
EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations, which are made under section 2(2) of the European Communities Act 1972 (c. 68), amend the Employment Equality (Sexual Orientation) Regulations 2003 (“the principal Regulations”). They do so in order to implement (in relation to trustees and managers of occupational pension schemes in Great Britain) Council Directive 2000/78/EC of 27th November 2000 establishing a general framework for equal treatment in employment (OJ L 303, 2.12.2000, p.16) so far as it relates to discrimination on grounds of sexual orientation. The principal Regulations make it unlawful to discriminate on grounds of sexual orientation in employment and vocational training, and come into force on 1st December 2003.

A new regulation – regulation 9A – is inserted into the principal Regulations by regulation 3(3). Regulation 9A makes it unlawful for the trustees or managers of an occupational pension scheme, when carrying out their functions, to harass or discriminate against a member or prospective member of the scheme.

An additional Schedule – Schedule 1A – is inserted into the principal Regulations by regulation 3(6). By virtue of Schedule 1A, every occupational pension scheme is treated as including a non-discrimination rule i.e. a rule requiring the trustees or managers of the scheme not to act in a way contrary to regulation 9A (see paragraph 2 of Schedule 1A); and trustees and managers are given power to alter schemes so as to secure conformity with that rule (see paragraph 4 of Schedule 1A).

Where a member or prospective member of a scheme has been subjected to harassment or discrimination contrary to regulation 9A, he can make a complaint against the trustees or managers of the scheme to an employment tribunal under regulation 28 of the principal Regulations. In such a case, Schedule 1A provides for the employer in relation to the scheme to be joined as a party to the complaint (see paragraph 6 of Schedule 1A).

Schedule 1A also makes provision regarding the remedies which may be granted by an employment tribunal in certain cases involving occupational pension schemes (see paragraph 7 of Schedule 1A). Where a member or prospective member of a scheme (other than a pensioner) makes a successful complaint against his employer, or the scheme’s trustees or managers, under regulation 28 of the principal Regulations, the tribunal may make a declaration as to his rights under the scheme. However, it cannot make an order for compensation under regulation 30(1)(b) of the principal Regulations unless the compensation is for injury to feelings or the order is made by virtue of regulation 30(3) of those Regulations.

Three further amendments to the principal Regulations are made by these Regulations. First, a modified definition of the term “benefits” is inserted into regulation 2 of the principal Regulations by regulation 3(2). The modified definition ensures that, when the term ‘benefits’ is used in relation to occupational pension schemes, it does not include facilities and services. Secondly, regulation 27 of the principal Regulations, which limits the proceedings which can be brought for a breach of those Regulations, is amended so as to ensure that a complaint that the non-discrimination rule has been breached by the trustees or managers of a scheme can be referred to the Pensions Ombudsman: see regulation 3(4). Thirdly, a new paragraph – paragraph (5) – is inserted into regulation 30 of the principal Regulations by regulation 3(5). This makes it clear that regulation 30 has effect subject to paragraph 7 of Schedule 1A.

A Regulatory Impact Assessment report of the effect that these Regulations will have on business costs, and a Transposition Note showing how the sexual orientation provisions of Council Directive 2000/78/EC have been implemented in Great Britain, are available to the public, free of charge,

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from the Selected Employment Rights Branch, UG65, Department of Trade and Industry, 1 Victoria Street, London SW1H 0ET. Copies of each have also been placed in both Houses of Parliament.