



**Consultation on amending regulations – The Employment Equality (Age) (Amendment No.2) Regulations 2006 (the “Amending Age Regulations”)**

**Amicus is the UK’s second largest trade union with 1.2 million members across the private and public sectors. Our members work in a range of industries including manufacturing, financial services, print, media, construction and not for profit sectors, local government, education and the NHS.**

**Introduction**

Broadly speaking Amicus takes the view that the latest revisions contained in this document are sensible reinforcements of what the original Regulations were trying to achieve.

However, there are three issues of principle which Amicus would wish to comment upon and these are set out below.

**1. Working past Normal Retirement Date**

1.1. The original tax simplification proposal for pensions<sup>1</sup> said that one of the major advantages of simplification would be to encourage flexible retirement - meaning downsizing, drawing pension but carrying on working. The DTI guidance on the Age Discrimination Regulations said that the Regulations required schemes to allow members to work and draw pension:

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<sup>1</sup> “Simplifying the taxation of pensions: increasing choice and flexibility for all” HM Treasury 2002

*“Q: ...Beyond 1 October 2006, can we continue requiring an individual to stop working for us before taking pension?”*

*A: This may amount to indirect age discrimination. No exemption is available. So continuation of the current practice would need to be objectively justified.”<sup>2</sup>*

1.2. The DTI Regulations do not appear to provide for this and the issue is not tidied up by the amending Regulations; all that exists is a promise that the DTI Guidance will be re-written.

1.3. The policy choices are these:

(i) A member who reaches normal retirement age is allowed to carry on at work; he or she can draw pension and draw his or her pay as well.

(ii) The same member can carry on at work; he or she can draw his or her pay, and carry on building up pension as before (but not draw it).

(iii) The same member can carry on at work; he or she can draw his or her pay, does not build up further pension, but what he or she has already earned is frozen and actuarially increased between retirement age and actually retiring.

(iv) Same member can carry on at work; he or she can draw his or her pay, and his or her pension, and build up a second pension for his or her period of working between retirement age and actually retiring.

1.4. DTI Guidance says that the effect of the Regulations is (iv): draw a wage, and a pension, and building up a second pension. This is not apparent from other interpretations of the Regulations

1.5. The problem with the new amendments is that the issue is simply not clarified. What does the Government intend? It should not leave it to re-written guidance by the DTI (re-written by the DWP).

1.6. Amicus would seek clarity on this matter and would advocate the greatest flexibility being available to the employee to provide a reasonable choice by applying the options outlined in (i) to (iii) above.

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<sup>2</sup> The impact of the Age Regulations on Pension Schemes, April 2006

## **2. Integration**

- 2.1. In some pension schemes the first slice of pay does not count as pensionable: typically, the lower earnings limit (LEL) is deducted from actual pay for all purposes connected with the pension scheme. The result is that pay below the LEL does not attract pension contributions but nor does it count as pensionable pay. The justification for the practice is that pay below the LEL is reflected in the state basic pension so that state basic pension plus scheme pension equals a decent level of income in retirement.
- 2.2. It comes up in this context because the Age Regulations make the clear connection between age and low pay, and so as originally drafted, clawback was outlawed to the extent that it was not aimed at integration with the State scheme: so deducting the LEL was okay, but more than that was not. The new amendments allow a deduction of a multiple of the LEL up to 1.5 times.
- 2.3. Amicus takes the view that the extension of the clawback provision beyond the basic LEL is undesirable although it is recognised that this would add to the costs of some schemes. One way of addressing this without placing schemes at financial risk would be to provide for the deduction to be frozen in monetary terms thus phasing it out over a reasonable period.

## **3. Redundancy Dismissals**

- 3.1. The third issue that Amicus wishes to draw attention to is specific to local government, civil service and the NHS.
- 3.2. As originally drafted, the Regulations allowed early retirement without actuarial reduction and with notional added years of service, but only in the event of early retirement on ill-health grounds. Many schemes, public and private sector, allow early, unreduced and enhanced pensions in the event of redundancy as well. In the public sector, that extends to early retirement on the basis that this was in the mutual interests of both parties. For example, cases such as where the employer may wish to promote an existing employee and the present

incumbent is prepared to leave on agreed terms, including voluntary redundancy. The Regulations, as drafted, prevented early unreduced and enhanced pensions in all of these cases.

- 3.3. The new amendments will allow early and enhanced pensions in redundancy cases, which is to be welcomed. However, this extends to redundancy only, (presumably but not explicitly following the statutory definition of redundancy), and not mutually agreed termination in the public or privatised sectors.
- 3.4. Perversely, the DCLG has said that the exemption applies only to early unreduced pensions with added years of notional service where the terms come from an “occupational pension scheme” as defined in the Pension Schemes Act 1993. The DCLG states that added years in local government by and large come from the Local Government (Discretionary Payments) Regulations and that is not an “occupational pension scheme”.
- 3.5. The approach of the DCLG appears to fly in the face of the intention of the amendments proposed in the new amendments. Amicus would seek to have this matter clarified so that there is no possibility of ending up with the DCLG saying that even if they wanted to permit added years in redundancy cases, the Age Regulations do not let them.
- 3.6. Amicus would suggest that the Age Regulations could usefully be amended to make it plain that added years derived from a scheme which runs alongside an occupational pension scheme are also covered by the new relaxation.

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