Barbara Castle Spech moving the Second Reading of the Equal Pay Act 9 Feb 1970,

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I beg to move, That the Bill be now read a Second time.

In our debates last week the right hon. Member for Mitcham (Mr. R. Carr) said of me: I bet that the right hon. Lady will be speaking when we come to the Second Reading of the Equal Pay Bill. She likes being in the kitchen when the sun is shining, but when the heat is on she gets clear."—[OFFICIAL REPORT, 3rd February, 1970; Vol. 795, c. 218] I found that a rather surprising statement, not only because I do not think that many hon. Members would recognise that image of me, but because I thought that the right hon. Member for Mitcham prided himself on having turned the heat on me successfully during those stormy debates on prices and incomes and industrial relations policy. But obviously I was wrong and he did not turn on the heat at all.

Be that as it may, on one thing I agree with the right hon. Gentleman. It is that the sun is certainly shining from these benches this afternoon. Indeed, I think that his rather uncharacteristic outburst of petulance was due far more to envy than to anger. He knows perfectly well that if he were occupying my post under a Tory Government he would never have been allowed to introduce equal pay at the present time, if ever. His industrial paymasters would have seen to that. I can only hope that if his better nature has had time to reassert itself, he will share my delight on this occasion.

There can be no doubt that this afternoon we are witnessing another historic advance in the struggle against discrimination in our society, this time against discrimination on grounds of sex. In introducing the Bill, I hope that there will be no difference between the two sides of the House about the principle. The only difference is that the present Government have had the will to act.

While other people have talked—lots of people have talked—we intend to make equal pay for equal work a reality, and, in doing so, to take women workers progressively out of the sweated labour class. We intend to do it, if the House will back us, in ways which will give a lead to other countries whose governments have left us behind in adopting the principle but who are still striving for effective ways of implementing it.

The concept of equal pay for equal work is so self-evidently right and just that it has been part of our national thinking for a very long time. Here, as in other things, it was the Trade Union Movement which gave the lead. Indeed, as far back as 1888 the T.U.C. first endorsed the principle of the same wages for the same work—a very courageous avant garde thing to do in those days, long before Queen Victoria's Diamond Jubilee, when women who worked in industry were certainly not considered respectable, even if they were regarded as human beings at all.

Since then the struggle against discrimination against women in rates of pay has had a chequered course. There was that great moment during the war when Mrs. Thelma Cazalet Keir, with strong Labour support, led a successful revolt against the Government on the issue of sex discrimination in teachers' pay, and the great man himself, Winston Churchill, had to come down to the House the next day to make the reimposition of sex discrimination a vote of confidence.

Since then, the cause of equal pay has had its partial victories: the non-industrial Civil Service, non-manual local authority workers and teachers all got the first of seven instalments towards equal pay in 1955, and full equality in 1961. But its extension to that far greater number of women in industry for whom the T.U.C. fought so long ago has so far eluded us. The trade union movement has realised that this can be done only by legislation, and previous Governments have refused to legislate. Up to now, the extension of equal pay in industry has always foundered on three arguments: how should we define equal pay for equal work? How can we enforce it? And: "The economic situation is not right." It is a tremendous credit to this Government that they have found the answer to all three.

First, let me take the question of definition as we have embodied it in the Bill. When my predecessor in this job, the right hon. Gentleman the Member for Southwark (Mr. Gunter), first started his discussions with both sides of industry on the implementation of equal pay in fulfilment of our election promise, it seemed as if this problem of definition might prove insoluble.

The C.B.I. was all in favour of the definition embodied in the Treaty of Rome: Equal pay for the same work but the T.U.C. emphatically rejected this as inadequate. The T.U.C. wanted the I.L. Convention definition: Equal pay for work of equal value which the C.B.I., in turn, rejected as being far too open ended and indefinite. I think that they were both right: "Equal pay for the same work" is so restrictive that it would merely impinge on those women, very much in the minority, who work side by side with men on identical work, while, equally, the I.L. definition is far from satisfactory.

