

*Draft laid before Parliament under paragraph 2 of Schedule 2 to the European Communities Act  
1972 for approval by resolution of each House of Parliament*

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DRAFT STATUTORY INSTRUMENTS

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**2006 No. 0000**

**EMPLOYMENT AND TRAINING**

**AGE DISCRIMINATION**

**The Employment Equality (Age) Regulations 2006**

*Made* - - - - 2006

*Coming into force* - - 1st October 2006

A draft of these Regulations was laid before Parliament in accordance with paragraph 2 of Schedule 2 to the European Communities Act 1972(1), and was approved by resolution of each House of Parliament;

The Secretary of State, who is a Minister designated for the purposes of section 2(2) of the European Communities Act 1972 in relation to discrimination(2), makes the following Regulations in exercise of the powers conferred by section 2(2):—

**PART 1**

**GENERAL**

**Citation, commencement and extent**

1.—(1) These Regulations may be cited as the Employment Equality (Age) Regulations 2006, and shall come into force on 1st October 2006.

(2) Any amendment, repeal or revocation made by these Regulations has the same extent as the provision to which it relates.

(3) Subject to that, these Regulations do not extend to Northern Ireland.

**Interpretation**

2.—(1) In these Regulations, references to discrimination are to any discrimination falling within regulation 3 (discrimination on grounds of age), regulation 4 (discrimination by way of victimisation)

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(1) 1972 c. 68.

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

or regulation 5 (instructions to discriminate) and related expressions shall be construed accordingly, and references to harassment shall be construed in accordance with regulation 6 (harassment on grounds of age).

(2) In these Regulations—

“1996 Act” means the Employment Rights Act 1996(3);

“act” includes a deliberate omission;

“benefit”, except in regulation 11 and Schedule 2 (pension schemes), includes facilities and services;

“commencement date” means 1st October 2006;

“Crown employment” means —

(a) service for purposes of a Minister of the Crown or government department, other than service of a person holding a statutory office; or

(b) service on behalf of the Crown for purposes of a person holding a statutory office or purposes of a statutory body;

“detriment” does not include harassment within the meaning of regulation 6;

“employment” means employment under a contract of service or of apprenticeship or a contract personally to do any work, and related expressions (such as “employee” and “employer”) shall be construed accordingly, but this definition does not apply in relation to regulation 30 (exception for retirement) or to Schedules 2, 6, 7 and 8;

“Great Britain” includes such of the territorial waters of the United Kingdom as are adjacent to Great Britain;

“Minister of the Crown” includes the Treasury and the Defence Council;

“proprietor”, in relation to a school, has the meaning given by section 579 of the Education Act 1996(4);

“relevant member of the House of Commons staff” means any person who was appointed by the House of Commons Commission or who is a member of the Speaker’s personal staff;

“relevant member of the House of Lords staff” means any person who is employed under a contract of employment with the Corporate Officer of the House of Lords;

“school”, in England and Wales, has the meaning given by section 4 of the Education Act 1996(5), and, in Scotland, has the meaning given by section 135(1) of the Education (Scotland) Act 1980(6), and references to a school are to an institution in so far as it is engaged in the provision of education under those sections;

“service for purposes of a Minister of the Crown or government department” does not include service in any office mentioned in Schedule 2 (Ministerial offices) to the House of Commons Disqualification Act 1975(7);

“statutory body” means a body set up by or in pursuance of an enactment, and “statutory office” means an office so set up; and

“worker” in relation to regulations 32 and 34 and to Schedule 2, means, as the case may be—

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(3) 1996 c. 18.

(4) 1996 c. 56; section 579 has been amended on a number of occasions. The relevant amendments for the purposes of these Regulations were those made by section 140(1) of, and paragraph 183(a)(iii) of Schedule 30 to, the School Standards and Framework Act 1998 (c. 31) and regulation 3 of S.I. 2003/2045.

(5) Section 4 was amended by section 51 of the Education Act 1997 (c. 44) and Part 3 of Schedule 22 to the Education Act 2002 (c. 32).

(6) 1980 c. 44.

(7) 1975 c. 24; Schedule 2 was amended by the Scotland Act 1998 (c. 46), sections 48(6) and 87(1) and Schedule 9, and by S.I. 2002/794.

- (a) an employee;
- (b) a person holding an office or post to which regulation 12 (office-holders etc) applies;
- (c) a person holding the office of constable;
- (d) a partner within the meaning of regulation 17 (partnerships);
- (e) a member of a limited liability partnership within the meaning of that regulation;
- (f) a person in Crown employment;
- (g) a relevant member of the House of Commons staff;
- (h) a relevant member of the House of Lords staff.

(3) In these Regulations references to “employer”, in their application to a person at any time seeking to employ another, include a person who has no employees at that time.

### **Discrimination on grounds of age**

3.—(1) For the purposes of these Regulations, a person (“A”) discriminates against another person (“B”) if—

- (a) on grounds of B’s age, A treats B less favourably than he treats or would treat other persons, or
- (b) A applies to B a provision, criterion or practice which he applies or would apply equally to persons not of the same age group as B, but—
  - (i) which puts or would put persons of the same age group as B at a particular disadvantage when compared with other persons, and
  - (ii) which puts B at that disadvantage,

and A cannot show the treatment or, as the case may be, provision, criterion or practice to be a proportionate means of achieving a legitimate aim.

(2) A comparison of B’s case with that of another person under paragraph (1) must be such that the relevant circumstances in the one case are the same, or not materially different, in the other.

(3) In this regulation—

- (a) “age group” means a group of persons defined by reference to age, whether by reference to a particular age or a range of ages; and
- (b) the reference in paragraph (1)(a) to B’s age includes B’s apparent age.

### **Discrimination by way of victimisation**

4.—(1) For the purposes of these Regulations, a person (“A”) discriminates against another person (“B”) if he treats B less favourably than he treats or would treat other persons in the same circumstances, and does so by reason that B has—

- (a) brought proceedings against A or any other person under or by virtue of these Regulations;
- (b) given evidence or information in connection with proceedings brought by any person against A or any other person under or by virtue of these Regulations;
- (c) otherwise done anything under or by reference to these Regulations in relation to A or any other person; or
- (d) alleged that A or any other person has committed an act which (whether or not the allegation so states) would amount to a contravention of these Regulations,

or by reason that A knows that B intends to do any of those things, or suspects that B has done or intends to do any of them.

(2) Paragraph (1) does not apply to treatment of B by reason of any allegation made by him, or evidence or information given by him, if the allegation, evidence or information was false and not made (or, as the case may be, given) in good faith.

#### **Instructions to discriminate**

5. For the purposes of these Regulations, a person (“A”) discriminates against another person (“B”) if he treats B less favourably than he treats or would treat other persons in the same circumstances, and does so by reason that—

- (a) B has not carried out (in whole or in part) an instruction to do an act which is unlawful by virtue of these Regulations, or
- (b) B, having been given an instruction to do such an act, complains to A or to any other person about that instruction.

#### **Harassment on grounds of age**

6.—(1) For the purposes of these Regulations, a person (“A”) subjects another person (“B”) to harassment where, on grounds of age, A engages in unwanted conduct which has the purpose or effect of—

- (a) violating B’s dignity; or
- (b) creating an intimidating, hostile, degrading, humiliating or offensive environment for B.

(2) Conduct shall be regarded as having the effect specified in paragraph (1)(a) or (b) only if, having regard to all the circumstances, including in particular the perception of B, it should reasonably be considered as having that effect.

## **PART 2**

### **DISCRIMINATION IN EMPLOYMENT AND VOCATIONAL TRAINING**

#### **Applicants and employees**

7.—(1) It is unlawful for an employer, in relation to employment by him at an establishment in Great Britain, to discriminate against a person—

- (a) in the arrangements he makes for the purpose of determining to whom he should offer employment;
- (b) in the terms on which he offers that person employment; or
- (c) by refusing to offer, or deliberately not offering, him employment.

(2) It is unlawful for an employer, in relation to a person whom he employs at an establishment in Great Britain, to discriminate against that person—

- (a) in the terms of employment which he affords him;
- (b) in the opportunities which he affords him for promotion, a transfer, training, or receiving any other benefit;
- (c) by refusing to afford him, or deliberately not affording him, any such opportunity; or
- (d) by dismissing him, or subjecting him to any other detriment.

(3) It is unlawful for an employer, in relation to employment by him at an establishment in Great Britain, to subject to harassment a person whom he employs or who has applied to him for employment.

(4) Subject to paragraph (5), paragraph (1)(a) and (c) does not apply in relation to a person—

- (a) whose age is greater than the employer's normal retirement age or, if the employer does not have a normal retirement age, the age of 65; or
- (b) who would, within a period of six months from the date of his application to the employer, reach the employer's normal retirement age or, if the employer does not have a normal retirement age, the age of 65.

(5) Paragraph (4) only applies to a person to whom, if he was recruited by the employer, regulation 30 (exception for retirement) could apply.

(6) Paragraph (2) does not apply to benefits of any description if the employer is concerned with the provision (for payment or not) of benefits of that description to the public, or to a section of the public which includes the employee in question, unless—

- (a) that provision differs in a material respect from the provision of the benefits by the employer to his employees; or
- (b) the provision of the benefits to the employee in question is regulated by his contract of employment; or
- (c) the benefits relate to training.

(7) In paragraph (2)(d) reference to the dismissal of a person from employment includes reference—

- (a) to the termination of that person's employment by the expiration of any period (including a period expiring by reference to an event or circumstance), not being a termination immediately after which the employment is renewed on the same terms; and
- (b) to the termination of that person's employment by any act of his (including the giving of notice) in circumstances such that he is entitled to terminate it without notice by reason of the conduct of the employer.

(8) In paragraph (4) "normal retirement age" is an age of 65 or more which meets the requirements of section 98ZH of the 1996 Act<sup>(8)</sup>.

### **Exception for genuine occupational requirement etc**

**8.—**(1) In relation to discrimination falling within regulation 3 (discrimination on grounds of age)—

- (a) regulation 7(1)(a) or (c) does not apply to any employment;
- (b) regulation 7(2)(b) or (c) does not apply to promotion or transfer to, or training for, any employment; and
- (c) regulation 7(2)(d) does not apply to dismissal from any employment,

where paragraph (2) applies.

(2) This paragraph applies where, having regard to the nature of the employment or the context in which it is carried out—

- (a) possessing a characteristic related to age is a genuine and determining occupational requirement;
- (b) it is proportionate to apply that requirement in the particular case; and
- (c) either—
  - (i) the person to whom that requirement is applied does not meet it, or

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<sup>(8)</sup> Section 98ZH of the 1996 Act is inserted into that Act by regulation 49 of, and paragraph 23 of Schedule 8 to, these Regulations.

- (ii) the employer is not satisfied, and in all the circumstances it is reasonable for him not to be satisfied, that that person meets it.

### **Contract workers**

**9.—(1)** It is unlawful for a principal, in relation to contract work at an establishment in Great Britain, to discriminate against a contract worker—

- (a) in the terms on which he allows him to do that work;
- (b) by not allowing him to do it or continue to do it;
- (c) in the way he affords him access to any benefits or by refusing or deliberately not affording him access to them; or
- (d) by subjecting him to any other detriment.

(2) It is unlawful for a principal, in relation to contract work at an establishment in Great Britain, to subject a contract worker to harassment.

(3) A principal does not contravene paragraph (1)(b) by doing any act in relation to a contract worker where, if the work were to be done by a person taken into the principal's employment, that act would be lawful by virtue of regulation 8 (exception for genuine occupational requirement etc).

(4) Paragraph (1) does not apply to benefits of any description if the principal is concerned with the provision (for payment or not) of benefits of that description to the public, or to a section of the public to which the contract worker in question belongs, unless that provision differs in a material respect from the provision of the benefits by the principal to his contract workers.

(5) In this regulation—

“principal” means a person (“A”) who makes work available for doing by individuals who are employed by another person who supplies them under a contract made with A;

“contract work” means work so made available; and

“contract worker” means any individual who is supplied to the principal under such a contract.

### **Meaning of employment and contract work at establishment in Great Britain**

**10.—(1)** For the purposes of this Part (“the relevant purposes”), employment is to be regarded as being at an establishment in Great Britain if the employee—

- (a) does his work wholly or partly in Great Britain; or
- (b) does his work wholly outside Great Britain and paragraph (2) applies.

(2) This paragraph applies if—

- (a) the employer has a place of business at an establishment in Great Britain;
- (b) the work is for the purposes of the business carried on at that establishment; and
- (c) the employee is ordinarily resident in Great Britain—
  - (i) at the time when he applies for or is offered the employment, or
  - (ii) at any time during the course of the employment.

(3) The reference to “employment” in paragraph (1) includes—

- (a) employment on board a ship only if the ship is registered at a port of registry in Great Britain, and
- (b) employment on an aircraft or hovercraft only if the aircraft or hovercraft is registered in the United Kingdom and operated by a person who has his principal place of business, or is ordinarily resident, in Great Britain.

(4) Subject to paragraph (5), for the purposes of determining if employment concerned with the exploration of the sea bed or sub-soil or the exploitation of their natural resources is outside Great Britain, this regulation has effect as if references to Great Britain included—

- (a) any area designated under section 1(7) of the Continental Shelf Act 1964<sup>(9)</sup> except an area or part of an area in which the law of Northern Ireland applies; and
- (b) in relation to employment concerned with the exploration or exploitation of the Frigg Gas Field, the part of the Norwegian sector of the Continental Shelf described in Schedule 1.

(5) Paragraph (4) shall not apply to employment which is concerned with the exploration or exploitation of the Frigg Gas Field unless the employer is—

- (a) a company registered under the Companies Act 1985<sup>(10)</sup>;
- (b) an overseas company which has established a place of business within Great Britain from which it directs the exploration or exploitation in question; or
- (c) any other person who has a place of business within Great Britain from which he directs the exploration or exploitation in question.

(6) In this regulation—

“the Frigg Gas Field” means the naturally occurring gas-bearing sand formations of the lower Eocene age located in the vicinity of the intersection of the line of latitude 59 degrees 53 minutes North and of the dividing line between the sectors of the Continental Shelf of the United Kingdom and the Kingdom of Norway and includes all other gas-bearing strata from which gas at the start of production is capable of flowing into the above-mentioned gas-bearing sand formations;

“overseas company” has the same meaning as in section 744 of the Companies Act 1985.

(7) This regulation applies in relation to contract work within the meaning of regulation 9 as it applies in relation to employment; and, in its application to contract work, references to “employee”, “employer” and “employment” are references to (respectively) “contract worker”, “principal” and “contract work” within the meaning of regulation 9.

## **Pension schemes**

**11.**—(1) It is unlawful, except in relation to rights accrued or benefits payable in respect of periods of service prior to the coming into force of these Regulations, for the trustees or managers of an occupational pension scheme to discriminate against a member or prospective member of the scheme in carrying out any of their functions in relation to it (including in particular their functions relating to the admission of members to the scheme and the treatment of members of it).

(2) It is unlawful for the trustees or managers of an occupational pension scheme, in relation to the scheme, to subject to harassment a member or prospective member of it.

(3) Schedule 2 (pension schemes) shall have effect for the purposes of—

- (a) defining terms used in this regulation and in that Schedule;
- (b) exempting certain rules and practices in or relating to pension schemes from Parts 2 and 3 of these Regulations;
- (c) treating every occupational pension scheme as including a non-discrimination rule;
- (d) giving trustees or managers of an occupational pension scheme power to alter the scheme so as to secure conformity with the non-discrimination rule;

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<sup>(9)</sup> 1964 c. 29.

<sup>(10)</sup> 1985 c. 6.

- (e) making provision in relation to the procedures, and remedies which may be granted, on certain complaints relating to occupational pension schemes presented to an employment tribunal under regulation 36 (jurisdiction of employment tribunals).

### **Office-holders etc**

**12.**—(1) It is unlawful for a relevant person, in relation to an appointment to an office or post to which this regulation applies, to discriminate against a person—

- (a) in the arrangements which he makes for the purpose of determining to whom the appointment should be offered;
- (b) in the terms on which he offers him the appointment; or
- (c) by refusing to offer him the appointment.

(2) It is unlawful, in relation to an appointment to an office or post to which this regulation applies and which is an office or post referred to in paragraph (8)(b), for a relevant person on whose recommendation (or subject to whose approval) appointments to the office or post are made, to discriminate against a person—

- (a) in the arrangements which he makes for the purpose of determining who should be recommended or approved in relation to the appointment; or
- (b) in making or refusing to make a recommendation, or giving or refusing to give an approval, in relation to the appointment.

(3) It is unlawful for a relevant person, in relation to a person who has been appointed to an office or post to which this regulation applies, to discriminate against him—

- (a) in the terms of the appointment;
- (b) in the opportunities which he affords him for promotion, a transfer, training or receiving any other benefit, or by refusing to afford him any such opportunity;
- (c) by terminating the appointment; or
- (d) by subjecting him to any other detriment in relation to the appointment.

(4) It is unlawful for a relevant person, in relation to an office or post to which this regulation applies, to subject to harassment a person—

- (a) who has been appointed to the office or post;
- (b) who is seeking or being considered for appointment to the office or post; or
- (c) who is seeking or being considered for a recommendation or approval in relation to an appointment to an office or post referred to in paragraph (8)(b).

(5) Paragraphs (1) and (3) do not apply to any act in relation to an office or post where, if the office or post constituted employment, that act would be lawful by virtue of regulation 8 (exception for genuine occupational requirement etc); and paragraph (2) does not apply to any act in relation to an office or post where, if the office or post constituted employment, it would be lawful by virtue of regulation 8 to refuse to offer the person such employment.

(6) Paragraph (3) does not apply to benefits of any description if the relevant person is concerned with the provision (for payment or not) of benefits of that description to the public, or a section of the public to which the person appointed belongs, unless—

- (a) that provision differs in a material respect from the provision of the benefits by the relevant person to persons appointed to offices or posts which are the same as, or not materially different from, that which the person appointed holds; or
- (b) the provision of the benefits to the person appointed is regulated by the terms and conditions of his appointment; or



- (c) the benefits relate to training.
- (7) In paragraph (3)(c) the reference to the termination of the appointment includes a reference—
- (a) to the termination of the appointment by the expiration of any period (including a period expiring by reference to an event or circumstance), not being a termination immediately after which the appointment is renewed on the same terms and conditions; and
  - (b) to the termination of the appointment by any act of the person appointed (including the giving of notice) in circumstances such that he is entitled to terminate the appointment without notice by reason of the conduct of the relevant person.
- (8) This regulation applies to—
- (a) any office or post to which persons are appointed to discharge functions personally under the direction of another person, and in respect of which they are entitled to remuneration; and
  - (b) any office or post to which appointments are made by (or on the recommendation of or subject to the approval of) a Minister of the Crown, a government department, the National Assembly for Wales or any part of the Scottish Administration,
- but not to a political office or a case where regulation 7 (applicants and employees), 9 (contract workers), 15 (barristers), 16 (advocates) or 17 (partnerships) applies, or would apply but for the operation of any other provision of these Regulations.
- (9) For the purposes of paragraph (8)(a) the holder of an office or post—
- (a) is to be regarded as discharging his functions under the direction of another person if that other person is entitled to direct him as to when and where he discharges those functions;
  - (b) is not to be regarded as entitled to remuneration merely because he is entitled to payments—
    - (i) in respect of expenses incurred by him in carrying out the function of the office or post; or
    - (ii) by way of compensation for the loss of income or benefits he would or might have received from any person had he not been carrying out the functions of the office or post.
- (10) In this regulation—
- (a) appointment to an office or post does not include election to an office or post;
  - (b) “political office” means—
    - (i) any office of the House of Commons held by a member of it;
    - (ii) a life peerage within the meaning of the Life Peerages Act 1958<sup>(11)</sup>, or any office of the House of Lords held by a member of it;
    - (iii) any office mentioned in Schedule 2 (Ministerial offices) to the House of Commons Disqualification Act 1975<sup>(12)</sup>;
    - (iv) the offices of Leader of the Opposition, Chief Opposition Whip or Assistant Opposition Whip within the meaning of the Ministerial and other Salaries Act 1975<sup>(13)</sup>;
    - (v) any office of the Scottish Parliament held by a member of it;

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(11) 1958 c. 21.

(12) 1975 c. 24; Schedule 2 was amended by the Scotland Act 1998 (c. 46), sections 48(6) and 87(1) and Schedule 9, and by S.I. 2002/794.

