

The draft Employment Equality (Age) (Amendment) Regulations (Northern Ireland) 2019

Public consultation

January 2019

Contents

- Introduction..... 3
 - Who this consultation is aimed at 3
 - Purpose of the consultation 3
 - Scope of consultation 3
 - Duration of the consultation..... 4
 - How to respond to this consultation..... 4
 - Response to consultation 4
 - Freedom of information 4
- Chapter 1: Commentary on the draft Employment Equality (Age) (Amendment) Regulations (Northern Ireland) 2019 6
 - Background 6
 - Commentary on the Regulations 7
 - Consultation questions 8
- Annex A: Draft Employment Equality (Age) (Amendment) Regulations (Northern Ireland) 2019 9

Introduction

Some occupational pension schemes currently pay one rate of pension when a member reaches the pensionable age under the scheme; and a reduced rate when the member reaches State Pension age. These are known as “bridging pensions”. Provisions in the Employment Equality (Age) Regulations (Northern Ireland) 2006 permit them to do this without breaching equality requirements relating to age. This practice is known as “integration” or “clawback”.

Because existing legislation is still aligned with the previous State Pension ages, any reduction must currently start between the ages of 60 and 65. However with State Pension age increasing beyond age 65 for men and women from 6 December 2018¹, the legislation will cease to provide an exception for schemes which enables them to reduce the pension payable to members reaching their State Pension age after this date.

This consultation seeks views on the draft Employment Equality (Age) (Amendment) Regulations (Northern Ireland) 2019 (“the 2019 Regulations”). The 2019 Regulations will enable schemes, which operate integration, to apply a reduction to members’ pension, which reduction commences between age 60 and the relevant new State Pension age (which increases incrementally to 68) without breaching equality requirements relating to age.

The 2019 Regulations will come into operation at the earliest opportunity.

Who this consultation is aimed at

This consultation is mainly aimed at pension administrators and employers who sponsor salary related occupational pension schemes which operate integration. However, comments are also welcome from the pension industry, professionals, pension schemes, trustees, pension scheme members, member representatives’ organisations and any other interested organisations.

Purpose of the consultation

The consultation seeks views on the draft Employment Equality (Age) (Amendment) Regulations (Northern Ireland) 2019.

Scope of consultation

This consultation applies to Northern Ireland. It is anticipated that the Department for Work and Pensions will make similar provision for Great Britain.

¹ Rules 10 and 11 in paragraph 1 of Schedule 2 to the Pensions (Northern Ireland) Order 1995 (S.I. 1995/3213 (N.I. 22))

Duration of the consultation

The consultation period begins on 16 January 2019 and runs until 30 January 2019.

How to respond to this consultation

Please send your consultation responses to:

Helen Wilson
Department for Communities
Social Security Policy and Legislation Division
Level 8
Causeway Exchange
1-7 Bedford Street
BELFAST
BT2 7EG

Telephone 028 9082 3234

You can also respond using the following e-mail address:

helen.wilson@communities-ni.gov.uk

Please ensure your response reaches us by 30 January 2019

When responding, please state whether you are doing so as an individual or representing the views of an organisation. If you are responding on behalf of an organisation, please make it clear who the organisation represents, and where applicable, how the views of members were assembled.

Response to consultation

We will consider the responses received to the consultation in conjunction with the Department for Work and Pensions.

Freedom of information

The information you send us may need to be shared with the Department for Work and Pensions, published in a summary of responses received and referred to in the published consultation report.

All information contained in your response, including personal information, may be subject to publication or disclosure if requested under the Freedom of Information Act 2000. By providing personal information for the purposes of the public consultation exercise, it is understood that you consent to its disclosure and publication. If this is not the case, you should limit any personal information provided, or remove it completely. If you want the information in your response to the consultation to be kept

confidential, you should explain why as part of your response, although we cannot guarantee to do this.