What does one mean by "work of equal value"? What does one mean by "equal value" in that context? The Convention is not very helpful on this matter, but merely says that its phrase refers to rates of remuneration established without discrimination based on sex. That is fine. This is what we are seeking to achieve. But how does one establish whether and in what forms discrimination has taken place?

The phrase "Equal pay for work of equal value" is too abstract a concept to embody in legislation without further interpretation. Is it suggested that some one should set a value on every job a woman does? Even if that were practicable it would not solve the problem, because what we are concerned with is the relationship between men's pay and women's pay, and men, of course, have never had equal pay for work of equal value. One could only establish the relative value of men's and women's work by evaluating the work, not only of all women but of all men in the population, which is something we have never attempted in our wildest dreams of prices and incomes policies.

The I.L. Convention does not require anything remotely like this. Indeed, it is pretty off-hand about this whole approach to job evaluation. All it says is: Where such action will assist in giving effect to the provisions of this Convention, measures shall be taken to promote objective appraisal of jobs on the basis of the work to be performed. So the I.L. definition does not make job evaluation mandatory. Besides, the Convention leaves open whether the principle of equal pay shall be applied by legislation or through collective bargaining.

The definitions that we have been offered so far have been too restrictive or too vague, while methods of enforcement have varied widely. Some countries have embodied the right of equal pay in their constitutions in general terms, and the detailed interpretation and enforcement of this right has depended on individuals raising cases in the ordinary courts. In other countries, the approach has been to encourage negotiations to incorporate

suitable provisions in collective agreements. It is, therefore, hardly surprising that there are many countries which have ratified the I.L. Convention or signed the Treaty of Rome which have not yet effectively applied the principle in practice.

It is for this reason that the Government decided that they must look at the old definitions afresh and try to work out methods of enforcement which would have an effective practical impact on inequality. I think that in the Bill we have succeeded. Its aim is to eradicate discrimination in pay in specific identifiable situations by prescribing equally specific remedies.

The Bill deals with three different situations. The first situation is where men and many women are doing the same or "broadly similar" work, not only in the same establishment but in different establishments of the same employer where these are covered by common terms and conditions. The second is where they are doing jobs which are different but which have been found ha be equivalent under a scheme of job evaluation. The third is where their terms and conditions of employment are laid down in collective agreements, statutory wages orders or employers' pay structures.

This three-pronged approach does all that can be done in legislation, and goes beyond anything in the law of other major countries. It gets away from abstractions like "equal pay for work of equal value", and brings equal pay out of the debating room and into recognisable situations in factories, offices and shops, and into the black and white of pay agreements.

Clause 1 deals with the first two of the situations I have mentioned. It establishes that where a woman is doing work which is the same or broadly similar to that of men, or work which has been established as being equivalent to that of men by a job evaluation exercise, she qualifies for equal pay, whatever tier contract of employment may have said before and whatever any collective agreement may say about her work.

The formula … the same or broadly similar work … covers not only the situation where men and women do identical work but also the situation where there are differences between the work of women and men but the differences are not of practical importance. The Clause provides that in deciding whether work is broadly similar regard shall be had to the frequency with which the differences occur in practice as well as to the nature and extent of the difference.

The other limb of the Clause deals with job evaluation. There will be no obligation on employers to carry out job evaluation, but where it has been done or is done in the future discrimination in pay on grounds of sex between jobs of equivalent value will be prohibited. Job evaluation schemes cover probably 30 per cent. of the working population, so that this provision will have a wide impact, particularly as there is nothing to prevent unions pressing for the extension of job evaluation schemes. The Clause also removes the effect of any blatant discrimination there may have been in the actual process of job evaluation.

There are two other things to notice about the Clause. The first is that discrimination against men is equally prohibited. Secondly, it applies to all Crown employment, except the Armed Forces. This exception does not mean that we do not intend to apply equal pay in the Services. Indeed, the Prices and Incomes Board Report of last June on pay in the Armed Forces recommended equal pay for men and women where they could be shown to be doing equal work, and we shall honour this. It is merely that the method of enforcement we propose in the Bill would not be appropriate to people in the Services.

