STATUTORY INSTRUMENTS

1976 No. 142

PENSIONS

The Occupational Pension Schemes (Equal Access to Membership) Regulations 1976

Made - - - -	*3rd February* 1976
Laid before Parliament	*10th February* 1976
Coming into Operation	*6th April* 1978

The Secretary of State for Social Services, in exercise of powers conferred upon her by sections 53(3) and (6), 55(2) and 66(3) and (4) of the Social Security Pensions Act 1975**(a)** and of all other powers enabling her in that behalf, hereby makes the following regulations:—

Citation, commencement and interpretation

1.—(1) These regulations may be cited as the Occupational Pension Schemes (Equal Access to Membership) Regulations 1976, and shall come into operation on 6th April 1978.

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

"the Act" means the Social Security Pensions Act 1975;

"the Board" means the Occupational Pensions Board;

"the Equal Pay Act" means the Equal Pay Act 1970**(b)** as amended by the Sex Discrimination Act 1975**(c)** and the Employment Protection Act 1975**(d)**;

"maximum age for admission", in relation to a person and a scheme, means the highest age at which, under the rules of that scheme, that person can become a member of that scheme;

"relevant employment", in relation to a scheme, means any employment with an employer who contributes or is liable to contribute to the resources of the scheme, or with any successor to such an employer;

"replacing scheme", in relation to another scheme, means a scheme to which persons who would otherwise be admitted to that other scheme would be admitted if that other scheme were wound up or ceased to admit new members;

"scheme" means an occupational pension scheme;

and other expressions have the same meanings as in the Act.

(3) Any reference in these regulations to any provision made by or contained in any enactment or instrument shall, except in so far as the context otherwise requires, be construed as a reference to that provision as amended or extended by any enactment or instrument and as including a reference to any provision which it re-enacts or which may re-enact or replace it, with or without modification.

(a) 1975 c. 60.
(b) 1970 c. 41.
(c) 1975 c. 65.
(d) 1975 c. 71.

(4) The rules for the construction of Acts of Parliament contained in the Interpretation Act 1889**(a)** shall apply for the purposes of the interpretation of these regulations as they apply for the purposes of the interpretation of an Act of Parliament.

Meaning of expressions "member", "prospective member" and "employer" in relation to a scheme

2.—(1) The following provisions of this regulation shall apply for the purposes of sections 53 to 56 of the Act (equal access requirements).

(2) Any person is to be regarded as a member of a scheme during, or at any time after, a period when his service in relevant employment is or was such that at the time it is or was given it either—

(*a*) qualifies or qualified him for benefits under the scheme; or

(*b*) is or was certain so to qualify him subsequently if it continues or continued for a sufficiently long time and the rules of the scheme and the terms of his contract of service remain or remained unaltered during that time.

(3) There are to be regarded as prospective members of a scheme any persons in relevant employment who are not members but—

(*a*) who, by virtue of the terms of their contracts of service, are able to become members at their own option or the option of any other person; or

(*b*) who, by virtue of the terms of their contracts of service, will become so able, if their service in relevant employment continues for a sufficiently long time and the terms of their contracts of service remain unaltered during that time; or

(*c*) who, by virtue of the rules of the scheme or the terms of their contracts of service, will become members in any event, if their service in relevant employment continues for a sufficiently long time and the rules of the scheme or, as the case may be, the terms of their contracts of service remain unaltered during that time.

(4) Any person, government department, public authority or body of persons who under the Social Security Act 1975**(b)** is, or is to be treated as, the secondary Class 1 contributor shall be treated as the employer of the earner in respect of whom the Class 1 contributions are payable.

(5) Without prejudice to paragraph (4) above, there shall be treated as the employer of a self-employed earner to whom a scheme applies any person (other than that self-employed earner), government department, public authority or body of persons who makes or is to make payments towards the resources of that scheme in respect of that self-employed earner (either under actual or contingent legal obligation or in the exercise of a power conferred, or duty imposed, on a Minister of the Crown, government department or any other person, being a power or duty which extends to the disbursement or allocation of public money).

