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Felicity Buchan MP
House of Commons

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Dear Felicity

Thank you for your further email of 22 September on behalf of [REDACTED] of [REDACTED], regarding the Supreme Court judgment on [REDACTED] case.

As you are aware, in [REDACTED]'s case, the Supreme Court judgment made clear that the exception in paragraph 18 of Schedule 9 to the Equality Act 2010 (which said it did not contravene the Act for a person to limit same-sex survivors' benefits to those which accrued on and after 5 December 2005) is incompatible with the European Union's (EU's) directive on equal treatment in employment and occupation (the Framework Directive). The Court said that insofar as it authorises a restriction of payment of benefits based on periods of service before 5 December 2005 the exception must be dis-applied.

I have previously confirmed that the Government's position remains as set out in my letter of 31 October 2018, in which I explained that the Supreme Court's judgment would continue to have full effect after the UK exited the EU. This remains the case.

However, [REDACTED] remains concerned that now the UK has left the EU the Government may renege on this position. In particular, I understand that [REDACTED] is concerned by statements made in my previous letters. [REDACTED] questions why my previous letter made reference to my Department 'making the necessary changes as soon as a suitable legislative vehicle is available' despite the assurance that no legislative change is required because the exception in Paragraph 18, Schedule 9 to the Equality Act 2010 has been dis-applied and has no legal effect.

In case it helps I set out the position again below.

The Court's ruling on the exemption in Paragraph 18, Schedule 9 of the Equality Act 2010

The Supreme Court held that to the extent the exception in Paragraph 18, Schedule 9 to the Equality Act 2010 authorises a restriction of payment of benefits based on the periods of service before 5 December 2005, it is incompatible with the Framework Directive and must be dis-applied. The wording of the provision remains in the 2010 Act, but has effectively been nullified by the court's judgment and to the extent it has been dis-applied by the judgment it has no legal effect.

Sections 6 (7), 4 (1) and 5 (2) of the European Union (Withdrawal) Act 2018, as amended by the European Union (Withdrawal Agreement) Act 2020, together make it clear that the Court's dis-application of the exemption remains binding despite the UK's exit from the EU and will remain binding after the implementation period (IP) completion day. The wording of the provision will therefore continue to have no legal effect, as dis-applied by the judgment, after the IP completion day.

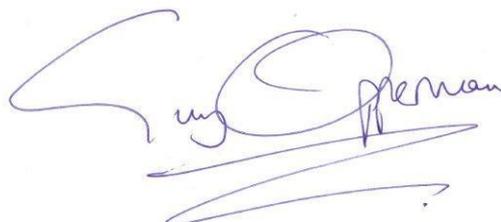
In summary: the exception in Paragraph 18, Schedule 9 to the Equality Act 2010 remains written into the Act. However, to the extent it has been dis-applied by the judgment it does not have any legal force in the UK, despite the UK's exit from the EU. This will remain the position after the IP completion day.

Why we still intend to legislate

While the exception has no effect to the extent it has been dis-applied by the Supreme Court Judgment, it is unnecessary to have dis-applied wording in legislation as this could potentially lead to confusion and concern. It is for that reason that we are looking to provide in legislation that the exception is dis-applied. This requires a legislative vehicle and I have committed to taking this through Parliament as soon as a suitable opportunity arises.

I want to reassure [REDACTED] that such legislation would be in effect a 'tidying up' process. It is important to be clear that this Government entirely accepts and respects the decision of the Supreme Court, and has no intention of changing the law back to the previous position.

I hope this clarifies the situation and reassures [REDACTED]



GUY OPPERMAN MP
MINISTER FOR PENSIONS AND FINANCIAL INCLUSION