



## **Consultation Response**

### **Draft Regulations on Flexible Retirement and Pension Provision**

**Submitted by TAEN – The Age and Employment Network**

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## **Introduction**

TAEN – The Age and Employment Network has been closely engaged with the DWP over pensions issues for a number of years. TAEN played an active role in the work of the Pensions Commission, worked with the then Department of Trade and Industry as an active member of the Age Advisory Group on the Employment Equality (Age) Regulations 2006 during the six years of its existence. Our strategic partner charity, Help the Aged, has also been closely engaged with the DWP on all aspects of pension reform and legislation. It follows that TAEN supports the Government in seeking equitable and workable clarification of the legal parameters for flexible retirement.

## **The Value of Flexible Retirement**

TAEN believes flexible retirement is an important element of policy which the Government should use as part of its extended working lives agenda. Since the Finance Act 2004 it has technically been possible for employers and pension schemes to offer flexible retirement by an employee taking an income whilst drawing a pension from the same employer. These provisions have not been widely used - the confusion and obstacles evidenced in responses to the October 2007 document provide some reasons.

TAEN believes the needs of employees should have parity with those of employers in any change to the legislation concerning flexible retirement. In our work we meet many employees who would value working beyond normal pension age (NPA) on a part time basis. Some are attracted to the life-style possibilities they see in flexible retirement but there are others for whom, for a variety of reasons, flexible retirement offers a practicable solution to many different sorts of pressures. Flexible retirement is therefore many faceted, should be flexible in the way it is described and used and requires a flexible legal framework, if it is to be used to its full potential. It is, for example, important that flexible retirement is available in suitable cases both before and later than NPA and that its definition for legal purposes does not limit it to situations where a change in work responsibilities has occurred.

## **Responses to Questions**

- **Definition of ‘flexible retirement’**

**Question 1** The definition of ‘flexible retirement’ excludes members continuing in the same grade with the same hours, but who take all or part of their age-related benefits. Do you (or employers or schemes you advise) enable workers to continue to work after NPA in the same grade and with the same hours whilst taking their age related benefits? If so, does the practice cause significant problems for the scheme and are you (or any of the employers or schemes you advise) considering withdrawing the policy? If not, please explain why the practice has not been adopted.

**Answer**

TAEN is not an employer or an adviser to a pension scheme and it is not possible for us to answer the question on this presumed basis. The following points are less concerned with existing problems for schemes but represent TAEN's view on possible implications of a legal definition of *flexible retirement* which could have broader ramifications than a direct legal impact.

Clearly, flexible retirement is intended to offer individuals the chance to combine work with a retirement pension so as to remain in the workforce longer. In most cases, we agree, this will entail a reduction in hours of work and/or a change of job responsibilities. However, TAEN believes there is little point in *prescribing* these elements rigidly as *essential* in flexible retirement schemes if they then become a constraint on the forms of flexible retirement that people are allowed to devise.

Several variations on the basic idea of *flexible retirement* are currently permitted under the A Day rule changes introduced in April 2006 which we hope would not be discouraged by the proposed reforms.

For example, TAEN knows of individuals who wish to remain in their current job roles on the same basic hours of work whilst drawing their pension in order to make better financial preparation for their later retirement. This practice would not fit the definition of *flexible retirement* as it is given but arguably it is an option which should be permitted, as indeed it is currently.

Similarly we are aware of arrangements in some companies which have allowed a flexible approach including taking extra periods of extended leave. We feel that there should be scope to explore such arrangements and that the flexible retirement concept could in some instances be an important element. The law, however framed, should not preclude less conventional ways of reducing hours or working flexibly to meet the needs of employer and older employees.

In summary, we believe the definition of *flexible retirement* in the Regulations should not discourage employers and pension schemes from affording such opportunities as the preceding paragraph describes. It is acknowledged that someone drawing their pension and continuing to work might not be considered to be 'retired', flexibly or otherwise. However, the *flexible retirement* concept interpreted broadly applies in our view. The government should be mindful that such arrangements are particularly helpful to those with inadequate savings or accrued pension benefits for actual retirement and the law should not be framed so as to limit or discourage opportunities for this category of employees.

In summary, we suggest that the government should be clear that the definition of *flexible retirement* does not inhibit such creative approaches such as our examples illustrate. Ideally, the definition of *flexible retirement* should encourage

innovative approaches that suit the particular needs of organisations and individuals.

- **Option 1: Flexible approach to exemption**

This option among the approaches being considered by government aims to make it lawful and non actionable under the Age Regulations to cease accrual of benefits or entitlement of any further rights or benefits under the pension scheme during a period of flexible retirement. The question posed in the consultative document asks:

**Question 2** As drafted, the exemption could be used to justify stopping further accrual of benefits, but not to provide future accruals at a lower rate than that previously enjoyed. Would you welcome a more flexible approach which would allow accruals at a lower rate?

**Answer**

TAEN does not believe this is the only question that should be asked on this option. We do not believe that in general taking flexible retirement should warrant a cessation of accrual of benefits. If an exemption of the kind envisaged is introduced it may well lead to employers unnecessarily withholding benefits to those who are flexibly retired.

*One consequence this approach may be that the discrimination becomes commonplace in this area.*

- **Effect of Section 7 of Pensions Act 2008**

The next question is based on the already mentioned provisions of S.7 of the Pensions Act 2008 and asks

**Question 3** Given this, do you consider that the implementation of these Regulations would meet the Government's overall aim of encouraging employers to provide flexible retirement arrangements?

