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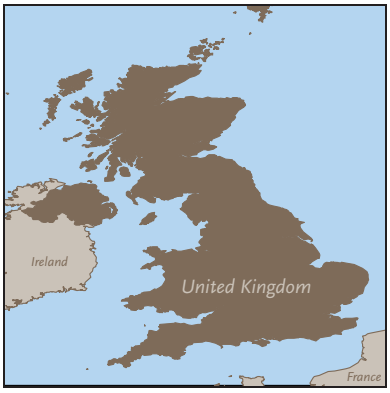

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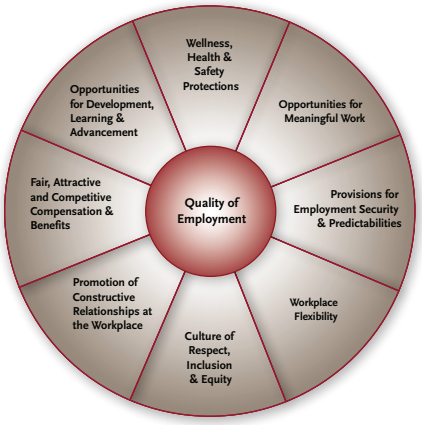
This policy brief discusses employment laws in the United Kingdom, with a particular focus on policies related to the employment of older workers, as it relates to the dimensions of the quality of employment framework. Rather than discussing all employment policies, this brief will highlight the most significant legislation in order to provide a general introduction to current policies as they relate to quality of employment in the United Kingdom.

This brief includes four sections:

- An in-country policy context introducing the reader to the policy background of the United Kingdom.
- A discussion of dimensions of quality employment, providing a policy overview of the major public policies affecting each dimension. The following matrix represents factors that impact the quality of employment. This brief discusses eight components in this matrix.
- Challenges and dilemmas: The Default Retirement Age, highlights the adoption of the default retirement age in the United Kingdom and the current debate surrounding it.
- A brief conclusion on the implications of policy for quality of employment in the United Kingdom.



IN-COUNTRY POLICY CONTEXT

Relative to other OECD countries, the UK has, until recently, been characterised as having low unemployment rates. Measures to encourage employment growth include low level of social contributions associated with labour costs (30% of labour costs compared with an OECD average of 40%),[1] as well as a strict regime of active labour market polices aimed at increasing labour market participation of particular groups (notably young people who are not in education or training – the UK has the second highest rate amongst OECD countries of young men aged 15 to 19 not in employment, education, or training).[2]

Consequently, the policies outlined below have been implemented in a very different economic and labour market environment to the one in which the UK now finds itself. Unemployment in the first quarter of 2009 reached 7.1%, up from 5.2% in the same period in 2008,[3] and according to OECD projections, this could reach 10% next year.[4]

The changing face of the UK economy in the current global recession may both exacerbate current problems in the labour market (such as labour market disadvantage of women and ethnic minorities in terms of employment opportunities and pay)[5] and refocus government priorities. Government initiatives to increase the labour market participation of people currently on disability benefits, for example, may to be hindered by the current labour market climate.

In addition to the immediate threat of rising unemployment, policy makers also have to address the long-term implications of the demographic challenges faced by the UK. Like many other OECD countries, the UK has an ageing population. ONS data shows that the population under 16 years of age is now lower than that of the population over state pensionable age.[6] By 2050, the ratio of the population age 65 and older to the population ages 20-64 will reach 50%, up from 27% in 2003. While migration has been proposed as possible solution to alleviate the labour shortages associated with ageing populations, recent political developments in the UK have shown that this solution comes with a high political cost, which is likely to be exacerbated if the current economic climate continues. Additionally, some commentators have highlighted the long-term effects of unemployment on young people (drawing on empirical data from the last period of high unemployment in the 1980s) with respect to skill development and future labour market attachment.

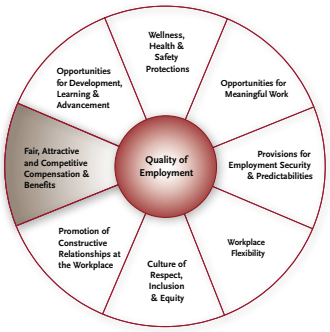
In response, recent policy initiatives have re-emphasised the importance of getting young people into employment or training; the Prime Minister has pledged that every young person under 25 who has been unemployed for more than a year will be guaranteed a job, training, or work experience, with the threat of benefit withdrawal if such places are refused, indicating that strong active labour market policies remain at the heart of UK initiatives to boost employment.

The current government's employment policy was laid out in the 1998 White Paper "Fairness at Work," the aim of which was to promote partnership between employers and employees (para 1.4) and to introduce a set of minimum workplace standards to protect employees while simultaneously enhancing the competitiveness of UK business.[7] Based on a notion of individual rather than collective rights, these standards were to provide a minimum "infrastructure of decency and fairness around people in the workplace" (Prime Minister's Forward).[7] Government legislation has been mindful to retain what it perceives as the UK's place as the "most lightly regulated labour market of any leading economy in the world" (Prime Minister's Forward).[7] Employment policy, therefore, has been characterised by a twin track approach: encouraging a labour market environment conducive to job creation – the light touch approach to regulation, while simultaneously promoting the idea of "better" jobs.

