

**EQUALITY AND DIVERSITY:
*AGE MATTERS***

AGE CONSULTATION 2003

SUMMARY OF RESPONSES

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INTRODUCTION

1. The “Age Matters” consultation took place from 2 July to 20 October 2003. It sought views on the Government’s proposals and options for age legislation in Great Britain. We are grateful for the responses submitted.

2. The Office of First and Deputy First Minister carried out a similar consultation in Northern Ireland between 6 October 2003 and 23 January 2004. The consultation document entitled “Promoting Equality of Opportunity – Prohibiting Age Discrimination in Employment and Training” together with a summary of the NI responses is available at www.ofmdfmi.gov.uk/equality.

3. This paper provides a summary of the Age Matters responses. It does not provide a Government response to the consultation – that will be set out when Government consults on draft Regulations in 2005. Nor does it include any Government reaction to specific points that have been raised. The figures and narrative represent a combination of individual and institutional responses. It is not possible to say exactly how many employers or employees these represent, nor to infer anything about the views of the general population from the responses. It does, however, help us to understand the issues that face all groups in relation to the implementation of age legislation.

4. This report follows the order of the Age Matters consultation document. Each chapter provides:

- a numerical breakdown of responses by question, followed by;
- an account of the views expressed on the proposals set out in each chapter, including the views expressed in the free responses.

5. A large number of responses did not follow the format of the response form (138 in total). These tended to set out general views, without always answering the specific questions in the consultation document. Those responses have been taken account of in this report and are what we call the “free” responses. It is these free responses which make up most of the narrative in the following report.

6. Unless respondents have requested confidentiality on the response form, they have been named in the following report, where appropriate. However, this report reflects all views. A list of those organisations and employers who publicly responded to this consultation, and agreed to be identified, is set out at **Annex A**

7. Even where confidentiality is not an issue, not every respondent is cited in relation to every view they have expressed. This is because many responses have repeated views already discussed by others. In general, those who are cited include organisations and employers who represent a large number of members or employees. Small businesses were also represented, either through a representative organisation or an individual response. We feel it is important to set these views out as they not only represent a large number of views, but also play a key role in the effective development of age legislation.

NUMBERS OF RESPONSES

1. The Age Matters consultation document was sent to: members of the Age Advisory Group including CBI, TUC, Third Age Employment Network, Age Concern England and Cymru, Society of Chief Personnel Officers, The Chartered Management Institute, Employers Forum on Age, British Chambers of Commerce, Small Business Service, and Chartered Institute of Personnel ; stakeholders who we have identified as having an interest in this area, including those who had responded to the first consultation on age - *Towards Equality and Diversity*; those individuals, organisations, and employers who have expressed an interest in age since work began on implementing the Employment Directive in 2001.

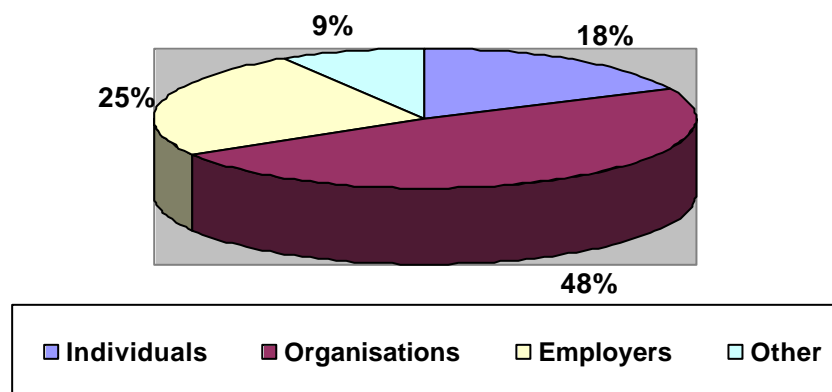
2. In total, over 5,000 hard copies of the Age Matters consultation document were sent out (including 150 Welsh language versions). The document was also available online and received more than 15,000 hits during the July to October consultation period.

3. 427 responses were received in total. Of these:

- 289 were submitted on the Age Matters response form;
- 138 reports or free responses were received from employers or organisations.

4. Of the 427 responses received:

- 77 were from individuals;
- 207 were on behalf of an organisation;
- 106 were from an employer;
- 37 were submitted as other or are unknown.



Responses by sector

5. A wide selection of small and large organisations took part in the consultation, and responses were received from a variety of sectors:

Is your organisation	%
A Local Authority	11.8
A voluntary organisation of, or for, younger people	1.4
A voluntary organisation of, or for, older people	12.2
A statutory body	4.1
A Government Department or Agency (please tick box & describe)	7.2
An organisation representing employers	13.1
A professional association	10.9
A trade union/staff association	13.1
A university	4.9
A college of further education	0.9
Other training provider	0.9
Other ¹	19.5

If responding as an employer which sector best describes you:	%
Electricity, gas and water supply	2.3
Construction and/or building design	3
Communications	2.3
Wholesale and retail trade	6
Distribution / Transport	1.2
Financial and/or business services	14.3
Legal services	6
Advice and/or information services	6
Public administration	15.5
Education / training	13.7
Health and social work	0.6
Charity / voluntary work	9
Other ²	19.8

¹ Where respondents have specified what "other" is, this includes: school; voluntary organisation for all ages; public sector; private healthcare; small business; HE college; law centre; insurer; charity; retail; representative organisation; recruitment agency; service provider; fire service; law centre; church; solicitors;

² Where respondents have specified what "other" is, this includes: food and drink manufacturer; fire and rescue; health provider; local authority; police; consultancy; live in care agency; commercial defence; employment agency; museum; library; emergency service.

OUTLAWING AGE DISCRIMINATION (AGE MATTERS - CHAPTER 3)

“Age discrimination in employment and vocational training will be unlawful from October 2006. The law will give new rights to workers and to people who apply for work. Direct and indirect discrimination will be prohibited. Employers and people who provide vocational training, including further and higher education institutions, will have new obligations. Exceptionally, differences of treatment, or exceptions to the general rule of non-discrimination may be possible, but only where they are objectively justified by reference to specific aims and are appropriate and necessary.”

Numerical data

Q5 (a)	Do you think there are practices other than those listed in paragraph 3.15 of the consultation document that employers should be able to justify in certain circumstances?	%	No.
	Yes	40.5	115
	No	45.1	128
	No strong feelings either way	14.4	41
		TOTAL:	284

Q5 (b)	Do you agree with the specific aims in paragraph 3.15 of the consultation document which might justify differences of treatment?	%	No.
	Yes	65.6	187
	No	28.4	81
	No strong feelings either way	6	17
		TOTAL:	285

Q5(c)	Do you think there are other aims which might justify differences of treatment:	%	No.
	Yes	40.1	112
	No	42.3	118
	No strong feelings either way	17.6	49
		TOTAL:	279

Account of responses

1. The proposals to outlaw age discrimination were welcomed by all respondents. However, responses set out a range of concerns about the impact of the legislation in relation to the interests of the parties concerned, which were both positive and negative.
2. It was clear from a number of responses that legislation that will allow for the justification of direct age discrimination was not only a difficult concept to accept, but was also a complex area to understand in itself. Generally, those who had considered the specific aims had asked for greater clarification on the processes that will be used for justifying age based practices. The responses indicated uncertainty around the level of evidence needed to justify a difference of treatment.
3. Help the Aged raised concerns around the concept of anti-discrimination legislation that will allow direct discrimination. The Third Age Employment Network (TAEN) believed that the current pattern of working lives and careers no longer justifies using age as a direct criterion in employment planning.

4. The Equality Commission of Northern Ireland was concerned at what it regarded as the use of a 'less favourable treatment' approach, which has been adopted in other implementing regulations. Noting that the consultation document does not propose a specific definition for 'direct discrimination' on age grounds, it believed the government's stated approach was inappropriate for age discrimination cases and recommended one that is based on the 'disadvantage on the grounds of age'.

5. Age Concern England said that any justification was unacceptable if it was linked to an objective that was itself "tainted by age discrimination", for example the modelling of clothes aimed at a specific age group, or a "trendy" bar which wanted to recruit only young and attractive staff. It was opposed in principle to the use of explicitly age-based practices, as these failed to value people of all ages equally, and asked for government to clarify the processes that would be used for justifying age-based rules. Age Concern Scotland questioned why differences of treatment may be permissible in relation to age discrimination, yet not for any other equality strand.

6. The views collated by the Chartered Management Institute indicated that members asked that the principles governing the justification of differences of treatment by employers were clarified from the government's current broad position. There was also concern amongst managers about the level of evidence needed to justify such differences of treatment.

7. The issue of over-regulation was raised by Employers Forum on Age (EFA) among others. There was concern that, although employers recognised that the basic premise of the legislation was positive, employers and employees are likely to resent the legislation if it is seen to disrupt standard practice greatly. Small businesses were seen as being at particular risk from the proposed changes. Meanwhile, one manufacturing employer suggested that the consultation concentrated too much on the proposals for retirement ages, at the detriment of the other issues, which would lead to an unintended consequence of reducing opportunities for school leavers at the lower end of the age spectrum.