(13) 1975 c. 27.

- (vi) a member of the Scottish Executive within the meaning of section 44 of the Scotland Act 1998<sup>(14)</sup>, or a junior Scottish Minister within the meaning of section 49 of that Act;
- (vii) any office of the National Assembly for Wales held by a member of it;
- (viii) in England, any office of a county council, a London borough council, a district council, or a parish council held by a member of it;
- (ix) in Wales, any office of a county council, a county borough council, or a community council held by a member of it;
- (x) in relation to a council constituted under section 2 of the Local Government etc (Scotland) Act 1994<sup>(15)</sup> or a community council established under section 51 of the Local Government (Scotland) Act 1973<sup>(16)</sup>, any office of such a council held by a member of it;
- (xi) any office of the Greater London Authority held by a member of it;
- (xii) any office of the Common Council of the City of London held by a member of it;
- (xiii) any office of the Council of the Isles of Scilly held by a member of it;
- (xiv) any office of a political party;
- (c) “relevant person”, in relation to an office or post, means—
  - (i) any person with power to make or terminate appointments to the office or post, or to determine the terms of appointment,
  - (ii) any person with power to determine the working conditions of a person appointed to the office or post in relation to opportunities for promotion, a transfer, training or for receiving any other benefit, and
  - (iii) any person or body referred to in paragraph (8)(b) on whose recommendation or subject to whose approval appointments are made to the office or post;
- (d) references to making a recommendation include references to making a negative recommendation; and
- (e) references to refusal include references to deliberate omission.

## Police

**13.**—(1) For the purposes of this Part, the holding of the office of constable shall be treated as employment—

- (a) by the chief officer of police as respects any act done by him in relation to a constable or that office;
  - (b) by the police authority as respects any act done by it in relation to a constable or that office.
- (2) For the purposes of regulation 25 (liability of employers and principals)—
- (a) the holding of the office of constable shall be treated as employment by the chief officer of police (and as not being employment by any other person); and
  - (b) anything done by a person holding such an office in the performance, or purported performance, of his functions shall be treated as done in the course of that employment.
- (3) There shall be paid out of the police fund—

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<sup>(14)</sup> 1998 c. 46.

<sup>(15)</sup> 1994 c. 39; section 2 was amended by the Environment Act 1995 (c. 25), Schedule 22, paragraph 232(1).

<sup>(16)</sup> 1973 c. 65; section 51 was amended by the Local Government etc (Scotland) Act 1994 (c. 39), Schedule 14, paragraph 1.

- (a) any compensation, costs or expenses awarded against a chief officer of police in any proceedings brought against him under these Regulations, and any costs or expenses incurred by him in any such proceedings so far as not recovered by him in the proceedings; and
- (b) any sum required by a chief officer of police for the settlement of any claim made against him under these Regulations if the settlement is approved by the police authority.

(4) Any proceedings under these Regulations which, by virtue of paragraph (1), would lie against a chief officer of police shall be brought against the chief officer of police for the time being or in the case of a vacancy in that office, against the person for the time being performing the functions of that office; and references in paragraph (3) to the chief officer of police shall be construed accordingly.

(5) A police authority may, in such cases and to such extent as appear to it to be appropriate, pay out of the police fund—

- (a) any compensation, costs or expenses awarded in proceedings under these Regulations against a person under the direction and control of the chief officer of police;
- (b) any costs or expenses incurred and not recovered by such a person in such proceedings; and
- (c) any sum required in connection with the settlement of a claim that has or might have given rise to such proceedings.

(6) Paragraphs (1) and (2) apply to a police cadet and appointment as a police cadet as they apply to a constable and the office of constable.

(7) Subject to paragraph (8), in this regulation—

“chief officer of police”—

- (a) in relation to a person appointed, or an appointment falling to be made, under a specified Act, has the same meaning as in the Police Act 1996<sup>(17)</sup>;
- (b) in relation to a person appointed, or an appointment falling to be made, under the Police (Scotland) Act 1967<sup>(18)</sup>, means the chief constable of the relevant police force;
- (c) in relation to any other person or appointment means the officer or other person who has the direction and control of the body of constables or cadets in question;

“police authority”—

- (a) in relation to a person appointed, or an appointment falling to be made, under a specified Act, has the same meaning as in the Police Act 1996;
- (b) in relation to a person appointed, or an appointment falling to be made, under the Police (Scotland) Act 1967, has the meaning given in that Act;
- (c) in relation to any other person or appointment, means the authority by whom the person in question is or on appointment would be paid;

“police cadet” means any person appointed to undergo training with a view to becoming a constable;

“police fund”—

- (a) in relation to a chief officer of police within sub-paragraph (a) of the above definition of that term, has the same meaning as in the Police Act 1996;
- (b) in any other case means money provided by the police authority; and

“specified Act” means the Metropolitan Police Act 1829<sup>(19)</sup>, the City of London Police Act 1839<sup>(20)</sup> or the Police Act 1996.

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<sup>(17)</sup> 1996 c. 16.

<sup>(18)</sup> 1967 c. 77.

<sup>(19)</sup> 1829 c. 44.

<sup>(20)</sup> 2 & 3 Vict c. xciv.

(8) In relation to a constable of a force who is not under the direction and control of the chief officer of police for that force, references in this regulation to the chief officer of police are references to the chief officer of the force under whose direction and control he is, and references in this regulation to the police authority are references to the relevant police authority for that force.

(9) This regulation is subject to regulation 14.

### **Serious Organised Crime Agency**

**14.**—(1) For the purposes of this Part, any constable or other person who has been seconded to SOCA to serve as a member of its staff shall be treated as employed by SOCA.

(2) For the purposes of regulation 25 (liability of employers and principals)—

- (a) the secondment of any constable or other person to SOCA to serve as a member of its staff shall be treated as employment by SOCA (and not as employment by any other person); and
- (b) anything done by a person so seconded in the performance, or purported performance, of his functions shall be treated as done in the course of that employment.

(3) In this regulation “SOCA” means the Serious Organised Crime Agency established under section 1 of, and Schedule 1 to, the Serious Organised Crime and Police Act 2005(21).

### **Barristers**

**15.**—(1) It is unlawful for a barrister or barrister’s clerk, in relation to any offer of a pupillage or tenancy, to discriminate against a person—

- (a) in the arrangements which are made for the purpose of determining to whom the pupillage or tenancy should be offered;
- (b) in respect of any terms on which it is offered; or
- (c) by refusing, or deliberately not offering, it to him.

(2) It is unlawful for a barrister or barrister’s clerk, in relation to a pupil or tenant in the set of chambers in question, to discriminate against him—

- (a) in respect of any terms applicable to him as a pupil or tenant;
- (b) in the opportunities for training, or gaining experience, which are afforded or denied to him;
- (c) in the benefits which are afforded or denied to him; or
- (d) by terminating his pupillage, or by subjecting him to any pressure to leave the chambers or other detriment.

(3) It is unlawful for a barrister or barrister’s clerk, in relation to a pupillage or tenancy in the set of chambers in question, to subject to harassment a person who is, or has applied to be, a pupil or tenant.

(4) It is unlawful for any person, in relation to the giving, withholding or acceptance of instructions to a barrister, to discriminate against any person by subjecting him to a detriment, or to subject him to harassment.

(5) In this regulation—

“barrister’s clerk” includes any person carrying out any of the functions of a barrister’s clerk; “pupil”, “pupillage” and “set of chambers” have the meanings commonly associated with their use in the context of barristers practising in independent practice; and

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(21) 2005 c. 15.

“tenancy” and “tenant” have the meanings commonly associated with their use in the context of barristers practising in independent practice, but also include reference to any barrister permitted to work in a set of chambers who is not a tenant.

(6) This regulation extends to England and Wales only.

### **Advocates**

**16.**—(1) It is unlawful for an advocate, in relation to taking any person as his pupil, to discriminate against a person—

- (a) in the arrangements which he makes for the purpose of determining whom he will take as his pupil;
- (b) in respect of any terms on which he offers to take any person as his pupil; or
- (c) by refusing to take, or deliberately not taking, a person as his pupil.

(2) It is unlawful for an advocate, in relation to a person who is his pupil, to discriminate against him—

- (a) in respect of any terms applicable to him as a pupil;
- (b) in the opportunities for training, or gaining experience, which are afforded or denied to him;
- (c) in the benefits which are afforded or denied to him; or
- (d) by terminating the relationship, or by subjecting him to any pressure to terminate the relationship or other detriment.

(3) It is unlawful for an advocate, in relation to a person who is his pupil or taking any person as his pupil, to subject such a person to harassment.

(4) It is unlawful for any person, in relation to the giving, withholding or acceptance of instructions to an advocate, to discriminate against any person by subjecting him to a detriment, or to subject him to harassment.

(5) In this regulation—

“advocate” means a member of the Faculty of Advocates practising as such; and

“pupil” has the meaning commonly associated with its use in the context of a person training to be an advocate.

(6) This regulation extends to Scotland only.

### **Partnerships**

**17.**—(1) It is unlawful for a firm, in relation to a position as partner in the firm, to discriminate against a person—

- (a) in the arrangements they make for the purpose of determining to whom they should offer that position;
- (b) in the terms on which they offer him that position;
- (c) by refusing to offer, or deliberately not offering, him that position; or
- (d) in a case where the person already holds that position—
  - (i) in the way they afford him access to any benefits or by refusing to afford, or deliberately not affording, him access to them; or
  - (ii) by expelling him from that position, or subjecting him to any other detriment.

(2) It is unlawful for a firm, in relation to a position as partner in the firm, to subject to harassment a person who holds or has applied for that position.

(3) Paragraphs (1)(a) to (c) and (2) apply in relation to persons proposing to form themselves into a partnership as they apply in relation to a firm.

(4) Paragraph (1) does not apply to any act in relation to a position as partner where, if the position were employment, that act would be lawful by virtue of regulation 8 (exception for genuine occupational requirement etc).

(5) In the case of a limited partnership references in this regulation to a partner shall be construed as references to a general partner as defined in section 3 of the Limited Partnerships Act 1907<sup>(22)</sup>.

(6) This regulation applies to a limited liability partnership as it applies to a firm; and, in its application to a limited liability partnership, references to a partner in a firm are references to a member of the limited liability partnership.

(7) In this regulation, “firm” has the meaning given by section 4 of the Partnership Act 1890<sup>(23)</sup>.

(8) In paragraph (1)(d) reference to the expulsion of a person from a position as partner includes reference—

- (a) to the termination of that person’s partnership by the expiration of any period (including a period expiring by reference to an event or circumstance), not being a termination immediately after which the partnership is renewed on the same terms; and
- (b) to the termination of that person’s partnership by any act of his (including the giving of notice) in circumstances such that he is entitled to terminate it without notice by reason of the conduct of the other partners.

### **Trade organisations**

**18.—**(1) It is unlawful for a trade organisation to discriminate against a person—

- (a) in the terms on which it is prepared to admit him to membership of the organisation; or
- (b) by refusing to accept, or deliberately not accepting, his application for membership.

(2) It is unlawful for a trade organisation, in relation to a member of the organisation, to discriminate against him—

- (a) in the way it affords him access to any benefits or by refusing or deliberately omitting to afford him access to them;
- (b) by depriving him of membership, or varying the terms on which he is a member; or
- (c) by subjecting him to any other detriment.

(3) It is unlawful for a trade organisation, in relation to a person’s membership or application for membership of that organisation, to subject that person to harassment.

(4) In this regulation—

“trade organisation” means an organisation of workers, an organisation of employers, or any other organisation whose members carry on a particular profession or trade for the purposes of which the organisation exists;

“profession” includes any vocation or occupation; and

“trade” includes any business.

### **Qualifications bodies**

**19.—**(1) It is unlawful for a qualifications body to discriminate against a person—

- (a) in the terms on which it is prepared to confer a professional or trade qualification on him;

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<sup>(22)</sup> 1907 c. 24.

<sup>(23)</sup> 1890 c. 39.

- (b) by refusing or deliberately not granting any application by him for such a qualification; or
  - (c) by withdrawing such a qualification from him or varying the terms on which he holds it.
- (2) It is unlawful for a qualifications body, in relation to a professional or trade qualification conferred by it, to subject to harassment a person who holds or applies for such a qualification.

(3) In this regulation—

“qualifications body” means any authority or body which can confer a professional or trade qualification, but it does not include—

- (a) a governing body of an educational establishment to which regulation 23 (institutions of further and higher education) applies, or would apply but for the operation of any other provision of these Regulations, or
- (b) a proprietor of a school;

“confer” includes renew or extend;

“professional or trade qualification” means any authorisation, qualification, recognition, registration, enrolment, approval or certification which is needed for, or facilitates engagement in, a particular profession or trade;

“profession” and “trade” have the same meaning as in regulation 18.

### **The provision of vocational training**

**20.**—(1) It is unlawful, in relation to a person seeking or undergoing training, for any training provider to discriminate against him—

- (a) in the arrangements he makes for the purpose of determining to whom he should offer training;
- (b) in the terms on which the training provider affords him access to any training;
- (c) by refusing or deliberately not affording him such access;
- (d) by terminating his training; or
- (e) by subjecting him to any other detriment during his training.

(2) It is unlawful for a training provider, in relation to a person seeking or undergoing training, to subject him to harassment.

(3) Paragraph (1) does not apply if the discrimination concerns training that would only fit a person for employment which, by virtue of regulation 8 (exception for genuine occupational requirement etc), the employer could lawfully refuse to offer the person seeking training.

(4) In this regulation—

“professional or trade qualification” has the same meaning as in regulation 19;

“registered pupil” has the meaning given by section 434 of the Education Act 1996(24);

“training” means—

- (a) all types and all levels of training which would help fit a person for any employment;
- (b) vocational guidance;
- (c) facilities for training;
- (d) practical work experience provided by an employer to a person whom he does not employ; and
- (e) any assessment related to the award of any professional or trade qualification;

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(24) 1996 c. 56.

“training provider” means any person who provides, or makes arrangements for the provision of, training, but it does not include—

- (a) an employer in relation to training for persons employed by him;
- (b) a governing body of an educational establishment to which regulation 23 (institutions of further and higher education) applies, or would apply but for the operation of any other provision of these Regulations; or
- (c) a proprietor of a school in relation to any registered pupil.

### **Employment agencies, careers guidance etc**

**21.**—(1) It is unlawful for an employment agency to discriminate against a person—

- (a) in the terms on which the agency offers to provide any of its services;
- (b) by refusing or deliberately not providing any of its services; or
- (c) in the way it provides any of its services.

(2) It is unlawful for an employment agency, in relation to a person to whom it provides its services, or who has requested it to provide its services, to subject that person to harassment.

(3) Paragraph (1) does not apply to discrimination if it only concerns employment which, by virtue of regulation 8 (exception for genuine occupational requirement etc), the employer could lawfully refuse to offer the person in question.

(4) An employment agency shall not be subject to any liability under this regulation if it proves that—

- (a) it acted in reliance on a statement made to it by the employer to the effect that, by reason of the operation of paragraph (3), its action would not be unlawful; and
- (b) it was reasonable for it to rely on the statement.

(5) A person who knowingly or recklessly makes a statement such as is referred to in paragraph (4) (a) which in a material respect is false or misleading commits an offence, and shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(6) For the purposes of this regulation—

- (a) “employment agency” means a person who, for profit or not, provides services for the purpose of finding employment for workers or supplying employers with workers, but it does not include—
  - (i) a governing body of an educational establishment to which regulation 23 (institutions of further and higher education) applies, or would apply but for the operation of any other provision of these Regulations; or
  - (ii) a proprietor of a school; and
- (b) references to the services of an employment agency include guidance on careers and any other services related to employment.

### **Assisting persons to obtain employment etc**

**22.**—(1) It is unlawful for the Secretary of State to discriminate against any person by subjecting him to a detriment, or to subject a person to harassment, in the provision of facilities or services under section 2 of the Employment and Training Act 1973(25) (arrangements for assisting persons to obtain employment).

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(25) 1973 c. 50; section 2 was substituted by section 25(1) of the Employment Act 1988 (c. 19), and amended by the Employment Act 1989 (c. 38), Schedule 7, Part 1, and by section 47(1) of the Trade Union Reform and Employment Rights Act 1993 (c. 19).



(2) It is unlawful for Scottish Enterprise or Highlands and Islands Enterprise to discriminate against any person by subjecting him to a detriment, or to subject a person to harassment, in the provision of facilities or services under such arrangements as are mentioned in section 2(3) of the Enterprise and New Towns (Scotland) Act 1990<sup>(26)</sup> (arrangements analogous to arrangements in pursuance of the said Act of 1973).

(3) This regulation does not apply in a case where—

- (a) regulation 20 (the provision of vocational training) applies or would apply but for the operation of any other provision of these Regulations, or
- (b) the Secretary of State is acting as an employment agency within the meaning of regulation 21 (employment agencies, careers guidance etc).

### **Institutions of further and higher education**

**23.**—(1) It is unlawful, in relation to an educational establishment to which this regulation applies, for the governing body of that establishment to discriminate against a person—

- (a) in the terms on which it offers to admit him to the establishment as a student;
- (b) by refusing or deliberately not accepting an application for his admission to the establishment as a student; or
- (c) where he is a student of the establishment—
  - (i) in the way it affords him access to any benefits,
  - (ii) by refusing or deliberately not affording him access to them, or
  - (iii) by excluding him from the establishment or subjecting him to any other detriment.

(2) It is unlawful, in relation to an educational establishment to which this regulation applies, for the governing body of that establishment to subject to harassment a person who is a student at the establishment, or who has applied for admission to the establishment as a student.

(3) Paragraph (1) does not apply if the discrimination concerns training that would only fit a person for employment which, by virtue of regulation 8 (exception for genuine occupational requirement etc), the employer could lawfully refuse to offer the person in question.

(4) This regulation applies to the following educational establishments in England and Wales, namely—

- (a) an institution within the further education sector (within the meaning of section 91(3) of the Further and Higher Education Act 1992<sup>(27)</sup>);
- (b) a university;
- (c) an institution, other than a university, within the higher education sector (within the meaning of section 91(5) of the Further and Higher Education Act 1992).

(5) This regulation applies to the following educational establishments in Scotland, namely—

- (a) a college of further education within the meaning of section 36(1) of the Further and Higher Education (Scotland) Act 1992<sup>(28)</sup> under the management of a board of management within the meaning of Part I of that Act;
- (b) a college of further education maintained by an education authority in the exercise of its further education functions in providing courses of further education within the meaning of section 1(5)(b)(ii) of the Education (Scotland) Act 1980<sup>(29)</sup>;

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<sup>(26)</sup> 1990 c. 35.

<sup>(27)</sup> 1992 c. 13.

<sup>(28)</sup> 1992 c. 37.

<sup>(29)</sup> 1980 c. 44.

- (c) any other educational establishment (not being a school) which provides further education within the meaning of section 1 of the Further and Higher Education (Scotland) Act 1992;
  - (d) an institution within the higher education sector (within the meaning of Part 2 of the Further and Higher Education (Scotland) Act 1992);
  - (e) a central institution (within the meaning of section 135 of the Education (Scotland) Act 1980).
- (6) In this regulation—
- “education authority” has the meaning given by section 135(1) of the Education (Scotland) Act 1980;
- “governing body” includes—
- (a) the board of management of a college referred to in paragraph (5)(a), and
  - (b) the managers of a college or institution referred to in paragraph (5)(b) or (e);
- “student” means any person who receives education at an educational establishment to which this regulation applies; and
- “university” includes a university college and the college, school or hall of a university.

### **Relationships which have come to an end**

24.—(1) In this regulation a “relevant relationship” is a relationship during the course of which an act of discrimination against, or harassment of, one party to the relationship (“B”) by the other party to it (“A”) is unlawful by virtue of any preceding provision of this Part.

- (2) Where a relevant relationship has come to an end, it is unlawful for A—
- (a) to discriminate against B by subjecting him to a detriment; or
  - (b) to subject B to harassment;

where the discrimination or harassment arises out of and is closely connected to that relationship.

(3) In paragraph (1), reference to an act of discrimination or harassment which is unlawful includes, in the case of a relationship which has come to an end before the coming into force of these Regulations, reference to an act of discrimination or harassment which would, after the coming into force of these Regulations, be unlawful.

## **PART 3**

### **OTHER UNLAWFUL ACTS**

#### **Liability of employers and principals**

25.—(1) Anything done by a person in the course of his employment shall be treated for the purposes of these Regulations as done by his employer as well as by him, whether or not it was done with the employer’s knowledge or approval.

