



Employers  
Forum on Age



# Briefing

## National Default Retirement Age

### The current position

The 2006 Employment Equality (Age) Regulations ensured that people could not be discriminated against on the basis of their age in employment and occupation unless objectively justified. However, Regulation 30 introduced a national default retirement age as an exception to the general principle of non-discrimination on grounds of age. This permits employers to operate a mandatory retirement age of 65 or over, allowing them to terminate the employment of a member of staff on the grounds of age. Employers can also refuse to recruit people over 65. These regulations have been re-laid as Schedule 9 of the Equality Bill.

Before the law came into force, Age Concern sought judicial review of the regulations, arguing that the UK Government has improperly implemented the EU directive which the Age Regulations were intended to transpose. The charity's position was that the regulations were unlawful both by introducing a national default retirement age and by giving employers too much scope to introduce other age-based rules in the workplace. The case was referred to the European Court of Justice (ECJ) in 2007.

The final ruling of the ECJ, given on 5<sup>th</sup> March 2009 stated that the UK's retirement laws will only comply with the EU Directive if they have a legitimate aim related to employment and social policy, rather than simply to reduce costs for individual employers. The court went on to emphasise that the UK Government will have to meet a high standard of proof in demonstrating that its policy aim is legitimate. The case will receive its final High Court hearing on the 16<sup>th</sup>, 17<sup>th</sup> and 20<sup>th</sup> July 2009.

It is the intention of the Department for Business, Innovation and Skills (BIS) to conduct an evidenced based review of the operation of the NDRA in 2011. If BIS maintains this policy in the next Parliament, and the review recommends the law is changed, then default retirement would come to an end in April 2012 at the earliest. In a debate in the House of Lords on the issue on 13<sup>th</sup> January 2009, Lord Carter said:

“Our long-term aim has always been to achieve a culture in which compulsory retirement ages are no longer required. We will continue to closely monitor the trends in employment rates by age and, in our coming research on employer policies and practices on that specific question, we will explore the issues and up-to-date evidence concerning the use of fixed retirement ages.”

The Equality Bill presents an opportunity to address the issue much sooner. This would deliver a number of benefits including:

- It would bring the policy on employment ages in line with wider policies such as promoting positive ageing, extend working lives and raising the State Pension Age. A policy of allowing employers to force people to retire at 65 is completely at odds with the wider aims of extending working lives and promoting a positive vision for our ageing society.

The removal of the NDRA would create an immediate impact on people's lives. It would offer a positive response to the recession - with previous experience and current indications suggesting that employers are enforcing mandatory retirement more vigorously, thousands of willing and able people are losing their jobs, at great cost to them and harming future economic recovery by removing them from the labour force for good.

- The opposition of some parts of the business lobby to scrapping the NDRA is increasingly at odds with the experience and practice of thousands of businesses in the UK and abroad. The business argument for forced retirement is based on the idea it would be too difficult to manage people at the end of their careers without a fixed date but the body representing Human Resources professionals, the Chartered Institute of Personnel and Development, opposes the national default retirement age.
- Thousands of businesses, in this country and abroad, have proved that, far from imposing undue burdens on them, operating without a mandatory retirement age is perfectly possible and can in fact benefit their business. Those in the business lobby who continue to oppose scrapping the national default retirement age are increasingly at odds with the experience and practice of their peers.

### **Views on forced retirement**

Public opinion and the press are moving decisively behind a change in the law. Some parts of the business lobby remain opposed to this, although even they are not taking as strong a line on this as they have in the past.

#### Public opinion

Public opinion on the issue of forced retirement is changing. When Age Concern launched its judicial review, several commentators were concerned that older people would want to stay in jobs, reducing access for other workers. But, opinions have changed, according to an ICM poll for Age Concern in January 2009, almost seven in ten people think it is unfair that employees aged 65 can be forced to retire purely on the basis of their age.

#### Press response

In the days following the announcement of the ECJ's ruling on the Age Concern case, several leaders and commentators from across the political spectrum argued that forced retirement should be consigned to history.

#### *Daily Telegraph, 5<sup>th</sup> March 2009*

"The current retirement age of 65 is an anachronism. It dates to a world when most people died within 10 years of giving up work. In the long term, the only answer is to abandon compulsory retirement. Successive governments have talked about doing so for years but nothing has been done. It is time something was."

#### *The Guardian, 6<sup>th</sup> March 2009*

"The retention of mandatory retirement always had more to do with industry lobbying than the public interest. Managers naturally prefer an arbitrary rule to a regime that lands them with the awkward task of deciding which older staff remain up to the job. But bosses' preference for an easy life is not a reason to licence discrimination. Once automatic retirement is finally consigned to history, the country will surely wonder why it was tolerated for so long."

*The Independent, 6<sup>th</sup> March 2009*

"That our retirement policy is now subject to wrangling by lawyers in Europe and London is a symptom of the Government's failure to tackle the issue head-on. Eager as ministers are to neither anger businesses nor voters, it cannot be ducked forever. A long-term strategy for addressing the challenges presented by an ageing population – spiraling state pension costs not least among them – will be vital for our future... There is no good reason to shed so many experienced members of the workforce."

