

1995 No. 3183

PENSIONS

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

<i>Made</i> - - - -	<i>7th December 1995</i>
<i>Laid before Parliament</i>	<i>11th December 1995</i>
<i>Coming into force</i>	<i>1st January 1996</i>

The Secretary of State for Social Security, in exercise of the powers conferred upon him by sections 63(5), 64(2) and (3), 66(4), 124(1) and 174(2) and (3) of the Pensions Act 1995(a) and of all other powers enabling him in that behalf, by this instrument, which is made before the end of the period of 6 months beginning with the coming into force of those provisions of Part I of that Act by virtue of which it is made(b), hereby makes the following Regulations:—

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Occupational Pension Schemes (Equal Treatment) Regulations 1995, and shall come into force on 1st January 1996.

(2) In these Regulations, unless the context otherwise requires—

“the Pensions Act” means the Pensions Act 1995;

“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 1992(c);

“equality clause” shall be construed in accordance with section 1(2) of the Equal Pay Act;

“the Equal Pay Act” means the Equal Pay Act 1970(d);

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

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

(a) 1995 c.26. Section 124(1) is cited for the meaning given to “prescribed” and “regulations”.

(b) See section 120 of the Act which provides that the Secretary of State must consult such persons as he considers appropriate before making regulations by virtue of the provisions in Part I of that Act. This duty does not apply where regulations are made before the end of six months from the coming into force of the provisions under which they are made.

(c) 1992 c.4.

(d) 1970 c.41 as amended by the Sex Discrimination Act 1975 (c.65), the Employment Protection Act 1975 (c.71), the Employment Protection (Consolidation) Act 1978 (c.44), the Armed Forces Act 1981 (c.55), the Equal Pay (Amendment) Regulations 1983 (S.I. 1983/1794), the Wages Act 1986 (c.48), the Contracts (Applicable Law) Act 1990 (c.36), the Trade Union and Labour Relations (Consolidation) Act 1992 (c.52), the Trade Union Reform and Employment Rights Act 1993 (c.19) and the Pensions Act 1995.

(e) The definition of pensionable age was substituted by paragraph 13 of Schedule 4 to the Pensions Act 1995 which provides that it has the meaning given by the rules in paragraph 1 of Schedule 4 to that Act.

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

“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 1993(a) 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 Act;

“scheme” means an occupational pension scheme.

Application of the Equal Pay Act to the equal treatment rule

2. In addition to the modifications made to the Equal Pay Act by the Pensions Act, the Equal Pay Act shall have effect for the purposes of sections 62 to 64 of the Pensions Act in relation to an equal treatment rule—

- (a) subject to the further modifications made in regulations 3 to 7 below,
- (b) as if references to remuneration were to benefits, and
- (c) as if expressions used in the Pensions Act and in the Equal Pay Act have the same meaning as in the Pensions Act.

Modification of the Equal Pay Act: no power to make financial awards in relation to the equal treatment rule

3. In the case of a claim made in respect of a failure to comply with an equal treatment rule, other than a claim to which regulation 7 below applies, section 2 of the Equal Pay Act shall have effect as if for subsection (5) there were substituted—

“(5) A woman shall not be entitled, in proceedings brought in respect of a failure to comply with an equal treatment rule (including proceedings before an industrial tribunal), to be awarded any payment by way of arrears of benefits, damages or any other financial award.”.

Modification of the Equal Pay Act: employer to have right to appear and be heard in proceedings for breach of an equal treatment rule

4. In the case of a claim made in respect of a failure to comply with an equal treatment rule, section 2 of the Equal Pay Act shall have effect as if after subsection (5) there were inserted—

“(5) In any proceedings brought before an industrial tribunal by a woman in respect of a failure to comply with an equal treatment rule, the employer shall, for the purposes of the rules governing procedure, be treated as a party and be entitled to appear and be heard in accordance with those rules.”.

Power for a court or industrial tribunal to declare right to admission to scheme and employer’s duty to provide additional resources in relation to access claims

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

“(6A) Where a court or industrial 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—

- (a) the court or tribunal may declare that a person has a right to be admitted to the scheme in question with effect from such date (“the deemed entry date”) as it may specify provided that such date may not be earlier than two years before the institution of the proceedings in which the order was made, and

(a) 1993 c.48.

- (b) when the court or tribunal so declares and the deemed entry date is earlier than the date of the declaration, the employer shall provide any such resources to the scheme as are specified in subsection (7A) below.

(7A) The resources referred to in subsection (6A)(b) above are such additional resources, if any, as may be necessary for the scheme to secure to the person, without contribution or further contribution by the person or by other members of the scheme, the same accrued rights in respect of the period to which the declaration by the court or tribunal relates as if that person had been a member of the scheme since—

- (a) in a case to which subsection (8A) below applies, the deemed entry date;
- (b) in any other case, whichever is the later of the deemed entry date and 31st May 1995.

