STATUTORY RULES OF NORTHERN IRELAND

2005 No. 377

PENSIONS

The Occupational Pension Schemes (Equal Treatment) (Amendment) Regulations (Northern Ireland) 2005

Made - - - -	*8th August 2005*
Coming into operation	*30th August 2005*

The Department for Social Development, being a Department designated(**1**) for the purposes of section 2(2) of the European Communities Act 1972(**2**) in relation to measures relating to discrimination, in exercise of the powers conferred by that section and by Articles 63(5), 66(4), and 166(1) and (3) of the Pensions (Northern Ireland) Order 1995(**3**) and now vested in it(**4**) and of all other powers enabling it in that behalf, hereby makes the following Regulations:

PART 1

GENERAL

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Occupational Pension Schemes (Equal Treatment) (Amendment) Regulations (Northern Ireland) 2005 and shall come into operation on 30th August 2005.

(2) In these Regulations—

"the Equal Pay Act" means the Equal Pay Act (Northern Ireland) 1970(**5**);

"armed forces" means the naval, military or air forces of the Crown;

"armed forces scheme" means any occupational pension scheme—

(a) made under section 3 of the Naval and Marine Pay and Pensions Act 1865(**6**) (payment of naval and marine pay and pensions according to Order in Council),

(**1**) *See* the European Communities (Designation) (No. 3) Order 2002 (S.I. 2002/1819)
(**2**) 1972 c. 68
(**3**) S.I. 1995/3213 (N.I. 22)
(**4**) *See* Article 8(b) of S.R. 1999 No. 481
(**5**) 1970 c. 32 (N.I.)
(**6**) 1865 c. 73.; section 3 was amended by section 4 of the Armed Forces (Pensions and Compensation) Act 2004 (c. 32)

(b) set out in the Army Pensions Warrant 1977(**7**),

(c) made under section 2 of the Air Force (Constitution) Act 1917(**8**) (government, discipline and pay of Air Force),

(d) made under sections 4 and 8 of the Reserve Forces Act 1996(**9**) (orders and regulations concerning the reserve forces), or

(e) made under section 1 of the Armed Forces (Pensions and Compensation) Act 2004(**10**) (pension and compensation schemes: armed and reserved forces);

"commencement date" means the date specified in paragraph (1);

"equality clause" shall be construed in accordance with section 1(2) of the Equal Pay Act(**11**);

"occupational pension scheme" has the meaning given by section 1 of the Pension Schemes (Northern Ireland) Act 1993(**12**) (categories of pension scheme);

"pension-related term of service" has the meaning given by regulation 12(2); and

"pensioner member" includes a person who is entitled to the present payment of pension or other benefits derived through a member.

(3) The Interpretation Act (Northern Ireland) 1954(**13**) shall apply to these Regulations as it applies to an Act of the Assembly.

PART 2

EQUAL TREATMENT: AMENDMENTS

Application of Part 2

2.—(1) The modifications contained in amendments made by this Part apply to proceedings in respect of the terms of an occupational pension scheme if the proceedings are instituted on or after the commencement date (subject to paragraph (2)).

(2) Those modifications do not so apply if the last day on which the woman was employed in the employment to which the scheme relates falls more than six months before the commencement date.

The Pensions (Northern Ireland) Order

Modification of Equal Pay provisions applied to an equal treatment rule

3. Article 63(4)(c) of the Pensions (Northern Ireland) Order 1995 (equal treatment rule: supplementary) is hereby repealed.

(**7**) Available from the Office of Public Sector Information (formerly known as Her Majesty's Stationery Office)
(**8**) 1917 c. 51
(**9**) 1996 c. 14
(**10**) 2004 c. 32
(**11**) Section 1(2) was substituted by Article 11 of the Sex Discrimination (Northern Ireland) Order 1976 (S.I. 1976/1042 (N.I. 15)) and subsection (2)(c) was inserted by S.R. 1984 No. 16
(**12**) 1993 c. 49
(**13**) 1954 c. 33 (N.I.)

The Occupational Pension Schemes (Equal Treatment) Regulations

Equal Pay Act provisions applying to equal treatment rule and equality clause

4. The Occupational Pension Schemes (Equal Treatment) Regulations (Northern Ireland) 1995(**14**) shall be amended in accordance with regulations 5 and 6.

Modifications: operation of equal treatment rule

5.—(1) In regulation 2 (application of Equal Pay Act to equal treatment rule)—

(a) the existing provision shall be numbered as paragraph (1) of that regulation;

(b) in paragraph (1) as so renumbered, for sub-paragraph (a) there shall be substituted the following sub-paragraph—

"(a) subject to the further modifications made in paragraph (2) and in regulations 3 to 7;";

(c) after that paragraph there shall be added the following paragraph—

"(2) Section 2ZA of the Equal Pay Act(**15**) shall have effect in relation to an equal treatment rule as if—

(a) for subsection (1) there were substituted the following subsections—

"(1) This section applies for the purpose of determining the qualifying date, in relation to relevant proceedings in respect of a woman, for the purposes of section 2(4)(**16**).

(1A) In subsection (1) "relevant proceedings" means proceedings in respect of the terms on which—

(a) persons become members of an occupational pension scheme, or

(b) members of an occupational pension scheme are treated."; and

(b) in subsection (2)—

(i) in paragraph (a) of the definition of "concealment case", the reference to the employer were a reference to the employer or the trustees or managers of the scheme, and

(ii) in paragraph (c) of the definition of "disability case", the reference to the employer were a reference to the employer or the trustees or managers of the scheme.".

