



Right to Work and Access to the Labour Market

Age Action's Submission to the 11th Session of the Open-ended Working Group on Ageing 31 October 2019

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Introduction

Age Action is an Irish NGO that supports and advocates for equality and human rights for all older people. Everything we do is based on a recognition of the diversity of identity and situation among older people and a concern for equality for all older people. In addressing ageing, our work includes a concern to influence perspectives on and responses to ageing. This pursuit of equality and human rights is underpinned by our work to promote ageing in place, life-long learning, and health and wellbeing for older people, empowering them to live as active citizens.

National Legal and Policy Framework

1. What are the legal provisions and policy frameworks in your country that recognise the right to work and access to the labour market by older persons?

- The [Employment Equality Acts 1998–2015](#): prohibits discrimination in a range of employment-related areas. The prohibited grounds of discrimination are gender, civil status, family status, age, race, religion, disability, sexual orientation and membership of the Traveller community.
- [Equality \(Miscellaneous Provisions\) Act 2015](#): makes significant amendments to the Employment Equality Act 1998 in the areas of [retirement](#) and age discrimination, discrimination by religious, medical and educational institutions on religious grounds, and indirect discrimination.
- Public Service Superannuation (Age of Retirement) Act 2018¹
- The Equal Status Acts 2000-2015 (ESA) prohibit discrimination in the provision of goods and services, accommodation and education. They cover the nine grounds of gender, marital status, family status, age disability, sexual orientation, race, religion, and membership of the Traveller community.
- [Workplace Relations Act 2015](#): establishes the Workplace Relations Commission (WRC) replacing the Labour Relations Commission, Rights Commissioner Service, Equality Tribunal, and National Employment Rights Authority
- National Positive Ageing Strategy², Objective 1.1., which, amongst other things, envisages the need for age-friendly workplaces, flexible workplace practices and gradual retirement

2. What are the challenges faced by older persons for the realization of their right to work and access to the labour market in your country?

Age Action supports the OECD recommendations on how to promote the employability of workers throughout their working lives through investing in older workers' skills and specifically: • Improving access to lifelong learning and skills recognition • Improving working

¹ See Government website for full text <https://www.oireachtas.ie/en/bills/bill/2018/76/>

² National Positive Ageing Strategy 2013. Page 24. http://health.gov.ie/wp-content/uploads/2014/03/National_Positive_Ageing_Strategy_English.pdf

conditions and job quality at all ages • Providing effective employment assistance for older workers facing job loss or wishing to find another job.³

While maximum retirement ages are forth set in legislation for public servants, there is no statutory retirement age in the private sector where it is determined by contract or implied by, say, a customary practice or employment manual.

3. What data, statistics and research are available regarding older persons engaged in informal work, particularly older women, including conditions of their work and economic value?

- Central Statistics Office
- International Labour Organization (2018) Women and Men in the Informal Economy: A Statistical Picture⁴
- Irish Human Rights and Equality Commission (2017) *Who experiences discrimination in Ireland? Evidence from the QNHS Equality Modules*⁵

Availability, Accessibility, Acceptability and Quality

4. What steps have been taken to ensure the access of older persons to the labour market including through physical accessibility, access to information about employment opportunities, training and the provision of appropriate workplace accommodations?

The National Positive Ageing Strategy (2013) identifies the removal of “any barriers (legislative, attitudinal, custom and practice) to continued employment and training opportunities for people as they age” as the first objective under National Goal 1 of the strategy.

5. What steps have been taken to ensure the availability of specialised services to assist and support older persons to identify and find employment?

The Minister for Jobs, Enterprise and Innovation has asked the Workplace Relations Commission to prepare a code of practice for employers on the use of fixed-term contracts beyond normal retirement age. Employers should take steps to ensure that their policy on retirement age is clearly articulated; Employers and workers representatives should take measures to improve awareness among both workers and employers of options, rights and responsibilities around longer working.

The Department of Public Expenditure and Reform was tasked with reviewing, with public service employers, the barriers to extended participation in the public service workforce up to the age of entitlement to the State Pension;⁶

6. What good practices are available in terms of ensuring the older persons' enjoyment of their right to work and their access to the labour market?

³ OECD (2019) 'Governments must take further action to boost job opportunities at an older age'. Press Release. Available at www.oecd.org.

⁴ See page 124 for country specific data on Ireland https://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/documents/publication/wcms_626831.pdf

⁵ McGinnity, F., Grotti, R., Kenny, O. and Russell, H. (2017). *Who experiences discrimination in Ireland? Evidence from the QNHS Equality Modules*. Dublin: Irish Human Rights and Equality Commission. Available at <https://www.ihrec.ie/app/uploads/2017/11/Who-experiences-discrimination-in-Ireland-Report.pdf>

⁶ <https://www.gov.ie/pdf/?file=https://assets.gov.ie/4984/191218122321-2472d175810b4278a78cce28d1118a07.pdf#page=1>

7. What protections are available to ensure older persons enjoy just and favourable conditions of work, including fair wages and equal remuneration for work of equal value, safe working conditions, both in the formal and informal sector? Equality and non-discrimination

The Equality Employment Acts 1998-2015 prohibit discrimination under the nine grounds in employment, including vocational training and work experience. The main obligations of employers under the act include the following: Employers may not discriminate against employees or potential employees on the basis of any of the nine grounds. The aspects of employment which are covered under the Employment Equality Acts include:

- Advertising
- Equal pay
- Access to employment
- Vocational training and work experience
- Terms and conditions of employment
- Promotion or re-grading
- Classification of posts
- Dismissal
- Collective agreements.

8. In your country, is age one of the prohibited grounds for discrimination in relation to work and access to the labour market, including in older age?

The Employment Equality Acts 1998 – 2015 prohibits discrimination on nine specified grounds including age. While retirement ages are set in legislation for public servants, there is no statutory retirement age in the private sector and it is determined by contract or implied by, say, a customary practice or employment manual.

The legal context for mandatory retirement clauses in contracts is the Framework Employment Directive 2000/78/EC. This Directive is central to EU labour law. Its aim is to prevent discrimination against workers on a variety of grounds, including age, and it was transposed into Irish law through the Equality Act 2005.

Article 6 of the Directive states that Member States may allow workers to be treated differently on the basis of age if “they are objectively and reasonably justified by a legitimate aim, including legitimate employment policy, labour market and vocational training objectives, and if the means of achieving that aim are appropriate and necessary”.⁷ This was transposed into Irish law via the Equality (Miscellaneous Provisions) Act 2015.

Remedies and Redress

9. What mechanisms are necessary, or already in place, for older persons to lodge complaints and seek redress for denial of their right to work and access to the labour market?

If a person believes they have been discriminated against under any of the nine grounds covered by the Employment Equality Acts, they can make a complaint to the Workplace Relations Commission. Employment law provides protection for employees who feel their rights have been breached. Complaints, disputes and grievances are heard before a [Workplace Relations Commission adjudicator](#) who will listen to both sides before completing an investigation of the complaint and issuing a decision.

⁷ <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32000L0078:en:HTML>