The enforcement procedure for those two limbs of our equal pay policy is outlined in Clause 2. The aim here is to provide a means of redress which is speedy, informal and accessible and in the industrial tribunals, set up in 1965 to deal with industrial training levies and later with appeals about redundancy payments and S.E.T., we have the ideal machinery to hand. It is ideal because the tribunals are experienced in dealing with employment matters, they include representatives of workers and they sit at various centres scattered throughout the country.

Where a dispute has arisen as to whether a woman worker is receiving equal pay for broadly similar work or under a job evaluation scheme, she or her employer can take the dispute to the tribunal which, if it finds in the woman's favour, will be able to award her arrears of pay for a period up to two years before the start of proceedings. Where a woman should have received payment in kind as well, such as accommodation or the use of a car, it will be able to award her compensatory damages in respect of this as well, though not punitive damages against the employer.

It is not only in the case of a job evaluation exercise having been carried out, but in a case where the woman claims to be doing a job equivalent to the men concerned, but where we are trying to measure the value of work done, it must be through job evaluation. This is why it is important to realise that 30 per cent. of the population are covered by job evaluation schemes. There is nothing to prevent unions asking for their extension, which would be very much in keeping with all that is best in the development of pay structures at present. The Clause removes the effect of any blatant discrimination there may have been in the process of job evaluation

Incidentally, if there is any reason why the woman cannot take the case to the tribunal herself, I can take it for her. In the normal way her union would take up the case, but she may not belong to a union: she may be afraid of victimisation or be frightened at the thought of going before a tribunal. If so, she can go to her local employment exchange and explain the situation and if there seems to be validity in her complaint, I can act on her behalf.

Clause 2 also contains a concept which is crucial to the whole intention of the Bill. This is the concept of "a material difference" between a woman's case and that of comparable male workers. The intention of the Bill is not to prohibit differences in pay between a woman and comparable male workers which arise because of genuine differences other than sex between her case and theirs. If an employer wishes to make additional payment to people employed on like work, in respect of matters such as length of service, merit, level of output and so on, the Bill will do nothing to hinder him, provided that the payments are available to any person who qualifies regardless of sex. But such payments must be related to actual differences in performance of service. It will not be permissible for an employer to discriminate between men as a class and women as a class, because he believes that in some way women generally are of less value to him as workers than men.

I now come to Clause 3, which deals with the third set of circumstances I have already mentioned—discrimination in collective agreements and in employers' pay structures which are not the subject of an agreement. The effect of this Clause is twofold. Where, on the operative date, a collective agreement or pay structure specifies a class of work or workers, however defined, to which separate men's and women's rates are attached, the women's rate must be raised to the level of the men's rate. And where an agreement or structure contains a women's rate as such—that is, without any description of the jobs that women do—that rate must be raised to the level of the lowest men's rate in the agreement. The effect of this on the women concerned is that none would get less than the lowest

male rate and some might get more, depending on the jobs they actually perform. This achieves just what the women's organisations in their conference last Saturday were demanding. It prohibits different basic rates for men and women in collective agreements. I entirely agree that it is right that we should do this.

Disputes about collective agreements may be taken by any of the parties to an agreement, or by myself, to the Industrial Court. The Industrial Court is clearly the body best qualified to deal with disputes about collective agreements because of its considerable expertise in this field. The action of the Court will be confined to removing discrimination which appears on the face of the agreement in the way I have described. To that extent the court will redraft the agreement and the terms and conditions of workers covered by the agreement will be changed accordingly and become part of their contract of employment.

