

2006 No. 2931

EMPLOYMENT AND TRAINING

AGE DISCRIMINATION

**The Employment Equality (Age) (Amendment No.2)
Regulations 2006**

<i>Made</i> - - - -	<i>9th November 2006</i>
<i>Laid before Parliament</i>	<i>10th November 2006</i>
<i>Coming into force</i> - -	<i>1st December 2006</i>

The Secretary of State, being a Minister designated(a) for the purposes of section 2(2) of the European Communities Act 1972(b) in relation to discrimination, makes the following Regulations in exercise of the powers conferred by section 2(2) of that Act.

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Employment Equality (Age) (Amendment No.2) Regulations 2006 and shall come into force on 1st December 2006.

(2) In these Regulations—

“the Age Regulations” means the Employment Equality (Age) Regulations 2006(c);

“Schedule 2” means Schedule 2 to the Age Regulations.

Amendment of the Age Regulations

2. The Age Regulations are amended in accordance with the provisions of these Regulations.

Amendment of regulation 11 of the Age Regulations

3. In regulation 11 of the Age Regulations (pension schemes)—

(a) in paragraphs (1) and (2), after “the trustees or managers of” insert in each place “, or any employer in relation to,”; and

(b) in paragraph (1) for “service” substitute “pensionable service”.

(a) See the European Communities (Designation) (No. 3) Order 2002 (S.I. 2002/1819).

(b) 1972 c.68.

(c) S.I. 2006/1031 amended by S.I. 2006/2408.

Interpretation of Schedule 2

4.—(1) In paragraph 1(3) of Schedule 2 (definition of occupational pension scheme), for “paragraphs 12, 13 and 30” substitute “paragraphs 3A, 7(b), 9, 15A, 17 to 21, 23, 24, 25, 25A and 30”.

(2) In paragraph 1(5) of Schedule 2 (interpretation)—

- (a) in the definition of “death benefit” for “pension scheme” substitute “scheme”;
- (b) in the definition of “dependant” after “means” insert “a widow, widower or surviving civil partner or a”;
- (c) for the definition of “early retirement pivot age” substitute—

“early retirement pivot age” means, in relation to age related benefit provided under a scheme, an age specified in the scheme rules (or otherwise determined) as the earliest age at which entitlement arises—

- (a) without consent (whether of an employer, the trustees or managers of the scheme or otherwise), and
- (b) without an actuarial reduction, but disregarding any special provision as to early payment on grounds of ill health or otherwise;”;
- (d) in the definition of “late retirement pivot age” after “scheme rules” insert “(or otherwise determined)”;
- (e) in the appropriate alphabetical places insert—

““additional state retirement pension” means the additional pension in the Category A retirement pension within the meaning of sections 44 and 45 of the Social Security Contributions and Benefits Act 1992(a);

“basic state retirement pension” means the basic pension in the Category A retirement pension within the meaning of section 44 of the Social Security Contributions and Benefits Act 1992 (b);

“block transfer” means a transfer in a single transaction or a series of transactions from a scheme of all the sums and assets held for the purposes of, or representing, or derived from—

- (i) all accrued rights under a scheme,
- (ii) contracted-out rights, or
- (iii) rights which are not contracted-out rights,

relating to a period of continuous pensionable service (or pensionable service which is treated as continuous) or one or more of a number of separate periods of such pensionable service which relate to a member and at least one other member;

“contracted-out rights” are such rights, under or derived from an occupational pension scheme or an appropriate personal pension scheme as fall within the following categories—

- (a) entitlement to payment of, or accrued rights to, guaranteed minimum pensions;
- (b) protected rights; or

(a) 1992 c. 4. Section 44 was amended by paragraph 3 of Schedule 4 to the Social Security (Consequential Provisions) Act 1992 (c.6), paragraph 38 of Schedule 8 to the Pension Schemes Act 1993 (c.48), section 128(1) and (2) of the Pensions Act 1995 (c. 26), section 68 of the Social Security Act 1998 (c.14), section 30(2), section 35(5) to (7) of the Child Support, Pensions and Social Security Act 2000 (c.19), paragraph 10 of Schedule 1 to the National Insurance Contributions Act 2002 (c.19) and S.I. 2006/645. Section 45 was amended by section 31(1) and (2), and 35(8) of the Child Support, Pensions and Social Security Act 2000 (c.19).

