

Excerpt from House of Lords Hansard

Question for Short Debate on the Default Retirement Age

13 January 2009

Tabled By Baroness Greengross

To ask Her Majesty's Government whether they plan to reform default retirement ages.

Baroness Greengross: My Lords, the Employment Equality (Age) Regulations 2006 implemented a European directive which outlawed age discrimination in employment and adult education. However, the regulations introduced a national default retirement age as an exception to the general principle of non-discrimination on the grounds of age. This means that it is lawful for employers to operate a mandatory retirement age of 65, in effect getting rid of people automatically just because they are deemed to be too old to do a job. There is provision for an appeal, but the effect remains that if an employer wishes to terminate someone's employment at 65, normally it will happen.

A recent survey by the Chartered Institute of Personnel and Development with KPMG suggests that in the current economic climate, almost one in five employers said that they were going to enforce the retirement age of 65 more vigorously. That means that even more people will be turfed out of their job on the assumption that they are too old, regardless of whether they are or not.

When the regulations came into effect, the Government justified the default retirement age at 65 for the next five years as a legitimate aim of social policy on the grounds that it assisted employers in manpower planning, but they committed to review the arrangements in 2011. At the time, this annoyed many older people, who pointed out that they would be too old—more likely dead—by then.

The review will look at the extent to which employees' right to request to stay at work beyond 65 will have created a culture which reduces reliance on the old-style cut-off date of retirement. It cannot be right that, on one day, you are a person with a job, status and the recognition that goes with it, and that, on the next, you have a 65th birthday and, just because of it, you lose the lot. However, to change this culture is a formidable task, but we have to take it on board. Equality legislation should be precisely that. As a commissioner at the Equality and Human Rights Commission, I believe that the default retirement age is a serious blot on our equalities landscape. Discrimination is not acceptable in the case of gender, race or disability; it should not be in respect of age.

I am aware, however, of understandable concerns of bodies such as the Engineering Employers Federation, which argues strongly that any change to current arrangements will adversely affect the UK's competitive position and that, fearing expensive litigation, some employers will retain older workers who are not the best people for a job. They believe also that removing the default age of retirement will undermine workforce morale and result in "dead-men's-shoes" succession planning problems. They believe also that management time would be diverted to dealing with industrial tribunal cases brought by disgruntled workers, whatever their age, whose performance had been deemed unsatisfactory. However, I strongly believe that in a

country where we are promoting equality as a societal norm we must find ways of addressing these concerns rather than allowing them to be used as a means of retaining the unjust system currently in place.

Any good employer should have in place an appraisal system that ensures that its employees are competent and meet their delivery targets. Surely this is even more important in the current economic climate. However, if after appropriate support and training an employee, whatever their age, fails to deliver, it is surely for the good of the organisation and its other employees that an employer should consider whether to retain that employee in the workforce.

It is this test of competence, through annual appraisals, that gives us the way forward for removing the DRA. It is not easy for a young manager to tell an employee who is the age of his father or perhaps his grandfather that he or she is no longer competent to do the job that they have been doing for years. If companies' appraisal systems are applied properly throughout an organisation to employees of all ages, those people who are able to contribute effectively to the success of the organisation can do so whether they are 25 or 65.

Those who express concern make a good point about the termination of employment of long-standing workers who would under present arrangements retire perhaps with a clock and some good will, but who might be perceived under a new regime as having been sacked for incompetence. I would expect employers to maintain morale by recognising years of loyal, good service, as many do now, through measures such as long-service awards and retirement presentations, but they must be based on performance, not on age.

If competence becomes the test by which to determine continued employment, certain benefits would stem from the abolition of the default retirement age. First, companies would retain existing talents within their workforce without the need at considerable cost to recruit and train new people to replace those who currently retire at 65 and to cover their posts while the recruitment and training process is under way. The Chartered Institute of Personnel and Development estimates that the average cost of replacing a manager or professional person is £10,000, so it is quite expensive. Secondly, it would help address the ratio of workers to non-workers in our population, which, without action, is forecast to become 54.7 inactive people over 65 for every 100 workers by 2050. It is an issue of which I am very well aware as chief executive of the International Longevity Centre. Thirdly, and perhaps most importantly, it would help address the growing pensions crisis by extending some employees' working lives and enabling them to contribute more money to their pension schemes, which was one of the key recommendations of the noble Lord, Lord Turner, in his review of pensions policy. Fourthly, it would provide an opportunity to raise more revenue if national insurance contributions and direct taxation were to be applied to earned income irrespective of the age of the worker, a policy which seems justified on grounds of equality if the argument for abolishing the default retirement age is based on equality.

