JUST A NUMBER
Dedication

To my Mother and Father, Virgilia and William Cotter,
my Uncle Theodore Mooney,
my Brothers and Sisters,
my Husband Mark Badger, and
our Son Bill and our Daughter Jill for their love and devotion.
Just a Number
An International Legal Analysis on Age Discrimination

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Chapter 1

Introduction to Just a Number

So we come here today to dramatize a shameful condition. In a sense we’ve come to our nation’s capital to cash a check. When the architects of our republic wrote the magnificent words of the Constitution and the Declaration of Independence, they were signing a promissory note to which every (human) was to fall heir. This note was the promise that all ... would be guaranteed the unalienable rights of life, liberty, and the pursuit of happiness .... A check which has come back marked insufficient funds. We refuse to believe that there are insufficient funds in the great vaults of opportunity of this nation. And so we’ve come to cash this check, a check that will give us upon demand the riches of freedom and the security of justice.¹

In our universal quest for justice in general and age as Just a Number, we may learn from the immortal words of one of the greatest civil rights leaders and human rights activists Dr Martin Luther King Jr. This book, Just a Number, focuses on the goal of age equality, and the importance of the law and legislation to combat age discrimination. The aim of this book is to better understand the issue of inequality and to improve the likelihood of achieving age equality in the future and ending age inequality. Just a Number examines the primary role of legislation, which has an impact on the court process, as well as the primary role of the judicial system, which has an impact on the fight for age equality. This is the fourth book in a series of books on discrimination law. Other titles in the series are Gender Injustice dealing with gender discrimination, Race Matters dealing with race discrimination, and This Ability dealing with disability discrimination. A similar approach and structure is used throughout the series to illustrate comparisons and contradictions in discrimination law.

Fundamental rights are rights which are either inherent in a person by natural law or are instituted in the citizen by the State. The ascending view of the natural law of divine origin over human law involves moral expectations in human beings through a social contract, which includes minimum moral rights of which one may not be deprived by government or society. The competing view is that courts operating under the Constitution can enforce only those guarantees which are expressed. Thus, legislation has an impact on the court system and on society as a whole. Internationally and nationally, attempts have been made to improve the situation of those who are older and outlaw age discrimination through acceptance and accommodation.

In looking at the relationship between Just a Number and the law, the book deals comprehensively with the issue of age discrimination throughout its
chapters: Chapter 1 introduces the reader to the core area of age inequality; Chapter 2 covers age inequality in human relations around the world; Chapter 3 looks at the United Nations; Chapters 4 and 5 examine age inequality in Australia and New Zealand, and Africa and South Africa, respectively; Chapters 6 and 7 examine age inequality in Canada, Mexico and the United States, and the North American situation with the North American Free Trade Agreement regarding age discrimination, respectively; Chapters 8 and 9 examine age inequality in the United Kingdom and Ireland, and the European situation with the European Union Treaty regarding age discrimination, respectively; and Chapter 10 concludes this overview of age inequality.

The globalization process and the various economic agreements have a direct impact on people’s lives as key players in the labor market today. This study seeks to comparatively analyze legislation impacting age equality in various countries internationally. It also examines the two most important trade agreements of our day, namely the North American Free Trade Agreement and the European Union Treaty in a historical and compelling analysis of equality. Although an important trade agreement with implications for labor, the North American Free Trade Agreement has a different system from the European system in that it has no overseeing court with jurisdiction over the respective countries. Further, the provisions for non-discrimination in the labor process are contained in a separate document, the North American Agreement on Labor Cooperation. On the other hand, the European Union Treaty takes a different approach, by directly providing for non-discrimination, as well as an overseeing court, the European Court of Justice, and the treaty is made part of the domestic law of every Member State, weakening past discriminatory laws and judgments. Further, the European process actively implements age equality by way of European Union legislation.

North America, as the new world with its image of freedom and equality, is considered to have made great strides in civil rights. However, the American philosophy of survival of the fittest, the pursuit of materialism and the search for the fountain of youth have slowed down the process. With the advent of the European Union, the coming together of nations has had a very positive influence on the enforcement of human rights, much more so than that of North America, because of the unique European approach.

All parties must cooperate, and governments need to work with businesses, trade unions and society as a whole, so together they can create an environment where all humans can participate at all levels of political life and decision-making. Indeed, combating age inequality and achieving age equality requires a strong ‘Just a Number’ focus on age in constitutional, legal, judicial and electoral frameworks for all humans to be actively involved at the national and international levels.

According to liberal democracy, the rule of law is the foundation stone for the conduct of institutions. Just a Number offers a defence of the notion that social reform is possible and plausible through key institutions, which include the legal system and its use of the law. For liberal democracy, the legislative system is the core for the governance of society in the way it functions toward social equality of opportunity. It is clear that if we initially reform our legislation and our laws and,
in the end; our way of thinking, then there will be a change in the institutions of
society and their functioning, which will be a major step forward in societal
reform.

The law is of central importance in the debate for change from age
inequality to age equality. Actionable and enforceable rights are legal norms,
which represent social facts demarcating areas of action linked with universalized
freedom. Law is a powerful tool, which can and must be used to better society.
Associated with command, duty and sanction, and emanating from a determined
source, law is a rule of conduct enforced by sanctions, and administered by a
determinate locus of power concentrated in a sovereign or a surrogate, the court.
Therefore, the justice system and the courts play a vital role in enforcing the law.

Legitimacy has subjective guarantees of internalization with the
acceptance and belief in authority, and objective guarantees of enforcement with
the expectation of reactions to the behavior. Therefore, law must recognize
equally all members of society, including those who are older, in order for it to be
effective. Further, in order for a law to be seen as legitimate from society’s point of
view and accepted by the people, in general to be followed, a process of inclusive
interaction by all affected must first be realized. When creating laws, this means
that input from various groups, including all humans and especially those who are
older with skills and experience, is critical.

Thus, laws have two components, namely: facts, which stabilize
expectations and sustain the order of freedom; and norms, which provide a claim of
approval by everyone. Law makes possible highly artificial communities whose
integration is based simultaneously on the threat of internal sanctions and the
supposition of a rationally motivated agreement. Age discrimination and injustice
can be undercut through the effective use of both the law and the courts.

The facticity of the enforcement of law is intertwined with the legitimacy
of a genesis of law that claims to be rational, because it guarantees liberty. Laws
can go a long way in forbidding inequality and providing for equality; where one
ends the other begins. There are two ranks of law, namely ordinary law of
legislation, administration and adjudication, and higher constitutional law affecting
rights and liberties, which government must respect and protect. The latter
encompasses the constitutions of the various nations as interpreted by the supreme
courts. Law holds its legitimacy and validity by virtue of its coercive potential, its
rational claim of acceptance as right. It is procedurally constructed to claim
agreement by all citizens in a discursive process purported to be open to all equally
for legitimacy with a presumption of fair results. The legitimate legal order is
found in its reflexive process. Therefore, we must all believe that equality is a good
and necessary thing, which is essential to the very growth of society and to the
ending of age discrimination.

Thus, conflict resolution is a process of reasoned agreement where, firstly,
members assume the same meanings by the same words; secondly, members are
rationally accountable for their actions; and thirdly, mutually acceptable
resolutions can be reached so that supporting arguments justify the confidence in
the notion that the truth in justice will not be proven false. Disenchantment with
the law and the legal process only serves to undermine the stabilization of
communities. By legitimizing the legal process and holding up the ideals of equality in the fight against age discrimination, the law and the courts can bring about change.

All humans have had to fight in the formulation of laws and in the enforcement of equality in the courts. Age, like class, rests on economic determination and historical change. Inequality in the distribution of private property among different classes of people has been a characteristic of society. The ruling class loathes that which it is not, that which is foreign to it, and this has traditionally been those who are older. The patriarchal system has freely fashioned laws and adjusted society to suit those in power, and this has traditionally been young white Anglo-Saxon Protestant men.

Relationships, opportunities, attributes and preconceived notions are socially constructed and are learned through socialization processes. They are context and time-specific but changeable, since the physical and the mental determine what is expected, allowed and valued in a given situation. In most societies, there are differences and inequalities between humans in the decision-making opportunities, assignment of responsibilities, undertaking of activities, and access to and control over resources with age part of the broader sociocultural context. There are important criteria for analysis, including age, race, gender, poverty and class, and hence all these can, alone or combined, amount to discrimination.

The concept of equality is the ignoring of difference between individuals for a particular purpose in a particular context, or the deliberate indifference to specified differences in the acknowledgement of the existence of difference. It is important to note that assimilation is not equality. The notion of rights and of equality should be bound to the notion of justice and fairness. Legal freedom and rights must be seen as relationships not possessions, as doing, not having. While injustice involves a constraint of freedom and a violation of human dignity through a process of oppression and domination, justice involves the institutional conditions necessary for the development and exercise of individual capacities for collective communication and cooperation. Discrimination is the withholding from the oppressed and subordinated what enables them to exercise private and public autonomy. The struggle must be continued to bring about psychological, sociological and institutional changes to allow all members of the human race including the aged to feel equal and to recognize all ages, the young and the old alike, one another as being so. Solidarity and cooperation are required for universal and global equality.

Though humans are mortal and civilizations come and go, from Biblical times to our days, there has been a fixed pivot for the thoughts of all generations and for humans of all continents, namely the equal dignity inherent in the human personality. Even Pope John XXIII described the United Nations Declaration of Human Rights in his 1963 Encyclical *Pacem in Terris*, as ‘one of the most important acts of the United Nations’ and as ‘a step towards the politico-judicial organization of the world community’; ‘In social life, every right conferred on man by nature creates in others (individuals and collectivities) a duty, that of recognizing and respecting that right’. Further, Pope John Paul II described the
importance of work and of just remuneration in his 1981 Encyclical *Laborem Exercens*:

Work bears a particular mark of ... humanity, the mark of a person operating within a community of persons .... While work, in all its many senses, is an obligation, that is to say a duty, it is also a source of rights on the part of the worker. These rights must be examined in the broad context of human rights as a whole, which are connatural with man, and many of which are proclaimed by various international organisations and increasingly guaranteed by the individual States for their citizens. Respect for this broad range of human rights constitutes the fundamental condition for peace in the modern world: peace both within individual countries and societies and in international relations .... The human rights that flow from work are part of the broader context of those fundamental rights of the person .... The key problem of social ethic...is that of just remuneration for work done .... Hence, in every case, a just wage is the concrete means of verifying the justice of the whole socio-economic system and, in any case, of checking that it is functioning justly.9

An improvement in equality of opportunity is sought for all rather than a utopian state of equality. No one should misunderstand this. Clearly, oppression exists. Rather, *Just a Number* seeks to add to the list of inequalities to be considered, and does not rule out other forms of injustices besides age inequality. Generalities are not presumed nor are they made here, for this would detract from the very purpose of this book, to bring to the forefront of discussion the reality of injustice, not to create further injustice, in the pursuit of *Just a Number*.

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1  King Jr., Dr. Martin Luther, *March on Washington*, 1963.
5  Ibid., at p.xv.

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Introduction

In the quest for age as Just a Number, this chapter will examine efforts against age discrimination in the United Kingdom and Ireland. It will examine important legislation impacting elder rights, first in the United Kingdom and Ireland.
Kingdom, which encompasses

England, Scotland, Wales and Northern Ireland, namely the Employment Equality

(Age) Regulations 2006, the Equal Pay Act, and the Equal Opportunities

Commission (EOC) and the Code of Practice on Equal Pay, as well as for older

minorities the Racial Relations Act, for older women the Sexual Discrimination

Act and for disabled seniors Disability Discrimination Act; and then in the

Republic of Ireland, namely the Employment Equality Act and the Equal Status

Act. There is a need for intervention in the application of human rights law to age

rights.

United Kingdom

There are now more 55-64 year olds than 16-24 year olds for the first time;

between 1986 and 2006, the number of men aged 16-24 has fallen by 26 per cent,

and the number of women by 30 per cent; and the numbers of 35-44 year old men

have increased by 19 per cent and the number of women in this age group by 39

per cent; life expectancy increases one more year approximately every four years;

there are 1 million fewer people in their 20s than ten years ago; 45-59 year olds

form the largest group in the labour force; 68 per cent of employers seeking skilled

staff are experiencing recruitment difficulties; 95 per cent of 55-65 year old men
were working in 1975, and it was close to 60 per cent in 1999; 75 per cent of people in Local Government employment are retiring early; nine out of 10 people aged 50 and over receive no training from their employer at all; a significant proportion of IT professionals think the term older worker can be applied to someone younger than 35; close to half of young workers say they have been held back at work because of their age; and importantly, at least 40 per cent of people who retired early feel that they were forced to against their will and would rather have continued to work. 1

The Employment Equality (Age) Regulations

The United Kingdom’s Employment Equality (Age) Regulations were made on 3 April 2006 and came into force on 1 October 2006, making age discrimination in employment unlawful, with the pensions aspects of the Regulations taking effect on 1st December 2006. This legislation is regarded as one of the most radical changes in employment law, and was a response to the European Council Directive 2000/78/EC Establishing a General Framework for Equal Treatment in Employment and Occupation, requiring Member States to introduce equality in employment legislation, including on age discrimination, and sets very broad
minimum requirements, obliging countries to prohibit age
discrimination with
respect to the labour market, including jobs and access to
training. The Regulations cover everyone either in or
seeking employment or
vocational training. Claims will normally be brought in an
employment tribunal
and there will be no limit on compensation. They also
covers the same forms of
discrimination on the grounds of age, or perceived age,
that employers are familiar
with in the context of discrimination in other areas, such
as race and gender, and
these are: direct discrimination that is less favourable
treatment on the ground of
age; indirect discrimination that is applying an apparently
age-neutral criterion that
has disparate impact on a particular age group; and
victimization. Age-related
harassment, which is prohibited, is a relatively new
statutory concept in
discrimination law and is defined as conduct that is
unwanted and which has the
purpose or effect of violating dignity or creating an
intimidating, hostile,
degrading, humiliating or offensive environment. The
Regulations cover the whole
of the employment relationship, from recruitment and
selection through pay and
benefits, including pensions and insurance, training and
promotion, and
termination, redundancy and retirement. There is a defence
of justification if the
employer can show that the age-discriminatory treatment or
practice is a

‘proportionate means of achieving a legitimate aim’, objectively justifying age
discriminatory treatment or practices in cases of direct
and indirect discrimination.

