



The draft Equality Act (Age Exceptions for Pension Schemes) (Amendment) Order 2019

Public consultation

January 2019

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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. This is in order to take account of the State Pension the member receives when they reach State Pension age. These are known as “bridging pensions. Provisions in the Equality Act (Age Exceptions for Pension Schemes) Order 2010 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 which enables them to reduce the pension payable to members reaching their State Pension age will cease to apply after this date.

This consultation seeks views on the draft Equality Act (Age Exceptions for Pension Schemes) (Amendment) Order 2019 (“the 2019 Order”). The 2019 Order will enable schemes, which operate integration (or clawback), to apply a reduction to members’ pension, which 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 Order will come into force at the earliest opportunity, subject to Parliamentary approval

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, the Government would also welcome comments 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 Equality Act (Age Exceptions for Pension Schemes) (Amendment) Order 2019.

Scope of consultation

This consultation applies to England, Wales and Scotland. It is anticipated that the Department for Communities will make corresponding provisions for Northern Ireland.

¹ Rules 9 and 10 in paragraph 1 of Schedule 4 to the Pensions Act 1995 (c. 26)

Duration of the consultation

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

How to respond to this consultation

Please send your consultation responses to:

Email: CONTRACTING.OUTTEAM@DWP.GSI.GOV.UK

By postal address to:

Department for Work and Pensions

Contracting-out policy Team

First Floor

Caxton House

Tothill Street

London SW1H 9NA

Please ensure your response reaches us by 30 January

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.

Government response

We will aim to publish the government response to the consultation on the [GOV.UK](https://www.gov.uk) website. Where consultation is linked to a statutory instrument responses should be published before or at the same time as the instrument is laid.

The report will summarise the responses and say what the Government intends to do as a consequence.

How we consult

Consultation principles

This consultation is being conducted in line with the revised [Cabinet Office consultation principles](#) published in March 2018. These principles give clear guidance to government departments on conducting consultations.

Feedback on the consultation process

We value your feedback on how well we consult. If you have any comments about the consultation process (as opposed to comments about the issues which are the subject of the consultation), including if you feel that the consultation does not adhere to the values expressed in the consultation principles or that the process could be improved, please address them to:

DWP Consultation Coordinator
4th Floor
Caxton House
Tothill Street
London
SW1H 9NA

Email: caxtonhouse.legislation@dwp.gsi.gov.uk

Freedom of information

The information you send us may need to be passed to colleagues within 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.

To find out more about the general principles of Freedom of Information and how it is applied within DWP, please contact the Central Freedom of Information Team:

Email: freedom-of-information-request@dwp.gsi.gov.uk

The Central FoI team cannot advise on specific consultation exercises, only on Freedom of Information issues. Read more information about the [Freedom of Information Act](#).

Chapter 1: The draft Equality Act (Age Exceptions for Pension Schemes) (Amendment) Order 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 Equality Act 2010 requires every occupational pension scheme to have a non-discrimination rule read into it, prohibiting a "responsible person" from discriminating against, harassing or victimising a member or person who could become a member of the scheme on the basis of a protected characteristic (age is one of the protected characteristics). Responsible persons include the trustees or managers of a scheme and employers whose employees may be members of the scheme.

4. Practices, actions or decisions specified in the Equality Act (Age Exceptions for Pension Schemes) Order 2010 (the "2010 Order") do not breach the non-discrimination rule. By paragraph 14(1) of Schedule 1 to the 2010 Order, schemes are permitted 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. The State Pension age is increasing incrementally to 68. Unless an amendment to the 2010 Order is made, schemes will no longer be able to reduce pension benefits, after 5 December 2018, 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 2019 Order therefore seeks to amend the 2010 Order 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 Order

7. We intend, subject to Parliamentary approval, 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 Order comes into force, we appreciate this could create difficulties for schemes. We would like to understand the extent of the problem and whether there are ways schemes can minimise these impacts. Accordingly we have included a question for stakeholders addressing this issue at the end of this consultation.

