

A guide for employers



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# Age and the workplace

Putting the Employment Equality (Age) Regulations 2006 into practice

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# Introduction

From 1 October 2006 the Employment Equality (Age) Regulations make it unlawful to discriminate against workers, employees, job seekers and trainees because of their age. This booklet describes the regulations and gives you guidance on how to implement them.

## Terms in this guide – workers and employees

**Workers** are covered in the regulations and in this guidance.

Workers often undertake roles similar to employees but do not have contracts of employment like employees, these include office holders, police, barristers and partners in a business.

Our Guidance uses the term '**employee**' throughout to cover all workers except under length of service issues, retirement, and right to request which are for a narrower range of employees.

Fairness at work and good job performance go hand in hand. Tackling discrimination helps to attract, motivate and retain staff and enhances your reputation as an employer. Eliminating discrimination helps everyone to have an equal opportunity to work and to develop their skills.

Employees who are subjected to discrimination, harassment or victimisation may:

- be unhappy, less productive and less motivated
- resign
- make a complaint to an employment tribunal.

In addition employers may find:

- their reputation as a business and as an employer may be damaged
- the cost of recruitment and training will increase because of higher employee turnover
- they may be liable to pay compensation following a claim to an employment tribunal – there is no upper limit to the amount of this compensation.

There is already legislation to protect people against discrimination on the grounds of sex, race, disability, gender reassignment, sexual orientation and religion or belief.

The new regulations should pose few difficulties in organisations where people are treated fairly and with consideration.

This guidance aims to:

- help employers and vocational training providers fulfil their obligations under the Employment Equality (Age) Regulations 2006
- make employees, job seekers and trainees aware of how they will be affected by the regulations.

# What the regulations say – in summary

These regulations apply to all employers, private and public sector vocational training providers, trade unions, professional organisations, employer organisations and trustees and managers of occupational pension schemes. In this context an employer is anyone who has employees or who enters into a contract with a person for them to do work. The regulations cover recruitment, terms and conditions, promotions, transfers, dismissals and training. They do not cover the provision of goods and services.

The regulations make it unlawful on the grounds of age to:

- discriminate directly against anyone – that is, to treat them less favourably than others because of their age – unless objectively justified
- discriminate indirectly against anyone – that is, to apply a criterion, provision or practice which disadvantages people of a particular age unless it can be objectively justified
- subject someone to harassment. Harassment is unwanted conduct that violates a person's dignity or creates an intimidating, hostile, degrading, humiliating or offensive environment for them having regard to all the circumstances including the perception of the victim
- victimise someone because they have made or intend to make a complaint or allegation or have given or intend to give evidence in relation to a complaint of discrimination on grounds of age
- discriminate against someone, in certain circumstances, after the working relationship has ended.

Employers could be responsible for the acts of employees who discriminate on grounds of age. This makes it important to train staff about the regulations.

Upper age limits on unfair dismissal and redundancy will be removed.

There will be a national default retirement age of 65, making compulsory retirement below 65 unlawful unless objectively justified.

Employees will have the right to request to work beyond 65 or any other retirement age set by the company. The employer has a duty to consider such requests.

There are limited circumstances when discrimination may be lawful (see section on genuine occupational requirements, objective justifications, exceptions and exemptions).

This guide does not use the precise legal terms contained within the regulations – reference needs to be made to the regulations.

# Guidance for employers

## What do the regulations mean?

### A brief explanation of the regulations

#### Direct discrimination

Direct discrimination is less favourable treatment because of someone's age.

For example it will be unlawful on the grounds of age to:

- decide not to employ someone
- dismiss them
- refuse to provide them with training
- deny them promotion
- give them adverse terms and conditions
- retire an employee before the employer's usual retirement age (if there is one) or retire an employee before the default retirement age of 65 without an objective justification (see page 30).

**Example:** Whilst being interviewed, a job applicant says that she took her professional qualification 30 years ago. Although she has all the skills and competences required of the job holder, the organisation decides not to offer her the job because of her age. This is direct discrimination.

**NOTE:** A job applicant can make a claim to an employment tribunal, it is not necessary for them to have been employed by the organisation to make a claim of discrimination.

#### Indirect discrimination

Indirect discrimination means selection criteria, policies, benefits, employment rules or any other practices which, although they are applied to all employees, have the effect of disadvantaging people of a particular age unless the practice can be justified. Indirect discrimination is unlawful whether it is intentional or not.

#### Lawful discrimination

There are limited circumstances when it is lawful to treat people differently because of their age.

It is not unlawful to discriminate on the grounds of age if:

- there is an **objective justification** for treating people differently – for example, it might be necessary to fix a maximum age for the recruitment or promotion of employees (this maximum age might reflect the training requirements of the post or the need for a reasonable period of employment before retirement)
- where a person is older than, or within six months of, the employer's normal retirement age, or 65 if the employer doesn't have one, there is a specific exemption allowing employers to refuse to recruit that person.
- the discrimination is covered by one of the **exceptions** or **exemptions** given in the regulations – for example pay related to the National Minimum Wage
- there is a **genuine occupational requirement** (GOR) that a person must be of a certain age – for example, if you are producing a play which has parts for older or younger characters.

For more details see the section on genuine occupational requirements, objective justifications, exceptions and exemptions on page 30.

#### Harassment

Harassment includes behaviour that is offensive, frightening or in any way distressing. It may be intentional bullying which is obvious or violent, but it can also be unintentional, subtle and insidious. It may involve nicknames, teasing, name calling or other behaviour which is not with malicious intent but which is upsetting. It may be about the individual's age or it may be about the age of those with whom the individual associates. It may not be targeted at an individual(s) but consist of a general culture which, for instance, appears to tolerate the telling of ageist jokes.

You may be held responsible for the actions of your employees – as well as the employees being individually responsible. If harassment takes place in the workplace or at a time and place associated with the workplace, for example a work-related social gathering, you may be liable. You may be ordered to pay compensation unless it can be shown that you took reasonable steps to prevent harassment. Individuals who harass may also be ordered to pay compensation.

It is good practice to protect your workers from harassment by third parties, such as service users and customers.

When you are investigating claims of harassment, consider all the circumstances before reaching a conclusion. Harassment is often subjective so think carefully about the complainant's perception of what has happened to them. Ask yourself if what has taken place could 'be reasonably considered to have caused offence?'

**Example:** A young employee is continually told he is 'wet behind the ears' and 'straight out of the pram' which he finds humiliating and distressing. This is harassment.

**Example:** An employee has a father working in the same workplace. People in the workplace often tell jokes about 'old fogies' and tease the employee about teaching 'old dogs new tricks'. This may be harassment on the grounds of age, even though it is not the victim's own age that is the subject of the teasing.

## Victimisation

Victimisation is when an individual is treated detrimentally because they have made a complaint or intend to make a complaint about discrimination or harassment or have given evidence or intend to give evidence relating to a complaint about discrimination or harassment.

They may become labelled 'troublemaker', denied promotion or training, or be 'sent to Coventry' by their colleagues. If this happens or if you fail to take reasonable steps to prevent it from happening, you may be ordered to pay compensation. Individuals who victimise may also be ordered to pay compensation.

**Example:** An employee claims discrimination against their employer on the grounds of age. A work colleague gives evidence on their behalf at the employment tribunal. When the work colleague applies for promotion her application is rejected even though she is able to show she has all the necessary skills and experience. Her manager maintains she is a 'troublemaker' because she had given evidence at the tribunal and should not be promoted. This is victimisation.

**Discrimination, harassment or victimisation following the end of a working relationship** covers issues such as references either written or verbal.

**Example:** A manager is approached by someone from another organisation. He says that Ms 'A' has applied for a job and asks for a reference. The manager says that he cannot recommend her as she was not accepted by other staff because she was 'too young and inexperienced'. This is direct discrimination because of age.

