
STATUTORY INSTRUMENTS

2005 No. 1923

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

PART 4

EQUALITY CLAUSE: SERVICE IN ARMED FORCES

Application of Part 4

12.—(1) This Part of these Regulations modifies the Equal Pay Act in relation to the operation of an equality clause in respect of a pension-related term of service.

(2) “Pension-related term of service” means a term of service in any of the armed forces which relates to the terms on which—

- (a) persons become members of an armed forces scheme; or
- (b) members of such a scheme are treated.

(3) The modifications of the Equal Pay Act made by this Part of these Regulations apply to proceedings in respect of pension-related terms of service if the proceedings are instituted on or after the commencement date (subject to paragraph (4)).

(4) Those modifications do not so apply if the last day of the woman’s period of service in the armed forces falls more than nine months before the commencement date.

Operation of equality clause on pension-related terms of service

13.—(1) Section 7A of the Equal Pay Act (service pay and conditions) shall have effect, in relation to the operation of an equality clause in respect of a pension-related term of service, as if it were modified as follows (see also regulations 14 and 15 which make further modifications to deal with different cases).

(2) In subsection (12), after the definition of “armed forces” insert—

““armed forces scheme” and “pension-related term of service” have the same meaning as in the Occupational Pension Scheme (Equal Treatment) (Amendment) Regulations 2005;”.

(3) After subsection (13) insert—

“(14) In the application of this section and sections 7AA to 7AC below to any claim in respect of a contravention of a pension-related term of service—

- (a) references to pay shall be regarded as references to benefits; and
- (b) expressions used in any of those sections and in the Pensions Act 1995 have the same meaning as in that Act.”.

Claims relating to contraventions of terms as to admission or treatment

14.—(1) In the case of a claim that—

- (a) is made in respect of a contravention of a pension-related term of service, and
- (b) does not fall within regulation 15,

section 7A of the Equal Pay Act shall have effect as if it were further modified as follows.

- (2) For subsection (9) substitute—

“(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.

(9A) A court or employment tribunal which finds that there has been a contravention of a pension-related term of service which is modified or included by a term corresponding to an equality clause in a contract of employment may—

- (a) where the contravention relates to the terms on which persons become members of an armed forces scheme (including any term 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 employment 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 employment 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) above 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

- 15.—(1) In the case of a claim that—

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

section 7A of the Equal Pay Act shall have effect as if it were further modified as follows.

- (2) In subsection (9), after “A woman” insert “who is a pensioner member”.
- (3) After subsection (9) insert—

“(9A) Where a court or employment tribunal awards a payment by way of arrears of benefits or damages, the employer shall provide any such resources to the armed forces scheme as are specified in subsection (9B) below.

(9B) The resources referred to in subsection (9A) 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, without contribution or further contribution by the pensioner member or by other members of the scheme.”