

**SECOND SUPPLEMENT TO THE GIBRALTAR
GAZETTE**

No. 2,901 of 29th February, 1996.

LEGAL NOTICE NO. 27 OF 1996

INTERPRETATION AND GENERAL CLAUSES ORDINANCE

EMPLOYMENT AND TRAINING ORDINANCE

**EMPLOYMENT (EQUAL TREATMENT IN OCCUPATIONAL
PENSION SCHEMES) REGULATIONS 1996.**

In exercise of the powers conferred on it by section 23 of the Interpretation and General Clauses Ordinance, and of all other enabling powers, and for the purpose of transposing into the national law of Gibraltar Council Directive 86/378, the Government has made the following regulations —

Title and commencement.

1. These regulations may be cited as the Employment (Equal Treatment in Occupational Pension Schemes) Regulations 1996 and shall come into effect on the 1st day of March 1996.

Amendment to the Employment and Training Ordinance.

2. The Employment and Training Ordinance is amended —

(a) in section 52D of the Ordinance —

(i) by inserting after the figure “52D” the figure “(1)”;

(ii) in subsection (1), as now so designated, by omitting the word “It” and substituting therefor the words “Subject to subsection (2), it”;

(iii) by inserting after subsection (1), as now so designated, the following new subsections —

“ (2) Section 52A(1) and subsections (1) and (2) of section 52B do not render it unlawful for a person to discriminate against a woman in relation to her membership of, or rights under, an occupational pension scheme in such a way that, were any term of the scheme to provide for discrimination in that

way, then, by reason only of any provision made by or under sections 52K to 52M, an equal treatment rule would not operate in relation to that term.

(3) In subsection (2), “occupational pension scheme” has the same meaning as in section 52J and “equal treatment rule” has the meaning given by section 52K.

(4) Regulations may make provision —

- (a) for this Ordinance to have effect, in relation to terms of employment relating to membership of, or rights under, an occupational pension scheme with prescribed modifications, and
- (b) for imposing requirements on employers as to the payment of contributions and otherwise in case of their failing or having failed to comply with any such terms.

(5) References in subsection (4) to terms of employment include (where the context permits) any collective agreement or pay structure.”;

(b) by inserting after section 52H the following new Part VB —

“PART VB

EQUAL TREATMENT IN OCCUPATIONAL PENSION SCHEMES

Interpretation of Part VB.

52J. (1) In this Part unless the context shall otherwise require —

“active member” means a person who is in pensionable service under the scheme;

“actuary” means a Fellow of the Institute of Actuaries or the Faculty of Actuaries of Great Britain;

“auditor” means a person whose name appears on the Register of Auditors as defined by the Auditors Registration Ordinance;

“deferred member” means a person (other than an active or pensioner member) who has accrued rights under the scheme;

“employer” means, subject to subsection (3), the employer of persons in the description or category of employment to which the scheme in question relates;

“firm” means a body corporate or a partnership;

“member” means, subject to subsection (4), any active, deferred or pensioner member;

“occupational pension scheme” means any scheme or arrangement which is comprised in one or more instruments or agreements and which has, or is capable of having, effect in relation to one or more descriptions or categories of employments so as to provide benefits, in the form of pensions or otherwise, payable on termination of service, or on death or retirement, to or in respect of employed or self-employed persons with qualifying service in an employment of any such description or category;

“pensionable service”, in relation to a member of an occupational pension scheme, means service in any description or category of employment to which the scheme relates which qualifies the member (on the assumption that it continues for the appropriate period) for pension or other benefits under the scheme;

“pensioner member” means a person who in respect of his pensionable service under the scheme or by reason of transfer credits, is entitled to the present payment of pension or other benefits;

“prescribed” means prescribed by regulations;

“regulations” means regulations made by the Government;

“transfer credits” means rights allowed to a member under the rules of an occupational pension scheme by reference to a transfer to that scheme of his accrued rights from another scheme (including any transfer credits allowed by that scheme);

“trustees or managers” means —

- (a) in the case of a trust scheme, the trustees of the scheme and,

(b) in any other case, the managers of the scheme;

“trust scheme” means an occupational pension scheme established under a trust.

(2) For every occupational pension scheme there shall be —

(a) an individual, or a firm, appointed by the trustees or managers as auditor, and

(b) an individual appointed by the trustees or managers as actuary.

(3) Regulations may, in relation to occupational pension schemes, extend for the purposes of this Part the meaning of “employer” to include persons who have been the employer in relation to the scheme.

(4) For any of the purposes of this Part, regulations may in relation to occupational pension schemes —

(a) extend or restrict the meaning of “member”,

(b) determine who is to be treated as a prospective member, and

(c) determine the times at which a person is to be treated as becoming or as ceasing to be, a member or prospective member.

The Equal Treatment Rule.

52K. (1) An occupational pension scheme which does not contain an equal treatment rule shall be treated as including one.

(2) An equal treatment rule is a rule which relates to the terms on which —

(a) persons become members of the scheme, and

(b) members of the scheme are treated.

