

## SCHEDULE 2

Regulation 11(3)

### Pension schemes

#### Part 1

#### Pension schemes - general

##### Interpretation

1.—(1) In this Schedule, subject to sub-paragraphs (2) and (3), “occupational pension scheme” means an occupational pension scheme within the meaning of section 1(1) of the Pension Schemes Act 1993<sup>(1)</sup>.

(2) In relation to rules, practices, actions and decisions identified at paragraph 7(a), “occupational pension scheme” means an occupational pension scheme within the meaning of section 1(1) of the Pension Schemes Act 1993 under which only retirement-benefit activities within the meaning of section 255(4) of the Pensions Act 2004<sup>(2)</sup> are carried out.

(3) In relation to rules, practices, actions and decisions identified at paragraphs 12, 13 and 30, “occupational pension scheme” means an occupational pension scheme within the meaning of either section 1(1) of the Pension Schemes Act 1993 or section 150(5) of the Finance Act 2004<sup>(3)</sup>.

(4) In this Schedule, “scheme” means an occupational pension scheme, construed in accordance with sub-paragraphs (1) to (3).

(5) In this Schedule, in relation to a scheme—

“active member” has the meaning given by section 124(1) of the Pensions Act 1995<sup>(4)</sup>, but in paragraph 13 also includes an active member within the meaning of section 151(2) of the Finance Act 2004;

“age related benefit” means benefit provided from a scheme to a member—

- (a) on or following his retirement (including early retirement on grounds of ill health or otherwise),
- (b) on his reaching a particular age, or
- (c) on termination of his service in an employment;

“death benefit” means benefit payable from a pension scheme, in respect of a member, in consequence of his death;

“deferred member” has the meaning given by section 124(1) of the Pensions Act 1995;

“defined benefits arrangement” has the meaning given by section 152(6) of the Finance Act 2004<sup>(5)</sup>, but the reference in that section to an arrangement shall be read as referring to an arrangement in respect of a member under a scheme as defined in section 1(1) of the Pension Schemes Act 1993<sup>(6)</sup> rather than in respect of a member under a pension scheme as defined in section 150(1) of the Finance Act 2004;

“dependant” means dependant as defined in the scheme rules;

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(1) 1993 c. 48; relevant amendments have been made to section 1(1) by the Pensions Act 2004 (c. 35), section 239.

(2) 2004 c. 35.

(3) 2004 c. 12.

(4) 1995 c. 26.

(5) 2004 c. 12.

(6) 1993 c. 48; relevant amendments to section 1(1) have been made by the Pensions Act 2004 (c. 35), section 239.

*Status: This is the original version (as it was originally made).*

“early retirement pivot age” means an age specified in the scheme rules as the earliest age at which age related benefit becomes payable without actuarial reduction (disregarding any special provision as to early payment on grounds of ill health or otherwise);

“employer” has the meaning given by section 318(1) of the Pensions Act 2004(7);

“employer contribution” means any contribution to a scheme by an employer in respect of a member;

“employment” includes any trade, business, profession, office or vocation, whether or not a person is employed in it under a contract of employment or is self employed;

“late retirement pivot age” means an age specified in the scheme rules above which benefit becomes payable with actuarial enhancement;

“managers” has the meaning given by section 124(1) of the Pensions Act 1995(8);

“member” means any active member, deferred member or pensioner member, but in paragraph 12 includes any active, deferred or pensioner member within the meaning of section 151(2) to (4) of the Finance Act 2004;

“member contribution” means any contribution to a scheme by a member;

“money purchase arrangement” has the meaning given by section 152(2) of the Finance Act 2004, but the reference in that section to an arrangement shall be read as referring to an arrangement in respect of a member under a scheme as defined in section 1(1) of the Pension Schemes Act 1993 rather than in respect of a member under a pension scheme as defined in section 150(1) of the Finance Act 2004;

“non-discrimination rule” means the rule in paragraph 2(1);

“normal pension age” has the meaning given by section 180 of the Pension Schemes Act 1993;

“normal retirement age”, in relation to a member, means the age at which workers in the undertaking for which the member worked at the time of his retirement, and who held the same kind of position as the member held at his retirement, were normally required to retire;

“pensionable age” has the meaning given by section 122(1) of the Social Security Contributions and Benefits Act 1992(9);

“pensionable pay” means that part of a member’s pay which counts as pensionable pay under the scheme rules;

“pensionable service” has the meaning given by section 124(1) of the Pensions Act 1995(10);

“pensioner member” has the meaning given by section 124(1) of the Pensions Act 1995(11); and

“prospective member” means any person who, under the terms of his employment or the scheme rules or both—

- (a) is able, at his own option, to become a member of the scheme,
- (b) shall become so able if he continues in the same employment for a sufficient period of time,
- (c) shall be so admitted to it automatically unless he makes an election not to become a member, or

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(7) 2004 c. 35.

