

PENSION PROVISIONS OF THE AGE REGULATIONS

Consultation on Amending Regulations

Age Discrimination

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

A Consultation Document

Dear Sir or Madam

Consultation on amending regulations - The Employment Equality (Age) (Amendment No.2) Regulations 2006 (the “Amending Age Regulations”)

The Employment Equality (Age) Regulations 2006 (S.I.2006/1031) (the “Age Regulations”) were introduced against a background of frantic activity in the pensions sector to comply with sweeping changes introduced by the Finance Act 2004. Since July DWP has received a range of comments in relation to the impact of the Age Regulations on occupational and personal pension schemes.

As a result of correspondence and meetings with the pensions industry it became apparent that, if DWP did not clarify the Age Regulations and include further exemptions, there was a danger that schemes would decide that the legal and financial risks of continuing certain practices were too great. Therefore, in order to avoid any future legal challenge employers and trustees/managers in relation to schemes will level down benefits provided by their schemes or close their schemes. As a result of postponing the implementation date (to 1 December 2006) and making Amending Age Regulations, employers, trustees/managers and their advisers will have more time to ensure their rules are compliant with the Age Regulations and to ensure they come within any available exemptions in Schedule 2 to those Regulations. In addition they will have time to discuss and respond to our informal consultation about the Amending Age Regulations.

This consultation document seeks views on the Amending Age Regulations which are being introduced to clarify and add to the exemptions in Schedule 2 to the Age Regulations.

We are currently amending the DTI Guidance on the Impact of the Act Regulations on pension schemes (April 2006) and will consult on those changes shortly.

Target audience

These regulations have been drafted following informal consultation with affected schemes and pension professionals. This consultation is primarily aimed at pension industry professionals, trustees/managers in relation to pension schemes and

employers with an interest in pension provision and age discrimination issues, although, views from the wider public would be welcome.

Questions

In particular we would welcome views on:

- Do the amendments make the requirements clearer and more operable by schemes and employers?
- Are there circumstances, other than TUPE transfer, when it is objectively justifiable on a national level to allow members of one section of a scheme to continue to accrue benefits under more preferential terms than members in another section?

DWP website

The consultation document is available on the Department's website at:

<http://www.dwp.gov.uk/consultations2006/index.asp>

How to respond

The consultation period starts today 11 October 2006 and closes 20 October 2006. This short period is necessary to bring the regulations into force before 2 December 2006 (the deadline for implementation of the Directive 2000/78/EC).

Where proposals have been stimulated by previous consultation, Cabinet office guidance provides that a shorter consultation period may be appropriate. This is the final stage of an extended period of consultation and takes account of comments provided in previous consultation activity. It will help ensure proposals are workable, and identify any other unforeseen consequences. The Secretary of State for the Department for Work and Pensions has agreed that, given the extent of previous consultation activity, the need to bring regulations into force, and the technical nature of the issues in question, that this consultation should be undertaken.

We would be grateful for your comments on any of the points covered by the regulations. Please ensure that your response reaches us by that date. Please send consultation responses to:

E-mail ('age-regulations-2006@dwp.gsi.gov.uk')

Or by post to:

Age Regulations Amendment Consultation

Department for Work and Pensions

EU and International Pension Policy

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When responding, please state whether you are responding as an individual or representing view of an organisation. If responding on behalf of a larger organisation please make it clear who the organisation represents and (where applicable) how the view of the members were assembled.

A list of those whom this document has been sent is attached. If you have any suggestions of others who may wish to be involved in this process, please contact us immediately.

Because of the Freedom of Information Act (2000), all information contained in your response, including personal information may be subject to publication or disclosure. By providing personal information for the purposes of the public consultation exercise, it is understood that you consent to its disclosure and publication. If this is not the case, you should limit any personal information which is provided, or remove it completely. If you want the information in your response to the consultation to be kept confidential, you should explain why as part of your response, although we cannot guarantee to do this. We cannot guarantee confidentiality even if your IT system claims it automatically. The contact point to discuss is Sheena.M.Taylor@dwp.gsi.gov.uk.

