EXPLANATORY MEMORANDUM TO

THE EMPLOYMENT EQUALITY (AGE) (CONSEQUENTIAL AMENDMENT) REGULATIONS 2007

2007 No. 825

1. This explanatory memorandum has been prepared by the Department of Trade and Industry and is laid before Parliament by Command of Her Majesty. This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Description

2.1 The Order makes further consequential amendments to legislation as part of our implementation of age strand of the European Employment Directive (2000/78/EC). The effect of the amendments is to amend legislation containing age-discriminatory provisions that cannot be shown to be a proportionate means of achieving a legitimate aim.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 The regulations are made under S2(2) of the European Communities Act 1972.

4. Legislative Background

4.1 The Directive establishes a general framework for equal treatment in employment and occupation, including vocational training. It requires Member States to ensure that they have legislation in place outlawing discrimination on the new grounds of sexual orientation, religion or belief, age, as well as disability. As in the other strands of equality legislation, education of pupils in schools is excluded since this is not vocational training within the meaning of the Directive.

4.2 The Employment Equality (Age) Regulations 2006 were brought into force on 1 October 2006. Amendments to the pension provisions of those Regulations were made by the Employment Equality (Age) (Amendment No.2) Regulations 2006 - SI 2006/2931 which came into force on 1 December 2006.

5. Extent

5.1 The regulations extend to Great Britain. Separate regulations are to be made in Northern Ireland.

5.2 The regulations do not extend to Gibraltar, the Channel Isles or the Isle of Man.

6. European Convention on Human Rights

6.1 Jim Fitzpatrick, the Minister for Employment Relations and Postal Services, has made the following statement regarding Human Rights:

In my view the provisions of The Employment Equality (Age) (Consequential Amendment) Regulations 2007 are compatible with the Convention rights as defined in section 1 of the Human Rights Act 1998.

7. Policy background

7.1 The amendments amend legislation containing age-discriminatory provisions that cannot be shown to be a proportionate means of achieving a legitimate aim.

7.2 The following amendments are necessary to ensure proper operation of the age regulations:

a. Social Security Contributions and Benefits Act 1992 - Schedule 11, paragraph 2(d) (i) - circumstances in which periods of entitlement to SSP do not arise.

Legislation relating to incapacity benefits includes linking rules, which allow claimants who have recently been entitled to incapacity benefits to return to incapacity benefits at the same stage at which they left.

The purpose of paragraph (2)(d)(i) of Schedule 11 to the 1992 Act is to ensure that a period of entitlement to SSP does not arise if the employee can return to incapacity benefits. This ensures that there isn't double provision.

The amendment ensures that employees who would return to incapacity benefits rather than becoming entitled to SSP if they were under pensionable age, but who cannot return to incapacity benefits because they are now over pensionable age, will be entitled to SSP.

b. Selection for Redundancy – Unfair dismissal - Section 105 of the Employment Rights Act 1996 provides that dismissal on grounds of redundancy is regarded as automatically unfair if an employee is selected for redundancy for specified reasons. Schedule 6 of the Employment Equality (Age) Regulations 2006 provides employees with the right to request working beyond retirement. Their employer must meet them to discuss the request and they have right to be accompanied at the meeting. The addition of section 105(7J) to the 1996 Act adds selection for redundancy for exercising or seeking to exercise the right to be accompanied at such meetings, or acting or seeking to act as a companion, to the specified reasons for selection, which render a dismissal unfair.

c. Retirement age of Scottish Auditor General - Section 13(5) of the Public Finance and Accountability (Scotland) Act 2000 requires that the Auditor General retires at 65or on such later date as the Parliament may by resolution determine. Implementation of the age strand of Directive 2000/78 requires that the reference to an inferred retirement age should be removed to reflect the equal opportunities policy. In order to achieve

this Section 13(5)(b) of the Public Finance and Accountability (Scotland) Act 2000, (asp1), is removed in its entirety. The Scottish Executive has consulted the Scottish Parliament Corporate Body on these amendments.

d. Statutory Sick Pay, Statutory Maternity Pay, Statutory Paternity Pay and Statutory Adoption Pay (Schedule 8, paragraphs 50(3), 53(3) and 60(3)). These paragraphs amended the definition of employer & employee within the existing statutory payments regulations by removing age restrictions, which prevented people under 16 from receiving Statutory Sick Pay (SSP), Statutory Maternity Pay (SMP), Statutory Paternity Pay (SPP) or Statutory Sick Pay (SAP). Regulations 5, 6 and 7 of these regulations amend the wording of the statutory payments provisions to ensure it is clear that the same provisions regarding treatment of a person as an employee will be applied regardless of whether the person is under or over the age of 16.

e. Consequential amendments to Employment Tribunals Rules of Procedure -

Paragraph 22(1) of Schedule 1 of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2004 has a 13-week fixed conciliation period that has to currently apply to all age discrimination complaints, which means that after the 13-week period has elapsed Acas no longer has a duty to conciliate. Therefore the case cannot be listed for hearing until after 13 weeks. Other discrimination complaints have no fixed period of conciliation thus allowing conciliation to continue until a Hearing. The amendment to Paragraph 22(1) removes the 13-week fixed conciliation period for age discrimination cases, in line with other discrimination jurisdictions.

8. Impact

8.1 A Regulatory Impact Assessment has not been prepared for this instrument as these amendments will not be adding any additional administrative burdens on business and are purely technical changes. The existing RIA considers the impact of age discrimination legislation on employers and individuals, and on the macroeconomy and the Exchequer – these amendments make no change to this.

9. Contact

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