
EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations are made under section 2(2) of the European Communities Act 1972 (c.68) and amend regulation 11 of and Schedule 2 to the Employment Equality (Age) Regulations 2006 (S.I. 2006/1031) (the “Age Regulations”). These Regulations and the Age Regulations implement (in Great Britain) Council Directive 2000/78/EC of 27th November 2000 establishing a general framework for equal treatment in employment (O.J. L 303, 2.12.2000, p.16) so far as it relates to discrimination on grounds of age. These Regulations deal with provisions relating to pensions.

Every occupational pension scheme shall from 1st December 2006 be treated as if it has a “non-discrimination rule”. This provides that trustees or managers of the scheme must refrain from any act which is unlawful by virtue of regulation 11 of the Age Regulations. Schedule 2 to the Age Regulations provides exemptions for certain rules, practices, actions or decisions in relation to occupational pension schemes and employer contributions to personal pension schemes.

Regulation 3 amends regulation 11 of the Age Regulations (pension schemes) so that that it will apply to both employers and trustees or managers in relation to occupational pension schemes and refers to “pensionable service” rather than just “service”.

Regulation 4 amends the interpretation provisions in paragraph 1 of Schedule 2 to the Age Regulations.

Paragraph 1(1) to (3) deal with the definition of “occupational pension scheme” and sub-paragraph (3) is amended so that the definition of “occupational pension scheme” used in the Finance Act 2004 (c. 12) is applied to additional paragraphs in Schedule 2.

Paragraph 1(5) defines certain terms used in Schedule 2. Regulation 4(2) adds some further definitions and also deletes some definitions. In particular the definition of “early retirement pivot age” is replaced and definitions of “block transfer” and “relevant transfer” are added.

Sub-paragraph (6) is deleted by regulation 4(3). Thus for the purposes of Schedule 2 a section of a scheme can no longer be treated as if it were a separate scheme.

Sub-paragraph (8) is amended by regulation 4(4) so that the reference in regulation 11 to “occupational pension scheme” shall mean an occupational pension scheme within the meaning of either section 1 of the Pension Schemes Act 1993 (c.48) or section 150(4) of the Finance Act 2004 (c. 12).

Regulation 5 inserts a new paragraph 3A in Schedule 2 to the Age Regulations. Paragraph 3A provides that trustees or managers and an employer can avail of a service related exemption along the same lines of the exemption in regulation 32 to the Age Regulations for the award of benefits by an employer.

New paragraph 3A applies where a rule, practice, action or decision of an employer or the trustees or managers results in a difference in treatment between two members with different lengths of service where a disadvantage is suffered as a result of a length of service criterion. The difference in treatment must relate to the admission to a scheme, accrual of benefits and eligibility for any benefits under a scheme or payment of contributions to a money purchase arrangement (including to a personal pension scheme). The difference must be justified where the member who is treated differently has more than five years service with the employer. The justification must be provided by an employer in relation to the scheme. The employer must ensure that it reasonably appears to him that the way in which the length of service criterion applies fulfils a business need of his undertaking. Where the difference in treatment is as a result of a rule, practice, action or decision of the trustees or

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managers, the trustees or managers must ask the employer to provide them with the justification for the difference in treatment. The employer must still ensure that it reasonably appears to him that that the way in which the length of service criterion applies fulfils a business need of his undertaking.

Regulation 6 adds a new paragraph 4A to Schedule 2 to the Age Regulations. It confirms that the existence of an exception in Schedule 2 does not necessarily mean that but for the exemption the rule, practice, action or decision is unlawful.

Regulation 7 replaces paragraph 7(b) (admission to schemes) and paragraph 23 (limits on benefits) of Schedule 2 to the Age Regulations. It also adds a new paragraph 23A.

New paragraph 7(b) allows for a minimum level of pensionable pay before a worker may be admitted to a scheme. This minimum level can be an amount up to 1.5 times the lower earnings limit or an amount which reflects the state retirement pension (either the basic pension plus the state second pension or just the basic pension).

New paragraph 23 makes similar provision as made in paragraph 7(b). It allows benefits from a scheme to be calculated in a manner which excludes from the pensionable pay an amount up to 1.5 times the lower earnings limit or an amount which reflects the state retirement pension (either the basic pension plus the state second pension or just the basic pension).