More information about the Freedom of Information Act can be found on the website of the Department for Constitutional Affairs - <http://www.dca.gov.uk/foi/guidance/exguide/index.htm>

Summary of responses

We will aim to publish a summary of responses before 2 December 2006. Paper copies will be available on request.

DWP values feedback on how well it consults. If you have any comments on the process of this consultation (as opposed to the issues raised) please contact the DWP Consultation Co-ordinator. Please also make any suggestions as to how the process of consultation could be improved further. Please contact:

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Yours faithfully

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The Age Advisory Group

The Pensions Advisory Service

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TUC

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

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- **Section Two – The Amending Age Regulations**

The Employment Equality (Age) (Amendment No. 2) Regulations 2006 (the “Amending Age Regulations”) amend the Employment Equality (Age) Regulations 2006 (S.I. 2006/2408) (the “Age Regulations”).

The Age Regulations came into force on 1 October 2006 but provisions relating to pensions will come into force on 1 December 2006. Regulation 11 of the Age Regulations imposes a duty on trustees or managers of occupational pension schemes to not discriminate against members or prospective members of their scheme on the grounds of age. They also must not subject them to harassment on the grounds of age. As a result of regulation 7 of the Age Regulations, employers are under a duty not to discriminate on the grounds of age against persons they employ and this will include terms of employment which relate to pension provision.

Every occupational pension scheme shall from 1 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 sets out exemptions for trustees or managers, and employers, in relation to occupational pension schemes and for contributions made by employers to personal pension schemes.

Regulation 3 – Amendment of regulation 11 of the Age Regulations

This amends regulation 11 of the Age Regulations so that it will apply to both employers and trustees or managers in relation to occupational pension schemes.

The amended regulation 11 will provide that any employer will, when carrying out its functions in relation to a scheme, ensure that members and prospective members are not discriminated against and are not subjected to harassment. In addition this requirement will not apply to rights accrued or benefits payable in respect of periods of service prior to 1 December 2006.

Regulation 4 – Interpretation of Schedule 2 to the Age Regulations

This amends the interpretation provisions in Schedule 2 to the Age Regulations.

In particular the definition of “early retirement pivot age” is replaced to clarify that:

- it is an age specified in scheme rules or otherwise determined e.g. by a rule or practice;

- it is the age at which a benefit is paid without requiring the consent of an employer or the trustees or managers in relation to the scheme;
- it is the age which relates to a benefit provided in respect of a particular period of service;

The definition still provides that it is the age at which benefits are paid without an actuarial reduction and that special provisions relating to ill health and otherwise should be disregarded when determining the early retirement pivot age.

A new definition of “block transfer” is added for the purpose of the new definition of “section” (see regulation 5). Such a transfer can consist of all accrued rights, just contracted-out rights or just non contracted-out rights and must relate to more than one member.

Regulation 5 – Sections of schemes

The Age Regulations provide in paragraph 1(6) of Schedule 2 that references to a scheme in Schedule 2 may include a section of a scheme.

This regulation amends paragraph 1(6) of Schedule 2 so that references to a scheme in regulation 11 to the Age Regulations may include a section of a scheme.

This Regulation also inserts a new definition of the term section of a scheme. In summary a section can consist of groups of members who are defined by reference to the date they joined a scheme or became eligible to join. This will include those who are transferred into a scheme as a result of a transfer. Such groups of members may only be treated as a section provided that the section does not admit new members and does not allow existing members to accrue, or become entitled to, new benefits. The only exception to this is where benefits must be provided to members as a result of a TUPE transfer (referred to as a “relevant transfer”).

Regulation 6 – length of service exemption for trustees or managers and employers

This inserts a new paragraph 3A in Schedule 2 to the Age Regulations, which provides for a service related exemption for certain practices in relation to occupational pension schemes.

