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**SUBMISSION BY AMICUS ON
EQUALITY AND DIVERSITY: COMING OF AGE
*Employment Equality (Age) Regulations N.I. 2006***

Introduction

1. Amicus Trade Union represents 28,000 members in a range of industries including, financial services, manufacturing, print and media, the voluntary and not for profit sectors, local government, NHS health professionals and Education.
2. We welcome the opportunity to respond to ***Employment Equality (Age) Regulations (Northern Ireland) 2006*** as we acknowledge the importance and impact that this legislation will have on employment and vocational training.
3. In general Amicus welcomes the new legislation, but there are a number of areas where we have concerns regarding the impact of the legislation and that the Government is not meeting the requirements of the EU Employment Directive if it remains in its current form.
4. Amicus supports the default retirement age of 65 as the majority of our members would wish to retire by age 65 if they have sufficient pension income to do so. However, the Government must focus on ensuring the wider availability of a decent pension income if workers are going to have real choices about retirement.
5. We support the introduction of a Single Equality Act with common standards across all aspects including age discrimination. This is vital if the Government wishes to achieve coherence in equality legislation and will ensure a more efficient operation of the single equality commission.
6. A Statutory Code of Practice, enforceable in Employment Tribunals, should be introduced to support the regulations.

7. We have major concerns that the regulations are going to lead to employers levelling down benefits. This will contravene the aims and principles of the EU Employment Directive. The legislation should include a provision to prohibit employers from removing or downgrading benefits as a result of the implementation of the legislation if benefits form part of a collective agreement.
8. We do not accept that the Government youth development rate for 18-21 year olds can be objectively justified under the Directive. We believe that all workers aged 18-21 should be able to claim the adult rate. Additionally, the Government should remove the provisions in the draft regulations, which allow employers to pay workers aged 22, and over more than those aged 18-21.
9. The regulations relating to both retirement and unfair dismissal are very complicated and unfair. We are concerned that "planned" retirement can and will be used, as a loophole by employers to avoid redundancy payments and unfair dismissal claims. This is a retrograde step and the Government needs to give more thought to this.
10. The duty-to-consider procedure will prove to be weak and ineffective in its current form and should be strengthened if the legislation is going to have any impact on workers' choices at retirement.
11. Unfair dismissal and statutory redundancy payments should be levelled up to one and half weeks' pay per year regardless of age. The Government has indicated that any changes to the statutory redundancy scheme must be cost neutral. This means that certain groups of workers will lose out and this is incompatible with Article 8(2) of the Directive, which bans regressive measures
12. **General Issues**
 - 12.1 As stated above we support the introduction of a Single Equality Act with common standards across all aspects including age discrimination. This is vital if the Government wishes to achieve coherence in equality legislation and will ensure a more efficient operation of the proposed single equality commission. Therefore, we welcome the Equalities Review, which includes the key priority of advising the Government on the modernisation of equality legislation and the introduction of a Single Equality Act.

- 12.2 Any guidance should co-ordinate and disseminate examples of best practice. Advice and helplines should be set up with experienced and trained staff.
- 12.3 We believe there should be a Statutory Code of Practice which should be enforceable in Employment Tribunals. This would strengthen the legislation and provide more clarity for workers, employers and employment tribunals on legislation, which is both complicated and wide-ranging in its impact. The Code of Practice should emphasise significant issues which should include:
- Retirement and pension rights;
 - unfair dismissal and redundancy;
 - recruitment, training and promotion;
 - harassment;
 - positive action measures;
 - performance assessment;
 - pay and non-pay related benefits;
 - and the concomitant rights under the Human Rights Act.
- 12.4 Full consultation on written guidance and the Code of Practice should be carried out with all interested parties, including the ICTU and trade unions.
- 12.5 It is an essential and urgent requirement that adequate resources are provided to promote age equality and to provide specialist advisory and legal services through the single Commission on establishment. There must be a commitment by the Government to fully fund and resource Commission services. There is much concern amongst the existing Commissions and trade unions that the suggested funding is inadequate and will not be sufficient to provide an adequate service.
- 12.6 Amicus is concerned that the draft regulations will lead to employers levelling down benefits. This will contravene the aims and principles of the EU Employment Directive. The legislation should include a provision to prohibit employers from removing or downgrading employment benefits as a result of the implementation of the regulations if benefits form part of a collective agreement.
- 12.7 Amicus believes that the test for harassment should not allow for a concept of "reasonableness" and legislation should relate to whether or not the conduct is wanted by the recipient. Additionally, we are concerned that there is a danger that employers will use this as a caveat to dismiss harassment claims as unreasonable.

