

Age Discrimination (No. 2) Bill

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TO

Make it unlawful to discriminate against persons on grounds of age in connection with employment, or the provision of goods and services; to establish an Age Equality Commission with the function of working towards the elimination of such discrimination and promoting age equality generally; and for connected purposes.

BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows—

PART 1

AGE DISCRIMINATION

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1 Proactive duty and meaning of discrimination

(1) There shall be a duty on public authorities to promote age equality in employment practices and delivery of services, and 'age equality' shall be taken to mean equal treatment of persons irrespective of age.

(2) Discrimination shall be taken to occur—

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(a) where one person is treated less favourably than another is, has been or would be treated in a comparable situation, in circumstances set out in sections 2 to 7, or

(b) where a provision, criterion or practice would put persons of a particular age at a particular disadvantage compared with other persons unless that provision, criterion or practice is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary.

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2 Employment

- (1) It is unlawful for an employer to discriminate against a person on grounds of age—
- (a) in the arrangements which he makes for the purpose of determining to whom he should offer employment; 5
 - (b) in the terms on which he offers that person employment; or
 - (c) by refusing to offer, or deliberately not offering, him employment for a reason related to age.
- (2) It is unlawful for an employer to discriminate on grounds of age against a person whom he employs— 10
- (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 for a reason related to his age; or 15
 - (d) by dismissing him, or subjecting him to any other detriment for a reason related to his age.
- (3) It is unlawful for a principal, in relation to contract work, to discriminate against a person on grounds of age—
- (a) in the terms on which he allows him to do that work; 20
 - (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 omitting to afford him access to them; or
 - (d) by subjecting him to any other detriment for a reason related to his age.
- (4) It is an offence to publish or cause to be published an advertisement for employment which specifies an actual or preferred upper age limit for a job. 25
- (5) Subsections (1) to (4) shall not apply where, by reason of the nature of the particular occupational activities concerned, or of the context in which they are carried out, a particular age requirement constitutes a genuine and determining occupational requirement, provided that the objective is legitimate and the requirement is proportionate. 30

3 Retirement age

It is unlawful for employers to set a normal retirement age in contracts of employment, unless there is an objective justification, such as linkage to an occupational pension schemes agreed by consent between the parties. 35

4 Trade organisations

- (1) It is unlawful for a trade organisation to discriminate against a person on grounds of age—
- (a) in the terms on which it is prepared to admit him to membership of the organisation; or 40
 - (b) by refusing to accept, or deliberately not accepting, his application for membership.

- (2) It is unlawful for a trade organisation to discriminate against a member on grounds of age—
- (a) in the way it affords him access to any benefits or by refusing or deliberately omitting to afford him access to them;
 - (b) by depriving him of membership, or varying the terms on which he is a member; or
 - (c) by subjecting him to any other detriment.

5 Qualifying bodies

It is unlawful for an authority or body which can confer an authorisation or qualification which is needed for, or facilitates engagement, in a particular profession or trade to discriminate against a person on grounds of age, in the terms on which it is prepared to confer on her that authorisation or qualification, or by refusing or deliberately omitting to grant his application for it, or by withdrawing it from him or varying the terms on which he holds it.

6 Partnerships

It is unlawful for a firm, in relation to a position as partner in the firm, to discriminate against a person on grounds of age in the arrangements it makes for the purpose of determining who should be offered that position, or in the terms on which it offers him that position, or by refusing or deliberately omitting to offer him that position, or in the way that access is afforded to any benefits, facilities or services, or by refusing or deliberately omitting to afford him access to them, or by expelling him from that position, or subjecting her to any other detriment.

7 Goods and services

- (1) It is unlawful for a provider of goods or services to discriminate against a person on grounds of age—
- (a) in refusing to provide, or deliberately not providing, any service which he provides, or is prepared to provide, to members of the public;
 - (b) in the standard of service which he provides to the person or the manner in which he provides it to him;
 - (c) in the terms on which he provides a service to the person; or
 - (d) in setting upper age limits for receipt of services.
- (2) Subsection (1) shall not apply where, by reason of the nature of the particular service concerned, or of the context in which the service is carried out, a particular age requirement constitutes a genuine service requirement, provided that the objective is legitimate and the requirement is proportionate.