There is also a defence if there is a genuine occupational
requirement for an age
related characteristic.

In recruitment and selection, it will only be lawful to
specify a particular
age range for a job where the employer can show either that
this is objectively
justified or that there is a genuine occupational
requirement for the person to be of
a certain age. More generally, employers must audit
carefully their recruitment
advertising and procedures. Interestingly, age
discrimination touches both younger
and older workers in that minimum requirements for
experience or qualifications
are likely to constitute indirect discrimination against
younger persons, and
employers in most cases should therefore avoid language
with age-specific
connotations, such as ‘mature’. When processing job
applications, discrimination
claims could readily arise if employers make stereotypical
assumptions about
potential candidates and their state of health or their
managerial expertise, because
of their age. It will be permissible to take certain types
of ‘positive action’, if the
employer believes that persons of a particular age group
are disadvantaged in relation to particular work and wishes to prevent or compensate for that disadvantage, such as the provision of training in IT skills for older people whose work has become computerized. Many employers currently provide enhancements to pay and benefits based upon length of service, and it is common to give additional holiday entitlement and longer paid sick leave according to length of service, serving as well as a basis for salary reviews. However, under the Regulations, this would potentially amount to indirect discrimination, as it is likely to be to the detriment of younger workers. The Regulations provide that it will be lawful to continue to base differences in pay and benefits on length of service, but only by reference to a maximum period of 5 years. For longer periods of service, the employer will have to show an advantage from rewarding loyalty, encouraging motivation or recognizing experience. The Regulations provide for a national default retirement age of 65, in that it will not be unlawful to dismiss a person, by reason of retirement, at age 65 or over. If an employer wishes to have a retirement age of less than 65, he will have to objectively justify it. When an employee over 65, he will have to follow a procedure which involves notifying the
employee in writing between 6 and 12 months before the intended retirement date

that he has the right to request to work beyond the intended retirement date. If such a request is made, the employer must consider it and must meet with the employee to discuss it and provide a response as soon as reasonably practicable. The employee has the right to appeal any decision. Enforcement of the Regulations is the same as that of other discrimination legislation: an employee will need to follow the statutory grievance procedure before bringing a claim and the Employment Tribunals will have jurisdiction to hear the claim. When people are employed: direct ageism, where the direct use of age limits is used, is unlawful; indirect ageism, where people of a particular age group are disadvantaged, is also unlawful; employers will be able to try and justify both direct and indirect discrimination; the law allows employers to refuse to recruit people within six months of their retirement age, or age 65 if you do not have one;

harassment and victimization are unlawful and can never be justified; it will be unlawful to unjustifiably exclude someone from training on the grounds of their age; pay and benefits based on age will be unlawful unless justified; employee benefits based on service up to five years will be exempt while benefits over five
years must be justified; and most age related elements of occupational pension schemes will be exempt. When people leave employment: a ‘national default retirement age’ will allow employers to ‘compulsorily’ retire people at 65 without justification, but employers will have to objectively justify a retirement age below 65; irrespective of whether you set a retirement age below 65, at 65, or above 65 you will have to follow the ‘Retirement Process’; individuals have ‘a right to request to stay on’ and employers have a ‘duty to consider that request’; upper age limits for unfair dismissal are removed; selection for redundancy on age or service grounds will be unlawful unless objectively justified; and the statutory redundancy payment scheme (SRPS) remains in place, and only enhanced redundancy compensation schemes that ‘mirror’ the statutory scheme will be automatically lawful. It is recommended to avoid using age wherever possible as discrimination law enables an individual to bring a claim if they can demonstrate that their ‘age’ may have had an impact so that it is better to avoid practices where someone may ‘infer’ age was an issue, such as asking for date of birth on an application form; assess your risk before attempting an ‘objective justification’, since the costs associated with losing a case could be high; be careful in your treatment of existing
employees, once a person is working for you they can easily see who is or isn’t getting promoted, trained or participating in a leadership development programme; transparency is vital; record keeping is important; training in the law, especially for managers is critical; and crucially, age could be linked with race, gender and disability discrimination. 2 In examining the Employment Equality (Age) Regulations, definitions are included in Part 1, and in particular, Regulation 2: 2.(2) In these Regulations “employment” means employment under a contract of service or of apprenticeship or a contract personally to do any work, and related expressions (such as “employee” and “employer”) shall be construed accordingly, but this definition does not apply in relation to regulation 30 (exception for retirement) or to Schedules 2, 6, 7 and 8: “worker” in relation to regulations 32 and 34 and to Schedule 2, means, as the case may be (a) an employee; (b) a person holding an office or post to which regulation 12 (office-holders etc) applies; (c) a person holding the office of constable; (d) a partner within the meaning of regulation 17 (partnerships); (e) a member of a limited liability partnership within the meaning of that regulation; (f) a person in Crown employment; (g) a relevant member of the House of Commons staff; (h) a relevant member of the House of Lords staff. 3 In terms of discrimination on the grounds of age, Regulation 3 states: 3.(1) For the purposes of these Regulations, a person (“A”) discriminates against another person (“B”) if (a) on grounds of B’s age, A treats B less favourably than he treats or would treat other persons, or (b) A applies to B a provision, criterion or practice which he applies or would apply equally to persons not of the same age group as B, but (i) which puts or would put persons of the same age group as B at a particular disadvantage when compared with other persons, and (ii) which puts B at that disadvantage, and A cannot show the treatment or, as the case may be, provision, criterion or practice to be a proportionate means of achieving a legitimate aim. (2) A comparison of B’s case with that of another person under paragraph (1) must be such that the relevant circumstances in the one case are the same, or not materially different, in the other. (3) In this regulation (a) “age group”
means a group of persons defined by reference to age, whether by reference to a particular age or a range of ages; and (b) the reference in paragraph (1)(a) to B’s age includes B’s apparent age. 4

Further, in terms of discrimination by way of victimization, Regulation 4 states: 4.(1) For the purposes of these Regulations, a person (“A”) discriminates against another person (“B”) if he treats B less favourably than he treats or would treat other persons in the same circumstances, and does so by reason that B has (a) brought proceedings against A or any other person under or by virtue of these Regulations; (b) given evidence or information in connection with proceedings brought by any person against A or any other person under or by virtue of these Regulations; (c) otherwise done anything under or by reference to these Regulations in relation to A or any other person; or (d) alleged that A or any other person has committed an act which (whether or not the allegation so states) would amount to a contravention of these Regulations, or by reason that A knows that B intends to do any of those things, or suspects that B has done or intends to do any of them. (2) Paragraph (1) does not apply to treatment of B by reason of any allegation made by him, or evidence or information given by him, if the allegation, evidence or information was false and not made (or, as the case may be, given) in good faith. 5

Regulation 5 deals with instructions to discriminate: 5. For the purposes of these Regulations, a person (“A”) discriminates against another person (“B”) if he treats B less favourably than he treats or would treat other persons in the same circumstances, and does so by reason that (a) B has not carried out (in whole or in part) an instruction to do an act which is unlawful by virtue of these Regulations, or (b) B, having been given an instruction to do such an act, complains to A or to any other person about that instruction. 6

Harassment on the grounds of age, according to Regulation 6 is: 6.(1) For the purposes of these Regulations, a person (“A”) subjects another person (“B”) to harassment where, on grounds of age, A engages in unwanted conduct which has the purpose or effect of (a) violating B’s dignity; or (b) creating an intimidating, hostile, degrading, humiliating or offensive environment for B. (2) Conduct shall be regarded as having the effect specified in paragraph (1)(a) or (b) only if, having regard to all the circumstances, including in particular the perception of B, it should reasonably be considered as having that
Discrimination in employment and vocational training is outlawed in Part 2, and in particular, Regulation 7 covers applicants and employees: 7.(1) It is unlawful for an employer, in relation to employment by him at an establishment in Great Britain, to discriminate against a person (a) in the arrangements he makes for the purpose of determining to whom he should offer employment; (b) in the terms on which he offers that person employment; or (c) by refusing to offer, or deliberately not offering, him employment. 

(2) It is unlawful for an employer, in relation to a person whom he employs at an establishment in Great Britain, to discriminate against that person (a) in the terms of employment which he affords him; (b) in the opportunities which he affords him for promotion, a transfer, training, or receiving any other benefit; (c) by refusing to afford him, or deliberately not affording him, any such opportunity; or (d) by dismissing him, or subjecting him to any other detriment. 

(3) It is unlawful for an employer, in relation to employment by him at an establishment in Great Britain, to subject to harassment a person whom he employs or who has applied to him for employment. 

(4) Subject to paragraph (5), paragraph (1)(a) and (c) does not apply in relation to a person (a) whose age is greater than the employer’s normal retirement age or, if the employer does not have a normal retirement age, the age of 65; or (b) who would, within a period of six months from the date of his application to the employer, reach the employer’s normal retirement age or, if the employer does not have a normal retirement age, the age of 65. 

(5) Paragraph (4) only applies to a person to whom, if he was recruited by the employer, regulation 30 (exception for retirement) could apply. 

(6) Paragraph (2) does not apply to benefits of any description if the employer is concerned with the provision (for payment or not) of benefits of that description to the public, or to a section of the public which includes the employee in question, unless (a) that provision differs in a material respect from the provision of the benefits by the employer to his employees; or (b) the provision of the benefits to the employee in question is regulated by his contract of employment; or (c) the benefits relate to training. 

(7) In paragraph (2)(d) reference to the dismissal of a person from employment includes reference (a) to the termination of that person’s employment by the expiration of any period (including a period expiring by reference to an event or circumstance), not being a termination immediately after which the employment is renewed on the same terms; and (b) to the termination of that person’s employment by any
act of his (including the giving of notice) in circumstances such that he is entitled to terminate it without notice by reason of the conduct of the employer.

(8) In paragraph (4) “normal retirement age” is an age of 65 or more which meets the requirements of section 98ZH of the 1996 Act. 8

Importantly, Regulation 8 contains the exception for genuine occupational requirement: 8.(1) In relation to discrimination falling within regulation 3 (discrimination on grounds of age) (a) regulation 7(1)(a) or (c) does not apply to any employment; (b) regulation 7(2)(b) or (c) does not apply to promotion or transfer to, or training for, any employment; and (c) regulation 7(2)(d) does not apply to dismissal from any employment, where paragraph (2) applies. (2) This paragraph applies where, having regard to the nature of the employment or the context in which it is carried out (a) possessing a characteristic related to age is a genuine and determining occupational requirement; (b) it is proportionate to apply that requirement in the particular case; and (c) either (i) the person to whom that requirement is applied does not meet it, or (ii) the employer is not satisfied, and in all the circumstances it is reasonable for him not to be satisfied, that that person meets it. 9 Contract workers are included under Regulation 9: 9.(1) It is unlawful for a principal, in relation to contract work at an establishment in Great Britain, to discriminate against a contract worker (a) in the terms on which he allows him to do that work; (b) by not allowing him to do it or continue to do it; (c) in the way he affords him access to any benefits or by refusing or deliberately not affording him access to them; or (d) by subjecting him to any other detriment. (2) It is unlawful for a principal, in relation to contract work at an establishment in Great Britain, to subject a contract worker to harassment. (3) A principal does not contravene paragraph (1)(b) by doing any act in relation to a contract worker where, if the work were to be done by a person taken into the principal’s employment, that act would be lawful by virtue of regulation 8 (exception for genuine occupational requirement etc). (4) Paragraph (1) does not apply to benefits of any description if the principal is concerned with the provision (for payment or not) of benefits of that description to the public, or to a section of the public to which the contract worker in question belongs, unless that provision differs in a material respect from the provision of the benefits by the principal to his contract workers. (5) In this regulation
“principal” means a person (“A”) who makes work available for doing by individuals who are employed by another person who supplies them under a contract made with A; “contract work” means work so made available; and “contract worker” means any individual who is supplied to the principal under such a contract. 10 Regulation 10 defines the meaning of employment and contract work at