*Jackie Ashley, The Guardian, 2<sup>nd</sup> February 2009*

"Far from equipping the country better for the future, by ditching more experienced workers, we are piling up problems for the public finances – where there are plenty of problems already – and weakening corporate culture when it needs to be stronger."

*Janet Daley, The Daily Telegraph, 5<sup>th</sup> March 2009*

"It is hard to imagine a policy more inappropriate for our current social and economic circumstances than a compulsory retirement age of 65."

#### Business and other key stakeholders

Parts of the business lobby, including the Confederation of British Industry's (CBI), continue to oppose a change in the law - although they acknowledge that there has been a culture shift towards supporting older workers. Others such as George Magnus, the senior economic adviser to UBS says the law should be changed:

"Bearing in mind the speed with which our society is ageing, particularly the enormous increase of people over 60 and over 65 over the next 25 years, I just don't think it makes any sense anymore to have this kind of condition, where people may want to work or have to given current circumstances under the recession, but can actually be turned down."

Following the ECJ's judgement, the Director of the Employers' Forum on Age, Catharine Pusey, commented:

"In an ageing society and as recession begins to bite, we can no longer afford a culture of early retirement. The EFA works with a number of employers, including B&Q, Hertfordshire County Council and the Department for Work and Pensions, who report that operating without the default retirement age has resulted in significant business benefits; filling skills gaps, keeping valuable members of their workforce, and having a better connection with their diverse customer base...It is vital that this anomaly in the age discrimination legislation is removed as it will help deliver the massive cultural shift which is needed to stop people being stereotyped by age. We firmly believe that a default retirement age must be removed altogether"

The General Secretary of the TUC, Brendan Barber commented:

"With the recession putting more financial pressure on older workers, today's judgment is a blow to those who are perfectly able and willing to work past 65, or who need to go on working just have enough money to survive."

### **What do businesses think?**

A survey carried out in June 2009 by TAEN and EFA of nearly 200 human resource management professionals undermines the argument that there are benefits to business when workers are forced to retire at 65.

Of those operating with a mandatory retirement age:

- 64% of employers said that operating with a mandatory retirement age could lead to a loss of talent and knowledge to the organisation.
- 37% also said that the National Default Retirement Age created risks from demographic factors – i.e. population ageing and the declining birth rate.
- 45% considered it a lost opportunity to be an employer of choice among older and mid-life workers and
- 30% were conscious of it having an adverse effect on their organisation's image.

Of the respondents who have no fixed retirement age the following benefits were identified:

- 76% considered it kept valued people in the organisation
- 85% said it maintained valuable skills within the organisation
- 52% believed it had improved morale among employees
- 52% said it has provided positive role models for younger employees
- 44% said that it had improved their company's customer facing image

### **Key arguments**

#### Opportunity age or the grey ceiling?

The Government currently adopts two different and contradictory positions on older workers, simultaneously promoting the need to encourage people to work past 65 and defending a policy of forced retirement at 65. For example, earlier this year, the Care Minister, Phil Hope MP spoke of the need to address:

“the Grey Ceiling - getting to grips with the hidden attitudes that stop older people from staying at work as long as they would like.”

This was echoed by Vera Baird MP, the Solicitor General at a recent seminar:

“We need to ensure that more older people remain in work...if we don't free older people up we face bleaker years ahead”.

This is also the position developed by Adair Turner's Pension Commission which concluded that working longer is essential for sustaining the pension system. The Government's decision to slowly raise the State Pension Age to 67 years has further undermined the case for forced retirement.

**A policy of allowing employers to force people to retire at 65 is completely at odds with the wider aims of extending working lives and promoting a positive vision for our ageing society.**

### The economic imperative

The economic downturn has hit older workers hard. With the economy now in recession, previous experience suggests that older workers who lose their jobs may never work again. Employers are already saying that the recession means that they are more likely to force people to retire. According to research conducted by the Chartered Institute for Personnel and Development in October 2008, almost one in five employers say that they are going to enforce retirement more vigorously.

A default retirement age creates a barrier to opportunities for selection, promotion, training and job mobility for people in their late 50s and early 60s. A 'fixed' point at which individuals can be forced to retire, inevitably influences employer decisions about their personal development and opportunities in the years leading up to it.

It is particularly important during a recession that the skills and abilities of older workers – including those who leave employment – are maintained and renewed as the economy will depend on those people to boost both labour supply and consumer demand as the economy recovers. In the early 1990s, the male 50+ employment rate fell 7 points and did not recover for nearly 10 years. Labour supply in the subsequent upturn was suppressed by the premature exit of more than 300,000 older workers.