8 Enforcement

- (1) A claim by any person that another person has discriminated against him under section 2(1) to (4) may be presented to an industrial tribunal.

- (2) Where an industrial tribunal finds that a complaint presented to it under this section is well-founded, it shall take such of the following steps as it considers just and equitable—
 - (a) making a declaration as to the rights of the complainant and the respondent in relation to the matters to which the complaint relates; 5
 - (b) ordering the respondent to pay compensation to the complainant;
 - (c) recommending that the respondent take, within a specified period, action appearing to the tribunal to be reasonable, in all the circumstances of the case, for the purpose of obviating or reducing the adverse effect on the complainant of any matter to which the complaint relates. 10
- (3) Where a tribunal orders compensation under subsection (2)(b), the amount of the compensation shall be calculated by applying the principles applicable to the calculation of damages in claims in tort or in reparation for breach of statutory duty. 15
- (4) For the avoidance of doubt it is hereby declared that compensation in respect of discrimination in a way which is unlawful under this Act may include compensation for injury to feelings whether or not it includes compensation under any other head.
- (5) If the respondent to a complaint fails, without reasonable justification, to comply with a recommendation made by an industrial tribunal under subsection (2)(c) the tribunal may, if it thinks it just and equitable to do so—
 - (a) increase the amount of compensation required to be paid to the complainant in respect of the complaint, where an order was made under subsection (2)(b); or 25
 - (b) make an order under subsection (2)(b).
- (6) A claim by any person that another person has discriminated against him in a way which is unlawful under section 7(1) may be made the subject of civil proceedings in the same way as any other claim in tort or in reparation for breach of statutory duty. 30

PART 2

AGE EQUALITY COMMISSION

9 Age Equality Commission

- (1) There shall be a body known as the Age Equality Commission.
- (2) The Commission shall— 35
 - (a) work towards the elimination of discrimination on grounds of age and promote age equality;
 - (b) monitor implementation of duties under this Act;
 - (c) advise the Secretary of State on the promotion of age equality amongst employers and service providers, and on all matters relating to age discrimination; 40

- (d) advise the Secretary of State on the preparation of Codes of Practice for businesses, voluntary organisations and public sector organisations on elimination of age discrimination;
 - (e) make proposals or give other advice as appropriate to any Minister of the Crown, Government Agency or public authority as to any aspect of the law or a proposed change to the law, and keep the Age Discrimination Act under review; 5
 - (f) undertake, or arrange for or support (whether financially or otherwise), the carrying out of research or the provision of advice or information.
- (3) *The Secretary of State shall pay to the Commission such sums as he thinks fit to enable it to meet its expenses.* 10
- (4) The Schedule (Further provision about the Age Equality Commission) has effect.

10 Formal investigation

- (1) The Commission may decide to conduct a formal investigation for any purpose connected with the performance of its duties under subsection (2) or if directed to do so by the Secretary of State for any such purpose. 15
- (2) If in the course of a formal investigation the Commission is satisfied that a person has committed or is committing an unlawful act, it may serve on him a notice (referred to in this Act as a non-discrimination notice) which— 20
- (a) gives details of the unlawful act which the Commission has found that he has committed or is committing; and
 - (b) requires him not to commit any further unlawful acts of the same kind (and if the finding is that he is committing an unlawful act, to cease doing so). 25
- (3) The notice may include recommendations to the person concerned as to action which the Commission considers he could reasonably be expected to take with a view to complying with the requirement mentioned in subsection (2)(b).
- (4) The notice may require the person concerned to propose an adequate action plan with a view to securing compliance and once an action plan proposed by him has become final, to take any action which is specified in the plan. 30
- (5) An action plan is a document drawn up by the person concerned specifying action (including action he has already taken) intended to change anything in his practices, policies, procedures or other arrangements which— 35
- (i) caused or contributed to the commission of the unlawful act concerned; or
 - (ii) is liable to cause or contribute to a failure to comply with the requirement mentioned in subsection (3)(b).
- (6) An action plan is adequate if the action specified in it would be sufficient to ensure, within a reasonable time, that he is not prevented from complying with that requirement by anything in his practices, or other arrangements; and the action specified in an action plan may include ceasing an activity or taking continuing action over a period. 40