New paragraph 3A applies where there is a difference in treatment between two members which results from differences in their length of service. The difference in treatment must relate to the admission to a scheme, accrual of benefits and eligibility for any benefits under a scheme.

The difference must be justified where the member who is discriminated against has more than five years service. The justification must be provided by the employer in relation to the scheme. The employer must ensure that it reasonably appears to him that it fulfils a business need of his undertaking.

Where the difference in treatment results from the application by the trustees or managers of a scheme rule they must ask the employer to provide them with the justification for the difference in treatment. The employer must still ensure that he is

satisfied that the difference in treatment reasonably appears to him to fulfil a business need of his undertaking.

Regulation 7 – Unlawfulness of rules, practices, actions or decisions relating to Part 2 or 3

This 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 8 – Lower earnings limit and offsets for state retirement pension

This replaces paragraph 7(a) (admission to schemes) and paragraph 23 (limits on benefits) of Schedule 2 to the Age Regulation. The amendments are intended to more closely reflect scheme practices when making pension provision. For example when calculating pensionable pay some schemes deduct from remuneration the full amount of the lower earnings limit while others deduct one and a half times the lower earnings limit.

Regulation 9 – Targeted and capped accrual

The amends paragraph 9 and 11 and adds a new paragraph 19A to Schedule 2 to the Age Regulations. The amendments to paragraph 9 and 11 are consequential to new paragraph 19A.

New paragraph 19A allows different accrual rates for active or prospective members in comparable situations where the aim is that they will, on retirement, get the same fraction of pensionable pay as a pension. This is regardless of whether the members actually continue in pensionable service until their retirement. It also allows schemes to cap the level of benefits by reference to a fraction of pensionable pay.

Regulation 10 – Money purchase arrangements

This amends paragraph 10 of Schedule 2 to the Age Regulations. That paragraph exempts different age related rates of contributions to schemes provided that the aim is to make benefits “equal” or “more nearly equal”. Amendments have been made to the effect that benefits payable in respect of each year of pensionable service need to meet the “equal” or “more nearly equal” test.

A new exemption has been added to allow employers to limit their contributions by reference to a maximum level of pensionable pay.

Regulation 11

This replaces paragraphs 12 and 13 of Schedule 2 to the Age Regulations.

New 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. Paragraph 12 has been amended to clarify that:

- there can be different minimum ages for different groups or categories of members;
- paragraph 12 applies to both money purchase and defined benefit arrangements;
- the minimum age can be subject to the consent of the employer or the trustees or managers;
- paragraph 12 does not apply where a member retires on the grounds of ill health or redundancy;

New paragraph 13 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. The minimum age must be before the early retirement pivot age which applies to the age related benefit. There can be a different minimum ages for different groups or categories of member. Paragraph 13 also allows employers to enhance any age related benefit by granting additional years of pensionable service or making an actuarial reduction which is smaller than if retirement had not been on the grounds of redundancy.

Regulation 12 – Different early and late retirement pivot ages

This adds a new provision to paragraph 14 of Schedule 2 to the Age Regulations. It provides that there can be a different early retirement pivot age and late retirement pivot age for deferred members.

Regulation 13

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

New 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. 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 15 also allows employers to enhance any age related benefit by granting additional years of pensionable service, by not making an actuarial reduction or making an actuarial reduction which is smaller than if retirement had not been on the grounds of ill health.

New paragraph 15A 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. New paragraph 15A 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.

Regulation 14 – Bridging pensions

This replaces paragraph 16 of Schedule 2 and extends the exemption for payment of bridging pensions. The amended paragraph 16 covers both men and women.

Regulation 15 – Reduction of pensions payable to younger dependants

This 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 it is reduced to reflect that the dependant is younger than the member, that reduction must be an actuarial reduction.