A number of substantial employers, and the Government in respect of the Civil Service, are already implementing no-mandatory-retirement-age policies; for example, B&Q, Defra, the DCLG, Hertfordshire County Council, HM Revenue & Customs, M&S and Sainsbury's and many more. All have adopted such a policy; it works for them; and, in many cases, customers are recorded as welcoming being able to ask an older employee, especially somewhere like B&Q, "Which is the right screwdriver?" and "What do I do if I want to put up some shelves?"—I know that I

have been in that position myself. It is very helpful to ask someone who has done it for many years.

We need to change our thinking so that employees are treated on an equal footing throughout their working lives, with the same opportunities to progress and the same requirement to show competency to deliver at the age of 65 as at the age of 30. Chronological age is an inadequate proxy for capability. Some people are over the hill at 35; but some are competent, quick-witted and innovative at 65, and the cost of losing such talent is unacceptable. In the future, our society will be judged by its basic fairness and humanity, especially in a period of economic downturn.

Baroness Turner of Camden: My Lords, I thank the noble Baroness, Lady Greengross, for introducing this timely debate. I understand that the default retirement age of 65 is due for review by 2011.

It is now widely accepted that we are all living longer. The Government appear to accept this when they talk about pension entitlement. There is also frequently expressed concern about the increased demands which may be placed on the NHS as a result of an ageing population. But this does not have to happen.

A healthy population is likely to be active. When competent individuals who want and need to work are removed from the workforce, not only is it a waste of valuable assets, but it may result in ill health which might not have occurred had they been actively involved in a working environment.

An unintended consequence of the introduction of a default retirement age in the age regulations has been the forced retirement at the age of 65 of employees who would otherwise have been able to continue working beyond that age. A recent survey revealed that, in the current economic climate, almost one in five employers said that they would try to enforce retirement at 65 more vigorously. The right to continue to work beyond retirement age is included in the regulations, but it is weak. An employer has a duty to consider an individual's wishes, but can refuse without giving a reason. Many employers refuse all requests to work beyond 65 to avoid setting a precedent.

It is clear that many older people want to work, but are effectively prevented from doing so because of the existence of the default retirement age. In the current financial crisis, many more people will need to work beyond the age of 65 because of the falling value of their pensions, which is regrettable, and the drop in interest rates, which is diminishing substantially any income from savings.

Of course, there are types of employment, including heavy manual or possibly dangerous physical work—the construction industry comes to mind—where employees may wish to retire early or at least be provided with work that is less physically demanding. But these jobs are in a minority; we are here talking about vast ranges of non-manual employment where employees are quite competent and willing, indeed desirous, of continuing in employment.

The research on which a lot of what I am saying is based tells us:

“The age discrimination legislation has made it worse for those of retirement age who want to continue working. Employers have found they can use the Act to their advantage and retire an employee without any problems”.

The Government have said that they have plans to end mandatory retirement age by 2010 for all non-senior civil servants. Those working in the private sector and other parts of the public sector should have the same choice about retirement. The existence of the default retirement age seems at odds with the Government's exhortations to people to extend their working lives to ensure that they are comfortable in retirement and non-benefit-dependent. That is very important. I await with interest the Minister's response.

Lord Selsdon: My Lords, I have to declare an interest in that I am long past my sell-by date. In accordance with the age prescriptions of your Lordships' House, I believe that it is only the noble Lord, Lord Stevenson, from the Back Benches, who has 18 months to go before he should technically be put down. Young Front-Bench people will have no problem.

I shall approach this from a different point of view. I have a great respect for age. Some of that has come from 46 years in your Lordships' House, where I have been drip fed by people who I thought were geriatrics before I made the average age. The learning is always there.

What I am going to suggest now may be a bit radical, even for myself. I do not believe that any cap should be put on people's working age; they should be allowed to go on working as long as they want to. The problem we have is that, in the bureaucracy in which we live, at a certain age in life people are entitled to a pension. Possibly when people reach the retirement age—perhaps when women are treated equally with men, although they do live three years longer than men, on average—those who continue to work should be paid tax-free, with no obligation for any contributions by the employee to the state.