11 Assistance in relation to proceedings

- (1) Where the individual concerned applies to the Commission for assistance in relation to any proceedings to which this section applies, the Commission may grant the application on any of the following grounds—
 - (a) that the case raises a question of principle; 5
 - (b) that it is unreasonable to expect the applicant to deal with the case unaided (because of its complexity, because of the applicant's position in relation to another party or for some other reason);
 - (c) that there is some other special consideration which makes it appropriate for the Commission to provide assistance. 10
- (2) If the Commission grants an application, it may—
 - (a) provide or arrange for the provision of legal advice;
 - (b) arrange for legal or other representation (which may include any assistance usually given by a solicitor or counsel);
 - (c) seek to procure the settlement of any dispute; 15
 - (d) provide or arrange for the provision of any other assistance which it thinks appropriate;
 - (e) assist in proceedings which an individual has brought or proposes to bring under section 7 of the Human Rights Act 1998.
- (3) Subsection (2)(b) does not affect the law and practice as to who may represent a person in relation to proceedings. 20

12 Exercise of Commission's functions

The Commission may authorise any employee of the Commission to exercise such of its functions under sections 10 and 11 as it may determine.

13 Expenses 25

There shall be paid out of money provided by Parliament any expenditure incurred by the Secretary of State by virtue of this Act.

14 Repeals

Section 109 of the Employment Rights Act 1996 is hereby repealed.

15 Short title, commencement and extent 30

- (1) This Act may be cited as the Age Discrimination Act 2002.
- (2) This Act (apart from this section) shall come into force on such day as the Secretary of State shall by order appoint; and different days may be appointed for different purposes.
- (3) This Act extends to England and Wales only. 35

SCHEDULE

Section 9

FURTHER PROVISION ABOUT THE AGE EQUALITY COMMISSION

Status

- 1 (1) The Commission is a body corporate.
- (2) The Commission is not the servant or agent of the Crown, it does not enjoy any status, immunity or privilege of the Crown and its property is not to be regarded as property of or as held on behalf of the Crown. 5

Membership

- 2 (1) The Commission shall consist of not less than 10 and not more than 15 commissioners appointed by the Secretary of State.
- (2) The Secretary of State may appoint as a commissioner a person of any age group above the age of majority. 10

Tenure of office of commissioners

- 3 (1) A commissioner shall hold and vacate office in accordance with the terms of his appointment.
- (2) A person shall not be appointed a commissioner for less than two or more than five years; but a person who has served as a commissioner may be reappointed. 15
- 4 A commissioner may resign by notice in writing to the Secretary of State.
- 5 The Secretary of State may terminate the appointment of a commissioner if satisfied that—
- (a) without the consent of the chairman he has failed to attend meetings of the Commission during a continuous period of six months beginning not earlier than nine months before the termination; 20
- (b) he has become bankrupt, has had his estate sequestrated or has made a composition or arrangement with, or granted a trust deed for, his creditors; or 25
- (c) he is otherwise unable or unfit to carry out his functions as a commissioner.