Regulation 16 – Life cover

This amends paragraph 18 of Schedule 2 to the Age Regulations (life assurance cover to ill health retirees) to clarify 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.

Limits on Benefits

Regulation 17

This adds a new exemption to paragraph 21 of Schedule 2 to the Age Regulations. The provisions of old paragraph 21 are now contained in sub-paragraph (a). Sub-paragraph (b) makes a new exemption for limits on benefits which arise from a fraction of pensionable pay.

Regulation 18

This makes some minor amendments to clarify paragraph 22 of Schedule 2 to the Age Regulations.

Regulation 19

This makes some minor amendments to clarify paragraphs 27 and 28 of Schedule 2 to the Age Regulations.

Regulation 20 - Finance Act 2004

This allows schemes when setting minimum ages for payment of benefits to rely on the exemption in paragraph 30 of Schedule 2 to the Age Regulations. Paragraph 30 exempts anything done to secure any tax relief or exemption available under the Finance Act 2004 or to avoid a tax charge under that Act.

Regulation 21 – Personal Pension Schemes

This adds some new exemptions to Part 3 of Schedule 2 to the Age Regulations which makes exemptions for personal pension schemes.

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 personal pension schemes and to set different minimum ages for different groups or categories of workers.

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

2006 No.

EMPLOYMENT AND TRAINING

AGE DISCRIMINATION

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

<i>Made</i>	- - - -	***
<i>Laid before Parliament</i>		***
<i>Coming into force</i>	- -	<i>1st December 2006</i>

The Secretary of State, being a Minister designated⁽¹⁾ for the purposes of section 2(2) of the European Communities Act 1972⁽²⁾ 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⁽³⁾;

“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 paragraphs (1) and (2) of regulation 11 of the Age Regulations (pension schemes), insert after “the trustees or managers of” in each place “, and any employer in relation to,”.

Interpretation of Schedule 2

4. In paragraph 1 of Schedule 2 (interpretation)—

(a) for the definition of “early retirement pivot age” substitute—

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

⁽¹⁾ See the European Communities (Designation) (No. 3) Order 2002 (S.I. 2002/1819).

⁽²⁾ 1972 c.68.

⁽³⁾ S.I. 2006/1031 amended by S.I. 2006/2408.

- (a) without the consent of an employer or the trustees or managers of the scheme, and
- (b) without an actuarial reduction,

but disregarding any special provision as to early payment on grounds of ill health or otherwise;”;

- (b) in the appropriate alphabetical places insert—

““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—

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

where any such rights relate to the 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, a guaranteed minimum pension;
- (b) protected rights;
- (c) section 9(2B) rights; or
- (d) any of the rights in sub-paragraphs (a) to (c) above which themselves are derived from any of those rights which have been subject of a transfer payment.

“guaranteed minimum pension” has the meaning given in section 8(2) of the Pension Schemes Act 1993(4);

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

“principal appointed day” has the same meaning as in section 7(2B) of the Pension Schemes Act 1993(6);

“protected rights” has the meaning given in section 10 of Pension Schemes Act 1993(7);

“relevant transfer” shall have the same meaning as in—

- (a) regulation 2(1) of the Transfer of Undertakings (Protection of Employment) Regulations 1981 (a relevant transfer)(8), or as the case may be,
- (b) regulation 2(1) the Transfer of Undertakings (Protection of Employment) Regulations 2006 (a relevant transfer)(9);

“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(10), so far as attributable to an earner's service in contracted-out employment on or after the principal appointed day; 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

(4) 1993 c. 8.

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

(6) Section 7(2B) was inserted by section 136(1) of the Pensions Act 1995 (c.26).

(7) Section 10 was amended by Schedule 5 to the Pensions Act 1995, 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).

(8) 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.

(9) S.I. 2006/246.

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

- (ii) protected rights under another occupational pension scheme or under an appropriate personal pension scheme attributable to payments or contributions in respect of employment on or after the principal appointed day;

“state retirement pension” means the rate of the basic state pension specified in section 44(4) of the Social Security Contributions and Benefits Act 1992(11);”.

