



Ministry of Defence

Ministry of Defence
Main Building
Whitehall
London
SW1A 2HB

Reference: FOI2016/00338

Reply to: [REDACTED]

8 February 2016

Dear Xx Xxxxxx,

Thank you for your email of 10 January 2016 in which you have requested the following information:

“ Please could you explain the basis on which the Armed Forces are given an exemption from age discrimination legislation.

In particular, I am keen to understand how this exemption is applied in terms of selecting personnel for promotion.”

Your correspondence has been treated as a request for information under the Freedom of Information Act 2000. I can confirm that the MOD holds information within the scope of your request.

The Armed Forces are exempt from the age related provisions of the Article 13 EC Employment Directive 2000 (Employment Directive 2000/78/EC). This allows Member States to provide that the Directive, insofar as it relates to discrimination on the grounds of disability and age, shall not apply to service in the Armed Forces. The Directive states:

Recital 18

“This Directive does not require, in particular, the armed forces and the police, prison or emergency services to recruit or maintain in employment persons who do not have the required capacity to carry out the range of functions that they may be called upon to perform with regard to the legitimate objective or preserving the operational capacity of those services.”

Recital 19

“Moreover, in order that the Member States may continue to safeguard the combat effectiveness of their armed forces, they may choose not to apply the provisions of the Directive concerning disability and age to all or part of their armed forces. The Member States which make that choice must define the scope of the derogation.”

Accordingly, the United Kingdom's age legislation, the Employment Equality (Age) Regulations 2006 (SI 2006 No 1031), contains an exemption for the Armed Forces in section 44(4), which states:

“These regulations do not apply to service in any of the naval, military or air forces of the Crown”.

The regulations are available from the website of the Office of Public Sector Information (OPSI) at <http://www.opsi.gov.uk> .

The rationale for the exemption is that Armed Forces personnel need to be combat effective in order to meet a worldwide liability to deploy. Although, in itself, an individual's age might not be the chief determinant of his or her effectiveness at a particular moment in time, it is a crucial factor in overall manpower planning in the Armed Forces. Maintaining the optimum balance of age and experience in the Armed Forces is fundamental to operational effectiveness. For this reason the Armed Forces have age-related policies that require personnel to leave after a certain number of years to ensure that there is a constant movement through the "promotion pyramid", otherwise career advancement would become static.

This would be unacceptable as, compared to civilians, Service personnel are unable to move as freely in and out of the labour market. Maintaining the balance of age and experience is fundamental to operational capability, and the terms of employment for Service personnel are structured accordingly. This system, which needs to operate without legal interference, is clear, policy driven and has been accepted by Her Majesty's Treasury/Cabinet Office as lying at the heart of the Armed Forces' workforce strategy.

If you are not satisfied with this response or wish to complain about any aspect of the handling of your request, then you should contact me in the first instance. If informal resolution is not possible and you are still dissatisfied then you may apply for an independent internal review by contacting the Deputy Chief Information Officer, 2nd Floor, MOD Main Building, Whitehall, SW1A 2HB (e-mail CIO-FOI-IR@mod.uk). Please note that any request for an internal review must be made within 40 working days of the date on which the attempt to reach informal resolution has come to an end.

If you remain dissatisfied following an internal review, you may take your complaint to the Information Commissioner under the provisions of Section 50 of the Freedom of Information Act. Please note that the Information Commissioner will not investigate your case until the MOD internal review process has been completed. Further details of the role and powers of the Information Commissioner can be found on the Commissioner's website, <http://www.ico.gov.uk>.

Yours sincerely

Defence People Secretariat