

PRIME MINISTER

MEETING WITH LADY PLATT

You do not need to go through this voluminous briefing from the Home Office in detail. I have highlighted key points.

You will, in any case, probably wish to stick to more general themes at your meeting with Lady Platt. Matters of detail should be for her to pursue with the appropriate Departmental Minister. You might instead ask her to paint a general picture of how she sees opportunities for women opening up, where the problems are, the role the EOC has played and can play in the future, and how the Government can best help it do so.

Particular points you might wish to raise:

(i) How does Lady Platt think the WISE initiative can be best taken forward? How can industry help, particularly in this, Industry Year - Lady Platt is Chairman of the Industry Year Women's Working Group?

(ii) More generally, how can one get the right balance between deregulation - to encourage more jobs for both men and women - and rules to constrain employers - to ensure that women are given a fair chance. Does Lady Platt think we have got the balance about right now?

N.L.W

(MARK ADDISON)

13 June 1986

From: THE PRIVATE SECRETARY



HOME OFFICE
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LONDON SW1H 9AT

13 June 1986

Dear Mark

MEETING WITH LADY PLATT

As requested in your letter of 17 April, I enclose a brief for the meeting which the Prime Minister is having with Lady Platt on 16 June.

I understand that Lady Platt wishes to discuss in particular WISE (Women into Science and Engineering) and women and public appointments. The briefing covers these and a number of other topics which may be raised. I am sorry that as a result it is somewhat voluminous.

The Department of Employment has contributed to the briefing.

Yours ever
WR

W R FITTALL

Mark Addison, Esq

LADY PLATT'S MEETING WITH THE PRIME MINISTER

BRIEFING

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1. LADY PLATT

Baroness Platt of Writtle became the Chairman (full-time since 1.1.84) of the Commission on 1 May 1983, succeeding Lady Lockwood. Lady Platt's appointment was for an initial period of three years but has now been extended for a further two years. Lady Platt took a degree in engineering at Cambridge during the war and was employed successively with Hawker Aircraft and BEA until 1949 when she married. In 1958, she entered local government as a Conservative County Councillor in Essex and subsequently became Chairman of the Council's Finance and General Purposes Committee and Vice Chairman of the Council.

2. THE EQUAL OPPORTUNITIES COMMISSION (EOC)

Points to make

The Government values highly the work of the EOC. The Commission's initiatives, such as in ^{the} WISE (Women into Science and Engineering) campaign, have done much to promote genuine equal opportunities, and the publication last year of its Code of Practice on Employment (Annex A) was particularly significant. The Government welcomes the sensible, practical guidance provided by the Code and will commend it to employers.

The Government recognises that what has been achieved has been done with more limited resources than had been envisaged when the Commission was established and welcomes the way in which the Commission is seeking to ensure that its resources are used as effectively as possible. The EOC is not the only body to be affected in this way and there is no foreseeable prospect of any significant increase in resources.

Background

- (i) The EOC was established under the Sex Discrimination Act 1975. The Act makes discrimination on the grounds of sex unlawful in employment, education and the provision of goods, facilities and services. It gives the Commission statutory duties to work towards the elimination of sex discrimination, to promote equality of opportunity between men and women generally, to keep under review the working of the Act and The Equal Pay Act 1970 and to submit proposals for their amendment when necessary.

The Commission has a wide discretion to assist individual complainants and power to conduct formal investigations to obtain information and to bring legal proceedings against those who persistently violate the law.

- (ii) The approved cash limit for the current financial year is £3.5 m of which £2 m is allocated to salaries and Commissioners' fees and the remaining £1.5 m to administrative expenses including legal costs and the Commission's own grant-aiding activities. This year's budget is intended to allow the Commission's activities to be maintained at broadly the level of the previous six years. However, Treasury "cash factor" revaluations have meant "real term" cuts. The Commission take the view that because of this and because they are involved in new work arising from the amendment to the Equal Pay Act allowing persons to claim equal pay for work of equal value, the level of resources is becoming increasingly inadequate.

(iii) Home Office Review of the Commission

The Home Office recently completed a review of the Commission questioning the justification, role and functions of the Commission as well as considering whether value for money is being obtained. The review was forwarded to the Commission for comments in February. The Review accepted the continuing need for the Commission but called for changes in management style, as well as its structure, and also raised questions about the future relationship between the Commission and the Home Office. Lady Platt is meeting the Home Secretary on 17 June to discuss the review.

3. WOMEN AND PUBLIC APPOINTMENTS

Points to make

The Government is keen to extend the influence of women in advisory and policy making bodies. Ministers make every effort to ensure that a good field of candidates, regardless of sex, is considered for appointments on the basis of their qualities, ability or experience and availability for the appointment to be made.

The work done by the EOC to encourage voluntary organisations to nominate women willing to serve in public life is welcome. The Public Appointments Unit of the Cabinet Office is anxious to expand its Central List of people who are ready to be considered for appointments and is proposing to take further steps later this year to obtain more names.

The Womens National Commission are also considering ways in which women can be better represented and the Ministerial Group on Women's Issues has identified the subject as one which they should consider at their next meeting.

Background

Responsibility for public appointments rests with individual Ministers who, in general, are free to decide who should be appointed and the manner and methods of identifying and considering candidates.

The percentage of women holding public appointments is currently about 20%. This is a low figure even though movement each year is in an upward direction.

In 1981 the EOC took part in a Joint Working Party with the 3 main political parties and the Women's National Commission (WNC) to investigate the matter further. The Working Party concluded that the small number of female appointments indicated a bias against women and recommended certain reforms of the public appointments system together with positive action to redress the imbalance. Further research by the EOC in 1983 and published in 1984 assessed the procedures for receiving nominations and making appointments to public bodies and identified the main cause of under-representation as resulting from the reliance on particular male dominated channels for nominations and consultations relating to public appointments and recommended voluntary organisations to send Ministers and the Public Appointments Unit lists of women who are able and willing to serve on public bodies.

More recently the Women's National Commission has been considering what can be done to increase the number of women in public appointments and the matter will be taken further by the Ministerial Group on Women's Issues which has been set up by the Home Secretary under the Chairmanship of Mr Waddington.

4. FORWARD LOOKING STRATEGIES FOR THE ADVANCEMENT OF WOMEN (FLS)

Points to make

Many of the recommendations contained in the FLS are consistent with Government policies and have already been implemented or are in course of implementation. Departments are considering the implications, of the FLS and the Ministerial Group on Women's Issues, under the Chairmanship of Mr David Waddington, is keeping under review the Government's response.

Background

The FLS was the final document of the World Conference held by the United Nations in Nairobi in July 1985 to mark the end of the UN Decade for Women. Lady Platt was a member of the United Kingdom delegation to the Conference.

The FLS covers some 370 observations and recommendations for the achievement of equality by women over the period to the year 2000. Publication of the FLS last autumn led to pressure from individuals and womens groups to establish some form of machinery to co-ordinate the Government's response to the issues raised by the FLS. The Government has always taken the view that the effects of its policies on women are better taken account of by the Departments directly concerned with developing and implementing these policies but the Home Secretary has established a Ministerial Group, under the Chairmanship of Mr David Waddington, to keep under review the Government's response to the FLS. Mrs Peggy Fenner MP has agreed to be deputy Chairman of the group in her capacity as Co-Chairman of the Women's National Commission. The first meeting of the group was held on 22 May and it was agreed at the meeting that a document would be produced setting out fully the Government's response to the FLS which would then be made available to outside organisations.

The Prime Minister notified Lady Platt of the establishment of the Ministerial Group by letter on 20 February.

5. 'WISE' CAMPAIGN

Points to make

- The Government applauds the success of WISE year and the continuing efforts in this campaign, such as the recent launch of the new WISE bus.
- WISE has succeeded in provoking a great deal of interest, from both girls and their teachers, in careers in science and engineering. This is very welcome.

Background

During 1984 the EOC and the Engineering Council jointly sponsored the "Women into Science and Engineering" (WISE) initiative, which had full government backing including financial and promotional support. It included a large number of individual projects co-ordinated into an overall programme to encourage girls and women to consider career opportunities. The programme received outstanding support from educational institutions and industrial companies. A media boost was given to the Campaign with the launch of the WISE Bus by the Prime Minister, which visited a large number of schools.

On 12 May 1986 a new WISE Bus was launched, sponsored by British Gas.

6. WOMEN'S TRAINING

Points to make

- The Government attaches great importance to training which helps to expand women's occupational horizons. It is crucial that women should have the opportunity to play their full part in the nation's continued economic recovery; we cannot afford to ignore the talents of half our population.

- All the Manpower Services Commission (MSC) training schemes are open equally to men and women, in line with the Commission's equal opportunities policy. Women are encouraged to consider the full range of training opportunities available, including those in occupations which are not traditional to their sex. In addition the Commission recognises the need to help women to overcome the effect of past inequalities and has a small programme of special training in work where they are under-represented, and for women returning to the labour market after a break discharging domestic or family responsibilities.
- 2-year YTS will give all 16 year-old school-leavers the chance to work towards a vocational qualification, whereas girls obtained only a tiny share of traditional apprenticeships. Care is taken to ensure that girls and boys have equal opportunities available.
- In 1985 the UK obtained European Social Fund support for 92 women's training schemes (many involving new technology), followed by Italy with 13.