Commentary on the 2019 Order

Amendment of the Equality Act (Age Exceptions for Pension Schemes) (Amendment) Order 2010

Article 1 Citation and commencement

1. Draft article 1 provides the citation and commencement of the Order. The new Order will come into force at the earliest opportunity, subject to Parliamentary time being available to address it.
2. The Order applies to England, Wales and Scotland. We anticipate that the Department for Communities in Northern Ireland will replicate the provisions.

Article 2 Amendments to the Equality Act (Age Exceptions for Pension Schemes) Order 2010

3. Draft article 2(2) amends the 2010 Order 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.
4. Draft article 2(3) 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"). The term was re-defined in the 2016 Regulations and draft article 2(3) updates the definition accordingly.

Consultation questions

1. Do you agree that the proposed change provided by draft article 2(2) 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 article 2(3) appropriately updates the definition of "relevant state retirement pension rate"?
3. The changes we are making through this Order will simply seek to maintain the status quo for schemes that operate integration (or clawback) so should not introduce any new impacts if the changes are made, however we would like to gauge impacts if changes are not made. To that end 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 Equality Act (Age Exceptions for Pension Schemes) (Amendment) Order 2019

STATUTORY INSTRUMENTS

2019 No. ***

EQUALITY

PENSIONS

The Equality Act (Age Exceptions for Pension Schemes) (Amendment) Order 2019

<i>Made</i>	- - - -	***
<i>Laid before Parliament</i>		***
<i>Coming into force</i>	- -	***

The Secretary of State for Work and Pensions makes the following Order in exercise of the powers conferred by sections 61(8) and 207(1), (2) and (4) of the Equality Act 2010(2).

In accordance with section 61(9) of the Equality Act 2010, the Secretary of State has consulted such persons as the Secretary of State considers appropriate.

Citation and commencement

1. This Order may be cited as the Equality Act (Age Exceptions for Pension Schemes) (Amendment) Order 2019 and shall come into force on ***.

Amendments to the Equality Act (Age Exceptions for Pension Schemes) Order 2010

2.—(1) The Equality Act (Age Exceptions for Pension Schemes) Order 2010(3) is amended in accordance with this article.

(2) In Schedule 1 (occupational pension schemes: excepted rules, practices, actions and decisions) in paragraph 14(1)(a)(4) for “65” substitute “that member’s state pension age”(5).

(2) 2010 c.15.

(3) S.I. 2010/2133.

(4) Schedule 1 paragraph 14 was amended by S.I. 2015/1985.

(5) State pension age is defined in paragraph 14(2) of Schedule 1.

(3) In Schedule 1 (occupational pension schemes: excepted rules, practices, actions and decisions) in paragraph 14(2) in the definition of “relevant state retirement pension rate” for the words “paragraph 2(5) of Schedule 28 to the Finance Act” substitute “regulation 4(3)(b) (pensions bridging: pensionable age on or after 6th April 2016) of the Registered Pension Schemes (Bridging Pensions) and Appointed Day Regulations 2016(6)”.

Signed by authority of the Secretary of State for Work and Pensions.

Address	<i>Name</i>
Date	Minister of State Department for Work and Pensions

EXPLANATORY NOTE

(This note is not part of the Order)

This Order amends the Equality Act (Age Exceptions for Pension Schemes) Order 2010 (S.I. 2010/2133) (“the 2010 Order”).

Article 2(2) amends an exception in the 2010 Order relating to an occupational pension scheme’s age related equality obligations under the Equality Act 2010 (c.15). The effect of the amendment is to enable occupational pension schemes to reduce a pensioner member’s pension 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 under the Equality Act 2010.

Article 2(3) 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 (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 (S.I. 2016/1005) (“the 2016 Regulations”). Article 2(3) updates the definition in the 2010 Order so it refers to the relevant part of the definition in the 2016 Regulations.

An impact assessment has not been produced for this Order as no, or no significant, impact on the private, voluntary or public sectors is foreseen.

⁽⁶⁾ S.I. 2016/1005.