(8) 1995 c. 26.

(9) 1992 c. 4; relevant amendments have been made to section 122(1) by the Pensions Act 1995 (c. 26), section 126 and Schedule 4 paragraph 13(a).

(10) 1995 c. 26; relevant amendments have been made to section 124(1) by the Pensions Act 2004 (c. 35), section 320 and Schedule 13, Part 1.

(11) 1995 c. 26; relevant amendments have been made to section 124(1) by the Child Support, Pensions and Social Security Act 2000 (c. 19), section 56 and Schedule 5, Part 1, paragraph 8(3).

(d) may be admitted to it subject to the consent of any person.

(6) In their application to a scheme which is divided into two or more sections, the provisions of this Schedule shall apply as if each section of the scheme was a separate scheme.

(7) In this Schedule—

“personal pension scheme” has the meaning given by section 1(1) of the Pension Schemes Act 1993<sup>(12)</sup>;

“registered pension scheme” has the meaning given by section 150(2) of the Finance Act 2004<sup>(13)</sup>; and

references to contributions under a money purchase arrangement shall be construed as including amounts credited to a member’s account whether or not they reflect payments actually made under the scheme.

(8) Any term used in regulation 11 (pension schemes) shall have the same meaning in that regulation as it has in this Schedule.

### **Non-discrimination rule**

2.—(1) Every scheme shall be treated as including a provision (“the non-discrimination rule”) containing a requirement that the trustees or managers of the scheme refrain from doing any act which is unlawful by virtue of regulation 11.

(2) The other provisions of the scheme are to have effect subject to the non-discrimination rule.

(3) The trustees or managers of a scheme may—

(a) if they do not (apart from this sub-paragraph) have power to make such alterations to the scheme as may be required to secure conformity with the non-discrimination rule, or

(b) if they have such power but the procedure for doing so—

(i) is liable to be unduly complex or protracted, or

(ii) involves the obtaining of consents which cannot be obtained, or can only be obtained with undue delay or difficulty,

by resolution make such alterations to the scheme.

(4) Alterations made by a resolution such as is referred to in sub-paragraph (3)—

(a) may have effect in relation to a period before the alterations are made (but may not have effect in relation to any time before the coming into force of these Regulations), and

(b) shall be subject to the consent of any employer in relation to the scheme whose consent would be required for such a modification if it were to be made under the scheme rules.

### **Exception for rules, practices, actions and decisions relating to occupational pension schemes**

3. Nothing in Part 2 or 3 of these Regulations shall render it unlawful for an employer, or for trustees or managers, to maintain or use, in relation to a scheme, any of the rules, practices, actions or decisions set out in Part 2 of this Schedule.

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<sup>(12)</sup> 1993 c. 48; relevant amendments have been made to section 1(1) by the Pensions Act 2004 (c. 35), section 239.

<sup>(13)</sup> 2004 c. 12.

*Status: This is the original version (as it was originally made).*

### **Exception for rules, practices, actions and decisions relating to contributions by employers to personal pension schemes**

4. Nothing in Part 2 or 3 of these Regulations shall render it unlawful for an employer, in relation to the payment of contributions to any personal pension scheme in respect of a worker, to maintain or use any of the rules, practices, actions or decisions set out in Part 3 of this Schedule.

### **Procedure in employment tribunals**

5. Where under regulation 36 (jurisdiction of employment tribunals) a member or prospective member of a scheme presents to an employment tribunal a complaint that the trustees or managers of the scheme—

- (a) have committed against him an act which is unlawful by virtue of regulation 11 (pension schemes) or 24 (relationships which have come to an end); or
- (b) are by virtue of regulation 25 (liability of employers and principals) or 26 (aiding unlawful acts) to be treated as having committed against him such an act,

the employer in relation to the scheme shall, for the purposes of the rules governing procedure, be treated as a party and be entitled to appear and be heard in accordance with those rules.

### **Remedies in employment tribunals**

6.—(1) This paragraph applies where—

- (a) under regulation 36 (jurisdiction of employment tribunals) a member or prospective member of a scheme (“the complainant”) presents to an employment tribunal a complaint against the trustees or managers of the scheme or an employer;
- (b) the complainant is not a pensioner member of the scheme;
- (c) the complaint relates to the terms on which persons become members of the scheme, or the terms on which members of the scheme are treated; and
- (d) the tribunal finds the complaint to be well-founded.

