

A brief guide to equal pension treatment

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

Disclaimer

The Pensions Authority have made every effort to ensure that this document is correct. However, no liability whatsoever is accepted by the Pensions Authority, its servants or agents for any errors or omissions in the information contained in this document or for any loss occasioned to any person acting or refraining from acting as a result of the information in this document.

Table of contents

1.	Introduction	4
2.	What is the principle of equal pension treatment?	7
3.	What are the discriminatory grounds?	8
4.	In what circumstances will the principle of equal pension treatment apply?	9
5.	When does discrimination occur and what is prohibited by the Pensions Act?	11
5.1	Discrimination	11
5.2	Indirect discrimination	11
5.3	Objective justification	12
5.4	Victimisation	12
6.	Discriminatory grounds and permitted exceptions	13
6.1	General permitted exception for compliance with statutory obligations ...	13
6.2	Gender ground	13
	Permitted exceptions	13
	Differing contribution rates	13
	Early and late retirement terms and voluntary contributions	14
6.3	Civil status ground	15
	Permitted exceptions	15
6.4	Family status ground	16
	Permitted exceptions	16
6.5	Sexual orientation ground	17
	Permitted exception	17
6.6	Religion ground	17
6.7	Age ground	17
	Permitted exceptions	17
6.8	Disability ground	19
	Permitted exceptions	19
6.9	Ground of race	20
6.10	Traveller community ground	20
7.	Non-compliance	21

7.1	What is the effect of a rule which does not comply with the principle of equal pension treatment?	21
7.2	Null and void dates for grounds other than the gender ground.....	21
7.3	Null and void dates for the gender ground.....	21
7.4	Gender discrimination may continue for certain deferred members	22
7.5	What happens when a rule is rendered null and void?	23
7.6	Backdated member contributions	23
8.	Complaints.....	24
8.1	Who can complain?	24
8.2	May a complainant be represented at a complaints hearing?	24
8.3	Is there a time limit within which to make a claim?	24
8.4	What does a complainant have to prove?	25
	Discrimination	25
	Victimisation	25
8.5	What redress is available to a person who has not received equal pension treatment?.....	25
9.	Family leave and maternity absence	27
9.1	Family leave	27
9.2	Maternity absence	27
10.	Miscellaneous	28
10.1	Disputes as to whether an occupational benefit scheme is defined benefit or defined contribution	28
10.2	Report of the Authority to the Director General of the Workplace Relations Commission.....	28
11.	Glossary of terms.....	29

1. Introduction

The Pensions Authority is the statutory body that supervises compliance with the requirements of the **Pensions Act** by **trustees** of occupational pension schemes and trust retirement annuity contracts (RACs), **personal retirement savings account (PRSA)** providers, registered administrators, employers, key function holders and any other parties subject to the requirements of the **Pensions Act**. The Pensions Authority also provides guidance on the operation of the **Pensions Act** and advises the Minister for Social Protection in relation to the **Pensions Act** and on pension matters generally.

The purpose of this guide is to describe how the **principle of equal pension treatment** applies to **occupational benefit schemes**.

In this guide you will see certain terms in bold print. These are words or expressions commonly used in relation to pensions or which have a specific definition under the **Pensions Act**. You will find an explanation of these terms in the glossary of terms at the end of the guide.

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** 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 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 civil or **family status** (the **civil 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 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** would put 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 guide explains each of the **discriminatory grounds** and each of the exceptions under which differing treatment is permitted.

Victimisation is also prohibited by the **Pensions 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 guide also sets out the procedures for making a complaint to the Workplace Relations Commission 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 **Pensions Act** and the types of redress which can be obtained.

This guide 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.

Detailed guidance notes on this matter, for use by those who are administering pension schemes are available [here](#).

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 **Pensions 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.
- Civil 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 **Pensions 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, they 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 (DC) 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 (DB) scheme**,
- survivors' benefits for spouses and **dependants** of **members**,
- early and late retirement terms, and
- conditions for voluntary contributions to purchase **defined benefits**.

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

5. When does discrimination occur and what is prohibited by the Pensions 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 1:

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 2:

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 **DB 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:

- (a) X is treated less favourably than Y because of X's association with Z, and
- (b) 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 **Pensions 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 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 **Pensions Act**.

5.4 Victimisation

Victimisation is also prohibited by the **Pensions 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 Authority or the Director of the Workplace Relations Commission; or
- in relation to supporting or assisting another employee in any way in proceedings under the equal treatment legislation, or instituting proceedings themselves for breach of the **principle of equal pension treatment**; or
- after their employer becomes aware of their 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 Acts, 1995 and 2005 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 **Pensions Act** provides for exceptions to the above principle and permits differing treatment on the **gender ground** in the following circumstances.

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 **DC scheme** and where the purpose of the differing contributions is to remove or limit differences in the benefits,
- in a **DB scheme**, a different level of contribution is paid in respect of male and female **members**, where the purpose is to ensure that the **scheme** has sufficient funds to cover the cost of the benefits,
- women are treated differently in connection with pregnancy and childbirth.

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 **DC 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 **DB 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.

