



**AGES  
13-65+**

# **AGE DISCRIMINATION IN NORTHERN IRELAND**

**A Guide for Workers and Employees**

Equality Commission

FOR NORTHERN IRELAND

Employment Equality (Age) Regulations (Northern Ireland) 2006



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This Guide was developed by the Equality Commission for Northern Ireland (“The Commission”) with assistance from Acas (Advisory, Conciliation and Arbitration Service). The Commission gratefully acknowledges the substantial contribution made by Acas to this publication.

On request, the Guide is available in a range of accessible formats from the Commission. If you would like a copy in an alternative format please contact us and state the format you require.

## **The Equality Commission for Northern Ireland**

The Commission is an independent public body established under the Northern Ireland Act 1998. The Commission has a general duty to keep equality legislation in Northern Ireland under review. The Commission promotes equality of opportunity and provides advice and guidance in relation to:

- age discrimination
- disability discrimination
- equal pay
- religious belief or political opinion discrimination
- race discrimination
- sex discrimination
- sexual orientation discrimination and
- the public sector equality duty (Section 75 of the Northern Ireland Act 1998), which includes the promotion of equality of opportunity between persons of different ages.

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**The Guide provides general guidance only and should not be regarded as a complete or authoritative statement of the law. This Guide is not a Code of Practice and does not, of itself, impose legal obligations. Authoritative interpretation of the law is a matter for Industrial Tribunals and Courts.**

### **Note: This Guidance applies only to Northern Ireland**

The Employment Equality (Age) Regulations (Northern Ireland) Order 2006 (the “Regulations”) apply to all employers, training providers and institutions of further and higher education. The Regulations came into operation on 1 October 2006.

This Guidance explains, for employees, the duties placed upon employers, vocational training providers and institutions of further and higher education (including universities).

This Guidance explains how the Regulations make it unlawful for employers, regardless of size, and all vocational training providers (including institutions of further and higher education) to discriminate against or harass employees (and former employees in certain circumstances), job seekers and applicants, and all vocational trainees and students across all ages.

When they were initially passed, the Age Regulations introduced a National Default Retirement Age and a set of special retirement procedures that, when properly followed, protected employers from claims of age discrimination and unfair dismissal if they dismissed employees aged 65 years or over on grounds of age. The original version of this guide, published in 2006, gave a lot of guidance about those retirement procedures. However, that guidance is no longer relevant as the procedures were later repealed in April 2011 by the *Employment Equality (Repeal of Retirement Age Provisions) Regulations (NI) 2011*.

This version of the guidance has been updated to take account of that major change in the law.

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# 1 Introduction

## A Guide for workers and employees

The **Employment Equality (Age) Regulations (Northern Ireland) 2006** ('the Regulations') came into operation on 1 October 2006. The Regulations make it unlawful for employers and others to discriminate on grounds of age in the areas of employment and occupation. This includes vocational training and further and higher education. The aim of this Guide is to enable job applicants, employees and trainees to understand their rights under the Regulations.

### What are the Age Regulations?

The Regulations **grant protection** against age discrimination and harassment to:

- job applicants or job-seekers, including those seeking appointment to, or membership of, the categories listed below
- employees, including civil servants, police officers and former employees
- self-employed workers
- contract workers
- persons using the services of employment agencies
- office holders
- partners (in business/es)
- barristers
- members of occupational pensions schemes
- members of trade organisations
- persons undergoing vocational training
- persons seeking professional or trade qualifications
- students, potential students and past students of institutions of further and higher education

The Regulations grant protection from discrimination and harassment to all of the above regardless of age. *However, the law may permit employers to discriminate on grounds of age in certain exceptional circumstances. These situations are outlined in Chapter 3.*

The Regulations prohibit age discrimination and harassment by:

- employers, including those who engage contract workers
- employment agencies
- persons who appoint office holders
- persons with statutory power to select employees for others
- trade organisations, including trade unions and professional organisations
- partnerships (in business/es)
- barristers
- the Police Service of Northern Ireland and other police bodies
- trustees and managers of occupational pensions schemes
- The Crown (which includes government departments and agencies)
- career- and training guidance providers who facilitate access to work and training
- organisations which confer professional and trade qualifications
- vocational training providers and
- institutions of further and higher education (including universities).

The Regulations **cover** the areas of:

- recruitment and selection
- terms and conditions of employment
- opportunities for promotions, transfers or training
- access to benefits
- the termination of employment such as dismissal and redundancy
- post-employment and post-training situations such as the provision of references and



## Goods, facilities and services

The Regulations do not generally prohibit discrimination by those who provide goods, facilities and services to the public. However, those who provide employment-related services to the public, such as employment agencies, career guidance services, vocational training providers and institutions of further and higher education are prohibited from discriminating on the grounds of age.

