STATUTORY RULES OF NORTHERN IRELAND

2006 No. 453

AGE DISCRIMINATION

PENSIONS

The Employment Equality (Age) (Amendment No. 2) Regulations (Northern Ireland) 2006

Made - - - -	*13th November 2006*
Coming into operation	*1st December 2006*

The Department for Social Development, being a Department designated(**1**) for the purposes of section 2(2) of the European Communities Act 1972(**2**) in relation to discrimination, makes the following Regulations in exercise of the powers conferred by that section.

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Employment Equality (Age) (Amendment No. 2) Regulations (Northern Ireland) 2006 and shall come into operation on 1st December 2006.

(2) The Interpretation Act (Northern Ireland) 1954(**3**) shall apply to these Regulations as it applies to an Act of the Assembly.

Amendment of the Employment Equality (Age) Regulations

2.—(1) The Employment Equality (Age) Regulations (Northern Ireland) 2006(**4**) shall be amended in accordance with the paragraphs (2) to (3).

(2) In regulation 12 (pension schemes)—

(a) in paragraph (1) for "service" substitute "pensionable service", and

(b) in paragraphs (1) and (2) after "trustees or managers of" in each place insert ", or any employer in relation to,".

(3) In Schedule 1 (pension schemes)—

(a) in paragraph 1 (interpretation)—

(**1**) *See* Schedule 2 to the European Communities (Designation) (No. 3) Order 2002 (S.I. 2002/1819)
(**2**) 1972 c.68
(**3**) 1954 c.33 (N.I.)
(**4**) S.R. 2006 No. 261 as amended by S.R. 2006 No. 395

(i) in sub-paragraph (4) for "paragraphs 12, 13 and 30" substitute "paragraphs 3A, 7(b), 9, 15A, 17 to 21, 23, 24, 25, 25A and 30";

(ii) in sub-paragraph (6)—

(aa) after the definition of "active member" insert—

""additional state retirement pension" means the additional pension in the Category A retirement pension within the meaning of sections 44 and 45 of the 1992 Act(**5**)

(bb) after the definition of "age related benefit" insert—

""basic state retirement pension" means the basic pension in the Category A retirement pension within the meaning of section 44 of the 1992 Act";

"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—

(a) all accrued rights under a scheme,

(b) contracted-out rights, or

(c) rights which are not contracted-out rights,

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;

"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 5(2B) rights,

but not safeguarded rights (within the meaning of section 64A of the 1993 Act(**6**));;";

(cc) in the definition of "death benefit" for "pension scheme" substitute "scheme";

(dd) in the definition of "dependant" after "means" insert "a widow, widower or surviving civil partner or a";

(ee) for the definition of "early retirement pivot age" substitute—

""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—

(**5**) 1992c. 7; section 44 was amended by paragraphs 2 and 3 of Schedule 4 to the Social Security (Consequential Provisions) (Northern Ireland) Act 1992 (c. 9), Article 125(1) and (2) of the Pensions (Northern Ireland) Order 1995 (S.I. 1995/3213 (N.I. 22)), Article 64 of the Social Security (Northern Ireland) Order 1998 (S.I. 1998/1506 (N.I. 10)), sections 29(2) and 33(5) to (7) of the Child Support, Pensions and Social Security Act (Northern Ireland) 2000 (c. 4 (N.I.)), paragraph 10 of Schedule 1 to the National Insurance Contributions Act 2002 (c. 19) and S.R. 2006 No. 109. Section 45 was amended by sections 31(1) and (2) and 33(8) of the Child Support, Pensions and Social Security Act (Northern Ireland) 2000

(**6**) 1993 c.49; section 64A was inserted by Article 33 of the Welfare Reform and Pensions (Northern Ireland) Order 1999 (S.I. 1999/3147 (N.I. 11))

(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;;";

(ff) omit the definition of "employer contribution";

(gg) after the definition of "employment" insert—

""guaranteed minimum pension" has the meaning given in section 4(2) of the 1993 Act(**7**);"

(hh) in the definition of "late retirement pivot age" after "scheme rules" insert "(or otherwise determined)";

(ii) after the definition of "late retirement pivot age" insert—

""lower earnings limit" means the amount specified for the tax year in question in regulations made under section 5(1)(a)(i) of the 1992 Act (earnings limits and thresholds for Class 1 contributions)(**8**);";

(jj) omit the definition of "member contribution";

(kk) omit the definition of "pensionable age";

(ll) at the end of the definition of "pensioner member" omit "and", and

(mm) after the definition of "prospective member" add—

""protected rights" has the meaning given in section 6 of 1993 Act(**9**);

"redundancy" means being dismissed by reason of redundancy for the purposes of the Employment Rights (Northern Ireland) Order 1996(**10**);

"relevant transfer" has the meaning given in—

(a) regulation 2(1) of the Transfer of Undertakings (Protection of Employment) Regulations 1981 (interpretation)(**11**), or as the case may be,

(b) regulation 2(1) of the Transfer of Undertakings (Protection of Employment) Regulations 2006 (interpretation)(**12**);

"section 5(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 5(2B) of the 1993 Act (requirements for certification of schemes: general)(**13**), so far as attributable to an earner's service in contracted-out employment on or after 6th April 1997, and

(**7**) The definition of "guaranteed minimum pension" was amended by paragraph 2 of Schedule 1 to S.R. 2005 No. 433

(**8**) Section 5 was substituted by paragraph 1 of Schedule 10 to the Welfare Reform and Pensions Act 1999 (c.30)

(**9**) Section 6 was amended by paragraph 18 of Schedule 3 to the Pensions (Northern Ireland) Order 1995, paragraph 39 of Schedule 1 to the Social Security Contributions (Transfer of Functions, etc.) (Northern Ireland) Order 1999 (S.I. 1999/671) and Article 29(2) of the Welfare Reform and Pensions (Northern Ireland) Order 1999

(**10**) S.I. 1996/1919 (N.I. 16)

(**11**) S.I. 1981/1794; these Regulations were revoked by regulation 20(1) of S.I. 2006/246 as from 6 April 2006, except in relation to a transfer that took place before that date

(**12**) S.I. 2006/246

(**13**) Section 5(2B) was inserted by Article 133(3) of the Pensions (Northern Ireland) Order 1995 and amended by paragraph 38(2) of Schedule 1 to the Social Security Contributions (Transfer of Functions, etc.) (Northern Ireland) Order 1999

(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 paragraph (a) under another scheme contracted-out by virtue of section 5(2B) of the 1993 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; and

"upper earnings limit" means the amount specified for the tax year in question in regulations made under section 5(1)(a)(iii) of the 1992 Act.";

(iii) omit sub-paragraph (7), and

(iv) in sub-paragraph (9) after "this Schedule" add "and "occupational pension scheme" shall mean an occupational pension scheme within the meaning of either section 1(1) of the 1993 Act(**14**) or section 150(5) of the 2004 Act(**15**)";

(b) after paragraph 3 (exception for rules, practices, actions and decisions relating to occupational pension schemes) insert—

"**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

(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.

(**14**) Section 1 was amended by Article 216 of the Pensions (Northern Ireland) Order 2005 (S.I. 2005/255 (N.I. 11))
(**15**) 2004 c. 12

(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 head (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 heads (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 34 (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".";

(c) after paragraph 4 (exception for rules, practices, actions and decisions relating to contributions by employers to personal pension schemes) insert—