



## EQUALITY ACT 2017 (AGE EXCEPTIONS FOR PENSION SCHEMES) ORDER 2019

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Statutory Document No. 20XX/XXXX



*Equality Act 2017*

## EQUALITY ACT 2017 (AGE EXCEPTIONS FOR PENSION SCHEMES) ORDER 2019

*Approved by Tynwald:*

*Coming into Operation:*

*1 January 2020*

The Treasury makes the following Order under section 53(8) of, and paragraph 13 of Schedule 9 to, the Equality Act 2017.

### 1 Title

This Order is the Equality Act 2017 (Age Exceptions for Pension Schemes) Order 2019.

### 2 Commencement

If approved by Tynwald, this Order comes into operation on 1 January 2020<sup>1</sup>.

### 3 Interpretation

(1) In this Order, “**occupational pension scheme**” means an occupational pension scheme within the meaning of section 1 of the Pension Schemes Act 1993<sup>2</sup>.

(2) In this Order, “**schemes**” means an occupational pension scheme.

(3) In this Order, in relation to a scheme —

“**abolition date**” means the day appointed for the commencement of section 15(1) of the Pensions Act 2007<sup>3</sup>;

“**active member**” has the meaning given by section 124 of the Pensions Act 1995<sup>4</sup>;

<sup>1</sup> Under section 168(1) of the Equality Act 2017 section 30 of the Legislation Act 2015 (Tynwald procedure — approval required) applies to these Regulations.

<sup>2</sup> 1993 c.48 (see SD 531/95).

<sup>3</sup> 2007 c.22 (see SD 193/09).

<sup>4</sup> 1995 c.26 (see SD 501/97).

**“additional state retirement pension”** means the additional pension in the Category A retirement pension within the meaning of sections 44 and 45 of the Social Security Contributions and Benefits Act 1992<sup>5</sup>;

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

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

**“basic state retirement pension”** means the basic pension in the Category A retirement pension within the meaning of section 44 of the Social Security Contributions and Benefits Act 1992;

**“block transfer”** means a transfer in a single transaction or series of transactions from a scheme of all the sums or 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 employment”** has the meaning given in section 8(1) and (1A) of the Pension Schemes Act 1993;

**“contracted-out rights”** are such rights, under or derived from an occupational pension scheme as fall within the following categories—

- (a) entitlement to payment of, or accrued rights to, guaranteed minimum pensions; or
- (b) section 9(2B) rights;

**“death benefit”** means benefit payable from a scheme in respect of a member, in consequence of that member’s death;

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<sup>5</sup> 1992 c.4 (see SD 505/94). Section 44 was amended by paragraph 2 of Schedule 4 to the Social Security (Consequential Provisions) Act 1992 (c.6) (see SD 501/97), section 128 of the Pensions Act 1995 (see SD 501/97), section 68 of the Social Security Act 1998 (c.14) (see SD 92/00), sections 30 and 35 of the Child Support, Pensions and Social Security Act 2000 (c.19) (see SD 378/01), Schedule 1 to the National Insurance Contributions Act 2002 (c.19) (see SD 802/09), section 12 of, and paragraphs 1(1), (2) and (3) of Schedule 1 and paragraphs 5(1) and (2) of Schedule 2 to, the Pensions Act 2007 (c.22) (see SD 193/09), SD 2017/0358 and SD 2018/0027. Section 45 was amended by sections 31 and 35 of the Child Support, Pensions and Social Security Act 2000 (see SD 378/01), section 11 of the Pensions Act 2007 (see SD 193/09) and section 102 of the Pensions Act 2008 (c.30) (see SD 851/09) and SD 2017/0331.

