STATUTORY RULES OF NORTHERN IRELAND

# 2004 No. 171

# SEX DISCRIMINATION

## Equal Pay Act 1970 (Amendment) Regulations (Northern Ireland) 2004

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| *Made - - - - -* | *7th April 2004* |
| *Coming into operation* | *28th April 2004* |

The Office of the First Minister and deputy First Minister, being a Department designated for the purposes of section 2(2) of the European Communities Act 1972(**a**) in relation to measures relating to discrimination(**b**), in the exercise of the powers conferred by that section, and of every other power enabling it in that behalf, hereby makes the following Regulations:

### Citation, commencement and interpretation

**1.**—(1) These Regulations may be cited as the Equal Pay Act 1970 (Amendment) Regulations (Northern Ireland) 2004.

(2) These Regulations shall come into operation on 28th April 2004 ("the commencement date").

(3) In these Regulations "the Act" means the Equal Pay Act (Northern Ireland) 1970(**c**).

(4) The Interpretation Act (Northern Ireland) 1954(**d**) shall apply to these Regulations as it applies to an Act of the Assembly.

### Application

**2.**—(1) Subject to paragraph (2), regulations 3(2) and 4 shall have effect for the purpose of determining whether an industrial tribunal may make a determination in proceedings in respect of a woman's employment where those proceedings were instituted on or after the commencement date.

(2) Those provisions shall not have such effect if the last day on which the woman was employed in the employment falls more than six months before the commencement date.

(3) If those provisions do have effect so as to enable an industrial tribunal to make a determination in proceedings in a stable employment case (within the meaning given by section 2ZA(2) of the Act as inserted by regulation 4), the determination shall not relate to any non-qualifying contract of employment forming part of the stable employment relationship.

(4) For the purposes of paragraph (3), a contract of employment is a non-qualifying contract of employment if it ended more than six months before the commencement date.

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(**a**) 1972 c. 68
(**b**) *See* the European Communities (Designation) (No. 3) Order 2002 (S.I. 2002/1819)
(**c**) 1970 c. 32 (N.I.): section 2 was amended by the Sex Discrimination (Northern Ireland) Order 1976 (S.I. 1976/1042 (N.I. 15)) Article 11 and Schedule 1, Part 1; section 6A was inserted by the Armed Forces Act 1996 (c. 46) section 25
(**d**) 1954 c. 33 (N.I.)

(5) The following provisions, that is to say –

(a) regulation 3(3),

(b) regulation 5,

(c) regulation 6(4), and

(d) regulation 8,

shall have effect in relation to proceedings which were instituted in respect of a woman's employment on or after the commencement date.

(6) Subject to paragraph (7), regulations 6(3) and 7 shall have effect for the purpose of determining whether an industrial tribunal may make a determination on a complaint in respect of a woman's service where that complaint was presented to it on or after the commencement date.

(7) Those provisions do not have such effect if the last day of the woman's period of service falls more than nine months before the commencement date.

**Amendments to the time limits under section 2 of the Act**

**3.**—(1) Section 2 of the Act (disputes as to, and enforcement of, requirement of equal treatment) is amended in accordance with paragraphs (2) and (3).

(2) For subsection (4) there shall be substituted –

"(4) A determination shall not be made by an industrial tribunal in the following proceedings, that is to say –

(a) on a complaint under subsection (1),

(b) on an application under subsection (1A), or

(c) on a reference under subsection (2),

unless the proceedings are instituted on or before the qualifying date (determined in accordance with section 2ZA).".

(3) For subsection (5) there shall be substituted –

"(5) A woman shall not be entitled, in proceedings (including proceedings before an industrial tribunal) brought in respect of a contravention of a term modified or included by virtue of an equality clause, to be awarded any payment by way of arrears of remuneration or damages in respect of a time earlier than the arrears date (determined in accordance with section 2ZB).".

