

# **The costs of non-equality: the UK report**

**Jill Rubery in collaboration with Colette Fagan, Hugo Figueiredo, Damian Grimshaw**

**European Work and Employment Research Centre  
Manchester School of Management  
UMIST**

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## **Introduction**

The development of equality legislation in the UK has been strongly influenced by legislation and policy at the EU level. Box 1 maps the development of equality legislation in the UK against the passing of EU directives with respect to equality. Although the passing of the 1970 Equal Pay Act in the UK preceded the UK's entry into the EU, there is no doubt that the impending entry and the awareness of the article on equal treatment in the Treaty of Rome was a stimulus to UK legislation. However, the UK already had legislation on racial discrimination and the 1975 law on sex discrimination was also influenced by this UK legislation. The 1983 amendment to the Equal Pay Act that brought in the concept of equal value to UK law was directly stimulated by the judgement by the European Court of Justice that the 1970 legislation did not comply fully with the 1975 directive. The UK has also developed and adapted its legislation in the light of emerging case law based on European law (see box 2). Amendments have been made to UK law, for example in areas of unfair dismissal and redundancy, in the light of judgments that exclusion based on the distinction between full-time and part-time workers constitutes a form of indirect discrimination.

### **BOX 1. UK legislation in relation to the EU Treaty and Equality directives**

Article 141(4) EC: Equal Pay Act 1970 (as amended)

Council Directive 75/117/EEC of 10 February 1975 on the approximation of the laws of the Member States relating to the application of the principle of equal pay for men and women [1975] OJ L45/198: Equal Pay Act 1970 (as amended); Equal Pay (Amendment) Regulations 2003 (SI 2003 No. 0000).

Council Directive 76/207/EEC of 9 February 1976 on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions [1976] OJ L39/40: Sex Discrimination Act 1975 (as amended), Sex Discrimination Act 1986; Employment Act 1989

Council Directive 79/7/EEC of 19 December 1978 on the progressive implementation of the principle of equal treatment for men and women in matters of social security [1979] OJ L6/24. originally implemented by Social Security Act 1980, schedule 1, Part 1, subsequently repealed by the Social Security (Consequential Provisions) Act 1992, section 3(1), Schedule 1. See now Social Security Contributions and Benefits Act 1992

Council Directive 86/378/EEC of 24 July 1986 on the implementation of the principle of equal treatment for men and women in occupational social security schemes [1986] OJ L225/40: Social Security Act 1989, section 23, and Schedule 5

Council Directive 86/613/EEC of 11 December 1986 on the application of the principle of equal treatment between men and women engaged in an activity, including agriculture, in a self-employed capacity, and on the protection of self-employed women during pregnancy and motherhood [1986] OJ L359/56: Sex Discrimination Act 1975; Equal Pay Act 1970; Sex Discrimination Act 1986; Social Security Act 1975 (as amended)

Council Directive 92/85/EEC of 19 October 1992 on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers who have recently given birth or are breastfeeding [1992] OJ L348/1. See now Maternity and Parental Leave (Amendment) Regulations 2002, SI 2789.

Council Directive 93/104/EC of 23 November 1993 concerning certain aspects of the organisation of working time [1993] OJ L307/18: Working Time Regulations 1998, SI 1833; Working Time Regulations 1999 SI 3372.

Council Directive 96/34/EC of 3 June 1996 on the framework agreement on parental leave concluded by UNICE, CEEP and the ETUC [1996] OJ L145/11, eventually agreed to by the United Kingdom in Council Directive 97/75/EC of 15 December 1997 amending and extending, to the United Kingdom of Great Britain and Northern Ireland, Directive 96/34/EEC on the framework agreement on parental leave concluded by UNICE, CEEP and the ETUC [1997] OJ L10/24: Employment Relations Act 1999; Maternity and Parental leave Regulations 1999, SI 3312; Maternity and Parental Leave Regulations (Amendment) Regulations 2001, SI 4010; Maternity and Parental Leave Regulations (Amendment) Regulations 2002, SI 2789.

Council Directive 96/97/EC of 20 December 1996 amending Directive 86/378/EEC on the implementation of the principle of equal treatment for men and women in occupational social security schemes [1997] OJ L14/13. Pensions Act 1995 Council Directive 97/80/EC of 15 December 1997 on the burden of proof in cases of discrimination based on sex [1998] OJ L14/6, eventually accepted by the United Kingdom in Council Directive 98/52/EC of 13 July 1998 on the extension of Directive 97/80/EC on the burden of proof in cases of discrimination based on sex to the United Kingdom of Great Britain and Northern Ireland [1998] OJ L205/66: Sex Discrimination (Indirect Discrimination and Burden of Proof) Regulations 2001 (SI 2001/2660)

Council Directive 97/81/EC of 15 December 1997 concerning the Framework Agreement on part-time work concluded by UNICE, CEEP and the ETUC Annex: Framework Agreement on part-time work [1998] OJ L14/9: Employment Relations Act 1999; Part-time Workers (Prevention of Less Favourable Treatment) Regulations 2000, SI 2000/1551; Part-time Workers (Prevention of Less Favourable Treatment) Regulations 2000 (Amendment) Regulations 2000, SI 2002/2035.

Box 2 outlines the main ways in which UK law has been influenced by the EU to comply with directives or as a consequence of case law. It also identifies the main areas where UK law may currently provide for improvement on EU law and areas where there may be doubts about compliance. For example with respect to equal pay, the UK is one of a rather small number of countries – just two according to Van Doorne-Huiskes et al. (1995), the UK and the Netherlands - that make specific reference to job grading in their equal pay legislation. However, the UK adopts a more restrictive definition than that in European legislation with respect to the scope of coverage, restricting the comparator to someone in the same employment (where this implies being in the same establishment with the same employer; or in the same establishment but with different employers, where the employers are ‘associated’; in a different establishment but the same employer, provided common terms and conditions apply; or being in different establishments with different employers, provided common terms and conditions apply and the employers are associated). In contrast the European legislation refers to the same employment or service and may allow for wider applications of comparison across non-associated employers or where common terms and conditions do not apply and the Netherlands has allowed for comparisons with another employer (as close as possible in character to that where the complainant is employed) in circumstances where no comparator of the opposite sex doing comparable work is available within the complainant’s own establishment. In a

1986 case in the UK sexual harassment was found to constitute sex discrimination within the context of the 1975 Sex Discrimination Act. The UK, however, has retained a restrictive approach to positive action compared to what could be permitted under EU law.

## **Box 2. The Evolution of UK law in relation to EU law**

### **1. Equal Value Amendment**

The 1983 equal value amendment was introduced as the 1979 legislation did not include an equal value clause. Where there is an analytical job evaluation scheme in place, this can provide the basis either for equal pay on the basis of work rated as equivalent or, for jobs not rated as equivalent, an equal pay claim can not proceed unless the scheme can be shown to be discriminatory. If no analytical job evaluation has been carried out and the case is referred to an independent expert, the expert is required to draw up a report using a non discriminatory, analytical job evaluation scheme. The UK law does not allow comparison across employers unless they are associated, nor even across workplaces that are under common ownership unless the employees are on common terms and conditions. The UK law may be more restrictive than the EU legislation in this respect.

### **2. Indirect discrimination: changes to definition, clarification of test and impact on part-timers**

UK definitions of indirect discrimination have been amended in line with changes in EU law as in the burden of proof directive. In implementing the Employment directive the UK government plans- independently of the 'recasting' of equality legislation- to harmonise the definition of indirect discrimination as in the 2002 amendment to the Equal Treatment directive.

The test for indirect discrimination, as in the *Bilka-Kaufhaus*, Case No. 170/84 European Court of Justice (ECJ) requires that employers objectively justify that the requirement is based on a real need and the provision is both appropriate and necessary to that end. This interpretation tightened the definition of indirect discrimination in the favour of an employee as previous UK case law had only required the needs of the employer to be balanced against the discriminatory effect.

In 1981, the ECJ in *Jenkins v. Kingsgate* found that paying part-time workers less than full-time can be discriminatory contrary to EU pay law. In 1994, the exclusion of employees working for under 16 hours a week for less than five years from unfair dismissal and redundancy rights was deemed not compatible with EU sex discrimination law (*Regina v. Secretary of State ex parte EOC*) and UK law was amended in 1995 to remove the hours' thresholds. The exclusion of part-timers from employers' occupational pension scheme was also found to constitute indirect discrimination and this ruling has led to the lodging of thousands of claims by part-timers for backdated pension contributions. Indirect discrimination has also been used in *London Underground v. Edwards* where a single parent could not comply with new rostering arrangements due to her childcare commitments.

### **3. Pensions**

The *Barber*, Case No. 262/88, and post-*Barber* cases in the ECJ have clarified that a pension paid under a contracted-out private occupational scheme constitutes pay for the purposes of Article 119/141 and is thus subject to the equal pay principle. Exceptions for provisions in relation to death and retirement in the Sex Discrimination Act were changed as a result of the *Marshall Case*, Case No. 152/84, which held to be unlawful the maintenance of different compulsory retirement ages. This decision had considerable impact on UK law as the UK had explicitly excluded pensions from its equal pay law. Although the judgment only provided public sector employees with a direct means of enforcement of these rights, the rights were

extended to private sector employees through the 1986 Sex Discrimination Act. Differences in the age at which the state pension is payable are being phased out.

The exemption of actuarial calculations from the EU equal treatment legislation has particular significance for the UK, due to the high and rising reliance on occupational and personal pensions based on actuarial assessments (in contrast to occupational defined benefit schemes and to the second tier state pension SERPS where contributions and benefits are equal by gender).

#### **4. Pregnancy discrimination**

The ECJ decision in Dekker, Case No. 177/88, that discrimination on grounds of pregnancy constituted direct sex discrimination, together with the Pregnancy Work directive has strengthened the protection of pregnant women against discrimination.

#### **5. Protective legislation/ night work**

The Employment Act 1989 removed the protections afforded to women with respect to night work following pressure from the European Commission, including a reasoned opinion.

#### **6. Compensation**

The upper limit on compensation in cases under the Sex Discrimination Act was removed following the decision of the ECJ in the Marshall v. Southampton and South West Hants Area Health Authority (No. 2) case.

#### **7. Positive action**

In comparison with several other EC states, UK law on positive action falls far short of what is permitted under interpretations of EC law by the ECJ from Marshall onwards (where positive discrimination at the point of recruitment was deemed to be compatible with EU law provided the discrimination was not automatic). In the UK positive actions can be allowed to encourage the minority to apply for jobs and to permit differential provision of training but discrimination is not permitted at the point of recruitment.

#### **8. Sexual Harassment**

Case law established sexual harassment as a form of sex discrimination in the 1975 Sex Discrimination Act, in 1986 (Strathclyde Regional Council v. Porcelli).

#### **9. Social security**

UK state social security legislation as a result of the 1979 Directive and case law has been amended through i) the removal of discriminatory rules relating to adult and child dependency additions; ii) changes in the rules relating to eligibility for supplementary benefit to allow married and cohabiting women to claim, non-contributory invalidity pension repealed (iii) the provision of entitlement to invalid care allowance on the same basis as men and single women to married and co-habiting women, in anticipation of the Drake case, Case No, 150/85; and (iv) the granting of women the same entitlement as men for severe disablement allowance following Johnson v Chief Adjudication Officer, Case No, 31/90.

Source: McCrudden (1995, 2003); EOC (2003a, 2003b); Martino et al (2003).

### *Assessment of the impact of the Equal Pay and Equal Treatment legislation.*

Most direct assessments of equality legislation were focused on the introduction of the Equal Pay Act (passed in 1970 to be implemented by 1975) and the 1975 Sex

Discrimination Act. Box 3 summarises the main results. Certain features of these evaluations can be identified. First, the impact of the legislation depended strongly on the political and economic context: for example the positive impact of the Equal Pay Act in 1970-75 was found to be primarily due to the presence of national level wage settlements that generalised the impact throughout the economy. If it had not been introduced until 1990 when national agreements in the private sector were rare, the impact would have been much more restricted. Secondly, econometric decomposition of the gender pay gap over the 1970s and 1980s suggests that the legislation contributed to a reduction in ‘discrimination’ during the 1970s but there was little change during the 1980s. Thirdly, the method chosen for evaluation leads to very variable results, as evident in the econometric studies which rely on different data sources and choice of variables. Fourthly, it is extremely difficult to identify the impact of the legislation as separate from general social trends, such as increasing female participation in employment and education. However, to the extent that legislation is designed to reinforce and generalise those trends, there is less need to identify the separate impact. Finally, indirect and long term effects of the legislation can be important but more difficult to quantify.

### **Box 3. Evaluations of gender equality legislation**

*First Report on the Implementation of the Equal Pay Act 1970 (Office of Manpower Economics 1972)*: a wide-ranging and detailed study commissioned by the government to assess the progress made and problems encountered during the first two years after passing the Act (with full implementation required by 1975). It draws on changes in rates of pay set out in collective bargaining agreements and wages council orders and is supplemented by information from 142 organizations and a survey of 202 small firms outside collective bargaining or wages council orders. Employers’ associations and trade unions were found to exert a ‘crucial influence on the pace at which equal pay is introduced’, but there was wide variation in progress at industry level; while most agreements registered some movement towards equal pay, few removed discrimination altogether and in some the differential in minimum rates still exceeded 20% (affecting around half a million female workers). Also, women in non manual jobs benefited far more in the public sector (where equal pay was, for the most part, achieved in the early 1960s) than in the private sector. More detailed information from 142 companies showed that only 1 in 10 had introduced equal pay for both manual and non manual workers by 1972. Also, while at national level trade unions positively promoted equal pay, at local level attitudes were sometimes equivocal – with no evidence of an association between company union membership and the pace of change and even some evidence of attempts to restore differentials. Among small firms outside agreements, the survey uncovered evidence of limited knowledge of the contents of the Act.

*Chiplin and Sloane (1976)* found that women’s earnings in 1975 were 8% higher than they would have been without legislation. But according to these authors three-quarters of this increase was due to the legislation giving women equal rights to the flat rate incomes policy supplements payable at this time and only 2% directly to the equal pay legislation. However, a subsequent study by *Ghobadian and White (1987)* refers to the method used to separate out these two impacts as ‘crude’.

*Snell et al 1981*: evaluation of the UK equal pay legislation through 26 cases studies of organisations over the period 1974-1977. In contrast to Chiplin and Sloane, this study found evidence of a direct impact from the legislation that improved women’s relative pay. Most of the impact came from the ‘dramatic’ change in the relationship of female to male basic wage rates. Most organisations did little to change training or promotion procedures but there were changes to recruitment methods, particularly to the wording of adverts. Six cases of non

compliance were identified and a possible 16 further cases of non compliance. Employers took action to minimise the impact through regrading exercises, increased job segregation, tightening of piece rates etc. They also concluded that the further application of job evaluation would be beneficial for women's pay.

*Craig et al. (1982)* evaluated the impact of the 1970 Equal Pay Act on payment systems and structures in small firms or firms without formal grading structures. The results showed that most of these organisations had been relatively unaffected by the Equal Pay Act, except in so far as they followed a national collective agreement where the minimum wage rate increased. In those firms that did introduce formal pay structures as a result of the equal pay legislation the impact was to make visible certain skills that were involved in women's work and to develop a skill and pay hierarchy within the firm.

*Zabalza and Tzannatos (1985)*: econometric analysis suggested that the overall effect of the legislations had been to increase the relative earnings of women by between 17.3 and 18.8 per cent (15% adjusting for changes in relative female employment) (Ghobadian and White 1987). An additional improvement of 2 percent was attributed to the effects of incomes policy. The main mechanism by which the Equal Pay Act had an impact was through the upward equalisation of female and male minimum wage rates in national collective bargaining agreements, a perspective supported by detailed analysis of the changes in collective agreements and in wages council rates over the five year implementation period (Craig et al. 1982).

*Wright and Ermisch (1991)*: econometric analysis of 1980 data which provides an estimate of gender discrimination in pay using, for the first time, real work experience data. Together with previous 'baseline' estimates of discrimination of 51% in 1972 and 32% in 1977 (Joshi and Newell 1989), Wright and Ermisch's estimate of 21% in 1980 suggests that the Equal Pay Act contributed significantly to reducing discrimination.

*Dolton, O'Neill and Sweetman (1996)*: econometric analysis of three cohorts of graduates who entered the labour market in 1960, 1970 and 1980. Applying the Juhn-Murphy-Pierce decomposition technique, the study finds that the legislation (together with a convergence in the gender gap in 'unobservable skills') led to a narrowing of the gender pay gap between 1967 and 1977, but that its effect during the 1980s was limited, possibly because while women enter occupations on the same terms as men 'women find it harder to advance up through the ranks'

*Harkness (1996)* provides a detailed assessment of changes in the gender pay gap between 1973 and 1993 for female full-timers and part-timers. Among full-timers, the pay ratio rose sharply from 59% to 70% between 1973 and 1977, remained relatively constant until the late 1980s and then increased to reach 77% by 1993. Relative pay of female part-timers compared to average pay of all male workers also rose rapidly prior to and following the introduction of the Equal Pay and Sex Discrimination Acts, from 59% to 67% between 1973 and 1977. However, this increase was quickly reversed and relative pay slumped to 61% by 1984 and remained fluctuated between 61% and 64% throughout the rest of the 1980s and early 1990s.

*Manning (1996)* finds that over the period 1971-76, female relative hourly earnings rose by 15% and, against mainstream economic assumptions, female relative employment also rose - by 11% (mainly among part-timers). Manning finds that there is no evidence for the demand curve model and that the female labour market is at least partially monopsonistic. Moreover, the Equal Pay Act raised female wages most in sectors where unionization was strong, supporting the findings of Zabalza and Tzannatos (1985) and others.

*Makepeace, Paci, Joshi and Dolton (1999)*. This comparison of two cohorts in their early 30s demonstrates that the unadjusted gender pay gap in 1991 was around half the 1978 value, due

mainly to women improving their higher education acquisition and work experience. There is some evidence of a fall in the discrimination coefficient, but it is not significantly different from zero, suggesting that there was no improvement in the treatment of women on average. Overall, the authors conclude that it is difficult to disentangle the effects of legislation versus women's improved human capital, since the legislation may also have been effective in raising human capital through increased participation in employment and education, as well as changing returns.