In this strange economic world in which we live, at one level people say that we must reduce employment. Your Lordships will be aware that there are companies that have issued instructions across the world, saying to heads of department that they must reduce the number of people that they employ by 20, 30 or 40 per cent. Those who were intelligent and saw this coming have already worked out that there are people whom they might like to have dismissed two years ago and have therefore garaged the reserves. There will be industries—probably the larger organisations—that will say that it may be better to get rid of the older ones and not take on any more of the younger ones. Therefore, you have a period of stagnation in employment, which may be quite worrying.

We have a high unemployment forecast—and I do not mind admitting that in the past when I have written papers making forecasts, I have always exaggerated and been horrified when I turned out to be right. I thought that the suggestion many years ago that we could have 22 per cent inflation and 17 per cent interest rates was in the extreme and wrong. Now we have possibilities of very high unemployment—and the wrong sort of unemployment. The older age group are having a problem. When those who have been wise and have saved, and who have hidden things under a bushel, are required at the age of 75 to take out a policy or surrender their capital, what will they get in terms of an annuity? Those who have their savings on deposit at the moment may find that even 1 per cent is on the high side. So what is the answer for the older people? It is to go on working. If a formula could be introduced so that those who have reached the statutory retirement age could go on being employed at a lower cost, because there were no added values, we may arrive somewhere quite interesting.

We are faced with an economic crisis that is related possibly more to industry than we realise, and not to service industries. The logical thing that you do in a recession is to train everybody you can think of for all you are worth—and the best trainers are usually those in the older generation who have experience. In parallel, when you are looking at age, as the noble Baroness, Lady Greengross, said, there is no one factor that determines whether you go on working. It can be physical or it can be mental. We all forget what it is we intended to do next, but we can remember what it is we were doing 50 years ago.

The worry that I have is that if we concentrate solely on the bureaucracy of getting rid of a regulation, we will be wrong to do so. If employers can be encouraged to recognise that there is some economic benefit to themselves in retaining people longer—or, perhaps more positively, in going out and recruiting those in the older age group—we will find something worth while.

I return to where I came in. I used to be in the asbestos industry, which is not the best thing to have been in. We did industrial and economic research. I was asked one day, with my team, if we would be bold enough to put a value on a human life. What is a person worth, throughout the seven ages of man? Is there an economic value that you can put on it? What does it cost if there is a death? We were talking in those days about road accidents. I believe that the older people in this country have a greater value now than they have had in the past 25 years.

Baroness Afshar: My Lords, I thank my noble friend Lady Greengross for putting this Question to the House. I declare an interest, because I am rapidly approaching the age of 65, so the axe is about to fall. I am fortunate in serving in your Lordships' House, where you might keep me for a bit longer, and also at a university where, as yet, our contractual agreement to work until 67 has not been revoked.

I find the imposition of a compulsory retirement age very problematic. I find it problematic culturally because I grew up in a society in which old age was venerated. As a result, I have celebrated every birthday as a step towards achievement, so I would find it very difficult to discover at the age of 65 that I have suddenly failed to achieve. This notion of respect for older people, which I am glad to see is shared in this House, is a common concept in the Middle East. In a recent study that we did in West Yorkshire, working with women of different origins, we found that that respect for old age and the experience and knowledge of old age is shared by Polish and Irish and by many working-class British women, as well as the Muslim women with whom we were working.

We found as part of our research that the most successful women, who made the least demand on the health services and social services and even on the churches and support systems, were the women who had a strong sense of functionality—people who served their communities, had a job and served their families. They felt an obligation to get up and go to work and do something. We had one wonderful case of a lovely lady whose grandchildren had left and who was feeling a little bit old. She collected a young man—a drug addict—from the side of the street and decided to adopt him and shake him into shape, so that again her life had a focus.

We also found that being paid for the work that they did was incredibly important to those women. Research after research indicates that older women are the most dispossessed and the poorest as well as the people with the least amount of advantage in our society. We now have a cohort of women who have worked in full-time employment and, therefore, may have the possibility of not ending on the poor

heap. It will be a great sorrow if, just as we are about to achieve the same status as men, with a decent retirement age and pension, those of us who had to pull out because we had babies or other caring responsibilities suddenly find that we cannot actually do the years that we need to get to a decent retirement age because we are chopped off. Therefore, there was this sudden death experience for the people we talked to.