Among legal acts, the following, among others, may be cited:
2008 Employment Act
1998 Working Time Regulations Act
2006 Work and Families Act
1974 Health and Safety at Work Act

POLICY OVERVIEW

DIMENSIONS OF QUALITY OF EMPLOYMENT



➲ Indicators of Fair, Attractive, and Competitive Compensation & Benefits

Employees' basic needs are secured, and fair and equitable distribution of compensation and benefits among employees is promoted.

National Minimum Wage

The setting of a statutory minimum wage is the main legislative instrument covering wage policy in the UK. The *National Minimum Wage* (NMW) is something of an exception to the UK non-interventionist legislative framework (or what the government has described as a "light touch" to employment regulation), but is seen by government and unions as an important instrument in tackling wage inequality, as well as "making work pay" (part of the government's promotion of employment amongst marginal sections of the working age population not in work). The employers' organization, the CBI (Confederation of British Industry) lobbied against the introduction of the minimum wage on the basis that regulation would harm the other key pillar of the UK's employment strategy – job creation.[8] However, it is generally acknowledged to strike a balance between fair compensation and business efficiency.[9]

The Low Pay Commission (LPC) advises the government on the rate at which the NMW should be set. As of October 2008, the NMW for an adult is £5.93 per hour. Over 1 million low paid workers (5-6% of the UK workforce, less than originally anticipated by the LPC) are said to have benefited from the NMW, two thirds of whom are women.[10] As a result, the NMW has had a positive effect on reducing the gender pay gap amongst the lowest earners. Additionally, research for LPC has suggested that the HMRC (the government tax collector) has played an important role in helping small businesses comply with the law.[11]

Alongside the NMW, the earnings of the lowest paid workers are enhanced by the *Working Tax Credit* (WTC), another pillar of the governments 'welfare to work' reforms, which provides low wage workers with state benefits to top off their income. WTC is paid to low wage workers with childcare responsibilities, on incapacity benefit, or 50 years old or older who work 16 hours or more a week and all others who work 30 hours or more a week. Child Benefit (non-means tested) and Child Tax Credit (means tested) are also paid to parents of children under 16 or under 20 and in full-time education.

Recently the government has been compelled to introduce legislation which ensures that the NMW is enforced, following revelations that employers in the hospitality industry were including tips when calculating the wages of their employees, thereby avoiding paying staff the minimum wage. Subsequently, the *2008 Employment Act* contains provisions for strengthening the enforcement of the NMW.

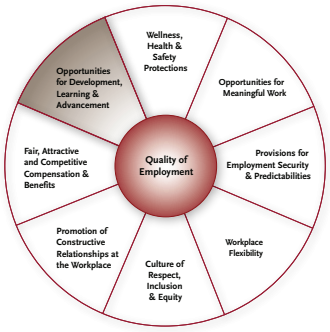
Pension expenditure is split roughly equally between the State Pension and private (including occupational) pension schemes. In the UK, growing pressures on the social security system have led to government initiatives to encourage younger workers to save more and older ones to delay retirement. The proportion of employers who are closing their pension schemes to new employees had been rising before the current economic crisis and there is some indication that some employers will be closing eligibility to current contributors.[12] The basic state retirement pension has gradually become less generous over the past two decades, as there have been changes to unemployment and disability benefits and the pension scheme in the public sector has changed. Coupled with this, there is a low level of pension savings among workers, both young and old, and poor understanding about pension need.[13] Finally, because both State and most occupational pension schemes are service related, there is particular problem of undersaving by women whose careers have been interrupted by child raising.

Leave entitlement

The 1998 Working Time Regulations Act introduced a statutory right to 4 weeks paid annual leave. This has recently been increased to 5.6 weeks by provisions made in the 2008 Employment Act, though employers have the right to include bank holidays in statutory leave obligations.

Maternity, Paternity and Adoption Leaves and Pay

Pregnant female employees are entitled to statutory maternity pay (SMP), subject to length of employment, and maternity leave. The Work and Families Act 2006 extended rights and benefits for pregnant employees by increasing the SMP from 26 weeks to 39 weeks and extending maternity leave to 12 months (regardless of length of service). SMP is paid at 90% of average weekly earnings for the first 6 weeks, followed by up to £123.06 or 90% of average weekly earnings if this is less. In addition, the act contains the right to be able to work for 10 days, 'keeping in touch' without losing the right to SMP, in order to facilitate the return to the same post. Working fathers are entitled to between one and two weeks paternity leave (paid on the basis of SMP). Adoption leave is also available on the same basis as maternity leave, although either parent can take it.



➲ Indicators of Opportunities for Development, Learning, & Advancement

Job skill development and advancement are promoted for employees of as many industrial sectors, employment statuses, and life/career stages as possible.

The UK does not have any statutory regulations concerning continuous training in the workplace, in keeping with its 'light' regulatory approach. However, the importance of improving workplace skills is clearly stated in the *Skills for Life Strategy,*[14] as is its commitment to life-long learning. There have been numerous initiatives around skills and training over the last decade, targeted mainly at youth and low-skilled sections of the labour force.

While there is a clear recognition that skills are key to competitiveness and lifelong learning is an essential ingredient for effective modern workplaces, the government has not legislated in this area outside of training targeting the low-skilled, long-term unemployed. Workplace learning and advancement are limited to the promotion of skills and training within organisations. However, the government does provide support for the *Union Learning Fund*, a trade union-led initiative delivered by Union Learning Representatives (ULRs).

