

# EQUALITY ACT 2010

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### **Part 16: General and Miscellaneous**

#### *Schedule 9: Work: exceptions*

#### **Part 2: Exceptions relating to age**

#### **Retirement: paragraph 8**

#### **Benefits based on length of service: paragraph 10**

#### Effect

819. This paragraph ensures that an employer does not have to justify paying or providing fewer benefits to a worker with less service than a comparator, should such a practice constitute indirect discrimination because of age. The employer can rely on the exception as an absolute defence where the benefit in question was awarded in relation to service of five years or less.
820. If the length of service exceeds five years, the exception applies only if it reasonably appears to an employer that the way in which he uses length of service to award benefits will fulfil 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.
821. Sub-paragraph (6) contains provisions which ensure that in calculating an employee's length of service previous service is taken into account where that is the result of the operation of section 218 of the Employment Rights Act 1996 or any other enactment such as an Order made under section 155 of that Act.
822. Sub-paragraph (7) defines what a benefit is and expressly rules out benefits provided only by virtue of a person's ceasing to work.