



A Brief Guide to Equal Pension Treatment

Guidance on the principle of equal pension treatment, discrimination and victimisation in relation to occupational pension schemes



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1. Introduction

The purpose of this booklet is to describe how the *Principle of Equal Pension Treatment* applies to *occupational benefit schemes*.

The *Principle of Equal Pension Treatment* between men and women in *occupational benefit schemes* is well established. On 1 January 1993 the Government introduced Part VII of the Pensions Act, 1990 (as amended) (the “Pensions Act”) giving effect to the following provisions of EC law:

- Article 119 of the Treaty of Rome which provides for equal pay for men and women. The European Court of Justice had ruled in the Barber case on 17 May 1990 that benefits under *occupational pension schemes* come within the scope of pay.
- Council Directive 1986/378 EC which specifically provides for the implementation of the *Principle of Equal Pension Treatment* in occupational social security schemes.

The effect of the legislation was to prohibit any *discrimination*, on the basis of sex in respect of any matter relating to an *occupational benefit scheme* and in relation to the manner in which an employer affords his employees access to an *occupational benefit scheme*. Direct *discrimination* on the basis of sex occurs where because of a person’s sex the person is treated less favourably than a person of the other sex, or where a person is treated, by reference to his or her marital or family status (the *Marital Status Ground* and the *Family Status Ground*), less favourably than a person of the other sex with the same status.

In 2004, the Pensions Act was amended by the insertion of a new Part VII which expands the grounds on which *discrimination* in an *occupational benefit scheme* is prohibited in accordance with the *Principle of Equal Pension Treatment*.

The reason for the expansion of the grounds, on which *discrimination* is prohibited, beyond the *Gender Ground*, is found yet again in EU legislation. The new Part VII implements Council Directive 2000/43 EC on the principle of equal treatment between persons irrespective of racial or ethnic origin (the *Ground of Race* and the *Traveller Community Ground*) and Council Directive 2000/78 EC prohibits *discrimination* in the field of employment and occupation based on religion or belief (the *Religion Ground*), disability (the *Disability Ground*), age (the *Age Ground*) and sexual orientation (the *Sexual Orientation Ground*). The *Principle of Equal Pension Treatment* must also apply in relation to the *members' dependants* as it applies in relation to *members*.

Not only is direct *discrimination* on the basis of the *Principle of Equal Pension Treatment* prohibited but also *indirect discrimination* in certain circumstances. *Indirect discrimination* occurs where an apparently neutral *rule* of a *scheme* puts a person who differs from another person in respect of one of the *discriminatory grounds* mentioned above at a disadvantage compared to another person in respect of the pension *scheme*. For example, *indirect discrimination* on the basis of sex may occur where access to an *occupational benefit scheme* is restricted to managers and it can be shown that the vast majority of managers are male.

It should be noted that some differences in treatment are still permitted. The general principle is that if there is a breach of the *Principle of Equal Pension Treatment* on one of the *discriminatory grounds* it is actionable, but there are certain exceptions contained in the legislation which operate to exclude certain factors in determining whether there has been a breach of the *Principle of Equal Pension Treatment* on one of the nine *discriminatory grounds*. This Booklet explains each of the *discriminatory grounds* and each of the exceptions under which differing treatment is permitted.

Victimisation is also prohibited by the Act. *Victimisation* occurs for example, where an employee is dismissed or otherwise treated adversely by an employer where he makes a complaint or gives notice of intention to complain about a breach of the *Principle of Equal Pension Treatment*.

The Booklet also sets out the procedures for making a complaint to the Equality Tribunal and the Circuit Court where a person believes he has been discriminated against or victimised contrary to the *Principle of Equal Pension Treatment* of the Act and the types of redress which can be obtained.

This booklet gives an overview of the requirement that occupational benefit schemes comply with the *Principle of Equal Pension Treatment*. It is not intended to be comprehensive; neither is it intended to be an interpretation of the law.

In this booklet you will see certain terms in italics. These are words or expressions commonly used in relation to pensions and equal treatment questions or which have a special definition under the Act. You will find an explanation of these terms in the Glossary on page 31.

Detailed Guidance Notes on this matter, for use by those who are administering pension schemes are also available. For more information contact:

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2. What is the Principle Of Equal Pension Treatment?

Every *occupational benefit scheme* must comply with the *Principle of Equal Pension Treatment*. The *Principle of Equal Pension Treatment* is that there may not be *discrimination* between persons on any of the *discriminatory grounds* specified in the Act. The principle also applies to access to, as well as the exercise of any discretion under, an *occupational benefit scheme*. The principle applies to *members' dependants* as it applies in relation to *members*.

It is an offence for a person to act (or to seek to have another person act) in breach of the *Principle of Equal Pension Treatment*.

3. What are the discriminatory grounds?

There are nine *discriminatory grounds*. These are:

- *Gender*
- *Marital Status*
- *Family Status*
- *Sexual orientation*
- *Religious belief*
- *Age*
- *Disability*
- *Race*
- *Membership of the Traveller Community.*

An allegation of breach of the *Principle of Equal Pension Treatment* must be based on one of the nine *discriminatory grounds*. A difference in pension treatment based on other grounds (such as work location, job description etc.) which does not fall within the scope of a *discriminatory ground* is not unlawful under Part VII of the Act.