(b) Section 44 was amended by paragraph 3 of Schedule 4 to the Social Security (Consequential Provisions) Act 1992 (c.6), paragraph 38 of Schedule 8 to the Pension Schemes Act 1993 (c.48), section 128(1) and (2) of the Pensions Act 1995 (c. 26), section 68 of the Social Security Act 1998 (c.14), section 30(2), section 35(5) to (7) of the Child Support, Pensions and Social Security Act 2000 (c.19), paragraph 10 of Schedule 1 to the National Insurance Contributions Act 2002 (c.19) and S.I. 2006/645.

(c) section 9(2B) rights,

but not safeguarded rights (within the meaning of section 68A of the Pension Schemes Act 1993(a));

“guaranteed minimum pension” has the meaning given in section 8(2) of the Pension Schemes Act 1993(b);

“lower earnings limit” means the amount specified for the tax year in question in regulations made under section 5(1)(a)(i) of the Social Security Contributions and Benefits Act 1992 (earnings limits and thresholds for Class 1 contributions)(c);

“protected rights” has the meaning given in section 10 of the Pension Schemes Act 1993(d);

“redundancy” means being dismissed by reason of redundancy for the purposes of the Employment Rights Act 1996(e);

“relevant transfer” has the meaning given in—

(a) regulation 2(1) of the Transfer of Undertakings (Protection of Employment) Regulations 1981 (a relevant transfer)(f), or as the case may be,

(b) regulation 2(1) of the Transfer of Undertakings (Protection of Employment) Regulations 2006 (a relevant transfer)(g);

“section 9(2B) rights” are—

(a) rights to the payment of pensions and accrued rights to pensions (other than rights attributable to voluntary contributions) under a scheme contracted-out by virtue of section 9(2B) of the Pension Schemes Act 1993(h), so far as attributable to an earner’s service in contracted-out employment on or after 6th April 1997; and

(b) where a transfer payment has been made to such a scheme, any rights arising under the scheme as a consequence of that payment which are derived directly or indirectly from—

(i) such rights as are referred to in sub-paragraph (a) under another scheme contracted-out by virtue of section 9(2B) of that Act; or

(ii) protected rights under another occupational pension scheme or under a personal pension scheme attributable to payments or contributions in respect of employment on or after 6th April 1997;

“upper earnings limit” means the amount specified for the tax year in question in regulations made under section 5(1)(a)(iii) of the Social Security Contributions and Benefits Act 1992 (earnings limits and thresholds for Class 1 contributions)(i).”;

(f) omit the definitions of “employer contribution”, “member contribution” and “pensionable age”.

(3) Omit sub-paragraph (6) of paragraph 1 of Schedule 2.

(4) In sub-paragraph (8) of paragraph 1 of Schedule 2, after “this Schedule” add “and “occupational pension scheme” shall mean an occupational pension scheme within the meaning of

(a) 1993 c.48. Section 68A was inserted by section 36 of the Welfare Reform and Pensions Act 1999 (c. 30).

(b) 1993 c. 8.

(c) 1992 c.4. Section 5 was substituted by paragraph 1 of Schedule 9 to the Welfare Reform and Pensions Act 1999 (c.30).

(d) Section 10 was amended by Schedule 5 to the Pensions Act 1995 (c.26), section 32(2) of the Welfare Reform and Pensions Act 1999 (c.30) and paragraph 22(1) of Schedule 11 to the Proceeds of Crime Act 2002 (c.29).

(e) 1996 c. 18.

(f) S.I. 1981/1794. These Regulations were revoked by regulation 20(1) of S.I. 2006/246 as from 6 April 2006, except in relation to a transfer that took place before that date.

(g) S.I. 2006/246.

(h) Section 9(2B) was amended by paragraph 35 of Schedule 1 to the Social Security Contributions (Transfer of Functions, etc) Act 1999 (c.2).

(i) c.4. Section 5 was substituted by paragraph 1 of Schedule 9 to the Welfare Reform and Pensions Act 1999 (c.30).

either section 1(1) of the Pension Schemes Act 1993^(a) or section 150(5) of the Finance Act 2004^(b)”.

