

**Flexible Retirement and Pension Provision - DWP's consultation on the draft  
"Employment Equality (Age) (Amendment) Regulations 2009"**

A response by

**The National Association of Pension Funds**

March 2009

**Introduction**

1. The National Association of Pension Funds (NAPF) is the leading voice of workplace pensions in the UK. We speak for 1,200 pension schemes with some 15 million members and assets of around £800 billion. NAPF members also include over 400 businesses providing essential services to the pensions sector.
2. The NAPF welcomes the opportunity to respond to the consultation on these draft regulations. We set out below our key points and then, where appropriate, our responses to DWP's five specific questions. However, as these questions are mostly designed to elicit evidence of practice by individual schemes or employers, which will be provided in respect of many NAPF members through other channels, our comments are more general in nature.
3. The NAPF also welcomes DWP's acknowledgement that the draft regulations do not address all areas of uncertainty in this area. We would be pleased to participate in the exchange of views and exploration of practical solutions which the consultation paper anticipates in the preparation of Government guidance relating to flexible retirement.

**Key Points**

4. In supporting the Government aim to encourage flexible retirement, the NAPF believes that there is a strong case to make pensions provision a broad-based exemption to the Age Regulations, rather than the detailed schedule approach adopted in 2006.
5. Flexible retirement is a new area of employment where employers and employees have little experience of what would work best. A fairly clear canvass would allow a range of approaches to be developed and evolve.
6. In essence, exemption from the Age Regulations capitalises on the freedoms created in the Pensions Act and Finance Acts of 2004, which enable employers to allow employees to draw pension from minimum pension age. The NAPF believes that employers should be able to exercise those freedoms unfettered - and that any amendments to the Employment Equality (Age) Regulations 2006 needed to achieve that end should be put into effect.

7. However, if the Government is not willing to adopt a blanket exemption for pensions from the Age Regulations, our preference of the two options under consideration would clearly be Option 1, the general exemption. But within that, the restricted definition of flexible retirement, applying in effect only where an employee is aged over 65, needs extending. We believe that a more flexible pivotal age would be appropriate and would suggest, instead, the age at which the individual enters into the flexible retirement arrangement.
8. The NAPF notes the Government's policy, stated in section 3 of the consultation document, to ensure that older people have opportunities to carry on working and earning towards retirement. We believe that employers are more likely to create those opportunities in circumstances where their flexible retirement arrangements, developed according to the needs of their businesses and staff, would not be restricted by a regulatory regime related to age.

### **The consultation's specific questions**

**Q1 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.**

9. We are aware of a number of NAPF fund members who allow employees to draw their pensions while remaining in employment without any change of grade or hours, both before and after NPA. We do not believe that the practice is causing significant problems for those members.

**Q2 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?**

10. NAPF feels that the more flexible approach would encourage a wider range of employers to offer flexible retirement arrangements to their employees. We would therefore welcome it.

**Q3 Given this (ie the right of a jobholder, under the Pensions Act 2008, to be enrolled in a qualifying scheme), do you consider that the implementation of these regulations would meet the Government's overall aim of encouraging employers to provide flexible retirement arrangements?**

11. We feel that the "Option 1" regulations would only go part way towards meeting that aim, making it easier for employers to allow employees to work beyond male SPA. But we understand that the Government also intends to facilitate the gradual reduction of working hours/responsibilities for those approaching NPA/SPA – an aim which is clearly not met by either of the alternative sets of draft regulations.

**Q4** 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?

12. We believe that exemption from the Age Regulations would lead more employers to consider offering flexible retirement arrangements.

**Q5** 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?

13. We believe that exemption of both 'active member' death benefits and ill-health retirement benefits from the Age Regulations would lead more employers to consider offering flexible retirement arrangements.

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10 March 2009