In addition, pension schemes are covered under Regulation 11: 11.(1) It is unlawful, except in relation to rights accrued or benefits payable in respect of periods of service prior to the coming into force of these Regulations, for the trustees or managers of an occupational pension scheme to discriminate against a member or prospective member of the scheme in carrying out any of their functions in relation to it (including in particular their functions relating to the admission of members to the scheme and the treatment of members of it). (2) It is unlawful for the trustees or managers of an occupational pension scheme, in relation to the scheme, to subject to harassment a member or prospective member of it. (3) Schedule 2 (pension schemes) shall have effect for the purposes of (a) defining terms used in this regulation and in that Schedule; (b) exempting certain rules and practices in or relating to pension schemes from Parts 2 and 3 of these Regulations; (c) treating every occupational pension scheme as including a non-discrimination rule; (d) giving trustees or managers of an occupational pension scheme power to alter the scheme so as to secure conformity with the non-discrimination rule; (e) making provision in relation to the procedures, and remedies which may be granted, on certain complaints relating to occupational pension schemes presented to an employment tribunal under regulation 36 (jurisdiction of employment tribunals). 12

Further, Regulation 12 covers office-holders: 12.(1) It is unlawful for a relevant person, in relation to an appointment to an office or post to which this regulation applies, to discriminate against a person (a) in the arrangements which he makes for the purpose of determining to whom the appointment should be offered; (b) in the terms on which he offers him the appointment; or (c) by refusing to offer him the appointment. (2) It is unlawful, in relation to an appointment to an office or post to which this regulation applies and which is an office or post referred to in paragraph (8)(b), for a relevant person on whose recommendation (or subject to whose approval) appointments to the office or post are made, to discriminate against a person (a) in the arrangements
which he makes for the purpose of determining who should be recommended or approved in relation to the appointment; or (b) in making or refusing to make a recommendation, or giving or refusing to give an approval, in relation to the appointment. (3) It is unlawful for a relevant person, in relation to a person who has been appointed to an office or post to which this regulation applies, to discriminate against him (a) in the terms of the appointment; (b) in the opportunities which he affords him for promotion, a transfer, training or receiving any other benefit, or by refusing to afford him any such opportunity; (c) by terminating the appointment; or (d) by subjecting him to any other detriment in relation to the appointment. (4) It is unlawful for a relevant person, in relation to an office or post to which this regulation applies, to subject to harassment a person (a) who has been appointed to the office or post; (b) who is seeking or being considered for appointment to the office or post; or (c) who is seeking or being considered for a recommendation or approval in relation to an appointment to an office or post referred to in paragraph (3)(b). (5) Paragraphs (1) and (3) do not apply to any act in relation to an office or post where, if the office or post constituted employment, that act would be lawful by virtue of regulation 8 (exception for genuine occupational requirement etc); and paragraph (2) does not apply to any act in relation to an office or post where, if the office or post constituted employment, it would be lawful by virtue of regulation 8 to refuse to offer the person such employment. (6) Paragraph (3) does not apply to benefits of any description if the relevant person is concerned with the provision (for payment or not) of benefits of that description to the public, or a section of the public to which the person appointed belongs, unless (a) that provision differs in a material respect from the provision of the benefits by the relevant person to persons appointed to offices or posts which are the same as, or not materially different from, that which the person appointed holds; or (b) the provision of the benefits to the person appointed is regulated by the terms and conditions of his appointment; or (c) the benefits relate to training. (7) In paragraph (3)(c) the reference to the termination of the appointment includes a reference (a) to the termination of the appointment by the expiration of any period (including a period expiring by reference to an event or circumstance), not being a termination immediately after which the appointment is renewed on the same terms and conditions; and (b) to the termination of the appointment by any act of the person appointed (including the giving of notice) in circumstances such that he is entitled to terminate the appointment without notice
by reason of the conduct of the relevant person. (8) This regulation applies to (a) any office or post to which persons are appointed to discharge functions personally under the direction of another person, and in respect of which they are entitled to remuneration; and (b) any office or post to which appointments are made by (or on the recommendation of or subject to the approval of) a Minister of the Crown, a government department, ... but not to a political office or a case where regulation 7 (applicants and employees), 9 (contract workers), 15 (barristers), 16 (advocates) or 17 (partnerships) applies, or would apply but for the operation of any other provision of these Regulations. (9) For the purposes of paragraph (8)(a) the holder of an office or post (a) is to be regarded as discharging his functions under the direction of another person if that other person is entitled to direct him as to when and where he discharges those functions; (b) is not to be regarded as entitled to remuneration merely because he is entitled to payments (i) in respect of expenses incurred by him in carrying out the function of the office or post; or (ii) by way of compensation for the loss of income or benefits he would or might have received from any person had he not been carrying out the functions of the office or post. 13

In addition, several professions are covered, namely the police under Regulation 13, serious organized crime agency under Regulation 14, barristers under Regulation 15, advocates under Regulation 16, partnerships under Regulation 17, trade organizations under Regulation 18, employment agencies and career guidance under Regulation 21, and assisting persons to obtain employment under Regulation 22. 14 In terms of institutions of further and higher education, Regulation 23 provides: 23.(1) It is unlawful, in relation to an educational establishment to which this regulation applies, for the governing body of that establishment to discriminate against a person (a) in the terms on which it offers to admit him to the establishment as a student; (b) by refusing or deliberately not accepting an application for his admission to the establishment as a
student; or (c) where he is a student of the establishment (i) in the way it affords him access to any benefits, (ii) by refusing or deliberately not affording him access to them, or (iii) by excluding him from the establishment or subjecting him to any other detriment. (2) It is unlawful, in relation to an educational establishment to which this regulation applies, for the governing body of that establishment to subject to harassment a person who is a student at the establishment, or who has applied for admission to the establishment as a student. (3) Paragraph (1) does not apply if the discrimination concerns training that would only fit a person for employment which, by virtue of regulation 8 (exception for genuine occupational requirement etc), the employer could lawfully refuse to offer the person in question. (4) This regulation applies to the following educational establishments in England and Wales, namely (a) an institution within the further education sector (within the meaning of section 91(3) of the Further and Higher Education Act 1992); (b) a university; (c) an institution, other than a university, within the higher education sector (within the meaning of section 91(5) of the Further and Higher Education Act 1992). (6) In this regulation ... “governing body” includes (a) the board of management of a college referred to in paragraph (5)(a), and (b) the managers of a college or institution referred to in paragraph (5)(b) or (e); “student” means any person who receives education at an educational establishment to which this regulation applies; and “university” includes a university college and the college, school or hall of a university. 15

Importantly, the liability of employers and principals is contained in

Regulation 25: 25.(1) Anything done by a person in the course of his employment shall be treated for the purposes of these Regulations as done by his employer as well as by him, whether or not it was done with the employer’s knowledge or approval. (2) Anything done by a person as agent for another person with the authority (whether express or implied, and whether precedent or subsequent) of that other person shall be treated for the purposes of these Regulations as done by that other person as well as by him. (3) In proceedings brought under these Regulations against any person in respect of an act alleged to have been done by an employee of his it shall be a defence for that person to prove that he took such steps as were reasonably practicable to prevent the employee from doing that act, or from doing in the course of his employment acts of that description. 16
Further, aiding unlawful acts is provided for under Regulation 26: 26.(1) A person who knowingly aids another person to do an act made unlawful by these Regulations shall be treated for the purpose of these Regulations as himself doing an unlawful act of the like description. (2) For the purposes of paragraph (1) an employee or agent for whose act the employer or principal is liable under regulation 25 (or would be so liable but for regulation 25(3)) shall be deemed to aid the doing of the act by the employer or principal. (3) A person does not under this regulation knowingly aid another to do an unlawful act if (a) he acts in reliance on a statement made to him by that other person that, by reason of any provision of these Regulations, the act which he aids would not be unlawful; and (b) it is reasonable for him to rely on the statement. (4) A person who knowingly or recklessly makes a statement such as is referred to in paragraph (3)(a) which in a material respect is false or misleading commits an offence, and shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.

There are several exceptions. Regulation 27 deals with a statutory authority exception: 27.(1) Nothing in Part 2 or 3 shall render unlawful any act done in order to comply with a requirement of any statutory provision. (2) In this regulation “statutory provision” means any provision (whenever enacted) of ... (b) an instrument made by a Minister of the Crown under an Act; ...

Regulation 29 deals with a positive exception: 29.(1) Nothing in Part 2 or 3 shall render unlawful any act 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; where it reasonably appears to the person doing the act that it prevents or compensates for disadvantages linked to age suffered by persons of that age or age group doing that work or likely to take up that work. (2) Nothing in Part 2 or 3 shall render unlawful any act done by a trade organisation within the meaning of regulation in or in connection with (a) affording only members of the organisation who are of a particular age or age group access to facilities for training which would help fit them for holding a post of any kind in the organisation; or (b) encouraging only members of the organisation who are of a particular age or age group to take advantage of
opportunities for holding such posts in the organisation, where it reasonably appears to the organisation that the act prevents or compensates for disadvantages linked to age suffered by those of that age or age group holding such posts or likely to hold such posts. (3) Nothing in Part 2 or 3 shall render unlawful any act done by a trade organisation within the meaning of regulation 18 in or in connection with encouraging only persons of a particular age or age group to become members of the organization where it reasonably appears to the organization that the act prevents or compensates for disadvantages linked to age suffered by persons of that age or age group who are, or are eligible to become, members. 19

Regulation 30 deals with a retirement exception: 30.(1) This regulation applies in relation to an employee within the meaning of section 230(1) of the 1996 Act, a person in Crown employment, a relevant member of the House of Commons staff, and a relevant member of the House of Lords staff. (2) Nothing in Part 2 or 3 shall render unlawful the dismissal of a person to whom this regulation applies at or over the age of 65 where the reason for the dismissal is retirement. (3) For the purposes of this regulation, whether or not the reason for a dismissal is retirement shall be determined in accordance with sections 982A to 982F of the 1996 Act. 20

Regulation 31 deals with a national minimum wage exception: 31.(1) Nothing in Part 2 or 3 shall render it unlawful for a relevant person (“A”) to be remunerated in respect of his work at a rate which is lower than the rate at which another such person (“B”) is remunerated for his work where (a) the hourly rate of the national minimum wage for a person of A’s age is lower than that for a person of B’s age, and (b) the rate at which A is remunerated is below the single hourly rate for the national minimum wage prescribed by the Secretary of State under section 1(3) of the National Minimum Wage Act 1998. (2) Nothing in Part 2 or 3 shall render it unlawful for an apprentice who is not a relevant person to be remunerated in respect of his work at a rate which is lower than the rate at which an apprentice who is a relevant person is remunerated for his work. (3) In this regulation “apprentice” means a person who is employed under a contract of apprenticeship or, in accordance with regulation 12(3) of the National Minimum Wage Regulations 1999, is to be treated as employed under such a contract; “relevant person” means a person who qualifies for the national minimum wage (whether at the single hourly rate for the national minimum wage prescribed by the Secretary of State under section 1(3) of the
Regulation 32 deals with a provision of certain benefits based on length of service

exception: 32.(1) Subject to paragraph (2), nothing in Part 2 or 3 shall render it unlawful for a person (“A”), in relation to the award of any benefit by him, to put a worker (“B”) at a disadvantage when compared with another worker (“C”), if and to the extent that the disadvantage suffered by B is because B’s length of service is less than that of C. (2) Where B’s length of service exceeds 5 years, it must reasonably appear to A that the way in which he uses the criterion of length of service, in relation to the award in respect of which B is put at a disadvantage, fulfils a business need of his undertaking (for example, by encouraging the loyalty or motivation, or rewarding the experience, of some or all of his workers). (3) In calculating a worker’s length of service for these purposes, A shall calculate (a) the length of time the worker has been working for him doing work which he reasonably considers to be at or above a particular level (assessed by reference to the demands made on the worker, for example, in terms of effort, skills and decision making); or (b) the length of time the worker has been working for him in total; and on each occasion on which he decides to use the criterion of length of service in relation to the award of a benefit to workers, it is for him to decide which of these definitions to use to calculate their lengths of service. (4) For the purposes of paragraph (3), in calculating the length of time a worker has been working for him (a) A shall calculate the length of time in terms of the number of weeks during the whole or part of which the worker was working for him; (b) A may discount any period during which the worker was absent from work (including any period of absence which at the time it occurred was thought by A or the worker to be permanent) unless in all the circumstances (including the way in which other workers’ absences occurring in similar circumstances are treated by A in calculating their lengths of service) it would not be reasonable for him to do so; (c) A may discount any period of time during which the worker was present at work (“the relevant period”) where (i) the relevant period preceded a period during which the worker was absent from work, and (ii) in all the circumstances (including the length of the worker’s absence, the reason for his absence, the effect his absence has had on his ability to discharge the duties of his work, and the way in which other workers are treated by A in similar circumstances) it is reasonable for A to
discount the relevant period. (5) For the purposes of paragraph (3)(b), a worker shall be treated as having worked for A during any period during which he worked for another if (a) that period is treated as a period of employment with A for the purposes of the 1996 Act by virtue of the operation of section 218 of that Act; or (b) were the worker to be made redundant by A, that period and the period he has worked for A would amount to “relevant service” within the meaning of section 155 of that Act. 22