**4.** After section 2 of the Act there shall be inserted –

" **"Qualifying date" under section 2(4)**

**2ZA.**—(1) This section applies for the purpose of determining the qualifying date, in relation to proceedings in respect of a woman's employment, for the purposes of section 2(4).

(2) In this section –

"concealment case" means a case where –

(a) the employer deliberately concealed from the woman any fact (referred to in this section as a "qualifying fact") –

(i) which is relevant to the contravention to which the proceedings relate, and

(ii) without knowledge of which the woman could not reasonably have been expected to institute the proceedings, and

(b) the woman did not discover the qualifying fact (or could not with reasonable diligence have discovered it) until after –

(i) the last day on which she was employed in the employment, or

(ii) the day on which the stable employment relationship between her and the employer ended,

(as the case may be);

"disability case" means a case where the woman was under a disability at any time during the six months after (as the case may be) –

(a) the last day on which she was employed in the employment to which the proceedings relate,

(b) where the proceedings relate to a stable employment relationship between her and the employer, the day on which that relationship ended; or

(c) where a qualifying fact is relevant to the proceedings and the fact was deliberately concealed from her by her employer, the day on which she discovered (or could with reasonable diligence have discovered) the fact (if that day falls after the day referred to in paragraph (a) or (b), as the case may be);

"stable employment case" means a case where the proceedings relate to a period during which a stable employment relationship subsists between the woman and the employer, notwithstanding that the period includes any time after the ending of a contract of employment when no further contract of employment is in force;

"standard case" means a case which is not –

(a) a stable employment case,

(b) a concealment case,

(c) a disability case, or

(d) both a concealment and a disability case.

(3) In a standard case, the qualifying date is the date falling six months after the last day on which the woman was employed in the employment.

(4) In a case which is a stable employment case (but not also a concealment or a disability case or both), the qualifying date is the date falling six months after the day on which the stable employment relationship ended.

(5) In a case which is a concealment case (but not also a disability case), the qualifying date is the date falling six months after the day on which the woman discovered the qualifying fact in question (or could with reasonable diligence have discovered it).

(6) In a case which is a disability case (but not also a concealment case), the qualifying date is the date falling six months after the day on which the woman ceased to be under a disability.

(7) In a case which is both a concealment and a disability case, the qualifying date is the later of the dates referred to in subsections (5) and (6).".

**5.** After section 2ZA of the Act (inserted by regulation 4) there shall be inserted –

" **"Arrears date" in proceedings under section 2(5)**

**2ZB.**—(1) This section applies for the purpose of determining the arrears date, in relation to an award of any payment by way of arrears of remuneration or damages in proceedings in respect of a woman's employment, for the purposes of section 2(5).

(2) In this section –

"concealment case" means a case where –

(a) the employer deliberately concealed from the woman any fact –

(i) which is relevant to the contravention to which the proceedings relate, and

(ii) without knowledge of which the woman could not reasonably have been expected to institute the proceedings, and

(b) the woman instituted the proceedings within six years of the day on which she discovered the fact (or could with reasonable diligence have discovered it);

"disability case" means a case where –

(a) the woman was under a disability at the time of the contravention to which the proceedings relate, and

(b) the woman instituted the proceedings within six years of the day on which she ceased to be under a disability;

"standard case" means a case which is not –

(a) a concealment case,

(b) a disability case, or

(c) both.

(3) In a standard case, the arrears date is the date falling six years before the day on which the proceedings were instituted.

(4) In a case which is a concealment or a disability case or both, the arrears date is the date of the contravention.".

**Amendments to the time limits under section 6A of the Act etc.**

**6.**—(1) Section 6A of the Act (service pay and conditions) shall be amended as provided in paragraphs (2) to (6).

(2) In subsection (2)(b), after "application)" there shall be inserted "and subsection (14)".

(3) For subsection (8) there shall be substituted –

"(8) A determination may not be made by an industrial tribunal in proceedings on a complaint in respect of the claim unless the complaint is presented on or before the qualifying date (determined in accordance with section 6AA).".