7. THE SEX DISCRIMINATION BILL

Points to make

i) Hours of Work Repeals

- The Government expects the repeal of outmoded restrictions on women's hours of work to enhance employers' flexibility to the ultimate benefit of enterprise and employment, at the same time removing a source of discrimination.
- We think few individual women will resist resulting changes in hours: on balance they stand to gain.
- To introduce complex transitional provisions would be a mistake risking all the potential gains by adding to burdens on employers.

ii) The Marshall Case

- The Government has now tabled two new clauses to the Sex Discrimination Bill to implement the Marshall judgment. These incorporate a number of improvements over the proposal set out in the consultative document.
- We have adopted the EOC suggestion for a parallel amendment to the Equal Pay Act on retirement.
- Equality in state and occupational pensions is generally accepted as a desirable objective, but for the longer term.

iii) Oxbridge Colleges

- At one stage there was a possibility of an amendment to the Sex Discrimination Bill to make discrimination in teaching appointments at Oxbridge colleges unlawful, as it is at other universities. This will now not happen in the Bill, although we have not necessarily ruled it out for good.

Background

The Sex Discrimination Bill, published on 7 February and introduced in the House of Lords, is now in Commons Committee stage. The Bill has three major purposes:

- i) It amends the Sex Discrimination Act 1975 to bring Britain into line with the EC Equal Treatment Directive following a judgment against the Government in the European Court of Justice in November 1983. The Bill will make void discriminatory provisions in collective agreements, narrow the Sex Discrimination Act's exemption for private households - but will maintain the principle of respect for private life - and remove the exemption for firms with five or fewer employees.
- ii) The Bill also removes outmoded restrictions on women's hours and nightworking in factories as recommended by the EOC's 1979 Report: "Health and Safety Legislation: Should we distinguish between men and women?" (as well as on men's nightworking in baking). No real health and safety protections for women could be identified.

The EOC Report also recommended transitional provisions to prevent women being pressured to work new hours conflicting with domestic responsibilities. Possibilities were incorporating statutory restrictions into contracts of employment, and ACAS or HSC issuing a Code of Practice to guide employers. The Lords accepted clauses providing for both against Government advice. Commons Committee will shortly consider Government amendments tabled on June 5 to remove them.

- iii) Following the European Court of Justice ruling in the Marshall case on 26 February 1986 (which stated that dismissal of a woman solely because she has reached state pensionable age, where a man of the same age and in comparable circumstances would not be dismissed, is sex discrimination contrary to the EC Equal Treatment Directive; and that employees of a 'state authority' can rely directly on European law where national provisions do not conform with the Directive in this respect), the Government has tabled new clauses to the Bill to outlaw discriminatory retirement ages.

These proposals do not affect the payment of pensions (payment of state pension at different ages for men and women is specifically allowed by European law). The EOC have argued that this opportunity should be taken to equalise state pensionable ages. The Government supports a flexible approach to retirement and proposed the idea of a 'decade of retirement', which would apply equally to men and women, in the recent Social Security White Paper. However, the costs would at present be prohibitive.

Cost about £3bn
if pensionable
ages equalised
at 60.

The proposed amendment to the statutes of single-sex Oxbridge Colleges (which at present permit them to employ teaching staff of one sex only) will not now go ahead in the Bill. The Oxbridge statutes were not singled out arbitrarily. They were one of three pre-1975 legal instruments, prevented from being unlawful by section 51 of the Sex Discrimination Act, which the Government had identified as being potentially contrary to the Equal Treatment Directive. The others concerned local authority licenses for public entertainment and some Northern Ireland regulations concerning primary schools. There are plans to remove discrimination in all these areas.

8. DEREGULATION WHITE PAPER PROPOSALSi) Written Reasons for DismissalPoints to make

- it is anomalous that the qualifying periods for the rights to complain of unfair dismissal and to ask for a written statement of reasons for dismissal are different.
- the increase in the qualifying period for the right to complain that they have not received a written statement of reasons for dismissal does not prevent an employee from asking for such a statement or the employer giving one; what it does is to remove the obligation on the employer to do so and thus simplify the law.

Background

The EOC have raised a point about para 7.5 of the White Paper which proposes to extend from 6 months to two years the qualifying period for employees to have the right to complain to an industrial tribunal that they have not received a written statement of the reasons for dismissal.

At present dismissed employees have the right after six months service to ask their employers to furnish such a statement within 14 days of the request. If no statement is forthcoming they can apply to an industrial tribunal. The proposal in the White Paper brings the right to ask for a written statement of reasons for dismissal into line with the qualifying period before an employee has a right to complain of unfair dismissal. The EOC's point is that unnecessary litigation could ensue on sex related issues if an employee thinks that he or she has been dismissed for a sex-related issue (for which there is no qualifying period for complaint under the Sex Discrimination Act) and has been given no explanation for the dismissal.

ii) Deposit for Applications to Industrial Tribunals

Points to make

- we will be consulting a wide range of interested bodies, including the EOC. All views will receive careful consideration.
- employers do complain about the cost and effort of defending ill-founded claims. If the EOC have alternative suggestions for deterring weak claims to industrial tribunals we would be pleased to consider them.

Background

One of the main complaints from employers about the employment protection legislation is the cost and management effort required to deal with ill-founded claims to industrial tribunals. This also results in additional public expenditure though it costs the applicant nothing to initiate such a claim.

Para 7.4 of the White Paper was a proposal to introduce a requirement that all applicants pay a fee, perhaps £25, when making an application to an industrial tribunal. Such a fee would be refundable if the applicant won the case or if the claim was withdrawn or settled before the date for a full hearing was fixed.

Because the Lord Chancellor, the Lord Advocate and the Law Officers had reservations about the proposal, it was included in the White Paper only as a suggestion which would be subject to fuller consultation. The Department of Employment will be inviting a wide range of organisations, including the EOC, to submit their views.

iii) Part-time Workers - qualification for employment rights

Points to make

- it is not the intention to take away the rights of employees who already qualify for them.
- rights to protection against dismissal in relation to complaints on grounds of sex discrimination will also not be affected.

[IF PRESSED on the rights of existing employees who have not yet qualified for employment protection rights]:

- we have not yet finalised the details of legislation that will be needed to implement this proposal. We will carefully consider the position of existing employees who do not yet qualify for the rights when detailed proposals are drawn up. We will, of course, bear your comments in mind].
- there is no intention to discriminate against women; the proposal is designed purely to help business and increase employment opportunities: many women will therefore benefit.

Background

Para 7.10 of the White Paper is a proposal to raise certain thresholds from the current 8 and 16 hours work each week to 12 and 20 hours respectively. Those working below 12 hours a week (currently 8 hours) will not qualify for most employment rights, including the right to make a complaint of unfair dismissal. Employees working between 12 and 20 hours (currently between 8 and 16 hours) will generally qualify after 5 years service. Employees working more than 20 hours a week (currently more than 16) will qualify for most rights after two years' service. Rights to protection against dismissal in relation to complaints on the grounds of sex or race discrimination and trades union membership, which do not depend on hours of work or qualifying periods, will not be affected.

Current legislation deters some employers from creating new part-time jobs. At present there are around 230,000 employees working between 8 and 12 hours a week with 5 or more years qualifying service, and 130,000 employees working 16-20 hours with between 2 and 5 years service whose jobs ultimately would be entirely or partially freed from the constraints of employment protection legislation.

EOC are under the impression that $\frac{1}{2}$ million women would lose their rights under this proposal. In fact it has never been the intention to take away the rights of employees who already qualify for them.

The EOC may argue that the removal of rights from persons who work less than a number of hours could constitute indirect discrimination against women. It is known that the majority of part-time workers (approx. 90%) are women and it seems likely that the proportion of women who could satisfy the requirement of working 20 hours a week for two years, or of working 12 hours a week for five years, would be lower than the proportion for men. The law officers have advised that there is a risk of the proposal being regarded as indirectly discriminatory and therefore in breach of the EC Equal Treatment Directive.

iv) The Right to Return to Work after Maternity Absence

Points to make

- We are concerned with protecting the rights of women employees but research indicates that this proposal while freeing a substantial number of employers from the obligation would not, in practice, greatly effect the position of the women employees or indeed their employers.
- Employers can feel threatened by the problem of keeping a job open for 40 weeks and this may lead them to be reluctant to recruit younger women. (We estimate that over 30% of all employing units are small independent firms with fewer than 10 employees).

- Research has shown that very few women with the necessary qualifying service give notice of return and act on it. We estimate that 5% of women employees of child bearing age work in small firms of less than 10 employees and have the necessary qualifying service and would potentially be denied the "absolute right" of return. But in any one year of the 16,500 who might be expected to have babies only perhaps 15% of these would give notice and return to the same employer.
- The proportion of women who do return to work with the same employer is higher among very small firms than generally despite the fact that fewer will qualify for the right to return. Research indicates that the statutory right seems to have little bearing on whether the woman will return to her employer or not. Indeed small firms seem to make less use of the formal notice requirement possibly because there is a tendency towards greater informality of employer relations.
- Although women in small firms will be denied the "absolute" right of return they nevertheless still have a "conditional" right insofar as the employer should allow the employee to return if it is reasonably practicable for him to do so, but failure to permit her return will not be treated as dismissal.

Background

Since 1976 women who have two years continuous service with the same employer by the beginning of the eleventh week before their expected week of confinement have had the right to return to their old jobs within 29 weeks of the birth of the baby.

