

# General exceptions

The Employment Equality (Age) Regulations 2006 set out 8 specific exceptions from the scope of the Regulations. Therefore it may be lawful to discriminate against someone on the grounds of age if the treatment, provision, criterion or practice falls under one of the following headings:

## Exception for statutory authority (reg 27)

Age criteria are used widely in legislation. For example the Licensing Act 1964 prohibits employing persons under 18 in any bar at a time when the bar is open for the sale or consumption of intoxicating liquor. Those who have to comply with such legislation will not be acting unlawfully and will have a complete defence against any possible claims which may be made.

## Exception for national security (reg 28)

Age Discrimination will not be unlawful if it is done for the purpose of safeguarding national security and the doing of the act is justified by that purpose.

## Exceptions for positive action (reg 29)

There are two narrow situations where positive age discrimination will be lawful. Anything done in or in connection with (a) affording persons of a particular age or age group access to facilities for training which would help fit them for particular work; or (b) encouraging persons of a particular age or age group to take advantage of opportunities for doing particular work will be lawful if this is reasonably expected to prevent or compensate for disadvantages suffered by such persons.

## Exception for retirement (reg 30)

This exception sets out a default retirement age of 65. Although this exception seems straightforward it does not apply to everyone (for example it does not apply to partnerships) and does not mean that all dismissals at age 65 will be lawful- indeed they will only be lawful if the reason for dismissal is retirement. A LawNow later in this series will be dedicated to this topic.

## Exception for the national minimum wage (reg 31)

This allows employers to discriminate against their workers on the basis of age in their pay structures in a very limited way. Employers may pay 16 and 17 year old employees less than those aged over 17; and 18 to 21 year old employees less than those aged over 21 provided that they base their pay structures on the national minimum wage legislation.

## Exception for provision of certain benefits based on length of service (reg 32)

This exception enables employers to continue to award benefits to employees using the criterion of length of service. A length of service criteria of 5 years or less does not need to be justified. However where the criteria exceeds 5 years it must fulfil a business need of the undertaking, for example by encouraging the loyalty or motivation, or rewarding the experience, of some or all of his workers.

## Exception for provision of enhanced redundancy payments to employees (reg 33)

This provision assists employers who base their redundancy schemes on the statutory scheme (which is lawful even though it uses age related criteria as it comes within the statutory authority exemption) but who are more generous than the statutory scheme requires them to be. Provided the Employer's enhanced redundancy scheme is calculated in the same way as the statutory scheme it is not limited by the statutory maximum for a week's pay or by the statutory multiplier.

## Exception of provision of life assurance cover to retired workers (reg 34)

This provides an exception for employers who provide life assurance cover to workers who have had to retire early on grounds of ill health. Therefore it will be lawful for employers to restrict life assurance cover to people below the age of 65 (or the employer's normal retirement age if different).