

TRANSPOSITION NOTE – RECAST DIRECTIVE

| Directive | | |
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| <p>Directive 2006/54/EC of the European Parliament and of the Council on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast).</p> | | |
| <p>Directive 2006/54/EC prohibits discrimination on grounds of sex in relation to access to employment, including promotion, and vocational training, working conditions, including pay, and occupational social security schemes. It consolidates and updates the Equal Pay Directive (75/117/EEC), the Equal Treatment Directive (76/207/EEC), the Directive on Equal Treatment in Occupational Social Security Schemes (86/378/EEC) and the Burden of Proof Directive (97/80/EC)), in each case as subsequently amended. Those Directives, which are repealed by the Recast Directive with effect from 15 August 2009, have been implemented in Great Britain by provisions of the Equal Pay Act 1970, the Sex Discrimination Act 1975, the Social Security Act 1989 and the Pensions Act 1995.</p> <p>This table has been prepared by the Government Equalities Office. It sets out the objective of each Article of the Recast Directive, and how the corresponding provision of the earlier Directives has been implemented in Great Britain. The Lord Privy Seal is responsible for each aspect of implementation.</p> | | |
| Articles | Objective | Implementation |
| <p>Article 1 <i>[Art.1 Dir.76/207; Art.1 Dir.86/378; Art.1 Dir.97/80]</i></p> | <p>Sets out the purpose of the Directive</p> | <p>No implementation required.</p> |

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| Article 2 (1) | Requires the following definitions to apply for the purposes of the Directive: | |
| [Art.2(2) Dir.76/207] | <p><i>a) ‘direct discrimination’</i></p> <p>where one person is treated less favourably on grounds of sex than another is, has been or would be treated in a comparable situation;</p> | <p><i>Direct discrimination</i></p> <p>Section 1(2)(a) of the Sex Discrimination Act 1975 (SDA): a person discriminates against a woman if on the ground of her sex he treats her less favourably than he treats or would treat a man</p> <p>Section 2(1) of the SDA: section 1 is to be read as applying equally to the treatment of men.</p> <p>Section 2A(1) of the SDA: a person (A) discriminates against another person (B) if he treats B less favourably than he treats or would treat other persons, and does so on the ground that B intends to undergo, is undergoing or has undergone gender reassignment.</p> <p>Section 2A(5) of the SDA: for the purposes of section 2A(1), a provision mentioned in that subsection framed with reference to discrimination against women shall be treated as applying equally to the treatment of men.</p> <p>Section 5(3) of the SDA: a comparison of the cases of persons of different sex under section 1(2), and a comparison of the cases of persons required for the purposes of section 2A, must be such that the relevant circumstances in the one case are the same, or not materially different, in the other.</p> |
| [Art.2(2) Dir.76/207; Art.2(2)] | <p><i>b) ‘indirect discrimination’</i></p> | <p><i>Indirect discrimination</i></p> <p>Section 1(2)(b) of the SDA: a person discriminates against a woman</p> |

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| <p><i>Dir.97/80]</i></p> | <p>where an apparently neutral provision, criterion or practice would put persons of one sex at a particular disadvantage compared with persons of the other sex, unless that provision, criterion or practice is objectively justified by a legitimate aim, and the means of achieving that aim are appropriate and necessary;</p> | <p>if he applies to her a provision, criterion or practice which he applies or would apply equally to a man, but-</p> <ul style="list-style-type: none"> (i) which puts or would put women at a particular disadvantage when compared with men, (ii) which puts her at that disadvantage, and (iii) which he cannot show to be a proportionate means of achieving a legitimate aim. <p>Sections 2(1) and 5(3) of the SDA apply as above.</p> |
| <p><i>[Art.2(2) Dir.76/207]</i></p> | <p><i>c) 'harassment'</i></p> <p>where unwanted conduct related to the sex of a person occurs with the purpose or effect of violating the dignity of a person, and of creating an intimidating, hostile, degrading, humiliating or offensive environment;</p> | <p><i>Harassment</i></p> <p>Section 4A(1)(a) and (c) of the SDA: a person subjects a woman to harassment if -</p> <ul style="list-style-type: none"> (a) he engages in unwanted conduct that is related to her sex or that of another person and has the purpose or effect- <ul style="list-style-type: none"> (i) of violating her dignity, or (ii) of creating an intimidating, hostile, degrading, humiliating or offensive environment for her ... or (c) on the ground of her rejection of or submission to unwanted conduct of that kind, he treats her less favourably than he would treat her had she not rejected, or submitted to, the conduct. <p>Section 4A(2) of the SDA: conduct shall be regarded as having the effect mentioned in sub-paragraph (i) or (ii) of subsection (1)(a) ...</p> |

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| | | <p>only if, having regard to all the circumstances, including in particular the perception of the woman, it should reasonably be considered as having that effect.</p> <p>Section 4A(3) of the SDA: a person (A) subjects another person (B) to harassment if A, on the ground that B intends to undergo, is undergoing or has undergone gender reassignment, engages in unwanted conduct that has the purpose or effect - (i) of violating B's dignity, or (ii) of creating an intimidating, hostile, degrading, humiliating or offensive environment for B, or (b) A, on the ground of B's rejection of or submission to unwanted conduct of that kind, treats B less favourably than A would treat B had B not rejected, or submitted to, the conduct.</p> <p>Section 4A(6) of the SDA: for the purposes of subsections (1) and (3), an employment provision of the Act framed with reference to harassment of women shall be treated as applying equally to the harassment of men.</p> |
| <p>[Art.2(2) Dir.76/207]</p> | <p><i>d) 'sexual harassment'</i></p> <p>where any form of unwanted verbal, non-verbal or physical conduct of a sexual nature occurs, with the purpose or effect of violating the dignity of a person, in particular when creating an intimidating, hostile,</p> | <p><i>Sexual harassment</i></p> <p>Section 4A(1)(b) and (c) of the SDA: a person subjects a woman to harassment if he engages in any form of unwanted verbal, non-verbal or physical conduct of a sexual nature that has the purpose or effect - (i) of violating her dignity, or (ii) of creating an intimidating, hostile, degrading, humiliating or offensive environment for her, or (c) on the ground of her rejection of or submission to unwanted conduct of that kind, he treats her less favourably than he would treat her had she not rejected, or submitted to, the conduct.</p> |

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| | degrading, humiliating or offensive environment; | <p>Section 4A(2) of the SDA: conduct shall be regarded as having the effect mentioned in sub-paragraph (i) or (ii) of subsection (1)(a) ... only if, having regard to all the circumstances, including in particular the perception of the woman, it should reasonably be considered as having that effect.</p> |
| | <p>e) 'pay'</p> <p>the ordinary basic or minimum wage or salary and any other consideration, whether in cash or in kind, which the worker receives directly or indirectly, in respect of his/her employment from his/her employer;</p> | <p><i>GB legislation distinguishes between <u>contractual pay and benefits</u> and <u>non-contractual pay and benefits</u></i></p> <p>The Equal Pay Act 1970 (EqPA) covers contractual terms of employment such as contractual remuneration and benefits.</p> <p>The SDA covers the terms on which employment is offered, non-contractual remuneration and contractual non-monetary benefits.</p> <p>Section 6(6) of the SDA excludes from the prohibition of sex discrimination in the employment field benefits consisting of the payment of money when the provision of those benefits is regulated by the contract of employment (because the EqPA would apply).</p> <p>The Pensions Act 1995 covers the terms of access to, and treatment of members of, occupational pension schemes.</p> |