(2) Anything done by a person as agent for another person with the authority (whether express or implied, and whether precedent or subsequent) of that other person shall be treated for the purposes of these Regulations as done by that other person as well as by him.

(3) In proceedings brought under these Regulations against any person in respect of an act alleged to have been done by an employee of his it shall be a defence for that person to prove that he took such steps as were reasonably practicable to prevent the employee from doing that act, or from doing in the course of his employment acts of that description.

### **Aiding unlawful acts**

**26.**—(1) A person who knowingly aids another person to do an act made unlawful by these Regulations shall be treated for the purpose of these Regulations as himself doing an unlawful act of the like description.

(2) For the purposes of paragraph (1) an employee or agent for whose act the employer or principal is liable under regulation 25 (or would be so liable but for regulation 25(3)) shall be deemed to aid the doing of the act by the employer or principal.

(3) A person does not under this regulation knowingly aid another to do an unlawful act if—

- (a) he acts in reliance on a statement made to him by that other person that, by reason of any provision of these Regulations, the act which he aids would not be unlawful; and
- (b) it is reasonable for him to rely on the statement.

(4) A person who knowingly or recklessly makes a statement such as is referred to in paragraph (3) (a) which in a material respect is false or misleading commits an offence, and shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.

## **PART 4**

### **GENERAL EXCEPTIONS FROM PARTS 2 AND 3**

#### **Exception for statutory authority**

**27.**—(1) Nothing in Part 2 or 3 shall render unlawful any act done in order to comply with a requirement of any statutory provision.

(2) In this regulation “statutory provision” means any provision (whenever enacted) of—

- (a) an Act or an Act of the Scottish Parliament;
- (b) an instrument made by a Minister of the Crown under an Act;
- (c) an instrument made under an Act or an Act of the Scottish Parliament by the Scottish Ministers or a member of the Scottish Executive.

#### **Exception for national security**

**28.** Nothing in Part 2 or 3 shall render unlawful an act done for the purpose of safeguarding national security, if the doing of the act was justified by that purpose.

#### **Exceptions for positive action**

**29.**—(1) Nothing in Part 2 or 3 shall render unlawful any act done in or in connection with—

- (a) affording persons of a particular age or age group access to facilities for training which would help fit them for particular work; or
- (b) encouraging persons of a particular age or age group to take advantage of opportunities for doing particular work;

where it reasonably appears to the person doing the act that it prevents or compensates for disadvantages linked to age suffered by persons of that age or age group doing that work or likely to take up that work.

(2) Nothing in Part 2 or 3 shall render unlawful any act done by a trade organisation within the meaning of regulation 18 in or in connection with—

- (a) affording only members of the organisation who are of a particular age or age group access to facilities for training which would help fit them for holding a post of any kind in the organisation; or
- (b) encouraging only members of the organisation who are of a particular age or age group to take advantage of opportunities for holding such posts in the organisation,

where it reasonably appears to the organisation that the act prevents or compensates for disadvantages linked to age suffered by those of that age or age group holding such posts or likely to hold such posts.

(3) Nothing in Part 2 or 3 shall render unlawful any act done by a trade organisation within the meaning of regulation 18 in or in connection with encouraging only persons of a particular age or age group to become members of the organisation where it reasonably appears to the organisation that the act prevents or compensates for disadvantages linked to age suffered by persons of that age or age group who are, or are eligible to become, members.

#### **Exception for retirement**

**30.**—(1) This regulation applies in relation to an employee within the meaning of section 230(1) of the 1996 Act, a person in Crown employment, a relevant member of the House of Commons staff, and a relevant member of the House of Lords staff.

(2) Nothing in Part 2 or 3 shall render unlawful the dismissal of a person to whom this regulation applies at or over the age of 65 where the reason for the dismissal is retirement.

(3) For the purposes of this regulation, whether or not the reason for a dismissal is retirement shall be determined in accordance with sections 98ZA to 98ZF of the 1996 Act<sup>(30)</sup>.

#### **Exception for the national minimum wage**

**31.**—(1) Nothing in Part 2 or 3 shall render it unlawful for a relevant person (“A”) to be remunerated in respect of his work at a rate which is lower than the rate at which another such person (“B”) is remunerated for his work where—

- (a) the hourly rate of the national minimum wage for a person of A’s age is lower than that for a person of B’s age, and
- (b) the rate at which A is remunerated is below the single hourly rate for the national minimum wage prescribed by the Secretary of State under section 1(3) of the National Minimum Wage Act 1998<sup>(31)</sup>.

(2) Nothing in Part 2 or 3 shall render it unlawful for an apprentice who is not a relevant person to be remunerated in respect of his work at a rate which is lower than the rate at which an apprentice who is a relevant person is remunerated for his work.

(3) In this regulation—

“apprentice” means a person who is employed under a contract of apprenticeship or, in accordance with regulation 12(3) of the National Minimum Wage Regulations 1999<sup>(32)</sup>, is to be treated as employed under such a contract;

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<sup>(30)</sup> Employment Rights Act 1996 (c. 18); sections 98ZA to 98ZF are inserted by paragraph 23 of Schedule 8 to these Regulations.

<sup>(31)</sup> 1998 c. 39. The hourly rate is prescribed in regulation 11 of the National Minimum Wage Regulations 1999 (S.I. 1999/584) and that rate has most recently been amended by regulation 2 of the National Minimum Wage Regulations 1999 (Amendment) Regulations 2005 (S.I. 2005/2019).

<sup>(32)</sup> S.I. 1999/584, to which relevant amendments have been made by S.I. 2000/1989 and S.I. 2004/1930.

“relevant person” means a person who qualifies for the national minimum wage<sup>(33)</sup> (whether at the single hourly rate for the national minimum wage prescribed by the Secretary of State under section 1(3) of the National Minimum Wage Act 1998 or at a different rate).

### **Exception for provision of certain benefits based on length of service**

**32.**—(1) Subject to paragraph (2), nothing in Part 2 or 3 shall render it unlawful for a person (“A”), in relation to the award of any benefit by him, to put a worker (“B”) at a disadvantage when compared with another worker (“C”), if and to the extent that the disadvantage suffered by B is because B’s length of service is less than that of C.

(2) Where B’s length of service exceeds 5 years, it must reasonably appear to A that the way in which he uses the criterion of length of service, in relation to the award in respect of which B is put at a disadvantage, 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 worker’s length of service for these purposes, A shall calculate—

- (a) the length of time the 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 worker, for example, in terms of effort, skills and decision making); or
- (b) the length of time the worker has been working for him in total;

and on each occasion on which he decides to use the criterion of length of service in relation to the award of a benefit to workers, it is for him to decide which of these definitions to use to calculate their lengths of service.

(4) For the purposes of paragraph (3), in calculating the length of time a worker has been working for him—

- (a) A shall calculate the length of time in terms of the number of weeks during the whole or part of which the worker was working for him;
- (b) A may discount any period during which the worker was absent from work (including any period of absence which at the time it occurred was thought by A or the worker to be permanent) unless in all the circumstances (including the way in which other workers’ absences occurring in similar circumstances are treated by A in calculating their lengths of service) it would not be reasonable for him to do so;
- (c) A may discount any period of time during which the worker was present at work (“the relevant period”) where—
  - (i) the relevant period preceded a period during which the worker was absent from work, and
  - (ii) in all the circumstances (including the length of the worker’s absence, the reason for his absence, the effect his absence has had on his ability to discharge the duties of his work, and the way in which other workers are treated by A in similar circumstances) it is reasonable for A to discount the relevant period.

(5) For the purposes of paragraph (3)(b), a worker shall be treated as having worked for A during any period during which he worked for another if—

- (a) that period is treated as a period of employment with A for the purposes of the 1996 Act by virtue of the operation of section 218 of that Act; or
- (b) were the worker to be made redundant by A, that period and the period he has worked for A would amount to “relevant service” within the meaning of section 155 of that Act.

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<sup>(33)</sup> A person qualifies for the national minimum wage if he is a person who – (a) is a worker; (b) is working, or ordinarily works, in the UK under a contract; and (c) has ceased to be of compulsory school age: see s.1(2) of the National Minimum Wage Act 1998.

- (6) In paragraph (5)—
- (a) the reference to being made redundant is a reference to being dismissed by reason of redundancy for the purposes of the 1996 Act;
  - (b) the reference to section 155 of that Act is a reference to that section as modified by the Redundancy Payments (Continuity of Employment in Local Government, etc.) (Modification) Order 1999<sup>(34)</sup>.
- (7) In this regulation—
- “benefit” does not include any benefit awarded to a worker by virtue of his ceasing to work for A; and
- “year” means a year of 12 calendar months.

### **Exception for provision of enhanced redundancy payments to employees**

- 33.**—(1) Nothing in Part 2 or 3 shall render it unlawful for an employer—
- (a) to give a qualifying employee an enhanced redundancy payment which is less in amount than the enhanced redundancy payment which he gives to another such employee if both amounts are calculated in the same way;
  - (b) to give enhanced redundancy payments only to those who are qualifying employees by virtue of sub-paragraph (a) or (c)(i) of the definition of qualifying employee below.
- (2) In this regulation—
- “the appropriate amount”, “a redundancy payment” and “a week’s pay” have the same meaning as they have in section 162 of the 1996 Act<sup>(35)</sup>;
- “enhanced redundancy payment” means a payment of an amount calculated in accordance with paragraph (3) or (4);
- “qualifying employee” means—
- (a) an employee who is entitled to a redundancy payment by virtue of section 135 of the 1996 Act;
  - (b) an employee who would have been so entitled but for the operation of section 155 of that Act;
  - (c) an employee who agrees to the termination of his employment in circumstances where, had he been dismissed—
    - (i) he would have been a qualifying employee by virtue of sub-paragraph (a) of this definition; or
    - (ii) he would have been a qualifying employee by virtue of sub-paragraph (b).
- (3) For an amount to be calculated in accordance with this paragraph it must be calculated in accordance with section 162(1) to (3) of the 1996 Act.
- (4) For an amount to be calculated in accordance with this paragraph—
- (a) it must be calculated as in paragraph (3);
  - (b) however, in making that calculation, the employer may do one or both of the following things—

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<sup>(34)</sup> S.I. 1999/2277. See Schedule 2, Part 1, paragraph 2.

<sup>(35)</sup> Subsections (4), (5) and (8) of section 162 of the 1996 Act have been repealed by regulation 49 of, and paragraph 32 of Schedule 8 to, these Regulations. Subsection (6) was amended by the Employment Rights (Dispute Resolution) Act 1998 (c. 8), section 1(2)(a). Subsection (7) was repealed by the Employment Relations Act 1999 (c. 26), sections 9 and 44 and Schedule 4, Part 3, paragraphs 5 and 30.

- (i) he may treat a week's pay as not being subject to a maximum amount or as being subject to a maximum amount above the amount laid down in section 227 of the 1996 Act<sup>(36)</sup>;
  - (ii) he may multiply the appropriate amount allowed for each year of employment by a figure of more than one;
  - (c) having made the calculation as in paragraph (3) (whether or not in making that calculation he has done anything mentioned in sub-paragraph (b)) the employer may increase the amount thus calculated by multiplying it by a figure of more than one.
- (5) For the purposes of paragraphs (3) and (4), the reference to “the relevant date” in section 162(1)(a) of the 1996 Act is to be read, in the case of a qualifying employee who agrees to the termination of his employment, as a reference to the date on which that termination takes effect.

#### **Exception for provision of life assurance cover to retired workers**

- 34.**—(1) Where a person (“A”) arranges for workers to be provided with life assurance cover after their early retirement on grounds of ill health, nothing in Part 2 or 3 shall render it unlawful—
- (a) where a normal retirement age applied in relation to any such workers at the time they took early retirement, for A to arrange for such cover to cease when such workers reach that age;
  - (b) in relation to any other workers, for A to arrange for such cover to cease when the workers reach the age of 65.
- (2) In this regulation, “normal retirement age”, in relation to a worker who has taken early retirement, means the age at which workers in A's undertaking who held the same kind of position as the worker held at the time of his retirement were normally required to retire.

## **PART 5**

### **ENFORCEMENT**

#### **Restriction of proceedings for breach of Regulations**

- 35.**—(1) Except as provided by these Regulations no proceedings, whether civil or criminal, shall lie against any person in respect of an act by reason that the act is unlawful by virtue of a provision of these Regulations.
- (2) Paragraph (1) does not prevent the making of an application for judicial review or the investigation or determination of any matter in accordance with Part 10 (investigations: the Pensions Ombudsman) of the Pension Schemes Act 1993<sup>(37)</sup> by the Pensions Ombudsman.

#### **Jurisdiction of employment tribunals**

- 36.**—(1) A complaint by any person (“the complainant”) that another person (“the respondent”) —
- (a) has committed against the complainant an act to which this regulation applies; or
  - (b) is by virtue of regulation 25 (liability of employers and principals) or 26 (aiding unlawful acts) to be treated as having committed against the complainant such an act;
- may be presented to an employment tribunal.

<sup>(36)</sup> The amount laid down in section 227 may be increased or decreased by Order made by the Secretary of State under section 34 of the Employment Relations Act 1999. The amount laid down in section 227 is currently £290: see [S.I. 2005/3352](#).

<sup>(37)</sup> [1993 c. 48](#).

(2) This regulation applies to any act of discrimination or harassment which is unlawful by virtue of any provision of Part 2 other than—

- (a) where the act is one in respect of which an appeal or proceedings in the nature of an appeal may be brought under any enactment, regulation 19 (qualifications bodies);
- (b) regulation 23 (institutions of further and higher education); or
- (c) where the act arises out of and is closely connected to a relationship between the complainant and the respondent which has come to an end but during the course of which an act of discrimination against, or harassment of, the complainant by the respondent would have been unlawful by virtue of regulation 23, regulation 24 (relationships which have come to an end).

(3) In paragraph (2)(c), reference to an act of discrimination or harassment which would have been unlawful includes, in the case of a relationship which has come to an end before the coming into force of these Regulations, reference to an act of discrimination or harassment which would, after the coming into force of these Regulations, have been unlawful.

(4) In this regulation, “enactment” includes an enactment comprised in, or in an instrument made under, an Act of the Scottish Parliament.

#### **Burden of proof: employment tribunals**

**37.—**(1) This regulation applies to any complaint presented under regulation 36 to an employment tribunal.

(2) Where, on the hearing of the complaint, the complainant proves facts from which the tribunal could, apart from this regulation, conclude in the absence of an adequate explanation that the respondent—

- (a) has committed against the complainant an act to which regulation 36 applies; or
- (b) is by virtue of regulation 25 (liability of employers and principals) or 26 (aiding unlawful acts) to be treated as having committed against the complainant such an act,

the tribunal shall uphold the complaint unless the respondent proves that he did not commit, or as the case may be, is not to be treated as having committed, that act.

#### **Remedies on complaints in employment tribunals**

**38.—**(1) Where an employment tribunal finds that a complaint presented to it under regulation 36 is well-founded, the tribunal shall make such of the following as it considers just and equitable—

- (a) an order declaring the rights of the complainant and the respondent in relation to the act to which the complaint relates;
- (b) an order requiring the respondent to pay to the complainant compensation of an amount corresponding to any damages he could have been ordered by a county court or by a sheriff court to pay to the complainant if the complaint had fallen to be dealt with under regulation 39 (jurisdiction of county and sheriff courts);
- (c) a recommendation that the respondent take within a specified period action appearing to the tribunal to be practicable for the purpose of obviating or reducing the adverse effect on the complainant of any act of discrimination or harassment to which the complaint relates.

(2) As respects an unlawful act of discrimination falling within regulation 3(1)(b) (discrimination on the grounds of age), if the respondent proves that the provision, criterion or practice was not applied with the intention of treating the complainant unfavourably on grounds of age, an order may be made under paragraph (1)(b) only if the employment tribunal—



- (a) makes such order under paragraph (1)(a) (if any) and such recommendation under paragraph (1)(c) (if any) as it would have made if it had no power to make an order under paragraph (1)(b); and
  - (b) (where it makes an order under paragraph (1)(a) or a recommendation under paragraph (1)(c) or both) considers that it is just and equitable to make an order under paragraph (1)(b) as well.
- (3) If without reasonable justification the respondent to a complaint fails to comply with a recommendation made by an employment tribunal under paragraph (1)(c), then, if it thinks it just and equitable to do so—
- (a) the tribunal may increase the amount of compensation required to be paid to the complainant in respect of the complaint by an order made under paragraph (1)(b); or
  - (b) if an order under paragraph (1)(b) was not made, the tribunal may make such an order.
- (4) Where an amount of compensation falls to be awarded under paragraph (1)(b), the tribunal may include in the award interest on that amount subject to, and in accordance with, the provisions of the Employment Tribunals (Interest on Awards in Discrimination Cases) Regulations 1996<sup>(38)</sup>.
- (5) This regulation has effect subject to paragraph 6 of Schedule 2 (pension schemes).

#### **Jurisdiction of county and sheriff courts**

- 39.**—(1) A claim by any person (“the claimant”) that another person (“the respondent”)—
- (a) has committed against the claimant an act to which this regulation applies; or
  - (b) is by virtue of regulation 25 (liability of employers and principals) or 26 (aiding unlawful acts) to be treated as having committed against the claimant such an act,
- may be made the subject of civil proceedings in like manner as any other claim in tort or (in Scotland) in reparation for breach of statutory duty.
- (2) Proceedings brought under paragraph (1) shall—
- (a) in England and Wales, be brought only in a county court; and
  - (b) in Scotland, be brought only in a sheriff court.
- (3) For the avoidance of doubt it is hereby declared that damages in respect of an unlawful act to which this regulation applies may include compensation for injury to feelings whether or not they include compensation under any other head.
- (4) This regulation applies to any act of discrimination or harassment which is unlawful by virtue of—
- (a) regulation 23 (institutions of further and higher education); or
  - (b) where the act arises out of and is closely connected to a relationship between the claimant and the respondent which has come to an end but during the course of which an act of discrimination against, or harassment of, the claimant by the respondent would have been unlawful by virtue of regulation 23, regulation 24 (relationships which have come to an end).
- (5) In paragraph (4)(b), reference to an act of discrimination or harassment which would have been unlawful includes, in the case of a relationship which has come to an end before the coming into force of these Regulations, reference to an act of discrimination or harassment which would, after the coming into force of these Regulations, have been unlawful.

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<sup>(38)</sup> S.I. 1996/2803. Regulation 1(2) of those Regulations is amended by paragraph 56 of, and Schedule 8 to, these Regulations.

### **Burden of proof: county and sheriff courts**

**40.**—(1) This regulation applies to any claim brought under regulation 39 in a county court in England and Wales or a sheriff court in Scotland.

(2) Where, on the hearing of the claim, the claimant proves facts from which the court could, apart from this regulation, conclude in the absence of an adequate explanation that the respondent—

- (a) has committed against the claimant an act to which regulation 39 applies; or
- (b) is by virtue of regulation 25 (liability of employers and principals) or 26 (aiding unlawful acts) to be treated as having committed against the claimant such an act,

the court shall uphold the claim unless the respondent proves that he did not commit, or as the case may be, is not to be treated as having committed, that act.

### **Help for persons in obtaining information etc**

**41.**—(1) In accordance with this regulation, a person (“the person aggrieved”) who considers he may have been discriminated against, or subjected to harassment, in contravention of these Regulations may serve on the respondent to a complaint presented under regulation 36 (jurisdiction of employment tribunals) or a claim brought under regulation 39 (jurisdiction of county and sheriff courts) questions in the form set out in Schedule 3 or forms to the like effect with such variation as the circumstances require; and the respondent may if he so wishes reply to such questions by way of the form set out in Schedule 4 or forms to the like effect with such variation as the circumstances require.

(2) Where the person aggrieved questions the respondent (whether in accordance with paragraph (1) or not)—

- (a) the questions, and any reply by the respondent (whether in accordance with paragraph (1) or not) shall, subject to the following provisions of this regulation, be admissible as evidence in the proceedings;
- (b) if it appears to the court or tribunal that the respondent deliberately, and without reasonable excuse, omitted to reply within eight weeks of service of the questions or that his reply is evasive or equivocal, the court or tribunal may draw any inference from that fact that it considers it just and equitable to draw, including an inference that he committed an unlawful act.