## 2 Explaining the law

### Responsibilities of employers

The Regulations generally prohibit employers, regardless of size, from subjecting job applicants and employees, including contract workers and former employees, to age discrimination and harassment.

An employer is directly responsible where he/she discriminates or harasses one of his/her own employees, job applicants, contract workers or former employees. Employers also have specific legal responsibilities in relation to the actions of their employees in the course of their employment, whether or not they knew of the discriminatory acts or approved of them. This is known as 'vicarious liability'. Employers can be liable for the discriminatory acts of their agents if the agent (such as a contractor) acts with the employer's express or implied authority.

### Responsibilities of employees

Like employers, individual employees should ensure that they do not discriminate or harass others on grounds of age. In the event of a complaint to an Industrial Tribunal individual employees who carried out age discriminatory conduct may be held personally liable or jointly liable with the employer for their actions and be ordered to pay all or part of any compensation that the Industrial Tribunal may award to the victim, including costs.

### Age discrimination

Discrimination on grounds of age can take different forms:

- direct discrimination
- indirect discrimination
- victimisation
- harassment
- unfair treatment arising from a failure to carry out an age-discriminatory instruction.

## Direct discrimination

Direct age discrimination occurs where, on the grounds of a person's age (or, perceived age), an employer, without objective justification, treats that person less favourably than he treats, or would treat, other persons in circumstances that are the same, or not materially different.

In a small number of circumstances direct age discrimination may be permitted where an employer can demonstrate that his or her actions are 'lawfully justified', or 'objectively justified'.

Actions that are lawfully justified are those which the Regulations permit, because another piece of legislation, for example, places limits on the age of certain employees. Objective justification is discussed further in the 'Exceptions and exemptions' section of this guide.

### Example 1 Direct age discrimination

Stephen is 50 years old. He applies for a job as a clerk. The employer notes that Stephen has all the skills and competences required to do the job. However, the employer also notes that all the clerical staff who currently work in his office are aged 18 to 25 years. The employer assumes that Stephen may not "fit in" with the other employees because of the differences in their ages. For this reason, the employer decides not to offer the job to Stephen and he appoints another applicant who is aged 21 years.

Stephen has been treated less favourably than the appointee on the grounds of his age. The treatment is based on a biased and stereotypical assumption that an older employee will be unable to "fit in" with younger employees. Therefore, this treatment is likely to amount to direct age discrimination.

### Example 2 Direct age discrimination

Harry has worked as a Production Operative in Jones & Company for 35 years. His general health and fitness are good and he would be happy to continue working for several more years as he enjoys the work. However, the firm operates a compulsory retirement age of 65 years for all of its Production Operatives. The firm has informed Harry that it intends to retire him at the end of this month because he has now reached that age.

When an employer operates a policy of having a compulsory retirement age for its employees, regardless of whether it is set at 55 or 60 or 65 or at any other age, it is a policy that is based on age and it treats the employees who reach that age less favourably than those who are younger. It is an example of direct age discrimination and will be unlawful unless it can be objectively justified, a topic that is discussed in Chapter 3.

### Example 3 Direct age discrimination

Mary applies to work as a Production Operative in Jones & Company, the same firm as in example 2 that operates a compulsory retirement age of 65 years. Mary's application is rejected on the ground that she is 64 years old and within 12 months of the firm's compulsory retirement age. This too is an example of direct age discrimination and will be unlawful unless it can be objectively justified, a topic that is discussed in Chapter 3."

## Indirect discrimination

This occurs where an individual is put at a particular disadvantage compared to other persons because an employer, without justification, applies a provision, criterion or practice which, although it applies to all persons equally, puts persons of the same age group as the individual at a particular disadvantage compared to other persons. In a small number of circumstances indirect age discrimination may be permitted where an employer can demonstrate that the provisions, criteria or practices are lawfully justified, or objectively justified.

### Example 4 Indirect age discrimination

Brian is aged 25 years. He is a solicitor with 2 years' post-qualification experience (PQE). He applies for the job of assistant solicitor with a firm of solicitors. His application is rejected because the firm is seeking to appoint a person who has at least 5 years' post-qualification experience. The criterion is applied to all applicants for the job but, given the length of time that it takes to gain the qualifications and experience necessary to meet this minimum standard, it is unlikely that any persons aged less than 28 years can satisfy it.

Both Brian and persons of his age group (solicitors aged less than 28 years) have, as a result of the application of this minimum experience requirement, been placed at a particular disadvantage compared to other persons (solicitors aged 28 years and over).

