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S T A T U T O R Y I N S T R U M E N T S

2010 No. 2285

EQUALITY

PENSIONS

**The Equality Act (Age Exceptions for Pension Schemes)
(Amendment) Order 2010**

Made - - - - - *16th September 2010*

Laid before Parliament *16th September 2010*

Coming into force - - - *1st October 2010*

The Secretary of State for Work and Pensions makes the following Order in exercise of the powers conferred by sections 61(8) and 207(1), (2) and (4)(a) of, and paragraph 16 of Schedule 9 to, the Equality Act 2010(a).

Citation and commencement

1. This Order may be cited as the Equality Act (Age Exceptions for Pension Schemes) (Amendment) Order 2010 and shall come into force on 1st October 2010.

Amendment to the Equality Act (Age Exceptions for Pension Schemes) Order 2010

2.—(1) The Equality Act (Age Exceptions for Pension Schemes) Order 2010(b) is amended in accordance with this article.

(2) In article 3—

(a) the words after “in relation to the scheme,” become paragraph (a), and

(b) after paragraph (a) insert—

“; or

(b) rules, practices, actions or decisions as they relate to rights accrued, or benefits payable, in respect of periods of pensionable service prior to 1st December 2006 that would breach the non-discrimination rule but for this paragraph.”.

(3) After article 5 insert—

(a) 2010 c.15.
(b) S.I. 2010/2133.

“Length of service exceptions

6.—(1) Paragraph (2) is subject to paragraph (3).

(2) In addition to the excepted rules, practices, actions or decisions contained in Schedules 1 and 2, none of the following is a breach of the non-discrimination rule or is an age contravention, as applicable—

- (a) any rule, practice, action or decision of the trustees or managers (“A”) of an occupational pension scheme regarding—
 - (i) admission to that scheme (“admission terms”); or
 - (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 an occupational pension scheme regarding the admission terms or benefit terms where it puts a member (“F”) of that 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 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.

(3) 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 paragraph (2)(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 sub-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 paragraph (2)(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).

(4) 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, must calculate—

- (a) the length of time the member or worker has been working for that employer doing work which that employer 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 that employer in total,

and it is for D or, as the case may be, E or H to decide which of sub-paragraphs (a) or (b) to use.

(5) For the purposes of paragraph (4), D or, as the case may be, E or H, shall calculate the length of time a member or worker has been working for that employer in accordance with sub-paragraphs (4) to (6) of paragraph 10 of Schedule 9 to the Equality Act 2010 (benefits based on length of service) and any reference in those sub-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) “person” (except in the phrase “person other than A”) shall, where paragraph (2)(a) or (b) applies, be read as if it were a reference to “member”.

(6) For the purposes of this article, a “member” shall include a “prospective member”.

(4) In Schedule 1 omit paragraph 33 (length of service exemptions).

Signed by authority of the Secretary of State for Work and Pensions.

Steve Webb

Minister of State

Department for Work and Pensions

16th September 2010

EXPLANATORY NOTE

(This note is not part of the Order)

This Order amends the Equality Act 2010 (Age Exceptions for Pension Schemes) Order 2010 (S.I. 2010/2133) (“the Order”) on the coming into force of that instrument, to correct errors.

Article 2(2) corrects an error in article 3 of the Order by providing that rules, actions, practices or decisions by employers, trustees or managers as they relate to rights accrued or benefits payable in respect of periods of pensionable service prior to 1st December 2006 are not a breach of the non-discrimination rule.

Article 2(3) and (4) correct an error in Schedule 1 to the Order by omitting the length of service exemptions from that Schedule and inserting length of service exceptions in new article 6 of the Order. Article 6 of the Order (length of service exceptions), as inserted by this Order, provides that none of the matters contained in that article is a breach of the non-discrimination rule or is an age contravention, as applicable.

An Impact Assessment has not been prepared for this instrument as it has no impact on the costs of business, charities or voluntary bodies.