New paragraph 23A makes provision for schemes which are not contracted-out of the second state pension and provide for higher accrual rates for pensionable pay above the upper earnings limit.

Regulation 8 makes minor amendments to paragraph 8 (the use of age criteria in actuarial calculations) and paragraph 9 (contributions).

Regulation 9 amends paragraph 10 of Schedule 2 to the Age Regulations (contributions under money purchase arrangements). Paragraph 10(a) exempts different age related rates of contributions to schemes provided that the aim is to make resulting benefits “equal” or “more nearly equal”. Amendments to paragraph 10(a) have been made to clarify that when applying the “equal” or “more nearly equal” tests, it is the benefits which result from comparable aggregate periods of pensionable service that are compared.

Regulation 9 adds a new paragraph 10(c) which exempts employer and member contributions which are limited by reference to a maximum level of pensionable pay.

Regulation 10 adds a new paragraph 11A which exempts where an employer’s or member’s contributions to a defined benefit arrangement are limited by reference to a maximum level of pensionable pay.

Regulation 11 replaces paragraphs 12 and 13 of Schedule 2 to the Age Regulations and adds new paragraphs 13A and 13B.

Amended paragraph 12 allows schemes to set a minimum age from when an age related benefit is paid. The minimum age must be before the early retirement pivot age which applies to the age related benefit. The age related benefit must be reduced for early payment and must not be enhanced. In particular, paragraph 12 has been amended to clarify that, there can be different minimum ages for different groups or categories of members and the minimum age can be subject to the consent of the employer or the trustees or managers. Paragraph 12 does not apply where paragraphs 13, 13A or 15 apply to early retirement.

Amended paragraph 13 allows active or prospective members of a scheme to retain an entitlement on 1st December 2006 to a minimum age for payment of age related benefit. This may be a minimum age at which there is entitlement to the benefit either with or without consent. This may also be a minimum age for payment of the benefit with or without consent. When a benefit is paid at either of these minimum ages it may be enhanced in one or more of the ways specified in sub-paragraph (2).

New paragraph 13A allows members who on 1st December 2006 have a right under paragraph 13 to payment of enhanced early retirement benefits to retain that right when they become members

of subsequent schemes. This is subject to certain conditions which are specified in sub-paragraphs (a) to (c).

New paragraph 13B allows schemes to set a minimum age from when an age related benefit is paid in the event of retirement on the grounds of redundancy. This may be a minimum age at which there is entitlement to the benefit either with or without consent. This may also be a minimum age for payment of the benefit with or without consent. The minimum age must be before the early retirement pivot age which applies to the age related benefit. There can be different minimum ages for different groups or categories of member. Paragraph 13 also allows employers to enhance any age related benefit in one or more of the ways specified in sub-paragraph (2).

Regulation 12 amends paragraph 14 of Schedule 2 to the Age Regulations by substituting a new paragraph 14. Amended paragraph 14 will provide that deferred members can have a different early retirement pivot age and late retirement pivot age from active members.

Regulation 13 replaces paragraph 15 and adds a new paragraph 15A to Schedule 2 to the Age Regulations.

Amended paragraph 15 allows schemes to set a minimum age from when an age related benefit is paid where retirement is on the grounds of ill health. This may be a minimum age at which there is entitlement to the benefit either with or without consent. This may also be a minimum age for payment of the benefit with or without consent. The minimum age must be before the early retirement pivot age which applies to the age related benefit. There can be a different minimum age for different groups or categories of member. Paragraph 15 also allows employers to enhance any age related benefit in one or more of the ways specified in sub-paragraph (2).

New paragraph 15A(1) allows schemes to calculate any death benefits by reference to prospective service the member could be treated as having completed if he had not died. Sub-paragraph (2) also exempts payment of benefits to dependants where they are paid when the member dies while in receipt of a pension guaranteed for a particular period. Sub-paragraph (4) exempts payment of different death benefits to deferred members who die before and after normal pension age.

Regulation 14 replaces paragraph 16 of Schedule 2. Amended paragraph 16 exempts where a scheme pays an additional pension to reflect that a member is not yet in receipt of his state retirement pension. It also exempts cessation of payment of such a pension when the person reaches his or her state pension age (currently 60 for women and 65 for men).

