



## The Equality Act 2010

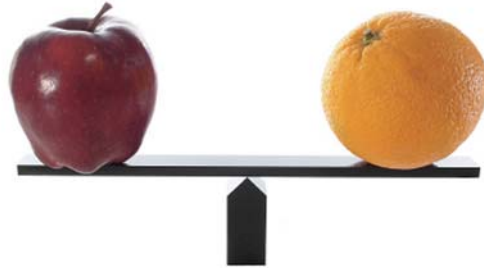
### What does it mean for pension schemes?

April 2010

The Equality Act has now become law and certain key provisions for pension schemes are expected to come into force in October 2010.

#### In a nutshell the Act will...

- make limited changes to the way equality law applies to occupational pension schemes;
- lead to new codes of practice from the Equality and Human Rights Commission covering pay and pensions (October 2010); and
- make equality law easier to apply by simplifying and standardising it across the areas it covers: age, sex, sexual orientation, disability, maternity, marriage/civil partnership, gender reassignment, religion/belief and race (October 2010).



#### Scheme rules

##### Are there any new overriding rules?

- A rule is already implied into occupational pension schemes that they must not discriminate on grounds of age, disability, religion/belief or sexual orientation. This implied rule will now also cover sex, gender reassignment, marriage/civil partnership and race. It will bind trustees and employers.
- On sex, schemes are also already subject to an implied rule that goes further and imposes a positive requirement for sex equality. This will continue.
- A new maternity equality rule is implied. It reflects existing requirements for pension accrual during maternity leave.

#### Power of amendment

##### Is there any help with making rule amendments?

- As now, trustees will have a special amendment power to make rule changes consequential on the wider implied rules. It is available where they do not otherwise have power to make changes, or where the scheme's procedure for making amendments would be unusually difficult to operate. The amendments would be made by a simple resolution.

#### Age

##### Will all the exceptions to do with age still be available?

- As expected, the current exceptions from age equality law for many common pension scheme practices are missing from the Act. We anticipate they will be recreated in new regulations, but it is unclear whether there will be any alterations.
- On current government plans, the default retirement age of 65 is up for review this year.

## Disability

### Is disability law going to be easier to apply?

- Disability discrimination is clarified with the introduction of the concept of "indirect disability discrimination"

(October 2010). Disability equality law has been difficult to apply to pension schemes; this should make it a bit easier.

## Representative bodies

### Are representative bodies going to be able to take legal action?

- As expected, there is no provision for bodies like trades unions or the Equality and Human Rights Commission to

initiate legal action on behalf of a scheme's members. The government thought about introducing this but decided that any such innovation should only be made after public consultation.

## Technical points

### What sort of simplification has there been?

- The Act standardises core concepts like direct and indirect discrimination, although there is inevitably some additional specification in relation to particular strands (like disability, for example).

- Where "objective justification" is a defence to a discrimination claim, there will be a single standard: that the measure objected to was a proportionate means of achieving a legitimate aim.

## What to do next

### What do I do now?

- Be alert for news of regulations re-enacting the age-related exceptions for pension schemes.

- Familiarise yourself with the pensions sections of the ECHR's codes of practice.

## More information

If you would like further information on the other aspects of the Equality Act 2010, we also have briefings specifically for:

- Employers
- Landlords and property managers

- The public sector (private and public sector)
- Service providers

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