

**DRAFT REGULATIONS PUBLISHED FOR CONSULTATION PURPOSES**

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STATUTORY RULES OF NORTHERN IRELAND

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**2006 No.**

**AGE DISCRIMINATION**

Employment Equality (Age) Regulations (Northern Ireland) 2006

*Made* 2006

*Coming into operation* 2006

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The Office of the First Minister and deputy First Minister, being a Department designated for the purposes of section 2(2) of the European Communities Act 1972 <sup>(a)</sup> in relation to discrimination <sup>(b)</sup>, in exercise of the powers conferred by that section, and of every other power enabling it in that behalf, hereby makes the following Regulations:

## PART 1

### GENERAL

#### **Citation and commencement**

**1.** These Regulations may be cited as the Employment Equality (Age) Regulations (Northern Ireland) 2006 and shall come into operation on 1st October 2006.

#### **Interpretation**

**2.** - (1) The Interpretation Act (Northern Ireland) 1954 <sup>(c)</sup> shall apply to these Regulations as it applies to an Act of the Northern Ireland Assembly.

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<sup>(a)</sup> 1972 c.68

<sup>(b)</sup> See the European Communities (Designation) (No. 3) Order 2002 (S.I. 2002/1819)

<sup>(c)</sup> 1954 c.33 (N.I.)

(2) In these Regulations, references to discrimination are to any discrimination falling within regulation 3 (discrimination on grounds of age) or 4 (discrimination by way of victimisation) and related expressions shall be construed accordingly, and references to harassment shall be construed in accordance with regulation 6 (harassment on grounds of age).

(3) In these Regulations –

"act" includes a deliberate omission;

"benefits", except in regulation 12 (trustees and managers of occupational pension schemes), includes facilities and services;

"the Commission" means the Equality Commission for Northern Ireland established by section 73 of the Northern Ireland Act 1998 <sup>(a)</sup>;

"the Department" means the Office of the First Minister and deputy First Minister;

"detriment" does not include harassment within the meaning of regulation 6;

references to "employer", in their application to a person at any time seeking to employ another, include a person who has no employees at that time;

"employment" means employment under a contract of service or of apprenticeship or a contract personally to do any work, and related expressions shall be construed accordingly;

"Minister of the Crown" includes the Treasury and the Defence Council;

"Northern Ireland" includes such of the territorial waters of the United Kingdom as are adjacent to Northern Ireland;

"Northern Ireland Minister" includes the First Minister and deputy First Minister acting jointly; and

"proprietor" has the same meaning as in Article 2(2) of the Education and Libraries (Northern Ireland) Order 1986 <sup>(b)</sup>.

"school" has the same meaning as in Article 2(2) of the Education and Libraries (Northern Ireland) Order 1986.

### **Discrimination on grounds of age**

**3.** - (1) For the purposes of these Regulations, a person ("A") discriminates against another person ("B") if—

- (a) on grounds of B's age, A treats B less favourably than he treats or would treat other persons, or
- (b) A applies to B a provision, criterion or practice which he applies or would apply equally to persons not of the same age group as B, but—
  - (i) which puts or would put persons of the same age group as B at a particular disadvantage when compared with other persons, and
  - (ii) which puts B at that disadvantage,

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<sup>(a)</sup> 1998 c.47

<sup>(b)</sup> S.I. 1986/594 (N.I. 3)

and A cannot show the treatment or, as the case may be, provision, criterion or practice to be a proportionate means of achieving a legitimate aim.

(2) Without prejudice to paragraph (1)(a), the following are examples of treatment which, depending on the circumstances of the case, an industrial tribunal or, as the case may be, a county court may find to be a proportionate means of achieving a legitimate aim—

- (a) the setting of requirements as to age in order to ensure the protection or promote the vocational integration of people in a particular age group;
- (b) the fixing of a minimum age to qualify for certain advantages linked to employment or occupation in order to recruit or retain older people;
- (c) the fixing of a maximum age for recruitment or promotion which is based on the training requirements of the post in question or the need for a reasonable period in post before retirement.

(3) A comparison of B's case with that of another person under paragraph (1) must be such that the relevant circumstances in the one case are the same, or not materially different, in the other.

(4) In this regulation—

- (a) "age group" means a group of persons defined by reference to age, whether by reference to a particular age or a range of ages;
- (b) the reference in paragraph (1)(a) to B's age, includes B's apparent age.

### **Discrimination by way of victimisation**

4. - (1) For the purposes of these Regulations, a person ("A") discriminates against another person ("B") if he treats B less favourably than he treats or would treat other persons in the same circumstances, and does so by reason that B has—

- (a) brought proceedings against A or any other person under these Regulations;
- (b) given evidence or information in connection with proceedings brought by any person against A or any other person under these Regulations;
- (c) otherwise done anything under or by reference to these Regulations in relation to A or any other person; or
- (d) alleged that A or any other person has committed an act which (whether or not the allegation so states) would amount to a contravention of these Regulations,

or by reason that A knows that B intends to do any of those things, or suspects that B has done or intends to do any of them.

(2) Paragraph (1) does not apply to treatment of B by reason of any allegation made by him, or evidence or information given by him, if the allegation, evidence or information was false and not made (or, as the case may be, given) in good faith.

### **Instructions to discriminate**

5. For the purposes of these Regulations, a person ("A") discriminates against another person ("B") if he treats B less favourably than he treats or would treat other persons in the same circumstances, and does so by reason that—

- (a) B has not carried out (in whole or in part) an instruction to do an act which is unlawful by virtue of these Regulations, or
- (b) B, having been given an instruction to do such an act, complains to A or to another about that instruction.

### **Harassment on grounds of age**

6. - (1) For the purposes of these Regulations, a person (“A”) subjects another person (“B”) to harassment where, on grounds of age, A engages in unwanted conduct which has the purpose or effect of—

- (a) violating B’s dignity; or
- (b) creating an intimidating, hostile, degrading, humiliating or offensive environment for B.

(2) Conduct shall be regarded as having the effect specified in paragraph (1)(a) or (b) only if, having regard to all the circumstances, including in particular the perception of B, it should reasonably be considered as having that effect.

## PART 2

### DISCRIMINATION IN EMPLOYMENT AND VOCATIONAL TRAINING

#### **Applicants and employees**

7. - (1) It is unlawful for an employer, in relation to employment by him at an establishment in Northern Ireland, to discriminate against a person—

- (a) in the arrangements he makes for the purpose of determining to whom he should offer employment;
- (b) in the terms on which he offers that person employment; or
- (c) by refusing to offer, or deliberately not offering, him employment.

(2) It is unlawful for an employer, in relation to a person whom he employs at an establishment in Northern Ireland, to discriminate against that person—

- (a) in the terms of employment which he affords him;
- (b) in the opportunities which he affords him for promotion, a transfer, training, or receiving any other benefit;
- (c) by refusing to afford him, or deliberately not affording him, any such opportunity; or
- (d) by dismissing him, or subjecting him to any other detriment.

(3) It is unlawful for an employer, in relation to employment by him at an establishment in Northern Ireland, to subject to harassment a person whom he employs or who has applied to him for employment.

(4) Paragraphs (1)(a) and (c) do not apply in relation to a person who has attained the age of 65 and who, if recruited, would be an employee or in Crown employment (as those expressions are defined for the purposes of regulation 31).

(5) Paragraph (2) does not apply to benefits of any description if the employer is concerned with the provision (for payment or not) of benefits of that description to the public, or to a section of the public which includes the employee in question, unless—

- (a) that provision differs in a material respect from the provision of the benefits by the employer to his employees; or
- (b) the provision of the benefits to the employee in question is regulated by his contract of employment; or
- (c) the benefits relate to training.

(6) In paragraph (2)(d), reference to the dismissal of a person from employment includes reference—

- (a) to the termination of that person's employment by the expiration of any period (including a period expiring by reference to an event or circumstance), not being a termination immediately after which the employment is renewed on the same terms; and
- (b) to the termination of that person's employment by any act of his (including the giving of notice) in circumstances such that he is entitled to terminate it without notice by reason of the conduct of the employer.

### **Discrimination by persons with statutory power to select employees for others**

**8.** - (1) It is unlawful for a person who is empowered by virtue of a statutory provision to select or nominate another person for employment by a third person to discriminate against a person -

- (a) by refusing to select or nominate, or deliberately not selecting or nominating, him for employment; or
- (b) where candidates are selected or nominated in order of preference, by selecting or nominating him lower in order than any other who is selected or nominated.

(2) It is unlawful for a person who is empowered by virtue of a statutory provision to select or nominate another person for employment by a third person to subject that other to harassment in relation to employment at an establishment in Northern Ireland.

### **Exception for genuine occupation requirement etc**

**9.** - (1) In relation to discrimination falling within regulation 3 (discrimination on grounds of age)—

- (a) regulation 7(1)(a) or (c) does not apply to any employment;
- (b) regulation 7(2)(b) or (c) does not apply to promotion or transfer to, or training for, any employment; and
- (c) regulation 7(2)(d) does not apply to dismissal from any employment,

where paragraph (2) applies.

(2) This paragraph applies where, having regard to the nature of the employment or the context in which it is carried out—

- (a) possessing a characteristic related to age is a genuine and determining occupational requirement;

- (b) it is proportionate to apply that requirement in the particular case; and
- (c) either—
  - (i) the person to whom that requirement is applied does not meet it, or
  - (ii) the employer is not satisfied, and in all the circumstances it is reasonable for him not to be satisfied, that that person meets it.

### **Contract workers**

**10.** - (1) It is unlawful for a principal, in relation to contract work at an establishment in Northern Ireland, to discriminate against a contract worker—

- (a) in the terms on which he allows him to do that work;
- (b) by not allowing him to do it or continue to do it;
- (c) in the way he affords him access to any benefits or by refusing or deliberately not affording him access to them; or
- (d) by subjecting him to any other detriment.

(2) It is unlawful for a principal, in relation to contract work at an establishment in Northern Ireland, to subject a contract worker to harassment.

(3) A principal does not contravene paragraph (1)(b) by doing any act in relation to a contract worker where, if the work were to be done by a person taken into the principal's employment, that act would be lawful by virtue of regulation 9 (exception for genuine occupational requirement etc).

(4) Paragraph (1) does not apply to benefits of any description if the principal is concerned with the provision (for payment or not) of benefits of that description to the public, or to a section of the public to which the contract worker in question belongs, unless that provision differs in a material respect from the provision of the benefits by the principal to his contract workers.

(5) In this regulation—

“principal” means a person (“A”) who makes work available for doing by individuals who are employed by another person who supplies them under a contract made with A;

“contract work” means work so made available; and

“contract worker” means any individual who is supplied to the principal under such a contract.

### **Meaning of employment and contract work at establishment in Northern Ireland**

**11.** - (1) For the purposes of this Part (“the relevant purposes”), employment is to be regarded as being at an establishment in Northern Ireland if the employee—

- (a) does his work wholly or partly in Northern Ireland; or
- (b) does his work wholly outside Northern Ireland and paragraph (2) applies.

(2) This paragraph applies if—

- (a) the employer has a place of business at an establishment in Northern Ireland;
- (b) the work is for the purposes of the business carried on at that establishment; and

- (c) the employee is ordinarily resident in Northern Ireland—
  - (i) at the time when he applies for or is offered the employment, or
  - (ii) at any time during the course of the employment.
- (3) The reference to “employment” in paragraph (1) includes—
  - (a) employment on board a ship only if the ship is registered at a port of registry in Northern Ireland, and
  - (b) employment on an aircraft or hovercraft only if the aircraft or hovercraft is registered in the United Kingdom and operated by a person who has his principal place of business, or is ordinarily resident, in Northern Ireland.

(4) For the purposes of determining if employment concerned with the exploration of the sea bed or sub-soil or the exploitation of their natural resources is outside Northern Ireland, this regulation has effect as if references to Northern Ireland included any area designated under section 1(7) of the Continental Shelf Act 1964<sup>(a)</sup>, or any part of such an area, in which the law of Northern Ireland applies.

(5) This regulation applies in relation to contract work within the meaning of regulation 10 as it applies in relation to employment; and, in its application to contract work, references to “employee”, “employer” and “employment” are references to (respectively) “contract worker”, “principal” and “contract work” within the meaning of regulation 10.

### **Trustees and managers of occupational pension schemes**

12. - (1) It is unlawful, except in relation to rights accrued or benefits payable in respect of periods of service prior to 1<sup>st</sup> October 2006, for the trustees or managers of an occupational pension scheme to discriminate against a member or prospective member of the scheme in carrying out any of their functions in relation to it (including in particular their functions relating to the admission of members to the scheme and the treatment of members of it).

(2) It is unlawful for the trustees or managers of an occupational pension scheme, in relation to the scheme, to subject to harassment a member or prospective member of it.

(3) Schedule 1 (occupational pension schemes) shall have effect for the purposes of—

- (a) defining terms used in this regulation and in that Schedule;
- (b) treating every occupational pension scheme as including a non-discrimination rule;
- (c) exempting certain rules and practices in or relating to occupational pension schemes;
- (d) giving trustees or managers of an occupational pension scheme power to alter the scheme so as to secure conformity with the non-discrimination rule;
- (e) making provision in relation to the procedures, and remedies which may be granted, on certain complaints relating to occupational pension schemes

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<sup>(a)</sup> 1964 c. 29.

presented to an industrial tribunal under regulation 44 (jurisdiction of industrial tribunals).

### **Office-holders etc**

**13.** - (1) It is unlawful for a relevant person, in relation to an appointment to an office or post to which this regulation applies, to discriminate against a person—

- (a) in the arrangements which he makes for the purposes of determining to whom the appointment should be offered;
- (b) in the terms on which he offers him the appointment; or
- (c) by refusing to offer him the appointment.

(2) It is unlawful, in relation to an appointment to an office or post to which this regulation applies and which is an office or post referred to in paragraph (8)(b), for a relevant person on whose recommendation (or subject to whose approval) appointments to the office or post are made, to discriminate against a person—

- (a) in the arrangements which he makes for the purpose of determining who should be recommended or approved in relation to the appointment; or
- (b) in making or refusing to make a recommendation, or giving or refusing to give an approval, in relation to the appointment.

(3) It is unlawful for a relevant person, in relation to a person who has been appointed to an office or post to which this regulation applies, to discriminate against him—

- (a) in the terms of the appointment;
- (b) in the opportunities which he affords him for promotion, a transfer, training or receiving any other benefit, or by refusing to afford him any such opportunity;
- (c) by terminating the appointment; or
- (d) by subjecting him to any other detriment in relation to the appointment.

