

Age equality and admissions to higher education

For higher education admissions, registry, student services and student care staff

This Briefing sets out how the Employment Equality (Age) Regulations affect those responsible for student admissions to higher education institutions (HEIs). It also covers some frequently asked questions relating to under-18s on campus. It complements a previous Equality Challenge Unit publication on the Age Regulations, **General Guidance Note on Age and Student Issues**, which includes guidance on minimum and maximum ages on entry.


What do the Regulations cover?

The Regulations prohibit direct and indirect discrimination, harassment and victimisation on the grounds of age.

The Regulations cover the acts and omissions of institutions in relation to access to the institution itself, to courses and to benefits. In practice, this is likely to cover most if not all activities relating to students, including marketing, recruitment and admissions, as well as the provision of services such as residential accommodation and information, advice and guidance.

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According to the Government's interpretation of the Regulations, funding is not covered. Grants and loans for tuition fees and maintenance are deemed 'state schemes' and therefore fall outside the scope of the regulations. Similarly, any government-funded courses with age limits are also 'state schemes' and are not covered by this legislation. Consequently, while all course provision, except Government-funded courses, is covered by the regulations, not all funding is covered.

Can we have a minimum or maximum age on entry?


A full answer to this question is set out in ECU's **General Guidance Note on Age and Student Issues**. This publication covers minimum and maximum ages on entry, objective justification and the evidence required to support it, positive action and child protection issues. In brief, minimum and maximum ages are generally not permitted. If HEIs do decide to impose age limits for access to the institution or to particular courses, they need to ensure they are able to justify such limits objectively.

What about minimum age and access courses?

The **Quality Assurance Agency for Higher Education** has advised providers to remove minimum ages. The policy intention underpinning access courses remains the same – these courses are designed to address the needs of students who would like to study, but who have been away from education for some time and do not have the necessary qualifications to get into higher education. This means that providers can still target the course at learners with significant life experience, but each applicant must be considered on the basis of individual merits, and applicants should not be turned down on the basis of their age. Institutions do have the option of retaining a minimum age, but will have to justify this objectively.

Some institutions have responded by taking a number of steps:

- = removed the minimum age requirement but emphasised that the course is *normally* for mature students returning to education, although applicants of any age, who feel they will benefit from such a course, will be considered on their individual merits

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- = reviewed entry criteria to reflect the skills, motivation and experience required.

What about age limits and medical and social care courses?


An ECU Briefing on **Age limits on access to medical, healthcare and social work professions**, produced by ECU and Eversheds LLP, looks at:

- = doctors
- = nurses and midwives
- = dentists
- = dental nurses, hygienists and technicians
- = veterinary surgeons
- = veterinary nurses
- = social work and independent healthcare professionals.

This Briefing examines the position of professional bodies such as the General Medical Council and the Nursing and Midwifery Council to establish what, if any, age barriers apply.

A number of institutions have asked if there are age requirements for clinical placements. Following discussions with NHS employers, ECU suggests the following answers to this question.

- = Any age requirement is always capable of objective justification. The issue here is whether the minimum age requirements can be justified.
- = NHS trusts do not have a minimum age for placements. Over time, individual trusts may have made decisions about age and placements, which are now unlikely to be valid following the implementation of the Age Regulations. Any such age requirement could be challenged to determine what assumptions have been made, and whether or not the decision is based on a valid, objective justification.
- = The cost of insurance is unlikely to be a valid, objective justification for imposing an age bar.

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- = Reference to the 'dignity of the patient' and 'patient concerns' would also probably not be a valid justification – as this is about patients' perceptions about age, not about the ability and competence of students.
 - = Duty of care is unlikely to be a valid argument. Vulnerable students could be supervised, which would remove this as a justification for a minimum age.

Are the expressions 'mature applicant' or 'mature student' acceptable?

In the context of staff recruitment, use of the word 'mature' in an advertisement would be inappropriate as it excludes younger candidates from applying for the job. Employers are advised to use such terms with caution. However, in the context of recruiting and selecting students, it is important to remember that the phrase 'mature students' is well established in higher education and has a particular meaning in this context – normally 21 or over for undergraduate students and 25 or over for postgraduates. It is a well accepted term that does not appear to offend either younger or older students.

