



Office of the

**First Minister and  
Deputy First Minister**

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## **Promoting Equality of Opportunity**

The Employment Equality (Age)  
Regulations (Northern Ireland) 2006

## **Consultation summary report**

**June 2006**

This consultation summary report on the draft Employment Equality (Age) Regulations (Northern Ireland) 2006 has been produced by Equality and Rights Division, Office of the First Minister and Deputy First Minister and was published in June 2006.

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## Chapter 1 - Background

- 1.1 The European Employment Directive (2000/78/EC) was agreed between EC Member States in 2000. The Directive establishes a general framework for equal treatment in employment and vocational training. It requires Member States to ensure that they put legislation in place to prohibit discrimination on the grounds of religion or belief, disability, age and sexual orientation.
- 1.2 The final step in implementing the Directive is to bring forward legislation to prohibit age discrimination. The Directive allows Member States until December 2006 to implement age discrimination legislation. This report provides summary of the responses received to the consultation on the draft legislation to give effect to the age strand of the Directive in Northern Ireland.
- 1.3 OFMDFM originally sought views on age discrimination laws for Northern Ireland by way of the **“Prohibiting Age Discrimination in Employment and Training: Legislation for Northern Ireland”** consultation exercise which took place from 6th October 2003 to 23rd January 2004. Drawing on the views expressed by respondents following that consultation the Department was able to finalise its policy and produce a set of draft Age Regulations.
- 1.4 A further consultation document entitled **“Promoting Equality of Opportunity – Consultation on draft Employment Equality (Age) Regulations (NI) 2006”** was issued on 8 September 2005 and recipients were asked to respond by 30 November 2005. The consultation document plus the draft Regulations and other related literature were widely distributed to individuals and organisations and they were also published on the OFMDFM website.
- 1.5 A total of 46 responses were received to the consultation on the draft Regulations. The wording of the consultation document was intended to explain as fully as possible what the legislation would require and form the basis of workplace guidance to be produced by the Equality Commission for Northern Ireland (ECNI). A draft of this guidance will be issued for consultation when the Age Regulations become law with a view to finalizing the guidance before the Regulations come into operation.

- 1.6 The Department is grateful to all those who responded and close attention has been paid to the views expressed both in fine-tuning the Regulations. Overall, there was general support for the aims of the new age discrimination legislation measures, however, some expressed disappointment that the provisions did not go further while others considered the provisions too complex.
- 1.7 The consultation on the draft Employment Equality (Age) Regulations (NI) 2006, with which this report is concerned, had the following aims:
- to inform you of the decisions which have been taken and what the Age Regulations will require so that employers and providers of vocational training can prepare for them;
  - to ask you whether the explanation in the consultation document was unclear on any issues, so that any such issues could be addressed in the workplace guidance which the Equality Commission for Northern Ireland will issue;
  - to give you a chance to comment on whether the details of these decisions will give rise to significant practical difficulties; and
  - to seek views on whether the draft Age Regulations effectively reflect the policy as set out in the consultation document.
- 1.8 This Report deals with the issues in the order in which they appeared in the 2005 consultation document. Its purpose is to reflect the range of responses received; it makes no comment upon them.
- 1.9 The figures and narrative represent a combination of individual and institutional responses.
- 1.10 A number of respondents made use of the response form provided which featured boxes for respondents to tick according to which one most closely represented their views. Some respondents were content simply to tick these boxes whilst others made use of the accompanying comments boxes to expand on their views. The numerical data drawn from the boxes ticked in the response form is summarised at Annex A. Not every respondent ticked every box and this accounts for the fact that totals do not always tally precisely.

- 1.11 Many respondents did not make use of the response form but set out their views at greater length in “free format” responses. These responses are not necessarily reflected in the tabular summaries at Annex A but are quoted in the text. The names of quoted respondents are given in **bold** typeface.
- 1.12 Some areas covered by the draft Regulations provided more scope for comment and query than others. This Report provides a broad overview of issues raised rather than a detailed account of who said what.

## Chapter 2 – Consultation responses

2.1 A total of 46 responses were received. Of these, 16 were received on the response form whilst the other 30 were received in a free-form narrative.

### 2.2 Responses by type of organisation

Voluntary Organisations	9
Statutory Bodies	20
Government Departments or Agencies	2
Organisations representing employers	2
Professional Associations	5
Trade Unions/Staff Association	4
Universities	2
Other	2
<b>Total</b>	<b>46</b>

### 2.3 Organisations and employers who responded

Organisation
Age Concern Northern Ireland (ACNI)
Amicus
Antrim Borough Council
Ards Borough Council
Armagh and Dungannon Health and Social Services Trust
Belfast Healthy Cities
Big Lottery Fund
British Association of Social Workers (BASW)
Causeway Health and Social Services Trust
Children's Law Centre (CLC)
Children in Northern Ireland (CiNI)
Committee on the Administration of Justice (CAJ)
Confederation of British Industry (CBI)
Construction Employers Federation (CEF)

Department of Health, Social Services and Public Safety (DHSSPS)  
Disability Action  
Eastern Health and Social Services Board (EHSSB)  
EEF Northern Ireland (EEF)  
Equal Opportunities Network Group  
Equality Assurance Unit (Southern Health Board, Craigavon/Banbridge  
Health and Social Services Trust, Newry and Mourne Health and Social  
Services Trust)  
Equality Commission for Northern Ireland (ECNI)  
Federation of Small Businesses (FSB)  
Help the Aged  
Homefirst Community Health and Social Services Trust  
Information Commissioner's Office  
Irish National Teachers Organisation (INTO)  
Labour Relations Agency (LRA)  
L'Estrange & Brett, Solicitors  
Local Government Staff Commission for Northern Ireland (NILGSC)  
Lord Steinberg  
National Association of Schoolmasters, Union of Women Teachers  
(NAS/UWT)  
North and West Belfast Health and Social Services Trust  
Northern Ireland Ambulance Service (NIAS)  
Northern Ireland Committee, Irish Congress of Trade Unions (NIC/ICTU)  
Northern Ireland Council for Voluntary Action (NICVA)  
Northern Ireland Housing Executive (NIHE)  
Northern Ireland Public Service Alliance (NIPSA)  
Older People's Policy Forum  
Parkinsons Disease Society Northern Ireland  
Queen's University, Belfast (QUB)  
Raymond Clark  
Royal College of Nursing, Northern Ireland (RCN)  
Save the Children  
South and East Belfast Health and Social Services Trust  
University of Ulster (UU)  
Youth Council for Northern Ireland (YCNI)

## Chapter 3 – Prohibiting age discrimination

### Summary of the issues covered in Chapter 3 of the consultation document

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 unjustified direct and indirect age discrimination, harassment and victimisation. The Regulations will not cover the provision of goods and services and unpaid volunteers. The consultation document explained who would have rights and who would have responsibilities under the Regulations.

### Questions asked in Chapter 3 were as follows:

- 3a - Is our explanation of who will have rights and responsibilities under the Age Regulations clear in the consultation document?
- 3b - Will our approach give rise to significant practical difficulties?
- 3c - Do the draft Age Regulations reflect our policy (as set out in the consultation document), effectively?

### Respondents welcomed the legislation in principle

- 3.1 The consultation on the draft Age Regulations provided another opportunity for consideration of age discrimination issues. The majority of responses indicated that the explanations of the new rights and responsibilities set out in the consultation document were clear.
- 3.2 In the main, respondents were in favour of the steps being taken. **Age Concern Northern Ireland (ACNI)**, for example, welcomed the legislation as a significant advance for people who have faced age discrimination in employment and training and who have hitherto had no recourse to law to rectify this. The **Construction Employers Federation (CEF)** recognised that, in most cases, ability rather than age is the most important factor to be considered and, therefore, welcomed the new proposals. The **Northern Ireland Council for Voluntary Action (NICVA)** stated that the legislation will, for the first time, afford real protection to employees and trainees on the grounds of age. The **Causeway Health & Social Services Trust** was of the opinion that the Regulations will support and further enhance an equality culture.

- 3.3 The **Confederation of British Industry (CBI)** said that making the most of employees and attracting new workers was vital to the competitiveness of UK firms and that the new Regulations would cement changes already well under way in the workplace. **Belfast Healthy Cities** is of the view that the key benefit of the legislation is that it sends a clear message about age discrimination and can therefore contribute to changing attitudes about age in wider society.
- 3.4 **Armagh & Dungannon Health & Social Services Trust** stated that although the legislation would create some practical issues, it was supportive of the legislation, believing that the practical issues were manageable. The **Equality Commission for Northern Ireland (ECNI)** welcomed the clarity of the consultation document and accepted that the proposed Regulations broadly implement the age provisions of the Employment Directive.

