1995 No. 482

PENSIONS

The Occupational Pension Schemes (Equal Treatment) Regulations (Northern Ireland) 1995

Made . . . . . 19th December 1995

Coming into operation . . 1st January 1996

The Department of Health and Social Services, in exercise of the powers conferred on it by Articles 63(5), 64(2) and (3) and 66(4) of the Pensions (Northern Ireland) Order 1995(**a**) and of all other powers enabling it in that behalf, hereby makes the following Regulations:

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Occupational Pension Schemes (Equal Treatment) Regulations (Northern Ireland) 1995 and shall come into operation on 1st January 1996.

(2) In these Regulations—

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

"the Pensions Order" means the Pensions (Northern Ireland) Order 1995;

"Category A retirement pension" has the same meaning as in Part II of the Contributions and Benefits Act;

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

"pensionable age" shall be construed in accordance with section 121(1) of the Contributions and Benefits Act(**d**);

"pensionable service" includes any service in respect of which transfer credits have been allowed by the scheme;

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

"salary-related contracted-out scheme" means an occupational pension scheme which is contracted-out by virtue of satisfying section 5(2) of the Pension Schemes Act and includes a scheme which was formerly a salary-related contracted-out scheme which is subject to supervision in accordance with section 49 of that Act;

"scheme" means an occupational pension scheme.

(**a**) S.I. 1995/3213 (N.I. 22)
(**b**) 1970 c. 32 (N.I.)
(**c**) Section 1(2) was substituted by Article 11(1) 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
(**d**) The definition of "pensionable age" was substituted by paragraph 9(*a*) of Schedule 2 to the Pensions (Northern Ireland) Order 1995

Application of the Equal Pay Act to the equal treatment rule

2. In addition to the modifications made to the Equal Pay Act by the Pensions Order, the Equal Pay Act shall have effect for the purposes of Articles 62 to 64 of the Pensions Order in relation to an equal treatment rule—

(*a*) subject to the further modifications made in regulations 3 to 7,

(*b*) as if references to remuneration were references to benefits, and

(*c*) as if expressions used in the Pensions Order and in the Equal Pay Act have the same meaning as in the Pensions Order.

Modification of the Equal Pay Act: no power to make financial awards in relation to the equal treatment rule

3. In the case of a claim made in respect of a failure to comply with an equal treatment rule, other than a claim to which regulation 7 applies, section 2 of the Equal Pay Act(**a**) shall have effect as if for subsection (5) there were substituted—

"(5) A woman 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, damages or any other financial award.".

Modification of the Equal Pay Act: employer to have right to appear and be heard in proceedings for breach of an equal treatment rule

4. In the case of a claim made in respect of a failure to comply with an equal treatment rule, section 2 of the Equal Pay Act shall have effect as if after subsection (5) there were inserted—

"(5A) In any proceedings brought before an industrial tribunal by a woman in respect of a failure to comply with an equal treatment rule, the employer shall, for the purposes of the rules governing procedure, be treated as a party and be entitled to appear and be heard in accordance with those rules.".

Power for a court or industrial tribunal to declare right to admission to scheme and employer's duty to provide additional resources in relation to access claims

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 shall have effect as if the following subsections were added after subsection (5A) (as inserted by regulation 4)—

"(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—

(a) Subsection (1) was substituted by paragraph 2(1) of Schedule 1 to the Sex Discrimination (Northern Ireland) Order 1976, subsection (1A) was inserted by paragraph 2(2) of that Schedule, subsection (2) was amended by paragraph 2(3) of that Schedule, subsections (3) to (5) were amended by paragraph 6 of that Schedule, subsection (6) was repealed by paragraph 2(4) of that Schedule and subsection (7) was repealed by Schedule 4 to the Industrial Training (Northern Ireland) Order 1984 (S.I. 1984/1159 (N.I. 9). *See also* Article 63(4) of the Pensions (Northern Ireland) Order 1995

(*a*) the court or tribunal may declare that a person has a right to be admitted to the scheme in question with effect from such date ("the deemed entry date") as it may specify provided that such date may not be earlier than two years before the institution of the proceedings in which the order was made, and

(*b*) when the court or tribunal so declares and the deemed entry date is earlier than the date of the declaration, the employer shall provide any such resources to the scheme as are specified in subsection (7A).