The term may be problematic if it were to exclude students who may benefit from services, for example, a careers guidance event for those students who have gained life experience between school and university. Targeting this session at 'mature students' may unintentionally exclude students under 21 whose life experience is such that they are 'mature', albeit at a younger age. In this context, it may be appropriate to find a more accurate term to describe this group of students.

If HEIs do decide that an event or service is for mature students, then it is acceptable to target that particular age group. However, HEIs should have evidence of the need for this service and should avoid absolute age bars (such as 21+ only). In this way, institutions will not unnecessarily exclude those who are not in that targeted age group, but who may have similar needs.



What about entry criteria for mature students?

'When considering an application from a mature applicant, we take into account their experience and relax the stipulation for qualifications. Is this not a case of treating older applicants differently from younger applicants? If we continue to do this, will we be acting illegally?'

This question is regularly asked. ECU believes that such widening participation / widening access initiatives do not contravene the Age Regulations.

When considering an application, admissions practitioners are looking for the motivation to study and the potential to complete a course in higher education successfully. For mature applicants, this may mean that their relevant experience will be taken into account.

What this means in practice is different (but not discriminatory) treatment of prospective students of different ages. However, any admissions policy for mature students should not have an absolute minimum age bar (such as 21+), and the admissions policy should emphasise that applicants will be considered on their individual merits.

The University of Exeter provides one example of a revised definition.

University of Exeter: applying as a mature student

'Regardless of your age, you may be applying to return to education after some time away, and in that respect this section may apply to you. We recognise that some applicants will be offering a range of experience and perhaps non-traditional qualifications, which will be taken into account when your application is considered. It is obviously important that you have adequate experience and/or qualifications, and you will be considered on your individual merits.'

University of Exeter



Can a minimum number of years' experience be stipulated as part of the entry criteria for postgraduate courses?

In employment recruitment, asking for a specific number of years' experience (for example, five years) may be indirectly discriminatory and would need to be justified.

The situation is similar in this context, and institutions should consider whether they are using the number of years' experience as shorthand for the range of skills and competencies required. If this is the case, criteria should be developed that detail what particular experience and skills are required. This will also benefit prospective postgraduate students by providing them with a clear understanding of what is required of them, and how they should present their experiences and achievements when applying. In this way, admissions staff can consider the relevance and quality of that experience rather than the mere length of experience.

Can courses still be offered to specific age groups?

This is a contentious issue, and until there is case law there will be no definitive answer. However, some tentative conclusions can be drawn. Limiting access to a course to those students of a certain age group or band may be regarded as potentially discriminatory. However, the Age Regulations differ from other equality legislation in that they allow for direct discrimination as long as it can be justified. The provision of such a course would need to be justified and supported by evidence, such as demographic details of under-representation of certain age groups, where relevant, in whatever vocation the training leads to, or failing that in participation in the course itself. The situation may be different for providers offering access courses (see above).

It may be advisable to avoid a specific cut-off age. If a course is open only to those over 50, for example, a 49-year-old would probably be able to argue that whatever justification arguments were put forward also applied to them. A more general approach for mature people, where each application can be considered on individual merits, may therefore be preferable. This would also significantly diminish the chances of a challenge from a younger person.



Why should HEIs have a policy for safeguarding young people?


There have been a number of developments that have led many institutions to put in place a policy for safeguarding young people.

- = Age discrimination legislation and the removal of the minimum age of 18 for entry to university.
- = More under-18s on campus as a result of widening participation and outreach initiatives.
- = The findings of Sir Michael Bichard's inquiry into the Soham murders.
- = New legislation (**Safeguarding Vulnerable Groups Act 2006**) that enhances the **Criminal Records Bureau** (CRB) disclosure service and vetting procedures.
- = The Government has encouraged institutions to have a written policy, enhanced CRB disclosure for staff in regulated positions, and a senior manager who is responsible for safeguarding younger students.