In terms of enforcement, there is a restriction of proceedings for breach of

the Regulations: 35.(1) Except as provided by these Regulations no proceedings, whether civil or criminal, shall lie against any person in respect of an act by reason that the act is unlawful by virtue of a provision of these Regulations. (2) Paragraph (1) does not prevent the making of an application for judicial review or the investigation or determination of any matter in accordance with Part 10 (investigations: the Pensions Ombudsman) of the Pension Schemes Act 1993 by the Pensions Ombudsman. 23

Importantly, the jurisdiction of employment tribunals is established under

Regulation 36: 36.(1) A complaint by any person (“the complainant”) that another person (“the respondent”) (a) has committed against the complainant an act to which this regulation applies; or (b) is by virtue of regulation 25 (liability of employers and principals) or 26 (aiding unlawful acts) to be treated as having committed against the complainant such an act; may be presented to an employment tribunal. (2) This regulation applies to any act of discrimination or harassment which is unlawful by virtue of any provision of Part 2 other than (a) where the act is one in respect of which an appeal or proceedings in the nature of an appeal may be brought under any enactment, regulation 19 (qualifications bodies); (b) regulation 23 (institutions of further and higher education); or (c) where the act arises out of and is closely connected to a relationship between the complainant and the respondent which has come to an end but during the course of which an act of discrimination against, or harassment of, the complainant by the respondent would have been unlawful by virtue of regulation 23, regulation 24 (relationships which have come to an end). (3) In paragraph (2)(c), reference to an act of discrimination or harassment which would have been unlawful includes, in the case of a relationship which has come to an end before the coming into force of these
Regulations, reference to an act of discrimination or harassment which would, after the coming into force of these Regulations, have been unlawful. 24

Crucially, the required burden of proof for employment tribunals is outlined in

Regulation 37: 37.(1) This regulation applies to any complaint presented under regulation 36 to an employment tribunal. (2) Where, on the hearing of the complaint, the complainant proves facts from which the tribunal could, apart from this regulation, conclude in the absence of an adequate explanation that the respondent (a) has committed against the complainant an act to which regulation 36 applies; or (b) is by virtue of regulation 25 (liability of employers and principals) or 26 (aiding unlawful acts) to be treated as having committed against the complainant such an act, the tribunal shall uphold the complaint unless the respondent proves that he did not commit, or as the case may be, is not to be treated as having committed, that act. 25

In addition, Regulation 41 provides for help for persons in obtaining information: 41.(1) In accordance with this regulation, a person (“the person aggrieved”) who considers he may have been discriminated against, or subjected to harassment, in contravention of these Regulations may serve on the respondent to a complaint presented under regulation 36 (jurisdiction of employment tribunals) or a claim brought under regulation 39 (jurisdiction of county and sheriff courts) questions in the form set out in Schedule 3 or forms to the like effect with such variation as the circumstances require; and the respondent may if he so wishes reply to such questions by way of the form set out in Schedule 4 or forms to the like effect with such variation as the circumstances require. (2) Where the person aggrieved questions the respondent (whether in accordance with paragraph (1) or not) (a) the questions, and any reply by the respondent (whether in accordance with paragraph (1) or not) shall, subject to the following provisions of this regulation, be admissible as evidence in the proceedings: (b) if it appears to the court or tribunal that the respondent deliberately, and without reasonable excuse, omitted to reply within eight weeks of service of the questions or that his reply is evasive or equivocal, the court or tribunal may draw any inference from that fact that it considers it just and equitable to draw, including an inference that he committed an unlawful act. (3) In proceedings before a county court in England or Wales or a sheriff court in
Scotland, a question shall only be admissible as evidence in pursuance of paragraph (2)(a) (a) where it was served before those proceedings had been instituted, if it was so served within the period of six months beginning when the act complained of was done; (b) where it was served when those proceedings had been instituted, if it was served with the leave of, and within a period specified by, the court in question. (4) In proceedings before an employment tribunal, a question shall only be admissible as evidence in pursuance of paragraph (2)(a) (a) where it was served before a complaint had been presented to the tribunal, if it was so served within the period of three months beginning when the act complained of was done; (b) where it was so served when a complaint had been presented to the tribunal, either (i) if it was served within the period of twenty-one days beginning with the day on which the complaint was presented, or (ii) if it was so served later with leave given, and within a period specified, by a direction of the tribunal. (5) A question and any reply thereto may be served on the respondent or, as the case may be, on the person aggrieved (a) by delivering it to him; (b) by sending it by post to him at his usual or last-known residence or place of business; (c) where the person to be served is a body corporate or is a trade union or employers’ association within the meaning of the Trade Union and Labour Relations (Consolidation) Act 1992, by delivering it to the secretary or clerk of the body, union or association at its registered or principal office or by sending it by post to the secretary or clerk at that office; (d) where the person to be served is acting by a solicitor, by delivering it at, or by sending it by post to, the solicitor’s address for service; or (e) where the person to be served is the person aggrieved, by delivering the reply, or sending it by post, to him at his address for reply as stated by him in the document containing the questions. (6) This regulation is without prejudice to any other enactment or rule of law regulating interlocutory and preliminary matters in proceedings before a county court, sheriff court or employment tribunal, and has effect subject to any enactment or rule of law regulating the admissibility of evidence in such proceedings. 26

Importantly, Regulation 38 outlines the remedies on complaints in employment tribunals: 38.(1) Where an employment tribunal finds that a complaint presented to it under regulation 36 is well-founded, the tribunal shall make such of the following as it considers just and equitable (a) an order declaring the rights of the complainant and the respondent in relation to the act to which the complaint relates;
(b) an order requiring the respondent to pay to the complainant compensation of an amount corresponding to any damages he could have been ordered by a county court or by a sheriff court to pay to the complainant if the complaint had fallen to be dealt with under regulation 39 (jurisdiction of county and sheriff courts); (c) a recommendation that the respondent take within a specified period action appearing to the tribunal to be practicable for the purpose of obviating or reducing the adverse effect on the complainant of any act of discrimination or harassment to which the complaint relates. (2) As respects an unlawful act of discrimination falling within regulation 3(1)(b) (discrimination on the grounds of age), if the respondent proves that the provision, criterion or practice was not applied with the intention of treating the complainant unfavourably on grounds of age, an order may be made under paragraph (1)(b) only if the employment tribunal (a) makes such order under paragraph (1)(a) (if any) and such recommendation under paragraph (1)(c) (if any) as it would have made if it had no power to make an order under paragraph (1)(b); and (b) (where it makes an order under paragraph (1)(a) or a recommendation under paragraph (1)(c) or both) considers that it is just and equitable to make an order under paragraph (1)(b) as well. (3) If without reasonable justification the respondent to a complaint fails to comply with a recommendation made by an employment tribunal under paragraph (1)(c), then, if it thinks it just and equitable to do so (a) the tribunal may increase the amount of compensation required to be paid to the complainant in respect of the complaint by an order made under paragraph (1)(b); or (b) if an order under paragraph (1)(b) was not made, the tribunal may make such an order. (4) Where an amount of compensation falls to be awarded under paragraph (1)(b), the tribunal may include in the award interest on that amount subject to, and in accordance with, the provisions of the Employment Tribunals (Interest on Awards in Discrimination Cases) Regulations 1996. (5) This regulation has effect subject to paragraph 6 of Schedule 2 (pension schemes). 27 The period within which proceedings may be brought is contained in Regulation 42: 42.(1) An employment tribunal shall not consider a complaint under regulation 36 unless it is presented to the tribunal before the end of the period of three months beginning when the act complained of was done. (2) A county court or a sheriff court shall not consider a claim brought under regulation 39 unless proceedings in respect of the claim are instituted before the end of the period of six months beginning when the act complained of was done. (3) A court or tribunal may
nevertheless consider any such complaint or claim which is out of time if, in all the circumstances of the case, it considers that it is just and equitable to do so. (4) For the purposes of this regulation and regulation 41 (help for persons in obtaining information etc) (a) when the making of a contract is, by reason of the inclusion of any term, an unlawful act, that act shall be treated as extending throughout the duration of the contract; and (b) any act extending over a period shall be treated as done at the end of that period; and (c) a deliberate omission shall be treated as done when the person in question decided upon it, and in the absence of evidence establishing the contrary a person shall be taken for the purposes of this regulation to decide upon an omission when he does an act inconsistent with doing the omitted act or, if he has done no such inconsistent act, when the period expires within which he might reasonably have been expected to do the omitted act if it was to be done.

Regulations establishes a duty to consider working beyond retirement. Paragraph 1

Importantly, there is a duty of an employer to inform employees under Paragraphs 2 and 3: 2.(1) An employer who intends to retire an employee has a duty to notify the employee in writing of (a) the employee’s right to make a request; and (b) the date on which he intends the employee to retire, not more than one year and not less than six months before that date. (2) The duty to notify applies regardless of (a) whether there is any term in the employee’s contract of employment indicating when his retirement is expected to take place, (b) any other notification of, or information about, the employee’s date of retirement given to him by the employer at any time, and (c) any other information about the employee’s right to make a request given to him by the employer at any time. 3.(1) This paragraph applies if the employer has notified the employee in accordance with paragraph 2 or 4 or the employee has made a request before being notified in accordance with paragraph 4 (including where no notification in accordance with that paragraph is given), and (a) the employer and employee agree, in accordance with paragraph 7(3)(b) or 8(5)(b), that the dismissal is to take effect on a date later than the relevant date; (b) the employer gives notice to the employee, in accordance with paragraph 7(7)(a)(ii) or, where the employee appeals, paragraph 8(9)(a)(ii), that the dismissal is to take effect on a date later than the relevant date; or (c) the employer and employee agree that
the dismissal is to take effect on a date earlier than the relevant date. (2) This Schedule does not require the employer to give the employee a further notification in respect of dismissal taking effect on a date (a) agreed as mentioned in sub-paragraph (1)(a) or notified as mentioned in subparagraph (1)(b) that is later than the relevant date and falls six months or less after the relevant date; or (b) agreed as mentioned in sub-paragraph (1)(c) that is earlier than the relevant date. (3) If (a) a date later than the relevant date is agreed as mentioned in sub-paragraph (1)(a) or notified as mentioned in sub-paragraph (1)(b) and falls six months or less after the relevant date, or (b) a date earlier than the relevant date is agreed as mentioned in sub-paragraph (1)(c), the earlier or later date shall supersede the relevant date as the intended date of retirement. (4) In this paragraph, “the relevant date” means the date that is defined as the intended date of retirement in paragraph (a), (b) or (c) of paragraph 1(2). 31

Further, there is a continuing duty to inform employees under Paragraph 4: 4. Where the employer has failed to comply with paragraph 2, he has a continuing duty to notify the employee in writing as described in paragraph 2(1) until the fourteenth day before the operative date of termination. 32

There is a statutory right to request not to retire under Paragraph 5: 5.(1) An employee may make a request to his employer not to retire on the intended date of retirement. (2) In his request the employee must propose that his employment should continue, following the intended date of retirement (a) indefinitely, (b) for a stated period, or (c) until a stated date; and, if the request is made at a time when it is no longer possible for the employer to notify in accordance with paragraph 2 and the employer has not yet notified in accordance with paragraph 4, must identify the date on which he believes that the employer intends to retire him. (3) A request must be in writing and state that it is made under this paragraph. (4) An employee may only make one request under this paragraph in relation to any one intended date of retirement and may not make a request in relation to a date that supersedes a different date as the intended date of retirement by virtue of paragraph 3(3) or 10(3)(b). (5) A request is only a request made under this paragraph if it is made (a) in a case where the employer has complied with paragraph 2, more than three months but not more than six months before the intended date of retirement, or (b) in a case where the employer has not complied with paragraph 2, before, but
not more than six months before, the intended date of retirement. 33

An employer has a duty to consider a request under Paragraph 6: 6. An employer to whom a request is made is under a duty to consider the request in accordance with paragraphs 7 to 9. 34

A meeting to consider a request is required under Paragraph 7: 7.(1) An employer having a duty under paragraph 6 to consider a request shall hold a meeting to discuss the request with the employee within a reasonable period after receiving it. (2) The employer and employee must take all reasonable steps to attend the meeting. (3) The duty to hold a meeting does not apply if, before the end of the period that is reasonable (a) the employer and employee agree that the employee’s employment will continue indefinitely and the employer gives notice to the employee to that effect; or (b) the employer and employee agree that the employee’s employment will continue for an agreed period and the employer gives notice to the employee of the length of that period or of the date on which it will end. (4) The duty to hold a meeting does not apply if (a) it is not practicable to hold a meeting within the period that is reasonable, and (b) the employer complies with sub-paragraph (5). (5) Where sub-paragraph (4)(a) applies, the employer may consider the request without holding a meeting provided he considers any representations made by the employee. (6) The employer shall give the employee notice of his decision on the request as soon as is reasonably practicable after the date of the meeting or, if sub-paragraphs (4) and (5) apply, his consideration of the request. (7) A notice given under sub-paragraph (6) shall (a) where the decision is to accept the request, state that it is accepted and (i) where the decision is that the employee’s employment will continue indefinitely, state that fact, or (ii) where the decision is that the employee’s employment will continue for a further period, state that fact and specify the length of the period or the date on which it will end, (b) where the decision is to refuse the request, confirm that the employer wishes to retire the employee and the date on which the dismissal is to take effect, and, in the case of a notice falling within paragraph (b), and of a notice referred to in paragraph (a) that specifies a period shorter than the period proposed by the employee in the request, shall inform the employee of his right to appeal. (8) All notices given under this paragraph shall be in writing and be dated. 35 Importantly, appeals are provided for in Paragraph 8: 8.(1) An employee is entitled to appeal
against (a) a decision of his employer to refuse the request, or (b) a decision of his employer to accept the request where the notice given under paragraph 7(6) states as mentioned in paragraph 7(7)(a)(ii) and specifies a period shorter than the period proposed by the employee in the request, by giving notice in accordance with sub-paragraph (2) as soon as is reasonably practicable after the date of the notice given under paragraph 7(6).

