

**We welcome your views on the documents contained in this consultation pack. They will help us finalise legislation to tackle age discrimination.**

This questionnaire:

- asks you whether the explanation in the accompanying consultation document is unclear on any issues, so that any such issues can be addressed in the guidance which the Equality Commission will issue next year;
- gives you a chance to comment on whether the details of our decisions will give rise to significant practical difficulties; and
- seeks your views on whether the draft Age Regulations effectively reflect our policy as set out in the accompanying consultation document.

Please do take time to fill in this response form. Once completed, it should be returned to:

**Age Team  
Equality and Rights Division  
Office of the First Minister and Deputy First Minister  
Freepost 3900  
Room E3.18  
Castle Buildings  
Stormont  
BELFAST  
BT4 3SR**

Alternatively, you may find it easier to complete the response form by downloading a copy of it from the OFMDFM website – [www.ofmdfmi.gov.uk/index/equality/age](http://www.ofmdfmi.gov.uk/index/equality/age) - and returning it by email to [agelegislation@ofmdfmi.gov.uk](mailto:agelegislation@ofmdfmi.gov.uk).

You need not use this form if you prefer to present your response in a different format.

**The consultation closes on 30 November 2005.** Please let us have your response by that date.

**Q1: Please fill in your name and address, or that of your organisation if relevant.**

Name

Organisation  
(if applicable)

Address

Postcode

#### **Confidentiality of Consultations - Freedom of Information Act 2000**

The Department will publish a summary of responses following completion of the consultation process. If you would prefer your response to be treated as confidential, please let us know, stating your reasons clearly. Any automatic confidentiality disclaimer generated by your IT system will be taken to apply only to information in your response for which confidentiality has been specifically requested.

If we are asked to disclose responses under freedom of information legislation, we will take any requests for confidentiality into account. However, confidentiality cannot be guaranteed.

We will handle appropriately any personal data you provide in accordance with the Data Protection Act 1998.

For further information about confidentiality of responses please contact the Information Commissioner's Office (or see website at: <http://www.informationcommissioner.gov.uk> ).

## Chapter 2: You or your organisation

We are committed to open consultation. Questions in this first section will enable us to have a better understanding of who has responded to this exercise.

### Q2a: In what capacity are you responding?

As an individual (after answering please go to Q3)

On behalf of an organisation (after answering please go to Q2b)

As an employer (after answering please go to Q2c)

Other (please specify)

### Q2b: Is your organisation?

*(please tick the boxes that apply to your organisation)*

A voluntary organisation

A statutory body

A Government Department or Agency  
*(please tick box and describe)*

An organisation representing employers

A professional association

A trade union/staff association

A university

A college of further education

Other training provider

Other – please specify

**Q2c: If responding as an employer, how many people do you employ?**

Between 1 and 49 employees

Between 50 and 249 employees

250 employees or more

### Chapter 3: Prohibiting age discrimination

The Age Regulations will apply to all workers and to people who apply for work. In addition, they will cover access to vocational training. The Age Regulations will prohibit direct and indirect age discrimination, harassment and victimisation.

**Q3a: Is our explanation of who will have rights and responsibilities under the Age Regulations clear in the consultation document?**

Yes

No

If no, please specify:

**Q3b: Will our approach give rise to significant practical difficulties?**

Yes

No

If yes, please specify:

**Q3c: Do the draft Age Regulations reflect our policy (as set out in the consultation document) effectively?**

Yes

No

If no, please specify:

## Chapter 4: Justifying age discrimination

In most situations, it will be unlawful to treat people differently on the grounds of age. However, employers and others with obligations under the Age Regulations will be able to justify doing so, but only by reference to specific aims and only if it is appropriate and necessary in the particular circumstances (“objective justification”). They will have to be able to produce supporting evidence if challenged: assertions will not be enough.

Q4a: **Is our explanation of objective justification clear in the consultation document?**

Yes

No

If no, please specify:

Q4b: **Will our approach give rise to significant practical difficulties?**

Yes

No

If yes, please specify:

**Q4c: Do the draft Age Regulations reflect our policy (as set out in the consultation document) effectively?**

Yes

No

If no, please specify:

The question arises whether separate provisions on genuine occupational requirements and positive action are necessary bearing in mind that the possibility of objectively justifying age-based requirements will be available.

**Q4d: Do you think that there should be a separate provision on genuine occupational requirements in the Age Regulations (see paragraph 4.27 of the consultation document)?**

Yes

No

Please say why:

**Q4e: Do you think that there should be a separate provision on positive action in the Age Regulations (see paragraph 4.28 of the consultation document)?**

Yes

No

Please say why:

## Chapter 5: Exemptions

### Service-related pay and benefits

Length of service is often used as a criterion for pay and non-pay benefits. This can amount to indirect discrimination because some age groups are more likely to have the necessary length of service than others. Such benefits are used widely to motivate staff, reward loyalty, and recognise experience. We intend to exempt any length-of-service requirement of five years or less, and any benefit which mirrors a statutory benefit. In addition, benefits that depend on length of service will be exempt if they are to recognise experience, loyalty or maintain motivation and the employer concludes that there is a benefit in rewarding loyalty, encouraging motivation or from recognising the experience of employees.