(3) In proceedings before a county court in England or Wales or a sheriff court in Scotland, a question shall only be admissible as evidence in pursuance of paragraph (2)(a)—

- (a) where it was served before those proceedings had been instituted, if it was so served within the period of six months beginning when the act complained of was done;
- (b) where it was served when those proceedings had been instituted, if it was served with the leave of, and within a period specified by, the court in question.

(4) In proceedings before an employment tribunal, a question shall only be admissible as evidence in pursuance of paragraph (2)(a)—

- (a) where it was served before a complaint had been presented to the tribunal, if it was so served within the period of three months beginning when the act complained of was done;
- (b) where it was so served when a complaint had been presented to the tribunal, either—
  - (i) if it was served within the period of twenty-one days beginning with the day on which the complaint was presented, or
  - (ii) if it was so served later with leave given, and within a period specified, by a direction of the tribunal.

(5) A question and any reply thereto may be served on the respondent or, as the case may be, on the person aggrieved—

- (a) by delivering it to him;
- (b) by sending it by post to him at his usual or last-known residence or place of business;
- (c) where the person to be served is a body corporate or is a trade union or employers' association within the meaning of the Trade Union and Labour Relations (Consolidation) Act 1992<sup>(39)</sup>, by delivering it to the secretary or clerk of the body, union or association at its registered or principal office or by sending it by post to the secretary or clerk at that office;
- (d) where the person to be served is acting by a solicitor, by delivering it at, or by sending it by post to, the solicitor's address for service; or
- (e) where the person to be served is the person aggrieved, by delivering the reply, or sending it by post, to him at his address for reply as stated by him in the document containing the questions.

(6) This regulation is without prejudice to any other enactment or rule of law regulating interlocutory and preliminary matters in proceedings before a county court, sheriff court or employment tribunal, and has effect subject to any enactment or rule of law regulating the admissibility of evidence in such proceedings.

(7) In this regulation "respondent" includes a prospective respondent.

#### **Period within which proceedings to be brought**

**42.**—(1) An employment tribunal shall not consider a complaint under regulation 36 unless it is presented to the tribunal before the end of the period of three months beginning when the act complained of was done.

(2) A county court or a sheriff court shall not consider a claim brought under regulation 39 unless proceedings in respect of the claim are instituted before the end of the period of six months beginning when the act complained of was done.

(3) A court or tribunal may nevertheless consider any such complaint or claim which is out of time if, in all the circumstances of the case, it considers that it is just and equitable to do so.

(4) For the purposes of this regulation and regulation 41 (help for persons in obtaining information etc)—

- (a) when the making of a contract is, by reason of the inclusion of any term, an unlawful act, that act shall be treated as extending throughout the duration of the contract; and
- (b) any act extending over a period shall be treated as done at the end of that period; and
- (c) a deliberate omission shall be treated as done when the person in question decided upon it,

and in the absence of evidence establishing the contrary a person shall be taken for the purposes of this regulation to decide upon an omission when he does an act inconsistent with doing the omitted act or, if he has done no such inconsistent act, when the period expires within which he might reasonably have been expected to do the omitted act if it was to be done.

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(39) 1992 c. 52.

## PART 6

### SUPPLEMENTAL

#### **Validity of contracts, collective agreements and rules of undertakings**

**43.** Schedule 5 (validity of contracts, collective agreements and rules of undertakings) shall have effect.

#### **Application to the Crown etc**

**44.**—(1) These Regulations apply—

- (a) to an act done by or for purposes of a Minister of the Crown or government department; or
- (b) to an act done on behalf of the Crown by a statutory body, or a person holding a statutory office,

as they apply to an act done by a private person.

(2) These Regulations apply to Crown employment as they apply to employment by a private person, and shall so apply as if references to a contract of employment included references to the terms of service and references to dismissal included references to termination of Crown employment.

(3) Paragraphs (1) and (2) have effect subject to paragraph (4) and regulations 13 (police) and 14 (Serious Organised Crime Agency).

(4) These regulations do not apply to service in any of the naval, military or air forces of the Crown.

(5) Regulation 10(3) (meaning of employment and contract work at establishment in Great Britain) shall have effect in relation to any ship, aircraft or hovercraft belonging to or possessed by Her Majesty in right of the government of the United Kingdom as it has effect in relation to a ship, aircraft or hovercraft specified in regulation 10(3)(a) or (b).

(6) The provisions of Parts 2 to 4 of the Crown Proceedings Act 1947<sup>(40)</sup> shall apply to proceedings against the Crown under these Regulations as they apply to proceedings in England and Wales which by virtue of section 23 of that Act are treated for the purposes of Part 2 of that Act as civil proceedings by or against the Crown, except that in their application to proceedings under these Regulations section 20 of that Act (removal and transfer of proceedings) shall not apply.

(7) The provisions of Part 5 of the Crown Proceedings Act 1947 shall apply to proceedings against the Crown under these Regulations as they apply to proceedings in Scotland which by virtue of the said Part are treated as civil proceedings by or against the Crown, except that in their application to proceedings under these Regulations the proviso to section 44 of that Act (proceedings against the Crown in the Sheriff Court) shall not apply.

#### **Application to House of Commons staff**

**45.**—(1) Subject to paragraphs (2) and (3), these Regulations apply in relation to employment as a relevant member of the House of Commons staff as they apply in relation to other employment.

(2) These Regulations apply to employment as such a member as they apply to employment by a private person, and shall so apply as if references to a contract of employment included references to the terms of employment of such a member and references to dismissal included references to termination of such employment.

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(40) 1947 c. 44.

(3) In relation to employment as such a member, subsections (6) to (12) of section 195 of the 1996 Act<sup>(41)</sup> (person to be treated as employer of House of Commons staff) apply, with any necessary modifications, for the purposes of these Regulations.

#### **Application to House of Lords staff**

**46.**—(1) These Regulations apply in relation to employment as a relevant member of the House of Lords staff as they apply in relation to other employment.

(2) Section 194(7) of the 1996 Act (continuity of employment) applies for the purposes of this regulation.

#### **Duty to consider working beyond retirement**

**47.** Schedule 6, which sets out the procedure to be followed if an employee (within the meaning of that Schedule) is to be retired, shall have effect.

#### **Duty to consider working beyond retirement - transitional provisions**

**48.** Schedule 7, which sets out transitional provisions in relation to the duty to consider working beyond retirement, shall have effect.

#### **Amendments, transitionals, repeals and revocations**

**49.**—(1) Schedule 8, which contains amendments to and repeals of legislation and related transitional provisions, shall have effect.

(2) Schedule 9, which contains repeals and revocations, shall have effect.

Date

*Name*  
*Title*  
Department of Trade and Industry

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<sup>(41)</sup> Employment Rights Act 1996 (c. 18); subsection (8) was amended by the Employment Rights (Dispute Resolution) Act 1998 (c. 8), section 1(2)(a).

SCHEDULE 1

Regulation 10(4)

Norwegian part of the Frigg Gas Field

1. The part of the Norwegian sector of the Continental Shelf described in this Schedule is the area defined by—

(a) the sets of lines of latitude and longitude joining the following surface co-ordinates—

<i>Longitude</i>	<i>Latitude</i>
02 degrees 05 minutes 30 seconds E	60 degrees 00 minutes 45 seconds N
02 degrees 05 minutes 30 seconds E	59 degrees 58 minutes 45 seconds N
02 degrees 06 minutes 00 seconds E	59 degrees 58 minutes 45 seconds N
02 degrees 06 minutes 00 seconds E	59 degrees 57 minutes 45 seconds N
02 degrees 07 minutes 00 seconds E	59 degrees 57 minutes 45 seconds N
02 degrees 07 minutes 00 seconds E	59 degrees 57 minutes 30 seconds N
02 degrees 07 minutes 30 seconds E	59 degrees 57 minutes 30 seconds N
02 degrees 07 minutes 30 seconds E	59 degrees 55 minutes 30 seconds N
02 degrees 10 minutes 30 seconds E	59 degrees 55 minutes 30 seconds N
02 degrees 10 minutes 30 seconds E	59 degrees 54 minutes 45 seconds N
02 degrees 11 minutes 00 seconds E	59 degrees 54 minutes 45 seconds N
02 degrees 11 minutes 00 seconds E	59 degrees 54 minutes 15 seconds N
02 degrees 12 minutes 30 seconds E	59 degrees 54 minutes 15 seconds N
02 degrees 12 minutes 30 seconds E	59 degrees 54 minutes 00 seconds N
02 degrees 13 minutes 30 seconds E	59 degrees 54 minutes 00 seconds N
02 degrees 13 minutes 30 seconds E	59 degrees 54 minutes 30 seconds N
02 degrees 15 minutes 30 seconds E	59 degrees 54 minutes 30 seconds N
02 degrees 15 minutes 30 seconds E	59 degrees 53 minutes 15 seconds N
02 degrees 10 minutes 30 seconds E	59 degrees 53 minutes 15 seconds N
02 degrees 10 minutes 30 seconds E	59 degrees 52 minutes 45 seconds N
02 degrees 09 minutes 30 seconds E	59 degrees 52 minutes 45 seconds N

<i>Longitude</i>	<i>Latitude</i>
02 degrees 09 minutes 30 seconds E	59 degrees 52 minutes 15 seconds N
02 degrees 08 minutes 30 seconds E	59 degrees 52 minutes 15 seconds N
02 degrees 08 minutes 30 seconds E	59 degrees 52 minutes 00 seconds N
02 degrees 07 minutes 30 seconds E	59 degrees 52 minutes 00 seconds N
02 degrees 07 minutes 30 seconds E	59 degrees 51 minutes 30 seconds N
02 degrees 05 minutes 30 seconds E	59 degrees 51 minutes 30 seconds N
02 degrees 05 minutes 30 seconds E	59 degrees 51 minutes 00 seconds N
02 degrees 04 minutes 00 seconds E	59 degrees 51 minutes 00 seconds N
02 degrees 04 minutes 00 seconds E	59 degrees 50 minutes 30 seconds N
02 degrees 03 minutes 00 seconds E	59 degrees 50 minutes 30 seconds N
02 degrees 03 minutes 00 seconds E	59 degrees 50 minutes 00 seconds N

- (b) a line from the point 02 degrees 03 minutes 00 seconds E 59 degrees 50 minutes 00 seconds N west along the parallel of latitude 59 degrees 50 minutes 00 seconds N until its intersection with the Dividing Line;
- (c) a line from the point of intersection specified in sub-paragraph (b) along the Dividing Line until its intersection with the parallel of latitude 60 degrees 00 minutes 45 seconds N;
- (d) a line from the point of intersection specified in sub-paragraph (c) east along the parallel of latitude 60 degrees 00 minutes 45 degrees N until its intersection with the meridian 02 degrees 05 minutes 30 seconds E.

2. In this Schedule, the “Dividing Line” means the dividing line as defined in an Agreement dated 10th March 1965 and made between the government of the United Kingdom of Great Britain and Northern Ireland and the government of the Kingdom of Norway as supplemented by a Protocol dated 22nd December 1978.

## SCHEDULE 2

Regulation 11(3)

### Pension schemes

#### Part 1

#### Pension schemes - general

##### Interpretation

1.—(1) In this Schedule, subject to sub-paragraphs (2) and (3), “occupational pension scheme” means an occupational pension scheme within the meaning of section 1(1) of the Pension Schemes Act 1993<sup>(42)</sup>.

(2) In relation to rules, practices, actions and decisions identified at paragraph 7(a), “occupational pension scheme” means an occupational pension scheme within the meaning of section 1(1) of the Pension Schemes Act 1993 under which only retirement-benefit activities within the meaning of section 255(4) of the Pensions Act 2004<sup>(43)</sup> are carried out.

(3) In relation to rules, practices, actions and decisions identified at paragraphs 12, 13 and 30, “occupational pension scheme” means an occupational pension scheme within the meaning of either section 1(1) of the Pension Schemes Act 1993 or section 150(5) of the Finance Act 2004<sup>(44)</sup>.

(4) In this Schedule, “scheme” means an occupational pension scheme, construed in accordance with sub-paragraphs (1) to (3).

(5) In this Schedule, in relation to a scheme—

“active member” has the meaning given by section 124(1) of the Pensions Act 1995<sup>(45)</sup>, but in paragraph 13 also includes an active member within the meaning of section 151(2) of the Finance Act 2004;

“age related benefit” means benefit provided from a scheme to a member—

- (a) on or following his retirement (including early retirement on grounds of ill health or otherwise),
- (b) on his reaching a particular age, or
- (c) on termination of his service in an employment;

“death benefit” means benefit payable from a pension scheme, in respect of a member, in consequence of his death;

“deferred member” has the meaning given by section 124(1) of the Pensions Act 1995;

“defined benefits arrangement” has the meaning given by section 152(6) of the Finance Act 2004<sup>(46)</sup>, but the reference in that section to an arrangement shall be read as referring to an arrangement in respect of a member under a scheme as defined in section 1(1) of the Pension Schemes Act 1993<sup>(47)</sup> rather than in respect of a member under a pension scheme as defined in section 150(1) of the Finance Act 2004;

“dependant” means dependant as defined in the scheme rules;

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(42) 1993 c. 48; relevant amendments have been made to section 1(1) by the Pensions Act 2004 (c. 35), section 239.

(43) 2004 c. 35.

(44) 2004 c. 12.

(45) 1995 c. 26.

(46) 2004 c. 12.

(47) 1993 c. 48; relevant amendments to section 1(1) have been made by the Pensions Act 2004 (c. 35), section 239.



“early retirement pivot age” means an age specified in the scheme rules as the earliest age at which age related benefit becomes payable without actuarial reduction (disregarding any special provision as to early payment on grounds of ill health or otherwise);

“employer” has the meaning given by section 318(1) of the Pensions Act 2004<sup>(48)</sup>;

“employer contribution” means any contribution to a scheme by an employer in respect of a member;

“employment” includes any trade, business, profession, office or vocation, whether or not a person is employed in it under a contract of employment or is self employed;

“late retirement pivot age” means an age specified in the scheme rules above which benefit becomes payable with actuarial enhancement;

“managers” has the meaning given by section 124(1) of the Pensions Act 1995<sup>(49)</sup>;

“member” means any active member, deferred member or pensioner member, but in paragraph 12 includes any active, deferred or pensioner member within the meaning of section 151(2) to (4) of the Finance Act 2004;

“member contribution” means any contribution to a scheme by a member;

“money purchase arrangement” has the meaning given by section 152(2) of the Finance Act 2004, but the reference in that section to an arrangement shall be read as referring to an arrangement in respect of a member under a scheme as defined in section 1(1) of the Pension Schemes Act 1993 rather than in respect of a member under a pension scheme as defined in section 150(1) of the Finance Act 2004;

“non-discrimination rule” means the rule in paragraph 2(1);

“normal pension age” has the meaning given by section 180 of the Pension Schemes Act 1993;

“normal retirement age”, in relation to a member, means the age at which workers in the undertaking for which the member worked at the time of his retirement, and who held the same kind of position as the member held at his retirement, were normally required to retire;

“pensionable age” has the meaning given by section 122(1) of the Social Security Contributions and Benefits Act 1992<sup>(50)</sup>;

“pensionable pay” means that part of a member’s pay which counts as pensionable pay under the scheme rules;

“pensionable service” has the meaning given by section 124(1) of the Pensions Act 1995<sup>(51)</sup>;

“pensioner member” has the meaning given by section 124(1) of the Pensions Act 1995<sup>(52)</sup>; and

“prospective member” means any person who, under the terms of his employment or the scheme rules or both—

- (a) is able, at his own option, to become a member of the scheme,
- (b) shall become so able if he continues in the same employment for a sufficient period of time,
- (c) shall be so admitted to it automatically unless he makes an election not to become a member, or

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<sup>(48)</sup> 2004 c. 35.

<sup>(49)</sup> 1995 c. 26.

<sup>(50)</sup> 1992 c. 4; relevant amendments have been made to section 122(1) by the Pensions Act 1995 (c. 26), section 126 and Schedule 4 paragraph 13(a).

<sup>(51)</sup> 1995 c. 26; relevant amendments have been made to section 124(1) by the Pensions Act 2004 (c. 35), section 320 and Schedule 13, Part 1.

<sup>(52)</sup> 1995 c. 26; relevant amendments have been made to section 124(1) by the Child Support, Pensions and Social Security Act 2000 (c. 19), section 56 and Schedule 5, Part 1, paragraph 8(3).

(d) may be admitted to it subject to the consent of any person.

(6) In their application to a scheme which is divided into two or more sections, the provisions of this Schedule shall apply as if each section of the scheme was a separate scheme.

(7) In this Schedule—

“personal pension scheme” has the meaning given by section 1(1) of the Pension Schemes Act 1993<sup>(53)</sup>;

“registered pension scheme” has the meaning given by section 150(2) of the Finance Act 2004<sup>(54)</sup>; and

references to contributions under a money purchase arrangement shall be construed as including amounts credited to a member’s account whether or not they reflect payments actually made under the scheme.

(8) Any term used in regulation 11 (pension schemes) shall have the same meaning in that regulation as it has in this Schedule.

### **Non-discrimination rule**

2.—(1) Every scheme shall be treated as including a provision (“the non-discrimination rule”) containing a requirement that the trustees or managers of the scheme refrain from doing any act which is unlawful by virtue of regulation 11.

(2) The other provisions of the scheme are to have effect subject to the non-discrimination rule.

(3) The trustees or managers of a scheme may—

(a) if they do not (apart from this sub-paragraph) have power to make such alterations to the scheme as may be required to secure conformity with the non-discrimination rule, or

(b) if they have such power but the procedure for doing so—

(i) is liable to be unduly complex or protracted, or

(ii) involves the obtaining of consents which cannot be obtained, or can only be obtained with undue delay or difficulty,

by resolution make such alterations to the scheme.

(4) Alterations made by a resolution such as is referred to in sub-paragraph (3)—

(a) may have effect in relation to a period before the alterations are made (but may not have effect in relation to any time before the coming into force of these Regulations), and

(b) shall be subject to the consent of any employer in relation to the scheme whose consent would be required for such a modification if it were to be made under the scheme rules.

### **Exception for rules, practices, actions and decisions relating to occupational pension schemes**

3. Nothing in Part 2 or 3 of these Regulations shall render it unlawful for an employer, or for trustees or managers, to maintain or use, in relation to a scheme, any of the rules, practices, actions or decisions set out in Part 2 of this Schedule.

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<sup>(53)</sup> 1993 c. 48; relevant amendments have been made to section 1(1) by the Pensions Act 2004 (c. 35), section 239.

<sup>(54)</sup> 2004 c. 12.

### **Exception for rules, practices, actions and decisions relating to contributions by employers to personal pension schemes**

4. Nothing in Part 2 or 3 of these Regulations shall render it unlawful for an employer, in relation to the payment of contributions to any personal pension scheme in respect of a worker, to maintain or use any of the rules, practices, actions or decisions set out in Part 3 of this Schedule.

### **Procedure in employment tribunals**

5. Where under regulation 36 (jurisdiction of employment tribunals) a member or prospective member of a scheme presents to an employment tribunal a complaint that the trustees or managers of the scheme—

- (a) have committed against him an act which is unlawful by virtue of regulation 11 (pension schemes) or 24 (relationships which have come to an end); or
- (b) are by virtue of regulation 25 (liability of employers and principals) or 26 (aiding unlawful acts) to be treated as having committed against him such an act,

the employer in relation to the scheme shall, for the purposes of the rules governing procedure, be treated as a party and be entitled to appear and be heard in accordance with those rules.

### **Remedies in employment tribunals**

6.—(1) This paragraph applies where—

- (a) under regulation 36 (jurisdiction of employment tribunals) a member or prospective member of a scheme (“the complainant”) presents to an employment tribunal a complaint against the trustees or managers of the scheme or an employer;
- (b) the complainant is not a pensioner member of the scheme;
- (c) the complaint relates to the terms on which persons become members of the scheme, or the terms on which members of the scheme are treated; and
- (d) the tribunal finds the complaint to be well-founded.

(2) Where this paragraph applies, the employment tribunal may, without prejudice to the generality of its power under regulation 38(1)(a) (power to make order declaring rights of complainant and respondent), make an order declaring that the complainant has a right—

- (a) where the complaint relates to the terms on which persons become members of the scheme, to be admitted to the scheme;
- (b) where the complaint relates to the terms on which members of the scheme are treated, to membership of the scheme without discrimination.