# An equality policy and action plan

You can start to address fairness at work by writing an equality policy or updating an existing one – with an action plan to back it up. You may already have equal opportunity or diversity policies which cover age but, if not, age should now be included. It is good practice in drawing up a policy to consult with your workforce or their representatives.

To make sure age discrimination is eliminated in your workforce draw up an action plan to review your policies for:

- recruitment, selection and promotion
- training
- pay, benefits and other conditions
- bullying and harassment
- retirement.

Also consider the make up of your workforce and whether positive action is required to tackle any age imbalance (guidance on positive action can be found on page 29).

Ensure that all employees know about your equality policy and what is expected of them; a communications strategy should be a key part of your action plan.

Employees are often attracted to an organisation if it has a robust equality policy. Although not a legal necessity, such a policy makes applicants feel confident and discourages those who do not embrace equality of opportunity.

Acas can help you to draw up and implement an equality policy and to train you and your employees to use it. For further information see the Acas booklet *Tackling discrimination and promoting equality – good practice guidance for employers*.

# Recruitment

See comment about specific recruitment exemption - on page 7.

Base your decisions about recruitment on the skills required to do the job. Provide training to help those making judgements to be objective and avoid stereotyping people because of their age.

## Application form

Remove age/date of birth from the main application form and include it in a diversity monitoring form to be retained by HR/Personnel. In addition review your application form to ensure that you are not asking for unnecessary information about periods and dates. Asking for age-related information on an application form could allow discrimination to take place.

Monitor your decisions for any evidence of age bias, particularly after shortlisting (see page 14).

## Job description and person specification

A job description outlines the duties required of a particular post holder. A person specification gives the skills, knowledge and experience required to carry out these duties.

Avoid references, however oblique, to age in both the job description and the person specification. For example, avoid asking for 'so many years' experience. This may rule out younger people who have the skills required but have not had the opportunity to demonstrate them over an extended period. A jobseeker could challenge any time requirement and you may have to justify it in objective terms.

**Example:** Scrape and Co, a local driving school have been advertising for instructors who must be qualified and have a minimum of 10 years driving experience. Effectively this would prevent people under 28 applying for this job and could therefore be discriminatory. Scrape would need to justify this 10 year experience criterion if challenged by a jobseeker under 28 especially as only four years experience is formally required to qualify as a driving instructor.

Educational and vocational qualifications have changed and developed over the years. Make sure that the qualifications you specify are not disadvantaging people at different ages.

Ask yourself:

- are the qualifications really necessary?
- are they still current?
- are there other ways of specifying the skill level you require?

If you are going to be specific about qualifications be sure you can justify their need in objective terms and make it clear you will consider equivalent or similar level alternative qualifications.

## Advertising

It makes sound business sense to attract a wide field of applicants – if you rely on the friends or family of current staff you will miss the opportunity to tap into the diverse skills of your local community.

Advertise in a way that will be accessible to a large audience. For instance, avoid using a publication or employment agency that is focused on a niche market. This may limit the diversity of applicants and may constitute indirect discrimination.

**Example:** An advertisement placed only in a magazine aimed at young people may indirectly discriminate against older people because they are less likely to subscribe to the magazine and therefore less likely to find out about the vacancy and apply.

Write your job advert using the information in the job description and person specification. Avoid using language that might imply that you would prefer someone of a certain age, such as 'mature', 'young' or 'energetic'.

**Example:** Try to avoid stereotyping. For example, which vacancy is asking for an older person and which a younger person?

- 1 'We require an enthusiastic person, flexible enough to fit in with our fast moving market place, not afraid of challenging the status quo and in touch with latest thinking'
- 2 'Our ideal candidate will need to manage competing demands. He or she should be reflective, and have boardroom presence and gravitas'.

Be clear about what skills you actually need for the post – and what skills are merely desirable or reflect the personal preferences of the selector. Recruit and/or promote for these essential skills and aptitudes – you can always decide not to recruit or promote someone if the applicant does not have these necessary skills or abilities.

As well as considering the language you use in adverts think also about the hidden messages that may be present in any promotional literature that you have, particularly the pictures.

## Graduates

If you ask for graduates, remember that the term can be interpreted as code for someone in their early twenties. Graduates can be almost any age. Make it clear that you are interested in the qualification and not the age of the applicant.

A local engineering company is looking for a new Personnel Officer and asks for applicants to be graduates and hold the IPD qualification. As many more people attend university today than say 25 years ago, there is a lower chance that older Personnel Officers will be university graduates even though holding the IPD qualification and having considerable practical experience. This graduate requirement might thus be indirect age discrimination if the employer is unable to justify it. Remember also that the IPD qualification was formerly the IPM qualification.

If you limit your recruitment to university 'milk rounds' only, you may find that this is indirect age discrimination as this practice would severely restrict the chances of someone over say, 25 applying for your vacancies. If challenged you would need to objectively justify this practice (see section on genuine occupational requirements, objective justifications, exceptions and exemptions).

Consider enhancing any 'milk round' programme with a broader recruitment strategy, using other avenues to capture a wider pool of applicants of differing ages.

## Shortlisting

If you have removed age-related material from your application form then you will generally not know a person's age although applicants may make reference to their age on the form so this is not always the case.

Whether or not you know someone's age, it is important that those doing the shortlisting, ideally more than one person, base their decisions on skills and ability alone. They should be trained, reminded of their responsibility not to discriminate on age grounds and use the requirements of the person specification to judge applicants.

**Before moving on to the next stage of the recruitment process, check** that no bias, deliberate or unintentional, has influenced decisions. In all organisations this check should be carried out by someone who has not been involved in the shortlisting. In all instances, you should record your decisions and retain these records, ideally for 12 months.

## Interviewing

Interviews should preferably not be carried out by one person on their own. When interviewing, try to avoid:

- Asking questions related to age, for example, "how would you feel about managing older/younger people?"
- Throwaway comments such as "you're a bit young for a post of this responsibility" or "don't you think someone like you should be looking for something with more responsibility".

Focus on the applicant's competence and where more than one demonstrates the required competence the one who is more competent or offers the best skill mix should be appointed.

Check decisions for any bias and make sure interviewers have received training in the skills required and equal opportunities/diversity.

Again, in all instances, record your decisions and retain these records, ideally for 12 months from the date of the interviews.

## Working with employment agencies

If you use a recruitment agency you need to be sure the agency acts appropriately and in accordance with your company's equality and diversity policies.

If you tell an employment agency to discriminate on age grounds because you consider you have objective justification for doing so, then the regulations enable the agency to rely on this justification if challenged. In such circumstances the agency should obtain this justification in writing from the employer and if at all unhappy to raise that with the employer.

## Vocational training

As well as training provided by employers for their own employees, the regulations also cover organisations providing vocational education and training to the wider community. For the purpose of anti-discrimination law, all forms of vocational training including general educational provision at further, higher and other adult education institutions will be covered.

This means that vocational training providers will not be able to set age limits or age related criteria:

- for entry to training; or
- in the terms under which they provide training, for example when offering help with costs to encourage participation among under represented groups of people.

As an employer, training provider, college or university you will need to consider the following questions:

- do you set a minimum or maximum age for entry generally or in relation to admission or access to particular courses? If so, what are the justifications for these?
- even if you do not have formal minimum or maximum ages, is age taken into account when you consider applications for admission or access, eg do you offer preferential fee discount arrangements based on age?

In either case, you need to consider:

- can you objectively justify any age-related criterion, eg what evidence have you in support of restricting such financial help to a particular age group?
- what legitimate aim does any age-related criterion help you achieve, eg have you clear evidence that demonstrates particular age groups would be excluded from your learning provision if they had to pay full fees?
- are your age-related criteria a proportionate means of achieving that aim?
- is there another way of achieving that aim without resorting to discrimination?