### Respondents perceived certain areas of weakness in the draft Regulations

- 3.5 Although welcoming the proposed legislation, a number of organisations expressed some reservations. For example, **ACNI** believe that the proposals are flawed in significant ways and this will lead to difficulties in implementation. **ECNI** said that it regretted certain policy choices made in the consultation process and stated that it was unfortunate that there will not be an opportunity for Parliamentary debate and thus possible amendments to certain provisions.
- 3.6 **ECNI** did not agree with the use of a 'less favourable treatment' approach to direct discrimination on grounds of age and were concerned that litigation will degenerate into a debate about comparators rather than the identification of whether age has been used in a discriminatory fashion. Likewise, the **Irish National Teachers Organisation (INTO)** do not support the approach of using 'less favourable treatment' to address age discrimination. **INTO** wish to see discrimination defined as "less favourable treatment based on the grounds of a prohibited factor". The **University of Ulster (UU)** and **INTO** both call for further clarification of the definition of vocational guidance and training in subsequent guidance.
- 3.7 The **Federation of Small Businesses (FSB)** disagreed with what it perceived to be a departure from the Directive in relation to the definition of harassment. It said that under the Directive, harassment related to age can only occur if it is seen that both the dignity of the complainant has been violated and this has created an intimidating, hostile, degrading, humiliating or offensive environment. The **FSB** point out that the Regulations propose that only one of these requirements needs to be fulfilled for a claim of

harassment on the grounds of age to be successful. Conversely, **NICVA** welcomed the broader criteria that a person has to show either that their dignity has been violated or that they have been subject to an intimidating, hostile, degrading, humiliating or offensive environment.

- 3.8 **Help the Aged** thought that the legislation falls more in the favour of employers, making it difficult for workers to fully challenge ageism and age discrimination. The **Northern Ireland Committee, Irish Congress of Trade Unions (NIC/ICTU)** and **Save the Children** thought that the draft Regulations are now considerably weaker than was originally anticipated and, if implemented in this form, will be a missed opportunity to effectively tackle age discrimination. The **Parkinson's Disease Society** thought the Regulations would give rise to significant practical difficulties, not least in terms of the costs associated with training and monitoring. In addition, the Society says that guidance needs to be easily understood - at present its contains jargon and is somewhat legalistic.
- 3.9 Several organisations were disappointed with what they perceived to be a broad lack of reference to, and emphasis on, children and young people throughout the consultation document.

### Means of enacting age discrimination legislation

- 3.10 **NIC/ICTU** and **Northern Ireland Public Service Alliance (NIPSA)** expressed their disappointment that age discrimination legislation will be enacted by way of Regulations rather than primary legislation, thus restricting its scope to employment and vocational training only and thereby failing to cover goods, facilities and services. **Save the Children, Children in Northern Ireland (CiNI)** and **the Children's Law Centre (CLC)** echoed this, pointing out the level of discrimination suffered by children and young people in accessing goods, facilities and services, in terms of education, health, social services and treatment within the criminal justice system. **ECNI** and **Committee on the Administration of Justice (CAJ)** commented on the fact there will not be an opportunity for Parliamentary debate on the proposed legislation and thus the possibility of making amendment to such legislation.

### Regulations not consistent with other discrimination law

- 3.11 The **Northern Ireland Council for Voluntary Action (NICVA)**, the **CLC**, **CiNI**, **CAJ**, **ECNI** and **Queen's University Belfast (QUB)** all raised concerns about the potential for justifying direct discrimination on grounds of age, when it cannot be justified under any other equality ground. **CLC**, **Save the Children** and **NICVA** were of the opinion that this will create a

hierarchy of inequality, with the protections afforded to those being discriminated against on grounds of age being much less than those discriminated against under any of the other discrimination strands. **Help the Aged** believes this sends out a message that age is the poor relation when it comes to equality issues.

- 3.12 The **National Association of Schoolmasters/Union of Women Teachers (NAS/UWT)** acknowledges the Government's consistency in treating harassment and victimisation in line with the other discrimination legislation and UK case law. The **South and East Belfast Health and Social Services Trust** recognises that with so much segmentation within the law, employment regulations will become an increasingly more complex and disconcerting area for human resources and equality professionals alike. The Trust believes that there is now a genuine need for harmonisation of employment equality legislation.

### Urgent need for guidance and transitional arrangements

- 3.13 **AMICUS** and **ACNI** were among those who stressed the importance of early guidance to co-ordinate and disseminate examples of best practice and stated that there should be full consultation on written guidance with all interested parties, including the unions. The **British Association of Social Workers (BASW)** concurred with this, stating that there should be full user and stakeholder involvement in taking the work forward and called for engagement with those who will be most affected by the proposed changes.
- 3.14 **NICVA** pointed out that clear information and guidance should be made available well in advance of the implementation date. **AMICUS** also called for the setting up of advice helplines, with experienced and trained staff. The **Parkinson's Disease Society** said that information and awareness of the new legislation must not only be available, it must be positively promoted (e.g. by postal drop). **ACNI** suggested that, in view of the complexity of the legislation, consultants should be made available to smaller employers to assist them in preparing for its introduction.
- 3.15 The **CBI** stated that, in addition to having clear workplace guidance to accompany the new Regulations, practical help must also be given to employers and employees to help them navigate through the Age Regulations particularly in the first few months of operation. **EEF Northern Ireland (EEF)** believed that Government must take a stronger lead in developing a wide-ranging education campaign and that the burden should not be left to employers alone. **Causeway Health and Social Services Trust** said that it would be vital to have clear guidance and understanding of the employer's role in circumstances where it is not possible to allow an

employee to work beyond age 65 or the employers justified retirement age.

- 3.16 The **CBI**, **CEF**, and **EEF** said that it was vital that transitional arrangements were put into place to avoid employers falling foul of the new Regulations as a result of requirements that could backdate to the period prior to implementation. **EEF** also thought the transitional arrangements must also take into account that employers, particularly in the case of senior employees, may be taking steps to provide for succession more than six months before their intended retirement date.

### Impact of costs on employers

- 3.17 **EEF** voiced concern at what they regarded as the onus being put on employers to bring about a cultural change, which would place a financial burden on their members. They said it was vital for the Government to bear its share of the costs involved in educating the workforce to move on from an ageist culture.

### Trade Union involvement

- 3.18 The **Youth Council for Northern Ireland (YCNI)** believed that whilst the new Regulations will have significant implications for employment practices, these should not necessarily be problematic. **YCNI** suggested that, as the Regulations may require widespread changes to current terms and conditions of employees, consultation with the unions would be essential.

### Adult learning

- 3.19 **Help the Aged** and the **Older People's Policy Forum** were concerned that the legislation does not apply to adult learning. **Help the Aged** believes that older people are discriminated against, both directly and indirectly in further and higher education and in relation to student loans and warned that this would have major implications for the job opportunities of older workers in the future.

### Rights of students

- 3.20 **QUB** felt that the explanation in the guidance of who will have rights and responsibilities under the Regulations was not particularly clear as regards universities. It raised a number of queries, for example do the vocational training provisions in the Regulations apply to the universities; what is the position of students undertaking periods of work placement as part of a higher education course or students who may also be employed by universities.

### Employers' liable for the actions of employees

- 3.21 **ECNI** noted that employers will be liable for the actions of their employees. The Commission was of the view that this liability should be extended to training organisations and institutions of further and higher education for the actions of trainees and students.

### Trade Organisations

- 3.22 **NICVA** particularly welcomes the extension of the Regulations to cover trade organisations and qualifications, arguing that these are "often part and parcel of certain forms of employment".

### Provision of goods, facilities and services

- 3.23 Many respondents were concerned that the Regulations were limited in scope to employment and training and did not cover the provision of goods, facilities and services (GFS). **NIPSA** stated that there was no fundamental reason why age discrimination legislation should not cover GFS. **NIC/ICTU** said that some aspects of GFS have a bearing on employment and vocational training – e.g. obtaining insurance. It is concerned that this is likely, in some circumstances, to act as a disincentive to employing very young workers or much older workers.
- 3.24 **NAS/UWT** urged that GFS protection should be extended as soon as possible. **CiNI** echoed this view, pointing out that the provision of GFS was being considered in the context of the development of a single Equality Bill for Northern Ireland. **CiNI** asked that urgency be accorded to the development of the single Equality Bill in order to accord the same level and breadth of protection to all equality grounds. **AMICUS** and **Save the Children** also supported the introduction of a single Equality Bill to standardise protection across all equality grounds, including age.
- 3.25 The **CLC** and **CiNI** expressed disappointment that there was no provision, in view of the level of discrimination suffered by children and young people in accessing goods, facilities and services and, in particular, felt that social security benefits should be covered.

## Schools

3.26 **Save the Children** and **CLC** were concerned that Regulations will not offer protection against age discrimination in services provided by schools. **Save the Children** and **CLC** argued that differential treatment on grounds of age at school can place individual children at significant disadvantage and both organisations failed to comprehend how such exclusion could be justified.

## Small Businesses

3.27 The **Federation of Small Businesses (FSB)** thought the complexity of the Regulations posed particular difficulties for small businesses. The Federation pointed out that in small businesses, flexible retirement was already common and had rarely given rise to problems. They said the Regulations were viewed as a potential procedural burden. The **Labour Relations Agency (LRA)** was of the view that particular support will be needed for non-unionised companies and small firms and stated that it will liaise with the **CBI** and **FSB** to establish the nature and extent of the support required.

## Volunteers

3.28 **Save the Children**, **Help the Aged**, **CLC** and **CiNI** were of the opinion that volunteers should be included in the scope of the Regulations to ensure the highest standards of fairness and protection to all who work for the voluntary sector. **CiNI** said that the issue of voluntary workers, and the extent to which they will be protected by anti-discrimination law, should be debated more broadly in the context of the single Equality Act. **YCNI** highlighted the importance of compatibility between the Age Regulations and the single Equality Bill in terms of unpaid volunteers.