For further information regarding confidentiality please contact the Information Commissioner at:

Information Commissioner's Office – Northern Ireland
3rd Floor
14 Cromac Place
BELFAST
BT7 2JB

Telephone: 028 9027 8757 or 0303 123 1113

Email: ni@ico.gov.uk

Website: <http://www.ico.org.uk>

Chapter 1: Commentary on the draft Employment Equality (Age) (Amendment) Regulations (Northern Ireland) 2019

Background

1. When the State Pension was introduced in 1948, it was recognised that some employees in the public and private sectors already had occupational pensions. In order to ensure that employers and their employees did not have to increase their contributions in respect of pensions, some employers who operated salary-related occupational pension schemes took account of some or all of the member's State Pension when calculating the occupational pension payable. The aim was to provide, overall, the same level of benefits, although the effect was to reduce the level of occupational pension to below what might otherwise have been expected based on a person's final salary. This process is known as "integration" or "clawback".

2. The age at which the deduction of the State Pension from the occupational pension takes place will depend on the individual and the age at which they are entitled to claim their State Pension.

3. The Employment Equality (Age) Regulations (Northern Ireland) 2006 ("the 2006 Regulations") make discrimination on the grounds of age unlawful and apply to trustees and managers of an occupational pension scheme and employers whose employees may be members of the scheme. The 2006 Regulations require occupational pension schemes to be treated as including a non-discrimination rule prohibiting trustees, managers and employers in carrying out functions in relation to the scheme from discriminating against, victimising or harassing scheme members or prospective members.

4. It is not a breach of a non-discrimination rule to use a practice, action or decision specified in Part 2 of Schedule 1 to the 2006 Regulations. Paragraph 16(1) of Part 2 of Schedule 1 to the 2006 Regulations permits schemes to reduce the amount of occupational pension in payment by the rate of the State Pension (or the rate of occupational pension in payment where the State Pension is greater than the rate of that payment). Where the reduction begins between ages 60 and 65, they can do this without breaching their equality requirements relating to age.

5. As the State Pension age is increasing incrementally to 68, unless an amendment is made, schemes will no longer be able to rely on the 2006 Regulations after 5 December 2018 (when State Pension age increases beyond age 65) to enable pension benefits to be reduced at the point State Pension becomes payable. Any such adjustments in the amount of pension payable would result in the scheme breaching

their equality obligation relating to age. The fact that State Pension ages equalise for men and women after age 65 is immaterial as the exception allows deductions to be made at different ages which correspond to different State Pension ages without breaching the age related equality obligations, irrespective of the member's sex.

6. The Employment Equality (Age) (Amendment) Regulations (Northern Ireland) 2019 ("the 2019 Regulations"), therefore seek to amend the 2006 Regulations so that schemes will be able to continue to operate rules whereby they pay a higher amount of scheme pension before a member reaches their State Pension age which is reduced by the amount of the State Pension when the State Pension comes into payment, including for those reaching State Pension age after 5 December 2018.

Timeframe for introducing the 2019 Regulations

7. The intention is to introduce these changes to legislation as soon as possible. Because there may be a delay between State Pension ages increasing and the time the 2019 Regulations come into operation, it is appreciated this could create difficulties for schemes. To understand the extent of the problem and whether there are ways schemes can minimise these impacts, a question for stakeholders addressing this issue is included at the end of this consultation.

Commentary on the 2019 Regulations

Regulation 1: Citation and commencement

1. Draft regulation 1 provides the citation and commencement of the Regulations. The intention is that the Regulations will come into operation as soon as possible in line with the corresponding Great Britain instrument.

Regulation 2: Amendment of the Employment Equality (Age) Regulations (Northern Ireland) 2006

2. Draft regulation 2(2)(a) amends the 2006 Regulations so as to increase the maximum age from which an occupational pension scheme can reduce the pension a member of the scheme will receive, from age 65 to the member's State Pension age. This will enable schemes to continue, as they do now, to make deductions to the member's scheme pension when the member reaches their State Pension age.

3. Draft regulation 2(2)(b) amends the definition of "relevant state retirement pension rate" so that it aligns with the current definition provided for in the Registered Pension Schemes (Bridging Pensions) and Appointed Day Regulations 2016 (S.I. 2016/1005) ("the 2016 Regulations") which relate to how tax law applies to schemes providing bridging pensions. The term was re-defined in the 2016 Regulations and draft regulation 2(2)(b) updates the definition accordingly.

