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Equality Unit

**AGE CONCERN NORTHERN IRELAND
RESPONSE TO
A SINGLE EQUALITY BILL FOR NORTHERN IRELAND**

1. Age Concern Northern Ireland (ACNI) is a national voluntary organisation committed through campaigning and service provision to promoting the rights of all older people as active, involved and equal citizens. ACNI seeks to further this aim through:
 - Providing Advice and Information
 - Advocacy and User Involvement
 - Campaigns
 - Community Development for Positive Ageing
 - Providing Day Care Services
 - Providing Domiciliary Care
 - Health Promotion Activities
 - Nearly New Shops
 - Providing Residential Care
 - Providing Training Opportunities for Older People

2. ACNI welcomes this opportunity to respond to the consultation document 'A Single Equality Bill for Northern Ireland'. While we are not responding by using the Response Booklet, most of our comments can be related to relevant sections and questions contained in it.

CHAPTER 1 – INTRODUCTION

3. ACNI welcomes the government's intention to harmonise existing equality legislation. However, our particular interest lies in extending the protection afforded on age grounds and chiefly to older people. While we may make some observations about other groups, in general we leave detailed response to our colleagues in the relevant organisations representing different age groups and other grounds.

4. Protection on grounds of age on the same basis as other grounds is both necessary and urgent. The impact of ageist attitudes and institutional ageism is all-pervasive. It has a real and negative impact in all areas of social, economic and cultural life, yet many people remain to be convinced that discriminating on grounds of age in employment practice and the delivery of goods, facilities and services is as unacceptable as it is on grounds of, for example, religion, disability or race. This continues despite many highly publicised and serious (even life and death) examples.

5. Promoting equality of opportunity for older people is equally important. Prohibiting discrimination without this twin strand will not ensure equality. Given the number of people over 50 who are economically inactive, it is essential that the legislation permits/requires employers and training organisations to promote opportunities for people in this age group. We note that the Employment Equality Act (1998) in Ireland permits positive action to facilitate the integration into employment of people aged over 50 and would welcome its inclusion in Northern Ireland legislation.
6. Underpinning this proposal is the demographic shift taking place. Statistics prepared by NISRA for the report of the Northern Ireland Ageing Population Panel (2001), a component of the foresight initiative, indicate the projected changes in the age structure of the Northern Ireland population over the 25 year period to 2023:
 - 15.9% decrease in U16s
 - 11.8% decrease in 16-29 year olds
 - 0.6% increase in 30-44 year olds
 - 36.9% increase in 45-59/64 year olds
 - 47.8% increase in 60/65-74 year olds
 - 56.7% increase in 75 and over

Estimates of how much ageism costs the UK economy range from £16 Billion (government) to £31 Billion (Employers Forum on Age).

7. As we indicated above, there is also a significant human cost, resulting in many older people coming to believe that they have no contribution to offer and that they are merely a burden on their families and society at large, resulting in their acquiescence in their own discrimination.

CHAPTER 2 – PURPOSE AND PRINCIPLES

8. AGNI agrees with and recognises the importance of the legislation being clear and accessible and, while we welcome the commitment to no regression, we argue strongly for extension. A hierarchy of equalities already exists in Northern Ireland, due in part to the differential protection afforded on the various grounds and unless variations are kept to an essential minimum it is difficult to see how it will be possible to meet the principle of minimising the tendency for hierarchies of inequality to continue.

CHAPTER 3 – GROUNDS

9. Clearly the issues with regard to marital or family status and dependents are of relevance to older people. We are invited to list the difficulties in

supporting the broader definition, but there will also be problems resulting from implementing the Irish definition for people who live (and die) outside it. In balance, therefore, given that this legislation is harmonising upwards where possible, we would support the wider definition.

10. Older people have also been victims, experience poverty, have strong views on language issues, concerns with regard to gender identity and genetic disposition. However, we do not feel that we are in a position to give a definitive view on the nature of the protection they require and whether this would be met most appropriately through inclusion in a SEA. Perhaps this is an area that requires further debate and research. Regarding other status, we feel that it is equally difficult to predict what emerging groups there will be, what their needs are in this regard and how they can be met. We would suggest that a formal review of the Act should take place two years after its full implementation by which time the situation with regard to the above would be clearer.
11. ACNI has already made comments on the issue of pay and age in our response to the consultation on the E U Directive and we would refer you to this.

