



Statutory Document No. 70/05

THE PENSION SCHEMES ACT 1995

THE PENSIONS ACT 1995 (APPLICATION) (AMENDMENT) ORDER 2005

Approved by Tynwald

16th March 2005

Coming into operation in accordance with Article 1

In exercise of the powers conferred on the Department of Health and Social Security by section 1 of the Pension Schemes Act 1995 (c.11), and of all other enabling powers, the following Order is hereby made:-

Citation, commencement and interpretation

1. (1) This Order may be cited as the Pensions Act 1995 (Application) (Amendment) Order 2005 and shall, subject to section 1(4) of the Pension Schemes Act 1995, come into force as provided for in paragraphs (2) and (3).

(2) This article shall come into force forthwith.

(3) Article 2 shall come into force on 6th April 2006.

(4) Modifications subject to which sections 62 to 66 of the Pensions Act 1995 (c.26) are applied to the Isle of Man by way of article 2(2) are shown in ***bold italics***.

Amendment of the Pensions Act 1995 (Application) Order 1997 (S.D. 501/97)

2. (1) Amend the Pensions Act 1995 (Application) Order 1997 (which sets out those provisions of the Pensions Act 1995 (of Parliament) which have effect in the Isle of Man) in accordance with the following paragraphs.

(2) In Schedule 2 to the Pensions Act 1995 (Application) Order 1997 (which sets out, *inter alia*, those provisions of Part 1 of the Pensions Act 1995 (occupational pensions) which have effect in the Isle of Man) after section 55 insert the following sections -

Equal treatment

The equal treatment rule

62. (1) An occupational pension scheme which does not contain an equal treatment rule shall be treated as including one.

(2) An equal treatment rule is a rule which relates to the terms on which -

(a) persons *whose prospective pensionable service in relation to that scheme would be employment at an establishment in the Island* become members of the scheme, and

(b) members of the scheme -

(i) whose pensionable service in relation to that scheme is employment at an establishment in the Island, or

(ii) whose former pensionable service in relation to that scheme was employment at an establishment in the Island,

are treated.

(3) Subject to subsection (6), an equal treatment rule has the effect that where -

(a) a woman is employed on like work with a man in the same employment,
or

(b) a woman is employed on work rated as equivalent with that of a man in the same employment,

(c) *omitted,*

but (apart from the rule) any of the terms referred to in subsection (2) is or becomes less favourable to the woman than it is to the man, the term shall be treated as so modified as not to be less favourable.

(4) An equal treatment rule does not operate in relation to any difference as between a woman and a man in the operation of any of the terms referred to in subsection (2) if the trustees or managers of the scheme prove that the difference is genuinely due to a material factor which -

(a) is not the difference of sex, but

(b) is a material difference between the woman's case and the man's case.

(5) References in subsection (4) and sections 63 to 65 to the terms referred to in subsection (2), or the effect of any of those terms, include -

(a) a term which confers on the trustees or managers of an occupational pension scheme, or any other person, a discretion which, in a case within either paragraph (a) or (b) of subsection (3) -

(i) may be exercised so as to affect the way in which persons become members of the scheme, or members of the scheme are treated, and

(ii) may (apart from the equal treatment rule) be so exercised in a way less favourable to the woman than to the man, and

(b) the effect of any exercise of such a discretion;

and references to the terms on which members of the scheme are treated are to be read accordingly.

(6) In the case of a term within subsection (5)(a) the effect of an equal treatment rule is that the term shall be treated as so modified as not to permit the discretion to be exercised in a way less favourable to the woman than to the man.

(6A) In subsection (2) "employment at an establishment in the Island" has the same meaning as in section 49 of the Sex Discrimination Act.

(6B) In subsection (6A) and sections 63 and 66 "the Sex Discrimination Act" means the Employment (Sex Discrimination) Act 2000 (c.16) (an Act of Tynwald).

Equal treatment rule: supplementary

63. (1) The reference in section 62(2) to the terms on which members of a scheme are treated includes those terms as they have effect for the benefit of dependants of members, and the reference in section 62(5) to the way in which members of a scheme are treated includes the way they are treated as it has effect for the benefit of dependants of members.

(2) Where the effect of any of the terms referred to in section 62(2) on persons of the same sex differs according to their family or marital status, the effect of the term is to be compared for the purposes of section 62 with its effect on persons of the other sex who have the same status.

(3) An equal treatment rule has effect subject to paragraphs 5 to 6 of Schedule 5 to the Social Security Act 1989 (c.24) (employment-related benefit schemes: maternity, *paternity*, *adoption* and family leave provisions).

