



# 1. Five years on: what impact have the Employment Equality (Age) Regulations had?

## *B c o n d*

On 1 October 2006, the Employment Equality (Age) Regulations (referred to as 'the Regulations' throughout) came into force, ostensibly giving people aged 65 and above the same employment rights as people in other age groups. This included access to redress for unfair and constructive dismissal and, of course, making discrimination on grounds of age, either direct or indirect, illegal. The Regulations were transposed into the Equality Act 2010.

The Regulations did, however, contain an anomaly. The Default Retirement Age (DRA), allowed employers to force employees to retire, whether employees agreed or not, thereby ensuring that employment rights failed to progress. We believe this has significantly restricted the positive impact of the Regulations.

So on the fifth anniversary of the Regulations' introduction, what impact have they had? Has the employment field for older workers been transformed, and have employers made significant changes to their behaviour en masse?

## *A c a n n a c c*

The existing research evidence suggests that employer policies and practices have changed in a small, but positive way since 2005. However, in many areas the change is marginal, and so the effect of the Regulations has been minimal. This is explored in more detail in Section 3.

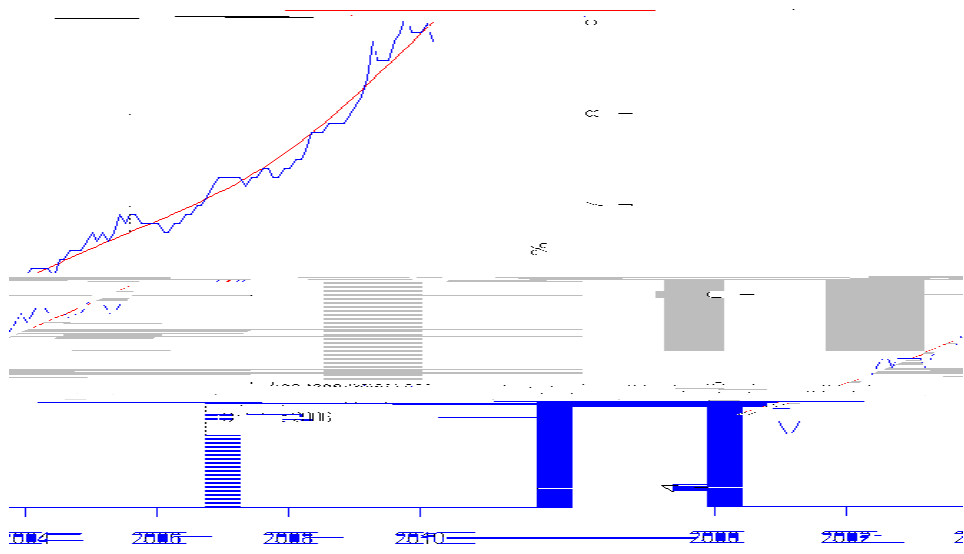
There is little doubt that the continued existence of the Default Retirement Age (DRA) has restricted the improvements made. As a result employers have lacked incentive to invest time and effort in developing more age friendly practices, leading many to

We are, however, optimistic that in the post-DRA world greater proliferation of age-friendly employment practices will occur.

International comparisons show that legislation has a vital role to play in fostering good practice and changing attitudes. It can act as a catalyst for change.<sup>i</sup>



### Employment rates



Research conducted at the time of the Regulations being introduced found that a majority of employers were aware of the impending legislation, and mindful of the potential effects on their business. However, in most cases this would not necessitate a dramatic change in attitudes or policies aimed at older workers.<sup>iv</sup> Therefore, the small change in practices over the years following the Regulations' introduction is broadly what we would expect, especially when considering the macroeconomic situation for 65+ employment rates.

The latter is supported by more recent research conducted in 2006/7 (published in 2009), which found:

*'Over the course of the project awareness of age-discrimination legislation tended to grow a little, and it may send a useful signal to the general public in the medium-to-longer term – but it has not so far transformed the widespread feeling that the employment situation is likely to remain difficult for people around retirement age.'*<sup>v</sup>

It is possible, although speculative, that the 2008-9 recession restricted the number of employers who altered their attitudes and practices.

In order to get a fuller picture of the change in practice, it is necessary to break down different aspects of employer practice and policy.

Also included in the boxes throughout are brief summaries of some of the key legal cases with a relevance to older workers.

### **The default retirement age and its impact**

The most notable aspect of the Regulations contained provision for the introduction of a national 'default retirement age' (DRA). This gave employers an exemption to the rest of the Regulations, justifying the removal of 65+ workers on grounds of retirement, provided a set process was followed.