3.29 **NICVA** called for the development of good practice guidance for organisations using volunteers. Such guidance could promote allowing volunteers to be treated equally to paid employees without imposing a legal requirement on organisations. **ECNI** is of the view that voluntary work should be protected by equality legislation if it involves a sufficient degree of permanence. This work can be covered by the definition of "employment" or "occupation" in Article 3 of the Directive. **AMICUS** said they could see no reason why voluntary workers should be excluded from the legislation and agreed with **ECNI**'s view.

- 3.30 **NIC/ICTU** is disappointed that volunteers are not protected by age legislation. The Union says that this position is unfair and illogical given that those who are on practical work experience (whether paid or unpaid) with an employer or person by whom they are not employed are nonetheless covered. **INTO** are of the view that volunteers who have a close relationship and a degree of permanency with the receiving organisation, and who are required to be trained, should be covered by the legislation..
- 3.31 **YCNI** welcomed the fact that unpaid work will be included if it forms part of the vocational training relationship as this will be an important issue for young people in particular

### Office-holders

- 3.32 Some organisations, including **Belfast Healthy Cities**, stated that the fact that the default retirement age will not apply to office-holders is a potential source of discrimination. **NIC/ICTU** and **Help the Aged** found it difficult to understand why, if Government has decided that a default retirement age is unnecessary for office-holders, this should be different for other groups of workers.
- 3.33 **YCNI** called for elaboration on what the consultation document says about office-holders. For many years, it has contended that office-holders should reflect diversity in terms of age, but says that unfortunately it is often the case that selection criteria within public bodies preclude young people. **YCNI** call for the introduction of legislation to address this issue.

## Chapter 4 – Justifying age discrimination

### Summary of issues covered in Chapter 4 of the consultation document

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.

### Questions asked in Chapter 4 were as follows:

- 4a: Is our explanation of objective justification clear in the consultation document?
- 4b: Will our approach give rise to significant practical difficulties?
- 4c: Do the draft Age Regulations reflect our policy (as set out in the consultation document), effectively?
- 4d: Do you think that there should be a separate provision on genuine occupational requirements in the Age Regulations?
- 4e: Do you think that there should be a separate provision on positive action in the Age Regulations?

- 4.1 The responses to this chapter of the consultation document reflected broad acceptance of the fact that there may be exceptional circumstances when difference of treatment on grounds of age may be justified. However, **ACNI** said they were opposed to the inclusion of “objective justification” for age pointing out that for other equality grounds, positive action and genuine occupational requirements were the only lawful means of setting a discriminatory criterion. Many respondents, whilst accepting that difference of treatment may be justified, have reservations about the introduction of a test of objective justification.

### Objective justification

- 4.2 Whilst many respondents thought that the explanation of objective justification was clear, the need to provide and maintain supporting evidence was stressed vigorously. **ECNI**, for example, welcomed what they perceived to be a tightening up of the objective justification test in terms of

'real need' and 'appropriate and necessary means'. However, **ECNI** remained concerned that a considerable scope for direct discrimination is being proposed which would not be permissible in relation to other equality grounds.

- 4.3 **CLC** and **CiNI** believed that the language of the Regulations should mirror that of the Directive to ensure that the intention of the Directive is accurately reflected, particularly in the case of legal definitions which may be the subject of debate in the courts. **North and West Belfast Health and Social Services Trust** and the **Equal Opportunities Network Group** thought that objective justification was not sufficiently defined, leaving it open to wider interpretation and the likelihood of an increase in grievances and complaints to Tribunals. The **Northern Ireland Housing Executive (NIHE)** called for guidance and examples of the types of evidence which might satisfy the test to ensure that employers do not fall foul of the Regulations.
- 4.4 **NIC/ICTU**, **NIPSA** and **CLC** raised concerns that, having proposed an exhaustive list of legitimate aims in the 2003 consultation exercise, Government has now decided that any direct discrimination is to be potentially justifiable. In their opinion, the effect of this is to broaden still further an employer's scope for justifying age discrimination and significantly diminishes the potential impact of the new legislation. **Help the Aged** was also of the opinion that the use of legitimate aims will present difficulties and that having a list essentially provides a charter for employers to continue to discriminate on the grounds of age. The **Royal College of Nursing Northern Ireland (RCN)** raised concerns that the policy (objective justification) as currently drafted allowed too much latitude to employers and was open to abuse. The **Older People's Policy Forum** was of the view that taking each case on an individual basis would be far preferable to applying blanket objective justifications.
- 4.5 **INTO** raised concerns at the use of the phraseology "exceptional circumstance" to justify adverse treatment and were also concerned at the use of the wording "encouraging and rewarding loyalty" as an example of a exceptional circumstances. **INTO** recognises that loyalty may be based on pay scale progression, but it did not wish to see equal pay issues arising because of age differences. It asks that the criterion is reworded to reflect the need for the exceptional circumstances to be appropriate and proportionate.

- 4.6 **CAJ** was of the view that, in practice, an objective justification test will mean that those wishing to ignore the legislation will be facilitated by the inclusion of such a provision. Having previously urged Government to remove justifications for employment discrimination, **NAS/UWT** was disappointed to see that the consultation document had retained a list of examples of legitimate exemptions. As these examples are not included in the draft Regulations they should not be included in explanatory guidance as this will cause confusion.
- 4.7 **Disability Action** made the point that it does not believe in the concept of justified discrimination, whether justified or not, and consequently disagreed with this chapter of the consultation document in its totality.

#### Legitimate aim - health and safety

- 4.8 **Help the Aged** was concerned that “health, welfare and safety” appeared as an example of a legitimate aim in the consultation document. Health, welfare and safety should be covered by health and safety legislation. **INTO** requested clarification regarding the reference to health and safety protection to ensure that the protection is appropriate and proportionate.

#### Legitimate aim - economic factors and business needs

- 4.9 **EEF** advised that employers would find it baffling that economic factors may be legitimate aims but costs and expense not. **FSB** pointed out that, for a small business, cost considerations are of paramount importance. Increases in expenditure which might easily be absorbed by a larger firm can have a significant impact on a small business. In stating that “discrimination will not be justified merely because it may be more expensive not to discriminate”, **FSB** believe that Government is failing to recognise what this will mean in reality for small firms. To then suggest that “economic factors such a business need and considerations of efficiency” may be legitimate aims is very confusing. For small employers, minimising expense is in most cases inextricably linked to business need and thus cannot be differentiated in this way.

#### Legitimate aim – facilitation of employment planning

- 4.10 **Help the Aged** failed to see why facilitation of employment planning should be included as a legitimate aim, arguing that if facilitation of employment planning means employers thinking they need someone of a particular age to do a particular job, then that should be defined as a genuine occupational requirement.

## Separate provision on genuine occupational requirement (GOR)

- 4.11 The majority of respondents were in favour of a separate GOR provision to provide greater clarity. The **YCNI** were supportive in order to allow for the continuation (in the youth service sector) of the practice of employing peer youth workers/researchers and mentors etc. **RCN** believed that it would reduce the risk of employers unjustifiably discriminating on the basis of age. **Armagh & Dungannon Health & Social Services Trust** and **NAS/UWT** accepted that the Regulations should include a GOR provision to deal with a very limited number of circumstances. However, **NAS/UWT** considered that many employers will use this provision when it is not applicable and are concerned that it will be difficult to police. **South & East Belfast Health & Social Services Trust** felt there may be uncertainty in terms of when a GOR may be genuine and called for guidance to recap the rules and/or a definitive list of GORs.
- 4.12 **QUB** questioned whether a separate GOR provision is really necessary given the lack of examples given in the consultation document. **QUB** also made the point that higher education institutions may have to make a judgement about whether a future employer could reasonably decide that age was a GOR in a particular profession in order that they could then make a decision whether or not to admit a student on to a course.
- 4.13 The **UU** did not consider it necessary to have a separate GOR provision and **NIHE** found it difficult to anticipate circumstances in which age would be a GOR and thought that more guidance was needed on the types of situation in which the provision is likely to be applied. **Help the Aged** believed that there would be very few instances where an age limit would be a GOR but thought that, in the interests of consistency with other equality legislation, it should be retained.
- 4.14 **ACNI** warned that there could be a temptation to use age as a proxy for qualities such as incapacity, ill health or indeed immaturity and feared that these are likely to be based on negative stereotypes. Employers, they felt, should be clearly advised that they will not constitute a legitimate substitute for a real GOR. **NIC/ICTU** stated that, given the breadth of the objective justification defence for direct discrimination, it is arguable that the GOR defence is superfluous in the context of age discrimination. **NIC/ICTU** claimed, therefore, that it did not seem unreasonable to suggest that a respondent who has failed in an argument based on objective justification should automatically be precluded from going on to argue a GOR.

## Separate Provision on Positive Action

4.15 As with GOR, most respondents were in favour of a separate provision for positive action. **Disability Action** commended the inclusion of positive action and **ECNI** welcomed the measures but would have preferred a wider approach than that proposed. **RCN** also agreed that there should be a separate provision but made the point that the discussion on positive action as articulated in the consultation document was too restrictive. **Help the Aged** believed that positive action should be encouraged, particularly with regard to learning and vocational training and the aim should be a situation where the age profile of older learners and older workers mirrors the age profile of the population as a whole. The **UU** and **NIHE** sought information and advice on comparators, as it would be useful to have a context in which to consider positive action.