(2) A notice of appeal under sub-paragraph (1) shall set out the grounds of appeal. (3) The employer shall hold a meeting with the employee to discuss an appeal within a reasonable period after the date of the notice of appeal. (4) The employer and employee must take all reasonable steps to attend the meeting. (5) The duty to hold a meeting does not apply if, before the end of the period that is reasonable (a) the employer and employee agree that the employee’s employment will continue indefinitely and the employer gives notice to the employee to that effect; or (b) the employer and employee agree that the employee’s employment will continue for an agreed period and the employer gives notice to the employee of the length of that period or of the date on which it will end. (6) The duty to hold a meeting does not apply if (a) it is not practicable to hold a meeting within the period that is reasonable, and (b) the employer complies with sub-paragraph (7). (7) Where sub-paragraph (6)(a) applies, the employer may consider the appeal without holding a meeting provided he considers any representations made by the employee. (8) The employer shall give the employee notice of his decision on the appeal as soon as is reasonably practicable after the date of the meeting or, if sub-paragraphs (6) and (7) apply, his consideration of the appeal. (9) A notice under sub-paragraph (8) shall (a) where the decision is to accept the appeal, state that it is accepted and (i) where the decision is that the employee’s employment will continue indefinitely, state that fact, or (ii) where the decision is that the employee’s employment will continue for a further period, state that fact and specify the length of the period or the date on which it will end, (b) where the decision is to refuse the appeal, confirm that the employer wishes to retire the employee and the date on which the dismissal is to take effect. (10) All notices given under this paragraph shall be in writing and be dated.

In terms of a dismissal before a request is considered, Paragraph 10 states: 10.(1) This paragraph applies where (a) by virtue of paragraph 6 an employer is under a duty to consider a request; (b) the employer dismisses the employee; (c) that dismissal is the contemplated dismissal
to which the request relates; and (d) the operative date of termination would, but for sub-paragraph (3), fall on or before the day on which the employer gives notice in accordance with paragraph 7(6). (2) Subject to sub-paragraph (4), the contract of employment shall continue in force for all purposes, including the purpose of determining for any purpose the period for which the employee has been continuously employed, until the day following that on which the notice under paragraph 7(6) is given. (3) The day following the day on which that notice is given shall supersede (a) the date mentioned in sub-paragraph (1)(d) as the operative date of termination; and (b) the date defined as the intended date of retirement in paragraph (a), (b) or (c) of paragraph 1(2) as the intended date of retirement. (4) Any continuation of the contract of employment under sub-paragraph (2) shall be disregarded when determining the operative date of termination for the purposes of sections 98ZA to 98ZH of the 1996 Act. 37 Filing a complaint to the employment tribunal would be a recourse for failing to comply with Paragraph 2: 11.(1) An employee may present a complaint to an employment tribunal that his employer has failed to comply with the duty to notify him in paragraph 2. (2) A tribunal shall not consider a complaint under this paragraph unless the complaint is presented (a) before the end of the period of three months beginning with (i) the last day permitted to the employer by paragraph 2 for complying with the duty to notify, or (ii) if the employee did not then know the date that would be the intended date of retirement, the first day on which he knew or should have known that date; or (b) within such further period as the tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be presented before the end of that period of three months. (3) Where a tribunal finds that a complaint under this paragraph is well-founded it shall order the employer to pay compensation to the employee of such amount, not exceeding 8 weeks’ pay, as the tribunal considers just and equitable in all the circumstances. (4) Chapter 2 of Part 14 of the 1996 Act (calculation of a week’s pay) shall apply for the purposes of sub-paragraph (3); and in applying that Chapter the calculation date shall be taken to be the date on which the complaint was presented or, if earlier, the operative date of termination. (5) The limit in section 227(1) of the 1996 Act (maximum amount of a week’s pay) shall apply for the purposes of sub-paragraph (3). 38 Finally, the concepts of detriment and dismissal are
contained in Paragraph 13: 13.(1) An employee has the right not to be subjected to any detriment by any act by his employer done on the ground that he exercised or sought to exercise his right to be accompanied in accordance with paragraph 9. (2) A worker has the right not to be subjected to any detriment by any act, or any deliberate failure to act, by his employer done on the ground that he accompanied or sought to accompany an employee pursuant to a request under paragraph 9. (3) Section 48 of the 1996 Act shall apply in relation to contraventions of subparagraph (1) or (2) above as it applies in relation to contraventions of certain sections of that Act. (4) Sub-paragraph (2) does not apply where the worker is an employee and the detriment in question amounts to dismissal (within the meaning of Part 10 of the 1996 Act). (5) An employee who is dismissed shall be regarded for the purposes of Part 10 of the 1996 Act as unfairly dismissed if the reason (or, if more than one, the principal reason) for the dismissal is that he (a) exercised or sought to exercise his right to be accompanied in accordance with paragraph 9, or (b) accompanied or sought to accompany an employee pursuant to a request under that paragraph. (6) Sections 128 to 132 of the 1996 Act (interim relief) shall apply in relation to dismissal for the reason specified in sub-paragraph (5)(a) or (b) above as they apply in relation to dismissal for a reason specified in section 128(1)(b) of that Act. 39

Equal Pay Act (EPA)

Important for elder rights in employment and in particular older women, under the

Equal Pay Act 1970 (EPA), genuine occupational qualification is recognized in

Section 1(3): 1(3) An equality clause shall not operate in relation to a variation between the woman’s contract and the man’s contract if the employer proves that the variation is genuinely due to a material factor which is not the difference of sex...and that factor...must be a material difference between the woman’s case and the man’s... 40

Section 2(1) guarantees the important right of tribunal recourse for redress: 2(1) Any claim in respect of the contravention of a term modified or included by virtue of an equality clause, including a claim for arrears of remuneration or damages in respect of the contravention, may be presented by way of a complaint to an employment
The EPA covers all contractual terms and not simply those relating to pay, with claims taken initially to an Industrial Tribunal.

Equal Opportunities Commission (EOC) and the Code of Practice on Equal Pay

In terms of age discrimination cases, the Code of Practice on Equal Pay is the main source of advice on implementing equal pay in the workplace and was issued by the Equal Opportunities Commission (EOC) in 1997. Employers must include an equality clause into individual contracts of employment. The EOC issued a Code of Practice for the purposes of the elimination of discrimination in employment; for guidance to employers, trade unions and employment agencies on measures that can be taken to achieve equality, and on what steps it is reasonably practicable for employers to take to ensure that their employees do not in the course of their employment act contrary to the law; and for the promotion of equality of opportunity in employment. The primary responsibility at law rests with each employer to ensure that there is no unlawful discrimination. The Code recommends the establishment and use of consistent criteria for selection, training, promotion, redundancy and dismissal that are made known to all employees, as part of good employment practices in eliminating disability.
discrimination. It is recommended that each individual should be assessed according to his personal capability to carry out a given job not on his age. The EOC recommends that a pay systems review should involve the following stages. Stage 1: undertake a thorough analysis of the pay system to produce a breakdown of all employees, which covers job title, grade, whether part time or full-time, with basic pay, performance ratings and all other elements of remuneration; stage 2: examine each element of the pay system against the data obtained in stage 1; stage 3: identify any elements of the pay system that the review indicates may be the source of any discrimination; stage 4: change any rules or practices, including those in collective agreements, which stages 1 to 3 have identified as likely to give rise to discrimination in pay, in consultation with employees, trade unions or staff representatives where appropriate. Stages 1 to 3 may reveal that practices and procedures in relation to recruitment, selection and access to training have contributed to discrimination in pay, and these should be addressed; stage 5: analyze the likely effects of any proposed changes in practice to the pay system before implementation, in order to identify and rectify any discrimination that could be caused; stage 6: give equal pay to current employees.
Where the review shows that some employees are not receiving equal pay for equal work and the reasons cannot be shown to be free of bias, then a plan must be developed for dealing with this; stage 7: set up a system of regular monitoring to allow checks to be made to pay practices; and stage 8: draw up and publish an equal pay policy with provision for assessing the new pay system or modification to a system in terms of discrimination. 42

Race Relations Act

Important for older minorities, the Race Relations Act 1976 defines direct and indirect discrimination, and victimization. The Act outlaws racial discrimination in employment, training, education, housing, public appointments, and the provision of goods, facilities and services. The Commission for Racial Equality (CRE) has the power to enforce the duties specified in the Act, as it will issue a compliance notice and if necessary seek a court order to enforce the notice. It places a general duty on a range of public authorities to promote race equality, with the duty’s aim to make the promotion of race equality central to the work of the listed public authorities, which includes public functions carried out by private sector organizations and has only limited exemption. The public duty requires public bodies to implement race equality in all aspects of
employment matters, such as recruitment and selection, training, promotion, discipline and dismissal. In relation to policy development and service delivery, the duty will encourage policy-makers to be more aware of possible problems; contribute to more informed decision making; make sure that policies are properly targeted; improve the authority’s ability to deliver suitable and accessible services that meet varied needs; encourage greater openness about policy making; increase confidence in public services, especially among ethnic minority communities; help to develop good practice; and help to avoid claims of unlawful racial discrimination.

Four principles should govern public authorities’ efforts to meet their duty to promote race equality:

- promoting race equality is obligatory for all public authorities listed; public authorities must meet the duty to promote race equality in all relevant functions;
- the weight given to race equality should be proportionate to its relevance; and the elements of the duty are complementary, which means they are all necessary to meet the whole duty. The general duty has three parts: eliminating unlawful racial discrimination; promoting equality of opportunity; and promoting good relations between people of different racial groups. 43 In terms of a General Statutory duty, Section 71(1) of the Race Relations
Act states: 71(1) Every body or other person specified in Schedule 1A or a description falling within that Schedule shall, in carrying out its functions, have due regard to the need a) to eliminate unlawful racial discrimination; and b) to promote equality of opportunity and good relations between persons of different racial groups. 44

In terms of the Employment Duty, Section 5 of the Race Relations Act 1976

(Statutory Duties) Order 2001 or Section 4 of the Race Relations Act 1976

(Statutory Duties) Order 2003 state: a) A person...shall:
(i) Before 31 May 2002 (2001 Order) or 31 May 2004 (2003 Order) or 31 May 2005 (2004 Order) ... , have in place arrangements for fulfilling, as soon as is reasonably practicable, its duties ..., and fulfil those duties in accordance with such arrangements. (ii) It shall be the duty of such a person to monitor, by reference to the racial groups to which they belong, the numbers of: Staff in post. Applicants for employment, training and promotion from each such group, and where that person has 150 or more full-time staff, the numbers of staff from each such group who: Receive training. Benefit or suffer detriment as a result of its performance assessment procedures. Are involved in grievance procedures. Are the subject of disciplinary procedures. Cease employment with that person. 45

Sex Discrimination Act (SDA)

Important for older women, the Sex Discrimination Act 1975 (SDA) defines direct and indirect discrimination. Further, under the SDA, it is first up to the applicant to establish facts, which constitute a 'prima facie' case of discrimination, as the burden of proof is initially on the employee to show on the balance of probabilities that her male comparator is doing the same or broadly similar work, or that her work has been rated as equivalent to his, or that her work is of equal value, and that
his contract contains a more favorable term. The burden of proof then shifts from
the applicant to the employer to show that there is a nondiscriminatory reason for
their actions, that is the difference between the contracts is genuinely due to a
material factor which is not the difference of gender. The material factor defence is
the reason put forward by the employer to explain why the comparator, although
doing equal work, is paid more than the applicant; to succeed in a defence, this
factor must be significant and relevant; that is, it must be an important cause of the
difference and apply to the jobs in question. The difference in pay must be
genuinely due to the material factor which must not be tainted by gender
discrimination. If the reason given for paying the comparator more is that he has
certain skills which the applicant does not have, then the employer would have to
demonstrate that these skills are necessary for the job, and genuinely applied
during the performance of the job, and are not simply rewarded because past pay
agreements recognized and rewarded skills which are no longer applicable; to
succeed in a defence, the employer needs to show that the material factor accounts
for the whole of the difference in pay. Direct and indirect discrimination are defined in Section 1: 1(1) In any circumstances relevant for the purposes of any provision of this Act ..., a person discriminates against a woman if: (a) on the ground of her sex he treats her less
favourably than he treats or would treat a man, or (b) he applies to her a requirement or condition which he applies or would apply equally to a man but: (i) which is such that the proportion of women who can comply with it is considerably smaller than the proportion of men who can comply with it, and (ii) which he cannot show to be justifiable irrespective of the sex of the person to whom it is applied, and 1(1)(b)(iii) which is to her detriment because she cannot comply with it. 46

