



Statutory Document No. 71/05

THE PENSION SCHEMES ACT 1995

THE PENSION SCHEMES LEGISLATION (APPLICATION) 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 and commencement

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

(2) This Article and Articles 2 and 3 shall come into force forthwith and each provision of the applied legislation, as modified, shall come into force on 6th April 2006.

Interpretation

2. (1) In this Order "the applied legislation" means the Occupational Pension Schemes (Equal Treatment) Regulations 1995 (S.I. 1995/3183).

(2) Unless the context otherwise requires -

- (a) any reference in any of the applied legislation to any provision in an instrument of a legislative character which is not itself a provision of any of the applied legislation shall be construed as if the provision so referred to had been in force in the Island from the date on which that instrument of a legislative character had effect in Great Britain;
- (b) reference in any legislation applied by this Order to any provision of any such legislation or of any other legislation applied to the Island by an order under section 1 of the Pension Schemes Act 1995 or section 1 of the Social Security Act 2000 (c.5) shall be construed as a reference to that legislation as it has effect in the Island.

Application to the Island of the applied legislation

3. The applied legislation, as modified and shown in the Schedule to this Order, shall apply to the Island as part of the law of the Island.

SCHEDULE

This Schedule sets out the text of the Occupational Pension Schemes (Equal Treatment) Regulations 1995 (S.I. 1995/3183) with such exceptions, adaptations and modifications made where necessary.

Note: Modifications subject to which the legislation is applied to the Island are in *bold italic* type.

STATUTORY INSTRUMENTS

1995 No. 3183

PENSIONS

The Occupational Pension Schemes (Equal Treatment) Regulations 1995

Citation, commencement and interpretation

1. (1) These Regulations may be cited as the Occupational Pension Schemes (Equal Treatment) Regulations 1995 and shall come into force on *6th April 2006*.

(2) In these Regulations, unless the context otherwise requires -

"the Pensions Act" means the Pensions Act 1995;

"Category A retirement pension" has the same meaning as in Part 2 of the Contributions and Benefits Act;

"the Contributions and Benefits Act" means the Social Security Contributions and Benefits Act 1992;

"equality clause" shall be construed in accordance with section 1(2) of the *Sex Discrimination Act*;

"pensionable age" shall be construed in accordance with section 122(1) of the Contributions and Benefits Act;

"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 9(2) of the Pension Schemes Act 1993 and includes a scheme which was formerly a salary-related contracted-out scheme which is subject to supervision in accordance with section 53 of that Act;

"scheme" means an occupational pension scheme;

"the *Sex Discrimination Act*" means the *Employment (Sex Discrimination) Act 2000 (c.16) (an Act of Tynwald)*.

Application of the *Sex Discrimination Act* to the equal treatment rule

2. In addition to the modifications made to the *Sex Discrimination Act* by the Pensions Act, the *Sex Discrimination Act* shall have effect for the purposes of sections 62 to 64 of the Pensions Act in relation to an equal treatment rule -

- (a) subject to the further modifications made in regulations 3 to 7 below,
- (b) as if references to remuneration were to benefits, and
- (c) as if expressions used in the Pensions Act and in the *Sex Discrimination Act* have the same meaning as in the Pensions Act.

Modification of the *Sex Discrimination 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 below applies -

- (a) section 42 of the *Sex Discrimination Act* (*time-limits for bringing claims under the Act*) shall have effect as if subsection (2) of that section were omitted; and
- (b) section 35 of that Act (*proceedings in respect of equal pay*) shall have effect as if after subsection (4) of that section there were inserted -

"(4A) A woman shall not be entitled, in proceedings brought in respect of a failure to comply with an equal treatment rule (including proceedings before *the* Tribunal), to be awarded any payment by way of arrears of benefits, damages or any other financial award."