- “dependant”** means a widow, widower or surviving civil partner, or a dependant as defined in the scheme rules;
- “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 —
- (a) without consent (whether of an employer, trustee 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;
- “guaranteed minimum pension”** has the meaning given in section 8(2) of the Pension Schemes Act 1993<sup>6</sup>;
- “late retirement pivot age”** means an age specified in the scheme rules (or otherwise determined) above which benefit becomes payable with actuarial enhancement;
- “lower earnings limit”** means the amount specified for the tax year in question in regulations made under section 5(1)(a)(i) of the Social Security Contributions and Benefits Act 1992<sup>7</sup> (earnings limits and thresholds for Class 1 contributions);
- “non-discrimination rule”** means the rule in section 53 of the Equality Act 2017 as it applies to the protected characteristic of age under that Act;
- “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 the member’s retirement, and who held the same kind of position as the member held at retirement, were normally required to retire;
- “pensionable pay”** means that part of a member’s pay which counts as pensionable pay under the scheme rules;
- “prospective member”** means any person who, under the terms of the person’s employment, or the scheme rules, or both —
- (a) is able, at the person’s option, to become a member of the scheme,
  - (b) shall become so able if the person continues in the same employment for a sufficient period of time,

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<sup>6</sup> The definition of “guaranteed minimum pension” was amended by paragraph 1 of Schedule 1 to S.I. 2005/2050 (see SD 744/05).

<sup>7</sup> Section 5 was substituted by paragraph 1 of Schedule 9 to the Welfare Reform and Pensions Act 1999 (c.30) (see SD 600/00) and amended by sections 7 and 27 of, and Schedule 7 to, the Pensions Act 2007 (see SD 193/09), SD 0009/13 and SD 155/10.

- (c) shall be so admitted to it automatically unless the person makes an election not to become a member, or
- (d) may be admitted to it subject to the consent of any person;

**“protected rights”** has the meaning given in section 10 of the Pension Schemes Act 1993<sup>8</sup> as it had effect immediately prior to the abolition date;

**“redundancy”** means being dismissed by reason of redundancy for the purposes of the Redundancy Payments Act 1990 (see section 1(2) of that Act);

**“section 9(2B) rights”** are —

- (a) rights to the payment of pensions and accrued rights to pension (other than rights attributable to voluntary contributions) under a scheme contracted-out by virtue of section 9(2B) of the Pension Schemes Act 1993<sup>9</sup>, so far as attributable to an earner’s service in contracted-out employment on or after 6th April 1997; and
- (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 sub-paragraph (a) under another scheme contracted-out by virtue of section 9(2B) of that 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 where the transfer took place before the abolition date;

**“upper earnings limit”** means the amount specified for the tax year in question in regulations made under section 5(1)(a)(iii) of the Social Security Contributions and Benefits Act 1992 (earnings limits and thresholds for Class 1 contributions).

(4) In this Order, **“tax-approved scheme”** means —

- (a) a retirement benefits scheme (within the meaning given in section 13 of the Income Tax (Retirement Benefit Schemes) Act 1978) which is approved by the Assessor of Income Tax for the purposes of that Act; or
- (b) an occupational pension scheme which is approved by the Assessor of Income Tax for the purposes of section 50C or 61H of the Income Tax Act 1970.

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<sup>8</sup> Section 10 was amended by section 151 of the Pensions Act 1995 (see SD 501/97), section 32 of the Welfare Reform Act 1999 (see SD 291/01), section 15 of, and Schedule 4 to, the Pensions Act 2007 (see SD 193/09), and section 106 of the Pensions Act 2008 (see SD 851/09).

<sup>9</sup> Section 9(2B) was inserted by section 136 of the Pensions Act 1995 (see SD 501/97).

- (5) In this Order 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.
- (6) Reference in this Order to any provision of legislation applied to the Island by an order under section 1 of the Social Security Act 2000 or section 1 of the Pension Schemes Act 1995 is to be construed as a reference to that legislation as it has effect in the Island.

#### 4 Meaning of “arrangement”, “defined benefits arrangement” and “money purchase arrangement”

- (1) In this Order “**arrangement**”, in relation to a member of a scheme, means an arrangement relating to the member under the scheme.
- (2) For the purposes of this Order an arrangement is a “**defined benefits arrangement**” at any time if, at that time, all the benefits that may be provided to or in respect of the member under the arrangement are defined benefits.
- (3) For the purposes of paragraph (2) “**defined benefits**”, in relation to a member of a scheme, means benefits which are not money purchase benefits (but which are calculated by reference to earnings or service of the member or any other factor other than an amount available for their provision).
- (4) For the purposes of this Order an arrangement is a “**money purchase arrangement**” at any time if, at that time, all the benefits that may be provided to or in respect of the member under the arrangement are —
  - (a) cash balance benefits; or
  - (b) other money purchase benefits.
- (5) In paragraph (4) —