In looking at discrimination in the employment stage, Section 6(2) states: 6(2) It is unlawful for a person, in the case of a woman employed by him at an establishment in Great Britain, to discriminate against her: (a) in the way he affords her access to opportunities for promotion, transfer or training, or to any other benefits, facilities or services, or by refusing or deliberately omitting to afford her access to them, or (b) by dismissing her, or subjecting her to any other detriment. 47

There is an exception to the rule where sex is a genuine occupational qualification, which is contained in Section 7: 7(1) In relation to sex discrimination: (a) section 6(1)(a) or (c) does not apply to any employment where being a man is a genuine occupational qualification for the job. 7(2) Being a man is a genuine occupational qualification for a job only where: (a) the essential nature of the job calls for a man for reasons of physiology (excluding physical strength or stamina) or, in dramatic performances or other entertainment, for reasons of authenticity, so that the essential nature of the job would be materially different if carried out by a woman; or (b) the job needs to be held by a man to preserve decency or privacy ...; or (c) the nature or location of the establishment makes it impracticable for the holder of the job to live elsewhere than in premises provided by the employer ...; (d) the nature of the establishment, or of the part of it within which the work is done, requires it to be held by a man ...; or (e) the job needs to be held by a man because of restrictions imposed by the laws regulating the employment of women; or (f) the holder of the job provides individuals with personal services promoting their welfare or education, or similar personal services, and those services can most effectively be provided by a man; or (g) the job needs to be held by a man because it is likely to involve the performance of duties outside the United Kingdom in a country whose laws or customs are such that the duties could not, or could not effectively, be
performed by a woman; or (h) the job is one of two to be held by a married couple. 48

Disability Discrimination Act (DDA)

Important for disabled seniors, the Disability Discrimination Act 1995 (DDA) deals with discrimination against disabled people in the areas of employment, the provision of goods, facilities and services and premises, education and public transport. 49 It aims to end the discrimination that many disabled people face. This Act gives disabled people rights in the areas of employment, education, access to goods, facilities and services, and buying or renting land or property. Businesses and organizations are called ‘service providers’ and include shops, restaurants, leisure centres and places of worship. Under the DDA, it is unlawful for employers to discriminate against disabled people for a reason related to their disability, in all aspects of employment, unless this can be justified. It covers application forms, interview arrangements, proficiency tests, job offers, terms of employment, promotion, transfer or training opportunities, work-related benefits such as access to recreation or refreshment facilities, dismissal or redundancy. The employer has a duty to consider making ‘reasonable adjustments’ to make sure no one with a disability is put at a substantial disadvantage by employment.
arrangements or any physical feature of the workplace. Adjustments the employer should consider are set out in the DDA and include allocating some of the work to someone else, transferring one to another post or another place of work, making adjustments to the buildings, being flexible about hours, allowing different core working hours and to be away from the office for assessment, treatment or rehabilitation, providing training, modified equipment, and a reader or interpreter, and making instructions and manuals more accessible. Further, in April 2005, a new Disability Discrimination Act 2005 (DDA) was passed by Parliament, which amends or extends existing provisions in the DDA of 1995, including making it unlawful for operators of transport vehicles to discriminate against disabled people; making it easier for disabled people to rent property and for tenants to make disability-related adaptations; making sure that private clubs with 25 or more members cannot keep disabled people out, because they have a disability; extending protection to cover people who have cancer and multiple sclerosis from the moment they are diagnosed; and ensuring that discrimination law covers all the activities of the public sector; requiring public bodies to promote equality of opportunity for disabled people. Under the DDA, the requirement that a person be 'substantially' adversely
affected points towards a ‘protected group’ philosophy and is consistent with an element of redistribution and positive action in favour of disabled people. Tribunal cases suggest that employers should expect to have to demonstrate that they have investigated the possibilities for accommodation before dismissing a worker. The case law also establishes that reasonable accommodation may involve physical adjustments to the workplace, but may also involve changes to a person’s job description, redeployment, or changes to the work time pattern, such as time off for medical treatment. While the restrictive definition of disability and the reasonable accommodation clause might suggest that the DDA is founded on an ‘equality of results’ conception, many cases are actually based on individual merit. DDA cases are heard by specialist Employment Tribunals, which are experienced in unfair dismissal cases and other aspects of employee rights. The Tribunals are accustomed to looking critically at employers’ actions and balancing the employer’s right to manage against the interests of workers. This leans towards an ‘equality as fairness’ approach to discrimination, whereas ordinary courts may be more inclined to restrict themselves to the firmer judicial territory of ‘equality as rationality’. It is also significant that there are many DDA cases where the
issue of the definition of
disability does not arise. Very often the employee has a
case under the law relating
to unfair dismissal alongside the DDA claim, and is thereby
able to utilize the
general rights of employees in establishing the claim. 50
The Act provides that it is unlawful to discriminate under
Section 4: 4. (1) It is unlawful for an employer to
discriminate against a disabled person (a) in the
arrangements which he makes for the purpose of determining
to whom he should offer employment; (b) in the terms on
which he offers that person employment; or (c) by
refusing to offer, or deliberately not offering, him
employment. (2) It is unlawful for an employer to
discriminate against a disabled person whom he employs
(a) in the terms of employment which he affords him; (b)
in the opportunities which he affords him for promotion, a
transfer, training or receiving any other benefit; (c)
by refusing to afford him, or deliberately not affording
him, any such opportunity; or (d) by dismissing him, or
subjecting him to any other detriment. (3) Subsection (2)
does not apply to benefits of any description if the
employer is concerned with the provision (whether or not
for payment) of benefits of that description to the
public, or to a section of the public which includes the
employee in question, unless (a) that provision differs
in a material respect from the provision of the benefits
by the employer to his employees; or (b) the provision of
the benefits to the employee in question is regulated by
his contract of employment; or (c) the benefits relate to
training. 51

The definition of ‘discrimination’ is found under Section
5: 5.(1) For the purposes of this Part, an employer
discriminates against a disabled person if (a) for a
reason which relates to the disabled person’s disability,
he treats him less favourably than he treats or would
treat others to whom that reason does not or would not
apply; and (b) he cannot show that the treatment in
question is justified. (6) Regulations may make provision,
for purposes of this section, as to circumstances in which
(a) treatment is to be taken to be justified; (b) failure
to comply with a section 6 duty is to be taken to be
justified; (c) treatment is to be taken not to be
justified; (d) failure to comply with a section 6 duty is
to be taken not to be justified. (7) Regulations under
subsection (6) may, in particular (a) make provision by
reference to the cost of affording any benefit; and (b) in
relation to benefits under occupational pension schemes,
make provision with a view to enabling uniform rates of
contributions to be maintained. 52 In terms of employment,
Section 6 notes the duty of employers to make
adjustments: 6.(1) Where (a) any arrangements made by
or on behalf of an employer, or (b) any physical feature
of premises occupied by the employer, place the disabled
person concerned at a substantial disadvantage in
comparison with persons who are not disabled, it is the
duty of the employer to take such steps as it is
reasonable, in all the circumstances of the case, for him
to have to take in order to prevent the arrangements or
feature having that effect. (3) The following are examples
of steps which an employer may have to take in relation to
a disabled person in order to comply with subsection (1)
(a) making adjustments to premises; (b) allocating some of
the disabled person’s duties to another person; (c)
transferring him to fill an existing vacancy; (d) altering
his working hours; (e) assigning him to a different place
of work; (f) allowing him to be absent during working
hours for rehabilitation, assessment or treatment; (g)
giving him, or arranging for him to be given, training;
(h) acquiring or modifying equipment; (i) modifying
instructions or reference manuals; (j) modifying
procedures for testing or assessment; (k) providing a
reader or interpreter; (l) providing supervision. (4) In
determining whether it is reasonable for an employer to
have to take a particular step in order to comply with
subsection (1), regard shall be had, in particular, to
(a) the extent to which taking the step would prevent the
effect in question; (b) the extent to which it is
practicable for the employer to take the step; (c) the
financial and other costs which would be incurred by the
employer in taking the step and the extent to which taking
it would disrupt any of his activities; (d) the extent of
the employer’s financial and other resources; (e) the
availability to the employer of financial or other
assistance with respect to taking the step. (6) Nothing
in this section imposes any duty on an employer in relation
to a disabled person if the employer does not know, and
could not reasonably be expected to know (a) in the case
of an applicant or potential applicant, that the disabled
person concerned is, or may be, an applicant for the
employment; or (b) in any case, that that person has a
disability and is likely to be affected in the way
mentioned in subsection (1). (7) Subject to the
provisions of this section, nothing in this Part is to be
taken to require an employer to treat a disabled person
more favourably than he treats or would treat others.

(8) Regulations may make provision, for the purposes of subsection (1) (a) as to circumstances in which arrangements are, or a physical feature is, to be taken to have the effect mentioned in that subsection; (b) as to circumstances in which arrangements are not, or a physical feature is not, to be taken to have that effect; (c) as to circumstances in which it is reasonable for an employer to have to take steps of a prescribed description; (d) as to steps which it is always reasonable for an employer to have to take; (e) as to circumstances in which it is not reasonable for an employer to have to take steps of a prescribed description; (f) as to steps which it is never reasonable for an employer to have to take; (g) as to things which are to be treated as physical features; (h) as to things which are not to be treated as such features.

Ireland

In looking at age discrimination in the Republic of Ireland, the two main pieces of legislation are the Employment Equality Act and the Equal Status Act.

Employment Equality Act

In Ireland, the Employment Equality Act (1998) prohibits discrimination in employment and in other spheres of life on a number of grounds, including age. The conception of equality in the EEA is based on individual merit, and moves towards the ‘equality as rationality’ end of the spectrum, addressing discrimination based on prejudice or stereotypes. The Act creates some positive duties to promote equality, despite the limits to positive action in favour of individuals. In addition, it established an Equality Authority with powers to develop codes of practice that have enhanced legal standing, and to promote equality.
through Equality Reviews and Action Plans. Positive measures are permitted under the Employment Equality Act, where the measures are ‘intended to reduce or eliminate the effects of discrimination’, and various provisions prevent challenges to measures targeted to disadvantaged groups, including seniors. Important for elder rights, under the Employment Equality Act 1998, discrimination is outlined in Section 6, and in particular Sections 6(2)(f) and 6(3):

6.(1) For the purposes of this Act, discrimination shall be taken to occur where, on any of the grounds in subsection (2) (in this Act referred to as ‘the discriminatory grounds’), one person is treated less favorably than another is, has been or would be treated. (2) As between any 2 persons, the discriminatory grounds (and the descriptions of those grounds for the purposes of this Act) are: (a) that one is a woman and the other is a man (in this Act referred to as ‘the gender ground’), (b) that they are of different marital status (in this Act referred to as ‘the marital status ground’), (c) that one has family status and the other does not (in this Act referred to as ‘the family status ground’), (d) that they are of different sexual orientation (in this Act referred to as ‘the sexual orientation ground’), (e) that one has a different religious belief from the other, or that one has a religious belief and the other has not (in this Act referred to as ‘the religion ground’), (f) that they are of different ages, but subject to subsection (3) (in this Act referred to as ‘the age ground’), (g) that one is a person with a disability and the other either is not or is a person with a different disability (in this Act referred to as ‘the disability ground’), (h) that they are of different race, color, nationality or ethnic or national origins (in this Act referred to as ‘the ground of race’), (i) that one is a member of the traveller community and the other is not (in this Act referred to as ‘the traveller community ground’). (3) Where: (a) a person has attained the age of 65 years, or (b) a person has not attained the age of 18 years, then treating that person more favorably or less favorably than another (whatever that other person’s age) shall not be regarded as discrimination on the age ground. (4) The Minister shall review the operation of this Act, within 2 years of the date of the coming into operation of this section, with a
view to assessing whether there is a need to add to the discriminatory grounds set out in this section. 54