(2) Where this paragraph applies, the employment tribunal may, without prejudice to the generality of its power under regulation 38(1)(a) (power to make order declaring rights of complainant and respondent), make an order declaring that the complainant has a right—

- (a) where the complaint relates to the terms on which persons become members of the scheme, to be admitted to the scheme;
- (b) where the complaint relates to the terms on which members of the scheme are treated, to membership of the scheme without discrimination.

(3) An order under sub-paragraph (2)—

- (a) may be made in respect of such period as is specified in the order (but may not be made in respect of any time before the coming into force of these Regulations);
- (b) may make such provision as the employment tribunal considers appropriate as to the terms on which, or the capacity in which, the complainant is to enjoy such admission or membership.

(4) Where this paragraph applies, the employment tribunal may not make an order for compensation under regulation 38(1)(b), whether in relation to arrears of benefits or otherwise, except—

- (a) for injury to feelings;
- (b) by virtue of regulation 38(3).

## Part 2

### Excepted rules, practices, actions and decisions relating to occupational pension schemes

#### **Admission to schemes**

7. In relation to admission to a scheme—
- (a) a minimum or maximum age for admission, including different ages for admission for different groups or categories of worker;
  - (b) a minimum level of pensionable pay for admission, provided that such a minimum is not above the lower earnings limit referred to in section 5(1) of the Social Security Contributions and Benefits Act 1992<sup>(14)</sup>.

#### **The use of age criteria in actuarial calculations**

8. The use of age criteria in actuarial calculations, for example in the actuarial calculation of—
- (a) any age related benefit commencing before any early retirement pivot age or enhancement of such benefit commencing after any late retirement pivot age;
  - (b) member or employer contributions to a scheme; or
  - (c) any age related benefit commuted in exchange for the payment of any lump sum.

#### **Contributions**

9. Any difference in the rate of member or employer contributions by or in respect of different members to the extent that this is attributable to any differences in the pensionable pay of those members.

#### **Contributions under money purchase arrangements**

10. Under a money purchase arrangement—
- (a) different rates of member or employer contributions according to the age of the members by or in respect of whom contributions are made where the aim in setting the different rates is—
    - (i) to equalise the amount of benefit to which members of different ages who are otherwise in a comparable situation will become entitled under the arrangement, or
    - (ii) to make the amount of benefit to which such members will become entitled under the arrangement more nearly equal;
  - (b) equal rates of member or employer contributions irrespective of the age of the members by or in respect of whom contributions are made.

#### **Contributions under defined benefits arrangements**

11. Under a defined benefits arrangement, different rates of member or employer contributions according to the age of the members by or in respect of whom contributions are made, to the extent that—

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<sup>(14)</sup> 1992 c. 4; relevant amendments have been made to section 5(1) by the Welfare Reform and Pensions Act 1999 (c. 30), section 73, Schedule 9, Part 1, paragraph 1.

*Status: This is the original version (as it was originally made).*

- (a) each year of pensionable service entitles members in a comparable situation to accrue a right to defined benefits based on the same fraction of pensionable pay, and
- (b) the aim in setting the different rates is to reflect the increasing cost of providing the defined benefits in respect of members as they get older.

#### **Age related rules, practices, actions and decisions relating to benefit**

**12.** A minimum age for entitlement to or payment of any age related benefit to a member, provided that, in the case of any age related benefit paid under a defined benefits arrangement before any early retirement pivot age—

- (a) such benefit is subject to actuarial reduction for early receipt, and
- (b) the member is not credited with additional periods of pensionable service.

**13.** In relation to workers who are active or prospective members of a scheme on the date on which these Regulations come into force, a minimum age for entitlement to or payment of any age related benefit to such members under defined benefit arrangements before any early retirement pivot age, where such benefit is calculated in one or both of the following ways—

- (a) it is not made subject to actuarial reduction for early receipt;
- (b) it results from crediting the member with additional periods of pensionable service.

**14.** An early retirement pivot age or a late retirement pivot age, including different such ages for different groups or categories of member.

**15.** The enhancement of any age related benefit in the event of a member's retirement before any early retirement pivot age on ill health grounds, where that enhancement is calculated by reference to the years of pensionable service which that member would have completed if he had continued in pensionable service up to the age specified for that purpose in the scheme rules.