## Recruitment, selection and promotion

4.16 **Help the Aged** believed that there should be no grounds for employers to refuse to recruit workers over retirement age and that this should not be covered in the legislation. An **individual respondent** observed that, at present, application forms carry information that shows an applicant's age. **ECNI** echoed this point, stating that employers should not be given any encouragement to include age on job applications, arguing that this information should be moved to separate diversity monitoring forms. **ACNI** reported that companies that have abandoned face-to-face interviews during the selection process have found that the age profile of the workforce has increased.

4.17 **NIC/ICTU** and **NIPSA** objected strongly to the provision in regulation 7(4) that excluded people over 65 from the protection from age discrimination in recruitment and selection for jobs. **NIC/ICTU** thought that this blanket exclusion sits uncomfortably with the terms of the Directive and will inevitably be subject to legal challenge. If the provision remains, **NIC/ICTU** says it will create an anomalous situation where it will still be unlawful to discriminate on grounds of sex, sexual orientation, race, religious belief, political opinion and disability against workers aged 65 and over in relation to recruitment, but not in relation to age.

4.18 **AMICUS** recommended that workplace guidance should emphasise to employers that the use of age in recruitment, selection, promotion and training should be avoided. Guidance should also 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. **NAS/UWT** reiterated this point, stating that, if employers are

allowed to fix a maximum age for recruitment or promotion because of the need for a reasonable period of employment before retirement, guidance will need to give examples of what would be considered to be a reasonable period. **NAS/UWT** considers that a maximum of one year would be appropriate. The **UU** queried whether the “duty to consider” requests to work beyond the default retirement age applies only to existing employees and not to applicants.

- 4.19 **EEF** felt that the example provided on page 29 of the consultation document appeared to them to be wrong, as targeting a young age group for one’s products or services is and will remain lawful and legitimate. It is not age-discriminatory to sell only products desired predominately or exclusively by certain customers. **EEF** go on to say that if an employer has evidence that having young assistants benefits his business, it would be for a tribunal to determine whether that quite legitimate aim is proportionate to the discrimination inherent in the act. This, they say, simply illustrates the problems associated with the introduction of age legislation – employers’ judgements will second-guessed by tribunals against a background where consensus is lacking in society as to what is or is not acceptable.

#### Graduate recruitment schemes

- 4.20 **AMICUS** agreed that it should be acceptable for employers to have recruitment drives at universities, however it stated that it should be made clear to employers, perhaps through guidance, that they must take action to advertise graduate recruitment schemes through other mediums and that the wording of job advertisements should not discourage applications from older graduates.

#### Employment related insurance

- 4.21 **ECNI** and **Help the Aged** were of the view that age-related insurance requirements are prevalent and will have a significant impact on employment conditions. In these circumstances, **ECNI** argued that consideration should be given to including employment-related insurance within the scope of the Regulations. **NICVA** called for further investigation and clarification on the subject of insurance, particularly in the absence of any legislation on goods, facilities and services and the lack of progress on a single Equality Bill.

- 4.22 **EEF** said that it was imperative that companies can have confidence that it will be acceptable justification for a company to comply with conditions set by insurance companies and thus allows the company to rely on the substantial cost of insurance. They thought that a specific exemption should be inserted in the Regulations to cover employment-related insurance.
- 4.23 **ACNI**, while acknowledging that the Regulations permit employers to use the defence of objective justification where age is a factor in insurance arrangements, stated that this did not address the issue of whether or not there is actuarial justification for them in the first place. **ACNI** went on to say that insurance is an area where older people feel they experience discrimination purely on grounds of age based on stereotypical views and called for age to be a protected ground in the area of goods, facilities and services in a single Equality Act.

## Chapter 5 - Exemptions

### Summary of issues covered in Chapter 5 of the consultation document

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. It is intended to exempt any length-of-service requirement of 5 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.

The Regulations contain an exemption linked to the National Minimum Wage to allow employers to use exactly the same age bands to pay at or above the national minimum rates provided those in the lower age groups are paid less than the adult minimum rate.

Age criteria are used widely in legislation. The Regulations contain a provision which will make it clear that any act done in order to comply with a requirement of a statutory provision will remain lawful (statutory authority exemption).

### Questions asked in Chapter 5 were as follows:

- 5a: Is our explanation of pay and non-pay benefits under the draft Age Regulations clear in the consultation document?
- 5b: Will our approach give rise to significant practical difficulties?
- 5c: Do the draft Age Regulations reflect our policy (as set out in the consultation document), effectively?
- 5d: 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?

### Service related pay and benefits

- 5.1 Overall, the majority of respondents found that the explanation of pay and non-pay benefits was clear but many raised concerns about individual exemptions and whether length of service benefits would be “leveled down”

by employers. **CAJ** were of the opinion that the exemptions proposed in the Regulations are so broad as to dilute the principal of 'non-discrimination'. **NICVA** said that it was vital that any criteria allowed under the legislation to determine loyalty be applied equally in all circumstances and to people of all ages.

- 5.2 **ECNI, Save the Children** and **CLC** were among those who were of the view that the proposed exemption for length of service benefits does not adequately reflect the objective justification requirements of the Directive. **ECNI** thought that the wording of draft regulation 35(1)(b) was unrelated to any notion of 'real need' or 'appropriate and necessary means' and was not satisfied it strikes the correct balance, believing that the provision will legitimise the widespread use of length of service criteria. **Save the Children** and **CLC** believe that the service related pay and benefits exemptions are discriminatory to children and young people. **Help the Aged** suggested that Government remove seniority payments from the legislation.
- 5.3 **ECNI** was also concerned about the appropriateness of the '5 year rule' and was of the view that any worker should be fully integrated into an organisation within two years of recruitment, hence this would be a more reasonable limit for any such exemption. **ECNI** also did not find it acceptable that a length of service requirement, which mirrors a similar requirement in a statutory benefit, is automatically exempted. **NIC/ICTU, CLC** and **Save the Children** believed that the 5 year blanket exemption exceeds what is permitted under the Directive. Conversely, the **CEF** thought that the only way to achieve clarity was to have a total exemption or, at the very least, increased certainty with a 10 year service exemption. **NIC/ICTU** were of the view that the appropriate way to address this issue is not by legislating on an age discriminatory basis, but rather by including, in the Regulations, an express "no leveling down" provision.
- 5.4 **EEF** said that the exemptions in the Regulations should be extended to cover all service-related employment decisions and not just to service linked to the award of benefits with a monetary value. In default of adopting such a proposal, the more limited application of the current provisions should be clearly pointed out to employers in guidance. They also said that the Directive permits the fixing of minimum conditions of seniority in service, as well as of age, for access to advantages linked to employment, and urge Government to adopt this wider wording.
- 5.5 In relation to draft regulation 34, **EEF** ask Government to make it clear (if that is its intention) that it is total service that counts and not "continuous employment" which companies are used to. As regards redundancy

selection procedures, **EEF** believe that it was in the interest of all parties for the use of length of service to be explicitly permitted by the Regulations because case law indicates that selection procedures must be based primarily on such objective factors. If such a change is rejected, **EEF** say that employers must be warned of the risks of using service as a selection criterion, and ask Government to explain what they are permitted to do to comply with unfair dismissal law as well as discrimination law when selecting for redundancy. **EEF** was also unclear as to whether a “contractual sick pay provision” is a “work-related invalidity benefit scheme” and called for a definitive list to be provided of the schemes or types of schemes that Government intended to cover.

- 5.6 **RCN** thought that the exemptions appeared to undermine the principles of the legislation and gave employers too much flexibility in interpreting the exemption criteria. The **UU**, **NIHE** and the **Local Government Staff Commission for Northern Ireland (NILGSC)** called for clearer guidance on the impact on pay scales. **UU** also raised the issue of developments in higher education in relation to the National Framework Agreement which will result in revised incremental pay scales for all university employees in the UK and recommended that the Universities and Colleges Employers’ Association be consulted regarding length of service requirements of more than 5 years.
- 5.7 **QUB** said the use of length of service as a criterion for pay and non-pay benefits is well established in the higher education sector. As there is likely to be an evidential burden on employers to have to justify the provision of service related benefits based on service longer than 5 years, they questioned why such a complicated approach had been taken.
- 5.8 **NAS/UWT** recommended that guidance should emphasise to employers that they will need to consider carefully whether using length of service criteria could discriminate against women workers, carers and disabled persons who are more likely to experience breaks in service. **NAS/UWT** also recommended that guidance should give practical examples of exemptions for reasons of loyalty, motivation or experience to assist employers and employees in understanding their rights.
- 5.9 The **CBI** was firmly of the view that implementing the Regulations as they stood in draft form would cause employee relations difficulties and would have the unintended consequence of forcing employers to level down their length of service benefits. As the Regulations only exempt length of service benefits based on less than 5 years services and those which mirror a statutory benefit, the **CBI** said that this left all other benefits having to be justified under the “general provision” which does not give employers the

clarity they required on this issue. **EEF** echoed this, stating that if Government was not prepared to widen the exemption of service related benefits beyond 5 years, it is likely that employers will seek to alter long-established benefit arrangements and this could create contractual and/or employee relations difficulties.