It was recognised that some employers, particularly small employers, might have had difficulty meeting this obligation and in turn have been reluctant to employ younger women. In 1980 some changes were introduced so that an employer could offer an alternative job if the original post was no longer available and employers with fewer than 6 employees were exempted from the obligation to reinstate if it was not reasonably practicable for them to do so.

The Government is proposing that the small firms exemption should be raised to employers with fewer than 10 employees.

9. SECOND COMMUNITY ACTION PROGRAMME ON EQUAL OPPORTUNITIES FOR WOMEN

Points to make

- The resolution which accompanied the Action Programme was agreed at the meeting of the Social Affairs Council on 5 June. The text commits the Council to support the broad outlines of the Programme and take appropriate action towards the objective of realising equal opportunities in economic, social and cultural life. The UK Government was very pleased to adopt this resolution.
- We are already in the UK implementing a number of the measures suggested in the Programme eg repealing outdated restrictions on women's night work. In addition, during our Presidency we intend to hold a conference for European practitioners in women's training. The Secretary of State for Employment will be writing to the EOC about this when plans are developed.

Background

The second Community Action Programme on Equal Opportunities for Women, for the period 1986-1990, is intended to follow on from the first Action Programme, which ran from 1982-1985, and has been prepared by the European Commission with the aim of intensifying action on equal opportunities for women and responding to economic and social changes and technological developments.

The new programme focuses on action to be taken by member states and by the Commission to improve the application of existing equal treatment legislation; develop training and education programmes to expand women's occupational choice, with special reference to new technology; revise protective legislation which is no longer needed; promote and sharing of family and occupational responsibilities; and modify out-dated attitudes towards women through information campaigns, contracts and exchanges.

The Resolution sets the terms of the Council of Ministers' Support for the Programme. Key features are

- (i) support for the broad outlines and objectives of the Programme proposed by the Commission;
- (ii) no commitment to outstanding directives (only to "efforts to seek solutions to the problems involved");
- (iii) no commitment to placing the burden of proof in sex discrimination cases on employers (only to "examination of all aspects of the problems relating to the establishment of proof");
- (iv) recognition that the objectives of the Programme "may and should be achieved without imposing any unreasonable burden on the economy and undertakings";
- (v) recognition of the role of employers and employees in promoting equality of opportunity at the workplace.

10. EC DRAFT DIRECTIVE ON PARENTAL LEAVE

Points to make

- The Government accepts that career break and leave arrangements can be of value to employees, and that there can be benefits to employers. Where this is so, these matters are best negotiated voluntarily between the parties concerned, according to their own priorities, needs and circumstances and what each can afford. The Government does not believe that legislation in this area would be appropriate. Imposing one arrangement on all undertakings - as the European Commission proposes - could be very costly to individual employers, thereby damaging employment prospects.
- The suggestion of a parental leave allowance is not a priority for public funds. This is not the right time to be giving extra rights to those in jobs at the expense of the unemployed.

- At the June 5 Council of Ministers Meeting the Commission shelved the draft directive but stated that they intend to issue a series of 'actions' on the issues covered by the proposal. We do not yet know what the Commission has in mind or how they intend to proceed.
- The Government welcomes the EOC study as a contribution to the debate. The Department of Employment are analysing it and will reply to the EOC shortly.

Background

The EC proposal seeks to create an entitlement to:

- i) at least 3 months parental leave consequential upon the birth or adoption of a child; and
- ii) a minimum number of days leave per annum for pressing family reasons.

Parental leave would be unpaid, though Member States would be free to pay a state allowance.

At the June 5 Social Affairs Council of Ministers Meeting the Commission shelved the draft directive due to its lack of progress but stated that a series of "actions" would be taken with regard to the issues covered by the proposal. We do not know what the Commission have in mind, nor how they intend to proceed.

At previous Council Meetings a number of Member States besides the UK had expressed reservations about the draft directive and at no stage has a vote been taken. At the December Council Meeting the Paymaster General suggested that the proposal be considered by the European Commission's new unit which will assess the impact of new regulations on small and medium size businesses, but nothing has subsequently happened on this front.

The EOC have recently published a study on parental leave which concludes that the cost of such a scheme would ^{not} be expensive relative to other social welfare costs associated with employment. It estimates that the total wages and salaries bill will increase by less than 0.01%; and the net cost to the Exchequer of unpaid leave will be between £3 and £6 m per year; that the

payment of a flat rate allowance would involve an annual net cost to the Exchequer of £29 to £42 m per year; and that between 6 and 9,000 would be taken off the unemployment register. The Department of Employment's initial reaction is that these figures are highly contentious.

11. UNFAIR DISMISSAL QUALIFYING PERIODS - IMPLICATIONS FOR PREGNANT WOMENPoints to make

- The Government certainly appreciates and shares the EOC's concern for the health and welfare of pregnant women. However, we do not believe that to reduce or remove the qualifying period for claims of unfair dismissal on the grounds of pregnancy would be either justified or helpful to potential women employees trying to find new jobs.
- We know of no evidence that the qualifying period has had an adverse effect on women's health and safety, and we believe that a shorter (or no) qualifying period might well have discouraged employers from taking on younger women and therefore have been counter-productive in terms of employment.
- Although a woman with less than two years continuous service cannot claim unfair dismissal, she does have the right, under the Sex Discrimination Act, to be treated no less favourably than a man would be in comparable circumstances; for example, a tribunal might find that there had been unlawful discrimination if an employer dismissed a woman because of actual or expected absences due to pregnancy where a man who, say, needed time off to have and recover from an operation would not have been dismissed.

Background

Prior to 1975 there were circumstances in which dismissal because of pregnancy could count as fair dismissal. A provision was introduced into the Employment Protection Act 1975 to make dismissal for reasons connected with pregnancy automatically unfair, but subject to the general qualifying period for unfair dismissal - then 6 months. Since then changes in the qualifying period for unfair dismissal have applied consequentially to dismissal on grounds of pregnancy.

Following the extension of the qualifying period for complaints of unfair dismissal to two years for all employees from 1 June 1985, Lady Platt wrote several times to successive Secretaries of State for Employment asking them to reconsider the policy on dismissal on grounds of pregnancy. She argued that the employment protection legislation should be amended to protect all women against such dismissals for two reasons:

- (i) the lack of protection encouraged women to conceal their pregnancies and thus undermined Government measures to improve take-up of ante-natal care;
- (ii) dismissal on grounds of pregnancy constituted sex discrimination.

On the first point Lady Platt was challenged to provide evidence. She was unable to do so but argued that the EOC do regularly receive complaints and enquiries concerning the employment problems of pregnant women. She stated that the EOC were also aware from the number of enquiries they and a number of Law Centres received, that some pregnant women were also experiencing difficulties in obtaining time off for ante-natal care.

Lady Platt based her second argument largely on two sex discrimination cases, supported by the EOC, which were the subject of a judgment last year by the Employment Appeal Tribunal (EAT). The EAT ruled that dismissal on grounds associated with pregnancy (eg absences or reduced performance resulting from sickness) could be unlawful sex discrimination if a sick man would have been treated more favourably by the employer. This means that a pregnant woman who has been employed for less than two years now has some degree of protection against dismissal though not so much protection as she would have if, as Lady Platt suggested, the employment protection legislation qualifying period were removed. There is no qualifying period for complaints under the Sex Discrimination Act.

The Secretary of State's reply of 22 October 1985 to Lady Platt is attached at Annex B.

12. ELIGIBILITY CRITERIA FOR THE COMMUNITY PROGRAMMEPoints to make

- The Government believes there is equal opportunity for women under the Community Programme. We consider that it is important to try to ensure that the help available goes to those in greatest need both of a job and of a wage - both men and women - as identified by the receipt of an appropriate benefit.
- As you know the Employment Appeal Tribunal upheld our appeal in the case of Mrs Chandler and the case has been remitted to a differently constituted Industrial Tribunal for re-hearing.
- I am sure you will agree it would not be right to pre-judge the outcome of that hearing.
- I am however encouraged by the facts that our appeal was allowed and that the original decision described our policy of directing help to the most needy as 'reasonable and proper'. That is what we shall continue to do.

Background

Last year a Mrs Chandler made a complaint to an industrial tribunal claiming that the community programme rule requiring applicants to be in receipt of an appropriate state benefit discriminates against married women. On 2 July 1985 the tribunal found against the Department on the grounds that such indirect discrimination was not justified.

The Department appealed against the decision to the Employment Appeals Tribunal (EAT) and the case was heard on 3-4 February 1986.

The EAT upheld our appeal on the grounds it did not find valid four of the five reasons on which the original decision of the Industrial Tribunal was based. The EAT have remitted the case back to a constituted Industrial Tribunal to reconsider in the light of this latest judgement.

In view of the number of other, similar cases which are outstanding the Department considered whether to appeal to the court of appeal against the case being remitted to the Tribunal. After taking Counsel's opinion and in view of the fact that we were successful before the Employment Appeal Tribunal on every point raised in our notice of appeal we decided not to appeal against the EAT judgment.

It is understood that the EOC will also not be appealing against the EAT decision.

CODE OF PRACTICE

For the elimination of
discrimination on the grounds
of sex and marriage
and the promotion of
equality of opportunity
in employment.



Equal Opportunities Commission

EQUAL OPPORTUNITIES COMMISSION

CODE OF PRACTICE

EQUAL OPPORTUNITY POLICIES,
PROCEDURES AND PRACTICES
IN EMPLOYMENT

This Code from pages 6 to 23 is issued pursuant to Section 56A(1) and (7) of the Sex Discrimination Act 1975 and comes into effect, by order of the Secretary of State, on 30 April 1985.