There is yet another way in which we can have a direct impact on discriminatory rates. As we know, some of the industries which employ a large proportion of women pay low rates of pay because trade union organisation in them is weak. It is for this reason that they have been brought under the protection of wages councils designed to reinforce the inadequacies of voluntary collective bargaining. We estimate that some 3,800,000 workers are covered by these wages councils, or by the Agricultural Wages Board, 2,375,000 of them women, and under Clauses 4 and 5 statutory wages orders embodying the agreements reached in these bodies will have to be brought in line with the principles I have outlined. Either side of the council or board concerned may complain that an order is discriminatory—so may I—and if the Industrial Court upholds the complaint, a fresh order must be made.

I would draw the attention of the House particularly to Clause 6. Unlike the legislation of some countries, our Bill provides that employers shall give equal treatment to women not only in remuneration, but in "terms and conditions of employment"—and here again we go further than the I.L. Convention. What do we mean by this? We mean that women must get equal treatment, not only in rates of pay, but in sickness and holiday schemes, payments in kind and any type of bonus rates. But we also say—and Clause 6 spells this out—that while being entitled to equal treatment in all these respects, a woman shall still retain the right to any favourable treatment accorded by law in respect of hours of work or to any special treatment accorded her by law or through negotiated agreements in connection with childbirth. In other words, we do not consider it preferential treatment for a woman to be given time off to have a baby, or to be paid while she is off—we would do the same for men if they had the courage to have babies, and I am sure the House will agree that this provision is right.

The hours of work question is more controversial. There are many who claim that the special restriction on women's hours of work contained in Part VI of the Factories Act, 1961, is out of date. The C.B.I. argues—so do many women—that now that we are legislating for equal pay all restrictions on women's hours of employment, including night work, should be removed.

I am the first to agree that there are a number of absurd anomalies in our present treatment of women over this. No one rushes in to protect nurses from night work—heaven help the rest of us if they did. We have women working nights on buses, as computer programmers, as air hostesses, in hotels and catering, without giving a second thought to it.

We women Members would scoff at the idea that we were too frail to do all-night sittings. Indeed, I have noticed that we usually look fresher than the men at the end of them.

Conditions in some parts of industry are more onerous; but, even so, only 25 per cent. of women workers are covered by the Factories Act regulations, and I am frequently asked to make exemptions in their case with the consent of the women concerned. Only the other day an agreement was negotiated by the unions in a motor company giving women equal pay, and I have been asked to exempt them from the restrictions on night work as part of it.

Where the women agree and I am satisfied that there is nothing prejudicial to their welfare, I am always prepared to consider exemptions. However, I think that it would be quite wrong to make the introduction of this legislation conditional on the blanket removal of the hours restrictions. There are some unions which still argue very strongly that the restrictions should be retained, and I know employers who are against night work for women on social grounds. It will be necessary to reassure them that the removal of statutory restrictions would not mean that women would be compelled to do night work if they did not want to do so. It is also necessary to show that we are really on the road to equal pay. I myself believe that the need for these restrictions is disappearing fast, but the, right way is for me to continue my consultations with both sides of industry on this as a separate matter in the hope of reaching an agreement.

There is one further point arising on Clause 6. I have given a great deal of thought to the question whether the Bill should also cover employers' pensions schemes. On the face of it, it seems just that pensions, as part of remuneration, should be covered by the Bill, but in practice there are a number of difficulties, and as far as I can ascertain no other major country has included pensions in the scope of its provisions for equal pay.

When men and women are both covered by an employer's pension scheme at the present time, their pension usually differs in a number of important respects—incidentally, often in the woman's favour. For one thing, her age of retirement is usually lower than the man's yet on average she lives longer. So if we insisted on exactly equal treatment, the woman employee might find herself worse off.

There is another point of considerable importance. Employers with pensions schemes now face a transitional period when they will have to adjust those schemes to the Government's new proposals for earnings-related pensions, and they would not welcome this additional complication and burden at the present time. For all these reasons, I think that it is better for all concerned not to include pensions in the Bill.