Further, discrimination by employers is covered under Section 8: 8.(1) In relation to: (a) access to employment, (b) conditions of employment, (c) training or experience for or in relation to employment, (d) promotion or re-grading, or (e) classification of posts, an employer shall not discriminate against an employee or prospective employee and a provider of agency work shall not discriminate against an agency worker. (5) Without prejudice to the generality of subsection (1), an employer shall be taken to discriminate against an employee or prospective employee in relation to access to employment if the employer discriminates against the employee or prospective employee: (a) in any arrangements the employer makes for the purpose of deciding to whom employment should be offered, or (b) by specifying, in respect of one person or class of persons, entry requirements for employment which are not specified in respect of other persons or classes of persons, where the circumstances in which both such persons or classes would be employed are not materially different. (6) Without prejudice to the generality of subsection (1), an employer shall be taken to discriminate against an employee or prospective employee in relation to conditions of employment if, on any of the discriminatory grounds, the employer does not offer or afford to that employee or prospective employee or to a class of persons of whom he or she is one: (a) the same terms of employment (other than remuneration and pension rights), (b) the same working conditions, and (c) the same treatment in relation to overtime, shift work, short time, transfers, lay-offs, redundancies, dismissals and disciplinary measures, as the employer offers or affords to another person or class of persons, where the circumstances in which both such persons or classes are or would be employed are not materially different. (7) Without prejudice to the generality of subsection (1), an employer shall be taken to discriminate against an employee in relation to training or experience for, or in relation to, employment if, on any of the discriminatory grounds, the employer refuses to offer or afford to that employee the same opportunities or facilities for employment counseling, training (whether on or off the job) and work experience as the employer offers or affords to other employees, where the circumstances in which that employee and those other employees are employed are not materially different. (8) Without prejudice to the generality of subsection (1), an employer shall be taken to discriminate against an employee in relation to
promotion if, on any of the discriminatory grounds: (a) the employer refuses or deliberately omits to offer or afford the employee access to opportunities for promotion in circumstances in which another eligible and qualified person is offered or afforded such access, or (b) the employer does not in those circumstances offer or afford the employee access in the same way to those opportunities. 55

In addition, indirect discrimination is covered in Section 31: 31.(1) Where a provision (whether in the nature of a requirement, practice or otherwise) relating to employment: (a) applies to all the employees or prospective employees of a particular employer who include C and D or, as the case may be, to a particular class of those employees or prospective employees which includes C and D, (b) operates to the disadvantage of C, as compared with D, in relation to any of the matters specified in paragraphs (a) to (e) of section 8(1), (c) in practice can be complied with by a substantially smaller proportion of the employees or prospective employees having the same relevant characteristic as C when compared with the employees or prospective employees having the same relevant characteristic as D, and (d) cannot be justified as being reasonable in all the circumstances of the case, then ... for the purposes of this Act the employer shall be regarded as discriminating against C, contrary to section 8, on whichever of the discriminatory grounds gives rise to the relevant characteristics referred to in paragraph (c). 56 The Employment Equality Act makes the principle of 'equal pay for like work' a term of every employment contract. Proving 'like work' means showing that the work of the person claiming equal pay, the claimant, is the same, similar or equal in value to the work of the appropriate comparator, the person with whom the claimant is comparing himself. The comparator must, among other things, be employed by the same or an associated employer, at the same time or during the previous or following three years. Section 7(1) establishes like work: 7.(1) Subject to subsection (2), for the purposes of this Act, in relation to the work
which one person is employed to do, another person shall be regarded as employed to do like work if: (a) both perform the same work under the same or similar conditions, or each is interchangeable with the other in relation to the work, (b) the work performed by one is of a similar nature to that performed by the other and any differences between the work performed or the conditions under which it is performed by each either are of small importance in relation to the work as a whole or occur with such irregularity as not to be significant to the work as a whole, or (c) the work performed by one is equal in value to the work performed by the other, having regard to such matters as skill, physical or mental requirements, responsibility and working conditions. (3) In any case where: (a) the remuneration received by one person (‘the primary worker’) is less than the remuneration received by another (‘the comparator’), and (b) the work performed by the primary worker is greater in value than the work performed by the comparator, having regard to the matters mentioned in subsection (1)(c), then, for the purposes of subsection (1)(c), the work performed by the primary worker shall be regarded as equal in value to the work performed by the comparator. 57

Further, in guarding against discrimination, comparators in general are necessary as outlined under Section 28: 28.(1) For the purpose of this Part, ‘C’ and ‘D’ represent 2 persons who differ as follows: (g) in relation to the ground of race, C and D differ as to race, colour, nationality or ethnic or national origins or any combination of those factors; (h) in relation to the traveller community ground, C is a member of the traveller community and D is not, or vice versa. (2) In the following provisions of this Part, any reference to C and D which does not apply to a specific discriminatory ground shall be treated as a reference to C and D in the context of each of the discriminatory grounds (other than the gender ground) considered separately. 58

In addition, entitlement to equal remuneration is covered under Section 29: 29.(1) It shall be a term of the contract under which C is employed that, subject to this Act, C shall at any time be entitled to the same rate of remuneration for the work which C is employed to do as D who, at that or any other relevant time, is employed to do like work by the same or an associated employer. (3) For the purposes of this Part, where D’s employer is an associated employer of C’s employer, C and D shall not be regarded as employed to do like work unless they both have
the same or reasonably comparable terms and conditions of employment. (4) Where a term of a contract of employment or a criterion applied to employees (including C and D): (a) applies to all employees of a particular employer or to a particular class of such employees (including C and D), (b) is such that the remuneration of those who fulfil the term or criterion is different from that of those who do not, (c) is such that the proportion of employees who can fulfil the term or criterion is substantially smaller in the case of the employees having the same relevant characteristic as C when compared with the employees having the same relevant characteristic as D, and (d) cannot be justified as being reasonable in all the circumstances of the case, then, for the purposes of subsection (1), C and D shall each be treated as fulfilling or, as the case may be, as not fulfilling the term or criterion, whichever results in the higher remuneration. (5) Subject to subsection (4), nothing in this Part shall prevent an employer from paying, on grounds other than the discriminatory grounds, different rates of remuneration to different employees. 59 Important for elder rights, an equality clause is outlined under Section 30: 30.(1) If and so far as the terms of a contract of employment do not include (expressly or by reference to a collective agreement or otherwise) a nondiscriminatory equality clause, they shall be taken to include one. (2) A non-discriminatory equality clause is a provision relating to the terms of a contract of employment, other than a term relating to remuneration or pension rights, which has the effect that if: (a) C is employed in circumstances where the work done by C is not materially different from that done by D in the same employment, and (b) at any time C’s contract of employment would (but for the non-discriminatory equality clause): (i) contain a term which is or becomes less favorable to C than a term of a similar kind in D’s contract of employment, or (ii) not include a term corresponding to a term in D’s contract of employment which benefits D, then the terms of C’s contract of employment shall be treated as modified so that the term in question is not less favorable to C or, as the case may be, so that they include a similar term benefiting C. (3) A non-discriminatory equality clause shall not operate in relation to a difference between C’s contract of employment and D’s contract of employment if the employer proves that the difference is genuinely based on grounds which are not among those specified in paragraphs (a) to (h) of section 28(1). 60 Harassment in the workplace is covered under Section 32: 32.(1) If, at a place where C is employed (in this section referred to as ‘the workplace’), or otherwise in the course of C’s
employment, another individual ('E') harasses C by reference to the relevant characteristic of C and: (a) C and E are both employed at that place or by the same employer, (b) E is C’s employer, or (c) E is a client, customer or other business contact of C’s employer and the circumstances of the harassment are such that C’s employer ought reasonably to have taken steps to prevent it, then, for the purposes of this Act, the harassment constitutes discrimination by C’s employer, in relation to C’s conditions of employment, on whichever discriminatory ground is relevant to persons having the same relevant characteristic as C. (6) If, as a result of any act or conduct of E another person ('F') who is C’s employer would, apart from this subsection, be regarded as discriminating against C, it shall be a defence for F to prove that F took such steps as are reasonably practicable: (a) to prevent C being treated differently in the workplace or otherwise in the course of C’s employment and, if and so far as any such treatment has occurred, to reverse the effects of it, and (b) to prevent E from harassing C (or any class of persons of whom C is one).

Importantly, positive action for older workers is permitted as contained in Section 33, and in particular Section 33(1)(a): 33.(1) Nothing in this Part or Part II shall prevent the taking of such measures as are specified in subsection (2) in order to facilitate the integration into employment, either generally or in particular areas or a particular workplace, of: (a) persons who have attained the age of 50 years, (b) persons with a disability or any class or description of such persons, or (c) members of the traveler community. (2) The measures mentioned in subsection (1) are those intended to reduce or eliminate the effects of discrimination against any of the persons referred to in paragraphs (a) to (c) of that subsection. (3) Nothing in this Part or Part II shall render unlawful the provision, by or on behalf of the State, of training or work experience for a disadvantaged group of persons if the Minister certifies that, in the absence of the provision in question, it is unlikely that that disadvantaged group would receive similar training or work experience. 62 The Equality Authority has important legal powers, not to decide on disputes but to work generally for the elimination of discrimination and the
promotion of equal opportunities. It can develop Codes of Practice, carry out

equality reviews in particular employment, draw up Equality Action Plans, and

serve Substantive Notices. The Authority has broad powers to ensure the
development of a proactive equality-conscious approach to equal opportunities in

the workplace. The functions of the Equality Authority are outlined under Section

39: The Authority shall have, in addition to the functions assigned to it by any other provision of this Act or of any other Act, the following general functions:
(a) to work towards the elimination of discrimination in relation to employment; (b) to promote equality of opportunity in relation to the matters to which this Act applies. 63

The forum for seeking redress is covered under Section 77:

77.(1) A person who claims: (a) to have been discriminated against by another in contravention of this Act, (b) not to be receiving remuneration in accordance with an equal remuneration term, (c) not to be receiving a benefit under an equality clause, or (d) to have been penalized in circumstances amounting to victimization, may, subject to subsections (2) to (8), seek redress by referring the case to the Director. (2) If a person claims to have been dismissed: (a) in circumstances amounting to discrimination by another in contravention of this Act, or (b) in circumstances amounting to victimization, then, subject to subsection (3), a claim for redress for the dismissal may be brought to the Labor Court and shall not be brought to the Director. (3) If the grounds for such a claim as is referred to in subsection (1) or (2) arise: (a) under Part III, or (b) in any other circumstances (including circumstances amounting to victimization) to which the Equal Pay Directive or the Equal Treatment Directive is relevant, then ... the person making the claim may seek redress by referring the case to the Circuit Court, instead of referring it to the Director under subsection (1) or, as the case may be, to the Labor Court under subsection (2). (4) In this Part, in relation to a case referred under any provision of this section: (a) ‘the complainant’ means the person by whom it is referred, and (b) ‘the respondent’ means the person who is alleged
to have discriminated against the complainant or, as the case may be, who is responsible for providing the remuneration to which the equal remuneration term relates or who is responsible for providing the benefit under the equality clause or who is alleged to be responsible for the victimization. 64 Crucially, enforcement of determinations, decisions and mediated settlements is outlined under Section 91: 91.(1) If an employer or any other person who is bound by the terms of: (a) a final determination of the Labor Court under this Part, or (b) a final decision of the Director under this Part, fails to comply with the terms of the determination or decision then, on an application under this section, the Circuit Court shall make, subject to section 93, an order directing the person affected (that is to say, the employer or other person concerned) to carry out the determination or decision in accordance with its terms. (2) If an employer or the person who is a party to a settlement ... fails to give effect, in whole or in part, to the terms of the settlement, then, on an application under this section, the Circuit Court may make an order directing the person affected (that is to say, the employer or the person who is a party to the settlement) to carry out those terms or, as the case may be, the part of those terms to which the application relates; but the Circuit Court shall not, by virtue of this subsection, direct any person to pay any sum or do any other thing which (had the matter been dealt with otherwise than by mediation) could not have been provided for by way of redress .... (3) An application under this section may not be made before the expiry of: (a) in the case of a determination or decision, the period within which an appeal might be brought against the determination or decision, and (b) in the case of a settlement reached as a result of mediation, 42 days from the date of the written record of the settlement. (4) An application under this section may be made: (a) by the complainant, or (b) in a case where the Authority is not the complainant, then, by the Authority with the consent of the complainant if the Authority considers that the determination, decision or settlement is unlikely to be implemented without its intervention. (5) On an application under this section, the Circuit Court shall exercise its functions under subsection (1) or (2) on being satisfied: (a) of the existence and terms of the determination, decision or settlement, and (b) of the failure by the person affected to comply with those terms. (6) For the purposes of this section, a determination or decision is final if no appeal lies from it under this Part or if the time for bringing an appeal has expired and
either: (a) no appeal has been brought, or (b) any appeal which was brought has been abandoned. (7) Without prejudice to the power of the Circuit Court to make an order for costs in favor of the complainant or the person affected, where an application is made by the Authority by virtue of subsection (4)(b), the costs of the Authority may be awarded by the Circuit Court. (8) The jurisdiction conferred on the Circuit Court by this section shall be exercised by the judge for the time being assigned to the circuit where the respondent ordinarily resides or carries on any profession, business or occupation. 65

