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STATUTORY INSTRUMENTS

2003 No. 2770

DISABLED PERSONS

**The Disability Discrimination Act 1995 (Pensions)
Regulations 2003**

Made - - - - - 1st November 2003

Laid before Parliament 10th November 2003

Coming into force - - - - - 1st October 2004

Whereas the Secretary of State is a Minister designated for the purposes of section 2(2) of the European Communities Act 1972(a) in relation to discrimination(b);

Now, therefore, the Secretary of State for Work and Pensions, in exercise of the powers conferred on him by section 2(2) of that Act, hereby makes the following Regulations:—

Citation, commencement, extent and interpretation

1.—(1) These Regulations may be cited as the Disability Discrimination Act 1995 (Pensions) Regulations 2003.

(2) These Regulations shall come into force 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 1995 Act(c) concerning any provision of that Act as it will have effect on or after that date by virtue of these Regulations.

(3) Except as provided by paragraph (2), these Regulations shall come into force on 1st October 2004.

(4) These Regulations shall not extend to Northern Ireland.

(5) In these Regulations—

“the 1995 Act” means the Disability Discrimination Act 1995(d); and

“the Amendment Regulations” means the Disability Discrimination Act 1995 (Amendment) Regulations 2003(e).

Amendment of the 1995 Act

2. The amendments to the 1995 Act set out in regulations 3 and 4 shall have effect.

(a) 1972 c. 68.

(b) See the European Communities (Designation) (No. 3) Order 2002 (S.I. 2002/1819).

(c) Section 53A was inserted by section 9 of the Disability Rights Commission Act 1999 (c. 17) and amended by section 36 of the Special Educational Needs and Disability Act 2001 (c. 10). It is further amended by regulation 20 of the Amendment Regulations.

(d) 1995 c. 50.

(e) S.I. 2003/1673.

Occupational pension schemes

3. After section 4F (office-holders: supplementary) (as inserted by regulation 5 of the Amendment Regulations), insert the following sections—

“Occupational pension schemes

4G Occupational pension schemes: non-discrimination rule

- (1) Every occupational pension scheme shall be taken to include a provision (“the non-discrimination rule”) containing the following requirements—
 - (a) a requirement that the trustees or managers of the scheme refrain from discriminating against a relevant disabled person in carrying out any of their functions in relation to the scheme (including in particular their functions relating to the admission of members to the scheme and the treatment of members of the scheme);
 - (b) a requirement that the trustees or managers of the scheme do not subject a relevant disabled person to harassment in relation to the scheme.
- (2) The other provisions of the scheme are to have effect subject to the non-discrimination rule.
- (3) It is unlawful for the trustees or managers of an occupational pension scheme—
 - (a) to discriminate against a relevant disabled person contrary to requirement (a) of the non-discrimination rule; or
 - (b) to subject a relevant disabled person to harassment contrary to requirement (b) of the non-discrimination rule.
- (4) The non-discrimination rule does not apply in relation to rights accrued, or benefits payable, in respect of periods of service prior to the coming into force of this section (but it does apply to communications with members or prospective members of the scheme in relation to such rights or benefits).
- (5) The trustees or managers of an occupational pension scheme may, if—
 - (a) they do not (apart from this subsection) have power to make such alterations to the scheme as may be required to secure conformity with the non-discrimination rule, or
 - (b) they have such power but the procedure for doing so—
 - (i) is liable to be unduly complex or protracted, or
 - (ii) involves the obtaining of consents which cannot be obtained, or can only be obtained with undue delay or difficulty,by resolution make such alterations to the scheme.
- (6) The alterations referred to in subsection (5) may have effect in relation to a period before the alterations are made (but may not have effect in relation to a period before the coming into force of this section).

4H Occupational pension schemes: duty to make adjustments

- (1) Where—
 - (a) a provision, criterion or practice (including a scheme rule) applied by or on behalf of the trustees or managers of an occupational pension scheme, or
 - (b) any physical feature of premises occupied by the trustees or managers,places a relevant disabled person at a substantial disadvantage in comparison with persons who are not disabled, it is the duty of the trustees or managers to take such steps as it is reasonable, in all the circumstances of the case, for them to have to take in order to prevent the provision, criterion or practice, or feature, having that effect.
- (2) The making of alterations to scheme rules is (in addition to the examples set out in section 18B(2)) an example of a step which trustees or managers may have to take in order to comply with the duty set out in subsection (1).

- (3) Nothing in subsection (1) imposes any duty on trustees or managers in relation to a disabled person if they do not know, and could not reasonably be expected to know—
 - (a) that the disabled person is a relevant disabled person; or
 - (b) that that person has a disability and is likely to be affected in the way mentioned in subsection (1).

4I Occupational pension schemes: procedure

- (1) Where under section 17A(a) a relevant disabled person presents a complaint to an employment tribunal that the trustees or managers of an occupational pension scheme have acted in relation to him in a way which is unlawful under this Part, the employer in relation to that scheme shall, for the purposes of the rules governing procedure, be treated as a party and be entitled to appear and be heard in accordance with those rules.
- (2) In this section, “employer”, in relation to an occupational pension scheme, has the meaning given by section 124(1) of the Pensions Act 1995(b) as at the date of coming into force of this section.

