

SCHEDULE 2

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 ^{M1}.

(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 ^{M2} are carried out.

(3) In relation to rules, practices, actions and decisions identified at [^{F1}paragraphs 3A, 7(b), 9, 15A, 17 to 21, 23, 24, 25, 25A 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 ^{M3}.

(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 ^{M4}, but in paragraph 13 also includes an active member within the meaning of section 151(2) of the Finance Act 2004;

[^{F2}“additional state retirement pension” means the additional pension in the Category A retirement pension within the meaning of sections 44 and 45 of the Social Security Contributions and Benefits Act 1992;]

“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;

[^{F2}“basic state retirement pension” means the basic pension in the Category A retirement pension within the meaning of section 44 of the Social Security Contributions and Benefits Act 1992 ;]

[^{F2}“block transfer” means a transfer in a single transaction or a series of transactions from a scheme of all the sums and assets held for the purposes of, or representing, or derived from—

- (i) all accrued rights under a scheme,
- (ii) contracted-out rights, or
- (iii) rights which are not contracted-out rights,

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relating to a period of continuous pensionable service (or pensionable service which is treated as continuous) or one or more of a number of separate periods of such pensionable service which relate to a member and at least one other member;]

[^{F2}“contracted-out rights” are such rights, under or derived from an occupational pension scheme or an appropriate personal pension scheme as fall within the following categories—

- (a) entitlement to payment of, or accrued rights to, guaranteed minimum pensions;
- (b) protected rights; or
- (c) section 9(2B) rights,

^{F3}...;]

“death benefit” means benefit payable from a [^{F4}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 ^{M5}, 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 ^{M6} rather than in respect of a member under a pension scheme as defined in section 150(1) of the Finance Act 2004;

“dependant” means [^{F5}a widow, widower or surviving civil partner or a] dependant as defined in the scheme rules;

[^{F6}“early retirement pivot age” means, in relation to age related benefit provided under a scheme, an age specified in the scheme rules (or otherwise determined) as the earliest age at which entitlement arises—

- (a) without consent (whether of an employer, the trustees or managers of the scheme or otherwise), and
- (b) without an actuarial reduction,

but disregarding any special provision as to early payment on grounds of ill health or otherwise;];

“employer” has the meaning given by section 318(1) of the Pensions Act 2004 ^{M7};

^{F7}...

“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;

[^{F2}“guaranteed minimum pension” has the meaning given in section 8(2) of the Pension Schemes Act 1993;]

“late retirement pivot age” means an age specified in the scheme rules [^{F8}(or otherwise determined)] above which benefit becomes payable with actuarial enhancement;

[^{F2}“lower earnings limit” means the amount specified for the tax year in question in regulations made under section 5(1)(a)(i) of the Social Security Contributions and Benefits Act 1992 (earnings limits and thresholds for Class 1 contributions);]

“managers” has the meaning given by section 124(1) of the Pensions Act 1995 ^{M8};

“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;

^{F7}...

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“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;

F7 ...

“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^{M9};

“pensioner member” has the meaning given by section 124(1) of the Pensions Act 1995^{M10}; 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
- (d) may be admitted to it subject to the consent of any person.

[^{F2}“protected rights” has the meaning given in section 10 of the Pension Schemes Act 1993;]

[^{F2}“redundancy” means being dismissed by reason of redundancy for the purposes of the Employment Rights Act 1996;]

[^{F2}“relevant transfer” has the meaning given in—

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

[^{F2}“section 9(2B) rights” are—

- (a) rights to the payment of pensions and accrued rights to pensions (other than rights attributable to voluntary contributions) under a scheme contracted-out by virtue of section 9(2B) of the Pension Schemes Act 1993, so far as attributable to an earner’s service in contracted-out employment on or after 6th April 1997; and
- (b) where a transfer payment has been made to such a scheme, any rights arising under the scheme as a consequence of that payment which are derived directly or indirectly from—
 - (i) such rights as are referred to in sub-paragraph (a) under another scheme contracted-out by virtue of section 9(2B) of that Act; or
 - (ii) protected rights under another occupational pension scheme or under a personal pension scheme attributable to payments or contributions in respect of employment on or after 6th April 1997;]

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[^{F2}“upper earnings limit” means the amount specified for the tax year in question in regulations made under section 5(1)(a)(iii) of the Social Security Contributions and Benefits Act 1992 (earnings limits and thresholds for Class 1 contributions).]

^{F9}(6)

(7) In this Schedule—

“personal pension scheme” has the meaning given by section 1(1) of the Pension Schemes Act 1993 ^{M11};

“registered pension scheme” has the meaning given by section 150(2) of the Finance Act 2004 ^{M12}; 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 [^{F10}and “occupational pension scheme” shall mean 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].

