

# EQUALITY ACT 2010

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### **Part 16: General and Miscellaneous**

#### *Schedule 9: Work: exceptions*

#### **Part 2: Exceptions relating to age**

#### **Retirement: paragraph 8**

#### **Applicants at or approaching retirement age: paragraph 9**

##### Effect

812. As a result of this paragraph it is not unlawful discrimination for an employer to decide not to offer employment to a person where, at the time of the person's application to the employer, he or she is over the employer's normal retirement age or he or she is over the age of 65 if the employer has no normal retirement age.
813. It is also not unlawful to refuse to offer employment where the applicant will reach the employer's normal retirement age or the age of 65 (if the employer has no normal retirement age) within six months of the application for employment.
814. For these purposes, the employer's normal retirement age must be 65 or over and has the same meaning as is given in section 98ZH of the Employment Rights Act 1996 (as inserted by Schedule 8 to the 2006 Regulations).
815. The employees to which paragraph 9 applies are the same group of employees to which paragraph 8 (exception for retirement) applies: that is to say, employees within the meaning of section 230(1) of the Employment Rights Act 1996, Crown employees, House of Lords staff and House of Commons staff.

##### Background

816. **Paragraph 9** preserves the exception previously provided for at regulation 7(4) of the 2006 Regulations.
817. The rationale for this exclusion from the requirement not to discriminate flows from the rationale for paragraph 8 (exception for retirement). There is little point in requiring an employer not to discriminate at the point of receiving an application from a prospective employee when, if he or she were to employ the person, that person could be retired (without it amounting to discrimination to do so) within six months of their appointment.
818. The appointment provisions are also being reviewed during 2010. It is intended that any changes resulting from the review will be implemented in 2011.

##### Examples

- An applicant is 66 years old at the time of applying for a job to work in an organisation where there is no normal retirement age. It is lawful for the employer to refuse her application simply on the basis of the applicant's age.

*These notes refer to the Equality Act 2010 (c.15)  
which received Royal Assent on 8 April 2010*

- An applicant is 69 years and 8 months old at the time of making an application to work in an organisation that has a normal retirement age of 70. Because the applicant will reach the age of 70 within 6 months, it is lawful for the employer to refuse his application.