On the basis of the information given here it cannot be said with certainty that applying this criterion amounts to indirect discrimination, but it is potentially so. It is possible that the firm has a lawful, objective justification for setting the 5 years post-qualification experience criterion (perhaps on the basis of particular business needs).

On the other hand, while an Industrial Tribunal may accept that the firm can lawfully justify asking for some level of post-qualification experience (for example, 1, 2 or 3 years), it may consider that there is no justification for seeking higher levels. It could be argued that the less technical or specialised a job is, the harder it will become for an employer lawfully to justify asking for some level of post-qualification experience.

## Age victimisation

This occurs where an employer treats a person less favourably than he treats, or would treat, other persons and does so by reason that the person has, in good faith, made (or intends to make) a complaint or allegation under the Regulations, or has assisted (or intends to assist) another person to make such a complaint or allegation. It is not necessary for the victim to have previously made a complaint or allegation to an Industrial Tribunal; for example, he/she is protected if he/she made a complaint in the course of an internal grievance. Treatment that amounts to victimisation is not capable of being objectively justified.

### Example 5 Age victimisation

A year ago Catherine lodged an age discrimination complaint against her employer in an Industrial Tribunal. A work colleague, Abigail, gave evidence on Catherine's behalf at the Tribunal hearing.

Two months ago, Abigail applied for a promotion but her application was rejected even though she has all the necessary skills and experience. The actual reason for the rejection is that the employer is retaliating against Abigail for having assisted Catherine in her age discrimination complaint.

This treatment amounts to discrimination by way of victimisation and is not capable of being justified.

Protection against victimisation does not apply to individuals who make allegations of discrimination which are false and not made in good faith.

### **Discrimination for failing to carry out an age discriminatory instruction**

This occurs where an employer treats a person less favourably than he treats, or would treat, other persons and does so by reason that the person has failed to carry out (in whole or in part) an instruction (or has complained about receiving an instruction) to do an act which is unlawful under the Regulations.

Treatment that amounts to this form of discrimination cannot be objectively justified.

#### **Example 6 Discrimination for failing to carry out an age discriminatory instruction**

A company has run into difficulties and must reduce its workforce by making compulsory redundancies. The company has an agreed redundancy selection procedure which is based on a number of objective job-related criteria.

However, the managing director instructs the personnel manager to select for redundancy all employees aged 50 years and above without reference to the agreed procedure.

This instruction is likely to result in direct age discrimination against those employees who are aged 50 years and above. The personnel manager notes this and refuses to carry out the instruction. As a result he is dismissed from his employment.

This treatment amounts to discrimination for failing to carry out an age discriminatory instruction and cannot be justified.

## Age harassment

Age harassment occurs where, on grounds of age, a person is subjected to unwanted conduct which has the purpose or effect of violating his or her dignity, or which creates an intimidating, hostile, degrading, humiliating or offensive environment for him or her.

Harassment can also occur when someone close to the person is the subject of the behaviour. For example, when someone is teased because their personal partner is considerably older or younger.

Harassment can take many forms:

- physical conduct such as (serious) assault
- verbal conduct such as jokes, banter, insults, innuendos, nicknames, teasing, name calling or songs
- written conduct such as graffiti, posters, pictures, or e-mails

Harassment may include conduct which is:

- condescending
- deprecating
- bullying behaviour or
- unfairly criticising another's work performance.

An Industrial Tribunal or County Court will take into account how the conduct in question was perceived by the person alleging harassment. It may also consider whether the conduct in question should reasonably be considered as having violated the person's dignity or having created an offensive environment. Therefore, the following two points should be considered:

- A single act, if sufficiently serious, can constitute harassment.
- Harassment can still be unlawful even though the person harassing another did not intend to cause offence or did not specifically direct the offensive conduct at the person alleging harassment.

### Example 7 Age harassment

Paul and John, who are both aged 55 years, work in a team whose other members are aged less than 30 years. The younger team members habitually tease Paul and John about their ages by calling them “old fogies” and “Grandas”. They even do this in front of the company’s customers. They believe that they are engaging in “good-natured banter”. Paul does not mind the teasing and he laughs along with it. However, John is offended by the comments, particularly when they are made in front of customers, and although he has made his feelings clear to his younger colleagues, they continue to tease him.

The conduct towards John is harassment on the grounds of age.

You are strongly recommended to examine the “Harassment & bullying” section in the “Good practice guidance” chapter of the Commission’s publication, “Age Discrimination in Northern Ireland: A Guide for Employers”. Furthermore, employees can obtain information on this subject from the Equality Commission and Labour Relations Agency joint publication “Harassment & bullying in the Workplace”

### Discrimination after a relevant relationship has come to an end

Treating a person less favourably or harassing an individual on grounds of age after a ‘relevant relationship’ has ended can also be unlawful. The act of discrimination must arise out of and be closely linked to the former relationship.

