EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Employment Equality (Age) Regulations (Northern Ireland) 2006 ("the Age Regulations") which implement Council Directive 2000/78/EC of 27th November 2000 establishing a general framework for equal treatment in employment and occupation (OJ 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 12 of the Age Regulations. Schedule 1 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 1 provides for citation, commencement and interpretation.

Regulation 2(2) amends regulation 12 of the Age Regulations so 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 2(3)(a) amends the interpretation provisions in paragraph 1 of Schedule 1 to the Age Regulations. Regulation 2(3)(a)(i) amends paragraph 1(4) of that Schedule so that the definition of "occupational pension scheme" used in the Finance Act 2004 is applied to additional paragraphs in Schedule 1. Regulation 2(3)(a)(ii) adds further definitions and deletes some others. In particular the definition of "early retirement pivot age" is substituted and definitions of "block transfer" and "relevant transfer" are inserted. Regulation 2(3)(a)(iii) omits paragraph 1(7) of that Schedule so that for the purposes of Schedule 1 a section of a scheme can no longer be treated as if it were a separate scheme. Regulation 2(3)(a)(iv) amends paragraph 1(9) of that Schedule so that the reference in regulation 12 to "occupational pension scheme" shall mean an occupational pension scheme within the meaning of either section 1 of the Pension Schemes (Northern Ireland) Act 1993 or section 150(4) of the Finance Act 2004.

Regulation 2(3)(b) inserts paragraph 3A into Schedule 1 to the Age Regulations to provide that trustees or managers and an employer in relation to occupational pension schemes can avail of a service related exemption along the lines of the exemption in regulation 34 of the Age Regulations for the award of benefits by an employer.

> 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 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 the way in which the length of service criterion applies fulfils a business need of his undertaking.

Regulation 2(3)(c) inserts paragraph 4A into Schedule 1 to the Age Regulations to confirm that the existence of an exemption in that Schedule does not necessarily mean that but for the exemption the rule, practice, action or decision is unlawful.

Regulation 2(3)(d) substitutes paragraph 7(b) of Schedule 1 to the Age Regulations to allow 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).

Regulation 2(3)(e) and (f) make minor amendments to paragraphs 8 and 9 of Schedule 1 to the Age Regulations.

Regulation 2(3)(g) amends paragraph 10 of Schedule 1 to the Age Regulations. Paragraph 10(a) exempts different age related rates of contributions to schemes provided that the aim is to make benefits "equal" or "more nearly equal". The amendments to paragraph 10(a) 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 2(3)(g) also adds paragraph 10(c) which exempts employer and member contributions which are limited by reference to a maximum level of pensionable pay.

Regulation 2(3)(h) inserts paragraph 11A into Schedule 1 of the Age Regulations 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 2(3)(i) substitutes paragraphs 12 to 16 of Schedule 1 to the Age Regulations.

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 paragraph 13, 13A or 15 apply to early retirement.

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 paragraph 13(2).

Paragraph 13A, subject to certain conditions, 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.

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 13B also allows employers to enhance any age related benefit using one or more of the methods specified in sub-paragraph (2) of that paragraph.

Paragraph 14 provides that deferred members can have a different early retirement pivot age and late retirement pivot age from active members.

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 ways specified in sub-paragraph (2) of that paragraph.

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. Paragraph 15A(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. Paragraph 15A(4) exempts payment of different death benefits to deferred members who die on or after normal pension age.

Paragraph 16 allows a scheme to pay 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 2(3)(j) amends paragraph 17 of Schedule 1 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 2(3)(k) amends paragraph 18 of Schedule 1 to the Age Regulations 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 age pivot. Regulation 2(3)(k) also makes a minor amendment.

Regulation 2(3)(l) makes a minor amendment to paragraph 19 of Schedule 1 to the Age Regulations.

Regulation 2(3)(m) inserts paragraphs 19A and 19B into Schedule 1 to the Age Regulations.

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).

Paragraph 19B exempts payment of different employer or member contributions where paragraph 19A applies to the target benefit.

Regulation 2(3)(n) substitutes paragraphs 21 to 24 of Schedule 1 to the Age Regulations.

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.

Paragraph 22 exempts payment of an age related benefit or death benefit where the requirement to provide short service benefit under section 67 of the Pension Schemes (Northern Ireland) Act 1993 applies (where a member leaves service before normal pension age and after 2 years qualifying service short service benefits must be provided).

Paragraph 23 makes similar provision as made in paragraph 7(b) by regulation 2(3)(d). 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).

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.

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 2(3)(o) inserts paragraph 25A into Schedule 1 to the Age Regulations. Paragraph 25A 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. Paragraph 25A(2) defines a section of a scheme.

Regulation 2(3)(p) makes a minor amendment to paragraphs 27 and 28 of Schedule 1 to the Age Regulations.

Regulation 2(3)(q) amends paragraph 30 of Schedule 1 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. Paragraph 30(2) is omitted to allow schemes to rely on the exemption in paragraph 30 of Schedule 1 to the Age Regulations when setting minimum ages for payment of benefits. Regulation 2(3)(q) also makes some minor amendments.

Regulation 2(3)(r) and (s) makes minor amendments to paragraphs 31 and 32 of Schedule 1 to Age Regulations. Regulation 2(3)(r) also amends the text in paragraph 31 of that Schedule for exempting age related contributions in the same way as paragraph 10(b) of that Schedule is amended by regulation 2(3)(g).

Regulation 2(3)(t) adds paragraphs 33 to 36 to Schedule 1 to the Age Regulations.

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

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.

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

An assessment of the cost to business of these Regulations is detailed in a Regulatory Impact Assessment, copies of which have been laid in the Business Office and the Library of the Northern Ireland Assembly. Copies of the Assessment are available from the Department for Social Development, Social Security Policy and Legislation Division, Level 1, James House, 2-4 Cromac Avenue, Gasworks Business Park, Ormeau Road, Belfast, BT7 2JA.