**16.** Any rule, practice, action or decision whereby a male member who reaches pensionable age is not entitled or is no longer entitled to any additional amount of pension which would have been payable to such a member before pensionable age in the circumstances prescribed for the purposes of section 64(2) of the Pensions Act 1995<sup>(15)</sup> by regulation 13 of the Occupational Pension Schemes (Equal Treatment) Regulations 1995<sup>(16)</sup>.

**17.** The reduction of any pension payable in consequence of a member's death to any dependant of the member where that dependant is more than a specified number of years younger than the member.

**18.** In relation to pensioner members who have retired on ill health grounds before any early retirement pivot age, discontinuation of any life assurance cover once any such members reach the normal retirement age which applied to them at the time they retired, or in relation to members to whom no such normal retirement age applied, once such members reach the age of 65.

#### **Other rules, practices, actions and decisions relating to benefit**

**19.** Any difference in the amount of any age related benefit or death benefit payable under a defined benefits arrangement to or in respect of members with different lengths of pensionable service to the extent that the difference in amount is attributable to their differing lengths of service, provided that, for each year of pensionable service, members in a comparable situation are entitled to accrue a right to benefit based upon the same fraction of pensionable pay.

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(15) 1995 c. 26.

(16) S.I.1995/3183.

**20.** Any difference in the amount of any age related benefit or death benefit payable from a scheme to or in respect of different members to the extent that the difference in amount is attributable to differences over time in the pensionable pay of those members.

**21.** Any limitation of the amount of any age related benefit or death benefit payable from a scheme where the limitation results from imposing a maximum number of years of service by reference to which such benefit may be calculated.

**22.** Any rule, practice, action or decision whereby any age related benefit or death benefit is only payable to or in respect of members who have completed a minimum period of service, provided that such a minimum period is not longer than 2 years qualifying service within the meaning of section 71(7) of the Pension Schemes Act 1993**(17)**.

**23.** Any limitation on the amount of any age related benefit or death benefit payable from a scheme where the limitation results from imposing a minimum level of pensionable pay by reference to which any such benefit may be calculated, provided that such a minimum is not above the lower earnings limit referred to in section 5(1) of the Social Security Contributions and Benefits Act 1992**(18)**.

**24.** Any limitation on the amount of any age related benefit or death benefit payable from a scheme where the limitation results from imposing a maximum level of pensionable pay by reference to which such benefit may be calculated.

#### **Closure of schemes**

**25.** The closure of a scheme, from a particular date, to workers who have not already joined it.

#### **Other rules, practices, actions and decisions**

**26.** Increases of pensions in payment which are made to members over 55 but not to members below that age.

**27.** Any difference in the rate of increase of pensions in payment for members of different ages to the extent that the aim in setting the different rates is to maintain the relative value of members' pensions.

**28.** Any difference in the rate of increase of pensions in payment for members whose pensions have been in payment for different lengths of time to the extent that the aim in setting the different rates is to maintain the relative value of members' pensions.

**29.** The application of an age limit for transfer of the value of a member's accrued rights into or out of a scheme, provided that any such age limit is not more than one year before the member's normal pension age.

#### **Registered pension schemes**

**30.**—(1) Subject to sub-paragraph (2), any rules, practices, actions or decisions relating to entitlement to or payment of benefits under a registered pension scheme insofar as compliance is necessary to secure any tax relief or exemption available under Part 4 of the Finance Act 2004**(19)** or to prevent any charge to tax arising under that Part of that Act, whoever is liable in relation to such charge.

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**(17)** 1993 c. 48.

**(18)** 1992 c. 4; relevant amendments have been made by the Welfare Reform and Pensions Act 1999, c. 30, section 73 and Schedule 9, Part 1, paragraph 1.

**(19)** 2004 c. 12.

**Status:** This is the original version (as it was originally made).

(2) Sub-paragraph (1) does not apply to any rules, practices, actions or decisions setting a minimum age for entitlement to or payment of any age related benefit.

### Part 3

#### Excepted rules, practices, actions and decisions relating to contributions by employers to personal pension schemes

##### **Contributions by employers**

**31.** Different rates of contributions by an employer according to the age of the workers in respect of whom the contributions are made where the aim in setting the different rates is—

- (a) to equalise the amount of benefit to which workers of different ages who are otherwise in a comparable situation will become entitled under their personal pension schemes, or
- (b) to make the amount of benefit to which such workers will become entitled under their personal pension schemes more nearly equal.

**32.** Any difference in the rate of contributions by an employer in respect of different workers to the extent that this is attributable to any differences in remuneration payable to those workers.