The provision of references, either written or verbal, is covered by the legislation. For example:

- on grounds of age, an employer refusing to provide a former employee with a reference or
- giving a former employee an adverse reference on grounds of age.

Unlawful discrimination can also occur where an employer refuses to provide a reference or gives an unfair reference because the former employee brought a discrimination complaint on grounds of age against his or her employer.



### **Example 8 Discrimination after a relevant relationship has come to an end**

Sinead was a manager for a large clothing retailer. Grainne, an ex-employee of the large clothing store, had applied for a job with a hardware store. The personnel officer from the hardware store asked Sinead for a reference regarding Grainne.

Sinead said that she could not recommend Grainne. Sinead's reason was that Grainne was not accepted by the other members of staff. Sinead believed the reason for this was that the other members of staff perceived Grainne as 'too young and inexperienced'.

This is direct discrimination on the grounds of age.

### **Vocational training**

On the grounds of age, it is unlawful for any training provider to discriminate against someone who is seeking or undergoing training:

- in the arrangements they make for the purpose of determining to whom they should offer training
- in the terms on which the training provider affords them access to any training
- by refusing or deliberately not affording them such access
- by terminating their training
- by subjecting them to any other detriment during their training.

It is also unlawful for the training provider to subject a person seeking or undergoing training to harassment on the grounds of age.

Under the Regulations, the term 'training' stands for:

- all types and all levels of training which would help fit a person for any employment
- vocational guidance

- facilities for training
- practical work experience provided by an employer to a person whom the employer does not employ
- any assessment related to the award of any professional or trade qualification.

A 'training provider' is any person or organisation which provides, or makes arrangements for the provision of training. It does not include:

- an employer, in relation to training for persons employed
- a governing body of an institution of further and higher education and
- a proprietor of a school in relation to registered pupils.

Therefore, training providers may include:

- employers
- further and higher education institutions (including universities)
- private sector training bodies
- public sector training bodies
- voluntary sector training bodies and
- providers of adult education programmes

Training providers can not set age limits for entry to training unless they can objectively justify them or rely on an exception or exemption.

### **Institutions of further and higher education, including universities**

The Regulations prohibit age discrimination by the governing bodies of institutions of further and higher education:

- in the terms on which they offer to admit a person as a student and
- by refusing or deliberately not accepting an application for a person's admission as a student.

When a person is a student of an educational establishment, it is unlawful for the educational institution to discriminate on the grounds of age:

- in the way it affords a person access to any benefits
- by refusing or deliberately not affording a person access to them or
- by excluding the person from the establishment or subjecting that person to any other detriment.

It is unlawful for an institution of further and higher education to harass a person who is a student at that establishment, or a person who has applied for admission to that establishment, on the grounds of age.

### Qualifications bodies

It is unlawful for a qualifications body to discriminate against a person on the ground of age:

- in the terms on which it is prepared to confer (including the renewal or extension of) a professional or trade qualification on them
- by refusing or deliberately not granting any application by them for such a qualification or
- by withdrawing such a qualification from them or varying the terms on which they hold it.

It is also unlawful for a qualifications body, in relation to a professional or trade qualification conferred by it, to subject to harassment a person who holds or applies for such a qualification.

A 'qualifications body' means any authority or body which can confer a professional or trade qualification, but does not include a proprietor of a school or the governing body of an institution of further and higher education.

A 'professional or trade qualification' means any authorisation, qualification, recognition, registration, enrolment, approval or certification which is needed for, or facilitates engagement in, a particular profession or trade. A 'profession' means any vocation or occupation, and a 'trade' means any business.

## 3 Exceptions & exemptions

### Objective justification

Direct and indirect discrimination may be permitted where an employer can demonstrate that his/her actions or provisions, criteria or practices are **objectively justified**.

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

Objective justification cannot be used as a defence for victimisation and harassment or discrimination for failing to carry out an age discriminatory instruction.

Objective justification will be established if an employer can show that what it has done is a **proportionate means of achieving a legitimate aim**.

Legitimate aims may include:

- promotion of health and safety
- facilitation of employment planning
- particular training requirements of the job or
- the need for a reasonable period of employment before retirement.

The particular means adopted by an employer to achieve a legitimate aim must be proportionate to the aim in question.

This means that:

- the decisions or provisions which an employer makes or the criteria or practices which are applied must actually contribute to the pursuit of the legitimate aim. For example, if the employer uses an age-related practice in order to promote health and safety (the legitimate aim), then the employer should have evidence which shows that the practice actually promotes health and safety.

