
STATUTORY RULES OF NORTHERN IRELAND

2006 No. 453

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

Amendment of the Employment Equality (Age) Regulations

2.—(1) The Employment Equality (Age) Regulations (Northern Ireland) 2006⁽¹⁾ shall be amended in accordance with the paragraphs (2) to (3).

(2) In regulation 12 (pension schemes)—

- (a) in paragraph (1) for “service” substitute “pensionable service”, and
- (b) in paragraphs (1) and (2) after “trustees or managers of” in each place insert “, or any employer in relation to,”.

(3) In Schedule 1 (pension schemes)—

(a) in paragraph 1 (interpretation)—

- (i) in sub-paragraph (4) for “paragraphs 12, 13 and 30” substitute “paragraphs 3A, 7(b), 9, 15A, 17 to 21, 23, 24, 25, 25A and 30”;

(ii) in sub-paragraph (6)—

(aa) after the definition of “active member” 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 1992 Act⁽²⁾

(bb) after the definition of “age related benefit” insert—

““basic state retirement pension” means the basic pension in the Category A retirement pension within the meaning of section 44 of the 1992 Act”;

“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—

- (a) all accrued rights under a scheme,
- (b) contracted-out rights, or
- (c) 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

⁽¹⁾ S.R. 2006 No. 261 as amended by S.R. 2006 No. 395

⁽²⁾ 1992c. 7; section 44 was amended by paragraphs 2 and 3 of Schedule 4 to the Social Security (Consequential Provisions) (Northern Ireland) Act 1992 (c. 9), Article 125(1) and (2) of the Pensions (Northern Ireland) Order 1995 (S.I. 1995/3213 (N.I. 22)), Article 64 of the Social Security (Northern Ireland) Order 1998 (S.I. 1998/1506 (N.I. 10)), sections 29(2) and 33(5) to (7) of the Child Support, Pensions and Social Security Act (Northern Ireland) 2000 (c. 4 (N.I.)), paragraph 10 of Schedule 1 to the National Insurance Contributions Act 2002 (c. 19) and S.R. 2006 No. 109. Section 45 was amended by sections 31(1) and (2) and 33(8) of the Child Support, Pensions and Social Security Act (Northern Ireland) 2000

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

(c) section 5(2B) rights,

but not safeguarded rights (within the meaning of section 64A of the 1993 Act⁽³⁾);”;

(cc) in the definition of “death benefit” for “pension scheme” substitute “scheme”;

(dd) in the definition of “dependant” after “means” insert “a widow, widower or surviving civil partner or a”;

(ee) 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;”;

(ff) omit the definition of “employer contribution”;

(gg) after the definition of “employment” insert—

““guaranteed minimum pension” has the meaning given in section 4(2) of the 1993 Act⁽⁴⁾,”

(hh) in the definition of “late retirement pivot age” after “scheme rules” insert “(or otherwise determined)”;

(ii) after the definition of “late retirement pivot age” insert—

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

(jj) omit the definition of “member contribution”;

(kk) omit the definition of “pensionable age”;

(ll) at the end of the definition of “pensioner member” omit “and”, and

(mm) after the definition of “prospective member” add—

““protected rights” has the meaning given in section 6 of 1993 Act⁽⁶⁾;

(3) 1993 c.49; section 64A was inserted by Article 33 of the Welfare Reform and Pensions (Northern Ireland) Order 1999 (S.I. 1999/3147 (N.I. 11))

(4) The definition of “guaranteed minimum pension” was amended by paragraph 2 of Schedule 1 to S.R. 2005 No. 433

(5) Section 5 was substituted by paragraph 1 of Schedule 10 to the Welfare Reform and Pensions Act 1999 (c.30)

(6) Section 6 was amended by paragraph 18 of Schedule 3 to the Pensions (Northern Ireland) Order 1995, paragraph 39 of Schedule 1 to the Social Security Contributions (Transfer of Functions, etc.) (Northern Ireland) Order 1999 (S.I. 1999/671) and Article 29(2) of the Welfare Reform and Pensions (Northern Ireland) Order 1999

“redundancy” means being dismissed by reason of redundancy for the purposes of the Employment Rights (Northern Ireland) Order 1996(7);

“relevant transfer” has the meaning given in—

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

“section 5(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 5(2B) of the 1993 Act (requirements for certification of schemes: general)(10), 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 paragraph (a) under another scheme contracted-out by virtue of section 5(2B) of the 1993 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; and

