

PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT

Third Delegated Legislation Committee

DRAFT OCCUPATIONAL PENSION SCHEMES
(AMENDMENT) (EQUAL TREATMENT)
(NORTHERN IRELAND) REGULATIONS 2023

DRAFT PENSIONS (PENSION PROTECTION FUND
COMPENSATION) (NORTHERN IRELAND)
REGULATIONS 2023

DRAFT PENSIONS ACT 2004 (AMENDMENT)
(PENSION PROTECTION FUND COMPENSATION)
REGULATIONS 2023

DRAFT PENSIONS ACT 2004 AND THE EQUALITY
ACT 2010 (AMENDMENT) (EQUAL TREATMENT
BY OCCUPATIONAL PENSION SCHEMES)
REGULATIONS 2023

Tuesday 21 November 2023

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Saturday 25 November 2023

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The Committee consisted of the following Members:

Chair: SIR GEORGE HOWARTH

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|-------------------------------------------------------------------------|-----------------------------------------------------------------------------------------|
| † Bell, Aaron (<i>Newcastle-under-Lyme</i>) (Con) | † Maynard, Paul (<i>Parliamentary Under-Secretary of State for Work and Pensions</i>) |
| † Cates, Miriam (<i>Penistone and Stocksbridge</i>) (Con) | † Randall, Tom (<i>Gedling</i>) (Con) |
| Cruddas, Jon (<i>Dagenham and Rainham</i>) (Lab) | † Scully, Paul (<i>Sutton and Cheam</i>) (Con) |
| † Furniss, Gill (<i>Sheffield, Brightside and Hillsborough</i>) (Lab) | Seely, Bob (<i>Isle of Wight</i>) (Con) |
| † Gibb, Nick (<i>Bognor Regis and Littlehampton</i>) (Con) | † Smith, Greg (<i>Buckingham</i>) (Con) |
| † Hamilton, Fabian (<i>Leeds North East</i>) (Lab) | † Strathern, Alistair (<i>Mid Bedfordshire</i>) (Lab) |
| † Johnson, Kim (<i>Liverpool, Riverside</i>) (Lab) | † Wild, James (<i>North West Norfolk</i>) (Con) |
| † Leadbeater, Kim (<i>Batley and Spen</i>) (Lab) | |
| † Lewis, Sir Brandon (<i>Great Yarmouth</i>) (Con) | Beth Goodwin, <i>Committee Clerk</i> |
| Linden, David (<i>Glasgow East</i>) (SNP) | † attended the Committee |

Third Delegated Legislation Committee

Tuesday 21 November 2023

[SIR GEORGE HOWARTH *in the Chair*]

Draft Occupational Pension Schemes (Amendment) (Equal Treatment) (Northern Ireland) Regulations 2023

9.25 am

The Parliamentary Under-Secretary of State for Work and Pensions (Paul Maynard): I beg to move,

That the Committee has considered the draft Occupational Pension Schemes (Amendment) (Equal Treatment) (Northern Ireland) Regulations 2023.

The Chair: With this it will be convenient to discuss the draft Pensions (Pension Protection Fund Compensation) (Northern Ireland) Regulations 2023, the draft Pensions Act 2004 (Amendment) (Pension Protection Fund Compensation) Regulations 2023 and the draft Pensions Act 2004 and the Equality Act 2010 (Amendment) (Equal Treatment by Occupational Pension Schemes) Regulations 2023.

Paul Maynard: It is a pleasure to serve under your chairmanship, Sir George.

The regulations were laid in the House on 18 September 2023 and are compatible with the European convention on human rights. We have four instruments: two relating to the Allonby and Walker judgments, and a similar set of two relating to the Hampshire judgment. I must make it clear that Allonby is being restated in relation solely to the impact of guaranteed minimum pensions legislation from 17 May 1990 onwards.

The well-known Retained EU Law (Revocation and Reform) Act 2023 allows the UK to reassert the sovereignty of Parliament. Where required, the UK Government are now able more easily to amend, revoke or replace retained EU law. After 31 December, certain retained EU law addressed in the three court cases I mentioned will cease applying. Two of those cases, Walker and Allonby, are about equality law for pension schemes, and the other, Hampshire, is about pension protection for those who, unfortunately, find themselves in the Pension Protection Fund, which is a compensation scheme.