(8A) This subsection applies to a case where the court or tribunal finds there has been a breach of an equal treatment rule which relates to terms concerning the age or length of service needed for becoming a member of the scheme.”(a)

Power for a court or industrial tribunal to declare right to equal treatment for members and employer’s duty to provide additional resources

6. Where a claim to which regulation 3 applies relates to the terms on which members of the scheme are treated, section 2 of the Equal Pay Act shall have effect as if the following subsections were added after subsection (5A) (as inserted by regulation 4)–

“(6B)Where a court or industrial tribunal finds that there has been a breach of an equal treatment rule which relates to the terms on which members of a scheme are treated–

- (a) the court or tribunal may declare that a member has a right to equal treatment in respect of such a period as it may specify provided that the period does not begin before 17th May 1990, and
- (b) if the court or tribunal declares that a member has a right to equal treatment in relation to a period falling before the date of the declaration, the employer shall provide any such resources to the scheme as are specified in subsection (7B) below.

(7B) The resources referred to in subsection (6B)(b) above are such additional resources, if any, as may be necessary for the scheme to secure to the member, without contribution or further contribution by the member or by other members of the scheme, the same accrued rights in respect of the period falling before the date of the declaration as if that member had been treated equally in respect of that period.”.

(a) Section 118 of the Pension Schemes Act 1993 and the Occupational Pension Schemes (Equal Access to Membership) Regulations 1976 (S.I. 1976/142) provided that schemes must be open to men and women on terms which were the same as to the age and length of service needed for becoming a member. These requirements were known as “the equal access requirements”. The Occupational Pension Schemes (Equal Access to Membership) Amendment Regulations 1995 (S.I. 1995.1215) came into force on 31st May 1995. They extended the equal access requirements to cases other than those concerning age and length of service. They also extended the obligation on employers to provide any necessary additional resources arising out of breach of the requirements as extended. However this obligation was limited to periods of membership falling after 31st May 1995. Section 118 was repealed by paragraph 29 of Schedule 3 to the Pensions Act 1995 and the Pensions Act 1995 (Commencement No. 2) Order 1995 (S.I. 1995/3104 (C.71)).

Power for a court or industrial tribunal to make a financial award for equal treatment claims by pensioner members and employer's duty to provide additional resources

7. In the case of a claim by a pensioner member in respect of a failure to comply with an equal treatment rule which relates to the terms on which the member is treated, section 2 of the Equal Pay Act shall have effect as if in subsection (5) for the words “or damages” there were substituted the words “, damages or any other financial award” and as if the following subsections were added after subsection (5A) (as inserted by regulation 4)–

“(6C) Where a court or industrial tribunal awards a payment by way of arrears of benefits, 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 the payment of those arrears of benefits, damages or that financial award to the member, without contribution or further contribution by the member or by other members of the scheme.”.

Application of the Equal Pay Act to terms of employment relating to pension rights

8. The Equal Pay Act shall have effect in relation to terms of employment relating to membership of and rights under a scheme–

- (a) subject to the modifications made in regulations 9 to 12 below,
- (b) as if references to remuneration were to benefits, and
- (c) as if expressions used in the Pensions Act and in the Equal Pay Act have the same meaning as in the Pensions Act.

Modification of the Equal Pay Act: no power to award damages in relation to an equality clause in connection with pension rights

9. In the case of a claim made in respect of a breach of an equality clause which relates to membership of or rights under a scheme, other than a claim to which regulation 12 applies, section 2 of the Equal Pay Act shall have effect as if for subsection (5) there were substituted–

“(5) A woman shall not be entitled, in proceedings brought in respect of a failure to comply with an equality clause (including proceedings before an industrial tribunal), to be awarded any payment by way of arrears of benefits or damages.”.

Power for a court or industrial tribunal to declare right to admission to scheme and employer's duty to provide additional resources 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 the following subsections were added after subsection (5) (as modified by regulation 9)–

“(6D) Where a court or industrial 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–

- (a) the court or tribunal may declare that a person has a right to be admitted to the scheme in question with effect from such date (“the deemed entry date”) as it may specify provided that such date may not be earlier than two years before the institution of the proceedings in which the order was made, and

- (b) when the court or tribunal so declares and the deemed entry date is earlier than the date of the declaration, the employer shall provide any such resources to the scheme as are specified in subsection (7D) below.

(7D) The resources referred to in subsection (6D)(b) above are such additional resources, if any, as may be necessary for the scheme to secure to the person, without contribution or further contribution by the person or by other members of the scheme, the same accrued rights in respect of the period to which the declaration by the court or tribunal relates as if that person had been a member of the scheme since—

- (a) in a case to which subsection (8D) below applies, the deemed entry date;
- (b) in any other case, whichever is the later of the deemed entry date and 31st May 1995.