ULRs work with both employers and employees to identify and respond to learning and development needs within organisations. Unions have been identified as key partners in providing learning in the workplace, particularly with respect to low-skilled adults who may be reluctant to take up training and development opportunities. By working in partnership with HR managers, unions, via the ULRs, are seen as having the potential to provide an additional resource for employers in their training and development strategies. They can be particularly useful in reaching employees which may otherwise slip through the net, such as older workers, part-time workers, or shift workers. Their

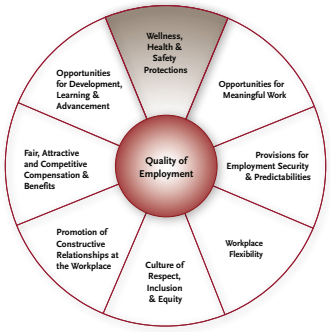
position of trust and confidence amongst employees means that ULRs may have privileged access to the workforce in promoting training and development.[15]

Indeed, one of the key roles of a ULR is to promote the importance and value of training and development to employees, by raising awareness of the need for continuing vocational and professional development in order to enhance employability. ULRs are seen as important partners in enhancing the responsiveness of parts of the workforce who may be more reticent when faced with training officers attached to personnel departments. Employers can, therefore, benefit from the work of ULRs since a workforce that is more responsive to training and development will also benefit employers given the association between skills and productivity.[15]

The 2002 Employment Act granted ULR's statutory rights to time off for training to ensure that they are able to fulfil their functions. ULRs have a mandate to identify learning and training needs, provide information on training and learning, promote the value of learning in the workplace and offer advice to union members (such as identifying barriers to learning and working towards solutions).

The lack of basic skills has been identified as an issue within the UK workforce by the employers' organisation, the CBI, while the Leitch Review highlighted the shortage of skills and the need to ensure that training and development continued into adult life. Notwithstanding, initiatives such as the Union Learning Fund, the absence of structured skills development and training is an issue for those in low skilled employment or employed in non-standard contracts; opportunities for meaningful employment are likely to be affected by the lack of training (see section below). Recent legislation to provide employees on part-time and fixed term contracts with similar workplace rights and benefits should improve the provision of training for these workers, at least granting them the same opportunities in the workplace as comparable colleagues.

The *Children, Skills and Learning Bill*, which was announced last year, will contain provisions for those in work to request time off for training.



➲ Indicators of Wellness, Health, & Safety Protections

Protection of employees' safety and health at their worksites is mandated, and their physical and mental well-being is promoted. In the case of job-related injury or illness, compensation or other forms of social protection are offered.

The UK has extensive legislation on health and safety in the workplace, underpinned by the 1974 *Health and Safety at Work Act* (HSWA). The Act covers all workplaces and stipulates that employers have an obligation to provide a safe working environment for employees. The Health and Safety Executive (HSE), established under the HSWA alongside the Health and Safety Commission (the two institutions have since merged into one), has responsibility for enforcing health and safety regulations, as well as promoting health and safety at work. Codes of practice and guidance support the work of the HSWA by providing clear guidelines which employers are expected to follow. These Approved Codes of Practice (ACoP) are guides which have legal standing. Companies with more than five employees are required to have a written health and safety policy.

Since the HSWA was introduced, there has been an extensive range of regulations put into place to extend and improve workplace health and safety, known as the 'six pack' since they are a result of six European directives on health and safety, lay down minimum standards for workplaces and clarify the definition of a workplace to include 'any place or part of premises which are not domestic premises and are made available to any person as a place of work.' The minimum standards address issues such as the provision of clean washing and sanitary facilities, guidelines concerning temperature, ventilation, lighting, space, and safety of equipment, and prevention of slipping and tripping hazards.

Employers are obliged to consult with recognised trade unions over health and safety issues in the workplace under the 1977 *Safety Representatives and Safety Committee Regulations*. Health and Safety Reps are appointed by unions to represent employees in consultations over issues concerning health and safety. They have statutory rights to reasonable paid time off in order to carry out their functions, including training leave. Health and Safety Reps have the right to investigate potential hazards, accidents in the workplace, and complaints by employees, and to represent employees in discussions with authorities which enforce workplace health and safety. They can also carry out independent workplace health and safety inspections and attend Safety Committees on behalf of employees.

Employers are obliged by law to consult with their workforce over changes to the workplace environment which affect health and safety, information on risks and prevention, arrangements for health and safety, plans for health and safety training, and communicating health and safety issues to the workforce.

Where there is no recognised trade union representative, the *1996 Health and Safety (Consultation with Employees) Regulations* apply. Employees can elect a "representative of employee safety", though the statutory functions are considerably less comprehensive than those accorded to union Health and Safety Reps. Employers are also able to consult individually with employees where there is no trade union representative.[16]

The *Personal Protective Equipment at Work Regulations 1992* require employers to ensure that suitable personal protective equipment is provided in appropriate contexts (protective facemasks, goggles, safety helmets, gloves, ear defenders, etc.), and to provide information, training, and instruction on the use of this equipment.

The *Display Screen Equipment Regulations 1992* deal with the growing number of employees using IT equipment in the workplace. Employers have to make a risk assessment of workplace risks, ensure adequate breaks, provide regular eye tests, provide information on risks, ensure adequate furniture is available, and demonstrate that there are adequate procedures in place to reduce risk of injury arising from IT use.

The *Management of Health and Safety at Work Regulations 1999* (commonly known as the Management Regs), make more explicit the role of employers in managing health and safety, placing on employers a legal duty to carry out risk assessments to ensure a safe workplace (Regulation 3). In addition, organisations are obliged to appoint a health and safety officer to oversee health and safety in consultation with employee' representatives, provide employees with relevant information and training, and have a written health and safety policy.

