

**EXPLANATORY MEMORANDUM TO**  
**THE EQUALITY ACT 2010 (AGE EXCEPTIONS FOR PENSION SCHEMES)**  
**ORDER 2010**

**2010 No. 2133**

1. This explanatory memorandum has been prepared by the Department for Work and Pensions and is laid before Parliament by Command of Her Majesty.

2. **Purpose of the instrument**

The Equality Act 2010 (“Equality Act”) provides for a “non-discrimination rule” to protect people who have a protected characteristic specified in the Act.

One of these protected characteristics is age, and this Instrument contains permitted exceptions from the non discrimination rule for certain rules, practices, actions and decisions relating to occupational pension schemes. It also excepts certain rules, practices, actions and decisions relating to payments by the employer to personal pension schemes from the non-discrimination provisions as they apply to age.

3. **Matters of special interest to the Joint Committee on Statutory Instruments**

None.

4. **Legislative Context**

The Equality Act 2010 replaces the non-discrimination provisions of the Employment Equality (Age) Regulations 2006 (“the Age Regulations”), which will be revoked when the Act comes into force on 1 October 2010.

This Order reproduces the rules, practices, actions and decisions occupational pension schemes may use without breaching the non-discrimination rule and those relating to contributions by an employer to a personal pension.

5. **Territorial Extent and Application**

This instrument applies to Great Britain.

6. **European Convention on Human Rights**

As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

## **7. Policy background**

- *What is being done and why*

7.1 The Age Regulations implemented the age strand of Directive 2000/78/EC (establishing a general framework for equal treatment in employment and vocational training) by making it unlawful for pension schemes to discriminate against members or prospective members of a pension scheme.

7.2 However, the Regulations made exceptions for a number of age-related rules and practices that were considered necessary for the proper operation of occupational and personal pension schemes.

7.3 This instrument replicates the exceptions; for example, they allow schemes to set a minimum or a maximum age for admission, or a minimum level of pensionable pay for admission to a scheme. They also cover certain rules on employers' contributions to personal pensions - for example, they allow employers to limit their contributions by reference to a maximum level of pay.

- *Consolidation*

7.4 This instrument replaces rather than amends an existing instrument.

## **8. Consultation Outcome**

No specific consultation was undertaken on this instrument as its provisions are not new, but have been carried forward from existing Regulations.

## **9. Guidance**

9.1 Guidance to assist in determining how the age exceptions may be used is published by the Government. Revised guidance will be drafted, although existing guidance will apply pending its publication.

9.2 No guidance has been specifically published alongside this instrument as provisions will be reflected in general guidance on the Equality Act. The first set of summary guidance on the Equality Act was published on 5 July 2010 for employers, employees, the voluntary sector, individuals and public sector organisations. This will be followed by further "quick-start" guides which focus on specific provisions. (e.g. gender reassignment; disability; private clubs), again for different audiences. This will be backed by comprehensive and detailed guidance produced by the Equality and Human Rights Commission, together with statutory Codes which will reflect provisions in the Equality Act and its supporting legislation.

## **10. Impact**

10.1 There is no new impact on business and civil society organisations arising from this instrument as it replicates existing legislation.

10.2 The impact on the public sector is negligible.

10.3 A full impact assessment has not been prepared for this instrument.

## **11. Regulating small business**

The legislation applies to small business. However, this instrument imposes no new burdens as it carries forward existing provisions.

## **12. Monitoring & review**

The Government Equalities Office is developing a project to establish an evaluation framework for the Act as a whole, including establishing a “before/after” baseline against which to measure change. This will enable relevant data to start to be collected. It is intended to complete a full evaluation 4-5 years following enactment.

## **13. Contact**

**Angela Perera** at the Department for Work and Pensions Tel. 020 7449 7389 or email: [angela.perera@dwp.gsi.gov.uk](mailto:angela.perera@dwp.gsi.gov.uk) can answer any queries on the instrument.