8. There was broad agreement amongst employers and employer organisations that the specific aims set out at paragraph 3.15 of the consultation document were sufficient. However, TUC's response did not support any of the suggested aims other than the example of health and safety protection for younger workers. There were suggestions for additional legitimate aims to be included. Financial services employers requested that, with regard to products aimed at specific age groups, they should be able to use employees with corresponding ages. Responses from the travel industry also wanted to see a similar exemption with regard to the marketing of holidays to specific age groups. Additionally, companies operating graduate recruitment schemes would like to continue these, but feared indirect age discrimination.

9. A representative employer from the manufacturing industry suggested that the "meeting of skill shortages" should be included as a specific aim in the legislation. Skill shortages were claimed to be a serious problem for the manufacturing industry, which is experiencing an increasing higher age profile, a situation exacerbated by difficulties in recruiting young people into that industry.

10. Local government asked for specific aims to be included to allow them to represent the community they served. Manchester City Council felt that local government should be able to justify differences of treatment where there were conflicting initiatives and obligations placed on the Council, such as Positive Action initiatives, which they believed were based on genuine occupational requirements. Dacorum Borough Council adopted a similar position on this matter, adding that legislation which enabled older workers to continue in employment would reduce employment opportunities for people being helped by local government to (re)enter the job market through economic development opportunities.

11. There was a commonly held view amongst a number of employers and employer organisations that differences of treatment should include a specific aim relating to health and safety requirements needed for the job, i.e. when an employee's physical ability to perform the tasks is declining. Alternatively, the West Midlands Employment and Low Pay Unit felt that differences of treatment would not need to be justified on health and safety grounds, as existing health and safety legislation would be sufficient to regulate this matter. The Public and Commercial Services Union (PCS) called for employers to make use of occupational health support, rehabilitation, and work adjustments and to take account of the health and safety needs of older workers.

12. With regard to the training and education aspect of the consultation, Age Concern England asked that the Department for Education and Skills should review upper age limits on learning opportunities. This view was supported by the Association of Retired and Persons Over 50 who also felt that the prohibition of grants and student loans to those over 54 appeared to contradict the proposed legislation's purpose. The Policy Research Institute on Ageing and Ethnicity, having researched the opinions of black and minority ethnic elders, called for the abolition of the upper age limit of 54 for student loans in higher education. There were no comments from employers and employer organisations with regard to the implications of age legislation upon vocational training.

13. The Institute of Directors discussed a specific example where an employer paid for one of its employees to study for an Open University degree. Their view was it would be unreasonable for the employer to be required to pay for this if the employee was to retire shortly after having completed the course, thereby denying the employer the opportunity to recoup the cost of this training. Legal and General believed the long-term training and development for a particular role was an issue in terms of the length of time the employee would be in the role before retirement was required to justify the cost of training. Aegon UK recommended the introduction of a "golden handcuff", whereby, expensive or time-consuming training would be linked with an employee committing to a specific period of employment.

14. EFA raised the scenario where a qualification, which was a specific requirement for a post, had only been in place for a short period and this could be seen to disadvantage older people who are less likely to have it. They suggested that the consequences of legislation needed clarification in relation to advertising for a recruit with a particular number of years experience in a relevant field.

15. The T&G Union set out its view that the lower rate of the National Minimum Wage for workers aged 18 to 21 is age discriminatory. PCS did not believe this was justifiable under the Directive. This was further discussed by the West Midlands Employment and Low Pay Unit, who pointed out that those who are 16-17 are currently excluded altogether. The Royal Mail Group also considered that age legislation would have an effect on the government's National Minimum Wage policy.

16. A number of union responses (e.g. Amicus, the Scottish Trades Union Congress, PCS, UNIFI) believed that anti-age discrimination should be extended to provide protection in relation to facilities, goods and services, as well as employment. The National Assembly for Wales, the Equality and Diversity Forum and the Institute for Public Policy Research (amongst others) also took this position, with the latter two going further by calling for protection to be extended to unpaid workers. Similarly, the Employment Relations Unit supported this view and asked whether the legislation should additionally cover people seeking or undertaking work experience.

RETIREMENT AGE (AGE MATTERS – CHAPTER 4)

“Retirement ages that employers set for employees will be unlawful under the Directive, unless they can be objectively justified. We are seeking views on whether the legislation should provide for employers, exceptionally, to be able to justify mandatory retirement ages according to their own circumstances and by reference to specific aims. We are also asking for comments on a default retirement age of 70 at or after which employers could require employees to retire.”

Numerical data

Q6(a)	How powerful a signal do you think abolition of mandatory retirement age would send?		
	Response	%	No.
	Positive (powerful and welcome)	61.7	166
	Negative	38.3	103
	TOTAL:		269

Q6(b)	If the legislation made mandatory retirement ages unlawful, to what extent do you think employers and employees would be unable to agree on when an employee would retire?		
	Response	%	No.
	Positive (not a problematic issue)	31.7	85
	Negative	68.3	183
	TOTAL:		268

Q6(c)	Employers would only be able exceptionally to justify retiring employees on age grounds, or dismiss them for other fair reasons such as on failing competence grounds or as part of a non-age based redundancy measure. What do you think would be the implications and effect of this?		
	Response	%	No.
	Positive (welcome this)	30.9	81
	Negative (seen as problematic)	69.1	181
	TOTAL:		262

Q6(d)	Do you think that the aims set out in paragraph 3.15 are sufficient for employers to justify their particular retirement age?		
		%	No.
	Yes	46.7	128
	No	39.1	107
	No strong feelings either way	14.2	39
	TOTAL:		274

Q6(e)	Do you think there are other reasons that might justify requiring someone to retire at a set age?	%	No.
	Yes	38.1	107
	No	44.1	124
	No strong feelings either way	17.8	50
	TOTAL:		281

Q6(f)	Should the Government specify a default retirement age at which employers would be able to require employees to retire?	%	No.
	Yes	51.8	145
	No	42.9	120
	No strong feelings either way	5.4	15
	TOTAL:		280

Q6(g)	Should the Government specify 70 as the default retirement age?	%	No.
	Yes	24.4	66
	No	64.9	176
	No strong feelings either way	10.7	29
	TOTAL:		271

Q6(h)	If you are an employer do you think you would rely on the default age of 70?	%	No.
	Yes	50.8	94
	No	40.5	75
	No strong feelings either way	8.6	16
	TOTAL:		165

Q6(i)	If you are an employer do you think you would set a higher retirement age?	%	No.
	Yes	7	13
	No	82.4	154
	No strong feelings either way	10.7	20
	TOTAL:		187

Account of responses

1. A number of responses demonstrated confusion about retirement ages – some already believe that there is a national compulsory retirement age, and that this was the state pension age. For the purposes of this report, the bullet points below set out what we mean by the following terms:

- default retirement age describes the age, which would be set out in the regulations, from which employers would be able to retire their employees compulsorily without having to justify their decision by reference to legitimate aims. (In any legal case brought by an employee required to retire at the default age it would be for the Government to justify the retirement age);

- mandatory retirement age is the age that an employer has set for the retirement of employees. (In a case brought by an employee who had been required to retire at the mandatory age the burden of justification would be on the employer);
- both a default retirement age and a mandatory retirement age are forms of compulsory retirement. The expression "compulsory retirement" in this paper should, therefore, be taken to cover all forms of enforced retirement.

2. The majority of employers and employer organisations supported the principle of abolishing the right to impose a compulsory retirement age on the grounds that it was age discriminatory. That said, this majority position appeared to be based on the expectation that the government would at the same time introduce a default retirement age. Most employers believed a default retirement age would help alleviate their concerns and expectations if compulsory retirement ages were abolished.

3. Most employers and employer organisations, across a range of industries (from retail to public sector and manufacturing), expected a significant increase in tribunal claims. A survey by the Chartered Management Institute found that 60% of responding employers held this view, that if they could not require an employee to retire at a particular age, that employee might feel they had nothing to lose by pursuing a complaint of unfair dismissal.

4. Employers and employer organisations also felt that the abolition of compulsory retirement age with no default retirement age would lead to a situation where celebrating retirement was replaced by employers forcing out loyal members of staff using 'convoluted' methods (these were usually no more specifically defined as introducing a more robust performance appraisal system). That said, there were significant concerns (particularly from the CBI and all small business organisations) that a rush to implement systems would aggravate employment relations. Employers and employer organisations anticipated the cost implication to be very high. For instance, the CBI referred to the experience in the United States (where retirement ages have been abolished), resulting in a total of 76% of all discrimination cases being on unfair dismissal.

5. A concern voiced by a number of employers and employer organisations (most notably EFA), was that of job blocking and of the subsequent consequence where an employer would not be able to retain talented younger employees due to not being able to retire older employees on age grounds. This situation was also expected to worsen during times of recession.

6. There was a further belief that any investment made in training younger employees with skills needed for positions of higher responsibility would be "wasted" if older employees remained in post, thereby encouraging younger employees to take their skills elsewhere. The fear of legal action was also raised by some employers and employer organisations, such that younger employees might feel (indirectly) discriminated against on age grounds if they were refused training or development opportunities due to more skilled and experienced older employees being able and willing to remain in post due to the absence of a legally permissible compulsory retirement age. This was a view most strongly held by manufacturing and local government employers, due to the specific skills deployed by these industries.