(3) An order under sub-paragraph (2)—

- (a) may be made in respect of such period as is specified in the order (but may not be made in respect of any time before the coming into force of these Regulations);
- (b) may make such provision as the employment tribunal considers appropriate as to the terms on which, or the capacity in which, the complainant is to enjoy such admission or membership.

(4) Where this paragraph applies, the employment tribunal may not make an order for compensation under regulation 38(1)(b), whether in relation to arrears of benefits or otherwise, except—

- (a) for injury to feelings;
- (b) by virtue of regulation 38(3).

## Part 2

### Excepted rules, practices, actions and decisions relating to occupational pension schemes

#### Admission to schemes

7. In relation to admission to a scheme—
- (a) a minimum or maximum age for admission, including different ages for admission for different groups or categories of worker;
  - (b) a minimum level of pensionable pay for admission, provided that such a minimum is not above the lower earnings limit referred to in section 5(1) of the Social Security Contributions and Benefits Act 1992<sup>(55)</sup>.

#### The use of age criteria in actuarial calculations

8. The use of age criteria in actuarial calculations, for example in the actuarial calculation of—
- (a) any age related benefit commencing before any early retirement pivot age or enhancement of such benefit commencing after any late retirement pivot age;
  - (b) member or employer contributions to a scheme; or
  - (c) any age related benefit commuted in exchange for the payment of any lump sum.

#### Contributions

9. Any difference in the rate of member or employer contributions by or in respect of different members to the extent that this is attributable to any differences in the pensionable pay of those members.

#### Contributions under money purchase arrangements

10. Under a money purchase arrangement—
- (a) different rates of member or employer contributions according to the age of the members by or in respect of whom contributions are made where the aim in setting the different rates is—
    - (i) to equalise the amount of benefit to which members of different ages who are otherwise in a comparable situation will become entitled under the arrangement, or
    - (ii) to make the amount of benefit to which such members will become entitled under the arrangement more nearly equal;
  - (b) equal rates of member or employer contributions irrespective of the age of the members by or in respect of whom contributions are made.

#### Contributions under defined benefits arrangements

11. 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, to the extent that—

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<sup>(55)</sup> 1992 c. 4; relevant amendments have been made to section 5(1) by the Welfare Reform and Pensions Act 1999 (c. 30), section 73, Schedule 9, Part 1, paragraph 1.

- (a) each year of pensionable service entitles members in a comparable situation to accrue a right to defined benefits based on the same fraction of pensionable pay, and
- (b) the aim in setting the different rates is to reflect the increasing cost of providing the defined benefits in respect of members as they get older.

#### **Age related rules, practices, actions and decisions relating to benefit**

**12.** A minimum age for entitlement to or payment of any age related benefit to a member, provided that, in the case of any age related benefit paid under a defined benefits arrangement before any early retirement pivot age—

- (a) such benefit is subject to actuarial reduction for early receipt, and
- (b) the member is not credited with additional periods of pensionable service.

**13.** In relation to workers who are active or prospective members of a scheme on the date on which these Regulations come into force, a minimum age for entitlement to or payment of any age related benefit to such members under defined benefit arrangements before any early retirement pivot age, where such benefit is calculated in one or both of the following ways—

- (a) it is not made subject to actuarial reduction for early receipt;
- (b) it results from crediting the member with additional periods of pensionable service.

**14.** An early retirement pivot age or a late retirement pivot age, including different such ages for different groups or categories of member.

**15.** The enhancement of any age related benefit in the event of a member's retirement before any early retirement pivot age on ill health grounds, where that enhancement is calculated by reference to the years of pensionable service which that member would have completed if he had continued in pensionable service up to the age specified for that purpose in the scheme rules.

**16.** Any rule, practice, action or decision 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<sup>(56)</sup> by regulation 13 of the Occupational Pension Schemes (Equal Treatment) Regulations 1995<sup>(57)</sup>.

**17.** The reduction of any pension payable in consequence of a member's death to any dependant of the member where that dependant is more than a specified number of years younger than the member.

**18.** In relation to pensioner members who have retired on ill health grounds before any early retirement pivot age, discontinuation of any life assurance cover once any such members reach the normal retirement age which applied to them at the time they retired, or in relation to members to whom no such normal retirement age applied, once such members reach the age of 65.

#### **Other rules, practices, actions and decisions relating to benefit**

**19.** Any difference in the amount of any age related benefit or death benefit payable under a defined benefits arrangement to or in respect of members with different lengths of pensionable service to the extent that the difference in amount is attributable to their differing lengths of service, provided that, for each year of pensionable service, members in a comparable situation are entitled to accrue a right to benefit based upon the same fraction of pensionable pay.

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<sup>(56)</sup> 1995 c. 26.

<sup>(57)</sup> S.I. 1995/3183.

**20.** Any difference in the amount of any age related benefit or death benefit payable from a scheme to or in respect of different members to the extent that the difference in amount is attributable to differences over time in the pensionable pay of those members.

**21.** Any limitation of the amount of any age related benefit or death benefit payable from a scheme where the limitation results from imposing a maximum number of years of service by reference to which such benefit may be calculated.

**22.** Any rule, practice, action or decision whereby any age related benefit or death benefit is only payable to or in respect of members who have completed a minimum period of service, provided that such a minimum period is not longer than 2 years qualifying service within the meaning of section 71(7) of the Pension Schemes Act 1993**(58)**.

**23.** Any limitation on the amount of any age related benefit or death benefit payable from a scheme where the limitation results from imposing a minimum level of pensionable pay by reference to which any such benefit may be calculated, provided that such a minimum is not above the lower earnings limit referred to in section 5(1) of the Social Security Contributions and Benefits Act 1992**(59)**.

**24.** Any limitation on the amount of any age related benefit or death benefit payable from a scheme where the limitation results from imposing a maximum level of pensionable pay by reference to which such benefit may be calculated.

#### **Closure of schemes**

**25.** The closure of a scheme, from a particular date, to workers who have not already joined it.

#### **Other rules, practices, actions and decisions**

**26.** Increases of pensions in payment which are made to members over 55 but not to members below that age.

**27.** Any difference in the rate of increase of pensions in payment for members of different ages to the extent that the aim in setting the different rates is to maintain the relative value of members' pensions.

**28.** Any difference in the rate of increase of pensions in payment for members whose pensions have been in payment for different lengths of time to the extent that the aim in setting the different rates is to maintain the relative value of members' pensions.

**29.** The application of an age limit for transfer of the value of a member's accrued rights into or out of a scheme, provided that any such age limit is not more than one year before the member's normal pension age.

#### **Registered pension schemes**

**30.**—(1) Subject to sub-paragraph (2), any rules, practices, actions or decisions relating to entitlement to or payment of benefits under a registered pension scheme insofar as compliance is necessary to secure any tax relief or exemption available under Part 4 of the Finance Act 2004**(60)** or to prevent any charge to tax arising under that Part of that Act, whoever is liable in relation to such charge.

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**(58)** 1993 c. 48.

**(59)** 1992 c. 4; relevant amendments have been made by the [Welfare Reform and Pensions Act 1999](#), c. 30, section 73 and Schedule 9, Part 1, paragraph 1.

**(60)** 2004 c. 12.

(2) Sub-paragraph (1) does not apply to any rules, practices, actions or decisions setting a minimum age for entitlement to or payment of any age related benefit.

### Part 3

#### Excepted rules, practices, actions and decisions relating to contributions by employers to personal pension schemes

##### Contributions by employers

**31.** Different rates of contributions by an employer according to the age of the workers in respect of whom the contributions are made where the aim in setting the different rates is—

- (a) to equalise the amount of benefit to which workers of different ages who are otherwise in a comparable situation will become entitled under their personal pension schemes, or
- (b) to make the amount of benefit to which such workers will become entitled under their personal pension schemes more nearly equal.

**32.** Any difference in the rate of contributions by an employer in respect of different workers to the extent that this is attributable to any differences in remuneration payable to those workers.

#### SCHEDULE 3

Regulation 41(1)

##### Questionnaire of person aggrieved

To.....(*name of person to be questioned*) of.....  
(*address*)

**1.—(1)** I.....(*name of questioner*) of.....(*address*) consider that you may have discriminated against me [subjected me to harassment] contrary to the Employment Equality (Age) Regulations 2006.

(2) (*Give date, approximate time and a factual description of the treatment received and of the circumstances leading up to the treatment.*)

(3) I consider that this treatment may have been unlawful because.....  
(*complete if you wish to give reasons, otherwise delete*).

**2.** Do you agree that the statement in paragraph 1(2) above is an accurate description of what happened? If not, in what respect do you disagree or what is your version of what happened?

**3.** Do you accept that your treatment of me was unlawful discrimination [harassment]?

If not—

- (a) why not,
- (b) for what reason did I receive the treatment accorded to me, and
- (c) how far did considerations of age affect your treatment of me?

**4.** (*Any other questions you wish to ask.*)

**5.** My address for any reply you may wish to give to the questions raised above is [that set out in paragraph 1(1) above] [the following address.....]

.....(*signature of questioner*)

.....(date)

N.B.—By virtue of regulation 41 of the Employment Equality (Age) Regulations 2006 this questionnaire and any reply are (subject to the provisions of that regulation) admissible in proceedings under the Regulations. A court or tribunal may draw any such inference as is just and equitable from a failure without reasonable excuse to reply within eight weeks of service of this questionnaire, or from an evasive or equivocal reply, including an inference that the person questioned has committed an unlawful act.

SCHEDULE 4

Regulation 41(1)

Reply by respondent

To.....(name of questioner) of.....(address)

1. I.....(name of person questioned) of.....(address) hereby acknowledge receipt of the questionnaire signed by you and dated.....which was served on me on.....(date).

2. [I agree that the statement in paragraph 1(2) of the questionnaire is an accurate description of what happened.]

[I disagree with the statement in paragraph 1(2) of the questionnaire in that.....]

3. I accept/dispute that my treatment of you was unlawful discrimination [harassment].

[My reasons for so disputing are..... The reason why you received the treatment accorded to you and the answers to the other questions in paragraph 3 of the questionnaire are.....]

4. (Replies to questions in paragraph 4 of the questionnaire.)

5. [I have deleted (in whole or in part) the paragraph(s) numbered.....above, since I am unable/unwilling to reply to the relevant questions in the correspondingly numbered paragraph(s) of the questionnaire for the following reasons.....]

.....(signature of person questioned)

.....(date)

SCHEDULE 5

Regulation 43

Validity of contracts, collective agreements and rules of undertakings

Part 1

Validity and revision of contracts

1.—(1) A term of a contract is void where—

- (a) the making of the contract is, by reason of the inclusion of the term, unlawful by virtue of these Regulations;
- (b) it is included in furtherance of an act which is unlawful by virtue of these Regulations; or



(c) it provides for the doing of an act which is unlawful by virtue of these Regulations.

(2) Sub-paragraph (1) does not apply to a term the inclusion of which constitutes, or is in furtherance of, or provides for, unlawful discrimination against, or harassment of, a party to the contract, but the term shall be unenforceable against that party.

(3) A term in a contract which purports to exclude or limit any provision of these Regulations is unenforceable by any person in whose favour the term would operate apart from this paragraph.

(4) Sub-paragraphs (1), (2) and (3) shall apply whether the contract was entered into before or after the date on which these Regulations come into force, but in the case of a contract made before that date, those sub-paragraphs do not apply in relation to any period before that date.

2.—(1) Paragraph 1(3) does not apply—

(a) to a contract settling a complaint to which regulation 36(1) (jurisdiction of employment tribunals) applies where the contract is made with the assistance of a conciliation officer within the meaning of section 211 of the Trade Union and Labour Relations (Consolidation) Act 1992<sup>(61)</sup>;

(b) to a contract settling a complaint to which regulation 36(1) applies if the conditions regulating compromise contracts under this Schedule are satisfied in relation to the contract; or

(c) to a contract settling a claim to which regulation 39 (jurisdiction of county or sheriff courts) applies.

(2) The conditions regulating compromise contracts under this Schedule are that—

(a) the contract must be in writing;

(b) the contract must relate to the particular complaint;

(c) the complainant must have received advice from a relevant independent adviser as to the terms and effect of the proposed contract and in particular its effect on his ability to pursue a complaint before an employment tribunal;

(d) there must be in force, when the adviser gives the advice, a contract of insurance, or an indemnity provided for members of a profession or professional body, covering the risk of a claim by the complainant in respect of loss arising in consequence of the advice;

(e) the contract must identify the adviser; and

(f) the contract must state that the conditions regulating compromise contracts under this Schedule are satisfied.

(3) A person is a relevant independent adviser for the purposes of sub-paragraph (2)(c)—

(a) if he is a qualified lawyer;

(b) if he is an officer, official, employee or member of an independent trade union who has been certified in writing by the trade union as competent to give advice and as authorised to do so on behalf of the trade union; or

(c) if he works at an advice centre (whether as an employee or a volunteer) and has been certified in writing by the centre as competent to give advice and as authorised to do so on behalf of the centre.

(4) But a person is not a relevant independent adviser for the purposes of sub-paragraph (2)(c) in relation to the complainant—

(a) if he is employed by, or is acting in the matter for the other party, or is a person who is connected with the other party;

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<sup>(61)</sup> 1992 c. 52.

- (b) in the case of a person within sub-paragraph (3)(b) or (c), if the trade union or advice centre is the other party or a person who is connected with the other party; or
  - (c) in the case of a person within sub-paragraph (3)(c), if the complainant makes a payment for the advice received from him.
- (5) In sub-paragraph (3)(a) “qualified lawyer” means—
- (a) as respects England and Wales, a barrister (whether in practice as such or employed to give legal advice), a solicitor who holds a practising certificate, or a person other than a barrister or solicitor who is an authorised advocate or authorised litigator (within the meaning of the Courts and Legal Services Act 1990<sup>(62)</sup>); and
  - (b) as respects Scotland, an advocate (whether in practice as such or employed to give legal advice), or a solicitor who holds a practising certificate.
- (6) A person shall be treated as being a qualified lawyer within sub-paragraph (5)(a) if he is a Fellow of the Institute of Legal Executives employed by a solicitors’ practice.
- (7) In sub-paragraph (3)(b) “independent trade union” has the same meaning as in the Trade Union and Labour Relations (Consolidation) Act 1992.
- (8) For the purposes of sub-paragraph (4)(a) any two persons are to be treated as connected—
- (a) if one is a company of which the other (directly or indirectly) has control; or
  - (b) if both are companies of which a third person (directly or indirectly) has control.
- (9) An agreement under which the parties agree to submit a dispute to arbitration—
- (a) shall be regarded for the purposes of sub-paragraphs (1)(a) and (b) as being a contract settling a complaint if—
    - (i) the dispute is covered by a scheme having effect by virtue of an order under section 212A of the Trade Union and Labour Relations (Consolidation) Act 1992, and
    - (ii) the agreement is to submit it to arbitration in accordance with the scheme, but
  - (b) shall be regarded as neither being nor including such a contract in any other case.
- 3.—**(1) On the application of a person interested in a contract to which paragraph 1(1) or (2) applies, a county court or a sheriff court may make such order as it thinks fit for—
- (a) removing or modifying any term rendered void by paragraph 1(1), or
  - (b) removing or modifying any term made unenforceable by paragraph 1(2);
- but such an order shall not be made unless all persons affected have been given notice in writing of the application (except where under rules of court notice may be dispensed with) and have been afforded an opportunity to make representations to the court.
- (2) An order under sub-paragraph (1) may include provision as respects any period before the making of the order (but after the coming into force of these Regulations).

## Part 2

### Collective agreements and rules of undertakings

- 4.—**(1) This Part of this Schedule applies to—

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(62) 1990 c. 41.

- (a) any term of a collective agreement, including an agreement which was not intended, or is presumed not to have been intended, to be a legally enforceable contract;
- (b) any rule made by an employer for application to all or any of the persons who are employed by him or who apply to be, or are, considered by him for employment;
- (c) any rule made by a trade organisation (within the meaning of regulation 18) or a qualifications body (within the meaning of regulation 19) for application to—
  - (i) all or any of its members or prospective members; or
  - (ii) all or any of the persons on whom it has conferred professional or trade qualifications (within the meaning of regulation 19) or who are seeking the professional or trade qualifications which it has power to confer.

(2) Any term or rule to which this Part of this Schedule applies is void where—

- (a) the making of the collective agreement is, by reason of the inclusion of the term, unlawful by virtue of these Regulations;
- (b) the term or rule is included or made in furtherance of an act which is unlawful by virtue of these Regulations; or
- (c) the term or rule provides for the doing of an act which is unlawful by virtue of these Regulations.

(3) Sub-paragraph (2) shall apply whether the agreement was entered into, or the rule made, before or after the date on which these Regulations come into force; but in the case of an agreement entered into, or a rule made, before the date on which these Regulations come into force, that sub-paragraph does not apply in relation to any period before that date.

**5.** A person to whom this paragraph applies may present a complaint to an employment tribunal that a term or rule is void by virtue of paragraph 4 if he has reason to believe—

- (a) that the term or rule may at some future time have effect in relation to him; and
- (b) where he alleges that it is void by virtue of paragraph 4(2)(c), that—
  - (i) an act for the doing of which it provides, may at some such time be done in relation to him, and
  - (ii) the act would be unlawful by virtue of these Regulations if done in relation to him in present circumstances.

**6.** In the case of a complaint about—

- (a) a term of a collective agreement made by or on behalf of—
  - (i) an employer,
  - (ii) an organisation of employers of which an employer is a member, or
  - (iii) an association of such organisations of one of which an employer is a member, or
- (b) a rule made by an employer within the meaning of paragraph 4(1)(b),

paragraph 5 applies to any person who is, or is genuinely and actively seeking to become, one of his employees.

**7.** In the case of a complaint about a rule made by an organisation or body to which paragraph 4(1)(c) applies, paragraph 5 applies to any person—

- (a) who is, or is genuinely and actively seeking to become, a member of the organisation or body;
- (b) on whom the organisation or body has conferred a professional or trade qualification (within the meaning of regulation 19) which the organisation or body has power to confer; or

- (c) who is genuinely and actively seeking such a professional or trade qualification which the organisation or body has power to confer.

**8.—(1)** When an employment tribunal finds that a complaint presented to it under paragraph 5 is well-founded the tribunal shall make an order declaring that the term or rule is void.

(2) An order under sub-paragraph (1) may include provision as respects any period before the making of the order (but after the coming into force of these Regulations).

**9.** The avoidance by virtue of paragraph 4(2) of any term or rule which provides for any person to be discriminated against shall be without prejudice to the following rights (except in so far as they enable any person to require another person to be treated less favourably than himself), namely—

- (a) such of the rights of the person to be discriminated against; and  
 (b) such of the rights of any person who will be treated more favourably in direct or indirect consequence of the discrimination,

as are conferred by or in respect of a contract made or modified wholly or partly in pursuance of, or by reference to, that term or rule.

**10.** In this Schedule “collective agreement” means any agreement relating to one or more of the matters mentioned in section 178(2) of the Trade Union and Labour Relations (Consolidation) Act 1992 (collective agreements and collective bargaining), being an agreement made by or on behalf of one or more employers or one or more organisations of employers or associations of such organisations with one or more organisations of workers or associations of such organisations.

## SCHEDULE 6

Regulation 47

### Duty to consider working beyond retirement

#### Interpretation

**1.—(1)** In this Schedule—

“dismissal” means a dismissal within the meaning of section 95 of the 1996 Act<sup>(63)</sup>;

“employee” means a person to whom regulation 30 (exception for retirement) applies and references to “employer” shall be construed accordingly;

“intended date of retirement” has the meaning given by sub-paragraph (2);

“operative date of termination” means (subject to paragraph 10(3))—

- (a) where the employer terminates the employee’s contract of employment by notice, the date on which the notice expires, or  
 (b) where the employer terminates the contract of employment without notice, the date on which the termination takes effect;

“request” means a request made under paragraph 5; and

“worker” has the same meaning as in section 230(3) of the 1996 Act.

(2) In this Schedule “intended date of retirement” means—

- (a) where the employer notifies a date in accordance with paragraph 2, that date;

<sup>(63)</sup> Employment Rights Act 1996 (c. 18); section 95 has been amended by section 57 of, and by Schedule 1, paragraph 29, and Schedule 2 to, the Employment Relations Act 2004 (c. 24), and by regulation 11 of, and paragraph 3(1) and (7) of Part 1 of Schedule 2 to, S.I. 2002/2034.

