

## Walker v Innospec – Supreme Court judgment

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### Introduction

On 12 July 2017, the Supreme Court handed down its [judgment](#) in the case of *Walker v Innospec Limited*.

In a landmark ruling, it overturned the Court of Appeal's 2015 judgment, and unanimously agreed that Mr Walker's husband should be entitled to a full survivor's pension.

### Key points

- The Supreme Court ruled that an exemption in the Equality Act 2010 ("EA10"), which permits the restriction of survivors' benefits for same-sex partners, is incompatible with EU Directive 2000/78/EC ("the Framework Directive") and must be disapplied.
- Occupational pension schemes must now provide civil partners and same-sex spouses with the same survivors' benefits as opposite sex married couples.

### Background

The UK was required to transpose the Framework Directive (which established a general framework for combating discrimination on a number of grounds, including sexual orientation), by 2 December 2003.

Since 5 December 2005, it has been possible for same-sex couples to enter into "civil partnerships". The first marriages for same-sex couples took place on 29 March 2014.

Due to an exemption in the EA10, occupational pension schemes are not required to provide the same survivors' benefits to civil partners / same-sex spouses as they would to opposite sex spouses. Civil partners / same-sex spouses are only entitled to:

- contracted-out survivors' benefits relating to service on or after 6 April 1988 (the date on which contracted-out benefits for widowers were introduced) and
- all other survivors' benefits relating to service on and from 5 December 2005.

## Facts

Mr Walker joined the Innospec Pension Scheme (“the Scheme”) on 2 January 1980 and was a member until his retirement in 2003. He and his partner had been together since September 1993 and registered a civil partnership on 23 January 2006; they have since married.

On 1 August 2006, the Scheme was amended to take account of civil partnerships, to the extent required by law. On the death of a pensioner, the Scheme provides for a 2/3rds spouse’s pension. However, as permitted by statute, for civil partners this benefit is only paid in respect of service on or after 5 December 2005.

Mr Walker calculated that, in the event of his death, his partner would be entitled to around £1,000 per annum. However, if he was married to a woman of the same age as his partner, on his death she would be entitled to a pension of approximately £45,700 per annum.

Mr Walker brought a claim against his employer and the trustees of the Scheme for unlawful discrimination on the grounds of sexual orientation. (The claim related to the non-contracted-out benefits only.)

The [Employment Tribunal](#) found in Mr Walker’s favour in 2012 but its decision was overturned by the [EAT](#) in 2014. The [Court of Appeal](#) upheld the EAT decision in 2015, broadly on the basis that Mr Walker was not entitled to claim pension rights retrospectively as a result of changes in EU law.

## Supreme Court judgment

The Supreme Court unanimously allowed Mr Walker’s appeal.

Lord Kerr explained that the “point of unequal treatment occurs at the time that the pension falls to be paid”. Entitlement was not, as the Court of Appeal had concluded, “permanently fixed” as it accrued. “If Mr Walker 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 that he was paying contributions to his pension fund”. Further, “the financing of [the Innospec Scheme] should have been planned taking into account a possible change in Mr Walker’s marital status”.

In any event, the court was satisfied that CJEU case law (the decisions of [Maruko](#) and *Römer v Freie und Hansestadt Hamburg*) makes it clear that unless “evidence establishes that there would be unacceptable economic or social consequences of giving effect to Mr Walker’s entitlement to a survivor’s pension for his husband, at the time that this pension would fall due, there is no reason that he should be subjected to unequal treatment as to the payment of that pension”.

The Supreme Court declared that the EA10 exemption is incompatible with the Framework Directive in so far as it allows payment to be restricted to benefits based on periods of service from 5 December 2005 and must therefore be disapplied.

As a result, Mr Walker’s husband, (assuming they remain married at the time of Mr Walker’s death), is entitled to a spouse’s pension (in excess of the contracted-out pension) calculated on the basis of all Mr Walker’s years of service with Innospec.

## Action

Occupational pension schemes which currently restrict scheme (as opposed to contracted-out) survivors' benefits for civil partners / same-sex spouses will need to be amended to bring these benefits into line with those for opposite-sex married couples.

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