So much for the scope of equal pay. How quickly should it be implemented? Clause 8 provides for the Act to come into force on 29th December, 1975, the last Monday of that year. This will give industry over five years to adapt itself to these far-reaching changes. As the House knows, the T.U.C. has urged me to make the period two years, while the C.B.I. has argued that five years is too short: it has claimed that in view of the economic effect of equal pay on certain woman-intensive industries I ought to allow a period of seven years. Here again. I believe that our proposals are about right.

I was saying that I believe that our proposals are about right. Seven years is too long for women to wait for this basic act of justice. Besides, if we were to enter the Common Market, we would be expected to catch up more quickly than that with the other members of the Community which have been making progress in this direction over the past 13 years.

On the other hand, I believe that it is quite unrealistic to imagine that industry—or, incidentally, the workers in industry—could adapt themselves to these changes in a mere two years. The Government believe that, given reasonable time, industry can adjust itself to these additional costs. Overall we estimate that equal pay will add about 3½ per cent. to

the national bill for wages and salaries over the five years—something we can certainly assimilate at a time of rising productivity. Moreover, we believe that by making employers pay economic rates for their women workers we shall be giving a boost to higher productivity.

For this is a Bill designed, not only to end injustice, but to stimulate efficiency. As long as women are paid below their economic value, there is no incentive to put their work and their abilities to the best use. Sweated labour is a soporific to management, not a stimulant.

At the same time, we recognise that the incidence of equal pay will fall much more heavily on some industries and firms than on others, because they are far more dependent on women's labour. That is why my Department carried out a survey recently, in conjunction with the T.U.C. and the C.B.I., into the cost of introducing equal pay in a number of firms in 13 selected industries, the results of which have been published in the January D.E.P. Gazette.

The industries were selected because they contained a high proportion or a large number of women. They were not intended to represent a complete cross-section of industry; therefore, the results are merely illustrative. They indicate that the median direct cost of introducing equal pay in the industries concerned would range from 0 per cent. to 18 per cent. In engineering, for example, the median figure would be only 2 per cent., whereas in retail distribution it would be 13 per cent. and in clothing 18 per cent. The cost for individual firms would vary even more—from 0 per cent. to 32 per cent. It is clear, therefore, that we must give the industries and firms most affected reasonable time to adjust. We believe that five years is reasonable.

We do not think that it is necessary, as the C.B.I. has suggested, to exempt particular firms or industries from this timetable to give them a longer breathing space on the grounds that the cost to them would be higher. I believe that it would be particularly undesirable to exempt some firms and not others in the same industry. A moment's thought will show how unfair this would be to the firms not exempted, which would he placed at a competitive disadvantage because they had already introduced equal pay, were paying their women more, or were employing more men than the exempted firms. It is important that the firms which have the most catching up to do should not be allowed to drag their feet to the detriment of firms which are facing up to their social obligations. That is why Clause 8 gives me power by Order, subject to the approval of Parliament, to provide an interim stage at the end of 1973 if I find it necessary. This would enable me, if I thought progress towards the implementation of equal pay was too patchy or too slow, to require all firms to have achieved a given percentage of the target of full implementation—say 90 per cent. of the men's rates—by 31st December, 1973.

There are two other thoughts that I want to leave with hon. Members who think that five years is too long. The first is that there is nothing to prevent any firm which can afford it from negotiating the earlier introduction of full equal pay—and nothing to prevent any union from pressing it, as some already have. If the unions are prepared to give women higher priority in their wage claims, no one will be more delighted than I.

However, we should also remember that the commitment in this Bill to achieve equal pay by the end of 1975 means that, by definition, pay increases for women will have to exceed those for men over the next few years if women are to catch up in the time allowed. This is what we are committing ourselves to do in the Bill. We have got to give men on the shop floor time, just as we have got to give their employers time, to adjust themselves to the

practical consequences of this commitment to equal pay on their wage negotiations. I believe that it would be asking too much of them to try and concentrate those consequences in a period of two years.

