
STATUTORY RULES OF NORTHERN IRELAND

2005 No. 377

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

PART 3

EQUAL TREATMENT RULE: ARMED FORCES SCHEMES

Application of Part 3

7.—(1) This Part —

- (a) applies (with modifications) certain provisions of the Equal Pay Act in relation to the operation of an equal treatment rule in respect of the terms of an occupational pension scheme, but
- (b) applies only to schemes which are an armed forces scheme.

(2) The modifications of the Equal Pay Act made by this Part apply to proceedings in respect of the terms of an armed forces scheme if the proceedings are instituted on or after the commencement date (subject to paragraph (3)).

(3) Those modifications do not so apply if the last day of the woman's period of service (to which the scheme relates) in the armed forces falls more than nine months before the commencement date.

Operation of the equal treatment rule on armed forces schemes

8. Section 6A of the Equal Pay Act⁽¹⁾ (service pay and conditions) shall have effect, in relation to the operation of an equal treatment rule in respect of an armed forces scheme, (see also regulations 10 and 11 which make further modifications to deal with different cases) as if—

- (a) subsections (1) and (2) were omitted;
- (b) for subsections (3) and (4) there were substituted the following subsections—
 - “(3) Any claim in respect of the contravention, in respect of a woman, of a term of an armed forces scheme which—
 - (a) relates to the terms on which—
 - (i) persons become members of the scheme, or
 - (ii) members of the scheme are treated, and
 - (b) is modified or included by an equal treatment rule,

may be presented by way of a complaint to an industrial tribunal under this section (and may not be presented by way of a complaint to an industrial tribunal under section 2).

(4) Subsections (5) to (10) apply in relation to any claim by a woman (“the claimant”) arising from a contravention of a term of a scheme referred to in subsection (3).”;

(1) Section 6A was inserted by section 25(2) of the Armed Forces Act 1996 (c. 46) and amended by regulation 6 of S.R. 2004 No. 171

- (c) for subsection (10) there were substituted the following subsection—
- “(10) Section 2A shall apply in relation to a complaint in respect of the claim as it applies to a complaint presented to an industrial tribunal under section 2(1), but with the substitution for any reference to section 1(2)(c) of a reference to Article 62(3)(c) of the Pensions (Northern Ireland) Order 1995 (the equal treatment rule).”;
- (d) in subsection (12), after the definition of “armed forces”, there were inserted the following definition—
- ““armed forces scheme” has the same meaning as in the Occupational Pension Schemes (Equal Treatment) (Amendment) Regulations (Northern Ireland) 2005;”, and
- (e) after subsection (13) there were added the following subsection—
- “(14) In the application of this section and sections 6AA and 6AB(2) to any claim in respect of the contravention of a term of an armed forces scheme, expressions used in any of those sections and in the Pensions (Northern Ireland) Order 1995 have the same meaning as in that Order.”.

Definition of “qualifying date”: proceedings relating to armed forces schemes

9. Section 6AA of the Equal Pay Act (meaning of “qualifying date” under section 6A(8)) shall have effect, in relation to the operation of an equal treatment rule in respect of an armed forces scheme as if—

- (a) for subsection (1) there were substituted the following subsections—
- “(1) This section applies for the purpose of determining the qualifying date, in relation to relevant proceedings on a complaint in respect of a woman, for the purposes of section 6A(8).
- (1A) In subsection 1 “relevant proceedings” means proceedings in respect of the terms on which—
- (a) persons become members of an armed forces scheme, or
- (b) members of an armed forces scheme are treated.”, and
- (b) in subsection (2), in the definitions of “concealment case” and “disability case”, for “the employer” there were substituted “the employer or the managers of the armed forces scheme”.

Claims relating to contraventions of terms as to admission or treatment

10. In the case of a claim that—

- (a) is made in respect of a contravention of a term of an armed forces scheme that relates to the terms on which—
- (i) persons become members of the scheme, or
- (ii) members of the scheme are treated, and
- (b) does not fall within regulation 11,

section 6A of the Equal Pay Act shall have effect as if it were further modified so that for subsection (9) there were substituted the following subsections—

(2) Sections 6AA and 6AB were inserted by regulations 7 and 8 respectively of [S.R. 2004 No. 171](#)

“(9) A woman shall not be entitled, in proceedings on a complaint in respect of the claim, to be awarded any payment by way of arrears of benefits or damages or any other financial award.

(9A) A court or industrial tribunal which finds that there has been a contravention of a term which is modified or included by an equal treatment rule may—

- (a) where the contravention relates to the terms on which persons become members of an armed forces scheme (including any terms concerning the age or length of service needed for becoming a member of the scheme), declare that a woman has the right to be admitted to the scheme with effect from such date as the court or industrial tribunal may specify provided that, in any case, that date is not earlier than 8th April 1976;
- (b) where the contravention relates to the terms on which members of an armed forces scheme are treated, declare that a woman who is a member has a right to equal treatment in respect of such a period as the court or industrial tribunal may specify provided that, in any case, that period does not begin before 17th May 1990.

(9B) Where a declaration under subsection (9A)(b) relates to any period falling before the date of the declaration, the employer shall provide to the armed forces scheme 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.”.

Claims by pensioner members relating to contraventions of terms as to treatment

11.—(1) In the case of a claim that—

- (a) is made in respect of a contravention of a term of an armed forces scheme that relates to the terms on which members of the scheme are treated, and
- (b) is made by a pensioner member,

the following provisions of the Equal Pay Act shall have effect as if they were modified (or in the case of section 6A further modified) as follows.

(2) Section 6A shall have effect as if for subsection (9) there were substituted the following subsections—

“(9) A woman who is a pensioner member shall not be entitled, in proceedings on a complaint in respect of the claim, to be awarded any payment by way of arrears of benefits or damages or any other financial award in respect of a time earlier than the arrears date (determined in accordance with section 6AB);

(9A) Where a court or industrial 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 armed forces scheme as are specified in subsection (9B).

(9B) The resources referred to in subsection (9A) 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 6AB (“arrears date” in proceedings under section 6A(9)) shall have effect as if —

- (a) for subsection (1) there were substituted the following subsection—

“(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 respect of a woman, for the purposes of section 6A(9).

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- (1A) In subsection (1) “relevant proceedings” means proceedings on a complaint in respect of the terms on which members of an armed forces scheme are treated.”, and
- (b) in subsection (2), in paragraph (a) of the definition of “concealment case” for “the employer” there were substituted “the employer or the managers of the armed forces scheme”.