

alert

AGE – BACK WITH A VENGEANCE?

1 INTRODUCTION

Last month, when it postponed implementation of the pensions aspects of the Age Regulations¹ to 1 December 2006, the Government also promised pension schemes more exemptions from the non-discrimination requirements. These arrived this week in the form of draft regulations² (the “Amending Regulations”), with a brisk consultation period ending on 20 October (to enable the Government to meet the 1 December 2006 implementation date).

The consultation document – which includes the draft amending regulations – can be found at www.dwp.gov.uk/consultations/2006.

2 KEY POINTS

- There will be no “blanket” exemption for pension or life assurance benefits, but more common scheme benefits are now exempt.
- Exemptions for enhanced early retirement are now restricted to redundancy situations.
- 1 December 2006 – “Age Day” – remains the date when the new laws will come into force. Employers and trustees must therefore continue to focus on this date (or lobby the Government for more time)!
- Where a practice is discriminatory, changes still only have to be made for service from 1 December 2006 if no exemption applies and there is no objective justification.
- The Amending Regulations are still in draft, so schemes should be prepared for further last minute changes.

¹ The Employment Equality (Age) Regulations 2006

² The Employment Equality (Age) (Amendment No. 2) Regulations 2006

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3 NOT TOTALLY OUT OF DANGER

In our Alert – Action on Age Day³, we flagged a number of “danger zones” for schemes. The Amending Regulations address many of these, but not all of them.

- *Different benefit structures in the same scheme* – it is possible that members might bring claims if they believe there is a disparity in “value” between different sections set up at different times. The Age Regulations already permit different sections of a scheme to be treated separately. However, the Amending Regulations have expanded this to try and make clear that there is no particular magic behind what a “section” is, and groups of members who became eligible for the scheme at different times can form different sections. One person on their own individual terms is not, however, a section.
- *Waiting periods* – the exemption allowing employers to link benefits to length of service (up to 5 years) without having to objectively justify this, has been extended to trustees. This will help where schemes operate waiting periods for joining and qualifying for benefits.
- *Consent requirements* – the early retirement provisions have been significantly reworked, and will permit schemes to continue to use employer and trustee consent requirements.
- *Benefits after normal retirement* – there is no change here, and employers still have important policy decisions to make on providing benefits when members work beyond the scheme’s normal pension age.
- *Flexible retirement* – still a thorny issue. Government policy is to promote this, but using age discrimination to do this arguably goes beyond what the law requires.

³ See our Sackers Extra Alert, Action on "Age-Day" dated 14 August 2006.

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- *Death and ill-health benefits* - the exemptions here are being extended, and will allow prospective service to be included in calculations of death in service benefits. In addition, the exemptions for ill-health enhancements give much more flexibility than before (e.g. adding a fixed period or paying an unreduced pension, as well as the existing exemption of using prospective service to retirement).

4 OTHER SIGNIFICANT CHANGES (AND GAPS)

Schemes which have enhanced early retirement terms, or operate so-called “golden numbers” will need to review these again in the light of the Amending Regulations.

- *Enhanced early retirement terms* – the Age Regulations had exempted the provision of certain enhanced benefits for all active and prospective members on 1 December 2006, but the Amending Regulations have restricted this to apply only on redundancy. Where the exemption does apply, however, it will apply to a greater range of enhancements (full prospective service to retirement, or a fixed number of years, and applying no actuarial reduction, or a lower actuarial reduction).
- *Golden numbers* – e.g. the “rule of 85” where an unreduced pension is payable from age 60 when a member’s age and service equal 85. A UNISON challenge to the Government’s proposed phasing out of this rule from the Local Government Pension Scheme (partly on grounds it was age discriminatory) suffered a blow at the end of last month when the Court decided against the union. The Amending Regulations offer no solace here either and schemes wishing to retain golden numbers will have to consider objective justification for this.

But there is also more welcome news for schemes.

- *Targeted and capped accrual* – there is a new exemption aimed at allowing schemes to target benefits, or limit benefits by reference to a proportion of pensionable pay (for example, 2/3rds x final salary).

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- *Lower earnings limit (LEL) and state retirement pension offsets* – the wording has been widened to allow up to 1.5 times the LEL, or an amount which “more or less” reflects the state retirement pension.
- *Personal pension schemes* – there are new exemptions allowing employers to set a minimum age for employer contributions starting, and making clear that fixed rate contributions are exempt (in addition to age banded contributions, where the aim is to make the benefit more nearly equal).
- *Bridging pensions* – there is also a change aimed at extending the exemption for bridging pensions paid between normal pension age and state pensionable age. At the moment this does not quite seem to do the trick for all schemes, but hopefully this will be clearer by the time the Amending Regulations are finalised.

5 ACTION NOW

With no “blanket” exemption for occupational and personal pension schemes, employers and trustees must ride on with their quest to ensure they are compliant with the Age Regulations (as amended) from 1 December 2006. However, schemes must take care as the Amending Regulations are still in draft, and we may yet see further changes before final regulations are laid (hopefully well before 1 December 2006).

For help complying with the new requirements, or with any of the issues in this Alert, please get in touch with your usual Sackers’ contact.