(4) In subsection (9) for the words from "two years before" to the end there shall be substituted –

"the arrears date (determined in accordance with section 6AB).".

(5) In subsection (12) after the words "this section" there shall be inserted "and sections 6AA and 6AB".

(6) After subsection (12) there shall be inserted –

"(13) Provisions of this section and sections 6AA and 6AB, and provisions applied by this section, framed with reference to women and their treatment relative to men are to be read as applying equally in a converse case to men and their treatment relative to women.".

**7.** After section 6A of the Act there shall be inserted –

" **"Qualifying date" under section 6A(8)**

**6AA.**—(1) This section applies for the purpose of determining the qualifying date, in relation to proceedings on a complaint in respect of a woman's service in any of the armed forces, for the purposes of section 6A(8).

(2) In this section –

"concealment case" means a case where –

(a) the employer deliberately concealed from the woman any fact (referred to in this section as a "qualifying fact") –

(i) which is relevant to the contravention to which the complaint relates, and

(ii) without knowledge of which the woman could not reasonably have been expected to present the complaint, and

(b) the woman did not discover the qualifying fact (or could not with reasonable diligence have discovered it) until after the last day of the period of service during which the claim arose;

"disability case" means a case where the woman was under a disability at any time during the nine months after (as the case may be) –

(a) the last day of the period of service during which the claim arose, or

(b) the day on which she discovered (or could with reasonable diligence have discovered) the qualifying fact deliberately concealed from her by the employer (if that day falls after the day referred to in paragraph (a)); and

"standard case" means a case which is not –

(a) a concealment case,

(b) a disability case, or

(c) both.

(3) In a standard case, the qualifying date is the date falling nine months after the last day of the period of service during which the claim arose.

(4) In a case which is a concealment case (but not also a disability case), the qualifying date is the date falling nine months after the day on which the woman discovered the qualifying fact in question (or could with reasonable diligence have discovered it).

(5) In a case which is a disability case (but not also a concealment case), the qualifying date is the date falling nine months after the day on which the woman ceased to be under a disability.

(6) In a case which is both a concealment and a disability case, the qualifying date is the later of the dates referred to in subsections (4) and (5).".

**8.** After section 6AA of the Act (inserted by regulation 7) there shall be inserted –

" **"Arrears date" in proceedings under section 6A(9)**

**6AB.**—(1) This section applies for the purpose of determining the arrears date, in relation to an award of any payment by way of arrears of pay or damages in proceedings on a complaint in respect of a woman's service in any of the armed forces, for the purposes of section 6A(9).

(2) In this section –

"concealment case" means a case where –

(a) the employer deliberately concealed from the woman any fact –

(i) which is relevant to the contravention to which the proceedings relate, and

(ii) without knowledge of which the woman could not reasonably have been expected to institute the proceedings, and

(b) the woman made a complaint under the service redress procedures within six years of the day on which she discovered the fact (or could with reasonable diligence have discovered it);

"disability case" means a case where –

(a) the woman was under a disability at the time of the contravention to which the proceedings relate, and

(b) the woman made a complaint under the service redress procedures within six years of the day on which she ceased to be under a disability;

"standard case" means a case which is not –

(a) a concealment case,

(b) a disability case, or

(c) both.

(3) In a standard case, the arrears date is the date falling six years before the day on which the complaint under the service redress procedures was made.

(4) In a case which is a concealment or a disability case or both, the arrears date is the date of the contravention.

(5) Subsection (6) applies in a case where, in accordance with regulations made under section 6A(6), proceedings are instituted without a complaint having been made under the service redress procedures.

(6) In that case, references in this section to the making of a complaint under the service redress procedures shall be read as references to the institution of proceedings.".

**Meaning of "under a disability"**

**9.** In section 10 of the Act (short title and interpretation) after subsection (2) there shall be inserted –

"(2A) For the purposes of this Act a woman is under a disability if she is an infant or is of unsound mind (within the meaning of Article 47(2) of the Limitation (Northern Ireland) Order 1989(**a**)).".

