

## New discrimination legislation on the horizon

We already have wide ranging anti-discrimination legislation in the UK. However, many legislative changes are in the pipeline, the driver for which is the EU Framework Directive on Equal Treatment. Although its precise effect on occupational pension schemes is still somewhat unclear, here we preview some possible implications.

### Application ...

... of current law

... of the new legislation

- Key areas covered by existing discrimination legislation include sex, part-timers, fixed-term employees and disability.
- The new legislation will prohibit discrimination in the workplace on grounds of sexual orientation, religion and belief, and age.
- There will also be changes to the scope of existing disability legislation.

### Sexual Orientation

In force: 1 December 2003

- The regulations prohibit direct and indirect discrimination against someone on grounds of "sexual orientation" in the terms of their contract (including pay).
- "Pay" is expected to include pensions.
- The definition of sexual orientation includes heterosexual, homosexual or bisexual orientation.
- The regulations are framed to allow claims against employers (with a view to introducing provisions applicable to trustees at a later date).

### Sexual Orientation

Spouses' exception

- As currently drafted, it will be possible for schemes to continue to pay dependants' pensions solely to spouses.
- But, as legislation is proposed to enable same sex couples to register their partnerships, reliance on this exception could be relatively short-lived (at least as regards contracted-out benefits).
- In any event, if dependants' pensions are paid to non-married partners, same sex partners will also be entitled to them.

## Religion & belief

In force: 2 December 2003

- This area of discrimination is not expected to have much impact in the pensions arena.
- Denial of benefits in respect of polygamous marriages could possibly be challenged (would the Government defend national laws prohibiting this on objective justification grounds?).

## Disability

Main change from  
1 October 2004

- It will no longer be possible to justify treatment which is specific to the individual (direct discrimination).
- A general measure which applies to all but which has a greater effect on a "disabled" person (indirect discrimination) may be justified.
- But employers will have a duty to make "reasonable adjustments" for disabled people and trustees can also be liable unless they did not set and cannot change a discriminatory rule.

NB: "disability" includes physical and mental impairment "which has a substantial and long-term adverse effect on [a person's] ability to carry out normal day-to-day activities".

## Age

In force: December 2006

- Further consultation was issued recently on age discrimination which suggests that setting admission ages or normal retirement dates under occupational pension schemes will not amount to age discrimination.
- As the implementation date remains some way off and much needs to be clarified in the interim - watch this space!

## Conclusions

- Scheme rules will need to be reviewed to ensure that they comply with the new legislation before the dates on which it comes into force.
- Looking forward, employers should also be aware of the proposals on the horizon when considering benefit design and membership issues.

If you would like further information about the new discrimination legislation please contact one of our lawyers with a particular interest in employment issues within the context of pensions:

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