

# **GMP Equalisation**

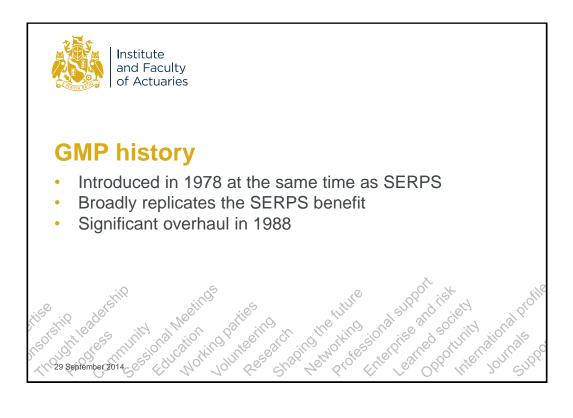
Jane Kola (Partner) Christopher Stiles (Associate)

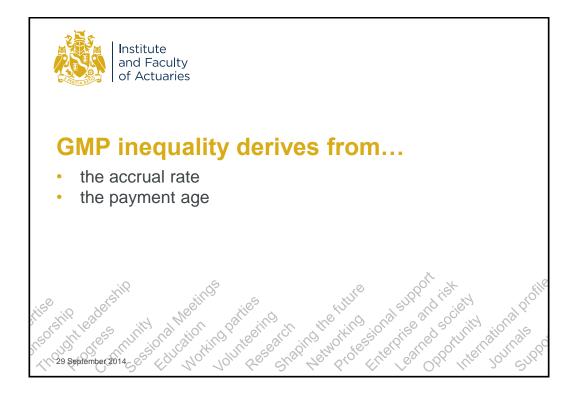
Wragge Lawrence Graham & Co LLP

29 September 2014

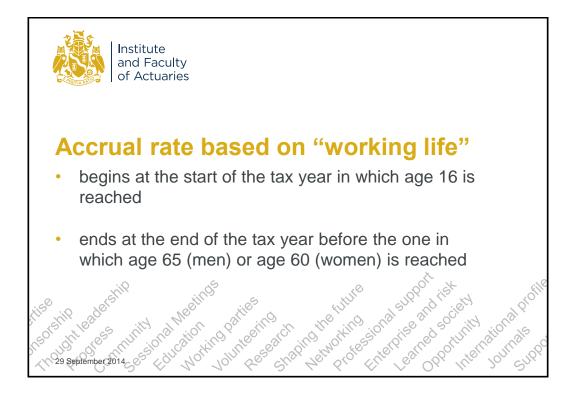


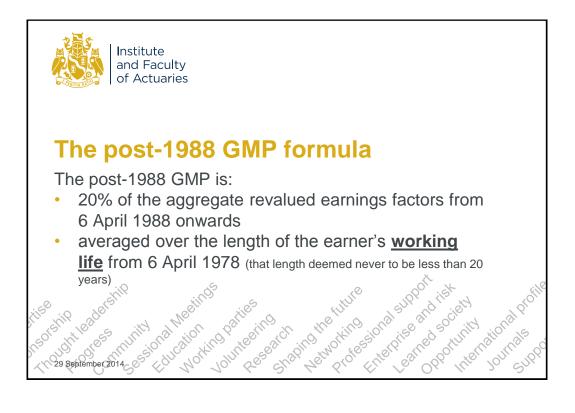


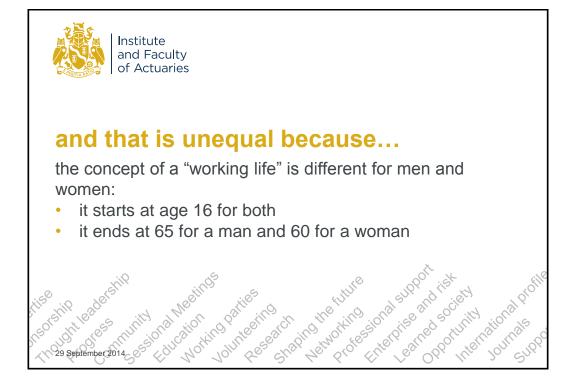




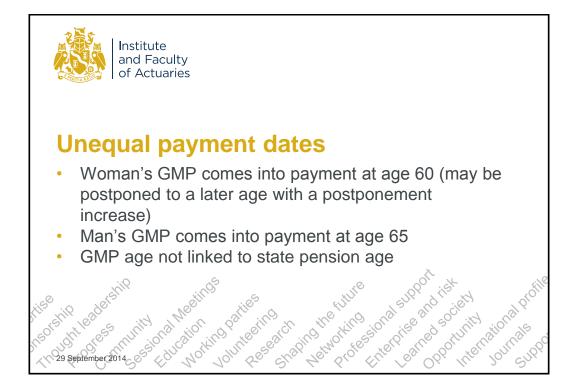




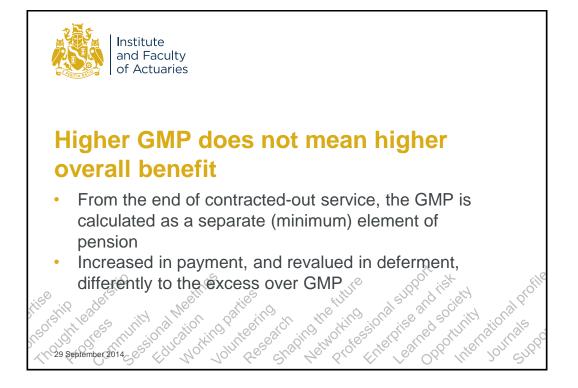


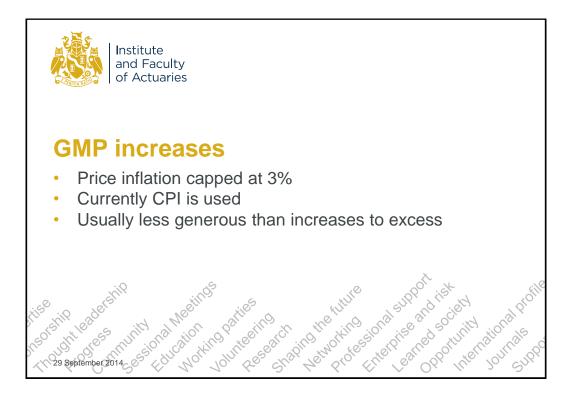






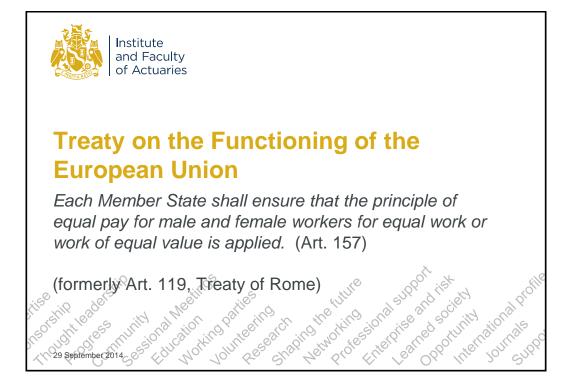


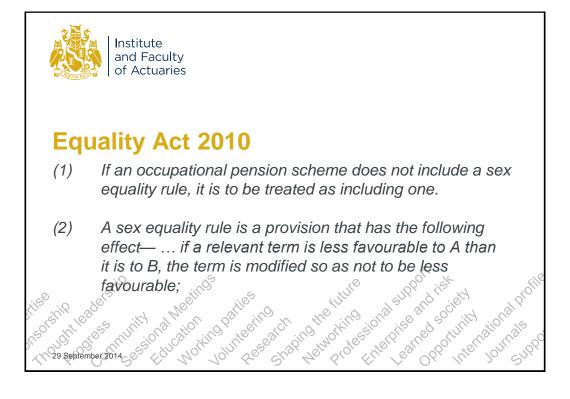














# Defrenne v Belgium (1971)

There cannot be brought within this concept, as defined in Art. 119, social security schemes or benefits, in particular retirement pensions, directly governed by legislation without any element of agreement within the undertaking ... concerned, which are obligatorily applicable to general Enterprise and risk International profil categories of workers. Professionalsup earned society working Partie

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#### Bilka-Kaufhaus v Weber (1986)

... the occupational pension scheme ... although adopted in accordance with the provisions laid down by German legislation for such schemes, is based on an agreement between Bilka and the staff committee ... and has the effect of supplementing the social benefits paid under International profil