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| <p>[Art.2(1) Dir.86/378]</p> | <p>(f) "occupational social security schemes": schemes not governed by Council Directive 79/7/EEC of 19 December 1978 on the progressive implementation of the principle of equal treatment for men and women in matters of social security whose purpose is to provide workers, whether employees or self-employed, in an undertaking or group of undertakings, area of economic activity, occupational sector or group of sectors with benefits intended to supplement the benefits provided by statutory social security schemes or</p> | <p>Section 1 of the Pension Schemes Act 1993 defines an occupational pension scheme, in essence, as a scheme established by an employer (subsection (2)) for the purpose of providing benefits to persons in employments of a description (subsection (1)). Subsection (3) clarifies the position as regards workers who are office holders. It provides that if a person is in an employment of a description by reason of holding office and is entitled to remuneration for holding that office, the person responsible for paying the remuneration shall be taken to employ the office holder.</p> <p>Section 1 of the 1993 Act also provides that pension schemes of a prescribed description are included in the definition of occupational pension scheme. The Pension Schemes (Categories) Regulations 2005 (S.I. 2005/2401) prescribes schemes which are contributed to by participating employers. Participating employers are employers who enter into arrangements with a view to the provision of benefits under the scheme to people with service in the employment of that employer.</p> <p>The above provisions cover self-employed persons, for example, where a self –employed person sets up a company of which they are the only employee. The employing company may then become a participating employer of a pension scheme arrangement. However, in the UK the self-employed are more likely to obtain a personal</p> |

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| | to replace them, whether membership of such schemes is compulsory or optional. | pension. Personal pensions are excepted from the Directive (see Article 8). |
| Article 2(2) [Art.2(3) and (4) and Art.2(7) Dir.76/207] | 2. For the purposes of the Directive , discrimination includes: | |
| | a) harassment and sexual harassment as well as any less favourable treatment based on a person's rejection of or submission to such conduct; | Harassment and sexual harassment as well as such less favourable treatment are defined in section 4A of the SDA (see implementation of Article 2(1)(c) and 2(1)(d) above). |
| | b) instruction to discriminate against persons on grounds of sex; | Under the SDA instructions to discriminate on the grounds of sex are covered as follows: 1) Where an individual refuses to carry out instructions to discriminate and subsequently suffers a detriment he/she has a remedy under the victimisation provisions: Section 4 of the SDA (discrimination by way of victimisation) provides that: A person ("the discriminator") discriminates against another person ("the person victimised") if he treats the person victimised less favourably than in those circumstances he treats or would treat other persons, and does so by reason that the person victimised has- (a) - (b) ...or |

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| | | <p>(c) otherwise done anything under or by reference to this Act or the Equal Pay Act 1970 or Part I of Schedule 5 to the Social Security Act 1989 or sections 62 to 65 of the Pensions Act 1995 in relation to the discriminator or any other person, or ...</p> <p>2) Where an individual carries out instructions to discriminate then the provisions on vicarious liability in Section 41 of the SDA mean that the victim is able to claim a remedy against the employer or principal who gave the instructions as well as the person who actually discriminated.</p> |
| | <p>c) any less favourable treatment of a woman related to pregnancy or maternity leave within the meaning of Directive 92/85/EEC.</p> | <p>Section 3A of the SDA provides that: (1) In any circumstances relevant for the purposes of a provision to which this subsection applies, a person discriminates against a woman if- (a) at a time in a protected period, and on the ground of the woman's pregnancy, the person treats her less favourably; or (b) on the ground that the woman is exercising or seeking to exercise, or has exercised or sought to exercise, a statutory right to maternity leave, the person treats her less favourably. (2) In any circumstances relevant for the purposes of a provision to which this subsection applies, a person discriminates against a woman if, on the ground that section 72(1) of the Employment Rights Act 1996 (compulsory maternity leave) has to be complied with in respect of the woman, he treats her less favourably.</p> |
| <p>Article 3 [Art.2(8) Dir.76/207]</p> | <p>Member States may maintain or adopt measures within the meaning of Article 141(4)</p> | <p>Sections 47 and 48 of the SDA allow some limited forms of positive action with regard to training and encouragement to take up opportunities for work.</p> |

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| | of the Treaty with a view to ensuring full equality in practice between men and women in working life. | |
| Article 4 [Art.1 Dir.75/117] | <p>Prohibition of discrimination</p> <p>For the same work or for work to which equal value is attributed, direct and indirect discrimination on grounds of sex with regard to all aspects and conditions of remuneration shall be eliminated.</p> <p>In particular, where a job classification system is used for determining pay, it shall be based on the same criteria for both men and women and so drawn up as to exclude any discrimination on grounds of sex.</p> | <i>Please see below</i> |
| | <i>For the same work or for</i> | <i>Contractual terms including pay:</i> |

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| | <p><i>classification system is used for determining pay, it shall be based on the same criteria for both men and women and so drawn up as to exclude any discrimination on grounds of sex.</i></p> | <p>regarded as employed on work rated as equivalent with that of any men if her job and their jobs have been given equal value in terms of the demand made on a worker under various headings (for instance effort, skill, decision), on a study undertaken with a view to evaluating the jobs to be done by all or any of the employees in an undertaking or group of undertakings (i.e. a job evaluation study (JES)) or would have been given equal value but for the evaluation being made on a system setting different values for men and women on the same demand under any heading.</p> <p>EqPA section 2A(2), (2A) and (3): If a JES has determined that a woman and a man’s job are not of equal value then the tribunal must accept this unless it has reasonable grounds for suspecting that the evaluation in the study was made on system which discriminates on grounds of sex (i.e. if a difference or coincidence in values set up by that system under the same or different headings is not justifiable irrespective of the sex of the person on whom the demands are made) or is otherwise unsuitable to be relied upon.</p> <p><u>Non-contractual pay</u></p> <p>Section 6(2) read in conjunction with section 6(6) of the SDA protect women and men against direct and indirect discrimination in the way employers afford them access to non-contractual benefits consisting of the payment of money.</p> <p>Section 6(2) of the SDA makes it unlawful for a person in the case of a woman employed by him at an establishment in GB to discriminate against her (a) in the way he affords her access to opportunities for promotion, transfer or training or to any other benefits, facilities or services, or by refusing or deliberately omitting to afford her access to</p> |
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| | <p><i>With regard to all aspects and conditions of remuneration</i></p> | <p>them, or (b) by dismissing her, or <u>subjecting her to any other detriment.</u></p> <p>Section 6(6) of the SDA provides that subsection (2) does not apply to benefits consisting of the payment of money when the provision of those benefits is regulated by the woman's contract of employment (since this will fall under the EqPA).</p> |
| | <p><i>Direct discrimination on grounds of sex shall be eliminated</i></p> | <p><u>Contractual terms including pay:</u></p> <p>The EqPA operates by deeming an equality clause into a woman's contract of employment as follows:</p> <p>Section 1(2) of the EqPA provides that an equality clause modifies a term of a woman's contract which is less favourable to a similar term in a man's contract to make it no less favourable. Where a term benefiting a man is included in a man's contract but not in the woman's contract, an equality clause includes that term in the woman's contract</p> |

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| | | <p>Under section 1(3) of the EqPA, the equality clause does not operate in relation to a variation between the woman's contract and the man's contract if the employer can establish that the difference is genuinely due to a material factor which is not the difference of sex.</p> <p>But the equality clause will operate if the reason for the variation in the contract is not a genuine material factor or is tainted by direct discrimination.</p> <p><i>Non-contractual pay:</i></p> <p>Sections 1(2)(a) and (3)(a) of the SDA provide that a person discriminates against a woman if on the ground of her sex he treats her less favourably than he treats or would treat a man in any circumstances relevant to Part II of the SDA (Employment).</p> <p>Discrimination is unlawful in the field of employment by virtue of the provisions in Part II of the SDA (e.g. section 6 in relation to employees and section 9 in relation to contract workers - see also implementation of Article 14 below).</p> |
| | <p><i>Indirect discrimination on grounds of sex shall be eliminated</i></p> | <p><i>Contractual terms including pay:</i></p> <p>The above analysis of the EqPA and direct discrimination also applies to indirect discrimination. An employer who wishes to rely on the defence in section 1(3) of the EqPA needs to show that any disparate impact on persons of one sex which amounts to indirect discrimination is objectively justified.</p> <p><i>Non-contractual pay</i></p> |