### *Costs of implementing the legislation*

The costs of implementing the legislation relate to the legal and administrative costs associated with compliance. These costs fall on the state, employers and the individuals concerned and will therefore also be addressed within our analysis that considers societal, employer and individual and household based benefits of legislation. Here we just outline the main institutional developments that resulted from the development of this legislation. Boxes 1 and 2 above outline the occasions when the UK law has changed in response to changes in European law or in response to case law established at European level. Each of these developments will have involved an administrative cost. In addition, the UK has established a separate enforcement body - the Equal Opportunities Commission - that had a budget of £8.7m in 2002. Although this enforcement body was set up through UK legislation prior to membership it has made considerable use of European Law as a means of taking test cases on aspects of UK law with a view to influencing the development and amendment of UK law. In 1999/2000 there were around 8000 sex discrimination claims, and around 5000 equal pay claims and just over a thousand claims of unfair dismissal due to pregnancy. Since then the number of cases has increased dramatically due mainly to claims for backdated part-timers' pension rights. The costs of Employment Tribunal cases can be considered to reflect both costs of non compliance by employers and – to the extent that this occurs - the prosecution of non valid cases by those making the complaints. It is not possible to allocate costs between these two areas but certainly costs of non compliance should not be regarded as a cost for the legislation but instead should be considered an indication of the need for legislation with effective remedies. Furthermore, since the removal of the cap on compensation for sex discrimination the value of settlements has risen significantly, suggesting that the penalties on employers have been too low in the past. This means that the legislation has in some sense been 'too cheap' for employers in the past, perhaps encouraging non compliance. Of course the argument may be made that now the compensation levels are higher then more 'vexatious' claims may be lodged.

## **I. An assessment of the impact of the EU legislation to date and the consequences of not having this legislation in place**

### ***I.1. Societal level costs and benefits***

The societal level benefits of the equality legislation can be assessed with respect to three objectives that are central to the European project, namely that of:

- developing a productive labour force
- ensuring against an ever increasing dependency ratio by maintaining a reasonable level of fertility
- and promoting social cohesion and fighting social exclusion.



## **I.1a. Investing in a productive labour force**

### *The role of legislation*

The main ways in which equality legislation can be said to promote a productive labour force are:

- *equal treatment* legislation, to provide the guarantee that an individual will be considered for a job on equal basis-even for a job that is traditionally regarded as only suitable for a women or for a man, in order to support and underpin decisions to invest in training or education relevant to the chosen career
- *maternity* legislation- including rights not to be discriminated against on grounds of maternity and rights to return to work in the same or equivalent job- to enhance returns to investment in education, training or specific careers
- rights not to be subject to *sexual harassment* at the workplace- to support decisions to invest in education/training for non traditional jobs/careers and to enhance the likelihood of continuity and progression at the workplace to maximize the development and utilisation of skills
- *equal pay* legislation to ensure a fair return on investments in education and training and to ensure that there are appropriate incentives for the development of skills in jobs traditionally undertaken by women.

### *UK legislation and voluntary measures compared to EU legislation*

The main improvements over and above EU legislation are:

- Job evaluation specified as a means of implementing equal value in equal pay legislation.
- Maternity leave 26 weeks from 2003 compared to 14 weeks in directive
- Rights of parents to request flexible working hours from 2003

### *Main weaknesses of UK compared to EU legislation*

- Limited rights to compare across employing organisations, possibly encouraging contracting out of female-dominated jobs
- Limited scope for positive action policies

### *Non legislative initiatives:*

- EOC Code of practice on equal pay
- Public sector to conduct pay reviews from April 2003
- 'Fair pay' champions in private sector
- Opportunity NOW (previously Opportunity 2002) aimed at boosting share of women in higher level jobs
- National Work-Life balance forum
- Trade Union campaigns- work-life balance, two-tier workforce etc.
- Bargaining initiatives e.g. agenda for change in health service

### *Impact of legislation (share affected)*

In the 1960s the government had accepted the principle of equal pay for non industrial civil servants and other public sector groups such as teachers. The impact of the 1970 Equal Pay act was therefore less for major public sector groups than for private sector workers.

Between 1984 and 1990 the share of establishments using job evaluation increased from 21% to 26% (WIRS- establishments with more than 25 people- Millward et al. 1992). This increase could be in part the result of the equal value amendment in 1983 but there had been an upward trend prior to the amendment. In 1980 the share using job evaluation was estimated in fact at 23% but in 1968 the share seemed to be much lower- only 9% according to a nationwide but non-directly comparable survey (Ghobadian and White 1987: 9).

All women are now eligible for maternity leave: prior to the EU directive, only women with two years employment with the same employer were eligible under the UK's 1975 legislation. According to the latest survey of maternity leave taken in 1996, it was found that around 70% of the mothers in employment during pregnancy were eligible for extended maternity leave and thus would have qualified for maternity leave under the previous UK regulations (Callender et al. 1997). This suggests that the 1994 directive extended maternity leave rights to around 30% of mothers.

#### *Main societal benefits from the development of a skilled, educated and employed workforce*

There are several reasons why equal treatment may be vital to the development of a skilled/productive workforce and the successful transition to a knowledge society.

- **Women and science and technology:** A recent report on a strategy to improve the supply of scientists/engineers (Roberts' report 2002) states that under-participation of women in mathematics/sciences is damaging UK supply of scientists. Although it is not stated in this report, one particular concern may be the problems caused by a low representation of women within science and engineering subjects at university alongside a declining tendency for men to enter into the teaching professions.
- **Women and the public sector infrastructure:** women are in fact taking an increasingly important role in providing the high quality labour needed to maintain and develop the public infrastructure- particularly in health and education. The public sector accounts for 60% plus of new graduates entering public sector, compared to around 40% of those entering private sector (Purcell 2002).
- **Women and the reproduction of a skilled/productive workforce:** The education of women also has inter-generational effects; the more educated the parents the higher the likely cognitive development of children (Esping-Andersen et al. 2002). Educated women are also less likely to be at risk of being socially excluded (with benefits for their children as well as for themselves, particularly when single parents).
- **The higher the women's education the more likely they will have had a longer employment history, reducing risk of poverty and social exclusion in old age, particularly in the context of family breakdown** (Bardasi and Jenkins 2002 show that women's risk of low income in old age is increased when there is no partner even when in continuous paid employment, but risk of low income is

negatively associated with being in certain occupations- namely professional, clerical and managerial occupations).

*Societal costs negative side effects*

The main potential costs or negative indirect effects from equality legislation on the development of a productive labour force are found in:

- the costs of compliance with the legislation (time and resources), including administrative costs of policymakers, enterprises etc. (see above); and
- any displacement effects for other groups.

The displacement impact of women's increasing entry into higher education on other groups - particularly working class young people of both sexes - may be more significant with respect to the quality of the degree course rather than an issue of displacement from higher education altogether as the government has a target to expand higher education to 50% of the cohort that it seems unlikely to reach. Places at higher education are therefore no longer supply constrained but there are considerable variations in quality and type of course and women's increasing success within the school system must have had some impact on access to courses for men. However, these displacement effects may be better tackled- as under current government policy- by increasing access for all disadvantaged young people, of both sexes and not by denying women access relative to men.

***Evidence for impact of equality legislation on the development of a productive labour force***

*Women's investment in education*

There has been a sustained rise in women's investment in education, such that in terms of numbers of students and in terms of qualifications obtained up to degree level, women's investment is now in excess of that for men (see box 4 and table 1).

**Box 4. School qualifications: improvements in both absolute terms and relative to boys**

- *Age 16 examinations*

Percentage of age group with 5 or more passes GCSE- A-C grade:

1999/2000 - 56% girls, 45% boys

1990/1991 - 41.1% girls, 34.6% boys

(Women and Equality Unit Key Indicators and Rubery et al. 1996).

- *Age 18 plus examinations*

Percentage of age group with 2 or more passes A levels:

1999/2000 – 39% girls, 31% boys

Between the mid 1970s and 1997/8 the share of young women with 2 or more A levels more than doubled- to 25%- while for men the share increased by just over a half to 21%.

Table 1 shows the marked absolute and relative increase in female students since the 1970s; most of the increase has occurred since 1990 but the gap between male and female student numbers closed significantly in the first two decades. By 2001 women accounted for 54% of students compared to only 46% for men. Men still dominated at the postgraduate level but only just, accounting for 51% of students, compared to 49% for women. Women are now achieving more good degrees than men (55.3%, compared to 48.7%, achieved a first or upper second), but men still achieve a higher percentage of firsts (8.5%, compared to 6.9%) (EOC 1998). At the other end of the scale, the impact of the expansion of education has been to reduce the share of women with no qualifications between 1984-1998 from 46% to 21% (Dench et al. 2002).

**Table 1 Students<sup>1</sup> in further and higher education: by type of course and sex**

United Kingdom		Thousands							
		Males				Females			
		1970/71	1980/81	1990/91	2001/02 <sup>2</sup>	1970/71	1980/81	1990/91	2001/02 <sup>2</sup>
<b>Further education<sup>3</sup></b>									
Full-time		116	154	219	543	95	196	261	543
Part-time		891	697	768	1,528	630	624	986	2,376
All further education		1,007	851	987	2,071	725	820	1,247	2,918
<b>Higher education<sup>3</sup></b>									
Undergraduate									
Full-time		241	277	345	519	173	196	319	620
Part-time		127	176	193	257	19	71	148	380
Postgraduate									
Full-time		33	41	50	86	10	21	34	86
Part-time		15	32	50	140	3	13	36	151
All higher education <sup>4</sup>		416	526	638	1,003	205	301	537	1,238

*1 Home and overseas students.*

*2 Further education data for 2001/02 are not available so figures for 2000/01 have been shown.*

*3 See Appendix, Part 3: Stages of education - Further education and Higher education.*

*4 Figures for 2001/02 include a number of higher education students for which details are not available by level.*

**Source: Department for Education and Skills; National Assembly for Wales; Scottish Executive; Northern Ireland Department for Employment and Learning**

If we measure productivity by lifetime earnings we find that the increased investment has considerably increased productivity for educated women: a recent government study (Rake 2000) estimated lifetime earnings for married childless women to be £518k for those with no qualifications, £650k for those with intermediate qualifications and £1.1m for university graduates. The impact on productivity will be exaggerated if the earnings for low skilled women are depressed by discrimination. However, the earnings for all women are likely to understate their productivity relative to men due to discrimination.

#### *Diversification of higher/vocational training choices*

Although gender differences in subject choice remain strong, notable increases in female shares even in less traditional female subjects are evident. Indeed there are some 'non traditional' areas where women are now beginning to dominate the subject

at undergraduate level- for example medicine, biological sciences, business and financial studies; there are others where there have been major increases in the female share but they still remain a minority- for example physical sciences and engineering and technology; and still others- mainly maths and computing- where the share has remained largely static. These trends are shown in tables 2 and 3. The first table provides information on trends since 1978 up until 2001 but because of a change in subject category definitions in 1989 the table is less detailed than table 3, which looks at graduates by subject from 1988 to 2001. Moreover, although the two classifications have been reconciled, the data between 1978 and 1988 may not be fully compatible with that between 1989 and 2001.

**Table 2. Share of female students by subject**

	1978	1988	1989	1997	2001	
Education	65.5%	79.6%	80.7%	76.8%	76.5%	Education
Medicine, Dentistry and Health	38.6%	53.7%	54.3%	66.1%	69.8%	Medicine and Dentistry + Allied M.
Engineering and Technology	5.5%	13.0%	10.2%	14.6%	15.7%	Engineering and Technology
Science	30.5%	37.0%	35.1%	41.3%	41.2%	Science
Administrative Business and Social Studies	39.0%	48.7%	49.5%	54.5%	56.7%	Social Sciences + Business and Financial Studies
Architecture and other Languages, Literature + Arts and o/ Languages	28.4%	46.1%	23.4%	24.8%	28.7%	Architecture Languages + Humanities
Music, Drama, Art and Design	59.7%	62.0%	64.7%	65.0%	65.2%	
	58.0%	59.5%	60.3%	58.0%	59.9%	Creative Arts
<b>All</b>	<b>37.0%</b>	<b>46.4%</b>	<b>46.9%</b>	<b>51.6%</b>	<b>53.3%</b>	<b>All</b>

**Source: UK Education Statistics, various years (note change in classification between 1988 and 1989)**

**Table 3. Women's share of first degrees by subject**

	1988	2001
Medicine & Dentistry	43.60%	53.33%
Subjects Allied to Medicine	68.80%	79.90%
Biological Sciences	55.20%	64.32%
Vet. Science, Agriculture and Related	46.70%	60.71%
Physical Sciences	26.80%	39.69%
Mathematical and Computer Sciences	23.90%	26.35%
Engineering & Technology	8.60%	15.66%
Architecture, Building and Planning	21.60%	25.81%
Social Sciences	48.90%	61.25%
Business & Administration Studies	46.60%	54.60%
Librarianship & Info Science	66.70%	64.44%
Languages	70.30%	72.89%
Humanities	47.30%	54.55%
Creative Arts and Design	59.00%	60.81%
Education	74.20%	77.12%
Combined, General	52.60%	58.91%
<b>All</b>	<b>47.30%</b>	<b>55.20%</b>

**Source: UK Education Statistics, various years**

### *Changes in the female share in higher level jobs/non traditional jobs*

There have been significant increases in the share of women within higher level and professional jobs. These changes have been found both in the early stages of the equality legislation (i.e. between 1974 and 1990 - see box 1), but have accelerated in the latter half of the 1990s, according to EOC data (see table 4 and box 5).

**Table 4. Women's share of managerial jobs**

	1974	1990	1995	2000	2001
Director	0.6	1.6	3.0	9.6	9.9
Function head	0.4	4.2	5.8	15.0	15.8
Department head	2.1	7.2	9.7	19.0	25.5
Section leader	2.4	11.8	14.2	26.5	28.9
All executives	1.8	7.8	10.7	22.1	24.1

Source: EOC (2002a) and Dench et al. (2002).

### **Box 5. Women's share of professional jobs**

- Women as solicitors  
1989 - 21%  
1999 - 35%
- Women as barristers  
1990 - 18%  
2000 - 26%
- Women as hospital medical staff  
1989 - 26%  
1999 - 34%
- Women as engineers  
1984-99 - 12-fold increase in women as chartered engineers
- Women as chartered accountants  
1989 - 10%  
2000 - 19%

Source : **EOC 2001a**

### *Women's employment and labour market participation*

The impact of education is both to raise the productivity of women as potential workers and to increase their activity in the labour market. Raising women's employment rate is an essential part of the European Employment Strategy. The inactivity rates for higher educated women are much lower than for those with no qualifications- 16% for higher educated women in their 30s compared to 47% for those with no qualifications (Walby and Olsen 2002: 44).

Women's activity rates rose from 56% in 1971 to 72% in 1999. This net increase coincides with a fall in men's participation rates from 91% to 84% over the same

period. This fall is associated with both longer education and early retirement. Women's participation rates were also negatively affected by the longer education, so that the positive impact from changed behaviour after education is even greater.

The largest rise in women's economic activity has been among mothers with children under 5 - from 27% in 1973 to 55% in 1998. However, there are wider variations among mothers according to education: in 1998 75% of mothers of children under 5 with higher education worked compared to just over a quarter for those without qualifications. The impact of the change in female employment behaviour is to move from a single to a dual earner society: in the early 1980s 40% of couples with dependent children had a sole male earner, a share that fell to 26% by 1996/7 (Women's Unit 2000: 36). The share of couples with two earners rose from 1979 to 1996/7 from 51% to 62% (the balance being due to an increase in non earners).

*Role of maternity leave etc in continuity of career/ assurance of returns to higher education*

Considerable research has found that in the UK women face major costs if they leave the labour market to have children; indeed discontinuity of employment has long term scarring effects (Walby and Olsen 2002, quoting studies by Dex et al. 1998, Joshi and Hinde 1993, Joshi and Paci 1998, Joshi et al. 1999, Joshi et al. 1996, Waldfogel 1995 and Waldfogel et al. 1998). Joshi and Davies (1992) estimated that women in the UK in the 1980s who left the labour market to have their first child lost 50% of their lifetime earnings - one third through loss of years in employment, one third through reductions in hours of work when they returned and one third through reductions in hourly pay levels or returners (see also Joshi and Davies 1993). Maternity leave reduces the period that women spend out of work and by allowing them to return to the same work should reduce the negative impact on hourly rates of pay. Women may still prefer to reduce their hours of work but the first and last causes of lifetime income loss should be reduced. According to a more recent simulation exercise on the loss of earnings associated with motherhood, the same authors in a study edited by Rake (2000) estimated that the loss varied significantly by skill level, with high skilled women only losing £19k over their lifetime (not including childcare costs) while mid-skilled women lost £140k and low skilled women £285K.

Table 5 demonstrates the rapid increase in the share of women returning after childbirth to work and the even higher rise in the share returning to full-time work, even if part-time remains the most popular. Also, as Table 6 shows, a higher share of those in full-time work prior to birth returned to work in 1996 compared to those in part-time work prior to childbirth.

**Table 5. Economic activity of women after childbirth**

<i>Proportion of women</i>	<i>1979 survey</i>	<i>1988 survey</i>	<i>1996 survey</i>
In work	24%	45%	67%
Full-time	7%	15%	24%
Part-time	17%	29%	42%
Not in work	76%	55%	33%
Seeking work	14%	20%	10%

Note: 1979 and 1988 surveys were with women 8-9 months after birth, 1996 survey 10-11 months after; base = all women in work during pregnancy.

Source: Callender et al. (1997).

**Table 6. Percentage of women returning to work after childbirth, by previous hours at work status**

	<i>1979 survey</i>	<i>1988 survey</i>	<i>1996 survey</i>
<i>Status during pregnancy</i>			
Full-time	18%	43%	69%
Part-time	37%	50%	64%

Source: Callender et al. (1997).