(3) Subject to subsection (6), an equal treatment rule has the effect that where —

- (a) a woman is employed on like work with a man in the same employment,
- (b) a woman is employed on work rated as equivalent with that of a man in the same employment, or
- (c) a woman is employed on work which, not being work in relation to which paragraph (a) or (b) applies, is, in terms of the demands made on her (for instance under such headings as effort, skill and decision) of equal value to that of a man in the same employment,

but (apart from the rule) any of the terms referred to in subsection (2) is or becomes less favourable to the woman than it is to the man, the terms shall be treated as so modified as not to be less favourable.

(4) An equal treatment rule does not operate in relation to any difference as between a woman and a man in the operation of any of the terms referred to in subsection (2) if the trustees or managers of the scheme prove that the difference is genuinely due to a material factor which —

- (a) is not the difference of sex, but
- (b) is a material difference between the woman's case and the man's case.

(5) References in subsection (4) and sections 52L to 52N to the terms referred to in subsection (2), or the effect of any of those terms, include —

- (a) a term which confers on the trustees or managers of an occupational pension scheme, or any other person, a discretion which, in a case within any of paragraphs (a) to (c) of subsection (3) —

(i) may be exercised so as to affect the way in which persons become members of the scheme or members of the scheme are treated, and

(ii) may (apart from the equal treatment rule) be so exercised in a way less favourable to the woman than to the man; and

- (b) the effect of any exercise of such a discretion;

and references to the terms on which members of the scheme are treated are to be read accordingly.

(6) In the case of a term within subsection (5)(a) the effect of an equal treatment rule is that the term shall be treated as so modified as not to permit the discretion to be exercised in a way less favourable to the woman than to the man.

Equal treatment rule: supplementary.

52L. (1) The reference in section 52K(2) to the terms on which members of a scheme are treated includes those terms as they have effect for the benefit of dependants of members, and the reference in section 52K(5) to the way in which members of a scheme are treated includes the way they are treated as it has effect for the benefit of dependants of members.

(2) Where the effect of any of the terms referred to in section 52K(2) on persons of the same sex differs according to their family or marital status, the effect of the term is to be compared for the purposes of section 52K with its effect on persons of the other sex who have the same status.

(3) An equal treatment rule shall not prejudice provisions relating to the protection of women by reason of maternity and any provision which suspends the retention or acquisition of rights during periods of maternity leave or leave for family reasons which are granted by law or agreement and are paid for by the employer shall be construed as being contrary to the equal treatment rule.

(4) Section 52K shall be construed as one with section 52D and sections 52E and 52F shall have effect for the purposes of section 52K as if —

(a) references to the principle of equal treatment were to an equal treatment rule, and

(b) reference to section 52C were to section 52K(3)(c).

(5) Regulations may make provision for this Ordinance to have effect, in relation to an equal treatment rule, with prescribed modifications and subsection (4) shall have effect subject to any regulations made by virtue of this subsection.

(6) Section 52K, so far as it relates to the terms on which members of a scheme are treated, is to be treated as having had effect in relation to any pensionable service on or after 17th May 1990.

Equal Treatment Rule: Exceptions.

52M. (1) An equal treatment rule does not operate in relation to any variation as between a woman and a man in the effect of any of the terms referred to in section 52k(2) if the variation is permitted by or under any of the provisions of this section.

- (2) A variation is permitted by this subsection if —
- (a) the variation consists of the application of actuarial factors which differ for men and women to the calculation of contributions to a scheme by employers, being factors which fall within a prescribed class or description, or
 - (b) the variation consists of the application of actuarial factors which differ for men and women to the determination of benefits falling within a prescribed class or description;

and in this subsection “benefits” include any payment or other benefit made to or in respect of a person as a member of the scheme.

- (3) Regulations may —
- (a) permit further variations, or
 - (b) amend or repeal subsection (2);

and regulations made by virtue of this subsection may have effect in relation to pensionable service on or after 17th May 1990 and before the date on which the regulations are made.

Equal Treatment Rule: Consequential Alteration of Schemes.

52N. (1) The trustees or managers of an occupational pension scheme may, if —

- (a) they do not (apart from this section) have power to make such alterations to the scheme as may be required to secure conformity with an equal treatment rule, or
 - (b) they have such power but the procedure for doing so —
 - (i) is liable to be unduly complex or protracted, or
 - (ii) involves the obtaining of consents which cannot be obtained, or can only be obtained with undue delay or difficulty,
- by resolution make such alterations to the scheme.
- (2) The alterations provided for in subsection (1) may have effect in relation to a period before the alterations are made.

Reference to the Industrial Tribunal.

- 52P. (1) Any interested person may refer to the Industrial Tribunal any question arising as to —
- (a) whether any provision of an occupational pension scheme does or does not comply with an equal treatment rule, or
 - (b) whether, and with what effect, any such provision is overridden by section 52L(3).
- (2) For the purposes of a reference under subsection (1) the provisions of the Industrial Tribunal Rules and the Industrial Tribunal (Appeal) Rules shall apply.”.

Dated this 29th day of February, 1996,

J. Baldachino,
Minister for Employment.