The existing child protection legislation imposes a duty on local education authorities, schools and HEIs to safeguard and promote the welfare of children receiving education or training. The **Care Standards Act 2000** imposes a similar duty on further education institutions providing accommodation to children. While this legislation does not extend to HEIs, universities do have a common-law duty of care that includes safeguarding young people.

There are a number of useful resources available for staff preparing a policy:

- = NSPCC: **Writing a child protection policy: resources for organisations**
- = local safeguarding boards
- = institutions' Aimhigher, widening participation and outreach initiative teams have also undertaken a great deal of work on safeguarding children on campus
- = **Aimhigher...Aimsafer: A framework for safeguarding children and young people in higher education institutions** by J. Burke and A.M. Ingram (2005)

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- = **Department for Innovation, Universities and Skills** guidance on safeguarding children in higher education, due to be published in late 2007.

Are institutions *in loco parentis*?

- = Traditionally, the education provider was considered to be *in loco parentis*, but the Chittock v. Woodbridge School (2002) case eroded the doctrine of *in loco parentis* and led to a shift towards the professional duty to take steps to safeguard children.
- = Some institutions have taken steps to inform both prospective students and their parents/guardians of the level of care provided by the institution, and to set out the respective responsibilities in relation to the applicant (see page 12).

What do 'duty of care' and 'safeguarding' mean?

Duty of care may be defined as:


'the obligation to exercise a level of care towards an individual, as is reasonable in all the circumstances, to avoid injury to that individual or his property.'

Duty of care is therefore based upon the relationship of the parties, the negligent act or omission and the reasonable foreseeability of loss to that individual.

A negligent act is an unintentional but careless act which results in loss. Only a negligent act will be regarded as having breached a duty of care. Liability for breach of a duty of care very much depends on the public policy at the time the case is heard.

In the FE and HE system duties of care will govern relations with a wide variety of groups including, but not limited to, employees, students and even visitors.'

Source: **Duty of Care in the Further and Higher Education Sectors**, prepared for the JISC Legal Information Service by MacRoberts Solicitors, 2002.



'Institutions have an enhanced duty towards children, and safeguarding is part of that common-law duty of care. Safeguarding refers to taking reasonable measures to ensure the risks of harm to children's welfare are minimised and, where there are concerns about children and young people's welfare, to take all appropriate actions to address those concerns.'

Source: Adapted from **Aimhigher... Aimsafer**.

How do we assess the risk?

The Health and Safety Executive identifies **Five steps to risk assessment** that can be adapted here:

- = identify risks
- = decide who may be at risk
- = evaluate the risks and decide on steps to remove or reduce these
- = record your findings and implement them
- = review your assessments and update them.

In an HEI environment, there are a wide range of factors that institutions may wish to consider. These may include:

- = number of younger students on campus
- = level of staff contact with students under 18
- = roles/staff that require CRB disclosure
- = accountability
- = accommodation issues
- = insurance
- = nature of course/programme – for example, particular health and safety issues or exposure to inappropriate material
- = training and guidance for staff working with under-18s
- = codes of conduct
- = medical emergency procedures
- = data protection issues.

The University of Surrey includes Guidance on Risk Issues produced by Aim Higher Southeast (Appendix D) in its **Guidelines concerning under 18-year-olds**.



How do we allocate staff to act as personal tutors to students under 18?

When allocating personal tutors for under-18s, it is important to make clear to existing staff, and in any recruitment process, that this role involves close contact work with young people and that a CRB check is required.

The University of Surrey asks existing staff to volunteer for the role of personal tutor to students under 18. The benefit of this is twofold: first, volunteers for such a role will have willingly accepted that a CRB check will be undertaken; second, specific training on working with under-18s can be targeted at these staff.

Which staff should have a CRB check?


The current system for vetting people who wish to work with children or vulnerable adults operates through employers obtaining a **Criminal Records Bureau** disclosure for job applicants. There are two levels of disclosure, standard and enhanced.