(4) Section 62 shall be construed as one with section 1 of the *Sex Discrimination Act (equal treatment of men and women in the same employment)*; and sections 35 and 42(1) and (2) of that Act (*proceedings in respect of equal pay claims and time-limits for doing so*) shall have effect for the purposes of section 62 as if -

- (a) references to an equality clause were to an equal treatment rule,
- (b) references to employers and employees were to the trustees or managers of the scheme (on the one hand) and the members, or prospective members, of the scheme (on the other), *and*
- (c) for section 42(1) there were substituted -

“(1) *Subject to subsection (5)*, no claim in respect of the operation of an equal treatment rule in respect of an occupational pension scheme shall be presented or referred to *the Tribunal* otherwise than by virtue of *section 35(4)* unless the woman concerned has been employed in a description or category of employment to which the scheme relates within the six months preceding the date of the reference.”,

- (d) *omitted.*

(5) Regulations may make provision for *the Sex Discrimination Act* to have effect, in relation to an equal treatment rule, with prescribed modifications; and subsection (4) shall have effect subject to any regulations made by virtue of this subsection.

(6) Section 62, so far as it relates to the terms on which members of a scheme are treated, *shall have* effect in relation to any pensionable service on or after *6th April 2006*.

Equal treatment rule: exceptions

64. (1) An equal treatment rule does not operate in relation to any variation as between a woman and a man in the effect of any of the terms referred to in section 62(2) if the variation is permitted by or under any of the provisions of this section.

(2) Where a man and a woman are eligible, in prescribed circumstances, to receive different amounts by way of pension, the variation is permitted by this subsection if, in prescribed circumstances, the differences are attributable only to differences between men and women in the benefits under sections 43 to 55 of the Social Security Contributions and Benefits Act 1992 (State retirement pensions) to which, in prescribed circumstances, they are or would be entitled.

(3) A variation is permitted by this subsection if -

- (a) the variation consists of the application of actuarial factors which differ for men and women to the calculation of contributions to a scheme by employers, being factors which fall within a prescribed class or description, or
- (b) the variation consists of the application of actuarial factors which differ for men and women to the determination of benefits falling within a prescribed class or description;

and in this subsection "benefits" include any payment or other benefit made to or in respect of a person as a member of the scheme.

(4) Regulations may -

- (a) permit further variations, or
- (b) amend or repeal subsection (2) or (3).

Equal treatment rule: consequential alteration of schemes

65. (1) The trustees or managers of an occupational pension scheme may, if -

- (a) they do not (apart from this section) have power to make such alterations to the scheme as may be required to secure conformity with an equal treatment rule, or
- (b) they have such power but the procedure for doing so -
 - (i) is liable to be unduly complex or protracted, or
 - (ii) involves the obtaining of consents which cannot be obtained, or can only be obtained with undue delay or difficulty,

by resolution make such alterations to the scheme.

(2) The alterations may have effect in relation to a period before the alterations are made.

Equal treatment rule: effect on terms of employment, etc.

66. (1) In section 2 of the *Sex Discrimination Act* (exclusions), for subsections (2) and (3) (exclusion for terms related to death or retirement) there is substituted -

“(2) An equality clause shall not operate in relation to terms relating to a person’s membership of, or rights under, an occupational pension scheme, being terms in relation to which, by reason only of any provision made by or under sections 62 to 64 of the Pensions Act 1995 (equal treatment), an equal treatment rule would not operate if the terms were included in the scheme.

(3) In subsection (2), “occupational pension scheme” has the same meaning as in the Pension Schemes Act 1993 and “equal treatment rule” has the meaning given by section 62 of the Pensions Act 1995”.

(2) In section 6(1) of the *Sex Discrimination Act* (victimisation of complainants, etc.)

(a) *at the end of* paragraphs (a), (b) and (d) *there is added* “or under sections 62 to 65 of the Pensions Act 1995”, and

(b) *in paragraph (c) for “or this Part” there is substituted “, this Part or sections 62 to 65 of the Pensions Act 1995”.*

(3) In section 8 of the *Sex Discrimination Act* (discrimination against applicants and employees), for subsection (3) there is substituted -

“(3) Subsections (1)(b) and (2) do not render it unlawful for a person to discriminate against a woman in relation to her membership of, or rights under, an occupational pension scheme in such a way that, were any term of the scheme to provide for discrimination in that way, then, by reason only of any provision made by or under sections 62 to 64 of the Pensions Act 1995 (equal treatment), an equal treatment rule would not operate in relation to that term.

