

**2010 No. 2622**

**EQUALITY**

**The Equality Act 2010 (Amendment) Order 2010**

<i>Made</i>	- - - -	<i>27th October 2010</i>
<i>Laid before Parliament</i>		<i>29th October 2010</i>
<i>Coming into force</i>	- -	<i>30th October 2010</i>

The Secretary of State, being a Minister designated<sup>(a)</sup> for the purposes of section 2(2) of the European Communities Act 1972<sup>(b)</sup> in relation to discrimination, makes the following Order in exercise of the powers conferred by that section:

**Citation, commencement and extent**

- 1.—(1) This Order may be cited as the Equality Act 2010 (Amendment) Order 2010.
- (2) This Order comes into force on 30th October 2010.
- (3) This Order extends to England and Wales and Scotland.

**Amendment of section 76 of the Equality Act 2010**

2. In section 76 of the Equality Act 2010<sup>(c)</sup> (exclusion of pregnancy and maternity discrimination provisions), after subsection (1), insert the following—

“(1A) The relevant pregnancy and maternity discrimination provision has no effect in relation to a term of the woman’s work—

- (a) that relates to pay, but
- (b) in relation to which a maternity equality clause or rule has no effect.”

27th October 2010

*Lynne Featherstone*  
Parliamentary Under Secretary of State

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(a) S.I. 2002/1819.  
(b) 1972 c.68.  
(c) 2010 c.15.

## EXPLANATORY NOTE

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

This Order amends section 76 of the Equality Act 2010 (c.15) (“the Act”) to ensure that a claim for pregnancy and maternity discrimination cannot be brought in relation to a term of a woman’s work that relates to pay where a maternity equality clause or rule has no effect. Section 76, together with sections 70 and 71 of the Act, are part of Chapter 3 of Part 5 of the Act governing equality of terms at work and are intended to replicate the effect of section 6(6) of the Sex Discrimination Act 1975 (c.65) (“the 1975 Act”). That provision operated so as to prevent a sex discrimination claim from being brought with respect to benefits consisting of the payment of money which was regulated by a contract of employment. Claims for discrimination arising out of such terms were to be brought exclusively under the Equal Pay Act 1970 (c.41) which governed all discrimination claims concerning contractual pay, including those brought in relation to maternity-related pay. Sections 70 and 71 of the Act replicate the effect of section 6(6) of the 1975 Act in relation to claims for sex discrimination concerning contractual pay (subject to the limited new exception in section 71(2) for claims of direct sex discrimination relating to contractual pay). Section 76 of the Act was intended to replicate the effect of section 6(6) of the 1975 Act in relation to claims for pregnancy and maternity discrimination, but only excluded such a claim where there would be a claim under a maternity equality clause or rule. Article 2 of this Order ensures that section 76 will have the same effect as section 6(6) of the 1975 Act by also excluding claims for pregnancy and maternity discrimination relating to contractual pay where a maternity equality clause or rule has no effect.

The amendment to section 76 of the Act relates to the obligation in Article 11 of Council Directive 92/85/EEC of 19 October 1992 on the introduction of measures to encourage improvements in the safety and health of pregnant workers and workers who have recently given birth or are breastfeeding (tenth individual Directive within the meaning of Article 16(1) of Directive 89/391) (O.J. L348, 28.11.92, p.1) to accord a woman on maternity leave a right to a payment or adequate allowance and the obligation in Article 4 of Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast) (O.J. L204, 26.7.2006, p.23) to prohibit discrimination in employment on grounds of sex, including discrimination on grounds of maternity.

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