

EQUALITY ACT 2010

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 16: General and Miscellaneous

Schedule 9: Work: exceptions

Part 2: Exceptions relating to age

Retirement: paragraph 8

Benefits dependent on marital status: paragraph 18

Effect

846. This paragraph concerns a specific exception to the prohibition of discrimination because of sexual orientation in the field of work. The exception concerns the provision of benefits by reference to marital status in respect of periods of service before 5 December 2005 (the coming into force of the Civil Partnership Act 2004). It also concerns benefits restricted to married persons and civil partners.

Background

847. This exception is intended to preserve the effect of regulation 25 of the Employment Equality (Sexual Orientation) Regulations 2003.

Examples

- An example of an employment benefit provided by reference to marital status is an occupational pension scheme which pays benefits to an employee's spouse on the death of the employee, but does not similarly compensate an unmarried employee's partner.
- A scheme which pays out only to surviving married and civil partners could be indirectly discriminatory because it might disadvantage gay couples, but it is permitted by the exception.
- A scheme which pays out to surviving married partners must also pay out to surviving civil partners in respect of any employee service since 5 December 2005 (when the Civil Partnership Act 2004 came into force). Provided the scheme does that, the exception allows it, even though it may (directly or indirectly) discriminate by paying out only to married partners for service before that date.