of the European Court of Justice in Case No C271/91-Marshall v Southampton and South-West Hampshire Area Health Authority (No.2)). They come into force on 22nd November 1993.

Regulation 2 repeals section 65(2) of the Sex Discrimination Act 1975, which provided that an award of compensation by an industrial tribunal under Part II of that Act could not exceed a specified sum. The Schedule to the Regulations contains consequential amendments relating to cases where particular conduct is alleged to constitute both sex discrimination and racial discrimination, or both sex discrimination and unfair dismissal, or all three.

The remaining provisions of the Regulations relate to cases where an industrial tribunal makes “an award under the sex discrimination legislation”, defined in regulation 1(2) as an award under the Equal Pay Act 1970 of arrears of remuneration or damages or an order under section 65(1)(b) of the Sex Discrimination Act 1975 for payment of compensation.

Regulation 3 enables an industrial tribunal which makes such an award to include a sum by way of interest on the amount awarded. Regulation 4 provides that such interest is to be calculated as simple interest which accrues from day to day, and specifies the rates of interest to be used for England and Wales and for Scotland. Regulations 5 to 7 contain rules for the calculation of interest. There is also provision for the industrial tribunal to depart from the calculation rules where it is of the opinion that

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<sup>(11)</sup> 1975 c. 71.

<sup>(12)</sup> 1976 c. 74.

<sup>(13)</sup> OJNo. L45, 19.2.75, p. 19.

<sup>(14)</sup> OJ No. L39, 14.2.76, p. 40.

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there are exceptional circumstances which have the effect that serious injustice would be done if it were to apply those rules. Regulation 8 provides that written details must be given of the calculation of interest and that reasons must be given if no interest is awarded. Regulation 9 ensures that an appeal will lie to the Employment Appeal Tribunal on any question of law relating to a decision to award or not to award interest.

Regulation 10 alters the effect of the Industrial Tribunals (Interest) Order 1990 as it applies to an award under the sex discrimination legislation (including any interest awarded under regulation 3). In relation to such an award, interest will begin to accrue from the day after the day on which the tribunal's decision is sent to the parties (and not from a date 42 days later), but no interest will be payable under the Order if the full amount of the award is paid to the complainant within 14 days after the decision is sent out.