4J Occupational pension schemes: remedies

- (1) This section applies where—
 - (a) under section 17A a relevant disabled person presents to an employment tribunal a complaint that—
 - (i) the trustees or managers of an occupational pension scheme have acted in relation to him in a way which is unlawful under this Part; or
 - (ii) an employer has so acted in relation to him;
 - (b) the complaint relates to—
 - (i) the terms on which persons become members of an occupational pension scheme, or
 - (ii) the terms on which members of the scheme are treated;
 - (c) the disabled person is not a pensioner member of the scheme; and
 - (d) the tribunal finds that the complaint is well-founded.
- (2) The tribunal may, without prejudice to the generality of its power under section 17A(2)(a), make a declaration that the complainant has a right—
 - (a) (where subsection (1)(b)(i) applies) to be admitted to the scheme in question; or
 - (b) (where subsection (1)(b)(ii) applies) to membership of the scheme without discrimination.
- (3) A declaration under subsection (2)—
 - (a) may be made in respect of such period as the declaration may specify (but may not be made in respect of any period before the coming into force of this section);
 - (b) may make such provision as the tribunal considers appropriate as to the terms upon which, or the capacity in which, the disabled person is to enjoy such admission or membership.
- (4) The tribunal may not award the disabled person any compensation under section 17A(2)(b) (whether in relation to arrears of benefits or otherwise) other than—
 - (a) compensation for injury to feelings;
 - (b) compensation pursuant to section 17A(5).

(a) The former section 8 of the 1995 Act, moved, renumbered and amended by regulation 9 of the Amendment Regulations.
(b) 1995 c. 26.

4K Occupational pension schemes: supplementary

- (1) In their application to communications, sections 4G to 4J apply in relation to a disabled person who is—
 - (a) entitled to the present payment of dependants' or survivors' benefits under an occupational pension scheme; or
 - (b) a pension credit member of such a scheme,as they apply in relation to a disabled person who is a pensioner member of the scheme.

- (2) In sections 4G to 4J and in this section—

“active member”, “deferred member”, “managers”, “pension credit member”, “pensioner member” and “trustees or managers” have the meanings given by section 124(1) of the Pensions Act 1995^(a) as at the date of coming into force of this section;

“communications” includes—

 - (i) the provision of information, and
 - (ii) the operation of a dispute resolution procedure;

“member”, in relation to an occupational pension scheme, means any active, deferred or pensioner member;

“non-discrimination rule” means the rule in section 4G(1);

“relevant disabled person”, in relation to an occupational pension scheme, means a disabled person who is a member or prospective member of the scheme; and

“prospective member” means any person who, under the terms of his contract of employment or the scheme rules or both—

 - (i) is able, at his own option, to become a member of the scheme,
 - (ii) will become so able if he continues in the same employment for a sufficiently long period,
 - (iii) will be admitted to it automatically unless he makes an election not to become a member, or
 - (iv) may be admitted to it subject to the consent of his employer.”.

Consequential amendments

- 4.—(1) Omit section 17 (occupational pension schemes) and the preceding cross-heading.

- (2) In section 18D (interpretation of Part 2) (as inserted by regulation 18 of the Amendment Regulations), in subsection (2)—
 - (a) after ““benefits”” insert “, except in sections 4G to 4K,”;
 - (b) in the definition of “duty to make reasonable adjustments”, after “4E,” insert “4H,”.

- (3) In section 55 (victimisation), in subsection (5) (as inserted by regulation 21 of the Amendment Regulations), after “4D,” insert “4G,”.

- (4) In Schedule 2^(b) (past disabilities)—
 - (a) in paragraph 3 (as substituted by regulation 29(1)(b) of the Amendment Regulations), after “4E(1),” insert “4H(1),”;
 - (b) in paragraph 4 (as substituted by regulation 29(1)(c) of the Amendment Regulations), after “4E(3)(b),” insert “4H(3)(b),”.

(a) 1995 c. 26.

(b) Schedule 2 was amended by the Special Educational Needs and Disability Act 2001 (c. 10), s. 38.

(5) In Schedule 3(a) (enforcement and procedure), in paragraph 2(2), at the end add “or the investigation or determination of any matter in accordance with Part 10 (investigations) of the Pension Schemes Act 1993(b) by the Pensions Ombudsman”.

Signed by authority of the Secretary of State for Work and Pensions.

1st November 2003

Maria Eagle
Parliamentary Under-Secretary of State,
Department for Work and Pensions

(a) Part I of Schedule 3 was amended by the Employment Tribunals Act 1996 (c. 17), s. 45, Sch. 3, Pt I; the Employment Rights (Dispute Resolution) Act 1998 (c. 8), s.1(2)(a); the Employment Relations Act 1999 (c. 26), ss. 41, 44, Sch. 8, para 7, Sch. 9, Table 12; and by reg. 29(2) of the Amendment Regulations.

(b) 1993 c. 48.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations implement (in Great Britain) provisions of Council Directive 2000/78/EC (OJ No. 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.

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.

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