Length of service exemptions for trustees or managers and employers

5. After paragraph 3 of Schedule 2 (exception for rules, practices, actions and decisions relating to occupational pension schemes) insert—

“Length of service exemptions

3A.—(1) Subject to sub-paragraph (2), nothing in Part 2 or 3 of these Regulations shall render it unlawful for—

- (a) any rule, practice, action or decision of the trustees or managers (“A”) of a scheme regarding—
 - (i) admission to the scheme (“admission terms”); or
 - (ii) the accrual of, or eligibility for, any benefit under the scheme (“benefit terms”),

where the admission terms or the benefit terms put a member (“B”) of the scheme at a disadvantage when compared with another member (“C”) if and to the extent that the disadvantage suffered by B is because B’s length of service with an employer (“D”) in relation to the scheme is less than that of C;

- (b) any rule, practice, action or decision of an employer (“E”) in relation to a scheme regarding the admission terms or benefit terms where it puts a member (“F”) of the scheme at a disadvantage when compared with another member (“G”) if and to the extent that the disadvantage suffered by F is because F’s length of service with E is less than that of G; or
- (c) any rule, practice, action or decision of an employer (“H”) regarding payment of contributions in respect of a worker (“I”) to a personal pension scheme or to a money purchase arrangement (“contribution terms”) where it puts I at a disadvantage when compared with another worker (“J”) if and to the extent that the disadvantage suffered by I is because I’s length of service with H is less than that of J.

(2) Where B’s, or as the case may be, F’s or I’s length of service exceeds 5 years and a length of service criterion in the admission terms or as the case may be, the benefit terms or contribution terms puts B or F or I at a disadvantage—

- (a) where sub-paragraph (1)(a) applies, A—
 - (i) must ask D to confirm whether the length of service criterion reasonably appears to D to fulfil a business need of D’s undertaking (for example by encouraging the loyalty or motivation, or rewarding the experience, of some or all of his workers), and
 - (ii) may rely on D’s confirmation;
- (b) for the purposes of paragraph (a)(i), D must—
 - (i) calculate B’s length of service;
 - (ii) provide A with details of B’s length of service; and
 - (iii) respond to A’s request within a reasonable time;
- (c) where sub-paragraph (1)(a) or (b) or (c) applies, it must reasonably appear to D or, as the case may be, E or H that the length of service criterion applies in such a way that it fulfils a business need of his undertaking (for example by encouraging the loyalty or motivation, or rewarding the experience, of some or all of his workers).

(a) 1993 c.48. Section 1 was amended by section 239 of the Pensions Act 2004 (c.35).

(b) 2004 c. 12.

(3) When calculating B’s or, as the case may be, F’s or I’s length of service D or, as the case may be, E or H shall calculate—

(a) the length of time the member or worker has been working for him doing work which he reasonably considers to be at or above a particular level (assessed by reference to the demands made on the member or worker, for example, in terms of effort, skills and decision making), or

(b) the length of time the member or worker has been working for him in total,

and it is for D or, as the case may be, E or H to decide which of paragraphs (a) or (b) to use.

(4) For the purposes of sub-paragraph (3), D or, as the case may be, E or H shall calculate the length of time a member or worker has been working for him in accordance with paragraphs (4) to (7) of regulation 32 (exception for provision of certain benefits based on length of service) and any reference in those paragraphs to—

(a) “A” shall be read as if it were a reference to “D” or, as the case may be, “E” or “H”; and

(b) “worker” shall, where sub-paragraph (1)(a) or (b) applies, be read as if it were a reference to “member”.

(5) For the purposes of this paragraph, a “member” shall include a “prospective member”.

Unlawfulness of rules, practices, actions or decisions relating to Part 2 or Part 3 of Schedule 2

6. After paragraph 4 of Schedule 2 (exception for rules, practices, actions and decisions relating to contributions by employers to personal pension schemes) insert—

“Unlawfulness of rules, practices, actions or decisions relating to Part 2 or Part 3 of Schedule 2

4A.—(1) The inclusion of a rule, practice, action or decision in Part 2 of this Schedule (excepted rules, practices, actions and decisions relating to occupational pension schemes) shall not be taken to mean that, but for the exemption in Part 2, the use or maintenance by an employer, trustees or managers of a scheme of the rule, practice, action or decision in relation to the scheme, would be unlawful.

