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To: <agelegislation@ofmdfmi.gov.uk>
cc:
Subject: Promoting Equality of Opportunity Response

30/11/2005 11:49

Thank you for the opportunity to respond to the above consultation.
A hard copy of this response will follow by post.

Thank you,

Joleen Connolly
POLICY OFFICER
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Two million older people care for someone who is ill, frail or has a disability. If you are a carer, you may be entitled to financial and practical support. Visit www.helptheaged.org.uk

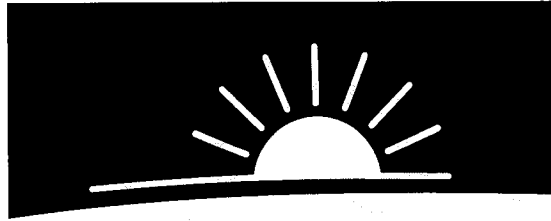
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Help the Aged

Response to "Promoting Equality of Opportunity- Consultation on the Draft
Employment Equality (Age) Regulations (Northern Ireland) 2006

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Introduction

The work of Help the Aged is about facilitating and enabling older people to remain in control of their lives. We work through a partnership approach with older people as equal partners. In addition, we also work with other agencies through an age sector approach to influence future policies. The work is aimed towards practical services as well as campaigning and lobbying on a range of issues. Older people are directly involved in this work. The core values which underpin our work are combating poverty, defeating ageism, reducing isolation and promoting quality in care.

General

Help the Aged welcome the opportunity to respond to "Promoting Equality of Opportunity." However we must make clear our concerns that all the major policy issues to do with the Age Legislation have already been taken and that the purpose of this consultation is to inform employers and others about the legislation and to see if there are any issues for clarification. We are disappointed that as members of the OFMDFM Age Legislation Group, it has amounted to little more than a talking shop and that our views and concerns mooted in this group have not been taken on board. Help the Aged hoped that as members of the Age Legislation Group that all social partners could have worked out the way forward together.

Help the Aged are disappointed at some of the policy decisions that have been taken in this document and do not feel they reflect the spirit or ethos of Section 75 of the Northern Ireland Act 1998.

Chapter Three- Prohibiting Age Discrimination

Whilst the Directive applies to employment and Vocational Training, Help the Aged is concerned that Adult learning has not been included. Older people are both directly and indirectly discriminated against with regard to learning opportunities. Direct discriminate exists in the upper age limits for student loans. Indirect discrimination exist in the under representation of older people in higher and further education. This is a very significant area that has major implications for the job opportunities of older workers in the future.

Help the Aged notes in paragraph 3.5 of the document that goods and services are not included in the Age Regulations. We believe that the issue of insurance needs urgent addressing as this is a major area where older people are discriminated against. We believe that employment related insurance should be addressed by the bill. Help the Aged also urge progress on the Single Equality Bill to be timely to concede with the introduction of the Age Regulations to afford older people and workers robust protection in the areas of goods, facilities and services.

Help the Aged does welcome the extension of the regulations to cover public office holders. However Help the Aged recognise the massive contribution to the economy and to society volunteers have made, a large proportion of whom are older people. We strongly believe that voluntary work should be covered by the legislation and we urge government to look at the grounds on which volunteers can be covered by this legislation.

Chapter Four- Justifying Age Discrimination

Help the Aged concede that there needs to be some scope to enable objective justification, and this concept does need to be carefully and tightly framed in the legislation.

Help the Aged is concerned that there is a larger capacity for direct age discrimination being granted than is acceptable or permissible among other Section 75 groups. This essentially is sending a message that age is a poor relation when it comes to equality issues.

The opportunity to justify direct age discrimination by the use of legitimate aims is will present incredible difficulties. Help the Aged have long stated that such a list of aims essentially provide a charter for employers to continue to discriminate on the grounds of age. Paragraph 4.20 outlines these grounds for discrimination.

Health, Welfare and Safety should be covered by Health and Safety Legislation. The fact that it is to be contained in Age Legislation is Ageist in itself. Help the Aged have long argued that the health, capacity and needs of each individual should be considered and not their age.

Facilitation of Employment Planning is a very ambiguous statement that could open the door to extensive litigation. Help the Aged fails to see why this should be included as a legitimate aim since if facilitation of employment planning means employers think they need someone of a particular age to do a particular job, then that should be defined as a genuine occupational requirement.

Genuine Occupational Requirements

We believe there would be very few instances where an age limit would be a Genuine Occupational Requirement. However we note that in the interests of consistency with other equality legislation that it should be retained.

Positive Action

We welcome proposals to encourage younger and older workers training and employment opportunities to address disadvantage and under representation. Help the Aged is of the view that positive action should be encouraged where appropriate to redress disadvantage in employment. Change in the age profile of older learners and workers will be extremely slow unless positive action is taken to

redress the effects of discrimination. Positive action should also be encouraged with regard to learning and vocational training. We should aim for a situation where the age profile of older learners and older workers mirrors the age profile of the population as a whole.

Recruitment, Selection and Promotion

Help the Aged believe that there should be no grounds for employers to refuse to recruit workers over retirement age and that this should not be covered in the legislation. Employers should have a duty to consider requests on a case by case basis. As it stands employers will be able to simply throw away any applications from older workers. Employers will select older workers on their merits and also the arguments for retirement of employees are centred around successor planning and career blockages and have no relevance to recruitment.