4. In what circumstances will the Principle of Equal Pension Treatment apply?

A person is entitled to receive *Equal Pension Treatment* in relation to an *occupational benefit scheme*, in particular, he or she may not be treated less favourably than another person in a comparable situation (on any of the *discriminatory grounds*) in relation to:

- who may become a *member* of an *occupational benefit scheme*;
- how employees are afforded access to an employer's *occupational benefit scheme*;
- whether membership is compulsory or optional;
- eligibility criteria such as age at entry, length of service to qualify for benefits etc;
- the *normal pension age* for *members* of an *occupational benefit scheme*;
- the level of contributions payable by *members* to an *occupational benefit scheme*;
- the level of employer contributions to a *defined contribution scheme*;
- the exercise of any discretion in the granting of a benefit under an *occupational benefit scheme*;
- the capital cost associated with a certain amount of benefit secured (i.e. the '*Annuity Rate*');
- what benefit options are available to *members* on leaving service and how those benefits are calculated;
- accrual rates in a *defined benefit scheme*;

- survivors' benefits for spouses and *dependants of members*;
- early and late retirement terms; and
- conditions for voluntary contributions to purchase *defined benefits*.

Note: The Act provides for a number of exceptions to the above principle. These exceptions will be elaborated upon later in this booklet under the relevant *discriminatory ground*.

5. When does discrimination occur and what is prohibited by the Act?

5.1 Discrimination

Discrimination occurs where a person is, has been or would be treated less favourably than another person in a comparable situation where that treatment is based on a *discriminatory ground*.

Example

If Sheila cannot join her employer's occupational benefit scheme because she is female but a male employee in a comparable situation to Sheila's could join, then this would be discrimination on the Gender Ground.

Discrimination will also occur where a person ("X") receives less favourable pension treatment because of an association with another person ("Z") in circumstances where someone in a comparable situation ("Y") but who is not associated with Z would not have received less favourable treatment and it would constitute *discrimination* if Z received the less favourable treatment.

Example

X is associated with Z who is a member of the Traveller Community and as a result of this association X accrues benefits under a defined benefit scheme on a 1/80th basis. Y however is not associated with Z and accrues benefits on a 1/60th basis. X is discriminated against where:

- (i) X is treated less favourably than Y because of X's association with Z; and
- (ii) provided that it would be *discrimination* if Z (as a member of the Traveller Community) were to receive the same less favourable treatment that X had received.

5.2 Indirect discrimination

Indirect Discrimination is also prohibited by the Act and occurs where a rule which appears neutral, impacts more heavily (on any one of the *discriminatory grounds*) on one category of persons to their disadvantage (compared with another category of persons).

Example:

Scheme rules may provide that maintenance staff can join an occupational benefit scheme but administration staff cannot. If all of the administrative staff are women and all or the majority of the maintenance staff are men, then in the absence of a defence this may amount to indirect discrimination on the Gender Ground.

5.3 Objective justification

It is a defence to a claim of *indirect discrimination* to show that the *rule* complained of was implemented to achieve a legitimate aim of the employer, and that the *rule* is an appropriate and necessary way of achieving that aim. The defence is available provided that the rule was not implemented for the purpose of treating one category of persons less favourably than another. Legitimate employment policy, labour market and vocational training objectives are examples of legitimate aims specified in the Act.

5.4 Victimisation

Victimisation is also prohibited by the Act and occurs where an employee is dismissed or otherwise treated adversely by the employer:

- in relation to the making of a complaint of a breach of the *Principle of Equal Pension Treatment* to the employer, the Pensions Board or the Director of the Equality Tribunal; or

- in relation to supporting or assisting another employee in any way in proceedings under the equal treatment legislation, or instituting proceedings himself/herself for breach of the *Principle of Equal Pension Treatment*, or
- is dismissed or treated adversely by his/her employer after his/her employer becomes aware of his/her intention to do either of the above.

6. Discriminatory grounds and permitted exceptions

6.1 General permitted exception for compliance with statutory obligations

Any act done to comply with a statutory obligation under the Maternity Protection Acts 1994 and 2004 or the Adoptive Leave Act 1995 is permitted notwithstanding that this results in differing treatment on a *discriminatory ground*.

6.2 Gender Ground

There will be *discrimination* on the *Gender Ground* if a woman is treated less favourably than a man or vice versa. It also occurs where survivors' benefits are provided on a different basis for male and female *dependants*.

Permitted exceptions

The Act provides for exceptions to the above principle and permits differing treatment on the *Gender Ground* in the following circumstances:

(i) Differing Contribution Rates

There will be no breach of the *Principle of Equal Pension Treatment* on the *Gender Ground* where:

- an employer pays different contributions for male and female *members* into a *defined contribution scheme* and where the purpose of the differing contributions is to remove or limit differences in the benefits;
- in a *defined benefit scheme* a different level of contribution is paid in respect of male and female *members*, where the purpose is to ensure the *scheme* has sufficient funds to cover the cost of the benefits;
- women are treated differently in connection with pregnancy and childbirth (see the Board's guide on "Women and Pensions").

(ii) Annuity Rates

It is not a breach of the *Principle of Equal Pension Treatment* on the *Gender Ground* for an *occupational benefit scheme* to use different *annuity rates* for men and women in calculating:

- the benefits to be provided under a *defined contribution scheme* where the difference arises from actuarial factors (e.g. allowance for longer life expectancy of females);
- the amount of:
 - a transfer payment in respect of occupational benefits provided under a *defined benefit scheme*; or
 - a pension payable to a *dependant* following surrender of part of a *member's* pension;where the difference arises from the use of actuarial factors.