national legislation ... It must therefore be concluded that the scheme does not constitute a social security scheme. Volunteering -eathed soc Shaping the Wetworking Enterprised Opportunity 29 September 2014 855 AM Morkingpar Professional Education Research

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## Barber v GRE (1990)

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... unlike the benefits awarded by national statutory social security schemes, a pension paid under a contracted-out scheme constitutes consideration paid by the employer to the worker in respect of his employment and consequently falls within the scope of Art. 119 of the Treaty. Enterprise and risk Shaping the future

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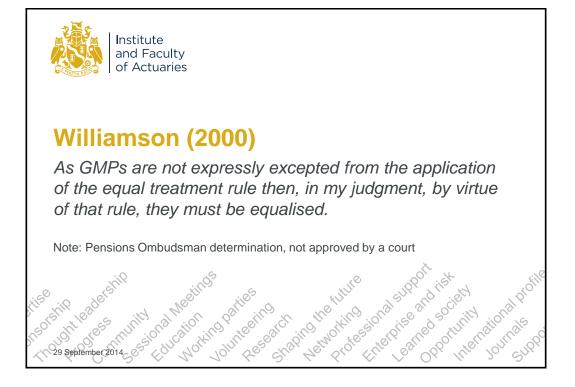
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#### Moroni v Collo (1993)

... an obligation imposed by a national provision to pay the occupational pension at the same time as the statutory pension cannot have the effect of excluding the occupational scheme from the scope of Art. 119





### Niemi v Valtiokonttori (2002)

... the Court has held that a decisive criterion is the existence of a link between the employment relationship and the retirement benefit, and has not regarded the structural elements of a system of pension benefits as playing a decisive role.