This, then, is the Bill that I commend to the House. I expect that, as we debate it during the coming months, we shall hear the usual range of conflicting arguments about the consequences of equal pay. On the one hand, we shall be told that the cost of these proposals will be crippling, that it will push up the cost of living, threaten our exports and damage our economic recovery. On the other, we shall be told that the proposals are so modest, that they will not help large numbers of women who are most exploited and that, in any case, men and their employers will successfully conspire to evade them. Yet again, we may be told that the proposals will be so effective in putting up women's rates of pay that they will put a large number of women out of work and damage the interests of women themselves.

Obviously these arguments cancel each other out. But let us look at them more closely. I believe that the country can afford this measure, that it will stimulate the more efficient use of labour, and that the effect on the cost of living will be marginal—far less than some of the tax proposals and proposals for import levies on food put forward by hon. Gentlemen opposite.

Will it, then, have the effect of throwing women out of work by forcing firms to automate or employ men instead? I accept that there are bound to be changes in a firm's workforce in specific instances. But I do not accept for a moment that the overall effect will be to create unemployment among women, any more than the introduction of equal pay in the non-industrial public services did—though we heard the same blood-chilling arguments put forward then as we are hearing now. Women form one-third of the working population, and they do so, not just because they are cheap labour or in it for the pin money, but because they need work and are urgently needed by their employers. Indeed, as we all know, there are innumerable jobs where women are employed because they are better at them than men, and in most areas of the country that I visit I find that employers are crying out for more women's labour. A number of employers, indeed, hope that equal pay will attract more women back into the labour force, where they are so badly needed.

How effective will the coverage of the Bill be? There are at the moment 8½ million women in employment, over one million of whom already receive equal pay. Of the rest, we estimate that some three million women are probably engaged on the same or broadly similar work as men or likely to benefit through the adjustment of collective agreements; others are covered by job evaluation schemes and, as I have said, nearly 2½ million women will be covered by the wages councils provisions.

There is also the fact that, if a number of women in a firm have their rates brought up to the men's rates, it is bound to have an effect on the pay of other women in the firm. Some of these categories, of course, overlap, but we believe that some six million women will be directly affected by this legislation, and that includes women who are engaged in what are traditionally "women's jobs". But there is also what I call the "halo effect".

Some of the firms surveyed in our inquiry told us that, although they believed that none of their women workers qualified directly for equal pay, they expected that they would have to increase their wages if increases were paid to women by other firms in the locality. Engineering, pottery and food firms in particular expected this to happen. I think that there can be no doubt that the introduction of equal pay along the lines of this Bill will lead to a general rise in women's earnings relative to men's.

What, then, of evasion? Again I have no doubt that some employers will try it on, and the T.U.C. has pointed out some ways in which it might be done; for example, by employers "phasing out" men from certain jobs in order to continue paying women a lower rate without being guilty of discrimination, or substituting job descriptions for women's rates that appear to make the men's and women's work different. I believe that extensive evasion along these lines can be prevented by the kinds of action that I have outlined earlier: the extension of job evaluation, properly drawn collective agreements, and the "halo effect". But, undoubtedly, pockets of discrimination will remain—unless women organise to put a stop to it.

Legislation cannot cover every possible development, and, in any case, it is no part of my job to make it unnecessary for women to join a trade union. Their failure to do so is one of the reasons for their present plight. This Bill does all that the law can do. It is for women to call the trade union movement in aid to see that they get the maximum benefit out of it, and it is for the trade union movement to seize the biggest opportunity that it has ever had to organise women, by showing them what it can do to help them to see that this law is not evaded. If the trade unions will seize this opportunity—and if women will respond—there is no reason why this Bill should not be the means of bringing to an end an era of financial exploitation of women's work. There will be other forms of discrimination against women that we shall have to deal with in due course, but this Bill is an essential starting point.

There is just one thing I would like to say in conclusion. It is to pay a tribute to all those who have argued and striven over the past years for equal pay for women, and in particular to those hon. Members on both sides of the House who have championed the cause which is coming to such happy fruition today. I hope that we can unite enthusiastically behind this Bill.