EXPLANATORY MEMORANDUM TO

THE EQUALITY ACT 2010 (AGE EXCEPTIONS FOR PENSION SCHEMES) (AMENDMENT) ORDER 2010

2010 No. 2285

1. This explanatory memorandum has been prepared by the Department for Work and Pensions and is laid before Parliament by Command of Her Majesty.

This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

2.1. This instrument amends the Equality Act (Age Exceptions for Pension Schemes) Order 2010 ("the Age Exceptions Order") which comes into force on 1 October 2010.

2.2. The Age Exceptions Order was intended to replicate the exceptions to the Employment Equality (Age) Regulations 2006 ("the Age Regulations").

2.3. There were 2 errors in the Age Exceptions Order which means that the exceptions in the Age Regulations are not replicated in full. If the amendments are not made then certain current practices which are currently lawful will become unlawful when this comes into force.

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

The laying of this instrument will breach the 21 day rule convention. It is, however, necessary to lay the instrument within the 21 days before it comes into force in order to rectify an error in the Age Exceptions Order.

4. Legislative Context

4.1. The Equality Act 2010 replaces the non-discrimination provisions of the Age Regulations. The exceptions are to the non-discrimination rule in the Age Regulations, which will be revoked and replicated by the Equality Act 2010 from 1st October 2010. The non-discrimination rule means the rule in section 61 of the Equality Act 2010 as it applies to protected characteristic of age under the Act.

4.2 This Order amends the Age Exceptions Order which intended to reproduce the exceptions to those non-discrimination rules as they apply to age.

4.3 Article 2(2) corrects a technical error in article 3 of the Age Exceptions Order to ensure that trustees, managers and employers in relation to an occupational pension scheme can continue certain practices in relation to benefits payable or rights accrued in respect of pensionable service before 1 December 2006, when the Age Regulations came into force.

4.4 Article 2(3) and (4) insert a new article 6 into the Age Exceptions Order to ensure that length of service exceptions can apply to contributions by employers to pension schemes, as well as to certain practices by occupational pension schemes. It removes the length of service exemptions from Schedule 1 where they appeared, in error.

5. Territorial Extent and Application

This instrument applies to Great Britain.

6. European Convention on Human Rights

As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

- What is being done and why

7.1 The purpose of this amending Order is to ensure that the Age Exceptions Order correctly replicates the age exceptions for pension schemes currently contained in the Age Regulations, which will be repealed by the Equality Act when it comes into force on 1st October.

7.2 The original purpose of the Age Exceptions Order was to replicate all existing exceptions to age discrimination provisions for pension schemes, but as a result of the two errors contained in that Order, those exceptions were not replicated in full.

7.3 The amendments are:

(a) To ensure that schemes and employers in relation to occupational pension schemes can continue certain practices in relation to rights accrued or benefits payable before the Age Regulations came into force on 1 December 2006.

(b) To ensure the length of service exceptions for contributions by employers to personal pension schemes are replicated in the Age Exceptions Order.

- Consolidation

7.4 This Instrument amends The Equality (Age Exceptions for Pension Schemes) Order 2010 (2010 NO. 2133) which was laid on 31 August 2010.

8. Consultation Outcome

No specific consultation was undertaken on this instrument as its provisions are not new, but have been carried forward from existing regulations. No consultation is required by the powers under which the Order is made.

9. Guidance

Guidance to assist in determining how the age exceptions may be used is published by the Government. Revised guidance will be drafted, although existing guidance will apply pending its publication.

10. Impact

10.1 There is no new impact on business and civil society organisations arising from this instrument as it replicates existing legislation.

10.2 The impact on the public sector is negligible.

10.3 A full impact assessment has not been prepared for this instrument.

11. Regulating small business

The legislation applies to small business. However, this instrument imposes no new burdens as it carries forward existing provisions..

12. Monitoring & review

The Government Equalities Office is developing a project to establish an evaluation framework for the Act as a whole, including establishing a "before/after" baseline against which to measure change. This will enable relevant data to start to be collected. It is intended to complete a full evaluation 4-5 years following enactment.

13. Contact

Angela Perera at the Department for Work and Pensions– tel. 020 7449 7389 or email: angela. perera@dwp.gsi.gov.uk can answer any queries on the instrument.