Textual Amendments

- F1** Words in Sch. 2 para. 1(3) substituted (1.12.2006) by [The Employment Equality \(Age\) \(Amendment No.2\) Regulations 2006 \(S.I. 2006/2931\)](#), regs. 1(1), **4(1)**
- F2** Words in Sch. 2 para. 1(5) inserted (1.12.2006) by [The Employment Equality \(Age\) \(Amendment No.2\) Regulations 2006 \(S.I. 2006/2931\)](#), regs. 1(1), **4(2)(e)**
- F3** Words in Sch. 2 para. 1(5) omitted (6.4.2009) by virtue of [The Pensions Act 2008 \(Abolition of Safeguarded Rights\) \(Consequential\) Order 2009 \(S.I. 2009/598\)](#), arts. 1, **12(2)**
- F4** Word in Sch. 2 para. 1(5) substituted (1.12.2006) by [The Employment Equality \(Age\) \(Amendment No.2\) Regulations 2006 \(S.I. 2006/2931\)](#), regs. 1(1), **4(2)(a)**
- F5** Words in Sch. 2 para. 1(5) inserted (1.12.2006) by [The Employment Equality \(Age\) \(Amendment No.2\) Regulations 2006 \(S.I. 2006/2931\)](#), regs. 1(1), **4(2)(b)**
- F6** Words in Sch. 2 para. 1(5) substituted (1.12.2006) by [The Employment Equality \(Age\) \(Amendment No.2\) Regulations 2006 \(S.I. 2006/2931\)](#), regs. 1(1), **4(2)(c)**
- F7** Words in Sch. 2 para. 1(5) omitted (1.12.2006) by virtue of [The Employment Equality \(Age\) \(Amendment No.2\) Regulations 2006 \(S.I. 2006/2931\)](#), regs. 1(1), **4(2)(f)**
- F8** Words in Sch. 2 para. 1(5) inserted (1.12.2006) by [The Employment Equality \(Age\) \(Amendment No.2\) Regulations 2006 \(S.I. 2006/2931\)](#), regs. 1(1), **4(2)(d)**
- F9** Sch. 2 para. 1(6) omitted (1.12.2006) by virtue of [The Employment Equality \(Age\) \(Amendment No.2\) Regulations 2006 \(S.I. 2006/2931\)](#), regs. 1(1), **4(3)**
- F10** Words in Sch. 2 para. 1(8) added (1.12.2006) by [The Employment Equality \(Age\) \(Amendment No.2\) Regulations 2006 \(S.I. 2006/2931\)](#), regs. 1(1), **4(4)**

Marginal Citations

- M1** 1993 c. 48; relevant amendments have been made to section 1(1) by the [Pensions Act 2004 \(c. 35\)](#), **section 239**.
- M2** 2004 c. 35.
- M3** 2004 c. 12.
- M4** 1995 c. 26.
- M5** 2004 c. 12.
- M6** 1993 c. 48; relevant amendments to section 1(1) have been made by the [Pensions Act 2004 \(c. 35\)](#), **section 239**.
- M7** 2004 c. 35.

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- M8** 1995 c. 26.
- M9** 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.
- M10** 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).
- M11** 1993 c. 48; relevant amendments have been made to section 1(1) by the [Pensions Act 2004 \(c. 35\)](#), [section 239](#).
- M12** 2004 c. 12.

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 [^{F11}1st December 2006]), 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.

Textual Amendments

- F11** Words in Sch. 2 para. 2(4)(a) substituted (30.9.2006) by [The Employment Equality \(Age\) \(Amendment\) Regulations 2006 \(S.I. 2006/2408\)](#), regs. 1, 2(5)(a)

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.

[^{F12}Length of service exemptions

3A.—(1) Subject to sub-paragraph (2), nothing in Part 2 or 3 of these Regulations shall render it unlawful for—

(a) any rule, practice, action or decision of the trustees or managers (“A”) of a scheme regarding—

