

dti

**EQUALITY AND DIVERSITY:
AGE MATTERS**

**Age Consultation 2003
A Summary**



The DTI drives our ambition of 'prosperity for all' by working to create the best environment for business success in the UK. We help people and companies become more productive by promoting enterprise, innovation and creativity.

We champion UK business at home and abroad. We invest heavily in world-class science and technology. We protect the rights of working people and consumers. And we stand up for fair and open markets in the UK, Europe and the world.

Equality and Diversity: Age Matters A Summary

Introduction

1. Age discrimination happens because assumptions are made about employees or prospective employees – young and old – that are based on inaccurate, outdated, and inappropriate stereotypes. Such attitudes work against the interests of the individual, the workforce, and employers. They get in the way of creating prosperity for all. We shall tackle this through effective legislation implementing the age strand of the European Employment Directive (2000/78/EC). We will build on the success of the Age Positive campaign, which, with its associated voluntary Code of Practice, promotes the business benefits of age diversity.
2. Age discrimination in employment and vocational training will become unlawful on 1 October 2006.

Our Approach

3. The proposals in the consultation document *Equality and Diversity: Age Matters*, aim to:
 - a. strike the right balance between regulating and supporting new legislation through other measures designed to achieve culture change;
 - b. achieve as coherent an approach as possible across all the equality strands, since that should reduce costs for business and bureaucracy for individuals.
4. We shall develop guidance separately, once we have decided the final contents of the implementing legislation. Clear and accessible guidance will be important in ensuring that everyone understands the law, their rights, and their responsibilities.

Our Proposals

5. We shall outlaw direct and indirect discrimination on the basis of age in employment and vocational training.
6. But, that will not mean that employers have to recruit, promote, retain, or train people who are not competent, capable, and available to perform the essential functions of the post concerned or to undergo relevant training.

Who will be protected?

7. The law will protect:
 - a. people who are working, whether they are directly employed, or working under another type of contract, such as agency workers and some self-employed people;
 - b. people who apply for work;
 - c. office holders appointed by the Crown and some other paid office holders (these can include company directors and the members of some independent public bodies);
 - d. people undertaking or applying for employment-related training;
 - e. people undertaking or applying for courses in further and higher education institutions, but not in schools;
 - f. in some circumstances, people who have left work, or work related training, or further and higher education institutions;
 - g. people who are members of, or who apply to join, trade unions or trade or professional bodies.

What is covered?

8. *Direct discrimination* occurs when a decision is made on the basis of a person's actual or perceived age.
9. *Indirect discrimination* happens when a policy or practice applies to everyone but causes disadvantage to a certain group (such as younger or older people), unless there are good reasons for it. Indirect discrimination is often inadvertent.

Who will have new obligations?

10. Those with new obligations will include:
 - a. employers;
 - b. providers of vocational training, including further and higher education institutions and private training companies;
 - c. trade unions, professional associations, and employers' organisations – in relation to their membership as well as in their role as employers.

Treating people differently because of age

11. Exceptionally, treating people differently on the grounds of age will be possible, but employers must be able to justify doing so:
 - a. by reference to specific aims set out in legislation (see paragraph 13); and
 - b. only if it is appropriate and necessary in the particular circumstances.
12. Employers will have to be able to produce supporting evidence if challenged on their use of the specific aims.

13. The sort of specific aims we think we might set out in legislation could be:
- a. health, welfare, and safety – for example, the protection of younger workers;
 - b. facilitation of employment planning – for example, where a business has a number of people approaching retirement age at the same time;
 - c. the particular training requirements of the post in question – for example, air traffic controllers, who have to have high levels of health and fitness and concentration, and who have to undergo extensive theoretical and practical training at the College of Air Traffic Control, followed by further on the job training;
 - d. encouraging and rewarding loyalty;
 - e. the need for a reasonable period of employment before retirement – for example, an employer who has exceptionally justified a retirement age of 65 might decline to employ someone only a few months short of 65 if the need for, and the cost and length of, training meant that the applicant would not be sufficiently productive in that time.
14. *Retirement age*: retirement ages that employers set for employees will be unlawful under the Directive, unless objectively justified. We are seeking views on whether the legislation should provide for employers, exceptionally, to be able to justify mandatory retirement ages. They would be able to do so only by reference to the specific aims listed above and only if their particular circumstances made it appropriate and necessary. We are also asking for comments on a default age of 70 at or after which employers could require employees to retire without having to justify their decision. Employers would be free to continue employing people beyond the age of 70. We will not make a decision about retirement age until we have considered the outcome of this consultation.