“**cash balance benefits**” means benefits the rate or amount of which is calculated by reference to an amount available for the provision of benefits to or in respect of the member calculated otherwise than wholly by reference to payments made under the arrangement by the member or by any other person in respect of the member (or transfers or other credits); and

“**money purchase benefits**”, in relation to a member of a scheme, means benefits the rate or amount of which is calculated by reference to an amount available for the provision of benefits to or in respect of the member (whether the amount so available is calculated by reference to payments made under the scheme by the member or any other person in respect of the member or any other factor).

## **5 Meaning of “member”**

- (1) Subject to paragraph (2), in this Order **“member”** means any active member, deferred member, or pensioner member.
- (2) In paragraph 7 of Schedule 1 **“member”** includes any active, deferred or pensioner member within the meaning given in paragraph (3).
- (3) For the purposes of paragraph (2) –
  - (a) a person is an active member of a scheme if there are presently arrangements made under the scheme for the accrual of benefits to or in respect of the person;
  - (b) a person is a deferred member of a scheme if the person has accrued rights under the scheme and is neither an active member nor a pensioner member; and
  - (c) a person is a pensioner member of a scheme if the person is entitled to the present payment of benefits under the scheme and is not an active member.

## **6 Occupational pension schemes: excepted rules, practices, actions and decisions**

It is not a breach of the non-discrimination rule for the employer, or the trustees or managers of a scheme, to maintain or use in relation to the scheme –

- (a) those rules, practices, actions or decisions set out in Schedule 1 (occupational pension schemes: excepted rules, practices, actions and decisions); 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 1 January 2020 that would breach the non-discrimination rule but for this paragraph.

## **7 Contributions by employers to personal pension schemes: excepted practices, actions and decisions**

It is not an age contravention for the employer, in relation to the payment of contributions to any personal pension scheme in respect of a worker, to maintain or use those practices, actions or decisions set out in Schedule 2 (contributions by employers to personal pension schemes: excepted practices, actions or decisions).

## **8 Unlawfulness of rules, practices, actions or decisions**

- (1) The inclusion of a rule, practice, action or decision in Schedule 1 (occupational pension schemes: excepted rules, practices, actions and decisions) shall not be taken to mean that, but for the exemption in Schedule 1, the use or maintenance by an employer or the trustees or



managers of a scheme of the rule, practice, action or decision in relation to the scheme, would be unlawful.

- (2) The inclusion of a practice, action or decision in Schedule 2 (contributions by employers to personal pension schemes: excepted practices, actions or decisions) shall not be taken to mean that, but for the exemption in Schedule 2, the use or maintenance by an employer of the practice, action or decision in relation to the payment of contributions to a personal pension scheme in respect of a worker, would be unlawful.

## **9 Length of service exceptions**

- (1) Paragraph (2) is subject to paragraph (3).
- (2) In addition to the excepted rules, practices, actions and 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 D's 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 D's undertaking (for example by encouraging the loyalty or motivation, or rewarding the experience, of some or all of D's 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 7 of Schedule 9 to the Equality Act 2017 (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".

**MADE**

*Minister for the Treasury*



## **SCHEDULE 1**

[Article 6]

### **OCCUPATIONAL PENSION SCHEMES: EXCEPTED RULES, PRACTICES, ACTIONS AND DECISIONS**

#### **Admission to schemes**

- 1 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 where that minimum—
    - (i) does not exceed one and a half times the lower earnings limit;
    - (ii) does not exceed an amount calculated by reference to the lower earnings limit where the aim is more or less to reflect the amount of the basic state retirement pension;
    - (iii) does not exceed an amount calculated more or less to reflect the amount of the basic state retirement pension plus the additional state retirement pension; or
    - (iv) does not exceed an amount calculated more or less to reflect the amount of the Manx state pension under Part 1 of the Pensions Act 2014.