- 5.10 On the issue of work-related insurance, the **CBI** believe that key group-risk products such as those insuring life, income protection and critical illness policies should maintain the right to use age as an objective part of their price calculations. The calculations are based on actuarial evidence and are necessary for the continuation of affordable risk benefits. They urge Government to recognise this in the final Regulations.

### Concern over “leveling down” of benefits

- 5.11 **ECNI**, **NAS/UWT** and **AMICUS** all said that there should be an explicit non-regression provision in the Regulations in order to prevent employers from reducing or removing particular benefits in order to achieve equality between workers of different ages. **NAS/UWT** stated that there should be full and effective consultation and negotiation with trade unions by employers regarding any changes proposed.
- 5.12 The **CBI** said that it would not be possible for employers to offer the highest level of benefits to all employees. However, forcing employers to justify their schemes will place an excessive burden on businesses, particularly since there will be such a short period of time between making the final Regulations and them coming into operation in October 2006. **CBI** also drew attention to the fact that October 2006 might not fit well with annual bargaining schedules with unions on collective agreements. Changing these benefits packages at short notice would, they say, be highly undesirable.

### Statutory authority exemption

- 5.13 **ECNI** and **NIC/ICTU** questioned how the statutory authority defence is considered to be compatible with the Framework Directive in some regards, as this defence has been (or is about to be) repealed in relation sex and race discrimination legislation in order to comply with the Race Directive and other aspects of the Framework Directive. Both organisations called on Government to undertake a wide-ranging review of any age-discriminatory statutory provisions so as to ensure that employers and providers of training services do not find themselves liable under the Regulations or directly under the Directive.

5.14 **NIC/ICTU** were of the opinion that a review of legislation should be undertaken before the Age Regulations come into operation and that Government should consult with interested and/or affected groups and publish widely the conclusions of the review. **NICVA** agreed, stating that justification due to statutory legislation would only be acceptable when the existing legislation can be justified.

### National Minimum Wage

5.15 **ECNI** made the point that it had consistently argued against age differentials in relation to the National Minimum Wage (NMW) and was, therefore, opposed to an exemption linked to the NMW. **RCN** and **NIPSA** agreed with this, with **RCN** calling for the removal of the development rates of the NMW. **NIC/ICTU** and **Save the Children** said that it amounted to a blatant denial of the rights of younger workers. The **YCNI** said that while it is opposed to the concept of lower limits of NMW, it accepted that this cannot be addressed within the Age Regulations. **NICVA** agreed with this, accepting that there is no jurisdiction over the NMW and calling for a national consultation on the issue of no NMW for those under 16.

5.16 **AMICUS** was of the opinion that all workers aged 18-21 should be able to claim the adult rate and called on Government to remove the provisions that allow employers to pay workers aged 22 and over more than those aged 18-21. **AMICUS** also pointed out that the Regulations will not allow employers to start their adult rate of pay at age 21 as employers must not pay different rates to those in the same age category. As this could result in 21 year olds having to take a pay cut, **AMICUS** was of the view that more thought needs to be given to this in the final Regulations.

5.17 **NIC/ICTU**, **CiNI** and **Save the Children** believed that in most cases the unwillingness to pay younger workers the same is down to discriminatory assumptions about the worth of younger workers as opposed to ability to do the job in question. If there are in fact circumstances where an employer is justified in paying a lower rate to a younger worker, then the employer will have an opportunity to argue that the broad objective justification defence applies. A blanket exemption applying to all young workers in all cases is neither appropriate nor necessary. The CAJ was concerned about the continued use of discriminatory provisions around the national minimum wage which they felt clearly discriminated directly against younger workers.

- 5.18 The **CBI** considers the fact that the Regulations fail to exempt employers paying differential rates over the minimum levels as a serious problem. In its opinion, there should be a complete exemption for differential rates for young people and apprentices and this would remove all confusion surrounding this area. The **CBI** is also of the opinion that lower rates for young people provide clear incentives to employers to take on younger workers, thereby giving them the opportunity to acquire workplace skills that they might not otherwise have obtained. The **CBI** believes that it should remain possible to pay different rates to employees in different age bands even where they are being paid at a level above the adult minimum wage.
- 5.19 **Help the Aged** believe that there is an 'Age Pay Gap' with people over the age of 50 who wish to return to work having to take a substantial drop in salary and call on Government to monitor this situation to ensure that older workers are paid equally.

## Chapter 6 - Retirement

### Summary of issues covered in Chapter 6 of the consultation document

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.

### Questions asked in Chapter 6 were as follows:

- 6a: 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?
- 6b: Will our approach give rise to significant practical difficulties?
- 6c: Do the draft Age Regulations reflect our policy (as set out in the consultation document), effectively?
- 6d: 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?

6.1 On the whole, opinion was split on the proposals for retirement and the introduction of a default retirement age. Most respondents welcomed the formal structure of the new duty to consider procedure; however concerns were raised about the notification timescales which were perceived to be overly complicated.

### More positive attitude required

6.2 In relation to the default retirement age (DRA) and the duty to consider procedure, **ACNI** believe that the balance of the rules is wrong, in that greater attention is paid to ensuring employers do not fall foul of the Regulations, than to affording older workers rights in these areas and in encouraging the continued employment of those over 65. **ACNI** asked for

clear and specific guidance on the retirement and request to stay on procedures and that it promotes the positive case for retaining employees over the age of 65. This was echoed by **NICVA**, who believed that the legislation should actively promote a culture change, thus negating the need for either a mandatory or default retirement age in the future. Likewise, the **Older People's Policy Forum** made the point that the Anti-Poverty Strategy relies heavily on employment as a route out of poverty. If there is to be a default retirement age of 65, the Forum asks how older people can ever escape financial hardship.

### Default retirement age

- 6.3 **ECNI, INTO, NIC/ICTU** and **RCN** were among those who did not support a default retirement age (DRA), preferring instead a system based on worker choice and the worker's financial circumstances. **Belfast Healthy Cities** were of the opinion that it was inappropriate to set a DRA, as age in itself will not determine a worker's ability to continue working but a DRA will give the general impression that this is the case. **ACNI** were also opposed to the concept of a retirement age and felt that the Regulations, as drafted, will lead to many employers, especially SMEs, unintentionally finding themselves in breach of the Regulations. **NICVA** stated that, although opposed to the introduction of a DRA, it would have preferred the age of 70 as put forward in the 2003 consultation. **Help the Aged** regarded it as a retrograde step, perpetuating the negative stereotypes about older workers and reinforcing the view that age is important in employment decisions.
- 6.4 The **CBI** believed that the right to retire staff at age 65 remained a vital management tool and that the proposals allowed the possibility of too many challenges to planned retirements on the grounds that the dismissal was for some reason other than retirement. However, they accepted that employees staying on at work beyond the age of 65 should retain their unfair dismissal and redundancy rights. **AMICUS** and **FSB** were among those who were in favour of a DRA of 65, with **AMICUS** stating that the majority of its members would wish to retire by age 65 if they have sufficient pension income to do so.
- 6.5 **AMICUS** and the **Older People's Policy Forum** were concerned that employers will use the Regulations as an excuse to raise retirement and pension ages and **AMICUS** felt that it was imperative that there should be a provision to prohibit employers from removing or downgrading employment benefits and this should include contractual retirement and pension ages below age 65.

- 6.6 **North & West Belfast Health and Social Services Trust** said that there was insufficient clarity regarding the obligation to consider a request to continue in the same, or similar, job following retirement. **AMICUS** proposed that, following agreement on working beyond the DRA, there should be a statutory right to continue in the same job under the same terms and conditions of employment. Such a provision would make it clear in law that extending retirement cannot be used as an excuse to alter a worker's job or terms and conditions of employment.
- 6.7 The **EEF** raised many questions over the issue of retirement and unfair dismissal, which they found not only complicated, but fraught with practical difficulties, including a failure to protect employers from "unmeritorious challenges". They were also worried about the "insecure foundation" upon which the policy was based. To their mind, where an employee was reluctant to retire, enforced retirement amounted to a dismissal thus giving employees plenty of possible grounds for challenging the retirement.

#### **Retirement: planned retirement**

- 6.8 **ECNI** broadly welcomed the proposals on planned retirement. **Help the Aged**, however, had reservations about the proposals for planned retirement which they feel heavily favoured the employer, but welcomed the provisions which enable a worker to take an unfair dismissal claim beyond normal retirement age.
- 6.9 **AMICUS** was concerned that planned retirement could be used as a loophole by employers to avoid redundancy payments and unfair dismissal claims. **NAS/UWT** also raised concerns that, under planned retirement, employees will have a heavy burden of proof if they want to show that a dismissal was for a different reason and questioned whether this contravened the principle of protecting workers against age discrimination. **NAS/UWT** recommended that planned retirement only refer to an agreed objectively justified retirement age or retirement at age 65 or older.
- 6.10 The **EEF** however thought that the presumption of retirement which applies where dismissal takes place on a planned retirement date could be too easily rebutted by employees and thus leave every enforced retirement open to challenge in a tribunal. It concluded that the presumption of retirement was potentially too weak and urged that the legislation be amended so that the employee - in order to rebut the presumption - must prove that retirement was not the principal reason for the dismissal. The **CBI** and **CEF** agreed, stating that a tightening up of the Regulations surrounding planned retirement would increase employers' protection which

was needed to avoid unnecessary tribunal cases.