The EU Employment Directive allows for the setting of age requirements relating to institutions of further and higher education and in respect of access to vocational training if they can be objectively justified, for example on the grounds of vocational integration.

# Retaining good staff

Many factors motivate employees and make them want to stay with an organisation. People are more likely to feel positive about an organisation if they are treated fairly and with consideration regardless of their age.

## Promotion and training

Opportunities for promotion and training should be made known to all employees and be available to everyone on a fair and equal basis.

Where employees apply for internal transfers take care with informal and verbal references between departmental heads, supervisors, etc. These references are covered by the regulations and should be fair and non-discriminatory.

Job-related training or development opportunities should be available to all employees regardless of age – monitor the training to make sure no particular age group is missing out.

Review the style and location of training to ensure:

- there are no barriers to any particular age group participating
- it is suitable for people of all ages
- everyone is encouraged to participate.

For example, if you are using computer-based training, do not assume everyone will be fully competent using a PC.

## Age discrimination awareness

However large or small an organisation, it is good practice for them to have an Equality Policy and to train all employees and update them on a regular basis. This will help to reduce the likelihood of discrimination, harassment and victimisation taking place and may help to limit liability if a complaint is made.

All employees should understand:

- what the terms 'discrimination' and 'harassment' mean
- why discrimination and harassment are hurtful, unlawful and totally unacceptable.

Tell all employees about your company policy on age discrimination and train those who make decisions that affect others. Training should apply not only to those who recruit and select but also to those involved in day-to-day decisions about work allocation, performance appraisal, etc. Supervisors and managers also need training in recognising and dealing with bullying and harassment.

## Performance appraisal

Check any performance appraisal system you have to ensure that it is working fairly and without bias. Many people have preconceptions about age and these can influence the judgements we make about people. If these preconceptions appear in performance appraisals through use of inappropriate comments – such as 'does well despite their age' or 'shows remarkable maturity for their age' – they will undermine the whole basis of a fair appraisal system. Such comments could also lead to further discrimination when decisions about promotion or work allocation are being made.

A fair and transparent appraisal system will become increasingly important when the changes to the retirement age are introduced. However, young people in the early stages of their career also need to be assessed on their actual performance unclouded by any preconceptions about their age.

**Example:** Two candidates have done equally well for the post on offer, so the selectors decide to review previous assessments to try and draw a fair distinction between them. On one they read: 'Despite his many years with the company John remains capable and enthusiastic' and 'John does very well at work considering his age'.

There are no such comments on Mark's assessments.

Which candidate now has a question mark against them?

Treat all employees the same when setting objectives or measuring performance. Ignoring shortfalls in performance because an employee is nearing retirement may be discriminatory – particularly if the same shortfalls are addressed in younger employees.

### Redundancy selection

Check that your selection processes for redundancy are free of age discrimination. This means that practices such as last in first out (LIFO), and using length of service in any selection criteria are likely to be age discriminatory.

### Policies and procedures

Review policies and procedures for age bias, including those covering:

- sick absence
- leave and holidays
- discipline and grievances
- staff transfers
- flexible working
- use of computers
- individual space requirements (ergonomic policies).

Annex 3 shows you how to use an age impact assessment to carry out these kinds of reviews.

### Bullying and harassment

Every individual member of staff has the right to be treated fairly and with dignity and respect. Harassment occurs when someone engages in unwanted conduct which has the purpose or effect of violating someone else's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment.

It is not the intention of the perpetrator which defines whether a particular type of conduct is harassment but the effect it has on the recipient.

Bullying is just as unacceptable as any other form of harassment.

People can become targets of harassment because of their age. Harassment could take the form of:

- inappropriate comments – for example, by suggesting someone is too old ('over the hill') or too young ('wet behind the ears')
- offensive jokes
- exclusion from informal groups such as social events.

**Example:** George is in his 60s and works in an office with a team of younger colleagues in their 20s and 30s. The team, including the manager, often go out socialising. They do not ask George because they feel that he wouldn't like the venues they choose for such events. However, George finds out that many workplace issues and problems are discussed and resolved during these informal meetings. George feels undervalued and disengaged by this unintended action. This is a form of harassment, even though unintended, as George is being excluded from the team. To prevent this, the manager ought to consider office-based meetings to consult more fully with all staff in decision-making to prevent George feeling excluded because of his age.

## Dealing with harassment

Make sure your anti-harassment policy covers age. You may have a stand alone policy or one that is part of a wider equal opportunities policy (for more detailed information see the Acas booklet *Tackling discrimination and promoting equality*).

If managers see unacceptable behaviour **whether or not a complaint is made** they need to treat the matter seriously and take action to eliminate the behaviour in question. This may involve just pointing out to someone the effect that their behaviour has on others and getting them to stop. If this informal approach fails, or in more serious cases, or where the person being harassed prefers it will be necessary to take formal action within the normal disciplinary procedures of the company or within the guidelines laid down by a specific anti-harassment policy.

For further information see the Acas leaflet *Bullying and harassment at work: a guide for managers and employers*.

# Retirement

**Pension age** is when an employee can draw down their pension; for many, but not all, it is also the time when they can retire if they wish.

**Retirement age** in this guidance is either the employer's normal retirement age (if there is one) or the default retirement age of 65.

**Normal retirement age** means the age at which the employer requires employees in the same kind of position as the employee to retire.

The regulations set a default retirement age of 65 (to be reviewed in 2011). This means you can retire employees or set retirement ages within your company at or above 65. Retirements or retirement ages below the default retirement age will need to satisfy the test of objective justification (see page 30).

However, you do not have to have a fixed retirement age. Indeed, there are many business benefits to adopting a flexible approach to the employment and work patterns of older workers. Employees will have the right to request to continue working beyond their retirement date and you have a duty to give consideration to such requests.

Think about each request on an individual basis – taking into account opportunities to vary the employee's hours or the duties they perform. You are under no obligation to agree to such requests.

## Fair retirement

A fair retirement is one that:

- takes effect on or after the default retirement age (or on or after the employer's normal retirement age – if there is one) and
- where the employer has given the employee written notice of the date of their intended retirement and told them about their right to request to continue working. (See below for the timing requirements of this notice).

If the employer's normal retirement age is below the age of 65, it must be objectively justified.

For the retirement to be classed as 'fair' you need to have informed the employee in writing of their intended retirement date and of their right to make a request to work beyond retirement age at least six months in advance (but no more than 12 months before the intended date).

If they do make such a request, you must have followed the correct procedure for dealing with it. Annex 5 sets out a guidance flowchart for fair retirements.

## Working beyond retirement date –

### Notification of right to request to continue working

You should notify the employee in writing of their right to request to go on working beyond their retirement date (at least six months in advance but no more than 12 months before the intended date).

When you write to the employee it is good practice to set out how you will manage the retirement process. Remind them of your obligation to give consideration to any request to work after the normal retirement age and in order not to raise the expectations of the employee, explain that you are entitled to refuse the request. You are not required to give a reason for your decision as – if you have followed the retirement procedure correctly (see Annex 5) – the reason for their dismissal will always be retirement.

However giving reasons and a more detailed explanation of your retirement policy may enable the employee to leave with dignity and respect and help you maintain good workplace relationships with other employees. This would be in line with normal good practice recommended by Acas.

If you choose to give reasons, take the time to consider what you are going to say and how you are going to say it. You must be careful not to suggest that you might be discriminating against the employee on the grounds of race, gender, disability, sexual orientation or religion or belief.

If the employee has been properly notified (as above) and wishes to continue working, they must request to do so no less than three months before the intended retirement date.