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

- 2 The use of age criteria in actuarial calculations in a scheme, 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 by or in respect of a member to a scheme; or
  - (c) any age related benefit commuted in exchange for the payment of any lump sum.

#### **Contributions**

- 3 Any difference in the rate of member or employer contributions, to a scheme, by or in respect of different members to the extent that this is attributable to any

differences in the pensionable pay or, where paragraph 18 applies, different accrual rates of those members.

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

#### **4 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 age related benefit in respect of comparable aggregate periods of pensionable service to which members of different ages who are otherwise in a comparable situation will become entitled under the arrangement, or
  - (ii) to make more nearly equal the amount of the age related benefit, in respect of comparable aggregate periods of pensionable service, to which members of different ages who are otherwise in a comparable situation will become entitled under the arrangement;
- (b) equal rates of member or employer contributions irrespective of the age of the members by or in respect of whom contributions are made;
- (c) any limitation on any employer contributions in respect of a member or member contributions by reference to a maximum level of pensionable pay.

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

#### **5 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—**

- (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.

- 6 Any limitation 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.

**Rules, practices, actions and decisions relating to benefit**

7

- (1) Subject to sub-paragraph (4), a minimum age for any member of a scheme to be entitled to a particular age related benefit that is paid in accordance with sub-paragraph (2) and is paid —
  - (a) either with or without consent (whether of an employer, the trustees or managers of the scheme or otherwise), and
  - (b) before the early retirement pivot age relevant to that age related benefit.
- (2) The age related benefit must —
  - (a) be actuarially reduced on the basis that the aim is to reflect that it is paid on a date before the applicable early retirement pivot age; and
  - (b) not be enhanced by crediting the member with any additional periods of pensionable service or additional benefits.
- (3) Sub-paragraph (1) shall also apply to different minimum ages for different groups or categories of members.
- (4) Sub-paragraph (1) shall not apply to any member who retires on the grounds to which paragraph 8, 9 or 12 apply.

8

- (1) A minimum age for any active or prospective members of a scheme for payment of or entitlement to a particular age related benefit before the early retirement pivot age relevant to that age related benefit where —
  - (a) the entitlement to the age related benefit at a minimum age applies to a member who is an active or prospective member of the scheme on 1 January 2020;
  - (b) the age related benefit may be paid, at a minimum age, to the active or prospective member either with or without consent (whether of an employer, the trustees or managers of the scheme or otherwise); and
  - (c) the age related benefit is enhanced in one or more of the ways specified in sub-paragraph (2).
- (2) For the purposes of sub-paragraph (1)(c) the specified ways are the enhancement of any age related benefit payable to or in respect of the member calculated in one or more of the following ways —

- (a) by reference to some or all of the years of prospective pensionable service a member would have completed if that member had remained in pensionable service until normal pension age;
  - (b) by reference to a fixed number of years of prospective pensionable service;
  - (c) by making an actuarial reduction which is smaller than if early retirement had been on grounds to which paragraph 7 applies; or
  - (d) by not making any actuarial reduction for early retirement.
- (3) Sub-paragraph (1) shall also apply to different minimum ages for different groups or categories of active or prospective members.

9 Paragraph 8 shall continue to apply to any member who after 1 January 2020—

- (a) joins a scheme as a result of a block transfer;
- (b) joins a scheme as a result of a block transfer from a scheme to which sub-paragraph (a) applied; or
- (c) joins a scheme on the basis that it will provide the same benefits as those provided by the scheme to which paragraph 8 applied.

10

- (1) A minimum age for any member of a scheme for payment of or entitlement to a particular age related benefit on the grounds of redundancy where it is enhanced in accordance with sub-paragraph (2) and paid either with or without consent (whether of an employer, the trustees or managers of the scheme or otherwise).
- (2) The enhancement of any age related benefit payable to or in respect of a member on the grounds of redundancy where the enhancement is calculated in one or more of the following ways—
  - (a) by reference to the years of prospective pensionable service a member would have completed if that member had remained in pensionable service until normal pension age;
  - (b) by reference to a fixed number of years of prospective pensionable service;
  - (c) by making an actuarial reduction which is smaller than if early retirement had been on grounds to which paragraph 7 applies; or
  - (d) by not making any actuarial reduction for early retirement.
- (3) Sub-paragraph (1) shall also apply to different minimum ages for different groups or categories of members.