Compliance enforcement is carried out by inspectors from either the HSE or the Environmental Health Department of the local authority. Workplaces are required to register with either of these organisations. In 2000, the government and the Health and Safety Committees launched an initiative setting targets for improving health and safety performance, *Revitalising Health and Safety,* with the overall aim of reducing fatal and major occupational injuries, occupational ill health and work days lost as a result of workplace injury or ill health.

Risk assessment has become an increasingly important dimension of prevention of occupational injury and ill health. All employers are expected to carry out assessments of workplaces for risks of injury, with detailed regulations of potential risks for specific sectors.

Workplace related stress is an issue in the UK, contributing to sickness related absence from work. Subsequently, there is increasing emphasis on well-being in the workplace, including psychological well-being and stress reduction. There is no specific legislation on stress in the workplace. However, the 1997 Protection from Harassment Act may be invoked in relation to stress as a result of harassment, and the HSE has produced guidance on managing stress which includes preventative measures such as risk assessments to measure dimensions of work associated with stress: demands of jobs, control over work, support in the workplace, clarity of job role, work relationships, and organisational change.[17]

Working time regulations can impact stress alleviation and well-being in the workplace. The 1998 Working Time Regulations cover the organisation of working time and the right to annual leave and rest breaks. The regulations

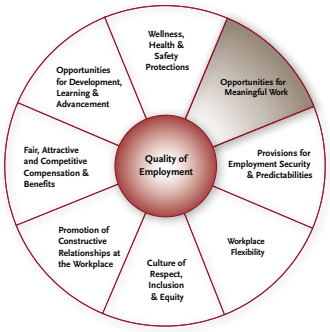
implement European Community Directives on working time with the right for employees to opt-out of the maximum working week of 48 hours should they so wish. There is evidence to suggest that some workers are under pressure to sign the working time opt-out clause. The Working Time Regulations also cover leaves and rest periods with specific clauses for younger employees (under 18 years of age). Employees have the right to 20 minutes rest and a 24 hour rest period every seven days, as well as minimum daily rest periods of 11 hours, with some shiftworkers exempt.

Other working time regulations also relate to stress management, for example, the right to request flexible working. These are dealt with in the section on flexible working below.

Gangmasters Licencing Act 2004

The intensive exploitation of migrant workers has lead to concerns over health and safety. The *Gangmasters Licencing Act 2004* requires agencies supplying labour such as gathering shellfish, packing, and processing, to register with the newly established *Gangmasters Licencing Authority*, which enforces minimum standard including health and safety.

The government has outlined its strategy for health and safety in the workplace in the 2004 paper *A Strategy for Workplace Health and Safety in Great Britain to 2010 and Beyond*. This paper draws on the experience of the three decades following the HWSA, and sees improved compliance with current legislation and regulations as the key to improving workplace health and safety, rather than further regulations.

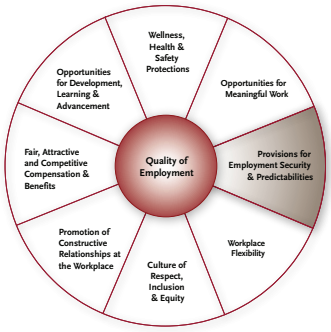


➲ Indicators of Opportunities for Meaningful Work

Opportunities for meaningful or fulfilling employment are promoted through facilitating appropriate job-skill matches, self-realization through occupation, or community participation away from routine work.

There is no specific legislation targeting the enhancement of the experience of work in the psychological sense, though there is some recognition of the importance of psychological well-being in the workplace. The government's "making work pay" agenda does refer to the potential for self-fulfilment gained from employment, however, such government initiatives are generally aimed at those on the periphery of the labour market whose well-being could be enhanced from a more consistent relationship to paid employment.

The provision of the right to request flexible working arrangements outside of occupations with a tradition of part-time or flexible work, and the improvement of child care provision, is likely to have improved the opportunities for women with children to pursue careers including those outside of the traditional occupations of working mothers. *The Childcare Act 2006* contained provisions to improve pre-school day nurseries, out of school clubs, and holiday schemes, which may facilitate the participation of women in mainstream occupations.



➲ Indicators of Provisions for Employment Security & Predictability

Stable provision of employment opportunities for job seekers is promoted, clear communication of terms of employment is facilitated, and protecting job security of the employed is a policy objective.

Provisions for employability in the UK are targeted towards getting the long-term unemployed and young adults who are not in employment or training into the labour market. Compared with other European countries, the UK has an extensive range of active labour market policies aimed at providing incentives for the unemployed to seek employment as well as punitive action against those who are not actively seeking work.

Youth unemployment is a key issue in the UK, particularly for young males who have a high rate of inactivity (15.8% for 15-24 year olds in 2006).[19] The *New Deal for Young People*, introduced in 1998, is the most important initiative aimed at improving the skills and employability of young adults who are not in education/training or in employment. A key part of the government's 'Welfare to Work' program, exists alongside other New Deal initiatives which target socio-economic groups that have persistently higher rates of inactivity, such as the older unemployed (aged 50 plus), single parents, and, more recently, disabled people. Once basic skills needs are identified, help is provided to improve skills, including workplace learning. The bulk of government funding for New Deal is focused on young adults.

