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# AGE DISCRIMINATION

*The DWP has begun a further consultation about age discrimination*

**Summary.** The DWP has begun a further consultation about age discrimination and pensions.

**Background.** The pensions provisions of regulations dealing with age discrimination came into force on 1 December 2006 (The Employment Equality (Age) Regulations 2006 SI 2006/1031 (the "Age Regulations")).

The Age Regulations included a number of exemptions from age discrimination legislation.

**Consultation.** The DWP has begun an informal consultation on the age discrimination implications of the following:

- flexible retirement (i.e. allowing workers to draw pension while remaining in employment);
- providing death benefits beyond a scheme's normal pension age.

*In relation to flexible retirement, the DWP says that the Government believes that allowing older workers to retire flexibly will encourage them to work for longer*

In relation to flexible retirement, the DWP says that the Government believes that allowing older workers to retire flexibly will encourage them to work for longer. The DWP notes that the pensions industry and employers have commented that without further guidance they are unclear on what might be discriminatory or acceptable practices in relation to flexible retirement. The DWP asks for the following:

- examples of flexible retirement practice;
- views on what might be age discrimination in relation to flexible retirement and which practices should be exempt from age discrimination legislation or capable of objective justification;
- examples of how flexible retirement is dealt with where employees are entitled to draw a pension before age 65 (the age at which the Age Regulations allow an employer to require an employee to retire);
- why some employers do not allow employees to draw pensions while continuing to work and whether this is considered discriminatory;
- whether employers allow employees who wish to draw their pension while continuing to work to earn further pension benefits.

*If employers cease to provide death benefits after normal pension age that practice needs to be justified*

In relation to provision of death benefits after normal pension age, the DWP says:

- if employers cease to provide death benefits after normal pension age that practice needs to be justified. Employers may adopt different age-related levels of benefits to reflect different risk profiles but this needs to be objectively justified;
- it would like views on when it may be justifiable not to provide death benefits after normal pension age.

The closing date for responses is 7 December 2007.

**Comment.** Flexible retirement is one of the main areas where there is uncertainty about the impact of the Age Regulations. Further guidance is seen as important by the pensions industry. Death benefits provided after normal pension age are an area of concern for many pension schemes (because of the greater risk of the benefit being triggered) and further guidance will be helpful.

*Source : DWP consultation document Flexible Retirement and Pension Provision dated October 2000, available at [www.dwp.gov.uk/consultations/2007](http://www.dwp.gov.uk/consultations/2007).*

## EMPLOYER DEBT

**Summary.** The DWP has clarified its proposals on employer debt.

**Background.** In August, the DWP issued a consultation paper on amendments to the legislation dealing with statutory debts due from employers (summarised in the September issue) which includes changes to the definition of “employment cessation event”. Under the current employer debt legislation, an “employment cessation event” occurs and a debt is triggered in a multi-employer defined benefit scheme where an employer ceases to employ active members at a time when at least one employer in the scheme continues to do so. The proposed changes would mean that a debt will also be triggered where all employers under a multi-employer scheme cease to employ active members at the same point. This would affect scheme mergers, transfers and the cessation of future accrual.

**Facts.** The DWP has now issued an announcement clarifying the intention of the changes to the definition of “employment cessation event”. The DWP say that its proposed changes are aimed at scheme abandonment (where an employer avoids responsibility for its funding obligations under a defined benefit scheme) and are not intended to affect legitimate mergers or transfers where the employer will still take financial responsibility for the scheme.

*Source: DWP announcement available at [http://www.dwp.gov.uk/publications/dwp/2007/ocpen-consult/def\\_emp\\_cessation.as](http://www.dwp.gov.uk/publications/dwp/2007/ocpen-consult/def_emp_cessation.as)*

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# ALTERNATIVE TO BUY-OUT

*Details have been published of a takeover offer which could resolve Telent plc's pension problems*

**Summary.** Details have been published of a takeover offer which could resolve Telent plc's pension problems.

**Background.** For some time, Telent has been exploring options for managing the pension liabilities stemming from the former GEC defined benefit pension scheme ("GEC Scheme"), which has assets of over £2.5 billion. The disposal by Marconi of its telecommunications equipment and international services businesses to Ericsson resulted in the creation of Telent in 2006. Telent retained the remainder of the old Marconi business, along with responsibility for the 62,000-member GEC Scheme – which Ericsson refused to take on. As part of the Ericsson transaction, and as required by the Trustee of the GEC Scheme and the Pensions Regulator, £490 million was put into an escrow arrangement for the GEC Scheme's potential benefit. If not required by the GEC Scheme, these funds could eventually be released to Telent. For the year to 31 March 2007 Telent's operating business produced profits before tax of about £40 million.

**Takeover Offer.** The Pension Corporation, a company which participates in the secondary buy-out market for acquiring pension scheme liabilities, has now made a recommended take over offer for Telent plc. The Corporation has the financial capacity to acquire over £25 billion of pension scheme liabilities so the recommended offer is well within its financial capacity.

Under the recommended offer, the Corporation acquires Telent plc and thus becomes the owner of Telent's operating business but also takes on responsibility for the GEC Scheme.

**Advantages.** For the Telent shareholders, they will receive a price for their shares which is better than the pre-offer market value. The management of Telent's operating business will gain access to the Corporation's expertise in the stewardship of large final salary schemes, allowing the management to focus exclusively on the operating business.

*It has the financial resources to take the time to manage the GEC Scheme's assets and liabilities, adopting strategies which would maximise the assets and reduce the liabilities*

There are a number of possible advantages to the Corporation:

- It has the financial resources to take the time to manage the GEC Scheme's assets and liabilities, adopting strategies which would maximise the assets and reduce the liabilities, e.g. by incentivising deferred pensioners to transfer out of the GEC Scheme.
- The GEC Scheme is now closed to new future accrual and this will make it easier to manage.
- The Corporation did not need to engage in negotiations with the Trustee of the GEC Scheme or the Pensions Regulator before making the offer.
- The Corporation may get access to the £490 million in the escrow arrangement, although current indications are that funds are unlikely to be released in the short to medium term.
- The Corporation would be able to sell on the operating business at a price which would not be discounted to reflect the pension scheme difficulties.

*Sources:*

1. "Recommended Cash Offer for Telent plc", press release issued by Pension Corporation on 25 September 2007. <http://www.pensioninsurancecorp.com/press.asp>
2. "Pension Corp buys final vestige of GEC with £400m takeover of Telent", The Independent, 26 September 2007. <http://news.independent.co.uk/business/news/article2998975.ece>
3. Offer Document dated October 2007, as downloaded from Telent website.
4. <http://www.telent.com/offer-Doc.htm>

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