Modification of the *Sex Discrimination Act*: employer 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 35 of the *Sex Discrimination Act* shall have effect as if after subsection (4A) (*as inserted by regulation 3*) there were inserted -

"(5A) In any proceedings brought before *the* 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 *the High Court* or *the Employment 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 35 of the *Sex Discrimination Act* shall have effect as if the following subsections were added after subsection (5A) (*as inserted by regulation 4*) -

"(6A) Where *the High Court* or *the* 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) 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 *whichever is the later of* -
 - (i) two years before the institution of the proceedings in which the order was made, *and*

(ii) 6th April 2006, 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) below.

(7A) The resources referred to in subsection (6A)(b) above 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) the deemed entry date;

(b) *omitted*.

(8A) *Omitted*."

Power for the High Court or Employment 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 35 of the *Sex Discrimination Act* shall have effect as if the following subsections were added after subsection (5A) (as inserted by regulation 4) -

"(6B) Where *the High Court or the 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 6th April 2006, 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) below.

(7B) The resources referred to in subsection (6B)(b) above 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 the High Court or the Employment 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 -

- (a) section 42 of the *Sex Discrimination Act* shall have effect as if in subsection (2) for the words "or damages" there were substituted the words ", damages or any other financial award"; and
- (b) as if the following subsections were added after subsection (5A) of section 35 of the *Sex Discrimination Act* (as inserted by regulation 4) -

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

(7C) The resources referred to in subsection (6C) above 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 *Sex Discrimination Act* to terms of employment relating to pension rights

8. The *Sex Discrimination 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 below,
- (b) as if references to remuneration were to benefits, and
- (c) as if expressions used in the Pensions Act and in the *Sex Discrimination Act* have the same meaning as in the Pensions Act.

Modification of the *Sex Discrimination 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 -

- (a) section 42 of the *Sex Discrimination Act* shall have effect as if subsection (2) of that section were omitted; and
- (b) section 35 of that Act shall have effect as if after subsection (4) of that section there were inserted -

"(4A) A woman shall not be entitled, in proceedings brought in respect of a failure to comply with an equality clause (including proceedings before *The Tribunal*), to be awarded any payment by way of arrears of benefits or damages."

Power for the *High Court* or the *Employment 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 35 of the *Sex Discrimination Act* shall have effect as if the following subsections were added after subsection (4A) (as modified by regulation 9) -

"(6D) Where the *High Court* or the *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 *whichever is the later of* -
 - (i) two years before the institution of the proceedings in which the order was made, *and*
 - (ii) 6th April 2006, 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) below.

(7D) The resources referred to in subsection (6D)(b) above 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 *High Court* or Tribunal relates as if that person had been a member of the scheme since *whichever is the later of* -

- (a) the deemed entry date; and
- (b) *6th April 2006*.

(8D) *Omitted*."

Power for the *High Court* or the *Employment 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 35 of the *Sex Discrimination* Act shall have effect as if the following subsections were added after subsection (4A) (as modified by regulation 9) -

"(6E) Where *High Court* or *the 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 -

- (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 *6th April 2006*, 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 (7E) below.

(7E) The resources referred to in subsection (6E)(b) above 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 the *High Court* or *Employment Tribunal* to award payment of arrears or damages in breach of contract of employment claims by pensioner members and employer's duty to provide additional resources

12. In the case of a claim by a pensioner member, in respect of a failure to comply with an equality clause which relates to the terms on which the member is treated, section 35 of the *Sex Discrimination* Act shall have effect as if the following subsections were added after subsection (4A) -

"(6F) Where the *High Court* or Tribunal awards a payment by way of arrears of benefits or damages, the employer shall provide any such resources to the scheme as are specified in subsection (7F) below.

(7F) The resources referred to in subsection (6F) above are such additional resources, if any, as may be necessary for the scheme to secure the payment of those arrears of benefits or damages to the member, without contribution or further contribution by the member or by other members of the scheme."

Exceptions to the equal treatment rule: bridging pensions

13. The following circumstances are prescribed for the purposes of section 64(2) of the Pensions Act

- (a) the man is in receipt of a pension from the scheme and has not attained pensionable age but would have attained pensionable age if he were a woman; and
- (b) an additional amount of pension is paid to the man which does not exceed the amount of Category A retirement pension that would be payable to a woman with earnings the same as the man's earnings in respect of his period of pensionable service under the scheme (assuming that the requirements for entitlement to Category A retirement pension were satisfied and a claim made).