In January 2009, the government announced extra help for those who have been unemployed for more than six months. Job centres received extra funding to provide intensive and more personalized support to job seekers, while extra funding for training was provided and the possibility to use volunteering as a way of learning good working habits. Employers were also encouraged to take on long-term job seekers, with the introduction of a "golden hello" of £2500 if they recruited and trained unemployed workers.

There are other plans to revise *New Deal* initiatives following evaluations which have suggested that those who have found jobs aided by the New Deal have a high chance of being unemployed again. Proposals include a *Flexible New Deal* which will establish a more tailored approach to skills and work placement as well encouraging more partnerships with workplaces.[20]

Plans to cut benefits to those who refuse to embark on training courses were shelved following protests by adult learning organizations who insisted that encouragement, not punitive sanctions, is needed for those with low skills.[21] However, the government has recently announced that these plans are to be introduced for those under 25 who reject offers of employment or training.

The *Learning and Skills Council* (LSC), the public body tasked with improving the skills and training of 14 to 19 year olds and adult learners, is soon to be disbanded. There are currently proposals to transfer the responsibility of the LSC to local authorities who will be charged with implementing the government's goal of raising the education and training of young people (*Children, Skills and Learning Bill*).

Other institutions and initiatives exist to enhance the employability of new labour market entrants. The *Sector Skills Councils* (SSC) are made up of employers, trade unions and professional bodies. Their role is to identify gaps between the skills of new labour entrants and the needs of businesses, and to make suggestions to government on skills and training policy. The Centres of Vocational Excellence (CoVEs) link colleges to business partners to further improve the match between workforce skills and the needs of businesses. The recent establishment of the Department of Business, Innovation and Skills, which encompasses higher education, is likely to lead to similar links between universities and employers.[22]

There are currently plans to further enhance the skills base of school-leavers and young adults. The *Children, Skills and Learning Bill* proposes the creation of a new statutory basis for an apprenticeship system by establishing a national apprenticeship system and increasing the age at which young people are required to remain in education and training.

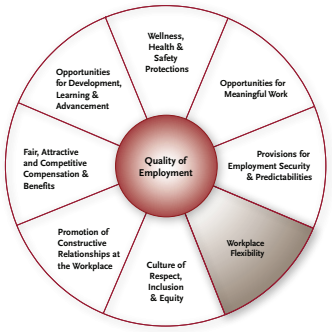
Protecting compensation and benefits and job security following transfers

In response to EC Directives, UK legislation provides some employment protection and stability for employees faced with employing businesses undergoing a change of

ownership. The most recent regulations are the *Transfer of Undertakings (Protection of Employment) Regulations 2006,* commonly referred to as TUPE regulations. TUPE regulations are complex, however, they are underpinned by the basic principle that when a transfer occurs, the rights of existing employees should be protected. The 2006 legislation widens the coverage of TUPE and obliges employers to inform and consult with their workforce before a transfer of operations takes place.

Under the regulations, when there is a change of business ownership via outsourcing or a transfer of services, employees cannot be dismissed, unless there is objective economic imperative or there has been a radical change in the identity of the business, in terms of the nature of its work or organisational structure.

The Employment Rights Act 1996 and the Trade Union and Labour Relations (Consolidation) Act 1992 afford workers certain protections when their employer announces a collective redundancy. The selection criteria must be fair and objective, and certain groups of employees (for example, those engaged in trade union activities, those on maternity leave, and those who are being dismissed for reasons related to the minimum wage) have special protection against unfair dismissal. Employees with at least two years of service are also entitled to statutory redundancy payment which is calculated by multiplying years of service (up to a maximum of 20) by a multiplier: 0.5 for workers under 22; 1 for workers 22-41; and 1.5 for workers over 41. As the statutory redundancy pay system is directly age related, the government had considered levelling payments. However, it found that the existing system is justified by the fact that older workers have greater difficulty than younger ones in finding re-employment. Where more than 20 people are expected to be made redundant within a 90 day period, the employer is also obliged to consult union representatives (or where they do not exist, elected employee representatives) on how the redundancy will be carried out.



➲ Indicators of Workplace Flexibility

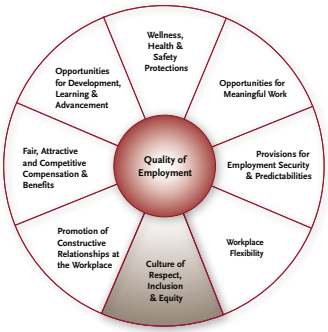
Availability and utilization of flexible work options are promoted for employees of various life stages through increasing their control over work hours, locations, and other work conditions.

The encouragement of flexible working practices has been a pivotal instrument in promoting and facilitating the participation of women in the labour market. In the UK, both unions and the government view flexibility of working time and place positively, though employers have voiced concerns over the increased obligations to consider requests by their workforce for flexible working options. While flexible working opportunities have focused on working parents, mainly mothers, but increasingly fathers as well, there has been a shift to consider flexible working practices across the workforce as a way of enhancing general work-life balance. However, legislation on the right to request flexibility is limited to parents and caregivers.

The Maternity and Parental Leave Regulations 1999 gave parents of children up to the age of five the right to take 13 weeks unpaid leave per child to carry out parental duties, so long as they have completed one year of service with their employer. For parents of disabled children, the leave period is extended to 18 weeks, up to the child's 18th birthday and can be taken in a more flexible manner.

