

**EXPLANATORY MEMORANDUM TO
THE EMPLOYMENT EQUALITY (AGE) REGULATIONS 2006
(AMENDMENT) REGULATIONS 2008**

2008 No. 573

1. This explanatory memorandum has been prepared by the Department for Business Enterprise and Regulatory Reform and is laid before Parliament by Command of Her Majesty. This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Description

- 2.1 These regulations make further amendments to the Employment Equality (Age) Regulations 2006 as part of our implementation of age strand of the European Employment Directive (2000/78/EC). The effect of the amendments is to correct certain gaps in the Regulations.

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

- 3.1 The regulations are made under S2(2) of the European Communities Act 1972.

4. Legislative Background

- 4.1 Directive 2000/78/EC establishes a general framework for equal treatment in employment and occupation, including vocational training. It requires Member States to ensure that they have legislation in place outlawing discrimination on the new grounds of sexual orientation, religion or belief, age, as well as disability. As in the other strands of equality legislation, education of pupils in schools is excluded since this is not vocational training within the meaning of the Directive.
- 4.2 The Employment Equality (Age) Regulations 2006 were brought into force on 1 October 2006. Amendments to those provisions related to occupational pensions were made by the Employment Equality (Age) (Amendment No.2) Regulations 2006 - SI 2006/2931 - which came into force on 1 December 2006. The Employment Equality (Age) (Consequential Amendments) Regulations 2007 – SI 2007 No 825 – came into force on 6 April 2007.

5. Extent

- 5.1 The regulations extend to Great Britain. Separate regulations are to be made in Northern Ireland.
- 5.2 The regulations do not extend to Gibraltar, the Channel Isles or the Isle of Man.

6. European Convention on Human Rights

- 6.1 Pat McFadden, the Minister of State for Employment Relations and Postal Affairs, has made the following statement regarding Human Rights:

In my view the provisions of The Employment Equality (Age) Regulations 2006 (Amendment) Regulations 2008 are compatible with the Convention rights as defined in section 1 of the Human Rights Act 1998.

7. Policy background

- 7.1 The following amendments are necessary to ensure proper operation of the age regulations:

a. **Amendment to regulation 32 of the Employment Equality (Age) Regulations 2006.**

Regulation 32 provides an exception to the prohibition of discrimination on grounds of age in respect of certain employment benefits based on length of service, for example, pay scales which increase with length of service or increase in annual leave allowance based on years of service. Such awards may result in indirect age discrimination because, for example, younger people will have shorter service so they are disadvantaged. Regulation 32 gives an employer a defence against a claim of indirect discrimination where benefits are based on length of service of five years or less, and provides that longer periods of service may be used so long as the use of length of service as a criterion for awarding benefits reasonably appears to him to fulfil a business need.

Where employees transfer from one employer to another, it is intended that the new employer may take the benefit of regulation 32 as if he was the first employer (i.e. the continuity of employment of the employees is preserved for the purpose of the exemption). Regulation 32 currently provides that this will happen where continuity of employment would be preserved for the employee either under section 218 or under section 155 Employment Rights Act 1996.

However, it has come to light that where employees are transferred from one employer to another in the course of a transfer of a government function which is effected through legislation, continuity of employment may not be preserved for the purposes of the exemption. This is because such a transfer may not fall within the scope of section 218 or 155. This amendment seeks to extend the scope of the exemption in Regulation 32 so that, in these situations, and provided that the legislation effecting the transfer preserves continuity of employment despite the change of employer, the new employer has the benefit of the exemption.

b. Amendment to regulations 41 and 42 of the Employment Equality (Age) Regulations 2006.

Regulation 41 provides that a prospective claimant may serve a questionnaire on his employer and regulation 42 establishes the time limits in which proceedings may be brought to an employment tribunal. Inadvertently, these regulations did not take account of amendments made to the time limits in serving a questionnaire made by the Employment Act 2002 (Dispute Resolution) Regulations 2004. This amendment seeks to rectify this omission.

8. Impact

- 8.1 A Regulatory Impact Assessment has not been prepared for this instrument as these amendments will not be adding any additional administrative burdens on business and are purely technical changes. The existing RIA considers the impact of age discrimination legislation on employers and individuals, and on the macroeconomy and the Exchequer – these amendments make no change to this.

9. Contact

- 9.1 Maurice Francis, Employment Relations Branch, Department for Business Enterprise and Regulatory Reform, Bay 4104, 1 Victoria Street, London SW1H 0ET (email: Maurice.Francis@berr.gsi.gov.uk; telephone 020 7215 2814).