LONDON: HER MAJESTY'S STATIONERY OFFICE

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CODE OF PRACTICE

The Equal Opportunities Commission (the EOC) was set up under the Sex Discrimination Act 1975 (as amended) and is empowered to issue Codes of Practice under section 56(A)(1) of that Act.

A failure on the part of any person to observe any provision of a code of practice shall not of itself render him [or her] liable to any proceedings; but in any proceedings under this Act before an industrial tribunal any code of practice issued under this section shall be admissible in evidence, and if any provision of such a code appears to the tribunal to be relevant to any question arising in the proceedings it shall be taken into account in determining that question.

[Sex Discrimination Act 1975 (as amended), section 56A(10)]

INTRODUCTION

1. The EOC issues this Code of Practice for the following purposes:

- (a) for the elimination of discrimination in employment
- (b) to give guidance as to what steps it is reasonably practicable for employers to take to ensure that their employees do not in the course of their employment act unlawfully contrary to the Sex Discrimination Act (SDA)
- (c) for the promotion of equality of opportunity between men and women in employment.

The SDA prohibits discrimination against men, as well as against women. It also requires that married people should not be treated less favourably than single people of the same sex.

It should be noted that the provisions of the SDA – and therefore of this Code – apply to the UK-based subsidiaries of foreign companies.

2. The Code gives guidance to employers, trade unions and employment agencies on measures which can be taken to achieve equality. The chances of success of any organisation will clearly be improved if it seeks to develop the abilities of all employees, and the Code shows the close link which exists between equal opportunity and good employment practice. In some cases, an initial cost may be involved, but this should be more than compensated for by better relationships and better use of human resources.

SMALL BUSINESSES

3. The Code has to deal in general terms and it will be necessary for employers to adapt it in a way appropriate to the size and structure of their organisations. Small businesses, for example, will require much simpler procedures than organisations with complex structures and it may not always be reasonable for them to carry out all the Code's detailed recommendations. In adapting the Code's recommendations, small firms should, however, ensure that their practices comply with the Sex Discrimination Act.

EMPLOYERS' RESPONSIBILITY

4. **The primary responsibility at law rests with each employer to ensure that there is no unlawful discrimination.** It is important, however, that measures to eliminate discrimination or promote equality of opportunity should be understood and supported by all employees. Employers are therefore recommended to involve their employees in equal opportunity policies.

INDIVIDUAL EMPLOYEES' RESPONSIBILITY

5. While the main responsibility for eliminating discrimination and providing equal opportunity is that of the employer, individual employees at all levels have responsibilities too. They must not discriminate or knowingly aid their employer to do so.

TRADE UNION RESPONSIBILITY

6. The full commitment of trade unions is essential for the elimination of discrimination and for the successful operation of an equal opportunities policy. Much can be achieved by collective bargaining and throughout the Code it is assumed that all the normal procedures will be followed.
7. It is recommended that unions should co-operate in the introduction and implementation of equal opportunities policies where employers have decided to introduce them, and should urge that such policies be adopted where they have not yet been introduced.
8. Trade Unions have a responsibility to ensure that their representatives and members do not unlawfully discriminate on grounds of sex or marriage in the admission or treatment of members. The guidance in this Code also applies to trade unions in their role as employers.

EMPLOYMENT AGENCIES

9. Employment agencies have a responsibility as suppliers of job applicants to avoid unlawful discrimination on the grounds of sex or marriage in providing services to clients. The guidance in this Code also applies to employment agencies in their role as employers.

DEFINITIONS

10. For ease of reference, the main employment provisions of the Sex Discrimination Act, including definitions of direct and indirect sex and marriage discrimination, are provided in a Legal Annex to this Code. (See pages 17-23).

PART 1

THE ROLE OF GOOD EMPLOYMENT PRACTICES IN ELIMINATING SEX AND MARRIAGE DISCRIMINATION

11. This section of the Code describes those good employment practices which will help to eliminate unlawful discrimination. It recommends the establishment and use of consistent criteria for selection, training, promotion, redundancy and dismissal which are made known to all employees. Without this consistency, decisions can be subjective and leave the way open for unlawful discrimination to occur.

RECRUITMENT

12. It is unlawful: UNLESS THE JOB IS COVERED BY AN EXCEPTION:*
- TO DISCRIMINATE DIRECTLY OR INDIRECTLY ON THE GROUNDS OF SEX OR MARRIAGE

- IN THE ARRANGEMENTS MADE FOR DECIDING WHO SHOULD BE OFFERED A JOB
- IN ANY TERMS OF EMPLOYMENT
- BY REFUSING OR OMITTING TO OFFER A PERSON EMPLOYMENT

[Section 6(1)(a); 6(1)(b); 6(1)(c)]†

13. It is therefore recommended that:

- (a) each individual should be assessed according to his or her personal capability to carry out a given job. It should not be assumed that men only or women only will be able to perform certain kinds of work;
- (b) any qualifications or requirements applied to a job which effectively inhibit applications from one sex or from married people should be retained only if they are justifiable in terms of the job to be done;

[Section 6(1)(a), together with section 1(1)(b) or 3(1)(b)]

- (c) any age limits should be retained only if they are necessary for the job. An unjustifiable age limit could constitute unlawful indirect discrimination, for example, against women who have taken time out of employment for child-rearing;

- (d) where trade unions uphold such qualifications or requirements as union policy, they should amend that policy in the light of any potentially unlawful effect.

GENUINE OCCUPATIONAL QUALIFICATIONS (GOQs)

14. It is unlawful: EXCEPT FOR CERTAIN JOBS WHEN A PERSON'S SEX IS A GENUINE OCCUPATIONAL QUALIFICATION (GOQ) FOR THAT JOB to select candidates on the ground of sex.

[Section 7(2); 7(3) and 7(4)]

* There are a number of exceptions to the requirements of the SDA, that employers must not discriminate against their employees or against potential employees. The main exceptions are mentioned on pages 17/18 of the Legal Annex.

† For the full text of section 6 or other sections of the Sex Discrimination Act referred to in this Code, readers are advised to consult a copy of the Act which is available from Her Majesty's Stationery Office.

15. There are very few instances in which a job will qualify for a GOQ on the ground of sex. However, exceptions may arise*, for example, where considerations of privacy and decency or authenticity are involved. The SDA expressly states that the need of the job for strength and stamina does not justify restricting it to men. When a GOQ exists for a job, it applies also to promotion, transfer, or training for that job, but cannot be used to justify a dismissal.

16. In some instances, the GOQ will apply to some of the duties only. A GOQ will not be valid, however, where members of the appropriate sex are already employed in sufficient numbers to meet the employer's likely requirements without undue inconvenience. For example, in a job where sales assistants may be required to undertake changing room duties, it might not be lawful to claim a GOQ in respect of *all* the assistants on the grounds that any of them might be required to undertake changing room duties from time to time.

17. It is therefore recommended that:

- A job for which a GOQ was used in the past should be re-examined if the post falls vacant to see whether the GOQ still applies. Circumstances may well have changed, rendering the GOQ inapplicable.

SOURCES OF RECRUITMENT

18. It is unlawful: UNLESS THE JOB IS COVERED BY AN EXCEPTION:

- TO DISCRIMINATE ON GROUNDS OF SEX OR MARRIAGE IN THE ARRANGEMENTS MADE FOR DETERMINING WHO SHOULD BE OFFERED EMPLOYMENT WHETHER RECRUITING BY ADVERTISEMENTS, THROUGH EMPLOYMENT AGENCIES, JOBCENTRES, OR CAREER OFFICES.

- TO IMPLY THAT APPLICATIONS FROM ONE SEX OR FROM MARRIED PEOPLE WILL NOT BE CONSIDERED.

[Section 6(1)(a)]

- TO INSTRUCT OR PUT PRESSURE ON OTHERS TO OMIT TO REFER FOR EMPLOYMENT PEOPLE OF ONE SEX OR MARRIED PEOPLE UNLESS THE JOB IS COVERED BY AN EXCEPTION.

[Sections 39 and 40]

It is also unlawful WHEN ADVERTISING JOB VACANCIES,

- TO PUBLISH OR CAUSE TO BE PUBLISHED AN ADVERTISEMENT WHICH INDICATES OR MIGHT REASONABLY BE UNDERSTOOD AS INDICATING AN INTENTION TO DISCRIMINATE UNLAWFULLY ON GROUNDS OF SEX OR MARRIAGE.

[Section 38]

* See page 18 of Legal Annex

19. It is therefore recommended that:

Advertising

- (a) job advertising should be carried out in such a way as to encourage applications from suitable candidates of both sexes. This can be achieved both by wording of the advertisements and, for example, by placing advertisements in publications likely to reach both sexes. All advertising material and accompanying literature relating to employment or training issues should be reviewed to ensure that it avoids presenting men and women in stereotyped roles. Such stereotyping tends to perpetuate sex segregation in jobs and can also lead people of the opposite sex to believe that they would be unsuccessful in applying for particular jobs;
- (b) where vacancies are filled by promotion or transfer, they should be published to all eligible employees in such a way that they do not restrict applications from either sex;
- (c) recruitment solely or primarily by word of mouth may unnecessarily restrict the choice of applicants available. The method should be avoided in a workforce predominantly of one sex, if in practice it prevents members of the opposite sex from applying;
- (d) where applicants are supplied through trade unions and members of one sex only come forward, this should be discussed with the unions and an alternative approach adopted.