(3A) In subsection (3), “occupational pension scheme” has the same meaning as in the Pension Schemes Act 1993 and “equal treatment rule” has the meaning given by section 62 of the Pensions Act 1995”.

(4) Regulations may make provision -

(a) for *the Sex Discrimination Act* to have effect, in relation to terms of employment relating to membership of, or rights under, an occupational pension scheme with prescribed modifications, and

(b) for imposing requirements on employers as to the payment of contributions and otherwise in case of their failing or having failed to comply with any such terms.

(5) References in subsection (4) to terms of employment include (where the context permits) -

(a) any collective agreement or pay structure,

(b) *omitted*”.

(3) In Schedule 1 to the Pensions Act 1995 (Application) Order 1997 (which sets out, *inter alia*, the provisions of Schedule 7 to the Pensions Act 1995 (repeals) which have effect in the Isle of Man), in Part 1 of Schedule 7 (repeal of certain provisions of the Pension Schemes Act 1993 relating to occupational pensions made redundant by the Pensions Act 1995) in the column entitled "Extent of repeal", in the appropriate places, insert the following entries -

"Section 118."

"In section 132, ", the equal access requirements"."

"In section 133(1), ", the equal access requirements"."

"In section 134, in subsection (3), ", the equal access requirements" and, in subsection (4), "or the equal access requirements" and "or, as the case may be, section 118(1)"."

"In section 136(2)(e)(iv), "or the equal access requirements"."

"In section 139(2), ", the equal access requirements"."

"In section 140(4), paragraph (c) and the "and" immediately preceding it."

"In section 170, subsections (5) and (6)."

"In section 181(1), the definition of "equal access requirements"."

"In Schedule 7, paragraph 3."

Made

9th February 2005



Minister for Health and Social Security

EXPLANATORY NOTE

(This note is not part of the Order)

1. This Order amends the Order which applied certain of the provisions of the United Kingdom Parliament Pensions Act 1995 to the Isle of Man in 1997 by adding to them sections 62 to 66 and provisions consequentially repealing certain parts of the Pension Schemes Act 1993 (another Act of the United Kingdom Parliament). Those provisions were not applied to the Island at that time because of the then absence of legislation prohibiting sex discrimination in employment.

Equal treatment in occupational pension schemes: an introduction

- 2.1 Sections 62 to 66 of the Pensions Act 1995 prohibit occupational pension schemes from treating men and women unequally as to -
 - the terms on which they can become a member of such a scheme; and
 - the way in which they are treated while a member of the scheme (in particular, the accrual of benefits they are entitled to receive when they retire).
- 2.2 The new provisions only apply to men and women who are engaged in the same or similar work and who carry out most or all of their work in the Isle of Man (or did so in the past).
- 2.3 Sections 62 to 66 also modify the Employment (Sex Discrimination) Act 2000 (an Act of Tynwald) ("the Sex Discrimination Act"), so that that Act now applies as regards the terms on which a person can become a member of an occupational pension scheme and how they are treated while a member of such a scheme in the same way it does as regards their other terms and conditions of employment. In particular, they empower the Employment Tribunal and the High Court to hear claims for unequal treatment in the matter.
- 2.4 The Order also contains repeals of earlier legislation, which provided limited protection from discrimination in this area by requiring occupational pension schemes to allow men and women access to pension scheme membership on equal terms.
- 2.5 A detailed explanation of the provisions applied by this Order are explained below.
3. ***Section 62 of the Pensions Act 1995 - The equal treatment rule***
 - 3.1 This section provides that occupational pension schemes which do not contain an equal treatment rule shall be treated as if they did so in respect of persons who do most or all of their work in the Isle of Man (or did so in the past) as a member (or prospective member) of such a scheme (subsections (1), (6A) and (6B)).
 - 3.2 An equal treatment rule is a rule which relates to the terms on which persons become members of an occupational pension scheme and how they are treated while a member of such a scheme (subsection (2)), including terms which may be exercised at the discretion of the trustees or managers of the scheme (subsections (5) and (6)).
 - 3.3 The effect of an equal treatment rule is that where -
 - a woman is employed on the same work as a man (or on work rated as equivalent with that of a man) in the same employment; but

- she is treated less favourably than him as to the terms on which she can become a member of her employer's occupational pension scheme or as a member of such a scheme,

then she must be treated no less favourably than the man in that regard. The effect applies *vice versa* in the case of a man who is treated less favourably than a woman (subsection (3)).