Callender et al. (1997) tried to estimate what would have been the returning to work rate in 1996 compared to 1988, even if the legislation had not extended maternity leave, as a result of the EU directive, to more people. According to their estimates, the returning to work rate would have been higher even without the extension of eligibility for maternity leave.

### **I.1b.Sustainable fertility rate**

#### *Role of legislation*

Equality legislation provides a framework within which women may feel more able to reconcile their desires for participation in the labour market with their social reproductive roles. Where opportunities for employment are limited, fertility rates have fallen further than in countries where women's employment has increased and become normalised. This suggests that legislation that promotes women's employment position, far from reducing fertility, may be an essential prerequisite to make women confident that they are not having to choose between employment and motherhood but can combine the two. This confidence is increased by the equal treatment legislation that disallows discrimination on grounds of maternity, by maternity legislation that provides for the right to return to work, by equal pay legislation that allows for a more equal partnership in domestic work (thereby helping to overcome some women's reluctance to have children if the higher wage for the male partner makes it difficult for him to share in childcare responsibilities). Overall the protection of women's employment and pay position could contribute to the early formation of separate adult households, with positive impacts on fertility rates.

#### *UK legislation compared to EU legislation*

- Paid maternity leave now 26 weeks not 14 weeks as provided for in directive.
- Right to request flexible working time arrangements from April 2003 (parents of children up to age 6)

#### *Non legislative initiatives*

- New tax credits for childcare costs, etc.

#### *Impact of legislation (share affected)*

Before the EU directive only women who had been with their employer for more than two years had legal entitlement to maternity leave.



### *Societal benefits*

Maintaining a reasonable fertility rate is important for sustainability as it reduces the tendency towards an ageing population.

### *Societal costs/ negative side effects*

The costs of compliance, in addition to the normal enforcement mechanisms already discussed, include for employers the costs of providing alternative cover during maternity leave (see section I.2). It should also be noted that the EOC reports that a high share of complaints of discrimination relate to issues of dismissal etc when pregnant. There is thus evidence of non compliance with the legislation but this is not a cost of the legislation. Another issue that should be considered is whether there are any negative impacts on children (as opposed to impacts on the fertility rate). However, such negative impacts are more appropriately associated with the lack of good childcare arrangements, lack of participation by fathers or unreasonable working hours and conditions than with equality legislation.

### *Evidence of change*

Fertility rates fell rapidly between 1971 and 1981 from over 80 live births per 1000 women aged 15 to 44 to around 60 and have stabilised at this level since. There has been a particularly strong decline in fertility rates for those aged 20-24 while those for women aged 30 and above have risen. This suggests that fertility is now being combined with longer education and a longer period of employment before childbirth. Recent years have witnessed a rapid increase in participation by mothers of young children rather than a rapid decline in fertility rates.

**Table 7. Fertility rates by age of mother at childbirth**

	Live births per 1000 women					
	1961	1971	1981	1991	1997	1998
15-19	37	50	28	33	30	31
20-24	173	154	107	89	75	74
25-29	178	155	130	120	105	102
30-34	106	79	70	87	89	90
35-39	51	34	22	32	39	40
40-44	16	9	5	5	7	8
<b>All (15-44)</b>	<b>91</b>	<b>84</b>	<b>62</b>	<b>64</b>	<b>60</b>	<b>59</b>

Source: The Women's Unit (2000:16).

### **I.1c. Reduction in poverty/social exclusion**

#### *Role of legislation*

Equal treatment provides for equal rights to training assistance or skill development that has potential importance as a means of developing 'employability' and thereby providing protection against poverty. Access to the labour market is particularly important for single women and single mothers to escape poverty in prime age; protection against discrimination on grounds of sex, motherhood or marital status is therefore important for protecting access. Access to the labour market is also

important for all women, not only for those who remain single but also for those subject to marital breakdown or widowhood to escape poverty in old age. Maternity leave helps women retain access to their previous occupation/skill level, thereby preventing downgrading. Equal pay legislation should promote desegregation and thereby increase women's access to more areas of employment. More equal pay may also reduce the likelihood of women quitting the labour market when becoming mothers as earnings may be sufficient to cover childcare costs etc. Continuous employment helps to prevent poverty in old age and social exclusion in prime age

#### *UK legislation compared to EU legislation*

- No specific differences of relevance for social inclusion.

#### *Non legislative initiatives.*

- New deal for lone parents (specific active labour market policy designed to encourage lone parents into work)

#### *Impact of legislation (share affected)*

Rising share of lone mothers, family breakdown since the legislation was passed has in fact increased the importance of access for women to the labour market to reduce risks of poverty and social exclusion.

#### *Societal benefits*

The reduction of poverty and social exclusion is a benefit in its own right but may have other beneficial indirect effects, for example on crime rates, conditions for children etc.

#### *Societal costs/ negative side effects*

The right to equal treatment increases the share of persons who may receive training (with its associated costs as well as benefits). Access to labour market, particularly for lone mothers, requires the provision of a childcare infrastructure.

#### *Evidence of change*

##### *Poverty*

The 'Households below average income report' for 2002 (Department for Work and Pensions 2003) shows that single female pensioners are at higher risk of low income than single male pensioners. The employment record of current female pensioners is less extensive than for the next generation of pensioners. Single pensioners less likely to be in receipt of occupational pensions and more likely to be in poverty if not in receipt. More single pensioners are women but no specific gender breakdown given. The same report shows that households where all adults in work are least at risk of falling into poverty while single parent families are most at risk, followed by single female pensioners. Women are also more likely to be in persistent poverty (11% of women compared to 8% of men likely to be in persistent poverty)

##### *Importance of female earnings for household income*

A study by Harkness et al. (1997) has demonstrated the importance of women's earnings for family income and for keeping families out of poverty. A high share of working women were found to be working for essentials and only a low percentage for 'pin money' – extras (in 1991 44% said they worked for essentials and 15% for

extras, in 1984 50% worked for essentials and 16% for extras). Over the period 1979/81 to 1989/1991 women's earnings as a share of household income increased from 26% to 31% for all households; for women living with partners, their share rose from 15% to 21%. Over this time period the share living with a partner fell from 73% to 68%, thereby also increasing the importance of women's earnings. In 1989/91, 67% of couples were both at work compared to 23% of couples where there was a single male breadwinner. In 1979/81 dual earner couples also exceeded single male breadwinner couples, but the gap was only 30% compared to 44% in 1989/91.

Female earnings were found to have an overall equalising impact on family income inequality- and more so in 1989/91 than 1979/81. Without women's earnings the dispersion of family income across married couples would have been 18% higher in 1979/81 and 34% higher in 1989/91.

In 1989-91 fewer than 1 in 100 two earner households were poor compared to 1 in 20 headed by single male breadwinners. The probability of being in poverty for single male breadwinner households was 10 times greater in 1989/91 than 1979/81 but 1 in 3 households supported by a single female breadwinner were in poverty in 1989/91. The incidence of poverty increased by 4% over this time period; of this, 3% was due to increased incidence within each family type, but 1% was due to change in family type. Here the rise in workless and female breadwinner households offset the impact of the rise in dual earner households. The study estimates that poverty rates would rise in the absence of female earnings and that in most cases it would be difficult for households to adopt other methods to lift the household out of poverty- for example through longer working hours by men as these are already long in the UK.

## ***1.2. Employing organisations: costs and benefits***

### *The role of legislation*

Equal treatment legislation has the potential benefit for employers of encouraging formalisation of procedures for selection for recruitment, training and promotion that should lead to a more effective and efficient use of human resources, particularly where informal methods lead to reliance on outdated and inappropriate use of stereotypes and prejudice. The requirement to address sexual harassment may encourage management to take responsibility for organisational culture, with potential positive spin-offs, including a safer work environment and the development of an anti-bullying culture. If such policies lead to greater fairness and perceptions of fairness, the effect should be to promote the retention of women, thereby protecting employer investment in training and recruitment, to encourage commitment to the organisation and to promote better industrial relations through more equal treatment of all staff. Equal pay legislation should promote a more flexible, integrated workforce as jobs should be paid according to the same value system. Higher pay for women should promote recruitment and retention.

### *UK legislation compared to EU legislation*

- Job evaluation is specified within the Equal Pay Act both as a protection against equal pay claims (as evaluation system has to be shown to be discriminatory before a case can be taken) and as a basis for an equal value claim, where evaluation has not been systematically applied.

- Limited use in UK law of potential for positive action under EU law.
- New rights for parents of children under six to request flexible working arrangements (April 2003).

#### *Non legislative initiatives*

- EOC Code of practice on equal pay
- EOC Tool-kit for carrying out gender pay audits
- Public sector to conduct pay reviews from April 2003
- Fair pay champions in private sector
- Equal Pay Forum now set up and open to all companies committed to undertaking pay reviews- 175 companies in membership
- Opportunity NOW (previously Opportunity 2002 aimed at boosting share of women in higher level jobs: 350 enterprises now in membership)
- National Work-Life balance forum
- Trade union based initiatives- for example campaign to prevent two-tier workforce with public sector contracting linked to equal pay issues

#### *Impact of legislation (share of enterprises affected)*

- Equal treatment: In 1998, according to the WERS survey, 64.5% of firms in the trading sector had an equal opportunities policy, 84.5% of these with an explicit sex/gender dimension. Among these firms with an EO policy, 30.5% monitor posts /jobs by gender, 15.5% monitor promotions by gender, 25.7% review selection procedures and 13.5% review relative pay rates (see table 2 in Pérotin and Robinson 2000 on practices by level of EO policy). The spread of equal opportunities policies is higher in the non traded public sector.
- Equal pay: Equal pay legislation has had limited impact on some sectors, particularly those in the public sector, as these had already established the principle before legislation. Research suggests that the initial equal pay act mainly had an impact through the upward equalisation of male and female minimum pay rates; at that time the majority of workers were covered by national collective agreements or wages councils that set minimum pay rates in hard-to-organise sectors. Furthermore the coincidence of the equal pay legislation with the development of national incomes policies extended the impact to more organisations and women; the flat rate wage increase had to be paid to women on the same basis as for men, whereas without legislation it is probable that women would have received a different and lower level of increase. According to a recent EOC study, 40% of organisations now monitor the relative pay of men and women (59% public sector, 27% manufacturing, 33% services); 40% had undertaken an assessment of how the value of jobs is determined, 35% of basic pay by gender, 15% had reviewed access to benefits (Morrell et al. 2001). Between 1984 and 1990 the share of establishments using job evaluation increased from 21% to 26% (establishments with more than 25 people- Millward et al. 1992), continuing the upward trend evident before the 1983 equal pay act amendment. In the public sector recent policies to bring in gender sensitive single pay spines at the national bargaining level in local authorities and the health service should increase the scope of the influence of gender sensitive job evaluation.

- Maternity/family friendly: Comparative studies of industrialised countries (Europe, US, Australia, Japan) (Arrowsmith and Sisson 2001, den Dulk 2001, Evans 2001, OECD 2001) have shown that state regulations stimulate provision at the company level by establishing new entitlements and higher expectations. Where statutory provision is high, such as in Sweden, then additional provision by employers is limited. However, where state entitlements are low or absent provision is more uneven across firms and contingent on the 'business case': this is the situation in the UK, although the minimum standards have been increased since 1997. In a survey published in 1996 10% of employers provided extra maternity leave over and above statutory requirements and 7% provided extra maternity pay over and above statutory requirements (Forth et al. 1997). Overall voluntary provision by firms does not compensate for low levels of legal provision, although the number and scope of workplace arrangements are slowly increasing in such countries. In general, 'best practice' examples of work-family measures are more established in the public sector, in financial services, in large firms and those firms with 'progressive' human resource management policies, and least established in manufacturing and small firms (although small firms may offer more informal practices as some compensation). The impact of the new legislation giving the right to request flexible working hours for parents of a child under six cannot be assessed as it is only coming into force in April 2003.

#### *Employer benefits*

There is some evidence (see below) of positive impact of equal opportunities policies on productivity, of family friendly policies on recruitment and retention, of equal pay policies on visibility of and recognition of skills, etc.

#### *Employer costs/ negative side effects*

Employer costs include those of compliance and non compliance. Compliance costs include those of improving procedures (formalisation of policies, keeping and monitoring of records) as well as the more immediate costs of raising pay, where problems of undervaluation are identified. The new agreement to implement a single pay spine in the NHS is estimated to be going to cost up to £3bn (*The Guardian* 28/11/02), but these costs include not only costs of changing systems but primarily the high level of underpayment identified. With respect to implementing family friendly policies Holterman (1995) has undertaken estimates that show the overall impact on the wage bill of providing paid parental leave would amount to only 0.1% of the payroll even before taking into account savings in hiring costs if such leave reduced labour turnover. The costs of equal opportunities policies tend to be felt more in the short term with the benefits being more long term and potentially captured also by other companies (as retained staff may still eventually leave and work for another employer, but with their skills still in use). The 1996 survey of maternity rights investigated attitudes of employers towards the enhanced maternity leave provisions that had arisen as a result of the 1992 directive. Although 35% of the workplaces where at least one woman had gone on maternity leave reported problems with the taking of maternity leave - primarily the problem of finding temporary cover - the overall impact of the reforms was considered by employers to be either small or zero and only 5% said the impact was substantial or severe. The overall impact on labour cost was considered to be very small. The majority of employers were in favour of the

arrangements staying as they were (60%) and a higher percentage thought they should be improved (8%) than the percentage who thought they should be reduced (6%).

The number of cases taken to tribunals with respect to sex discrimination, equal pay, part-time worker regulations and unfair dismissal due to pregnancy has been rising over recent years; for example the number of cases where equal pay was the main issue rose from 2,400 to 6000 between 1999/2000 and 2000/2001 (Dench et al. 2002). However, only 1% of equal pay cases (main and subsidiary issue) were successful at tribunals, with 66% withdrawn (these can include those subject to private settlements) and 19% conciliated by ACAS. The figures for sex discrimination were 7%, 34% and 40% respectively. Sex equality cases appear to have a much lower chance of success than other claims as the overall success rate was 15% with only 29% of cases withdrawn and 37% conciliated. How these success rates are to be interpreted is open to question; they may imply a high level of compliance such that claims made were not well grounded (hence a high level of compliance costs from the legislation) , weaknesses in the legislation ( such that there were strong grounds for the complaint but problems in success due to the specifics of the law), and high costs for the individual and/or the employer of pursuing the case (hence high withdrawal rate and potential for private settlement).

### ***Evidence of change***

#### *More efficient organisations*

- **Improvements to productivity:** Pèrotin and Robinson (2000), using the 1998 WERS survey, show that equal opportunities policies improve productivity overall and increasingly so as the share of female and ethnic minority workers increases. Moreover equal opportunities policies can interact in positive ways with other policies; for example, non financial participation when implemented alone was found to have a negative impact on productivity but when combined with equal opportunities a positive impact. The findings of this study also suggested that the intensity of EO policy matters for its effects.
- **Systematisation of procedures:** The impact of initial equal pay legislation was greater systematisation of pay systems. Nine out of 26 organisations monitored introduced job evaluation (Snell et al. 1981). Furthermore most organisations surveyed reviewed their recruitment procedures and their advertisements in the light of the legislation. A study of payments structures in small firms and firms with informal payment systems found the side effect of the implementation of the equal pay act in some instances was to make more visible to employers the skills deployed in the organisation and to stimulate the development of skill development policies and career structures (Craig et al. 1985). In a study of recruitment practices for the EOC, support was found for the notion that formalisation was a minimum requirement for compliance with equal treatment in recruitment, although the persistence of informal processes alongside apparently formal systems was pointed to (Collinson et al. 1990). Bevan et al's (1999) study of formal family friendly policies found that formalisation came about often as a response to the need to make ad hoc arrangements, often to accommodate senior staff whom they did not wish to lose. Prior to the new regulation giving parents a right to request flexible working hours there has been no legislative requirement stimulating

formalisation of such procedures. However this research found that organisations felt they had benefited from formalising the policy as it promoted notions of fairness and equity but also increased loyalty and commitment of key employees

- **Openings for negotiating new arrangements/ extending scope of collective bargaining:** Bercusson (1997) points to an example of a company agreement (British Gas) where the existence of equal opportunities legislation can be considered to be the spur to a new agreement allowing flexible working arrangements. The employer wanted more flexibility in scheduling and the unions used this as an opening to obtain more flexible working to fit with home and family life.

#### *More efficient human resource policies*

- **Improved recruitment/retention and reductions in sickness/absence:** A study of the business case for family friendly employment by Bevan et al. (1999) showed that such policies reduced casual sickness absence, improved retention, improved productivity (employees on flexible hours being more productive than those on traditional hours) and improved recruitment, morale and commitment. In the public sector, where there are major difficulties in recruitment and retention, mainstreaming of gender equality issues into flexible working, improving work-life balance and increasing pay has been found to contribute to improving recruitment and retention (Escott and Whitfield 2002: 37). Ford Motor company adopted a policy of enhanced maternity leave to improve its image as an employer, with positive effects on recruitment and retention (WEU 2003 and box 6). Enhanced maternity leave increased the rate of return for those on maternity leave from 33% to 66% in Barclays Bank and from 7% to 50% in Boots 1989-1993, according to Opportunity 2000 (Breugel and Perrons 1995: 161). Higher pay may also improve retention after maternity leave and retention of part-timers (Walby and Olsen 2002). The 1996 survey on maternity rights reported a much higher availability of workplace arrangements to facilitate their return to work than in the earlier surveys of 1988 and 1979, suggesting a process of progressive awareness among employers of the need to make such provision (see table 8)
- **Breakdown of segregation:** An Equal Opportunities Commission investigation into Barclays Bank in 1983 revealed that it was operating a two tier recruitment policy, with women with low qualifications being twice as likely to be interviewed for a job than women with high qualifications as these were seen as competing with male applicants for the accelerated training programme. The bank agreed to cooperate with the EOC by changing its recruitment policies resulting in a rapid increase of women being entered onto the accelerated training programme (Crompton et al. 1991). Similar adjustments were made by other major banks to their recruitment policies. Now HSBC is publishing its performance assessments and finds that women are outperforming men at all grades (WEU 2003 and box 6). At the Scottish Executive a 'Diversity Strategy' implemented in 2000 initiated projects around the recruitment process, staff networks, childcare strategy, diversity training, working hours and career breaks (Escott and Whitfield 2002: 37): data on sex segregation shows a marked increase in female share within all job

levels in line with projected targets for the year 2005<sup>1</sup> (op. cit.: 29). At Unilever the increased recruitment of women into management grades has gone hand in hand with an increased value attached to ‘female attributes or management skills’ (WEU 2003 and box 6).