(4) It is unlawful for a relevant person, in relation to an office or post to which this regulation applies, to subject to harassment a person—

- (a) who has been appointed to the office or post;
- (b) who is seeking or being considered for appointment to the office or post; or
- (c) who is seeking or being considered for a recommendation or approval in relation to an appointment to an office or post referred to in paragraph (8)(b).

(5) Paragraphs (1) and (3) do not apply to any act in relation to an office or post where, if the office or post constituted employment, that act would be lawful by virtue of regulation 9 (exception for genuine occupational requirement etc); and paragraph (2) does not apply to any act in relation to an office or post where, if the office or post constituted employment, it would be lawful by virtue of regulation 9 to refuse to offer the person such employment.

(6) Paragraph (3) does not apply to benefits of any description if the relevant person is concerned with the provision (for payment or not) of benefits of that description to the public, or a section of the public to which the person appointed belongs, unless—

- (a) that provision differs in a material respect from the provision of the benefits by the relevant person to persons appointed to offices or posts which are the

same as, or not materially different from, that which the person appointed holds; or

- (b) the provision of the benefits to the person appointed is regulated by the terms and conditions of his appointment; or
- (c) the benefits relate to training.

(7) In paragraph (3)(c), the reference to the termination of the appointment includes a reference—

- (a) to the termination of the appointment by the expiration of any period (including a period expiring by reference to an event or circumstance), not being a termination immediately after which the appointment is renewed on the same terms and conditions; and
- (b) to the termination of the appointment by any act of the person appointed (including the giving of notice) in circumstances such that he is entitled to terminate the appointment without notice by reason of the conduct of the relevant person.

(8) This regulation applies to—

- (a) any office or post to which persons are appointed to discharge functions personally under the direction of another person, and in respect of which they are entitled to remuneration; and
- (b) any office or post to which appointments are made by (or on the recommendation of or subject to the approval of) a Minister of the Crown, a Northern Ireland Minister, the Assembly or a government department,

but not to a political office or a case where regulation 7 (applicants and employees), 8 (discrimination by persons with statutory powers to select employees for others), 10 (contract workers), 16 (barristers), or 17 (partnerships) applies, or would apply but for the operation of any other provision of these Regulations.

(9) For the purposes of paragraph (8)(a), the holder of an office or post—

- (a) is to be regarded as discharging his functions under the direction of another person if that other person is entitled to direct him as to when and where he discharges those functions;
- (b) is not to be regarded as entitled to remuneration merely because he is entitled to payments—
  - (i) in respect of expenses incurred by him in carrying out the functions of the office or post, or
  - (ii) by way of compensation for the loss of income or benefits he would or might have received from any person had he not been carrying out the functions of the office or post.

(10) In this regulation—

- (a) appointment to an office or post does not include election to an office or post;
- (b) “political office” means—
  - (i) any office of the House of Commons held by a member of it,

- (ii) a life peerage within the meaning of the Life Peerages Act 1958<sup>(a)</sup>, or any office of the House of Lords held by a member of it,
  - (iii) any office of the Assembly held by a member of it,
  - (iv) any office of a district council held by a member of it,
  - (v) any office of a political party;
- (c) “relevant person”, in relation to an office or post, means—
- (i) any person with power to make or terminate appointments to the office or post, or to determine the terms of appointment,
  - (ii) any person with power to determine the working conditions of a person appointed to the office or post in relation to opportunities for promotion, a transfer, training or for receiving any other benefit, and
  - (iii) any person or body referred to in paragraph (8)(b) on whose recommendation or subject to whose approval appointments are made to the office or post;
- (d) references to making a recommendation include references to making a negative recommendation; and
- (e) references to refusal include references to deliberate omission.

**Police Service of Northern Ireland and the Police Service of Northern Ireland Reserve**

**14.** - (1) For the purposes of this Part, the holding of the office of constable as a police officer shall be treated as employment—

- (a) by the Chief Constable as respects any act done by him in relation to that office or a holder of it;
- (b) by the Policing Board as respects any act done by it in relation to that office or the holder of it.

(2) For the purposes of regulation 25 (liability of employers and principals)—

- (a) the holding of the office of constable as a police officer shall be treated as employment by the Chief Constable (and as not being employment by any other person); and
- (b) anything done by a person holding such an office in the performance, or purported performance, of his functions shall be treated as done in the course of that employment.

(3) There shall be paid out of funds put at the disposal of the Chief Constable under section 10(5) of the Police (Northern Ireland) Act 2000 <sup>(b)</sup>—

- (a) any compensation, damages or costs awarded against the Chief Constable in any proceedings brought against him under these Regulations, and any costs incurred by him in any such proceedings so far as not recovered by him in the proceedings; and

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<sup>(a)</sup> 1958 c. 21  
<sup>(b)</sup> 2000 c.32

(b) any sum required by the Chief Constable for the settlement of any claim made against him under these Regulations if the settlement is approved by the Policing Board.

(4) The Chief Constable may, in such cases and to such extent as appear to him to be appropriate, pay—

(a) any compensation, damages or costs awarded in proceedings under these Regulations against a police officer;

(b) any costs incurred and not recovered by a police officer in such proceedings; and

(c) any sum required in connection with the settlement of a claim that has or might have given rise to such proceedings if the settlement is approved by the Policing Board.

(5) The Chief Constable may make arrangements for the legal representation of a police officer in any proceedings mentioned in paragraph (4).

(6) This regulation—

(a) applies in relation to a person serving with the Police Service of Northern Ireland by virtue of section 98 of the Police Act 1996<sup>(a)</sup>, or section 23 of the Police Act 1997<sup>(b)</sup> as it applies in relation to a police officer;

(b) applies in relation to a police officer who, by virtue of paragraph 7(2)(a) or 8(4)(a) of Schedule 3 to the Police (Northern Ireland) Act 1998 <sup>(c)</sup>, is under the direction and control of the Police Ombudsman for Northern Ireland, as if —

(i) in paragraph (1), the reference to the Chief Constable included a reference to the Ombudsman; and

(ii) in paragraphs (2), (4) and (5), the references to the Chief Constable were references to the Ombudsman.

### **Other police bodies**

**15.** - (1) For the purposes of this Part, the holding of the office of constable otherwise than as a police officer shall be treated as employment—

(a) by the chief officer of police as respects any act done by him in relation to that office or a holder of it;

(b) by the policing authority as respects any act done by it in relation to that office or the holder of it.

(2) For the purposes of regulation 25 (liability of employers and principals)—

(a) the holding of the office of constable otherwise than as a police officer shall be treated as employment by the chief officer of police (and as not being employment by any other person); and

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<sup>(a)</sup> 1996 c. 16

<sup>(b)</sup> 1997 c. 50

<sup>(c)</sup> 1998 c. 32

- (b) anything done by a person holding such an office in the performance, or purported performance, of his functions shall be treated as done in the course of that employment.
- (3) There shall be paid out of the police fund—
- (a) any compensation, damages or costs awarded against a chief officer of police in any proceedings brought against him under these Regulations, and any costs incurred by him in any such proceedings so far as not recovered by him in the proceedings; and
  - (b) any sum required by a chief officer of police for the settlement of any claim made against him under these Regulations if the settlement is approved by the police authority.
- (4) A police authority may, in such cases and to such extent as appear to it to be appropriate, pay out of the police fund—
- (a) any compensation, damages or costs awarded in proceedings under these Regulations against a person under the direction and control of the chief officer of police;
  - (b) any costs incurred and not recovered by such a person in such proceedings; and
  - (c) any sum required in connection with the settlement of a claim that has or might have given rise to such proceedings.
- (5) A police authority may make arrangements for the legal representation of any person under the direction and control of the chief officer of police in any proceedings mentioned in paragraph (4).
- (6) Subject to paragraph (8), in this regulation —
- “chief officer of police” means —
- (a) in relation the National Criminal Intelligence Service, the Director General of that Service;
  - (b) in relation to any other body of constables, the person who has the direction and control of the body in question;
- “police authority” means —
- (a) in relation to the National Criminal Intelligence Service, the Service Authority for the National Criminal Intelligence Service;
  - (b) in relation to any other body of constables, the authority by which the members of the body are paid;
- “police fund” means —
- (a) in relation to the National Criminal Intelligence Service, the service fund under section 16 of the Police Act 1997;
  - (b) in relation in relation to any other body of constables, money provided by the authority by which the members of the body are paid.
- (7) Nothing in paragraphs (3) to (6) applies in relation to the police.
- (8) In relation to a constable of a force who is not under the direction and control of the chief officer of police for that force, references in this regulation to the chief officer of police are references to the chief officer of the force under whose

direction and control he is, and references in this regulation to the police authority are references to the relevant police authority for that force.

### **Barristers**

**16.** - (1) It is unlawful for a barrister, in relation to taking any person as his pupil, to discriminate against a person—

- (a) in the arrangements which he makes for the purpose of determining whom he will take as his pupil;
- (b) in respect of any terms on which he offers to take any person as his pupil; or
- (c) by refusing, or deliberately omitting, to take as his pupil.

(2) It is unlawful for a barrister, in relation to a person who is his pupil, to discriminate against him—

- (a) in respect of any terms applicable to him as his pupil;
- (b) in the opportunities for training, or gaining experience, which are afforded or denied to him;
- (c) in the benefits which are afforded or denied to him; or
- (d) by terminating the relationship or by subjecting him to any pressure to terminate the relationship, or any other detriment.

(3) It is unlawful for a barrister to subject to harassment a person who is his pupil or has applied to be his pupil.

(4) It is unlawful for any person, in relation to the giving, withholding or acceptance of instructions to a barrister, to discriminate against any person by subjecting him to a detriment, or to subject him to harassment.

(5) In this regulation, “pupil” has the meaning commonly associated with its use in the context of a person training as a barrister.

### **Partnerships**

**17.** - (1) It is unlawful for a firm, in relation to a position as partner in the firm, to discriminate against a person—

- (a) in the arrangements they make for the purpose of determining to whom they should offer that position;
- (b) in the terms on which they offer him that position;
- (c) by refusing to offer, or deliberately not offering, him that position; or
- (d) in a case where the person already holds that position—
  - (i) in the way they afford him access to any benefits or by refusing to afford, or deliberately not affording, him access to them, or
  - (ii) by expelling him from that position, or subjecting him to any other detriment.

(2) It is unlawful for a firm, in relation to a position as partner in the firm, to subject to harassment a person who holds or has applied for that position.

(3) Paragraphs (1)(a) to (c) and (2) apply in relation to persons proposing to form themselves into a partnership as they apply in relation to a firm.

(4) Paragraph (1) does not apply to any act in relation to a position as partner where, if the position were employment, that act would be lawful by virtue of regulation 9 (exception for genuine occupational requirement etc).

(5) In the case of a limited partnership, references in this regulation to a partner shall be construed as references to a general partner as defined in section 3 of the Limited Partnerships Act 1907<sup>(a)</sup>.

(6) This regulation applies to a limited liability partnership as it applies to a firm; and, in its application to a limited liability partnership, references to a partner in a firm are references to a member of the limited liability partnership.

(7) In this regulation, “firm” has the meaning given by section 4 of the Partnership Act 1890<sup>(b)</sup>.

(8) In paragraph (1)(d), reference to the expulsion of a person from a position as partner includes reference—

- (a) to the termination of that person’s partnership by the expiration of any period (including a period expiring by reference to an event or circumstance), not being a termination immediately after which the partnership is renewed on the same terms; and
- (b) to the termination of that person’s partnership by any act of his (including the giving of notice) in circumstances such that he is entitled to terminate it without notice by reason of the conduct of the other partners.

## **Trade organisations**

**18.** - (1) It is unlawful for a trade organisation to discriminate against a person—

- (a) in the terms on which it is prepared to admit him to membership of the organisation; or
- (b) by refusing to accept, or deliberately not accepting, his application for membership.

(2) It is unlawful for a trade organisation, in relation to a member of the organisation, to discriminate against him—

- (a) in the way it affords him access to any benefits or by refusing or deliberately omitting to afford him access to them;
- (b) by depriving him of membership, or varying the terms on which he is a member; or
- (c) by subjecting him to any other detriment.

(3) It is unlawful for a trade organisation, in relation to a person’s membership or application for membership of that organisation, to subject that person to harassment.

(4) In this regulation—

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<sup>(a)</sup> 1907 c. 24  
<sup>(b)</sup> 1890 c. 39

“trade organisation” means an organisation of workers, an organisation of employers, or any other organisation whose members carry on a particular profession or trade for the purposes of which the organisation exists;

“profession” includes any vocation or occupation; and

“trade” includes any business.

### **Qualifications bodies**

**19.** - (1) It is unlawful for a qualifications body to discriminate against a person—

(a) in the terms on which it is prepared to confer a professional or trade qualification on him;

(b) by refusing or deliberately not granting any application by him for such a qualification; or

(c) by withdrawing such a qualification from him or varying the terms on which he holds it.

(2) It is unlawful for a qualifications body, in relation to a professional or trade qualification conferred by it, to subject to harassment a person who holds or applies for such a qualification.

(3) Paragraph (1) does not apply to a professional or trade qualification for purposes of an organised religion where a requirement related to age is applied to the qualification so as to comply with the doctrines of the religion or avoid conflicting with the strongly held religious convictions of a significant number of the religion’s followers.

(4) In this regulation—

“qualifications body” means any authority or body which can confer a professional or trade qualification, but it does not include—

(a) a governing body of an educational establishment to which regulation 23 (institutions of further and higher education) applies, or would apply but for the operation of any other provision of these Regulations, or

(b) a proprietor of a school;

“confer” includes renew or extend;

“professional or trade qualification” means any authorisation, qualification, recognition, registration, enrolment, approval or certification which is needed for, or facilitates engagement in, a particular profession or trade;

“profession” and “trade” have the same meaning as in regulation 18.

### **The provision of vocational training**

**20.** - (1) It is unlawful, in relation to a person seeking or undergoing training, for any training provider to discriminate against him—

(a) in the arrangements he makes for the purpose of determining to whom he should offer training;

(b) in the terms on which the training provider affords him access to any training;

(c) by refusing or deliberately not affording him such access;

- (d) by terminating his training; or
- (e) by subjecting him to any other detriment during his training.

(2) It is unlawful for a training provider, in relation to a person seeking or undergoing training, to subject him to harassment.

(3) Paragraph (1) does not apply if the discrimination only concerns training for employment which, by virtue of regulation 9 (exception for genuine occupational requirement etc), the employer could lawfully refuse to offer the person seeking training.