- The importance and benefits of the legitimate aim should be weighed up against the discriminatory effects. For example, a discriminatory criterion which helps to protect employees' safety is more likely to be regarded as proportionate than one which results in a marginal improvement in production efficiency.
- The employer should not discriminate more than necessary. For example, where a legitimate aim can be achieved equally as well by a measure that has a substantial discriminatory effect and one that has a lesser discriminatory effect, or none at all, the latter should be used.

In the event that an individual complains of discrimination, it will be for an employer to convince an Industrial Tribunal that it acted in order to achieve a legitimate aim.

### **Example 9 Objective Justification**

Sarah is employed as a bus driver. She works for a tour company to drive tourists on trips around Northern Ireland. When she reaches the age of 65 years, the firm terminates her employment. The reason given is that Sarah must be insured to drive the bus but that the employer's regular insurance provider refuses to insure Sarah because of her age. The insurance firm refuses to insure bus drivers who are 65 years or over.

The employer's aim here, i.e. ensuring that its bus drivers are properly insured to carry-out their work, as motoring law requires, is certainly a legitimate aim. But the more important question is whether it is reasonably necessary for the employer in pursuing that aim to dismiss Sarah from her job? Is the dismissal a proportionate means of achieving that aim?

In the event of a complaint of age discrimination, an industrial tribunal can be expected to enquire about the efforts made by the employer to find an alternative insurance provider; one who would be prepared to insure Sarah, even at the cost of charging higher premiums. The tribunal would also expect to hear an explanation as to why the employer would be unable to pay higher premiums, if such are charged. Finally, a tribunal would also expect to hear about the efforts made by the employer to find suitable employment for Sarah as an alternative to dismissing her.

If the employer makes no efforts to investigate and consider these matters before dismissing Sarah, then the dismissal is unlikely to be justified and is likely to be unlawful. Equally, any investigations and considerations that are done should be genuine and open-minded and not mere "tick-boxing" exercises. To be justified, the dismissal needs to shown to be something that was reasonably necessary."

## Other exceptions & exemptions

The Regulations allow for some discriminatory activities to be lawful. These activities are either due to a genuine occupational requirement or fall within statutory exceptions to the legislation.

The exceptions to the Regulations are for:

- **positive action**

The Regulations only permit two types of positive action to be taken by employers. These are affording persons of a particular age or age group access to facilities for training which would help to fit them for particular work, and encouraging persons of a particular age or age group to take advantage of opportunities for doing particular work.

- **genuine occupational requirements**

In exceptional circumstances, age-related treatment, provisions, criteria or practices may be lawful where, having regard to the nature of the employment or the context in which it is carried out, possessing a characteristic related to age is a genuine and determining occupational requirement (“GOR”).

- **the armed forces**

The Regulations do not apply to service in the Army, Navy or Air Force.

- **acts under statutory authority**

Age criteria are widely used in legislation, notably in the area of qualifying 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.

- **national security**

The Regulations do not render unlawful any justifiable act that is done for the purpose of safeguarding national security, or protecting public safety or public order.

- **the provision of benefits based on length of service**

In many cases, employers apply certain length of service criteria before awarding benefits, such as increased holiday entitlements. Without the exception contained in the Regulations the application of such criteria could amount to indirect age discrimination because some age groups are more likely to satisfy the length of service criteria than others.

The exemption provides that benefits (such as extra contractual holiday entitlement) may lawfully be awarded to workers using the criterion of length-of-service without the need for any special justification, except in one situation. That situation occurs where benefits are based on length-of-service and where employees with more than 5 years service are not receiving those benefits when employees with longer service are. For example, if an employer awards an extra 3 days annual leave entitlement to employees with 10 years continuous service but to no one else, employees with less than 5 years service have no legal right to complain about this, but employees with more than 5 years service do. If challenged, the policy would not be unlawful so long as the employer can justify it on the basis that it reasonably appears to him that the way in which he is using the length-of-service criterion fulfils a business need (for example, by encouraging the loyalty or motivation, or rewarding the experience, of some or all of his staff. Conversely, if, instead, the extra annual leave entitlement was given to all employees when or before they attain 5 years continuous service, the exception makes the policy lawful without the need for any special justification.

- **the 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, that is, 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.

- **the provision of enhanced redundancy payments**

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

- **Insurance etc.**

The exception allows an employer to make arrangements for, or to afford access to, the provision of insurance or a related financial service to or in respect of an employee for a period ending when the employee attains whichever is the greater of the age of 65 years and the state pensionable age.

The exception also allows an employer to make arrangements for, or to afford access to, the provision of insurance or a related financial service to or in respect of only employees as have not attained whichever is the greater of the age of 65 years and the state pensionable age.