Sections of schemes

5.—(1) In sub-paragraph (6) of paragraph 1 of Schedule 2 (treat sections as separate schemes) after “the provisions of this Schedule” insert “and regulation 11”.

(2) After sub-paragraph (6) of paragraph 1 of Schedule 2 insert—

“(6A) For the purposes of this Schedule a section of a scheme means—

- (a) any group of members who became eligible to join, or 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;
- (b) any group of members who became eligible to join, or joined, the scheme as a result of a block transfer;
- (c) in the case of a relevant transfer, any group of members—
 - (i) who became eligible to join, or joined, the scheme as a result of the relevant transfer;
 - (ii) who must be provided with particular benefits as a result of the relevant transfer; and
- (d) except in the case of sub-paragraph (c)(ii), a section must be closed to new members and after closure existing members must not accrue, or become entitled to, any new age related benefit or new death benefit.”.

Length of service exemptions for Trustees or Managers and Employers

6. 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) the application by the trustees or managers of a scheme (“A”) of a provision in the scheme rules regarding—
 - (i) admission to the scheme (“admission rule”); or
 - (ii) the accrual of, or eligibility for, any benefit under the scheme (“accrual rule”),where the admission rule or the accrual rule puts 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 a scheme is less than that of C; or
- (b) the application by D of an admission rule or accrual rule in relation to the scheme where that rule puts a member (“E”) of the scheme at a disadvantage when compared with another member (“F”) if and to the extent that the disadvantage suffered by E is because E’s length of service with D is less than that of F.

(2) Where B’s or E’s length of service exceeds 5 years and a length of service criterion in the admission rule or accrual rule puts B or E at a disadvantage—

- (a) where sub-paragraph (1)(a) applies, A must ask D to provide confirmation that the length of service criterion fulfils a business need of D’s undertaking (for example by encouraging

(11) 1992.c4. Section 44(4) was amended by S.I. 3006/645.

the loyalty or motivation, or rewarding the experience, of some or all of his workers) and for this purpose D must—

- (i) calculate B's length of service; and
 - (ii) provide A with details of B's length of service;
- (b) where sub-paragraph (1)(a) or (b) applies, it must reasonably appear to D 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).
- (3) In calculating a member's length of service D shall calculate—
- (a) the length of time the member 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, for example, in terms of effort, skills and decision making), or
 - (b) the length of time the member has been working for him in total,
- and it is for D to decide which of these definitions to use.

(4) For the purposes of sub-paragraph (3), D shall calculate the length of time a member 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) but the references in those paragraphs to "A" and "worker" shall be read as if they were references to "D" and "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

7. 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

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

(2) The inclusion of a rule, practice, action or decision in Part 3 of this Schedule shall not be taken to mean that, but for the exemption in Part 3, the use or maintenance by an employer in relation to contributions to a scheme of the rule, practice, action or decision would be unlawful."

Lower earnings limit and offsets for state retirement pension

8.—(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 does not exceed—

- (i) one and a half times the lower earnings limit;
- (ii) an amount calculated by reference to the lower earnings limit where the aim is more or less to reflect the amount of the state retirement pension;
- (iii) an amount calculated more or less to reflect the amount of the 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—

- (a) equal to the lower earnings limit;
- (b) equal to one and a half times the lower earnings limit;

- (c) calculated by reference to the lower earnings limit where the aim is more or less to reflect the amount of the state retirement pension; or
- (d) calculated more or less to reflect the amount of the state retirement pension.”.

Targeted and capped accrual

9.—(1) In paragraph 9 of Schedule 2 (contributions) after “pensionable pay” insert “or where paragraph 19A applies, different accrual rates”.

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

“**11A.** Under a defined benefits arrangement, 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 where paragraph 19A applies.”.