(4) In this regulation—

“professional or trade qualification” has the same meaning as in regulation 18;

“registered pupil” has the same meaning as in Article 2(2) of the Education and Libraries (Northern Ireland) Order 1986 <sup>(a)</sup>;

“training” means—

- (a) all types and all levels of training which would help fit a person for any employment;
- (b) vocational guidance;
- (c) facilities for training;
- (d) practical work experience provided by an employer to a person whom he does not employ; and
- (e) assessment related to the award of any professional or trade qualification;

“training provider” means any person who provides, or makes arrangements for the provision of, training, but it does not include—

- (a) an employer in relation to training for persons employed by him;
- (b) a governing body of an educational establishment to which regulation 23 (institutions of further and higher education) applies, or would apply but for the operation of any other provision of these Regulations; or
- (c) proprietor of a school in relation to a registered pupil.

### **Employment agencies, careers guidance etc**

**21.** - (1) It is unlawful for an employment agency to discriminate against a person—

- (a) in the terms on which the agency offers to provide any of its services;
- (b) by refusing or deliberately not providing any of its services; or
- (c) in the way it provides any of its services.

(2) It is unlawful for an employment agency, in relation to a person to whom it provides its services, or who has requested it to provide its services, to subject that person to harassment.

(3) Paragraph (1) does not apply to discrimination if it only concerns employment which, by virtue of regulation 9 (exception for genuine occupational requirement etc), the employer could lawfully refuse to offer the person in question.

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<sup>(a)</sup> S.I. 1986/594 (N.I. 3)

(4) An employment agency shall not be subject to any liability under this regulation if it proves that—

- (a) it acted in reliance on a statement made to it by the employer to the effect that, by reason of the operation of paragraph (3), its action would not be unlawful, and
- (b) it was reasonable for it to rely on the statement.

(5) A person who knowingly or recklessly makes a statement such as is referred to in paragraph (4)(a) which in a material respect is false or misleading commits an offence, and shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(6) For the purposes of this regulation—

- (a) “employment agency” means a person who, for profit or not, provides services for the purpose of finding employment for workers or supplying employers with workers, but it does not include—
  - (i) a governing body of an educational establishment to which regulation 23 (institutions of further and higher education) applies, or would apply but for the operation of any other provision of these Regulations, or
  - (ii) proprietor of a school; and
- (b) references to the services of an employment agency include guidance on careers and any other services related to employment.

### **Assisting persons to obtain employment etc**

**22.** - (1) It is unlawful for the Department for Employment and Learning to discriminate against any person by subjecting him to a detriment, or to subject a person to harassment, in the provision of facilities or services under section 1 of the Employment and Training (Northern Ireland) Act 1950 <sup>(a)</sup> (general functions of the Department as to employment and training for employment).

(2) This regulation does not apply in a case where—

- (a) regulation 20 (the provision of vocational training) applies, or would apply but for the operation of any other provision of these Regulations, or
- (b) the Department for Employment and Learning is acting as an employment agency within the meaning of regulation 21 (employment agencies, careers guidance etc).

### **Institutions of further and higher education**

**23.** - (1) It is unlawful, in relation to an educational establishment to which this regulation applies, for the governing body of that establishment to discriminate against a person—

- (a) in the terms on which it offers to admit him to the establishment as a student;

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<sup>(a)</sup> 1950 c. 29 (N.I.); section 1 was amended by Article 3 of the Employment and Training (Amendment) (Northern Ireland) Order 1988 (S.I. 1988/1087 (N.I.)); *see also* Article 4(b) of S.R. 1999 No. 481 [Departments (Transfer and Assignment of Functions) Order (Northern Ireland) 1999]

- (b) by refusing or deliberately not accepting an application for his admission to the establishment as a student; or
- (c) where he is a student of the establishment—
  - (i) in the way it affords him access to any benefits,
  - (ii) by refusing or deliberately not affording him access to them, or
  - (iii) by excluding him from the establishment or subjecting him to any other detriment.

(2) It is unlawful, in relation to an educational establishment to which this regulation applies, for the governing body of that establishment to subject to harassment a person who is a student at the establishment, or who has applied for admission to the establishment as a student.

(3) Paragraph (1) does not apply if the discrimination only concerns training which would help fit a person for employment which, by virtue of regulation 9 (exception for genuine occupational requirement etc), the employer could lawfully refuse to offer the person in question.

(4) This regulation applies to the following educational establishments in Northern Ireland, namely—

- (a) an institution of further education (as recognised under Article 8 of the Further Education (Northern Ireland) Order 1997<sup>(a)</sup>);
- (b) a higher education institution (within the meaning of Article 30(3) of the Education and Libraries (Northern Ireland) Order 1993<sup>(b)</sup>).

(5) In this regulation, “student” means any person who receives education at an educational establishment to which this regulation applies.

### **Relationships which have come to an end**

**24.** - (1) In this regulation, a “relevant relationship” is a relationship during the course of which an act of discrimination against, or harassment of, one party to the relationship (“B”) by the other party to it (“A”) is unlawful by virtue of any preceding provision of this Part.

- (2) Where a relevant relationship has come to an end, it is unlawful for A—
  - (a) to discriminate against B by subjecting him to a detriment; or
  - (b) to subject B to harassment,

where the discrimination or harassment arises out of and is closely connected to that relationship.

(3) In paragraph (1), reference to an act of discrimination or harassment which is unlawful includes, in the case of a relationship which has come to an end before 1<sup>st</sup> October 2006, reference to an act of discrimination or harassment which would, after that date, be unlawful.

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<sup>(a)</sup> S.I. 1997/1772 (N.I.15)

<sup>(b)</sup> S.I. 1993/2810 (N.I.12); Article 30(3) was amended by Article 25 of, and Schedule 4 to, the Further Education (Northern Ireland) Order 1997 and by Article 11(2) of the Colleges of Education (Northern Ireland) Order 2005 (S.I. 2005/1963 (N.I. 13))

## PART 3

### OTHER UNLAWFUL ACTS

#### **Liability of employers and principals**

**25.** - (1) Anything done by a person in the course of his employment shall be treated for the purposes of these Regulations as done by his employer as well as by him, whether or not it was done with the employer's knowledge or approval.

(2) Anything done by a person as agent for another person with the authority (whether express or implied, and whether precedent or subsequent) of that other person shall be treated for the purposes of these Regulations as done by that other person as well as by him.

(3) In proceedings brought under these Regulations against any person in respect of an act alleged to have been done by an employee of his it shall be a defence for that person to prove that he took such steps as were reasonably practicable to prevent the employee from doing that act, or from doing in the course of his employment acts of that description.

#### **Aiding unlawful acts**

**26.** - (1) A person who knowingly aids another person to do an act made unlawful by these Regulations shall be treated for the purpose of these Regulations as himself doing an unlawful act of the like description.

(2) For the purposes of paragraph (1) an employee or agent for whose act the employer or principal is liable under regulation 25 (or would be so liable but for regulation 25(3)) shall be deemed to aid the doing of the act by the employer or principal.

(3) A person does not under this regulation knowingly aid another to do an unlawful act if—

(a) he acts in reliance on a statement made to him by that other person that, by reason of any provision of these Regulations, the act which he aids would not be unlawful; and

(b) it is reasonable for him to rely on the statement.

(4) A person who knowingly or recklessly makes a statement such as is referred to in paragraph (3)(a) which in a material respect is false or misleading commits an offence, and shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.

## PART 4

### GENERAL EXCEPTIONS FROM PARTS 2 AND 3

#### **Exception for statutory authority**

**27.** - (1) Nothing in Part 2 or 3 shall render unlawful any act done in order to comply with a requirement of any statutory provision.

(2) In this regulation, “statutory provision” has the meaning assigned to it by section 1(f) of the Interpretation Act (Northern Ireland) 1954<sup>(a)</sup>.

#### **Exception for national security etc**

**28.** No act done by any person shall be treated for the purposes of any provision of Part 2 or 3 as unlawfully discriminating if—

- (a) the act is done for the purpose of safeguarding national security or protecting public safety or public order; and
- (b) the doing of the act is justified by that purpose.

#### **Effect of certificates by Secretary of State**

**29.** - (1) This regulation applies where in any proceedings—

- (a) a person claims that an act discriminated against him in contravention of any provision of Part 2 or 3; and
- (b) the person against whom the claim is made proposes to rely on a certificate purporting to be signed by or on behalf of the Secretary of State and certifying—
  - (i) that an act specified in the certificate was done for the purpose of safeguarding national security or protecting public safety or public order; and
  - (ii) that the doing of the act was justified by that purpose.

(2) The claimant may, in accordance with rules under section 91 of the Northern Ireland Act 1998<sup>(b)</sup>, appeal against the certificate to the tribunal established under that section.

(3) If on an appeal under paragraph (2) that tribunal determines -

- (a) that the act specified in the certificate was done for the certified purpose; and
- (b) that the doing of the act was justified by that purpose,

the tribunal shall uphold the certificate; in any other case, the tribunal shall quash the certificate.

(4) If -

- (a) the claimant does not appeal against the certificate; or
- (b) the certificate is upheld on appeal,

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<sup>(a)</sup> 1954 c.33 (N.I.)

<sup>(b)</sup> 1998 c.47

the certificate shall be conclusive evidence of the matters certified by it.

(5) Sections 91 and 92 of the Northern Ireland Act 1998 shall apply in relation to appeals under this regulation as they apply in relation to appeals under section 90 of that Act.

(6) In this Regulation -

"claim" includes complaint; and

"claimant" includes complainant.

### **Exceptions for positive action**

**30.** - (1) Nothing in Part 2 or 3 shall render unlawful any act done in or in connection with—

- (a) affording persons of a particular age or age group access to facilities for training which would help fit them for particular work; or
- (b) encouraging persons of a particular age or age group to take advantage of opportunities for doing particular work,

where it reasonably appears to the person doing the act that it prevents or compensates for disadvantages linked to age suffered by persons of that age or age group doing that work or likely to take up that work.

(2) Nothing in Part 2 or 3 shall render unlawful any act done by a trade organisation within the meaning of regulation 18 in or in connection with—

- (a) affording only members of the organisation who are of a particular age or age group access to facilities for training which would help fit them for holding a post of any kind in the organisation; or
- (b) encouraging only members of the organisation who are of a particular age or age group to take advantage of opportunities for holding such posts in the organisation,

where it reasonably appears to the organisation that the act prevents or compensates for disadvantages linked to age suffered by those of that age or age group holding such posts or likely to hold such posts.

(3) Nothing in Part 2 or 3 shall render unlawful any act done by a trade organisation within the meaning of regulation 18 in or in connection with encouraging only persons of a particular age or age group to become members of the organisation where it reasonably appears to the organisation that the act prevents or compensates for disadvantages linked to age suffered by persons of that age or age group who are, or are eligible to become, members.

### **Exception for retirement**

**31.** - (1) Nothing in Part 2 or 3 shall render unlawful the dismissal of an employee at or over the age of 65 where the reason for the dismissal is retirement.

(2) For the purposes of this regulation, whether or not the reason for a dismissal is retirement shall be determined in accordance with Articles 130ZA to 130ZC of the Employment Rights (Northern Ireland) Order 1996<sup>(a)</sup>.

(3) This regulation has effect in relation to Crown employment and persons in Crown employment as it has effect in relation to other employment and other employees.

(4) For the purposes of the application of this regulation in relation to Crown employment—

- (a) references to an employee shall be construed as references to a person in Crown employment; and
- (b) references to dismissal shall be construed as references to the termination of Crown employment.

(5) In this regulation—

“Crown employment” means employment under or for the purposes of a government department or any officer or body exercising on behalf of the Crown functions conferred by a statutory provision;

“dismissal” means a dismissal within the meaning of Article 127 of the Employment Rights (Northern Ireland) Order 1996 (circumstances in which an employee is dismissed); and

“employee” has the same meaning as in Article 3 of the Employment Rights (Northern Ireland) Order 1996 (employee, workers).

### **Exception for certain provisions in work-related invalidity benefit schemes**

**32.** - (1) Nothing in Part 2 or 3 shall render unlawful, in or in relation to a work-related invalidity benefit scheme—

- (a) the fixing of an age for admission to such a scheme; or
- (b) the fixing of an age for entitlements to invalidity benefits under such a scheme,

including the fixing of different such ages for different workers or for different groups or categories of workers.

(2) Nothing in Part 2 or 3 shall render unlawful the use of age criteria in actuarial calculations in or in relation to any work-related invalidity benefit scheme.

(3) In this regulation—

“invalidity benefit” means benefit payable in money or money’s worth in respect of—

- (a) any interruption or cessation of work by reason of sickness or invalidity;
- (b) accidents, injuries or diseases connected with work.

“work” means work performed by a worker;

“worker” means any person in respect of whom an unlawful act of discrimination is rendered unlawful by virtue of any of the following regulations—

- (a) regulation 7 (applicants and employees);

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<sup>(a)</sup> S.I. 1996/1919 (N.I. 16); Articles 130ZA to 130 ZC are inserted by Schedule 5 to these regulations

(b) regulation 7 (applicants and employees) in combination with regulation 14 (Police Service of Northern Ireland and Police Service of Northern Ireland Reserve) or regulation 15 (other police bodies) or regulation 53 (application to the Crown etc);

(c) regulation 13 (office-holders);

“work-related invalidity benefit scheme” means any scheme or arrangement which is comprised in one or more instruments or agreements insofar as it has, or is capable of having, in effect in relation to one or more descriptions or categories of work so as to provide invalidity benefits to or in respect of workers.

### **Exception for the national minimum wage**

**33.** - (1) Nothing in Part 2 or 3 shall prevent a relevant person (“A”) from being remunerated in respect of his work at a rate which is lower than the rate at which another such person (“B”) is remunerated for his work where—

- (a) the hourly rate of the national minimum wage for a person of A’s age is lower than that for a person of B’s age, and
- (b) the rate at which A is remunerated is below the single hourly rate for the national minimum wage prescribed by the Secretary of State under section 1(3) of the National Minimum Wage Act 1998<sup>(a)</sup>;

(2) Nothing in Part 2 or 3 shall prevent an apprentice who is not a relevant person from being remunerated in respect of his work at a rate which is lower than the rate at which an apprentice who is a relevant person is remunerated for his work.

(3) In this regulation—

“apprentice” means a person who is employed under a contract of apprenticeship or, in accordance with regulation 12(3) of the National Minimum Wage Regulations 1999<sup>(b)</sup>, is to be treated as employed under a contract of apprenticeship.