This exception applies to so-called “group risk insurance benefits” of the kind that employers are not legally obliged to provide to their employees; e.g. insured benefits, such as income protection, life assurance, death-in-service benefits, sickness and accident insurance and private medical cover. It does not apply to other types of insurance, like third-party motor insurance or employers’ liability insurance, that employers may be legally obliged to obtain to enable those of their employees who carry-out driving or other duties to lawfully do their work.”



## 4 Retirement

When they were initially passed, the Age Regulations introduced a National Default Retirement Age (“NDRA”) of 65 years and a set of special retirement procedures (i.e. “the duty to consider working beyond retirement” procedures) that, when properly followed, protected employers from claims of age discrimination and unfair dismissal if they dismissed employees aged 65 years or over on grounds of age. In effect, employers did not have to justify the decisions they made to retire on grounds of age employees who were at or over that age. Chapter 4 of the original version of this guide, published in 2006, gave detailed guidance about those retirement procedures.

However, those provisions were repealed entirely in April 2011.

Since then, employers may no longer avoid having to justify the decisions they might make to retire on grounds of age employees who are aged 65 years or over; or who are over any other age for that matter; e.g. 55, 60, 65, 70, etc.. Aggrieved employees now have the right to go an industrial tribunal to complain of age discrimination and/or unfair dismissal.

The implications of this are that employers now have a choice – they may:

- a. allow their employees to continue to work beyond the age of 65 (or, whatever the employer’s normal retirement age previously was) until such time as-
  - their employees choose to voluntarily resign, or they die in service; or
  - the employers are compelled to dismiss the employees on grounds of incapacity, misconduct, or redundancy [i.e. the usual kinds of grounds that might justify the dismissal of any employee regardless of their age], or
- b. operate a compulsory retirement age for all of employees, or for a particular group of employees. But, if this is done, the employer will be required to objectively justify the retirement age policy. If the policy cannot be justified, it will be unlawful.

The principles for justifying retirement ages are the same as those that apply in all other cases of direct age discrimination. Further information on that subject is given in Chapter 3.

When retiring an employee on grounds of age, employers will also, in addition to having to justify the policy, be obliged to follow a fair dismissal procedure. There no longer exists, however, a special procedure for use only in retirement cases. Instead, employers must follow the same minimum procedure that applies in all other cases to which the statutory disciplinary and dismissal procedure applies. This is the procedure outlined in the Employment (NI) Order 2003 and in Section 1 of the Labour Relations Agency's Code of Practice on Disciplinary and Grievance Procedures (April 2011). Employees should refer to the latter for further information. An employer who fails to follow this procedure, where applicable, risks having a finding of automatic unfair dismissal being made against them. An employee who fails to follow this procedure, where applicable, risks having any compensation that they are awarded reduced. Employees to whom the procedure applies also have a statutory right to be accompanied at meetings dealing with their dismissal.

## 5 Making a complaint

As a job applicant or an employee you have a right under the Regulations not to be discriminated against on grounds of age when seeking employment, during the course of your employment and/or, in certain circumstances, after you have left your employment.

For more information on discrimination after leaving employment see the previous section on “Discrimination after a relevant relationship has come to an end” in the “Explaining the Law” section.

You have a right to work in an environment free from harassment in which you are treated with dignity and respect and in which you can raise complaints of less favourable treatment without being victimised.

If you are a student at an institution of further and higher education or undergoing vocational training, you have a right not to be discriminated against or harassed on the grounds of age when you are either seeking or undergoing vocational training/education and/or in certain circumstances, after you have left training.

### Complaint and resolution

The remainder of this chapter examines different employee/employer situations. It examines what employees and employers need to know, and do in order to make a complaint and to find resolution. The areas examined are with respect to:

- job applicants
- employees
- the period after a relationship has come to an end.

### Job applicants

If you are a job applicant and believe that you have not, on grounds of age, been shortlisted for, or appointed to, a post, you can, in the first instance, contact the employer and seek an explanation as to why you were not shortlisted/appointed.

At this stage, the employer is not legally obliged to provide that information. However, it is strongly advised that the employer responds positively to such a request, as providing a clear non-discriminatory explanation for the shortlisting or appointment decision can avoid legal action.

If as a job applicant you are not satisfied with the reasons given by the employer or in the absence of any explanation, you can, subject to time limits, lodge a discrimination complaint with an Industrial Tribunal. It is the Industrial Tribunal which decides whether or not unlawful discrimination has taken place.

You are not legally required to first contact the employer before lodging a complaint with an Industrial Tribunal. However, provided there is sufficient time to seek information, and it is otherwise appropriate, an early explanation from the employer may resolve the situation.

## Employees

If as an employee you believe that you have been harassed at work, not promoted or dismissed or otherwise treated less favourably on grounds of age, you also have the right to complain about your treatment.