(2) The inclusion of a rule, practice, action or decision in Part 3 of this Schedule (excepted rules, practices, actions and decisions relating to contributions by employers to personal pension schemes) shall not be taken to mean that, but for the exemption in Part 3, the use or maintenance by an employer of the rule, practice, action or decision in relation to the payment of contributions to a personal pension scheme in respect of a worker, would be unlawful.”.

Lower earnings limit and offsets for state retirement pension

7.—(1) In paragraph 7 of Schedule 2 (admission to schemes), for sub-paragraph (b) substitute—

“(b) a minimum level of pensionable pay for admission where that minimum—

(i) does not exceed one and a half times the lower earnings limit;

(ii) does not exceed an amount calculated by reference to the lower earnings limit where the aim is more or less to reflect the amount of the basic state retirement pension; or

(iii) does not exceed an amount calculated more or less to reflect the amount of the basic state retirement pension plus the additional state retirement pension;”.

(2) For paragraph 23 of Schedule 2 (limits on benefits) substitute—

“23. When determining a member’s pensionable pay by reference to which any age related benefit or death benefit payable to or in respect of a member is calculated, to exclude from the member’s remuneration an amount which—

- (a) does not exceed one and a half times the lower earnings limit;
- (b) does not exceed an amount calculated by reference to the lower earnings limit where the aim is more or less to reflect the amount of the basic state retirement pension; or
- (c) does not exceed an amount calculated more or less to reflect the amount of the basic state retirement pension plus the additional state retirement pension.”.

(3) After paragraph 23 of Schedule 2 insert—

“23A. Any difference in the amount of age related benefit or death benefit payable under a scheme to or in respect of members where the difference is attributable to accrual of age related benefit at a higher fraction of pensionable pay for pensionable pay over the upper earnings limit (and a lower fraction of pensionable pay for pensionable pay under the upper earnings limit) where the aim is to reflect the additional state retirement pension.”.

Amendments of paragraphs 8 and 9 of Schedule 2

8.—(1) In paragraph 8 of Schedule 2 (the use of age criteria in actuarial calculations)—

- (a) after “The use of age criteria in actuarial calculations” insert “in a scheme”; and
- (b) in sub-paragraph (b), after “employer contributions” insert “by or in respect of a member”.

(2) In paragraph 9 of Schedule 2 (contributions)—

- (a) after “employer contributions” insert “, to a scheme,”;
- (b) after “pensionable pay” insert “or, where paragraph 19A applies, different accrual rates”.

Money purchase arrangements

9. In paragraph 10 of Schedule 2 (contributions under money purchase arrangements)—

- (a) in paragraph (i) of sub-paragraph (a), for “amount of benefit” substitute “amount of age related benefit in respect of comparable aggregate periods of pensionable service”;
- (b) for paragraph (ii) of sub-paragraph (a) substitute—
 - “(ii) to make more nearly equal the amount of the age related benefit, in respect of comparable aggregate periods of pensionable service, to which members of different ages who are otherwise in a comparable situation will become entitled under the arrangement;”;

(c) after sub-paragraph (b) add—

“(c) any limitation on any employer contributions in respect of a member or member contributions by reference to a maximum level of pensionable pay.”.

Limits on contributions to a defined benefits arrangement

10. After paragraph 11 of Schedule 2 (contributions under defined benefits arrangements) insert—

“11A. Any limitation on employer contributions in respect of a member or member contributions to a defined benefit arrangement by reference to a maximum level of pensionable pay.”.

Early retirement

11.—(1) For paragraph 12 of Schedule 2 (reductions for early retirement) substitute—

“12.—(1) Subject to sub-paragraph (4), a minimum age for any member of a scheme to be entitled to a particular age related benefit that is paid in accordance with sub-paragraph (2) and is paid—

- (a) either with or without consent (whether of an employer, the trustees or managers of the scheme or otherwise), and
- (b) before the early retirement pivot age relevant to that age related benefit.

(2) The age related benefit must—

- (a) be actuarially reduced on the basis that the aim is to reflect that it is paid on a date before the applicable early retirement pivot age; and
- (b) not be enhanced by crediting the member with any additional periods of pensionable service or additional benefits.

(3) Sub-paragraph (1) shall also apply to different minimum ages for different groups or categories of members.