[“contract of apprenticeship” means a contract of apprenticeship, whether express or implied, and (if it is express) whether oral or in writing;]

“relevant person” means a person who qualifies for the national minimum wage (whether at the single hourly rate for the national minimum wage prescribed by the Secretary of State under section 1(3) of the National Minimum Wage Act 1998 or at a different rate <sup>(c)</sup>).

### **Exception for provision of benefits on basis of no more than 5 years service**

**34.** - (1) Nothing in Part 2 or 3 shall prevent an employer from awarding a benefit to a worker (“A”) but not to another worker (“B”) if and to the extent that—

- (a) length of service is the criterion by reference to which the benefit is awarded;

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<sup>(a)</sup> 1998 c. 39

<sup>(b)</sup> S.I. 1998/584; Regulation 12(3) was substituted by S.I. 2000/1989 and amended by S.I. 2004/1930

<sup>(c)</sup> A person qualifies for the national minimum wage if he is a person who – (a) is a worker; (b) is working, or ordinarily work, in the United Kingdom under a contract; and (c) has ceased to be of compulsory school age; see section 1(2) of the National minimum Wage Act 1998

- (b) the benefit is awarded to all of the employer’s workers who meet the length of service criterion and whose circumstances are not otherwise materially different; and
  - (c) B does not satisfy the length of service criterion.
- (2) Under this regulation, in relation to the award of any particular benefit, the employer shall elect to treat length of service as meaning either—
- (a) the length of time a worker has served the employer in a post or in posts carrying out work of like nature, or
  - (b) the length of time that the worker has worked for the employer.
- (3) In calculating whether a worker satisfies a length of service criterion for the purposes of this regulation, the employer—
- (a) shall take into account all of the worker’s length of service up to a maximum of five years, but
  - (b) may, subject to any provision to the contrary in the worker’s contract or terms of service, ignore any period of time during which the worker was absent from work.
- (4) For the purposes of this regulation, workers shall be treated as carrying out work of like nature where they are doing—
- (a) work of the same or a broadly similar nature (and where any differences in that work are not of practical importance in relation to their contract or terms of service), or
  - (b) work of equal value in terms of the demands made on them (for example, in terms of effort, skill and decision making).
- (5) For the purposes of paragraph (2)(a), service in different government departments shall be treated as work for different employers.

**Exception for provision of benefits based on length of service**

- 35.** - (1) Nothing in Part 2 or 3 shall prevent an employer from awarding a benefit to a worker (“A”) but not to another worker (“B”) if and to the extent that—
- (a) length of service is the criterion by reference to which the benefit is awarded;
  - (b) it reasonably appears to the employer that there will be an advantage to him from rewarding the loyalty, encouraging the motivation or recognising the experience of workers by awarding benefits on the basis of length of service;
  - (c) the benefit is awarded to all of the employer’s workers who meet the length of service criterion and whose circumstances are not otherwise materially different; and
  - (d) B does not satisfy the length of service criterion.
- (2) Under this regulation, in relation to the award of any particular benefit, the employer shall elect to treat length of service as meaning either—
- (a) the length of time a worker has served the employer in a post or in posts carrying out work of like nature, or
  - (b) the length of time that the worker has worked for the employer.

(3) For the purposes of this regulation, workers shall be treated as carrying out work of like nature where they are doing—

- (a) work of the same or a broadly similar nature (and where any differences in that work are not of practical importance in relation to their contract or terms of service), or
- (b) work of equal value in terms of the demands made on them (for example, in terms of effort, skill and decision making).

#### **Exception for provision of statutory benefits**

**36.** Nothing in Part 2 or 3 shall prevent an employer from awarding a benefit to a worker (“A”) but not to another worker (“B”) if and to the extent that—

- (a) the employer is required to provide the benefit to A under or by virtue of a legislative provision; and
- (b) B does not satisfy the statutory qualifying period for receipt of the benefit.

#### **Exception for provision of more generous benefits to replace statutory benefits**

**37.** - (1) Nothing in Part 2 or 3 shall prevent an employer from awarding a benefit to a worker (“A”) but not to another worker (“B”) if and to the extent that—

- (a) length of service is the criterion by reference to which the benefit is awarded;
- (b) the benefit —
  - (i) is provided by the employer in place of a benefit which the employer is required to provide to A under or by virtue of a legislative provision (the “statutory benefit”), and
  - (ii) is more generous than the statutory benefit;
- (c) the employer provides a benefit to all of the employer’s workers who meet the length of service criterion and whose circumstances are not otherwise materially different, and in calculating the amount of such a benefit the employer uses the same principles which he has applied to calculate the benefit which he paid to A; and
- (d) B does not satisfy the length of service criterion.

(2) Under this regulation the employer shall treat “length of service” as meaning the length of the worker’s period of continuous employment as defined in Chapter III of Part I of the Employment Rights (Northern Ireland) Order 1996<sup>(a)</sup>.

#### **Exception for provision of benefits before statutory qualifying period**

**38.** - (1) Nothing in Part 2 or 3 shall prevent an employer from awarding a benefit to a worker (“A”) but not to another worker (“B”) if and to the extent that—

- (a) length of service is the criterion by reference to which the benefit is awarded;
- (b) the benefit—
  - (i) is intended to fulfil the same purpose as a benefit (the “statutory benefit”) which the employer would be required to provide to a worker

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<sup>(a)</sup> S.I. 1996/1919 (N.I. 16)

under or by virtue of a legislative provision if the worker had fulfilled the statutory qualifying period for receipt of such a benefit, and

- (ii) is equivalent to the amount of statutory benefit which the worker would have received if he had satisfied the qualifying period for receipt of such a benefit;
- (c) the benefit is awarded to all of the employer's workers who meet the length of service criterion and whose circumstances are not otherwise materially different; and
- (d) B does not satisfy the length of service criterion.

(2) Under this regulation the employer shall treat "length of service" as meaning the length of time that the worker has worked for the employer.

### **Definitions**

**39.** - (1) For the purposes of regulations 34 to 39, "worker" means any person in respect of whom an unlawful act of discrimination is rendered unlawful by virtue of any of the following regulations—

- (a) regulation 7 (applicants and employees),
- (b) regulation 7 (applicants and employees) in combination with regulation 14 (Police Service of Northern Ireland and Police Service of Northern Ireland Reserve) or regulation 15 (other police bodies) or regulation 53 (application to the Crown etc.),
- (c) regulation 13 (office-holders).

(2) For the purposes of regulations 34 to 39, "employer" means any person for whom the person works and by whom he is paid.

## **PART 5**

### **FUNCTIONS OF THE EQUALITY COMMISSION**

#### **General duty of Commission**

**40.** It shall be the duty of the Commission—

- (a) to work towards the elimination of discrimination;
- (b) to promote equality of opportunity between persons of differing age groups; and
- (c) to keep under review the working of these Regulations and, when it is so required by the Department or otherwise thinks it necessary, draw up and submit to the Department proposals for amending these Regulations.

#### **Research and education**

**41.** - (1) The Commission may undertake or assist (financially or otherwise) the undertaking by other persons of any research, and any educational activities, which appear to the Commission necessary or expedient for the purposes of regulation 40.

(2) The Commission may make charges for educational or other facilities or services made available by it.

### **Codes of practice**

**42.** - (1) The Commission may issue codes of practice containing such practical guidance as the Commission thinks fit for all or any of the following purposes, namely—

- (a) the elimination of discrimination or harassment which is unlawful by virtue of these Regulations;
- (b) the promotion of equality of opportunity in any field to which these Regulations apply between persons of differing age groups.

(2) Without prejudice to the generality of paragraph (1), a code of practice issued under this regulation may include such practical guidance as the Commission thinks fit as to what steps it is reasonably practicable for employers to take for the purpose of preventing their employees from doing in the course of their employment acts made unlawful by these Regulations

(3) When the Commission proposes to issue a code of practice, it shall prepare and publish a draft of that code, shall consider any representations made to it about the draft and may modify the draft accordingly.

(4) In the course of preparing any draft code of practice for eventual publication under paragraph (3), the Commission shall consult with—

- (a) such organisations or associations of organisations representative of employers or of workers; or
- (b) such other organisations or bodies,

as appear to the Commission to be appropriate.

(5) The Commission may from time to time revise the whole or any part of a code of practice issued under this regulation and issue that revised code, and paragraphs (3) and (4) shall apply (with appropriate modifications) to such a revised code as they apply to the first issue of a code.

## **PART 6**

### **ENFORCEMENT**

#### **Restriction of proceedings for breach of Regulations**

**43.** - (1) Except as provided by these Regulations no proceedings, whether civil or criminal, shall lie against any person in respect of an act by reason that the act is unlawful by virtue of a provision of these Regulations.

(2) Paragraph (1) does not prevent the making of an application for judicial review or the investigation or determination of any matter in accordance with Part X (investigations: the Pensions Ombudsman) of the Pension Schemes (Northern Ireland) Act 1993<sup>(a)</sup> by the Pensions Ombudsman.

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<sup>(a)</sup> 1993 c.49

## **Jurisdiction of industrial tribunals**

**44.** - (1) A complaint by any person (“the complainant”) that another person (“the respondent”)—

- (a) has committed against the complainant an act to which this regulation applies; or
- (b) is by virtue of regulation 25 (liability of employers and principals) or 26 (aiding unlawful acts) to be treated as having committed against the complainant such an act,

may be presented to an industrial tribunal.

(2) This regulation applies to any act of discrimination or harassment which is unlawful by virtue of any provision of Part 2 other than—

- (a) where the act is one in respect of which an appeal or proceedings in the nature of an appeal may be brought under any statutory provision, regulation 19 (qualifications bodies);
- (b) regulation 23 (institutions of further and higher education); or
- (c) where the act arises out of and is closely connected to a relationship between the complainant and the respondent which has come to an end but during the course of which an act of discrimination against, or harassment of, the complainant by the respondent would have been unlawful by virtue of regulation 24 (relationships which have come to an end).

(3) In paragraph (2)(c), reference to an act of discrimination or harassment which would have been unlawful includes, in the case of a relationship which has come to an end before 1<sup>st</sup> October 2006, reference to an act of discrimination or harassment which would, after that date, have been unlawful.

(4) Where a complaint is presented to an industrial tribunal under paragraph (1) and it appears to the tribunal that the act to which the complaint relates is one in respect of which (as being unlawful discrimination within the meaning of the Fair Employment and Treatment (Northern Ireland) Order 1998<sup>(a)</sup>)—

- (a) a complaint could be made to the Fair Employment Tribunal for Northern Ireland under Part VI of that Order; or
- (b) such a complaint has been made, but the proceedings under that Order have not been disposed of,

the tribunal shall not proceed further under these Regulations in relation to the complaint unless all proceedings which can be taken under the Fair Employment and Treatment (Northern Ireland) Order 1998 in respect of the act have been disposed of.

## **Burden of proof: industrial tribunals**

**45.** - (1) This regulation applies to any complaint presented under regulation 44 to an industrial tribunal.

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<sup>(a)</sup> S.I. 1998/3162 (N.I. 21)

(2) Where, on the hearing of the complaint, the complainant proves facts from which the tribunal could, apart from this regulation, conclude in the absence of an adequate explanation that the respondent—

- (a) has committed against the complainant an act to which regulation 44 applies; or
- (b) is by virtue of regulation 25 (liability of employers and principals) or 26 (aiding unlawful acts) to be treated as having committed against the complainant such an act,

the tribunal shall uphold the complaint unless the respondent proves that he did not commit, or as the case may be, is not to be treated as having committed, that act.

### **Remedies on complaints in industrial tribunals**

**46.** - (1) Where an industrial tribunal finds that a complaint presented to it under regulation 44 is well-founded, the tribunal shall make such of the following as it considers just and equitable —

- (a) an order declaring the rights of the complainant and the respondent in relation to the act to which the complaint relates;
- (b) an order requiring the respondent to pay to the complainant compensation of an amount corresponding to any damages he could have been ordered by a county court to pay to the complainant if the complaint had fallen to be dealt with under regulation 47 (jurisdiction of county courts);
- (c) a recommendation that the respondent take within a specified period action appearing to the tribunal to be practicable for the purpose of obviating or reducing the adverse effect on the complainant of any act of discrimination or harassment to which the complaint relates.

(2) As respects an unlawful act of discrimination falling within regulation [3](1)(b), if the respondent proves that the provision, criterion or practice was not applied with the intention of treating the complainant unfavourably on grounds of age, an order may be made under paragraph (1)(b) only if the industrial tribunal —

- (a) makes such order under paragraph (1)(a) (if any) and such recommendation under paragraph (1)(c) (if any) as it would have made if it had no power to make an order under paragraph (1)(b); and
- (b) (where it makes an order under paragraph (1)(a) or a recommendation under paragraph (1)(c), or both) considers that it is just and equitable to make an order under paragraph (1)(b) as well.

(3) If without reasonable justification the respondent to a complaint fails to comply with a recommendation made by an industrial tribunal under paragraph (1)(c), then, if it thinks it just and equitable to do so —

- (a) the tribunal may increase the amount of compensation required to be paid to the complainant in respect of the complaint by an order made under paragraph (1)(b); or
- (b) if an order under paragraph (1)(b) was not made, the tribunal may make such an order.

(4) Where an amount of compensation falls to be awarded under paragraph (1)(b), the tribunal may include in the award interest on that amount subject to, and in

accordance with, the provisions of the Industrial Tribunals (Interest on Awards in [Age] Discrimination Cases) Regulations (Northern Ireland) \*\*\*\*<sup>(a)</sup>.

(5) This regulation has effect subject to paragraph 7 of Schedule 1 (occupational pension schemes).

### **Jurisdiction of county courts**

**47.** - (1) A claim by any person (“the claimant”) that another person (“the respondent”)—

- (a) has committed against the claimant an act to which this regulation applies; or
- (b) is by virtue of regulation 25 (liability of employers and principals) or 26 (aiding unlawful acts) to be treated as having committed against the claimant such an act,

may be made the subject of civil proceedings in like manner as any other claim in tort for breach of statutory duty.

(2) Proceedings brought under paragraph (1) shall be brought only in a county court.

(3) For the avoidance of doubt it is hereby declared that damages in respect of an unlawful act to which this regulation applies may include compensation for injury to feelings whether or not they include compensation under any other head.

(4) This regulation applies to any act of discrimination or harassment which is unlawful by virtue of—

- (a) regulation 23 (institutions of further and higher education); or
- (b) where the act arises out of and is closely connected to a relationship between the claimant and the respondent which has come to an end but during the course of which an act of discrimination against, or harassment of, the claimant by the respondent would have been unlawful by virtue of regulation 24 (relationships which have come to an end).