CHAPTER 4 – SCOPE

12. ACNI re-emphasises its view that age must receive the same level of protection as other grounds. Indeed, as we have also said, given past legislative neglect, there is an argument for making age a priority. Protection should also extend to:
 - Membership and Involvement in Organisations of Workers and Employers;
 - Vocational Guidance and Vocational Training, including Practical Work Experience;
 - Coverage of Public Functions;
 - Social Protection, including Social Security and Health Care and Social Advantage.
13. However, with regard to the latter we believe there is a need for exceptions/exemptions. Ireland's Equal Status Act, for example, refers to exemptions on relevant grounds, in relation to sporting facilities and events, for reasons for authenticity, aesthetics, tradition or custom, a reasonable preferential charge for people together with their children, couples (?), people in a specific age group and people with a disability. Also, reasonably necessary differences in relation to services that are

provided for the principal purpose of promoting bona fide the special interests of persons in that capacity.

14. Volunteering

ACNI are fully aware of the contrasting views regarding the inclusion of voluntary employment as an activity to be protected under the legislation. We see some validity in each of the range of views: that it is inappropriate; that some volunteers should be protected; that this should apply generally to volunteers. We note, however, that it is agreed that protecting volunteers from discrimination is an important issue. Given this, we feel there is merit in further consultation on this issue – directly with volunteers as well as the volunteering organisations. The contribution of volunteers cannot be overestimated and if we are to make changes that will fundamentally influence and alter the nature of volunteering, then, it is imperative all aspects of proposed change are fully explored by all the relevant organisations.

15. We note that small premises are exempted in Ireland's Equal Status Act and the term small premises is defined. Clearly because it is already included here under 'Race', it cannot be removed. Therefore it is important that exemptions protect circumstances such as that quoted in paragraph 62 (e) of the Equal Status Act, which states it does not apply in respect of 'the provision of accommodation to persons of one gender where embarrassment or infringement of privacy can reasonably be expected to result from the presence of a person of another gender'.

16. ACNI supports the extension of the race and disability grounds to cover all other grounds in relation to Private Clubs and Voluntary Associations. However, it is clearly not the intention of the legislation to make illegal clubs/voluntary associations for women or those based on age and these should be exempted. It would also be appropriate to allow organisations to offer concessionary arrangements and different treatment on grounds such as age, where this is reasonable and relevant.

CHAPTER 5 – DEFINITIONS OF DISCRIMINATION

17. Often it is the perceptions associated with 'age' that are an underlying problem, so any definition should include this. We do not support the view that a comparator is always and absolutely necessary, although it may be used to highlight the differences in treatment. Effective resolution is also essential.

18. With regard to extending the 'reasonable adjustment' duty to grounds other than disability, i.e. age; if this would permit a range of options for

people nearing the end of their working life (as defined by themselves) to renegotiate their work responsibilities, we would support this. If, however, it was used by employers to shed older workers and argue it was to 'facilitate orderly retirement', we would find this unacceptable.

19. The concept of 'Indirect Discrimination' in relation to age is new to us, as 'age' has not been a protected ground. We understand, however, it has been the source of much legal debate. In defining it for a SEA, this affords an opportunity to learn from past experience. We understand that the term 'necessary aim' is the most stringent in use in current Northern Ireland legislation and would therefore support the view that this terminology be used. It should certainly apply across all grounds.
20. With regard to harassment we do not accept that what constitutes it can only be established by reference to another individual(s). As we are arguing for harmony, then a definition common to all should apply. This may entail some rewording to accommodate aspects of the current separate definition of sexual harassment.
21. Victimization should also have a general definition common to all grounds. As we understand it, victimization is a form of persecution which is reflected in the nature of the treatment, the reasons behind it and the impact on the individual(s) who experience it. We do not believe a comparator is essential to establish it has taken place.

CHAPTER 6 – EXCEPTIONS

22. We have already commented on GOR in our submission on the E U Directive and would refer you to it. We have invited employers to give examples that are not covered by ability/capacity to do the job, where age must be considered due to the essential nature of the work. Convincing arguments have not been forthcoming and we are concerned that if GOR defence is included, it will be used to maintain and justify current bad human resources practice unless challenged. If it is available, clear guidance is essential to ensure limited use.
23. If a GSR is included, this means, effectively that any exception (e.g. free transport for older people, other concessions for young and old) might be open to challenge unless it is specifically exempted. It would seem, therefore, that some additional clarification is necessary, although the best approach might not be through an exhaustive list. Again, reference to Ireland's Equal Status Act may help. Paragraph 16 states that, 'Imposing or maintaining a reasonable preferential fee, charge or rate in respect of anything offered or provided to or in respect of persons together with their children, married couples, persons in a specific age group or persons with a disability does not constitute discrimination. There is also a reference to

clinical judgement. We might however want to widen the reference to 'married couples'.