This aspect of the Regulations directly undermined all the other safeguards given to older workers, and represented an unfair and one-sided employment practice. In spite of an appeals process, the reality was that if an employer wanted to remove someone from their workforce they could do so unimpeded, therefore there was in effect still virtually no employment protection for this age group.

However, in January 2011 the Government confirmed it would abolish the DRA. Since 5 April 2011 employers have no longer been able to issue forced retirement notices, and the DRA will effectively be consigned to the history books from April next year.<sup>vi</sup>

This change was warmly welcomed by Age UK.

The introduction of the DRA had a number of different impacts on employers, depending on how it was interpreted. Research by Flynn (2010) demonstrates examples of varied interpretations<sup>vii</sup>, including:

- Some managers thought they had to establish written policies about retirement, so introduced a fixed retirement age.
- Conversely, others found there was now no need to use a retirement age as the DRA could be relied upon.
- Others thought that 65 was the only point at which employees could be forcibly retired, so began removing everyone at this age even where before the organisation had no forced retirement policy.
- In some instances a formal retirement policy was designed and implemented, even if this did not explicitly use the DRA.
- Line managers were often responsible for interpreting and implementing bespoke responses in applying the DRA.

It should be noted that there are few instances of employers embarking on this with malice or in an attempt to victimise their older workers from spite. The vast majority acted in good faith based on their own interpretations of the Regulations, even where this turned out to be erroneous.

Therefore, the business need to have a DRA must be seriously questioned in the vast majority of cases.

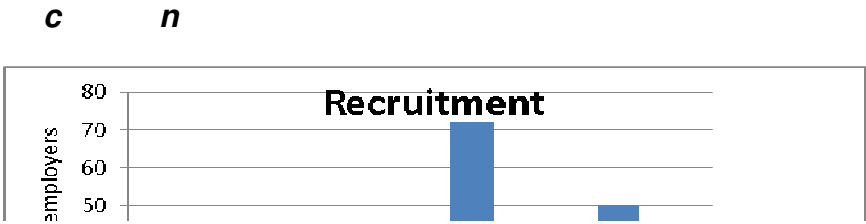
Flynn finds that 'by explicitly allowing employers to choose whether or not to retain older workers, the regulations have removed any pressure employers might have faced to change their retirement policies.' It is clear that any positive impact on employer behaviour is severely compromised with the DRA in operation.

### **Pre- and post-Regulations comparison**

Although small, the Regulations have had an observable impact on employers' policies and practices. In 2005 in preparation for the introduction of the Age

These two surveys provide the best comparative overview of attitudinal change available. The following sections break this down, issue by issue, and draw primarily although not exclusively on the two SEPPPs. The figures showing the change on particular issues are all from these surveys, and are summarised in Table 1 at the end of the section.

The Chartered Institute for Personnel and Development and the Chartered Management Institute also produced a point of comparison for some parts of the employment cycle in their 2010 *Managing an ageing workforce* survey report.<sup>x</sup> As this focuses on members of the two professional bodies, it may not be fully representative of all managers across the workforce. Some figures from this are used here too for comparative purposes.



Stereotypes about older workers still prevail, and Age UK's employment projects around the country all find many examples of negative attitudes towards their clients.

There are several examples of issues in recruitment showing no or even negative change, including:

- Maximum recruitment age shows no change from before the introduction of the Regulations. Employers still appear to have approximately the same attitudes towards factors taken into consideration: for instance, 43 per cent stated that expected length of service affected recruitment decisions in both 2006 and 2010.
- The number of employers considering qualifications has in fact risen over the



regulations, suggesting that considerably more work needs to be done to combat stereotypes for older (and younger) workers.

The chart above shows the distribution within age groups the employers have seen an increase among age groups than others. There has been an increase among

induced behavioural change and so is a positive sign that at least employers have taken notice of the Regulations.

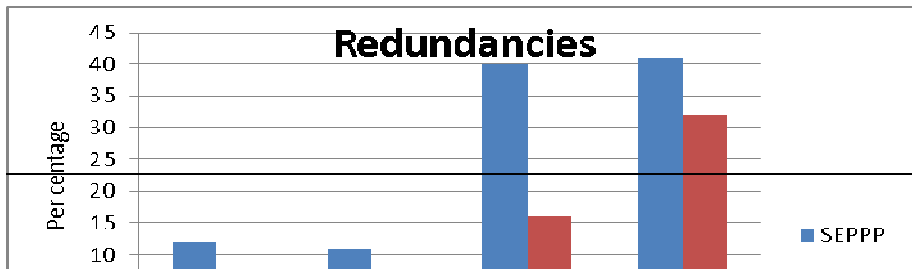
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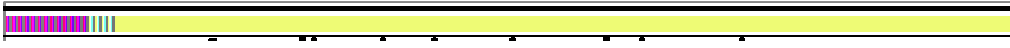