“upper earnings limit” means the amount specified for the tax year in question in regulations made under section 5(1)(a)(iii) of the 1992 Act.”;

(iii) omit sub-paragraph (7), and

(iv) in sub-paragraph (9) after “this Schedule” add “and “occupational pension scheme” shall mean an occupational pension scheme within the meaning of either section 1(1) of the 1993 Act(11) or section 150(5) of the 2004 Act(12)”;

(b) after paragraph 3 (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—

(7) [S.I. 1996/1919 \(N.I. 16\)](#)

(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 5(2B) was inserted by Article 133(3) of the Pensions (Northern Ireland) Order 1995 and amended by paragraph 38(2) of Schedule 1 to the Social Security Contributions (Transfer of Functions, etc.) (Northern Ireland) Order 1999

(11) Section 1 was amended by Article 216 of the Pensions (Northern Ireland) Order 2005 ([S.I. 2005/255 \(N.I. 11\)](#))

(12) [2004 c. 12](#)

- (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 head (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).
- (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

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

(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 that Part, 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.”;

- 5

- (g) in paragraph 10 (contributions under money purchase arrangements)—
- (i) in sub-paragraph (a)(i) for “amount of benefit” substitute “amount of age related benefit in respect of comparable aggregate periods of pensionable service”;
 - (ii) for sub-paragraph (a)(ii) 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;”, and
 - (iii) 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.”;
- (h) after paragraph 11 (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.”;
- (i) for paragraphs 12 to 16 (age related rules, practices, actions and decisions relating to benefit) 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 applies.
- 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 from a scheme to which paragraph 13 applied;
- (b) joins a scheme as a result of a block transfer or relevant transfer from a scheme to which sub-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.

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.

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 of 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.

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 2004 Act⁽¹³⁾;
- “state pension age” means the pensionable age specified in the rules in paragraph 1 of Schedule 2 to the 1995 Order⁽¹⁴⁾.”;
- (j) in paragraph 17 (reduction of pension payable to a dependant)—
- (i) before “reduction” insert “actuarial”, and
- (ii) after “pension payable” insert “from a scheme”;
- (k) in paragraph 18 (life assurance cover to ill health retirees)—
- (i) after “who have retired” insert “from a scheme”, and
- (ii) omit “before any early retirement pivot age”;
- (l) in paragraph 19 (differing amounts of benefit attributable to differing lengths of service) for “defined benefits arrangement” substitute “scheme”;
- (m) after paragraph 19 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.

⁽¹³⁾ Paragraph 2(5) of Schedule 28 was substituted by paragraph 20(3) of Schedule 23 to the Finance Act 2006 (c.25)

⁽¹⁴⁾ Paragraph 1 of Schedule 2 was amended by paragraph 28 of Schedule 2 to the [State Pension Credit Act \(Northern Ireland\) 2002 \(c. 14 \(N.I.\)\)](#)

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.”;

- (n) for paragraphs 21 to 24 (other rules, practices, actions and decisions relating to benefit) substitute—

“**21.**—(1) Any limitation on the amount of any age related benefit or death benefit payable from a scheme where one or both of 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.

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 67 of the 1993 Act (basic principles as to short service benefit)(**15**).

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.

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.

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.”;

- (o) after paragraph 25 (closure of schemes) insert—

(15) Section 67 was amended by Article 240(1) of the Pensions (Northern Ireland) Order 2005 (S.I. 2005/255 (N.I. 1)) and modified by regulation 14 of, and paragraph 3 of Schedule 2 to, S.R. 2005 No. 581 in relation to European members of cross-border schemes

“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 sub-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.”;

(p) in paragraphs 27 and 28 (other rules, practices, actions and decisions) after “different rates is to maintain” in both places insert “or more nearly maintain”;

(q) in paragraph 30 (registered pension schemes)—

(i) in sub-paragraph (1)—

(aa) omit “Subject to sub-paragraph (2),”, and

(bb) before “registered pension scheme” insert “scheme which is a”, and

(ii) omit sub-paragraph (2);

(r) in paragraph 31 (contributions by employers to personal pension schemes)—

(i) after “an employer” insert “to a personal pension scheme”;

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

(iii) 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.”;

(s) in paragraph 32 (excepted rules, practices, actions and decisions relating to contributions by employers to personal pension schemes) after “an employer” insert “to a personal pension scheme”, and

(t) after paragraph 32 add—

“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.”.

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.