7. Most employers and employer organisations felt that, if there was neither a mandatory nor a default retirement age, there would be few incentives for individuals with declining health, who were off sick or may be off sick in the future, to choose to retire. Responses raised a concern that a 'sick note culture' would develop as a result of employees assuming they would be forced to work longer. It was felt that these individuals would then expect to be paid off by an employer who wanted them to leave when performance management systems identified poor performance.

8. The majority of employers and employer organisations believed that effective performance management systems were not well developed in Britain – particularly amongst small businesses. This issue was a concern for the CBI, which cited the experience of employers who had abolished compulsory retirement ages and who had subsequently seen an increase in the dismissal of long-serving and loyal employees on performance grounds, when they would have previously been celebrating their retirement. Certainly many employer organisations believed that, without the ability to retire people compulsorily, this would lead to a situation where an increasing number of employees performed badly. It was felt that this would place enormous pressure on employers, particularly where employees were not performing badly enough to warrant dismissal on performance grounds. CBI further discussed their concern that there would be a rush to implement performance management systems resulting in procedures that were not robust. That said, there was recognition by the Age Concern Consultation Service’s focus groups that the price of age equality in the workplace would mean employees who were retained over 65 would be subject equally to the same disciplinary procedures as younger employees.

9. A majority concern of employers and employer organisations was based around increased costs being incurred as a result in the ‘downgrading’ or removal of pay and non-pay benefits (including insurance and pensions). In a survey carried out by the EFA, the potential impact on pensions was the number one concern for 92% of employers. This was borne out of an assumption that employees would either feel forced to, or wish to, work beyond the current ages that they can access an occupational pension. If this is the case, it was felt that there would be significant cost implications of an increase in the number of ill health retirements (and tribunal claims), which employers believed would inevitably happen with an older workforce. Therefore, there was a significant call for a default retirement age to be set no higher than the current state pension age (65). If this did not happen, employers felt they would be forced to increase the entitlement age to their occupational pension scheme. The consequence would be that, in the future, employees retiring before the default retirement age (if higher than the current state pension age) would receive actuarially reduced pensions.

10. On health insurance, most employers expected their private health insurance bills to increase significantly if they had to extend cover to employees over the age of 65. To clarify, the issue here was not about the unavailability of insurance at higher ages, but rather the incremental hikes in the cost of premiums. The CBI considered that without a default retirement age in line with the current state pension age, employers would have to offer benefits to every employee. As this may be impossible or unreasonably costly, the most likely result for some employers would be to remove benefits for everyone.

11. Amongst employers and employer organisations, there was little support for the view that a default retirement age was unnecessary. That said, neither the Royal Bank of Scotland, Aegon UK, nor the Institute of Directors expected to see a major upheaval as they felt that the numbers of people wishing to work beyond current compulsory retirement ages would be manageable (a gradual removal of such ages was, however, urged). This positive opinion was supported by observations from the Equality and Diversity Forum, which noted that the experience of UK companies and other countries that have abolished compulsory retirement ages, demonstrated that the retirement process could reasonably be managed satisfactorily without a default retirement age.

12. Only a forum of retail employers and a nationwide retailer directly stated a preference against a default retirement age for reasons of workforce flexibility unlimited by age restrictions of any kind. The retailer added that their older employees had brought noticeable qualities to the teams they worked in. The Royal Bank of Scotland recommended that the removal of compulsory retirement ages should be phased in gradually. However, in general, it did not foresee any major upheaval if the setting of retirement ages became unlawful, as it believed that, in the current social climate, the numbers of people wishing to work beyond 60 would be manageable. It expected only a small number of grievances where employers and

employees would not agree and believed that employers would bolster performance management processes as a result.

13. More direct opposition to both the right to impose a compulsory retirement age and the introduction of a default retirement age was expressed by all those organisations representing older people (including all Age Concern responses, TAEN, and low pay units). It was felt that compulsory retirement ages and a default retirement age contradicted the basic premise that a date of birth is not a sound basis for any employment decision. These organisations were universally opposed to the use of compulsory retirement ages as they were seen as reducing the likelihood of reforms by employers of outdated, age-based practices. Similarly, they did not believe it legally tenable for any employer to justify successfully a mandatory retirement age using the aims of health, welfare and safety or the facilitation of employment planning. Furthermore, the introduction of a default retirement age was strongly opposed, as it would allow any employer to impose a compulsory retirement age without justification, provided that it was at or above the default retirement age. The consequences of the proposals to replace the right to impose a compulsory retirement age with a default retirement age were seen as merely endorsing continued age discrimination.

14. The universal position stated in Trade Union submissions was that a default retirement age was legally and morally untenable. The TUC stated that they were firmly opposed to a national default retirement age of any age, as they thought it severely undermined the underlying objective of the legislation of tackling age discrimination. These responses also tended to focus on the implications for pensions. BALPA (a professional association for UK airline pilots), noted its opposition to a default retirement age and felt that a higher 'normal retirement age' would merely encounter the same problems and inconsistencies as a lower one.

15. The PCS Union called for employers to provide suitable pensions if they wanted people to retire at a particular age – a default retirement age should not then be set. The Association of University Teachers did not accept the consultation document's argument for a national, 'fixed' default retirement age at any age, as there was a fear that it would have the effect of encouraging employers to reduce the benefits of their pension schemes and delay their receipt. Amicus was opposed to setting a default retirement age at 70, as they felt that this would encourage employers to reduce pension benefits currently available at the state pension age of 65. Similarly, the T&G stated that, if there is to be a default retirement age, it should be 65 "as now", adding that government proposals on this matter were "driven more for Government economic reasons than age discrimination".

16. The T&G Union also set out that a move to a default retirement age beyond age 65 would mean that manual workers were likely to have to continue to work due to the poverty expected in retirement. The T&G Union was joined by the FDA, Unison and GMPU in believing that a default retirement age at 70 would appear to be the first move towards making state pension payable at 70. Indeed the GMPU Union believed there was a precedent: it pointed out that, following the government's change to the state pension age for women to 65, this led to an industry-wide reduction in benefits for women.

17. Both the Scottish Trades Union Congress and the PCS Union called for a flexible decade of retirement between the ages of 60 and 70, which would allow individuals to make a choice based on their own circumstances instead of an arbitrary fixed age.

18. The responses from legal and employment law organisations said they believed that the government would have difficulty in justifying a default retirement age. Furthermore, they also felt that, should a default retirement age be introduced, employers were likely to apply a blanket approach and dismiss all employees as soon as they reached the default age.

19. There were also equal opportunity concerns raised by relevant agencies with regard to abolishing the right to impose a compulsory retirement age and introducing a default retirement age. The Equal Opportunities Commission led on the view that there was a

gender equality aspect to this issue. On average, a woman's retirement income is 53% of a man's. Therefore any legislation and initiatives that help to increase women's income after the state pension age were welcome. That said, the emphasis here was on advocating a universal basic state pension set at a level above the poverty line, available to all at state pension age. This would then prevent women (and men) from feeling 'forced' to work longer in order to avoid poverty in retirement.

20. Employers and employer organisations put forward reasons for using a compulsory retirement age. These included keenly emphasised assertions from Fire Service employers about health and safety concerns. These employers currently have compulsory retirement ages for operational employees, which they continued to view as appropriate in terms of competence and physical ability (even public perception).

21. Concerns were raised around insurance costs potentially increasing in the absence of compulsory retirement ages. The broad view expressed here was that government needed to intervene so that insurance companies offered flexibility where age restrictions currently applied.

22. The position amongst the majority of employers and employer organisations was to favour the introduction of a default retirement age, in principle, provided that it was set at no more than age 65 (or state pension age). Responses indicated that this was a workable alternative if compulsory retirement ages were abolished but justifiable, and reflected a policy that both large and small businesses could work with. The consensus appeared to be that employers would be able to develop flexibility that suited their particular situation. The CBI suggested it would be sensible to review this policy after legislation had bedded down (perhaps after 5 years). This was not just in terms of workforce planning, but also to maintain pay and non-pay benefits as they currently existed, which are based on compulsory retirement ages or the state pension age.

23. The issue of staff morale was also a concern to employers and employer organisations, and a chief one amongst small businesses. It was felt that setting a default retirement age at more than the state pension age would send out a signal that the higher age would be the norm in future and state pension entitlement would be changed to reflect this.

24. A majority of manufacturing/engineering employers and employer organisations believed that a default retirement age should be limited to 65, as any expectation to work beyond this age would be too demanding where manual work was concerned. One employer took an exceptional view on the issue of introducing a default retirement age at 65, referring to a trend in other European Union (EU) countries where an effective retirement age at 65 had been adopted and sought consistency - both in terms of labour mobility and competitive disadvantage. The Better Regulation Task Force also wanted to see the UK set a default retirement age of 65 in line with what they saw as a European trend, stating that harmonisation of default retirement ages would avoid creating a competitive disadvantage between the UK and other EU member states.