**Answer**

We note that Section 7 of the Pensions Act 2008 will provide a right for a job holder aged between 16 and 75 to require their employer to enrol them into a qualifying pension scheme and we note the further explanatory points in paragraphs 4.9 to 4.11. The summary offered here implies the flexibly retired person may be provided with access to a different scheme in which the level of benefits will be at a reduced level. It would seem likely that issues may well arise because of such disparities in benefits. TAEN believes

it should be possible to use the law to challenge such inequalities and we would not wish to see an exemption from such claims.

More fundamentally, we wish to point out that individuals may feel attracted to flexible retirement precisely *because* they have very low accrued pension rights. For them, one important advantage of continuing to work (albeit flexibly retired) would be to earn more retirement benefits. Therefore, anything which serves to legitimise discrimination against the flexibly retired would be an unacceptable step and this would certainly include ceasing accruals of benefits for flexible retirees. TAEN believes employers should provide the flexibly retired with the same or equivalent benefits to those offered other employees, either in the same or another scheme.

It is however, accepted that some who have flexibly retired may not themselves want or need to continue contributing to a pension scheme, particularly where they have accrued maximum benefits allowed under the scheme. If this were the case it should be permitted for an employer not to contribute on the employees' behalf, though this would not justify an employer withholding benefits automatically from flexible retirees. Moreover, one would hope that in such circumstances equivalent additional voluntary contributions could be paid to the employee's credit.

*In summary we believe that it would be a mistake to allow the generalised cessation of accruals in the way that it is implied the legislation will encourage. We believe such an arrangement will make flexible retirement considerably less attractive and would be completely contrary to the spirit of the Age Regulations. Moreover, we do not believe that the slowness of employers to offer flexible retirement schemes has been demonstrably shown to have roots in the existing legislation. Therefore we doubt that the Government would be able to show that it had met its obligations under Directive 2000/78/EC, were such an amendment to be passed into law.*

**Question 4** We welcome further evidence to determine the extent to which the Age Regulations deter employers from offering flexible retirement arrangements. Do you (or the employers or schemes you advise) currently provide flexible retirement arrangements to staff? If so, are you (or the employers or schemes you advise) considering withdrawing or limiting those arrangements? Why? If you (or the employers or schemes you advise) do not offer flexible retirement arrangements, what is the reason for this? Would an exemption from the Age Regulations lead you (or the employers or schemes you advise) to change your current practice?

**Answer**

We are not responding as an employer, provider of pensions or adviser to the same, though we do have frequent conversations with employers and pensions providers as well as with individuals. We have no evidence that the Age Regulations are having the effect referred to in the question. We are not aware of any research that has been undertaken to properly and objectively establish such a link and we consider this question has been put in a tendentious manner, completely without balance or pretence thereof.

- **Option 2 Exemption of death in service benefits**

This section of the paper in paragraphs 4.14 to 4.18 outlines an argument for allowing schemes to refuse to cover flexible retired members with death benefits on the same scale as employee members without the need to justify doing so on a scheme by scheme basis.

We accept the argument in paragraph 4.15 that “the very process of ageing involves a greater expectation of death”. However we would point out that the very fact of demographic changes making extended working lives so important to the nation’s economy arises precisely because the risk of death at any particular age has been declining. It is ludicrous to suggest that an employee aged 65 today has the same risk of death as an employee of 65 10 or 20 years ago, when we know that life expectancy at 65 has increased significantly over this time.

Moreover, there are enormous differences between individuals and to suggest that any individual presents an unacceptable risk of death because he or she has reached a given age is crude, simplistic and hardly merits serious consideration.

*Therefore, we deplore the government’s proposal to allow pension schemes to treat all flexibly retired people simply as pensioner members of a scheme without consideration of their rights to take benefits as employees.*

**Question 5** We welcome views on whether the provision of ill-health benefits during a flexible retirement arrangement should form part of the exemption. Does your scheme currently provide ill-health benefits? What (if any) detriment does the continued provision of ill-health benefits during a flexible retirement arrangement cause?

**Answer**

Again, we are not answering as a provider of pension schemes, but from the position of an informed observer of the labour market for older and mid-life people. We study influences on the employability and job seeking success of people in the *older worker* age group. From this perspective, we see no reason for allowing such exemptions to take place.

Though older people generally suffer from more chronic conditions than younger people, it is not clear that older people *who are willing to opt for flexible retirement* are imbued with more susceptibility in this way. Therefore, it is not clear that older people who wish to remain in work beyond 65 really would make more call on ill-health benefits than younger members of staff. If risk is to be used as a basis for withholding benefits, it needs to be clear that robust and properly representative evidence has been used to provide the comparative risk figures in the first instance.

Secondly, ill-health benefits are generally costed by insurance companies on the basis of aggregated risk for an entire workforce. We see no reason why an employer should take older workers as a separate cohort for the purpose of calculating a higher or lower risk. It would be technically possible to disaggregate risk by other more relevant factors (including smoking, body mass and other strong indicators of health risks). The fact is that within any cohort based on age there are inevitably people more or less at risk of health impairments. Denying protection on the basis of a crude and unreliable calculation is not equitable or just.

*Individuals present with wide differences in health conditions and age offers no satisfactory proxy for a cut off point to ill-health protection. We do not therefore believe that the continued provision of ill-health retirement should be an issue for employers.*

*We urge the government not to consider making the provision of health benefits to flexibly retired people a further exception under the Regulations.*

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