

**2007 No. 825**

**EMPLOYMENT AND TRAINING**

**AGE DISCRIMINATION**

**The Employment Equality (Age) (Consequential Amendments)  
Regulations 2007**

|                               |                        |
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| <i>Made</i> - - - -           | <i>8th March 2007</i>  |
| <i>Laid before Parliament</i> | <i>14th March 2007</i> |
| <i>Coming into force</i> - -  | <i>6th April 2007</i>  |

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

**Citation and Commencement**

1. These Regulations may be cited as the Employment Equality (Age) (Consequential Amendments) Regulations 2007 and they shall come into force on 6th April 2007.

**Amendment of the Social Security Contributions and Benefits Act 1992**

2.—(1) The Social Security Contributions and Benefits Act 1992(c) is amended as follows.

(2) Before paragraph 6 of Schedule 11 (circumstances in which periods of entitlement to statutory sick pay do not arise) insert—

“5A.—(1) Paragraph 2(d)(i) above does not apply if, at the relevant date, the employee is over pensionable age and is not entitled to incapacity benefit.

(2) Paragraph 2(d)(i) above ceases to apply if, at any time after the relevant date, the employee is over pensionable age and is not entitled to incapacity benefit.

(3) In this paragraph “pensionable age” has the meaning given by the rules in paragraph 1 of Schedule 4 to the Pensions Act 1995.”.

**Amendment of the Employment Rights Act 1996**

3.—(1) The Employment Rights Act 1996(d) is amended as follows.

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(a) 1972 c. 68.  
(b) See the European Communities (Designation) (No.3) Order 2002 (S.I. 2002/1819).  
(c) 1992 c. 4. Paragraph 2(d) was substituted by paragraph 43(2) of Schedule 1 to the Social Security (Incapacity for Work) Act 1994. Paragraph 5 was repealed by the Social Security (Incapacity for Work) Act 1994, Section 11, Schedule 1 paragraph 43(3), Schedule 2.  
(d) 1996 c.18. Section 105, subsection (7I) was inserted by SI 2006/349, regulation 17, Schedule, paragraph 6(1)(b). Section 105, subsection (7J) was inserted by SI 2006/2059, regulation 32(b).

- (2) In section 105 (redundancy) after subsection (7I), insert—
- “(7IA) This subsection applies if the reason (or, if more than one, the principal reason) for which the employee was selected for dismissal was that he—
- (a) exercised or sought to exercise his right to be accompanied in accordance with paragraph 9 of Schedule 6 to the Employment Equality (Age) Regulations 2006, or
  - (b) accompanied or sought to accompany an employee pursuant to a request under that paragraph.”.

#### **Amendment of the Public Finance and Accountability (Scotland) Act 2000**

- 4.—(1) The Public Finance and Accountability (Scotland) Act 2000(a) is amended as follows.
- (2) In section 13(5) (Auditor General for Scotland)—
- (a) omit paragraph (b); and
  - (b) in paragraph (c), omit the words “in other respects,”.

#### **Amendment of the Statutory Sick Pay (General) Regulations 1982**

- 5.—(1) The Statutory Sick Pay (General) Regulations 1982(b) are amended as follows.
- (2) In regulation 3 (period of entitlement ending or not arising) after paragraph (2A) insert—
- “(2B) Paragraph (2A) shall not apply, in the case of an employee who was entitled to incapacity benefit, where paragraph 2(d)(i) of Schedule 11 to the Contributions and Benefits Act ceases to have effect by virtue of paragraph 5A of that Schedule.”.
- (3) In regulation 16 (meaning of “employee”), for paragraph (1ZA) substitute—
- “(1ZA) Paragraph (1) shall have effect in relation to a person who—
- (a) is under the age of 16; and
  - (b) would or, as the case may be, would not have been treated as an employed earner by virtue of the Social Security (Categorisation of Earners) Regulations 1978 had he been over that age,
- as it has effect in relation to a person who is or, as the case may be, is not so treated.”.

#### **Amendment of the Statutory Maternity Pay (General) Regulations 1986**

- 6.—(1) The Statutory Maternity Pay (General) Regulations 1986(c) are amended as follows.
- (2) In regulation 17 (meaning of “employee”), for paragraph (1A), substitute—
- “(1A) Paragraph (1) shall have effect in relation to a woman who—
- (a) is under the age of 16; and
  - (b) would or, as the case may be, would not have been treated as an employed earner by virtue of the Social Security (Categorisation of Earners) Regulations 1978 had she been over that age,
- as it has effect in relation to a woman who is, or, as the case may be, is not so treated.”.

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(a) 2000 asp 1.  
(b) S.I. 1982/894. Regulation 3 paragraph (2A) was inserted by S.I. 1998/2231, regulation 6. Regulation 16, paragraph (1ZA) was inserted by S.I. 2006/1031, regulation 49(1), Schedule 8, Part 2, paragraphs 49, 50(1), (3).  
(c) S.I. 1986/1960. Regulation 17, paragraph (1A) was inserted by S.I. 2006/1031, regulation 49(1), Schedule 8, Part 2, paragraph 52, 53(1), (3).