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 **DC scheme**,
- the **transfer payment** which is payable in respect of a **member's deferred benefit** entitlement in a **DB scheme**, or
- the service credit to be awarded in respect of a **transfer payment** received into a **DB scheme**.

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.

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

Early and late retirement 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 Civil status ground

Discrimination on the **civil status ground** will occur where less favourable treatment is based on the fact that a person is single, married, separated, divorced, widowed, in a civil partnership or being a former civil partner in a civil partnership that has ended by death or has been dissolved.

Permitted exceptions

The **Pensions Act** permits different **dependants'** benefits as follows:

- 'Spouse's/civil partner's benefits': More favourable **occupational benefits** may be provided for spouses/civil partners of deceased married **members** where no equivalent death benefits are provided for non-civil partners of deceased **members**, provided no **discrimination** on the **gender ground** occurs as a result.
- 'Orphans' benefits': Where a **member** has predeceased their spouse/civil partner, more favourable **occupational benefits** may be paid on the death of a **member's** spouse/civil partner 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 or those in a civil partnership 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/civil partner's death in service benefit but to provide no equivalent benefit for unmarried or same-sex partners.

Example 2:

If a **member** with **civil status** dies and their spouse/civil partner 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 **civil status** dies and their spouse/civil partner 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 **Pensions 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/civil 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 **DB 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/civil partner'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 **civil 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 three years of post-primary education, whichever occurs the later).

Permitted exceptions

The **Pensions Act** provides for exceptions to the above rule and permits differing treatment on the **age ground** in the following circumstances.

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 two years' service prior to admission provided 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 two years' service for staff and a requirement of attaining age 35 and 10 years' service for management prior to admission, provided there is no **discrimination** on the **gender ground** (and subject to **PRSA** access obligations).

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 **DB scheme**, or
- (b) a particular level of contribution under a **DC 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 **Pensions 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 **DC scheme** (provided there is no **discrimination** on the **gender ground** and subject to **PRSA** access obligations).

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.

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 **Pensions Act** provides for exceptions to the above rule and permits differing treatment on the **disability ground** in the following circumstances.

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.

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.

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.

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; and
- 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 **Pensions 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; and
- 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, and
- (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 General of the Workplace Relations Commission (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 Authority may refer matters to the Director where it appears to the Authority 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, and
- 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 Authority 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?

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.

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.

8.5 What redress is available to a person who has not received equal pension treatment?

The following is the redress 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 they 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 Acts, 1995 and 2005.

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 Acts, 1995 and 2005.

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 a **DB scheme** or a **DC scheme**, it shall be determined by the Authority, 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 the Authority to the Director General of the Workplace Relations Commission

The Director General of the Workplace Relations Commission may request the Authority to prepare a report and answer questions in relation to the **occupational pension schemes**, on which he may rely in making his decision. The Authority must give a copy of any such report to the complainant, respondent and any other person to whom it relates.

11. Glossary of terms

Age ground: Discrimination by reference to age is discrimination on the age ground.

Annuity: A guaranteed retirement income for life paid at stated intervals until a particular event (usually the death of the person receiving the annuity). Annuities are normally purchased from a life assurance company at retirement in return for a lump sum payment (from your pension fund).

Annuity rate(s): The level of retirement income you receive will depend on annuity rates at the time of your annuity purchase.

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.

Civil status ground: One of the nine discriminatory grounds set out in the Pensions Act in the context of the principle of equal pension treatment. Discrimination by reference to civil status is discrimination on the civil status ground. Civil status means being single, married, separated, divorced, widowed, in a civil partnership or being a former civil partner in a civil partnership that has ended by death or been dissolved.

Deferred benefit: Any retirement benefit, payment of which is delayed, e.g., until a person reaches normal pensionable age. Most often used to refer to pensions payable at retirement age which accrue to a scheme member on leaving service before retirement.

Deferred member: A pension scheme member who has left service with an entitlement to retirement benefits payable at a future date.

Defined benefits: See 'defined benefit scheme'.

Defined benefit scheme (also known as ‘final salary scheme’): Defined benefit (DB) schemes provide members with retirement and death benefits based on predefined formulae set out in the rules of the scheme. Benefits are often based on a members’ salary close to retirement (or earlier death or leaving service) and on the length of time they have been a member of the scheme. For this reason, these schemes are sometimes known as ‘final salary’ schemes. However, DB schemes may also be ‘career average’ schemes in which the pension calculation is typically based on the member’s average earnings while a member of the scheme.

Defined contribution scheme (also known as ‘money purchase plan’): Defined contribution schemes provides retirement benefits based on the accumulated value of contributions paid to a pension scheme by or on behalf of a member, including the investment returns earned on those contributions less any charges. As such, it is the contributions that are ‘defined’ or known, as opposed to the benefits that the member will receive at retirement.

Dependant: A person who depends financially on a scheme member. Children are generally regarded as dependants until they reach the age of 18 or leave full-time education or vocational training, if later. A spouse/civil partner is always regarded as a dependant and a cohabiting partner is generally considered a dependant also. The definition of a dependant for any particular scheme is typically set out in the rules of the scheme.