- **Improved representation of local or client population:** the Greater London Authority produces reports on equalities each quarter with the general aim of ensuring the workforce reflects the local population at all levels; targets set for each area of activity include increasing the female share of firefighters to 15% by the year 2009 (Escott and Whitfield 2002: 30).
- **Adopting sexual harassment policies:** A study by *The Industrial Society* (1993) found 40% of organisations had sexual harassment policies but 54% of individuals had experienced or observed sexual harassment over the previous year. An IRS survey in 1996 reported an increase in sexual harassment policies among large organisations surveyed from 33% to 72% between 1992 and 1996 (but not based on a large or structured sample) (IRS 1996); policies are more common in the public sector, 86%, than the private sector, 65%. While the most common reason for sexual harassment policies was to promote equal opportunities, the next most common reason given was to avoid ‘legal and potential costs such as increased absenteeism, higher sickness levels and lower productivity’ (EC 1999:145).
- **Improvements to employee involvement/ participation/ voice:** A national Home Office ‘Gender Agenda’ which promotes the needs of women police (just 16% of all police) is being used successfully at West Midlands police authority (where there is a 24% female share) to campaign for improved voice in influential policy decision-making, action on how to balance careers with work/life balance and support for part-time working, among a range of issues (Escott and Whitfield 2002: 57-9).
- **Wage structures adjusted to reflect skill levels:** The equal value amendment has led to greater awareness among employers of the need to pay attention to gender in the grading of jobs and in the public sector in particular; in recognition there have been moves to introduce single pay spines based on gender sensitive job evaluation that facilitates comparisons between groups. These developments have been prompted by the large number of equal value claims made by trade unions in the public sector, but even in these employment areas there are difficulties - not least because of budget restrictions – in implementation of the schemes. Nevertheless the development of systematic job evaluation procedures has eliminated anomalies in pay structures that reflect the gender rather than the skill levels of the job (see Bercusson 1997, Hastings 2000, Lissenburgh 1985 on the Local authorities manual workers’ job grading scheme and part III of this report). In the private sector there have also been a number of landmark cases that have led to restructuring of pay systems and structures; for example successful claims that

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<sup>1</sup> Between 1998 and 2001 women’s share of Bands C and B increased from 25% to 36% and from 34% to 43%, respectively. The Diversity Strategy includes targets for the year 2005 of 43% and 48%, respectively. No data are available for Band A staff (Escott and Whitfield 2002: Table A1).



secretarial wages should be higher than porters in the banks and the rejection of the claim that the higher wages for porters were permissible because the union had bargained for these higher wages on the basis of the need for a family wage; the successful claim that retail assistants should be equally rated with warehouse workers (mainly men) in the retail sector. A full discussion of the impact on job grading of the equal value amendment is postponed until part III of this report.

**Box 6. ‘Best practice’ examples of company equal opportunities policies**

*Unilever* (global consumer goods business) women to account for 80% of workforce growth and 50% of graduate recruits. Company has taken the line that they ‘cannot afford to waste this talent’, that most of their consumers are women and that women bring new and valuable traits to management. Policies include: ‘managing the pipeline and demanding women candidates on shortlists’; mentoring for senior women; flexible working; equal pay audits.

*Ford* (global car company): aims are ‘valuing differences, creating success’. Objective to be the employer of choice to recruit and retain the best people. One example of policies was to provide 100% paid maternity leave for 52 weeks; result was considerable positive feedback

*HSBC* (international bank): undertaking equal pay audits and revealing that women have higher performance ratings than men; improvements in shares of women in all grades –from 24% to 33% share of managers in 5 years. Employee satisfaction has also risen from 58% to 77% over the same five years.

Source: WEU 2003

**Table 8. Availability of selected workplace arrangements that might help mothers with young children**

<i>Workplace arrangement</i>	<i>1979 survey</i>	<i>1988 survey</i>	<i>1996 survey</i>
Part-time	39	36	79
Job sharing	-	6	35
Flexi-time	12	12	32
Shift work	11	9	26
Chance to do some work at home	3	4	17
Career break scheme	-	4	23
Workplace or other help with childcare	3	4	9*

Notes: data based on a comparison of the 1979, 1988 and 1996 PSI surveys of maternity rights and benefits; \*workplace nursery or crèche only.

Source: Callender et al. (1997: table 1.8).

***1.3. Individual/household costs/benefits***

*Role of legislation*

Equal treatment legislation supports right of individuals to exercise preferences for type of work, underpins individual investment decision in education/ training and supports the right to self-development (access to training). Most importantly it supports the right to be treated as an individual, not to be stereotyped/ subject to

statistical discrimination or to be treated as a dependant or subordinate. Maternity leave supports rights of individuals to retain access to their own job. Protection against sexual harassment provides rights to privacy and dignity at the workplace and reinforces the right to choose a non traditional career, to demonstrate non traditional capacities. These individual rights combined with equal pay increase scope for decision-making at household level according to the preferences of both partners. If women have equal pay to men, a couple can determine the domestic division of labour according to preferences and specific household circumstances, rather than according to unequal returns to wage labour. Furthermore women can exercise rights to live independently with or without children.

#### *UK legislation compared to EU legislation*

- Right to request flexible working hours for parents of children under 6
- Limited use of positive action to promote non traditional roles

#### *Non-legislative initiatives*

- National Work-Life balance forum

#### *Impact of legislation (share of individuals/households affected)*

Equal pay/equal treatment issues are often pursued by individuals taking cases to employment tribunals: the number of cases taken varies between 10 to 20,000 per year but it is not possible to give an exact number of individuals concerned as one case may have more than one jurisdiction claim. In practice only a small proportion are actually taken through to a tribunal hearing. For example of around 6000 sex discrimination cases in 2000/1 around a third were withdrawn and 40% were settled through conciliation. Only 22% were heard at the tribunal and only 7% were successful (Dench et al. 2002).

Some landmark cases- for example those that established the right of part-timers to join occupational pension schemes- have had significant impacts for individuals. Trade unions have indeed been campaigning for part-timers to be able to back date their access to pension entitlements to 1976, instead of the two years of backdated entitlements that it was originally considered they were eligible for. Up to 40,000 part-timers may be able to claim back to 1976. Some issues are still being decided in the tribunals and courts, but trade unions have negotiated deals for some part-timers, covering 15,000 workers in the banking sector (*The Guardian* 21.09.02). Another ruling that affected large numbers of part-timers was the 1994 judgement that hours limits for unfair dismissal and redundancy were not permissible; this brought many more part-timers within this protective legislation. In 2001 18% of UK women worked less than 16 hours per week and would therefore have been outside this protection if it had not been for this ruling (and the subsequent part-time workers' directive).

Where rights are dependent on a non legislative basis - for example extended benefit provided by employers - eligibility for the benefits depends on job status and/or performance, thereby limiting individual rights (Dickens 1999).

#### *Benefits for individuals /households*

- Individual choice/right to non discrimination has positive benefits for men as well as women

- Repeal of protective legislation with respect to women's night work removed reasons for discrimination in hiring and allowed women to decide whether or not they as individuals wished to work nights (although many exemptions to the night work regulations were allowed and instead of repeal equal protection could have been extended to men)
- Improves matching of division of labour to individuals' attributes and preferences, again positive for men as well as women.
- Right not to be subject to sexual harassment protects access to job/career and promotes dignity at work
- Equality of access to employment may promote more equal participation in civil society, greater equality of representation in decision-making
- Women's employment may protect against domestic violence: women in employment have been found to be less vulnerable to crimes of violence and also the more equal the household the less the violence (Walby and Olsen 2002: 21, based on Home Office research).

#### *Costs/ negative side effects for individuals*

- Individual costs of asserting rights through legislation (cost in time, resources, reputation. Leonard (1987) found that victories in employment tribunal case were 'pyrrhic victories' because of the low compensation and the high costs to the individual complainants who sometimes suffered problems at the workplace, lost their jobs, or indeed faced problems of finding alternative employment
- Administrative costs associated with exertion of individual rights (provision of advice, legal aid, etc.)
- Impact on stress/health of family time squeeze (when right to employment not matched by control of working hours/rights to flexible working arrangements)

#### *Evidence of change*

##### *Exercise of individual preferences*

Changes in participation rates, in education levels and subject choices can be regarded as evidence of women being able to exercise a wider set of choices than in the period when women followed a more prescribed path. That exercise of preferences is underpinned by the legal right to equal treatment.

##### *Reduction in stereotyping/ traditional norms and values*

There is some evidence of a reduction in sex stereotyping, particularly among women who are less likely to hold job stereotype views than men: for example between 1987 and 1994 the share of women thinking a car mechanic job was more suitable for a man dropped from 62% to 55% (Women's Unit 2000), although men are more likely to think nursing women's work and policing men's work; similarly the share of women who think a man's job is to earn money, a women's job to look after the home and family fell from 26% to 16% 1989 to 1998 (Women's Unit 2000); support for mothers working if children well looked after rose from 6 in 10 to 7 in 10 between 1987 to 1994 (and continued 1998). Young women hold less stereotyped views than young men. In 1994 69% of women thought a working mother could establish just as warm a relationship with their children as a non working mothers but men held more traditional attitudes.

*Growth of alternative household arrangements*

- Changes in household formation

The traditional household of a married couple and male breadwinner is declining, indicating a widening of preferences by individuals and households for alternative forms of family formation. These changes in household formation reflect a number of different demographic changes: between 1971 and 1997 the average age of marriage for women rose from 22 to 27 and from 24 to 29 for men; between 1970 and 1997 divorces doubled; by 1998/9 around a quarter of non married people were cohabiting (an increasing trend); and fertility rates have fallen (see section I.1b above) (The Women's Unit 2000).

**Table 9. Household composition**

<i>Household type</i>		<i>1971</i>	<i>1998-9</i>	<i>1996-7</i>	
				<i>women</i>	<i>Men</i>
One person	below pension age	6	14	5	8
	above pension age	12	15	11	5
Couple	No children	27	30	29	32
	1-2 children	26	19	24	27
	3+ children	9	4	5	6
	Non-dependent children	8	6	10	13
Single parent	Children	3	7	7	2
	Non-dependent children only	4	3	3	3

Source: The Women's Unit (2000).

- Women as breadwinners in couple and single households

There are a number of pieces of evidence to suggest that more and more women are becoming important, equal or main breadwinners:

- In 1979/81 only 1 in 15 women in couples contributed more than their partner but by 1989/91 the ratio had risen to 1 in 5 women (Harkness et al. 1997).
- In 1996/7 in 7% of couples women had an individual weekly income of greater than £200 while men had an individual income of less than £200, but in 44% of couples the situation was reversed (Women and Equality Unit 2002).

The contribution that women make to couples' joint lifetime earnings, however, varies considerably by skill and presence of children, household status and employment status. According to the Harkness et al. (1997) study, 70% of couple income comes from men 30% from women, with similar shares found across all income bands. In cohabiting couples the female share is higher at 40%. When the female partner works full-time the share was 45%, when she works part-time it falls to 25%. In Rake (2000) it is only for women with high skills where having children has only a limited impact on household income (but childcare costs are not taken into account here) (see table 10).

**Table 10. Women’s contribution to family income**

	Women with low skills	Women with mid skills	Women with high skills
No children	41%	42%	49%
Two children	24%	35%	47%

Source: Rake (2000).

In the Harkness et al. (1997) data the female contribution accounted for around 40% of total income in households aged 16 to 24, that is above the average of 30%. This supports other evidence (Irwin 1995) that female earnings have become very important in the formation of independent households for young adults.

*Changes in male roles in household and in employment and attitudes of men to changes*

There is some evidence of change in male roles in the households, even if that change remains limited. In 1996/7 partners of both sexes were found to be still the first and second most important sources of childcare in households but the male partner was cited in only 15% of cases for children under six compared to 82% of cases for the female partner (The Women’s Unit 2000: 42). Some household tasks are beginning to be shared. The most equally shared household tasks were: shopping for groceries- 52% of households say about equal or both together; looking after sick/family members (45%); deciding what to have for dinner (35%). Least shared tasks were - washing and ironing and small repairs, the former done almost always by the women the latter by the man. Although some tasks are becoming equally shared there is little evidence of any role reversal; few women or men take on the main responsibility for non traditional roles (The Women’s Unit 2000: 46).

*More equal participation in civil society, greater equality of representation in decision-making*

In 1997 women accounted for only 18% of Members of Parliament and for 29 out of 87 government ministers (March 2000) but for 38% of the Members of the Scottish Parliament and 43% of the Welsh assembly members.

## II. An assessment of progress towards achieving the objectives of equality

### *II.a. Progress towards and costs of not achieving equality objectives*

#### Societal level

##### **Objective: Productive labour force**

Full development and utilisation of women's productive potential has not yet been achieved. This is evident in continuing tendencies towards undereducation, underutilisation and underpayment.

##### *Undereducation*

- Women have still to compete equally at top end of education system (share of firsts and share of postgraduates relative to share of graduates)
- Women are still unrepresented in some subject areas in higher education, particularly physical sciences, engineering, maths and computing; their exclusion from computing/IT may be leading to new important processes of job segregation.
- Gender segregation is very high in the Modern Apprenticeships system suggesting that the diversification of training by gender has made less progress among those outside the higher education sector
- Women face continuing problems in gaining access to training particularly when in part-time jobs. Evidence of the exclusion of part-time workers and other atypical workers from workplace based training is provided by the British Household Panel Survey from 1991-1995: Arulampalam and Booth (1997) found that: *'A man switching from a permanent contract to a temporary or fixed term contract is 19% less likely to receive training in his current job, while a comparable woman is nearly 14% less likely.... We find that part-time male workers are 8% less likely to receive work-related training than full-time men, while women in part-time work are 9% less likely to receive work-related training than their full-time counterparts'*. While the level of discrimination in training is similar for men as for women, the impact on women is that much greater because of their overrepresentation in atypical work forms, particularly part-time work.
- The majority of part-time or non-employed women have been found to be willing to do additional training but they find it difficult to finance (Walby and Olsen 2002, see also table 11).

**Table 11. Circumstances under which women would take up training or education**

Circumstances	Part-time employed	Not employed
If it were free	79	79
If there were grants to support you while you did it	73	74
If the fees were lower or subsidised	72	71
If it were more flexible in terms of time and location	71	68
If it were to come with ideal affordable childcare or care for the elderly, sick or disabled	50	54
If there were loans to pay for it	33	39

Note: The figures refer to the percentage of respondents who said that this circumstance would be 'very helpful' or 'quite helpful' rather than those that said that it was not of help to them. Those who did not answer each question are included in the calculation of the percentage.

Source: Walby and Olsen (2002).

### *Underutilisation*

- Underutilisation due to gaps in employment and shorter working hours: 1986-1998 women employees in full-time jobs rose by 5% but by 30% in part-time jobs. Part-time working is still associated with motherhood: two-thirds of women with dependent children in part-time jobs compared to a third of those without dependent children (The Women's Unit 2002: 37)
- Interruptions for childbirth not only cause immediate downward mobility for many (see table 12 below) but also cause long term 'scarring': Recent research suggests that flexibility and higher pay would lead to higher retention rates (Walby and Olsen, see table 13 below). Blackwell (2001) also found that it is the shift to part-time work rather than the periods of inactivity that lead to downgrading of job status. Low or no returns to part-time experience (Walby and Olsen 2002, see table 14 below) may reflect some underutilisation (as well as underpayment)
- The gender pay gap in part reflects underutilisation: underutilisation may be associated with i) occupational segregation (vertical and horizontal); this accounts for 13% of the pay gap, ii) lack of full time work experience gap (26% of gender pay gap), iii) care responsibilities (15% of gender pay gap) and working part-time (12%- of gender pay gap even on an hourly basis) (Walby and Olsen 2002)
- Higher educated women also suffer segregation and occupational downgrading: '*even with an undergraduate degree women are more likely than men to end up with a secretarial or clerical job (18.8% of female graduates cf 11.2% of men). Women graduates are more likely to end up with a temporary or part-time job*' (The Women's Unit 2002: 37).

**Table 12. Occupational mobility over childbirth**

<b>Best job before having children</b>	<b>% Retained occupation</b>	<b>%Downward</b>	<b>%Upward</b>
Manager or Administrator	52	48	-
Professional	84	13	3
Associate professional	65	22	12
Secretarial	47	36	17
Skilled manual worker	33	50	17
Personal services	63	19	18
Retail sales	36	23	41
Plant or machine operator	19	23	58
Other Unskilled	59	-	41
Total	53	28	19

Source: Walby and Olsen 2002

**Table 13. Circumstances under which women would have stayed with the same employer over childbirth**

<b>Circumstances</b>	<b>Full-time</b>	<b>Part-time</b>	<b>Total</b>
If the hours and conditions of the job had been more flexible	21	24	23
If able to reduce the number of hours worked (eg move to part-time)	13	19	16
If the maternity and parental leaves had been longer	6	5	6
If the maternity and parental leaves had been better paid	5	3	4

Source: Walby and Olsen (2002).



**Table 14 . Components of the pay and productivity gap**

<b>Component</b>	<b>Women's levels compared to men's</b>	<b>% of gap</b>
Full-time employment experience	-7.7 years	26
Interruptions due to family care	+3.2 years	15
Part-time employment experience	+4.1 years	12
Education	-0.3 years	6
Segregation	.34/.70*	13*
Discrimination and other factors associated With being female		29*
<b>Total</b>		<b>100</b>

Notes: \*The percentage gap for segregation is if there were segregation; the percentage gap for discriminations is if there were none.