(iii) Leaving Service Benefits

It is not a breach of the *Principle of Equal Pension Treatment* on the *Gender Ground* for an *occupational benefit scheme* to use actuarial factors which differ according to gender in determining the amount of:

- the deferred benefit which can be secured by the application of the value of a *member's* account in the case of a *defined contribution scheme*;
- the transfer payment which is payable in respect of a *member's* deferred benefit entitlement in a *defined benefit scheme*; or
- the service credit to be awarded in respect of a transfer payment received into a *defined benefit scheme*.

(iv) Lump Sum Payments in lieu of a pension

Where a *member* can choose to take a lump sum payment in lieu of an equivalent amount of pension, the amount of pension surrendered in exchange for a lump sum payment may vary between male and female scheme *members* without breaching the *Principle*

of *Equal Pension Treatment* if the difference arises from the use of actuarial factors.

Note: If taking a lump sum payment is mandatory then there can be no difference in the amount of the payment.

(v) **Early and late retirements terms and voluntary contributions**

The value of a pension is based on the life expectancy of the recipient. Where a *member* voluntarily retires either before or after *normal pension age*, the amount of pension will be adjusted because the pension fund must now provide the *member* with a pension for a longer or shorter period of time. Where this adjustment is determined using actuarial factors, then the amount of pension may vary between male and female *members* without breaching the *Principle of Equal Pension Treatment on the Gender Ground*.

6.3 Marital Status Ground

Discrimination on the *Marital Status Ground* will occur where less favourable treatment is based on the fact that a person is single, married, separated, divorced or widowed.

Permitted Exceptions

The Act permits different *Dependants'* benefits as follows:

- “Spouse’s Benefits”: More favourable *occupational benefits* may be provided for spouses of deceased married *members* where no equivalent death benefits are provided for non-marital partners of deceased *members*, provided no *discrimination* on the *Gender Ground* occurs as a result.
- “Orphans’ Benefits”: Where a member has predeceased his or her spouse, more favourable *occupational benefits* may be paid on the death of a *member’s* spouse than may be payable to or upon the death of the partner of a deceased unmarried *member*, provided no *discrimination* on the *Gender Ground* occurs as a result.

Example 1

Positive *discrimination* in favour of married people is permitted as long as the same benefit is provided in respect of male and female *members* of the *occupational benefit scheme*, e.g. it is permissible to pay a spouse's death in service benefit but to provide no equivalent benefit for unmarried or same-sex partners.

Example 2

If a *member* with *marital status* dies and his or her spouse subsequently dies, an *occupational benefit scheme* may provide a children's pension without providing similar benefits for the children of an unmarried *member*.

Example 3

If a *member* with *marital status* dies and his or her spouse subsequently dies, an *occupational benefit scheme* may provide for increased children's pensions without providing for corresponding increases to pensions payable to the children of an unmarried *member*.

6.4 Family Status Ground

Discrimination on the *Family Status Ground* occurs where less favourable treatment is based on the fact that one person has *family status* and the other person does not.

A person has *family status* where they are a parent (or a person in loco parentis) to a person under the age of 18, or a parent or resident primary carer to a person over 18 with a disability needing continuing regular or frequent support.

Permitted Exceptions

The Act provides for the following exceptions to the general rule and permits differing treatment on the *Family Status Ground* in the following circumstances:

- On the death of a *member* with *family status*, more favourable *occupational benefits* may be paid to or upon the death of the *member's* spouse or partner than are payable on the death of a *member* who does not have *family status*, provided no *Discrimination* on the *Gender Ground* occurs as a result.

Example

An occupational benefit scheme may not provide a higher accrual/contribution rate for family status members, e.g. a defined benefit scheme could not say provide for benefits at a rate of 1/60th of Salary for each year of service for family status members and 1/80th of Salary for each year of service for members without family status. A scheme may provide children's death in service pensions in respect of a family status member where no equivalent benefit is offered for members without family status.

6.5 Sexual Orientation Ground

Discrimination on the Sexual Orientation Ground occurs where one person is accorded less favourable treatment than another person due to differing sexual orientation, including heterosexuality, homosexuality and bisexuality.

Permitted Exception

An *occupational benefit scheme* is allowed to pay spouse's benefits without paying any equivalent benefits to the partners, including same sex partners of unmarried *members* without breaching the *Principle of Equal Pension Treatment* on the grounds of *Marital Status* and/or *Sexual Orientation*, provided no *discrimination* on the *Gender Ground* occurs as a result.

6.6 Religion Ground

Discrimination on the Religion Ground occurs where less favourable treatment is based on the fact that persons have different *religious beliefs* or where one person has a *religious belief* and the other person does not. *Religious belief* includes a religious background or outlook.

6.7 Age Ground

Discrimination on the Age Ground occurs where, based on the fact that persons are of different ages, one person receives less favourable treatment than the other. This ground only applies to persons over the maximum age for which there is an obligation to attend school, (i.e. minors aged less than 16 years or who have not completed 3 years of post-primary education, whichever occurs the later).

Permitted Exceptions

The Act provides for exceptions to the above *rule* and permits differing treatment on the *Age Ground* in the following circumstances:

(i) Access to Scheme Membership

Provided there is no *discrimination on the Gender Ground*, a *scheme* can treat persons with different ages or lengths of service differently in deciding:

- to fix age or length of service (or a combination of both) as a condition for admission to a *scheme*, entitlement to benefits under an *occupational benefit scheme*, or to use age related factors for actuarial calculations;

Example 1

An occupational benefit scheme may fix an entry requirement of attaining age 25 years' and 2 years' service prior to admission provided that there is no discrimination on the Gender Ground (and subject to PRSA access obligations).

