

EQUALITY ACT 2010

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 5: Work

Chapter 2: Occupational pension schemes

Section 61: Non-discrimination rule

Effect

203. This section requires that every occupational pension scheme is to have a non-discrimination rule read into it. The rule prohibits “a responsible person” from discriminating against, harassing or victimising a member or a person who could become a member of the scheme.
204. A responsible person is a scheme trustee or manager, an employer, and the person responsible for appointing a person to a public office, where the office-holder can be a scheme member.
205. The rule does not apply to pension rights built up or benefits payable for periods of service before the commencement of this section. Periods of service prior to this date will be subject to the previous discrimination legislation.
206. Where there has been a breach of a non-discrimination rule, proceedings may be brought against the person responsible for the breach under Part 9 of the Act. The provisions in Part 9 do not prevent the investigation or determination of any matter in accordance with Part 10 of the Pension Schemes Act 1993 (investigations: the Pensions Ombudsman) by the Pensions Ombudsman as the Ombudsman’s investigations are not legal proceedings.
207. Pension credit members are not protected from discrimination because their rights are derived from an order of the court, rather than directly from employment.
208. It would not be a breach of a non-discrimination rule if an employer or the trustees or managers maintain certain practices or make decisions in relation to age that are specified by order by Ministers.
209. The non-discrimination rule does not apply where an equality rule operates or would operate, but for the exceptions in Part 2 of Schedule 7.

Background

210. Occupational pension schemes were already required by previous legislation to have non-discrimination rules in respect of age, disability, religion or belief and sexual orientation. This provision establishes non-discrimination rules in respect of race, gender reassignment, marriage and civil partnership, and sex.
211. Exceptions to the non-discrimination rule in relation to age were set out in Schedule 2 to the [Employment Equality \(Age\) Regulations 2006 \(SI 2006/1031\)](#).

Example

- A disabled person is refused membership of an occupational pension scheme because the trustees believe it is not in her best interest to join. This is because she has a short life expectancy and is unlikely to build up a reasonable pension. Although the trustees believe they are acting reasonably, they may be liable to challenge because they have breached the non-discrimination rule.

Section 62: Non-discrimination alterations

Effect

212. This section gives trustees and managers of an occupational pension scheme the power, by resolution, to alter their scheme's rules to conform to the non-discrimination rule in section 61.
213. They may use the power if:
- they lack powers to alter the rules for that purpose, or
 - procedures for altering the rules, including obtaining consent, are unduly complex or would take too long.

Background

214. This section is based on similar provisions which allowed trustees and managers to secure conformity with the non-discrimination rules in the Disability Discrimination Act 1995, the Employment Equality (Religion or Belief) Regulations 2003, the Employment Equality (Sexual Orientation) Regulations 2003 and the Employment Equality (Age) Regulations 2006.

Example

- Changes to the scheme rules of a large scheme require consultation with all the members before they may be made. This is impracticable, particularly as some deferred members cannot be traced. Scheme trustees may make the necessary alteration to scheme rules relying on this power.

Section 63: Communications

Effect

215. This section applies to sections 61, 120, 126 and paragraph 19 of Schedule 8, in their application to communications, to a disabled person who is:
- entitled to the present payment of dependants' or survivors' benefits under an occupational pension scheme, or
 - entitled to a pension derived from a divorce settlement (pension credit member).

Background

216. This section replaces provisions in the Disability Discrimination Act 1995.