We talked to many successful, retired people, who enjoyed going to more theatres, concerts and so on, but those women who had depended on a wage felt that without a decent income they did not have an identity. They could not support their families, provide presents at Christmas or keep themselves warm. Therefore, they became dysfunctional, dependent categories.

In this age of equality and equal opportunity, to have a provision that intentionally creates more people that are dysfunctional seems to me to be a great pity. Therefore, I very much hope that the Government will consider doing something about it.

Lord Giddens: My Lords, I congratulate the noble Baroness, Lady Greengross, on having initiated this debate and on her elegant introduction, which made me feel a bit uneasy as I feel that I am one of those people over the hill at 35 who were so aptly identified.

About 15 years ago, I gave a speech to IG Metall, which is the biggest metal- working union in Germany. It proved to be a very heated kind of encounter. At that point, the union's policy was to press for the statutory retirement age to be reduced to 60. I went to the discussion and said that I thought there should be no statutory retirement age and that people should be able to work as long as they wanted to work, given the normal conditions that apply to people of any age. It caused a furious confrontation. Since then, things have moved on. The climate of opinion in Europe and in this country has changed substantially, and the policy of that union has been reversed.

In Europe, we have had the equal treatment framework directive, and in the UK the UK Employment Equality (Age) Regulations of 2006, to which this debate refers.

I agree with all the other speakers who said that regulations that still allow employers to retire workers against their will at age 65 are a serious anomaly. When he was a Minister of State for Pensions in 2004, Malcolm Wicks said:

“Mandatory retirement age should be thrown into the dustbin of social history”.

He was right to make that statement.

We are in a transitory situation with regard to the law because we do not know what is going to happen with the Heyday case. It is still not clear what the ultimate response of the European Court of Justice will be to that, or, indeed, what the response of the Government here will be to its decision. It seems to me, along with other speakers, that the arguments in favour of scrapping the default retirement age are very much stronger than those that can be deployed to keep it. I list them as four. First, having a statutory retirement age of any kind is a form of discrimination and should be contested in the same way as any other form of discrimination is. The noble Baroness made that point very effectively in her introduction.

Secondly, anyone who studies pensions and has read the Turner report knows that we need a higher proportion of older people in the labour force. They also know that the UK is not doing as well as some other countries, which have liberalised their age of retirement in a much more radical way than the UK has done—for example, in the United States at a federal level.

Thirdly, as has been said, keeping older people in the labour force if they want to stay in it—and many people do—preserves and helps dignify experience in the workplace. That is a positive attribute. Fourthly, we have plenty of studies that show it does not harm younger workers. You might think intuitively that if you keep older workers on, and you allow them to stay on beyond a statutory retirement age, it would reduce the proportion of younger workers entering the labour force. The opposite is true. You can see that if you compare different European countries—for example, in Greece, you have a very low rate of unemployment among younger people and you have a very low proportion of older people in work. Those two things are tied together. In Finland, you have a higher proportion of people who work in both categories, so those things seem to be tied to one another rather than in opposition.

I conclude by asking the Minister to respond to three questions. First, does he agree that ageism is a form of discrimination like any other and should be contested with equal rigour? Secondly, does he agree that the Government should be trying to increase the proportion of older people in the labour force, rather than, as the existing legislation seems to suggest, doing the opposite? Thirdly, since a review is projected for 2011, what studies are being carried out to help the Government reach a decision on this issue?

Lord Stevenson of Coddham: My Lords, I start by joining others in congratulating the noble Baroness Lady Greengross, on bringing a debate about a subject that is somewhat specialist but hugely important. I express the hope to the Minister that this will pave the way to what can only be called a win-win solution for Government to extend their own decision, at least for central government, to the rest of the country. Incidentally, it is worth congratulating the Government on having decided to remove mandatory retirement age for civil servants in central government.

I say to the noble Lord, Lord Selsdon, that I should declare a real interest in that I am president of the EFA, the Employers Forum on Age, which represents a large number of large employers on matters of age. Incidentally, the stimulus to set it up came from the noble Baroness many years ago when she ran Age Concern. The arguments for the benefits of the Government just going ahead and getting rid of this rather foolish default have been made very clear. I shall not repeat them. There are strong social and human arguments, but the killer arguments are the resource arguments, which have been so eloquently argued by the previous speaker and other noble Lords. We should use our financial resources better and, above all, our human resources.

