



EQUALITY ACT 2017 (SEX EQUALITY RULE) (EXCEPTIONS) REGULATIONS 2018

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Equality Act 2017

EQUALITY ACT 2017 (SEX EQUALITY RULE) (EXCEPTIONS) REGULATIONS 2018

Approved by Tynwald: 21st November 2018
Coming into Operation: 1 January 2019

The Treasury makes the following Regulations under paragraphs 4, 5 and 6¹ of Schedule 7 to the Equality Act 2017.

1 Title

These Regulations are the Equality Act 2017 (Sex Equality Rule) (Exceptions) Regulations 2018.

2 Commencement

If approved by Tynwald, these Regulations come into operation on 1 January 2019².

3 Interpretation

(1) In these Regulations—

“**the Act**” means the Equality Act 2017;

“**the additional pension of a Category A retirement pension**” has the same meaning as in Part II of the Contributions and Benefits Act;

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

“**the Contributions and Benefits Act**” means the Social Security Contributions and Benefits Act 1992³;

“**normal pension age**” has the meaning given in section 180 of the Pension Schemes Act 1993⁴;

¹ Paragraph 6 is cited for the meaning it gives to “prescribed”.

² Under section 168(1) of the Equality Act 2017 these Regulations cannot come into operation until they are approved by Tynwald.

³ 1992 c.4 (see SD 505/94).

⁴ 1993 c.48 (see SD 531/95).

“**pensionable age**” shall be construed in accordance with section 122(1) of the Contributions and Benefits Act⁵;

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

“**personal pension scheme**” has the meaning given in section 1 of the Pension Schemes Act 1993;

“**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 1993⁶ 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 Act⁷;

“**scheme**” means an occupational pension scheme;

“**transfer credits**” has the meaning given in section 124(1) of the Pensions Act 1995⁸.

(2) Section 3(4) of the Act applies to these Regulations as it applies to the Act.

4 Exceptions to the sex equality rule: bridging pensions

The following circumstances are prescribed for the purposes of paragraph 4 of Schedule 7 to the Act (state retirement pensions)—

- (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).

5 Exceptions to the sex equality rule: effect of indexation

(1) The following circumstances are prescribed for the purposes of paragraph 4 of Schedule 7 to the Act (state retirement pensions)—

⁵ The definition of “pensionable age” was substituted by section 126 and by paragraph 13(a) of Schedule 4 to the Pensions Act 1995 (c.26) (see SD 501/97).

⁶ Section 9(2) was substituted by sections 9(2) to (2C) by section 136(3) of the Pensions Act 1995 (see SD 501/97).

⁷ Section 53 was amended by paragraph 48 of Schedule 5 to the Pensions Act 1995 (see SD 501/97) and SI 2011/1730 (see SD 0927/11).

⁸ The definition of “transfer credits” was amended by paragraph 69 of Schedule 12 to the Pensions Act 2004 (see SD 220/05).

- (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 the member's period of pensionable service under the scheme would have been increased following an order made under paragraph 1(4) of Schedule 4E⁹ to the Social Security Administration Act 1992¹⁰ 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 the member's earnings factors during the member's period of pensionable service under the scheme is increased following an order made under paragraph 1(4) of Schedule 4E to that Act.

6 Exceptions to the sex equality rule: use of actuarial factors which differ for men and women

- (1) The factors prescribed for the purposes of paragraph 5(1) of Schedule 7 to the Act (actuarial factors) 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 paragraph 5(2) of Schedule 7 to the Act—
 - (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 1993¹¹;

⁹ Schedule 4E was inserted by SD 2017/0330.

¹⁰ 1992 c.5 (see SD 506/94).

¹¹ The definition of "money purchase benefits" was amended by SI 2005/2053 (see SD 745/05) and section 29(1) of the Pensions Act 2011 (SD 0152/12).

- (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.

7 Revocations

The following are revoked —

- (a) the entries relating to sections 62 to 66 of the Pensions Act 1995¹² in Schedule 2 to the Pensions Act 1995 (Application) Order 1997¹³;
- (b) the Pensions Act 1995 (Application) (Amendment) Order 2005¹⁴;
- (c) in the entry relating to Schedule 5¹⁵ to the Social Security Act 1989¹⁶ in the Schedule to the Social Security Legislation (Application) (No. 24) Order 1995¹⁷ —
 - (i) in paragraph 2(4)¹⁸, the words from “, but where” to the end; and
 - (ii) paragraph 5¹⁹;
- (d) the Occupational Pension Schemes (Equal Treatment) Regulations 1995²⁰ as set out in the Schedule to the Pension Schemes Legislation (Application) Order 2005;
- (e) the Pension Schemes Legislation (Application) Order 2005²¹;

¹² Sections 62 to 66 were inserted into the Pensions Act 1995 by SD 70/05.

¹³ SD 501/97.

¹⁴ SD 70/05.

¹⁵ Schedule 5 was applied to the Island by SD 589/95.

¹⁶ 1989 c.24.

¹⁷ SD 589/95.

¹⁸ Paragraph 2(4) was substituted by SD 153/06.

¹⁹ Paragraph 5 was amended by SD 153/06.

²⁰ S.I. 1995/3183.

²¹ SD 71/05.

- (f) the Occupational Pension Schemes (Equal Treatment) (Amendment) Regulations 2005²² as set out in the Schedule to the Pension Schemes Legislation (Application) Order 2006; and
- (g) the Pension Schemes Legislation (Application) Order 2006²³.

MADE 24TH OCTOBER 2018

A L CANNAN
Minister for the Treasury

²² S.I. 2005/1923.

²³ SD 15/06.

*EXPLANATORY NOTE**(This note is not part of the Regulations)*

These Regulations contain permitted exceptions to a sex equality rule provided for by sections 59 to 63 of the Equality Act 2017 (“the Equality Act”).

Sections 59 to 63 of the Equality Act replace an equal treatment rule provided for by sections 62 to 66 of the Pensions Act 1995 (as it has effect in the Island), which are revoked by these Regulations.

Exceptions to that equal treatment rule were contained in regulations 13 to 15 of the Occupational Pension Schemes (Equal Treatment) Regulations 1995 (S.I. 1995/3183) (“the Equal Treatment Regulations”), which are also revoked by these Regulations. The exceptions contained in the Equal Treatment Regulations are replaced by the provisions in these Regulations. The Occupational Pension Schemes (Equal Treatment) (Amendment) Regulations 2005 (S.I. 2005/1923), which amended the Equal Treatment Regulations, are also revoked by these Regulations.

Regulation 4 concerns bridging pensions which are paid to men before they reach state pension age.

Regulation 5 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.

Regulation 6 concerns the use of actuarial factors which differ for men and women in relation to the calculation of employers’ contributions in certain circumstances and the provision of certain benefits.

Regulation 7 contains the revocation of the provisions referred to above and of provisions of Schedule 5 to the Social Security Act 1989 (as it has effect in the Island), which concern equal treatment for men and women in relation to employment-related benefit schemes.