



Statutory Document No. 153/06

THE SOCIAL SECURITY ACT 2000
**THE SOCIAL SECURITY LEGISLATION (APPLICATION)
(AMENDMENT) ORDER 2006**

Approved by Tynwald *26th April 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 Social Security Act 2000(a), and of all other enabling powers, the following Order is hereby made:-

Citation and commencement

1. This Order may be cited as the Social Security Legislation (Application) (Amendment) Order 2006 and shall, subject to section 2(1) of the Social Security Act 2000, come into operation on 1st May 2006.

Amendment of the Social Security Legislation (Application) (No. 13) Order 1994 (S.D. 272/94)

2. (1) Amend the Social Security Legislation (Application) (No. 13) Order 1994(b) in accordance with the following paragraphs.

(2) In article 2(1) of that Order (which cites the legislation being applied to the Isle of Man by that Order) omit sub-paragraph (f) (which refers to the Occupational Pension Schemes (Modification) Regulations 1990(c)).

(3) Omit Schedule 4 to that Order (which specifies the exceptions, adaptations and modifications subject to which the Occupational Pension Schemes (Modification) Regulations 1990 have effect in the Isle of Man).

Amendment of the Social Security Legislation (Application) (No. 24) Order 1995

3. (1) Amend the Schedule to the Social Security Legislation (Application) (No. 24) Order 1995(d) (which sets out section 23 of, and Part I of Schedule 5 to, the Social Security Act 1989 (of Parliament)(e) (equal treatment) as those provisions have effect in the Isle of Man) in accordance with the following paragraph.

(a) 2000 c.5; (b) S.D. 272/94; (c) S.I. 1990/2021; (d) S.D. 589/95; (e) 1989 c.24.

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(2) In Part I of Schedule 5 (employment-related benefit schemes to comply with the principle of equal treatment)–

(a) in paragraph 2 (the principle of equal treatment)–

- (i) in sub-paragraph (1) at the end add “(see paragraph 7(a) below)”,
- (ii) in sub-paragraph (2) for “Sub-paragraphs (3) to (6) below” substitute “Sub-paragraphs (4) and (5) below”, and
- (iii) for sub-paragraph (4) substitute –

“(4) No account shall be taken of any special treatment for the benefit of women in connection with pregnancy or childbirth, but where the scheme includes any unfair maternity provisions, it shall to that extent be regarded as according less favourable treatment to women on the basis of sex.”; and

(b) in paragraph 5 (unfair maternity provisions) –

(i) for sub-paragraph (1) substitute –

“(1) In this Schedule “unfair maternity provisions”, in relation to an employment-related benefit scheme, means any provision -

(a) which relates to the continuing membership of, or the accrual of rights under, the scheme during –

(i) any period of entitlement to maternity allowance under Part II of the Social Security Contributions and Benefits Act 1992, or

(ii) any period of paid maternity absence,

in the case of any woman who is (or who, immediately before the commencement of such a period, was) an employed earner and which treats such a woman otherwise than in accordance with the normal employment requirement; or

(b) which requires the amount of any benefit payable under the scheme to or in respect of any such woman, to the extent that it falls to be determined by reference to her earnings during a period which included a period of –

(i) entitlement to maternity allowance under Part II of the Social Security Contributions and Benefits Act 1992, or

(ii) paid maternity absence,

to be determined otherwise than in accordance with the normal employment requirement.”,

(ii) for sub-paragraph (2) substitute –

“(2) In the case of any unfair maternity provision the more favourable treatment required by paragraph 3(1) above is treatment no less favourable than would be accorded to the women in accordance with the normal employment requirement, but in respect of a period of –

(a) entitlement to maternity allowance under Part II of the Social Security Contributions and Benefits Act 1992, or

(b) paid maternity absence,

a woman shall only be required to pay contributions on the amount of contractual remuneration actually paid to or for her in respect of that period.”, and

(iii) in sub-paragraph (3) for the definition of “the normal employment requirement” substitute –

“(b) “the normal employment requirement” is the requirement that any period of –

(i) entitlement to maternity allowance under Part II of the Social Security Contributions and Benefits Act 1992, or

(ii) paid maternity absence,

shall be treated as if it were a period throughout which the woman in question works normally and receives the remuneration likely to be paid for doing so.”.