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| | | <p>Section 1(2)(b) of the SDA provides that a person discriminates against a woman if he applies to her a provision, criterion or practice which he applies or would apply equally to a man, but which puts or would put women at a particular disadvantage when compared with men, which puts her at that disadvantage, and which he cannot show to be a proportionate means of achieving a legitimate aim.</p> <p>Discrimination is unlawful in the field of employment by virtue of the provisions in Part II of the SDA (e.g. section 6 in relation to employees and section 9 in relation to contract workers - see also interpretation of Article 14 below).</p> |
| <p>Article 5 [Art.5(1) Dir.86/378]</p> | <p>Equal treatment in occupational social security schemes</p> <p>There shall be no direct or indirect discrimination on grounds of sex in occupational social security schemes, in particular as regards:</p> <p>(a) the scope of such schemes and the conditions of access to them</p> <p>(b) the obligation to contribute and the</p> | <p>Pensions Act 1995</p> <p>s.62(1) deems the insertion of an equal treatment rule into an occupational pension scheme.</p> <p>s.62(2): An equal treatment rule is a rule which relates to the terms on which persons become members of the scheme and the terms on which members of the scheme are treated.</p> <p>s.62(5): The ‘terms’ include terms, or the effects of the exercise of such terms, which confer a discretion on the trustees or managers of an occupational pension scheme which may be exercised</p> <p>(a) so as to effect the way in which persons become members, or the way in which members of the scheme are treated;</p> <p>(b) may be exercised, but for the equal treatment rule, in a way which is less favourable to a woman than a man.</p> |

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| | <p>calculation of contributions; (c) the calculations of benefits, including supplementary benefits due in respect of a spouse or dependants, and the conditions governing the duration and retention of entitlement to benefits</p> | <p>Following the <i>Barber</i> case law which established that pensions were pay for the purposes of Article 141 of the Treaty and therefore that an actual comparator was relevant, s.62(3) and (6) provides that an equal treatment rule has the effect that where</p> <p>(a) a woman is employed on like work with a man in the same employment, (b) a woman is employed on work rated as equivalent with that of a man in the same employment, or (c) a woman is employed on work which, not being work in relation to which paragraph (a) or (b) applies, in terms of demands made on her (for instance under such headings as effort, skill and decision) of equal value to that of a man in the same employment, but (apart from the rule) any of the terms referred to in subsection (2) is or becomes less favourable to the woman than it is to the man,</p> <p>the term shall be treated as so modified as not to be less favourable or the discretion shall not be capable of being exercised in a discriminatory manner.</p> <p>Section 63(4) is construed as one with the EqPA and its enforcement provisions apply with the necessary modifications (e.g. references to employers to be read as reference to trustees or managers of occupational pension schemes).</p> |
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| <p>Article 6 <i>[Art.3 Dir.86/378]</i></p> | <p>Personal Scope This Chapter shall apply to members of the working population, including self-employed persons, persons whose activity is interrupted by illness, maternity, accident or involuntary unemployment and persons seeking</p> | <p>Section 62 of the Pensions Act 1995 provides that an occupational pension scheme will be treated as including an equal treatment rule which regulates the manner in which members and prospective members are treated. For the definition of occupational pension scheme see the response to Article 2(1)(f). The rule contained in section 62 will cover each of the categories of person referred to in Article 6 where these persons are members or are eligible for membership of an occupational pension scheme.</p> |

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| | <p>employment and to retired and disabled workers, and to those claiming under them, in accordance with national law and/or practice.</p> | |
| <p>Article 7 [Art.4 Dir.86/378]</p> | <p>Material Scope This Chapter applies to: (a)occupational social security schemes which provide protection against the following risks: (i)sickness, (ii)invalidity, (iii)old age, including early retirement, (iv)industrial accidents and occupational diseases, (v)unemployment; (b)occupational social security schemes which provide for other social benefits, in cash or in kind, and in particular survivors' benefits and family allowances, if such benefits constitute a consideration paid by the</p> | <p>The equal treatment rule in s.62 of the Pensions Act 1995 relates to occupational pension schemes. For the definition of occupational pension scheme see the response to Article 2(1)(f). That definition enables an employer to include all matters in Article 7 as benefits under their pension scheme. Public service pension schemes are a form of occupational pension scheme and as a result they must comply with the equal treatment rule in s.62 of the Pensions Act 1995.</p> <p>The term “public service pension” scheme is defined in s.1(1) of the Pension Schemes Act 1993.</p> |

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| | employer to the worker by reason of the latter's employment. | |
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| | <p>(2)This Chapter also applies to pension schemes for a particular category of worker such as that of public servants if the benefits payable under the scheme are paid by reason of the employment relationship with the public employer. The fact that such a scheme forms part of a general statutory scheme shall be without prejudice in that respect.</p> | |
| <p>Article 8 [Art.2(2)</p> | <p>Exclusions from the material scope</p> | <p>The equal treatment rule in section 62 of the Pensions Act 1995 relates to occupational pension schemes and therefore does not bite</p> |

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| <p><i>Dir.86/378]</i></p> | <p>(a)individual contracts for self-employed persons;</p> <p>(b)single-member schemes for self-employed persons;</p> <p>(c)insurance contracts to which the employer is not a party, in the case of workers;</p> <p>(d)optional provisions of occupational social security schemes offered to participants individually to guarantee them:</p> <p>(i)either additional benefits,</p> <p>(ii)or a choice of date on which the normal benefits for self-employed persons will start, or a choice between several benefits;</p> <p>(e) occupational social security schemes in so far as benefits are financed by contributions paid by workers on a voluntary</p> | <p>upon personal pension schemes which are defined in s.1(5) of the Pension Schemes Act 1993. A personal pension may cover any of the arrangements in Article 8 (a) to (d).</p> <p>Section 64(2) of the Pensions Act 1995 allows differences of treatment in the amount of pensions permitted where those differences are attributable to differences between men and women in the State retirement pensions they are entitled to receive.</p> |
| <p><i>Art.2(3)</i> <i>Dir.86/378]</i></p> | | |

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| | <p>basis.</p> <p>2 This Chapter does not preclude an employer granting to persons who have already reached the retirement age for the purposes of granting a pension by virtue of an occupational social security scheme, but who have not yet reached the retirement age for the purposes of granting a statutory retirement pension, a pension supplement, the aim of which is to make equal or more nearly equal the overall amount of benefit paid to these persons in relation to the amount paid to persons of the other sex in the same situation who have already reached the statutory retirement age, until the persons benefiting from the supplement reach the statutory retirement age.</p> | |
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| <p>Article 9 [Art.6 Dir.86/378]</p> | <p>Examples of discrimination</p> <p>1(a) determining the persons who may participate in an occupational social security scheme:</p> <p>(b)fixing the compulsory or optional nature of participation in an occupational social security scheme;</p> <p>(c)laying down different rules as regards the age of entry into the scheme or the minimum period of employment or membership of the scheme required to obtain the benefits thereof;</p> <p>(d)laying down different rules, except as provided for in points (h) and (j), for the reimbursement of contributions when a worker leaves a scheme</p> | <p>The equal treatment rule at s.62 of the Pension Act 1995 covers the examples at Article 9(a) to (k). Exceptions allowed at Article 9(i) to (j) have been implemented in s.64 of the Pensions Act 1995.</p> |

