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STATUTORY INSTRUMENTS

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**2005 No. 1923**

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

**PART 2**

**EQUAL TREATMENT: AMENDMENTS**

*Occupational Pension Schemes (Equal Treatment) Regulations 1995*

**Equal Pay Act provisions applying to equal treatment rule and equality clause**

4. The Occupational Pension Schemes (Equal Treatment) Regulations 1995(1) are amended in accordance with regulations 5 and 6.

**Modifications: operation of equal treatment rule**

5.—(1) In regulation 2 (application of Equal Pay 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;”;

(c) after paragraph (1) add—

“(2) Section 2ZA of the Equal Pay Act shall have effect in relation to an equal treatment rule as if—

(a) for subsection (1) there were substituted—

“(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 2(4) above.

(1A) 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.”;

(b) in subsection (2)—

(i) in paragraph (a) of the definition of “concealment case”, the reference to the employer was a reference to the employer or the trustees or managers of the scheme, and

- (ii) in paragraph (c) of the definition of “disability case”, the reference to the employer was a reference to the employer or the trustees or managers of the scheme.”.

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

**“Power for a court or 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 2 of the Equal Pay Act shall have effect as if, after subsection (5A) (as inserted by regulation 4), there were added—

“(6A) Where a court or employment 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 8th April 1976.”.

(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 a court or 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 2 of the Equal Pay Act shall have effect as if—

(a) for subsection (5) there were substituted—

“(5) 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 an employment tribunal), to be awarded any payment by way of arrears of benefits or damages or any other financial award—

(a) in proceedings in England and Wales, in respect of a time earlier than the arrears date (determined in accordance with section 2ZB below), and

(b) in proceedings in Scotland, in respect of a time before the period determined in accordance with section 2ZC below.”; and

(b) the following subsections were added after subsection (5A) (as inserted by regulation 4)—

“(6C) Where a court or employment 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) Section 2ZB of the Equal Pay Act shall have effect as if—

- (a) for subsection (1) there were substituted—
    - “(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 England and Wales in respect of a woman, for the purposes of section 2(5)(a) above.
    - (1A) In subsection (1) above “relevant proceedings” means proceedings in respect of the terms on which members of an occupational pension scheme are treated.”; and
  - (b) in subsection (2), the reference in the definition of “concealment case” to the employer were a reference to the employer or the trustees or managers of the scheme.
- (4) Section 2ZC of the Equal Pay Act shall have effect as if—
- (a) for subsection (1) there were substituted—
    - “(1) This section applies, 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 Scotland in respect of a woman, for the purposes of determining the period mentioned in section 2(5)(b) above.
    - (1A) In subsection (1) above “relevant proceedings” means proceedings in respect of the terms on which members of an occupational pension scheme are treated.”; and
  - (b) in subsection (2)(a), the reference to the employer or any person acting on his behalf was a reference to the employer, the trustees or managers of the scheme or any person acting on his or their behalf.”.

**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 a court or 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 2 of the Equal Pay Act shall have effect as if, after subsection (5) (as modified by regulation 9), there were added—

“(6D) Where a court or employment 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 8th April 1976.”.