(3) After paragraph 19 of Schedule 2 (other rules, practices, actions and decisions relating to benefit) insert—

“**19A.**—(1) Any differences in the fraction of pensionable pay upon which any age related benefit accrues or entitlement to any death benefit arises, to or in respect of active or prospective members of a defined benefits arrangement where—

- (a) the differences are attributable to the aim that each member in a comparable situation to one or more other members will have the right to benefits based on the same proportion of pensionable pay—
 - (i) without regard to each member’s length of pensionable service with the arrangement, and
 - (ii) provided that those members continue in pensionable service under the arrangement until an age specified in the scheme rules.

(2) Any differences in age related benefit which accrues, or entitlement to any death benefit which arises, to or in respect of active or prospective members of a defined benefits arrangement who are in a comparable situation where—

- (a) those differences are attributable to the aim in sub-paragraph (1)(a), and
- (b) the member’s pensionable service under the arrangement ceases before an age specified in the scheme rules which is referred to in sub-paragraph (1)(a)(ii).

(3) Any limitation on the amount of any age related benefit or death benefit payable from a scheme where the limitation arises from imposing a maximum amount on the age related benefit or death benefit which is equal to a fraction or proportion of the member’s pensionable pay.”.

Money purchase arrangements

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

- (a) in paragraphs (i) and (ii) of sub-paragraph (a)—
 - (i) after “amount of benefit” in each place insert “payable in respect of each year of pensionable service”;
 - (ii) after “under the arrangement” in each place insert “at a particular age”;
- (b) after sub-paragraph (b) add—
 - “(c) any limitation on any employer contributions 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, or different minimum ages for different groups or categories of members, of a defined benefits arrangement or money purchase arrangement to be entitled to a particular age related benefit—

- (a) either with or without the consent of the employer or the trustees or managers of the scheme; and
- (b) before the early retirement pivot age,

provided that the age related benefit is paid to the member in accordance with sub-paragraphs (2) and (3).

(2) In the case of a defined benefits arrangement, the age related benefit must be actuarially reduced in a manner which reflects that it is paid on a date before the applicable early retirement pivot age.

(3) The age related benefit must not be enhanced by crediting the member with any additional periods of pensionable service.

(4) This paragraph shall not apply to any member who retires on the grounds of ill health or redundancy.”.

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

“**13.**—(1) A minimum age for any member, or different minimum ages for different groups or categories of members, of a defined benefits arrangement or money purchase arrangement to be entitled to a particular age related benefit on the grounds of redundancy.

(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—

- (a) by reference to the years of prospective pensionable service a member would have completed if he had remained in pensionable service until an age specified in the scheme rules;
- (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 not been on the grounds of redundancy; or
- (d) by not making any actuarial reduction for early retirement;”.

Different early and late retirement pivot ages

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

- (a) after “including” insert “(a)”;
- (b) after “categories of member” insert—
“and

(b) any different early retirement pivot age or late retirement pivot age where a member is a deferred member before an age related benefit comes into payment”.”.

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, or different minimum ages for different groups or categories of members, of a defined benefits arrangement or money purchase arrangement to be entitled to a particular age related benefit on the grounds of ill health.

(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 as follows—

- (a) by reference to the years of prospective pensionable service a member would have completed if he had remained in service until an age specified in the scheme rules;
- (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 not been on the grounds of ill health; or
- (d) by not making any actuarial reduction for early retirement.

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

- (a) by reference to the years of prospective pensionable service a member would have completed if he had remained in service until an age specified in the scheme rules; 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 the scheme rules commencing on—

- (a) the date on which the payment of pension to or in respect of the member commenced, or
- (b) if so 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 commenced.