(4) Sub-paragraph (1) shall not apply to any member who retires on the grounds to which paragraph 13, 13A or 15 apply.”.

(2) For paragraph 13 of Schedule 2 (enhancements for early retirement) substitute—

“13.—(1) A minimum age for any active or prospective members of a scheme for payment of or entitlement to a particular age related benefit before the early retirement pivot age relevant to that age related benefit where—

- (a) the entitlement to the age related benefit at a minimum age applies to a member who is an active or prospective member of the scheme on 1st December 2006;
- (b) the age related benefit may be paid, at a minimum age, to the active or prospective member either with or without consent (whether of an employer, the trustees or managers of the scheme or otherwise); and
- (c) the age related benefit is enhanced in one or more of the ways specified in sub-paragraph (2).

(2) For the purposes of sub-paragraph (1)(c) the specified ways are the enhancement of any age related benefit payable to or in respect of the member calculated in one or more of the following ways—

- (a) by reference to some or all of the years of prospective pensionable service a member would have completed if he had remained in pensionable service until normal pension age;
- (b) by reference to a fixed number of years of prospective pensionable service;
- (c) by making an actuarial reduction which is smaller than if early retirement had been on grounds to which paragraph 12 applies; or
- (d) by not making any actuarial reduction for early retirement.

(3) Sub-paragraph (1) shall also apply to different minimum ages for different groups or categories of active or prospective members.

13A. Paragraph 13 shall continue to apply to any member who after 1st December 2006—

- (a) joins a scheme as a result of a block transfer or relevant transfer;
- (b) joins a scheme as a result of a block transfer or relevant transfer from a scheme to which paragraph (a) applied; or
- (c) joins a scheme on the basis that it will provide the same benefits as those provided by the scheme to which paragraph 13 applied.

13B.—(1) A minimum age for any member of a scheme for payment of or entitlement to a particular age related benefit on the grounds of redundancy where it is enhanced in accordance with sub-paragraph (2) and paid either with or without consent (whether of an employer, the trustees or managers of the scheme or otherwise).

(2) The enhancement of any age related benefit payable to or in respect of a member on the grounds of redundancy where the enhancement is calculated in one or more of the following ways—

- (a) by reference to the years of prospective pensionable service a member would have completed if he had remained in pensionable service until normal pension age;
- (b) by reference to a fixed number of years of prospective pensionable service;
- (c) by making an actuarial reduction which is smaller than if early retirement had been on grounds to which paragraph 12 applied; or
- (d) by not making any actuarial reduction for early retirement.

(3) Sub-paragraph (1) shall also apply to different minimum ages for different groups or categories of members.”.

Different early and late retirement pivot ages

12. For paragraph 14 of Schedule 2 (different early and late retirement pivot ages) substitute—

“**14.** An early retirement pivot age or a late retirement pivot age including—

- (a) different such ages for different groups or categories of member, and
- (b) any early retirement pivot age or late retirement pivot age for deferred members which is different than for active members.”.

Ill health benefits and death benefits

13.—(1) For paragraph 15 of Schedule 2 (ill health benefits) substitute—

“**15.—**(1) A minimum age for any member of a scheme for payment of or entitlement to a particular age related benefit on the grounds of ill health where the age related benefit is enhanced in accordance with sub-paragraph (2) and paid either with or without consent (whether of an employer, the trustees or managers of the scheme or otherwise).

(2) The enhancement of any age related benefit payable to or in respect of a member on the grounds of ill health where the enhancement is calculated in one or more of the following ways—

- (a) by reference to some or all of the years of prospective pensionable service a member would have completed if he had remained in pensionable service until normal pension age;
- (b) by reference to a fixed number of years of prospective pensionable service;
- (c) by making an actuarial reduction which is smaller than if early retirement had been on the grounds to which paragraph 12 applied; or
- (d) by not making any actuarial reduction for early retirement.

(3) Sub-paragraph (1) shall also apply to different minimum ages for different groups or categories of members.

15A.—(1) The calculation of any death benefit payable in respect of a member—

- (a) by reference to some or all of the years of prospective pensionable service a member would have completed if he had remained in service until normal pension age; or
- (b) by reference to a fixed number of years of prospective pensionable service.

(2) Payment after a member’s death of a death benefit calculated by reference to the period remaining in a pension guarantee period.