- (b) where the employer notifies a date in accordance with paragraph 4 and either no request is made or a request is made after the notification, that date;
- (c) where,
  - (i) the employer has not notified a date in accordance with paragraph 2,
  - (ii) a request is made before the employer has notified a date in accordance with paragraph 4 (including where no notification in accordance with that paragraph is given),
  - (iii) the request is made by an employee who has reasonable grounds for believing that the employer intends to retire him on a certain date, and,
  - (iv) the request identifies that date,the date so identified;
- (d) in a case to which paragraph 3 has applied, any earlier or later date that has superseded the date mentioned in paragraph (a), (b) or (c) as the intended date of retirement by virtue of paragraph 3(3);
- (e) in a case to which paragraph 10 has applied, the later date that has superseded the date mentioned in paragraph (a), (b) or (c) as the intended date of retirement by virtue of paragraph 10(3)(b).

#### **Duty of employer to inform employee**

**2.—**(1) An employer who intends to retire an employee has a duty to notify the employee in writing of—

- (a) the employee's right to make a request; and
- (b) the date on which he intends the employee to retire,

not more than one year and not less than six months before that date.

(2) The duty to notify applies regardless of—

- (a) whether there is any term in the employee's contract of employment indicating when his retirement is expected to take place,
- (b) any other notification of, or information about, the employee's date of retirement given to him by the employer at any time, and
- (c) any other information about the employee's right to make a request given to him by the employer at any time.

**3.—**(1) This paragraph applies if the employer has notified the employee in accordance with paragraph 2 or 4 or the employee has made a request before being notified in accordance with paragraph 4 (including where no notification in accordance with that paragraph is given), and—

- (a) the employer and employee agree, in accordance with paragraph 7(3)(b) or 8(5)(b), that the dismissal is to take effect on a date later than the relevant date;
- (b) the employer gives notice to the employee, in accordance with paragraph 7(7)(a)(ii) or, where the employee appeals, paragraph 8(9)(a)(ii), that the dismissal is to take effect on a date later than the relevant date; or
- (c) the employer and employee agree that the dismissal is to take effect on a date earlier than the relevant date.

(2) This Schedule does not require the employer to give the employee a further notification in respect of dismissal taking effect on a date—

- (a) agreed as mentioned in sub-paragraph (1)(a) or notified as mentioned in sub-paragraph (1)(b) that is later than the relevant date and falls six months or less after the relevant date; or
  - (b) agreed as mentioned in sub-paragraph (1)(c) that is earlier than the relevant date.
- (3) If—
- (a) a date later than the relevant date is agreed as mentioned in sub-paragraph (1)(a) or notified as mentioned in sub-paragraph (1)(b) and falls six months or less after the relevant date, or
  - (b) a date earlier than the relevant date is agreed as mentioned in sub-paragraph (1)(c),
- the earlier or later date shall supersede the relevant date as the intended date of retirement.
- (4) In this paragraph, “the relevant date” means the date that is defined as the intended date of retirement in paragraph (a), (b) or (c) of paragraph 1(2).

#### **Continuing duty to inform employee**

4. Where the employer has failed to comply with paragraph 2, he has a continuing duty to notify the employee in writing as described in paragraph 2(1) until the fourteenth day before the operative date of termination.

#### **Statutory right to request not to retire**

5.—(1) An employee may make a request to his employer not to retire on the intended date of retirement.

(2) In his request the employee must propose that his employment should continue, following the intended date of retirement—

- (a) indefinitely,
- (b) for a stated period, or
- (c) until a stated date;

and, if the request is made at a time when it is no longer possible for the employer to notify in accordance with paragraph 2 and the employer has not yet notified in accordance with paragraph 4, must identify the date on which he believes that the employer intends to retire him.

(3) A request must be in writing and state that it is made under this paragraph.

(4) An employee may only make one request under this paragraph in relation to any one intended date of retirement and may not make a request in relation to a date that supersedes a different date as the intended date of retirement by virtue of paragraph 3(3) or 10(3)(b).

(5) A request is only a request made under this paragraph if it is made—

- (a) in a case where the employer has complied with paragraph 2, more than three months but not more than six months before the intended date of retirement, or
- (b) in a case where the employer has not complied with paragraph 2, before, but not more than six months before, the intended date of retirement.

#### **An employer’s duty to consider a request**

6. An employer to whom a request is made is under a duty to consider the request in accordance with paragraphs 7 to 9.

#### **Meeting to consider request**

7.—(1) An employer having a duty under paragraph 6 to consider a request shall hold a meeting to discuss the request with the employee within a reasonable period after receiving it.

- (2) The employer and employee must take all reasonable steps to attend the meeting.
- (3) The duty to hold a meeting does not apply if, before the end of the period that is reasonable—
  - (a) the employer and employee agree that the employee’s employment will continue indefinitely and the employer gives notice to the employee to that effect; or
  - (b) the employer and employee agree that the employee’s employment will continue for an agreed period and the employer gives notice to the employee of the length of that period or of the date on which it will end.
- (4) The duty to hold a meeting does not apply if—
  - (a) it is not practicable to hold a meeting within the period that is reasonable, and
  - (b) the employer complies with sub-paragraph (5).
- (5) Where sub-paragraph (4)(a) applies, the employer may consider the request without holding a meeting provided he considers any representations made by the employee.
- (6) The employer shall give the employee notice of his decision on the request as soon as is reasonably practicable after the date of the meeting or, if sub-paragraphs (4) and (5) apply, his consideration of the request.
- (7) A notice given under sub-paragraph (6) shall—
  - (a) where the decision is to accept the request, state that it is accepted and—
    - (i) where the decision is that the employee’s employment will continue indefinitely, state that fact, or
    - (ii) where the decision is that the employee’s employment will continue for a further period, state that fact and specify the length of the period or the date on which it will end,
  - (b) where the decision is to refuse the request, confirm that the employer wishes to retire the employee and the date on which the dismissal is to take effect,and, in the case of a notice falling within paragraph (b), and of a notice referred to in paragraph (a) that specifies a period shorter than the period proposed by the employee in the request, shall inform the employee of his right to appeal.
- (8) All notices given under this paragraph shall be in writing and be dated.

## Appeals

- 8.—**(1) An employee is entitled to appeal against—
- (a) a decision of his employer to refuse the request, or
  - (b) a decision of his employer to accept the request where the notice given under paragraph 7(6) states as mentioned in paragraph 7(7)(a)(ii) and specifies a period shorter than the period proposed by the employee in the request,
- by giving notice in accordance with sub-paragraph (2) as soon as is reasonably practicable after the date of the notice given under paragraph 7(6).
- (2) A notice of appeal under sub-paragraph (1) shall set out the grounds of appeal.
  - (3) The employer shall hold a meeting with the employee to discuss an appeal within a reasonable period after the date of the notice of appeal.
  - (4) The employer and employee must take all reasonable steps to attend the meeting.
  - (5) The duty to hold a meeting does not apply if, before the end of the period that is reasonable—
    - (a) the employer and employee agree that the employee’s employment will continue indefinitely and the employer gives notice to the employee to that effect; or

- (b) the employer and employee agree that the employee's employment will continue for an agreed period and the employer gives notice to the employee of the length of that period or of the date on which it will end.
- (6) The duty to hold a meeting does not apply if—
  - (a) it is not practicable to hold a meeting within the period that is reasonable, and
  - (b) the employer complies with sub-paragraph (7).
- (7) Where sub-paragraph (6)(a) applies, the employer may consider the appeal without holding a meeting provided he considers any representations made by the employee.
- (8) The employer shall give the employee notice of his decision on the appeal as soon as is reasonably practicable after the date of the meeting or, if sub-paragraphs (6) and (7) apply, his consideration of the appeal.
- (9) A notice under sub-paragraph (8) shall—
  - (a) where the decision is to accept the appeal, state that it is accepted and—
    - (i) where the decision is that the employee's employment will continue indefinitely, state that fact, or
    - (ii) where the decision is that the employee's employment will continue for a further period, state that fact and specify the length of the period or the date on which it will end,
  - (b) where the decision is to refuse the appeal, confirm that the employer wishes to retire the employee and the date on which the dismissal is to take effect.
- (10) All notices given under this paragraph shall be in writing and be dated.

### **Right to be accompanied**

- 9.—**(1) This paragraph applies where—
- (a) a meeting is held under paragraph 7 or 8, and
  - (b) the employee reasonably requests to be accompanied at the meeting.
- (2) Where this paragraph applies the employer must permit the employee to be accompanied at the meeting by one companion who—
- (a) is chosen by the employee;
  - (b) is a worker employed by the same employer as the employee;
  - (c) is to be permitted to address the meeting (but not to answer questions on behalf of the employee); and
  - (d) is to be permitted to confer with the employee during the meeting.
- (3) If—
- (a) an employee has a right under this paragraph to be accompanied at a meeting,
  - (b) his chosen companion will not be available at the time proposed for the meeting by the employer, and
  - (c) the employee proposes an alternative time which satisfies sub-paragraph (4),
- the employer must postpone the meeting to the time proposed by the employee.
- (4) An alternative time must—
- (a) be convenient for employer, employee and companion, and
  - (b) fall before the end of the period of seven days beginning with the first day after the day proposed by the employer.



(5) An employer shall permit a worker to take time off during working hours for the purpose of accompanying an employee in accordance with a request under sub-paragraph (1)(b).

(6) Sections 168(3) and (4), 169 and 171 to 173 of the Trade Union and Labour Relations (Consolidation) Act 1992<sup>(64)</sup> (time off for carrying out trade union duties) shall apply in relation to sub-paragraph (5) above as they apply in relation to section 168(1) of that Act.

### **Dismissal before request considered**

**10.**—(1) This paragraph applies where—

- (a) by virtue of paragraph 6 an employer is under a duty to consider a request;
- (b) the employer dismisses the employee;
- (c) that dismissal is the contemplated dismissal to which the request relates; and
- (d) the operative date of termination would, but for sub-paragraph (3), fall on or before the day on which the employer gives notice in accordance with paragraph 7(6).

(2) Subject to paragraph (4), the contract of employment shall continue in force for all purposes, including the purpose of determining for any purpose the period for which the employee has been continuously employed, until the day following that on which the notice under paragraph 7(6) is given.

(3) The day following the day on which that notice is given shall supersede—

- (a) the date mentioned in sub-paragraph (1)(d) as the operative date of termination; and
- (b) the date defined as the intended date of retirement in paragraph (a), (b) or (c) of paragraph 1(2) as the intended date of retirement.

(4) Any continuation of the contract of employment under sub-paragraph (2) shall be disregarded when determining the operative date of termination for the purposes of sections 98ZA to 98ZH of the 1996 Act.

### **Complaint to employment tribunal: failure to comply with paragraph 2**

**11.**—(1) An employee may present a complaint to an employment tribunal that his employer has failed to comply with the duty to notify him in paragraph 2.

(2) A tribunal shall not consider a complaint under this paragraph unless the complaint is presented—

- (a) before the end of the period of three months beginning with—
  - (i) the last day permitted to the employer by paragraph 2 for complying with the duty to notify, or
  - (ii) if the employee did not then know the date that would be the intended date of retirement, the first day on which he knew or should have known that date; or
- (b) within such further period as the tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be presented before the end of that period of three months.

(3) Where a tribunal finds that a complaint under this paragraph is well-founded it shall order the employer to pay compensation to the employee of such amount, not exceeding 8 weeks' pay, as the tribunal considers just and equitable in all the circumstances.

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<sup>(64)</sup> 1992 c. 52; sections 171 and 173 have been amended by section 1(2)(a) of the Employment Rights (Dispute Resolution) Act 1998 (c. 8). There are other amendments to these provisions which are not relevant for the purposes of these Regulations.

(4) Chapter 2 of Part 14 of the 1996 Act (calculation of a week's pay) shall apply for the purposes of sub-paragraph (3); and in applying that Chapter the calculation date shall be taken to be the date on which the complaint was presented or, if earlier, the operative date of termination.

(5) The limit in section 227(1) of the 1996 Act<sup>(65)</sup> (maximum amount of a week's pay) shall apply for the purposes of sub-paragraph (3).

### **Complaint to employment tribunal: denial of right to be accompanied**

**12.**—(1) An employee may present a complaint to an employment tribunal that his employer has failed, or threatened to fail, to comply with paragraph 9(2) or (3).

(2) A tribunal shall not consider a complaint under this paragraph in relation to a failure or threat unless the complaint is presented—

- (a) before the end of the period of three months beginning with the date of the failure or threat; or
- (b) within such further period as the tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be presented before the end of that period of three months.

(3) Where a tribunal finds that a complaint under this paragraph is well-founded it shall order the employer to pay compensation to the worker of an amount not exceeding two weeks' pay.

(4) Chapter 2 of Part 14 of the 1996 Act (calculation of a week's pay) shall apply for the purposes of sub-paragraph (3); and in applying that Chapter the calculation date shall be taken to be the date on which the relevant meeting took place (or was to have taken place).

(5) The limit in section 227(1) of the 1996 Act (maximum amount of a week's pay) shall apply for the purposes of sub-paragraph (3).

### **Detriment and dismissal**

**13.**—(1) An employee has the right not to be subjected to any detriment by any act by his employer done on the ground that he exercised or sought to exercise his right to be accompanied in accordance with paragraph 9.

(2) A worker has the right not to be subjected to any detriment by any act, or any deliberate failure to act, by his employer done on the ground that he accompanied or sought to accompany an employee pursuant to a request under paragraph 9.

(3) Section 48 of the 1996 Act shall apply in relation to contraventions of sub-paragraph (1) or (2) above as it applies in relation to contraventions of certain sections of that Act.

(4) Sub-paragraph (2) does not apply where the worker is an employee and the detriment in question amounts to dismissal (within the meaning of Part 10 of the 1996 Act).

(5) An employee who is dismissed shall be regarded for the purposes of Part 10 of the 1996 Act as unfairly dismissed if the reason (or, if more than one, the principal reason) for the dismissal is that he—

- (a) exercised or sought to exercise his right to be accompanied in accordance with paragraph 9, or
- (b) accompanied or sought to accompany an employee pursuant to a request under that paragraph.

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<sup>(65)</sup> 1996 c. 18; the amount laid down in section 227 may be increased or decreased by Order made by the Secretary of State under section 34 of the Employment Relations Act 1999. The amount laid down in section 227 is currently £290: see [S.I. 2005/3352](#).

(6) Sections 128 to 132 of the 1996 Act (interim relief) shall apply in relation to dismissal for the reason specified in sub-paragraph (5)(a) or (b) above as they apply in relation to dismissal for a reason specified in section 128(1)(b) of that Act.

## SCHEDULE 7

Regulation 48

### Duty to consider working beyond retirement - transitional provisions

1. In paragraphs 2 to 6—

- (a) “the expiry date” means the date on which notice of dismissal given by an employer expires; and
- (b) words and expressions shall have the same meanings as they do in Schedule 6.

2.—(1) This paragraph applies in a case where—

- (a) an employer has given notice of dismissal to the employee before the commencement date of—
  - (i) at least the period required by the contract of employment; or
  - (ii) where the period required by the contract exceeds four weeks, at least four weeks;
- (b) the expiry date falls before 1st April 2007; and
- (c) the employer has made the employee aware, before the commencement date, that the employer considers that the employee is being retired on the expiry date.

(2) Where this paragraph applies and the employer on or as soon as is practicable after the commencement date notifies the employee in writing of the employee’s right to make a request under paragraph 5 of Schedule 6—

- (a) the employer shall be treated as complying with the duty in paragraph 2 of Schedule 6;
- (b) a request shall be treated as being a request made under paragraph 5 of Schedule 6 provided it—
  - (i) is made after the employer notified the employee of his right to make a request;
  - (ii) satisfies the requirements of sub-paragraphs (2) and (3) of paragraph 5 of Schedule 6; and
  - (iii) is made—
    - (aa) where practicable, at least four weeks before the expiry date; or
    - (bb) where that is not practicable, as soon as reasonably practicable (whether before or after the expiry date) after the employer notified the employee of his right to make a request, but not more than four weeks after the expiry date.

(3) Where this paragraph applies and the employer does not, on or as soon as is practicable after the commencement date, notify the employee in writing of the employee’s right to make a request under paragraph 5 of Schedule 6—

- (a) the duty to notify in accordance with paragraph 2 of Schedule 6 does not apply;
- (b) the duty to notify in accordance with paragraph 4 of Schedule 6 applies as if—
  - (i) the employer had failed to notify in accordance with paragraph 2 of that Schedule; and
  - (ii) the duty was one to notify at any time before the expiry date;

- (c) a request shall be treated as being a request made under paragraph 5 of Schedule 6 if it satisfies the requirements of sub-paragraphs (2) and (3) of that paragraph and is made—
  - (i) before any notification given in accordance with paragraph 4 of Schedule 6; or
  - (ii) after such notification and—
    - (aa) where practicable, at least four weeks before the expiry date; or
    - (bb) where that is not practicable, as soon as reasonably practicable (whether before or after the expiry date) after the employer notified the employee of his right to make a request, but not more than four weeks after the expiry date.

**3.—(1)** This paragraph applies in a case where the employer has given notice of dismissal to the employee before the commencement date and—

- (a) the expiry date falls before 1st April 2007, but
  - (b) the period of notice given is shorter than the minimum period of notice required by paragraph 2(1)(a) or the employer has not complied with paragraph 2(1)(c).
- (2) Where this paragraph applies—
- (a) the duty to notify in accordance with paragraph 2 of Schedule 6 does not apply;
  - (b) the duty to notify in accordance with paragraph 4 of Schedule 6 applies as if—
    - (i) the employer had failed to notify in accordance with paragraph 2 of that Schedule; and
    - (ii) the duty was one to notify at any time before the expiry date;
  - (c) a request shall be treated as being a request made under paragraph 5 of Schedule 6 if it satisfies the requirements of sub-paragraphs (2) and (3) of that paragraph and is made—
    - (i) before any notification given in accordance with paragraph 4 of Schedule 6; or
    - (ii) after such notification and—
      - (aa) where practicable, at least four weeks before the expiry date; or
      - (bb) where that is not practicable, as soon as reasonably practicable (whether before or after the expiry date) after the employer notified the employee of his right to make a request, but not more than four weeks after the expiry date.

**4.—(1)** This paragraph applies in a case where—

- (a) notice of dismissal is given on or after the commencement date of at least—
  - (i) the period required by the contract of employment; or
  - (ii) if longer, the period required by section 86 of the 1996 Act; and
- (b) the expiry date falls before 1st April 2007.

(2) Where this paragraph applies and the employer notifies the employee in writing of the employee's right to make a request under paragraph 5 of Schedule 6 before, or on the same day as, the day on which notice of dismissal is given—

- (a) the employer shall be treated as complying with the duty in paragraph 2 of Schedule 6;
- (b) a request shall be treated as being a request made under paragraph 5 of Schedule 6 provided it—
  - (i) is made after the employer notified the employee of his right to make a request;

- (ii) satisfies the requirements of sub-paragraphs (2) and (3) of paragraph 5 of Schedule 6;  
and
  - (iii) is made—
    - (aa) where practicable, at least four weeks before the expiry date; or
    - (bb) where that is not practicable, as soon as reasonably practicable (whether before or after the expiry date) after the employer notified the employee of his right to make a request, but not more than four weeks after the expiry date.
- (3) Where this paragraph applies but the employer does not notify the employee in writing of the employee's right to make a request under paragraph 5 of Schedule 6 before, or on the same day as, the day on which notice of dismissal is given—
- (a) the duty to notify in accordance with paragraph 2 of Schedule 6 does not apply;
  - (b) the duty to notify in accordance with paragraph 4 of Schedule 6 applies as if—
    - (i) the employer had failed to notify in accordance with paragraph 2 of that Schedule;  
and
    - (ii) the duty was one to notify at any time before the expiry date;
  - (c) a request shall be treated as being a request made under paragraph 5 of Schedule 6 if it satisfies the requirements of sub-paragraphs (2) and (3) of that paragraph and is made—
    - (i) before any notification given in accordance with paragraph 4 of Schedule 6; or
    - (ii) after such notification and—
      - (aa) where practicable, at least four weeks before the expiry date; or
      - (bb) where that is not practicable, as soon as reasonably practicable (whether before or after the expiry date) after the employer notified the employee of his right to make a request, but not more than four weeks after the expiry date.
- 5.—(1) This paragraph applies in a case where—
- (a) notice of dismissal is given on or after the commencement date and is for a period shorter than—
    - (i) the period required by the contract of employment; or
    - (ii) if longer, the period required by section 86 of the 1996 Act; and
  - (b) the period of notice expires on a date falling before 1st April 2007.
- (2) Where this paragraph applies—
- (a) the duty to notify in accordance with paragraph 2 of Schedule 6 does not apply;
  - (b) the duty to notify in accordance with paragraph 4 of Schedule 6 applies as if—
    - (i) the employer had failed to notify in accordance with paragraph 2 of that Schedule;  
and
    - (ii) the duty was one to notify at any time before the expiry date;
  - (c) a request shall be treated as being a request made under paragraph 5 of Schedule 6 if it satisfies the requirements of sub-paragraphs (2) and (3) of that paragraph and is made—
    - (i) before any notification given in accordance with paragraph 4 of Schedule 6; or
    - (ii) after such notification and—
      - (aa) where practicable, at least four weeks before the expiry date; or

(bb) where that is not practicable, as soon as reasonably practicable (whether before or after the expiry date) after the employer notified the employee of his right to make a request, but not more than four weeks after the expiry date.