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| | <p>without having fulfilled the conditions guaranteeing a deferred right to long-term benefits;</p> <p>(e) setting different conditions for the granting of benefits or restricting such benefits to workers of one or other of the sexes;</p> <p>(f) fixing different retirement ages;</p> <p>(g) suspending the retention or acquisition of rights during periods of maternity leave or leave for family reasons which are granted by law or agreement and are paid by the employer;</p> <p>(h) setting different levels of benefit, except in so far as may be necessary to take account of actuarial calculation factors which differ according to sex in</p> | |
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| | <p>the case of defined-contribution schemes; in the case of funded defined-benefit schemes, certain elements may be unequal where the inequality of the amounts results from the effects of the use of actuarial factors differing according to sex at the time when the scheme's funding is implemented;</p> <p>(i) setting different levels for workers' contributions;</p> <p>(j) setting different levels for employers' contributions, except:</p> <p>(i) in the case of defined-contribution schemes if the aim is to equalise the amount of the final benefits or to make them more nearly equal for both sexes,</p> <p>(ii) in the case of funded defined-benefit schemes where the employer's contributions are intended</p> | |
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| | <p>to ensure the adequacy of the funds necessary to cover the cost of the benefits defined;</p> <p>(k)laying down different standards or standards applicable only to workers of a specified sex, except as provided for in points (h) and (j), as regards the guarantee or retention of entitlement to deferred benefits when a worker leaves a scheme.</p> | |
| <p>Article 10 [Art.8 Dir.86/378]</p> | <p>Implementation as regards self-employed persons</p> <p>Member States shall take the necessary steps to ensure that the provisions of occupational social security schemes for self-employed persons contrary to the principle of equal treatment are revised with effect from 1 January 1993 at the latest or for Member States whose accession took</p> | <p>See above in relation to Article 2(1)(f).</p> |

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| | <p>place after that date, at the date that Directive 86/378/EEC became applicable in their territory.</p> <p>This Chapter shall not preclude rights and obligations relating to a period of membership of an occupational social security scheme for self-employed persons prior to revision of that scheme from remaining subject to the provisions of the scheme in force during that period.</p> | |
| <p>Article 11 [Art.9 Dir.86/378]</p> | <p>Possibility of deferral as regards self-employed persons</p> <p>As regards occupational social security schemes for self-employed persons, Member States may defer compulsory application of the principle of equal</p> | <p>N/A</p> |

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| | <p>treatment with regard to:</p> <p>(a) determination of pensionable age for the granting of old-age or retirement pensions, and the possible implications for other benefits:</p> <p>(i) either until the date on which such equality is achieved in statutory schemes,</p> <p>(ii) or, at the latest, until such equality is prescribed by a directive;</p> <p>(b) survivors' pensions until Community law establishes the principle of equal treatment in statutory social security schemes in that regard;</p> <p>(c) the application of Article 9(1)(i) in relation to the use of actuarial calculation factors, until 1 January 1999 or for Member States whose accession took place after</p> | |
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| | that date until the date that Directive 86/378/EEC became applicable in their territory. | |
| Article 12 [Art.2 Dir.96/97] | <p>Retroactive effect</p> <p>Any measure implementing this Chapter, as regards workers, shall cover all benefits under occupational social security schemes derived from periods of employment subsequent to 17 May 1990 and shall apply retroactively to that date, without prejudice to workers or those claiming under them who have, before that date, initiated legal proceedings or raised an equivalent claim under national law. In that event, the implementation measures shall apply retroactively to 8 April 1976 and shall cover all the benefits derived from periods of employment</p> | <p>Section 63 of the Pensions Act 1995 provides that section 62, so far as it relates to the terms on which members of a scheme are treated, is to be treated as having had effect in relation to any pensionable service on or after 17th May 1990.</p> |

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| | <p>after that date. For Member States which acceded to the Community after 8 April 1976, and before 17 May 1990, that date shall be replaced by the date on which Article 141 of the Treaty became applicable in their territory.</p> <p>2 The second sentence of paragraph 1 shall not prevent national rules relating to time limits for bringing actions under national law from being relied on against workers or those claiming under them who initiated legal proceedings or raised an equivalent claim under national law before 17 May 1990, provided that they are not less favourable for that type of action than for similar actions of a domestic nature and that they do not render the exercise of rights conferred by</p> | <p>N/A</p> |
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| | <p>Community law impossible in practice.</p> <p>3 For Member States whose accession took place after 17 May 1990 and which were on 1 January 1994 Contracting Parties to the Agreement on the European Economic Area, the date of 17 May 1990 in the first sentence of paragraph 1 shall be replaced by 1 January 1994.</p> <p>4 For other Member States whose accession took place after 17 May 1990, the date of 17 May 1990 in paragraphs 1 and 2 shall be replaced by the date on which Article 141 of the Treaty became applicable in their territory.</p> | |
| <p>Article 13 [Art.9a Dir.86/378]</p> | <p>Flexible pensionable age Where men and women may claim a flexible pensionable age under the</p> | |

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| | same conditions, this shall not be deemed to be incompatible with this Chapter. | |
| Article 14 (1) [Art.2(1) and 3(1) Dir.76/207; Art.2(1) Dir.97/80] | There shall be no direct or indirect discrimination on grounds of sex in the public or private sectors including public bodies in relation to: | <p>By virtue of section 1(1) EqPA, the EqPA applies to contracts under which a woman is employed at an establishment in GB. It catches employment in the public and private sectors.</p> <p>Similarly section 6 of the SDA prohibits discrimination by employers against women employed by them at establishments in GB whether in the private or public sector.</p> <p>By virtue of sections 2A and 4A SDA, the provisions set out below apply to discrimination and harassment respectively on the grounds of gender reassignment.</p> |
| | (a) conditions for access to employment, to self employment or to occupation, including selection criteria and recruitment conditions , whatever the branch of activity and at all levels of the professional hierarchy including promotion; | <p>Section 6(1) of the SDA makes it unlawful for an employer to discriminate against a woman seeking employment -</p> <ul style="list-style-type: none"> (a) in the arrangements he makes for the purpose of determining who should be offered employment, (b) in the terms on which employment is offered to her, or (c) by refusing or deliberately omitting to offer her employment. <p>Section s6(2) of the SDA makes it unlawful for an employer to discriminate against a woman whom he employs in the way he affords her access to opportunities for transfer or promotion, or by refusing or deliberately omitting to afford her access to them.</p> |

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| | <p>Section 9(2) of the SDA makes it unlawful for a principal to discriminate against a contract worker in the terms on which he allows her to do work, or by not allowing her to do it or continue to do it.</p> <p>Section 15(1) of the SDA makes it unlawful for employment agencies to discriminate against women or men in the terms on which they offer to provide any of their services, in the way they provide any of these, or by refusing or deliberately omitting to provide any of these.</p> <p>Sections 11(1)(a)(b) and (c) and (2) of the SDA make it unlawful for a partnership or those proposing to form themselves into a partnership to discriminate on grounds of sex in the selection of partners, and in the terms on which partnership is offered.</p> <p>Sections 35A(1) and 35B(1) of the SDA make it unlawful for barristers/ barrister’s clerks/ advocates to discriminate in the selection of tenants/ pupils, and in the terms on which tenancy/pupillage is offered.</p> <p>Section s13(1)(a) and (b) of the SDA make it unlawful for authorities or bodies which can confer an authorisation or qualification which is needed for or facilitates engagement in a particular profession to discriminate in the terms on which they are prepared to confer authorisation, or by refusing or omitting to grant applications for authorisation.</p> <p>Section 10B of the SDA makes it unlawful for those responsible for appointing office holders to discriminate in the terms on which office holders are appointed, and in the opportunities afforded for</p> |
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| | | <p>promotion.</p> <p><i>It is unlawful to subject a woman to harassment including sexual harassment in the cases of:</i></p> <p>Section 6(2A)(b) of the SDA: an employer vis-a-vis a woman who has applied to him for employment.</p> <p>Section 15(1A) of the SDA: employment agencies vis-a-vis a woman who has requested the provision of their services.</p> <p>Section 11(2A) of the SDA: a firm vis-a-vis an applicant for partnership.</p> <p>Sections 35A(2A) and 35B(2A) of the SDA: barristers, a barrister's clerk or an advocate vis-a-vis a person who has applied to be a pupil or a tenant.</p> <p>Section 13(1A) of the SDA: a qualifying body vis-a-vis a person who applies for an authorisation or qualification.</p> <p>Section 10B(4) of the SDA: a relevant person vis-a-vis a woman who is seeking or being considered for appointment to an office or post.</p> |
| | <p>(b) access to all types and to all levels of vocational guidance, vocational training, advanced vocational training and retraining, including</p> | <p>Section 14(1) of the SDA: providers of vocational training must not discriminate against a woman seeking vocational training.</p> <p>Section 14(1A) of the SDA: providers of vocational training must not subject to harassment a woman who is seeking vocational training.</p> |