(7A) The resources referred to in subsection (6A)(*b*) are such additional resources, if any, as may be necessary for the scheme to secure to the person, without contribution or further contribution by the person or by other members of the scheme, the same accrued rights in respect of the period to which the declaration by the court or tribunal relates as if that person had been a member of the scheme since—

(*a*) in a case to which subsection (8A) applies, the deemed entry date;

(*b*) in any other case, whichever is the later of the deemed entry date and 31st May 1995(**a**).

(8A) This subsection applies to a case where the court or tribunal finds there has been a breach of an equal treatment rule which relates to terms concerning the age or length of service needed for becoming a member of the scheme.".

Power for a court or industrial tribunal to declare right to equal treatment for members and employer's duty to provide additional resources

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

"(6B) 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 members of a scheme are treated—

(*a*) the court or tribunal may declare that a member has a right to equal treatment in respect of such a period as it may specify provided that the period does not begin before 17th May 1990, and

(*b*) if the court or tribunal declares that a member has a right to equal treatment in relation to a period falling before the date of the declaration, the employer shall provide any such resources to the scheme as are specified in subsection (7B).

(a) The earliest date from which employers could be liable to provide additional resources in accordance with S.R. 1976 No. 238 as amended by S.R. 1995 No. 183

(7B) The resources referred to in subsection (6B)(*b*) are such additional resources, if any, as may be necessary for the scheme to secure to the member, without contribution or further contribution by the member or by other members of the scheme, the same accrued rights in respect of the period falling before the date of the declaration as if that member had been treated equally in respect of that period.".

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. 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, section 2 of the Equal Pay Act shall have effect as if in subsection (5) for "or damages" there were substituted ", damages or any other financial award" and as if 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, 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 the payment of those arrears of benefits, damages or that financial award to the member, without contribution or further contribution by the member or by other members of the scheme.".

Application of the Equal Pay Act to terms of employment relating to pension rights

8. The Equal Pay Act shall have effect in relation to terms of employment relating to membership of and rights under a scheme—

(*a*) subject to the modifications made in regulations 9 to 12,

(*b*) as if references to remuneration were references to benefits, and

(*c*) as if expressions used in the Pensions Order and in the Equal Pay Act have the same meaning as in the Pensions Order.

Modification of the Equal Pay Act: no power to award damages in relation to an equality clause in connection with pension rights

9. In the case of a claim made in respect of a breach of an equality clause which relates to membership of or rights under a scheme, other than a claim to which regulation 12 applies, section 2 of the Equal Pay Act shall have effect as if for subsection (5) there were substituted—

"(5) A woman shall not be entitled, in proceedings brought in respect of a failure to comply with an equality clause (including proceedings before an industrial tribunal), to be awarded any payment by way of arrears of benefits or damages.".

Power for a court or industrial tribunal to declare right to admission to scheme and employer's duty to provide additional resources 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 the following subsections were added after subsection (5) (as modified by regulation 9)—

"(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—

(*a*) the court or tribunal may declare that a person has a right to be admitted to the scheme in question with effect from such date ("the deemed entry date") as it may specify provided that such date may not be earlier than two years before the institution of the proceedings in which the order was made, and

(*b*) when the court or tribunal so declares and the deemed entry date is earlier than the date of the declaration, the employer shall provide any such resources to the scheme as are specified in subsection (7D).

(7D) The resources referred to in subsection (6D)(*b*) are such additional resources, if any, as may be necessary for the scheme to secure to the person, without contribution or further contribution by the person or by other members of the scheme, the same accrued rights in respect of the period to which the declaration by the court or tribunal relates as if that person had been a member of the scheme since—

(*a*) in a case to which subsection (8D) applies, the deemed entry date;

(*b*) in any other case, whichever is the later of the deemed entry date and 31st May 1995.

(8D) This subsection applies to a case where the court or tribunal finds there has been a breach of an equality clause which relates to terms concerning the age or length of service needed for becoming a member of the scheme.".

Power for a court or industrial tribunal to declare right to equal treatment for members and employer's duty to provide additional resources for breach of term in contract of employment

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

"(6E) Where a court or industrial tribunal finds that there has been a breach of an equality clause which relates to the terms on which members of a scheme are treated—