However, it may be worth spending a moment addressing the elephant in the room. Why are we here? Why is there a reluctance to do this? As someone who would be seen, rightly, as being in the employers' corner of the ring, I can tell noble Lords that it is very simply that many employers are nervous about this move. I tread into sensitive ground, and I will put it in an extreme way. They are nervous that if the default is removed, they run the risk of an ageing and less than competent workforce and of losing control of their manpower planning. It is difficult to admit in public, but that is the reality. I have read some very delicate words, and the EFA and various others make it plain.

Particularly at the moment, that is an understandable but wholly mistaken nervousness. Well run businesses, whether small or large, appraise performance, and do so on an ongoing basis. We live in a country where there is flexible legislation that enables well run businesses to ask underperforming colleagues to leave, whether they are young, middle aged or old. They need have no nerves. The corollary of that is that it is grotesquely silly that an able, high-performing human being should be forced to leave because he or she reaches a certain age.

I have another argument, which I hope will appeal to the noble Lord, Lord Selsdon. Being 65 is not what it used to be. I owe this insight to the noble Baroness, Lady Murphy, who was one of the country's leading experts in geriatric medicine. When I reached the ripe old age of 60 a few years ago she consoled me by explaining that as a result of changes in diet, health, science and medicine, to get to your equivalent age in your parents' generation you need to take 12 years off. Therefore, at aged 60 I was 48 in my father's years. That is very bad news for the Minister because that puts him roughly back at university. I say to the Minister that if for any reason the Government are not minded to move the default retirement age, or whatever it is called, there is a perfectly logical corollary of that that I do not advocate but I mention, which is to change the age from 65 to 77. The Minister, I am glad to say, has huge experience in running large businesses and knows about this from the coalface and about well run and well appraised organisations. I hope he will lead the way in persuading the Government to do something that will win-win all the way.

Lord Oakeshott of Seagrove Bay: My Lords, I join the paeon of praise to the noble Baroness, Lady Greengross, for introducing this highly relevant debate. I agreed with every word that she said, as I usually do. "Performance, not age", as she put it. She is an example to us all.

I also welcome back the noble Lord, Lord Stevenson of Coddenham. We have missed his sparkling contributions while he has been carrying out his long, distinguished chairmanship of the House of Lords Appointments Commission, in which position he has served us all very well in turbulent times. We are delighted to have him back.

In our view, this is simple. We should not assume that just because someone has reached a particular age they are not fit to do a particular job. People should be judged on the basis of their ability to do that job, not by their date of birth. We do not think that if compulsory retirement age is abolished a large proportion of the workforce will want to retire significantly later than the present standard ages. However, as various noble Lords have said, when many people may now live healthily even to an age of 90 or beyond, individuals are entitled to be judged on their abilities instead of having their career cut off in what may well be, as the noble Baroness, Lady Afshar, pointed out, its prime.

Various noble Lords have told us about the change in the Civil Service and highly reputable and efficient employers like B&Q, Sainsbury's the Co-op and so on, which are already operating without a standard retirement age. Even the Cabinet Office is doing it, where people with public sector pensions do not in most cases have the economic pressure we have heard about under which they cannot afford to retire. We must face the fact that more and more 65 year-olds still have mortgage debts. Many of them have seriously shrinking pensions pots, as the noble Lord, Lord Selsdon, and the noble Baroness, Lady Turner, have pointed out.

The noble Lord, Lord Stevenson, put it very well with his great business experience: a mandatory retirement age is frankly a cop-out for employers. I have been briefed,

which I greatly appreciate, by the EEF and the CBI on their view that there is still a case for a DRA, but I am afraid that I do not find them persuasive. It seems in many ways to be an excuse for bad management. If somebody is 61, 62 or 63 and not performing, people quite often duck out of taking the necessary decision to work them out at that stage. You can argue either way from a businesses efficiency perspective, so I am not persuaded by those arguments.

Flexibility is obviously key. Part of our problem in this country is that people somehow assume that you go right on up to the pinnacle of your career and then suddenly stop. Other countries have a much more sensible attitude: if people reach a certain age, perhaps they wind down into a less senior or demanding job where they contribute better, or start working part time. Again, we do not want a standard cut-off. I say to the CBI and the EEF that businesses are normally and rightly against centralised regulation. Why on earth, then, are they in favour, in this particular case, of a centrally decided, one-size-fits-all retirement age? That does not make sense to me.