During the recession, some commentators have suggested, "older workers should stand aside in favour of the young". However, the idea that mandatory retirement is needed for these reasons ignores the financial hardship implied for those obliged to retire early and denies the evidence that working longer is good for one's health. Indeed, when in the 1980s, the then Department for Employment evaluated the success of its own Job Release Scheme, the results showed about one in four of the "released jobs" (paid for by generous premiums to encourage early retirement incentives) was filled by a younger person in need of a job. Also, an important OECD international study, "Live Longer, Work Longer," showed that countries with schemes to encourage older workers to quit early were most likely to have high youth unemployment, rather than the reverse. Across OECD countries the study showed that there was a positive rather than a negative correlation between changes in employment rates for older and younger people.

Examining the outflows of workers aged 55-64 and inflows of workers aged 15-24 in earlier recessions, it is significant that such outflows and inflows in general occur in quite different sectors. In any case, common sense suggests jobs which had been performed by older workers with experience, skills and knowledge are not going to be suitable for young workers starting out. Encouraging older workers to leave on the other hand, reduces demand in the economy at precisely the wrong time.

**Employers should not be allowed to use forced retirement as a cheap alternative to redundancy; this will not only cause great harm to older workers, it will harm the UK's long term recovery.**

### The impact on business

Business leaders sometimes claim that it is impossible to carry out succession planning without using a mandatory retirement age. However, as many businesses have proved, this simply is not true. No business operating in the USA, Australia, Canada or Ireland is permitted to use a forced retirement age. In the UK, many large business groups (including several members of the CBI) operate without recourse to a mandatory retirement age, including the following members of the Employers Forum on Age:

Asda Stores Ltd	Centrica Plc	The Cooperative Group
Nationwide Building Society	Barclays Plc	BT Plc
B&Q	Marks and Spencer	JD Weatherspoon
Sainsbury's Plc		

Unlike in other areas of regulation, where politicians are rightly concerned about the impact on small businesses, changing the law would not disadvantage small businesses. The Federation of Small Businesses surveyed their members, 78% said that they had no fixed retirement age, illustrating the natural flexibility of small businesses without the need for legislation.

It is sometimes claimed that scrapping the national default retirement age would mean introducing complicated new performance management systems. Some employers' organisations argue that if it is abolished, older employees would also gain a 'unilateral' right to stay in their job. This is incorrect:

- The assumption that the productivity of many workers goes into decline as they age, is unproven, and employers' fears will usually be groundless if they offer their older workers opportunities, training and motivation.
- Abolishing the national default retirement age would simply give older workers the same rights as employees of other ages. This would balance an employee's expectation of job security and an employer's right to dismiss on grounds such as capability or conduct.
- Performance management systems are recognised by the best employers as vital to developing and improving workforce productivity and business success. Regular appraisals are designed to identify and address poor performance in *employees of all ages*. The Default Retirement Age should not be used as a convenient proxy for performance management.

Over 100 research projects have demonstrated that older workers in the vast majority of roles are no less capable or productive than people of other ages. There is a great deal of positive evidence about older workers from surveys, qualitative research and case studies. For example, B&Q report that absenteeism is 39% lower among older people; Nationwide's annual turnover rate for older people is 4% compared to 10% for younger people and they report an average of 13 years service from older workers they have proactively recruited in their 50s and 60s. The Government has recently announced its intention to scrap forced retirement for all civil servants except for the most senior grades during 2010.

The current procedure employers have to use to force retirement at 65 is also cumbersome and complicated. Removing the national default retirement age would in fact help to reduce the regulatory burden on businesses.

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## **Key statistics**

- The idea that most people are happy to retire at age 65 is now outdated. People aged between 50 and state pension age in the UK make up 25% of the workforce, and a further 1.3 million people work beyond State Pension Age. These figures are set to rise as we lead longer, healthier lives and need to save more for retirement.
- 900,000 people aged over 50 who want to work cannot get a job because of barriers to retaining or recruiting older staff. Only a third of those who retire early do so entirely voluntarily.
- In a survey of 6,000 UK workers, 17% identified age as a major barrier to employment. More than 50% of those aged 45+ felt they had been discriminated against because of their age.
- Since the introduction of the age regulations, many workers aged 65 or over who would have been able to continue working beyond that age had the legislation not been introduced, have been forced into retirement. According to a 2006 DWP survey conducted before the legislation, 43% of establishments had a compulsory retirement age at that time, but unfortunately many have introduced one since the Regulations came into force. A recent survey carried out in May 2009 by ComRes for Age Concern and Help the Aged found 70% of business now operate a mandatory retirement age. So, many more businesses are now operating a mandatory retirement age than were when the regulations were introduced.
- Once out of work, older people remain unemployed longer than their younger counterparts: 37% Jobseeker's Allowance recipients aged 50 and over have been claiming for over a year compared to 27% of those aged 25-49. The DRA diminishes the opportunities for recruiting people near or above State Pension Age. Business organisations argue that the DRA debate is about whether people should be forced to retire, but the impact of the DRA on recruitment is equally important.
- With the Government committed to increasing the State Pension Age to 68 over the long term, it must address the discrepancy. Currently 1.3 million pensioners in the UK have no source of income other than the state pension and benefits and the financial impacts of being forced into retirement, contributes to the level of poverty faced by pensioners in the UK.

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