

Draft Regulations laid before Parliament under section 2(2) of the European Communities Act 1972, for approval by resolution of each House of Parliament. This draft Statutory Instrument supersedes the draft of the same title which was laid before Parliament on 16th February 2011 and published on 21st February 2011. It is being issued free of charge to all known recipients of that draft Statutory Instrument.

DRAFT STATUTORY INSTRUMENTS

2011 No. 0000

EQUALITY

The Employment Equality (Repeal of Retirement Age Provisions) Regulations 2011

Made - - - - *2011*

Coming into force - - *6th April 2011*

A draft of these Regulations was laid before Parliament in accordance with section 2(2) of the European Communities Act 1972⁽¹⁾ and approved by a resolution of each House of Parliament.

The Secretary of State is a Minister designated⁽²⁾ for the purposes of section 2(2) of the European Communities Act 1972 in relation to discrimination.

The Secretary of State, in exercise of the powers conferred by section 2(2) of the European Communities Act 1972, makes the following Regulations.

Citation, commencement and extent

1.—(1) These Regulations may be cited as the Employment Equality (Repeal of Retirement Age Provisions) Regulations 2011 and come into force on 6th April 2011.

(2) These Regulations extend to England and Wales and Scotland.

Amendments to the Equality Act 2010

2.—(1) Schedule 9 to the Equality Act 2010 (work: exceptions relating to age)⁽³⁾ is amended as follows.

(2) Omit paragraph 8 (retirement).

(3) Omit paragraph 9 (applicants at or approaching retirement age).

(4) For paragraph 14 (life assurance), substitute—

(1) 1972 c.68.
(2) S.I. 2002/1819.
(3) 2010 c.15.

“Insurance etc.

14.—(1) It is not an age contravention for an employer to make arrangements for, or afford access to, the provision of insurance or a related financial service to or in respect of an employee for a period ending when the employee attains whichever is the greater of—

- (a) the age of 65, and
- (b) the state pensionable age.

(2) It is not an age contravention for an employer to make arrangements for, or afford access to, the provision of insurance or a related financial service to or in respect of only such employees as have not attained whichever is the greater of—

- (a) the age of 65, and
- (b) the state pensionable age.

(3) Sub-paragraphs (1) and (2) apply only where the insurance or related financial service is, or is to be, provided to the employer’s employees or a class of those employees—

- (a) in pursuance of an arrangement between the employer and another person, or
- (b) where the employer’s business includes the provision of insurance or financial services of the description in question, by the employer.

(4) The state pensionable age is the pensionable age determined in accordance with the rules in paragraph 1 of Schedule 4 to the Pensions Act 1995(4).”.

Amendments to the Employment Rights Act 1996

3.—(1) The Employment Rights Act 1996(5) is amended as follows.

(2) In section 98(6) (fairness of dismissals: general)—

- (a) omit subsections (2)(ba), (2A) and (3A), and
- (b) in subsection (4), for “In any other case where” substitute “Where”.

(3) Omit sections 98ZA to 98ZH (retirement dismissals)(7).

(4) In section 105 (redundancy) omit subsection (7A)(8).

(5) In section 108 (qualifying period of employment) omit subsection (3)(n)(9).

(6) In section 112 (remedies for unfair dismissal: orders for compensation), omit subsections (5) and (6)(10).

(7) In section 120 (basic award in certain cases), omit subsections (1A) and (1B)(11).

(4) 1995 c.26; paragraph 1 of Schedule 4 was amended by the State Pension Credit Act 2002 (c.16), section 14, Schedule 2, Part 3, paragraph 39; the Welfare Reform Act 2007 (c.5) section 28(1), Schedule 3, paragraph 13; and the Pensions Act 2007 (c.22), section 13(1), Schedule 3, paragraph 4.

(5) 1996 c.18.

(6) Relevant amendments to section 98 have been made by S.I. 2006/1031, Schedule 8, Part 1, paragraphs 21 and 22.

(7) Subsections 98ZA to 98ZH inserted by S.I. 2006/1031, Schedule 8, Part 1, paragraphs 21 and 23.

(8) Subsection (7A) inserted by S.I. 2007/825.

(9) Paragraph (n) inserted by S.I. 2006/1031, Schedule 8, Part 1, paragraphs 21 and 24.

(10) Subsection (5) was inserted by the Employment Act 2002 (c.22), section 34(1) and (3) and amended by S.I. 2006/1031, Schedule 8, Part 1, paragraphs 21 and 26. Subsection (6) was inserted by the Employment Act 2002 (c.22), section 34(1) and (3).

(11) Subsection (1A) was inserted by the Employment Act 2002 (c.22), section 34(1) and (6) and amended by S.I. 2006/1031, Schedule 8, Part 1, paragraphs 21 and 28 and the Employment Act 2008 (c.24), section 20, Schedule, Part 1. Subsection (1B) was inserted by the Employment Act 2002 (c.22), section 34(1) and (6).