(5) In paragraph (4)(b), reference to an act of discrimination or harassment which would have been unlawful includes, in the case of a relationship which has come to an end before 1<sup>st</sup> October 2006, reference to an act of discrimination or harassment which would, after that date, have been unlawful.

### **Burden of proof: county courts**

**48.** - (1) This regulation applies to any claim brought under regulation 47(1) in a county court.

(2) Where, on the hearing of the claim, the claimant proves facts from which the court could, apart from this regulation, conclude in the absence of an adequate explanation that the respondent—

- (a) has committed against the claimant an act to which regulation 47 applies; or

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<sup>(a)</sup> S.R. 2006 No.

- (b) is by virtue of regulation 25 (liability of employers and principals) or 26 (aiding unlawful acts) to be treated as having committed against the claimant such an act,

the court shall uphold the claim unless the respondent proves that he did not commit, or as the case may be, is not to be treated as having committed, the act.

### **Help for persons in obtaining information etc**

**49.** - (1) In accordance with this regulation, a person (“the person aggrieved”) who considers he may have been discriminated against, or subjected to harassment, in contravention of these Regulations may serve on the respondent to a complaint presented under regulation 44 (jurisdiction of industrial tribunals) or a claim brought under regulation 47 (jurisdiction of county courts) questions in the form set out in Schedule 2 or forms to the like effect with such variation as the circumstances require; and the respondent may if he so wishes reply to such questions by way of the form set out in Schedule 3 or forms to the like effect with such variation as the circumstances require.

(2) Where the person aggrieved questions the respondent (whether in accordance with paragraph (1) or not)—

- (a) the questions, and any reply by the respondent (whether in accordance with paragraph (1) or not) shall, subject to the following provisions of this regulation, be admissible as evidence in the proceedings;
- (b) if it appears to the court or tribunal that the respondent deliberately, and without reasonable excuse, omitted to reply within eight weeks of service of the questions or that his reply is evasive or equivocal, the court or tribunal may draw any inference from that fact that it considers it just and equitable to draw, including an inference that he committed an unlawful act.

(3) In proceedings before a county court a question shall only be admissible as evidence in pursuance of paragraph (2)(a)—

- (a) where it was served before those proceedings had been instituted, if it was so served within the period of six months beginning when the act complained of was done;
- (b) where it was served when those proceedings had been instituted, if it was served with the leave of, and within a period specified by, the court in question.

(4) In proceedings before an industrial tribunal, a question shall only be admissible as evidence in pursuance of paragraph (2)(a)—

- (a) where it was served before a complaint had been presented to the tribunal, if it was so served—
  - (i) within the period of three months beginning when the act complained of was done, or
  - (ii) where paragraph (2) of regulation 51 applies, within the extended period;
- (b) where it was so served when a complaint had been presented to the tribunal, either—

- (i) if it was so served within the period of twenty-one days beginning with the day on which the complaint was presented, or
- (ii) if it was so served later with leave given, and within a period specified, by a direction of the tribunal.

(5) A question and any reply thereto may be served on the respondent or, as the case may be, on the person aggrieved—

- (a) by delivering it to him;
- (b) by sending it by post to him at his usual or last-known residence or place of business;
- (c) where the person to be served is a body corporate or is a trade union or employers' association within the meaning of the Industrial Relations (Northern Ireland) Order 1992<sup>(a)</sup>, by delivering it to the secretary or clerk of the body, union or association at its registered or principal office or by sending it by post to the secretary or clerk at that office;
- (d) where the person to be served is acting by a solicitor, by delivering it at, or by sending it by post to, the solicitor's address for service; or
- (e) where the person to be served is the person aggrieved, by delivering the reply, or sending it by post, to him at his address for reply as stated by him in the document containing the questions.

(6) This regulation is without prejudice to any other statutory provision or rule of law regulating interlocutory and preliminary matters in proceedings before a county court or industrial tribunal, and has effect subject to any statutory provision or rule of law regulating the admissibility of evidence in such proceedings.

(7) In this regulation, "respondent" includes a prospective respondent.

### **Assistance by Commission**

**50.** - (1) Where, in relation to proceedings or prospective proceedings under these Regulations, an individual who is an actual or prospective complainant applies to the Commission for assistance under this regulation, the Commission shall consider the application and may grant it if it thinks fit to do so -

- (a) on the ground that the case raises a question of principle; [or]
- (b) on the ground that it is unreasonable, having regard to the complexity of the case, or to the applicant's position in relation to the respondent or another person involved, or to any other matter, to expect the applicant to deal with the case unaided; or
- (c) by reason of any other special consideration.

(2) Assistance by the Commission under this regulation may include -

- (a) giving advice;
- (b) procuring or attempting to procure the settlement of any matter in dispute;
- (c) arranging for the giving of advice or assistance by a solicitor or counsel;
- (d) arranging for representation by any person, including all such assistance as is usually given by a solicitor or counsel in the steps preliminary or incidental to

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<sup>(a)</sup> S.I. 1992/807 (N.I. 5)

any proceedings, or in arriving at or giving effect to a compromise to avoid or bring to an end any proceedings;

(e) any other form of assistance which the Commission may consider appropriate

but sub-paragraph (d) shall not affect the law and practice regulating the descriptions of persons who may appear in, conduct, defend, and address the court in, any proceedings.

(3) In so far as expenses are incurred by the Commission in providing the applicant with assistance under this regulation, the recovery of those expenses (as taxed or assessed in such manner as may be prescribed by rules or regulations) shall constitute a first charge for the benefit of the Commission -

(a) on any costs which (whether by virtue of a judgment or order of a court or tribunal or an agreement or otherwise) are payable to the applicant by any other person in respect of the matter in connection with which the assistance is given; and

(b) so far as relates to any costs, on his rights under any compromise or settlement arrived at in connection with that matter to avoid or bring to an end any proceedings.

(4) The charge conferred by paragraph (3) is subject to any charge under the Legal Aid, Advice and Assistance (Northern Ireland) Order 1981<sup>(a)</sup> and is subject to any provision in that Order for payment of any sum into the legal aid fund.

(5) In this regulation "respondent" includes a prospective respondent and "rules or regulations" -

(a) in relation to county court proceedings, means county court rules;

(b) in relation to industrial tribunal proceedings, means industrial tribunal procedure regulations under the Industrial Tribunals (Northern Ireland) Order 1996<sup>(b)</sup>

### **Period within which proceedings to be brought**

**51.** - (1) An industrial tribunal shall not consider a complaint under regulation 44 (jurisdiction of industrial tribunals) unless it is presented to the tribunal before the end of the period of three months beginning when the act complained of was done.

(2) Where the period within which a complaint must be presented in accordance with paragraph (1) is extended by regulation 15 of the Employment (Northern Ireland) Order 2003 (Dispute Resolution) Regulations (Northern Ireland) 2004<sup>(c)</sup>, the period within which the complaint must be presented shall be the extended period rather than the period in paragraph (1).

(3) A county court shall not consider a claim brought under regulation 47 (jurisdiction of county courts) unless proceedings in respect of the claim are instituted before the end of the period of six months beginning when the act complained of was done.

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<sup>(a)</sup> S.I. 1981/228 (N.I. 8)

<sup>(b)</sup> S.I. 1996/1921 (N.I. 18)

<sup>(c)</sup> S.R. 2004 No. 521

(4) A court or tribunal may nevertheless consider any such complaint or claim which is out of time if, in all the circumstances of the case, it considers that it is just and equitable to do so.

(5) For the purposes of this regulation and regulation 49 (help for persons in obtaining information etc)—

- (a) when the making of a contract is, by reason of the inclusion of any term, an unlawful act, that act shall be treated as extending throughout the duration of the contract; and
- (b) any act extending over a period shall be treated as done at the end of that period; and
- (c) a deliberate omission shall be treated as done when the person in question decided upon it,

and in the absence of evidence establishing the contrary a person shall be taken for the purposes of this regulation to decide upon an omission when he does an act inconsistent with doing the omitted act or, if he has done no such inconsistent act, when the period expires within which he might reasonably have been expected to do the omitted act if it was to be done.

## PART 7

### SUPPLEMENTAL

#### **Validity of contracts, collective agreements and rules of undertakings**

**52.** Schedule 4 (validity of contracts, collective agreements and rules of undertakings) shall have effect.

#### **Application to the Crown etc**

**53.** - (1) These Regulations apply—

- (a) to an act done by or for the purposes of a Minister of the Crown, a Northern Ireland Minister or government department, or
- (b) to an act done on behalf of the Crown by a statutory body, or a person holding a statutory office,

as they apply to an act done by a private person.

(2) These Regulations apply to—

- (a) service for purposes of a Minister of the Crown, a Northern Ireland Minister or government department, other than service of a person holding a statutory office; or
- (b) service on behalf of the Crown for purposes of a person holding a statutory office or purposes of a statutory body,

as they apply to employment by a private person, and shall so apply as if references to a contract of employment included references to the terms of service.

(3) Paragraphs (1) and (2) have effect subject to paragraph (4) and regulation 14 (Police Service of Northern Ireland and Police Service of Northern Ireland Reserve) regulation 15 (other police bodies).

(4) These Regulations do not apply to service in any of the naval, military or air forces of the Crown.

(5) Regulation 11(3) (meaning of employment and contract work at establishment in Great Britain) shall have effect in relation to any ship, aircraft or hovercraft belonging to or possessed by Her Majesty in right of the government of the United Kingdom as it has effect in relation to a ship, aircraft or hovercraft specified in regulation 11(3)(a) or (b).

(6) The provisions of Parts II to IV of the Crown Proceedings Act 1947<sup>(a)</sup> shall apply to proceedings against the Crown under these Regulations as they apply to proceedings in Northern Ireland which by virtue of section 23 of that Act are treated for the purposes of Part II of that Act as civil proceedings by or against the Crown, except that in their application to proceedings under these Regulations section 20 of that Act (removal and transfer of proceedings) shall not apply.

(7) In this regulation—

“service for purposes of a Minister of the Crown, a Northern Ireland Minister or government department” does not include service in any office mentioned in Schedule 2 (Ministerial offices) to the House of Commons Disqualification Act 1975<sup>(b)</sup>; and

“statutory body” means a body set up by or in pursuance of a statutory provision, and “statutory office” means an office so set up.

### **Retirement dismissals**

**54** Schedule 5 (amendments to unfair dismissal legislation) shall have effect.

### **Duty to consider working beyond retirement**

**55** Schedule 6 (duty to consider working beyond retirement) shall have effect.

### **Amendments to legislation**

**56** Schedule 7 (amendments to legislation) shall have effect.

### **Repeals and revocations**

**57** Schedule 8 (repeals and revocations) shall have effect.

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<sup>(a)</sup> 1947 c. 44.

<sup>(b)</sup> 1975 c. 24

Sealed with the Official Seal of the Office of the First Minister and deputy First Minister on \*\*\*\*\*.

A Senior Officer of the Office of the First Minister and deputy First Minister

## OCCUPATIONAL PENSION SCHEMES

*Interpretation***Meaning of “occupational pension scheme”**

1. In this Schedule—

“employer” means any person for whom a worker works and by whom he is paid—

“occupational pension scheme” means a scheme or other arrangement, comprised in one or more instruments or agreements, established by an employer or employers and having or capable of having effect so as to provide benefits to or in respect of any or all of the workers of—

- (a) that employer or those employers, or
- (b) any other employer,

whether or not it also has or is capable of having effect so as to provide benefits to or in respect of other persons; and

“worker means any person in respect of whom an unlawful act of discrimination is rendered unlawful by virtue of any of the following regulations—

- (a) regulation 7 (applicants and employees),
- (b) regulation 7 (applicants and employees) in combination with regulation 14 (Police Service of Northern Ireland and Police Service of Northern Ireland Reserve) or regulation 15 (other police bodies) or regulation 53 (application to the Crown etc.),
- (c) regulation 13 (office-holders).

**Meaning of “member” and “prospective member”**

2. In this Schedule—

“active member” in relation to an occupational pension scheme, means a person in respect of whom there are presently arrangements made under the scheme for the accrual of benefits to or in respect of the person;

“deferred member”, in relation to an occupational pension scheme, means a person who has accrued rights under the pension scheme and is neither an active member nor a pensioner member;

“member”, in relation to an occupational pension scheme, means any active member, deferred member or pensioner member;

“pensioner member”, in relation to an occupational pension scheme, means a person who is entitled to the present payment of benefits under the pension scheme, and is not an active member;

“prospective member”, in relation to an occupational pension scheme, means any person who, under the terms of his employment or the rules of the scheme or both—

- (a) is able, at his own option, to become a member of the scheme,
- (b) shall become so able if he continues in the same employment for a sufficient period of time,
- (c) shall be so admitted to it automatically unless he makes an election not to become a member, or
- (d) may be admitted to it subject to the consent of any person.

## **General**

3. In this Schedule—

“benefit” includes—

- (a) retirement benefit for the member, including retirement benefit received early on the grounds of ill health or redundancy,
- (b) benefit for the member’s spouse, civil partner, widow, widower, surviving civil partner, or dependants or others, or
- (c) both such descriptions of benefit;

“early retirement pivot age”, in relation to the scheme and any lump sum under it, means—

- (a) the age specified in the scheme rules as the earliest age at which the pension or lump sum becomes payable in given circumstances without actuarial reduction, or
- (b) where different ages are specified in relation to different parts of a pension or lump sum, the age specified in the scheme rules as the earliest age at which that part of the pension or lump sum becomes payable in given circumstances under the scheme without actuarial reduction (disregarding any special provision as to early payment on grounds of ill health or otherwise);

“late retirement pivot age”, in relation to the scheme and any lump sum under it, means—

- (a) the age specified in the scheme rules as the latest age at which the pension or lump sum becomes payable in given circumstances without actuarial enhancement, or
- (b) where different ages are specified in relation to different parts of a pension or lump sum, the age specified in the scheme rules as the latest age at which that part of the pension or lump sum becomes payable in given circumstances under the scheme without actuarial enhancement.