If you fail to notify the employee six months in advance of retirement, you may be liable for compensation and you have an ongoing duty (up until two weeks before the retirement dismissal) to inform the employee of both the intended date and their right to request working longer. Failure to do this will make the dismissal automatically unfair.

If you fail to inform the employee of their intended retirement date and of their right to request to continue working, the employee will still be able to make a request not to retire at any stage until dismissal. If the employee does make a request the employment must continue until the day after the employer notifies the employee of their decision on the request.

Employees should be able to retire with dignity so try and use as much tact and sensitivity as possible.

## Dealing with the request

If the employee requests in writing not to be retired this request must be considered before the employee is retired. Failure to do so will make the dismissal automatically unfair. You must meet the employee to discuss their request within a reasonable period of receiving it (unless agreeing to the request or it is not practicable to hold a meeting) and inform them in writing of your decision as soon as is reasonably practicable. The employee's employment continues until you have informed them of your decision on the request.

As preparation for this meeting, it would be good practice for you to reflect on the positive reasons why you should grant an extension, in particular:

- savings to the organisation in recruitment and training costs
- retaining the valuable experience and knowledge of the employee

Try to avoid making stereotypical assumptions about the capabilities of the employee. At the meeting the employee has a right to be accompanied by a colleague. There is the same right in relation to any subsequent appeal meeting.

The individual accompanying the employee must be:

- chosen by the employee
- a worker or trade union representative employed by the same employer as the employee
- permitted to address the meeting but not answer questions on behalf of the employee; and
- permitted to confer with the employee during the meeting.

The employee may appeal against your decision as soon as is reasonably practicable after receiving notification of your decision. If the employee does appeal, the appeal meeting should be held as soon as is reasonable. The employee may appeal the decision if you refuse the request in its entirety or if you accept it but decide to continue employing the employee for a shorter period than the employee requested. The appeal meeting can be held after the retirement has taken effect.

This procedure must be repeated each time an individual nears an extended point for retirement. Annex 6 sets out a guidance framework for retirement and the duty to consider.

As long as employers follow this procedure correctly they may rely on their normal retirement age (if they have one) or the default retirement age without the dismissal being regarded as unfair or age discriminatory. Where a dismissal is for reasons of retirement, the statutory dismissals procedure does not apply.

### Transitional arrangements

There are transitional arrangements produced by the Department for Trade and Industry (DTI) for employees who are retiring on or shortly after 1 October 2006. These arrangements are available at the DTI website and are summarised at Annex 12 of this guide (see page 59).

# Know your employees

You will probably have information that shows the ages of your employees. It makes sense to analyse this information (probably in age bands – see Annex 4) to get an age profile of your workforce.

This profile will help you decide whether there is a need for any remedial action.

For example, do you need to:

- plan for a retirement peak?
- take positive action to rectify any obvious imbalance in the age bands?

You can also use this profile to check that your entire workforce is getting access to training and other facilities.

Staff attitude surveys and exit interviews can also give you valuable insights into how people view their work and you as an employer, and help you to create a positive working environment.

It is important to monitor in this way if you wish to claim an objective justification or, when reviewing service related benefits, ‘conclude’ a business benefit (see section on genuine occupational requirements, objective justifications, exceptions and exemptions). In considering these matters you should always use evidence in your decision-making rather than merely continuing old working practices or relying on ‘gut feeling’ as these may be based on unfounded assumptions.

Annex 4 sets out a framework for age monitoring.

## Positive action

You can take positive action to prevent or compensate for disadvantages linked to age.

This might involve:

- giving people of a particular age access to vocational training; or
- encouraging people of a particular age to take up employment opportunities.

Where it reasonably appears to the person undertaking such positive action that it will prevent or compensate for disadvantages linked to age that they have or may suffer.

For example, you might place advertisements where they are more likely to be seen by people in a disadvantaged group. Or you might limit access to a computer training course to those over 60 because they may have had less exposure to such training in the past.

Positive action on age can help you to attract people from all age groups in your local community.

**Example:** Green and Co, a transport company, see from their internal monitoring processes that the company has a mature age profile with disproportionately few workers under 40. Not wanting to miss out on the talents of all the local community, they include a statement in their next adverts saying “We welcome applications from everyone irrespective of age but, as we are under-represented by people under 40, would especially welcome applications from these jobseekers. Appointment will be on merit alone”.

# Objective justifications, exceptions, exemptions and genuine occupational requirements

Treating people differently because of their age will only be justifiable in the following exceptional circumstances.

## Objective justification

You may treat people differently on the grounds of their age if you have an **objective justification**.

An objective justification allows employers to set requirements that are directly age discriminatory. Remember that different treatment on grounds of age will only be possible exceptionally for good reasons (see below).

You will need to provide real evidence to support any claim of objective justification. Assertion alone will not be sufficient and each case must be considered on its individual merits.

Both direct and indirect discrimination will be justified if it is:

- a proportionate means (of)
- achieving a legitimate aim.

## What is proportionate?

This means:

- what you are doing must actually contribute to a legitimate aim, eg if your aim is to encourage loyalty then you ought to have evidence that the provision or criterion you introduce is actually doing so
- the discriminatory effect should be significantly outweighed by the importance and benefits of the legitimate aim
- you should have no reasonable alternative to the action you are taking. If the legitimate aim can be achieved by less or non-discriminatory means then these must take precedence.

## What is a legitimate aim?

A legitimate aim might include:

- economic factors such as business needs and efficiency
- the health, welfare and safety of the individual (including protection of young people or older workers)
- the particular training requirements of the job.

A legitimate aim **must** correspond with a real need of the employer – economic efficiency may be a real aim but saving money because discrimination is cheaper than non-discrimination is not legitimate. The legitimate aim cannot be related to age discrimination itself.

The test of objective justification is not an easy one and it will be necessary to provide evidence if challenged; assertions alone will not be enough.

Jones and Company are unsure if they need an objective justification. To help make the decision they ask themselves:

- STOP - Why do we want to do this?
- Set out the reason clearly on paper
- Do we have evidence to support us in this reason?
- Are we certain this is real hard evidence and not just based on assumptions?
- Is there an alternative less or non-discriminatory way of achieving the same result?

The HR director seeks a second opinion from the Board and keeps all records of how the decision was made in case it is reviewed in the future.

In a smaller company, you could consult your partner or colleague.

## Exceptions and exemptions

There are also **exceptions** to or **exemptions** from the age regulations in the following areas:

- pay and other employment benefits based on length of service
- pay related to the National Minimum Wage
- acts under statutory authority
- enhanced redundancy
- life assurance
- retirement (see separate section on page 23)
- occupational pension systems (not covered in this guidance).

### Exemptions based on length of service

In many cases employers require a certain length of service before increasing or awarding a benefit such as holiday entitlement. Without the exemptions contained in the regulations this could often amount to indirect age discrimination because some age groups are more likely to have completed the length of service than others.

Any benefit earned by five years service or less will be exempt. Employers may use pay scales that reflect growing experience or limit the provision of non-pay benefits to those who have served a qualifying period, subject to the five-year limit.

The use of length of service of more than five years for all types of employment benefits is lawful if:

- awarding or increasing the benefit is meant to reflect a higher level of experience of the employee, or to reward loyalty, or to increase or maintain the motivation of the employee;
- the employer has reasonable grounds for concluding that using length of service in this way fulfils a business need of his undertaking.

In order to meet these requirements employers would need evidence from which they can conclude there is a benefit to the organisation. This could include information the employer might have gathered through monitoring, staff attitude surveys or focus groups for example.

## National Minimum wage

Nothing in the regulations will alter the provisions of the National Minimum Wage. The exemption linked to the National Minimum Wage will allow employers using exactly the same age bands, ie 16 and 17, 18 to 21 and 22 and over, to pay at or above the national minimum rates provided those in the lower age group(s) are paid less than the adult minimum wage.

