

Age Discrimination & Pensions

Exploring your right to protection from age discrimination in relation to pensions



Overview

The Age Regulations, which came into force on 1st October 2006, stated that it is unlawful to treat a person differently in the workplace because of their age, unless it can be objectively justified or is covered by an exemption or genuine occupational requirement. The Age Regulations (as amended) extended this protection to occupational pension schemes. As of 1st October 2010, all existing equality legislation (including the 2006 Regulations) was consolidated into the Equality Act 2010 ('The Act') and provisions of the Age Regulations in relation to occupational pension schemes were incorporated into it.

For more information on age discrimination in the workplace, see our factsheet 'Age Concerns', part of the Employment Law series.

What types of pension schemes are covered?

Occupational pension schemes and employers contributions to personal pension schemes are covered. State pensions, National Insurance rebates, annuities purchased from an insurance company and pension-sharing arrangements following a divorce are not covered by the current law.

Who is protected by the Act?

Existing members of occupational schemes and 'prospective' members, as defined by the Equality Act (broadly covering anyone eligible to join), are protected.

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Exemptions from the non-discrimination rule

It is lawful to do the following when working out who is under a scheme: In relation to occupational pension schemes, the exemptions specifically provided for are:

A) To restrict admission to schemes by, for example:

- Setting a minimum or maximum admission age, including different ages for admission for different groups of workers (this applies to both employers contributions to personal pension schemes and occupational pension schemes, but does not include life assurance only schemes)
- Setting a minimum level of pensionable pay for admission. This minimum level can be an amount up to 1.5 times the lower earnings limit or an amount which reflects the state retirement pension
- Applying a minimum service requirement before you can join the pension scheme or a difference in the terms of admission to a scheme (without justification if less than 5 years or with justification if more than 5 years).

B) To restrict access to benefits by, for example:

- Only providing benefits where the member has completed a minimum period of service (this period must not be longer than 2 years)
- Setting a minimum age for entitlement to or payment of any age related benefit to a member. There can be different minimum ages for different groups or categories of members and the minimum age can be subject to the consent of the employer or the trustees or managers
- Limiting any members' or survivors' entitlement to benefits by imposing a maximum number of years' service in the calculation of such benefit
- Imposing a minimum or maximum level of pensionable pay in order to calculate benefits (the level must not be above the lower earnings limit).

C) To deal with ill health/redundancy retirement for example:

- Setting a minimum age from when an age related benefit is paid in the event of retirement on the grounds of redundancy
- Setting a minimum age from when an age related benefit is paid where retirement is on the grounds of ill health
- Enhancing any age related benefit where the member retires on ill health grounds prior to reaching the age which is specified in the scheme as being the earliest age at which age related benefit becomes payable without actuarial reduction. Where the enhancement relates to prospective service the member would have completed had they remained in pensionable service until the age specified in the scheme rules
- Discontinuing life assurance cover to members who retired early on ill health grounds once such members reach the normal retirement age which applied to them under the scheme (or if no such age is specified, 65)
- Payment of bridging pensions to male scheme members.

Members who on, 2nd December 2006, had a right to payment of enhanced early retirement benefits are permitted to retain that right when they become members of subsequent schemes.

"If you think that you have been discriminated against on the grounds of your age in relation to your pension scheme there are a number of options open to you."



D) To calculate death benefits by, for example:

- Reference to prospective service the member could be treated as having completed if they had not died
- Reference to a maximum number of years of pensionable service and/or by reference to a fraction, proportion or multiple of pensionable pay
- Making an actuarial reduction to any pension payable in consequence of a member's death to a dependant where that dependant is more than a specified number of years younger than the member.

E) To use age criteria in actuarial calculations by, for example:

- Reducing benefits paid before a certain age or to enhance them after a certain age.

F) To apply different levels of employer contributions to an occupational pension scheme or personal pension scheme, depending on your length of service (without justification if less than 5 years or with justification if more than 5 years) or any differences in the member's pensionable pay, or to apply equal rates of member or employer contributions irrespective of the age of the members.

G) To apply different rates of member or employer contributions according to the age of the members under money purchase arrangements where the aim is to equalise or make more nearly equal the amount of age related benefit to members of different ages, who are otherwise in a comparable situation.

H) To apply different rates of member or employer contributions according to the age of the members under defined benefits arrangements to the extent that each year of pensionable service entitles members in comparable situations to accrue benefits based on the same fraction of pensionable pay.

The aim in setting the different rates here would be to reflect the increasing cost of providing the defined benefits as the members get older.

It is also permissible to place a limit on employer contributions in respect of a member or member contributions to a defined benefit arrangement by reference to a maximum level of pensionable pay.

I) To close a scheme to new-joiners from a particular date however, closure of any section of a scheme to workers who have not joined the section is exempted.

J) Other miscellaneous rules, practices, actions and decisions

- Increasing pensions in payment for members over 55 but not for members under 55
- Setting different rates of increase of pensions in payment for members of different ages (or for members whose pensions have been in payment for different lengths of time) where the aim in setting the rates is to maintain the relative value of member's pensions

- Applying an age limit for transfers into or out of the scheme, provided that the age limit is not more than one year before the member's normal pension age.

K) Applying any rules necessary to secure any tax relief or exemption available under Part 4 of the Finance Act 2004 or to prevent any charge to tax arising, except in relation to setting a minimum age for entitlement to or payment of benefits.

Making a complaint

If you think that you have been discriminated against on the grounds of your age in relation to your pension scheme there are a number of options open to you:


- You can complain to the trustees of the pension scheme who have power under the Equality Act to amend the scheme by resolution, unilaterally if necessary, to ensure compliance with the provisions prohibiting age discrimination
- You can bring a complaint of age discrimination to an Employment Tribunal (please note that strict time limits apply)
- If you have not brought a claim in the Employment Tribunal, provided that you have exhausted the pensions schemes dispute resolution procedure, you can make a complaint to the Pensions Ombudsman.


You will find several factsheets relating to other aspects of age discrimination on our website www.rjw.co.uk.

Contact Us

Please feel free to discuss your own position and concerns. Contact your nearest Russell Jones & Walker office or call:

 **0800 916 9015**

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 **Our offices:**
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Prepared by Russell Jones & Walker Solicitors 2011.

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