



Statutory Document No. 15/06

THE PENSION SCHEMES ACT 1995

THE PENSION SCHEMES LEGISLATION (APPLICATION) ORDER 2006

*Approved by Tynwald*

*22<sup>nd</sup> February 2006*

*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 2006 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 6<sup>th</sup> April 2006.

**Interpretation**

2. (1) In this Order “the applied legislation” means the Occupational Pension Schemes (Equal Treatment) (Amendment) Regulations 2005(a).

(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.

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Price: £1.70 Band: B

(a) S.I. 2005/1923.

**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 regulations 1 and 3 to 6 of the Occupational Pension Schemes (Equal Treatment) (Amendment) Regulations 2005 (S.I. 2005/1923) 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.

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### STATUTORY INSTRUMENTS

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2005 No. 1923

### PENSIONS

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

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12. to 15. *Omitted*

PART 1  
GENERAL

**Citation, commencement and interpretation**

1. (1) These Regulations may be cited as the Occupational Pension Schemes (Equal Treatment) (Amendment) Regulations 2005.

(2) These Regulations shall come into force on **6<sup>th</sup> April 2006**.

(3) In these Regulations—

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

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

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

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

PART 2  
EQUAL TREATMENT: AMENDMENTS

**Application of Part 2**

2. **Omitted.**

*Pensions Act 1995*

**Modification of *Sex Discrimination Act* provisions applied to equal treatment rule**

3. In section 63 of the Pensions Act 1995<sup>1</sup> (equal treatment rule: supplementary), **for** subsection (4)(c) **substitute—**

***“(c) for section 42(1) there were substituted –***

***“(1) Subject to subsection (5), no determination may be made by the Tribunal in the following proceedings –***

***(a) on a complaint under section 35(1),***

***(b) on an application under section 35(2), or***

***(c) on a reference under subsection 35(3),***

***unless the proceedings are instituted on or before the qualifying date (determined in accordance with section 35A).”.***

***Minor amendments of section 66 of the Pensions Act 1995***

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<sup>1</sup> Section 63 of the Pensions Act 1995 was applied to the Isle of Man by article 2(2) of the Pensions Act 1995 (Application) (Amendment) Order 2005 (S.D. 70/05).

3A. In section 66 of the Pensions Act 1995<sup>2</sup> (equal treatment rule: effect on terms of employment, etc.)—

(a) in subsection (1) —

- (i) in section 2(2) of the Sex Discrimination Act (as substituted by section 66(1) of the Pensions Act 1995) after “the Pensions Act 1995” insert “(as that Act of Parliament has effect in the Isle of Man)”, and
- (ii) in section 2(3) of the Sex Discrimination Act (as substituted by section 66(1) of the Pensions Act 1995) after “the Pensions Act 1995” add “(as those Acts of Parliament have effect in the Isle of Man)”;

(b) in subsection (2) —

- (i) in the words added to section 6(1) of the Sex Discrimination Act by paragraph (a) after “the Pensions Act 1995” add “(as that Act of Parliament has effect in the Isle of Man)”, and
- (ii) in the words substituted in section 6(1) of the Sex Discrimination Act by paragraph (b) after “the Pensions Act 1995” add “(as that Act of Parliament has effect in the Isle of Man)”;

(c) in subsection (3) —

- (i) in section 8(3) of the Sex Discrimination Act (as substituted by section 66(3) of the Pensions Act 1995) after “the Pensions Act 1995” insert “(as that Act of Parliament has effect in the Isle of Man)”, and
- (ii) in section 8(3A) of the Sex Discrimination Act (as substituted by section 66(3) of the Pensions Act 1995) after “the Pensions Act 1995” add “(as those Acts of Parliament have effect in the Isle of Man)”.

#### *Occupational Pension Schemes (Equal Treatment) Regulations 1995*

#### **Sex Discrimination Act provisions applying to equal treatment rule and equality clause**

4. The Occupational Pension Schemes (Equal Treatment) Regulations 1995<sup>3</sup> are amended in accordance with regulations 5 and 6.