15. *Recruitment, selection, and promotion:* decisions about recruitment, selection, and promotion should not normally be based on age. We propose that employers should be able to apply an age limit to recruitment but only if they can justify doing so.
16. *Pay and non-pay benefits:* we propose that legislation would allow employers to continue to provide pay and non-pay benefits based on length of service or experience if they can justify doing so.
17. *Unfair dismissal:* we propose changing the provisions relating to unfair dismissal so that employees can seek redress at any age, but retirement at an employer's justifiable mandatory retirement age, or any default age set out in legislation, will be a fair reason for dismissal. We also plan to change the way that financial compensation is calculated so that the basic award will no longer be based on the employee's age. The calculation of the award will continue to take account of the employee's length of service, which will still be limited to 20 years.
18. *Redundancy:* we propose removing some age-related aspects of the statutory redundancy payments scheme. Age will cease to be a factor when calculating the payment due: the calculation will be on the basis of one week's pay per year of service, subject to the current maximum of 20 years, regardless of age; and service below the age of 18, which is currently ignored, will be taken into account.
19. The upper age limit for entitlement to a statutory redundancy payment will depend on the decision we make about retirement ages. Entitlement would either:
 - a. end at the employer's normal retirement age for the job, which would have to be justified if under the default retirement age, if we decided to have one; or
 - b. end at the default age if one was set out in legislation and if the employer had no normal retirement age for the job; or
 - c. continue for as long as the person remained in employment – if the employer had no normal retirement age for the job and if we decided not to set out a default age in legislation.

20. *Cross-cutting issues:* these are issues that apply to all the various strands of equality legislation. Our approach is to be as coherent and consistent as possible across all those strands. We propose taking an approach on who is covered, and indirect discrimination, harassment, victimisation, genuine occupational requirements, positive action, and discrimination after employment that is consistent with legislation covering sexual orientation and religion or belief.

Benefits and Costs

21. Legislation on age discrimination is likely to result in increased participation rates for older and younger workers. This will lead to a wider pool of workers whose abilities and talents better match the requirements of employers when recruiting and developing their staff. We believe there will be net economic, and social benefits from the legislation.
22. There are about 1.18 million business in Great Britain, of which about 1.14 million are small employers. Since small firms (those with fewer than fifty employees) tend to have neither dedicated human resources arrangements, nor formal systems in place, they generally find it harder than medium and larger companies to assimilate the implications of new regulations.
23. We expect small firms to spend between about four and a half and five and a quarter hours in total reading and understanding the guidance on age. The cost for each small business will be between about £105 and £122. The total cost for small businesses of reading and understanding the guidance and other published material will be between about £120 million and £140 million. Against that must be offset the considerable, if unquantifiable, benefits we expect to accrue from the implementation of age legislation across all areas of business. The Cabinet Office study of older workers – *Winning the Generation Game* – which estimated that low employment among older people reduced gross domestic product by around £16 billion, illustrates potential orders of magnitude in this area.
24. The costs and benefits are described fully in our Regulatory Impact Assessment (RIA), which is available from www.dti.gov.uk/er/equality/age. Annex A of the RIA contains the small firm impact assessment.

How and When to Comment

25. The consultation will continue until 20 October 2003. You can comment on our proposals by completing a consultation response form. You can get a copy of the full consultation document and response form by phoning the DTI Publications Orderline 0870 1502 500. The reference number of the consultation pack is URN 03/919. If you want the version in Welsh, please quote URN 03/934.

26. Please send your completed form to the address below before the closing date:

Valerie Bainton
Department of Trade and Industry
UG61
1 Victoria Street
London SW1 0ET

27. All the consultation documents are available on the internet at www.dti.gov.uk/er/equality/age . You can download a copy of the response form from and return it by email to age.consultation@dti.gov.uk

Next Steps

28. We shall develop draft regulations in the light of responses to this consultation. We shall consult on them in the first half 2004. We aim to lay the legislation before Parliament by the end of 2004. We shall also develop guidance, and publish it when the regulations have been approved by Parliament.

29. The legislation will come into force on 1 October 2006. This will give employers, training providers, and others with new obligations under the Directive some two years to complete their preparations. It will also allow individuals to familiarise themselves with their new rights.