- 6.11 **NILGSC**, while welcoming to concept of encouraging employers and employees to extend working life beyond age 65, pointed out that if employees who remain in employment after they are 65 are entitled to claim redundancy and unfair dismissal, this could act as a disincentive for employers to extend an employees working life. **ACNI** were of the opinion that planned retirement should not be permitted prior to an employer's normal retirement age, even if this is over 65.
- 6.12 **EEF** was concerned about retirement dismissals which take place on a date other than a planned retirement date and the fact that there is no presumption that retirement is the reason the dismissal. In its opinion, the provisions dealing with retirement dismissals in such circumstances are unfairly biased against employers. **EEF** argues that if there are two or more potentially fair reasons for dismissal, an employer is debarred from arguing retirement was the principal one if dismissal for another reason entered the corporate mind as a possibility at any time in the prior 6 months. The prior contemplation of dismissal for another reason may have been completely discounted but it will be held against the employer. **EEF** strongly recommended that the law should simply ask whether the employer has shown that retirement was the principal reason for dismissal. If not, the employer loses the case because he has failed to show that the reason which he pleaded (retirement) was the principal reason for dismissal.

#### **Retirement: duty to consider**

- 6.13 **EEF** saw problems with the duty to notify and consider procedure and suggested that Government guidance should ensure that employers who intended the employment of an employee to terminate by reason of retirement are made aware that they must comply with the notifications provisions.
- 6.14 **Disability Action, NICVA** and **Help the Aged** welcomed the duty to consider proposal, with **NICVA** stating that it will allow for dialogue over a period of six months or more and, if correctly followed, employers will begin to realise the value of not asking staff to retire at a certain age. **ECNI** and **NIC/ICTU** commented on it as a modest advance towards flexible retirement planning. **ACNI, NAS/UWT** and **NIC/ICTU** were among many who thought that employers should be obliged to provide reasons for the rejection of a request to stay on.

- 6.15 **Belfast Healthy Cities** thought that the introduction of a formal procedure will strengthen the position of employees, which will contribute to a more balanced relationship between employees and employers. The **CBI** said there were a number of internal inconsistencies regarding the various time limits placed on the procedure. The **CBI** were also of the view that there were elements of the Flexible Working Regulations on which the duty to consider process should be modeled; a provision to extend any period of the process provided both parties agree and a formal process under which the employee can withdraw their appeal. According to the **CBI** both provisions would make the process clearer and more 'user-friendly' and give employers flexibility to manage a potentially sensitive situation as effectively as possible.
- 6.16 **AMICUS** says the duty to consider procedure, as set out the draft Regulations, will prove to be weak and ineffective legislation. It believes that workers should have the right to work in a flexible manner and that the Flexible Working Regulations should be amended to reflect this. It also says that eight weeks' pay was not sufficient compensation for the worker, nor a sufficient enough deterrent for employers to ensure they follow the correct procedure. The **FSB** wanted the duty to consider procedure to be removed in its entirety and wanted the onus for raising the question of working on beyond retirement dates shifted from the employer to the employee.
- 6.17 **Ards Borough Council** asked that the Equality Commission's guidance include detailed information on the duty to consider procedure and what considerations an employer will need to take into account before deciding whether to retire an employee. **NICVA** said employers should be made aware that if they follow the correct retirement planning procedure and agree to continue to employ a person, at a later stage the same planning procedure will have to be applied again if they wish to retire that person.

### Retirement: appeals

- 6.18 **NIC/ICTU** and **AMICUS** called for the Regulations to be amended and strengthened to provide that employers should be obliged to provide reasons for any refusal to allow an employee to work on, with a complainant having a right of redress to an Industrial Tribunal and an effective remedy when reasons are not provided or those that are provided are not reasonable. **NAS/UWT** referred to draft paragraph 7(9) of Schedule 6 which states that the appeal hearing against a retirement/dismissal need not take place before the "dismissal" takes effect. They said that in practical terms this would mean that after a person had retired (possibly with

retirement party and gifts) the employer would only then decide whether the appeal should be accepted. In these circumstances, it was highly unlikely that the employer would agree to a return.

### **Retirement: time periods**

- 6.19 The **Equal Opportunities Network Group** felt that, overall the time constraints will have a considerable impact on employers and dedicating resources to the process will give rise to practical difficulties. The **CBI** was concerned at the confusing proliferation of time periods in draft paragraphs 6 and 7 of Schedule 6 and suggested that for the sake of clarity these time periods should be made uniform to avoid confusion – they suggested a standard period of 28 days be applied. **South & East Belfast Health & Social Services Trust** suggested a harmonisation of all deadlines and reducing them to 3 months. **AMICUS, Help the Aged** and **NIC/ICTU** were among many who thought that six months' notice of retirement was insufficient. Given that retirement is a major life event, **AMICUS** was of the view that workers should be given at least one year's notice of a planned retirement and the right to continue working on, with statutory provision for collective bargaining arrangements to improve on this approach.
- 6.20 **Homefirst Community Health & Social Services Trust, NIHE** and **North & West Belfast Health & Social Services Trust** stated that, in their opinion, the 6-week minimum period for an employee to announce their decision about whether they wanted to work on past 65 or not, was too short. The **UU** also called on a longer period of minimum notice, suggesting that 12 weeks would be more manageable in terms of succession planning – a suggestion which was also supported by the **CBI, CEF** and **QUB**. The **EEF** suggested within 2 months of receiving the notification from the employer and, if the employee has already had the information, perhaps in the contract of employment, the request should be made no later than 4 months before the retirement date. The **EEF** also suggested that a model form be provided which will provide the correct wording for a request by an employee not to retire.
- 6.21 **AMICUS** and **NAS/UWT** considered that a dismissal should be automatically unfair if the employer has not informed the employee of the intended retirement date and the right to continue working on beyond that date at a longer timescale than 2 weeks.

6.22 **The Northern Ireland Ambulance Service (NIAS)** queried whether there would always be a requirement on the employer to give the employee 6 months notice of his/her right to request working longer, even if the employee/employer agree a 3 month extension of working on the original retirement date.

### Retirement and pensions

6.23 **NAS/UWT** warned that the legislation must not be used in any way to downgrade entitlement to pensions and wanted the guidance to state very clearly that retirement age and normal pension age are completely separate. **AMICUS** welcomed the abolishment of the tax rules preventing people from drawing their occupational pension whilst continuing to work for the same employer, thus allowing workers more choice and flexibility about work and retirement.

### Monitoring and review

6.24 **ECNI** and **Help the Aged** were of the opinion that a review will be useful in 2011. **QUB** agreed, stating that the review should allow employers to comment with the benefit of experience of the new rules. However, the **Parkinson's Disease Society** was of the opinion that there must be ongoing monitoring and review so that problems can be sorted out – much can change in 5 years. **NICVA** were of the opinion that it is essential that the retirement age decision is taken on a UK-wide basis using equivalent data, or that GB surveys extend their remit to Northern Ireland for relevant questions.

6.25 **CAJ** was of the view that there should not be a delay until 2011 and the option of a default retirement age should be removed immediately. **CAJ** stated that it also would have preferred the Regulations to have introduced a requirement for employers to monitor the composition of their workforce, in the same way as is required in relation to community background.

## Chapter 7 – Occupational pensions

### Summary of issues covered in Chapter 7 of the consultation document

Many rules in occupational 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. The Regulations apply to all aspects of occupational pension schemes. Personal pension schemes are not covered, except for employer contributions to such schemes. The Regulations do not cover State pensions.

### Questions asked in Chapter 7 were as follows:

- 7a: Is our explanation of the occupational pension scheme rules under the draft Age Regulations clear in the consultation document?
- 7b: Will our approach give rise to significant practical difficulties?
- 7c: Do the draft Age Regulations reflect our policy (as set out in the consultation document), effectively?

### Occupational pension schemes

- 7.1 **NAS/UWT** welcomed the Government's intention not to undermine the provision of occupational pensions by exempting most age-related rules in schemes. However, **ECNI** and **NIC/ICTU** did not agree that blanket exemptions in relation to occupational pension schemes, other than those provided in the Framework Directive, are permissible without objective justification in particular cases.
- 7.2 **NIC/ICTU** and **Save the Children** pointed out that, in a climate where young people are being urged to plan and save for the future, it is wholly inconsistent to leave them largely unprotected in relation to age-based discrimination as regards access to occupational pension schemes. Such an inconsistent approach will only serve to exacerbate the UK pension's crisis in the long-term.

- 7.3 **ACNI** called for Government to clarify its policy for people over their employer's normal pension age. **ACNI** said that employers should not be able to bar older employees from building up pension entitlements or stop making employer contributions. **Help the Aged** echoed this, stating that the Regulations should be seen as an opportunity to reform pension schemes so that they reward those who choose to work longer. The **UU** did not foresee any difficulties with the exemptions in relation to occupational pensions if pension funds are effectively consulted and can demonstrate that their schemes are compliant with the Regulations.
- 7.4 **EEF** was unclear as to whether the definition of occupational pensions adequately protects the variety of pension arrangements provided by employers and advised that some commentators have expressed the view that the definition of occupational pension schemes in the draft Regulations is not wide enough to cover all of the different types of arrangements provided by employers and, in particular, to cover personal pension schemes. The use of the term "occupational", which in the Pension Schemes Act 1993 is used in contrast to "personal", may lead to a limitation being read into the definition.