11 An early retirement pivot age or a late retirement pivot age including—

- (a) different such ages for different groups or categories of member, and



- (b) any early retirement pivot age or late retirement pivot age for deferred members which is different than for active members.

12

- (1) A minimum age for any member of a scheme for payment of or entitlement to a particular age related benefit on the grounds of ill health where the age related benefit is enhanced in accordance with sub-paragraph (2) and paid either with or without consent (whether of an employer, the trustees or managers of the scheme or otherwise).
- (2) The enhancement of any age related benefit payable to or in respect of a member on the grounds of ill health where the enhancement is calculated in one or more of the following ways —
  - (a) by reference to some or all of the years of prospective pensionable service a member would have completed if he or she had remained in pensionable service until normal pension age;
  - (b) by reference to a fixed number of years of prospective pensionable service;
  - (c) by making an actuarial reduction which is smaller than if early retirement had been on the grounds to which paragraph 7 applies; or
  - (d) by not making any actuarial reduction for early retirement.
- (3) Sub-paragraph (1) shall also apply to different minimum ages for different groups or categories of members.

13

- (1) The calculation of any death benefit payable in respect of a member —
  - (a) by reference to some or all of the years of prospective pensionable service a member would have completed if that member had remained in service until normal pension age; or
  - (b) by reference to a fixed number of years of prospective pensionable service.
- (2) Payment after a member's death of a death benefit calculated by reference to the period remaining in a pension guarantee period.
- (3) For the purposes of sub-paragraph (2), a pension guarantee period means a fixed period specified in or permitted by the scheme rules beginning on —
  - (a) the date on which the payment of pension to or in respect of the member began, or
  - (b) if specified in the scheme rules, the date of the member's death on or after normal pension age where payment of pension to or in respect of that member had not begun.

- (4) Any difference between the death benefits payable in respect of deferred members who die before normal pension age and the death benefits payable in respect of deferred members who die on or after normal pension age.

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- (1) Any rule, practice, action or decision where —
- (a) the rate of pension to which a pensioner member is entitled is reduced at any time between age 60 and that member's state pension age ("the reduction date"), by either —
    - (i) an amount not exceeding the relevant state retirement pension rate at the reduction date, or
    - (ii) the rate of the pension in payment where on the reduction date the relevant state retirement pension rate is greater than the rate of that pension;
  - (b) from the date a member is entitled to present payment of a pension from a scheme that member is entitled to an additional amount of pension which does not exceed the amount of the basic state retirement pension plus the additional state retirement pension or the Manx state pension under Part 1 of the Pensions Act 2014 that would be payable at state pension age; or
  - (c) a member who reaches his or her state pension age is not entitled to, or no longer entitled to, an additional amount of pension which does not exceed the amount of the basic state retirement pension plus the additional state retirement pension or the Manx state pension under Part 1 of the Pensions Act 2014 that would be payable at state pension age.
- (2) For the purposes of sub-paragraph (1) "**relevant state retirement pension rate**" at any time means —
- (a) in relation to a member who reached state pension age before 6 April 2019 —
    - (i) where no employment of the member to which the scheme relates is or has been other than contracted-out employment by reference to the scheme, 125% of the rate of the basic state retirement pension at that time,
    - (ii) where no such employment of the member is or has been contracted-out employment by reference to the scheme, 250% of the rate of the basic state retirement pension at that time, and
    - (iii) otherwise, the percentage of the rate of the basic state retirement pension that is found by the formula set out below —

$$125 + (125^{A/B})$$

- (b) in relation to a member who reached state pension age on or after 6 April 2019, 200% of the full rate of the Manx state pension at that time; and
  - (3) In the formula in sub-paragraph (2)(a)(iii)—
    - (a) A is the total number of years of a member's employment to which the scheme relates which is not or has not been contracted-out; and
    - (b) B is the total number of years of a member's employment to which the scheme relates.
  - (4) For the purposes of sub-paragraph (2)(b) **“the full rate of the Manx state pension”** has the meaning given in section 3(1) of the Pensions Act 2014<sup>10</sup>.
  - (5) For the purposes of this paragraph **“state pension age”** means the pensionable age specified in the rules in paragraph 1 of Schedule 4 to the Pensions Act 1995.
- 15 The actuarial reduction of any pension payable from a scheme 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.
- 16 In relation to pensioner members who have retired from a scheme on ill health grounds, 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

