



Pensions for same sex spouses and civil partners

The Supreme Court has ruled that an exemption in the Equality Act 2010 is invalid as it contravenes EU anti-discrimination legislation. In the case of *Walker v Innospec* it has been decided that a same sex spouse/civil partner is entitled to a spouse's pension based on all the members pensionable service, not just on pensionable service accrued from 5 December 2005.

Walker v Innospec

Mr Walker had been in a relationship with his husband since 1993 and had entered into a civil partnership in 2006. Mr Walker had built up benefits from the beginning of his employment with Innospec in January 1980 until his retirement in March 2003. Under the rules of the pension scheme of his employer, if Mr Walker died before his husband, his husband would have been entitled to a pension of approximately £1,000 per annum. In comparison if Mr Walker had been in a heterosexual relationship, his wife would have been entitled to a spouse's pension of about £45,700 per annum. The Supreme Court commented "if Mr Walker had married a woman long after his retirement, she would be entitled to a spouse's pension notwithstanding the fact that they were not married during the time he was paying contributions to the pension."

The Supreme Court noted that the salary paid to Mr Walker throughout his working life was the same as would have been paid to a heterosexual man, and therefore there was no basis to deny his partner access to a spouse's pension in the event of his death, despite that some of his pension benefits accrued before the Civil Partnership Act came into force in 2005.

The Supreme Court advised that the exemption making it lawful to limit same sex survivors' benefits to those attributable to accrual on and after 5 December 2005 is incompatible with the EU's directive on equality. Therefore, the exemption in the Equality Act 2010 should be disappplied.

Actions for pension schemes

Following the ruling it is now clear that pension schemes must provide same sex survivors' benefits on the same basis as other married members. Trustees of pension schemes should therefore;

- Review current practice in relation to same sex spouses/civil partners. Consider any changes that may be required.
- Pension schemes that have relied on the exemption should liaise with the scheme's administrators to review whether there are any pensions in payment that will be affected. Trustees should seek further advise on any payments requiring correcting.
- Consider whether the scheme's actuarial assumptions require updating.

If you have any questions about the decision in *Walker v Innospec* and how it may be relevant to your pension arrangements please contact your 44 Consultant.

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