This will allow an employer to pay those aged 22 and over more than those aged under 22 as long as those under 22 are paid less than the minimum adult rate; likewise an employer may pay those aged 18 to 21 more than those under 18 as long as those under 18 are paid less than the minimum adult rate. The exemption does not allow employers to pay different rates to those in the same age category. Apprentices not entitled to the National Minimum Wage may continue to be paid at a lower rate than those that are.

### Acts under statutory authority

Age criteria are widely used in legislation, notably to qualify for various licences. Where this is the case the employer must follow the criteria laid down by statute and will not be contravening the age regulations by doing so.

### Enhanced redundancy payments

The statutory redundancy scheme will not substantially change (except in respect of the years worked when an employee was below 18 or over 64). Both the statutory authority exemption and this regulation make it clear that, even though statutory redundancy payments are calculated using age-related criteria, such payments are lawful.

The exemption linked to statutory redundancy payments is for an employer who wants to make more generous redundancy payments than under the statutory scheme. It allows the employer to use one of the methods specified, based on the statutory redundancy scheme, to calculate the amount of redundancy payment. An employer can use a different method of their own to calculate the amount of redundancy payment, but if it is based on length of service and if an employee brings a discrimination claim under the regulations, the employer will

have to objectively justify it in so far as age discrimination arises. (This is because the exception for pay and benefits based on length of service does not apply to redundancy payments).

The exemption allows the employer to either raise or remove the maximum amount of a week's pay so that a higher amount of pay is used in the calculation, or multiply the total amount calculated by a figure of more than one, or both. Having done this, the employer may again multiply the total by a figure of more than one.

The exemption also allows an employer to make a redundancy payment to an employee who has taken voluntary redundancy, and an employee with less than two years continuous employment. In such cases, where no statutory redundancy payment is required, an employer may make a payment equivalent to the statutory minimum payment, or if they so wish an enhanced payment as above.

### Life assurance cover

Some employers provide life assurance cover for their workers. If a worker retires early due to ill health, the employer may continue to provide that life assurance cover for that worker. This exemption allows an employer to stop doing so when the worker reaches the age at which he would have retired had he not fallen ill. If there was no normal retirement age at which the worker would have retired, the employer can stop providing life assurance cover when the worker reaches 65.

### Genuine occupational requirement (GOR)

In very limited circumstances, it will be lawful for an employer to treat people differently if it is a genuine occupational requirement that the job holder must be of a particular age. When deciding if this applies, it is necessary to consider the nature of the work and the context in which it is carried out. Jobs may change over time and you should review whether the requirement continues to apply, particularly when recruiting.

**Example:** An organisation advising on and promoting rights for older people **may be able** to show that it is essential that its chief executive – who will be the public face of the organisation – is of a certain age. The age of the holder of the post may be a genuine occupational requirement.

## Guidance for the individual

### What do I do if I think I have suffered discrimination or harassment?

#### Expressing your concerns

If you think you are being harassed or discriminated against it is a good idea to make it clear to the person who is harassing you that their behaviour is unwelcome and that you want it to stop. However, you do not have to do this, particularly if you are feeling bullied or intimidated. If you do choose to address your concerns to the person, be clear and assertive but take care that you are not perceived to be bullying the individual. Some people may find it helpful to ask a friend, colleague, welfare officer or trade union representative to be with them in a support role.

If speaking to the person in question has failed to stop the problem, you should talk to your manager or your trade union representative. If it is your manager or supervisor who is harassing you, speak to someone higher up. Employers should deal with such complaints quickly, thoroughly and sympathetically.

It is usually best to try and sort things out quickly and as close to the problem as possible. If your organisation has a personnel or human resources department or an equality adviser you might find it helpful to talk to them. Discrimination can happen accidentally or through thoughtlessness. Harassment can be unintentional. Often, once a manager understands the problem, he or she will be willing to try and put things right.

#### Using the grievance procedure

If your manager is unable to help you, or refuses to help you, you must use your organisation's grievance procedure if you wish to proceed with your complaint. All organisations should have a grievance procedure by law. You also have a legal right to be accompanied by a trade union representative or a work colleague at any hearing into your grievance.

If you are not satisfied with the result of a grievance procedure, you have a right of appeal which should be heard, if the organisation's size allows it, by someone different from the person who conducted the original grievance hearing. You have a right to be accompanied by a trade union representative or a work colleague during the appeal hearing.

#### Making a claim to an employment tribunal

When you have tried all these things, or if your employer does not have a grievance procedure, or if you feel too intimidated to use the internal procedures, you may be able to bring a complaint to an employment tribunal under the age regulations. You do not have to hand in your notice to bring such a complaint. As part of your employment tribunal claim, you can require your employer to answer a set of questions about discrimination in your workplace. A questionnaire is available on the DTI website ([www.dti.gov.uk](http://www.dti.gov.uk)) and from jobcentres and citizens advice bureaux.

You and any witnesses have a right not to be victimised for following up a grievance or complaining to an employment tribunal under these regulations provided the complaint was made in good faith.

If you have been dismissed because you objected to conduct towards you, you may be able to bring a complaint of unfair dismissal to an employment tribunal.

Complaints to an employment tribunal must normally be brought within three months of the act you are complaining about. Care should be taken to ensure that the three month point is not exceeded during any internal grievance/appeals process.

#### Retirement

You now have the right to request to continue working beyond your expected retirement date. If you do so your employer must give consideration to your request if you have made it in time and if they turn it down you have the right to appeal to the employer. If you do not make the request to continue working no less than three months before your expected date of retirement you may lose your opportunity to continue working.

You will not automatically be allowed to work beyond your expected retirement. Your employer does not have to agree to your request or give you a reason for turning it down.

If you want to continue working beyond your expected retirement date, but perhaps with alternative or variable working patterns take the initiative and discuss this with your employer at an early stage. Your employer does not have to agree to vary your job but early discussion could help highlight the mutual benefits of a different pattern of work or combination of duties.

Take advantage of training and development opportunities in the years approaching retirement. It will help you to make a stronger case for continuing to work.

Your employer should inform you of their intended retirement date for you and your right to request to continue working at least six months, but no more than twelve months, before the intended date. If your employer does not do this you may have the right to eight weeks pay as compensation.

If you ask to continue working, your employer should hold a meeting with you to consider your request. You have a right to be accompanied by a work colleague or trade union representative at the meeting. The trade union representative must also be a work colleague. You must be told the result of your request as soon as is reasonably practicable after the meeting. You can appeal against the decision if your request is not met. You will need to give your employer notice of the appeal as soon as is reasonably practicable after you have received his decision.

There will no longer be an upper age limit on unfair dismissal claims. The statutory redundancy payments scheme is also being adjusted to remove upper and lower age limits as is statutory sick pay and maternity pay.

## Further Guidance for Employers

### Some frequently asked questions

#### **Q Do the regulations only cover older employees?**

**A** No. The regulations cover workers of all ages – young and old.

#### **Q Can I ask for a candidate's date of birth on the application form?**

**A** Yes. But asking for age-related information on an application form could allow discrimination to take place. Remove the date of birth/age from the main application form and include it in a diversity monitoring form to be retained by HR/personnel. In addition review your application form to ensure that you are not asking for unnecessary information about periods and dates.

#### **Q Am I responsible for what an employment agency does?**

**A** Yes. If you use a recruitment agency you need to be sure the agency acts appropriately and in accordance with your company's equality and diversity policies.

#### **Q Do I have to do anything new or different when the legislation comes in?**

**A** Yes. Include age in your equality policy. Consider adding all forms of discrimination and harassment (sex, race, disability, gender reassignment, sexual orientation and religion or belief) to your disciplinary rules. These rules should also include bullying.