(8D) This subsection applies to a case where the court or tribunal finds there has been a breach of an equality clause which relates to terms concerning the age or length of service needed for becoming a member of the scheme.”(a)

Power for a court of industrial tribunal to declare right to equal treatment for members and employer’s duty to provide additional resources for breach of term in contract of employment

11. Where a claim to which regulation 9 applies relates to the terms on which members of a scheme are treated, section 2 of the Equal Pay Act shall have effect as if the following subsections were added after subsection (5) (as modified by regulation 9)—

“(6E) Where a court or industrial tribunal finds that there has been a breach of an equality clause which relates to the terms on which members of a scheme are treated—

- (a) the court or tribunal may declare that a member has a right to equal treatment in respect of such a period as it may specify provided that the period does not begin before 17th May 1990, and
- (b) if the court or tribunal declares that a member has a right to equal treatment in relation to a period falling before the date of the declaration, the employer shall provide any such resources to the scheme as are specified in subsection (7E) below.

(7E) The resources referred to in subsection (6E)(b) above are such additional resources, if any, as may be necessary for the scheme to secure to the member, without contribution or further contribution by the member or by other members of the scheme, the same accrued rights in respect of the period falling before the date of the declaration as if that member had been treated equally in respect of that period.”.

Power for a court or industrial tribunal to award payment of arrears or damages in breach of contract of employment claims by pensioner members and employer’s duty to provide additional resources

12. In the case of a claim by a pensioner member, in respect of a failure to comply with an equality clause which relates to the terms on which the member is treated, section 2 of the Equal Pay Act shall have effect as if the following subsections were added after subsection (5)—

“(6F) Where the court or tribunal awards a payment by way of arrears of benefits or damages, the employer shall provide any such resources to the scheme as are specified in subsection (7F) below.

(a) See footnote to regulation 5.

(7F) The resources referred to in subsection (6F) above are such additional resources, if any, as may be necessary for the scheme to secure the payment of those arrears of benefits or damages to the member, without contribution or further contribution by the member or by other members of the scheme.”.

Exceptions to the equal treatment rule: bridging pensions

13. The following circumstances are prescribed for the purposes of section 64(2) of the Pensions Act—

- (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).

Exceptions to the equal treatment rule: effect of indexation

14.—(1) The following circumstances are prescribed for the purposes of section 64(2) of the Pensions Act—

- (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 his period of pensionable service under the scheme would have been increased following an order made under section 150(9) of the Social Security Administration Act 1992(a) 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 his earnings factors during his period of pensionable service under the scheme is increased following an order made under section 150(9) of the Social Security Administration Act 1992.

Exceptions to the equal treatment rule: use of actuarial factors which differ for men and women

15.—(1) The factors prescribed for the purposes of section 64(3)(a) of the Pensions Act (equal treatment rule: exception relating to the application of actuarial factors which differ for men and women to employers’ contributions) 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.

(a) 1992 c.5. Section 150(1)(c), (2), (3) and (9) of that Act provides for the additional pension of a Category A retirement pension to be increased each year by reference to the general level of prices. See also section 46 of the Pension Schemes Act 1993 (c.48) by virtue of which any guaranteed minimum pension of a member of a salary-related contracted-out scheme (including any increases due under section 109 of that Act) is deducted from the member’s entitlement to additional pension.

(2) The following benefits are prescribed for the purposes of section 64(3)(b) of the Pensions Act (equal treatment rule: exception relating to the application of actuarial factors which differ for men and women to the determination of prescribed benefits)–

- (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 1993;
- (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.

Signed by authority of the Secretary of State for Social Security.

A. J. B. Mitchell
Parliamentary Under-Secretary of State,
Department of Social Security

7th December 1995

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations supplement the requirements for equal treatment relating to occupational pension schemes provided for in sections 62 to 66 of the Pensions Act 1995. Those sections implement the requirements of Article 119 of the Treaty establishing the European Community (concerning equal pay for men and women). These Regulations supersede the Occupational Pension Schemes (Equal Access to Membership) Regulations 1976 (S.I. 1976/142) as amended, made under section 118 of the Pension Schemes Act 1993 which is now repealed.

Regulation 2 provides for the Equal Pay Act 1970 to have effect in relation to an equal treatment rule subject to certain modifications.

Regulation 3 provides that a court or tribunal may not make a financial award for a claim relating to breach of an equal treatment rule and regulation 4 provides an employer with the right to appear and be heard in such proceedings before a tribunal.

Regulations 5 and 6 provide for a court or tribunal to have power to make a declaration as to an applicant's rights to equal treatment and for employers to provide any additional resources which may be required.

Regulation 7 makes provision in relation to the making of a financial award to a pensioner member in respect of a breach of an equal treatment rule and for employers to provide any additional resources which may be required.

Regulations 8 to 12 make provision, in relation to a breach of an equality clause in a contract of employment, similar to that contained in regulations 2 to 7.

Regulations 13 to 15 provide for permitted exceptions to an equal treatment rule. Regulation 13 concerns bridging pensions which are paid to men before they reach state pension age. Regulation 14 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 15 concerns the use of actuarial factors which differ for men and women in relation to the calculation of employer's contributions in certain circumstances and the provision of certain benefits.

As these Regulations concern the existing requirements of Article 119 of the Treaty establishing the European Community, no compliance cost assessment has been prepared.