## Chapter 8 – Changes to other legislation

### Summary of issues covered in Chapter 8 of the consultation document

The current lower and upper age limits in the statutory redundancy scheme (18 and 65 respectively) will be removed. The upper age limit for unfair dismissal will also be removed (age 65). 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.

### Questions asked in Chapter 8 were as follows:

- 8a: Is our explanation of the statutory redundancy payments scheme under the Age Regulations clear in the consultation document?
- 8b: Will our approach give rise to significant practical difficulties?
- 8c: Do the draft Age Regulations reflect our policy (as set out in the consultation document), effectively?
- 8d: Is our explanation of unfair dismissal under the Age Regulations clear in the consultation document?
- 8e: Will our approach give rise to significant practical difficulties?
- 8f: Do the draft Age Regulations reflect our policy (as set out in the consultation document), effectively?

8.1 **NICVA** was pleased to see that the responses received to the previous (2003) consultation had been taken into account and that details of exact figures have been provided.

### Statutory redundancy payments

8.2 **ECNI, ACNI, NICVA** and **AMICUS** were among many who welcomed the proposed reforms of the statutory redundancy payments scheme and accepted the reasoning for the removal of the lower and upper age limits. However **NICVA** were concerned that the two years of continuous service qualifying period will remain in place with no consultation. **ECNI** had no objection to the calculation of a redundancy payment being based on length of service, however, it warned that any regression from the proposals would be incompatible with the terms of the Framework Directive.

- 8.3 The **CBI** was in favour of retaining the existing “three-age band” system for calculating statutory redundancy payments. They believed the prospect of a single multiplier raised fears that the overall costs to employers would be increased. Moreover, **CBI** argued that the proposed system would produce “losers”, that is those older workers who were currently entitled to a 1.5 week multiplier which might fall to a lower level yet to be set and that the disruption caused by the changeover might well lead to employee relations problems.
- 8.4 Legal advice provided to the **CBI** was that the current statutory redundancy regime could be retained through reference to Article 6.1(a) of the Directive. They believed it would be foolish to abandon the present scheme at short notice and there may be benefit from its being reviewed in 5 years time, like the default retirement age. **EEF** agreed with this view and didn't think the Government had demonstrated clearly enough that changes to the basis on which statutory redundancy payments are made was necessary. They asked for an explanation as to why Government cannot objectively justify its retention on public policy grounds in the same way that it is retaining different age levels in respect of the National Minimum Wage.
- 8.5 **AMICUS** was of the view that payments should be leveled up to one and a half weeks' pay per year regardless of age. However, they also pointed out, as did many respondees, that if changes to the statutory redundancy scheme have to be cost neutral, as indicated by Government, certain groups of workers will lose out and this would be incompatible with Article 8(2) of the Directive, which bans regressive measures.
- 8.6 **North & West Belfast Health & Social Services Trust, the Equality Assurance Unit, CEF and the Equal Opportunities Network Trust** warned that removal of the 1.5-week multiplier could disadvantage older people who may have difficulty getting another job and the **NILGSC** warned that it could have major implications for the reorganisation of local councils under the Review of Public Administration. **NICVA** agreed that there could be an adverse effect on older workers and called for further consultation on the multiplier rules.
- 8.7 **AMICUS** and **NAS/UWT** called on Government to review and increase the statutory limit of a week's pay ( £280 per week) which is used in the calculation of statutory redundancy payments.
- 8.8 **Armagh & Dungannon Health & Social Services Trust** raised concerns about the removal of the taper down rule and the potential impact on costs, particularly when an individual is nearing the default retirement age. In its

view, redundancy pay is intended to remove immediate hardship whilst other work is found – in the case of an individual coming to the default retirement age, they are likely to have other provision in place. The Trust also pointed out that there will be instances when individuals will not be planning to work beyond 65 and there would be occasions when the service provision would not facilitate them working beyond 65 years. In the Trust's view, it would seem inappropriate to compensate an individual of 64 at the same rate as a 45 year old.

- 8.9 **AMICUS** and **INTO** called on the removal of the 20 year cap on length of service, with **AMICUS** disputing the argument that removing the cap would put younger workers at a disadvantage because they would be at greater risk of dismissal.
- 8.10 **AMICUS** welcomed the fact that contractual redundancy schemes will be allowed but recommended that the legislation include a provision to prohibit employers from removing or downgrading contractual redundancy schemes to make cost savings. **EEF** made the point that employers who operate contractual schemes are faced with difficult issues of re-negotiating their terms and will need the maximum time to effect the necessary changes. Also, there will be redundancy programmes that straddle the 1<sup>st</sup> October commencement date for the new legislation where comparable workers are perforce treated differently and this will create employee relations (if not legal) problems. Guidance on how to cope with the difficulties created must be made available to employers.
- 8.11 **Ards Borough Council** and **North & West Belfast Health & Social Services Trust** asked that the Equality Commission workplace guidance specify how to calculate a new redundancy award.

### Unfair Dismissal

- 8.12 **ECNI**, **INTO**, **Help the Aged** and **Belfast Healthy Cities** welcomed the removal of the upper age limit in unfair dismissal claims, allowing the fairness of a dismissal to be judged in broadly the same way as other dismissals. They also welcomed the alignment of the calculation of a basic award with the calculation of a statutory redundancy payment. **AMICUS** was of the view that payments should be leveled up to one and a half weeks' pay per year of service.
- 8.13 The **CBI** said that giving tribunals the power to effectively "second guess" the fairness or otherwise of a retirement/unfair dismissal would be of serious concern to employers.

8.14 ACNI thought that it seemed odd that a worker over the retirement age of 65 will be able to challenge dismissal on a range of grounds, while s/he will be unable to challenge termination of employment on grounds of retirement at 65 providing the employer has followed a bureaucratic procedure laid down in statutory rules that are designed to make age discrimination illegal. **South & East Belfast Health & Social Services Trust** called for case studies on when a retirement dismissal is automatically deemed unfair.

## Chapter 9 – Support and legal action

### Summary of issues covered in Chapter 9 of the consultation document

The process for pursuing legal action will mirror the procedures for pursuing legal action under other strands of equality legislation, however specific burden of proof rules have been introduced for unfair dismissal. The Equality Commission for Northern Ireland will given new duties in relation to age discrimination similar to those which the Commission has in relation to other equality legislation.

### Questions asked in Chapter 9 were as follows:

- 9a: Does the consultation document explain clearly the requirements for proving discrimination, harassment and victimization?
- 9b: Do the draft Age Regulations reflect our policy (as set out in the consultation document), effectively?
- 9c: Do you have any comments on the provisions of the draft Age Regulations extending the duties of the Equality Commission to cover age?

### Burden of proof - comparators

- 9.1 **ECNI** were of the view that previous case law on indirect discrimination was bedeviled by searches for pools of comparison and considered that, in many cases, the 'particular disadvantage' required will be sufficiently self-evident, or subject to expert evidence, so that the construction of comparison pools will not be necessary. However, it accepted that this is less likely in age cases and welcomed the broad approach towards comparison pools.
- 9.2 **ACNI** also saw particular, although not insurmountable, problems regarding finding comparators in cases of both direct and indirect discrimination. The **FSB** said that the concept of a comparator pool is complex and it would be unrealistic to expect small firms to provide such evidence in their defence. The **FSB** recommends that the comparator must be drawn from fellow employees of the same employer.
- 9.3 **EEF** thought there was a need for greater clarity as to the nature of the comparisons permitted by draft regulation 3(1)(b) dealing with indirect

discrimination. They say the claimant can assign him or herself to whatever age group best suits the case but it is not clear with whom he or she is then entitled to compare respective impacts of the provision, criterion or practice (PCP) under challenge. **EEF** say that commentators take the view that the comparison is not required to be with all persons not of the chosen age group but with such other persons not of that age group as the claimant chooses. That would appear to permit the claimant to point to any two or more persons who are not of the same age group and are not adversely affected by the PCP and, on such a flimsy basis, to require the employer to justify the PCP. **EEF** are of the view that employers will regard it as unacceptable and believe that Government should make clear what effect they intend the legislation to have.

### Statutory Code of Practice

9.4 **The Information Commissioner's Office** was among those who would welcome a Code of Practice. **AMICUS** were of the opinion that a Statutory Code of Practice, enforceable in industrial tribunals, should be introduced to support the Regulations. **AMICUS** also called for full consultation on written guidance and the Code of Practice with all interested parties, including trade unions. This view was supported by **NICVA** who proposed that the Equality Commission work along with those who responded to the consultation to ensure that guidance meets the needs of both older people and employers, and that it promotes positive examples of good practice.

### Equality Commission

9.5 **ECNI** welcomed its proposed jurisdiction over age discrimination from October 2006 but was disappointed that a power to conduct formal investigations has not been included, when the Commission enjoys these powers under other equality statutes. **Help the Aged** also welcomed the Equality Commission being given new powers in relation to age discrimination and agreed that it too was disappointed to note that the Commission will not be granted powers to conduct formal investigations and urged that this decision be repealed.

9.6 The **Big Lottery Fund**, **RCN** and the **UU** were among those who agreed with the extension of the duties of the Equality Commission to cover age. **AMICUS**, **ACNI** and **Help the Aged** said that as a matter of urgency the Commission needs to address and be adequately resourced to meet its forthcoming responsibilities.