Finally—because several points I wanted to make have already been made so well—I have, rather like Pooh-Bah in *The Mikado*, a little list. It is actually rather a long list and, were we to go by it, many of us would be missed: 512 of the 743 Members of this House are over 65; that is 70 per cent. Indeed, 351 of us, almost half, would still be for the chop if we had a default retirement age of 70. In the Commons, the figures are a bit less, but it is still quite a significant number: 12 per cent, as 88 out of 646 are over 65. On this basis, if no other, we are left with the strongest argument of all against a default retirement age: enlightened self-interest.

Lord De Mauley: My Lords, we are all most grateful to the noble Baroness, Lady Greengross, for tabling this Question for Short Debate on what we must surely all agree is such an important subject. As we have heard, the current national default retirement age is 65, and employees have the right to request that they continue to work beyond that age. The Government's decision to have a national default retirement age is to be reviewed five years from implementation of the European employment directive, although it is of course now subject to a legal challenge.

As my noble friend Lord Selsdon said, we on these Benches strongly agree that people should be able—indeed, encouraged—to work on after normal retirement age where they are willing and able to do so. As the noble Lord, Lord Stevenson, said so aptly, 65 ain't what it used to be. Such people have worked hard for many years. Often they prefer to continue to work as a lifestyle decision, and we in this House all know how much better working can be for one's health than not working.

Alternatively, such people's pensions may have been destroyed by a combination of the abolishment of the ACT credit and the effects of falling stock markets, so that they have to continue to work whether they want to or not. Furthermore, as the noble Lord, Lord Giddens, mentioned, the demographics will mean that employers will need to employ older people. For years ahead—at least, once we have emerged from economic downturn—there will be an inadequate supply of younger people available.

On the other hand, the last thing we need, especially in these extremely difficult times for business, is yet more changes to our employment legislation. Since 1997, this Government have introduced no less than 18 Acts of Parliament and a staggering 280 statutory instruments dealing directly with employment. Employers are reeling under this colossal and barely manageable burden. It has had a profoundly negative impact on UK business and its competitiveness. A year ago, the Federation of Small Businesses found that 30 per cent of small businesses would not be hiring any new

staff at all. That, I need hardly say, was before the cold wind of the economic downturn was felt. One can only imagine what that proportion would be now.

The last thing, surely, any sane Government would want to do would be to exacerbate the problem by reducing flexibility in the labour market even further, at a time when our economy is weakening faster than our competitors' and unemployment is growing by the day. Even John Hutton, until not long ago the Secretary of State for Business, recently admitted that there was a "need to challenge the automatic assumption that the only way to deal with exploitation in the workplace is by passing new laws".

Furthermore, there is a considerable amount of litigation waiting in the wings, encouraged by the fact of the ongoing judicial review by the ECJ. This is making employers more reluctant to employ older people, something that several noble Lords have referred to this evening.

We on these Benches consider that retirement should be flexible and viewed as a process rather than focused on a specific age. For example, people with physical jobs should be able to opt to be retrained to take on jobs which, while less physically demanding, can utilise their valuable experience. Others may opt to move into part-time work for a few years before final retirement. Retirement needs to become a process rather than an event. It is the case that, with an ageing of the population, once growth returns there will be a natural progression to businesses employing older people because they will have no option. As I said earlier, there simply will not be enough younger people to employ.

I have the following questions for the Minister. First, I referred earlier to the fact that the Government's decision to have a national default retirement age is to be reviewed five years from implementation of the European employment directive—although it is subject to legal challenge on judicial review, on which the European Court has just issued a provisional ruling. Can the Minister say what the Government's current expectation is as to the likely outcome of all this, especially given that the stakeholder group established to inform the review has not met for nearly a year? Secondly, as the noble Lord, Lord Giddens, asked, when the end of the five-year review period approaches, what procedure will the Government follow to decide on whether there should continue to be a national default retirement age, and, if so, what it should be?

The Parliamentary Under-Secretary of State for Communications, Technology and Broadcasting (Lord Carter of Barnes): My Lords, if anyone was in any doubt, it seems clear that 60 is the new 40. In listening to the debate I was reminded of a cartoon from the Wall Street Journal that a friend sent me, which showed a young man walking into an office where a clearly older man sat behind a desk. The caption read, "He's young. I've never liked that in a man". If anyone was in any doubt about the sense of humour of the Whips' Office, they should note that it has fallen to me to answer this debate on behalf of the Government.