“managers”, in relation to an occupational pension scheme other than a trust scheme, means the persons responsible for the management of the scheme;

“non-discrimination rule” means the rule in paragraph 4;

“normal pension age”, in relation to the scheme and any pension or lump sum under it, means—

- (a) the age specified in the [scheme rules] as the earliest age at which the pension or lump sum becomes payable without actuarial adjustment (disregarding any

scheme rule making special provision as to early payment on the grounds of ill health or otherwise), or

- (b) where different ages are specified in relation to different parts of a pension or lump sum, the age specified in the scheme rules as the earliest age at which that part of the pension or lump sum becomes payable under the scheme without actuarial adjustment (disregarding any special provision as to early payment on grounds of ill health or otherwise);

“pensionable service” is service with the employer or in the scheme which earns entitlement to an amount of benefit under the scheme; OR [in relation to an individual and a scheme means a period in respect of which benefits accrue to or in respect of him or her under the scheme; OR [ any service which gives or will give rise to an entitlement to benefit under an occupational pension scheme;]

“trustees or managers”, in relation to an occupational pension scheme, means—

- (a) in the case of a trust scheme, the trustees of the scheme, and
- (b) in any other case, the managers of the scheme;

“trust scheme” means an occupational pension scheme established under a trust.

(2) In paragraph 14 (procedure in industrial tribunals), “employer”, in relation to an occupational pension scheme, has the meaning given by Article 121(1) of the Pensions (Northern Ireland) Order 1995<sup>(a)</sup> as at 1<sup>st</sup> October 2006.

#### **Non-discrimination rule**

4. - (1) Every occupational pension scheme shall be treated as including a provision (“the non-discrimination rule”) containing a requirement that the trustees or managers of the scheme refrain from doing any act which is unlawful by virtue of regulation 12.

(2) The other provisions of the scheme are to have effect subject to the non-discrimination rule.

(3) The trustees or managers of an occupational pension scheme may—

- (a) if they do not (apart from this paragraph) have power to make such alterations to the scheme as may be required to secure conformity with the non-discrimination rule, or
- (b) if they have such power but the procedure for doing so—
  - (i) is liable to be unduly complex or protracted, or
  - (ii) involves the obtaining of consents which cannot be obtained, or can only be obtained with undue delay or difficulty,

by resolution make such alterations to the scheme.

(4) Alterations made by a resolution such as is referred to in sub-paragraph 3 may have effect in relation to a period before the alterations are made (but may not have effect in relation to any time before 1<sup>st</sup> October 2006.

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<sup>(a)</sup> S.I. 1995/3213 (N.I. 22) [relevant amendments made by \*\*\* \*\* Child Support, Pensions and Social Security Act (NI) 2000 c.4 (N.I.)]

## **General exception for ages for admission or entitlement and actuarial calculations**

5. - (1) Nothing in Part 2 or 3 shall render unlawful, in or in relation to an occupational pension scheme—

- (a) the fixing of an age for admission to the scheme; or
- (b) the fixing of an age for entitlement to benefits,

including the fixing of different such ages for different employees or for different groups or categories of employees.

(2) Nothing in Part 2 or 3 shall render unlawful the use of age criteria in actuarial calculations in or relating to any scheme.

(3) The provisions of paragraphs [9] to [15] are without prejudice to the generality of this exception.

## **Admission to schemes and entitlement to benefits**

6. Nothing in Part 2 or 3 shall render unlawful—

- (a) the setting of minimum or maximum ages for admission to a scheme, including the setting of different ages for admission to a scheme for different groups or categories of employees;
- (b) the setting of a minimum period of employment for admission to a scheme, including the setting of different periods for admission to a scheme for different groups or categories of employees;
- (c) the setting of a minimum level of remuneration for admission to a scheme, including the setting of different levels for admission to a scheme for differing groups or categories of employees;
- (d) the setting of an early retirement pivot age or a late retirement pivot age, including the setting of different such ages for different groups or categories of members.

## **The use of age criteria in actuarial calculations**

7. Nothing in Part 2 or 3 shall render unlawful—

- (a) the use of age criteria in the actuarial calculation of reduction or enhancement for receipt of benefits before early retirement pivot age or enhancement for receipt of benefits after late retirement pivot age;
- (b) the use of age criteria in the actuarial calculation for calculating transfer payments out of the scheme or benefits to be credited in respect of payments into the scheme;
- (c) the use of age criteria in the actuarial calculation of any additional voluntary contributions made by the member to the scheme;
- (d) the use of age criteria in the actuarial calculation of contributions to a scheme or the benefits to be paid in respect of contributions made to a scheme; or
- (e) the use of age criteria in the actuarial calculation of any lump sum benefit or of the pension benefits commuted in exchange for the payment of a lump sum benefit.

### **Contributions to a scheme**

**8.** Nothing in Part 2 or 3 shall render unlawful—

- (a) any difference in contributions to a scheme attributable to the age of the member;
- (b) payment of equal contributions to a scheme irrespective of the age of the member;
- (c) any difference in contributions to a scheme attributable to the length of pensionable service of the member;
- (d) any difference in contributions to a scheme attributable to the seniority of the member; or
- (e) any difference in contributions to a scheme attributable to the remuneration payable to the member.

### **Benefit from a scheme**

**9.** Nothing in Part 2 or 3 shall render unlawful—

- (a) any difference in the amount of benefit from a scheme attributable to the years of pensionable service of the member;
- (b) any difference in the amount of benefit from a scheme attributable to the contributions paid to the scheme;
- (c) any difference in the amount of benefit from a scheme attributable to the seniority of the member;
- (d) any difference in the amount of benefit from the scheme attributable to the remuneration at any time of the member;
- (e) any limitation of the amount of benefit from the scheme made by reference to the remuneration at any time of the member;
- (f) any limitation on the amount of benefit from the scheme made by imposing a minimum or maximum number of years of qualifying service; or
- (g) any limitation on the amount of benefit from the scheme made by imposing a minimum or maximum level or type of remuneration by reference to which those benefits may be calculated;

### **Use of normal pension age**

**10.** Nothing in Part 2 or 3 shall render unlawful—

- (a) the application of a maximum age limit for transfer of the value of a member's accrued rights into or out of a scheme, provided that that maximum age limit is [not more than one year before normal pension age] [consistent with Chapter IV of Part IV of the Pension Schemes Act (Northern Ireland) 1993<sup>(a)</sup>];
- (b) the enhancement of benefits in the event of death, early retirement, ill-health or redundancy, where that enhancement is calculated by reference to a member's years of pensionable service up to a specified age.

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<sup>(a)</sup> 1993 c.49

### **Different schemes for different members**

11. Nothing in Part 2 or 3 shall render unlawful—
- (a) the closure of a scheme, or part of a scheme, to new members;
  - (b) the provision of different schemes for members of different ages;
  - (c) the provision of different schemes for members with different lengths of pensionable service or of service with their employer.

### **Dependants' benefits**

12. Nothing in Part 2 or 3 shall render unlawful—
- (a) the application of age limits to those dependants to whom benefits may be paid; or
  - (b) the reduction of benefits paid to the spouse, civil partner or other dependant of the member where that spouse, civil partner or dependant is more than a specified number of years younger than the member.

### **Other rules and practices**

13. Nothing in Part 2 or 3 shall render unlawful—
- (a) the application of a minimum age for annual increases of pensions in payment;
  - (b) any difference, attributable to the age of the pensioner member, in the increase of pensions in payment; or
  - (c) [stepping down].

### **Procedure in industrial tribunals**

14. Where under regulation 44 (jurisdiction of industrial tribunals) a member or prospective member of an occupational pension scheme presents to an industrial tribunal a complaint that the trustees or managers of the scheme—

- (a) have committed against him an act which is unlawful by virtue of regulation 12 (trustees and managers of occupational pension schemes) or 24 (relationships which have come to an end); or
- (b) are by virtue of regulation 25 (liability of employers and principals) or 26 (aiding unlawful acts) to be treated as having committed against him such an act,

the employer in relation to the scheme shall, for the purposes of the rules governing procedure, be treated as a party and be entitled to appear and be heard in accordance with those rules.

### **Remedies in industrial tribunals**

15. - (1) This paragraph applies where—
- (a) under regulation 44 (jurisdiction of industrial tribunals) a member or prospective member of an occupational pension scheme (“the complainant”) presents to an industrial tribunal a complaint against the trustees or managers of the scheme or an employer;
  - (b) the complainant is not a pensioner member of the scheme;

- (c) the complaint relates to the terms on which persons become members of the scheme, or the terms on which members of the scheme are treated; and
- (d) the tribunal finds the complaint to be well-founded.

(2) Where this paragraph applies, the industrial tribunal may, without prejudice to the generality of its power under regulation 46(1)(a) (power to make order declaring rights of complainant and respondent), make an order declaring that the complainant has a right—

- (a) where the complaint relates to the terms on which persons become members of the scheme, to be admitted to the scheme;
- (b) where the complaint relates to the terms on which members of the scheme are treated, to membership of the scheme without discrimination.

(3) An order under sub-paragraph (2)—

- (a) may be made in respect of such period as is specified in the order (but may not be made in respect of any time before 1<sup>st</sup> October 2006);
- (b) may make such provision as the industrial tribunal considers appropriate as to the terms on which, or the capacity in which, the complainant is to enjoy such admission or membership.

(4) Where this paragraph applies, the industrial tribunal may not make an order for compensation under regulation 46(1)(b), whether in relation to arrears of benefits or otherwise, except—

- (a) for injury to feelings;
- (b) by virtue of regulation 46(3).

EMPLOYMENT EQUALITY (AGE) REGULATIONS (NORTHERN IRELAND) 2006

**Questionnaire of person aggrieved**

To.....(*name of person to be questioned*)

of.....(*address*)

1. - (1) I.....(*name of questioner*)

of.....(*address*)

consider that you may have discriminated against me [subjected me to harassment] contrary to the Employment Equality (Age) Regulation (Northern Ireland) 2006.

(2). (*Give date, approximate time and a factual description of the treatment received and of the circumstances leading up to the treatment.*)

(3). I consider that this treatment may have been unlawful [because.....  
(*complete if you wish to give reasons, otherwise delete*)].

2. Do you agree that the statement in paragraph 1(2) above is an accurate description of what happened? If not, in what respect do you disagree or what is your version of what happened?

3. Do you accept that your treatment of me was unlawful discrimination [harassment]?

If not—

(a) why not,

(b) for what reason did I receive the treatment accorded to me, and

(c) how far did considerations of age affect your treatment of me?

4. (*Any other questions you wish to ask.*)

5. My address for any reply you may wish to give to the question raised above is [that set out in paragraph 1(1) above] [the following address.....].

.....(*signature of questioner*)

.....(*date*)

N.B.—By virtue of regulation 49 of the Employment Equality (Age) Regulations (Northern Ireland) 2006 this questionnaire and any reply are (subject to the provisions of that regulation) admissible in proceedings under the Regulations. A court or tribunal may draw any such inference as is just and equitable from a failure without reasonable excuse to reply within eight weeks of service of this questionnaire, or from an evasive or equivocal reply, including an inference that the person questioned has committed an unlawful act.

EMPLOYMENT EQUALITY (AGE) REGULATIONS (NORTHERN IRELAND) 2006

**Reply by respondent**

To.....(*name of questioner*)  
of.....(*address*)

1. I.....(*name of person questioned*)  
of.....(*address*)

hereby acknowledge receipt of the questionnaire signed by you and dated  
.....which was served on me on.....(*date*).

2. [I agree that the statement in paragraph 1(2) of the questionnaire is an accurate  
description of what happened.]

[I disagree with the statement in paragraph 1(2) of the questionnaire in  
that.....]

3. I accept/dispute that my treatment of you was unlawful discrimination  
[harassment] by me against you.

[My reasons for so disputing are.....The  
reason why you received the treatment accorded to you and the answers to the other  
questions in paragraph 3 of the questionnaire are.....]

4. (*Replies to questions in paragraph 4 of the questionnaire.*)

5. [I have decided (in whole or in part) the paragraph(s)  
numbered.....above, since I am unable/unwilling to reply to the relevant  
questions in the correspondingly numbered paragraph(s) of the questionnaire for the  
following reasons.....]

.....(*signature of person questioned*)

.....(*date*)

## VALIDITY OF CONTRACTS, COLLECTIVE AGREEMENTS AND RULES OF UNDERTAKINGS

## PART I

## VALIDITY AND REVISION OF CONTRACTS

1. - (1) A term of a contract is void where—

- (a) the making of the contract is, by reason of the inclusion of the term, unlawful by virtue of these Regulations;
- (b) it is included in furtherance of an act which is unlawful by virtue of these Regulations; or
- (c) it provides for the doing of an act which is unlawful by virtue of these Regulations.

(2) Sub-paragraph (1) does not apply to a term the inclusion of which constitutes, or is in furtherance of, or provides for, unlawful discrimination against, or harassment of, a party to the contract, but the term shall be unenforceable against that party.

(3) A term in a contract which purports to exclude or limit any provision of these Regulations is unenforceable by any person in whose favour the term would operate apart from this paragraph.

(4) Sub-paragraphs (1), (2) and (3) shall apply whether the contract was entered into before or after 1<sup>st</sup> October 2006; but in the case of a contract made before that date, those sub-paragraphs do not apply in relation to any period before that date.

2. - (1) Paragraph 1(3) does not apply—

- (a) to a contract settling a complaint to which regulation 44(1) (jurisdiction of industrial tribunals) applies where the contract is made with the assistance of the Labour Relations Agency;
- (b) to a contract settling a complaint to which regulation 44(1) applies if the conditions regulating compromise contracts under this Schedule are satisfied in relation to the contract; or
- (c) to a contract settling a claim to which regulation 47 (jurisdiction of county courts) applies.

(2) The conditions regulating compromise contracts under this Schedule are that—

- (a) the contract must be in writing;
- (b) the contract must relate to the particular complaint;
- (c) the complainant must have received advice from a relevant independent adviser as to the terms and effect of the proposed contract and in particular its effect on his ability to pursue a complaint before an industrial tribunal;
- (d) there must be in force, when the adviser gives the advice, a contract of insurance, or an indemnity provided for members of a profession or professional body, covering the risk of a claim by the complainant in respect of loss arising in consequence of the advice;

- (e) the contract must identify the adviser; and
- (f) the contract must state that the conditions regulating compromise contracts under this Schedule are satisfied.

(3) A person is a relevant independent adviser for the purposes of sub-paragraph (2)(c)—

- (a) if he is a qualified lawyer;
- (b) if he is an officer, official, employee or member of an independent trade union who has been certified in writing by the trade union as competent to give advice and as authorised to do so on behalf of the trade union; or
- (c) if he works at an advice centre (whether as an employee or a volunteer) and has been certified in writing by the centre as competent to give advice and as authorised to do so on behalf of the centre.