Outside of provisions for parents to take parental leave, there are no general statutory provisions for flexible working in the UK. A series of amendments to the Employment Rights Act gives 'qualifying employees' the right to request flexible working arrangements to enable them to care for a child or an adult in their care. At present, a qualifying employee is an employee who has worked continuously for 26 weeks and is responsible for a child under the age of six or 18 if disabled, or the carer of an adult in need of care. The definition of a qualifying employee is soon to be extended to parents of children up to the age of 16.

Flexible working arrangements may include working from home, the organization of working time, or a request to work less than full-time. Where requests are denied, employees have the right to appeal, in the first instance to the employer and, if there is a breach of procedure, to an employment tribunal. The whole system is highly formalized and in some cases replaces informal procedures that were in place.



➲ Indicators of Culture of Respect, Inclusion, & Equity

Diversity in the workforce and inclusion of less advantageous populations are promoted, and equity in work conditions is pursued.

The UK has an extensive history of anti-discrimination legislation in the workplace. In the 1970s two major pieces of legislation were passed to combat discrimination against employees on grounds of gender and race, the *Sex Discrimination Act 1975* and the *Race Relations Act 1976*. Two corresponding institutions were established to monitor the implementation of anti-discrimination legislation: the *Equal Opportunities Commission and the Commission for Racial Equality*. These bodies have since been replaced by the *Equality and Human Rights Commission*, set up in 2007 in order to address other forms of discrimination not covered by the two bodies, and to better address forms of double discrimination. The mandate of the Commission is to promote equality based on the concept of human rights for all and to strengthen the enforcement powers of the three previous equality commissions. UK policy no longer treats equality as a minority issue; every individual is accorded the 'human right' to achieve their potential free from prejudice and discrimination.[23]

Under UK law, discrimination can be direct or indirect:

- Direct discrimination is where an employee (or prospective employee) is treated less favourably due to their race, gender, religion or belief, or sexual orientation. Employers cannot argue that they did not intend to discriminate, since the law only takes the consequence of employer actions into account.

- Indirect discrimination occurs where rules or regulations have a disproportionately negative effect on particular groups. An Employment Tribunal will consider 1) whether the number of people that are affected by a procedure is significant; 2) whether the procedure is justified from a business point of view (for example,

recruiting only women in a female hostel. This is considered to be a "genuine occupational requirement"); 3) whether the procedure has a negative affect on a particular group of people.

Anti-discrimination legislation has been extended to other groups of workers. The *Disability Discrimination Act of 1995* led to the establishment of the Disability Rights Commission (now also subsumed within the EHRC) and required employers to provide evidence of reasonable medical criteria for not employing a disabled person, whilst more recently the *Employment Equality Legislation (Sexual Orientation) 2003* and *Employment Equality Legislation (Religion and Belief) 2003* have prohibited discrimination on grounds of sexual orientation and religion or belief.

The most recent employment equality legislation, the *Employment Equality Act (Age) 2006* prohibits age discrimination in recruitment, promotion, and training, and protects employees from unjustified retirement below the age of 65. It also grants employees the right to request working beyond their employers' mandatory retirement age.

The legislation described above covers all aspects of employment and vocational training and makes it unlawful to treat people less favourably than others in a comparable situation or subject them to harassment. Organisations are also required to carry out *Equality Impact Assessments* in situations of organisational change such as restructuring or redundancy plans. Equality Impact Assessments can be requested by unions where changes to conditions of employment occur.

Recent anti-discrimination legislation has been driven by European Framework Directives and has had the effect of overcoming shortcomings in the previous legislation in terms of scope of legislation and enforcement. Similarly, amendments to earlier anti-discrimination legislation have brought UK laws more into line with EU legislation. The *Sex Discrimination Regulations 2001* places the onus on the employer to prove that discrimination has not taken place, whilst the *Race Relations Amendment Act (2000)* places a statutory obligation on all public bodies to develop a race equality policy and action plan.

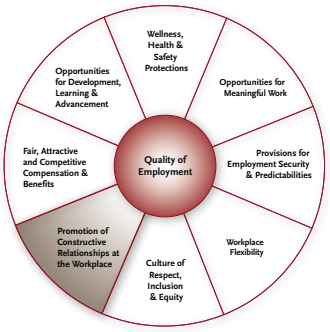
The UK government has been mindful to bring the business community on board with equality legalisation. The EHRC promotes the idea that employers can benefit from the diverse pool of talent which exists in the UK workforce. According to this view, discrimination is not only an issue for the person experiencing it, but also for organisations which may not be tapping into the full potential of this diverse workforce. Discrimination, therefore, can be a barrier to enhancing productivity and efficiency in the workplace. The CBI appears to support this position; it recently published guidelines on workplace diversity in collaboration with the TUC (Trades Union Congress).[24]

New equality legislation is currently under debate in the UK parliament. In keeping with the logic behind the creation of the EHRC, the proposed *Equality Bill* aims to "harmonise discrimination law, and to strengthen the law to support progress on equality." It is hoped that businesses will benefit from a clearer legal framework. In addition, the *Equality Bill* aims to increase transparency in order to reveal workplace inequality, as well as require some organisations to implement positive discrimination in order to make workplaces more reflective of their surrounding communities. Similarly, companies will be required to publish information regarding pay differentials between male and female employees. The Bill also aims to enable employment tribunals to make recommendations in discrimination cases so that individual cases can lead to workplace wide improvements.[25]