- 17 Any difference in the amount of any age related benefit or death benefit payable under a scheme 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.
- 18
- (1) Any differences in—
    - (a) the fraction of pensionable pay at which any age related benefit accrues, or

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<sup>10</sup> 2014 c.19 (see SD 2018/0076).

- (b) the amount of death benefit,  
to or in respect of active or prospective members of a scheme where the differences are attributable to the aim specified in sub-paragraph (2).
  - (2) The aim referred to in sub-paragraph (1) is that members in a comparable situation will have the right to age related benefit or death benefit equal to the same fraction, proportion or multiple of pensionable pay—
    - (a) without regard to each member's length of pensionable service under the scheme, and
    - (b) provided that each member continues in pensionable service under the scheme until normal pension age.
  - (3) Any differences in age related benefits which accrue, or entitlement to any death benefits which arises, to or in respect of active or prospective members of a scheme who are in a comparable situation where—
    - (a) those differences are attributable to the aim specified in sub-paragraph (2), and
    - (b) the member's pensionable service under the arrangement ceases before normal pension age.
  - (4) Where sub-paragraph (1) applies, any limitation on the amount of any age related benefit or death benefit payable from a scheme where the limitation arises from imposing one or both of the following—
    - (a) a maximum amount on the age related benefit or death benefit which is equal to a fraction, proportion or multiple of the member's pensionable pay, or
    - (b) a minimum period of pensionable service.
- 19 Where paragraph 18 applies, different rates of member or employer contributions according to the age of the members by, or in respect of whom, contributions are made, where for each year of pensionable service members in comparable situations accrue different fractions of pensionable pay.
- 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
- (1) Any limitation on the amount of any age related benefit or death benefit payable from a scheme where either or both sub-paragraphs (2) and (3) apply.

- (2) The limitation results from imposing a maximum number of years of pensionable service by reference to which the age related benefit or death benefit may be calculated.
  - (3) The limitation arises from imposing a maximum amount on the age related benefit or death benefit which is equal to a fraction, proportion or multiple of a member's pensionable pay.
- 22 Any rule, practice, action or decision where any age related benefit or death benefit is only payable from a scheme where a member is entitled to short service benefit under section 71 of the Pension Schemes Act 1993<sup>11</sup> (basic principles as to short service benefit).
- 23 When determining a member's pensionable pay by reference to which any age related benefit or death benefit payable to or in respect of a member is calculated, to exclude from the member's remuneration an amount which—
  - (a) does not exceed one and a half times the lower earnings limit;
  - (b) does not exceed an amount calculated by reference to the lower earnings limit where the aim is more or less to reflect the amount of the basic state retirement pension;
  - (c) does not exceed an amount calculated more or less to reflect the amount of the basic state retirement pension plus the additional state retirement pension; or
  - (d) does not exceed an amount calculated more or less to reflect the amount of the Manx state pension under Part 1 of the Pensions Act 2014.
- 24 Any difference in the amount of age related benefit or death benefit payable under a scheme to or in respect of members where the difference is attributable to accrual of age related benefit at a higher fraction of pensionable pay for pensionable pay over the upper earnings limit (and a lower fraction of pensionable pay for pensionable pay under the upper earnings limit) where the aim is to reflect the additional state retirement pension.
- 25 Any limitation on the amount of any age related benefit or death benefit payable from a scheme where the limitation—
  - (a) relates to—
    - (i) all members who joined or who became eligible to join the scheme on, after or before a particular date; or
    - (ii) any group or category of members who joined or who became eligible to join the scheme on, after or before a particular date; and

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<sup>11</sup> Section 71 was amended by S.I.2005/275.

- (b) results from imposing a maximum level of pensionable pay by reference to which the age related benefit or death benefit may be calculated.