An occupational benefit scheme may fix an upper age limit for admission to the scheme e.g. a maximum age of entry of 60 in a scheme with a normal pensionable age of 65.

Example 2

An occupational benefit scheme may fix an entry requirement of attaining age 25 years and 2 years' service for staff and a requirement of attaining age 35 and 10 years' service for management prior to admission, provided that there is no discrimination on the Gender Ground (and subject to PRSA access obligations).

(ii) Level of contributions/benefits

To fix different ages or lengths of service, or a combination of both to qualify for:

(a) a particular level of benefit under a *defined benefit scheme*;

or

(b) a particular level of contribution under a *defined contribution scheme* provided that such conditions are justified by reference to a legitimate aim of the employer. Legitimate employment policy, labour market and vocational training objectives are examples of legitimate aims specified in the Act.

Example 3

Provided an employer can show a legitimate aim (e.g. a labour market objective such as retention of senior employees) which is appropriate and necessary, an occupational benefit scheme design could provide that, on attaining the age of 35 and completing 10 years' service, the employer would increase employer contributions to a defined contribution scheme (provided that there is no discrimination on the Gender Ground and subject to PRSA access obligations).

(iii) Retirement Ages

It is not *discrimination* on the *Age Ground* to fix different ‘retirement ages’ for different employees or groups of employees, provided no *discrimination* on the *Gender Ground* occurs as a result.

(iv) Annuity Rates

Differing factors attributable to different ages can be used in actuarial calculations including those relating to *Annuity Rates* and similar calculations.

6.8 Disability Ground

Discrimination on the *Disability Ground* occurs where one person has a *disability* and the other person does not, or where both persons have different *disabilities* and one person receives less favourable treatment than the other.

Permitted Exceptions

The Act provides for exceptions to the above *rule* and permits differing treatment on the *Disability Ground* in the following circumstances:

(i) Eligibility For Scheme Benefits

An *occupational benefit scheme* can provide for more favourable *occupational benefits* to be paid to a *member* with a *disability*, where the *member* avails of early retirement on the grounds of that *disability*. A person without that *disability* is not entitled to this more favourable treatment.

(ii) Commutation

Where a *member* opts to take a lump sum payment in lieu of an equivalent amount of pension, an *occupational benefit scheme* may provide, subject to Revenue requirements, for accelerated commutation for a *member* taking early retirement due to serious ill-health.

(iii) **Special Provisions**

- The provisions of the Pensions Act relating to *discrimination* on the *Disability Ground* do not apply to Defence Forces employments.
- Provided there is no *discrimination* on the *Gender Ground*, an *occupational benefit scheme* may provide for differences in treatment of disabled *members* who cannot do the same amount of work in a particular period as a *member* without that disability.

6.9 Ground of Race

Discrimination on the *Ground of Race* occurs where the less favourable treatment is based on the fact that one person is of a different race, colour, nationality, ethnic or national origin, or a combination of any of those factors and another person is not.

6.10 Traveller Community Ground

Discrimination occurs on the ground of membership of the *Traveller Community*, where the less favourable treatment is based on the fact that one person is a *member* of the *Traveller Community* and another person is not.

7. Non-Compliance

7.1 What is the effect of a rule which does not comply with the Principle of Equal Pension Treatment?

A *rule* of an *occupational benefit scheme* which does not comply with the *Principle of Equal Pension Treatment* is null and void to the extent it breaches the principle.

Depending on the date the *rule* was made and the relevant *discriminatory ground*, there are different effective dates from which the *rule* is null and void – see section 7.5.

7.2 Null and void dates for Grounds other than the Gender Ground

The date with effect from which a *rule* is null and void is as follows:

- for a **discriminatory rule on Grounds of Race** – 19 July 2003 or, if later, the date on which the *rule* purports to come into force;
- for **other discriminatory rules** (except for *Gender Ground* and *Grounds of Race*): 2 December 2003 or, if later, the date on which the rule purports to come into force.

An *occupational benefit scheme's discriminatory rule* may continue in force in respect of rights and obligations in relation to periods of membership prior to the date the *rule* becomes null and void under the Act.

7.3 Null and void dates for the Gender Ground

There are a series of relevant dates to consider in respect of *discriminatory rules* which are null and void on the *Gender Ground*. The date with effect from which a *rule* is null and void is as follows:

- for a **discriminatory rule on access** – 8 April 1976 or, if later, the date on which the Rule purports to come into force;

- for **other discriminatory rules** (except for those applying to self-employed persons and *rules* made after 5 April 2004) 17 May 1990 or earlier if proceedings were started before that date, but in any event not earlier than 8 April 1976.
- for **discriminatory rules applicable to self-employed persons**: 1 January 1993 or, if later, the date on which the *rule* purports to come into force;
- for **discriminatory rules made after 5 April 2004**: the date on which the *Rule* purports to come into force;

7.4 Gender Discrimination may continue for certain deferred members

Where a *rule* of an *occupational benefit scheme* is rendered null and void on the *Gender Ground*, the *discriminatory rule* may remain in force in respect of the rights and obligations of certain groups of *members* before specified dates as set out below:

- (a) for employees;
 - (i) who left service or retired before 17 May 1990, the *rule* may remain unequal;
 - (ii) who left service or retired between 17 May 1990 and 31 December 1998, equalisation is required in respect of the period between 17 May 1990 and 31 December 1998, but provisions may remain unequal in respect of service prior to 17 May 1990;
 - (iii) in respect of *rules* relating solely to retirement ages, who left service or retired between 17 May 1990 and 31 December 2017, equalisation is required in respect of the period between 17 May 1990 and 31 December 2017, but provisions may remain unequal in respect of service prior to 17 May 1990;

- (iv) with effect from 1 January 1999 in respect of employees leaving or retiring on or after that date, a discriminatory *rule* (other than a *rule* on retirement ages where the relevant date is 1 January 2018) must be equalised in respect of all an employee's service including service prior to 17 May 1990.
- (b) for self-employed persons, a discriminatory *rule* may remain in force in respect of benefits and obligations attributable to a period of membership before 1 January 1993.

7.5 What happens when a rule is rendered null and void?

- Where a *rule* is rendered null and void for breach of the *Principle of Equal Pension Treatment*, the person who received less favourable treatment must receive the more favourable treatment for the appropriate period of membership in the *occupational benefit scheme* with effect from the relevant date as determined in accordance with 7.2 and 7.4 above (“Levelling Up”).
- The *occupational benefit scheme* can be amended for the future so that all *scheme members* receive the less favourable treatment from the date on which the *scheme rule* is amended (“Levelling Down”).

7.6 Backdated Member Contributions

Where an *occupational benefit scheme* provides for mandatory *member contributions*, the *Scheme* may require the payment of *appropriate back contributions* as a condition of the back dated admission of a person as a *member*.

8. Complaints

8.1 Who can complain?

A person who claims not to have received *Equal Pension Treatment* or to have been the subject of *victimisation* (“a Complainant”) may refer a complaint to the Director of the Equality Tribunal (“the Director”). Where the Director feels the complaint could be resolved by mediation, in the absence of any objection from the parties, the complaint may be dealt with by an equality mediator.

Where the complaint is based on a breach of the *Principle of Equal Pension Treatment* on the *Gender Ground*, the Complainant may refer their case to the Circuit Court instead of the Director.

The Pensions Board may refer matters to the Director where it appears to the Pensions Board that:

- *Discrimination* or *victimisation* has occurred in relation to a particular person who has not referred the matter to the Director;
- there is a failure to comply with the *Principle of Equal Pension Treatment* in respect of a person whom it is not reasonable to expect to refer the matter to the Director themselves;
- a person has procured or attempted to procure another person to do anything amounting to *discrimination* or *victimisation*, or to breach the *Principle of Equal Pension Treatment*.

8.2 May a complainant be represented at a complaints hearing?

Complainants may appoint any individual or body to represent them in proceedings. Please note that because of related statutory duties, the Pensions Board is not able to represent complainants in proceedings.

8.3 *Is there a time limit within which to make a claim?*

Claims in respect of a claim of *victimisation* or a breach of the *Principle of Equal Pension Treatment* must be brought while in employment, or within six months of termination of employment.

Where circumstances exist where it was not reasonable for a Complainant to make the claim within the time limits, the Complainant may apply to the Director or to the Circuit Court (as the case may be) for the discretion to extend the time period to twelve months following termination of employment.

8.4 *What does a Complainant have to prove?*

(a) **Discrimination**

The Complainant must establish facts from which it can be reasonably inferred that there has been a breach of the *Principle of Equal Pension Treatment*. Once this has been done it is for the person against whom the complaint is made, to prove that there was no such breach.

(b) **Victimisation**

In cases of alleged *victimisation*, the Complainant must only show that they were dismissed, and that the employer knew that the Complainant had or intended to either make a complaint or support or assist the complaint of another of a breach of the *Principle of Equal Pension Treatment*. Where this is established the employer will have to prove this was not the reason for the dismissal.

What redress is available to a person who has not received Equal Pension Treatment?

- An order requiring that the Complainant receive the more favourable treatment (“levelling up”).
- An order directing a person or persons to implement the *Principle of Equal Pension Treatment* for the future (i.e. from the date on which the rule of the *Scheme* is amended to comply with a “levelling up” order).

- An order directing a person or persons to take a specific course of action in accordance with the order.
- An order of compensation (to a maximum of two years salary) for the effects of *victimisation*, but limited to *victimisation* occurring in the six years prior to the referral of the case to the Director.
- An order for re-instatement or re-engagement with or without an order for compensation (to a maximum of two years salary).
- Where there is a breach of the *Principle of Equal Pension Treatment* on the *Gender Ground*, and the Director makes an award of compensation, the Director can also order the payment of interest.

9. Family Leave and Maternity Absence

9.1 Family Leave

During a period of *qualifying family leave*, *occupational benefit schemes* are required to ensure that a *member*:

- continues in membership of the *scheme*; and
- continues to accrue rights under the *scheme*;

as if he or she were at work and being paid normally during that period.

There is no obligation to pay an employee or provide him/her with pension benefits by reference to a period of family leave which is not *qualifying family leave*.

Nothing in the Act makes unlawful any act done in compliance with the Maternity Protection Acts 1994 and 2004 or the Adoptive Leave Act 1995.

9.2 Maternity Absence

During a period of *qualifying maternity absence*, *occupational benefit schemes* are required to ensure that a *member*:

- continues in membership of the *scheme*; and
- continues to accrue rights under the *scheme*;

during any period of *qualifying maternity absence* in the same manner as if she were at work and being paid normally during that period.