Source: Walby and Olsen (2002).

### *Underpayment*

- Underpayment by gender and skill: A mid skilled woman will earn 37% less than a mid skilled man over working life even without children (Rake 2000); female graduates are found to earn less than male graduates even after allowing for either subject studied or class of degree, with women with first class degrees earning salaries closer to men with lower second degrees three years after graduating. The largest gap was found in law where women with first and upper second degrees earn only 79% of their male counterparts earnings three years after graduating (Purcell 2002, see table 13)
- Women face higher wage penalties: wage penalty for a one year gap for childbirth etc has been estimated to be 16% but this is twice that for a one year gap for men (Gregg 1998). Female dominated jobs face additional wage penalties over and above the average gender pay gap (see Grimshaw and Rubery 1997)
- Women face lower returns to their investments: Walker and Zhu (2003) found that there was no return to arts degrees, a subject area dominated by women
- Underpayment in part-time jobs: Waldfogel (1995) found that full-time pay rose from 70% in 1979 to 75% in 1989 as a percentage of male pay but part-time pay rose by only 2 percentage points from 55% to 57% (Harkness 1996, see, also, Box 3 above). Walby and Olsen (2002) found that there was no extra pay for extra years of part-time employment. Joshi et al. (1999) found that part-time jobs account for 30% of the 70% pay penalty faced by mothers and between 1978 and 1998 the penalty for working part-time increased
- Underpayment for being female: Walby and Olsen (2002) calculate that being female accounts for 29% of the average gender pay gap.

**Table 15. Average annual earnings of graduates, 1999-2000**

	Males (£)	Females (£)	% by which average male earnings exceeded those of females
20-24	16,738	14,592	14.7
25-29	23,302	20,154	15.6
30-34	30,448	24,939	22.1
35-39	36,948	27,774	33.2
40-44	36,949	26,691	38.4
45-49	36,696	26,113	40.5
50-54	38,153	26,549	43.7
<b>All ages under 60</b>	<b>32,555</b>	<b>23,630</b>	<b>37.8</b>

Source: Labour Force Survey, September 1999 – 2000 (pooled data).

**Objective: Population balance- sustainable fertility rate**

Childlessness has increased: if we measure childlessness by the percentage childless at age 45 the rate is 16% for those born in 1953 but this is expected to rise to 25% for those born in 1973 (The Women's Unit 2000). To some extent this reflects the exercise of personal choice but for some childless women different decisions may have been taken if reconciling work and family life had been more possible.

**Objective: Reduce social exclusion and poverty**

Poverty among women is not being eliminated because:

- The gender pay gap remains wide particularly for women in part-time jobs
- Inequality in pension provision exacerbates the gender pay gap and increases risk of old age poverty (see below)
- Lone parents are often faced with too low paid or unstable jobs and therefore even if they enter work often return to unemployment and inactivity (Rubery and Rake 2000). The number of lone parents claiming benefits (income support) doubled from 1981/2 to 1997/8 and while some are moving into work most remain dependent upon benefits that traps them into a relatively low standard of living (majority of families claiming WFTC are lone parents)

**Employing organisations**

**Objective: Efficient employing organisations**

- Although women are entering some higher level jobs, there is still evidence of them hitting the so-called glass ceiling. Moreover desegregation is often leading to new forms of job divisions within sectors or occupations- that is to processes of re-segregation (Crompton and Sanderson 1990, Rubery and Fagan 1995)
- New organisational forms are in principle creating new opportunities for new ways of working but are also leading to delayering of hierarchies, thereby leaving women without the incremental stepping stones that may be necessary for them to pursue successfully an organisational career (Grimshaw et al. 2002, Coyle 1995)

- Contracting out may be increasing female segregation and reducing opportunities for equal pay cases across occupational groups.
- Recruitment/ training/ promotion procedures still based on informal and discriminatory procedures, even when there are formal procedures apparently in place (Collinson et al. 1990)
- Problems of retention after maternity leave reflect the costs of current inflexible working time arrangements,
- Concentration of women into low level part-time jobs reflects the long hours culture and presenteeism in full-time jobs that prevents women entering full-time jobs or the creation of part-time jobs in sectors where full-time hours are very long
- Discrimination in cases of pregnancy still high: dismissal associated with pregnancy accounts for highest share of requests for assistance from EOC
- Flexible working arrangements take different forms for men and women, thereby reinforcing difference: Casey et al. (1997) found that employers offered various forms of flexible working only to women and did not consider them for men
- Continuing problems of sexual harassment and bullying and with the victim paying the main price (the EOC found that in most successful tribunal cases the victim lost their job or resigned, *The Guardian* 30.8.01); sexual harassment is often worse in male dominated jobs (EC 1999)
- Responses to, for example, equal pay initiatives, have reduced the long term effectiveness of these policies: for example in the Local authorities case where there was a major job evaluation exercise that upgraded care workers, the effects on the gender pay gap were reduced by first of all continuing to pay more or higher bonuses to some male dominated jobs and the contracting out of the lower skilled areas of care work to avoid the higher grade and wages associated with care work within the public sector (Lissenburgh 1985)
- The development of new pay systems and practices, such as performance related pay, and the increased use of outsourcing restrict the effectiveness of the equal pay legislation as currently formulated.

### **Individuals/ households**

#### **Objective: extend individual/household choices**

These choices are still restricted by the presence of the following.

- Unequal pay that prevents the widespread development of either shared breadwinner roles or the development of female breadwinner roles
- The lack of sufficient financial support during periods of pregnancy and childbirth to allow women to be financially independent and autonomous
- The continued sexualisation of employing organisations, including continuing problems of harassment and exclusion from masculine organisational cultures
- The continuation of male cultures in non traditional job areas, requiring women, even if they train and succeed in obtaining entry to comply with male norms (Devine 1992; Corcoran-Nantes and Roberts 1995) and to deal with sexual harassment (EC 1999)
- The continuing need to conform to working time arrangements that are incompatible with a balanced personal and family life

- The continued exclusion of the inactive from access to lifelong learning and the more limited access for part-timers than for full-timers.

## ***II.b. Barriers to achieving equality***

### **II.b.1. Main barriers to achieving equality**

#### *Barriers to continuity - particularly childcare and flexible working*

- Need for *more and better childcare*: Walby and Olsen (2002:28) found that 66% of nonworking mothers would prefer to study or to work if better childcare and 31% working parents wanted or needed more childcare. In 1994 most working mothers said they would not change their hours even if they could change their childcare arrangements, but a quarter of those working part-time said they would work more hours and 80% of those not in paid work said they would get a job if they had appropriate childcare (Women's Unit 2000). McRae (1991) found that those new mothers who wanted to stay at home found it easier to fulfil their desires than those who wanted to re-enter work
- The *high cost of childcare* acts as a barrier to continuity (Callender 1997)
- *Rights to more flexible or reduced hours* would increase the return rate for mothers (see tables 5 and 6 above)
- The *tax trap of inwork benefits* is potentially trapping more women who are second income earners into inactivity because of the high effective tax rate on their earnings (Rubery and Rake 2000; Walby and Olsen 2002: 31)
- *Illegal dismissal related to pregnancy* appears to be a continuing problem as this complaint is the one where the EOC is most often asked to provide assistance (Walby and Olsen 2002: 41)
- *Low pay for maternity leave and unpaid parent leave* with no specific leave for fathers (except for paternity) reinforces the traditional domestic division of care work (as male wages still tend to be higher).

#### *Organisational culture, working hours*

- The UK has a particular problem of the *long hours culture*, particularly in higher level jobs. This creates barriers to women working in full-time jobs and the creation of part-time jobs at higher levels. This tendency to work long hours is reinforced by a culture of presenteeism (Walby and Olsen 2002:33)
- *Sexual harassment* continues to be a problem and may result in resignation, or reduced work tasks or promotion opportunities for the victim (EC 1999).

#### *Specific characteristics of labour market segments where women are concentrated*

- The *part-time sector* in the UK provides lower returns to human capital (Joshi and Paci 1998), offers limited opportunities in higher level jobs (Walby and Olsen 2002: 37); restricts part-timers to short part-time jobs (Walby and Olsen 2002) such that significant numbers of part-timers would prefer to work more hours; and restricts opportunities for education and training for part-timers (see table 11)
- The increasing practice of *contracting out* in the public services presents a major potential obstacle to achieving sex equality (both in terms of equal

treatment and equal pay). Experience of CCT legislation during the late 1980s and 1990s shows that women in particular experienced reduced pay and terms and conditions (especially reduced weekly hours among part-timers) when jobs were outsourced to private sector subcontractors (Escott and Whitfield 1995). In 1999, 'Best Value' legislation replaced CCT and is seen as a central plank of the current government's public services modernization agenda. It aims to improve the quality, efficiency and effectiveness of services provision and while official guidance states that equalities ought to be taken into account in service reviews assessment of Best Value reports in 2000-01 found only two examples where equality issues were adequately evaluated (Audit Commission 2002, cited in Escott and Whitfield 2002: 18). Moreover, research on contracting out through Best Value identifies a two-tier workforce (UNISON 2002), where transferred staff enjoy protected terms and conditions (for a limited period) and new staff are employed on different terms and conditions. As such, the rapid increase in provision of public services by a third party (generally a private sector firm) has major implications for the terms and conditions of female employment. There has been some progress recently on this issue as a result of a new code of practice with respect to contracting out (see below).

- *Performance management* in the public sector is challenging the ability of managers to focus on equalities issues. As Escott and Whitfield found: '*Respondents in Birmingham City Council considered that the Best Value process had impacted on equalities work ... However, respondents from Environment and Consumer services argued that the need to compete with other organizations, including the private sector, where equality strategies are less well developed, caused problems. Concern was expressed about applying a duty to promote gender equality to the public sector which was not equally applied in the private sector*' (2002: 35-6). Funding is also increasingly short term - sometimes linked to performance targets - and this creates further problems related to the continuity, sustainability and long-term planning of equality policies (op. cit.: 36-7).

#### *Wage policies*

- Although the UK has recently established a national minimum wage, there are problems due to the *low level of the minimum wage* and the lack of a formula for regular upgrading.
- Collective bargaining coverage is limited in the UK, now accounting for only a minority of workers, particularly in the private sector
- The restructuring of the public sector may have negative impacts on the gender pay gap (see above), but there are also major initiatives to introduce gender neutral pay structures based around single pay spines, for example into the National Health Service and new requirements for gender pay audits (see section II.b.2 below)
- The restrictive nature of equal pay legislation that limits comparisons across employers may be a particular barrier to equal pay in a country where there are few sector or national level agreements on pay and hence wide variety in pay levels between sectors and organisations. There needs to be provision for hypothetical comparators to prevent the evasion of equal pay cases through subcontracting and opportunities to compare wages across workplaces and between those working for different employers but in the same workplace.

- Trends towards performance-related pay in the UK may increase discretion for managers with possible negative consequences for the gender pay gap.
- The UK only has a relatively low level of state pensions and relies extensively on occupational pensions to provide a reasonable standard of living in retirement; occupational pensions mirror the low pay and the employment gaps that characterise women's employment history in the UK as only the state pension takes into account years spent rearing children; moreover, the provision of occupational pensions varies by sector and company and women in part-time jobs and in the private sector have more limited access to pensions; women are less likely than men to have long term careers in the same organisation, thereby reducing their access to defined benefit pension schemes; however in defined contribution occupational pension schemes they are penalised by the use of gender specific actuarial assessment for the purchase of an annuity; the problem of sex-based annuities is increasing as more and more employers are withdrawing from defined benefit schemes.

### **II.b.2. Recent changes/developments in legislation/public policy**

There have been a number of recent policy initiatives that could be expected to do something to reduce the specified barriers. These include:

#### *Childcare and barriers to continuity*

- National childcare strategy, which is leading to the expansion of childcare facilities from a low level
- Rights of parents to request flexible working hours from April 2003
- Improvements to length and pay for maternity leave (from April 2003 26 weeks and paid at £100 a week)
- Paid paternity leave for two weeks
- New childcare tax credits

#### *Public sector*

- Pay audits in public sector from April 2003
- New public sector single pay spines- agenda for change in NHS is set to introduce a single pay spine involving significant upgrading for some female dominated jobs such as nursing.
- New code of practice with respect to contracting out and two tier workforce for local authorities that requires contractors to provide no less favourable conditions not just for transferred staff but for new recruits too, thus bringing the UK closer into line with the practice in the rest of the EU of requiring public sector contractors to pay fair wages.

#### *Equal Pay*

- New right to request information on pay for a specified comparator
- Encouragement to private sector to conduct gender pay audits

### **II.b.3. Areas where there are still needs for further policy initiatives/legislative developments**

The main policy gaps in comparison to best practice elsewhere in the EU include:

- the lack of a national planned infrastructure for childcare, with subsidised childcare to facilitate entry for women, particularly those in lower paid jobs;

- the lack of significant earnings related pay for maternity and parental leave, thereby inhibiting the development of shared rather than male dominated breadwinner households and changes to the domestic division of caring;
- limited regulation of working-time and in particular the frequent use of the opt out from the working-time directive;
- a wage determination system that promotes fragmentation and differentiation, thereby increasing risks of underpayment for women;
- a pension system that not only reflects women's labour market disadvantage during their working years but in fact intensifies this disadvantage;
- a lack of positive action programmes and policies.

#### IV.1 The socio-economic impact in the UK of removing the exemption to equal treatment with respect to the uses of actuarial factors in occupational pension schemes

Occupational pension schemes currently cover less than half of female employees in the UK (56% of full-timers and 27% of part-timers). One third of full-timers and two thirds of part-timers rely on statutory pensions alone, with third tier pension only covering an additional 8% of full-time employees and 7% of part-time employees (in 1998) (see table 16). Over half of self employed full-timers have personal pensions but these are uncommon among part-timers. Coverage for men and women appears similar but women's coverage is reduced by their much higher share of part-time working. Among occupational pensions in 2002 around 20% are believed to be defined contribution schemes although this proportion is rising. This is evidenced by the decline in members of defined benefit schemes from 5.1m in 1991 to 3.8m in 2001. Moreover in 2002 only 37% of defined benefit schemes were open to new members and half of these were 'contemplating closure' (EOC 2002b). Further problems exist because of the reduction in the value of defined contribution schemes by 50% in three years due to the stock market collapse (EOC 2002b).

Table 16: Membership of pension schemes

	Women		men	
	F/T	P/T	F/T	P/T
<i>Employees</i>				
Occupational	56	27	57	9
Personal	15	9	25	n/a
Any pension	64	34	72	15
<i>Self employed</i>				
Personal	53	17	65	22

EOC 2001b

The use of actuarial factors differentiated by gender are allowed in two different contexts in occupational pension schemes in the UK.

In the first place they are used, according at least to the implied evidence in the Neath case, in calculating employer contributions to *defined benefit* schemes. The Neath case refers to a company where the employer makes higher contributions for female employees compared to male employees based on gender specific actuarial tables (see box 7). The judgment is unclear as to whether the employer is given a specific different rate of contribution according to the gender of the employee or whether gender factors are included in overall actuarial advice with respect to funding (according to the judgment employers' contributions 'are calculated in the aggregate' but it is also stated that 'they are also higher for female employees than for male employees.) As payments may vary according to other demographic factors such as age, it is not clear if claims for differentiated transfer payments can or have been made on the basis of other factors or just gender. Whether the actuarial advice just affects the aggregate employer payments or leads to specific gender-related payments, this practice does not affect the employees' contributions or their benefits and so the ECJ has ruled that this practice does not come under article 141 as it is not an issue of pay. It is not therefore clear if the proposed removal of the exemption will affect this practice. Furthermore in the Neath case the outcome was to the benefit of women as it



enabled a higher capital transfer value to be paid, even if this is required simply in order to purchase the same level of annuity as a man.

However, to the extent that the payment of differential employer contributions exists, it creates a direct disincentive for employer to hire women compared to men. The equal treatment directive requires that employers do not take this monetary disincentive into account, but nevertheless it remains a matter of concern that employers can point to identifiable higher costs of employing women. There is an issue therefore of whether this practice should be deemed contrary to gender equality on grounds of it creating barriers to women's employment, even though the formal legal position is that the requirement to provide equal access makes this disincentive irrelevant. There is the further issue of how widespread is the practice referred to in the Neath case. It is certainly not the case that all defined benefit schemes use different contribution rates for female to male employees (for example staff costings which include employer contributions are produced on a gender neutral basis in the university system). The Equal Opportunities Commission in its recent paper on modernising annuities makes no mention of the use of actuarial calculation in determining employer contributions. In fact it states:

‘Final salary occupational pension schemes are calculated on a defined benefit basis related to the final salary of the member. They do not require the purchase of an annuity and do not take into account the sex of the member.’  
(EOC 2002c)

One issue that must be addressed therefore in the recasting of the legislation is whether the removal of the exemption should extend not only to areas which are deemed to constitute pay but also to include other areas currently exempt from the requirement for equal treatment as they do not constitute pay. This includes the use of gender differentiated actuarial factors in the calculation of capital sums and transfer rights that is permitted according to EU law and UK law. Currently it is only in periodic payment under a defined benefit occupational pension scheme that equal treatment has to apply as well as in statutory schemes (except with respect to retirement age). In the UK according to the EOC, ‘current legislation already requires annuity providers to provide a unisex annuity in respect of any protected rights in occupational and personal pensions. This reflects the provisions of SERPS and, for the future, state second pension, where benefit levels are equal for men and women’ (EOC 2002b). This requirement may relate to the specification under EU law of the right to equal benefits under statutory schemes.