25. Responses amongst employers and employer organisations set out other positions. One such organisation felt that a default retirement age had the potential to support and encourage a more diverse workforce. The British Chambers of Commerce believed it necessary and beneficial to "set an end point to the employment relationship". The Royal Bank of Scotland thought that having a retirement age, rather than an open-ended contract, helped both the individual and organisational workforce planning. A large retailer stated that they would use a default retirement age introduced by legislation rather than create one. The Royal Mail Group felt that their preference for a default retirement age at 70 should be seen in the context of the government's announcement that it intends to provide incentives if employees defer taking the state pension until that age. Similarly, the Association of Chartered Certified Accountants believed that the abolition of a fixed retirement age reinforced the government's aim of encouraging more people to defer drawing pensions.

26. There were a number of responses that discussed the principles of flexible retirement. The Association of Chartered Certified Accountants suggested the adoption of 'provisional' retirement dates to be negotiated between the employer and employee, at which time employees would be entitled to retire but could continue if they wished.

27. However, direct calls for flexible retirement options were, in general, the position of local government employers, who felt it was important that this became a reality, as it would ease employees into retirement by agreement rather than dispute. They envisaged that employees would be able to work fewer hours or downshift while having the option of drawing some or all of their accrued occupational pension. By enabling councils to operate flexible retirement options, they could maintain continuity of service provision allowing for skills and experience to be passed on. Furthermore, by enabling employees to work longer under flexible retirement options, current fund deficits of the Local Government Pension Scheme could be significantly improved (particularly if the trend became for employees to work 5 years longer than is currently the case with compulsory retirement ages).

28. A suggestion made in a survey of employers (by the EFA) was the introduction of 'employee work/retirement planning sessions', to be set a specific period prior to the pivotal or pension age. At these meetings, employers could retain the right to discuss retirement planning with employees, propose flexible working options (similar to those proposed by local government employers) to facilitate workforce and succession planning. This approach was felt to be capable of reassuring employees that they still had the right to retire while protecting employers who needed to ask about their employees' plans but did not wish to be subject to legal action on age grounds.

29. As already said, the concept of flexible retirement was also a view supported by Unions. Some specified support for a flexible decade of retirement between 60 and 70, while the TUC (with other trades unions) called for generic flexibility to be facilitated by employees enjoying adequate levels of occupational pension benefits irrespective of the age at which they chose to retire. Overall, all trades unions felt that flexible retirement options would allow individuals to make a choice based on their own circumstances instead of an arbitrary fixed age, and as such were, therefore, opposed to a default retirement age at any age.

30. Local government employers raised concerns about the potential implications of flexible retirement policies. For example, they stated that flexible retirement options might lead to a reduced number of full time jobs for younger workers who needed a full time income to support family and pay for a mortgage. In addition, there may be difficulties in accommodating all requests by certain employers. They stated that the age profile of the local government workforce was already skewed towards the upper end of the range (only 6% of local government employees are under 25, compared with a national average of 15%). They, therefore, called for initiatives to encourage more young people and ensure a balanced age profile in the local government workforce to be allowed to continue.

31. The National Association of Pension Funds did not have any specific concerns about abolishing compulsory retirement ages. However, they sought reassurances that occupational pension schemes could continue to be designed on the basis that unreduced pensions are payable from a specified pension age.

32. The Northern Ireland consultation "Promoting Equality of Opportunity – Prohibiting Age Discrimination in Employment and Training" also sought views on the same retirement age questions. A summary of the NI responses is available at www.ofmdfmi.gov.uk/equality

UNFAIR DISMISSAL & STATUTORY REDUNDANCY PAYMENTS (AGE MATTERS - CHAPTERS 5 & 6)

“We propose changing provisions relating to unfair dismissal so that:

- employees can seek redress at any age, but retirement at a justifiable retirement age will be a fair reason for dismissal;
- the calculation of the component of compensation known as the basic award is not based on age.”

“We propose to make a number of changes to age-related aspects of the statutory redundancy payments scheme.”

Numerical data

Q7(a)	Do you think that an employer who dismisses employees on grounds of retirement should be able to defend the dismissal as fair (paragraph 5.8 of the consultation document)?	%	No.
	Yes	66	188
	No	30.5	87
	No strong feelings either way	3.5	10
	TOTAL:		285

Q7(b)	Do you think that the age-related aspects of the basic award should be removed (paragraph 5.10 of the consultation document)?	%	No.
	Yes	74.3	211
	No	14.8	42
	No strong feelings either way	10.9	31
	TOTAL:		284

Q7(c)	Do you think that the limit of 20 years on the length of service that counts towards the basic award should be retained (see paragraph 5.12 of the consultation document)?	%	No.
	Yes	50	141
	No	34.4	97
	No strong feelings either way	15.6	44
	TOTAL:		282

Q8(a)	Should the statutory redundancy payments scheme be amended so that service below the age of 18 counts for qualification purposes and is included in the calculation (paragraph 6.3 of the consultation document)?	%	No.
	Yes	79.1	227
	No	9.1	26
	No strong feelings either way	11.8	34
	TOTAL:		287

Q8 (b)	Should payments be calculated on the basis of one week's pay (subject, as now, to the statutory maximum) for each year of service, irrespective of age (paragraph 6.5 of the consultation document)?	%	No.	
		Yes	62	173
		No	24.7	69
		No strong feelings either way	13.3	37
		TOTAL:	279	

Q8(c)	Should the upper age limit for entitlement to a statutory redundancy payment be amended to: <ul style="list-style-type: none"> ○ the employer's retirement age for a job, which would have to be justified if under 70, or ○ where there is no normal retirement age for the job, the age of 70? Yes or no or no strong feeling either way. 	%	No.	
		Yes	56.3	152
		No	24.8	67
		No strong feelings either way	18.9	51
		TOTAL:	270	

Q8 (d)	Should we repeal the provision under which the amount of payment due decreases by one twelfth for each month elapsed of the year prior to the default upper age limit (paragraph 6.11 of the consultation document)?	%	No.	
		Yes	64.5	178
		No	15.2	42
		No strong feelings either way	20.3	56
		TOTAL:	276	

Q8 (e)	Should the statutory redundancy payments scheme retain the use of length of service as a factor in the payment calculation (paragraph 6.12 – 6.14 of the consultation document)?	%	No.	
		Yes	88.2	246
		No	3.9	11
		No strong feelings either way	7.9	22
		TOTAL:	279	

Q8 (f)	Should we revoke the Redundancy Payments Pension Regulations 1965 (paragraph 6.15 of the consultation document)?	%	No.	
		Yes	48.7	135
		No	10.1	28
		No strong feelings either way	41.2	114
		TOTAL:	277	

Account of responses

1. The responses to the consultation document covered unfair dismissal and Statutory Redundancy Payments together. For this reason, this narrative section summarises the views on both issues.

2. Generally, the CBI supported the proposed changes to the law on unfair dismissal and Statutory Redundancy Payments. CBI discussed this issue in relation to a default retirement age, which they believed should be set at age 65 . They accepted the extension of unfair dismissal rights to all ages if a default retirement age of 65 was set, and dismissal on the grounds of retirement was potentially fair. However, they raised concerns around the possibility of an employer, who kept one employee on beyond default retirement age, being unable to justify retiring other employees at the default age. Clarification was sought from government, as CBI considered “the risk-adverse employer might find themselves decreasing the flexibility offered to individuals – something we are trying to encourage”.

3. A nationwide retailer set out their concern that the abolition of a “state retirement age” (or compulsory retirement age) would mean that employers would have to retain employees who were not performing effectively. This could lead to long-serving, loyal colleagues being ‘forced’ to leave on inefficiency grounds (unconnected to the employee’s age). This view was shared by a large number of employers and employer organisations. A number of employers expected unfair dismissal tribunals to increase in number, while the Royal Mail Group added that, if an employee did not agree to retire at a particular age, the employee might feel that they would have nothing to lose in pursuing a complaint of unfair dismissal.

4. Some unions responded to the issue of the impact of removing age considerations from the calculation of basic awards. Amicus felt that this would protect older workers against victimisation on other grounds (i.e. a lack of competency), but they insisted that employers must be made aware of their duties not to discriminate indirectly. The TUC stated that the calculation of awards for unfair dismissal and redundancy should not be age-based but must not be levelled down from the current approach taken for 41 to 65 year olds. The GMB Union demanded that the unfair dismissal law should be strengthened in order to protect workers of all ages. It also called for a review of the continuity of employment rules, so that disabled workers or those with caring responsibilities did not lose out due to gaps in their employment service.

5. All Unions, along with the Law Society, believed that retaining the limit of 20 years on the length of service that counts towards the basic award was inconsistent with the principle of equal treatment. TUC stated that if the 20 year cap were retained it would lead to the sacking of “cheaper” younger workers rather than “expensive” older workers. Age Concern England added that “the basic award for people over 40 should only be ‘levelled down’ if the maximum compensatory award is increased. Age Concern Scotland did not support the retention of the 20 year service limit either, but was opposed to any ‘levelling down’ of compensation. Meanwhile, Thompson’s Solicitors stated that the proposed reduction represented “a significant reduction in protection for those [over 41] who were unfairly dismissed”.