(i) admission to the scheme (“admission terms”); or

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- (ii) the accrual of, or eligibility for, any benefit under the scheme (“benefit terms”), where the admission terms or the benefit terms put a member (“B”) of the scheme at a disadvantage when compared with another member (“C”) if and to the extent that the disadvantage suffered by B is because B’s length of service with an employer (“D”) in relation to the scheme is less than that of C;
 - (b) any rule, practice, action or decision of an employer (“E”) in relation to a scheme regarding the admission terms or benefit terms where it puts a member (“F”) of the scheme at a disadvantage when compared with another member (“G”) if and to the extent that the disadvantage suffered by F is because F’s length of service with E is less than that of G; or
 - (c) any rule, practice, action or decision of an employer (“H”) regarding payment of contributions in respect of a worker (“I”) to a personal pension scheme or to a money purchase arrangement (“contribution terms”) where it puts I at a disadvantage when compared with another worker (“J”) if and to the extent that the disadvantage suffered by I is because I’s length of service with H is less than that of J.
- (2) Where B’s, or as the case may be, F’s or I’s length of service exceeds 5 years and a length of service criterion in the admission terms or as the case may be, the benefit terms or contribution terms puts B or F or I at a disadvantage—
- (a) where sub-paragraph (1)(a) applies, A—
 - (i) must ask D to confirm whether the length of service criterion reasonably appears to D to fulfil a business need of D’s undertaking (for example by encouraging the loyalty or motivation, or rewarding the experience, of some or all of his workers), and
 - (ii) may rely on D’s confirmation;
 - (b) for the purposes of paragraph (a)(i), D must—
 - (i) calculate B’s length of service;
 - (ii) provide A with details of B’s length of service; and
 - (iii) respond to A’s request within a reasonable time;
 - (c) where sub-paragraph (1)(a) or (b) or (c) applies, it must reasonably appear to D or, as the case may be, E or H that the length of service criterion applies in such a way that it fulfils a business need of his undertaking (for example by encouraging the loyalty or motivation, or rewarding the experience, of some or all of his workers).
- (3) When calculating B’s or, as the case may be, F’s or I’s length of service D or, as the case may be, E or H shall calculate—
- (a) the length of time the member or worker has been working for him doing work which he reasonably considers to be at or above a particular level (assessed by reference to the demands made on the member or worker, for example, in terms of effort, skills and decision making), or
 - (b) the length of time the member or worker has been working for him in total,
- and it is for D or, as the case may be, E or H to decide which of paragraphs (a) or (b) to use.
- (4) For the purposes of sub-paragraph (3), D or, as the case may be, E or H shall calculate the length of time a member or worker has been working for him in accordance with paragraphs (4) to (7) of regulation 32 (exception for provision of certain benefits based on length of service) and any reference in those paragraphs to—
- (a) “A” shall be read as if it were a reference to “D” or, as the case may be, “E” or “H”; and
 - (b) “worker” shall, where sub-paragraph (1)(a) or (b) applies, be read as if it were a reference to “member”.
- (5) For the purposes of this paragraph, a “member” shall include a “prospective member”.]

Textual Amendments

F12 Sch. 2 para. 3A inserted (1.12.2006) by The Employment Equality (Age) (Amendment No.2) Regulations 2006 (S.I. 2006/2931), regs. 1(1), 5

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.

[^{F13}Unlawfulness of rules, practices, actions or decisions relating to Part 2 or Part 3 of Schedule 2

4A.—(1) The inclusion of a rule, practice, action or decision in Part 2 of this Schedule (excepted rules, practices, actions and decisions relating to occupational pension schemes) shall not be taken to mean that, but for the exemption in Part 2, the use or maintenance by an employer, trustees or managers of a scheme of the rule, practice, action or decision in relation to the scheme, would be unlawful.

(2) The inclusion of a rule, practice, action or decision in Part 3 of this Schedule (excepted rules, practices, actions and decisions relating to contributions by employers to personal pension schemes) shall not be taken to mean that, but for the exemption in Part 3, the use or maintenance by an employer of the rule, practice, action or decision in relation to the payment of contributions to a personal pension scheme in respect of a worker, would be unlawful.]

Textual Amendments

F13 Sch. 2 para. 4A inserted (1.12.2006) by The Employment Equality (Age) (Amendment No.2) Regulations 2006 (S.I. 2006/2931), regs. 1(1), 6

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;

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- (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 ^{F14}1st December 2006);
- (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).

Textual Amendments

F14 Words in Sch. 2 para. 6(3)(a) substituted (30.9.2006) by [The Employment Equality \(Age\) \(Amendment\) Regulations 2006 \(S.I. 2006/2408\)](#), regs. 1, 2(5)(a)

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Changes and effects yet to be applied to :

- Regulations revoked (except Schs. 6, 8) by [2010 c. 15 Sch. 27 Pt. 2](#) (Regulations revoked except Schs. 6, 8)

Commencement Orders yet to be applied to the The Employment Equality (Age) Regulations 2006

Commencement Orders bringing legislation that affects this Instrument into force:

- [S.I. 2010/2317 art. 2\(15\)\(f\)](#) commences ([2010 c. 15](#))
- [S.I. 2011/1066 art. 2\(h\)](#) commences ([2010 c. 15](#))