Exceptions to the equal treatment rule: effect of indexation

14. (1) The following circumstances are prescribed for the purposes of section 64(2) of the Pensions Act (*equal treatment rule: exception relating to differences attributable to differences between men and women in State retirement pensions*) -

- (a) the scheme is a salary-related contracted-out scheme under which the annual rate of a pension payable to or in respect of a member is increased by more than it would have been increased had the recipient been of the other sex; and
- (b) the amount by which the pension increase exceeds any increase that would have applied had the member been of the other sex, does not exceed the relevant amount.

(2) In this regulation, the relevant amount means the amount by which X exceeds Y where -

X is the amount by which the additional pension of a Category A retirement pension attributable to the member's earnings factors during his period of pensionable service under the scheme would have been increased following an order made under section 150(9) of the Social Security Administration Act 1992 (*as that section has effect in Great Britain*) if the member had been of the other sex; and

Y is the amount (if any) by which the member's entitlement to the additional pension of a Category A retirement pension attributable to his earnings factors during his period of pensionable service under the scheme is increased following an order made under section 150(9) of the Social Security Administration Act 1992 (*as that section has effect in Great Britain*).

Exceptions to the equal treatment rule: use of actuarial factors which differ for men and women

15. (1) The factors prescribed for the purposes of section 64(3)(a) of the Pensions Act (equal treatment rule: exception relating to the application of actuarial factors which differ for men and women to employers' contributions) are actuarial factors which differ for men and women in respect of the differences in the average life expectancy of men and women and which are determined with a view to providing equal periodical pension benefits for men and women.

(2) The following benefits are prescribed for the purposes of section 64(3)(b) of the Pensions Act (equal treatment rule: exception relating to the application of actuarial factors which differ for men and women to the determination of prescribed benefits) -

- (a) a lump sum payment which consists of a commuted periodical pension or part of such a pension;
- (b) a periodical pension granted in exchange for a lump sum payment;

- (c) money purchase benefits within the meaning of section 181(1) of the Pension Schemes Act 1993;
- (d) transfer credits and any rights allowed to a member by reference to a transfer from a personal pension scheme;
- (e) a transfer payment including a cash equivalent within the meaning of section 94 of the Pension Schemes Act 1993;
- (f) a periodical pension payable in respect of a member who opts to take such benefits before normal pension age or in respect of a member who defers taking such benefits until after normal pension age;
- (g) benefits payable to another person in exchange for part of a member's benefits and the part of the member's benefits given up for that purpose;
- (h) benefits provided in respect of a member's voluntary contributions within the meaning of section 111 of the Pension Schemes Act 1993.

Made

9th February 2005



Minister for Health and Social Security

EXPLANATORY NOTE

(This note is not part of the Order)

1. Section 1 of the Pension Schemes Act 1995 enables the Department by Order to apply to the Isle of Man, as part of the law of the Island and incorporating such exceptions, adaptations and modifications as may be specified by the Order, any legislation to which that Act applies.
2. *Inter alia*, the Act applies to the Pension Schemes Act 1993 and the Pensions Act 1995 (Acts of the United Kingdom Parliament) and to any statutory instrument made or having effect as if made under either of those Acts.
3. This Order applies to the Island the legislation referred to in Article 2(1) of the Order ("the Equal Treatment Regulations"), the provisions of which are summarised in the following paragraphs.