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| | <p>practical work experience.</p> | <p>Section 6(2)(b) of the SDA: employers must not discriminate in the way they afford employees access to training.</p> <p>Section 10B(3) of the SDA : relevant persons must not discriminate in the way they afford office holders access to training.</p> <p>Section 22(2) and (3) of the SDA: discrimination by a “responsible body” (as defined in that provision) in relation to an educational establishment is prohibited.</p> <p>Sections 35A(2)(b) and 35B(2)(b) of the SDA: barristers/ clerks and advocates must not discriminate against pupils/ tenants in the opportunities for training or gaining experience afforded/ denied to them.</p> <p>Other provisions provide that discrimination should not occur in the way access to benefits, facilities or services is afforded (sections 9(2)(c) and s11(1)(d)(i) of the SDA).</p> <p>Section 15(3) of the SDA: employment agencies are prohibited from discriminating in providing guidance on careers and any other services related to employment</p> |
| | <p>(c) employment and working conditions, including dismissals....</p> | <p>Section 6(1)(b) of the SDA makes it unlawful for an employer to discriminate against a woman in the terms on which he offers her employment.</p> <p>Section 8(3) of the SDA further provides that such discrimination occurs where any of the terms offered would fall to be modified or additional terms would fall to be included by virtue of an equality clause if the woman accepted the employment. However discrimination has not occurred if section 1(3) of the EqPA (genuine</p> |

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| | <p>or material factor defence) would prevent an equality clause from operating.</p> <p>Section 8 of the SDA on the relationship with the EqPA provides:</p> <p>(1) . . .</p> <p>(2) Section 1(1) of the Equal Pay Act 1970 (as set out in subsection (1) above) does not apply in determining for the purposes of section 6(1)(b) of this Act the terms on which employment is offered.</p> <p>(3) Where a person offers a woman employment on certain terms, and if she accepted the offer then, by virtue of an equality clause, any of those terms would fall to be modified, or any additional term would fall to be included, the offer shall be taken to contravene section 6(1)(b).</p> <p>(4) Where a person offers a woman employment on certain terms, and subsection (3) would apply but for the fact that, on her acceptance of the offer, section 1(3) of the Equal Pay Act 1970 (as set out in subsection (1) above) would prevent the equality clause from operating, the offer shall be taken not to contravene section 6(1)(b).</p> <p>(5) An act does not contravene section 6(2) if—</p> <p>(a) it contravenes a term modified or included by virtue of an equality clause, or</p> <p>(b) it would contravene such a term but for the fact that the equality clause is prevented from operating by section 1(3) of the Equal Pay Act 1970.</p> |
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| | | <p>Sections 6(2)(a) and (b) of the SDA make it unlawful for an employer to discriminate against an employee in the way it affords her access to benefits, facilities and services or by dismissing her or subjecting her to another detriment.</p> <p>Sections 9(2)(c) and (d) of the SDA: a principal must not discriminate against a contract worker in the way he affords/ refuses or omits to afford her access to benefits, facilities or services or by refusing/omitting to afford access to them or by subjecting her to another detriment.</p> <p>Section s11(1)(d) and (2) of the SDA: a firm or those proposing to form themselves into a partnership must not discriminate against a partner in the way they afford/ refuse or omit to afford her access to benefits, facilities or services.</p> <p>Sections 35A(2)(b) and 35B(2)(b) of the SDA: barristers, clerks, or advocates must not discriminate against pupils/tenants in the terms of pupillage/tenancy, benefits, facilities or services, terminating pupillage/relationship, or subjecting them to pressure to leave chambers/relationship or some other detriment.</p> <p><i>Harassment including sexual harassment</i></p> <p>Section 6(2A)(a) of the SDA: it is unlawful for an employer to subject an employee to harassment.</p> <p>Section 9(2A) of the SDA: it is unlawful for a principal to subject a contract worker to harassment.</p> |
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| | | <p>Section s11(2A) of the SDA: it is unlawful for a partnership to subject a partner to harassment.</p> <p>Section 22(3) of the SDA: it is unlawful for the governing body of an institution of further or higher education to subject a woman to harassment if that woman is a student at the institution or has applied for admission to the institution.</p> <p>Sections 35A(2A) and 36(2A) of the SDA: it is unlawful for a barrister/ barrister's clerk/ advocate to subject a pupil/tenant to harassment.</p> |
| | <p>...as well as pay as provided for in Article 141 of the Treaty.</p> | <p><i>GB legislation distinguishes between <u>contractual</u> pay and benefits and <u>non-contractual</u> pay and benefits (see also the commentary on Article 4 above)</i></p> <p>Section 1(2) of the EqPA provides that an equality clause is a provision which relates to terms (whether concerned with pay or not) of a contract under which a woman is employed. An equality clause will only alter contracts where a term of a comparator's contract is <i>more favourable</i> than a similar term in the claimant's contract or where the comparator's contract includes a term <i>benefiting him</i> which is not included in the claimant's contract.</p> <p>Section 6(1)(b) of the SDA makes it unlawful for a person in relation to employment.....to discriminate against a woman in the terms on which he offers her that employment.</p> <p>Section 6(2)(a) of the SDA makes it unlawful for a person in the case of woman employed by him to discriminate against her in the way he affords her access to opportunities for promotion, transfer or training,</p> |

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| | | <p>or to <u>any other benefits, facilities or services</u> or by refusing or deliberately omitting to afford her access to them.</p> <p>By virtue of section 6(6) of the SDA benefits consisting of the payment of money are not covered by section 6(2) where the provision of those benefits is regulated by the woman's contract of employment.</p> <p>Pursuant to section 8(5) of the SDA, acts do not contravene section 6(2) of the SDA if they contravene terms modified or included by an equality clause or which would contravene such terms but for section 1(3) EqPA .</p> |
| | (d) Membership of, and involvement in, an organisation of workers or employers or any organisation whose members carry on a particular profession, including the benefits provided for by such organisations. | <p>Section 12 of the SDA: it is unlawful for an organisation of workers or employers, or any other organisation whose members carry on a particular profession or trade, to discriminate against a woman applicant for membership in the terms on which it is prepared to admit her to membership, or by refusing or deliberately omitting to accept her application for membership. It is also prohibited from discriminating against female members in the way it affords them/refuses or deliberately omits to afford them access to benefits, facilities or services, or by depriving them of membership or subjecting them to any other detriment.</p> <p>Section 12(3A) of the SDA: it is unlawful for such an organisation to subject a member or an applicant for membership to harassment.</p> |
| Article 14(2) [Art.2(6) Dir.76/207] | Member States may provide, as regards access to employment, including the training leading | Section 7 (1) of the SDA: disapplies the prohibition on discrimination where being a man is a Genuine Occupational Qualification (GOQ) as defined in section 7(2) of the SDA. |

