

EQUALITY ACT 2010

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 5: Work

Chapter 3: Equality of terms

Section 67: Sex equality rule

Effect

227. This section requires that every occupational pension scheme is to have a sex equality rule read into it.
228. The rule requires that men and women are treated equally to comparable members of the opposite sex in relation both to the terms on which they are permitted to join the scheme, and to the terms on which they are treated once they have become scheme members.
229. The rule, insofar as it applies to the terms on which a person is treated once he or she has become a member of the scheme, does not apply to pensionable service before 17 May 1990. This was the date of the European Court's decision in *Barber v Guardian Royal Exchange Assurance Group* (C 262/88; [1991] 1 QB 344; [1990] ECR I-1889), which established that occupational pensions were pay for the purposes of what was Article 119 of the Treaty of Rome (now Article 157 of the Treaty on the Functioning of the European Union). Where the application of the rule relates to the terms on which a person becomes a member of the scheme, it has effect from 8 April 1976. This was the date of the judgment in *Defrenne v Sabena* (C 43/75; [1981] 1 All ER 122; [1976] ECR 455), where the Court, in holding that the principle of equal pay was directly effective, indicated that what was Article 119 of the Treaty of Rome should not be applied to periods of service prior to the judgment.
230. Where there has been a breach of a term modified by a sex equality rule, proceedings may be brought against the person responsible for the breach under Part 9 of the Act.

Background

231. The section replaces equivalent equal treatment provisions in section 62 of the Pensions Act 1995.

Example

- A scheme rule requires employees to work full time before they may join the scheme. There may be a breach of the equality rule because the scheme rule may have an adverse impact on female employees, who are less able to comply with the requirement to work full-time.