Careers Service/Schools

20. When notifying vacancies to the Careers Service, employers should specify that these are open to both boys and girls. This is especially important when a job has traditionally been done exclusively or mainly by one sex. If dealing with single sex schools, they should ensure, where possible, that both boys' and girls' schools are approached; it is also a good idea to remind mixed schools that jobs are open to boys and girls.

SELECTION METHODS

Tests

21. (a) If selection tests are used, they should be specifically related to job and/or career requirements and should measure an individual's actual or inherent ability to do or train for the work or career.
- (b) Tests should be reviewed regularly to ensure that they remain relevant and free from any unjustifiable bias, either in content or in scoring mechanism.

Applications and Interviewing

22. It is unlawful: UNLESS THE JOB IS COVERED BY AN EXCEPTION:

TO DISCRIMINATE ON GROUNDS OF SEX OR MARRIAGE BY REFUSING OR DELIBERATELY OMITTING TO OFFER EMPLOYMENT.

[Section 6(1)(c)]

23. It is therefore recommended that:

- (a) employers should ensure that personnel staff, line managers and all other employees who may come into contact with job applicants, should be trained in the provisions of the SDA, including the fact that it is unlawful to instruct or put pressure on others to discriminate;
- (b) applications from men and women should be processed in exactly the same way. For example, there should not be separate lists of male and female or married and single applicants. All those handling applications and conducting interviews should be trained in the avoidance of unlawful discrimination and records of interviews kept, where practicable, showing why applicants were or were not appointed;
- (c) questions should relate to the requirements of the job. Where it is necessary to assess whether personal circumstances will affect performance of the job (for example, where it involves unsocial hours or extensive travel) this should be discussed objectively without detailed questions based on assumptions about marital status, children and domestic obligations. Questions about marriage plans or family intentions should not be asked, as they could be construed as showing bias against women. Information necessary for personnel records can be collected after a job offer has been made.

PROMOTION, TRANSFER AND TRAINING

24. It is unlawful: UNLESS THE JOB IS COVERED BY AN EXCEPTION, FOR EMPLOYERS TO DISCRIMINATE DIRECTLY OR INDIRECTLY ON THE GROUNDS OF SEX OR MARRIAGE IN THE WAY THEY AFFORD ACCESS TO OPPORTUNITIES FOR PROMOTION, TRANSFER OR TRAINING.

[Section 6(2)(a)]

25. It is therefore recommended that:

- (a) where an appraisal system is in operation, the assessment criteria should be examined to ensure that they are not unlawfully discriminatory and the scheme monitored to assess how it is working in practice;
- (b) when a group of workers predominantly of one sex is excluded from an appraisal scheme, access to promotion, transfer and training and to other benefits should be reviewed, to ensure that there is no unlawful indirect discrimination;
- (c) promotion and career development patterns are reviewed to ensure that the traditional qualifications are justifiable requirements for the job to be done. In some circumstances, for example, promotion on the basis of length of service could amount to unlawful indirect discrimination, as it may unjustifiably affect more women than men;
- (d) when general ability and personal qualities are the main requirements for promotion to a post, care should be taken to consider favourably candidates of both sexes with differing career patterns and general experience;
- (e) rules which restrict or preclude transfer between certain jobs should be questioned and changed if they are found to be unlawfully discriminatory. Employees of one sex may be concentrated in sections from which transfers are traditionally restricted without real justification;

- (f) policies and practices regarding selection for training, day release and personal development should be examined for unlawful direct and indirect discrimination. Where there is found to be an imbalance in training as between sexes, the cause should be identified to ensure that it is not discriminatory;

(g) age limits for access to training and promotion should be questioned.

HEALTH AND SAFETY LEGISLATION

26. Equal treatment of men and women may be limited by statutory provisions which require men and women to be treated differently. For example, the Factories Act 1961 places restrictions on the hours of work of female manual employees, although the Health and Safety Executive can exempt employers from these restrictions, subject to certain conditions. The Mines and Quarries Act 1954 imposes limitations on women's work and there are restrictions where there is special concern for the unborn child (e.g. lead and ionising radiation). However the broad duties placed on employers by the Health and Safety at Work, etc., Act, 1974 makes no distinctions between men and women. Section 2(1) requires employers to ensure, so far as is reasonably practicable, the health and safety and welfare at work of *all* employees.

SPECIFIC HEALTH AND SAFETY REQUIREMENTS UNDER EARLIER LEGISLATION ARE UNAFFECTED BY THE ACT.

It is therefore recommended that

- company policy should be reviewed and serious consideration given to any significant differences in treatment between men and women, and there should be well-founded reasons if such differences are maintained or introduced.

TERMS OF EMPLOYMENT, BENEFITS, FACILITIES AND SERVICES

27. It is unlawful: UNLESS THE JOB IS COVERED BY AN EXCEPTION:

TO DISCRIMINATE ON THE GROUNDS OF SEX OR MARRIAGE, DIRECTLY OR INDIRECTLY, IN THE TERMS ON WHICH EMPLOYMENT IS OFFERED OR IN AFFORDING ACCESS TO ANY BENEFITS*, FACILITIES OR SERVICES

[Sections 6(1)(b); 6(2)(a); 29]

28. It is therefore recommended that:

- (a) all terms of employment, benefits, facilities and services are reviewed to ensure that there is no unlawful discrimination on grounds of sex or marriage. For example, part-time work, domestic leave, company cars and benefits for dependants should be available to both male and female employees in the same or not materially different circumstances.

29. In an establishment where part-timers are solely or mainly women, unlawful indirect discrimination may arise if, as a group, they are treated less favourably than other employees without justification.

It is therefore recommended that:

- (b) where part-time workers do not enjoy pro-rata pay or benefits with full-time workers, the arrangements should be reviewed to ensure that they are justified without regard to sex.

GRIEVANCES, DISCIPLINARY PROCEDURES AND VICTIMISATION

30. It is unlawful: TO VICTIMISE AN INDIVIDUAL FOR A COMPLAINT MADE IN GOOD FAITH ABOUT SEX OR MARRIAGE DISCRIMINATION OR FOR GIVING EVIDENCE ABOUT SUCH A COMPLAINT.

[Section 4(1); 4(2); and 4(3)]

31. It is therefore recommended that:

- (a) particular care is taken to ensure that an employee who has in good faith taken action under the Sex Discrimination Act or the Equal Pay Act does not receive less favourable treatment than other employees, for example by being disciplined or dismissed;
- (b) employees should be advised to use the internal procedures, where appropriate, but this is without prejudice to the individual's right to apply to an industrial tribunal within the statutory time limit, i.e. before the end of the period of three months beginning when the act complained of was done. (There is no time limit if the victimisation is continuing.);
- (c) particular care is taken to deal effectively with all complaints of discrimination, victimisation or harassment. It should not be assumed that they are made by those who are over-sensitive.

DISMISSALS, REDUNDANCIES AND OTHER UNFAVOURABLE TREATMENT OF EMPLOYEES

32. It is unlawful: TO DISCRIMINATE DIRECTLY OR INDIRECTLY ON GROUNDS OF SEX OR MARRIAGE IN DISMISSALS OR BY TREATING AN EMPLOYEE UNFAVOURABLY IN ANY OTHER WAY.

[Section 6(2)(b)]

It is therefore recommended that:

- (a) care is taken that members of one sex are not disciplined or dismissed for performance or behaviour which would be overlooked or condoned in the other sex;
- (b) redundancy procedures affecting a group of employees predominantly of one sex should be reviewed, so as to remove any effects which could be disproportionate and unjustifiable;
- (c) conditions of access to voluntary redundancy benefit* should be made available on equal terms to male and female employees in the same or not materially different circumstances;
- (d) where there is down-grading or short-time working (for example, owing to a change in the nature or volume of an employer's business) the arrangements should not unlawfully discriminate on the ground of sex;
- (e) all reasonably practical steps should be taken to ensure that a standard of conduct or behaviour is observed which prevents members of either sex from being intimidated, harassed or otherwise subjected to unfavourable treatment on the ground of their sex.

* Certain provisions relating to death and retirement are exempt from the Act.

* Certain provisions relating to death and retirement are exempt from the Act.

PART 2

THE ROLE OF GOOD EMPLOYMENT PRACTICES IN PROMOTING EQUALITY OF OPPORTUNITY

33. This section of the Code describes those employment practices which help to promote equality of opportunity. It gives information about the formulation and implementation of equal opportunities policies. While such policies are not required by law, their value has been recognised by a number of employers who have voluntarily adopted them. Others may wish to follow this example.

FORMULATING AN EQUAL OPPORTUNITIES POLICY

34. An equal opportunities policy will ensure the effective use of human resources in the best interests of both the organisation and its employees. It is a commitment by an employer to the development and use of employment procedures and practices which do not discriminate on grounds of sex or marriage and which provide genuine equality of opportunity for all employees. The detail of the policy will vary according to size of the organisation.

IMPLEMENTING THE POLICY

35. An equal opportunities policy must be seen to have the active support of management at the highest level. To ensure that the policy is fully effective, the following procedure is recommended:
- (a) the policy should be clearly stated and, where appropriate, included in a collective agreement;
 - (b) overall responsibility for implementing the policy should rest with senior management;
 - (c) the policy should be made known to all employees and, where reasonably practicable, to all job applicants.
36. Trade unions have a very important part to play in implementing genuine equality of opportunity and they will obviously be involved in the review of established procedures to ensure that these are consistent with the law.