I have decided to restate the law addressed in those cases because two of them are about the effects of EU equality law for pensions schemes, and the other is about protecting people's old-age benefits when they find themselves in the PPF. It is important that any ambiguity is removed for occupational pension schemes and that we ensure there is equality in the outcomes for pension benefits.

Let me go through the judgments as speedily as I can, without going into great detail. The first judgment, Allonby, is about the right to pension benefits paid on an equal basis between men and women, where discrimination has arisen in an occupational pension

scheme because of legislation on guaranteed minimum pensions. The second judgment, Walker, is about the pension rights on which survivor benefits are based, where a member is in a same-sex marriage or civil partnership.

The Allonby amendments are relatively straightforward: they are about the right to equal treatment between men and women in the absence of a direct real-life comparator to show discrimination, where the discrimination has arisen in an occupational pension scheme because of legislation on guaranteed minimum pensions. How we get to that point requires some more explanation.

First, guaranteed minimum pensions are unequal for men and women. That can result in a different amounts of occupational pension benefits being paid because GMPs are paid to women at the age of 60 and to men at the age of 65. Secondly, the 1990 Barber judgment found that pension benefits must be paid to men and women on an equal basis for pensionable service from May 1990 onwards. That means that pension schemes are required to equalise pension benefits to correct the unequal effect caused by members having a GMP.

Thirdly, the European Court of Justice judgment in the case of Allonby in 2004 means that it is not necessary for someone who brings an equal pay claim to be able to point to a real-life comparator in relation to such discrimination. For example, a man who was employed as a dustman—a role predominantly performed in the past by men—would not now need to point to a real-life female comparator who was being treated differently to demonstrate that his pension should be equalised to take account of the unequal effect of the GMP rules. A notional comparator could instead be used to show whether he would have received a higher pension if he had been a woman, because of the GMP rules.

Until the end of this year, the Allonby judgment overrides the need for an opposite-sex comparator in our equality legislation, but we of course want and need schemes to equalise for the differences between men and women resulting from GMP legislation. That is why we are amending equality legislation to ensure that the requirement to equalise occupational pension benefits as a result of GMP does not fall away where there is no real-life opposite-sex comparator.

Continuing on the theme of equality, the Walker case was about equal treatment on the grounds of sexual orientation in occupational pension schemes. The Supreme Court ruled that the Equality Act could not permit Mr Walker's scheme to restrict the survivor benefits payable to his husband to only those based on pension rights earned since December 2005—the date civil partnerships were introduced.

The restriction in the Equality Act had previously meant that a person in a same-sex marriage or civil partnership who had worked their entire working life and built up an occupational pension could leave their surviving spouse or civil partner survivor only benefits relating to pensionable service from December 2005—potentially only a few years of their working life.

For example, someone in a civil partnership who retired in 2015, having built 45 years of occupational pension rights, could find that their surviving civil partner was entitled to only 10 years of survivor benefit rights. Mr Walker challenged that unequal treatment and won.

The changes we are making will mean that legislation will not allow schemes to restrict the pension rights that are used to provide survivor benefits for survivors in a same-sex legal relationship to only those earned after December 2005. Survivor benefits are important to so many people and help provide reassurance that a member's survivor will be provided for, should the worst happen. That is why it is important that we reflect the Walker judgment in the Equality Act.

Moving on, the Hampshire judgment provides protection in the event of employer insolvency. The regulations retain the effects of the judgment in domestic legislation and remove redundant references to the Pension Protection Fund compensation cap from it.

Briefly, by way of context, Mr Hampshire took legal action in the domestic and European courts against the Pension Protection Fund, because under the PPF's rules, his benefits were substantially reduced. He was under his scheme's normal pension age when his employer became insolvent. The European Court ruled that former employees must receive at least 50% of the value of their pension rights in the event of their employer's insolvency.

There was further litigation in the domestic courts—the Hughes judgment—which concluded with the UK's Court of Appeal upholding the High Court's ruling that the cap on Pension Protection Fund compensation constituted unlawful age discrimination. The cap previously applied to individuals below their scheme's normal pension age when their employer became insolvent.

The Pension Protection Fund is now identifying its members and members of the financial assistance scheme affected by the Hampshire judgment, increasing their payments and paying arrears, where appropriate, to comply with the terms of the judgment. It is also uncapping the compensation payments of its affected members and backdating arrears.

