

**2012 No.**

**PENSIONS AND EQUALITY**

**The Occupational Pension Schemes and Pension Protection  
Fund (Equality) (Amendment) Regulations 2012**

*Made* - - - - \*\*\*  
*Laid before Parliament* \*\*\*  
*Coming into force* - - \*\*\*

The Secretary of State for Work and Pensions, being a Minister designated<sup>(a)</sup> for the purposes of section 2(2) of the European Communities Act 1972<sup>(b)</sup>, in relation to personal and occupational pensions, makes the following Regulations in exercise of the powers conferred by section 2(2) of that Act.

**Citation and commencement**

1. These Regulations may be cited as the Occupational Pension Schemes and Pension Protection Fund (Equality) (Amendment) Regulations 2012 and shall come into force on **[date to be inserted]** 2012.

**Amendment of the Pensions Act 2004**

2. In section 171 of the Pensions Act 2004<sup>(c)</sup> (equal treatment)—

- (a) in subsection (1), for “This section” substitute “Subsection (2)”;
- (b) after subsection (4) insert—

“(4A) Subsection (4B) applies where a person has been in pensionable service under an occupational pension scheme (regardless of whether subsection (2) also applies in that person’s case).

(4B) If, apart from this subsection, any of the payment functions so far as it relates (directly or indirectly) to that pensionable service is or becomes, by virtue of the application of the guaranteed minimum pension provisions, less favourable to that person than it would be if that person were of the opposite sex, that function has effect with such modifications as are necessary to ensure that the provision is not less favourable.”; and

- (c) in subsection (6), before the definition of “payment function”, insert—

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<sup>(a)</sup> See the European Communities (Designation) (No.7) Order 2004 (S.I. 2004/3328).

<sup>(b)</sup> 1972 c.68. Section 2(2) was amended by section 27(1)(a) of the Legislative and Regulatory Reform Act 2006 (c.51) and section 3 of the European Union (Amendment) Act 2008 (c.7).

<sup>(c)</sup> 2004 c.35.

““Guaranteed minimum pension provisions” means so much of the Pension Schemes Act 1993(a) and of any other enactment as relates to guaranteed minimum pensions (within the meaning of that Act);”.

### **Amendment of the Equality Act 2010**

**3.**—(1) Chapter 3 of Part 5 of the Equality Act 2010(b) (equality of terms) is amended as follows.

(2) In section 64 (relevant types of work), after subsection (2) insert—

“(3) Sections 66 to 68 and 70 apply where a person (A) is or has been in pensionable service under an occupational pension scheme (regardless of whether those sections also apply in A’s case by virtue of subsection (1)).”.

(3) In section 66 (sex equality clause)—

(a) at the beginning of subsection (2) insert “Where this section applies by virtue of section 64(1),”; and

(b) after subsection (4) insert—

“(5) Where this section applies by virtue of section 64(3), a sex equality clause is a provision that has the effect that if, by virtue of the application of the guaranteed minimum pension provisions, a term of A’s that relates to membership of or rights under the scheme concerned is less favourable to A than it would be if A were of the opposite sex, the term, in so far as a sex equality rule would have effect in relation to it, is modified so as not to be less favourable.

(6) “Guaranteed minimum pension provisions” means so much of the Pension Schemes Act 1993 and of any other enactment as relates to guaranteed minimum pensions (within the meaning of that Act).”.

(4) In section 67 (sex equality rule)—

(a) at the beginning of subsection (2) insert “Where this section applies by virtue of section 64(1),”; and

(b) after subsection (2) insert—

“(2A) Where this section applies by virtue of section 64(3), a sex equality rule is a provision that has the following effect—

(a) if, by virtue of the application of the guaranteed minimum pension provisions, a relevant term is less favourable to A than it would be if A were of the opposite sex, the term is modified so as not to be less favourable;

(b) if, by virtue of the application of those provisions, a term confers a relevant discretion capable of being exercised in a way that would be less favourable to A than it would be if A were of the opposite sex, the term is modified so as to prevent the exercise of the discretion in that way.

(2B) “Guaranteed minimum pension provisions” means so much of the Pension Schemes Act 1993 and of any other enactment as relates to guaranteed minimum pensions (within the meaning of that Act).”.

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

Minister of State,  
Department for Work and Pensions

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(a) 1993 c. 48.

(b) 2010 c.15.

**EXPLANATORY NOTE**

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