

# EQUAL TREATMENT IN EMPLOYMENT AGE DISCRIMINATION ACT

Whereas We have considered that in order to implement Directive 2000/78/EC establishing a general framework for equal treatment in employment and occupation (OJ EC, 2000, L303), and in connection with article 1 of the Constitution, it is desirable to prohibit discrimination on the grounds of age in employment, occupation and vocational training;

We, therefore, having heard the Council of State, and in consultation with the States General, have approved and decreed as We hereby approve and decree:

## §1 General

### Definition of discrimination

#### Section 1

1. In this Act, discrimination means discrimination on the grounds of age or on the grounds of other characteristics, or conduct that results in discrimination on the grounds of age.
2. An instruction to discriminate on the grounds referred to above shall be deemed to be discrimination within the meaning of subsection 1.

### Harassment

#### Section 2

1. The prohibition on discrimination laid down in this Act shall also include a prohibition on harassment.
2. Harassment as referred to in the preceding subsection means conduct related to age that has the purpose or effect of violating the dignity of a person and creating an intimidating, hostile, degrading, humiliating or offensive environment.

## § 2 Scope of the prohibition

### Employment

#### Section 3

It shall be unlawful to discriminate with regard to:

- a) the recruitment, selection and appointment of personnel;
- b) job placement;
- c) entering into or terminating an employment relationship;
- d) the appointment and dismissal of public servants;
- e) conditions of employment;
- f) education and training during or prior to an employment relationship;
- g) promotion;
- h) working conditions.

### The liberal professions

#### Section 4

It shall be unlawful to discriminate with regard to the conditions for and admission to the liberal professions, and to the opportunities to practise such professions or develop professional skills within them.

#### Vocational training

##### Section 5

It shall be unlawful to discriminate with regard to:

- a) access to and provision of careers advice and vocational guidance;
- b) access to and provision of training directed at entering and functioning on the labour market and the holding of tests in connection with and completion of such training.

#### Membership of organisations

##### Section 6

It shall be unlawful to discriminate with regard to membership of or involvement in an employers' organisation or trade union, or a professional or occupational association. This shall also apply to the benefits which arise from membership of such organisations and associations.

#### § 3 Exceptions to the prohibition on discrimination

##### Objective justification

##### Section 7

1. The prohibition on discrimination shall not apply if the discrimination:

- a) is based on employment or labour-market policies to promote employment in certain age categories, provided such policies are laid down by or pursuant to an Act of Parliament;
- b) relates to the termination of an employment relationship because the person concerned has reached pensionable age under the General Old Age Pensions Act (AOW), or a more advanced age laid down by or pursuant to an Act of Parliament or agreed between the parties;
- c) is otherwise objectively justified by a legitimate aim and the means used to achieve that aim are appropriate and necessary.

2. The preceding subsection shall not apply to cases of harassment as referred to in section 2.

#### Pensions

##### Section 8

- 1. For the purposes of this section 'pension scheme' shall mean a pension scheme applying to one or more persons solely in connection with their activities in a company, branch of industry, occupation or public service, which scheme supplements a statutory social security system and, in the case of a scheme applicable to a person, is not arranged privately by the person in question.
- 2. The prohibition on discrimination shall not apply to the age of admission or to the pensionable age laid down in the pension scheme, nor to the establishment of different ages for admission or entitlement for employees or for groups or categories of employees.
- 3. The prohibition on discrimination shall not apply to actuarial calculations in the context of pension schemes which make use of age criteria.

#### § 4 Stating age limit

##### Section 9

If a distinction on the grounds of age is made in advertising a vacancy, the grounds for this must be clearly stated.

## § 5 Legal protection

### Protection against victimisation

#### Section 10

Adverse treatment in reaction to a person's reliance either at law or otherwise on this Act or provision of assistance in relation to it shall be prohibited.

### Protection against dismissal

#### Section 11

1. Termination of employment by the employer in breach of section 3 shall be voidable.
2. Termination of employment by the employer in reaction to a person's reliance either at law or otherwise on this Act or provision of assistance in relation to it shall be voidable.
3. Without prejudice to Chapter 8 of the General Administrative Law Act, the employee's right to invoke the grounds referred to in subsections 1 and 2 shall lapse two months after the date of termination of employment. Article 55 of Book 3 of the Civil Code shall not apply.
4. The limitation period on legal claims relating to nullification shall expire six months after the date on which employment was terminated.
5. Termination as referred to in subsections 1 and 2 shall not render the employer liable to pay damages.

### Burden of proof

#### Section 12

1. If a person who considers that he has been wronged through discrimination as referred to in this Act establishes before a court facts from which it may be presumed that discrimination has taken place, it shall be for the respondent to prove that the action in question was not in breach of this Act.
2. Subsection 1 shall apply mutatis mutandis to legal actions as referred to in article 305a of Book 3 of the Civil Code and to appeals instituted by interested parties within the meaning of section 1:2, subsection 3 of the General Administrative Law Act.

### Invalidity

#### Section 13

Conditions that are in breach of this Act shall be invalid.

### Equal Treatment Commission

#### Section 14

The Equal Treatment Commission referred to in section 11 of the Equal Treatment Act shall be empowered to investigate whether discrimination within the meaning of this Act has taken place. Sections 12, 13, 14, 15, 20, subsection 2, and 33 of the Equal Treatment Act shall apply mutatis mutandis.

### Final provisions

### Evaluation

#### Section 15

In consultation with Our Ministers of Justice, of the Interior & Kingdom Relations and of Education, Culture & Science, Our Minister of Social Affairs & Employment shall submit a report to the States General within five years of the entry into force of this Act regarding its effectiveness and impact in practice.

The armed forces

#### Section 16

This Act shall not apply to military personnel as referred to in the Military Personnel Act 1931, to conscripts as referred to in section 1 of the Compulsory Military Service Framework Act and to reservists as referred to in section 2 of the Armed Forces (Reserve Personnel) Act.

Amendments to other legislation

#### Section 17

In section 5 of the Council of State Act the words 'who are at least thirty-five years of age' shall be deleted.

#### Section 18

In section 42, subsection 1 of the Government Accounts Act, the words 'who are at least thirty years of age' shall be deleted.

Date of entry into force

#### Section 19

This Act shall enter into force on a date to be determined by Royal Decree.

Title

#### Section 20

This Act may be cited as the Equal Treatment in Employment (Age Discrimination) Act.