MONITORING

37. It is recommended that the policy is monitored regularly to ensure that it is working in practice. Consideration could be given to setting up a joint Management/Trade Union Review Committee.
38. In a small firm with a simple structure it may be quite adequate to assess the distribution and payment of employees from personal knowledge.
39. In a large and complex organisation a more formal analysis will be necessary, for example, by sex, grade and payment in each unit. This may need to be introduced by stages as resources permit. Any formal analysis should be regularly updated and available to Management and Trade Unions to enable any necessary action to be taken.
40. Sensible monitoring will show, for example, whether members of one sex:
- (a) do not apply for employment or promotion, or that fewer apply than might be expected;

- (b) are not recruited, promoted or selected for training and development or are appointed/selected in a significantly lower proportion than their rate of application;
- (c) are concentrated in certain jobs, sections or departments.

POSITIVE ACTION

Recruitment, Training and Promotion

41. Selection for recruitment or promotion must be on merit, irrespective of sex. However, the Sex Discrimination Act does allow certain steps to redress the effects of previous unequal opportunities. Where there have been few or no members of one sex in particular work in their employment for the previous 12 months, the Act allows employers to give special encouragement to, and provide specific training for, the minority sex. Such measures are usually described as Positive Action.

[Section 48]

42. Employers may wish to consider positive measures such as:
- (a) training their own employees (male or female) for work which is traditionally the preserve of the other sex, for example, training women for skilled manual or technical work;
 - (b) positive encouragement to women to apply for management posts - special courses may be needed;
 - (c) advertisements which encourage applications from the minority sex, but make it clear that selection will be on merit without reference to sex;
 - (d) notifying job agencies, as part of a Positive Action Programme that they wish to encourage members of one sex to apply for vacancies, where few or no members of that sex are doing the work in question. In these circumstances, job agencies should tell both men and women about the posts and, in addition, let the under-represented sex know that applications from them are particularly welcome. Withholding information from one sex in an attempt to encourage applications from the opposite sex would be unlawful.

Other Working Arrangements

43. There are other forms of action which could assist both employer and employee by helping to provide continuity of employment to working parents, many of whom will have valuable experience or skills.

Employers may wish to consider with their employees whether:

- (a) certain jobs can be carried out on a part-time or flexi-time basis;
- (b) personal leave arrangements are adequate and available to both sexes. It should not be assumed that men may not need to undertake domestic responsibilities on occasion, especially at the time of childbirth;
- (c) child-care facilities are available locally or whether it would be feasible to establish nursery facilities on the premises or combine with other employers to provide them;

(d) residential training could be facilitated for employees with young children. For example, where this type of training is necessary, by informing staff who are selected well in advance to enable them to make childcare and other personal arrangements; employers with their own residential training centres could also consider whether childcare facilities might be provided;

(e) the statutory maternity leave provisions could be enhanced, for example, by reducing the qualifying service period, extending the leave period, or giving access to part-time arrangements on return.

These arrangements, and others, are helpful to both sexes but are of particular benefit to women in helping them to remain in gainful employment during the years of child-rearing.

ANNEX

LEGAL BACKGROUND

This section gives general guidance only and should not be regarded as a complete or definitive statement of law.

THE RELATIONSHIP BETWEEN THE EQUAL PAY ACT AND THE SEX DISCRIMINATION ACT

The Sex Discrimination Act 1975 (as amended) (the SDA) covers a wide range of non-contractual benefits, in addition to covering practices and procedures relating to recruitment, training, promotion and dismissal. A claim relating to a contractual benefit may also be brought under the SDA provided the benefit does not consist of the payment of money.

The Equal Pay Act 1970 (as amended) (the EPA) provides for an individual to be treated not less favourably than a person of the opposite sex who works for the same employer, as regards **pay and other terms of the contract of employment** where they are employed on like work (i.e. the same work or work which is broadly similar) or on work which has been rated as equivalent under a job evaluation scheme or on work which is of equal value.

There is no overlap between an individual's rights under the Equal Pay Act and those under the Sex Discrimination Act. All complaints of discrimination in the circumstances covered by the EPA are dealt with under that Act. All complaints of discrimination about access to jobs and matters not included in a contract of employment and about contractual matters (other than those relating to the payment of money) in situations not covered by the EPA are dealt with under the SDA.

WHO IS COVERED BY THE SDA?

The provisions of the SDA apply to both men and women. It is unlawful to discriminate, directly or indirectly, against a person on the grounds of sex or marriage, unless the situation is covered by one of the Exceptions. It is also unlawful to instruct or bring pressure to bear on others to discriminate.

EXCEPTIONS FROM THE ACT

Geographical Scope

Section 10(1)

The SDA does not relate to employment which is wholly or mainly outside Great Britain.

Private Household or Small Employer

Section 6(3)(a); Section 6(3)(b)

These exceptions make it lawful under the Sex Discrimination Act to discriminate in relation to existing or potential employment in a private household, or an organisation which employs five people or fewer.* These exceptions do not apply to matters covered by the Equal Pay Act.

Discrimination ("victimisation") under section 4 of the SDA is not excluded by these exceptions.

* However in the light of a judgement of the European Court of Justice in Luxembourg (165/82 of 8th November 1983), these exceptions will be subject to amendment in the near future.

Death or Retirement

Section 6(4)

Certain provisions relating to death or retirement are exempt from the SDA.

Pregnancy or Childbirth

Section 2(2)

Special treatment (i.e. more favourable treatment) may lawfully be afforded to women in connection with pregnancy or childbirth.

Genuine Occupational Qualifications

Section 7

A person's sex may be a Genuine Occupational Qualification (GOQ) for a job, in which case discrimination in recruitment, opportunities for promotion or transfer to, or training for such employment would not be unlawful. A GOQ cannot, however, apply to the treatment of employees once they are in post, nor to discrimination on grounds of marriage, nor to victimisation.

The GOQ is not an automatic exception for general categories of jobs. In every case it will be necessary for an employer to show that the criteria detailed in the SDA apply to the job or part of the job in question.

A GOQ may be claimed only because of:

- (a) physiology (excluding physical strength and stamina) or authenticity – for example, a model or an actor.
- (b) decency or privacy – for example, some changing room attendants.
- (c) the nature or location of the establishment which makes it impracticable for the jobholder to live in premises other than those provided by the employer (e.g. if the job is in a ship or on a remote site) and the only available premises for persons doing that kind of job do not provide both separate sleeping accommodation for each sex, and sanitary facilities which can be used in privacy from the other. In such a case, the employer may discriminate by choosing for the job only persons of the same sex as those who are already living, or normally live, in these premises. However, the exception does not apply if the employer could reasonably be expected either to equip the premises with the necessary separate sleeping accommodation and private sanitary facilities, or to provide other premises, for a jobholder of the opposite sex.
- (d) the fact that the establishment, or part of it, provides special care, supervision or attention to people of one sex only – for example, some jobs in a single-sex hospital.
- (e) the fact that the job involves the provision of personal services, promoting welfare or education, that are most effectively provided by men (or by women) – for example, some probation officers or wardens of residential hostels.
- (f) laws regulating the employment of women.
- (g) the laws and customs of the country in which part of the job is to be carried out – for example, a job involving driving in a country where women are forbidden to drive.
- (h) the fact that the job is one of two to be held by a married couple.

DEFINITION OF "EMPLOYMENT"

Section 82

"Employment" is defined in the SDA as meaning employment under a contract of service or of apprenticeship or a contract personally to carry out any work or labour.

DIRECT SEX DISCRIMINATION

Section 1(1)(a)

This occurs where a person of one sex is treated less favourably, on the ground of sex, than a person of the other sex would be in the same or not materially different circumstances.

INDIRECT SEX DISCRIMINATION

Section 1(1)(b)

Indirect sex discrimination occurs when an unjustifiable requirement or condition is applied equally to both sexes, but has a disproportionately adverse effect on one sex, because the proportion of one sex which can comply with it is much smaller than the proportion of the other sex which can comply with it. For example, a requirement to be mobile might bar more women than men. A complainant would have to show that fewer women than men could comply with such a requirement and that it is to her detriment that she cannot comply. Where the employer can justify such a requirement without regard to sex there will be no unlawful act. A finding of unlawful discrimination may be made even though the employer has no intention to discriminate.

MARRIAGE DISCRIMINATION

Section 3(1)(a); Section 3(1)(b)

Direct discrimination against a married person occurs where a married person is treated less favourably on the grounds of marital status, than an unmarried person of the same sex would be in the same or not materially different circumstances. Indirect discrimination against a married person is similar in concept to indirect sex discrimination and may arise when a condition or requirement is applied equally to married and unmarried persons of the same sex but which is in fact discriminatory in its effect on married persons. For example, a requirement to be mobile might bar more married than single women.

DISCRIMINATION BY WAY OF VICTIMISATION

Section 4

This occurs where a person is treated less favourably than other persons would be treated because he/she has done something by reference to the EPA or the SDA, for example, brought proceedings or given evidence or information in a case under either of those Acts or alleged (expressly or otherwise) that anyone has committed an act which could constitute a breach of those Acts. Victimisation is not unlawful if the allegation was false and not made in good faith.