Make sure all employees are aware (through training, noticeboards, circulars, contracts of employment, etc) that it is not only unacceptable to discriminate, harass or victimise someone on the grounds of age, it is also unlawful. Make it clear that you will not tolerate such behaviour.

Individuals should know what to do if they believe they have been discriminated against or harassed, or if they believe someone else is being discriminated against or harassed. This should be included in the grievance procedure.

**Reminder:** The Employment Act 2002 requires all employers, however large or small, to have both a disciplinary and a grievance procedure.

Check your policies for retirement and redundancy. Upper age limits on unfair dismissal claims and redundancy payments will be removed. There will be a default retirement age of 65, making compulsory retirement below 65 unlawful unless objectively justified.

Give serious consideration to the benefits of flexible working. All employees will also have the right to request to work beyond 65 or any other retirement age set by the organisation. You have a duty to consider such requests.

### **Q Must I have an equality policy?**

**A** No. However, an equality policy is the best way of demonstrating that you take discrimination seriously and have steps in place to tackle it. The policy should set the minimum standard of behaviour expected of all employees through recruitment right through to retirement. It also spells out what employees can expect from the organisation. It gives employees confidence that they will be treated with dignity and respect, and may be used as an integral part of a grievance or disciplinary process if necessary. If you would like help putting an equality policy in place Acas can help – call our helpline on 08457 47 47 47.

### **Q Do these regulations cover all workers?**

**A** Yes. The regulations apply to all workers, including office holders, police, barristers and partners in a business. They also cover related areas such as membership of trade organisations, the award of qualifications, the services of careers guidance organisations, employment agencies and vocational training providers, including further and higher education institutions.

The regulations also cover anyone who applies to an organisation for work, or who already works for an organisation – whether they are directly employed, work under some other kind of contract, or are an agency worker. You will also be responsible for the behaviour of your employees towards an individual working for someone else but on their premises, for example someone from another organisation repairing a piece of your equipment.

Employees are sometimes harassed by third parties, such as customers or clients. Where possible you should protect your employees from such harassment and take steps to deal with actual or potential situations of this kind. This will enhance your reputation as a good employer and make the organisation a welcoming and safe place to work.

Many organisations provide visitors and visiting workers with guidance on health and safety matters. It may be appropriate to include some comments on your organisation's attitude to harassment.

However the default retirement age and the duty to consider procedure apply only to a narrower group of employees – this does not include office holders, partners, barristers etc. Refer to the regulations for the precise definition.

### **Q I am a partner, am I covered by the regulations?**

**A** Yes, you are covered by the regulations except for the provisions covering retirement and the right to request. Partnerships will need to objectively justify their decisions on age issues and for retirement. It would be sensible for partners to have clear records of these decisions at partnership meetings to show they meet business objectives, are properly considered and regularly reviewed. Such records may help support any case for objective justification.

### **Q No one in my organisation has ever complained of discrimination or harassment so I don't need to do anything new, do I?**

**A** People do not always feel able or confident enough to complain, particularly if the harasser is a manager or senior executive. Sometimes they will simply resign. One way to find out is to undertake exit interviews when people leave and to ask them if they have ever felt harassed, bullied or discriminated against in the workplace. If it is possible, exit interviews should be undertaken by someone out of the individual's line of management, for instance a personnel officer.

Discrimination includes harassment which can take place without management being aware of it. Make sure all your employees understand that harassment means any unwanted behaviour that makes someone feel intimidated, degraded, humiliated or offended.

This includes teasing, tormenting, name calling and gossip and it applies to whoever the perpetrator may be. The victim's perception of the effect of the behaviour is also important.

Take all possible steps to make sure employees understand that they and their management teams will not tolerate such behaviour and that they will deal with whoever is causing the problem.

### **Q Should I take positive action to promote age diversity?**

**A** Your business could benefit from employing people of different ages. The law allows you to introduce positive action measures where you can demonstrate that employees of a particular age are at a career disadvantage or are under represented in the organisation (see page 29).

## Annexes

### Annex 1: An age healthcheck

#### Purpose

These questions are designed to kick start the planning and thinking process in your organisation. The answers to these questions should tell you if:

- any key personnel decisions are influenced by age
- your recruitment is attracting people from everyone in the local community.

#### The Checklist

- 1 Look at your records to establish your company age profile – insert 16-21, 22-30, 31-40, 41-50, 51-60, 60-65, 65+ (These age bands are for illustration only; you may wish to choose different ones to suit your company circumstances.) Compare this to census data available from websites, libraries, business and Chambers of Commerce. What do you find?
- 2 Look at your application forms for recent recruitments and compare with your age profile. Are you missing out on potential talent? **Yes/No**
- 3 Is your equality and diversity policy visibly supported by your board and chief executive? **Yes/No**
- 4 Do you train employees to recognise and tackle age discrimination? **Yes/No**
- 5 Is age ever used as a factor in staff recruitment/selection or training and development? **Yes/No**  
If yes, can it be justified? **Yes/No**
- 6 Do you offer variable and alternative working patterns to employees regardless of age? **Yes/No**
- 7 Are your managers aware of what behaviour could be perceived as harassment on the grounds of age? **Yes/No/Not Sure**
- 8 Do you have an action plan to ensure you are compliant with the age regulations in October 2006? **Yes/No**

## Annex 2: Age action plan – some potential quick wins

### Purpose

To make your action plan successful:

- Agree who is responsible for the plan
- Launch it with the support of the head of your organisation
- Agree who should be involved and consulted, for example line managers, personnel staff, trade unions, other stakeholders
- Make sure your partners and suppliers support your action plan
- Agree and publish timescales for when you will do things and prioritise key objectives before October 2006
- Get feedback from employees and address their concerns/questions.

### Some quick win areas for the action plan

#### 1 Recruitment, promotion and selection

- Remove ageist language (see page 12) from job and promotion adverts and focus on the needs of the job. In the short-term make someone responsible for 'vetting' the wording
- In performance assessments challenge phrases that make assumptions about an individual and focus on actual performance
- Look at where you advertise and how you advertise to ensure you reach the whole labour market
- Train selectors in anti age discrimination
- Monitor and publish your results to show you mean business.

#### 2 Hearts and minds

- Deliver a programme of age awareness training to all employees to focus on:
  - tackling deep seated stereotypes; and
  - bullying and harassment.
- Review company literature for age bias, look to how your organisation might be perceived by younger or older employees. If someone feels fully engaged with an organisation they are likely to be more productive.

#### 3 Retirement and knowledge management

- Recognise that senior employees have a wealth of experiences that are valuable and can help the organisation. Set up a system to capture this knowledge.
- Make your retirement policy well known and treat requests to stay after retirement as an opportunity to retain knowledge.

## Annex 3: Practical impact assessing for age bias in policies

### Purpose

Impact assessments are designed to measure the impact of policies and processes on different groups of people. They can help to inform planning and decision-making.

### Ask yourself:

- What is the purpose of a policy or practice?
- What is it achieving?
- Do any age groups benefit and, if so, do any not? And how?
- What are the differences and adverse outcomes (if any) by age group.

### To answer these questions you will need to look at:

- Your monitoring data (see section 'Know your staff' and Annex 4)
- Anecdotal views from managers and employee representatives about the way a policy is working locally
- Attitude surveys, focus groups, exit interviews and specific research and evaluation exercises you may wish to carry out
- What has worked elsewhere and why by comparing your data with that of other business groups/employer organisations.

This process will give you evidence of different outcomes by age groups. It is important to remember that not all differences are necessarily wrong and you need to ask the question "is it justifiable for this to continue?" Our guidance on objective justification can give some pointers here.

We would suggest that it would be good practice to undertake these assessments openly in the organisation as a sign of your commitment to tackle unwitting age discrimination.