There is no obligation to pay an employee, or provide her with pension benefits during any period of maternity absence which is not *qualifying maternity absence*.

Nothing in the Act prevents an *occupational benefit scheme* from providing special more favourable treatment for women in connection with pregnancy or childbirth, or makes unlawful any act done in compliance with the Maternity Protection Acts 1994 and 2004 or the Adoptive Leave Act 1995.

10 Miscellaneous

10.1 *Disputes as to whether an occupational benefit scheme is Defined Benefit or Defined Contribution.*

Where there is a dispute as to whether an *occupational benefit scheme* is *defined benefit* or *defined contribution*, it shall be determined by the Pensions Board, following an application made to it by one of the following persons:

- the *trustees* of the *scheme*;
- any employer of the persons to whom the *scheme* applies;
- a *member* or prospective *member* of the *scheme*; or
- other persons prescribed in regulations by the Minister who, in the opinion of the Minister ought to be entitled to make such an application.

An appeal to the High Court exists in relation to points of law by a person who brought or was entitled to bring an application.

10.2 *Report of Pensions Board to the Director of the Equality Tribunal*

The Director of the Equality Tribunal may request the Pensions Board to prepare a report and answer questions in relation to the occupational pension schemes, on which he may rely in making his decision. The Pensions Board must give a copy of any such report to the complainant, respondent and any other person to whom it relates.

11 The Pensions Board

The Pensions Board was established by the Minister for Social Welfare under the terms of the Pensions Act. Its main functions as set out in that Act and amending legislation are:

- to monitor and supervise the operation of the Pensions Act and pension developments generally, including the activities of *PRSA (Personal Retirement Savings Account)* providers, the provision of *PRSA* products and the operation of *PRSAs*;
- to issue guidelines or Guidance Notes on the duties and responsibilities of trustees of schemes, and Codes of Practice on specific aspects of their responsibilities;
- to issue guidelines or Guidance Notes on the duties and responsibilities of *PRSA* providers in relation to *PRSA* products;
- to encourage the provision of appropriate training for *trustees* of pension schemes, and to advise the Minister on standards for *trustees*;
- to advise the Minister on all matters in relation to the Pensions Act and on pension matters generally.

Occupational pension schemes must register with the Board, and most *occupational pension schemes* must pay an annual fee to meet the Board's administrative costs. The Board can act on behalf of pension scheme *members* who are concerned about their scheme; it can investigate the operation of pension schemes; it has the power to prosecute for breaches of the Pensions Act, and to take court action against *trustees* for the protection of *members* and their rights.

In relation to *PRSAs*, the Board and the Revenue Commissioners are jointly responsible for the approval of *PRSA* products in order to provide for the protection of *PRSA* contributors and the need for effective supervision of the production, marketing and sale of such

products. The Board can collect fees on an annual basis from *PRSA* providers to defray the costs of the supervision of this function; it can act on behalf of *PRSA* contributors who have concerns about their *PRSAs*; it can investigate the state of a *PRSA* product, the *PRSA* provider in respect of its *PRSA* activities and employers in relation to statutory requirements of the Pensions Act; it has the power to initiate prosecutions for breaches of the Pensions Act.

The Pensions Board includes representatives of trade unions, employers, Government, pension scheme *trustees*, the pensions industry, consumer interests, pensioner interest and various professional groups involved with *occupational pension schemes* and *PRSAs*.

12 Glossary

Age Ground

Discrimination by reference to age is discrimination on the Age Ground.

Annuity

A series of payments made at stated intervals until a particular event – usually the death of the person receiving the annuity – occurs. It is normally secured by the payment of a single premium to an insurance company.

Annuity Rate

The capital cost associated with a certain amount of benefit secured.

Appropriate Back Contributions

Appropriate back contributions in relation to a scheme means –

- (a) In a case where the *rules* of the *scheme* so provide, the amount of *member* contributions due for the period concerned, at the appropriate contribution rate applying during that period calculated by reference to the salary applying at the time the contributions are being paid, or
- (b) in any other case, the amount of contributions due, calculated in accordance with the *rules* of the *scheme*, from the beginning of the period in respect of which admission to the *scheme* is granted.

Beneficiaries

A person entitled to a pension payment at a future date. Normally this would be an early leaver, but the term is sometimes used to describe someone whose retirement is being postponed.

Deferred Benefit

If you leave an *occupational pension scheme* before *normal pension age* having completed the *vesting period*, but do not have entitlement to an immediate pension, then you are entitled to a *deferred benefit*. This is the benefit to which you are entitled from *normal pension age*

based on service completed to date of exit in a *defined benefit scheme*, or on the accumulation of employee and employer contributions in a *defined contribution scheme*.

Defined Benefits – See Defined Benefit Scheme

Defined Benefit Scheme

An *occupational pension scheme* in which the benefits are calculated according to a set formula. The benefits may be related to service completed and/or earnings prior to retirement.

Defined Contribution Scheme

An *occupational pension scheme* in which the retirement benefits paid to each member depend on the amount of contributions which have been paid in for that member, and the investment returns earned on those contributions.

Deferred Member

A person entitled to a pension payment at a future date. Normally this would be an early leaver, but the term is sometimes used to describe someone whose retirement is being postponed.

