Draft laid before Parliament under paragraph 2 of Schedule 2 to the European Communities Act 1972 for approval by resolution of each House of Parliament

DRAFT STATUTORY INSTRUMENTS

2006 No. 0000

EMPLOYMENT AND TRAINING

AGE DISCRIMINATION

The Employment Equality (Age) Regulations 2006

Made - - - -	*2006*
Coming into force - -	*1st October 2006*

A draft of these Regulations was laid before Parliament in accordance with paragraph 2 of Schedule 2 to the European Communities Act 1972(**1**), and was approved by resolution of each House of Parliament;

The Secretary of State, who is a Minister designated for the purposes of section 2(2) of the European Communities Act 1972 in relation to discrimination(**2**), makes the following Regulations in exercise of the powers conferred by section 2(2):—

PART 1

GENERAL

Citation, commencement and extent

1.—(1) These Regulations may be cited as the Employment Equality (Age) Regulations 2006, and shall come into force on 1st October 2006.

(2) Any amendment, repeal or revocation made by these Regulations has the same extent as the provision to which it relates.

(3) Subject to that, these Regulations do not extend to Northern Ireland.

Interpretation

2.—(1) In these Regulations, references to discrimination are to any discrimination falling within regulation 3 (discrimination on grounds of age), regulation 4 (discrimination by way of victimisation)

(**1**) 1972 c. 68.
(**2**) See the European Communities (Designation) (No. 3) Order 2002 (S.I. 2002/1819).

or regulation 5 (instructions to discriminate) and related expressions shall be construed accordingly, and references to harassment shall be construed in accordance with regulation 6 (harassment on grounds of age).

(2) In these Regulations—

"1996 Act" means the Employment Rights Act 1996(**3**);

"act" includes a deliberate omission;

"benefit", except in regulation 11 and Schedule 2 (pension schemes), includes facilities and services;

"commencement date" means 1st October 2006;

"Crown employment" means —

(a) service for purposes of a Minister of the Crown or government department, other than service of a person holding a statutory office; or

(b) service on behalf of the Crown for purposes of a person holding a statutory office or purposes of a statutory body;

"detriment" does not include harassment within the meaning of regulation 6;

"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;

"Great Britain" includes such of the territorial waters of the United Kingdom as are adjacent to Great Britain;

"Minister of the Crown" includes the Treasury and the Defence Council;

"proprietor", in relation to a school, has the meaning given by section 579 of the Education Act 1996(**4**);

"relevant member of the House of Commons staff" means any person who was appointed by the House of Commons Commission or who is a member of the Speaker's personal staff;

"relevant member of the House of Lords staff" means any person who is employed under a contract of employment with the Corporate Officer of the House of Lords;

"school", in England and Wales, has the meaning given by section 4 of the Education Act 1996(**5**), and, in Scotland, has the meaning given by section 135(1) of the Education (Scotland) Act 1980(**6**), and references to a school are to an institution in so far as it is engaged in the provision of education under those sections;

"service for purposes of a Minister of the Crown or government department" does not include service in any office mentioned in Schedule 2 (Ministerial offices) to the House of Commons Disqualification Act 1975(**7**);

"statutory body" means a body set up by or in pursuance of an enactment, and "statutory office" means an office so set up; and

"worker" in relation to regulations 32 and 34 and to Schedule 2, means, as the case may be—

(**3**) 1996 c. 18.
(**4**) 1996 c. 56; section 579 has been amended on a number of occasions. The relevant amendments for the purposes of these Regulations were those made by section 140(1) of, and paragraph 183(a)(iii) of Schedule 30 to, the School Standards and Framework Act 1998 (c. 31) and regulation 3 of S.I. 2003/2045.
(**5**) Section 4 was amended by section 51 of the Education Act 1997 (c. 44) and Part 3 of Schedule 22 to the Education Act 2002 (c. 32).
(**6**) 1980 c. 44.
(**7**) 1975 c. 24; Schedule 2 was amended by the Scotland Act 1998 (c. 46), sections 48(6) and 87(1) and Schedule 9, and by S.I. 2002/794.

(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 these Regulations references to "employer", in their application to a person at any time seeking to employ another, include a person who has no employees at that time.

Discrimination on grounds of age

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.

Discrimination by way of victimisation

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.

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.

Harassment on grounds of age

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 effect.

PART 2

DISCRIMINATION IN EMPLOYMENT AND VOCATIONAL TRAINING

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**).

Exception for genuine occupational requirement etc

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

(**8**) Section 98ZH of the 1996 Act is inserted into that Act by regulation 49 of, and paragraph 23 of Schedule 8 to, these Regulations.