
EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations codify, to a limited extent and in the particular context of occupational pension schemes, the effects of Article 157 of the Treaty on the Functioning of the European Union (“the right to equal pay”) and of the right to non-discrimination on grounds of sexual orientation as regards employment and occupation established by Council [Directive 2000/78/EC](#) establishing a general framework for equal treatment in employment and occupation (OJ L 303, 2.12.2000 p. 16-22) (“the Framework Directive”). The effects to be codified form part of domestic law by virtue of section 4 of the European Union (Withdrawal) Act 2018 (c. 16).

These Regulations codify the right to equal pay to allow a notional (rather than actual) opposite sex comparator to be used in certain circumstances to establish the existence of discrimination caused by legislation – a principle established in *C-256/01 Allonby v Accrington and Rossendale College and others* [2004] ICR 1328. Regulations 2 and 3 give effect to this principle by amending, respectively—

- (a) section 171 of the Pensions Act 2004 (c. 35), to modify certain functions of the Board of the Pension Protection Fund, and
- (b) sections 64, 66 and 67 of the Equality Act 2010 (c. 15), to modify certain provisions relating to the terms of a person’s work, or the rules of an occupational pension scheme of which they are a member,

to secure that those functions, terms and rules do not, in relation to pensionable service on and after 17th May 1990, discriminate on the grounds of sex where, as a result of legislation on guaranteed minimum pensions, a person would otherwise be subject to less favourable treatment compared to a person of the opposite sex.

Regulation 4 codifies the right to non-discrimination on grounds of sexual orientation as regards employment and occupation established by the Framework Directive by amending paragraph 18 of Schedule 9 to the Equality Act 2010 to secure that that paragraph does not apply in respect of access to benefits payable to the surviving spouse or civil partner of a deceased member or pension credit member of an occupational pension scheme – a principle established in *Walker v Innospec Ltd and others* [2017] UKSC 47.

A full impact assessment has not been produced for this instrument as no, or no significant, impact on the private, voluntary or public sector is foreseen.