Dependant

A person who is financially dependent on a *member* or *pensioner*, or was so at the time of death or retirement of the *member* or *pensioner*. For Revenue purposes, a child of the *member* or *pensioner* may always be regarded as a dependant, until he or she reaches the age of eighteen or ceases to receive full-time education or vocational training, if later. A spouse of a *member* or *pensioner* may always be regarded as a *dependant*.

Disability Ground

Discrimination by reference to disability is *discrimination* on the Disability Ground. Disability means total or partial absence of a person's bodily or mental functions, including the absence of a part of person's body, the presence in the body of organisms causing or likely

to cause chronic disease or illness, the malfunction, malformation or disfigurement of a part of a person's body, a condition or malfunction which results in a person learning differently from a person without the condition or malfunction, or a condition illness or disease which affects a person's thought processes, perception of reality, emotions or judgement or which results in disturbed behaviour. Disability includes a disability which exists at present, or which previously existed but no longer exists, or which may exist in the future, or which may be imputed to a person.

Discrimination

Less favourable treatment of one person as against another in a comparable situation on a *discriminatory ground* regarding access to or membership of an *occupational benefit scheme*. Discrimination also occurs where a person receives less favourable treatment on a *discriminatory ground* because of an association with another person (and it would constitute discrimination if that other person were treated less favourably in the same manner). *Discrimination* includes the issue of an instruction to discriminate.

Discriminatory Grounds

The *Gender Ground, Family Status Ground, Marital Status Ground, Sexual Orientation Ground, Religion Ground, Age Ground, Disability Ground, Ground of Race* and *Traveller Community Ground* are the discriminatory grounds. *Discrimination* on a discriminatory ground contrary to the *Principle of Equal Pension Treatment* is prohibited under Part VII of the Pensions Act.

Family Status – see Family Status Ground

Family Status Ground

Discrimination by reference to Family Status is *discrimination* on the Family Status Ground. Family Status means responsibility as a parent, or as a person in loco parentis in relation to a person who has not attained the age of 18 years or, as a parent, or the resident primary

carer in relation to a person aged 18 or over with a *disability* which is of such nature as to give rise to the need for care or support on a continuing, regular or frequent basis.

Gender Ground

Discrimination by reference to gender is *discrimination* on the Gender Ground. Gender means male or female gender.

Ground of Race

Discrimination by reference to race, colour, nationality, ethnic or national origins is *discrimination* on the Ground of Race.

Indirect Discrimination

Where an apparently neutral *rule* of an *occupational benefit scheme* concerned puts persons who differ in relation to any of the *discriminatory grounds* at a particular disadvantage compared with other persons, being *members* or prospective *members* of that *scheme*.

Marital Status Ground

Discrimination by reference to Marital Status is *discrimination* on the Marital Status Ground. Marital Status means whether a person is single, married, separated, divorced, or widowed.

Member

A person who has been admitted to membership of an *occupational benefit scheme* and who is entitled to benefits under the *scheme*. This will include active *members*, *pensioners* and *deferred members*.

Normal Pension Age

This is the age at which retirement benefits become payable. This will be set out in the governing documents of an *occupational benefit scheme*. Normal pension age is usually in the range of 60 to 65.

Objective Justification

It may be possible to justify the fixing of different levels of contribution under a *defined contribution* scheme by reference to a legitimate aim of the employer. Legitimate employment policy, labour market and vocational training objectives are examples of legitimate aims specified in the Act.

Similarly, it is a defence to a claim of *indirect discrimination* to show that the *rule* complained of was implemented to achieve a legitimate aim of the employer, and that the *rule* is an appropriate and necessary way of achieving that aim.

Occupational Benefit

Payments in the form of pensions, payable in respect of termination of service, retirement, old age, death, interruptions of service by reason of sickness or invalidity, accidents, injuries or diseases arising out of or in the course of a person's employment, unemployment or expenses incurred in connection with children or other *dependants*.

Occupational Benefit Scheme

This is formally defined in the Act as a scheme or arrangement for providing *occupational benefits* to employees and the self-employed. This definition includes *occupational pension schemes*, *personal pension* plans and *PRSAs*, but also includes other arrangements such as permanent health insurance.

Occupational Pension Scheme

A pension scheme set up by an employer to provide retirement benefits for employees. All occupational pension schemes are *occupational benefit schemes* for the purposes of Part VII of the Act. An occupational pension scheme is formally defined in the Pensions Act. The term occupational pension scheme is generally used to distinguish job related pension schemes from State Social Welfare schemes. A *personal pension plan* is not an occupational pension scheme, nor is a *PRSA*, even if the employer contributes to it.

Personal Pension Plan

A policy taken out with an insurance company in order to provide benefits in retirement. These may be taken out by those who are self-employed, or who are in *non-Pensionable Employment*. All *personal pension plans* are *occupational benefit schemes*.

Personal Retirement Savings Account (PRSA)

A PRSA is a contract between an individual and an authorised PRSA provider in the form of an investment account. The PRSA benefits will be determined by the contributions paid by and on behalf of the contributor, and the investment return on those contributions. There are two types of PRSA contract

- A **Standard PRSA** is a contract that has a maximum charge of 5% on the contributions paid and 1% per annum on the assets under management. Investments are only allowed in pooled funds which include unit trusts and life company unit funds.
- A **Non-Standard PRSA** is a contract that does not have maximum limits on charges and/or allows investments in funds other than pooled funds.