## Annex 4: Age monitoring – a framework

Monitoring the effect of the anti-age discrimination regulations can help you to:

- identify any problems
- gather evidence that might be needed by the courts for objective justification of any age discrimination (see page 30).

The following age bands might provide a useful starting point for gathering your information:

16-21, 22-30, 31-40, 41-50, 51-60, 60-65, 65+

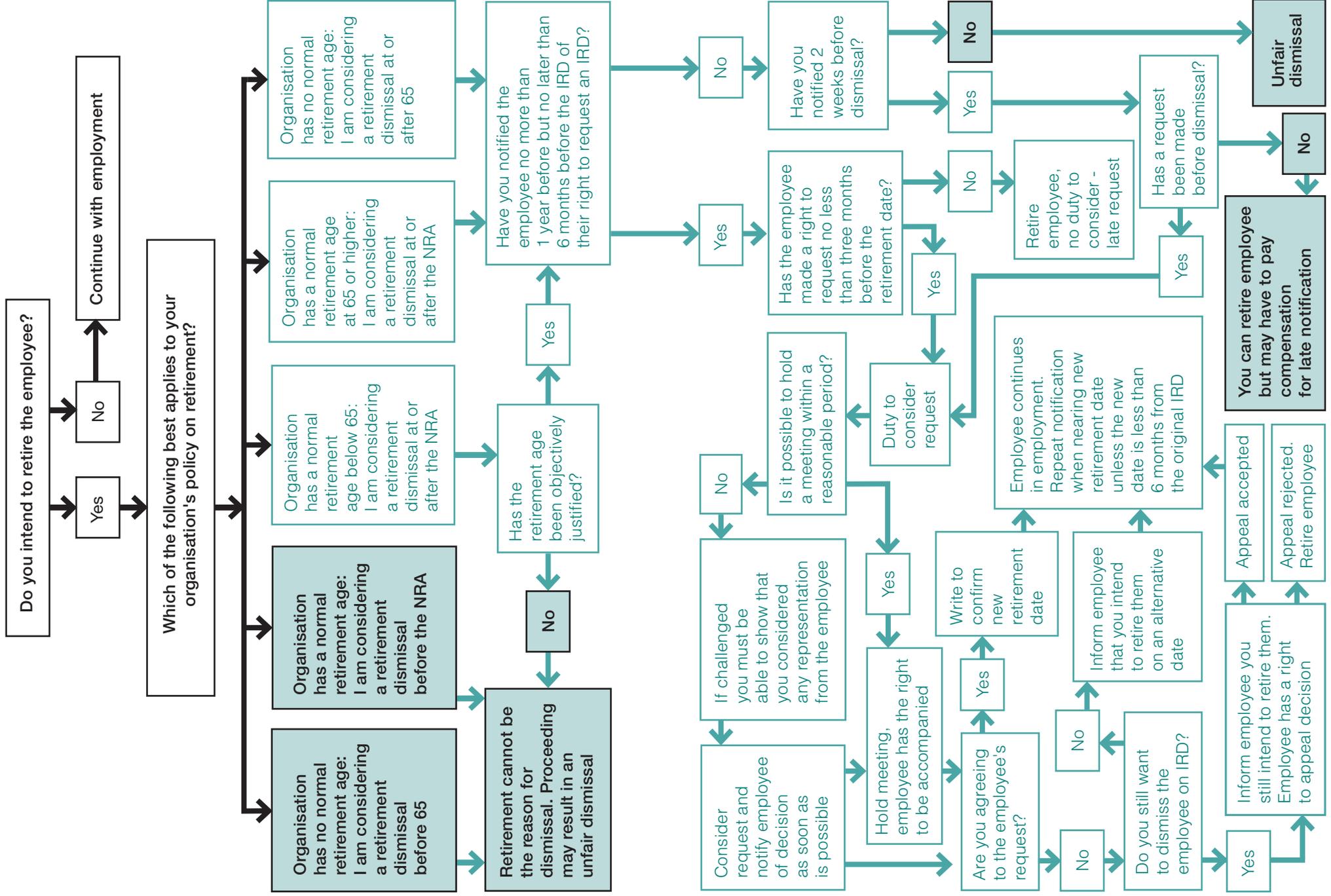
Keep records on how all your employees fit into these age bands. Also keep data on employees who:

- Apply for jobs (and those who are successful)
- Apply for training (and those who receive training)
- Apply for promotion (and those who are successful)
- Are being assessed to measure their performance
- Are involved in disciplinary and grievance processes (and the outcomes of these processes)
- Leave the organisation.

Another source of monitoring information are staff attitude surveys that can be used in concluding a business benefit when considering the exemptions surrounding service-related benefits.

Staff consultation groups and trade unions can also be valuable sources of information that can add to raw data figures.

# Annex 5: Fair retirement flow chart



Notes: NRA means normal retirement age IRD means intended retirement date

## Annex 6: Request to work beyond retirement flow chart

### Employer – Pre-Retirement

If you intend to retire the employee you must inform the employee of the retirement date, in writing, no more than one year but no later than six months before the intended retirement and that they have a right to request to work beyond the retirement age.

### Employee – Responding to your employer's notification

When your employer has notified you of your intended retirement date and your right to request, if you want to request working beyond retirement age you must inform your employer no less than three months before the intended retirement date. Your request to your employer must be in writing and state whether you wish to continue work:

- indefinitely
- for a stated period
- or until a certain date.

You may only make one request in relation to each intended retirement date. If your employer has failed to notify you of your intended retirement date six months before that date, you may still make a request not to retire at any time before you retire.

### Employer – Responding to your employee's request

When you receive your employee's request you must normally hold a meeting with your employee to discuss the request. If you accept there is no need to hold a meeting; simply amend the employee's contract of employment to reflect the new intended retirement date, and if required, the new employment pattern.

If after considering the request, you decide that you do wish to continue with the retirement you should hold a meeting with the employee. This will enable the employee to put their case to you. The employee has a right to be accompanied at the meeting.

The companion can be:

- chosen by the employee
- a worker or trade union representative employed by you or the organisation.

The companion can:

- address the meeting but not answer questions on behalf of the employee
- confer with the employee during the meeting.

The meeting must be held within a reasonable period after the request has been received from the employee. If the meeting cannot be held within a reasonable period, you may inform the employee of your decision in writing as long as you have considered any representation made by the employee.

### Employee – The meeting to consider your request

If your employer does not accept your request, they must still offer you a meeting to discuss it. This is your opportunity to put your case before your employer. You have a right to be accompanied at the meeting.

The companion can be:

- chosen by you; but must be
- a worker or trade union representative employed by the same employer.

The companion can:

- address the meeting but not answer questions on your behalf
- confer with you during the meeting.

It is important to remember that your companion cannot answer questions on your behalf. You must take all reasonable steps to attend the meeting, although if it is not possible to hold the meeting within a reasonable period your employer may inform you of their decision in writing.

(continued)

## Annex 6: Request to work beyond retirement flow chart (continued)

### The meeting

The meeting is an opportunity for the employee to put their case before the employer. At the end of the meeting the employer may decide that whilst they cannot accept the employee's stated request, there may be a compromise solution. It is perfectly acceptable for the employer to propose alternative working patterns and retirement dates, other than those proposed by the employee, if the employer is persuaded by the employee's case not to be retired.

### Employer – Post-meeting action

If, after the meeting, you decide to accept the employee's request you should inform them that you have accepted the request and state the new employment pattern and when the new intended retirement date will be.

Where the decision is to refuse the request you should confirm with them that you still wish to retire them – either on the original intended retirement date or an alternative later date.

Any decision should be given in writing and should be dated. The employee has a right to appeal the employer's decision, or a decision on a new intended retirement date if it is shorter than the intended retirement proposed by the employee in the employee's initial request.

