

FIREFIGHTERS' PENSION COMMITTEE
IMPACT OF AGE DISCRIMINATION REGULATIONS

Note by DCLG

Please see letter of copy of letter of 12 June attached from Ivan Walker, Thompsons, Solicitors, about the impact of the Employment Equality (Age) Regulations 2006 on the Firefighters' Pension Scheme.

The Committee is invited to discuss.

June 2006

12 June 2006

Dear Martin

EMPLOYMENT EQUALITY (AGE) REGULATIONS 2006

As suggested, I have had a look at the question whether the above Regulations will cause any difficulties for the FPS. As you know, they will import a non-discrimination rule into the FPS with effect from 1st October 2006.

It will become unlawful to discriminate on the grounds of age in carrying out any functions relating to the Scheme, unless the rule or practice in question is excepted from the general prohibition. The excepted functions are set out in Part 2 of Schedule 2 to the regulations. Even if a function or practice does not fall within this list of exceptions, it will not be unlawful if it can be justified if it is a proportionate means of attaining a legitimate aim. Most of the rules and practices commonly adopted by pension scheme are within the list of exceptions.

I have looked at all of the rules of the FPS but I cannot guarantee that I have identified every potentially age-related provision. As a general rule, I have looked at provisions where there is a difference in treatment on the grounds of age, or length of service (members with a longer period of service will be older).

Issues relating to old provisions which have been protected or preserved as transitional arrangements in the past can be discounted as potential problems. The Regulations will not prevent discrimination on the grounds of age arising from periods of service prior to their entry into force.

The most obvious age related provisions are the simple facts that pensions accrue by reference to years of service and pay. Unsurprisingly the Regulations make the calculation of defined benefits on this basis a permitted practice. So are the use of minimum entry ages and minimum ages for receipt of benefits.

Fast accrual after 20 years' service does not cause a problem either. That is because the Scheme provides for uniform accrual (Rule B5). At any particular point in their service, a member has a deferred entitlement to 1/45th available at deferred pension age.

The age at which the pension can be drawn depends on the length of the member's service and as I have said above, members with longer service are likely to be older. I don't think the 25 year rule (Rules A14 and B1) causes a problem however. That is because the operation of an "Early Retirement Pivot Age" or ERPA is an excepted practice too. This is the earliest age at which a member is entitled to benefits without actuarial reduction. Normal retirement age under the Scheme is 55. The right to retire with a pension at age 50 is a right to retire early without actuarial reduction: it is in other words an ERPA.

The different scales of enhancement used for calculating ill-health awards and the bands used to calculate injury awards depend on length of service (and therefore by implication, age). That too is an excepted practice.

Commutation factors are explicitly age-related. That too is an excepted practice, to the extent that the difference is due to life expectancies.

Some benefits depend on minimum periods of service (see rule B2 - short service gratuities for example). Provided that the period is no longer than two years, provisions such as this are lawful.

The only problem I can see is the requirement that partners' pensions cease upon remarriage. That is not an excepted practice. Younger ex-spouses and partners are more likely to remarry and so the rule is indirectly discriminatory. The provision could only be preserved if the administrator is able to show that retaining the rule is a proportionate means of achieving a legitimate goal. I have never seen a real justification for it at all.

I hope that this is helpful. I look forward to discussing this tomorrow.

Yours sincerely

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By email only