(3) For the purposes of sub-paragraph (2), a pension guarantee period means a fixed period specified in or permitted by the scheme rules beginning on—

- (a) the date on which the payment of pension to or in respect of the member began, or

- (b) if specified in the scheme rules, the date of the member's death on or after normal pension age where payment of pension to or in respect of him had not begun.
- (4) Any difference between the death benefits payable in respect of deferred members who die before normal pension age and the death benefits payable in respect of deferred members who die on or after normal pension age.”.

Bridging pensions and state scheme integration

14.—(1) For paragraph 16 of Schedule 2 (additional pensions paid to male members) substitute—

- “16.**—(1) Any rule, practice, action or decision where—
- (a) the rate of pension to which a pensioner member is entitled is reduced at any time between age 60 and 65 (“the reduction date”), by either —
 - (i) an amount not exceeding the relevant state retirement pension rate at the reduction date, or
 - (ii) the rate of the pension in payment where on the reduction date the relevant state retirement pension rate is greater than the rate of that pension;
 - (b) from the date a member is entitled to present payment of a pension from a scheme he is entitled to an additional amount of pension which does not exceed the amount of the basic state retirement pension plus the additional state retirement pension that would be payable at state pension age; or
 - (c) a member who reaches his state pension age is not entitled to, or no longer entitled to, an additional amount of pension which does not exceed the amount of the basic state retirement pension plus the additional state retirement pension that would be payable at state pension age.
- (2) For the purposes of paragraph (1)—
- “relevant state retirement pension rate” has the same meaning as in paragraph 2(5) of Schedule 28 to the Finance Act 2004(a);
- “state pension age” means the pensionable age specified in the rules in paragraph 1 of Schedule 4 to the Pensions Act 1995(b).”.

Reduction of pensions payable to younger dependants

- 15.** In paragraph 17 of Schedule 2 (reduction of pension payable to a dependant)—
- (a) before “reduction” insert “actuarial”; and
 - (b) after “pension payable” insert “from a scheme”.

Life cover

- 16.** In paragraph 18 of Schedule 2 (life assurance cover to ill health retirees)—
- (a) after “who have retired” insert “from a scheme”; and
 - (b) omit “before any early retirement pivot age”.

Amendment of paragraph 19 of Schedule 2

17. In paragraph 19 of Schedule 2 (differing amounts of benefit attributable to differing lengths of service) for “defined benefits arrangement” substitute “scheme”.

(a) 2004 c.12. Paragraph 2(5) was substituted by paragraph 20 of Schedule 23 to the Finance Act 2006 (c.25).
(b) 1995 c.26. Paragraph 1 of Schedule 4 was amended by paragraph 39 of Schedule 2 to the State Pension Credit Act 2002 (c.16).

Targeted and capped accrual

18. After paragraph 19 of Schedule 2 insert—

“19A.—(1) Any differences in—

- (a) the fraction of pensionable pay at which any age related benefit accrues, or
- (b) the amount of death benefit,

to or in respect of active or prospective members of a scheme where the differences are attributable to the aim specified in sub-paragraph (2).

(2) The aim referred to in sub-paragraph (1) is that members in a comparable situation will have the right to age related benefit or death benefit equal to the same fraction, proportion or multiple of pensionable pay—

- (a) without regard to each member’s length of pensionable service under the scheme, and
- (b) provided that each member continues in pensionable service under the scheme until normal pension age.

(3) Any differences in age related benefits which accrue, or entitlement to any death benefits which arises, to or in respect of active or prospective members of a scheme who are in a comparable situation where—

- (a) those differences are attributable to the aim specified in sub-paragraph (2), and
- (b) the member’s pensionable service under the arrangement ceases before normal pension age.

(4) Where sub-paragraph (1) applies, any limitation on the amount of any age related benefit or death benefit payable from a scheme where the limitation arises from imposing one or both of the following—

- (a) a maximum amount on the age related benefit or death benefit which is equal to a fraction, proportion or multiple of the member’s pensionable pay, or
- (b) a minimum period of pensionable service.

19B. Where paragraph 19A applies, different rates of member or employer contributions according to the age of the members by, or in respect of whom, contributions are made, where for each year of pensionable service members in comparable situations accrue different fractions of pensionable pay.”.