Persons competent to apply for determination

3. In relation to a scheme which makes different provision for men and women with regard to access to membership, any persons who, if they were of the

(a) 1889 c. 63. **(b)** 1975 c. 14.

opposite sex, would be members or prospective members of the scheme shall be proper persons to make an application for the purposes of section 55 of the Act (determination of questions whether a scheme, other than a public service scheme, conforms with the equal access requirements).

Upper age limit for membership

4. The equal access requirements shall apply with the modification that, in a case where the rules of a scheme are such that the normal pension age applicable to a member of a scheme may be different from what it would be if he were of the opposite sex, membership of that scheme may be open to men and women on terms which differ as to the maximum age for admission, so however that where the normal pension age applicable to a person (if he becomes a member) is higher than it would be if he were of the opposite sex—

(*a*) the maximum age for admission for that person must not be lower than it would be if he were of the opposite sex; and

(*b*) the difference between the maximum age for admission applicable to that person and the maximum age for admission which would be applicable if he were of the opposite sex shall not exceed the difference between the normal pension age applicable to him and the normal pension age which would be applicable to him if he were of the opposite sex.

Interpretation of "age" and "length of service"

5. In the case of a scheme which provides for admission to membership to be by reference not to the attainment of a precise age or length of service but to the falling of a particular day of the week, month or year bearing some relationship to the date of attainment of an age or length of service, the equal access requirements shall apply with the modification that membership of the scheme must be open to men and women, not on terms which are the same as to the age and length of service needed for becoming a member, but on terms which are the same with regard to any qualification for becoming a member which is related to attainment of an age or a length of service.

Schemes to be considered together in certain cases

6. In a case where 2 or more schemes apply to employment with an employer, the equal access requirements shall apply with the modification that any one of those schemes which apart from this regulation does not comply with those requirements shall nevertheless be treated as doing so if that scheme and another or others of those schemes—

(*a*) were both or all set up on or before 5th April 1978;

(*b*) are both or all continuing to admit new members; and

(*c*) would comply with those requirements if treated as a single scheme.

Schemes with an overseas element

7.—(1) This regulation applies to any scheme which has any overseas element, that is to say, a scheme established, or relating to employment, or with parties domiciled, resident or carrying on business, in any part of the world outside Great Britain, or otherwise not confined in its operation to Great Britain (being a scheme to which the equal access requirements apply or but for the provisions of this regulation would apply).

(2) In the case of a scheme to which this regulation applies, the equal access requirements shall be so modified as not to apply to that scheme unless—

(*a*) at least one of its members is employed in the United Kingdom in employment to which the scheme relates; and

(*b*) either the scheme is established in Great Britain or it has a representative appointed to carry out the functions of a trustee or manager in Great Britain.

(3) In the case of a scheme to which this regulation applies and in respect of which conditions (*a*) and (*b*) in paragraph (2) of this regulation are fulfilled, the equal access requirements shall be so modified as to apply only in relation to men and women whose employment is in the United Kingdom, or whose earnings give rise to liability for primary Class 1 contributions or would do so if the level of their earnings were not below the lower earnings limit.

Schemes closed to new members

8.—(1) This regulation applies to any scheme which has ceased to admit any new members.

(2) In the case of a scheme to which this regulation applies, the equal access requirements shall be so modified as to apply only in relation to persons who, if they had been of the opposite sex, would have had access to membership of the scheme after 5th April 1978 but before the date on which the scheme ceased to admit new members.

Special provision for membership of a scheme to be or remain voluntary

9.—(1) This regulation applies to cases where it is or has been necessary to modify the rules of a scheme in order to make them comply with the equal access requirements because in the scheme's application to any class of persons membership of the scheme is or has been obligatory for members of that class who are of one sex but either voluntary for, or not available to, members of that class who are of the other sex.

(2) In a case to which this regulation applies, the equal access requirements shall apply subject to the exceptions that—

(*a*) while to become a member of the scheme is obligatory for the generality of members of that class, it may be voluntary for any member of that class who on 5th April 1978 is employed in relevant employment but is not a member of the scheme; and

(*b*) until his service in the employment of the person who was his employer on 5th April 1978 is terminated—

(i) it may continue to be voluntary for him to become a member of that scheme, and

(ii) it may be voluntary for him to become a member of any replacing scheme.