6. The T&G Union felt that the level of compensation currently paid does not deter employers from acting unfairly. Therefore, by proposing to reduce the award calculation for unfair dismissal cases, the government would further reduce any deterrent to dismiss unfairly, as these proposals would make it cheaper for the employer.

7. Hertfordshire Chartered Institute of Personnel and Development raised concerns about the implications for changes to the existing rules, calculating that under the new proposals some employees would lose the equivalent of 10 weeks’ worth of the award. The response from Usdaw focused on the proposal to remove age-related aspects of the basic award. They recognised that the proposal was to arrive at a medium level of payment calculation to address age inequality, but felt the result of using one week as an equal calculator would result in a substantial loss being experienced by some employees.

8. The Employers' Organisation for Local Government pointed out that the basic award was often a minor part of the actual award. They went on to raise a question about how tribunals would assess the value of loss of future rights when assessing the compensatory element of an unfair dismissal award in the absence of any compulsory retirement age.

9. The removal of the upper age limit on unfair dismissal protection was welcomed by Age Concern England. This position was shared by the Association of University Teachers, which added that the common argument that the abolition of the limit would put younger workers at greater risk, suggested a case for strengthening the law against unfair dismissal, rather than retention of the limit. In a similar vein, the West Midlands Employment and Low Pay Unit felt that retaining an upper age limit would entrench the assumptions made about the age at which people became unemployable.

10. The Institute of Directors believed it was reasonable to retain some kind of restriction on the length of service that counted towards the basic award for Unfair Dismissal.

11. There was a strong belief at Amicus that the crux of the consultation document was on the proposed changes to Statutory Redundancy Payments where they will be calculated on the basis of one week's pay for each year of service, irrespective of age. While it welcomed the proposals to include all service from 16 onwards and for a flat rate for every year of service, the cap of 20 years of reckonable service up to 65 was seen as inconsistent with legislation that was, presumably, about preventing regressive measures and should, therefore, be abolished.

12. This concern was shared by a number of organisations representing the interests of older people. The Association of Retired and Persons Over 50 argued that a perceived levelling-down of Statutory Redundancy Payments was unacceptable, as those at the end of their working life had a greater need of stability. All the Age Concern (England, Scotland, Cymru) responses agreed that they would prefer to see a levelling up, rather than a levelling down of payments. Help the Aged said that reducing compensation for workers over 41 was a regressive measure and that the award should be calculated on an employee's entire length of service. TAEN agreed that the current provisions were inconsistent with the proposed legislation, but argued along with the Institute for Public Policy Research that the award per week should be levelled up, not down.

13. The Age Concern Consultation Service focus groups felt that the only factor that should determine Statutory Redundancy Payments was length of service, and should be calculated at a minimum of 1.5 weeks for each year of service.

14. EFA's view was that the government's proposals could lead to a levelling up of Statutory Redundancy Payments, and employers had indicated that in these circumstances they would be forced to downgrade enhanced schemes.

15. Dacorum Borough Council suggested a compromise by stating that, if the award was reduced to one week's pay, then the cap should be increased to 30 years to counter the effect of the reduction.

16. On the matter of Unfair Dismissal and Statutory Redundancy Payments, concerns were raised about a perceived bias in the consultation process. The FDA Union felt the consultation questions in these areas pre-supposed the acceptance of the principle of a default retirement age (which the union did not accept). This mirrored a view expressed by the PCS Union that these same questions were "overwhelmingly aimed at getting the views from employers, which could be seen to marginalise the views of trade unions and others representing employees".

RECRUITMENT, SELECTION, AND PROMOTION (AGE MATTERS – CHAPTER 7)

“Decisions about recruitment, selection, and promotion should not normally be based on age. We propose that employers should be able to apply an upper age limit to recruitment but only if they can justify doing so.”

Numerical data

Q9 (a)	Should the Government make provision for employers to apply an upper age limit to recruitment if they can justify doing so by reference to aims set out in legislation? (paragraph 7.7 of the consultation document)	%	No.
		Yes	72.9 212
		No	21.6 63
		No strong feelings either way	5.5 16
		TOTAL:	291

Q9 (b)	Do you think that the aims set out in paragraph 3.15 of the consultation document are sufficient for employers to justify their particular approach?	%	No.
		Yes	57.3 157
		No	30.7 84
		No strong feelings either way	12 33
		TOTAL:	274

Q9(c)	Do you think there are other aims that might justify setting an upper age limit on recruitment?	%	No.
		Yes	28.9 83
		No	46.7 134
		No strong feelings either way	24.4 70
		TOTAL:	287

“Most insurance schemes, such as employers' liability insurance, do not use age as a requirement. However, there could be a small number of occupations whose insurance provision might be based on age. We believe that where compulsory insurance is not available because of the applicant's age, employers are justified in not recruiting. Equally, employers would be justified in dismissing employees when they reach the age where such insurance is unavailable, if suitable alternative employment is either unavailable or rejected by the employee.

Q10 (a)	Do you agree with our approach (employment related insurance, paragraph 7.8 – 7.9 of the consultation document)?	%	No.
		Yes	57.2 162
		No	25.1 71
		No strong feelings either way	17.7 50
		TOTAL:	283

Q10 (b)	Do you know of any types of employment-related insurance where age will be an issue?	%	No.
	Yes	35.7	90
	No	64.3	162
		TOTAL:	252

Q10(c)	Do you think that the cost of employment related insurance where age will be an issue should be a factor in recruitment decisions?	%	No.
	Yes	45	121
	No	41.6	112
	No strong feelings either way	13.4	36
		TOTAL:	269

Q10 (d)	Are you aware of any types of employment related insurance where premiums are significantly increased as a result of an employee's age?	%	No.
	Yes	25.6	66
	No	74.4	192
		TOTAL:	258

Account of responses

1. The Employment Lawyers' Association felt that it was unlikely to be able to justify upper age limits for recruitment purposes if compulsory retirement ages did not exist. Thompson's Solicitors added that, if the law precluded compulsory retirement ages, then an upper age limit for recruitment would be vulnerable to challenge. Additionally, Age Concern England believed that the proposals for upper age limits amounted to indirect sex discrimination.
2. Manchester City Council felt that local government generally would need an exemption for certain types of age-based recruitment, such as the need to represent the community as far as possible for Positive Action initiatives. The Employment Unit also stated that the age profile of the local government workforce was skewed towards the upper end of the range and called for initiatives to encourage more young people to apply for jobs and ensure a balanced age profile in the local government workforce.
3. Hertfordshire Chartered Institute Of Personnel and Development felt that any weakness in legislation would be exploited by employers. While protecting current employees, it believed the proposed legislation would discourage employers from recruiting older workers in the future. The Association of University Teachers set out that allowing any upper age limits for recruitment could not be justified in the context of a flexible retirement regime.
4. The West Midlands Employment and Low Pay Unit felt that retaining the concept of being able to set an upper age limit on recruitment would entrench the assumptions made about the age at which people become unemployable.
5. While most of them will remove direct age bars, there was a desire amongst employers and employer organisations to maintain graduate recruitment schemes. That said, the majority felt that age legislation would probably put the continuation of such schemes in jeopardy as they could be met with indirect discrimination claims.
6. Employer members belonging to EFA also raised the issue that the revision of recruitment adverts, job titles etc. to avoid ageist terms was viewed as "an extreme case of

political correctness". TUC have suggested the Government provides sanctions against age discrimination in advertisements as has been done in the Republic of Ireland.

7. There is a concern from organisations representing the interests of older workers that the unavailability of insurance will be used to justify an upper age limit on recruitment. Age Concern England and Age Concern Scotland asked that legislation include provision for insurance that is essential for employment, and that responsibilities under the new legislation should be extended to insurance providers. Help the Aged also stated that if insurance remained outside the scope of the proposed legislation, older and younger workers could expect to continue facing age discrimination in the workplace.

8. The Association of London Government called for more input from the insurance industry, while the Communication Workers Union demanded intervention by government to resolve "problems" with insurance providers. The union further supported the view put forward by BALPA, a professional association for UK airline pilots, that insurance premiums "escalate at a lower age than we believe medical evidence justifies".

9. Kent County Council, however, confirmed that their experience has shown that it was possible to arrange insurance without any age-based limitations. There was one known exception: Personal Accident policy had a restriction of age 75, although this had been extended for one small group of volunteers to 90. Eversheds Solicitors supported this example by stating that, in their experience, most insurers operated group schemes that did not examine in detail the age of specific individual members: "In terms of compulsory insurance this was limited to employers liability insurance/personal liability insurance, which generally under the terms of such scheme insurances do not provide for any age limit."

10. EFA felt that insurance was generally available, but it is the premiums that are an issue. Eversheds felt that employers should be permitted to justify recruitment decisions where the impact on motor and health insurance premiums would be considerable. The Employment Lawyers Association argued that it would be unfair for employers to face age discrimination claims where the only reason they had not recruited or had dismissed an employee was because of a conflicting legal obligation, such as insurance requirements.

11. Some respondents gave examples or suggested types of employment related insurance where they believed age had an effect. A list is at **Annex B** for information.