Equity for 'non-standard' employees

Under the impulse of EC directives aimed at creating parity between full-time, permanent employees, and employees on other types of contracts, the government has introduced regulations on part-time workers and fixed term-employees – the *Part Time Workers (Prevention of Less Favourable Treatment) Regulations 2000* and the *Fixed-Term Employees (Prevention of Less Favourable Treatment) Regulations 2002*. Under these regulations, part-time and fixed term employees are not to be given less favourable contractual terms and conditions than comparable employees on standard contracts (full-time permanent employees), unless there is a legitimate business objective to justify less favourable treatment. For example, if the costs of a benefit to a 'non-standard' employee are disproportionate as compared to the benefit a standard employee would receive, the business can claim exemption. These regulations mean that such 'non-standard' employees should receive similar conditions, benefits, and compensation, on a pro-rata basis where appropriate, and apply to all employers regardless of the number of employees.

Agency workers are not well covered by these regulations. However, following the EC Directive On Temporary Agency Work of 2008, agency workers in the UK who have worked for 12 weeks in a given post will be subject to similar regulation to promote equal treatment in the workplace.



➲ Indicators of Promotion of Constructive Relationships at Work

Employer-employee frictions and conflicts are mitigated, and constructive workplace relations are facilitated.

The stated aim of government policy in regards to industrial relations is to promote partnership between employees and employers. The *Employment Relations Act 1999* left in place some of the previous government's trade union legislation; strict guidelines on strike action such as the ban on secondary action and the legal requirement to hold a secret ballot for any proposed strike action were kept in place since they were perceived as cede too much power to trade unions and therefore detrimental to the promotion of partnership in the workplace.

However, the *1999 Employment Relations Act* facilitated union recognition for collective bargaining processes where a majority of the appropriate workforce expressed a desire for this. The 1999 Act was updated by the *Employment Rights Act 2004* which tightened provisions for employees to have the right to free association in trade unions.

In particular, the 2004 Act gave workers statutory protection against inducements offered by employers not to join a union or take part in union activities, or to cede their terms and conditions of employment determined by a collective agreement, and reinforced and expanded the right to be accompanied at a disciplinary or grievance hearing by a union official or colleague. The Act prohibits improper activities by employers and unions during recognition and de-recognition ballots, and allows unions to communicate with relevant employees during ballots.

In order to comply with EC regulations, the 2004 Act also set in motion the *Information and Consultation of Employees Regulations 2004*, which is an important development in UK employment law. For the first time, there is a statutory obligation for employers to inform and consult employees over a range of workplace issues.

The *Employment Act 2008* introduces a range of reforms to employment relations, in particular encouraging earlier and informal resolution of disputes by promoting compliance with a statutory code of practice on the procedures for dispute resolution. The code of practice specifies what constitutes a reasonable standard of behaviour in handling disputes between employers and employees, though this may vary according to specific circumstances. This is ultimately decided by employment tribunals if disputes are not resolved informally. Both parties are obliged to follow basic principles of fairness, for example, reasonable timescales for negotiation and adequate communication and information.

Despite the UK's traditionally voluntarist approach to industrial relations, the present government views trade unions as a key component of partnership within workplaces, illustrated by the establishment of a union 'modernisation' fund. The purpose of the fund is to enable trade unions to improve and modernise their operations in the workplace in particular by making funds available for the training of trade union representatives, the enhanced use of modern technology and improved accessibility to young people and under-represented groups.

CONTEXTUAL FOCUS:
THE DEFAULT RETIREMENT AGE

When the 2006 Employment Equality (Age) Regulations were being drafted, the most contentious issue that the government faced was whether or not to have a mandatory retirement age. Prior to the Age Regulations, there had not been any law that required an employer to set a mandatory retirement date in their contracts of employment. There were, however, legal consequences in terms of employment protection. Employees who continued in employment after the age of 65 lost their right to protection against unfair dismissal and their right to redundancy payments.

In its 2003 consultation paper, *Age Matters*, the government sought views on three possible approaches to regulating mandatory retirement:

- To abolish mandatory retirement completely
- To abolish mandatory retirement, but also allow employers to petition for an exemption where they feel there is an objective justification for retaining their mandatory retirement age
- To set a "default retirement age" of 70, after which an employer could mandatorily retire an employee.

The main employer group, the Confederation for Business and Industry (CBI) favoured retaining the status quo, while the Trades Union Congress (TUC), Chartered Institute for Personnel and Development (CIPD), and the age lobby campaigned jointly for mandatory retirement to be abolished completely.

In the end, the government chose none of these three options. Rather, it decided to set a default retirement age at 65 rather than 70. The regulations allow for employers to petition for an exemption to allow for a lower workplace mandatory retirement age. However, such organisations face what the government has described as a "tough test." The government has pledged to review the default retirement age, with a goal of abolishing it in 2010. The age lobby also tried, unsuccessfully, to challenge this part of the Age Regulation in the European Court of Justice.

In addition to setting a default retirement age, the Age Regulation also put upon employers a "duty to consider" requests from employees to remain in work beyond their expected retirement date. Modelled on the "duty to consider" requests from caregivers for flexible working (see the section "Workplace Flexibility"), the onus on employers is procedural rather than substantive. Employers are required to inform the employee of its intent to require retirement, allow the employee to request to continue working beyond the expected retirement date, meet to discuss options that would enable continued employment, and allow a dissatisfied employee to file an appeal. However, so long as the employer follows the procedures outlined in the Age Regulations, it can dismiss the employee for reasons of retirement.