**Q5a: Is our explanation of pay and non-pay benefits under the draft Age Regulations clear in the consultation document?**

Yes

No

If no, please specify:

**Q5b: Will our approach give rise to significant practical difficulties?**

Yes

No

If yes, please specify:

**Q5c: Do the draft Age Regulations reflect our policy (as set out in the consultation document) effectively?**

Yes

No

If no, please specify:

## National Minimum Wage

Q5d: To ensure that the Age Regulations do not discourage employers from using the development rates of the National Minimum Wage, they will allow for certain exemptions. As they stand, do the draft Age Regulations achieve this effect?

Yes

No

If no, please specify:

## Chapter 6: Retirement

There will be a default retirement age of 65. This means that it will not constitute age discrimination if employers retire employees at or above the age of 65 where there is a genuine retirement. Employers will be free to continue employing people beyond the default age. Lower retirement ages will be possible if the employer can objectively justify them. There will be a new procedure for compulsory retirement of employees – the “duty to consider” procedure. This will allow employees to request working beyond a compulsory retirement age. If the employee makes such a request, the employer will have to consider it seriously.

**Q6a: Is our explanation of retirement (including retirement ages, “planned retirement” and the duty-to-consider procedure) under the draft Age Regulations clear in the consultation document?**

Yes

No

If no, please specify:

**Q6b: Will our approach give rise to significant practical difficulties?**

Yes

No

If yes, please specify:

**Q6c: Do the draft Age Regulations reflect our policy (as set out in the consultation document) effectively?**

Yes

No

If no, please specify:

Q6d: **Are the various deadlines and time periods set out in the consultation document for planned retirement (paragraphs 6.30 to 6.41) and the new “duty to consider” procedure (paragraphs 6.42 to 6.56) appropriate and workable?**

Yes

No

If no, please specify:

## Chapter 7: Occupational pensions

Many rules in pension schemes are age-based and necessary for their proper operation. The Regulations will effectively exempt most age-related rules. Scheme managers will be able to retain other age-related rules of schemes, provided they can be objectively justified. The aim is to ensure that age discrimination legislation does not undermine the provision of occupational pensions, or interfere unduly with their normal operation.

**Q7a: Is our explanation of the occupational pension scheme rules under the draft Age Regulations clear in the consultation document?**

Yes

No

If no, please specify:

**Q7b: Will our approach give rise to significant practical difficulties?**

Yes

No

If yes, please specify:

**Q7c: Do the draft Age Regulations reflect our policy (as set out in the consultation document) effectively?**

Yes

No

If no, please specify:

## Chapter 8: Changes to other legislation

The current upper age limit of 65 for unfair dismissal and redundancy rights will be removed. This means that older workers will get the same rights to claim unfair dismissal or to receive a redundancy payment as younger workers. However, retirement will not constitute unfair dismissal if it is after 65 (or a lower retirement age, if justified) and the employer has followed the “duty to consider” procedure.

### Statutory redundancy payments

**Q8a: Is our explanation of the statutory redundancy payments scheme under the Age Regulations clear in the consultation document?**

Yes

No

If no, please specify:

**Q8b: Will our approach give rise to significant practical difficulties?**

Yes

No

If yes, please specify:

**Q8c: Do the draft Age Regulations reflect our policy (as set out in the consultation document) effectively?**

Yes

No

If no, please specify:

**Unfair Dismissal**

**Q8d: Is our explanation of unfair dismissal under the Age Regulations clear in the consultation document?**

Yes

No

If no, please specify:

**Q8e: Will our approach give rise to significant practical difficulties?**

Yes

No

If yes, please specify:

**Q8f: Do the draft Age Regulations reflect our policy (as set out in the consultation document) effectively?**

Yes

No

If no, please specify:

## Chapter 9: Support and legal action

The process for pursuing legal action will mirror the procedures for pursuing legal action under other strands of equality legislation, however we have introduced specific burden of proof rules for unfair dismissal.

**Q9a: Does the consultation document explain clearly the requirements for proving discrimination, harassment and victimisation?**

Yes

No

If no, please specify:

**Q9b: Do the draft Age Regulations reflect our policy (as set out in the consultation document) effectively?**

Yes

No

If no, please specify:

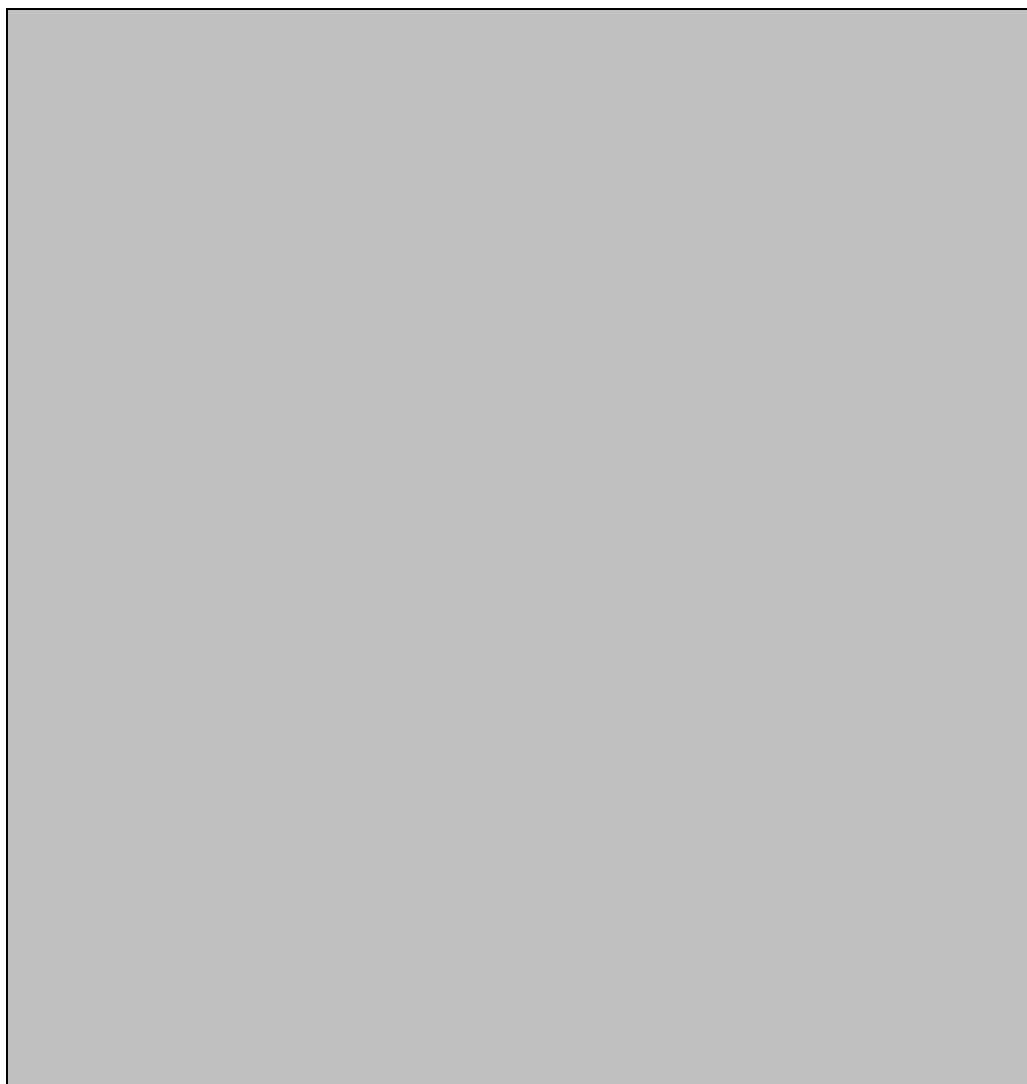
**Q9c: Do you have any comments on the provisions of the draft Age Regulations extending the duties of the Equality Commission to cover age?**



## Chapter 10: Benefits and costs

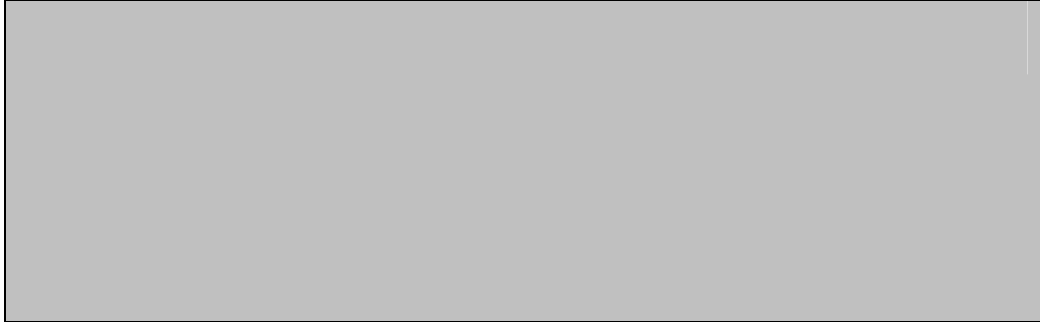
Over time, there will be overall net economic (not to mention social) benefits from the legislation. It is expected that these benefits will arise principally due to increased employment rates and better matching jobs to people. There will be costs associated with the legislation as well, for instance the costs to employers of dealing with requests by those who wish to continue working past the firm's retirement age. However, it is expected that overall these costs will be of a lower magnitude than the benefits.

**Q10: Please let us have your views on the estimate of costs and benefits summarised in chapter 10.** We welcome comments on the methodology or assumptions used in the analysis. A more detailed regulatory impact assessment is available at [www.ofmdfmi.gov.uk/index/equality/age](http://www.ofmdfmi.gov.uk/index/equality/age)



## **Chapter 11: Section 75 considerations**

**Q11: Do you have any comments about the Section 75 considerations?**



## **Other Comments**

**Q12: Do you have any other comments about the proposals in the consultation document or on the consultation exercise itself?**



**Thank you for completing this response form.**