**Consequential amendment**

**10.** In section 1(14) of the Act (application of provisions to men and women) for "and 2A" there shall be substituted "to 2A".

Sealed with the Official Seal of the Office of the First Minister and deputy First Minister on 7th April 2004.

(L.S.) *P. McAuley*

A senior officer of the Office of the First Minister and deputy First Minister

(**a**) S.I. 1989/1339 (N.I. 11)

## EXPLANATORY NOTE

*(This note is not part of the Regulations.)*

These Regulations amend the time limits within which a person must institute proceedings before an industrial tribunal in respect of a breach of the Equal Pay Act (Northern Ireland) 1970 ("the Act"). The Regulations also amend the time period in respect of which an industrial tribunal or court is able to award any payment by way of arrears of remuneration or damages in such proceedings.

These changes are necessary to reflect requirements of European Community law, specifically Article 141 of the Treaty of Rome (equal pay), as applied in a number of recent cases before the European Court of Justice and the domestic courts(**a**).

Regulation 3 amends the current rules which appear in sections 2(4) and 2(5) of the Act. Under the new rules, proceedings in the industrial tribunal must be instituted on or before the "qualifying date". If proceedings are successful, the industrial tribunal or court may award a payment in respect of any time when unequal pay was paid back to the "arrears date".

The rules for determining the "qualifying date", "arrears date" and "period" are contained in two new sections, which are inserted into the Act by regulations 4 and 5. The "qualifying date" in a standard case is the date falling six months after the last day of the employment in question. There are different rules where the employee and the employer had a stable employment relationship (even though one or more individual contracts of employment had ended), where the employer deliberately concealed relevant facts from the employee, or where the employee was under a disability (as defined in new section 10(2A) of the Act).

The "arrears date" in a standard case is the date falling six years before the day on which the proceedings are instituted. There is a different arrears date where the employer deliberately concealed relevant facts from the employee, or where the employee was under a disability.

Section 6A of the Act contains separate rules for claims by service personnel in the armed forces. Regulations 6 to 8 make changes to the time limits and arrears periods which apply for such claims. The differences between the rules for service personnel and the rules described above are that the standard time limit for instituting proceedings is nine months rather than six, that there is no provision relating to stable employment relationships, and that the "arrears date" and "period" are generally calculated by reference to the day on which a complaint was made under the service redress procedures which members of the armed forces are usually obliged to follow before bringing proceedings.

The Regulations come into operation on 28th April 2004. Regulation 2 makes provision for how the new rules will apply to proceedings or facts which already exist at that time.

A copy of the Regulatory Impact Assessment relating to these Regulations has been placed in the library of the Northern Ireland Assembly, and can be obtained from Anti Discrimination Division, Office of the First Minister and deputy First Minister, Room E3.18, Castle Buildings, Stormont, Belfast BT4 3SR.

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(**a**) *See* the European Court of Justice's decisions in Levez v T.H. Jennings (Harlow Pools) Ltd (Case C-326/96, judgment of 1st December 1998) and Preston and others v Wolverhampton Healthcare NHS Trust Ltd and others (Case C-78/98, judgment of 16th May 2000); the decision of the Employment Appeal Tribunal in Levez v T.H. Jennings (Harlow Pools) Ltd (decision of 1st October 1999) and the ruling of the House of Lords in Preston and others v Wolverhampton Healthcare NHS Trust Ltd and others (ruling of 8th February 2001)

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Stationery Office Limited
under the authority and
superintendence of Carol
Tullo, Controller of
Her Majesty's Stationery
Office being the Government
Printer for Northern Ireland and
the Officer appointed to print the
Acts of the Northern Ireland Assembly

Dd. N1395. C2. 4/04. Gp. 130. 14567.

£3·00

ISBN 0-337-95483-6

9 780337 954832