(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

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

“**16.** Any rule, practice, action or decision whereby—

- (a) the rate of pension to which a pensioner member is entitled is reduced—
 - (i) during the period commencing on the date on which the member reaches the age of 60 and ending on the date on which the member reaches the age of 65, and
 - (ii) by an amount—
 - (aa) not exceeding the relevant state retirement pension rate (within the meaning of paragraph 2(5) of Schedule 28 to the Finance Act 2004⁽¹²⁾ (scheme pension)) at that time, or
 - (bb) the pension ceasing to be payable at such time if at that time the state retirement pension rate is greater than the rate of the pension;
- (b) whereby a male member who reaches pensionable age is not entitled or is no longer entitled to any additional amount of pension which would have been payable to such a member before pensionable age in the circumstances prescribed for the purposes of section 64(2) of the Pensions Act 1995⁽¹³⁾ by regulation 13 of the Occupational Pension Schemes (Equal Treatment) Regulations 1995⁽¹⁴⁾.”.

Reduction of pensions payable to younger dependants

15. In paragraph 17 of Schedule 2 (reduction of pension payable to a dependant) before “reduction” insert “actuarial”.

Life cover

16. In paragraph 18 of Schedule 2 (life assurance cover to ill health retirees) delete “before any early retirement pivot age”.

⁽¹²⁾ 2004 c.12. Paragraph 2(5) was substituted by paragraph 20 of Schedule 23 to the Finance Act 2006 (c.25).

⁽¹³⁾ 1995 c.26.

⁽¹⁴⁾ S.I. 1995/3183.

Limits on Benefits

17. For paragraph 21 of Schedule 2 (benefits limited by reference to maximum service) substitute—

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

- (a) results from imposing a maximum number of years of pensionable service by reference to which such benefit may be calculated;
- (b) arises from imposing a maximum amount on the benefit which is equal to a fraction or proportion of a member’s pensionable pay. ”.

18. In paragraph 22 of Schedule 2 (benefits payable to those with qualifying service)—

- (a) after “minimum period of” insert “qualifying”;
- (b) delete “provided that such a minimum period is not longer than 2 years qualifying service”.

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

Finance Act 2004: registered pension schemes

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

- (a) in sub-paragraph (1) omit “Subject to sub-paragraph (2)”; and
- (b) omit sub-paragraph (2).

Personal pension schemes

21. 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 by reference to a maximum level of remuneration.

34. A minimum age for commencement of payment of contributions by an employer.

35. Different minimum ages for commencement of payment of contributions by an employer in respect of—

- (a) different workers, or
- (b) different groups or categories of workers.

36. Equal rates of contributions by an employer irrespective of the age of the worker by or in respect of whom contributions are made.”.

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

Date

Name
Minister of State,
Department for Work and Pensions

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations which are made under section 2(2) of the European Communities Act 1972 (c.68) amend regulation 11 (pension schemes) of, and Schedule 2 (pension schemes) to, the Employment Equality (Age) Regulations 2006 (S.I. 2006/2408) (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.

Every occupational pension scheme shall from 1 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 made exemptions from the requirement not to discriminate on the grounds of age for trustees or managers, and employers, in relation to occupational pension schemes and for contributions made by employers 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.

Regulation 4 amends the interpretation provisions in Schedule 2 to the Age Regulations. In particular the definition of “early retirement pivot age” is replaced and definitions of “block transfer” and “relevant transfer” are added.

Regulation 5 amends paragraph 1(6) of Schedule 2 so that references to a “scheme” in regulation 11 to the Age Regulations may include a section of a scheme.

This Regulation also inserts a new definition of the term section of a scheme. In summary a section can consist of groups of members who are defined by reference to the date they joined a scheme or became eligible to join. This will include those who are transferred into a scheme as a result of a block transfer or a relevant transfer. Such groups of members may only be treated as a section provided that the section does not admit new members and does not allow existing members to accrue, or become entitled to, new benefits. The only exception to this is where particular benefits must be provided to members as a result of a relevant transfer.

Regulation 6 inserts a new paragraph 3A in Schedule 2 to the Age Regulations to clarify that trustees or managers and employers in relation to occupational pension schemes can avail of a service related exemption along the lines of the exemption for employers in regulation 32 to the Age Regulations.