PAY & NON-PAY BENEFITS (AGE MATTERS – CHAPTER 8)

“We propose that legislation should allow employers to provide pay and non-pay benefits based on length of service or experience, which might otherwise amount to unlawful direct or indirect discrimination, if they can justify doing so.”

Numerical data

Q11 (a)	Where pay and non-pay benefits based on length of service, and / or experience amount to direct discrimination, should the Government provide for employers to be able to justify them by reference to aims set out in legislation (paragraph 8.5 of the consultation document)?		
		%	No.
	Yes	77.7	216
	No	12.9	36
	No strong feelings either way	9.4	26
TOTAL:			278

Q11 (b)	Do you think there are reasons or aims other than those set out in paragraph 3.14 of the consultation document that might justify pay and non-pay benefits based on experience or length of service?		
		%	No.
	Yes	30.6	82
	No	39.9	107
	No strong feelings either way	29.5	79
TOTAL:			268

Account of responses

1. The responses to the consultation document’s discussion on pay and non-pay benefits were largely dominated by how the proposed legislation would impact upon length of service awards and pension schemes.
2. There was a broad consensus amongst employers and employer organisations in favour of retaining the concept of long-service awards. However, a number of employers stated that they were not confident about being able to justify them, even though they believed that length of service should not be regarded as age discrimination, and nor should they have to provide evidence to support their continuation. Moreover, it was generally felt that long-service awards were important for staff morale and that it would be “a shame” or “unfortunate” to lose these policies.
3. Employers and employer organisations felt that length of service benefits should not be viewed as indirectly discriminatory to younger workers as they would have the opportunity to increase their service. Moreover, these benefits were widely used by both large and small employers as an effective recruitment and retention too.
4. For most employers, abandoning (or reducing) length of service benefits would only be an issue if there was no exemption in the legislation and it would become too costly to offer them to all employees. Other than that, no employer stated that there were any specific length of service benefits they intended to abolish. However, The TUC urged the Government not to include a specific provision or justification in the age equality legislation exempting length of service or experience based pay or benefits. They felt, that where appropriate, employers would be able to justify arrangements under usual principles of indirect discrimination law.

5. According to a survey of employers conducted by the EFA, 71% of respondents listed the impact of age legislation on length of service benefits as a major concern. Across all other free responses from employers and employer organisations, there was clearly majority support for retaining the concept of long-service awards. That said, employers did not single out any benefits in particular as it was felt that there were too many permutations of length of service benefits to ask employers to justify each and every one in tribunal. Therefore, a blanket exemption for all length of service benefits was proposed as it was viewed (at least by employers and employer organisations) as a practice that is recognised and supported by employers, employees, trades unions and the age lobby. This was also a wish for all length of service benefits to be retained on the lines that they rewarded experience that resulted in added-value to the employer rather than providing pay benefits that were given on a 'time-served' basis without necessarily demonstrating performance improvements. If length of service benefits, as they currently stand would contravene age legislation, then the majority of employers would seek a cost neutral approach and it was most likely that length of service benefits would be cut, rather than 'levelled up'. According to the EFA survey, 27% of employers thought it would lead to benefit cuts, while 41% were unsure. This was felt to apply particularly to smaller benefits (e.g. additional leave, a token bonus or celebration of service after "x" years etc). Other employer responses also echoed this stance.

6. The effect on employment relations was also discussed, in that many length of service benefits were the product of years of negotiations with trade unions, or had been inherited after acquisitions. HM Customs and Excise proposed avoiding the need to legislate against length of service benefits by replacing them with ones that had the aim of "encouraging and rewarding continued good performance and the building of skills and knowledge".

7. However, one employer organisation welcomed the principle behind the abolition of length of service benefits as they discriminated against younger workers and female employees (as they move around in the labour market more frequently than male workers and, therefore, will also have less access to these benefits). The Equal Opportunities Commission also raised the view that permitting length of service awards could lead to an undesirable inconsistency between the law on gender pay discrimination and age pay discrimination. Help the Aged suggested that the government remove seniority payments from the legislation, as they would be indirectly discriminatory on the grounds of age and gender. The Equality and Diversity Forum also believed that pay and non-pay benefits systems tended to have a disproportionate effect on women, ethnic minorities and disabled people.

8. Employer and employer organisations were concerned about how they expected insurance costs to escalate once the legislation was introduced. They pointed out that they believed age was a factor in health insurance, vehicle insurance, insurance relating to occupational pensions (e.g. death in service benefits), employer's liability insurance, and travel insurance.

9. Health insurance was a major concern. 46% of employers surveyed by the EFA believed that health insurance, where it was offered as part of an employee's benefits package, was a key issue. The average claim on health insurance was expected to increase significantly - for instance, one large financial service provider stated that, while the average claim on health insurance for most workers was £350, average claims were £2000+ for workers over 50. However, a sharp rise in premiums was the dominant anxiety, with one employer in the EFA survey stating that premiums for those over 65 are 137% higher than for those under 65.

10. Employers and employer organisations asked that government introduce a specific aim to cover "costs" because, although insurance is generally available irrespective of age, the premiums were the major concern. If this did not happen, then employers thought there was a risk that benefits would be stripped away for all employees if insurance costs increased as the working population aged. It was suggested this was most likely to happen

for small employers, by whom it was argued that even a slight increase in insurance premiums could be the difference between profit and loss.

11. Employers mentioned that many currently take into account the cost of premiums when deciding whether or not to offer certain insurance cover to a particular individual. These employers asked that the legislation should allow them to continue to do this, but they felt it would be difficult to justify such decisions under the proposed specific aims.

12. There was a shared view expressed by a number of responses that the consultation document did not set out how the proposed legislation might affect pension schemes.

13. There was a general expectation amongst employers and employer organisations that the abolition of compulsory retirement ages would impact on all employers' ability to sustain their current pension schemes – this was the primary concern with regard to age discrimination legislation of 92% of employers in a survey conducted by EFA. If a default retirement age is set higher than the pivotal ages for receipt of occupational pensions, then employers would likely be forced to increase these pivotal ages. The consequence would be that, in future, employees would receive actuarially reduced pensions. The majority view amongst employers and employer organisations was that the government must include an exemption for occupational pension schemes from claims of age discrimination to prevent a universal reduction. Otherwise, it will undermine employer commitment to defined benefit types. This is because, if they are perceived to provide a lesser benefit to new entrants (who are likely to be younger), employers could well face claims of indirect age discrimination. Both the Association of Pension Lawyers and the Actuarial Profession also believed that benefits were likely to be equalised downwards or 'flat-rated', irrespective of employees' ages, if employers sought to avoid claims of discrimination. However, Watson Wyatt advised the government to consider the inclusion of a provision in the legislation that a given pension scheme design would not be deemed to be discriminatory on the grounds of age provided it complied with the existing UK preservation requirements.

14. In the absence of compulsory retirement ages, employers and employer organisations insisted that there should be no obligation on employers to continue making contributions to the occupational pension schemes for employees who chose to work past the scheme's pivotal age. Legislation should also prevent age discrimination claims being brought where employers are reorganising their occupational pension arrangements.

15. Amicus was concerned that, in persuading and obliging employers to move away from age-based retirement, the government would also be encouraging employers to modify their pension schemes in ways that would undermine employees' ability to retire at the state pension age. Both the National Union of General and Municipal Workers (GMB Union) and the Association of University Teachers expressed the fear that employers will use the introduction of a default retirement age as an allowable excuse to delay or level down benefits based on length of service, and therefore protection should be contained in any legislation. A joint response from Amicus and Legal and General would also seem to substantiate the above fears, as it clearly stated that the increase in costs resulting from the proposed legislation could influence employers not to provide these types of benefits for their employees in the future.

CROSS-CUTTING ISSUES (AGE MATTERS – CHAPTER 9)

“Chapter 9 of *Age Matters* covers a number of issues that are common to all strands of discrimination in employment - race, gender, sexual orientation, religion or belief, disability and age. They were discussed in the consultation document *Equality and Diversity – The Way Ahead*. Our approach is to be as coherent and consistent as possible across all those strands of equality legislation, including age.”

Account of responses

1. Most of the comments made in response to this question fell within the subject matter set out in the other chapters of the consultation document. Those comments have, therefore, been incorporated into the relevant chapter. However, the remainder of the views expressed are set out below.
2. The West Midlands Employment and Low Pay Unit sought clarification as to whether the test for harassment on grounds of age will be similar to the amended Race Relations Act or a more subjective, traditional format.
3. On the subject of genuine occupational requirements based on age, the Association of Retired and Persons Over 50 said that they could not support the idea that exemptions could be sought and implemented.
4. Age Concern Scotland and Age Concern England supported the use of positive action to further age equality in ways that became legally binding for employers under the Race Relations Amendment Act.
5. Age Concern England were opposed to an exemption for the Armed Forces.