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 a 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 includes the issue of an instruction to discriminate.

Discriminatory grounds: Gender, family status, civil status, sexual orientation, religion, age, disability, race and traveller community membership 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 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 parent has family status 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.

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 on grounds of gender: A form of sex discrimination, usually unintentional, which is deemed to exist if conditions are applied to a group of workers which, though not expressly related to sex, are more likely to be met by one sex than the other.

Member: A person who has been admitted to membership of a pension scheme and who remains entitled to benefits under the scheme. This includes active members, deferred pensioners and pensioners.

Normal pensionable age (NPA): Normal pensionable age (NPA) means the earliest age at which a pension scheme member is entitled to receive immediate retirement benefits from a pension scheme in normal circumstances, or age 60, whichever is later. NPA usually coincides with normal retirement age.

Objective justification: It may be possible to justify the fixing of different levels of age or qualifying service (or both) as a condition in relation to the accrual of benefits under a defined benefit scheme or the level of contributions to a defined contribution scheme by reference to a legitimate objective of the employer. Legitimate employment policy, labour market and vocational training objectives are examples of legitimate objectives specified in the Pensions 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. See section 72 of the Pensions Act.

Occupational benefit: Occupational benefits, as defined in the Pensions Act, include payments in the form of pensions, payable in respect of:

- retirement, old age or 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 section 65 of the Pensions Act in relation to the principle of equal treatment, as a scheme or arrangement for providing occupational benefits to employees and the self-employed. This definition includes certain occupational pension schemes and pension contracts, and also includes permanent health insurance arrangements.

Occupational pension scheme: A scheme set up for employees which provides either or both of the following benefits:

- retirement benefits for members,
- death benefits for the dependant(s) of members.

Pensions Act: The Pensions Act, 1990, as amended, is the principal piece of pensions legislation in Ireland and has been considerably amended and extended since 1990.

Personal pension contract: A retirement savings contract, usually with an insurance company, providing benefits at retirement. Personal pension contracts may be taken out by those who are self-employed or who are in non-pensionable employment. There are two forms of personal pension contracts: personal retirement savings accounts (PRSAs) and retirement annuity contracts (RACs). PRSAs can also be used by people in pensionable employment who wish to make additional voluntary contributions. The tax treatment of contributions, maximum benefits and drawdown options for RACs are broadly the same as for PRSAs.

Personal retirement savings account (PRSA): A personal retirement savings account (PRSA) is a personal retirement savings contract that any individual can take out with an authorised PRSA provider. It is effectively an investment account used to save for retirement and savings can only be accessed at retirement. PRSAs are a type of defined contribution arrangement. Income tax relief is given on contributions to a PRSA, within limits set by Revenue. Revenue also set rules regarding how and when retirement savings can be accessed. Further information on these matters can be found in the [Revenue Pensions Manual](#). A register of authorised PRSA providers and

their approved PRSA products is available on the [Pensions Authority website](#). The Authority has also published a guide to PRSAs, available [here](#).

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 nine discriminatory grounds are gender, civil status, family status, sexual orientation, religious belief, age, disability, race and membership of the travelling community.

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's salary.

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 salary.

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 'rules'.

Rules: The detailed provisions of a pension scheme normally set out in a formal way and usually given authority by a trust deed.

Scheme: Scheme, as defined in the Pensions Act, means an occupational pension scheme.

Sexual orientation ground: The sexual orientation ground is one of nine discriminatory grounds listed in the Pensions Act. The Pensions Act prohibits discrimination of people on the ground of sexual orientation in any rule of an occupational benefit scheme. Sexual orientation means heterosexual, homosexual or bisexual orientation.

Transfer payment (also known as 'transfer value'): A member of a pension scheme who is entitled to a preserved benefit is entitled to take a transfer payment from that pension scheme to:

- (a) another pension scheme of which they are a member or prospective member,
- (b) a buy-out bond, also known as a 'personal retirement bond', with an insurance

company, or

(c) a personal retirement savings account (PRSA) with a PRSA provider,

in lieu of the benefits payable to the member from the pension scheme from which the transfer payment is made.

In the case of a defined benefit pension scheme, the transfer payment is the actuarial value of the deferred pension (preserved benefit). This may be reduced to reflect the funding position of the pension scheme. In the case of a defined contribution pension scheme, the transfer payment is the accumulated value of contributions paid by or in respect of the member.

Traveller community ground: Discrimination by reference to membership of the traveller community is discrimination on the traveller community ground under the Pensions Act. 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.

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.

Trustee: In the context of pension schemes means an individual or a company which alone, in the case of a company, or jointly becomes the legal owner of assets to be administered for the benefit of pension scheme members and beneficiaries in accordance with the provisions of the document creating the trust, the provisions of trust law generally and the Pensions Act which is overriding. Since the second EU pensions directive was transposed, the Pensions Act requires there to be a minimum of two trustees for each pension scheme, or two directors in the case of a sole corporate trustee.

Victimisation: Where the dismissal or otherwise adverse treatment of an employee by their 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.