Tenure of office of chairman and deputy chairmen

- 6 (1) The Secretary of State shall appoint one commissioner as chairman of the Commission and either one or two other commissioners as deputy chairmen. 30
- (2) The Secretary of State shall exercise his powers of appointment under this paragraph with a view to securing that at least one of the persons holding office as chairman or deputy chairman is a person over sixty five years of age.
- 7 A person appointed as chairman or deputy chairman—

- (a) shall hold and vacate that office in accordance with the terms of his appointment,
- (b) may resign that office by notice in writing to the Secretary of State, and
- (c) shall cease to hold that office if he ceases to be a commissioner. 5

Remuneration, pensions etc. of commissioners

- 8 The Commission may—
- (a) pay to any commissioner such remuneration or expenses; and
 - (b) pay, or make provision for the payment of, such sums by way of pensions, allowances or gratuities to or in respect of any commissioner, 10
as the Secretary of State may determine.
- 9 If the Secretary of State determines that there are special circumstances which make it right that a person who has ceased to be a commissioner should receive compensation, the Secretary of State may direct the Commission to pay that person such sum by way of compensation as the Secretary of State may determine. 15

Staff

- 10 (1) The Commission shall have—
- (a) a chief executive appointed by the Commission, subject to the approval of the Secretary of State; and 20
 - (b) such other employees as the Commission may appoint, subject to the approval of the Secretary of State as to numbers and terms and conditions of service.
- (2) The first appointment of chief executive shall be made by the Secretary of State. 25
- 11 (1) Employment with the Commission shall be included among the kinds of employment to which a scheme under section 1 of the Superannuation Act 1972 (c. 11) may apply, and accordingly in Schedule 1 to that Act (in which those kinds of employment are listed) at the end of the list of Royal Commissions and other Commissions there shall be inserted— 30
“Age Equality Commission.”
- (2) The Commission shall pay to the Minister for the Civil Service, at such times as he may direct, such sums as he may determine in respect of the increase attributable to sub-paragraph (1) in the sums payable out of money provided by Parliament under that Act. 35

Proceedings etc.

- 12 (1) The Commission may regulate its own procedure (including quorum).
- (2) The quorum for meetings of the Commission shall in the first instance be determined by a meeting of the Commission attended by at least five commissioners. 40

- 13 The validity of any proceedings of the Commission is not affected by a vacancy among the commissioners or by a defect in the appointment of a commissioner.

Delegation

- 14 (1) The Commission may authorise any committee of the Commission or any commissioner to exercise such of its functions (other than functions relating to the conduct of a formal investigation) as it may determine. 5
- (2) This paragraph does not affect any power of the Commission to authorise its employees to do anything on its behalf.

Accounts 10

- 15 (1) The Commission shall—
- (a) keep proper accounts and proper records in relation to the accounts,
 - (b) prepare a statement of accounts in respect of each accounting year, and
 - (c) send copies of the statement to the Secretary of State and the Comptroller and Auditor General not later than the 31st August following the end of the accounting year to which it relates. 15
- (2) The Comptroller and Auditor General shall examine, certify and report on the statement of accounts and shall lay copies of the statement and of his report before each House of Parliament. 20
- (3) The Commission's accounting year is the twelve months ending with 31st March.
- (4) The Commission's first accounting year shall be the period of not more than 12 months beginning with the Commission's establishment and ending with 31st March. 25

Annual reports

- 16 (1) As soon as practicable after the end of each accounting year the Commission shall submit to the Secretary of State a report on its activities during that year.
- (2) The report shall include (among other things)— 30
- (a) a report on anything done by the Commission, in the performance of its functions under section 2(1)(a) to (c), jointly or otherwise in co-operation with any other organisation;
 - (b) a general survey of developments in matters within the scope of the Commission's functions; and 35
 - (c) proposals for the Commission's activities in the current year.
- (3) The Secretary of State shall lay a copy of the report before Parliament and arrange for such further publication of it as he considers appropriate.

List of consultees

- 17 (1) The Commission shall maintain a list of the organisations it has consulted generally for the purposes of any of its functions.
- (2) An organisation may be removed from the list if it has not been consulted generally in the 12 months preceding its removal.
- (3) The Commission shall make the list available to the public in whatever way it considers appropriate (subject to any charge it may impose).

Age Discrimination (No. 2) Bill

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B I L L

To make it unlawful to discriminate against persons on grounds of age in connection with employment, or the provision of goods and services; to establish an Age Equality Commission with the function of working towards the elimination of such discrimination and promoting age equality generally; and for connected purposes.

Presented by Mr Paul Burstow

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