BENEFITS AND COSTS (AGE MATTERS – CHAPTER 10)

Q13	Please let us have your views on the estimate of costs and benefits summarised in chapter 10. We welcome comments on the methodology or assumptions used in the analysis. A more detailed regulatory impact assessment is available at www.dti.gov.uk/er/equality/age		
	Response	%	No.
	Positive (tend to agree with figures/ narrative)	24.2	23
	Negative (tend to disagree with figures/ narrative)	75.8	72
		TOTAL:	95

Account of responses

1. The responses regarding benefits and costs were largely polarised around social and economic improvements for employees, and greater financial and bureaucratic burdens on employers.
2. Age Concern England believed the main benefit of the legislation would be an increase in the number of older people in work. They went on to say that the social benefits outweighed the costs because individuals currently faced the entire costs of age discrimination, whereas, under the new legislation any costs would be shared between individuals, employers, and government. A comparison was suggested with the increased employment of women in the last 30 years. Unions also shared this view and agreed with Age Concern that any exemptions and justifications should be strictly limited to maximise the social benefits.
3. The CBI considered that many UK employers have already introduced measures to promote age diversity in their workforce. They believed there were significant economic and social benefits to be gained by breaking down the barriers to re-enter the labour market for 50-65 year olds. This was supported by the IPPR, which stated that leading companies such as Tesco and Sainsburys reported that employees over the age of 50 contributed to high quality customer service, increased sales, increased customer satisfaction, less absenteeism, and less shrinkage than other stores.
4. The Forum of Professional Recruiters stated that, if the legislation resulted in deepening the pool of available talent and reducing employment costs by alleviating the 'wage inflation' created by chronic skills shortages, this would result in more capital for employers to invest in growing their business and hiring new people.
5. The Audit Commission estimated that there would be benefits gained through saving costs for training and induction as a result of the "experience" factor once flexible retirement options flourished after legislation is introduced.
6. One local government employer (Kent County Council) believed that, if the trend became for people to work longer with the onset of more flexible retirement options, then current fund deficits to the Local Government Pension Scheme would be significantly improved.

7. Almost all employers envisaged greater costs to themselves as a result of implementing age legislation than the consultation document suggested. The British Chambers of Commerce were concerned about “the reliability of the government’s calculations” and suggested that more precise figures were needed as they felt that very broad financial estimates had been used. Eversheds questioned “the relatively modest costs” that have been identified as to be incurred by businesses.

8. A number of responses felt that the enforcement costs looked to have been underestimated, particularly given the fact that the consultation document appeared to take no account of either legal representation costs or the business costs arising from managerial time spent on litigating cases. The CBI also felt that government had not taken into account inflation since its original estimates in relation to the cost of a tribunal claim, and felt the estimated number of claims was low. Meanwhile, Manchester City Council believed that the legislation generally would consume far more manager and Human Resources time in local government.

9. EFA stated that age legislation would require a comprehensive review of employment practice, the introduction of new policies and an effective communications and training programme for staff and line managers, as well as possible restructuring of employers’ occupational pension schemes. This would consequently involve major negotiations with union and employee representatives. It was, therefore, suggested the government revised its estimate and reviewed the scale of the task facing employers.

10. The Forum of Professional Recruiters argued that it was possible that, in certain cases, employers may become more reluctant to hire older employees. In other words, it was felt this assessment did not adequately reflect the increased costs and risks that the legislation would attach to older workers. It therefore underestimated the extent to which some companies would try to limit their exposure to these risks.

11. The Birmingham Chamber of Commerce referred to government estimates that the proposals would bring a net benefit of £1 billion in present value terms over the next 20 years. However, this organisation felt that this was an underestimation of the benefits, considering other sources claimed that “age discrimination currently costs £5.5 billion in lost taxes and extra benefits, and £31 billion in lost production”.

12. Dacorum Borough Council stated that the cost and benefit analysis did not take into account the potential cost of younger people being unable to progress within organisations or to enter the employment market. Possible costs might be an increased reliance on state benefits.

13. The costs to small businesses (those with fewer than 50 employees) was a key concern. According to both the Small Business Council and the Federation of Small Businesses, the additional burden on small businesses had been significantly underestimated, and may be considerable given that they are less likely to have a formal retirement policy and that they employ a higher proportion of those over 65. Likewise, the assessed cost (£93m) to small businesses of reading and understanding age legislation was high, and which will increase with implementation and monitoring.

14. The British Chambers of Commerce were also concerned with the reliability of the government’s calculations: there are currently 1.14 million small businesses and the government’s estimation of implementation costs to them was between £120 million and £140 million overall, which calculates as between £105 and £122 per small firm. In response, the British Chambers of Commerce called for an exemption to be granted to small employers for a specific period of time when age legislation is introduced, similar to that given under the Disability Discrimination Act. Conversely, the Equal Opportunities Commission insisted that age discrimination legislation should apply to all employers regardless of size, while the Equality and Diversity Forum opposed any Small Firms Exemption. The TUC also

suggested that the government should be careful not to exaggerate the possible costs to small businesses. This was in response to a recent TUC survey, which found that substantial numbers of small businesses already believed that age discrimination is unlawful and, therefore, presumably had already adjusted their procedures and practices to accommodate age legislation.

NEW EQUALITY INSTITUTIONS (AGE MATTERS – CHAPTER 11)

Account of responses

1. There was broad support for legislation on age discrimination to be tied to outlawing all forms of discrimination in the workplace. In particular, organisations representing disadvantaged groups welcomed the proposed Single Equality Body, with some calling for its work to be underpinned by primary legislation.
2. Age Concern England stated that age legislation should improve the opportunities of older people from disadvantaged groups, particularly those with intermittent employment histories (e.g. women who had been out of the labour market caring for children or dependent adults). It further cautioned against a default retirement age due to its negative implications for these disadvantaged groups, but stated that the proposed Single Equality Body would have a key role to play in tackling multiple discrimination.
3. Both the CBI and Help the Aged proposed that, while a Single Equality Body was being set up, a pre-legislative body could provide businesses with support to enable them to prepare effectively for the introduction of age legislation.
4. While the Association of Retired and Persons Over 50 welcomed the proposed Single Equality Body, it was critical that there was no apparent intention to introduce a unifying Equality Act. Many union submissions (e.g. Scottish Trades Union Congress, Public and Commercial Services Union, GMB) called for such legislation to be introduced.
5. The Institute for Public Policy Research argued that the Single Equality Body should promote good practice not only in employment but also in goods and services, doing so alongside broader human rights standards important to older people, including respect for privacy and family life and avoidance of degrading treatment.
6. The Policy Research Institute on Ageing and Ethnicity was concerned that minority interests (particularly those of black and minority ethnic elders) could be lost in a hierarchy of discrimination, with some forms receiving more attention than others. It, therefore, cautioned against “lumping all forms of discrimination together”.

OTHER COMMENTS (RESPONSE FORM QUESTION 14)

Account of views

1. Most of the comments made in response to this question fell within the subject matter set out in the other chapters of the consultation document. Those comments have, therefore, been incorporated into the relevant chapter. However, the remainder of the views expressed are set out below.
2. The Institute for Public Policy Research feels that employers should make it publicly known the steps they have taken and, more significantly, what outcomes they have achieved in promoting age equality. They suggest this should be done on an annual basis.
3. The GMB Union called for a review of the continuity of employment rules so that disabled workers or those with caring responsibilities would not lose out due to gaps in their employment service.
4. Age Concern England stated that they felt voluntary workers should be protected by the legislation; and that “on grounds of age” should be defined to include perception and association.

Organisations And Employers Who Responded To The Age Matters Consultation

The following is a list of those who responded publicly to the Age Matters consultation. Respondents who asked for their response to remain confidential, and the names of the 77 individuals who responded, are not listed here.

Actuarial Profession	British Retail Consortium (BRC)
AEGON UK	British Society of Gerontology
Aetheric Engineering Ltd	BSA Machine Tools Ltd
Age Concern Cymru	Buckinghamshire & Milton Keynes Fire Authority
Age Concern England	Business in Sport and Leisure
Age Concern Scotland	Business Services Association
All Souls College	CAADE Centre Charity
Alzheimer's Society	Cabinet Office
AMICUS	Cambridgeshire Constabulary
AMICUS (Legal & General)	Cambridgeshire Fire Service
AON Consulting	Canada Life Ltd
Arbitration, Conciliation and Advisory Service (ACAS)	Cap Gemini Ernst & Young
Archbishops Council	Cathley Enterprises
Association of Chartered Certified Accountants (ACCA)	Central & West Lancashire Chamber of Commerce
Association of Convenience Stores Ltd	Central Trains Ltd
Association of London Government	Centrica Plc
Association of Partnership Practitioners	Chartered Institute of Personnel and Development (CIPD)
Association of Pension Lawyers	Chartered Management Institute
Association of Police Authorities	Chemical Industries Association
Association of Retired Persons Over 50 (ARPO50)	Cheshire Fire Service
Association of University Teachers	Children's Society, The
Audit Commission	Christian Council on Ageing
BAA Plc	Cinema Exhibitor's Association
Barclays Bank	Citizens Advice Bureau (CAB)
Bawtry Hall	City of Bradford Metropolitan District Council
Better Government for Older People (BGOP)	City of Edinburgh Council
Better Regulation Task Force	Cloisters
Birmingham Chamber of Commerce	Communication Workers Union
Birmingham Law Society	Confederation of British Industry (CBI)
Black Community Development Project	Construction Confederation
Blake Laphorn Linnell	COPAS
Blue Arrow	Council of Employment Tribunal Members Association
Bolton Sixth Form College	Coventry and Warwickshire Chamber of Commerce
Boots Group	Coventry Law Centre
Bradford Bolt & Nut Co Ltd	Cumbria Fire Service
Bristol Co-operative Working Party	D3 Consultants Ltd
British Air Line Pilots Association (BALPA)	Dacorum Borough Council
British Beer and Pub Association	Darbari Trust UK
British Chambers of Commerce	Denbighshire County Council
British Energy Plc	Department for Constitutional Affairs (DCA)
British Holiday & Home Parks Association Ltd	Department for Environment, Food and Rural Affairs (DEFRA)
British Hospitality Association	Department for Work and Pensions (DWP)
British Library	
British Medical Association (BMA)	
British Nuclear Fuels Plc	