- 4.1 The Equal Treatment Regulations are made under, and supplement, the requirements of sections 62 to 66 of the Pensions Act 1995 (as they have effect in the Isle of Man). Those sections ordinarily prohibit occupational pension schemes from discriminating in favour of one sex over the other by requiring such schemes to contain an “*equal treatment rule*” if they do not already do so.
- 4.2 The effect of an equal treatment rule is that where a man and a woman are employed on the same work (or on work rated as equivalent) in the same employment but the terms on which -
- they become a member of the occupational pension scheme in question; or
 - they are treated as a member of the scheme (in particular, the accrual of benefits),
- favour one sex over the other, then the terms shall be modified so as not to do so.
5. The Equal Treatment Regulations come into force in the Isle of Man on 6th April 2006 and a detailed explanation of their provisions is given below.
6. Regulation 1 provides for their citation, commencement and interpretation.
7. Regulation 2 provides that the Employment (Sex Discrimination) Act 2000 (an Act of Tynwald) (“the Sex Discrimination Act”) has effect in relation to an equal treatment rule subject to the further modifications found in regulations 3 to 7.
8. Regulation 3 prohibits the High Court or the Employment Tribunal from making a financial award for a claim relating to a breach of an equal treatment rule, other where the claim is one to which regulation 7 applies.
9. Regulation 4 provides that in any proceedings brought before the Employment Tribunal claiming breach of an equal treatment rule, the employer in question is to be treated as a party to the proceedings and has the right to appear and be heard in those proceedings.
10. Regulation 5 provides that where the High Court or the Employment Tribunal finds that there has been a breach of an equal treatment rule as to the terms on which persons may become members of an occupational pension scheme by virtue of their sex, then the Court or Tribunal may declare that the scheme must allow a person discriminated against to join the scheme, which may be with effect from a date earlier than the declaration (but no earlier than 2 years before the start of those proceedings or 6th April 2006 (whichever is the later)). Under regulation 5 the employer must also (if necessary) increase the funding of the scheme so that the person can acquire the same pension rights they would have accrued had they been a member of the scheme from the date they are now allowed to join.
11. Regulation 6 makes similar provision to that in regulation 5 where the High Court or the Employment Tribunal finds that there has been a breach of an equal treatment rule relating to the way in which people are treated by virtue of their sex as members of an occupational pension scheme.
12. Regulation 7 relates to people who have now retired (“pensioner members”) who claim that they are treated less favourably than persons of the opposite sex as members of an occupational pension scheme. Where the High Court or the Employment Tribunal finds that this is the case, then the employer must increase the funding of the scheme so that it can pay any arrears of benefits, damages or other financial award it is ordered to pay in order to make good the breach of an equal treatment rule in that case.

13. Regulations 8 to 12 make provision in relation to a breach of an equality clause in a person's contract of employment in relation to terms of employment relating to membership of and rights under an occupational pension scheme similar to that in relation to a breach of an equal treatment rule under regulations 2 to 7.
14. Regulations 13 to 15 provide for certain pensions arrangements to be exempt from an equal treatment rule, as follows.
15. *"Bridging pensions"* (regulation 13)
 - 15.1 Bridging pensions are paid by employers to remove the effect of the inequality created by there being different State pensionable ages for women and men (currently 60 for women and 65 for men).
 - 15.2 An occupational pension scheme may pay a bridging pension to former female and male employees once they reach the ages of 55 and 60 respectively (the earliest date tax-approved occupational pension schemes are normally allowed to start paying retirement benefits). However, the scheme will then stop paying pensions (or more commonly reduce the amount paid) to those women once they reach the age of 60, when it is presumed that they will start to receive a State pension. The scheme will only adjust pension payments made to its former male employees when they reach 65 years of age.
16. Regulation 14 concerns indexation paid with a member's pension equivalent to the payments to which a person of the opposite sex would be entitled as part of the State additional pension.
 - 17.1 Regulation 15 concerns the use of actuarial factors which differ for men and women in calculating employers' contributions in certain circumstances and the provision of certain benefits.
 - 17.2 Different actuarial factors may be applied -
 - to the contributions made by employers to pension schemes in respect of their male and female employees where those differences are due to the different average life expectancies of men and women and with a view to the scheme ultimately providing equal benefits for men and women (paragraph (1)); and
 - to the determination of certain pension benefits, specified in paragraph (2).