24. Ireland also has a clause providing insurance companies with exemption based on actuarial and related considerations. However it is instructive and encouraging to read a judgement of the Equality Tribunal made in October 2003. A 77 year old man was refused a quote for motor insurance. He had a seven year no claims bonus at the time. The insurance company had a policy of refusing to quote people aged over 70. The Equality Officer found that the insurers failed to satisfy him that the data on which they relied to support this practice had come 'from a source on which it is reasonable to rely'. The Equality Tribunal found that the company's policy did not therefore fall within the exemptions provided for under the Equal Status Act 2000 – in other words it was not supported by actuarial data obtained from a reliable source or other relevant underwriting or commercial factors. The Equality Tribunal also found that the insurance company did not take all relevant factors into account in considering individual requests but simply applied an 'across the board' policy of refusing quotations to persons over 70 year of age. An award of € 2000 was made to the man. This issue has some resonance with the debate on the gender directive and insurance.
25. In general, we believe that exceptions should be there for a positive purpose, to protect, promote and include and not be available to support discriminatory practices that have no objective justification. Given this, current upper age limits for membership of a range of state bodies should not be exempted. They should in fact be removed as part of the preparation for the introduction of this legislation.

CHAPTER 7 – GOODS, FACILITIES AND SERVICES

26. ACNI supports option 'C'. This places the onus on the provider to justify the action rather than requiring an individual to prove discrimination. We do, of course, argue strongly for GFS to apply to age generally on the same basis as other grounds. Any unforeseen or unintended consequences could be addressed in the context of the review we have suggested should take place after two years. In the absence of such a review, this issue might require a specific focus.
27. The issue of whether or not the legislation on GFS should apply to transactions between two private persons, may require exceptions to be considered. For example, should the disposal of goods by will or gift fall

within the legislation? Should the legislation specifically exclude the disposal of goods and services not done in the course of business or trade? If so, would this have an adverse impact on one or more of the otherwise protected grounds?

28. To ensure harmonisation it is important that a uniform approach is taken with regard to the various grounds, It may well be that different exceptions may apply in particular circumstances, although it is also true that the same exception will be relevant to more than one ground – the example of a single sex school has been given in the document. However, we are adamant that there should be no delay or deferment with regard to the full inclusion of age in the legislation. The original aim was to have this in place by 2002. Currently the estimates are 2006/7.

CHAPTER 8 – ADDRESSING UNDER-REPRESENTATION IN EMPLOYMENT

29. The problem with regard to age discrimination in employment and training is emphasised by its absence from the pages of this chapter. Voluntary codes will not address the problem to which we have alluded already in paragraphs 4 – 7 above. It requires a combination of legislation and positive action and in addition a wider awareness campaign to challenge ageism. We reiterate our proposal that there should be a facility for a positive duty to promote equality of opportunity in education and training for those aged 50+. Age should also receive the same protection as other grounds and the full FETO approach should be applied.

CHAPTER 9 – EQUALITY COMMISSION FOR NORTHERN IRELAND – FUNCTIONS AND POWERS

30. The powers and duties of the ECNI in relation to age should be as rigorous and effective as they are for all other grounds. ECNI should have powers in relation to promoting equality of opportunity and in the periods before and following the implementation of the legislation, to conduct an awareness raising public information campaign. It should also have effective enforcement powers that provide a real disincentive with regard to discrimination – consequences of non-compliance must be significant.
31. Organisations like ACNI should be empowered/enabled to take actions but of course along with this they should be able to access funding to enable

them to do this. There are issues, too, about the availability of legal aid.

CHAPTER 10 – TRIBUNALS AND COURTS

32. ACNI supports option 'd' – the establishment of new equality tribunals. This reflects the aim of harmonisation, makes the evolution of hierarchy less likely, builds expertise across all grounds and issues and make it less likely for a case to 'fail' because it was taken on the 'wrong' grounds. They should have powers to compel those who have broken the law to make practical restitution as has happened in Ireland.
33. Regarding appeals, we wish to see in place a system that will not lead to undue delays in decisions, which are not in the interests of any of the parties to a dispute. Some of the options in this regard appear to insert another 'layer' which is likely to have this effect.
34. Representative claims and class/group actions should be permitted and reinstatement should be an available option – even though in a range of circumstances it is unlikely to be part of the resolution. Remedies available to Industrial Tribunal should be harmonised with those of Articles 39 of FETO.
35. Alternative Dispute Resolutions can provide a useful alternative or preliminary way of addressing issues. However people who feel they have a grievance should always have the right to use whatever legal redress is available through the legislation.

CONCLUSION

36. ACNI will be happy to expand on any of the above, either by further correspondence or through meeting the Single Equality Team.