As stated in the Age Regulations, the government's aim when setting a "duty to consider" was to "move away from a culture that retires people without regard to the contribution that they can still make to the labour market" (para 6.3.1). In other words, the expectation has been that discussions between employees and their managers, at an individual level, should lead to an increase in post-65 labour activity. This is in keeping with its "light touch" (para 6.3.3) approach to employment regulation.[26]

To understand the government's approach to work and retirement, it is important to put it into context of older workers' labour market participation and employer practices. Roughly 30% of men and 10% of women 65-69 remain economically active. These figures drop down to 5% and 2.5% respectively for people 70 and over. These figures have gradually been rising, even in the past year during the recession. Roughly two-thirds of men and four-fifths of women above 65 are in part-time work. However, most continue to work in the same job as they had before, with the majority having had worked for their employers for more than a decade. In other words, British people who have stayed in work after 65 have tended to carry on with their previous work (albeit on a part-time basis) for a relatively short period of time, often in order to finish up a project.

An extensive survey of employers which was commissioned by the Department for Work and Pensions (DWP) showed that only one third of employers had had a mandatory retirement age before the Age Regulations came into effect (although this group was disproportionately large for public sector organisations); and only 7% of employers said that they would not allow employees to stay in work beyond the company retirement age "under any circumstances." Most of those that would allow employees to remain in work said that they would only do so where there was a clear business reason.

In 2007, a qualitative survey of 70 managers was carried out for the DWP looking at how the Age Regulations, particularly the default retirement age and duty to consider, were impacting retirement practices. The managers worked in a cross-section of industrial sectors, in small, medium

and large organisations, and at senior, HR and line manager levels. The survey revealed a few clear ways in which employers were responding:

First, retirement policies had become more formalised. The Age Regulations specify a timetable for certain milestones in the retirement process (e.g. informing an employee of her retirement date, meeting to discuss post-retirement work options, and allowing an appeal), and employers are fearful of breaching these rules. An HR manager, for example, said that her company had previously "let workers run out the clock," but had since adopted procedures for ensuring that employees were aware of their retirement dates, and could request changes to their work routines.

Formalization of retirement policies included, for a number of businesses, setting a company retirement age where one had not existed before. This was particularly the case with small employers. The DWP talked, for example, with a trade association that represented small and micro-sized employers. The association recommends to its members that they formally adopt a mandatory retirement age of 65, even if they did not employ anybody approaching that age. It was noted by the association's representative that although small employers had frequently not formalised retirement policies, it was still common for employers to dismiss workers who had passed the State Pension Age. In anticipation of the 2011 government review of the default retirement age, a few employers have abolished their mandatory retirement ages. For example, the UK Civil Service, which less than a decade ago had a mandatory retirement age of 60 in some government departments, has abolished compulsory retirement. Some large retailers, faced with high turnover rates, have done likewise.

Second, managers began to think about the business case for retaining employees over 65 who wanted to stay in work. However, this was normally framed in relation to completing specific tasks and for a limited period. Although most managers said that their employers would allow people to stay in work after 65, they also noted that opportunities would be limited to circumstances in which a post was vacant and that extended work arrangements would be annually reviewed. A few exceptional circumstances were noted in sectors in which flexible working was common (e.g. social care homes routinely offered retired nurses the chance to work as locum staff) or where employees had specialised skills which could not easily be replaced (e.g. a university permitted a professor with expertise on Shamanism was permitted to delay retirement because his modules were popular with students).

Third, responsibility for managing retirement and considering requests from employees to delay retirement was, for most organiz
ations, mainly the responsibility of line managers. Although managers were normally given strict instructions on complying with the timetable for informing and consulting employees about their retirement plans, in few organisations did senior or HR managers offer guidance on what alternatives to retirement were available in their organisations. In other words, requests from employees to delay retirement were normally subject to individual dispensation negotiated between employees and their immediate managers. A few exceptions were noted. For example, the HR departments for two large public sector organisations employed "Age Champions." In both cases, when an employee requested to delay retirement, the Age Champion would discuss with both the employee and the manager options for continued work which were available in the respective organisations, including part time employment, mentoring roles, and other changes to job design.

The survey revealed that employer practices in regards to retirement have not significantly changed as a result of the Age Regulations. While managers generally spoke positively about their older workers, few had systems in place for managing people beyond the age of 65. This may create a challenge for the government to abolish mandatory retirement completely by 2011, since practices seem to be changing only incrementally.

IMPLICATIONS FOR QUALITY OF EMPLOYMENT

Like other European countries, the UK government is responding to a number of external and domestic pressures which are impacting labour market participation: changing age demographics; the transition away from traditional industries like manufacturing towards the service sector; preserving the sustainability of the welfare state; and convergence pressures from the European Union. Its over-riding public policy objective has been to make work appear attractive, particularly for those on social benefits. The UK government's policy approach has been to take a light touch to employment regulation, leaving it mainly up to businesses to find ways to enable participation of vulnerable groups such as the very young, older workers, and people with caring responsibilities; while offering financial incentives for people to move from welfare to work. However, the current recession has put strains on this approach. Not only is there a high level of unemployment, but the recession is having a disproportionate impact on groups of vulnerable workers, particularly the young and the unskilled, whom the government is seeking to help. Further, other public policy concerns are now likely to take priority over the funding of employment programs. It is unclear in the current political and economic context how, or whether, it will meet its targets for labour market participation.

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