The noble Baroness, Lady Greengross, made the powerful point that chronology is no measure of capability. This evening's debate has ably highlighted that. I hope that my response will not serve to underscore her point too well. Before I get into my formal remarks I should say that it seems clear to me, coming fresh to this, that we are discussing a culture change, and culture changes are rarely fast. Listening to the debate, particularly the remarks of the noble Lord, Lord Stevenson, and the noble Baroness, Lady Greengross, I was reminded that achieving culture change and getting the right balance between the role of legislation and government position and

willing participation from business is always a series of fine judgments. In essence, this evening's debate is about whether we have that fine judgment correct. If I am allowed a personal reflection, it reminded me of the first management decision I ever made at the tender age of 31. I was doing an appraisal of a 59 year-old who was clearly underperforming. I went to see my then mentor and said to him, "I'm deeply conscious that I am 31 and he is 59 and I have to undertake his management appraisal". The individual in question said, "Stephen, be fair, be transparent, rely on our appraisals and our review systems and, by the way, ignore his age and your own, and if you make the wrong decision, be bloody generous". That was good advice but that was 15 years ago. It is not evident to me that businesses across the piece—which I think is the point the noble Lord, Lord Stevenson, was making—are universally demonstrating that level of best management practice. Therefore, I recognise the significance of the issues that the noble Baroness and others raised. Retirement is an important issue for all of us. As someone who was under the age of 47 when the state pension age rises were announced in 2007, I am part of that generation who know explicitly that we shall need to work for longer than our parents.

The point has been made this evening that the declining value of annuities funding retirement is a pressing concern for many people, particularly for those who are not sitting on public sector provided pensions, as the noble Lord, Lord Oakeshott, pointed out. We are therefore considering how to refresh our ageing strategy. A public consultation on the direction of the strategy closes on 10 March. The 2000 Act age regulations prohibit age discrimination in employment and vocational training, which in part answers the point made by the noble Baroness, Lady Greengross, about competence and good management. They apply to all individuals in work or seeking work or access to training, all employers and all providers of vocational training. The change has been described by the Employers Forum on Age as the most significant change to employment law since the Sex Discrimination Act 1975. It might be argued, as many have this evening, that the change was long overdue, but it was nevertheless a huge step into the unknown, or certainly into the uncertain, for employers and employees alike, and one could argue that employers were facing other significant changes. The regulations benefit everyone because we all get older. They also protect young people. They are about discrimination against any age group at any time. As regards the points made by the noble Lord, Lord Selsdon, on redundancy, they expressly forbid discrimination in redundancy selection on grounds of age.

The regulations implement the UK's obligations in relation to discrimination on grounds of age under the Council directive. The directive establishes a general framework for equal treatment in employment and occupation, including vocational training. It requires member states to ensure that they have legislation in place outlawing discrimination on the grounds of sexual orientation, religion or belief and age as well as disability. As noble Lords know, the regulations include a number of exemptions in relation to retirement—the subject of tonight's debate—and service-related benefits, and provide for other differences of treatment if they can be objectively justified. One of our aims when developing the regulations was for light-touch implementation that struck the right balance between tackling age discrimination effectively by giving important and much needed rights to individuals while allowing businesses to operate productively but fairly, particularly those businesses which could not see the self-interest arguments.

The legislation was developed as a result of what I think could be underdescribed as extensive consultation, both formal and informal, with a full range of stakeholders. The default retirement age is an important element of the regulations and one which I realise has clearly not enjoyed universal support. If noble Lords will forgive me, I

should like to restate for the record what it is, how it was hoped that it would work positively and what might be its medium to long-term future. The default retirement age is not a national mandatory retirement age. Employers do not have to retire employees once they reach 65. They are free to continue to employ them as long as they like. Instead, the default retirement age allows employers to continue to use retirement as a tool for workforce planning. Employers who do not wish to use the DRA are free to continue employing workers beyond the age of 65 for as long as they wish. Many employers are operating without fixed retirement ages across the public and private sectors and supporting flexible approaches to retirement to meet the needs of businesses and employees alike. But where employers set a retirement age, either 65 or another, in order to retire an employee, the employer must follow a statutory procedure. As was pointed out this evening, this is in part a right but with a limited number of teeth. By my calculations, somewhere between 170,000 and 200,000 employers a year find themselves able to exercise that right. My judgment is that in a well managed company that right is a useful one to have. In an averagely managed company it is essential to have that right. In a badly managed company one could argue that the right is not sufficient. Therein lies the crux of that debate.