Where possible, employers and employees should attempt to sort problems out informally. In the first instance, you should raise your complaint internally, either through your employer's managers, supervisors or personnel staff, to enable your employer to deal with the matter.

If you are trade union member you may also wish to raise the matter with their representatives, trade unions can be, and often are, the first point of contact for those experiencing discrimination.

The recommended internal procedures to follow when dealing with disputes between employers and their employees are described in *Section 2 of the Labour Relations Agency's Code of Practice on Disciplinary and Grievance Procedures (April 2011)*. Although it is not compulsory to follow the Section 2 procedures before a formal complaint is lodged in an industrial tribunal; there can still be some adverse consequences for employers or employees who fail to do so. It is strongly recommended, therefore, that employers and employees alike do follow it.

## The Employment Equality (Age) Regulations (Northern Ireland) 2006

If you are dissatisfied with the measures taken to deal with your complaint, you have the right, subject to time limits, to lodge a complaint with an Industrial Tribunal. Complaints of discrimination in employment under The Employment Equality (Age) Regulations (Northern Ireland) 2006 must be made **within 3 months** of the date of the act you complained of.

Complainants (an employee who makes a complaint) and any witnesses, have a right not to be victimised for raising a grievance or complaining to an Industrial Tribunal under these Regulations provided the complaint was made in good faith.

When considering taking legal action, the Commission strongly recommends that complainants seek advice from either the Commission or other independent legal advisers

### Changes to redundancy & unfair dismissal legislation

There are no longer any upper (e.g. 65 years) or lower (e.g. 18 years) age limits to receiving statutory entitlements, such as statutory redundancy pay, statutory sick pay, statutory maternity or paternity pay.

There is no longer an upper age limit on unfair dismissal claims. The statutory redundancy payments scheme has been adjusted to remove age limits.

### After a relevant relationship has come to an end

If you are a former employee and believe that you have been treated less favourably or harassed on the grounds of age after a relevant relationship has come to an end (for example, in the provision of age discriminatory references), you can make a complaint of discrimination or harassment to a County Court.

### Vocational training

If you are seeking or undergoing vocational training other than at an institution of further and higher education and believe that you have been discriminated against or harassed on grounds of age by a training provider, you may make a complaint of discrimination or harassment to an Industrial Tribunal.

If you are a former trainee who is subjected to discrimination or harassment, you are protected under certain circumstances. You can make a complaint to the County Court.

## Institutions of further and higher education

If you are a student or prospective student at an institution of further and higher education you have a right not to be discriminated against or harassed on the grounds of age when applying for or undergoing training. In Northern Ireland, institutions of further and higher education include universities and colleges of education (also known as teacher training colleges) and all colleges and institutes of further and higher education.

If you are a student or prospective student and wish to make a complaint of age discrimination or harassment, you must lodge your complaint with a County Court.

If you are a former student who is subjected to discrimination or harassment you are protected under certain circumstances. You can make a complaint to the County Court.

## Time limits for lodging a complaint

### Industrial Tribunal time limits

There are very strict time limits for lodging a complaint of discrimination on grounds of age with an Industrial Tribunal. In most cases, complaints relating to discrimination in employment should be made to an **Industrial Tribunal** within **three months** of the date of the alleged act of discrimination. The Industrial Tribunal can extend the time limits in exceptional cases, but simply not knowing that there were deadlines is usually an insufficient reason for extending the deadlines.

### County Court time limits

Complaints against institutions of further and higher education must be made to the **County Court**.

Complaints regarding acts of discrimination or harassment on the grounds of age after a relevant relationship has come to an end (for example, discrimination or harassment by a former employer of a former employee, such as refusal to provide a reference on the grounds of age) must be made to a **County Court**.

All complaints to a County Court must be lodged within **six months** of the date of the act of discrimination. The County Court may extend the time limits in exceptional cases.

## 6 Frequently asked questions

### 1. What do the Age Regulations cover?

The Age Regulations prohibit discrimination and harassment in the areas of employment, occupation and vocational training, including further and higher education.

They do not prohibit discrimination by those who provide goods, facilities and services to the public (with the exception of those who provide employment-related services to the public such as employment agencies, vocational training providers and institutions of further and higher education).

### 2. Who do the Regulations cover?

The Regulations cover people of all ages, including children and young people in work who may be as young as 13.

### 3. Can an employer still ask for date of birth on an application form?

Yes. Employers may still ask for date of birth on a job application form. However, the advice from the Equality Commission to employers would be to remove date of birth/age from the main form and include such information on their monitoring form.