## Allonby v A&R College (2004)

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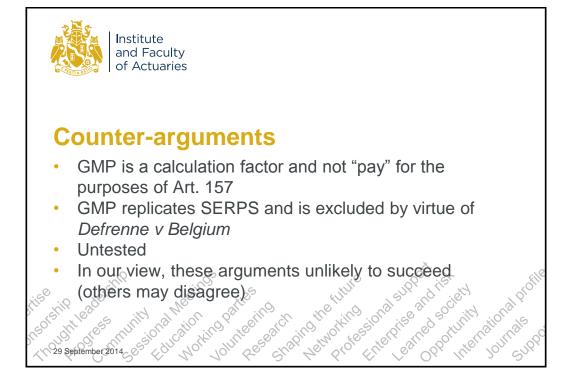
... where State legislation is at issue, the applicability of [Art. 157] is not subject to the condition that the worker concerned can be compared with a worker of the other sex who is or has been employed by the same employer and who has received higher pay for equal work .... Professional suppor Enterprise and risk Staping the future International profil

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## **Ministerial statement (2010)**

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The examination of the relevant legislation and case law has led the Government to conclude that where a scheme member has accrued entitlement to a guaranteed minimum pension after May 1990, European law requires that any inequality in scheme rules which results from the legislative provisions governing GMPs should be removed, whether earned society International P or not a person can show that a comparator exists. Opportunity Volunteering



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### Ministerial statement (2010) (ctd.)

The Government intends to bring forward amending legislation when Parliamentary time allows. However, in the meantime, it is the Government's opinion that, in order to ensure full compliance with European law, trustees and others should act as if existing domestic legislation requires equalisation in respect of International profil differences resulting from GMPs whether or not real Enterprisear Staping the \_eathed 50Cl Volunteering Professional Networking Opportunity Research comparators exist. Norking

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# **Consultation paper (2012)**

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The Government understands the current situation is that contracted-out schemes which hold GMP liabilities are already under an obligation to ... equalise pensions for the effect of the GMP rules for any accruals from 17 May 1990 to 5 April 1997... Professional support Enterprise and risk



### **Consultation paper (2012)**

These draft Regulations are, therefore, only changing domestic legislation to reflect the development of the jurisprudence of the [CJEU], thereby codifying a scheme's existing obligations in EU law into UK law.





# **Consultation paper (2012)**

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The Government appreciates that a degree of uncertainty has existed for some time over equality and the GMP and wishes to offer schemes as much help as is practicable in providing equalised benefits

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#### **Draft regulations**

... a sex equality clause is a provision that has the effect that if, by virtue of the application of the guaranteed minimum pension provisions, a term of A's that relates to ... the scheme concerned is less favourable to A than it would be if A were of the opposite sex, the term, in so far as a sex equality rule would have effect in relation to it, is modified so as not to be less favourable. Staping the future Enterptise and risk International profil Professionalsuf Learned society

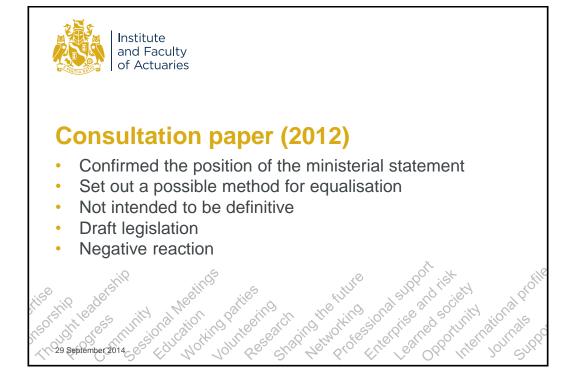
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### Interim response (2013)

Whilst the consultation did not ask for comments on either the need to equalise pensions for the effect of the GMP or the use of a notional comparator when doing so, the majority of respondents focused on these two issues.





### Interim response (2013)

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... the Government had already considered the request to sponsor a test case, and had decided that this would not be an appropriate way forward. The Government's view has not changed...

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### Interim response (2013)

The Government is in no doubt that the draft regulations merely reflect the outcome of recent judgements in European case law, and will be laid in the future. This action has been delayed so that the Government can give further consideration to Enterprise and risk International profil providing statutory guidance for schemes on GMP Professional sur Learned society 29 September 2014 85 7 MICRION Working Paties So conversion. Volunteering Shaping the Opportunity Wetworking Pesestch