*Box 7: Judgment in the Neath case*

- The employer's contributions, however, which are calculated in the aggregate, vary over time, so as to cover the balance of the cost of the pensions promised. They are also higher for female employees than for male employees.
- This variability and inequality are due to the use of actuarial factors in the mechanism for funding the scheme. The aim of an occupational retirement pension scheme being to provide for the future payment of periodic pensions, the scheme's financial resources, accrued through funding, must be adjusted to the pensions which, according to forecasts, will have to be paid. The assessments needed to give effect to this system are based on a number of objective factors, such as the return on the scheme's investments, the rate of increase in salaries and demographic assumptions, in particular those relating

to the life expectancy of workers.

- The fact that women live on average longer than men is one of the actuarial factors taken into account in determining how the scheme in question is to be funded. This is why the employer has to pay higher contributions for his female employees than for his male employees.
- In the case of the transfer of acquired rights and in the case where part of a pension is converted into capital (the cases under consideration in the main proceedings), the fact that account is taken of different actuarial factors as just described has the result that male employees are entitled to sums lower than those to which female employees are entitled.
- Essentially, the national court wants to know whether such differences are compatible with Article 119 of the Treaty. In order to reply to that question, it must be determined whether transfer benefits and lump-sum options constitute pay within the meaning of that article.
- The Commission claims that this is indeed the case and that consequently any difference in treatment based on sex would be permissible only if it were objectively justified. Statistical data based on the life expectancy of the two sexes do not, in its view, constitute an objective justification because they reflect averages calculated on the basis of the entire male and female population whereas the right to equal treatment in the matter of pay is a right given to employees individually and not because they belong to a particular class.
- It is, of course, settled law that the concept of pay, within the meaning of the second paragraph of Article 119, comprises any consideration, whether in cash or in kind, whether immediate or future, provided that the worker receives it, albeit indirectly, in respect of his employment from his employer. The fact that certain benefits are paid after the end of the employment relationship does not prevent them from being pay within the meaning of Article 119 (see, in particular, the Barber judgment at paragraph 12).
- The assumption underlying this approach is that the employer commits himself, albeit unilaterally, to pay his employees defined benefits or to grant them specific advantages and that the employees in turn expect the employer to pay them those benefits or provide them with those advantages. Anything that is not a consequence of that commitment and does not therefore come within the corresponding expectations of the employees falls outside the concept of pay.
- In the context of a defined-benefit occupational pension scheme such as that in question in the main proceedings, the employer's commitment to his employees concerns the payment, at a given moment in time, of a periodic pension for which the determining criteria are already known at the time when the commitment is made and which constitutes pay within the meaning of Article 119. However, that commitment does not necessarily have to do with the funding arrangements chosen to secure the periodic payment of the pension, which thus remain outside the scope of application of Article 119.
- In contributory schemes, funding is provided through the contributions made by the employees and those made by the employers. The contributions made by the employees are an element of their pay since they are deducted directly from an employee's salary, which by definition is pay (see the judgment in Case 69/80 Worringham and Humphreys v Lloyds Bank [1981] ECR 767).

The amount of those contributions must therefore be the same for all employees, male and female, which is indeed so in the present case. This is not so in the case of the employer's contributions which ensure the adequacy of the funds necessary to cover the cost of the pensions promised, so securing their payment in the future, that being the substance of the employer's commitment.

- It follows that, unlike periodic payment of pensions, inequality of employers' contributions paid under funded defined-benefit schemes, which is due to the use of actuarial factors differing according to sex, is not struck at by Article 119.
- That conclusion necessarily extends to the specific aspects referred to in the questions submitted, namely the conversion of part of the periodic pension into a capital sum and the transfer of pension rights, the value of which can be determined only by reference to the funding arrangements chosen.
- The answer to be given to the national court must therefore be that the use of actuarial factors differing according to sex in funded defined-benefit occupational pension schemes does not fall within the scope of Article 119 of the EEC Treaty.“

Other areas of pension provision are outside the scope of equal treatment as they are outside the scope of the directive on occupational social security and are also unlikely to be considered as pay under article 141. These include:

- individual contracts for self-employed workers;
- schemes for self-employed workers with only one member;
- in the case of paid employees, insurance contracts not involving the employer;
- the optional provisions of occupational schemes offered individually to participants;
- occupational schemes financed by contributions paid by workers on a voluntary basis.

As a consequence, for example, early or late retirement under defined benefit schemes does not have to be offered on an equal treatment basis as actuarial factors can be taken into account. Again it is not clear if the recasting of the equality legislation would affect these practices.

The second context in which actuarial factors are used relies on an exemption to equal treatment under the occupational pensions directive. This exemption refers to *defined contribution* pension schemes where gender differences in actuarial factors may be used to generate different annuities by gender for the same level of contributions. This practice is becoming more common in the UK; currently these account for 20% of occupational pension schemes. However, defined benefit schemes are being converted into defined contribution schemes and the benefit level associated with the statutory supplementary scheme is being reduced. Furthermore the government has introduced a new type of pension- stakeholder pensions which in principle are aimed at expanding the range of coverage of occupational pension schemes but these are based on defined contribution schemes, where gender based actuarial pensions are to be used. Moreover stakeholder pension schemes do not necessarily involve employer contributions, and as such the removal of exemptions with respect to defined

contributions under occupational pension schemes might not affect those stakeholder schemes that are held as third tier personal pensions. The Equal Opportunities Commission has opposed the continuation of the actuarial exemption on the grounds that this is anomalous (as other pension systems provide for equal treatment), unfair as it is based on average differences in life expectancy, while a pooling of risks would be fairer, and counterproductive, as the government is trying to expand the take-up of occupational pension schemes among those currently not covered, a majority of whom are women, but the continued use of actuarial differentiated tables reinforces a prevailing view that pension schemes are poor value. Box 8 provides the summary of the EOC case and Tables 17 and 18 provide numerical examples of the impact of the exemption on pension benefits for women compared to men.

Table 17: Comparison of best paying annuity rates by gender

	Man 65	Woman 65	Gender gap
Capital sum	£100,000	£100,000	0
Annuity indexed to retail price index	£6,546.24. per annum	£5,682.36. per annum	£863.88 (-13.2%)

EOC (2002c)

Table 18: Retirement income generated by saving £81 a month until retiring at 65

Starting age	Weekly retirement income men	Weekly retirement income women
25	£231	£212
35	£134	£123
45	£69	£64
55	£27	£25

Source: EOC 2002b and Association of British Insurers

**Box 8.**  
**Equal Opportunities Commission**  
**Response to Modernising Annuities: A Consultative Document February 2002**

**Summary**

- The application of sex-based actuarial factors which require women to pay higher contributions to receive the same pension rate as an equivalent man, or provide a lower pension for the same level of contributions is a major barrier to equality.
- As a result of the fall in rates offered by insurance companies annuities are perceived as providing increasingly poor value for money. The requirement to purchase an annuity therefore disadvantages both men and women. Women suffer a further disadvantage, however, because their fund produces a lower pension than a man would receive.
- The ‘annuity problem’ is increasing in significance as more company

pension schemes move to money purchase schemes rather than final salary (or defined benefits) occupational schemes.

- The continued use of sex-based annuities is:
- An anomaly - The purchase of an annuity to provide a pension cannot be considered in isolation. Annuities are one part of a patchwork of provisions which go to make up a pension. Currently pension benefits may be calculated in a variety of ways i.e. using sex-based annuities; unisex annuities, or a formula which does not rely on the purchase of an annuity.
- Counter-productive - Annuities need to be more attractive to the saver if people are going to put aside the right kind of sums for retirement in future. Women are unlikely to be encouraged to save more of their income if they see that their efforts will produce a lower pension just because they are female.
- Unfair - The use of sex-based actuarial factors provides women with a lower pension for the same level of contributions. A system of pooling life expectancy risk would be much fairer.
- The expected growth of stakeholder pensions is a key reason to make sure that the annuity market works satisfactorily when pension savings are transformed into retirement income.
- It will become increasingly difficult to sell pensions based on annuities to women while differential rates apply.
- Under the current system women lose out on two counts
- The pay gap combined with breaks in employment for family care results in lower lifetime earnings. This means that the pension funds available to women to purchase an annuity are on average smaller than those built up by men.
- The use of sex-based actuarial factors provides a lower pension for the same level of contributions.
- The current annuities regime therefore perpetuates the pay gap and exacerbates the difficulties women have in acquiring a decent income in retirement.
- Sex-based annuities run counter to the spirit of the equal treatment legislation, both domestic and European. The essence of equal treatment is the consideration of the individual without regard to general assumptions related to sex, but so long as actuarial factors fall outside of the scope of the legislation both sexes will experience inequality, with the impact on women being the greater.
- Although currently permitted under Section 45 of the Sex Discrimination Act, the use of sex-based actuarial factors undermines the fundamental right to equal treatment between men and women. The EOC's proposal to amend the Sex Discrimination Act to remove the exception in Section 45 received support from the National Association of Pension Funds and the Office of Fair Trading.

**The EOC recommends that any proposals for reform ensure that women and men are treated equally.** In particular:

1. The Government must ensure that annuities are examined from male and female perspectives. This will require insurance providers to make gender data readily

available. Lack of a gender perspective in data collection, research and policy evaluation compounds existing inequalities between women and men as the differences are invisible in policy analysis.

2. We strongly recommend the establishment by Government of a working group to address the practical difficulties and come up with answers that will be workable from industry's point of view and ensure gender equity. The working group should involve the ABI, EOC and other interested organisations.

EOC (2002c)

*Socio-economic evaluation of adopting unisex actuarial tables in the context of occupational pensions.*

*The benefits of moving to unisex actuarial tables*

There are three main ways in which the adoption of unisex pensions could promote welfare, efficiency and social justice.

First of all, there is the argument that to maintain the sex-differentiated annuities system would inhibit the spread of occupational and personal pensions, particularly the new stakeholder pensions, thereby thwarting government policy of moving to a higher share of the workforce covered by occupational pension schemes and reducing dependency in old age on means tested benefits ( the majority of those so reliant being women). According to the EOC (2002c), the Retirement Income Reform Campaign has estimated that a man with £100,000 of pensions savings and purchasing an annuity is likely to qualify for Income Support after 15-16 years of living on the annuity but women with the same level of savings would be likely to qualify for Income Support within around 12 years. Current arrangements also may discourage women from making voluntary contributions to build up pension entitlements even under defined benefits schemes, as although all occupational schemes have to offer the opportunity to make additional voluntary contributions (AVC) these AVCs are permitted to accrue on a defined contribution basis requiring purchase of an annuity even within defined benefit schemes. Sex-based annuities may also discourage the spread of personal pensions for women who are self-employed or in employment where no occupational scheme is offered as all stakeholder and personal pensions, including group personal pension schemes involve the purchase of an annuity. The impact of a change in European law on the various dimensions to annuities will depend on whether the change only refers to occupational pensions or to voluntary and personal schemes as well.

Secondly, the adoption of unisex actuarial tables would remove an anomaly that results in differential incentives for employers to move between types of pension scheme and which may provide differential incentives for women and men in choosing between types of occupations and organisations. For example, the government has sought to develop a mixed approach to the delivery of public services, using both public sector and private sector organisations, but the latter are more likely to offer defined contribution pension schemes compared to the standard defined benefit schemes in the public sector. Differences in pension schemes are already a factor discouraging transfer to the private sector but this disincentive is

likely to be particularly strong for women. Where employers do pay higher contributions for women on defined benefit schemes, this could be a factor in accelerating the current switch from defined benefit to defined contribution schemes.

According to the EOC, the use of sex-differentiated tables is sometimes defended on the grounds that there are significant differences in life expectancy by gender so that on average women do not receive lower total benefits from their pension savings than men as they are payable for longer (EOC 2002c). However, on this basis then the payment of the same annual benefits under defined benefit schemes must be considered discriminatory against men. The argument for removing the anomaly rather than allowing for all pensions to be differentiated by gender is that this approach contradicts the principle that women and men should be treated as individuals and not assigned group characteristics (known as statistical discrimination in economics). Even if there are significant differences in group averages, there is overlap between the groups so that the individual is assigned the characteristic of the group and not their own individual life expectancy (which is both unknown and influenced by many factors other than gender). The practice of differentiating by race in South Africa was discontinued on ethical grounds (EOC 2002c) and a similar argument can be made for discontinuing the practice by gender. In both cases the individual has no choice or influence over their categorisation as it is based on a characteristic that cannot be changed by individual behaviour or choices.

Thirdly, the adoption of unisex tables would end the situation where women's longer life expectancy on average adds to difficulties women face in accumulating rights to an adequate pension, related to shorter employment periods, more part-time working, lower hourly pay rates, lower returns to experience and less likelihood of employment in occupations and sectors offering high quality occupational pensions. Unisex tables would be thus one element in a package of changes that are likely to be required if women are to close the gender pay gap, here defined, as in EU legislation, to include occupational pensions. This change would thus add to social justice in two senses, by creating more equal outcomes and by removing an anomaly, as defined above. Improving women's pension entitlements has benefits not just for women; it also reduces the share of the population likely to be dependent upon state benefits and could promote a virtuous circle where it becomes worthwhile to save for retirement rather than to rely on state provision. Furthermore for women's partners it provides added security as their spouses are not so dependent on their own pension entitlement; if both partners have access to reasonable pensions, this reduces the costs of redundancy and company failure, where these have implications for pension entitlements and also simplifies the financial issues associated with family breakdown and divorce. Finally it provides more individual choice as it enables the woman to be the main breadwinner without the household facing penalties in terms of annual pension entitlements.

#### *The costs of moving to unisex actuarial tables*

Clearly the use of unisex actuarial tables with respect to pensions will involve some costs; these seem likely to be primarily costs of redistribution of benefits and not significant additional costs relating to, for example, more complex actuarial calculations. Indeed given the requirement to use unisex calculations in some conditions and not others, a requirement to use them in all areas with respect to

occupational pensions could be expected to reduce administrative costs. The groups most likely to bear the direct costs of this change are men; there are few reasons to suppose that the insurance industry would bear the cost by upward equalisation of annuity rates. The impact on individual men would be moderated by: the fact that most men are in partnerships with women so that the impact on household income would be modified by the enhanced pension entitlements of women; where men take out annuities involving dependent spouses the rates received are not entirely dependent upon their own life expectancy (and in that sense unisex tables are already used<sup>2</sup>).

Actuarial advice on the funding of defined benefit schemes needs to ensure that appropriate contributions are paid. Here there may be a case for allowing gender differences in life expectancy to be taken into account as one factor in actuarial advice on aggregate contributions (as opposed to gender-specific contributions). More generally there needs to be a requirement for actuarial advice to be based on the most pertinent factors for a specific scheme, including demographic factors, turnover rates and occupational characteristics and not to use aggregate gender differences. Moreover if annuities were no longer gender differentiated there would be less need for capital sums on transfer from scheme to scheme to reflect the implicit higher contributions made for female employees.

The objections by the insurance industry revolve primarily against the issue of principle (see box 9); if sex-differentiated tables are not allowed to be used in the area of occupational pensions, then they may be deemed unacceptable- legally or morally- in other areas and this could have implications for other factors used for actuarial calculations. The fact that in some countries already such differentiation is not allowed suggests that this is not an insurmountable problem and that these objections are to be expected from any agents who see their autonomy being questioned. The EOC in campaigning for the removal of section 45 in the Sex Discrimination Act is implicitly asking for the removal of exemptions on actuarial factors to extend beyond pensions and issues of pay to all areas, including consumer items. The EC has been considering the introduction of a wider directive on gender equality that would cover consumer issues but the directives considered for this recasting only concern employment and social protection.

**Box 9. The use of unisex actuarial tables with respect to pensions: assessment of feasibility and desirability**

*Feasibility and attitudes of the insurance industry*

Consulting actuaries Tillinghast - *Unisex Pricing in Long Term Insurance (1989)* – in a report for the EOC ‘concluded that changes to current practices in insurance and pensions would be feasible’.( EOC 2002c)

The National Association of Pension Funds Ltd has suggested, according to the EOC, that the general application of unisex annuity rates is only a matter of time. The Society of Pension Consultants could see no insurmountable technical problems to their introduction. Opposition from the Association of British Insurers, the insurance companies trade association, according to the EOC was based primarily on grounds of cost and ‘because, in their view, the implications of abolishing the right of an insurer

<sup>2</sup> However the majority of annuities are single life annuities at present (EOC 2002b)



to underwrite on the basis of sex has implications for other classes of business'.(EOC 2002c)

*Pension inquiries/reports*

According to the EOC, 'the Report of Director General's Inquiry into Pensions, published by the Office of Fair Trading in 1997, recommended that there should be equal annuity rates for men and women. The report stated 'there is a strong moral case that men and women should enjoy the same level of pension for the same contribution'.'

However, the most recent UK reports on pensions have not addressed the issue of gender differentiated annuities, in contradiction to government commitments to mainstreaming. Indeed the EOC points out that 'all the examples in the consultation [on modernising annuities] are for men, and there is no consideration of the impact of lower annuity rates for women' (2002b). Furthermore data on the position by gender is not collected and analysed: according to the EOC they were unable to source data from either the ABI or from the Government Actuaries Department on the numbers of women and men currently receiving retirement incomes from annuities, the levels of income received and projections for the future.

The EOC itself has however continued to promote the repeal of Section 45 of the Sex Discrimination Act (see *Equality in the 21st Century - A New Sex Equality Law for Britain* 1998). The EOC also pressed the European Commission to include a requirement for equal treatment in actuarial matters within the new Gender Directive under Article 13.

**IV. 2. Consolidating and recasting the equality legislation: the socio-economic impact of extending the innovative measures in the Equal Treatment Directive (Directive 2002/73/EEC), and of extending the burden of proof into occupational pension schemes.**

The impact of consolidating the EU equality legislation will be to extend the innovative measures introduced by the amendment to the Equal Treatment Directive in 2002 (Directive 2002/73/EEC) into other areas of equality legislation. Assessing the impact of this involves both an assessment of current legislation and practice in the UK that has not yet been adjusted to take into account Directive 2002/73/EEC as well as assessing any further changes that would be necessary as a consequence of the consolidation and recasting exercise. These issues have been addressed by the UK legal expert and are presented in Box 10 below. Further complications in this assessment arise because the government's response to this Directive is being considered concurrently with broader reforms to the equality legislation to encompass age, sexual orientation and religion alongside the existing provisions in UK law for sex, race and disability in light of the Race and Employment Directives (Article 13 Directives). The Equal Opportunities Commission has provided a response to the government's consultative document on reforming the equality legislation, including measures to implement of the EU Employment and Race Directives (Article 13 Directives) and the Equal Treatment Amendment Directive (EOC, undated-document b). The main points of this response are included in our summary of the main issues below.