Consultation questions

1. Do you agree that the proposed change provided by draft regulation 2(2)(a) will ensure that pension schemes can continue to reduce a member's pension where the member reaches State Pension age, taking into account incremental rises from 6 December 2018?
2. Do you agree that the proposed change provided by draft regulation 2(2)(b) appropriately updates the definition of "relevant state retirement pension rate"?
3. The proposed changes will simply seek to maintain the status quo for schemes that operate integration so should not introduce any new impacts if the changes are made, however to gauge impacts if changes are not made, could you tell us:
 - (i) whether you operate a scheme that applies integration;
 - (ii) if so, if changes are not made to legislation, how many members are likely to be affected?
4. As outlined at paragraph 7, if there is a delay in introducing the changes to legislation, could you tell us:
 - (i) how many members are likely to be affected within the next (i) 6 months; and (ii) 12 months as a result of any delay;
 - (ii) are there any ways in which schemes may be able to minimise these impacts?

Annex A: Draft Employment Equality (Age) (Amendment) Regulations (Northern Ireland) 2019

STATUTORY RULES OF NORTHERN IRELAND

2019 No. ***

AGE DISCRIMINATION

PENSIONS

The Employment Equality (Age) (Amendment) Regulations (Northern Ireland) 2019

Made - - - - - ***
Coming into operation - - - - - ***

The Department for Communities, being a Department designated⁽²⁾ for the purposes of section 2(2) of the European Communities Act 1972⁽³⁾ in relation to discrimination, makes the following Regulations in exercise of the powers conferred by that section.

Citation and commencement

1. These Regulations may be cited as the Employment Equality (Age) (Amendment) Regulations (Northern Ireland) 2019 and shall come into operation on ***.

Amendment of the Employment Equality (Age) Regulations

2.—(1) The Employment Equality (Age) Regulations (Northern Ireland) 2006⁽⁴⁾ are amended in accordance with paragraph (2).

(2) In paragraph 16⁽⁵⁾ of Schedule 1 (pension schemes)—

(a) in sub-paragraph (1)(a) for “65” substitute “that member’s state pension age”⁽⁶⁾;

⁽²⁾ See Schedule 2 to the European Communities (Designation) (No. 3) Order 2002 (S.I. 2002/1819)

⁽³⁾ 1972 c. 68

⁽⁴⁾ S.R. No. 261; relevant amending rules are S.R. 2006 No. 453 and S.R. 2016 No. 25

⁽⁵⁾ Paragraph 16 was substituted by regulation 2(3)(i) of S.R. 2006 No. 453 and amended by regulation 3(b) and (c) of S.R. 2016 No. 25

⁽⁶⁾ State pension age is defined in paragraph 16(2) of Schedule 1 to S.R. 2006 No. 261

- (b) in sub-paragraph (2) in the definition of “relevant state retirement pension rate” for “paragraph 2(5) of Schedule 28 to the 2004 Act” substitute “regulation 4(3)(b) of the Registered Pension Schemes (Bridging Pensions) and Appointed Day Regulations 2016⁽⁷⁾ (pensions bridging: pensionable age on or after 6th April 2016).

Sealed with the Official Seal of the Department for Communities on ***
(L.S.)

A senior officer of the Department for Communities

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Employment Equality (Age) Regulations (Northern Ireland) 2006 (“the 2006 Regulations”).

Regulation 2(2)(a) amends the 2006 Regulations so as to increase the maximum age at which an occupational pension scheme can reduce the rate of pension a pensioner member of the scheme is receiving from age 65 to the state pension age of that member. This is to allow pension schemes to continue to rely on the exception in the 2006 Regulations which enables schemes to reduce the member’s benefits by an amount not exceeding the relevant state retirement pension rate with effect from the date they reach their state pension age without infringing their age related equality obligations.

Regulation 2(2)(b) amends the definition of “relevant state retirement pension rate”. The term was defined in accordance with the meaning given in paragraph 2(5) of Schedule 28 to the Finance Act 2004 (2004 c. 12). Paragraph 2(5) was repealed by section 20(1) of the Finance Act 2016 (c. 24). The term was re-defined in the Registered Pension Schemes (Bridging Pensions) and Appointed Day Regulations 2016 (“the 2016 Regulations”). Regulation 2(2)(b) updates the definition in the 2006 Regulations so it refers to the relevant part of the definition in the 2016 Regulations.

(7) S.I. 2016/1005