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| | <p>thereto, that a difference of treatment which is based on a characteristic related to sex shall not constitute discrimination where, by reason of the nature of the particular occupational activities concerned or of the context in which they are carried out, such a characteristic constitutes a genuine and determining occupational requirement, provided that its objective is legitimate and the requirements is proportionate.</p> | <p>Sections 7A and 7B of the SDA: provide GOQ exceptions in relation to gender reassignment.</p> <p>Section 9(3) of the SDA: provides a GOQ exception covering contract workers.</p> <p>Section 11(3) of the SDA: provides a GOQ exception for partnerships.</p> <p>Section 15(4) of the SDA: disapplies the prohibition on discrimination by employment agencies where it would be lawful to refuse the employment to a woman.</p> <p>Sections 17-19 of the SDA: permit limited exceptions in relation to the police, prison officers and Ministers of religion respectively.</p> <p>Section 85(4) of the SDA: permits an exception in relation to the combat effectiveness of the armed forces.</p> |
| <p>Article 15 [Art.2(7) Dir.76/207]</p> | <p>A woman on maternity leave shall be entitled after the end of her period of maternity leave to return to her job or to an equivalent post on terms and conditions which are no less favourable to her and to benefit from any improvement in working conditions to which she would have been entitled</p> | <p>Employment Rights Act 1996 sections 71(4) and 73(4) provides that an employee who exercises her rights to Ordinary Maternity Leave (OML) or Additional Maternity Leave (AML) is entitled to the benefit of terms and condition which would have applied if she had not been absent and is entitled to return from leave to a job of a prescribed kind.</p> <p>Maternity and Parental Leave Regulations 1999 regs 9 and 17 and 18 An employee taking OML is entitled to benefit from all terms and conditions of employment which would have applied if she had not been absent except terms and conditions about remuneration. An employee taking AML is entitled to terms and conditions of</p> |

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| | during her absence. | employment in relation to notice of termination, redundancy compensation, disciplinary or grievance procedures and the employer's implied obligation to her of trust and confidence. An employee who returns after a period of OML is entitled to return to the same job, an employee who returns from a period of AML is entitled to the same job or if that is not reasonably practicable to a job that is suitable and appropriate for her to do in the circumstances. |
| Article 16 [Art.2(7) Dir.76/207] | This Directive is without prejudice to the right of Member States to recognise distinct rights to paternity and/ or adoption leave. Those member states which recognise such rights shall take the necessary measures to protect working men and women against dismissal due to exercising those rights and ensure that, at the end of such leave, they are entitled to return to their jobs or to equivalent posts on terms and conditions which are no less favourable to them and to benefit from any improvement in working conditions to which they would have been entitled | <p>Employment Rights Act 1996 (ERA), sections 75A – C and 47C(2)(ca)</p> <p>Reg 12: an employee taking paternity leave is entitled during the period of leave to the benefit of all of the terms and conditions of employment which would have applied if he had not been absent (but not remuneration).</p> <p>Paternity and Adoption Leave Regs 2002 reg 13(2): an employee returning to work after paternity leave is entitled to return from leave to the job in which he was employed before absence, or another job which is suitable for him and appropriate for him to do in the circumstances.</p> <p>Reg 14: an employee's right to return is a right to return with seniority, pension rights and similar rights and on terms and conditions not less favourable than those which would have applied if he had not been absent.</p> <p>Reg 19: an employee taking ordinary adoption leave is entitled during the period of leave to benefit of all the terms and conditions of employment which would have applied if he had not been absent (but not remuneration).</p> |

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| | <p>during their absence.</p> | <p>Reg 21: an employee taking additional adoption leave is entitled to the benefit of his employer's implied obligation of trust and confidence and terms and conditions relating to notice of termination, redundancy compensation, disciplinary or grievance procedures</p> <p>Reg 26(1): an employee who returns to work after a period of ordinary adoption leave Is entitled to return from leave to the job in which he was employed before his absence.</p> <p>(2) An employee who returns to work after a period of additional adoption leave is entitled to return to the job in which he was employed before his absence or if not reasonably practicable to another suitable and appropriate job.</p> <p>Reg 27(1): an employee's has a right to return with his seniority, pension rights and similar rights and on terms and conditions not less favourable than those which would have been applied to him if he had not been absent.</p> <p>Reg 28 and section 47C ERA: protection from detriment for taking paternity or adoption leave</p> <p>Reg 29: automatic unfair dismissal, if dismissed for reasons connected with seeking to take paternity or adoption leave.</p> |
| <p>Article 17(1) [Art.2 Dir.75/117; Art.6(1) Dir.76/207;</p> | <p>Member States shall ensure that after possible recourse to other competent authorities including where they</p> | <p>Sections 2-7B EPA (contractual terms) together with sections 8-10 and Part VII SDA (non-contractual terms) provide procedures enabling individuals to enforce the Directive's obligations. The usual rules of procedure in tribunals and courts apply, including time limits.</p> |

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| <p><i>Art.10</i> <i>Dir.86/378]</i></p> | <p>deem is appropriate conciliation procedures, judicial procedures for the enforcement of obligations under the Directive are available to all persons who consider themselves wronged by failure to apply the principle of equal treatment to them, even after the relationship in which the discrimination is alleged to have occurred has ended.</p> | <p>Section 2 EqPA provides for a complaint to be made to an employment tribunal in respect of any claim concerning the contravention of a term modified or included by virtue of an equality clause, including a claim for arrears of remuneration or damages.</p> <p>Section 63 SDA provides that a complaint by a person that another person has committed an act of discrimination or harassment against them which is unlawful may be presented to an employment tribunal.</p> <p>Section 7B EqPA and section 74 SDA provide for a complainant to issue a questionnaire to their employer in order to obtain information related to their complaint.</p> <p>Sections 20A and 35C of the SDA prohibit, in certain circumstances, discrimination and harassment which take place after a relevant relationship has ended.</p> |
| <p>Article 17(2) <i>[Art.6(3)</i> <i>Dir.76/207]</i></p> | <p>Member States shall ensure that associations, organisations or other legal entitles, which have, in accordance with the criteria laid down by their national law, a legitimate interest in ensuring that the provisions of this</p> | <p>Section 8(1)(e) of the Equality Act 2006 (EA): The Commission for Equality and Human Rights (which operates under the name “Equality and Human Rights Commission” (EHRC)), is under a duty to enforce the equality enactments, which include the Equal Pay Act 1970 and the Sex Discrimination Act 1975 (by virtue of section 33 of the EA). It took over this role in respect of the EA and the SDA from the previous body (the Equal Opportunities Commission) with effect from 31 October 2007.</p> |

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| | <p>Directive are complied with, may engage, either on behalf, or in support of the complainant, with his or her approval in any judicial and/or administrative procedures provided for the enforcement of obligations under this Directive.</p> | <p>Sections 20 to 32 of the EA give the EHRC enforcement powers including the power to conduct investigations, issue unlawful act notices, make applications to the court of its own accord and provide legal assistance to individuals.</p> <p>Claimants can also be represented by solicitors and Trade Unions.</p> <p>Section 28 of the EA enables the EHRC to give legal assistance to claimants in proceedings relating to the equality enactments, and section 30 of the EA enables the EHRC to institute or intervene in legal proceedings relating to matters with which the EHRC is concerned.</p> |
| <p>Article 17(3) [Art.6(4) Dir.76/207]</p> | <p>Paragraphs 1 and 2 are without prejudice to national rules relating to time limits for bringing actions as regards the principle of equal treatment</p> | <p>No implementation required. See commentary on Article 17(1) above.</p> |
| <p>Article 18 [Art.6(2) Dir.76/207]</p> | <p>Member States shall introduce into their national legal systems such measures as are necessary to ensure real and effective compensation or reparation as the Member States so determine for the loss and damage sustained by a person injured as a</p> | <p>Section 2 of the EPA (contractual terms) provides that a complainant may be awarded arrears of remuneration and/or damages as compensation and reparation in respect of a claim for breach of an equality clause.</p> <p>Section 65 of the SDA (non-contractual terms) provides that a complainant may be awarded a declaratory order; and/or damages and/or a recommendation to the respondent, by way of compensation and reparation for injury suffered. The amount of damages that can be awarded is uncapped.</p> |