Department of Health (DoH)
 Devon County Council
 Devon Fire and Rescue Service
 Direct Marketing Association
 Disability Rights Commission (DRC)
 Discrimination Law Association (DLA)
 Doncaster Chamber of Commerce
 DWF Solicitors
 East Sussex County Council
 EasyJet
 Educational Institute of Scotland
 Electrical Contractors Association
 Electricity Association
 Employers Forum on Age (EFA)
 Employers' Organisation for Local Government
 Employment Tribunal Service (ETS)
 Engineering Employers' Federation (EEF)
 Equal Opportunities Commission
 Equality and Diversity Forum
 Equality Commission for Northern Ireland
 Essex County Council
 Evangelical Alliance
 Eversheds Solicitors
 Executives Recycled Ltd
 Fair Play Partnership/Back to Work Company
 Falkirk Council
 Federation of Managerial & Professional Associations (MPA)
 Federation of Small Businesses
 First Division Association (FDA)
 Fisher Research Ltd
 Food & Drink Federation
 Forum of Professional Recruiters
 Freshfields Bruckhaus Deringer
 Friends Provident Plc
 Future of Rural Society
 GKN Plc
 Glasgow Chambers of Commerce
 Gloucester City Council
 GPMU
 Grampian Fire and Rescue Service
 Grant Thornton
 Greater London Pensioners' Association
 Greater Manchester Fire Service Headquarters
 Greenfile Developments Ltd
 Hammonds Solicitors
 Hampshire Fire and Rescue Service
 Harrow Council
 Harrow School
 Health & Safety Executive (HSE)
 Help the Aged
 Hereford & Worcester Fire Brigade
 Hertfordshire Chartered Institute of Personnel and Development (CIPD)
 Hertfordshire County Council
 HM Customs & Excise
 HM Prison Service
 House of Lords
 Impact Commercial Development Ltd
 In Practice Systems Ltd
 Independent Pensions Research Group
 Institute for Public Policy Research (IPPR)
 Institute of Directors (IoD)
 Investment and Life Assurance Group (ILAG)
 Iris Group Ltd
 Islington Law Centre
 Jack Waghorn International Ltd
 JUSTICE
 Kent County Council
 Kent Fire Brigade
 KNAUF UK GMBH
 KRSNA (Krishna) Yoga Mandir
 Labour Party Disabled Members Group
 Lancaster District Chamber of Commerce
 Law Society
 Legal & General
 Leicestershire Constabulary
 Lincoln Fire Service
 Lloyds TSB
 Lobby to End Age Discrimination (LEAD)
 Local Government Association
 London Borough of Camden
 London Borough of Harrow
 London Borough of Lewisham
 London Chamber of Commerce
 Lothian & Borders Fire Brigade
 Manchester City Council
 Manpower UK
 Mercer Human Resource Consulting
 Metropolitan Police Service
 Michael J Powsonby Ltd
 Mid & West Wales Fire Brigade
 Mid Cornwall Enterprise Trust Ltd
 Mid Yorkshire Chamber of Commerce
 Morgan Cole
 NATFHE – The University and College Lecturers' Union
 National Assembly for Wales – Equality of Opportunity Committee
 National Association of Pension Funds (NAPF)
 National Association of School Masters Union and Women Teachers (NASUWT)
 National Association of Teachers in Further and Higher Education (NATFHE)
 National Council for Women of Great Britain
 National Farmers Union
 National Federation of the Blind (UK)
 National Health Service (NHS) Trust
 Essex Rivers

National Institute for Adult Continuing Education (NIACE)
 National Pensioners' Convention (NPC)
 National Spiritual Assembly of the Baha'is of the UK
 National Union of General and Municipal Workers (GMB)
 National Union of Journalists (NUJ)
 National Union of Teachers (NUT)
 Nationwide Building Society
 Navy, Army and Air Force Institute (NAFFI)
 Network Partnership
 New Media -I Ltd
 Newspaper Society
 North Wales Fire Service
 North West Employers
 Northumbria University
 Office for Standards in Education (OFSTED)
 Origin
 Paper Federation, The
 Pensions Management Institute
 Perth & Kinross Council
 Police Federation of England & Wales
 Policy Research Institute on Ageing & Ethnicity (PRIAE)
 Population Ageing Associates
 Porthcawl Town Council
 Prospect
 Public and Commercial Services Union (PCSU)
 QinetiQ
 Qualifications and Curriculum Authority (QCA)
 Queen Mary, University of London
 Queen's University
 Re-connect Retired Members Association
 Recruitment and Employment Confederation
 Redrow Group Services Ltd
 Rhondda Forum of Older People
 Road Haulage Association, The
 Royal Bank of Scotland Group
 Royal Mail
 Royal National Institute for Blind People (RNIB)
 Scot Herrington Ltd
 Scottish Council for Voluntary Organisations (SCVO)
 Scottish Equitable Plc
 Scottish Trades Union Congress (TUC)
 Sheffield College
 Simmons & Simmons
 Skanska Construction Group Ltd
 Skill - National Bureau for Students with Disabilities
 Small Business Council
 Small Business Service (SBS)
 Society of Chief Personnel Officers (SOCPO)
 Society of London Theatre and the Theatrical Management Association
 Society of Pension Consultants (SPC)
 Soroptimist International of Yorkshire
 South Asian Health Equality Trust
 Southampton Institute
 Stockport Metropolitan Borough Council
 Strathclyde Police
 Suffolk Fire Service
 Surrey County Council
 Surrey Fire & Rescue
 Swiss Life (UK) Plc
 Tesco Stores Ltd
 Third Age Employment Network (TAEN)
 Third Age Foundation
 Thompsons Solicitors
 Trades Union Congress (TUC)
 Transport and General Workers Union (T&G)
 Transport for London / London Underground
 Travers Smith Braithwaite
 UNIFI
 Union of Shop, Distributive & Allied Workers (USDAW)
 UNISON
 UNISON Cymru, Retired Members Committee
 United Reformed Church, The
 Universities, Colleges Employers Association (UCEA)
 University of Bath
 University of Birmingham
 University of Leicester
 University of Paisley
 University of Strathclyde 50+ Challenge
 University of Teesside
 Volunteer Development Scotland
 Wakefield Metropolitan District Council
 Warwickshire County Council
 Watson Wyatt
 West Lothian 50+ Network
 West Midlands Employment and Low Pay Unit
 West Midlands Local Government Association
 West Midlands Regional Assembly
 West Sussex County Council
 West Yorkshire Passenger Transport Executive (WYPTE)
 Wiltshire Fire Brigade
 Yellowfin Ltd
 YouthLink Scotland

AGE MATTERS – SUGGESTIONS OF WHERE EMPLOYMENT RELATED INSURANCE MAY BE AFFECTED BY AGE

Question 10 (b) – Do you know of any types of employment related insurance where age will be an issue?

- Adventure sport, outward-bound etc
- Aircraft industry, ship building, all types of welding, high rise building work or electricians
- Young workers operating machinery
- Airline Pilot
- Car hire firms
- Critical illness cover
- Death in service benefit
- Deep sea diving
- Driving – insurance & restrictions for HGV and PSV drivers
- Employers' liability life assurance
- Eyesight & physical jobs
- Health insurance
- Indemnity insurance in bank and building societies
- Insurance cover for manual work e.g. heavy lifting
- Insurance for operating machinery
- Overseas travel insurance
- Personal accident cover (not available for persons aged 70+)
- PHI – life assurance, motor insurance, critical illness cover – they are currently obliged to provide age profiles
- Stuntmen
- Teaching

Question 10 (d) Are you aware of any types of employment related insurance where premiums are significantly increased as a result of an employees age?

- Adventure sport - outward bound etc
- Business travel
- Death in service
- Dental insurance, Eyesight & physical
- Driving
- Employer's liability, life assurance income protection,
- Final pay type pension schemes
- Health / life insurance offered by employers as part of a benefit
- Indemnity insurance in banks and building societies
- Motor fleet insurance
- Personal accident insurance
- Pregnancy risk, accident risk in relation to young drivers, risks that are related to eyesight, ill health insurance
- Professional indemnity
- Sports and acting
- Teaching
- Vehicle hire