

Guernsey Discrimination Consultation - Pension Implications



"pension schemes still could use age criteria"

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10 Protected characteristics

- age
- carer status
- disability
- marital status
- pregnancy or maternity status
- race
- religious belief
- sex
- sexual orientation, and
- trans status

The Committee for Employment & Social Security has issued a consultation on anti-discrimination legislation in relation to employment and the provision of services. We look at the potential implications for occupational pension schemes.

Overview of Proposals

Guernsey introduced sex discrimination legislation in 2006. It is proposed that in future it would be illegal for employers and service providers to discriminate on the grounds of a further nine protected characteristics.

How will this affect pensions?

Currently, pension schemes must not discriminate on grounds of sex in respect of benefits accruing from 1 March 2008. Under the proposals, employers would need to provide equal "terms and conditions" to all employees who are in circumstances that are not materially different from each other. "Terms and Conditions" include working hours, leave entitlements, bonuses, and access to health insurance, benefits in kind and occupational pensions.

Exemptions for Pension Schemes

It is proposed that occupational benefits and pension schemes could still use age criteria in the following circumstances:

- to fix ages for admission to a scheme or to fix an age for claiming benefits,
- to use ages in actuarial calculations, or
- to provide different rates of severance payment based on the difference between the current age of the employee and their State Pension Age.

Pension schemes could also impose a maximum length of pensionable service or set different age-banded contribution levels for money purchase schemes (where the aim is to equalise the resultant benefit for comparable members). They could also use gender-specific actuarial factors where there is actuarial data to justify the difference.

Pension schemes, annuity providers and insurers would be able to use some protected characteristics to undertake assessments to determine the terms for a specific benefit or contract.

In these circumstances exemptions are expected to apply to differential treatment on grounds of age or disability.

Transitional arrangements

The consultation notes that there may be some historic schemes which treated people differently in a way that would not be permissible when the legislation comes into force. These schemes would not be subject to complaints of discrimination if *"there are reasonable and proportionate transitional arrangements agreed prior to the legislation entering into force to phase out the scheme; and these are already being implemented when the legislation comes into force with a view to reaching a position which would be compliant."*

Points to be clarified

It is unclear if pension schemes will still only be required to provide equal benefits for men and women from 2008 onwards.

An employer can require an employee to retire from employment where this can be objectively justified. However, if in practice the legislation makes it difficult for employers to terminate an individual's employment once they have reached retirement age and a scheme is required to continue to provide death in service benefits for them, the cost of doing so could increase considerably.

Consultation Timetable

The consultation closes on 30 September 2019, with the results due in December 2019. Proposals are then expected to be brought to the States for debate by April 2020, with the earliest date for the legislation coming into force being sometime in 2021.

Next Steps

In view of the proposed exemptions, other than the areas where clarification is required, it is unlikely that the proposed legislation will have any significant implications for the operation of pension schemes. In the meantime, we recommend that trustees consider if there are any aspects of their pension scheme design which might be considered discriminatory and the options available to eliminate the discrimination.

The consultation can be found at:
<https://www.gov.gg/discriminationconsultation>

Discrimination Legislation Timeline



Consultation



Consultation results published



Deadline for States debate



Earliest date legislation could come into force