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| | <p>result of discrimination on grounds of sex, in a way which is dissuasive and proportionate to the damage suffered. Such compensation or reparation may not be restricted by the fixing of a prior upper limit, except in cases where the employer can prove that the only damage suffered by an applicant as a result of discrimination within the meaning of this Directive is the refusal to take his/her job application into consideration.</p> | |
| <p>Article 19(1) [Arts.3 and 4 Dir.97/80]</p> | <p>Member States shall take such measures as are necessary in accordance with their national judicial systems to ensure that when persons who consider themselves wronged because the principle of equal treatment has not been</p> | <p><u>Contractual pay and benefits</u></p> <p>Section 1 of the EqPA: it is for the claimant to show that she has been doing like work, work rated as equivalent or work of equal value with a valid comparator and that there is a variation between her contract and her comparator's contract. If the claimant establishes these facts, there is a presumption of discrimination. The burden of proof then falls upon the employer to show that a genuine material factor defence applies under section 1(3) of the EqPA. If the claimant provides evidence of disparate impact amounting to indirect</p> |

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| | <p>applied to them establish, before a court or other competent authority, facts from which it may be presumed that there has been direct or indirect discrimination, it shall be for the respondent to prove that there has been no breach of the principle of equal treatment.</p> | <p>discrimination, it is for the employer to show that any indirect discrimination is objectively justified.</p> <p><i>Non-contractual pay</i></p> <p>Section 63A of the SDA: Where a complaint is presented to an employment tribunal, and the complainant proves facts from which a tribunal could conclude, in the absence of an adequate explanation, that the respondent has committed an act of discrimination or harassment which is unlawful, then the tribunal must uphold the complaint unless the respondent proves that he did not commit, or is not be treated as having committed, that act.</p> |
| Article 19(2) | <p>Paragraph 1 shall not prevent Member States from introducing rules of evidence which are more favourable to plaintiffs.</p> | <p>No implementation required</p> |
| Article 19(3) | <p>Member States need not apply paragraph 1 to proceedings in which it is for the Court or competent body to investigate the facts of the case.</p> | <p>No implementation required.</p> <p>Under section 20 of the EA the EHRC has powers to investigate breaches of the equality enactments, including the SDA and EqPA, where it suspects that an unlawful act has been committed.</p> |
| Article 19(4) | <p>Paragraphs 1, 2 and 3 shall also apply to:</p> <p>(a) the situations covered by Article 141 of the Treaty ...;</p> | <p>See commentary on Article 19(1), (2) and (3) above</p> |

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| | (b) any civil or administrative procedure concerning the public or private sector which provides for a means of redress under national law pursuant to the measures referred to in (a) with the exception of out-of-court procedures of a voluntary nature or provided for in national law. | |
| Article 20(1) <i>[Art.8a Dir.76/207]</i> | Member States shall designate and make the necessary arrangements for a body or bodies for the promotion, analysis, monitoring and support of equal treatment of all persons without discrimination on grounds of sex. These bodies may form part of agencies with responsibility at national level for the defence of human rights or the safeguard of individuals' rights. | Section 1 of the EA: Establishment of the EHRC to monitor equality legislation. Sections 3 and 8 to 19 of the EA set out the duties of the EHRC including the promotion of equality and diversity, monitoring the law on equality and human rights and monitoring progress on equal opportunities. |
| Article 20(2) | Member States shall ensure that the competencies of these | |

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| | bodies include: | |
| | (a) without prejudice to the right of victims and of associations, organisations or other legal entities referred to in Article 17(2), providing independent assistance to victims of discrimination in pursuing their complaints about discrimination: | <p>Section 13 of the EA gives the EHRC powers to provide information and advice in pursuance of its duties.</p> <p>Section 28 of the EA provides that the EHRC has the capacity to provide legal assistance to individuals in proceedings.</p> |
| | (b) conducting independent surveys concerning discrimination; | Sections 11 to 13 of the EA: the EHRC is under a duty to monitor the law and to monitor progress on equality and may publish information, undertake research, provide advice etc. to that effect. |
| | (c) publishing independent reports and making recommendations on any issue relating to such discrimination; | Section 12(4) EA imposes a duty on EHRC to publish 3-yearly reports on progress towards identified outcomes |
| | (d) at the appropriate level exchanging available information with corresponding European bodies such as any future EIGE | Section 13 of the EA gives the EHRC powers to publish/disseminate ideas or information, undertake research, give advice/guidance and to act jointly with or cooperate with a person in doing so. |
| Article 21(1) [Art.8b Dir.776/207] | Member States shall, in accordance with national traditions and practice, | The UK Government promotes dialogue by funding initiatives, research and guidance, as appropriate. One initiative supported is the Partnership Fund which aims to improve the relationship between |

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| | <p>take adequate measures to promote social dialogue between the social partners with a view to fostering equal treatment, including, for example, through the monitoring of practices in the workplace, in access to employment, vocational training and promotion, as well as through the monitoring of collective agreements, codes of conduct, research or exchange of experience and good practice.</p> | <p>employers and employees. Research supported includes the various ‘Workplace Employment Relations’ surveys which include information on equal opportunities.</p> <p>Studies and surveys facilitating the equal treatment of men and women in the UK include:</p> <ul style="list-style-type: none"> • the Equalities Review which was established on 25 February 2005 to carry out an investigation into the causes of persistent discrimination and inequality in British society. The Equalities Review’s final report can be found at http://archive.cabinetoffice.gov.uk/equalitiesreview/publications.html; • the Women and Work Commission (WWC) which was set up in September 2004 to investigate the causes and consequences of the gender pay and opportunity gaps between women and men in the UK labour market. This was an independent Commission with Commissioners drawn from the public and private sector as well as from trade unions. The WWC published a report with around 40 recommendations in the spring of 2006 and the UK Government published how it had implemented the recommendations in April 2007. The UK Government invited the WWC to reconvene in October 2008 to consider whether the recommendations have been implemented effectively, with the intention of issuing its views in the spring of 2009. <p>The EOC, now subsumed within the EHRC, produced a Code of Practice on Equal Pay in 2003 which provides practical guidance on</p> |
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| | | <p>how to ensure pay is determined without sex discrimination. Although the Code is aimed at employers, employees and their representatives or advisers may also find it useful.</p> |
| Article 21(2) | <p>Where consistent with national traditions and practice, Member States shall encourage the social partners, without prejudice to their autonomy, to promote equality between men and women, and flexible working arrangements, with the aim of facilitating the reconciliation of work and private life, and to conclude, at the appropriate level, agreements laying down anti-discrimination rules in the fields referred to in Article 1 which fall within the scope of collective bargaining. These agreements shall respect the provisions of this Directive and the relevant national implementing measures.</p> | <p>UK tradition and practice does not include promotion by the government of collective agreements as a model preferable to others for employer-employee dialogue on equality or any other grounds, and it would be inconsistent with that tradition and practice for the government to do so now. However, Acas offer advice on a range of dialogue methods including collective bargaining.</p> <p>In 2003, the UK Government introduced the right to request flexible working for employees with children under the age of six and disabled children. The scope of the law was extended to carers of adults with effect from 6 April 2007. From April 2009 the law will be further extended to parents of children aged 16 and under. This means over 10 million people will have the right the request flexible working.</p> <p>The EOC has produced guidance (<i>‘Introducing and Managing Flexible Working’</i>) for managers and supervisors on how to manage requests for flexible working. This guidance included case studies of organizations that have adopted flexible working arrangements and the benefits to their business.</p> |