Over the period since the introduction of the Regulations there has been a slight homogenisation of pay levels within an employer. Only

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## 6. Policy recommendations

- The desired cultural change among employers will not achieve itself. The Government must continue to work with employers and trade bodies to persuade them of the benefits to an age positive approach.
- The end of the DRA represents an excellent opportunity to restate 'age-positive' messages to employers. The Age Positive campaign should be stepped up at this crucial time.
- International examples of good practice should be recognised and promoted.
- Employers must take the steps to prepare their policies and practices for the ageing workforce. The key message that 'preparation is everything' must not be lost.
- The Government must work closely with the Equality and Human Rights Commission, ACAS and organisations like Age UK in order to reach as many employers and individuals as possible.
- Anti-discrimination legislation is a vital part of creating the necessary cultural change and should not, under any circumstances, be compromised or watered down. There is no evidence whatsoever it is detrimental to employers.
- The Government should work to ensure that discriminatory behaviour can be punished through the tribunals system and the courts. Some of the proposed changes to the tribunal system are likely to make this harder to achieve.<sup>xvii</sup>
- With the possibility of a shift towards greater discrimination on grounds of health and disability, the Government should ensure that sufficient back-to-work support is in place for ex-Incapacity Benefit claimants found fit for work. This includes through Jobcentre Plus and Work Programme contractors, and by communicating with employers to reduce discrimination in recruitment.

## 7. Conclusion

The Employment Equality (Age) Regulations 2006 have therefore had a marginal but mostly positive impact on employment practices for older workers. As a first step this is encouraging, but Age UK would have hoped for greater progress to be made after five years. However, the effect the Regulations were able to exert was severely hampered by the existence of the Default Retirement Age.

There is contrary evidence on whether attitudes are changing. While employers appear to be aware of the broad agenda, there is little movement to put changes into practice. There is some encouraging evidence about employers valuing their older workers – recent DWP research found 91 per cent agree older workers bring skills and benefits to their business<sup>xviii</sup> and this is borne out by the CIPD/CMI research. However, the attitudinal research included in the SEPPP2 survey, shown in Section 3, found that the over 50s are still less well regarded than other age groups, and the situation has got worse since 2006.

Nevertheless, Age UK is optimistic that in the post-DRA world, cultural change towards greater

## References

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- <sup>i</sup> Wood A, Robertson M & Wintersgill D (2010), A comparative review of international approaches to mandatory retirement, DWP Research Report 674
- <sup>ii</sup> We used a Chow test to evaluate statistically whether employment rates changed following the introduction of the Regs, and the result showed there was no difference.
- <sup>iii</sup> Metcalfe H & Meadows P (2010), Second survey of employers' policies, practices and preferences relating to age, DWP Research Report 682
- <sup>iv</sup> McNair S, Flynn M, Dutton N (2007), Employer responses to an ageing workforce: a qualitative study, DWP Research Report 455.
- <sup>v</sup> Hedges A, Sykes W & Groom C (2009), Extending working life: changing the culture – qualitative research into effective messages, DWP Research Report 557
- <sup>vi</sup> Although it is still possible for an employee and employer to negotiate a six-month extension, in which event the final retirement date could be set at 5 October 2012. We expect such arrangements to be rare.
- <sup>vii</sup> Flynn M (2010), The United Kingdom government's 'business case' approach to the regulation of retirement, *Ageing & Society*, vol.30 p.421-443
- <sup>viii</sup> Metcalfe H & Meadows P (2006), Survey of employers' policies, practices and preferences relating to age, DWP Research Report 325
- <sup>ix</sup> Metcalfe H & Meadows P (2010), Second survey of employers' policies, practices and preferences relating to age, DWP Research Report 682
- <sup>x</sup> CIPD/CMI (2010), Managing an ageing workforce: how employers are adapting to an ageing workforce
- <sup>xi</sup> DWP (2011) Older worker statistical bulletin
- <sup>xii</sup> Flynn M (2010), The United Kingdom government's 'business case' approach to the regulation of retirement, *Ageing & Society*, vol.30 p.421-443
- <sup>xiii</sup> Felstead A (2010), The importance of teaching old dogs new tricks: training and learning opportunities for older workers, in Parry E and Tyson S (2010), *Managing an Ageing Workforce*
- <sup>xiv</sup> CIPD/CMI (2010), Managing an ageing workforce
- <sup>xv</sup> Error due to rounding
- <sup>xvi</sup>