#### **Modifications: operation of equal treatment rule**

5. (1) In regulation 2 (application of *Sex Discrimination Act* to equal treatment rule)—

(a) renumber the existing text as paragraph (1);

(b) in paragraph (1), for sub-paragraph (a) substitute—

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

(c) after paragraph (1) add —

“(2) *The Sex Discrimination Act* shall have effect in relation to an equal treatment rule as if *after section 35 there were inserted* —

<sup>2</sup> Section 66 of the Pensions Act 1995 was applied to the Isle of Man by article 2(2) of the Pensions Act 1995 (Application) (Amendment) Order 2005 (S.D. 70/05).

<sup>3</sup> S.I. 1995/3183 (see S.D. 71/05)

*“Qualifying date” under section 42(1)*

35A. (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 42(1) (as substituted by section 63(4)(c) of the Pensions Act 1995 (as that Act of Parliament has effect in the Isle of Man)).*

(2) *In subsection (1) above "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.*

(3) *In this section—*

*“concealment case” means a case where—*

(a) *the employer or the trustees or managers of the scheme deliberately concealed from the woman any fact (referred to in this section as a “qualifying fact”)—*

(i) *which is relevant to the contravention to which the proceedings relate, and*

(ii) *without knowledge of which the woman could not reasonably have been expected to institute the proceedings, and*

(b) *the woman did not discover the qualifying fact (or could not with reasonable diligence have discovered it) until after—*

(i) *the last day on which she was employed in the employment, or*

(ii) *the day on which the stable employment relationship between her and the employer ended,*

*(as the case may be);*

*“disability case” means a case where the woman was under a disability at any time during the six months after—*

(a) *the last day on which she was employed in the employment,*

(b) *the day on which the stable employment relationship between her and the employer ended, or*

(c) *the day on which she discovered (or could with reasonable diligence have discovered) the qualifying fact deliberately concealed from her by the employer or the trustees or managers of the scheme (if that day falls after the day referred to in paragraph (a) or (b) above, as the case may be),*

*(as the case may be);*

*“stable employment case” means a case where the proceedings relate to a period during which a stable employment relationship subsists between the woman and the employer, notwithstanding that the period includes any time after the ending of a contract of employment when no further contract of employment is in force;*

*“standard case” means a case which is not—*

- (a) a stable employment case,*
- (b) a concealment case,*
- (c) a disability case, or*
- (d) both a concealment and a disability case.*

*(4) In a standard case, the qualifying date is the date falling six months or the last day on which the woman was employed in the employment.*

*(5) In a case which is a stable employment case (but not also a concealment or a disability case or both), the qualifying date is the date falling six months after the day on which the stable employment relationship ended.*

*(6) In a case which is a concealment case (but not also a disability case), the qualifying date is the date falling six months after the day on which the woman discovered the qualifying fact in question (or could with reasonable diligence have discovered it).*

*(7) In a case which is a disability case (but not also a concealment case), the qualifying date is the date falling six months after the day on which the woman ceased to be under a disability.*

*(8) In a case which is both a concealment and a disability case, the qualifying date is the later of the dates referred to in subsections (6) and (7).””.*

(2) For regulation 5 (power to declare right to admission to scheme and employer's duty to provide additional resources) substitute—

**"Power for the High Court or the Employment Tribunal to declare 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 35 of the *Sex Discrimination Act* shall have effect as if, after subsection (5A) (as inserted by regulation 4), there were added—

*"(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 (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 6<sup>th</sup> April 2006.".*

(3) For regulation 7 (power to make financial award for equal treatment claims by pensioner members and employer's duty to provide additional resources) substitute—

**"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. (1) This regulation applies in the case of a claim by a pensioner member of a scheme 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 42 of the *Sex Discrimination Act* shall have effect as if for subsection (2) there were substituted –

"(2) 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 *the* 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 35B)."