Limits on benefits

19. For paragraph 21 of Schedule 2 substitute—

“21.—(1) Any limitation on the amount of any age related benefit or death benefit payable from a scheme where either or both sub-paragraphs (2) and (3) apply.

(2) The limitation results from imposing a maximum number of years of pensionable service by reference to which the age related benefit or death benefit may be calculated.

(3) The limitation arises from imposing a maximum amount on the age related benefit or death benefit which is equal to a fraction, proportion or multiple of a member’s pensionable pay.”.

20. For paragraph 22 of Schedule 2 substitute—

“22. Any rule, practice, action or decision where any age related benefit or death benefit is only payable from a scheme where a member is entitled to short service benefit under section 71 of the Pension Schemes Act 1993 (basic principles as to short service benefit)(a).”.

(a) 1993 c.48. Section 71(3) was substituted by section 263(1) of the Pensions Act 2004 (c.35).

21. For paragraph 24 of Schedule 2 substitute—

“24. Any limitation on the amount of any age related benefit or death benefit payable from a scheme where the limitation—

- (a) relates to—
 - (i) all members who joined, or who became eligible to join the scheme on, after or before a particular date; or
 - (ii) any group or category of members who joined, or who became eligible to join the scheme on, after or before a particular date; and
- (b) results from imposing a maximum level of pensionable pay by reference to which the age related benefit or death benefit may be calculated.”.

Closure of sections of schemes

22. After paragraph 25 of Schedule 2 insert—

“Closure of sections of schemes

25A.—(1) The closure of any section of a scheme, from a particular date, to workers who have not already joined it.

- (2) For the purposes of paragraph (1)—
 - (a) a scheme may be divided into two or more sections, and
 - (b) a section of a scheme shall mean any of the groups in sub-paragraph (3).
- (3) A section of a scheme shall mean any of the following—
 - (a) any group of members who became eligible to join, or who joined, the scheme on, after or before a particular date on the basis that particular benefits will be provided to or in respect of those members or that a particular level of contributions will be paid in respect of those members; or
 - (b) any group of members who became eligible to join, or who joined, the scheme as a result of a block transfer or relevant transfer.”.

Amendment of paragraphs 27 and 28 of Schedule 2

23. In paragraphs 27 and 28 of Schedule 2 (other rules, practices actions and decisions) after “different rates is to maintain” in both places insert “or more nearly maintain”.

Finance Act 2004: registered pension schemes

24. In paragraph 30 of Schedule 2 (registered pension schemes)—

- (a) in sub-paragraph (1)—
 - (i) omit “Subject to sub-paragraph (2)”;
 - (ii) before “registered pension scheme” insert “scheme which is a”; and
- (b) omit sub-paragraph (2).

Personal pension schemes

25. In paragraphs 31 and 32 of Schedule 2 (contributions by employers to personal pension schemes) after “an employer” insert in both places “to a personal pension scheme”.

26. In paragraph 31 of Schedule 2—

- (a) in sub-paragraph (a), for “amount of benefit” substitute “amount of age related benefit, derived from contributions made each year by the employer,”;
- (b) for sub-paragraph (b) substitute—

“(b) to make more nearly equal the amount of the age related benefit, derived from contributions made each year by the employer, to which workers of different ages who are otherwise in a comparable situation will become entitled under their personal pension schemes.”.

27. After paragraph 32 of Schedule 2 (excepted rules, practices, actions and decisions relating to contributions by employers to personal pension schemes) insert—

“33. Any limitation on any contributions by an employer, to a personal pension scheme, by reference to a maximum level of remuneration.

34. A minimum age for commencement of payment of contributions by an employer to a personal pension scheme in respect of a worker.

35. Different minimum ages for commencement of payment of contributions by an employer to a personal pension scheme in respect of different groups or categories of workers.

36. Equal rates of contributions by an employer to a personal pension scheme irrespective of the age of the workers in respect of whom contributions are made.”.

Signed by authority of the Secretary of State for Work and Pensions.

9th November 2006

James Purnell
Minister of State,
Department for Work and Pensions

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 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.

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.

£3.00

© Crown copyright 2006

Printed and published in the UK by The Stationery Office Limited under the authority and superintendence of Carol Tullo, Controller of Her Majesty's Stationery Office and Queen's Printer of Acts of Parliament.

E1389 11/2006 161389T 19585