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Age Regulations Amendment Consultation
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Dear sir

Employment Equality (Age) Regulations 2006

We welcome the Government's decision to consult on revised regulations.

Overall, we consider the revised regulations to be helpful as they improve the clarity of the relevant provisions. However, we regret that the DWP does not consider it possible for all age-related practices to be exempted wholesale. The current proposals will still require schemes to carry out a detailed audit to ensure compliance. (This will be the second time such an audit must be undertaken as many schemes already did one for the earlier version of the draft regulations.)

We, note, moreover, that trustees and employers will only have two weeks to assess and implement the new regulations so we urge the DWP and the Pensions Regulator to adopt a flexible and pragmatic approach to compliance over the next few months.

Nevertheless, we welcome the broadening of the exemptions and the clarifications offered, although the very short consultation period means that we cannot be 100% confident as to whether we have identified all the potential issues. The points we have been able to identify are outlined below.

Flexible retirement

Many of our members are concerned that arrangements introduced to encourage employees to continue working while drawing all or some of their pension at the same time will be discriminatory but without an objective justification. We are therefore a little disappointed that this has not been dealt with in the amending regulations but will instead be the subject of guidance. Given that longer working is a key component in meeting the challenges of an older population, and that it is also one of the Government's flagship policies, to place legal barriers in the way of flexible retirement would be perverse. We would welcome clear guidance and reassurance that flexible retirement practices which treat employees differently according to age can be objectively justified.

Sections of schemes

The draft regulations expand and clarify the definition of “sections” of schemes. However, it defines them so narrowly that it would not permit any new members or future accruals. We are aware that this would cause major difficulties for many schemes which operate different benefit structures within different sections of the same scheme, including defined benefit and defined contribution. It particularly affects industry-wide and multi-employer schemes. So in answer to your second question, we believe that these existing structures should be exempted with continuing accruals being permitted.

Integration with State Scheme

We think that the draft regulations should exempt defined benefit schemes with benefit structures which have different accrual rates at different bands of earnings. For example, a scheme might have accrual at N/100ths of earnings up to the UEL and N/60ths of earnings for earnings above the UEL. There might be indirect discrimination if higher paid employees tend generally to be older than employees with earnings at or below the UEL. To avoid any risk of indirect discrimination claims, an exemption could be given on the basis that the different accrual rates are designed to produce broadly equal outcomes once the state second pension is included. The rationale is the same as the exemption for LEL offsets.

Contributions to defined contribution schemes

The draft regulations give an exemption where there is a flat rate percentage contribution for all members, and where there is an age-related scale of contributions which is designed to replicate a defined benefit scheme. However, it does not appear to exempt intermediate scales where contributions are stepped or banded. This surely cannot be the intention.

Retirement before normal pension age without consent

We understand that this area is still under consideration. We believe it is a mistake to not to exempt this common practice.

We hope that you can take these points into account and will be happy to discuss further as you wish.

Yours faithfully

Ken MacIntyre
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