6. In every case to which paragraph 2, 3, 4 or 5 applies—
- (a) paragraph 10 of Schedule 6 does not apply; and
  - (b) the employer is under a duty to consider any request which complies with the requirements of paragraph 2(2)(b), 2(3)(c), 3(2)(c), 4(2)(b), 4(3)(c) or 5(2)(c) in accordance with paragraphs 7 to 9 of Schedule 6.

## SCHEDULE 8

Regulation 49(1)

### Amendments to legislation and related transitional provisions

## Part 1

### Primary legislation

#### **The Mines and Quarries Act 1954**

1. The Mines and Quarries Act 1954(66) is amended as follows.
- 2.—(1) In section 42(1) (charge of winding and rope haulage apparatus when persons are carried) omit the words “who has attained the age of twenty-two years”.
- (2) In section 43(2) (charge of winding and rope haulage apparatus when persons are not carried) omit the words “who has attained the age of eighteen years”.
- (3) In section 44 (charge of conveyors at working faces) omit the words “who has attained the age of eighteen years”.

#### **The Parliamentary Commissioner Act 1967**

3. The Parliamentary Commissioner Act 1967(67) is amended as follows—
- 4.—(1) Section 1 (appointment and tenure of office) is amended in accordance with this paragraph.
- (2) In subsection (2) omit the words from “, and any person” to “during good behaviour”.
- (3) After subsection (2) insert—
  - “(2A) A person appointed to be the Commissioner shall hold office until the end of the period for which he is appointed.
  - (2B) That period must be not more than seven years.
  - (2C) Subsection (2A) is subject to subsections (3) and (3A).”.
- (4) For subsection (3) substitute—

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(66) 1954 c. 70; relevant amendments to sections 42, 43 and 44 are made by the Employment Act 1989 (c. 38), sections 9 and 29(4) and by Schedule 7.

(67) 1967 c. 13; section 1(3A) was inserted by the Parliamentary and Health Services Commissioners Act 1987 (c. 13), section 2(1).

- “(3) A person appointed to be the Commissioner may be—
- (a) relieved of office by Her Majesty at his own request, or
  - (b) removed from office by Her Majesty, on the ground of misbehaviour, in consequence of Addresses from both Houses of Parliament.”.

(5) After subsection (3A) insert—

“(3B) A person appointed to be the Commissioner is not eligible for re-appointment.”.

**5.—(1)** Section 3A (appointment of acting Commissioner) is amended in accordance with this paragraph.

(2) After subsection (1) insert—

“(1A) A person appointed to act as the Commissioner (“an acting Commissioner”) may have held office as the Commissioner.

(1B) A person appointed as an acting Commissioner is eligible for appointment as the Commissioner unless he has already held office as the Commissioner.”.

(3) In subsection (2) for the words “under this section” substitute “as an acting Commissioner”.

(4) For subsection (3) substitute—

“(3) A person appointed as an acting Commissioner shall, while he holds office, be treated for all purposes, except for the purposes of section 1 and 2, and this section of this Act, as the Commissioner.”.

**6.** The amendments made to the Parliamentary Commissioner Act 1967 apply in relation to appointments made on or after the commencement date.

### **The Pilotage Act 1987**

**7.—(1)** The Pilotage Act 1987(**68**) is amended in accordance with this paragraph.

(2) In section 3(2) (authorisation of pilots) omit the word “age.”.

### **The Social Security Contributions and Benefits Act 1992**

**8.** The Social Security Contributions and Benefits Act 1992(**69**) is amended as follows.

**9.—(1)** Section 163(1) (interpretation of Part 11 and supplementary provisions) is amended in accordance with this paragraph.

(2) In the definition of “employee” omit paragraph (b) and the word “and” preceding it.

(3) For the definition of “employer” substitute—

““employer”, in relation to an employee and a contract of service of his, means a person who—

(a) under section 6 above is liable to pay secondary Class 1 contributions in relation to any earnings of the employee under the contract, or

(b) would be liable to pay such contributions but for—

(i) the condition in section 6(1)(b), or

(ii) the employee being under the age of 16.”.

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(68) 1987 c. 21.

(69) 1992 c. 4; the definition of “employee” has been amended but in a way not relevant for the purposes of these Regulations. The definition of “employer” has been amended by the [Social Security Act 1998, \(c.14\)](#), section 86(1), and Schedule 7, paragraph 74.

**10.**—(1) Section 171(1)(**70**) (interpretation of Part 12 and supplementary provisions) is amended in accordance with this paragraph.

(2) In the definition of “employee” omit paragraph (b) and the word “and” preceding it.

(3) For the definition of “employer” substitute—

““employee”, in relation to a woman who is an employee, means a person who—

(a) under section 6 above is liable to pay secondary Class 1 contributions in relation to any of her earnings; or

(b) would be liable to pay such contributions but for—

(i) the condition in section 6(1)(b), or

(ii) the employee being under the age of 16;”.

(4) This paragraph applies in relation to any case where the expected week of confinement begins on or after 14th January 2007.

**11.**—(1) Section 171ZJ(**71**) (Part 12ZA: supplementary) is amended in accordance with this paragraph.

(2) In subsection (1) for the definition of “employer” substitute—

““employee”, in relation to a person who is an employee, means a person who—

(a) under section 6 above is, liable to pay secondary Class 1 contributions in relation to any of the earnings of the person who is an employee; or

(b) would be liable to pay such contributions but for—

(i) the condition in section 6(1)(b), or

(ii) the employee being under the age of 16;”.

(3) In subsection (2) omit paragraph (b) and the word “and” preceding it.

(4) This paragraph applies in relation to an entitlement to—

(a) statutory paternity pay (birth) in respect of children whose expected week of birth begins on or after 14th January 2007;

(b) statutory paternity pay (adoption) in respect of children—

(i) matched with a person who is notified of having been matched on or after the commencement date; or

(ii) placed for adoption on or after the commencement date.

**12.**—(1) Section 171ZS(**72**) (Part 12ZB: supplementary) is amended in accordance with this paragraph.

(2) In subsection (1) for the definition of “employer” substitute—

““employee”, in relation to a person who is an employee, means a person who—

(a) under section 6 above is liable to pay secondary Class 1 contributions in relation to any of the earnings of the person who is an employee; or

(b) would be liable to pay such contributions but for—

(i) the condition in section 6(1)(b), or

(ii) the employee being under the age of 16;”.

**(70)** The definition of “employee” has been amended but in a way not relevant for the purposes of these Regulations. The definition of “employer” has been amended by the Social Security Act 1998, section 86(1), and Schedule 7, paragraph 75.

**(71)** Section 171ZJ was inserted by the Employment Act 2002 (c. 22), section 2.

**(72)** Section 171ZS was inserted by the Employment Act 2002, section 4.



- (3) In subsection (2) omit paragraph (b) and the word “and” preceding it.
- (4) This paragraph applies in relation to an entitlement to statutory adoption pay in respect of children—
  - (a) matched with a person who is notified of having been matched on or after the commencement date; or
  - (b) placed for adoption on or after that commencement.

**13.**—(1) In Schedule 11 omit paragraph 2(a) (period of entitlement not to arise if at the relevant date the employee is over 65).

(2) Sub-paragraph (1) applies in relation to a period of incapacity for work which—

- (a) begins on or after the commencement date, or
- (b) begins before and continues on or after the commencement date.

(3) But in a case falling within sub-paragraph (2)(b), sub-paragraph (1) does not affect the application of paragraph 1 of Schedule 11 to the 1992 Act in relation to the part of the period of incapacity for work that falls before the commencement date.

### **The Health Service Commissioners Act 1993**

**14.** The Health Service Commissioners Act 1993<sup>(73)</sup> is amended as follows.

**15.**—(1) Schedule 1 (the English Commissioner)<sup>(74)</sup> is amended in accordance with this paragraph.

(2) For paragraph 1 (appointment of Commissioners) substitute the following new paragraphs—

“**1.** Her Majesty may by Letters Patent appoint a person to be the Commissioner.

**1A.** Subject to paragraphs 1C and 1D a person appointed to be the Commissioner shall hold office until the end of the period for which he is appointed.

**1B.** That period must be not more than seven years.

**1C.** A person appointed to be the Commissioner may be relieved of office by Her Majesty at his own request.

**1D.** A person appointed to be the Commissioner may be removed from office by Her Majesty, on the ground of misbehaviour, in consequence of Addresses from both Houses of Parliament.

**1E.** A person appointed to be the Commissioner is not eligible for re-appointment.”

(3) In paragraph 2 (appointment of acting Commissioners)—

(a) after sub-paragraph (1) insert—

“(1A) A person appointed to act as the Commissioner (“an acting Commissioner”) may have held office as the Commissioner.

(1B) A person appointed as an acting Commissioner is eligible for appointment as the Commissioner unless he has already held office as the Commissioner.”;

(b) in sub-paragraph (2) for the words “under this paragraph” substitute “as acting Commissioner.”; and

(c) for sub-paragraph (3), substitute—

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<sup>(73)</sup> 1993 c. 46.

<sup>(74)</sup> The schedule heading was amended by the Government of Wales Act 1998 (c. 38), section 112, and Schedule 10, paragraph 16(2).

“(3) A person appointed as an acting Commissioner shall, while he holds office, be treated for all purposes, except for the purposes of paragraphs 1, 4 to 10 and this paragraph, as the Commissioner.”.

16. The amendments made to the Health Service Commissioners Act 1993 apply in relation to appointments made on or after the commencement date.

#### **The Statutory Sick Pay Act 1994**

17.—(1) The Statutory Sick Pay Act 1994(75) is amended in accordance with this paragraph.

(2) In section 1(2) omit the words after paragraph (b).

#### **The Employment Tribunals Act 1996**

18. The Employment Tribunals Act 1996(76) is amended as follows.

19.—(1) Section 18(1)(77) (conciliation) is amended in accordance with this paragraph.

(2) At the end of paragraph (p), omit “or”.

(3) After paragraph (q), insert

“or

(r) under regulation 36 of the Employment Equality (Age) Regulations 2006.”.

20.—(1) Section 21(1)(78) (jurisdiction of Appeal Tribunal) is amended in accordance with this paragraph.

(2) At the end of paragraph (q), omit “or”.

(3) After paragraph (r) insert—

“or

(s) the Employment Equality (Age) Regulations 2006.”.

#### **The Employment Rights Act 1996**

21. The 1996 Act is amended as follows.

22.—(1) Section 98 (fairness of dismissal: general) is amended as follows.

(2) In subsection (2), after paragraph (b) insert—

“(ba) is retirement of the employee.”.

(3) After subsection (2) insert—

“(2A) Subsections (1) and (2) are subject to sections 98ZA to 98ZF.”.

(4) After subsection (3) insert—

“(3A) In any case where the employer has fulfilled the requirements of subsection (1) by showing that the reason (or the principal reason) for the dismissal is retirement of the employee, the question whether the dismissal is fair or unfair shall be determined in accordance with section 98ZG.”.

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(75) 1994 c. 2.

(76) 1996 c. 17.

(77) Section 18(1)(p) was amended by [S.I. 2004/3426](#), regulation 34(c). Section 18(1)(q) was inserted by [S.I. 2006/349](#), Schedule 1, paragraph 9.

(78) Section 21(1)(q) was amended by [S.I. 2004/3426](#), regulation 37(c). Section 21(r) was inserted by [S.I. 2006/349](#), Schedule 1, paragraph 10.

(5) In subsection (4) for “Where” substitute “In any other case where”.

23. After section 98 insert—

*“Retirement*

**No normal retirement age: dismissal before 65**

**98ZA.**—(1) This section applies to the dismissal of an employee if—

- (a) the employee has no normal retirement age, and
- (b) the operative date of termination falls before the date when the employee reaches the age of 65.

(2) Retirement of the employee shall not be taken to be the reason (or a reason) for the dismissal.

**No normal retirement age: dismissal at or after 65**

**98ZB.**—(1) This section applies to the dismissal of an employee if—

- (a) the employee has no normal retirement age, and
- (b) the operative date of termination falls on or after the date when the employee reaches the age of 65.

(2) In a case where—

- (a) the employer has notified the employee in accordance with paragraph 2 of Schedule 6 to the 2006 Regulations, and
- (b) the contract of employment terminates on the intended date of retirement,

retirement of the employee shall be taken to be the only reason for the dismissal by the employer and any other reason shall be disregarded.

(3) In a case where—

- (a) the employer has notified the employee in accordance with paragraph 2 of Schedule 6 to the 2006 Regulations, but
- (b) the contract of employment terminates before the intended date of retirement,

retirement of the employee shall not be taken to be the reason (or a reason) for dismissal.

(4) In a case where—

- (a) the employer has not notified the employee in accordance with paragraph 2 of Schedule 6 to the 2006 Regulations, and
- (b) there is an intended date of retirement in relation to the dismissal, but
- (c) the contract of employment terminates before the intended date of retirement,

retirement of the employee shall not be taken to be the reason (or a reason) for dismissal.

(5) In all other cases where the employer has not notified the employee in accordance with paragraph 2 of Schedule 6 to the 2006 Regulations, particular regard shall be had to the matters in section 98ZF when determining the reason (or principal reason) for dismissal.

**Normal retirement age: dismissal before retirement age**

**98ZC.**—(1) This section applies to the dismissal of an employee if—

- (a) the employee has a normal retirement age, and

(b) the operative date of termination falls before the date when the employee reaches the normal retirement age.

(2) Retirement of the employee shall not be taken to be the reason (or a reason) for the dismissal.

**Normal retirement age 65 or higher: dismissal at or after retirement age**

**98ZD.**—(1) This section applies to the dismissal of an employee if—

- (a) the employee has a normal retirement age,
- (b) the normal retirement age is 65 or higher, and
- (c) the operative date of termination falls on or after the date when the employee reaches the normal retirement age.

(2) In a case where—

- (a) the employer has notified the employee in accordance with paragraph 2 of Schedule 6 to the 2006 Regulations, and
- (b) the contract of employment terminates on the intended date of retirement,

retirement of the employee shall be taken to be the only reason for the dismissal by the employer and any other reason shall be disregarded.

(3) In a case where—

- (a) the employer has notified the employee in accordance with paragraph 2 of Schedule 6 to the 2006 Regulations, but
- (b) the contract of employment terminates before the intended date of retirement,

retirement of the employee shall not be taken to be the reason (or a reason) for dismissal.

(4) In a case where—

- (a) the employer has not notified the employee in accordance with paragraph 2 of Schedule 6 to the 2006 Regulations, and
- (b) there is an intended date of retirement in relation to the dismissal, but
- (c) the contract of employment terminates before the intended date of retirement,

retirement of the employee shall not be taken to be the reason (or a reason) for dismissal.

(5) In all other cases where the employer has not notified the employee in accordance with paragraph 2 of Schedule 6 to the 2006 Regulations, particular regard shall be had to the matters in section 98ZF when determining the reason (or principal reason) for dismissal.

**Normal retirement age below 65: dismissal at or after retirement age**

**98ZE.**—(1) This section applies to the dismissal of an employee if—

- (a) the employee has a normal retirement age,
- (b) the normal retirement age is below 65, and
- (c) the operative date of termination falls on or after the date when the employee reaches the normal retirement age.

(2) If it is unlawful discrimination under the 2006 Regulations for the employee to have that normal retirement age, retirement of the employee shall not be taken to be the reason (or a reason) for dismissal.

(3) Subsections (4) to (7) apply if it is not unlawful discrimination under the 2006 Regulations for the employee to have that normal retirement age.

(4) In a case where—

- (a) the employer has notified the employee in accordance with paragraph 2 of Schedule 6 to the 2006 Regulations, and
- (b) the contract of employment terminates on the intended date of retirement,

retirement of the employee shall be taken to be the only reason for dismissal by the employer and any other reason shall be disregarded.

(5) In a case where—

- (a) the employer has notified the employee in accordance with paragraph 2 of Schedule 6 to the 2006 Regulations, but
- (b) the contract of employment terminates before the intended date of retirement,

retirement of the employee shall not be taken to be the reason (or a reason) for dismissal.

(6) In a case where—

- (a) the employer has not notified the employee in accordance with paragraph 2 of Schedule 6 to the 2006 Regulations, and
- (b) there is an intended date of retirement in relation to the dismissal, but
- (c) the contract of employment terminates before the intended date of retirement,

retirement of the employee shall not be taken to be the reason (or a reason) for dismissal.

(7) In all other cases where the employer has not notified the employee in accordance with paragraph 2 of Schedule 6 to the 2006 Regulations, particular regard shall be had to the matters in section 98ZF when determining the reason (or principal reason) for dismissal

#### **Reason for dismissal: particular matters**

**98ZF.**—(1) These are the matters to which particular regard is to be had in accordance with section 98ZB(5), 98ZD(5) or 98ZE(7)—

- (a) whether or not the employer has notified the employee in accordance with paragraph 4 of Schedule 6 to the 2006 Regulations;
- (b) if the employer has notified the employee in accordance with that paragraph, how long before the notified retirement date the notification was given;
- (c) whether or not the employer has followed, or sought to follow, the procedures in paragraph 7 of Schedule 6 to the 2006 Regulations.

(2) In subsection (1)(b) “notified retirement date” means the date notified to the employee in accordance with paragraph 4 of Schedule 6 to the 2006 Regulations as the date on which the employer intends to retire the employee.

#### **Retirement dismissals: fairness**

**98ZG.**—(1) This section applies if the reason (or principal reason) for a dismissal is retirement of the employee.

(2) The employee shall be regarded as unfairly dismissed if, and only if, there has been a failure on the part of the employer to comply with an obligation imposed on him by any of the following provisions of Schedule 6 to the 2006 Regulations—

- (a) paragraph 4 (notification of retirement, if not already given under paragraph 2),
- (b) paragraphs 6 and 7 (duty to consider employee’s request not to be retired),
- (c) paragraph 8 (duty to consider appeal against decision to refuse request not to be retired).

## Interpretation

**98ZH.** In sections 98ZA to 98ZG—

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

“intended date of retirement” means the date which, by virtue of paragraph 1(2) of Schedule 6 to the 2006 Regulations, is the intended date of retirement in relation to a particular dismissal;

“normal retirement age”, in relation to an employee, means the age at which employees in the employer’s undertaking who hold, or have held, the same kind of position as the employee are normally required to retire;

“operative date of termination” means—

- (a) where the employer terminates the employee’s contract of employment by notice, the date on which the notice expires, or
- (b) where the employer terminates the contract of employment without notice, the date on which the termination takes effect.

*Other dismissals”.*

**24.** In section 108(**79**) (qualifying period of employment) in subsection (3) (cases where no qualifying period of employment is required)—

- (a) at the end of paragraph (l) omit “or”; and
- (b) after paragraph (m) insert—

“or

(n) paragraph (a) or (b) of paragraph 13(5) of Schedule 6 to the Employment Equality (Age) Regulations 2006 applies.”.

**25.** Omit section 109(**80**) (upper age limit on unfair dismissal right).

**26.—**(1) Section 112(**81**) (remedies for unfair dismissal: orders and compensation) is amended as follows.

- (2) In subsection (5)(a) after “section” insert “98ZG or”.

**27.—**(1) Section 119 (basic award) is amended as follows.

- (2) Omit subsections (4) and (5).

**28.—**(1) Section 120(**82**) (basic award: minimum in certain cases) is amended as follows.

- (2) In subsection (1A) after “section” insert “98ZG or”.

