
EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations, which are made under section 2(2) of the European Communities Act 1972 (c. 68), implement (in Great Britain) Council Directive 2000/78/EC of 27th November 2000 establishing a general framework for equal treatment in employment (O.J. L 303, 2.12.2000, p.16) so far as it relates to discrimination on grounds of age. The Regulations make it unlawful to discriminate on grounds of age in employment and vocational training. They prohibit direct discrimination, indirect discrimination, victimisation, instructions to discriminate and harassment.

Direct discrimination, defined in regulation 3(1)(a), arises where a person is treated less favourably than another on grounds of his age or apparent age. Indirect discrimination, defined in regulation 3(1)(b), arises where a provision, criterion or practice, which is applied generally, puts persons of a particular age or age group at a disadvantage. Discrimination will occur where the difference in treatment or disadvantage cannot be shown to be a proportionate means of achieving a legitimate aim. Victimisation, defined in regulation 4, occurs where a person receives less favourable treatment than others by reason of the fact that he has brought (or given evidence in) proceedings, made an allegation or otherwise done anything under or by virtue of the Regulations. Instructions to discriminate are dealt with in regulation 5. It is a form of discrimination to treat a person less favourably than another because he has failed to carry out an instruction to discriminate or because he has complained about receiving such an instruction. Harassment, defined in regulation 6, occurs where a person is subjected to unwanted conduct on grounds of age with the purpose or effect of violating his dignity, or creating an intimidating, hostile, degrading, humiliating or offensive environment for him.

Regulations 7 to 24 prohibit discrimination, victimisation and harassment in the fields of employment and vocational training. In particular, they protect employees (regulation 7), contract workers (regulation 9), office-holders (including police and those seconded to the Serious Organised Crime Agency (regulations 12, 13 and 14)), and partners in firms (regulation 17). They not only prohibit discrimination etc by employers, but also by trustees and managers of occupational pension schemes (regulation 11), trade organisations (regulation 18), qualifications bodies (regulation 19), providers of vocational training (regulation 20), employment agencies (regulation 21) and institutions of further and higher education (regulation 23). By virtue of regulation 24, discrimination, victimisation or harassment occurring after the relevant relationship has ended is unlawful if it arises out of, and is closely connected to, the relationship. The Regulations also apply to Crown servants and Parliamentary staff (regulations 44, 45 and 46). Regulation 43 and Schedule 5 address the validity of discriminatory terms in contracts and collective agreements.

Not all differences of treatment on grounds of age are unlawful. There are exceptions: in regulation 27 in relation to acts done in order to comply with a statutory provision; in regulation 28 in relation to acts related to national security; in regulation 29 for positive action; in regulation 30 in relation to retirement; in regulation 31 in relation to the national minimum wage; in regulation 32 in relation to the provision of certain employment benefits based on length of service; in regulation 33 in relation to the provision of enhanced redundancy payments; and in regulation 34 in relation to the provision of life assurance cover to workers who have had to retire early on grounds of ill-health. Regulation 8 provides an exception where possessing a characteristic related to age is a genuine and determining occupational requirement for a post if it is proportionate to apply the requirement in the particular case. Schedule 2 provides exceptions for various rules, practices actions and decisions relating to occupational pension schemes.

Status: This is the original version (as it was originally made).

Regulations 35 to 42 deal with enforcement and provide remedies for individuals, including compensation, by way of proceedings in employment tribunals and in the county or sheriff courts. There are special provisions about the burden of proof in those cases in regulations 37 and 40, which transfer the burden to a respondent to a case once a complainant has established facts from which a court or tribunal could conclude, in the absence of an adequate explanation, that an act of discrimination or harassment has been committed by the respondent. Regulation 41 and Schedules 3 and 4 also include a questionnaire procedure to assist complainants in obtaining information from respondents.

Schedule 6 establishes a new duty on employers to consider requests by employees to continue working beyond retirement. Schedule 7 contains transitional provisions in relation to that new duty.

Schedule 8 amends legislation containing age-discriminatory provisions that cannot be shown to be a proportionate means of achieving a legitimate aim. It also includes amendments to the Employment Rights Act 1996 (c. 18), which introduce a new potentially fair ground for dismissal of employees – dismissal on the grounds of retirement (where the duty to consider procedure in Schedule 6 has been followed).

Schedule 9 contains repeals and revocations.

A full Regulatory Impact Assessment report of the effect that these Regulations will have on the costs to business and a Transposition Note are freely available to the public from the Selected Employment Rights Branch, Bay 391, Department of Trade and Industry, 1 Victoria Street, London SW1H 0ET. Copies have also been placed in the libraries of both Houses of Parliament.