## Remedies

- 9.7 **ECNI** pointed out that it has consistently stated that the provisions of the Directive, requiring 'effective, proportionate and dissuasive' sanctions, involve a reassessment of remedies, particularly in the tribunal system. **ECNI** are of the opinion that tribunals ought to be able to order a more proactive range of remedies to eliminate discrimination and promote equality of opportunity on grounds of age.

## Dispute resolution

- 9.8 **The Labour Relations Agency** said it takes the view that in allegations of age discrimination, as in all other tribunal jurisdictions, departments and other public authorities should provide alternative dispute resolution machinery as a matter of good public employment policy and as part of their statutory duty to promote good relations under section 75 of the Northern Ireland Act 1998.

## Questionnaire and reply forms

- 9.9 **The Employment Lawyers Group in Northern Ireland** is of the opinion that discrimination on grounds of age will often be interrelated with other forms of discrimination. It is concerned that the increased range of questionnaires under different equality heading is creating both confusion and duplication. It wishes to see provisions which allow for consolidated questionnaires covering more than one possible ground of discrimination and also a specific provision inserted, providing that a respondent may produce a consolidated reply covering a number of grounds of discrimination.

## Chapter 10 – Benefits and costs

### Summary of issues covered in Chapter 10 of the consultation document

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, 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.

Chapter 10 called for views of individuals and organisations on the estimate of costs and benefits summarised in the consultation document.

10.1 **South & East Belfast Health & Social Services Trust** thought that this section of the consultation document provided a very optimistic, if not ambitious, forecast and questioned the feasibility of realizing the benefits to the stated level or within the projected timescales. The Trust was of the view that the chapter does not examine hidden costs and does not consider possible demographic change to the population. It also questioned the assumption that a bigger labour pool is necessarily advantageous.

### Vexatious claims

10.2 The **UU** pointed out that claimants have in the past used other equality legislation to make frivolous and vexatious claims which led to significant costs to employers and hoped that due regard had been given to this in order that similar problems do not arise with this legislation. The **FSB** believed that Industrial Tribunals should be encouraged to make realistic costs awards against vexatious applicants.

### Cost to small businesses

10.3 The **FSB** welcomed the admission that small businesses will suffer a net loss as a result of the Regulations. However, it said that the quoted implementation cost of £140 per small business was a gross underestimate. The cost of a single visit to a legal professional is likely to be significantly

more than £140 in itself. The Federation also voiced concerns regarding the acknowledgement in the partial Regulatory Impact Assessment that there will be a 'significant number' of tribunal applications brought under the new Regulations. They view this with grave concern as small businesses are already suffering from the cost of the increasing number of Tribunal cases, given that applications to Industrial Tribunals under existing legislation have nearly trebled in the last ten years. Many **FSB** members involved in such cases make the decision to settle out of court to avoid defence costs even though they believe they have a good case.

- 10.4 **North & West Belfast Health & Social Services Trust** were of the view that the threat of increased claims on the basis of age was likely to be higher than other areas of discrimination and called for a notional cost against legal fees and managerial time in responding to proceedings both in answering preliminary enquiries and defending at tribunal. **South & East Belfast Health & Social Services Trust** also raised concerns about the additional strain the new age discrimination legislation will place on employers an upon already scarce resources.

## Chapter 11 – Section 75 considerations

This chapter called for comments in respect of the obligations placed on public authorities by section 75 of the Northern Ireland Act 1998.

### Equality Impact Assessment

- 11.1 **Save the Children** and **NICVA** called on Government to carry out, as a matter of urgency, a full and comprehensive Equality Impact Assessment on the Regulations and where adverse impact is identified, such as, in the opinion of **Save the Children**, the National Minimum Wage, it should be acknowledged and the adverse impact that its operation will have on children and young people should be addressed in discharging its section 75 duties.
- 11.2 **CAJ** reiterated this, stating that, in its opinion a full Equality Impact Assessment would have allowed for examination of the effects of the legislation on those experiencing multiple disadvantage, for example, older ethnic minority community members and younger women.
- 11.3 **Help the Aged** were disappointed at some of the policy decisions articulated in the consultation document and do not feel that they reflect the spirit or ethos of section 75 of the Northern Ireland Act 1998.
- 11.4 **NIC/ICTU** point out that there is a clear statutory obligation on Government under section 75 in bringing forward legislation to promote equality of opportunity on grounds of age. The view of Congress is that many of the draft Regulations fly in the face of that obligation.

## Chapter 12 – Other comments

This chapter called for general comments about the proposals set out in the consultation document.

- 12.1 **EEF** believed that Government should take a stronger lead in developing a wide-ranging public education campaign to ensure that the right message about age discrimination begins to take hold in society. The burden, they say, should not be left to employers alone. **EEF** thought the major changes which the new law will bring about require a longer period of adjustment than is currently envisaged between its enactment and its coming into operation. The **FSB** and **NAS/UWT** both made the same point – it is essential that Government produces the final Regulations and that the Equality Commission publishes clear and comprehensible as soon as possible as until this happens employers and businesses will remain uncertain about many aspects of the Regulations and what they will mean in practice.
- 12.2 The **FSB** also said that employers need clarity well before 1 October 2006 in order to comply with the proposed legislation and require immediate notice of transitional arrangements **NAS/UWT** said that Government will need to promote intensely the legislation in order to avoid non-compliance by employers. **NICVA** also echoed the need for clear information and guidance to be made available well in advance of the legislation coming into operation as it was unlikely that many employers and training providers will have been involved in the consultation process.
- 12.3 **NIC/CTU** said the Regulations are so overladen with exceptions to the principle of non-discrimination as to render questionable whether they achieve their intended effect and whether they comply with the requirements of European law. The **CBI** said that the Regulations will present a huge challenge to employers and employees and it is inevitable there will be a period of transition as everyone acquaints themselves with the new Regulations. The **CBI** goes on to say that examples of age discrimination in the workplace will need to be managed carefully – workplace banter still, on occasion, involved references to a colleague's age.

- 12.4 **Help the Aged** said they were disappointed that the OFMDFM Age Legislation Group amounted to little more than a talking shop and that their views and concerns mooted in the Group had not been taken on board.
- 12.5 **Belfast Healthy Cities** urged OFMDFM to publicise the new legislation widely to ensure that employees and employers are made aware of the changes and their new rights and responsibilities. The **Labour Relations Agency** noted, with concern, the absence in the consultation material of a lack of reference to the Labour Relations Agency as an information and advice provider. It asks OFMDFM to rectify this omission in all future documentation and promotional events in relation to age discrimination.
- 12.6 **Lord Steinberg** said he found the proposed legislation to be excessively complicated and time-consuming

## Annex A

### Summary of consultation response forms

#### Organisations who responded on the response form

Armagh and Dungannon Health and Social Services Trust  
Big Lottery Fund  
Construction Employers Federation  
Department of Health, Social Services and Public Safety  
Equal Opportunities Network Group  
Homefirst Community Health and Social Services Trust  
North and West Belfast Health and Social Services Trust  
Northern Ireland Ambulance Service  
Northern Ireland Housing Executive  
Parkinsons Disease Society Northern Ireland  
Queen's University, Belfast  
Raymond Clark  
Royal College of Nursing, Northern Ireland  
South and East Belfast Health and Social Services Trust  
Southern Health Board, Craigavon/Banbridge Health and Social Services Trust,  
Newry and Mourne Health and Social Services Trust  
University of Ulster

#### 3: Prohibiting Age Discrimination

	Yes	No
3a Is our explanation of who will have rights and responsibilities clear?	13	3
3b Will our approach cause difficulties?	4	12
3c Do Regs reflect policy effectively?	14	2

#### 4: Justifying Age Discrimination?

	Yes	No
4a	11	5
4b	7	9
4c	13	3
4d	12	4
4e	11	5

#### 5: Exemptions - Service Related Pay & Benefits

	Yes	No
5a	7	9
5b	8	8
5c	15	1

#### 5: Exemptions - National Minimum Wage

	Yes	No
5d	16	

#### 6: Retirement

	Yes	No
6a	13	3
6b	9	7
6c	14	2
6d	8	8

## 7: Occupational pensions

		Yes	No
7a	Is our explanation of occupational pension scheme rules clear?	14	2
7b	Will approach cause significant difficulties	1	15
7c	Do regs reflect policy effectively?	16	

## 8: Changes to other legislation - statutory redundancy payments

		Yes	No
8a	Is our explanation of the statutory redundancy payments scheme clear?	15	1
8b	Will approach cause significant difficulties?	7	9
8c	Do regs reflect policy effectively?	15	1

## 8: Changes to other legislation - unfair dismissal

		Yes	No
8d	Is our explanation of unfair dismissal clear?	15	1
8e	Will approach cause significant difficulties?	3	13
8f	Do regs reflect policy effectively?	14	2

## 9: Support and Legal Action

		Yes	No
9a	Are the requirements for proving discrimination, harassment and victimisation, clearly explained?	15	1
9b	Do regs reflect policy effectively?	13	3

		Comment	No Comment
9c	Comments on provisions extending the duties of the Equality Commission for NI.	9	7

### 10: Benefits and Costs

		Comment	No Comment
10	Views invited on estimated costs and benefits.	7	9

### 11: Section 75 considerations

		Comment	No Comment
11	Comments on Section 75 considerations.	2	14

		Comment	No Comment
12	Any other comments?	2	14