STATUTORY RULES OF NORTHERN IRELAND

2004 No. 171

SEX DISCRIMINATION

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

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(**1**) in relation to measures relating to discrimination(**2**), 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(**3**).

(4) The Interpretation Act (Northern Ireland) 1954(**4**) 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

(**1**) 1972 c. 68
(**2**) *See* the European Communities (Designation) (No. 3) Order 2002 (S.I.2002/1819)
(**3**) 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
(**4**) 1954 c. 33 (N.I.)

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.

(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 –