(4) But a person is not a relevant independent adviser for the purposes of sub-paragraph (2)(c) in relation to the complainant—

- (a) if he is, is employed by or is acting in the matter for the other party or a person who is connected with the other party;
- (b) in the case of a person within sub-paragraph (3)(b) or (c), if the trade union or advice centre is the other party or a person who is connected with the other party; or
- (c) in the case of a person within sub-paragraph (3)(c), if the complainant makes a payment for the advice received from him.

(5) In sub-paragraph (3)(a) “qualified lawyer” means a barrister (whether in practice as such or employed to give legal advice) or a solicitor who holds a practising certificate.

(6) In sub-paragraph (3)(b) “independent trade union” has the same meaning as in the Industrial Relations (Northern Ireland) Order 1992<sup>(a)</sup>.

(7) For the purposes of sub-paragraph (4)(a) any two persons are to be treated as connected—

- (a) if one is a company of which the other (directly or indirectly) has control; or
- (b) if both are companies of which a third person (directly or indirectly) has control.

(8) An agreement under which the parties agree to submit a dispute to arbitration—

- (a) shall be regarded for the purposes of sub-paragraph (1)(a) and (b) as being a contract settling a complaint if—
  - (i) the dispute is covered by a scheme having effect by virtue of an order under Article 84A of the Industrial Relations (Northern Ireland) Order 1992<sup>(b)</sup>, and
  - (ii) the agreement is to submit it to arbitration in accordance with the scheme, but

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<sup>(a)</sup> S.I. 1992/807 (N.I. 5)

<sup>(b)</sup> Article 84A was inserted by Article 8 of the Employment Rights (Dispute Resolution) (Northern Ireland) Order 1998 (S.I. 1998/1265 (N.I. 8))

(b) shall be regarded as neither being nor including such a contract in any other case.

3. - (1) On the application of a person interested in a contract to which paragraph 1(1) or (2) applies, a county court may make such order as it thinks fit for—

(a) removing or modifying any term rendered void by paragraph 1(1), or

(b) removing or modifying any term made unenforceable by paragraph 1(2);

but such an order shall not be made unless all persons affected have been given notice in writing of the application (except where under county court rules notice may be dispensed with) and have been afforded an opportunity to make representations to the court.

(2) An order under sub-paragraph (1) may include provision as respects any period before the making of the order (but after 1<sup>st</sup> October 2006).

## PART II

### COLLECTIVE AGREEMENTS AND RULES OF UNDERTAKINGS

4. - (1) This Part of this Schedule applies to—

(a) any term of a collective agreement, including an agreement which was not intended, or is presumed not to have been intended, to be a legally enforceable contract;

(b) any rule made by an employer for application to all or any of the persons who are employed by him or who apply to be, or are, considered by him for employment;

(c) any rule made by a trade organisation (within the meaning of regulation 18) or a qualifications body (within the meaning of regulation 19) for application to—

(i) all or any of its members or prospective members; or

(ii) all or any of the persons on whom it has conferred professional or trade qualifications (within the meaning of regulation 19) or who are seeking the professional or trade qualifications which it has power to confer.

(2) Any term or rule to which this Part of this Schedule applies is void where—

(a) the making of the collective agreement is, by reason of the inclusion of the term, unlawful by virtue of these Regulations;

(b) the term or rule is included or made in furtherance of an act which is unlawful by virtue of these Regulations; or

(c) the term or rule provides for the doing of an act which is unlawful by virtue of these Regulations.

(3) Sub-paragraph (2) shall apply whether the agreement was entered into, or the rule made, before or after 1<sup>st</sup> October 2006; but in the case of an agreement entered into, or a rule made, before 1<sup>st</sup> October 2006, that sub-paragraph does not apply in relation to any period before that date.

5. A person to whom this paragraph applies may present a complaint to an industrial tribunal that a term or rule is void by virtue of paragraph 4 if he has reason to believe—

- (a) that the term or rule may at some future time have effect in relation to him; and
- (b) where he alleges that it is void by virtue of paragraph 4(2)(c), that—
  - (i) an act for the doing of which it provides, may at some such time be done in relation to him, and
  - (ii) the act would be unlawful by virtue of these Regulations if done in relation to him in present circumstances.

6. In the case of a complaint about—

- (a) a term of a collective agreement made by or on behalf of—
  - (i) an employer,
  - (ii) an organisation of employers of which an employer is a member, or
  - (iii) an association of such organisations of one of which an employer is a member, or
- (b) a rule made by an employer within the meaning of paragraph 4(1)(b),

paragraph 5 applies to any person who is, or is genuinely and actively seeking to become, one of his employees.

7. In the case of a complaint about a rule made by an organisation or body to which paragraph 4(1)(c) applies, paragraph 5 applies to any person—

- (a) who is, or is genuinely and actively seeking to become, a member of the organisation or body;
- (b) on whom the organisation or body has conferred a professional or trade qualification which the organisation or body has power to confer;
- (c) who is genuinely and actively seeking such a professional or trade qualification which the organisation or body has power to confer.

8. - (1) When an industrial tribunal finds that a complaint presented to it under paragraph 5 is well-founded the tribunal shall make an order declaring that the term or rule is void.

(2) An order under sub-paragraph (1) may include provision as respects any period before the making of the order (but after 1<sup>st</sup> October 2006).

9. The avoidance by virtue of paragraph 4(2) of any term or rule which provides for any person to be discriminated against shall be without prejudice to the following rights (except in so far as they enable any person to require another person to be treated less favourably than himself), namely—

- (a) such of the rights of the person to be discriminated against; and
- (b) such of the rights of any person who will be treated more favourably in direct or indirect consequence of the discrimination,

as are conferred by or in respect of a contract made or modified wholly or partly in pursuance of, or by reference to, that term or rule.

**10.** In this Schedule “collective agreement” means any agreement relating to one or more of the matters mentioned in Article 96(1) of the Industrial Relations (Northern Ireland) Order 1992 (collective agreements and collective bargaining), being an agreement made by or on behalf of one or more employers or one or more organisations of employers or associations of such organisations with one or more organisations of workers or associations of such organisations.

## AMENDMENTS TO UNFAIR DISMISSAL LEGISLATION

1. The Employment Rights (Northern Ireland) Order 1996<sup>(a)</sup> is amended as follows.

2. - (1) Article 130<sup>(b)</sup> (fairness –general) is amended as follows.

(2) In paragraph (2), after sub-paragraph (b) insert—

“(ba) is retirement of the employee.”.

(3) After paragraph (2), insert—

“(2A) Paragraphs (1) and (2) are subject to Articles 130ZA to 130ZC.”.

(4) After paragraph (3), insert—

“(3A) In any case where the employer has fulfilled the requirements of paragraph (1) by showing that a reason falls within paragraph (2)(ba), the question whether the dismissal is fair or unfair shall be determined in accordance with Article 130ZD.”.

(5) In paragraph (4), for “Where” substitute “In any other case where”.

3. After Article 130 insert—

*“Retirement*

**Dismissal on planned retirement date**

**130ZA.**—(1) Retirement of the employee shall be taken to be the only reason for a dismissal which takes effect on a planned retirement date (within the meaning of any of paragraphs (4) to (7)).

(2) But paragraph (1) does not apply if the dismissal is an excluded dismissal by virtue of paragraph (8) or (9).

(3) If paragraph (1) applies, any other reason for the dismissal shall be disregarded.

(4) The date on which any employee reaches the age of 65 is a planned retirement date.

(5) In a case where there is a normal retirement age (whether this is above or below the age of 65) for a person—

(a) in the employer’s undertaking,

(b) who holds the position held by the employee,

the date on which the employee reaches that age is a planned retirement date.

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<sup>(a)</sup> S.I. 1996/1919 (N.I. 16)

<sup>(b)</sup> Article 130 was amended by paragraph 7 of Schedule 4 to, and Schedule 9(2), to the Employment Relations (NI) Order 1999 (S.I. 1999/2790 (N.I.9) and paragraph 2(4) of Schedule 5 to the Employment (NI) Order 2003 (S.I. 2003/2902 (N.I. 15)

(6) In a case where the employee has been given at least [six months'] written notice that he would be retired on a particular date, that date is a planned retirement date.

(7) In a case where—

- (a) the employer has complied with the duty under paragraph 5(2) of Schedule 6 to the 2006 Regulations, and
- (b) but for compliance with that duty, the dismissal would have taken effect on a planned retirement date within the meaning of paragraphs (4) to (6),

the date on which the dismissal actually takes effect is a planned retirement date.

(8) The dismissal is an excluded dismissal if it amounts to unlawful discrimination under the 2006 Regulations.

(9) The dismissal is an excluded dismissal if the employee can show that the employer would not have dismissed the employee on the planned retirement date but for some reason other than retirement.

#### **Dismissal on another date: retirement only reason for dismissal**

**130ZB.**—(1) This Article applies in relation to a dismissal if—

- (a) the dismissal does not take effect on a planned retirement date, and
- (b) retirement of the employee is shown to be the only potentially fair reason for the dismissal.

(2) The employer shall be regarded as having failed to fulfil the requirements of Article 130(1) if—

- (a) the dismissal amounts to unlawful discrimination under the 2006 Regulations, or
- (b) the employer contemplated dismissing the employee at some time in the period of six months that ends with the day of the dismissal, for a reason other than retirement.

(3) The condition in paragraph (2)(b) shall be presumed to be met unless the employer shows that it is not.

#### **Dismissal on another date: retirement one of reasons for dismissal**

**130ZC.**—(1) This Article applies in relation to a dismissal if—

- (a) the dismissal does not take effect on a planned retirement date, and
- (b) retirement of the employee is shown to be one of two or more potentially fair reasons for the dismissal.

(2) Retirement of the employee shall be disregarded in determining which of the potentially fair reasons is the principal reason for the dismissal if the employer contemplated dismissing the employee at some time in the period of six months that ends within the day of the dismissal, for a reason other than retirement.

### **Fairness of retirement dismissal**

**130ZD.**—(1) This Article applies where the employer has fulfilled the requirements of Article 130(1) by showing that a reason falls within Article 130(2)(ba).

(2) If this Article applies, the employee shall be regarded as unfairly dismissed for the purposes of this Part only if paragraph (3) or (5) applies.

(3) The employee shall be regarded as unfairly dismissed if, in a case where paragraph 3 of Schedule 6 to the 2006 Regulations applies, the employer did not comply with the duty under that paragraph.

(4) But the employee shall not be regarded as unfairly dismissed by virtue of paragraph (3) if, before the start of the period of 14 days that ends with the day of the dismissal, the employee knew of the right to make a request and the intended retirement date (within the meaning of Schedule 6 to the 2006 Regulations).

(5) The employee shall be regarded as unfairly dismissed if—

- (a) the employee has made a request under paragraph 4 of Schedule 6 to the 2006 Regulations,
- (b) the requirements of paragraphs 5 to 7 of that Schedule have not been complied with, and
- (c) that non-compliance is wholly or mainly attributable to failure by the employer.

(6) Any question whether [the requirements of paragraphs 5 to 7 of Schedule 6 to the 2006 Regulations] have been complied with shall be determined in accordance with those paragraphs.

### **Interpretation of Articles 130ZA to 130ZD**

**130ZE.**—(1) In Articles 130ZA to 130ZD—

“2006 Regulations” means the Employment Equality (Age) Regulations (Northern Ireland) 2006;

“potentially fair reason” means a reason of the kind mentioned in Article 130(1)(b).

(2) In Articles 130ZB and 123ZC, “planned retirement date” has the same meaning as in Article 130ZA.

*Other dismissals”.*

4. Omit Article 141 (upper age limit on unfair dismissal right).

5. - (1) Article 146<sup>(a)</sup> (remedies for unfair dismissal: orders and compensation) is amended as follows.

(2) In paragraph (5)(a) after “Article” insert “130ZD or”.

6. - (1) Article 153 (basic award) is amended as follows.

(2) For paragraph (2) substitute—

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<sup>(a)</sup> Article 146(5) was inserted by Article 23(3) of S.I. 2003/2902 (N.I. 15)

“(2) In paragraph (1)(c) “the appropriate amount” means— [            ].”;

(3) Omit paragraphs (4) and (5).

7. - (1) Article 154<sup>(a)</sup> (basic award: minimum in certain cases) is amended as follows.

(2) In paragraph (1A)(a), after “Article” insert “130ZD or”.

8. - (1) Article 250 (powers to amend Order) is amended as follows.

(2) In paragraph (2), omit “141(1)”.

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<sup>(a)</sup> Article 154(1A) was inserted by Article 23(5) of S.I. 2003/2902 (N.I. 15)

## DUTY TO CONSIDER WORKING BEYOND RETIREMENT

**Interpretation**

1. - (1) In this Schedule—

“Crown employment” means employment under or for the purposes of a government department or any officer or body exercising on behalf of the Crown functions conferred by a statutory provision;

“dismissal” means a dismissal within the meaning of Article 127 of the Employment Rights (Northern Ireland) Order 1996<sup>(a)</sup> where the reason (or, if more than one, the principal reason) for the dismissal is retirement;

“employee” has the same meaning as in Article 3 of the Employment Rights (Northern Ireland) Order 1996;

“employer” has the same meaning as in Article 3 of the Employment Rights (Northern Ireland) Order 1996;

“intended retirement date” means the date notified to the employee in accordance with paragraph 2 or 3, disregarding any later changes to that intention as a result of a request made under paragraph 4, or where no such modification has been given it means the date of dismissal; and

“request” means a request made in accordance with paragraph 4.

(2) For the purposes of this Schedule, whether or not the reason for a dismissal is retirement shall be determined in accordance with Articles 130ZA to 130ZC of the Employment Rights (Northern Ireland) Order 1996<sup>(b)</sup>.

**Duty of employer to inform employee**

2. - (1) An employer who intends to dismiss an employee where the reason for the dismissal is retirement has a duty to notify the employee—

(a) of the employee’s right to make a request; and

(b) of the date on which he intends the employee to retire.

(2) The notification under sub-paragraph (1) shall be given in writing [not more than one year and not less than six months] before dismissal.

**Continuing duty to inform employee**

3. Where the employer has failed to comply with paragraph 2, he has a continuing duty to notify the employee in writing as described in paragraph 2(1) until the 14<sup>th</sup> day before dismissal.

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<sup>(a)</sup> S.I.1996/1919 (N.I. 16)

<sup>(b)</sup> Articles 130ZA to 130ZC are inserted by paragraph 3 of Schedule 5 to these Regulations

### **Statutory right to request not to retire**

4. - (1) An employee may make a request to his employer not to retire on the intended retirement date.

(2) A request under this paragraph must be in writing and state that it is such a request.