(3) For the purposes of paragraph (2) above, and except as mentioned in paragraph (4) below, a person's service in an employment is to be treated as terminated when his contract of service expires or is terminated, or, in a case where there is no contract, when the service itself ends.

(4) A person's service in an employment is not to be treated as terminated if that employment is followed by another employment with the same employer or his successor and either—

(*a*) there is no interval, or an interval not exceeding one month, between the 2 employments; or

(*b*) the second employment results from the exercise of a right to return to work under section 48(1) of the Employment Protection Act 1975**(a)** (right to return to work following pregnancy or confinement).

Modification, in relation to the equal access requirements, of the provisions of the Equal Pay Act as to equality clauses

10.—(1) Subject to paragraphs (2) to (4) below, the Equal Pay Act shall be so modified, in its application to the equal access requirements, as to have effect as if there were substituted, for references to less favourable terms of a contract and less favourable terms and conditions of employment, references to—

(*a*) terms (or, as the case may be, terms and conditions) which do not enable persons to have access to membership of a scheme (as compared with terms, or terms and conditions, which do enable persons to have such access), and

(*b*) terms (or, as the case may be, terms and conditions) which enable persons to have access to membership of a scheme at a higher minimum or (subject to regulation 4 above) lower maximum age, after a greater length of service or on a voluntary (as compared with an obligatory) basis.

(2) In relation to a person who on 5th April 1978 is not a member of a scheme but is employed in relevant employment, paragraphs (3) and (4) below shall apply until his service in the employment of the person who was his employer on 5th April 1978 is terminated (which expression is to be construed in accordance with paragraphs (3) and (4) of regulation 9 above).

(3) In its application to any such person as is specified in paragraph (2) above, the Equal Pay Act shall be further modified so as to provide that where, by virtue of paragraph (1) above and apart from the provisions of this paragraph, an equality clause would be a provision making it obligatory for that person to become a member of the scheme in question or any replacing scheme, an equality clause shall be a provision making that obligatory unless, but voluntary if, the scheme makes such provision as is referred to in paragraph (4) below, so however that any question whether the scheme has made such provision shall not fall to be determined in any proceedings brought in respect of a failure to comply with the equality clause, or in respect of a dispute in relation to the effect of that clause.

(4) The scheme's provision referred to in paragraph (3) above is that in the application of the scheme to any class of persons which includes the person referred to in paragraph (3) above, membership is obligatory for the generality of members of that class but voluntary for any member of that class who on 5th April 1978 is employed in relevant employment but is not a member of the scheme.

(5) The Equal Pay Act shall be further modified, in its application to the equal access requirements, so as to have effect as if for the references in section 1(2) to treating a contract as including a term there were substituted references to treating a contract as so modified as to include a term.

Damages not to be awarded for failure to comply with the equal access requirements

11. The Equal Pay Act shall be so modified that there shall be no power for

(a) 1975 c. 71.

a court or an industrial tribunal to award damages in respect of any failure to comply with the equal access requirements.

Power for court or industrial tribunal to declare right to admission to scheme, and employer's duty to provide additional resources

12.—(1) The Equal Pay Act shall be so modified as to provide that where a court or an industrial tribunal finds that there has been a breach of a term in a contract of employment which has been included in the contract, or modified, by virtue of an equality clause and which relates to membership of a scheme, or where it makes an order declaring the right of an employee to admission to membership of a scheme in pursuance of the equal access requirements, it may declare that the employee has a right to be admitted to the scheme in question with effect from such date ("the deemed entry date") as it may specify, not being earlier than whichever is the later of the following dates, namely—

(*a*) 6th April 1978; and

(*b*) the date 2 years before the institution of the proceedings in which the order was made.

(2) The Equal Pay Act shall be so modified as to require that if the deemed entry date is earlier than the date of the declaration, the employer shall provide any such resources as are specified in paragraph (3) below.

(3) The resources referred to in paragraph (2) above are any additional resources which may be necessary for the scheme to secure to the employee, without contribution or further contribution by the employee or by other members of the scheme, the same prospective entitlement to benefit arising from past service (other than benefit by way of refund of contributions) as if he had been a member of the scheme since the deemed entry date.