Preserved Benefit

Prior to the Pensions Act, *occupational pension schemes* were not obliged to preserve benefits on leaving service, i.e. the only benefit paid was a refund of member's contributions. The Pensions Act requires schemes to provide a minimum preserved benefit for those leaving service between 1st January 1993 and 1st June 2002 provided 5 years' scheme membership have been completed, of which at least 2 must be completed after 1st January 1991. The Pensions (Amendment) Act, 2002 requires schemes to provide a minimum preserved benefit to those who leave after 1st June 2002 with 2 or more year's scheme service. In the case of a *defined benefit scheme*, the preserved benefit means a deferred pension, deferred retirement gratuity and benefits in the event of death before pension

commences. In the case of a *defined contribution scheme*, preserved benefit refers to the accumulation of employer and employee contributions.

Principle of Equal Pension Treatment

This principle dictates that there shall be no *discrimination* on any of the nine *discriminatory grounds* in respect of any *rule* of a *scheme*. The principle applies in relation to *members*, *members' dependants*, and those seeking access to membership of an *occupational benefit scheme*.

Qualifying Family Leave

Any period throughout which a *member* is absent from work for family reasons, and in respect of which the employer pays the *member* remuneration.

Qualifying Maternity Absence

Any period throughout which a woman is absent from work due to pregnancy or childbirth, and in respect of which her employer, or former employer, pays her any remuneration.

Religious Belief – see Religion Ground

Religion Ground

Discrimination by reference to religious belief is *discrimination* on the Religion Ground. Religious belief includes religious background or outlook.

Rule – see definition of Rules

Rule(s)

The detailed provisions of an *occupational benefit scheme*, normally set out in a formal way in the scheme's governing documents.

Scheme

Scheme means an *occupational benefit scheme*.

Sexual Orientation Ground

Discrimination by reference to sexual orientation is *discrimination* on the Sexual Orientation Ground. Sexual orientation means heterosexual, homosexual or bisexual orientation.

Transfer Value

If you leave an *occupational benefit scheme* with entitlement to *deferred benefit*, then you may be entitled to elect to transfer your benefits to either a new employer's scheme, to a Personal Retirement Bond, or to a PRSA (only possible if less than 15 years' service completed). In the case of a *defined benefit scheme*, the transfer value represents the actuarial value at the date of transfer of any pensions payable to your *dependants* in the event of your death. In the case of a *defined contribution scheme*, the transfer value represents the accumulated value at the date of transfer of the employer and employee contributions.

Traveller Community Ground

Discrimination by reference to membership of the Traveller Community is *discrimination* on the Traveller Community Ground. Traveller Community means the community of people commonly so called who are identified by both themselves and others as people with a shared history, culture and traditions including historically a nomadic way of life on the island of Ireland.

Trustee

An individual or a company which alone or jointly becomes the legal owner of property to be administered for the benefit of someone else (the *beneficiaries*), in accordance with the provisions of the document creating the trust and the provisions of *trust law* generally and the Pensions Act.

Trust Deed and Rules

Occupational pension schemes are usually set up under trust. A *Trust Deed and Rules* governs how the scheme is managed and sets out how the benefits are determined and to whom they are payable.

Trust Law

Trust law comprises a number of statutory provisions dating back to the Trustee Act, 1893, and principles of equity which have evolved over many years in cases decided in the Courts.

Vesting Period

This is the period of membership of an *occupational pension scheme*, which you must complete in order to be entitled to *deferred benefits* on leaving service.

Victimisation

Where the dismissal or otherwise adverse treatment of an employee by his employer occurs as a reaction to a complaint, or participation in a complaint by an employee in relation to a breach of the *Principle of Equal Pension Treatment*.

13. Useful Addresses

The Department of Social and Family Affairs

Pension Services Office
College Road
Sligo
Tel: 071 916 9800
LoCall: 1890 500 000
Web: www.welfare.ie

Financial Services (Pensions) Business

Office of the Revenue Commissioners
Grattan House, 4th Floor
Lower Mount Street
Dublin 2
Tel: 01 647 4022
Fax: 01 647 4748
Web: www.revenue.ie
E-mail: lcdretirebens@revenue.ie

The Pensions Board

Verschoyle House
28/30 Lower Mount Street
Dublin 2
Tel: 01 613 1900
Fax: 01 631 8602
Web: www.pensionsboard.ie
E-mail: pb@pensionsboard.ie

Financial Services Ombudsman's Bureau

Regus House
Harcourt Centre
Harcourt Road
Dublin 2
Lo call: 1890-88-20-90
Tel: 01 662-0899
Fax: 01 662-0890
Web: www.financialservicesombudsmansbureau.ie
E-mail: enquiries@financialombudsman.ie

**The Financial Regulator
Consumer Information Department**

PO Box 9138
College Green
Dublin 2
LoCall: 1890 777 777
Web: www.financialregulator.ie
E-mail: consumerinfo@FinancialRegulator.ie

The Equality Authority

2 Clonmel Street
Dublin 2
Tel: 1890 24 55 45
Fax: 01 417 3333
Web: www.equality.ie
E-mail: info@equality.ie

The Equality Tribunal

3 Clonmel Street
Dublin 2
LoCall: 1890 34 44 24
Tel: 01 477 4100
Web: www.equalitytribunal.ie
E-mail: info@equalitytribunal.ie

The Pensions Ombudsman

36 Upper Mount Street
Dublin 2
Tel: 01 647 1650
Fax: 01 676 9577
Web: www.pensionsombudsman.ie
E-mail: info@pensionsombudsman.ie



An Bord Pinsean -
The Pensions Board

Authority for Pensions