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| Article 21(3) | Member States shall, in accordance with national law, collective agreements or practice, encourage employers to promote equal treatment for men and women in a planned and systematic way in the workplace, in access to employment, vocational training and promotion. | <p>The EHRC has a statutory duty to promote equality of opportunity between men and women. Part of its work towards achieving this includes advising employers on how best to achieve equal treatment in the workplace.</p> <p>Public sector bodies have a statutory duty to proactively promote equality of opportunity between men and women in the way they exercise their functions, with the requirements to draw up and publish a gender equality scheme (which is to be reviewed every 3 years) and to monitor and publish progress on achieving the actions. The EHRC has enforcement powers to ensure public sector bodies adhere to this duty.</p> |
| Article 21(4) | To this end, employers shall be encouraged to provide at appropriate regular intervals employees and/or their representatives with appropriate information on equal treatment for men and women in the undertaking. | The UK Government is supportive of employers who provide appropriate information for employees (and their representatives) on equal treatment. |
| Article 22 <i>[Art.8c Dir.76/207]</i> | Member States shall encourage dialogue with appropriate non-governmental organisations which have, in accordance with their national law and practice, a legitimate interest in | The UK Government regularly consults the EHRC, the Women's National Commission (WNC) and other NGOs on issues related to combating sex discrimination. |

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| | contributing to the fight against discrimination on grounds of sex with a view to promoting the principle of equal treatment. | |
| Article 23 | Member States shall take all necessary measures to ensure that: | |
| [Arts.3 and 6 Dir.75/117; Art.3(2)(a) Dir.76/207] | (a) any laws, regulations and administrative provisions contrary to the principle of equal treatment are abolished; | No laws or administrative provisions contrary to the Directive have been identified. |
| [Art.4 Dir.75/117; Art.3(2)(b) Dir.76/207; Art.7a Dir.86/378] | (b) provisions contrary to the principle of equal treatment in individual or collective contracts or agreements, internal rules of undertakings or rules governing the independent occupations and professions and workers' and employers' organisations or any other arrangements shall be, or may be, declared null and void or are amended; | Section 77 of the SDA renders void unlawfully discriminatory terms of contracts and renders unenforceable terms excluding the provisions of the SDA or the EqPA. Section 6 of the SDA 1986 applies section 77 of the SDA to collective agreements and rules of undertakings. |
| [Art.7b Dir.86/378] | (c) occupational social security schemes | See response to Article 5. The equal treatment rule contained in section 62 of the Pensions Act 1995 ensures that any term shall be |

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| | containing such provisions may not be approved or extended by administrative measures. | treated as modified so as not to be less favourable and any discretion afforded to the trustees of an occupational pension scheme shall not be capable of being exercised in a discriminatory manner. |
| Article 24 [Art.5 Dir.75/117; Art.7 Dir.76/207; Art.11 Dir.86/378] | Member States shall introduce into their national legal systems such measures as are necessary to protect employees, including those who are employees' representatives provided for by national laws and/or practices against dismissal or other adverse treatment by the employer as a reaction to a complaint within the undertaking or to any legal proceedings aimed at enforcing compliance with the principle of equal treatment. | Section s4(1) of the SDA (on victimisation) provides that a person discriminates against another person if he treats the person victimised less favourably than in those circumstances he treats or would treat other persons, and does so by reason that the person victimised has brought proceedings against the discriminator under the SDA, the EqPA or sections 62 to 65 of the Pensions Act 1995, or given evidence or information in connection with such proceedings, or otherwise done anything by reference to those Acts, or alleged that the discriminator has contravened those provisions. |
| Article 25 [Art.8d Dir.76/207] | Member States shall lay down the rules on penalties applicable to infringements of the national provisions adopted pursuant to this Directive, and shall take | Section 65 of the SDA provides for the remedies for complaints in employment tribunal proceedings which include payment of compensation. Section 66 of the SDA makes provision for remedies in county or sheriff court proceedings. The usual remedies for claims in tort apply, including the payment of compensation. Section 2 of the EPA makes provision for remedies in employment tribunal proceedings by way of arrears of remuneration or damages. |

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| | all measures necessary to ensure that they are applied. The penalties, which may comprise the payment of compensation to the victim, must be effective, proportionate and dissuasive. | |
| Article 26 [Art.2(5) Dir.76/207] | Member States shall encourage, in accordance with national law, collective agreements or practice, employers and those responsible for access to vocational training to take effective measures to prevent all forms of discrimination on grounds of sex, in particular harassment and sexual harassment in the workplace, in access to employment, vocational training and promotion. | <p>The UK Government encourages employers and those responsible for vocational training to take measures to prevent discrimination by providing in Great Britain an explanation of the law in this area and best practice advice and guidance via the EHRC and the Advisory, Conciliation and Arbitration Service (Acas).</p> <p>In response to the Women and Work Commission's recommendations in 2006, the Government provided funding for training courses aimed specifically at different groups of women. These include:</p> <ul style="list-style-type: none"> • Providing £20million for a Level 3 training pilot in London to deliver over 7,000 A-Level equivalent qualifications for women returners and those with low skills. • Supporting eight Sector Skills Councils through a £10m Women and Work Sector Pathways initiative to develop projects providing women with the skills and confidence and mentoring support to move up within or move into male dominated occupations. This initiative has recently been extended with an additional £5m funding for each of a further three years. |
| Article 27(1) [Art.8e(1) Dir.76/207; Art.4(2)] | Member States may introduce or maintain provisions which are more favourable to the | No implementation required. |

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| <i>Dir.97/80]</i> | protection of the principle of equal treatment than those laid down in the Directive. | |
| Article 27(2) <i>[Art.8e(2)</i> <i>Dir.76/207;</i> <i>Art.6</i> <i>Dir.97/80]</i> | Implementation of this Directive shall under no circumstances be sufficient grounds for a reduction in the level of protection of workers in the areas to which it applies, without prejudice to the Member States' right to respond to changes in the situation by introducing laws, regulations and administrative provisions which differ from those in force on the notification of this Directive, provided that the provisions of this Directive are complied with. | No implementation required. |
| Article 29 <i>[Art.1(1)(a)</i> <i>Dir.76/207]</i> | Member States shall actively take into account the objective of equality between men and women when formulating and | The UK Government has developed a gender impact assessment mainstreaming tool to help policy makers assess whether their policies will deliver equality of opportunity. Equality impact assessment forms part of the screening process for all new legislation and can equally be applied to policy, plans and programmes at the |

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| | <p>implementing laws, regulations, administrative provisions, policies and activities in the areas referred to in this Directive.</p> | <p>earliest stage of the decision-making process.</p> <p>The UK Government also through its Public Service Agreements (PSAs), continues to remain committed to equality by setting specific targets and initiatives aimed at reducing gender inequalities. These PSAs identify the outcomes Government will seek to deliver over the three years to March 2011. The Government aims to deliver these achievements by working together with a wide range of partners including regional government, local government, and non-Departmental public bodies such as the EHRC.</p> <p>The Equality Act 2006 places a duty on public authorities to promote equality of opportunity between men and women, and to prohibit sex discrimination in the exercise of public functions.</p> |
| <p>Article 30 [Art.7 Dir.75/117; Art.8 Dir.76/207; Art.5 Dir.97/80]</p> | <p>Dissemination of information Member States shall ensure that measures taken pursuant to this Directive, together with the provisions already in force, are brought to the attention of all the persons concerned by all suitable means and, where appropriate, at the workplace.</p> | <p>The UK Government regularly disseminate information about discrimination law through various means including publications on designated websites. The Government Equalities Office website will provide information on implementation of the Recast Directive.</p> <p>Equally, the CEHR routinely publish information and guidance about discrimination law on its website.</p> |