Employer's duty to provide additional resources when scheme is modified

13.—(1) This regulation applies to cases where—

(*a*) an employer has failed to comply with a term of employment relating to membership of a scheme; and

(*b*) the Board by order modify the scheme retrospectively (within the meaning of section 56(4) of the Act), or authorise or direct other persons to modify the scheme retrospectively, in order to make it comply with the equal access requirements.

(2) In a case to which this regulation applies, the employer of every person (not being a person who by virtue of regulation 9 above has, and is exercising, a right not to become a member of the scheme) who could have been, but because of the employer's failure to comply with a term of employment relating to membership of the scheme was not, a member of the scheme during a period ending on the date on which the order is made and beginning not earlier than the latest of the following dates, namely—

(*a*) the date 2 years earlier than that on which the order is made;

(*b*) the date with effect from which the scheme is to be modified; and

(*c*) 6th April 1978,

shall provide any such resources as are specified in paragraph (3) below.

(3) The resources referred to in paragraph (2) above are any additional resources which may be necessary for the scheme to secure to that person, without contribution or further contribution by him or by other members of

the scheme, the same prospective entitlement to benefit arising from past service (other than benefit by way of refund of contributions) as if he had been a member of the scheme since whichever is the later of—

(*a*) the date on which, but for the employer's failure mentioned in paragraph (2) above, he would have become a member of the scheme; and

(*b*) the date on which the period mentioned in paragraph (2) above began.

Additional power of Board to modify or authorise modification of schemes

14.—(1) Where—

(*a*) there has been an alteration under the Equal Pay Act of any terms of employment relating to access to membership of a scheme; and

(*b*) a competent person (within the meaning of paragraph (2) below) has applied to the Board to make or authorise such a modification of the rules of the scheme as is specified in paragraph (3) below,

the Board shall have power by order themselves to make, or to authorise the trustees or managers of the scheme or other persons named in the order to make, such a modification of the rules of the scheme.

(2) For the purposes of paragraph (1)(*b*) above, a competent person is any of the following, namely—

(*a*) the trustees or managers of the scheme;

(*b*) any person other than the trustees or managers who has power to alter any of the rules of the scheme; and

(*c*) any person who is an employer of persons in service in an employment to which the scheme applies.

(3) Paragraph (1) above refers to a modification of the scheme's rules which is consequential upon the alteration of terms of employment referred to in that paragraph.

(4) Subsections (2) to (4) of section 56 of the Act shall apply to orders and modifications under this regulation as they apply to orders and modifications under that section.

Barbara Castle,
Secretary of State for Social Services.

3rd February 1976.

EXPLANATORY NOTE

(*This Note is not part of the Regulations.*)

These Regulations make miscellaneous provisions with regard to the equal access requirements of sections 53 to 56 of the Social Security Pensions Act 1975, which relate to the access of men and women to membership of occupational pension schemes. Regulation 3 provides for a category of persons (additional to those specified in section 55(2)) to be competent to apply for a determination whether the rules of a scheme conform with those requirements.

Regulation 4 modifies those requirements in their application to upper age limits for membership; regulation 6 modifies them in their application to cases where there is (on or before 5th April 1978) a group of schemes some of which do not comply with those requirements unless the group is treated as a single scheme; and regulations 7 and 8 modify them in their application to schemes with an overseas element and schemes closed to new members respectively. Regulations 9 and 10 make a transitional provision for membership of a scheme to be or to remain voluntary for certain persons for whom it would otherwise be obligatory; and regulation 10 also modifies the references in the Equal Pay Act 1970 to "less favourable" terms and conditions of employment. Regulations 11, 12 and 13 modify the provisions of that Act in its application to the equal access requirements so that a court or industrial tribunal may not award damages but may declare the right of employees to be admitted to schemes, and so that in certain circumstances employers are required to make additional contributions to the resources of schemes so as to provide appropriate benefits for employees who, through a breach of the equal access requirements, have been admitted to schemes later than they should have been. Regulation 14 confers upon the Occupational Pensions Board power to order or effect the consequential modification of a scheme where there has been an alteration under the Equal Pay Act 1970 of terms of employment relating to membership of that scheme. The remaining regulations are concerned with interpretation.

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