(2) For regulation 5 (power to declare right to admission to scheme and employer's duty to provide additional resources), there shall be substituted the following regulation—

"**Power for a court or industrial tribunal to declare the right to admission to scheme**

5. Where a claim to which regulation 3 applies, relates to the terms on which persons become members of the scheme, section 2 of the Equal Pay Act(**17**) shall have effect as if, after subsection (5A) (as inserted by regulation 4), there were added the following subsection—

"(6A) Where a court or industrial tribunal finds that there has been a breach of an equal treatment rule which relates to the terms on which persons become members of the scheme

(**14**) S.R. 1995 No. 482
(**15**) Section 2ZA was inserted by regulation 4 of S.R. 2004 No. 171
(**16**) Section 2(4) was substituted by regulation 3 of S.R. 2004 No. 171
(**17**) Section 2 was amended by paragraphs 2 and 6 of Schedule 1 to the Sex Discrimination (Northern Ireland) Order 1976 and regulation 3 of S.R. 2004 No. 171

(including any terms concerning the age or length of service needed for becoming a member of the scheme), the court or tribunal may declare that a woman has the right to be admitted to the scheme with effect from such date as it may specify provided that, in any case, that date is not earlier than 8th April 1976.".".

(3) For regulation 7 (power to make financial award for equal treatment claims by pensioner members and employer's duty to provide additional resources) there shall be substituted the following regulation—

"**Power for a court or industrial tribunal to make a financial award for equal treatment claims by pensioner members and employer's duty to provide additional resources**

7.—(1) This regulation applies in the case of a claim by a pensioner member in respect of a failure to comply with an equal treatment rule which relates to the terms on which the member is treated.

(2) Section 2 of the Equal Pay Act shall have effect as if—

(a) for subsection (5) there were substituted the following subsection—

"(5) A woman who is a pensioner member shall not be entitled, in proceedings brought in respect of a failure to comply with an equal treatment rule (including proceedings before an industrial tribunal), to be awarded any payment by way of arrears of benefits or damages or any other financial award in respect of a time earlier than the arrears date (determined in accordance with section 2ZB(**18**)).";

(b) the following subsections were added after subsection (5A) (as inserted by regulation 4)—

"(6C) Where a court or industrial tribunal awards a payment by way of arrears of benefits or damages, or makes any other financial award, the employer shall provide any such resources to the scheme as are specified in subsection (7C).

(7C) The resources referred to in subsection (6C) are such additional resources, if any, as may be necessary for the scheme to secure to the pensioner member the payment of the amount awarded or other financial award made, without contribution or further contribution by the pensioner member or by other members of the scheme.".

(3) Section 2ZB of the Equal Pay Act shall have effect as if—

(a) for subsection (1) there were substituted the following subsections—

"(1) This section applies for the purpose of determining the arrears date, in relation to an award of any payment by way of arrears of benefits or damages or any other financial award in relevant proceedings in respect of a woman, for the purposes of section 2(5).

(1A) In subsection (1), "relevant proceedings" means proceedings in respect of the terms on which members of an occupational pension scheme are treated.";
and

(b) in subsection (2), the reference in the definition of "concealment case" to the employer were a reference to the employer or the trustees or managers of the scheme.".

(**18**) Section 2ZB was inserted by regulation 5 of S.R. 2004 No. 171

Modifications: operation of equality clause on pension-related terms of employment

6. For regulation 10 (power to declare right to admission to scheme for breach of term in contract of employment and employer's duty to provide additional resources) there shall be substituted the following regulation—

"**Power for a court or industrial tribunal to declare right to admission to scheme for breach of term in contract of employment in relation to access claims**

10. Where a claim to which regulation 9 applies, relates to the terms on which persons become members of the scheme, section 2 of the Equal Pay Act shall have effect as if, after subsection (5) (as modified by regulation 9), there were added the following subsection—

"(6D) Where a court or industrial tribunal finds that there has been a breach of an equality clause which relates to the terms on which persons become members of the scheme (including any terms concerning the age or length of service needed for becoming a member of the scheme), the court or tribunal may declare that a woman has a right to be admitted to the scheme with effect from such date as it may specify provided that, in any case, that date is not earlier than 8th April 1976.".".

PART 3

EQUAL TREATMENT RULE: ARMED FORCES SCHEMES

Application of Part 3

7.—(1) This Part —

(a) applies (with modifications) certain provisions of the Equal Pay Act in relation to the operation of an equal treatment rule in respect of the terms of an occupational pension scheme, but

(b) applies only to schemes which are an armed forces scheme.

(2) The modifications of the Equal Pay Act made by this Part apply to proceedings in respect of the terms of an armed forces scheme if the proceedings are instituted on or after the commencement date (subject to paragraph (3)).

(3) Those modifications do not so apply if the last day of the woman's period of service (to which the scheme relates) in the armed forces falls more than nine months before the commencement date.

Operation of the equal treatment rule on armed forces schemes

8. Section 6A of the Equal Pay Act(**19**) (service pay and conditions) shall have effect, in relation to the operation of an equal treatment rule in respect of an armed forces scheme, (see also regulations 10 and 11 which make further modifications to deal with different cases) as if—

(a) subsections (1) and (2) were omitted;

(b) for subsections (3) and (4) there were substituted the following subsections—

"(3) Any claim in respect of the contravention, in respect of a woman, of a term of an armed forces scheme which—

(a) relates to the terms on which—

(i) persons become members of the scheme, or

(**19**) Section 6A was inserted by section 25(2) of the Armed Forces Act 1996 (c. 46) and amended by regulation 6 of S.R. 2004 No. 171