New paragraph 3A applies where there is a difference in treatment between two members which results from differences in their length of service. The difference in treatment must relate to the admission to a scheme, accrual of benefits and eligibility for any benefits under a scheme. The difference must be justified where the member who is discriminated against has more than five years service. The justification must be provided by an employer in relation to

the scheme. The employer must ensure that it reasonably appears to him that it fulfils a business need of his undertaking.

Where the difference in treatment results from the application by the trustees or managers of a scheme of a scheme rule they must ask the employer to provide them with the justification for the difference in treatment. The employer must still ensure that he is satisfied that the difference in treatment reasonably appears to him to fulfil a business need of his undertaking.

Regulation 7 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 8 replaces paragraph 7(a) (admission to schemes) and paragraph 23 (limits on benefits) of Schedule 2 to the Age Regulation.

Regulation 9 amends paragraphs 9 and 11 and adds a new paragraph 19A to Schedule 2 to the Age Regulations. The amendments to paragraph 9 and 11 are consequential to new paragraph 19A.

New paragraph 19A allows different accrual rates for active or prospective members in comparable situations where the aim is that they will, on retirement, get the same fraction of pensionable pay as a pension. This is regardless of whether the members actually continue in pensionable service until their retirement. It also allows schemes to cap the level of benefits by reference to a fraction of pensionable pay.

Regulation 10 amends paragraph 10 of Schedule 2 to the Age Regulations. That paragraph exempts different rates of contributions to schemes provided that the aim is to make benefits “equal” or “more nearly equal”. Amendments have been made to clarify how benefits payable in respect of each year of pensionable service need to meet the “equal” or “more nearly equal” test.

A new exemption has been added to allow employers to limit their contributions by reference to a maximum level of pensionable pay.

Regulation 11 replaces paragraphs 12 and 13 of Schedule 2 to the Age Regulations.

New 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, the minimum age can be subject to the consent of the employer or the trustees or managers and that it does not apply where a member retires on the grounds of ill health or redundancy.

New paragraph 13 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. 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 by granting additional years of pensionable service, by not making an actuarial reduction or making an actuarial reduction which is smaller than if retirement had not been on the grounds of redundancy.

Regulation 12 adds a new provision to paragraph 14 of Schedule 2 to the Age Regulations. It provides that there can be a different early retirement pivot age and late retirement pivot age for deferred members.

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

New 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. 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 by granting additional years of pensionable service, by not making an actuarial reduction or making an actuarial reduction which is smaller than if retirement had not been on the grounds of ill health.

New paragraph 15A 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. New paragraph 15A 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.

Regulation 14 replaces paragraph 16 of Schedule 2 to expand on the exemption for bridging pensions. The amended paragraph 16 covers both men and women.

Regulation 15 amends paragraph 17 of Schedule 2 to the Age Regulations to clarify that when a pension paid to a dependant of a deceased member is reduced to reflect that the dependant is younger than the member, that reduction must be an actuarial reduction.

Regulation 16 amends paragraph 18 of Schedule 2 to the Age Regulations (life assurance cover to ill health retirees) to clarify 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.

Regulation 17 adds a new exemption to paragraph 21 of Schedule 2 to the Age Regulations. The provisions of old paragraph 21 are now contained in sub-paragraph (a). Sub-paragraph (b) makes a new exemption for limits on benefits which arise from a fraction of pensionable pay.

Regulations 18 and 19 make some minor amendments to clarify paragraphs 22, 27 and 28 of Schedule 2 to the Age Regulations.

Regulation 20 deletes sub-paragraph (2) of paragraph 30 of Schedule 2 to the Age Regulations. This 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. 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 21 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 personal pension schemes or different minimum ages for different groups or categories of workers. New paragraph 36

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

A full Regulatory Impact Assessment report of the effect that these Regulations will have on the costs to business is available to the public from [].