Equal Status Act

Important for elder rights, under the Equal Status Act (2000), discrimination is outlined in Section 3, and in particular Sections 3(2)(f) and 3(3): 3.(1) For the purposes of this Act, discrimination shall be taken to occur where: (a) on any of the grounds specified in subsection (2) (in this Act referred to as ‘the discriminatory grounds’) which exists at present or previously existed but no longer exists or may exist in the future, or which is imputed to the person concerned, a person is treated less favorably than another person is, has been or would be treated, (b) (i) a person who is associated with another person is treated, by virtue of that association, less favorably than a person who is not so associated is, has been or would be treated, and (ii) similar treatment of that person on any of the discriminatory grounds would, by virtue of paragraph (a), constitute discrimination, or (c) (i) a person is in a category of persons who share a common characteristic by reason of which discrimination may, by virtue of paragraph (a), occur in respect of those persons, (ii) the person is obliged by the provider of a service … to comply with a condition (whether in the nature of a requirement, practice or otherwise) but is unable to do so, (iii) substantially more people outside the category than within it are able to comply with the condition, and (iv) the obligation to comply with the condition cannot be justified as being reasonable in all the circumstances of the case. (2) As between any two persons, the discriminatory grounds (and the descriptions of those grounds for the purposes of this Act) are: (a) that one is male and the other is female (the ‘gender ground’), (b) that they are of different marital status (the ‘marital status ground’), (c) that one has family status and the other does not or that one has a different family status from the other (the ‘family status ground’), (d) that they are of
different sexual orientation (the ‘sexual orientation ground’), (e) that one has a different religious belief from the other, or that one has a religious belief and the other has not (the ‘religion ground’), (f) that they are of different ages (the ‘age ground’), (g) that one is a person with a disability and the other either is not or is a person with a different disability (the ‘disability ground’), (h) that they are of different race, color, nationality or ethnic or national origins (the ‘ground of race’), (i) that one is a member of the Traveller community and the other is not (the ‘Traveller community ground’), (j) that one: (i) has in good faith applied for any determination or redress provided for in Part II or III, (ii) has attended as a witness before the Authority, the Director or a court in connection with any inquiry or proceedings under this Act, (iii) has given evidence in any criminal proceedings under this Act, (iv) has opposed by lawful means an act which is unlawful under this Act, or (v) has given notice of an intention to take any of the actions specified in subparagraphs (i) to (iv), and the other has not (the ‘victimization ground’).

3) Treating a person who has not attained the age of 18 years less favourably or more favourably than another, whatever that other person’s age, shall not be regarded as discrimination on the age ground.

Section 5 provides for non-discrimination as to age in the disposal of goods and services:

5.(1) A person shall not discriminate in disposing of goods to the public generally or a section of the public or in providing a service, whether the disposal or provision is for consideration or otherwise and whether the service provided can be availed of only by a section of the public. (2) Subsection (1) does not apply in respect of: (c) differences in the treatment of persons on the gender ground in relation to services of an aesthetic, cosmetic or similar nature, where the services require physical contact between the service provider and the recipient, (d) differences in the treatment of persons in relation to annuities, pensions, insurance policies or any other matters related to the assessment of risk where the treatment: (i) is effected by reference to: (I) actuarial or statistical data obtained from a source on which it is reasonable to rely, or (II) other relevant underwriting or commercial factors, and (ii) is reasonable having regard to the data or other relevant factors, (e) differences in the treatment of persons on the religion ground in relation to goods or
services provided for a religious purpose, (f) differences in the treatment of persons on the gender, age or disability ground or on the basis of nationality or national origin in relation to the provision or organization of a sporting facility or sporting event to the extent that the differences are reasonably necessary having regard to the nature of the facility or event and are relevant to the purpose of the facility or event, (h) differences in the treatment of persons in a category of persons in respect of services that are provided for the principal purpose of promoting, for a bona fide purpose and in a bona fide manner, the special interests of persons in that category to the extent that the differences in treatment are reasonably necessary to promote those special interests, (i) differences in the treatment of persons on the gender, age or disability ground or on the ground of race, reasonably required for reasons of authenticity, aesthetics, tradition or custom in connection with a dramatic performance or other entertainment, or (l) differences, not otherwise specifically provided for in this section, in the treatment of persons in respect of the disposal of goods, or the provision of a service, which can reasonably be regarded as goods or a service suitable only to the needs of certain persons. 67 Certain measures are not prohibited under Section 14: 14. Nothing in this Act shall be construed as prohibiting: (a) the taking of any action that is required by or under: (i) any enactment or order of a court, (ii) any act done or measure adopted by the European Union, by the European Communities or institutions thereof or by bodies competent under the Treaties establishing the European Communities, or (iii) any convention or other instrument imposing an international obligation on the State, or (b) preferential treatment or the taking of positive measures which are bona fide intended to: (i) promote equality of opportunity for persons who are, in relation to other persons, disadvantaged or who have been or are likely to be unable to avail themselves of the same opportunities as those other persons, or (ii) cater for the special needs of persons, or a category of persons, who, because of their circumstances, may require facilities, arrangements, services or assistance not required by persons who do not have those special needs. 68

Further, certain activities are not considered discrimination under Section 15: 15.(1) For greater certainty, nothing in this Act prohibiting discrimination shall be construed as requiring a person to dispose of goods or premises, or to provide services or accommodation
or services and amenities related to accommodation, to another person (‘the customer’) in circumstances which would lead a reasonable individual having the responsibility, knowledge and experience of the person to the belief, on grounds other than discriminatory grounds, that the disposal of the goods or premises or the provision of the services or accommodation or the services and amenities related to accommodation, as the case may be, to the customer would produce a substantial risk of criminal or disorderly conduct or behavior or damage to property at or in the vicinity of the place in which the goods or services are sought or the premises or accommodation are located. 69 Importantly, redress in respect of prohibited grounds is covered under Section 21: 21.(1) A person who claims that prohibited conduct has been directed against him or her may, subject to this section, seek redress by referring the case to the Director. (2) Before seeking redress under this section the complainant: (a) shall, within 2 months after the prohibited conduct is alleged to have occurred, or, where more than one incident of prohibited conduct is alleged to have occurred, within 2 months after the last such occurrence, notify the respondent in writing of: (i) the nature of the allegation, (ii) the complainant’s intention, if not satisfied with the respondent’s response to the allegation, to seek redress by referring the case to the Director, and (b) may in that notification, with a view to assisting the complainant in deciding whether to refer the case to the Director, question the respondent in writing so as to obtain material information and the respondent may, if the respondent so wishes, reply to any such questions. (3) If, on application by the complainant, the Director is satisfied: (a) that exceptional circumstances prevented the complainant from notifying the respondent in accordance with subsection (2), and (b) that it is just and equitable, having regard to the nature of the alleged conduct and to any other relevant circumstances, that the period for doing so should be extended beyond the period of 2 months provided for in that subsection, the Director may direct that, in relation to that case, subsection (2) shall have effect as if for the reference to 2 months there were substituted a reference to such period not exceeding 4 months as is specified in the direction; and where such a direction is given, this Part shall have effect accordingly. (4) The Director shall not investigate a case unless he or she is satisfied either that the respondent has replied to the notification or that at least one month has elapsed after it was sent to
the respondent. (5) The Minister may by regulations prescribe the form to be used by a complainant and respondent for the purposes of subsection (2). (6) Subject to subsection (7), a claim for redress in respect of prohibited conduct may not be referred under this section after the end of the period of 6 months from the date of the occurrence of the prohibited conduct to which the case relates or, as the case may be, the date of its most recent occurrence. (7) If, on application by the complainant, the Director is satisfied that exceptional circumstances prevented the complainant's case from being referred within the time limit specified in subsection (6): (a) the Director may direct that, in relation to that case, subsection (6) shall have effect as if for the reference to a period of 6 months there were substituted a reference to such period not exceeding 12 months as is specified in the direction, and (b) where such a direction is given, this Part shall have effect accordingly.

Finally, mediation is provided for under Section 24:
24.(1) Subject to subsection (2), if at any time after a case has been referred to the Director under section 21 it appears to the Director that the case is one which could be resolved by mediation, the Director shall refer the case for mediation to an equality mediation officer. (2) If the complainant or the respondent objects to a case being dealt with by way of mediation, the Director shall not exercise his or her powers under this section.... (3) Mediation shall be conducted in private. (4) Where a case referred under section 21 is resolved by mediation (a) the equality mediation officer concerned shall prepare a written record of the terms of the settlement, (b) the written record of the terms of the settlement shall be signed by the complainant and the respondent, (c) the equality mediation officer shall send a copy of the written record, as so signed, to the complainant and the respondent, and (d) a copy of the written record shall be retained by the Director. (5) If, after a case has been referred to an equality mediation officer that the case cannot be resolved by mediation, the officer shall issue a notice to that effect to the complainant and the respondent.

Conclusion

Due to the overall legislation, employer behaviour has changed in countries with anti-discrimination laws in that explicit discrimination,
especially in recruitment,

has reduced. However, society’s and employers’ attitudes to older workers do not

yet appear to have shifted as much as towards groups such as women and people

from minority ethnic communities, where legislative protection has, generally,

operated for longer. Discriminating against workers on the basis of their age can

be unfair to individuals and harmful to the economy. In particular, the assumption

that someone is ‘too old’ to be sufficiently adaptable to do a job as well as a

younger person wastes talent and potential in many workplaces. At a time when

populations are ageing, the economic cost of age discrimination is likely to grow. Overall, more emphasis needs to be given to ‘age proofing’ systems of

promotion and higher-level recruitment, and to encouraging career development for

any age in the United Kingdom and Ireland. As age monitoring of posts,

recruitment and promotion would be useful, action is needed both to encourage all

ages, including older workers to develop their careers and to remove obstacles in

their paths. The principle is that redressing this inequality is a shared responsibility

by all aspects of government stakeholders in age analysis, planning and training.

The State’s accountability for violations committed by private actors has long been

an important debate. This will be of critical relevance to Commonwealth
governments and the Secretariat as part of their continuing priority work in the area of democracy, rule of law, and human rights. The increased participation of all, especially seniors at decision-making levels in conflict prevention, mediation and resolution is vital, in the pursuit of Just a Number.

Notes
1 Employers Forum on Age (EFA), Age Discrimination, The Basics.
2 Ibid.
4 Ibid., at Regulation 3.
5 Ibid., at Regulation 4.
6 Ibid., at Regulation 5.
7 Ibid., at Regulation 6.
8 Ibid., at Regulation 7.
9 Ibid., at Regulation 8.
10 Ibid., at Regulation 9.
11 Ibid., at Regulation 10.
12 Ibid., at Regulation 11.
13 Ibid., at Regulation 12.
14 Ibid.
15 Ibid., at Regulation 23.
16 Ibid., at Regulation 25.
17 Ibid., at Regulation 26.
18 Ibid., at Regulation 27.
19 Ibid., at Regulation 29.
20 Ibid., at Regulation 30.
21 Ibid., at Regulation 31.
22 Ibid., at Regulation 32.
23 Ibid., at Regulation 35.
24 Ibid., at Regulation 36.
25 Ibid., at Regulation 37.
26 Ibid., at Regulation 41.
27 Ibid., at Regulation 38.
28 Ibid., at Regulation 44.
30 Ibid., at Paragraph 2.
31 Ibid., at Paragraph 3.
32 Ibid., at Paragraph 4.
33 Ibid., at Paragraph 5.
34 Ibid., at Paragraph 6.
36 Ibid., at Paragraph 8.
37 Ibid., at Paragraph 10.
38 Ibid., at Paragraph 11.
39 Ibid., at Paragraph 13.
40 Equal Pay Act, UK, at Section 1(3).
41 Ibid., at Section 2(1).
42 Equal Opportunities Commission, Code of Practice on Equal Pay, UK.


44 Race Relations Act, UK, at Section 71(1).

45 Race Relations Act (Statutory Duties) Order 2001, UK, at Section 5; Race Relations Act (Statutory Duties) Order 2003, UK, at Section 4.

46 Sex Discrimination Act, UK, at Section 1.

47 Ibid., at Section 6(2).

48 Ibid., at Section 7.

49 Disability Discrimination Act, UK.

50 Ibid.

51 Ibid., at Section 4.

52 Ibid., at Section 5.

53 Ibid., at Section 6.

54 Employment Equality Act, Ireland, at Section 6.

55 Ibid., at Section 8.

56 Ibid., at Section 31.

57 Ibid., at Section 7.

58 Ibid., at Section 28.

59 Ibid., at Section 29.

60 Ibid., at Section 30.

61 Ibid., at Section 32.

62 Ibid., at Section 33.

63 Ibid., at Section 39.

64 Ibid., at Section 77.
65 Ibid., at Section 91.
66 Equal Status Act, Ireland, at Section 3.
67 Ibid., at Section 5.
68 Ibid., at Section 14.
69 Ibid., at Section 15.
70 Ibid., at Section 21.
71 Ibid., at Section 24.
Employers Forum on Age (EFA), Age Discrimination, The Basics.
Equal Opportunities Commission, Code of Practice on Equal Pay, UK.
Hornstein, Zmira, Outlawing age discrimination: Foreign lessons, UK choices, The
Policy Press.
Race Relations Act 1976, UK.
9 Just a Number in the European Union


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