Made

24th February 2006

Stephen C Rodan
Minister for Health and Social Security

EXPLANATORY NOTE

(This note is not part of the Order)

1. This Order, which comes into force on 1st May 2006, revokes the Occupational Pension Schemes (Modification) Regulations 1990 and makes a number of changes to Part I of Schedule 5 to the Social Security Act 1989 (as those items of United Kingdom Parliament legislation have effect in the Isle of Man).
2. **Revocation of the Occupational Pension Schemes (Modification) Regulations 1990**
 - 2.1 Under section 136 of the Pension Schemes Act 1993 (as it has effect in the Isle of Man), the Department may make, if asked to do so by the trustees or managers of the scheme (or any other person able to change the scheme rules), the sponsoring employer of an occupational pension scheme or such other persons as allowed by Regulations, an order –
 - authorising the modification of the scheme; or
 - modifying the scheme itself,with a view to achieving certain purposes.
 - 2.2 The Occupational Pension Schemes (Modification) Regulations 1990 provide that the Department could make an order authorising the modification of an occupational pension scheme to enable the scheme to reduce or eliminate a surplus of assets it has over its liabilities provided statutory Inland Revenue conditions were met and future benefits under the scheme were protected from inflation.
 - 2.3 That Inland Revenue legislation has now been repealed, so those Regulations do not operate properly and are therefore being repealed ([article 2](#)).
3. **Amendment of Part I of Schedule 5 to the Social Security Act 1989 (the principle of equal treatment on grounds of sex in relation to employment-related benefit schemes)**
 - 3.1 This Order makes a number of changes to Part I of Schedule 5 to the Social Security Act 1989 (as it has effect in the Isle of Man) with effect from 1st May 2006.
 - 3.2 Part I of Schedule 5 prohibits all employment-related benefit schemes (in particular, occupational pension schemes) from treating persons of one sex, on the basis of their sex, less favourably than persons of the other sex in any respect relating to such a scheme. This is in accordance with the principle of equal treatment set out in paragraph 2 of that Part.
 - 3.3 Paragraph 3 of Part I of Schedule 5 requires schemes to “level up” any less favourable treatment accorded to persons of one sex with the more favourable treatment accorded to persons of the other sex. Specific provision is made in relation to the principle of equal treatment for people absent from work for maternity, family, adoption and paternity reasons but who are still paid by their employer or former employer (as the case may be).
 - 3.4 Paragraph 5 of Part I of Schedule 5 applies where a woman –
 - is absent from work for maternity reasons; and

- is still paid remuneration by her employer under her contract of employment, but of an amount less than that which she was paid before her absence.
- 3.5 In such a case the woman must be treated as if she had continued to work normally and received her normal level of pay for doing in relation to –
- her membership of the scheme and how she accrues pension rights or other benefits under it; and
 - the amount of any pension or other benefit payable to or in respect of her which is determined by reference to her earnings,
- during her period of paid maternity absence.
- 3.6 Also, while she is on paid maternity absence the woman will only have to pay pension contributions etc. on the amount of pay she actually receives – rather than on the amount of earnings she is treated as having (referred to in the above paragraph) for the purposes of building up pension benefits, etc. under the scheme. Her employer will have to fund any contribution shortfall.
- 3.7 The principle change the Order makes is to provide that these special provisions applying to women on paid maternity absence are extended so as to also apply to women in receipt of maternity allowance but not remuneration from their employer while they are on maternity leave (article 3(2)(b)).
- 3.8 The rest of the changes the Order makes are ones simplifying the text, aiding its interpretation and making a correction (article 3(2)(a)).