DISCRIMINATION IN RECRUITMENT

Section 6(1)

This section makes it unlawful for an employer to discriminate when recruiting employees in the following ways:

Section 6(1)(a)

in the arrangements made for deciding who should be offered a job. (One example might be the instructions given to a Personnel Officer or to an Employment Agency. Another example might be advertising a job in a place where only one sex would have the opportunity of seeing the advertisement.)

Section 6(1)(b)

in relation to any terms offered (for instance, in respect of pay or holidays). It is, for instance, unlawful to offer a job (whether or not the candidate accepts), where the terms would be a breach of the EPA should an employment contract be entered into.

Section 6(1)(c)

by refusing or deliberately omitting to offer a person employment (for example, by rejecting an application or deliberately refusing consideration of an application).

DISCRIMINATION IN THE TREATMENT OF PRESENT EMPLOYEES

Section 6(2)

This section makes it unlawful for an employer to discriminate in the following ways:

Section 6(2)(a)

in the way access is afforded to opportunities for promotion, transfer or training, or to any other benefits*, facilities or services, or by refusing or deliberately omitting to afford access to them; or

Section 6(2)(b)

by dismissal or the subjection to any other unfavourable treatment.

Section 9

DISCRIMINATION AGAINST CONTRACT WORKERS

Section 9(1)

This section covers contract workers, i.e. workers who are sent to work for an organisation by another organisation which employs them.

Section 9(2)

It is unlawful for the principal firm to discriminate on grounds of sex or marriage:

- (a) in the terms on which it allows the contract worker to do the work; or
- (b) by not allowing the contract worker to do it or continue to do it; or
- (c) in the way the contract worker is afforded access to any benefits, facilities or services or by refusing or deliberately omitting to afford access to any of them; or
- (d) by subjecting the contract worker to any other unfavourable treatment.

Section 9(3)

A principal may rely upon the GOQ exception, where it is applicable, to refuse to allow a contract worker to do, or to continue to do the contract work.

* other than the payment of money provided under a contract of employment.

Section 9(4)

Where a principal provides his contract workers with benefits, facilities or services not materially different from those he provides to the public, a complaint relating to the discriminatory provision of such benefits, etc. would not fall under section 9, but under section 29 of the SDA.

DISCRIMINATION BY TRADE UNIONS AND EMPLOYERS' ORGANISATIONS, ETC.

Section 12(1) and 12(2)

It is unlawful, for an organisation of workers or of employers or any other organisation whose members carry on a particular profession or trade for the purposes of which the organisation exists, to discriminate on grounds of sex or marriage against anyone applying for membership:

- (a) in the terms on which it is prepared to admit the person to membership; or
- (b) by refusing or deliberately omitting to accept an application for membership.

Section 12(3)

It is unlawful for such an organisation to discriminate on grounds of sex or marriage against a member:

- (a) in the way it affords access to any benefits, facilities or services or by refusing or deliberately omitting to afford access to them; or
- (b) by depriving a person of membership or varying the terms of membership; or
- (c) subjecting to any other unfavourable treatment.

DISCRIMINATION BY EMPLOYMENT AGENCIES

Section 15(1)

It is unlawful for an employment agency to discriminate on grounds of sex or marriage:

- (a) in the terms on which they offer to provide any of their services; or
- (b) by refusing or deliberately omitting to provide them; or
- (c) in the way in which they provide any of them.

Section 15(4)

Section 15(1) will not apply if the discrimination only concerns employment which an employer could lawfully refuse to offer to a woman (or a man).

Section 15(5) and 15(6)

Where an employment agency has the employer's assurance that a vacancy is covered by one of the exceptions and this turns out not to be the case, the agency has a defence if it can prove both that it acted in reliance on a statement by the employer that its action would not be unlawful and that it was reasonable for it to rely on the statement. It is a summary offence punishable by a fine not exceeding £2,000, knowingly or recklessly to make such a statement which in a material respect is false or misleading.

Section 38

DISCRIMINATORY ADVERTISEMENTS

Section 38(1) and 38(2)

The SDA makes it unlawful to publish or cause to be published an advertisement which indicates, or might reasonably be taken to indicate, an intention to discriminate unlawfully. An advertisement would not be unlawful if it dealt with a job which was covered by an exception.

Section 38(3)

An advertisement which uses a job description with a sexual connotation (for example, 'waiter' 'salesgirl' or 'stewardess') is taken as an intention to commit an unlawful discriminatory act, unless the advertisement states that the job is open to men and women or uses descriptions applying to both sexes (e.g. 'waiter' or 'waitress').

Section 38(4)

There will be cases where a publisher may not know whether a particular advertisement is lawful. A publisher will not be held liable if:

- (a) he or she relied on a statement by the person placing the advertisement that the publication would not be unlawful, for example because the vacancy was covered by an exception; and
- (b) it was reasonable for the publisher to rely on the statement.

Section 38(5)

It is an offence punishable on summary conviction with a fine not exceeding £2,000, for anyone placing an advertisement knowingly or recklessly to make a materially false or misleading statement to the publisher as to its lawfulness.

INSTRUCTIONS TO DISCRIMINATE

Section 39

It is unlawful for a person who has authority over another person or whose wishes are normally carried out by that other person to instruct or attempt to procure another person (e.g. a member of staff) to carry out an act of unlawful discrimination, e.g. an instruction to an employment agency to discriminate.

PRESSURE TO DISCRIMINATE

Section 40

It is unlawful for a person to bring pressure to bear on another person to carry out an act of unlawful discrimination, by providing or offering any benefit or threatening any detriment; for example, by a threat of industrial action to persuade an employer to discriminate.

LIABILITY OF EMPLOYERS AND PRINCIPALS

Section 41

An employer is liable for any act done by an employee in the course of the employment with or without the employer's knowledge or approval, unless the employer can show that such steps were taken as were reasonably practicable to prevent the employee doing the act in question. Similarly, a principal is liable for any act done by an agent with the principal's authority.

Section 42

A person (for example, an employee or agent) who knowingly aids another to do an unlawful act is also to be treated as having done that act, unless it can be shown that he or she acted in reliance on a statement that the act would not be unlawful and that it was reasonable to rely on such a statement.

POSITIVE ACTION BY TRAINING BODIES

Section 47

Training bodies may apply to the Secretary of State for Employment to become designated for the purpose of providing:

- (a) training or encouragement for particular work where in the previous 12 months one sex has been substantially under-represented, or
- (b) special training for persons following absence from employment because of domestic or family responsibilities.

POSITIVE ACTION BY EMPLOYERS

Section 48

This section of the SDA allows for positive action by employers to overcome the effects of past discrimination. It allows for training and encouragement where few or no members of one sex have been doing particular work in the preceding 12 months. It does not cover recruitment or promotion.

Advice on the promotion of equality of opportunity in employment is available from the EOC. All EOC publications referred to are available from the EOC offices in Manchester, Glasgow and Cardiff:

Overseas House, Quay Street, Manchester M3 3HN

249 West George Street, Glasgow G2 4QE

Caerwys House, Windsor Lane, Cardiff CF1 1LB

EOC Publications

A Short Guide to the Sex Discrimination Act 1975

Equal Opportunities: A Guide for Employers

A Model Equal Opportunity Policy

The Sex Discrimination Act and Advertising

Fair Dealing - guidance notes on the Sex Discrimination Act for those in the Employment Services

Setting up a Workplace Nursery: A manual for employers and employees

Positive Sex Discrimination in Training Schemes: Guidance on how to apply for Designation under Section 47 of the Sex Discrimination Act 1975

Other Publications

Many Policy Statements will cover race as well as sex discrimination. For advice on racial discrimination refer to the Code of Practice issued by the Commission for Racial Equality.

Examples of equal opportunities policy statements are the Trade Union Congress Model Clause and the Confederation of British Industry's Statement Guide.

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The Baroness Platt of Writtle CBE MA C.Eng M.R.Ac.S
Chairman
Equal Opportunities Commission
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22 October 1985

De Vries,

You wrote to Tom King on 10 July about the implications for pregnant women employees of the extension of the qualifying period for complaints of unfair dismissal. I am sorry that I have not been able to let you have an earlier response.

As you would expect, I have carefully considered the position in the light of your letter and the judgment of the Employment Appeal Tribunal in the cases of Hayes v Malleable Working Men's Club and Institute and Maughan v North East London Magistrates Court Committee. The EAT ruled that there is no principle in law preventing the application of the Sex Discrimination Act to cases where a woman claims to have been the victim of direct or indirect discrimination on grounds associated or connected with the fact that she is pregnant. The effect of this judgment is to allow another avenue of complaint to a woman who is dismissed and would not qualify under employment protection legislation. I am afraid therefore that I cannot agree that the Tribunal's decision strengthens the case for an exception to the qualifying period for unfair dismissal or that such an amendment would be appropriate.

I have also looked again at the more general arguments, but can only endorse the points made by Tom King, namely that there has always been the same qualifying period for unfair dismissal on grounds of pregnancy as on general grounds; that in determining the length of the qualifying period, a balance needs to be struck between employment protection rights and the creation of jobs and that to have introduced a shorter (or no) qualifying period in respect of dismissal because of pregnancy might well have discouraged employers from taking on younger women and therefore have been counter productive in terms of the creation of employment opportunities.



I am sorry that I cannot send you a more encouraging reply. I am sending copies of this letter to Norman Fowler and Barney Hayhoe.