- = Enhanced disclosure contains details of current or spent convictions, as well as details of cautions, reprimands and warnings. It also includes any other relevant information held by the police.
- = Standard disclosure contains similar information to the enhanced version, but without the 'soft' information held by the police.

The Government recommends that institutions obtain enhanced CRB disclosures for all staff working in 'regulated positions', which are defined by the **Criminal Justice and Court Services Act 2000**.¹

When deciding which staff should have a CRB check, the type of role and the level of contact with young students should be taken into account. It is important that 'regulated position' is not interpreted too widely, as this may mean the institution falls foul of

1. Note that 'Educational Institution', as used in this Act, means an institution exclusively or mainly for the provision of full-time education to children; see the **Criminal Justice and Court Services Act 2000**.



the **Rehabilitation of Offenders Act 1974**. Under this Act, which applies to England, Scotland and Wales, a person does not have to reveal the existence of a spent conviction unless they are working with children, elderly or sick people.

Universities differ in respect of the roles for which they carry out CRB checks. The range of roles that have been identified include:


- = academics who have one-to-one contact with young students
 - for example, personal tutors
- = admissions staff
- = widening participation, outreach and student recruitment staff
- = wardens
- = security staff
- = sports staff
- = personal support services staff.

What about the new Independent Safeguarding Authority scheme?

The **Safeguarding Vulnerable Groups Act 2006** provided for a central vetting process, which builds on the CRB and establishes a new **Independent Safeguarding Authority**, which will be phased in from autumn 2008.

This new authority will be responsible for maintaining the lists of individuals barred from working with children and vulnerable adults. The Act removes the responsibility for barring decisions from Ministers and transfers this to the Independent Safeguarding Authority, which will make decisions on whether or not to include someone on the barred list.

The Act provides for a new vetting and barring scheme under which individuals who wish to engage in certain types of work, or volunteering with children or vulnerable adults, will have to apply to be subject to monitoring. In this way, the information held on individuals employed to work with children and vulnerable adults will be current – an improvement on the current system, where disclosures are valid only on the day of issue.



The term 'regulated position' will cease, replaced by '**Regulated and Controlled Activity**'. The CRB will provide a new facility for online checks and continuous updates.

Further information can be found on the **Every Child Matters** website.


Should we have special admissions procedures for under-18s?

ECU has gathered a few examples of how different institutions are approaching the issue of admissions of younger students.

Institutions are taking different approaches to interviewing under-18s. Some institutions have decided not to operate a policy specifically to interview under-18s applicants, others have written a procedure for considering applicants significantly under 18 or 16.

The University of Surrey has a procedure for suitable applicants who would not reach 18 before Christmas of their first year. The university invites the applicant and their parent/guardian to visit the institution, which serves a twofold purpose. The prospective student and their parent/guardian are given a tour of the University, which includes accommodation and social areas. This gives the parent or guardian a clear understanding of the kind of environment the young person will be entering, and it is emphasised that this is an adult environment. This visit also provides the University with the opportunity to gain an understanding of the prospective student's expectations of university life and their experience of managing money and living independently, and to identify any particular risks or additional support required.

Some institutions have adopted a policy that requires parents or guardians to sign a consent form. These forms emphasise that the university is not *in loco parentis* and that the child will be entering an adult environment. They detail the respective responsibilities of both parent and university. Parents act as financial guarantor for the student and also give consent for the universities to act in a medical emergency. The University of Surrey's **Guidelines concerning under 18-year-olds** contain a letter to parents and the consent



form. The University of Wales, Swansea has also shared an example of **Information for students aged under 18 and their parents**, and an under-18 consent form.

What about international students who are under 18?

There are similar policies in place for international students who are under the age of 18. A number of institutions require or recommend that those parents/guardians who live outside the UK should provide the university with a named UK-based guardian.

Next Steps for Equality Challenge Unit

ECU will be following up this Briefing with a more in-depth investigation of positive practice in relation to under-18s on campus, and how institutions are responding to this.

Also, the project on **Accommodation and Social Space** is currently under way, and this guidance will cover age issues.



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