12.8 The draft regulations state that unpaid voluntary workers will not be protected under the regulations. We see no reason why voluntary workers should be excluded from protection under the regulations and it is arguable that this approach does not comply with article 3 of the Directive.

13 Recruitment, selection and promotion

13.1 We believe that the majority of jobs do not require a minimum or maximum age and welcome that this view is mirrored in the Consultation. The guidance and a Code of Practice will need to emphasise to employers that the use of age in the recruitment, selection, promotion and training should be avoided.

13.2 We have concerns that upper age limits for recruitment should be listed as examples of potentially justified direct discrimination on the grounds of training requirements of the post in question, or the need for a reasonable period of employment before retirement. This could be used by employers to discriminate against workers who have negative attitudes to the ability of older workers to learn new skills. Any guidance should make it clear that there will be limited circumstances when it will be justifiable not to employ older workers because of training requirements, or the fact that they are near to retirement.

13.3 We would like to see a stronger statement in any guidance, or Code of Practice regarding graduate recruitment schemes. Although, it should be acceptable for employers to have recruitment drives at universities, it is not enough that "employers do not exclude applications from other sources". It should be made clear to employers that they must take action to advertise graduate recruitment schemes through other mediums and that any job advertisement should not discourage applications from older graduates because of the nature of the wording.

14 Service-related pay and benefits

14.1 As previous mentioned in 7 and 12.6 Amicus is concerned that the regulations in their current form will lead to employers levelling down benefits. This will contravene the aims and principles of the EU Employment Directive. In addition to the current provisions, the legislation should include a provision to prohibit employers from removing or downgrading employment benefits as a result of the implementation of the regulations where benefits form part of a collective agreement. This would ensure that workers' existing benefits of employment are protected.

14.2 The Consultation states that "using performance as a criterion is not age discrimination". However, the age of an employee can influence the judgment of their performance by their appraiser. There are stereotypical views, such as that younger workers may be unreliable, or that older workers find it difficult to gain new skills. Guidance must make it clear that age should not be used as criteria to judge performance at work.

15. National Minimum Wage

15.1 We do not accept that the Government youth development rate for 18-21 years can be objectively justified under the Directive, particularly in light of the recent report by the Low Pay Commission recommending that the youth development rate should not apply to 21 year olds because the labour market justification is not sufficient. We believe that all workers aged 18-21 should be able to claim the adult rate.

15.2 For the same reasons, the Government should remove the provisions in the draft regulations which allow employers to pay workers aged 22 and over more than those aged 18-21, as long as they are paying at least the minimum wage.

15.3 Additionally, many employers start their adult rate at age 21 and the regulations will not allow this, as employers must not pay different rates to those in the same age category. Clearly it defies the whole object of the regulations if 21 year old workers are going to have to take a pay cut. The Government needs to give more thought to this contradiction in the final draft of the regulations as this would be a regressive measure.

16 Retirement and unfair dismissal

16.1 Amicus supports the default retirement age of 65 as the majority of our members would wish to retire by age 65 if they have sufficient pension income available to do so. We welcome that the Government will be protecting those who are contractually entitled to retire at age 65 on a full pension.

16.2 However, many employers, including the public and much of the finance sector, have contractual retirement and pension ages of 60. In the Public Sector the trade unions are opposed to proposals to raise the retirement and pension age. We are concerned that employers will use the regulations as an excuse to raise retirement and pension ages. It is imperative that the legislation includes a provision to prohibit employers from removing or downgrading employment benefits and this should

include contractual retirement and pension ages below age 65. Additionally, the legislation should allow collective agreement of retirement and pension ages below age 65 without the need for justification by the employer. Otherwise workers are going to lose out and have less choice about when they retire which is contrary to the principle of the Directive.