### Employee – Post-meeting

The employer will inform you as soon as is reasonable after the meeting of their decision. If the employer rejects your request or proposes a new intended retirement date that is less than that in your original request, you may ask for an appeal meeting.

### Appeal meeting

The appeal meeting is the final opportunity for the employee to put their case before the employer. At the end of the meeting the employer may decide that whilst they cannot accept the employee's stated request, there may be a compromise solution. It is perfectly acceptable for the employer to propose alternative working patterns and retirement dates, other than those proposed by the employee, if the employer is persuaded by the employee's case not to be retired.

### Employer – Post-appeal meeting action

If, after the meeting you decide to accept the employee's request, you should inform them that you have accepted the appeal and state the new employment pattern and when the new intended retirement date will be.

Where the decision is to reject the appeal you should confirm with them that you still wish to retire them and the date that the dismissal is to take effect.

Any decision should be given in writing and should be dated.

### Employee – Post-appeal meeting

The employer will inform you as soon as is reasonable after the appeal meeting of their decision. If your request is accepted, or a compromise solution is reached, the employer should inform you in writing of that decision.

If your appeal is rejected the employer is obliged to inform you of this in writing and of the date of your retirement. The employer does not need to give a reason why your application has been rejected.

## Annex 7: Example of a letter informing employee of their retirement date

Letter to inform employee of their retirement date and of their right to make a request.

**Note to employer:** You must inform the employee no more than one year but no later than six months before their retirement date what the intended retirement date is and that they have a right to request not to be retired. Failure to inform the employee of the date and their right may mean that the dismissal is unfair. This letter should only be used if you are complying with the above time limits. If you do not, you are under an obligation to consider a request made by the employee at any time before retirement takes effect. You can get additional guidance on retirement from Acas.

Dear:	Staff Number:
Date:	
1 I am writing to inform you that your retirement date will be <i>[insert date]</i> and that you have a right to request not to be retired.	
1a I will give careful consideration to any request you may make to work beyond this date and will inform you if I cannot let you. I am not required by law to give a reason.	
2 Your request not to be retired must be returned to <i>[insert name]</i> no later than three months before the date stated in paragraph 1. Failure to do so will mean that you lose your statutory right to have your request considered and you will be retired on the retirement date above.	

Name:	Signature:
Date:	

## Annex 8: Example of a letter informing employee of a meeting to discuss a request not to retire

**Note to employer:** The meeting to discuss the request should be held within a reasonable period after the request has been received. The employee has a right to be accompanied at the meeting.

The companion can be:

- chosen by the employee
- a worker employed by you or the organisation.

The companion can:

- address the meeting but not answer questions on behalf of the employee
- confer with the employee during the meeting.

Dear:	Staff Number:
Date:	
I am writing to inform you that after receiving your request not to be retired that there will be a meeting to discuss your request.	
The meeting will be held on <i>[insert date]</i> at <i>[insert time]</i> at <i>[insert location]</i> .	
You have a right to be accompanied at the meeting by a fellow worker or a trade union representative. Your companion may be someone that you have chosen, but they must work for <i>[insert name of organisation]</i> . Your companion can address the meeting but not answer questions on your behalf although you may confer with your companion during the meeting.	
After the meeting if it is decided to continue your employment beyond the intended retirement date of <i>[insert date]</i> you will receive written notification reflecting these agreed changes to your contract.	
If no agreement is reached you will receive further notification confirming your intended retirement date and informing you of your right to appeal.	

Name:	Signature:
Date:	

## Annex 9: Example of a letter confirming retirement on the intended date

**Note to employer:** If after the meeting to discuss the employee's request not to be retired, you decided that you still wish to retire the employee, you must inform them as soon as is reasonably practicable. You must also inform them that they have a right to appeal

Dear:	Staff Number:
Date:	
I am writing to inform you that after our meeting held on <i>[insert date]</i> to discuss your request not to be retired, that <i>[insert organisation]</i> still intends to retire you on <i>[insert intended retirement date]</i> .	
You have a right to appeal this decision. If you wish to appeal you must inform <i>[insert name]</i> as soon as is reasonable. Failure to do so may mean that you lose the right to an appeal meeting and <i>[insert organisation's name]</i> may consider your appeal without holding a meeting but they will consider any previous representations that you have made.	

Name:	Signature:
Date:	

## Annex 10: Example of a letter to employee notifying the result of their appeal

**Note to employer:** You must hold the appeal meeting to discuss the employee's appeal not to be retired as soon as is reasonably practicable. If it is not reasonably practicable to hold an appeal meeting within a period that is reasonable you may consider the appeal without holding a meeting as long as you consider any representations that the employee has made.

Dear:	Staff Number:
Date:	
I am writing to inform you that after our meeting held on <i>[insert date]</i> to discuss your appeal not to be retired, that <i>[insert organisation]</i> still intends to retire you on <i>[insert intended retirement date]</i> .	

Name:	Signature:
Date:	

## Annex 11: Example of a letter to employee confirming new retirement date

**Note to employer:** You should use this letter if you accept the employee's request or appeal.

Dear:	Staff Number:
Date:	
I am writing to inform you that following our meeting to consider your request not to be retired/appeal meeting <i>[delete as appropriate]</i> <i>[insert organisation]</i> has agreed that your new intended retirement date shall be <i>[insert date]</i> .	
As agreed at the meeting to discuss your request not to be retired/appeal meeting <i>[delete as appropriate]</i> your new working pattern will be as follows. <i>[Delete this paragraph if no new working pattern is agreed]</i> .	

Name:	Signature:
Date:	

## Annex 12: Retirement – transitional arrangements applicable up to 1 April 2007

Transitional arrangements apply to retirements from 1 October 2006 to 31 March 2007 because the DTI recognises that:

Where an employee is due to retire soon after 1 October 2006 the procedures for ensuring a retirement dismissal is fair are summarised below.

### Notice given before 1 October 2006

If the employee is given notice before 1 October that they are to be retired after 1 October 2006 but before 1 April 2007:

- notice must be at least the period required by the contract of employment;
- or
- where the employee is already serving a long period of notice required by the contract that exceeds four weeks, the employer must give at least four weeks notice before the 1 October 2006 to ensure the employee is aware and given the statutory minimum period of notice for retirement.

On 1 October, or as soon practicable afterwards, the employer must write to the employee telling them of their right to request working longer.

The employee can make such a request after their contract has been terminated but not more than four weeks afterwards.

A meeting to discuss the request, and any subsequent appeal meeting, must be held within a reasonable period. The employee can ask to be accompanied by a companion.

## Annex 12: Retirement – transitional arrangements applicable up to April 2007 (continued)

### Notice given after 1 October 2006

If the employee is given notice after 1 October that they are to be retired before 1 April 2007 the employer must:

- write to the employee notifying them of the intended retirement date – giving the longer of contractual or statutory notice; and
- tell them in writing that they have a right to request working longer.

An employee who wants to exercise this right should make a written request:

- where possible, four weeks before the intended retirement date; or
- as soon as reasonably practicable after being notified of the 'right to request'.

The request can be made after the employee's contract has been terminated but not more than four weeks after termination.

A meeting to discuss the request, and any subsequent appeal meeting, must be held within a reasonable period. The employee can ask to be accompanied by a companion.

**Anyone retiring on or after 1 April 2007 will be subject to the full retirement procedure set out in the Employment Equality (Age) Regulations 2006 and described in this guidance.**

Information in this booklet has been revised up to the date of the last reprint - see date below.

Legal information is provided for guidance only and should not be regarded as an authoritative statement of the law, which can only be made by reference to the particular circumstances which apply. It may, therefore, be wise to seek legal advice.

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April 2006

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