- ***Equality Bodies and Institutional reform***

Directive 2002/73/EEC requires the establishment of independent equality bodies. It is clear that the two UK Equal Opportunities/Equality Commissions fulfill these criteria. It is notable that the EOC has taken cases against the government with respect to its fulfillment of obligations under EU law. No changes can be expected therefore as a consequence of the recasting. The Government is reviewing the institutional arrangements given that there are three commissions in the UK addressing equality for race, sex and disability in light of the three new grounds (age, sexual orientation and religion) that will be introduced by the Race and Employment Directives. The EOC, while supporting the idea of a single equality commission, has made detailed recommendations for designing the new equality institutional arrangements, including the proposal that existing enforcement procedures be extended and strengthened, and that group (class) action be introduced.

- ***Equality Plans***

Equality plans have entered the political agenda in the UK since the EOC published its Equal Pay Taskforce report recommending compulsory gender pay audits. The idea of compulsory audits were rejected by the government but it set up a new review (the Kingsmill review) to consider what could be done on a more voluntary basis. This review endorsed the voluntary approach but recommended that if the voluntary approach failed that compulsion should be considered in the future. This is the approach now taken by the EOC that is monitoring the adoption of voluntary reviews with a target of 50% of large firms (with over 500 employees) to have completed an equal pay review by 2003 and 25% of the rest of firms to have reviewed their pay systems by 2005. Furthermore, the EOC recommends that the Government 'start to consider what additional policy and regulatory measures might be needed to achieve Ministers' objectives of substantially reducing the pay gap should this target not be met'. In November 2002 175 companies had signed up as members of the Equal Pay Forum, which requires a commitment to carrying out reviews. However there appears to be no further news as to membership numbers. In addition the public sector is embarking on equality audits from April 2003. Furthermore Kingsmill is carrying forward another of the recommendations in her report by considering the case for 'human capital reporting' in company reports by chairing a taskforce appointed by the Secretary of State for Industry on 'Accounting for People'. As the legal expert makes clear, the references to equality reviews in the 2002 Directive 'does not create a legal obligation of any great weight' and thus the extension, while reinforcing the notion that reviews are good practice, would not be sufficient to move the system from voluntary compliance to compulsion.

### **Preventative measures**

This element of the directive gives some support to mainstreaming gender equality but does not require the UK government to change current practice. It would not therefore have to follow the Northern Ireland equality legislation and introduce a statutory duty on public bodies to promote sex equality in both employment and services. Furthermore it would not have to accept the recommendation of the EOC that the government introduces a shift in the focus in the legislation 'to give employers a positive duty to promote equality in employment' (EOC, undated-document a,

paragraph 12) and for a (paragraph 15).

#### Sanctions and remedies

The extension of the requirement to consider the possibility of discrimination continuing after the ending of the employment relationship to other areas of equality, not just equal treatment, would extend the scope for the taking of equality cases in the UK.

#### Upper limits

No upper limit will be placed on remedies available under UK law related to pregnancy and maternity while previously complaints were dealt with as unfair dismissal remedies which were subject to a statutory upper limit. Extension to other directives will not have an impact as no upper limits exist.

#### Burden of proof in occupational pensions

The introduction of the burden of proof directive into the occupational pension law would require a change in UK national law. This is unlikely to be as important as the removal of the actuarial exemption in reducing gender discrimination in pension systems.

#### ***Proposed Changes to UK Equality legislation***

The UK government can be considered to be anticipating the impact of the recasting on the definition of indirect discrimination by proposing to adopt a coherent approach to both the tests for indirect discrimination. The proposal, welcomed by the EOC, is to amend the *Sex Discrimination Act (SDA)* and the *Race Relations Act (RRA)* to bring the test for indirect discrimination into line with the new Directives. Furthermore the SDA will be amended to outlaw sexual harassment and harassment on grounds of sex. However, the EOC recommends that the proposed definition of 'harassment on the grounds of sex and sexual harassment' may need expansion.

#### **Box 10 The Impact of the Introduction of the Innovative Provisions of Directive 2002/73/EEC if extended to the other Equality Directives**

Information and comment provided by Christopher McCrudden, UK legal Expert on the EU legal network

##### **Equality bodies (Article 8a)**

The United Kingdom currently has two independent bodies that will fulfill the criteria laid down in the Directive: the Equal Opportunities Commission with jurisdiction in England Scotland and Wales, and the Equality Commission with jurisdiction in Northern Ireland. The latter's jurisdiction also extends to race, religion and disability discrimination. There is currently under consideration the possibility of creating a similar unified body for England Scotland and Wales. An extension of Article 8a to cover the other equality directives would have no major impact in the UK.

##### **Equality plans (Article 8b(3))**

United Kingdom public bodies have embarked on the preparation of equal pay plans from April 2003. Private sector employers are encouraged to do so. There is no legal compulsion to do so, except in Northern Ireland under section 75 of the Northern Ireland Act 1998 in so far as it applies to public bodies. Article 8b(3) will not change this situation to any marked extent as it does not create a legal

obligation of any great weight; effectively the government is already doing as much as the Article seems to require. Extension to the other directives would therefore not have any significant impact.

#### **Preventative measures (Article 1a, Article 8b(1) and (2))**

To the extent that Article 1a recommends mainstreaming, it is a relatively weak legal provision. The UK government currently operates a form of mainstreaming in England, Scotland and Wales by way of an administrative circular; in Northern Ireland mainstreaming is legally required under section 75 of the Northern Ireland Act 1998, and there is a somewhat similar provision applying to the devolved government in Wales, and some other public bodies in Britain. The provisions in 8(b) are unlikely to affect UK current practice to any marked degree. Extension would similarly be of little effect.

#### **Sanctions and remedies (Article 6(1))**

The requirement in Article 6(1) that remedies must be provided "even after the relationship in which the discrimination is alleged to have occurred has ended" is based on the decision of the ECJ in *Coote v Granada Hospitality*. *Coote* has been somewhat restrictively applied in the UK to claims of victimization. The new provision will therefore broaden the remedies available in this respect. Otherwise, probably no change, depending on the meaning to be given to the terms "effective, proportionate and dissuasive." Extension would have no impact.

#### *Upper limits*

Upper limits are not applied in the UK statutory sex discrimination provisions, following *Marshall*. Extension to the other Directives might have an impact in the context of equal pay remedies where a somewhat different approach to remedies is taken than in the rest of sex discrimination law in the UK.

#### *Burden of proof*

This would require a change in the UK legislation, although how far it would affect practice is doubtful.

### ***Expected changes in UK law as a result of Directive 2002/73/EEC***

#### ***1. Harassment and sexual harassment***

The new Directive provisions will require legislative changes in the UK and will significantly affect UK current interpretation.

#### ***2. Genuine occupational qualification***

The new Directive provisions will require amendment of the legislation, but it is unlikely to have any significant impact.

#### ***3. Pregnancy and maternity leave***

The availability of remedies under the new directive for pregnancy and maternity leave will mean that no upper limit will be placed on remedies available under UK law; previously complaints were dealt with as unfair dismissal remedies which were subject to a statutory upper limit.

## **IV. 3. The current shortcomings of the equal pay legislation**

The first problem to be identified with respect to the equal pay legislation lies in the limitations to the equal pay act by limiting the definition of equal pay to equal work or work of equal value. As the legal expert identifies (see Box 11), this means there is no general requirement not to discriminate on grounds of gender in the payment systems. Where there is no equal comparator there is no case that can be made for equal value. Hastings points to the important decisions with respect to a case concerning the comparison of a speech therapist with a clinical psychologist (*Evesham*) that 'almost equal value' should be treated as 'equal value' as otherwise there would be no remedy available. It is also the case that in the UK the Equal Pay Act is limited to contractual pay and does not cover all aspects of remuneration. Thus issues of equal access to performance bonuses might be covered by the sex discrimination act not the equal pay act. This division becomes more problematic the more that payment systems become individualised and less dependent upon the grading of jobs. There is a need therefore for a more comprehensive approach to equal pay issue and perhaps a more general remedy against gender discrimination in pay. According to the legal expert 'This gap

in the coverage of EC and UK law suggests that there is a need to amend EC law to enable discriminatory differentials to be tackled, either by expanding the scope of comparison, or permitting hypothetical comparisons.'

### **Box 11: The Limitations to the Equal Pay legislation**

'There is a broad problem with UK equal pay law that EC law does not appear to tackle. Strange as it may seem, neither EC law nor UK law prohibits gender discrimination in pay. The problem arises because of the split between the Equal Pay Act and the Sex Discrimination Act, and between the equal pay directive and the equal treatment directive. All the Equal Pay Act and the Equal Pay Directive prohibit is paying men and women differently where they are doing equal work or work of equal value. Therefore, where a man and a woman are not doing equal work or work of equal value, there is no remedy for gender discrimination in pay. For example, if a non-discriminatory job evaluation finds that the woman's work is 80% the value of the man's but she receives only 40% of the pay of the man due to sex discrimination, there is no remedy under EC or UK law. This gap in the coverage of EC and UK law suggests that there is a need to amend EC law to enable discriminatory differentials to be tackled, either by expanding the scope of comparison, or permitting hypothetical comparisons. Although at first sight the new Directive amending the Equal treatment Directive appears to tackle the problem by referring to equal pay (Article 3(1)(c)), all this does is to retain the limits on equal pay sketched out above by explicitly referring to equal pay "as provided for" in the Equal Pay Directive, unless "working conditions" could be interpreted as encompassing discriminatory pay that falls outside the scope of Article 141 and the Equal Pay Directive but this might be overly creative for the ECJ.' (McCrudden 2003)

#### *Role of independent review/analysis of job grading in strengthening equal pay legislation*

The UK is one of the few countries to have specific reference to the use of job evaluation with respect to claims of equal pay for work of equal value. However the way in which job evaluation has been used in this context has had mixed effects for the pursuit of gender pay equity. The main limiting factor is up until now where jobs have been rated as not equivalent under a job evaluation scheme this has been considered sufficient to dismiss a claim on the basis that there is no reasonable grounds for the claim. Unless it can be shown that the job evaluation scheme is biased the claim cannot proceed, except where there is evidence that the job has not been properly evaluated under the scheme. The government is proposing removing the no reasonable grounds as it could be regarded as not compatible with EU law, according to Hastings (presumably following the burden of proof directive). However it is proposing to allow an Employment Tribunal to conclude that two jobs are not of equal value where they have already been rated differently by a job evaluation scheme 'providing that the scheme is satisfactory'. The opinion of the EOC is that this in effect provides an absolute defence to a claim of equal value and that 'this appears to be contrary to at least the spirit of the Burden of Proof Directive'. Their preferred option would be to refer the issue to an independent expert prior to the hearing rather than

relying on non expert tribunal chairs and non expert complainants attempting to determine whether there is a case to be considered. It is notable that there have been no successful claims that a job evaluation scheme is 'flawed' although there have been a number of successful cases that have demonstrated that a job was not appropriately evaluated under the job evaluation scheme. Moreover where no job evaluation scheme exists an independent expert can be asked to compare the jobs in question using a job evaluation scheme. Some of the most important cases in the public sector- for example speech therapists- have established that the fact that two jobs are covered by different collective agreements and in practice different evaluation schemes is not a genuine material factor. This has resulted in a move to establish single pay spines within public sector employment areas such as local government and the health service. Furthermore the possibility of success in showing a job evaluation scheme to be unsatisfactory has stimulated some interests in developing gender neutral job evaluation schemes; an early example of this was the Local Authority manual workers scheme in the 1980s that took into account responsibility for people and caring skills, factors omitted in earlier schemes.

*Current involvement of the state and/or social partners in monitoring equal pay and in what ways could monitoring be made more effective;*

We have discussed above the moves towards equality audits or equal pay reviews, albeit on a voluntary basis and the possible inclusion of human capital reporting requirements in company accounts. The government is active in commissioning studies on the gender pay gap, but regards the gender pay gap as separate from its general pay policies that encourage flexibility and decentralisation that make both monitoring and applying the law more difficult. The trade unions have adopted a relatively active stance towards the promotion of equal pay particularly in the public sector and they have been concerned about the policy of contracting out in the public sector for equal pay. The government has responded to that campaign by in principle agreeing to a requirement for contractors to follow the terms and conditions in the public sector even for new recruits ( at least in local authorities- not yet agreed in health) and has allowed equal opportunities issues to be factors to be considered in awarding contracts within the public sector.

*Potential benefits of extending the scope for comparisons across employing organisations or allowing the use of hypothetical comparators for equal pay claims.*

The UK has perhaps gone further than most European countries in promoting the fragmentation of the employing organisations through the development of subcontracting, use of agency workers in the development of hybrid organisational forms such as joint ventures, public private partnerships and the like. This fragmentation is more significant in the UK because of the lack of collective agreements with general applicability; this contracting out has the implications for opportunities for changes in terms and conditions, including minimum terms at least for new recruits not covered by the Transfer of Undertakings regulations. Fragmentation also increases the scope for gender segregation by organisation and reduces the chance that male comparators will be found within the same employing organisation. There is therefore a very strong need to recast equal pay legislation to allow comparisons across employing organisations as the current legislation does not

allow for comparison in many cases where workers are side by side in the same workplace or engaged in the same productive activity (see box 12).

**Box 12 Expansion of permissible equal pay comparators to include employees of other organizations at the same workplace**

The Equal Pay Act focuses very specifically on a single employer at a single establishment. However, it is unlikely that the framers of the legislation could have envisaged the transformation in work organisation which has occurred over the thirty years since it was passed. Walby (1997: 208) has made the general point that equal opportunity and equal pay legislation and policy are premised on 'notions of uniformity of process and criteria and reduction of ad hoc personnel decision-making'. Moreover they presume a centralized and bureaucratic organizational form

If one remembers that the Act is concerned with inequality in contractual terms and conditions between members of the opposite sex which cannot be justified, there is an argument for extending this remit beyond the boundaries of the integrated bureaucratic firm to cover other situations in which there is perceived inequity of treatment between similarly placed workers even if they do not share the same legal employer.

To a limited extent, the broadening of the remit beyond the immediate employer already features in UK employment law via the ability to make equal pay comparisons across 'associated employers'. However, the dearth of case law involving such claims tends to suggest that they are not often made. Employees in associated companies may, in fact, have little notion of any potential for legal claims because they may be unaware of inequities in matters of pay. In contrast.... equal pay claims are arising where employers are not 'associated' but where employees are much more likely to be conscious of disparities in pay between themselves and those alongside whom they work – or used to work i.e. from agency workers and from staff transferred from the public to the private sector. The Kingsmill review (2002) made the proposal that when staff are transferred from the public sector that their pay and grading should be maintained in line with the position accorded to the post in the public employers' job evaluated grading structure, providing appropriate comparators remain employed in the public sector. The objective of this proposal was to prevent the contracting out of public sector services being a cause of women losing the gains that have been and continue to be made from the application of equal value claims and the development of gender sensitive job evaluation schemes in the public sector. Should the current proposals in the proposed EU Temporary Work Directive become a reality, agency workers would have an explicit right to make comparisons with individuals employed by the client firm.

Extract from Earnshaw et al. 2002

#### **IV. 4. The socio-economic impact of eliminating the derogations under Directive 79/7 as a result of the recasting of the equality legislation.**

##### Article 3(2) (family benefits and survivors benefits)

The UK does not observe equal treatment in all areas of family benefits and survivors benefits. For example child benefit is automatically paid to the mother and the father has to obtain written agreement from the mother if he is to receive the child benefit. Similarly child tax credits are paid to the main carer who will normally be the recipient of child benefit.

Widowers are now eligible (since 2000).

##### Article 7(a) retirement and pensionable age,

Differences in retirement ages are being phased out, with women's retirement age rising in stages from 2010 to 2020.

(b) advantages in respect of old-age pension schemes granted to persons who have brought up children; the acquisition of benefit entitlements following periods of interruption of employment due to the bringing up of children;

These advantages are available for the statutory pension scheme to both mothers and fathers who have the primary responsibility for a child. However this eligibility is tied to the receipt of child benefit. Child benefit is automatically paid to the mother and the father has to obtain written agreement from the mother if he is to receive the child benefit.

(c) the granting of old-age or invalidity benefit entitlements by virtue of the derived entitlements of a wife;

There is provision for a married women's statutory pension to be paid on the basis of the national insurance contributions of the husband. This provision does not apply to married men. According to the National Strategy Report on the Future of Pensions, September 2002, married men whose wives were born on or after April 1950 will have this right as from 6 April 2010.

(d) the granting of increases of long-term invalidity, old-age, accidents at work and occupational disease benefits for a dependent wife;

Not aware of any use of this derogation but may be in use

(e) the consequences of the exercise, before the adoption of this Directive, of a right of option not to acquire rights or incur obligations under a statutory scheme(which is no more relevant)?

This derogation is still being used for married women who opted out of paying the full National Insurance 26 years ago. This leaves them with no entitlement to a state pension although they can claim a dependant's pension on the basis of their husband's contributions when their husband reaches the age of 65. The length of time taken for phasing out this option may be exceptional to the UK.



