

PREMIER PENSIONS MANAGEMENT LEGISLATION UPDATE : 23/06

Age Discrimination Technical Update

Age discrimination will apply to pension schemes with effect from October 2006. This is a turn around from the initial indication given by the Government originally it was thought that pension schemes in the UK would be exempt from the legislation.

Age discrimination is either treatment of one individual which is less favourable than another on grounds of age (direct discrimination) and/or, application of a provision, criterion or practice which on the face of it is age neutral, but in fact disadvantages individuals of a particular age (indirect discrimination).

Age discrimination will work a bit like "Barber equalisation" in that if schemes need to implement changes, but do not do so before the legislation comes into force on 1 October, they will have to reflect the most generous practice for the period until the changes are actually made.

This update looks at the high level issues. You should contact Premier Pensions Management or your usual advisers for an assessment of the impact the legislation will have on your scheme.

Issues to be aware of

- Closure of a DB Scheme to new hires could potentially be indirect discrimination to younger workers. Unlikely if the closure is justifiable on commercial grounds' although this should be kept under review.
- Minimum age for admission into the pension scheme. This is direct discrimination against younger workers, but allowed under the Regulations.
- Maximum age for admission into the pension scheme, This is direct discrimination against older workers, but again, allowed under the Regulations
- Different employer contributions to a DB scheme at different ages. This arguably discriminates against the younger works, but is allowed if the basis is that it targets the same level of benefits at retirement.
- Age related rebates. Possible discrimination against younger workers. The rebates are unlikely to be regarded as pay and should fall outside the legislation.
- Setting a normal retirement age. This is allowed for under the Regulations and the Directive as long as it is not less than 65.
- Setting different retirement ages for different categories of member. This is allowed under the Regulations and the Directive. However, assurances should be sought that the policies are not determined by a criteria which discriminates

- Younger spouse's reduction. Indirect discrimination against older workers. Allowed under the Regulations.
- The winding up priorities would appear to discriminate against younger members as pensioners receive a higher priority. However, justifiable as it is in line with legislation.

Issues to consider/review and obtain further advice

- Waiting period of employment before admission to the scheme. Indirect discrimination against younger worker.
- Different employer contributions to a DC scheme at different ages. Direct discrimination to (younger) workers. May be possible if the aim is to provide equal benefits at retirement. Advice should be taken as if challenged, it is possible the highest contribution band will become payable by the employer for all.
- Different employer contributions to a DC scheme after certain lengths of service have been completed. Could be indirect discrimination against younger workers. The risk is the same as with age related contributions.
- Identical employer contributions to a DC scheme irrespective of age. This could discriminate against older workers. This should be justifiable.
- DC benefits up to a certain age and DB benefits there after. Discrimination against younger workers. Possible risk is that all employees be offered DB benefits.
- Ceasing benefit accrual (and contributions) after a stated period of service (i.e. 40 years). This is discrimination against older workers. This is allowed for in DB but DC not covered. This is common DB clause and should be reviewed.
- Retirement age as age by reference to which actuarial reductions / enhancements are calculated. This is direct discrimination against younger and older workers. The scheme Rules should be reviewed to see what changes can be made.
- Consent requirements for early/late retirement. This is direct discrimination against younger and older workers. This is not covered by the Regulations and will need to be objectively justified.
- Retirement Age at which DB benefits cease to accrue. Although schemes can set a retirement age it does not exempt employers from providing benefits if someone works past this age. Advice should be obtained on what options are available.
- Retirement Age at which DC contributions cease. As above.
- Retirement Age as age at which death in service benefits cease. As above
- Special numbers, i.e. Rule of 85 for determining when benefits can be paid unreduced. This potentially discriminates against older joiners.

- Maximum age by which benefits can be taken. If this is prior to age 75 then may be discriminatory.
- Pension calculation which includes prospective service may discriminate against older workers i.e. spouses pensions or unusual early retirement policies. This is allowed for in the calculation for ill health early retirement only.
- Lower Earnings Limited (LEL) offset. This is a possible issue if younger workers are low paid and the scheme offset is more or less than the actual LEL.
- Flexible retirement (allowing employees to continue working and take their pension) could discriminate against younger workers.
- Providing certain groups of individuals with higher benefits. This could be age discriminatory depending on the selection criteria.

Age discrimination can be justified if it can be shown that the discrimination was a proportionate means of achieving a legitimate aim i.e. a real business need (efficiency, reducing staff turnover or providing promotion opportunities to retain “good people”.) Proportionate means, that there must be a balance between the discriminatory effect of the measure and the aim which is being pursued by introducing it. It will not be justified merely because one option is less expensive to implement than the other, unless the cost would threaten the Company’s ability to continue trading.

Premier Pensions Management would be delighted to assist you with this.

There are a number of areas which are likely to affect your scheme and which will require further investigation and analysis of the options. This legislation update is only general advice and cannot be deemed as advice to any particular scheme. Premier Pensions Management will be carrying out an audit of the pension benefits for its clients. Premier Pensions Management would also be delighted to assist you with this. You should contact your adviser or P Couchman at Premier Pensions Management Ltd, Capital Business Centre, Units 14 & 15, 22 Carlton Road, South Croydon, Surrey, CR2 0BS.

DL: 020 8916 2129. Email: paul.couchman@premierpensions.co.uk, if you require definitive advice

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