3.4 However, an equal treatment rule shall not operate if the trustees or managers of the scheme prove that a woman and a man are treated differently due to a genuine material factor which is not due to their being of different sexes but is a material difference between the woman's and the man's case (subsection (4)).

4. ***Section 63 of the Pensions Act 1995 - Equal treatment rule: supplementary***

4.1 Section 63 supplements section 62 -

- by making it clear that the terms on which members of a scheme are treated for the purposes of section 62 include the benefits provided to their dependants under the scheme (subsection (1));
- by providing that, where persons of the same sex are treated differently because of their family or marital status, then whether or not those terms breach the equal treatment rule shall be determined by comparing the treatment of two people of the opposite sex but of the same marital status (subsection (2)); and
- by providing that an equal treatment rule has effect subject to the principle of equal treatment required of occupational pension schemes in respect of persons on maternity, paternity, adoption or family leave from work by section 23 of, and Schedule 5 to, the Social Security Act 1989 (subsection (3)).

4.2.1 Subsection (4) modifies the Sex Discrimination Act -

- so as to treat references to an equality clause appearing in the Sex Discrimination Act as if they were references to an equal treatment rule; and
- so as to treat references to employers as references to the trustees or managers of the pension scheme and references to employees as references to members (or prospective members) of the scheme.

4.2.2 It also provides that people who were members of their former employer's occupational pension scheme can only make a claim to the Employment Tribunal that they were affected by a breach of an equal treatment rule if they do so within 6 months of leaving their employment unless the Tribunal (or the High Court) feels that it would be just and equitable to allow them to do so later. Persons are similarly restricted in bringing claims for unequal pay, etc..

4.3 Subsection (5) enables regulations to be made providing for the Sex Discrimination Act (as modified) to apply in respect of an equal treatment rule.

4.4 Subsection (6) provides that section 62 shall only have effect in respect of periods of pensionable service on or after 6th April 2006.

5. ***Section 64 of the Pensions Act 1995 - Equal treatment rule: exceptions***

5.1 Despite the above, section 64 provides that the unequal treatment of women and men in relation to occupational pension schemes is allowed in certain circumstances, if it is permitted by that section or by regulations made under it (subsections (1) and (4)).

5.2 Unequal treatment is permitted if it is only as a consequence of there currently being different State pensionable ages for men and women (e.g. by the payment of “bridging pensions”) (subsection 2).

5.3 Different actuarial factors for men and women may also be applied in calculating employers’ contributions to pension schemes in determining certain pension benefits (subsection (3)).

6. ***Section 65 of the Pensions Act 1995 - Equal treatment rule: consequential alteration of schemes***

6.1 Section 65 allows the trustees or managers of an occupational pension scheme to alter any scheme (by resolution, and retrospectively or otherwise) so that it conforms with an equal treatment rule where -

- they do not already have that power; or
- they do, but the procedures for altering the scheme would be too complicated or take too long in the circumstances.

7. ***Section 66 of the Pensions Act 1995 - Equal treatment rule: effect on terms of employment, etc.***

7.1 Section 66 then amends (rather than modifies) the Sex Discrimination Act.

7.2 Subsection (1) does so in order to allow the terms of a woman’s employment contract relating to an occupational pension scheme to be less favourable than a man’s where an equal treatment rule would not operate in the matter.

7.3 Subsection (2) amends the existing definition of what constitutes discrimination by way of “victimisation”. Victimisation is now treated as occurring -

- where one person (e.g. an employee) brings proceedings (or assists another in doing so) under that Act against another (e.g. their employer or former employer, or the managers or trustees of a pension scheme) alleging breach of an equal treatment rule in relation to an occupational pension scheme; and
- as a result, that person is treated differently than they would otherwise have been.

7.4 Subsection (3) exempts the discriminatory treatment of men and women as to their being offered employment (and on what terms) and how they are treated while in employment where an equal treatment rule would not operate in the matter.

7.5 Subsection (4) allows for regulations to be made for the Sex Discrimination Act (as modified) to have effect in relation to the terms of a person’s employment relating to their membership of, and rights under, occupational pension schemes and requiring employers to pay contributions, etc. where they have not complied with those terms.

7.6 Subsection (5) makes it clear that references to terms of employment in subsection (4) include any collective agreement or pay structure.

Consequential repeals

8. Article 2(3) provides for repeals to be made to the Pension Schemes Act 1993 (as amended), consequent on the above.