Amendments to the Employment Equality (Age) Regulations 2006

4.—(1) Schedule 6 to the Employment Equality (Age) Regulations 2006⁽¹²⁾ (duty of employer to consider employee’s request to work beyond retirement) is revoked.

(2) Omit paragraphs 22 to 24, 26 and 28 of Schedule 8 to those Regulations.

Transitional provisions

5.—(1) Despite regulations 2 to 4, the provisions mentioned in paragraph (2) continue to have effect in relation to the employment of a person if—

- (a) notification in respect of that employment has been given under paragraph 2 or 4 of Schedule 6 to the Employment Equality (Age) Regulations 2006 before the date of the commencement of these Regulations, and
- (b) that person has attained the age limit or will attain it before 1st October 2011.

(2) The provisions are—

- (a) sections 98(2)(ba), (2A) and (3A), 98ZA to 98ZD, 98ZF to 98ZH, 105(7IA), 108(3)(n), 112(5) and (6) and 120(1A) and (1B) of the Employment Rights Act 1996,
- (b) Schedule 6 to the Employment Equality (Age) Regulations 2006, and
- (c) paragraph 8 of Schedule 9 to the Equality Act 2010.

(3) The age limit is whichever is the greater of—

- (a) the age of 65, and
- (b) the normal retirement age in the case of the employment concerned.

(4) Despite this regulation—

- (a) an employer may not issue a notification under paragraph 2 or 4 of Schedule 6 to the Employment Equality (Age) Regulations 2006 on or after 6th April 2011 in respect of the employment of a person to which this regulation applies; and
- (b) an employee may not make a request under paragraph 5 of Schedule 6 to the Employment Equality (Age) Regulations 2006 on or after 5th January 2012 in respect of the employment to which this regulation applies.

(5) In this regulation, “normal retirement age” has the meaning given in section 98ZH of the Employment Rights Act 1996.

(6) This regulation does not apply to the employment of a person if section 98ZE of the Employment Rights Act 1996 would (but for regulation 3(3)) apply to a dismissal from that employment.

6.—(1) Despite regulations 3 and 4, the provisions mentioned in paragraph (2) continue to have effect in relation to the employment of a person if—

- (a) notification in respect of that employment has been given under paragraph 2 or 4 of Schedule 6 to the Employment Equality (Age) Regulations 2006 before the date of the commencement of these Regulations, and
- (b) section 98ZE of the Employment Rights Act 1996 would (but for regulation 3(3)) apply to a dismissal from that employment.

(2) The provisions are—

- (a) sections 98(2)(ba), (2A) and (3A), 98ZE to 98ZH, 105(7IA), 108(3)(n), 112(5) and (6) and 120(1A) and (1B) of the Employment Rights Act 1996, and

⁽¹²⁾ S.I. 2006/1031.

(b) Schedule 6 to the Employment Equality (Age) Regulations 2006.

7. Despite regulation 3(6) and (7), sections 112(5) and (6) and 120(1A) and (1B) of the Employment Rights Act 1996 continue to have effect so far as necessary for the transitional provisions in Part 1 of the Schedule to the Employment Act 2008 (Commencement No.1, Transitional Provisions and Savings) Order 2008**(13)**.

8. Despite regulation 4, paragraphs 9, 12 and 13 of Schedule 6 to the Employment Equality (Age) Regulations 2006 (right of employee to be accompanied at meeting with employer) continue to have effect in a case where paragraph 9 of that Schedule applies immediately before the commencement of these Regulations.

9. Regulations 5 to 8 do not affect the general operation of section 16 of the Interpretation Act 1978**(14)**.

	<i>Name</i>
	Title
Date	Department for Business, Innovation and Skills

(13) S.I. 2008/3232.

(14) 1978 c. 30.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations repeal and amend provisions in Schedule 9 to the Equality Act 2010 (and repeal and amend related provisions in the Employment Rights Act 1996) which except certain dismissals made on the basis of retirement from constituting direct age discrimination and unfair dismissal. New provision relating to insurance arranged by an employer for the employer's employees and other persons in connection with that employment is also made. These Regulations come into force on 6th April 2011.

Regulation 2 amends Schedule 9 to the Equality Act 2010 by repealing paragraphs 8 and 9 and substituting a new paragraph 14.

Regulation 3 repeals sections 98ZA to 98ZH of the Employment Rights Act 1996 and makes amendments to section 98, 105, 108, 112 and 120 of that Act.

Regulation 4 revokes Schedule 6 to the Employment Equality (Age) Regulations 2006 which sets out a duty for employers to consider requests from employees who wish to work beyond retirement. It also revokes certain amending provisions in Schedule 8 to those Regulations.

Regulations 5 to 8 contain transitional provisions.

A full regulatory impact assessment of the effect that this instrument will have on the costs of business and the voluntary sector is annexed to the Explanatory Memorandum which is available alongside the instrument on www.legislation.gov.uk.