(3) An employee may make only one request under this paragraph.

### **An employer's duty to consider a request**

5. - (1) An employer to whom a request is made has a duty to consider the request in accordance with the following provisions of this Schedule—

(a) if the employer has not complied with paragraph 2, where the request is made before, but not more than [one year] before, the intended retirement date; and

(b) in any other case, where the request is made more than [six weeks] but not more than [one year] before the intended retirement date.

(2) Where, in accordance with sub-paragraph (1) the employer has a duty to consider a request, he also has a duty to not to retire the employee until he has complied with the requirements of paragraph 6 in relation to the request.

### **Meeting to consider request**

6. - (1) Where an employer has a duty under paragraph 5 to consider a request, he shall do so in good faith.

(2) An employer shall hold a meeting to discuss the request with the employee.

(3) The employer and employee must take all reasonable steps to attend the meeting.

(4) Where a meeting is held to discuss the request, the employer shall give the employee notice of his decision on the request within 14 days after the date of the meeting.

(5) Sub-paragraphs (2) to (4) do not apply where—

(a) the employer agrees to the request and notifies the employee; or

(b) it is not reasonably practicable to hold the meeting within a period of two months from the date of the request, this is not due to a failure on the part of the employer, and the employer complies with sub-paragraph (6).

(6) In the circumstances described in sub-paragraph (5)(b), the employer may consider the request without holding a meeting provided he considers any representations made by the employee and he shall notify the employee of his decision on the request as soon as is reasonably practicable.

(7) A notice under sub-paragraph (4) or (6) shall—

(a) be in writing;

(b) where the decision is to refuse the request, confirm that the employer wishes to retire the employee and the date on which the dismissal shall take effect, and set out the appeal procedure; and

(c) be dated.

## **Appeals**

7. - (1) An employee is entitled to appeal against his employer's decision to refuse a request by giving notice in accordance with sub-paragraph (2) within 14 days (or, if that is not reasonably practicable, within such further period (not exceeding three months) as is reasonable) after the date on which the notice of the decision is given.

(2) A notice of appeal under sub-paragraph (1) shall be in writing, set out the grounds of appeal and be dated.

(3) The employer shall hold a meeting with the employee to discuss an appeal made in compliance with sub-paragraph (1) within 14 days (or, if that is not reasonably practicable, within such further period (not exceeding three months) as is reasonable) after the employee's notice under that sub-paragraph is given.

(4) The employer and employee must take all reasonable steps to attend the meeting.

(5) Where a meeting is held to discuss the appeal, the employer shall notify the employee of his decision on the appeal within 14 days (or, if that is not reasonably practicable, within such further period (not exceeding three months) as is reasonable) after the date of the meeting.

(6) Sub-paragraphs (3) to (5) do not apply where—

(a) within 14 days after the date on which the notice under sub-paragraph (1) is given, the employer upholds the appeal and notifies the employee in writing of his decision; or

(b) it is not reasonably practicable to hold the meeting within a period of two months from the date of the appeal, this is not due to a failure on the part of the employer, and the employer complies with sub-paragraph (7).

(7) In the circumstances described in sub-paragraph (6)(b), the employer may consider the appeal without holding a meeting provided he considers any representations made by the employee and he shall notify the employee of his decision on the request as soon as is reasonably practicable.

(8) Notice under sub-paragraphs (5) and (7) shall—

(a) be in writing;

(b) where the decision is to refuse the appeal, confirm that the employer wishes to retire the employee and the date on which the dismissal shall (or took) effect; and

(c) be dated.

(9) Consideration of the appeal, either in a meeting or under sub-paragraph (7), need not take place before the dismissal takes effect.

## **Remedies**

8. - (1) Where an employer fails to comply with paragraph 2, an industrial tribunal may make an award of compensation to be paid by the employer to the employee.

(2) The amount of compensation shall be such amount, not exceeding 8 weeks' pay, as the tribunal considers just and equitable in all the circumstances.

(3) Chapter IV of Part I of the Employment Rights (Northern Ireland) Order 1996 (calculation of a week's pay) shall apply for the purposes of sub-paragraph (2); and in

applying that Chapter the calculation date shall be taken to be the date of the [intended retirement date].

(4) The limit in Article 23(1) of Employment Rights (Northern Ireland) Order 1996 (maximum amount of a week's pay) shall apply for the purposes of sub-paragraph (2).

### **Crown employment**

9. - (1) This Schedule has effect in relation to Crown employment and persons in Crown employment as it has effect in relation to other employment and other employees.

(2) For the purposes of the application of this Schedule in relation to Crown employment—

- (a) references to an employee shall be construed as references to a person in Crown employment; and
- (b) references to dismissal shall be construed as references to the termination of Crown employment.

## AMENDMENTS TO LEGISLATION

1. - (1) The Social Security Contributions and Benefits (Northern Ireland) Act 1992<sup>(a)</sup> shall be amended in accordance with sub-paragraphs (2) to (6).

(2) In section 159(1) (interpretation of Part XI and supplementary provisions)—

- (a) in the definition of “employee” the words “and over the age of 16” shall be omitted, and
- (b) for the definition of “employer” there shall be substituted the following definition—

““employer” in relation to an employee and a contract of service of his, means a person—

- (a) who, under section 6 above is, or but for the condition in subsection (1)(b) of that section would be, liable to pay secondary Class 1 contributions in relation to any earnings of the employee under the contract; or
- (b) who, in relation to an employee under the age of 16 would be liable to pay secondary Class 1 contributions in relation to any earnings of that employee under the contract, but for that employee’s age.”

(3) In section 167(1) (interpretation of Part XII and supplementary provisions)—

- (a) in the definition of “employee” the words “and over the age of 16” shall be omitted, and
- (b) for the definition of “employer” there shall be substituted the following definition—

““employer” in relation to a woman who is an employee, means a person—

- (a) who, under section 6 above is, or but for the condition in subsection (1)(b) of that section would be, liable to pay secondary Class 1 contributions in relation to any of her earnings under the contract; or
- (b) who would, in relation to an employee under the age of 16, be liable to pay secondary Class 1 contributions in relation to any of her earnings under the contract, but for that employee’s age.”

(4) In section 167ZJ (Part XIIZA: supplementary)—

- (a) in sub-section (1) for the definition of “employer” there is substituted the following definition—

““employer” in relation to a person who is an employee, means a person—

- (a) who, under section 6 above is, or but for the condition in subsection (1)(b) of that section would be, liable to pay secondary Class 1 contributions in relation to any of the earnings of the person who is an employee; or

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<sup>(a)</sup> 1992 c. 7; sections 167ZJ and 167ZS were inserted by Articles 5 and 6 of the Employment (Northern Ireland) Order 2002 (S.I. 2002/2836 (N.I. 2))

(b) who, in relation to a person who is an employee under the age of 16, would be liable to pay secondary Class 1 contributions in relation to any of the earnings of the person who is an employee, but for that employee's age." and

(b) in sub-section (2)—

(i) at the end paragraph (a) there shall be omitted the word "and"; and

(ii) paragraph (b) shall be omitted.

(5) In section 167ZS (Part XIIIZB: supplementary)—

(a) in sub-section (1) for the definition of "employer" there shall be substituted—

““employer” in relation to a person who is an employee, means a person—

(a) who, under section 6 above is, or but for the condition in subsection (1)(b) of that section would be, liable to pay secondary Class 1 contributions in relation to any of the earnings of the person who is an employee; or

(b) who, in relation to a person who is an employee under the age of 16, would be liable to pay secondary Class 1 contributions in relation to any earnings of the person who is an employee, but for that employee's age.”, and

(b) in sub-section (2)—

(i) at the end of paragraph (a), there shall be omitted the word "and"; and

(ii) paragraph (b) shall be omitted.

(6) In Schedule 11 (circumstances in which periods of entitlement to statutory sick pay do not arise) paragraph 2(b) shall be omitted.

2. Article 20(1)(a) of the Industrial Tribunals (Northern Ireland) Order 1996<sup>(a)</sup> (cases where conciliation provisions apply) shall be amended as follows—

(a) at the end of head (iv), there shall be omitted "or", and

(b) after head (v), there shall be inserted—

“or

(vi) regulation 44 of the Employment Equality (Age) Regulations (Northern Ireland) 2006”;

3.- (1) The Employment Rights (Northern Ireland) Order 1996<sup>(b)</sup> shall be amended in accordance with sub-paragraphs (2) to (6).

(2) In Article 7 (period of continuous employment)—

(a) in sub-paragraph (a) of paragraph (1) for "paragraphs (2) and" there shall be substituted "paragraph"; and

(b) paragraph (2) shall be omitted.

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<sup>(a)</sup> S.I.1996/1921 (N.I. 18)

<sup>(b)</sup> S.I.1996/1919 (N.I. 16)

(3) In Article 160(1)(b) of the (acts which are both unfair dismissal and discrimination)—

(a) after “Race Relations (Northern Ireland) Order 1997” the word “and” shall be omitted, and

(b) after Employment Equality (Sexual Orientation) Regulations (Northern Ireland) 2003 there shall be inserted “and the Employment Equality (Age) Regulations (Northern Ireland) 2006”.

(4) Article 191 (upper age limit) shall be omitted.

(5) Article 193 (pension rights) shall be omitted.

(6) In Article 197 (amount of a redundancy payment)—

(a) for paragraph (2) there shall be substituted—

“(2) In paragraph (1)(c) “the appropriate amount” means—

(b) paragraphs (4) and (5) shall be omitted;

(c) in paragraph (6), for “Paragraphs (1) to (5)” there shall be substituted “Paragraphs (1) to (3)”;

(d) paragraph (8) shall be omitted.

4. - (1) The Fair Employment and Treatment (Northern Ireland) Order 1998<sup>(a)</sup> shall be amended in accordance with sub-paragraphs (2) and (3).

(2) In Article 85(1) (procedure for matters within jurisdiction of industrial tribunal)—

(a) in sub-paragraph (a), after head (v) there shall be added—

(vi) a person has committed an act of discrimination or harassment against the complainant which is unlawful by virtue of any provision of Part 2 of the Employment Equality (Age) Regulations (Northern Ireland) 2006; or”;

(b) in sub-paragraph (b) after “(Northern Ireland) 2003 there shall be inserted “or the Employment Equality (Age) Regulations (Northern Ireland) 2006”.

(3). In Article 85(3)(b), after head (iv), there shall be inserted—

(v) regulation 44(4) of the Employment Equality (Age) Regulations (Northern Ireland) 2006.”.

5. In the Employment (Northern Ireland) Order 2003<sup>(b)</sup> at the end of each of the following Schedules—

(a) Schedule 2 (tribunal jurisdictions to which Article 17 applies);

(b) Schedule 3 (tribunal jurisdictions to which Article 19 applies); and

(c) Schedule 4 (tribunal jurisdictions to which Article 27 applies),

there shall be inserted—

“Regulation 44 of the Employment Equality (Age) Regulations (Northern Ireland) 2006 (discrimination in the employment field)”.

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<sup>(a)</sup> S.I.1998/3162 (N.I. 21)

<sup>(b)</sup> S.I.2003/2902 (N.I. 15)

6. Regulation 3 of the Employment Protection (Continuity of Employment) Regulations (Northern Ireland) 1996<sup>(a)</sup> shall be amended as follows—

(a) at the end of paragraph (\*) the word “or” shall be omitted, and

(b) after paragraph (\*), there shall be inserted—

“or

(\*) a decision taken arising out of the use of the statutory duty to consider procedure contained in regulation 55 of the Employment Equality (Age) Regulations (Northern Ireland) 2006.”.

7. In Regulation 4 of the Riding Establishments Regulations (Northern Ireland) 1980<sup>(b)</sup> (management and supervision requirements), for paragraph (1) there shall be substituted the following paragraph—

“(1) A riding establishment shall be managed and supervised by a licence holder or a person who to the satisfaction of the Department is qualified or experienced in the management of horses and has not been convicted of any offence for which a penalty is provided under the Act.”

8. In the Schedule to the Petshops Regulations (Northern Ireland) 2000<sup>(c)</sup> (conditions for keeping petshops) —

(a) paragraph 2 shall be omitted, and

(b) for paragraph 3, there shall be substituted—

“(3) The petshop shall be managed only by or left in the sole charge of a person who, to the satisfaction of the Department, has either sufficient experience or suitable training and qualifications to provide a reasonable level of care and supervision in respect of the number and range of species which are permitted to be kept within that petshop.”.

9. - (1) The Employment (Northern Ireland) Order 2003 (Dispute Resolution) Regulations (Northern Ireland) 2004<sup>(d)</sup> shall be amended in accordance with subparagraphs (2) and (3).

(2) In Regulation 7(3) (circumstances in which parties are treated as complying with the grievance procedures) there shall be added a reference to—

“Regulation 44 of the Employment Equality (Age) Regulations (Northern Ireland) 2006”.

(3). In Regulation 14(2) (questions to obtain information not to constitute statement of grievance) there shall be added a reference to—

“Regulation 49 of the Employment Equality (Age) Regulations (Northern Ireland) 2006”.

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<sup>(a)</sup> S.R. 1996 No. 604;

<sup>(b)</sup> S.R. 1980 No. 121;

<sup>(c)</sup> S.R. 2000 No. 405;

<sup>(d)</sup> S.R. 2004 No. 521

## REPEALS AND REVOCATIONS

<i>(1) Repeals</i>	
<i>Short title</i>	<i>Extent of repeal</i>
Weights and Measures (Northern Ireland) Order 1981 (N.I. 10)	Article 40(3)
Social Security Contributions and Benefits (Northern Ireland) Act 1992 (c.7)	In section 167(1), in the definition of “employee” the words “and over the age of 16”. In section 167ZJ(2), at the end of paragraph (a) the word “and” and paragraph (b) In section 167ZS(2), at the end of paragraph (a) the word “and” and paragraph (b) In Schedule 11, paragraph 2(b)
The Employment Rights (Northern Ireland) Order 1996 (N.I. 16)	Article 7(2) Article 191 Article 193 Article 197(4), (5) and (8)

<i>(2) Revocations</i>	
<i>Title</i>	<i>Extent of revocation</i>
The Contracts of Employment and Redundancy Payments (Pensions) Regulations (Northern Ireland) 1965 (S.R. & O (N.I.) 1965 No. 246)	The whole of the Regulations
The Petshops Regulations (Northern Ireland) 2000 (S.R. 2000 No. 405)	In the Schedule, paragraph 2

**EXPLANATORY NOTE**

*(This note is not part of the Regulations.)*