(2A) *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)—*

"(6C) Where *the High Court* or *the* 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) 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 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) *The Sex Discrimination Act shall have effect as if after section 35A (as inserted by regulation 2(2)) there were inserted —*

*““Arrears date” in proceedings under section 42(2)*

*35B. (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 42(2) (as substituted by regulation 7(2)).*

*(2) In subsection (1) above "relevant proceedings" means proceedings in respect of the terms on which members of an occupational pension scheme are treated.*

*(3) In this section—*

*“concealment case” means a case where—*

- (a) the employer or the trustees or managers of the scheme deliberately concealed from the woman any fact—*
  - (i) which is relevant to the contravention to which the proceedings relate, and*
  - (ii) without knowledge of which the woman could not reasonably have been expected to institute the proceedings, and*
- (b) the woman instituted the proceedings within six years of the day on which she discovered the fact (or could with reasonable diligence have discovered it);*

*“disability case” means a case where—*

- (a) the woman was under a disability at the time of the contravention to which the proceedings relate, and*
- (b) the woman instituted the proceedings within six years of the day on which she ceased to be under a disability;*



*“standard case” means a case which is not—*

- (a) a concealment case,*
- (b) a disability case, or*
- (c) both.*

*(4) In a standard case, the arrears date is the date falling six years before the day on which the proceedings were instituted.*

*(5) In a case which is a concealment or a disability case or both, the arrears date is the date of the contravention.”.*

*(4) Omitted.”.*

#### **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) substitute—

**"Power for the High Court or the Employment 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 35 of the *Sex Discrimination Act* shall have effect as if, after subsection (4A) (as *inserted* by regulation 9), there were added—

*"(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 (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 6<sup>th</sup> April 2006.”.*

### **PART 3**

#### **EQUAL TREATMENT RULE: ARMED FORCES SCHEMES**

7. to 11. *Omitted.*

### **PART 4**

#### **EQUALITY CLAUSE: SERVICE IN ARMED FORCES**

12. to 15. *Omitted.*



Minister for Health and Social Security

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### 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 Pensions Act 1995 (an Act 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 Amendment Regulations”), the provisions of which are summarised in the following paragraph.
4. **The Occupational Pension Schemes (Equal Treatment) (Amendment) Regulations 2005 (S.I. 2005/1923) (regulations 1 and 3 to 6 only)**
  - 4.1 *Introduction*
    - 4.1.1 Sections 62 to 66 of the Pensions Act 1995 and the Occupational Pension Schemes (Equal Treatment) Regulations 1995 (“the Equal Treatment Regulations”) **made under them** were applied to the Isle of Man on 16<sup>th</sup> March 2005. Both sets of legislation will come into force on 6<sup>th</sup> April 2006. That legislation will (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.
    - 4.1.2 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 their employer’s occupational pension scheme; or

- how they are treated as a member of the scheme (in particular, how they accrue pension benefits),

favour one sex over the other, then the terms shall be modified so as not to do so.

4.1.3 The Equal Treatment Amendment Regulations amend section 63 of the Pensions Act 1995 and the Equal Treatment Regulations 1995 so as to –

- change the time limits for bringing claims for breaches of equal treatment in pensions;
- change the period in respect of which successful claims for retrospective pension scheme membership may be backdated where breach of an equal treatment rule is found; and
- remove the previous obligation employers were under to meet the cost of arrears of pension contributions following a successful claim for backdated pension scheme membership which would put the claimant in the same position if they had been in the scheme all along.

4.1.4 These changes will come into effect on 6<sup>th</sup> April 2006 and are explained in detail in paragraph 5 below.

5. *Citation, commencement and interpretation of the Equal Treatment Amendment Regulations*

5.1 Regulation 1 provides for the citation, commencement and interpretation of the Equal Treatment Amendment Regulations.

5.2 *Time limits for bringing claims for breach of an equal treatment rule*

5.2.1 Regulation 3 amends section 63 of the Pensions Act 1995 so as to change the time limit within which someone may bring a claim for breach of an equal treatment rule in accordance with section 42(1) of the Employment (Sex Discrimination) Act 2000 (of Tynwald) (“the Sex Discrimination Act”).