### **Closure of schemes**

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

### **Closure of sections of schemes**

27

- (1) The closure of any section of a scheme, from a particular date, to workers who have not already joined it.
- (2) For the purposes of sub-paragraph (1)—
  - (a) a scheme may be divided into two or more sections, and
  - (b) a section of a scheme shall mean any of the groups in sub-paragraph (3).
- (3) A section of a scheme shall mean any of the following—
  - (a) any group of members who became eligible to join, or who joined, the scheme on, after or before a particular date on the basis that particular benefits will be provided to or in respect of those members or that a particular level of contributions will be paid in respect of those members; or
  - (b) any group of members who became eligible to join, or who joined, the scheme as a result of a block transfer.

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

- 28 Increases of pensions in payment which are made to members over 55 but not to members below that age.
- 29 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 or more nearly maintain the relative value of members' pensions.
- 30 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 or more nearly maintain the relative value of members' pensions.
- 31 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.

### **Tax-approved schemes**

- 32 Any rules, practices, actions or decisions relating to entitlement to or payment of benefits under a scheme which is a tax-approved scheme insofar as compliance is necessary —
- (a) to secure any tax relief or exemption available under —
    - (i) the Income Tax (Retirement Benefit Schemes) Act 1978; or
    - (ii) section 50C or 61H of the Income Tax Act 1970; or
  - (b) to prevent any charge to tax arising under any of the provisions referred to in sub-paragraph (a),
- whoever is liable in relation to such charge.

**SCHEDULE 2**

[Article 7]

**CONTRIBUTIONS BY EMPLOYERS TO PERSONAL PENSION SCHEMES:  
EXCEPTED PRACTICES, ACTIONS OR DECISIONS****Contributions by employers**

- 1 Different rates of contributions by an employer to a personal pension scheme 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 age related benefit, derived from contributions made each year by the employer, 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 more nearly equal the amount of the age related benefit, derived from contributions made each year by the employer, to which workers of different ages who are otherwise in a comparable situation will become entitled under their personal pension schemes.
- 2 Any difference in the rate of contributions by an employer to a personal pension scheme in respect of different workers to the extent that this is attributable to any differences in remuneration payable to those workers.
- 3 Any limitation on any contributions by an employer, to a personal pension scheme, by reference to a maximum level of remuneration.
- 4 A minimum age for commencement of payment of contributions by an employer to a personal pension scheme in respect of a worker.
- 5 Different minimum ages for commencement of payment of contributions by an employer to a personal pension scheme in respect of different groups or categories of workers.
- 6 Equal rates of contributions by an employer to a personal pension scheme irrespective of the age of the workers in respect of whom contributions are made.



*EXPLANATORY NOTE*

*(This note is not part of the Order)*

This Order contains permitted exceptions for occupational pension schemes to the non-discrimination rule contained in section 53 of Part 5 of the Equality Act 2017 (“the Equality Act”) (work) as it applies to age.

This Order also contains permitted exceptions – relating to employer contributions to personal pension schemes – to the other non-discrimination provisions of Part 5 of the Equality Act as they apply to age.

Article 1 provides the Order’s title.

Article 2 provides for the Order’s commencement.

Articles 3 to 5 are interpretation provisions.

Article 6 provides that it is not a breach of the non-discrimination rule to maintain or use those rules, practices, actions or decisions set out in Schedule 1 to this Order.

Article 7 provides that it is not an age contravention to maintain or use those practices, actions or decisions set out in Schedule 2 to this Order.

Article 8 provides that the inclusion of a rule, practice, action or decision in Schedule 1 or 2 shall not be taken to mean, but for that inclusion, the use or maintenance of the rule, practice, action or decision would otherwise be unlawful.

Article 9 provides that none of the matters contained in that article is a breach of the non-discrimination rule or is an age contravention (see paragraph 6, Part 2, Schedule 9 to the Equality Act 2017), as applicable.

Schedule 1 contains exceptions to the non-discrimination rule for occupational pension schemes.

Schedule 2 contains exceptions to Part 5 of the Equality Act as it relates to age for employers contributing to a personal pension scheme.