### **Amendment of the Statutory Paternity Pay and Statutory Adoption Pay (General) Regulations 2002**

7.—(1) The Statutory Paternity Pay and Statutory Adoption Pay (General) Regulations 2002(a) are amended as follows.

(2) In regulation 32 (treatment of persons as employees), for paragraph (1A) substitute—

“(1A) Paragraph (1) shall have effect in relation to a person who—

- (a) is under the age of 16; and
- (b) would or, as the case may be, would not have been treated as an employed earner by virtue of the Social Security (Categorisation of Earners) Regulations 1978 had he been over that age,

as it has effect in relation to a person who is or, as the case may be, is not so treated.”.

### **Amendment of the Employment Act 2002 (Dispute Resolution) Regulations 2004**

8.—(1) The Employment Act 2002 (Dispute Resolution) Regulations 2004(b) are amended as follows.

(2) In regulation 7(3) (circumstances in which parties are treated as complying with the grievance procedures), after “regulation 28 of the Employment Equality (Sexual Orientation) Regulations 2003”, insert—

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

(3) In regulation 14(2) (questions to obtain information not to constitute statement of grievance), after “regulation 33 of the Employment Equality (Sexual Orientation) Regulations 2003”, insert—

“regulation 41 of the Employment Equality (Age) Regulations 2006.”.

### **Amendment of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2004**

9.—(1) The Employment Tribunals (Constitution and Rules of Procedure) Regulations 2004(c) are amended as follows.

(2) In Schedule 1 (the Employment Tribunals rules of procedure) paragraph 22(1) (fixed period for conciliation) is amended as follows—

- (a) in sub-paragraph (f) omit “and”;
- (b) in paragraph (g) after “105(6A)” omit “.” and substitute “; and”; and
- (c) after sub-paragraph (g) insert—

“(h) the Employment Equality (Age) Regulations 2006.”.

*Jim Fitzpatrick*  
Parliamentary Under Secretary of State for Employment Relations  
and Postal Services  
Department of Trade and Industry

8th March 2007

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(a) S.I. 2002/2822. Regulation 32, paragraph (1A) was inserted by S.I. 2006/1031, regulation 49(1), Schedule 8, Part 2, paragraphs 59 and 60(1), (3).  
(b) S.I. 2004/752.  
(c) S.I. 2004/1861.

## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations are the fourth set of regulations containing legislative measures necessary for implementing Council Directive 2000/78/EC (which concerns equal treatment in employment) so far as it relates to discrimination on the grounds of age and are made under section 2(2) of the European Communities Act 1972 (c.68).

These Regulations amend the Social Security Contributions and Benefits Act 1992 (“the Social Security Contributions and Benefits Act”), the Employment Rights Act 1986 (“the Employment Rights Act”), the Public Finance and Accountability (Scotland) Act 2000 (“the Public Finance and Accountability (Scotland) Act”), the Statutory Sick Pay (General) Regulations 1982 (“the Statutory Sick Pay Regulations”), the Statutory Maternity Pay (General) Regulations 1986 (“the Statutory Maternity Pay Regulations”), the Statutory Paternity Pay and Statutory Adoption Pay (General) Regulations 2002 (“the Statutory Paternity Pay and Statutory Adoption Pay Regulations”), the Employment Act 2002 (Dispute Resolution) Regulations 2004 (“the Dispute Resolution Regulations”) and the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2004 (“the Employment Tribunal Rules of Procedure Regulations.”)

Regulation 2 amends the provisions of Schedule 11 to the Social Security Contributions and Benefits Act and provides that entitlement to Statutory Sick Pay will in certain cases not be prevented from arising for employees who are over pensionable age and not entitled to incapacity benefit.

Regulation 3 amends section 105 of the Employment Rights Act, so that dismissal for exercising, or seeking to exercise, the right to be accompanied, or to accompany another, at a meeting under Schedule 6, paragraph 9 of the Employment Equality (Age) Regulations 2006, will be unfair.

Regulation 4 removes the provision from the Public Finance and Accountability (Scotland) Act 2000 which provides that the Scottish Auditor General must retire at age 65.

Regulation 5(2) amends regulation 3 of the Statutory Sick Pay Regulations in consequence of the amendment of Schedule 11 to the Social Security Contributions and Benefits Act made by regulation 2 of these Regulations.

Regulations 5(3), 6 and 7 amend regulation 16 of the Statutory Sick Pay Regulations, regulation 17 of the Statutory Maternity Pay Regulations and regulation 32 of the Statutory Paternity Pay and Statutory Adoption Pay Regulations respectively to clarify the circumstances in which those under the age of 16 may or may not, be treated as if they had been employed earners.

Regulation 8 amends the Dispute Resolution Regulations, so that a complaint under the Employment Equality (Age) Regulations 2006 is treated in the same way as complaints under other discrimination legislation in respect of the provisions of regulation 7 and regulation 14 of the Dispute Resolution Regulations.

Regulation 9 amends the Employment Tribunal Rules of Procedure Regulations, so that cases of age discrimination are be treated in the same way as cases involving other discrimination legislation in respect of the requirement for a fixed 13 week fixed conciliation period.

A full regulatory impact assessment has not been produced for this instrument as no additional impact on the private or voluntary sectors is foreseen.

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