The regulations have delivered significant benefits for older people. For example, upper age limits on unfair dismissal and redundancy have been abolished and companies with retirement ages lower than 65 have had to raise them to 65 unless they are able objectively to justify their reason for retaining a normal retirement age below 65. I should be interested to hear more about the evidence referred to by my noble friend Lady Turner on employers who have used the legislation to lower their companies' retirement age.

The Government provided for the default retirement age on the basis of the evidence available at the time, which was almost by definition a relatively limited evidence base. We recognise that circumstances can change, and we made a public commitment to review the default retirement age in 2011. In addition, through the DWP Age Positive initiative, the Government are working with employers and business lead bodies to share good practice in the employment and retention of older workers, including the adoption of flexible approaches to work and retirement.

On the point made by the noble Lord, Lord Selsdon, about encouraging employers to recognise the benefits of employing older workers, the new statutory right to request does ensure the dialogue between employers and employees who want to work beyond retirement, and this will help to accelerate the culture change necessary for employers to recognise the contribution that older employees make.

The figures from the Office for National Statistics and the Labour Force Survey have shown that opportunities for older workers have been increasing, as employment figures for those up to age 65 and beyond have been rising consistently. The employment rate of men aged 65 and over has risen from 7 per cent in quarter 3 of 1998 to over 10 per cent in quarter 3 of 2008. For women aged 60 and over, it has increased from 7.8 per cent in 1998 to nearly 12.5 per cent in the third quarter of last year. These increases are larger than those seen during the same period in the overall employment rate of men and women of working age, so there are early signs of change in that process. On the point which I think was also raised by the noble Lord, Lord Selsdon, on the tax on earnings beyond the state retirement age, people who work past the state pension age do not pay national insurance and those who work past age 65 have a higher income tax allowance, as I am sure he is aware, so they keep more of what they earn.

Most of the rise in employment rates of older workers has been due to retention in the workplace. As we all know and as was restated tonight, since the default retirement age was introduced, the economic landscape has changed dramatically. That point was made by a number of speakers tonight and was passionately made by the noble Baroness, Lady Afshar. People may want or need to work longer to boost savings or to enhance pensions or their own individual financial position, and we are more than committed to working with employers to promote the retention of skilled workers, both younger and older. As has recently been highlighted, these are the workers that will help businesses pull through and out of the economic downturn as markets improve. Conversely, they may be those who are often worst hit.

We are monitoring the legislation, as we said we would in our impact assessment, in preparation for the review that we have committed to publicly. The legislation needs some time to bed in so that we can properly judge its effectiveness. To change that at this stage would be a level of change too much. We need to make a judgment on whether the age regulations have created the sort of culture change that this evening's debate has argued for. Our long-term aim has always been to achieve a culture in which compulsory retirement ages are no longer required. We will continue to closely monitor the trends in employment rates by age and, in our coming research on employer policies and practices on that specific question, we will explore the issues and up-to-date evidence concerning the use of fixed retirement ages.

As has been pointed out tonight, we also need to hear what the ECJ says, if anything, in the Age Concern judicial review about the directive in relation to retirement, and what the High Court says in turn, once the case returns to our own courts for a decision. We will take due account of that and of all the up-to-date information available in ensuring that we arrive at an appropriate outcome in our review, which is currently planned for 2011.

The noble Baroness tabled today's debate to ask about the Government's plan to reform the default retirement age. Our plans are to review it. We provided for the default retirement age because we examined the evidence and concluded that we needed it. We will reform it when the evidence shows that it is the right thing to do. I am afraid that I am not going to pre-empt the review, which is rightly to be firmly evidence-based. Skilled older and younger workers can be the key to maintaining business productivity, recovery and renewed growth, and the review will take full account of the position that businesses and older workers face in the prevailing markets.

On the question asked by my noble friend Lord Giddens, age is, in truth, common to us all, even if it is not evenly distributed at any particular point in time. Perversely perhaps because of that, we need to work even harder on this point of discrimination.

I am grateful to all noble Lords who have taken part in today's debate on the default retirement age. I am sure that my right honourable friends in Cabinet will look with interest at the points raised in the debate. It is a key element of our strategy to make work pay and help older people remain in employment. As I have said, we will reform it when evidence shows that it is the right thing to do, ensuring that businesses can continue to operate effectively and that we balance the need for the culture change that we all wish for with the ability for it to be adopted in a willing and constructive manner.