- 16.3 Amicus welcomes that tax rules preventing people from drawing their occupational pension whilst continuing to work for the same employer will be abolished in April 2006. This will allow workers more choice and flexibility about work and retirement.
- 16.4 Although, we accept that there is a distinction between retirement age and pension age, the two are linked intrinsically. The key issue surrounding retirement is whether people have sufficient pension income to have a choice about when they retire. The Government must focus on ensuring the wider availability of a decent pension income to all workers. We advocate that the Government increases the degree of compulsion on employers and workers to make contributions to pensions and provide a decent state pension for all. Without this workers are going to have no choice, but to extend their working lives. We await the Turner report on pensions to comment more fully on pension provision in the UK.
- 16.5 We consider six months' notice of retirement as insufficient. Retirement is a major life event, which requires careful thought and planning. Workers should be given at least one year's notice of a "planned" retirement and the right to continuing working, with statutory provision for collective bargaining arrangements to improve on this approach. Additionally, there is no recognition of the impact on workers' rights to claim unfair dismissal under "planned" retirement (see 16.11 and 16.12).
- 16.6 Where an employer and worker reach agreement on working beyond the default retirement age, or the employer's normal retirement age, there should be a statutory right to continue in the same job under the same terms and conditions of employment not "a right not to be retired". This will make it clear under law that extending retirement cannot be used as an excuse to alter a worker's job or terms and conditions of employment.
- 16.7 The duty-to-consider procedure will prove to be weak and ineffective legislation in its current form. Eight weeks' pay is neither sufficient compensation for the worker, nor a sufficient enough deterrent for employers to ensure that they follow the procedure.

- 16.8 We believe that all workers should have the right to work in a flexible manner and that the flexible working regulations should be amended to reflect this. It should then form part of the duty-to-consider procedure that a worker has the right to work in a flexible manner. This would encourage a flexible and phased approach to retirement.
- 16.9 The employer should be under a duty to give the worker the reasons for any refusal and there should be a right for the worker to challenge these reasons by both appeal and through an employment tribunal. The employer should have to justify any refusal on business grounds.
- 16.10 We consider that the dismissal should be automatically unfair if the employer has not informed the employee of the intended retirement age and the right to request working longer at a longer time-scale than less than two weeks. This is clearly an insufficient amount of time considering the detriment that a worker would suffer.
- 16.11 The regulations relating to both retirement and unfair dismissal are very complicated and unfair. Under “planned” retirement the employee will have a heavy burden of proof if he or she wants to show that the dismissal was for a different reason. This reverses the burden of proof in the Directive and again is contravening the whole principle of protecting workers against age discrimination.
- 16.12 Additionally, “planned” retirement can and will be used as a loophole by employers to avoid redundancy payments and unfair dismissal claims. This is a retrograde step and the Government needs to give this further consideration.
- 16.13 Our view on the calculation of the basic award is the same as for statutory redundancy payments, that it should be leveled up to one and half weeks’ pay per year of service.

17 Statutory Redundancy Payments

- 17.1 We welcome that the lower age limit and upper age limit for entitlement to statutory redundancy payments and the taper will be removed.
- 17.2 However, we have major concerns about the calculation rate for redundancy payments. The Government has indicated that any changes to the statutory redundancy scheme must be cost neutral. Amicus argues that this is not possible as it would mean certain groups of workers would lose out and this is incompatible with Article 8(2) of the Directive, which

bans regressive measures. The redundancy multiplier should be leveled up to one and half weeks' pay per year of service.

- 17.3 The Government must use this opportunity to honour its commitment under the Warwick agreement to review and increase the weekly pay limit of £280 per week under the statutory redundancy scheme.
- 17.4 We advocate rights for workers from the first day of employment, including redundancy rights and that the statutory redundancy scheme should be amended to reflect this.
- 17.5 Additionally, we would support the removal of the 20-year cap on length of service. We do not support the Government's argument that removing the cap would put younger workers at a disadvantage because they would be at greater risk of dismissal. Legislation is already in place for unfair dismissal and workers would also be able to claim age discrimination if they felt that their age was a contribution to their dismissal once the legislation is in force.

18 Contractual Redundancy Schemes

- 18.1 We welcome that it will be allowable under the regulations for employers to have contractual redundancy schemes that are more generous than the statutory one, but follow the same structure as the current existing statutory scheme.
- 18.2 However, we are concerned that employers are going to use the regulations as an excuse to level down redundancy packages to make cost savings. Therefore, it is essential that the legislation should include a provision to prohibit employers from removing or downgrading contractual redundancy schemes as a result of the implementation of the regulations. This would ensure that workers with contractual redundancy schemes are protected

We would welcome the opportunity to discuss the issues further at any level. Our contact details are as follows:-

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