**29.** In section 126(1)(**83**) (acts which are both unfair dismissal and discrimination), for paragraph (b) substitute—

- “(b) any one or more of the following—
  - (i) the Sex Discrimination Act 1975;

**(79)** Section 108(1) was amended by [S.I. 2004/3426](#), regulation 31(2)(b). Section 108(m) was inserted by [S.I. 2006/1349](#), Schedule 1, paragraph 6.

**(80)** Section 109 has been amended but the amendments are not relevant for the purposes of these Regulations.

**(81)** Subsection (5) was inserted by the Employment Act 2002 ([c. 22](#)), section 34(3).

**(82)** Subsection (1A) inserted by the Employment Act 2002, sections 34(1) and (6).

**(83)** Section 126(1)(b) was substituted by the Employment Rights (Dispute Resolution) Act 1998 ([c. 8](#)), section 14(3), and has been amended since, but the amendments are not relevant for the purposes of these Regulations.

- (ii) the Race Relations Act 1976;
- (iii) the Disability Discrimination Act 1995;
- (iv) the Employment Equality (Sexual Orientation) Regulations 2003;
- (v) the Employment Equality (Religion or Belief) Regulations 2003;
- (vi) the Employment Equality (Age) Regulations 2006.”.

**30.** Section 156 (upper age limit) is repealed.

**31.** Section 158 (pension rights) is repealed.

**32.—**(1) Section 162 (amount of a redundancy payment) is amended in accordance with this paragraph.

(2) Subsections (4), (5) and (8) are repealed.

(3) In subsection (6), for the words “Subsections (1) to (5)” substitute “Subsections (1) to (3)”.

**33.** In relation to any case where the date that is the relevant date by virtue of section 153 of the 1996 Act falls before the commencement date, paragraphs 30 to 32 do not apply.

**34.—**(1) Section 209 (powers to amend Act) is amended as follows.

(2) In subsection (5)(**84**) omit “109(1),”.

**35.—**(1) Section 211 (period of continuous employment) is amended in accordance with this paragraph.

(2) In paragraph (a) of subsection (1) for the words “subsections (2) and” substitute “subsection”.

(3) Subsection (2) is repealed.

### **The Employment Act 2002**

**36.—**(1) The Employment Act 2002 is amended in accordance with this paragraph.

(2) At the end of each of the following Schedules—

- (a) Schedule 3 (tribunal jurisdictions to which section 31 applies for adjustment of awards for non-completion of statutory procedure);
- (b) Schedule 4 (tribunal jurisdictions to which section 32 applies for complaints where the employee must first submit a statement of grievance to employer); and
- (c) Schedule 5 (tribunal jurisdictions to which section 38 applies in relation to proceedings where the employer has failed to give a statement of employment particulars),

insert—

“Regulation 36 of the Employment Equality (Age) Regulations 2006 (discrimination in the employment field)”.

### **The Equality Act 2006**

**37.** The Equality Act 2006(**85**) is amended as follows.

**38.—**(1) Section 14(1) (codes of practice) is amended in accordance with this paragraph.

(2) At the end of paragraph (g) omit “and”.

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(84) Section 209(5) was amended by the Employment Relations Act 1999 (c. 26), Section 44 and Schedule 9.

(85) 2006 c. 3.

(3) After paragraph (h) insert—  
“and

(i) Parts 2 and 3 of the Employment Equality (Age) Regulations 2006.”.

**39.**—(1) Section 27(1) (conciliation) is amended in accordance with this paragraph.

(2) At the end of paragraph (f) omit “or”.

(3) After paragraph (g) insert—

“or

(h) regulation 39 of the Employment Equality (Age) Regulations 2006 (Jurisdiction of County and Sheriff Courts).”.

**40.**—(1) Section 33(1) (equality and human rights enactments) is amended in accordance with this paragraph.

(2) At the end of paragraph (g) omit “and”.

(3) After paragraph (h) insert—

“and

(i) the Employment Equality (Age) Regulations 2006.”.

## Part 2

### Other legislation

**41.**—(1) The Coal and Other Mines (Locomotives) Regulations 1956(**86**), Schedule 1 to the Coal and Other Mines (Locomotives) Order 1956 is amended in accordance with this paragraph.

(2) In regulation 17(1) (drivers of locomotives) omit the words “and no appointed driver shall operate a locomotive hauling persons in vehicles unless he has attained the age of—

(a) in the case of a mine of shale, eighteen years;

(b) in the case of any other mine, twenty-one years”.

**42.**—(1) The Stratified Ironstone, Shale and Fireclay Mines (Explosives) Regulations 1956(**87**) are amended in accordance with this paragraph.

(2) In regulation 3 (qualification of shot firers) omit the words “he has attained the age of twenty-one years; and”.

**43.**—(1) The Miscellaneous Mines (Explosives) Regulations 1959(**88**) are amended in accordance with this paragraph.

(2) Omit regulation 6(2).

(3) In regulation 8(2) (control of issue of detonators) omit the words “has attained the age of eighteen years and”.

**44.**—(1) The Lynemouth Mine (Diesel Vehicles and Storage Battery Vehicles) Special Regulations 1961(**89**) are amended in accordance with this paragraph.

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(86) S.I. 1956/1771.

(87) S.I. 1956/1943.

(88) S.I. 1959/2258.

(89) S.I.1961/2445.



(2) In regulation 15 after the words “Regulations 17” insert “as amended by the Employment Equality (Age) Regulations 2006”.

**45.**—(1) The South Crofty Mine (Locomotive) Special Regulations 1965**(90)** are amended in accordance with this paragraph.

(2) In regulation 11(2) omit the words “has attained the age of twenty-one years and”.

**46.**—(1) The Glebe Mine (Locomotives and Diesel Vehicles) Special Regulations 1967**(91)** are amended in accordance with this paragraph.

(2) In regulation 15(2) omit the words “has attained the age of eighteen years and”.

**47.**—(1) The Winsford Rock Salt Mine (Diesel Vehicles and Storage Battery Vehicles) Special Regulations 1971**(92)** are amended in accordance with this paragraph.

(2) In regulation 14(2) omit the words “is under the age of twenty-one years and”.

**48.**—(1) The Thoresby Mine (Cable Reel Load-Haul-Dump Vehicles) Special Regulations 1978**(93)** are amended in accordance with this paragraph.

(2) In regulation 17 after the words “Regulations 17” insert “as amended by the Employment Equality (Age) Regulations 2006”.

**49.** The Statutory Sick Pay (General) Regulations 1982**(94)** are amended as follows.

**50.**—(1) Regulation 16 (meaning of “employee”) is amended in accordance with this paragraph.

(2) In paragraph (1)—

(a) at the beginning insert the words “Subject to paragraph (1ZA),”, and

(b) omit the words “over the age of 16”.

(3) After paragraph (1) insert—

“(1ZA) Any person under the age of 16 who would have been treated as an employed earner or, as the case may be, would have been treated otherwise than as an employed earner by virtue of the Social Security (Categorisation of Earners) Regulations 1978 had he been aged 16 or over, shall be treated as if he is aged 16 or over for the purposes of paragraph (1).”.

**51.**—(1) Regulation 17(2) (meaning of “earnings”) is amended in accordance with this paragraph.

(2) At the end of sub-paragraph (a) insert “(or would have been so excluded had he not been under the age of 16)”.

(3) At the end of sub-paragraph (b) insert “(or where such a payment or amount would have been so excluded and in consequence he would not have been entitled to statutory sick pay had he not been under the age of 16)”.

**52.** The Statutory Maternity Pay (General) Regulations 1986**(95)** are amended as follows.

**53.**—(1) Regulation 17 (meaning of “employee”) is amended in accordance with this paragraph.

(2) In paragraph (1)—

(a) at the beginning insert the words “Subject to paragraph (1A),”, and

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**(90)** S.I. 1965/759.

**(91)** S.I. 1967/1335.

**(92)** S.I. 1971/50.

**(93)** S.I. 1978/119.

**(94)** S.I. 1982/894; regulation 17(2) was amended by S.I. 1999/567, regulation 13.

**(95)** S.I. 1986/1960.

(b) omit the words “over the age of 16”.

(3) After paragraph (1) insert—

“(1A) Any woman under the age of 16 who would have been treated as an employed earner or, as the case may be, would have been treated otherwise than as an employed earner by virtue of the Social Security (Categorisation of Earners) Regulations 1978 had she been aged 16 or over, shall be treated as if she is aged 16 or over for the purposes of paragraph (1).”.

**54.**—(1) Regulation 20(2)(**96**) (Meaning of “earnings”) is amended in accordance with this paragraph.

(2) At the end of sub-paragraph (a) insert “(or would have been so excluded had she not been under the age of 16)”.

(3) At the end of sub-paragraph (b) insert “(or where such a payment or amount would have been so excluded and in consequence she would not have been entitled to statutory maternity pay had she not been under the age of 16)”.

(4) This paragraph applies in relation to any case where the expected week of confinement begins on or after 14<sup>th</sup> January 2007.

**55.**—(1) The Coal and Other Safety-Lamp Mines (Explosives) Regulations 1993(**97**) are amended in accordance with this paragraph.

(2) In regulation 4(4) (appointment of shotfirers and trainee shotfirers) omit the words “he is at least 21 years of age and”.

**56.**—(1) The Employment Tribunals (Interest on Awards In Discrimination Cases) Regulations 1996(**98**) are amended in accordance with this paragraph.

(2) In sub-paragraph (b) of the definition of “an award under the relevant legislation” in regulation 1(2) (interpretation)—

(a) after “regulation 30(1)(b) of the Employment Equality (Sexual Orientation) Regulations 2003” omit “or”; and

(b) after “regulation 30(1)(b) of the Employment Equality (Religion or Belief) Regulations 2003” insert—

“or regulation 38(1)(b) of the Employment Equality (Age) Regulations 2006”.

**57.**—(1) The Employment Protection (Continuity of Employment) Regulations 1996(**99**) are amended in accordance with this paragraph.

(2) In regulation 2 (application)—

(a) omit the word “or” at the end of paragraph (e); and

(b) after paragraph (f) insert—

“, or

(g) a decision taken arising out of the use of the statutory duty to consider procedure contained in Schedule 6 to the Employment Equality (Age) Regulations 2006.”.

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(96) Regulation 20(2) was amended by [S.I. 1999/567](#), regulation 12.

(97) [S.I. 1993/208](#).

(98) [S.I. 1996/2803](#); regulation 1(2) was amended by [S.I. 2003/1661](#), regulation 1(1), and [S.I. 2003/1660](#), regulation 1(1).

(99) [S.I. 1996/3147](#); regulation 2(c) was inserted by [S.I. 2001/1188](#), regulation 1(1), and regulation 2(f) was amended by [S.I. 2004/752](#), regulation 17(e).

**58.**—(1) The National Minimum Wage Regulations 1999(**100**) are amended in accordance with this paragraph.

(2) Omit regulation 12(2)(a).

(3) Omit paragraphs (2) to (6) of regulation 13.

(4) In regulation 13(7) for the words “Paragraphs (1) and (2) do” substitute “Paragraph (1) does”.

(5) In relation to any case where, before the commencement date, a worker within the meaning of regulation 12(2) has attained the age of 26, sub-paragraph (2) does not apply.

**59.** The Statutory Paternity Pay and Statutory Adoption Pay (General) Regulations 2002(**101**) are amended as follows.

**60.**—(1) Regulation 32 (Treatment of persons as employees) is amended in accordance with this paragraph.

(2) In paragraph (1)—

(a) at the beginning insert the words “Subject to paragraph (1A),”, and

(b) omit the words “over the age of 16”.

(3) After paragraph (1) insert—

“(1A) Any person under the age of 16 who would have been treated as an employed earner or, as the case may be, would have been treated otherwise than as an employed earner by virtue of the Social Security (Categorisation of Earners) Regulations 1978 had he been aged 16 or over, shall be treated as if he is aged 16 or over for the purposes of paragraph (1).”.

**61.**—(1) Regulation 39(2) (Meaning of “earnings”) is amended in accordance with this paragraph.

(2) At the end of sub-paragraph (a) insert “(or would have been so excluded had he not been under the age of 16)”.

(3) At the end of sub-paragraph (b) insert “(or where such a payment or amount would have been so excluded and in consequence he would not have been entitled to statutory paternity pay or, as the case may be, statutory adoption pay had he not been under the age of 16)”.

**62.**—(1) Schedule 1A (occupational pension schemes) to the Employment Equality (Religion or Belief) Regulations 2003(**102**) is amended in accordance with this paragraph.

(2) In paragraph 1(1)—

(a) in the definition of “active member”, “deferred member”, “managers”, “pensioner member” and “trustees or managers”, omit the words “as at the date of the coming into force of these Regulations”, and

(b) in the definition of “occupational pension scheme” omit the words “as at the date of the coming into force of these Regulations”.

(3) In paragraph 1(2) omit the words “as at the date of the coming into force of these Regulations”.

**63.**—(1) Schedule 1A (occupational pension schemes) to the Employment Equality (Sexual Orientation) Regulations 2003(**103**) is amended in accordance with this paragraph.

(2) In paragraph 1(1)—

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(**100**) S.I. 1999/584; regulation 13 has been amended, but the amendments are not relevant for the purposes of these Regulations.

(**101**) S.I. 2002/2822.

(**102**) S.I. 2003/1660; Schedule 1A was inserted by S.I. 2003/2828, regulation 3.

(**103**) S.I. 2003/1661; Schedule 1A was inserted by S.I. 2003/2827, regulation 3.

- (a) in the definition of “active member”, “deferred member”, “managers”, “pensioner member” and “trustees or managers”, omit the words “as at the date of the coming into force of these Regulations”, and
  - (b) in the definition of “occupational pension scheme” omit the words “as at the date of the coming into force of these Regulations”.
- (3) In paragraph 1(2) omit the words “as at the date of the coming into force of these Regulations”.

**64.**—(1) The Employment Act 2002 (Dispute Resolution) Regulations 2004(**104**) are amended in accordance with this paragraph.

- (2) In regulation 4(1) (dismissals to which the dismissal and disciplinary procedures do not apply)

- (a) omit the word “or” at the end of sub-paragraph (f); and
- (b) after sub-paragraph (g) insert —
  - “, or
  - (h) the reason (or, if more than one, the principal reason) for the dismissal is retirement of the employee (to be determined in accordance with section 98ZA to 98ZF of the 1996 Act(**105**))”.

## SCHEDULE 9

Regulation 49(2)

### Repeals and revocations

<i>(1) Repeals</i>	
Short title and chapter	Extent of repeal
Marriage (Scotland) Act 1977 (c.15)	In section 9(1) the proviso,  In section 12 the proviso, and  In section 17 the proviso
Education (Scotland) Act 1980 (c.44)	Section 89
Solicitors (Scotland) Act 1980 (c.46)	Section 6(1)(a)
Weights and Measures Act 1985 (c.72)	Section 73(3)
Electricity Act 1989 (c.29)	In Schedule 10, paragraph 9(3)
Judicial Pensions and Retirement Act 1993(c. 8)	In Schedule 6, paragraph 66
Scottish Public Services Ombudsman Act 2002 (asp 11)	In Schedule 1, paragraph 4(1)(c)  In Schedule 1, in paragraph 4(3), the words in brackets

(104) S.I. 2004/752.

(105) Sections 98ZA to 98ZF are inserted by regulation 49 of, and paragraph 23 of Schedule 8 to, these Regulations.

<b>(1) Repeals</b>	
Freedom of Information (Scotland) Act 2002 (asp 13)	Section 42(4)(b)  In Section 42(5), the words in brackets

<b>(2) Revocations</b>	
Title and reference	Extent of revocation
Coal and Other Mines (Sidings) Regulations 1956, Schedule to the Coal and Other Mines (Sidings) Order 1956 (S.I. 1956/1773)	Regulation 21  In Regulation 22, the definition of locomotive
The Management and Administration of Safety and Health in Mines Regulations 1993 (S.I. 1993/1897)	Regulation 17(2)

## 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), implement (in Great Britain) Council Directive 2000/78/EC of 27<sup>th</sup> November 2000 establishing a general framework for equal treatment in employment (OJ L 303, 2.12.2000, p.16) so far as it relates to discrimination on grounds of age. The Regulations make it unlawful to discriminate on grounds of age in employment and vocational training. They prohibit direct discrimination, indirect discrimination, victimisation, instructions to discriminate and harassment.

Direct discrimination, defined in regulation 3(1)(a), arises where a person is treated less favourably than another on grounds of his age or apparent age. Indirect discrimination, defined in regulation 3(1)(b), arises where a provision, criterion or practice, which is applied generally, puts persons of a particular age or age group at a disadvantage. Discrimination will occur where the difference in treatment or disadvantage cannot be shown to be a proportionate means of achieving a legitimate aim. Victimisation, defined in regulation 4, occurs where a person receives less favourable treatment than others by reason of the fact that he has brought (or given evidence in) proceedings, made an allegation or otherwise done anything under or by virtue of the Regulations. Instructions to discriminate are dealt with in regulation 5. It is a form of discrimination to treat a person less favourably than another because he has failed to carry out an instruction to discriminate or because he has complained about receiving such an instruction. Harassment, defined in regulation 6, occurs where a person is subjected to unwanted conduct on grounds of age with the purpose or effect of violating his dignity, or creating an intimidating, hostile, degrading, humiliating or offensive environment for him.

Regulations 7 to 24 prohibit discrimination, victimisation and harassment in the fields of employment and vocational training. In particular, they protect employees (regulation 7), contract workers (regulation 9), office-holders (including police and those seconded to the Serious Organised Crime Agency (regulations 12, 13 and 14)), and partners in firms (regulation 17). They not only prohibit discrimination etc by employers, but also by trustees and managers of occupational pension schemes (regulation 11), trade organisations (regulation 18), qualifications bodies (regulation 19), providers of vocational training (regulation 20), employment agencies

(regulation 21) and institutions of further and higher education (regulation 23). By virtue of regulation 24, discrimination, victimisation or harassment occurring after the relevant relationship has ended is unlawful if it arises out of, and is closely connected to, the relationship. The Regulations also apply to Crown servants and Parliamentary staff (regulations 44, 45 and 46). Regulation 43 and Schedule 5 address the validity of discriminatory terms in contracts and collective agreements.

Not all differences of treatment on grounds of age are unlawful. There are exceptions: in regulation 27 in relation to acts done in order to comply with a statutory provision; in regulation 28 in relation to acts related to national security; in regulation 29 for positive action; in regulation 30 in relation to retirement; in regulation 31 in relation to the national minimum wage; in regulation 32 in relation to the provision of certain employment benefits based on length of service; in regulation 33 in relation to the provision of enhanced redundancy payments; and in regulation 34 in relation to the provision of life assurance cover to workers who have had to retire early on grounds of ill-health. Regulation 8 provides an exception where possessing a characteristic related to age is a genuine and determining occupational requirement for a post if it is proportionate to apply the requirement in the particular case. Schedule 2 provides exceptions for various rules, practices actions and decisions relating to occupational pension schemes.

Regulations 35 to 42 deal with enforcement and provide remedies for individuals, including compensation, by way of proceedings in employment tribunals and in the county or sheriff courts. There are special provisions about the burden of proof in those cases in regulations 37 and 40, which transfer the burden to a respondent to a case once a complainant has established facts from which a court or tribunal could conclude, in the absence of an adequate explanation, that an act of discrimination or harassment has been committed by the respondent. Regulation 41 and Schedules 3 and 4 also include a questionnaire procedure to assist complainants in obtaining information from respondents.

Schedule 6 establishes a new duty on employers to consider requests by employees to continue working beyond retirement. Schedule 7 contains transitional provisions in relation to that new duty.

Schedule 8 amends legislation containing age-discriminatory provisions that cannot be shown to be a proportionate means of achieving a legitimate aim. It also includes amendments to the Employment Rights Act 1996 (c.18), which introduce a new potentially fair ground for dismissal of employees – dismissal on the grounds of retirement (where the duty to consider procedure in Schedule 6 has been followed).

Schedule 9 contains repeals and revocations.

A full Regulatory Impact Assessment report of the effect that these Regulations will have on the costs to business and a Transposition Note are freely available to the public from the Selected Employment Rights Branch, Bay 391, Department of Trade and Industry, 1 Victoria Street, London SW1H 0ET. Copies have also been placed in the libraries of both Houses of Parliament.