### 4. Can an employer still carry out 'graduate recruitment' campaigns?

If an employer limits recruitment campaigns to graduates either in advertisements or through the university 'milk round', this may constitute indirect discrimination on grounds of age as it often restricts vacancies to individuals at the start of their working careers. If you are a mature student and there is an upper age limit on any graduate recruitment programme, this could be unlawful.

Employers should open any such recruitment campaigns to others outside the 'milk round' and remove any upper/lower age limits.



## 5. Can an employer still stipulate in their criteria for a vacancy say '3 years' experience'?

If the job requires a certain amount of experience it will not be unlawful for an employer to state this. However, this may disadvantage younger job seekers and it would be up to the employer to objectively justify the use of this criterion if challenged. Employers may find it difficult to justify having experience more than 3 years unless the job is very technical and they can show that it is objectively justified. Similarly an employer who stipulates that a candidate should have no more than 2-3 years experience would have to objectively justify this as it would indirectly discriminate against older workers. For more information on objective justification please see the "Exceptions & Exemptions" chapter of this Guide.

It should be remembered that skills, experience, etc, gained during school holidays and any practical work experience should be included on any applications for employment.

## 6. After 15 years' service I am entitled to extra leave. Is this affected by the Age Regulations?

Under the Regulations, all service related pay and benefits that are accrued by employees with '5 years or less' service will be exempt and can continue. For benefits that accrue when length of service exceeds 5 years, the employer will have to show that it reasonably appears to them that the benefit fulfils a 'business need', ie it encourages the loyalty or motivation, or rewards the experience, of some or all employees.

Note: length of service does not necessarily mean length of continuous service.

## 7. I will be 65 in four months' time. Can an employer refuse to offer me a job?

It depends on the reason for the refusal. If the reason is on the grounds of your age, then that raises the possibility that the refusal is an act of age discrimination. In that case, whether the decision is lawful or not depends on whether the employer can objectively justify it – see Chapter 3 for further information on this complex subject.

**8. My employer operates a compulsory retirement age of 65 years. Is that lawful?**

Possibly. Whether the policy is lawful or not depends on whether the employer can objectively justify it – see Chapters 3 and 4 for further information on this complex subject

## 7 Further information, advice & support

Individuals who believe they have been discriminated against on grounds of their age can contact the Equality Commission. **The advice is free and confidential.** In certain circumstances, the Equality Commission may provide legal representation to individuals who believe they have been discriminated against contrary to the Regulations.

Individuals who are trade union members may also be able to receive advice and assistance in this area from their trade unions.

Individuals who lodge complaints of discrimination on grounds of their age with a tribunal, can avail of a free conciliation service provided by the Labour Relations Agency. This service is designed to assist both parties to a complaint to reach a resolution of the dispute. Further information on this service can be obtained from the Labour Relations Agency:

### **Labour Relations Agency (LRA)**

2-8 Gordon Street  
Belfast  
BT1 2LG

Tel: 028 90 321 442  
Textphone: 028 90 238 411  
Fax: 028 90 330 827  
Email: [info@lra.org.uk](mailto:info@lra.org.uk)  
Website: [www.lra.org.uk](http://www.lra.org.uk)

If you need help and advice from the Commission, contact us at:

### **Equality Commission for Northern Ireland**

Equality House  
7-9 Shaftesbury Square  
Belfast  
BT2 7DP

Enquiry line: 028 90 890 888 (information and advice queries)  
Telephone: 028 90 500 600 (switchboard)  
Textphone: 028 90 500 589  
Fax: 028 90 248 687  
Email: [information@equalityni.org](mailto:information@equalityni.org)  
Website: [www.equalityni.org](http://www.equalityni.org)

**Citizens Advice** regional office is at the following address. Contact this number to find out the address of your nearest local office.

Citizens Advice  
46 Donegall Pass  
Belfast  
BT7 1BS

Telephone: 028 90 231 120  
Textphone: 028 90 236 522  
Fax: 028 90 248 687  
Email: [info@citizensadvice.co.uk](mailto:info@citizensadvice.co.uk)  
Website: [www.citizensadvice.co.uk](http://www.citizensadvice.co.uk)

**Equality Commission**

**FOR NORTHERN IRELAND**

# How can we help?

The Equality Commission for Northern Ireland can give advice and information on the Employment Equality (Age) Regulations (Northern Ireland) 2006. Information is also available on our website.

For further information, please contact us at:

Equality Commission for Northern Ireland  
Equality House  
7-9 Shaftesbury Square  
Belfast  
BT2 7DP

Enquiry line: 029 90 890 888 (General enquiries)  
Telephone: 028 90 500 600 (Switchboard)  
Textphone: 028 90 500 589  
Fax: 028 90 248 687  
Email: [information@equalityni.org](mailto:information@equalityni.org)  
Website: [www.equalityni.org](http://www.equalityni.org)

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