*Ken
Haw*



**The shortage of
mathematics and physics
teachers**

**A statement by
The Engineering Council
May 1986**



This terse paper is a request for a firm national programme to respond to perceived shortages. It is addressed to all those bodies who can contribute to a national programme. A great deal may be achievable through currently deployed resources.

Introduction

There has been anxiety about the shortage of mathematics and physics teachers since the end of the last war – from Lord Hankey's report to the Ministry of Employment in 1949 to the current alarms raised by industry and bodies such as the Royal Society and Institute of Physics. A number of palliatives have been tried, but over the years they have proved inadequate. The present crisis relates to Britain's loss of competitiveness in world trade. Solutions have to be found if we are to remain an advanced industrial nation in the 21st Century.

Heads of schools describe the future prospects for their mathematics and physics education as "desperate". This judgement applies only to the condition of mathematics and science education as it has been and is now; it scarcely begins to approach the issue of mathematics and science education as it should be.

If the nation's intention is to convert itself into a society more numerate and more literate in science and technology and to provide a base for future technological and economic competence, then immediate remedial actions of many kinds must be taken. Measures need to be taken at a number of levels, in different directions and ranging from emergency to long term action.

The shortage problem is so complex that no one remedy will sort it out. What is needed is a co-ordinated national programme.

Action recommended

The following list is not exclusive and it is not given in any priority order.

Differential rewards for teachers

Industry and commerce are competing for a larger share of physics and mathematics graduates and are paying increasingly higher salaries.

Employers of teachers and the Department of Education and Science should explore all possibilities for enhancing the financial attractions of teaching mathematics and physics.

The possibilities of a formal differential salary structure should be examined, otherwise a general differential rewards approach should be pursued. Inducements may well be offered on salary scales by allowances for special responsibilities, and by the negotiation of extra pay for extra experience with industry or higher education. Consultancy, associate lectureships or contributions to research programmes could similarly be recognised.

Use industry and higher and further education institutions (including universities) as a source of teachers

Encourage flexible career patterns allowing interchange between industry and education. This could be achieved by secondments from industry and higher/further education into schools or by shared appointments.

Encourage suitable mathematicians and physicists from industry and higher education to take early retirement and to transfer to a career in the teaching profession.

Returners to teaching

Campaign nationally to attract "returners" back to the teaching profession on a full time or part time basis.

"Career Break" schemes similar to those promoted by The Engineering Council for women engineers should be considered.

Offer financial incentives, for example, guarantee that they can return to teaching on the same salary scale that they left, or award a lump sum if they return for a period greater than, say, two years.

Offer child care facilities and give high priority to nursery classes and playgroups.

Offer intensive courses for updating and conversion to teaching.

Initial teacher training

Pay a Scale 1 salary to intending teachers of mathematics and physics during initial teacher training.

Encourage biology and other suitable graduates at the post graduate certificate of education (PGCE) stage to reorientate to mathematics and physics.

Foundation courses

Encourage polytechnics and universities to offer a one-year bridging course in mathematics and physics to enable school leavers to prepare themselves for mathematics, physical science and engineering undergraduate courses. Grants must be available for students pursuing these courses.

Use of Education Support Grants (ESGs)

Give increased priority for in-service training in mathematics, physics, and "technology across the curriculum".

Offer ESGs to Local Education Authorities (LEAs) for Computer Assisted Learning, Inter Active video, Open Learning modules, and tutored video work initiatives.

Equip schools with modern equipment for science and technology teaching.

Local Education Authorities

Local Education Authorities can contribute by:

carrying out an audit of qualified staff in their schools, colleges and LEA departments to unlock specialists from administrative duties.

directing capitation allowances towards mathematics and science departments.



drawing up five-year action plans based on "Industry Year 1986" initiatives.

ensuring mathematics and physics courses are "friendly" to both sexes and are enjoyable, interesting and relevant.

making technological literacy and competency for all pupils a priority in primary and secondary schools.

ensuring that there are good ancillary staff support, particularly laboratory technicians, for science and mathematics departments.

strengthening their mathematics and science Education Advisory Service.

joining the university and polytechnic "milk-round" to attract people into the teaching profession.

developing the use of open learning systems in subject shortage areas.

paying all out-of-pocket expenses to mathematics and physics teachers who have to relocate to take up a new appointment.

Build on existing initiatives

A substantial number of initiatives are currently being taken by the Department of Education and Science, and the Department of Trade and Industry, such as the £1,200 p.a. Bursary Scheme for people training as mathematics and physics teachers, the development of National Education Resources Information Service (NERIS), and ESGs.

We now need to build on these initiatives.



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HUSBAND & WIFE TAXES

Margaret Stone takes a good look at the Government's latest Green Paper – more like waving a red rag at working wives?

One of the longest running sagas on the family finance scene is the taxation of husband and wife. It looks as though this 'soap' has started yet another new series, but I have a feeling that for many women the next few episodes will be as unsatisfactory as was the *Dynasty* wedding massacre in the TV ratings.

At the hub of the tax debate is equality between men and women. For too long, women have been treated as their husband's chattels, at least in the eyes of the taxman. It is the husband's responsibility to fill in the tax return, and it is only in recent years that the Inland Revenue has, when a query arose, deigned to address correspondence to a married working woman.

The 1973 change in the rules which permitted high earning couples each to be taxed as separate individuals, each in receipt of a single person's allowance, helped couples whose incomes jointly exceed £25,361 (tax year 1985-86). But that was a tax-saving device, not a matter of equality between husband and wife, and anyway did little to help lower-earning families. Further reforms were drafted. They promise to be quite incendiary.

Light the Green Paper

Timed to coincide with this year's Budget – and heavily criticised in advance – the Chancellor's Green Paper (The Reform of Personal Taxation) proposes to abolish the married man's tax allowance and introduce independent taxation for both partners. There would be single allowances for all, with husbands and wives able to transfer any unused part of their allowances to each other. Meaning that all couples would get two allowances whether both partners work, or just one. (At present, only working wives are entitled to the wife's earned income relief.)

In future, suggested Mr Lawson, husbands should have the benefit of twice the single person's allowance when their wives give up a job to start a family – belated recognition, of sorts, of the unpaid vital work that women do in the home. But tax experts and women's rights groups were quick to spot flaws, the key complaint being that the long-awaited tax 'reforms' would penalise

two-earner couples and wind up discriminating against working women instead.

It is already being called a charter for 'stay-at-home' wives – wives who choose not to work as distinct from women who, because of domestic responsibilities such as looking after children, cannot go out to work. It is also bound to upset many working wives because of the implied dismissal of their contribution to the family's and the country's economy. And for wives returning to work after a period of absence, the implications are disturbing; their entire income immediately will be taxed at 29% – more, if the husband is in a higher tax bracket, which he will be if his taxable income exceeds £16,200.

Under the Lawson scheme, households with a husband and wife both working would lose, whereas families with just one earner would gain. It is small consolation to know that the Government will introduce the reform very gradually, allowing a long transitional period, during which personal allowances will be raised to the point where two allowances match the two-and-a-half allowances which dual-earner families get today. Meantime, here's how things stand for the 1985-86 tax year, and allowances proposed for 1986-87 (*in italics*):

Single – both working.

Man	£2,205	(2,335)
Woman	£2,205	(2,335)

Married – both working.

Husband	£3,455	(2,655)
Wife's earned income allowance	£2,205	(2,335)

Married – both working and joint income over £25,361.

Husband	£2,205	(2,335)
Wife	£2,205	(2,335)

Married – wife not working.

Husband	£3,455	(3,655)
Wife	nil	

Married – husband not working.

Husband	nil	
Wife	£3,455	(3,655)

plus wife's earned income allowance £2,205 (2,335)

The crucial contrast at the moment is between the ordinary working couple who between them at the moment have two and half times the ordinary single person's allowance, and the household in which the wife doesn't work, where the allowances

are only one and half times the single person's allowance. Clearly, the tax treatment of these two sets of married couples is unbalanced compared with the 'norm' of the tax treatment for single men and women.

Attempts at reform

Debate and discussion on how to redress this imbalance began back in what almost qualifies as 'the good old days' when Jim Callaghan was Prime Minister and Denis Healy his Chancellor of the Exchequer. The Conservatives inherited the issue, and when Sir Geoffrey Howe was Chancellor, the first important Green Paper on the taxation on husbands and wives was published.

The prevailing impression, then, was that Sir Geoffrey favoured individual taxation for husbands and working wives, but that money saved on the abolition of the married man's personal allowance should be diverted to boost child allowances instead of being given to the non-working wife to transfer back to her husband. But the lobby in favour of giving an extra fillip where it is most needed – the child benefit – instead of paying women to stay at home, seems to have lost ground to the more generalist campaigners in favour of the 'family', and a woman's right not to work outside the home.

Full implementation of the proposed new system – assuming it survives without modification the pent-up antagonism and any possible change in Government – will certainly not be until the Inland Revenue is fully computerised at the end of the decade. It is amazing that so many of our tax returns are not yet held on computer; but by the end of this decade, we should have push-button rather than pen-pushing tax officers.

Other Green Paper points: investment income will be the responsibility of the recipient; mortgage interest tax relief (currently available to each of two single persons living together) probably will be reduced to £30,000 per residence; capital gains tax to be charged separately, too.

And a further change afoot for the working woman, of course, is the latest Government proposal to let her carry on working right up to the male retirement age if she wishes. □