5.2.2 Previously people had to bring their claim within 6 months of leaving their employment. Now, although the same time limit will apply to “standard” cases, more generous time limits apply in others (see paragraph 5.2.3 below). In all cases, claims will not be able to be brought for periods earlier than the “qualifying date” (see section 35A of the Sex Discrimination Act inserted by regulation 5(1)).

5.2.3 In cases other than “standard” ones the qualifying date will be –

- where the employee and the employer had a stable employment relationship (even though one or more individual contracts of employment between them have ended), the qualifying date will be 6 months from the date that stable relationship ended;
- where the employer deliberately concealed facts indicating a breach had occurred from the employee until after they had left their employment and they could not reasonably have discovered those facts before their employment ended, the qualifying date will be 6 months from the date those facts were revealed or the person could reasonably have been discovered them; and
- where the employee was suffering from a disability during the 6 months after their employment ended, the qualifying date will be 6 months after the person’s disability ended.

- 5.2.4 What constitutes a “standard case”, a “stable employment case”, a “concealment case” and a “disability case” referred to above is also defined in section 35A.
- 5.3 *Claims for backdated membership of an occupational pension scheme*
- 5.3.1 Regulation 5(2) amends the period in respect of which a person’s membership of an occupational pension scheme may be backdated if their claim for breach of an equal treatment rule is successful (see the new version of regulation 5 of the Equal Treatment Regulations). Previously, membership could only be backdated for up to two years before proceedings were instituted, but no earlier than 6<sup>th</sup> April 2006 in any case. That two-year time limit is now abolished, although claims will still not be able to be heard in respect of periods pre-dating 6<sup>th</sup> April 2006.
- 5.3.2 Regulation 6 makes similar provision in relation to backdated claims for breach of an equality clause in a person’s employment contract in relation to terms of employment relating to membership of, and rights under, an occupational pension scheme.
- 5.4 *Funding of backdated membership of an occupational pension scheme*
- 5.4.1 Previously employers found to have denied membership of their occupational pension scheme to an employee because the terms of their scheme discriminated on grounds of sex had to pay both the pension contributions the employee would have been liable for had they been allowed to join the scheme as well as their own contributions. The new version of regulation 5 of the Equal Treatment Regulations (as provided for by regulation 5(2)) also provides that employers will now only have to fund arrears of their own pension contribution shortfall and not that of their employees as well.
- 5.5 *Funding of compensation for persons in receipt of an occupational pension scheme who have been discriminated against as to the benefits they receive*
- 5.5.1 However, employers will still have to fund the cost of compensating those members currently receiving a pension to put them back to where they would have been had they not suffered discrimination (see the modifications made to section 35 of the Sex Discrimination Act by regulation 7(2A) of the Equal Treatment Regulations). However, employers will only have to pay compensation for periods beginning with the appropriate “arrears date” (see section 42(2) of the Sex Discrimination Act as modified by regulation 7(2) of the Equal Treatment Regulations and new section 35B inserted by regulation 7(3) of the same Regulations).
- 5.5.2 In standard cases the arrears date is the date 6 years before proceedings were instituted. Where the employer or trustees or managers of the scheme concealed a fact relevant to the contravention from the pensioner member, or the pensioner member was disabled when the contravention took place, the arrears date is the date of that contravention. But in either case, proceedings must have been instituted within 6 years of the date the pensioner member discovered that fact (or could reasonably have been expected to have done so) or recovered from their disability (as the case may be).
- 5.6 *Minor amendments of section 66 of the Pensions Act 1995*
- 5.6.1 Regulation 3A is inserted into the Equal Treatment Amendment Regulations. It inserts text into section 66 of the Pensions Act 1995 to make it clear that reference to the Pensions Act 1995 and the Pension Schemes Act 1993 appearing in the Sex Discrimination Act (as modified by section 66) is to those Acts of the United Kingdom Parliament as they have effect in the Isle of Man.