### *Impact of removing derogations*

A strong case has been made for the principle of automatically paying child benefit and child tax credits to the mother, with provision for switching of payments if the mother so approves ( see Women's Budget Group submission on this point – reference?). The argument in favour, even though this is a derogation from equal treatment is that apparently gender neutral policies such as the main alternative option of paying the benefit through the wage packet would tend to have the opposite effect of paying in the majority of cases to the father. As women are more likely than men still to be in charge of the care of children, if the aim is that the benefit should be deployed to the benefit of the child, paying the benefit to the mother is more likely to bring this about. The argument against leaving it up to the household to decide who should receive the benefit is that it is felt that fathers may be more likely to overrule mothers than vice versa; here the argument is more one of positive action than equal treatment as it is recognised that women are often less powerful in the home. There are less strong arguments why fathers who are taking the primary responsibility for childcare should require the permission of their partners before their care activity can be recognised for pension purposes, but this use of the derogation follows from the decision to tie national insurance credits to the recipient of child benefits. Derogations with respect to retirement age are being phased out and forcing an accelerated phasing out would lead to people who are already preparing for retirement not being able to follow through with their plans. The extension of rights to married men to draw pensions based on their spouse's contributions makes access to derived rights more symmetrical and thus consistent with equal treatment but does not contribute towards individualisation of benefit entitlements which could be considered the long term objective of equal treatment in the area of statutory social security.

### **IV. 5. Positive Action**

The UK in contrast to many EU member states has adopted a limited approach to positive action, in particular stopping short of positive action at the point of recruitment. In a number of member states the equality legislation establishes a duty on the state and/or employers and social partners to promote gender equality or to negotiate over gender equality issues, thus taking a more proactive stance than the non-discrimination requirements of EU equality law<sup>3</sup>. For example, positive action programmes are permitted under EU law (see box 13), but a number of countries move beyond this permissive position to one that requires positive action (largely in the public sector). In some countries there are also requirements to provide information on women's employment position relative to that of men's (type of jobs, pay levels etc.) and to draw up equality plans, either at the national level led an equality agency or government ministry, or at the enterprise level through requirements placed on employers and/or social partners (Rubery and Fagan 1993, 2000; Rubery et al. 1996).

In relation to the development and initiatives in many of the other member states, the UK has taken a 'voluntarist' approach, in keeping with the thrust of much of the employment legislation in this country. The scope of the anti-discrimination

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<sup>3</sup> Alongside the legal measures there is also a European Council 1984 Recommendation on the promotion of positive action for women (84/635/EEC).

legislation permits positive action on the specific issue of training for the sex that is under-represented in a given area of employment. There is no statutory requirement for positive action programmes to be used or considered by either private sector employers or public sector agencies. The scope for other forms of positive action to improve women's access to employment are not addressed explicitly in the legislation, yet this would be one way of providing guidance to employers in light of the Kalanke ruling.

**Box 13 Positive Action in EU law**

Eckhard Kalanke v Freie Hansestadt Bremen (Case C-450/93, Judgement of the Court 17 October 1995, document 61993J0450). The decision states that where candidates of different sexes shortlisted for promotion are equally qualified it is illegal to give automatic priority to one sex (women) if they are under-represented in this occupation/function level under the scope of Directive 76/207 (Equal Treatment in employment, vocational training and promotion). This is because such measures go beyond promoting equal opportunities and instead promotes equality of representation, which is only to be arrived at by providing equal opportunities. Rather under Directive 76/207 national measures are permitted relating to access to employment, including promotion, which give a specific advantage to women with a view to improving their ability to compete on the labour market and to pursue a career on an equal footing with men. However Case C-409/95 *Marshall* [1997] ECR I-6363 clarified that a 'quota rule' to the effect that, where women were under-represented in the post concerned, an equally qualified woman should be preferred to a man for promotion, "unless reasons specific to an individual male candidate tilt the balance in his favour" (A 'saving clause' is consistent with EC law).

Alongside the legislation there have been a number of major voluntary initiatives that have promoted different forms of positive action including training and targeted information campaigns about education and career choices and/or the use of workplace equality plans and targets. These include the employer-led 'Opportunity Now' campaign and the government's campaign to encourage women entry and retention in science, engineering and technology careers, where there has been a recent new announcement in April this year, as well as the ongoing promotional work of the Equal Opportunities Commission and the Cabinet Office Women's Equality Unit (see Appendix 1). The government in its role as employer has also used positive action in its programme to promote equality in the civil service, and overall the public sector has played an important lead role in developing and promoting workplace initiatives. There are also a number of other information and education and training initiatives to promote men and women's entry into non-traditional areas run by various public sector and voluntary sector agencies (for major examples see Appendix 2).

The Government has recently issued a consultative document on the implementation of the EU Employment and Race Directives, and in it there are no proposals for any extension of the positive action provisions in the existing legislation. The EOC has not called for any such extension in its response, but it does recommend that the government introduces a shift in the focus in the legislation 'to give employers a positive duty to promote equality in employment' and for a statutory duty to be placed

on public bodies to promote sex equality in both employment and services (EOC, undated-document a, paragraph 12 and 15). The EOC also advocates the promotion of positive action measures in a number of areas of government policy (see Appendix 1).

Given the relatively poor record of the UK in promoting gender equality, with the UK registering one of the largest gender pay gaps and relying for its relatively high female employment rate on high shares of women employed in short hour low paid jobs, there would be a clear case for strengthening the approach taken towards positive action in the UK. Most importantly there is a clear need for both the government and employers to have a requirement not just to comply with equal opportunities legislation but actively to promote gender equality.

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## **Appendix 1: Recent Positive Action initiatives in the UK**

### **Promotion of women's advancement in the workplace – the 'Opportunity Now' Campaign**

This campaign is run by Business in the Community (BIC), a not-for-profit organization representing over 300 influential companies drawn from the private, public and education sectors across the UK. It works with employers to tackle the barriers that exist to women's advancement in employment by disseminating information materials, including 'business case' cost estimates and best practice examples of equal opportunities initiatives to recruit, retain and promote women, organizes conferences and publicises 'success stories' through annual awards. One of the initial innovations of this campaign – introduced in its previous guise as 'Opportunity 2000' – was that companies are encouraged to establish targets to monitor their progress over time. An early evaluation of the impact of this initiative showed that the rate of advance of women into non-traditional occupations or more senior posts was better in companies that had set targets than in companies that had not. Furthermore, that the best rate of progress was found in companies with comprehensive positive action plans in place (Hammond 1994). However, the emphasis on target setting and monitoring is rather low key in the current web site materials of the campaign, which suggests that some member companies may have become reluctant to having their performance assessed in this way (see <http://www.opportunitynow.org.uk> for further details).

Source: [www.opportunitynow.org.uk](http://www.opportunitynow.org.uk) and Hammond, V. (1994) 'Opportunity 2000: Good Practice in UK Organizations' in M. Davidson and R. Burke (eds.) Women in Management: current research issues London: Paul Chapman, pp.304-18

### **Promotion of women's entry and retention in science, engineering and technology (SET)**

On April 28<sup>th</sup>, 2003 the Government announced new initiatives to encourage women into science. The total budget allocated is £1.5 billion, of which more than half will go on a science resource center to work with employers to improve recruitment and retention. It will do this by coordinating existing activity, promoting good practice, identifying and rewarding good employers, raising the profile of women in science and building a database of expert women. The center will also hold pump-priming funds to support innovative pilot schemes, as well as £500,000 in funds to support women returning to scientific careers.

The initiatives are a response to the report on women in science produced last year by Susan Greenfield, who welcomes this initiative and who comments that these measures 'will really make a difference both to women already engaged in research and those who are contemplating a career in science'

Source: [www.set4women.gov.uk/set4women/policy](http://www.set4women.gov.uk/set4women/policy) and 'A Strategy for Women in Science, Engineering and Technology – the Government' A report from Baroness Greenfield to the Secretary of State for Trade and Industry, 2002

### **The Policy of the equality agencies: the Equal Opportunities Commission (EOC) and the Women's Equality Unit**

The EOC's policy work promotes a number of measures to reduce gender segregation, as well as making a number of recommendations to the government for legal reforms. It recommends:

- Accessible training systems
- Positive Action by employers and vocational trainers to encourage women and men into non-traditional job areas
- Improvements in recruitment procedures to remove sex discrimination
- Regular workplace reviews to identify gender inequalities in pay and promotion
- Better implementation of Equal Pay and Equal Treatment measures for part-timers
- Increased opportunities for more flexible working arrangements, including opportunities to work part-time in professional and managerial positions
- An end to the long hours culture, which is particularly endemic in management and certain professions, including health and education
- The expansion and targeted funding of childcare services

The EOC has not called for any extension of the positive action provisions in the UK legislation. However, in its response to the Government's consultation document on the implementation of the EU Employment and Race Directives it recommends a shift in focus in the legislation 'to give employers a positive duty to promote equality in employment'. The same document also calls for a statutory positive duty to be placed on public bodies to promote sex equality in both employment and service delivery, which could encompass health, education, policing, immigration, transport and so forth (EOC, undated, 'Towards Equality and Diversity: A Response from the Equal Opportunities Commission', paragraph 12 and 15). It also advocates an extension of positive action measures in a number of other areas of government policy and legislation. This includes supporting the proposed legal changes in the *Sex Discrimination (Election Candidates) bill* to allow political parties to initiative positive action policies. It also includes the EOC recommendations that the government make more use of targets to monitor the efficacy of the voluntary approach to equality initiatives, in both the promotion of pay reviews by private sector employers and in the *Education Bill* in relation to education and training of young women in non-traditional areas. (EOC Manifesto, undated 'it's time for a fresh approach'). See [www.eoc.org.uk](http://www.eoc.org.uk) for further details.

A similar set of policy recommendations are presented by the *Women's Equality Unit* in the Cabinet Office in its advisory role to government. A recent positive action initiative by the Women's Equality Unit is the Advancing Women in the Workplace handbook, available from their website [www.womenandequalityunit.gov.uk/](http://www.womenandequalityunit.gov.uk/).

## **Appendix 2: The EOC - Organisations working to tackle stereotyping**

Source: [http://www.eoc.org.uk/cseng/policyandcampaigns/where\\_to\\_go\\_for\\_help.asp](http://www.eoc.org.uk/cseng/policyandcampaigns/where_to_go_for_help.asp), downloaded May 2003

### **Gender and achievement website**

<http://www.standards.dfes.gov.uk/genderandachievement>

<http://www.standards.dfes.gov.uk/genderandachievement>

Department for Education and Skills website for teachers, local education authorities and others with an interest in gender differences and related areas of achievement.

### **Science Year**

<http://www.scienceyear.com/http://www.scienceyear.com/>

To raise awareness amongst young people aged 10-19 of the wide world of subjects and careers that are underpinned by science and technology.

### **Women in science, engineering and technology**

<http://www.set4women.gov.uk/http://www.set4women.gov.uk/>

Promoting SET for Women Unit, Office of Science and Technology, Department of Trade and Industry, 1 Victoria Street, London SW1H 0ET. Tel: 020 7215 0051.

Posters, videos, magazines and teaching materials

### **Women And Equality Unit**

<http://www.womenandequalityunit.gov.uk/http://www.womenandequalityunit.gov.uk/>

Useful reports include *Women's Incomes over the Lifetime* and *Listen up* - a dialogue with young people.

### **Women & Manual Trades**

<http://www.wamt.orghttp://www.wamt.org>

52-54 Featherstone Street, London, EC1Y 8RT, Tel:0207 251 919

Produces videos and teaching packs for schools.

### **Construction Industry Training Board (CITB)**

[www.citb.org.uk](http://www.citb.org.uk)

Bircham Newton, Kings Lynn, PE31 6RH, Norfolk, Tel: 01485 577577

### **Lets Twist Project**

[www.bilk.ac.uk/college/extraweb/twistweb/index.htm](http://www.bilk.ac.uk/college/extraweb/twistweb/index.htm)

[www.bilk.ac.uk/college/extraweb/twistweb/index.htm](http://www.bilk.ac.uk/college/extraweb/twistweb/index.htm)

A national project run by Bradford and Ilkley College to encourage and support women and girls into engineering and construction careers.

**WITEC**

[www.shu.ac.uk/witec](http://www.shu.ac.uk/witec)

Sheffield Hallam University, City Campus, Sheffield S1 1WB Tel 0114 225 2041/4033

Aims to redress the balance of women studying and working in science, engineering and technology.

**WISE (Women into Science and Engineering)**

[www.engc.org.uk/Wise](http://www.engc.org.uk/Wise)

2 Queen Anne's Gate Buildings, Dartmouth St, London, SW1H 9BP

Produces video, booklets for teaching staff and for parents, as well as a register of women prepared to act as role models.

**The British Council - UK Women Scientists and Engineers**

[www.britcoun.org/science/science/personalities/text2/index.htm](http://www.britcoun.org/science/science/personalities/text2/index.htm)

A series of profiles of leading UK women scientists and engineers.

**E-Skills National Training Organisation**

[www.e-skillsnto.org.uk/www.e-skillsnto.org.uk/](http://www.e-skillsnto.org.uk/www.e-skillsnto.org.uk/)

1 Castle Lane, London, SW1E 6PR Tel: 0207 963 8920

Running projects to encourage women to take up careers in information technology

**Women's Sports Foundation**

[www.wsf.org.uk/home.htm](http://www.wsf.org.uk/home.htm)

305–315 Hither Green Lane, Lewisham, London, SE13 6TJ Tel/fax: 0208 697 5370.

**Women in Computing**

[www.wic.org.uk](http://www.wic.org.uk)

A network to raise the profile of women in the computing and IT fields, especially in higher education.

**Working with Men**

[www.wwm-uk.freeuk.com](http://www.wwm-uk.freeuk.com)

320 Commercial Way, London, SE15 1QN Tel: 0208 308 0709

Posters, classroom resources and training courses to tackle male stereotypes

**Fair Play** Contact addresses via Equal Opportunities Commission: [www.eoc.org.uk](http://www.eoc.org.uk)

Fair Play is regional networks whose aim is to act as a catalyst in tackling the barriers facing women and other disadvantaged groups at work and in society. The Fair Play Consortia run specific projects, some on careers and act as 'brokers', providing expertise and links to other equal opportunities resources.

**National Youth Agency**

[www.nya.org.uk](http://www.nya.org.uk)

and a website for young people [www.youthinformation.com](http://www.youthinformation.com)

17-23 Albion Street, Leicester LE1 6GD Tel: 0116 285 3700 (minicom available)

NYA has produced a set of five A1 posters; each includes four images designed by young people for young people exploring issues such as gender stereotyping, crime, the environment and sexuality.

***The Fawcett Society***

[www.fawcettsociety.org.uk](http://www.fawcettsociety.org.uk)[www.fawcettsociety.org.uk](http://www.fawcettsociety.org.uk)

5<sup>th</sup> floor, 45 Beech Street, London, EC2Y 8AD Tel: 020 7628 4441

Campaign packs, including posters, to promote equality for women in Britain.

## Appendix 3. The EOC - *Campaigning for Equal Pay*

Source: [http://www.eoc.org.uk/cseng/policyandcampaigns/campaigning\\_for\\_equal\\_pay.asp](http://www.eoc.org.uk/cseng/policyandcampaigns/campaigning_for_equal_pay.asp), downloaded May 2003

### Did you know?

- Women working full-time earn 18.5% less per hour than men
- Women working full-time earn 25% less per week than men
- Women working part-time earn 41% less per hour than full-time men

Apart from being unjust and unlawful, paying women less than men is bad for business and the economy. Employers who pay women less than men are less likely to recruit and retain good employees. It also means that they face difficult and expensive legal cases. Women have caught up with men in educational achievement – it is time to get rid of inequality in the workplace.

We have spearheaded efforts to get the issue of equal pay back on the political agenda and in the public eye with our *Valuing Women* campaign, launched in 1999. The campaign called for action on several fronts:

- Employers to review pay systems for sex bias
- Trade unions to put pay reviews at the heart of the bargaining agenda
- The Government to simplify Equal Pay law
- The Government to consider making pay reviews a requirement if the voluntary approach doesn't work

### Outcomes so far

The Equal Pay Task Force, an employer-led body set up by the EOC, published its recommendations in its report *Just Pay* in February 2001. This called for: -

- Improving equal pay legislation by introducing mandatory pay reviews and a streamlined tribunal process
- Improved guidance for employers and unions and a Government requirement for pay reviews in the public sector
- Opening up discussion about pay, with reporting of pay reviews in employers' annual reports

Since the *Just Pay* report was published the Government has:

- Set up the review of Women's Pay and Employment led by Denise Kingsmill, Deputy Chair of the Competition Commission. The report of the Kingsmill Review was published in December 2001

- Published its own research into the gender pay gap
- Introduced the Castle Awards which recognise the steps taken by individual employers in addressing inequality in the workplace
- Asked all government departments and agencies to have carried out an equal pay review by April 2003
- Nominated leading figures in industry as Fair Pay Champions
- Funded the TUC Learning Fund Equal Pay Reps Project to equip unions to work with employers to conduct pay reviews
- Funded the EOC to pilot and develop an equal pay review model

And at the EOC we have:

- Developed the EOC Equal Pay Review Kit to help employers carry out equal pay reviews <http://www.eoc.org.uk/cseng/advice/equalpay.asp>
- Developed a version of the Kit for small businesses.
- Introduced suppliers of human resource and payroll software to the Kit and invited them to build equal pay reviews into their products
- Produced a series of practical tips that aim to help employers deal with the more common causes of unequal pay in the workplace.
- Set targets for the number of firms to have assessed their pay systems. The EOC wants 50% of large firms (with over 500 employees) to have completed an equal pay review by 2003 and 25% of the rest of firms to have reviewed their pay systems by 2005
- Revised the Code of Practice on Equal Pay. Consultation on the revision ended on the **21<sup>st</sup> February 2003** [http://www.eoc.org.uk/CSeng/advice/c\\_o\\_p\\_equal\\_pay.asp](http://www.eoc.org.uk/CSeng/advice/c_o_p_equal_pay.asp)
- Joined forces with the NUS to extend the Valuing Women campaign for equal pay to students around the country.

### **Next steps**

- **It's OK to talk about pay -EOC equal pay conference, 24 March 2003.** We have picked 24 March for the date of our equal pay conference, because it is 23% of the way through the year. The conference is the key event where all those working to reduce the gender pay gap in Great Britain review progress and share ideas to help build the momentum for change.
- Publication of research into progress towards our targets for employers to have



carried out equal pay reviews

- Publication of the Revised Code of Practice – we expect this to be in the summer 2003