Regulation 15 amends paragraph 17 of Schedule 2 to the Age Regulations to clarify that when a pension is paid to a dependant of a deceased member and is reduced to reflect that the dependant is younger than the member, that reduction must be an actuarial reduction. A minor amendment is also made. Note regulation 4(2) makes a minor amendment to the definition of “dependant”.

Regulation 16 amends paragraph 18 of Schedule 2 to the Age Regulations (life assurance cover to ill health retirees) so that paragraph 18 only applies to early retirement on the grounds of ill health. It is not necessary for retirement to occur before the early retirement pivot age. A minor amendment is also made.

Regulation 17 makes a minor amendment to paragraph 19 of Schedule 2 (differing amounts of benefit attributable to differing lengths of service).

Regulation 18 adds new paragraphs 19A and 19B to Schedule 2. New paragraph 19A allows different accrual rates or different death benefits for active or prospective members who are in comparable situations, where the aim is that they will on retirement get the same fraction, proportion or multiple of pensionable pay as an age related benefit or death benefit. This is regardless of whether the members actually continue in pensionable service until normal pension age. It also allows schemes to cap the level of benefits by reference to a fraction, proportion or multiple of pensionable pay or minimum pensionable service (or both). New paragraph 19B exempts payment of different employer or member contributions where paragraph 19A applies to the target benefit.

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Regulation 19 replaces paragraph 21 of Schedule 2. Amended paragraph 21 provides that any age related benefit or death benefit can be limited by reference to a maximum number of years of pensionable service and/or by reference to a fraction, proportion or multiple of pensionable pay.

Regulation 20 replaces paragraph 22 of Schedule 2. Amended paragraph 22 exempts payment of an age related benefit or death benefit where the requirement to provide short service benefit under section 71 of the Pension Schemes Act 1993 applies (where a member leaves service before normal pension age and after 2 years qualifying service short service benefits must be provided).

Regulation 21 replaces paragraph 24 of Schedule 2. Amended paragraph 24 exempts limits on any age related benefit or death benefit where those benefits may only be calculated by reference to a maximum level of pensionable pay. In addition this limit can apply to all members or certain groups or categories of members.

Regulation 22 adds a new paragraph 25A. It exempts closure of any section of a scheme to workers who have not joined the section. There is no limit on the number of sections in a scheme which may be closed to new members. There is no requirement that the whole scheme must be closed to new members. New paragraph 25A(2) defines a section of a scheme.

Regulation 23 makes minor amendments to paragraphs 27 and 28 of Schedule 2 (other rules, practices, actions and decision).

Regulation 24 amends paragraph 30 of the Schedule 2. Paragraph 30 exempts anything done to secure any tax relief or exemption available under the Finance Act 2004 (c.12) or to avoid a tax charge under that Act. Regulation 24 deletes sub-paragraph (2) of paragraph 30. This amendment allows schemes to rely on the exemption in paragraph 30 of Schedule 2 to the Age Regulations when setting minimum ages for payment of benefits. Regulation 24 also makes some minor amendments.

Regulation 25 makes some minor amendments to paragraphs 31 and 32 of Schedule 2 (contributions to personal pension schemes).

Regulation 26 amends the test in paragraph 31 for exempting age related contributions in the same way as paragraph 10(b) is amended by regulation 9.

Regulation 27 adds new paragraphs 33 to 36 to Schedule 2 to the Age Regulations.

New paragraph 33 allows employers to limit contributions to personal pension schemes by reference to a maximum level of remuneration.

New paragraphs 34 and 35 allow employers to set a minimum age for commencement of payment of contributions to a personal pension scheme or different minimum ages for different groups or categories of workers.

New paragraph 36 allows employers to make equal contributions to personal pension schemes in respect of workers.

An assessment of the impact of these Regulations on business, charities and the voluntary sector has been made. Copies of this Regulatory Impact Assessment have been placed in the libraries of both the Houses of Parliament. Copies may be obtained from the Better Regulation Unit of the Department for Work and Pensions, Level 4, The Adelphi, 1-11 John Adam Street, London WC2N 6HT.