In practice, most PPF members already receive more than the 50% minimum established by the Hampshire judgment and few were affected by the compensation cap. As a matter of fairness, however, the Government have decided to retain the effects of the Hampshire judgment beyond the sunset date. That means that all members of eligible pension schemes affected by the judgment—not just those with an entitlement before the sunset date—can be reassured that they will receive at least 50% of the value of their original pension benefits in the event of their employer's insolvency. To tidy up the legislation, the regulations also remove redundant references to the Pension Protection Fund compensation cap, which no longer exists. That will improve the legislation and reflect the High Court's ruling.

The regulations will give reassurance to the pensions industry and to members of defined benefit occupational pension schemes from 31 December. In practice, nothing will change in relation to the Allonby, Walker and Hampshire judgments. It is important that pension scheme members are treated fairly and equitably, regardless of sexual orientation, sex or age. I commend the regulations to the Committee.

9.35 am

Gill Furniss (Sheffield, Brightside and Hillsborough) (Lab): It is a great pleasure to serve under your chairpersonship, Sir George. I thank the Minister for

his explanation of the statutory instruments and welcome him to his place. I look forward to working collaboratively with him on issues where there is cross-party consensus, and I believe there is much we will agree on in regard to pensions.

Today's statutory instruments are wholly necessary to maintain the same legislative framework following the expiry of certain EU laws on 31 December, so we will not oppose them and my speech will be short. Action is needed given that, under section 4 of the European Union (Withdrawal) Act 2018, the principles of EU law will sunset at the end of this year. The purpose of the regulations is to ensure that the effects of the Hampshire and Hughes judgments will be preserved in domestic legislation. I would be grateful if the Minister confirmed that the regulations are intended to ensure only that everything stays in its current state after the relevant EU laws are sunsetted. Will any businesses need to make any adjustments?

I also want to note some concern that the regulations are being brought forward only weeks away from 31 December, when the relevant EU laws cease to apply. Has all the necessary EU legislation within the Minister's brief now been enacted in domestic law ahead of that deadline?

As I said at the outset, the regulations are necessary and we will not oppose them. It is my understanding that they ensure simply that there is no ambiguity in this area when the equivalent EU laws are sunsetted at the end of this year. However, I will be interested to hear the Minister's response to the specific points I have raised.

9.37 am

Paul Maynard: May I also welcome the hon. Member for Sheffield, Brightside and Hillsborough? I am sure I will enjoy working with her. She made three points, and I am hoping that a note about the third might be coming my way—time will tell. She is right that the changes are quite distinct in and of themselves. They apply already, so the sector does not have to do anything new to reflect them. It has already been reflecting them since the judgments, quite some time ago.

On the timing, one of my first observations in this role has been the absolute avalanche of evidence—calls for evidence, consultations and consultation responses. The pensions industry is swamped, and finding people to respond to these things must be a growth industry. The hon. Lady is right that it has taken some time for the judgments to come to the House. Many of the judgments, of course, took place way back last decade, but the court system itself takes quite some time. When their final application is eventually decided, we have to start consulting on how to apply them within the private pensions industry that we have to rely on to deliver them; it is not a matter of pressing a button at the Department for Work and Pensions.

Finally, the hon. Lady asked whether there were any more retained EU laws to deal with. My understanding is that we have now completed our trawl, and I do not expect any more to come my way. Should the situation turn out to be any different, I will write to her. But I think I am right—I would have been tapped on the shoulder if I had been wrong.

[Paul Maynard]

I thank the hon. Lady for her comments. We have had a useful and helpful initial interchange. As I said in my opening speech, these are important equality protections. We do not want them to disappear because of sunset. They are important and came about for good reason in the first place. I hope all Members will be happy that we are to retain them.

Question put and agreed to.

Draft Pensions (Pension Protection Fund Compensation) (Northern Ireland) Regulations 2023

Resolved,

That the Committee has considered the draft Pensions (Pension Protection Fund Compensation) (Northern Ireland) Regulations 2023.

Draft Pensions Act 2004 (Amendment) (Pension Protection Fund Compensation) Regulations 2023

Resolved,

That the Committee has considered the draft Pensions Act 2004 (Amendment) (Pension Protection Fund Compensation) Regulations 2023.

Draft Pensions Act 2004 and the Equality Act 2010 (Amendment) (Equal Treatment by Occupational Pension Schemes) Regulations 2023

Resolved,

That the Committee has considered the draft Pensions Act 2004 and the Equality Act 2010 (Amendment) (Equal Treatment by Occupational Pension Schemes) Regulations 2023.—(*Paul Maynard.*)

9.41 am

Committee rose.

