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## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations implement (in Great Britain) provisions of Council Directive [2000/78/EC](#) (OJNo. L 303, 2.12.2000, p.16) establishing a general framework for equal treatment in employment and occupation, so far as it relates to disability discrimination by trustees or managers of occupational pension schemes. For this purpose, they amend the Disability Discrimination Act [1995 \(c. 50\)](#) (“the Act”), as amended by the [Disability Discrimination Act 1995 \(Amendment\) Regulations 2003 \(S.I. 2003 No. 1673\)](#) (“the Amendment Regulations”).

The Regulations make provision for commencement on 1st December 2003 so far as enabling anything to be done for the purposes of preparing and bringing into force on or after 1st October 2004 a code of practice under section 53A of the Act concerning any provision of that Act as it will have effect on or after that date by virtue of these Regulations (regulation 1(2)). Otherwise, the Regulations come into force on 1st October 2004 (regulation 1(3)).

Regulation 3 inserts new sections 4G to 4K, relating to discrimination in occupational pension schemes, into Part 2 of the Act (which concerns discrimination in the employment field).

Section 4G inserts a non-discrimination rule (requiring trustees or managers to refrain from discriminating against a relevant disabled person in carrying out their functions in relation to the scheme or harassing such a person in relation to the scheme) into every occupational pension scheme (subsection (1)), and ensures that the other provisions of the scheme have effect subject to that rule (subsection (2)). Acts of discrimination or harassment by the trustees or managers contrary to the non-discrimination rule are unlawful (subsection (3)). The non-discrimination rule does not apply to rights accrued or benefits payable in respect of periods of service prior to 1st October 2004, although it does apply to communications with members or prospective members of the scheme about such rights or benefits (subsection (4)). The trustees or managers of the scheme are given power to alter schemes to ensure conformity with the rule (subsections (5) and (6)).

Section 4H imposes a duty to make reasonable adjustments on trustees or managers of schemes in relation to provisions, criteria or practices (including scheme rules) applied by them and physical features of premises occupied by them, where these place a relevant disabled person at a substantial disadvantage in comparison with persons who are not disabled.

Section 4I ensures that where a relevant disabled person presents a complaint to an employment tribunal (under section 17A of the Act) that trustees or managers of a scheme have acted in a way which is unlawful under Part 2 of the Act, the employer in relation to that scheme is to be treated as a party to the complaint.

Section 4J sets out the remedies available where a relevant disabled person presents a complaint to an employment tribunal (against trustees or managers, or against an employer) relating to the terms on which persons become members of a scheme or the terms on which scheme members are treated. It provides that (save in the case of claims by pensioner members) the tribunal may make a declaration of the complainant’s rights (to be admitted to the scheme or, as the case may be, to scheme membership without discrimination) but may not award any compensation (other than compensation for injury to feelings or compensation pursuant to section 17A(5) of the Act).

Section 4K(1) ensures that, in relation to communications, sections 4G to 4J apply to a disabled person entitled to present payment of dependants' or survivors' benefits, and to a disabled person who is a pension credit member of an occupational pension scheme, as they apply to a disabled pensioner member of the scheme. Section 4K(2) contains definitions.

**Status:** *This is the original version (as it was originally made).*

Regulation 4 makes consequential amendments to other provisions of the Act (as amended by the Amendment Regulations).

The regulatory impact of these Regulations was assessed as part of the regulatory impact assessment in relation to the Amendment Regulations. A copy of that document, and of the transposition note for these Regulations, may be obtained from: Disability Unit, Department for Work and Pensions, 6th Floor, The Adelphi, 1-11 John Adam Street, London WC2N 6HT. Copies of both documents have been placed in the Library of each House of Parliament.