Employment Related Insurance

Help the Aged reiterate our position that we believe employer related insurance should be contained within the scope of the consultation. It is nonsensical not to recognise the massive overlap between employment and employment related insurance. Not to do so will have an extremely detrimental effect on the recruitment and retaining of older employees. Some employers will be

worried about the higher premiums levied on older people with regard to work benefits; health, life, and car insurance and as a result may refuse to employ older people using the justification of the default retirement age.

Chapter Five- Exemptions

Service Related Pay and Benefits

Help the Aged believe that length of service is not related to a person's age. It relates to the length of time that a person has worked for an employer. Although older workers would have more opportunity to work for the same employer for a longer period than younger workers, we suggest that the government removes seniority payments from the legislation.

National Minimum Wage

We believe that age differentials within the NMW are discriminatory. Help the Aged are also aware that there

is an "Age Pay Gap" just as there is a gender pay gap . Those wishing to return to work after the age of 50yrs have to take a substantial drop in salary. Government needs to monitor the pay rates of the 50plus age group who return to work to ensure that older workers are paid equally.

Chapter Six-Retirement

Retirement Ages

Help the Aged has long stated that we do not support a default retirement age. Having a default retirement age run contrary to the objective of eliminating age discrimination.

We believe that retirement ages and arbitrary and discriminatory and ultimately should be abolished. It needs to be carefully promoted so that people are not led to believe it is compulsory to work beyond 65 before they can claim their pension. Retirement should be based solely on the assessment of an employees competency and ability to do the job, informed by each employees financial security and personal choice. The proposal to set a default retirement age, after which employees could not claim unfair dismissal is a retrograde step. It perpetuates the negative stereotypes about older workers and reinforces the view that age is important in employment decisions. If the default retirement age is not applicable to office holders how then can it be justified in other employment areas?

Planned Retirement

Help the Aged have serious reservations about the processes of planned retirement. We feel that again, it comes down more heavily in the favour of the employer. However we welcome the ability of the worker to take unfair dismissals claims beyond normal retirement age. The timescale for planned retirement needs to be given more consideration as people will be an adequate timeframe to adjust to new financial circumstances and will need to plan for their forced retirement.

Duty to Consider Procedure

The Duty to Consider procedure is a welcome step in encouraging planned retirement and dialogue between employers and employees. However we are unhappy that the employee can only challenge the decision if the case procedure was not adhered to correctly. We believe that the employer must be made to give reasons for their decision and that the employee should be able to challenge the decision on wider grounds.

Clarity will be essential in this area if employers are to comply with the law and employees are to be made aware of their rights.

Monitoring and Review

Help the Aged believes the monitoring and a full and thorough review process is essential to evaluate the process of the directive and its affects on older workers.

Chapter Seven-Occupational Pension Schemes

Occupational Pension Schemes

Whilst government wishes to provide clear exemptions to ensure that occupational pensions are not undermined action needs to be taken to ensure that pension schemes do not use age discrimination. This restricts the ability of older people to work and save for longer. The regulations should be seen as an opportunity to reform pensions schemes so that they reward those who choose to work longer in line with other government policy.

The reasoning for some of the exemptions is not clear around the minimum and maximum ages for new entrants to a scheme and setting different ages for entry for different groups of employees, have different schemes for different employees of different ages and different lengths of service. These particular exemptions may lead to increased disparity in pension provision for the workforce. This could potential have an adverse impact on women, ethnic minorities and disabled people who are more like to work in low paid jobs.

Chapter Eight- Changes to other Legislation

Statutory Redundancy Payments

Help the Aged welcomes the proposed reforms of the statutory redundancy payments scheme and the removal of upper and lower limits and the practice of tapering off.

This is a very important area given that redundancy of older workers often leads to their total exclusion from work, therefore to compensate for their financial situation and in the interests of fairness redundancy payments should reimburse workers for their length of service.

However Help the Aged also suggest that SRP's should be rounded to one and a half weeks per year in order to comply with the Directives requirement of no regression. UK rates are already below EU averages and governments proposal would exacerbate that situation.

Unfair Dismissal

Help the Aged welcomes the removal of the upper age limit in unfair dismissal claims. We also welcome the alignment of the calculation of a basic award with the calculation of a redundancy payment.

Chapter Nine- Support and Legal Action

Guidance and Support

Help the Aged welcomes the Equality Commission being given new duties in relation to Age Discrimination. We are however, disappointed that they will not be granted powers to conduct formal investigations and would urge that this is repealed.

Conclusion

Help the Aged are glad of the opportunity to put our views across on this important issue. Age Discrimination Legislation is essential if we are to promote equality and to change the working culture in Northern Ireland and beyond. Whilst we broadly welcome the legislation, we believe that it falls short on a number of counts and falls more in the favour of employers, making it difficult for workers to fully challenged the ageism and age discrimination which is prolific in our society.

Help the Aged urge that goods, facilities and services are incorporated into the legislation in the interests of fairness and parity. We also urge that age discrimination is tackled in areas running parallel to employment, such as disability benefits, learning and skills policies, workers with caring responsibilities and volunteering.

We urge that a well resourced Age Unit within the Equality Commission is established to provide, information, advice and guidance. Also we strongly feel that the Equality Commission is given powers to enforce and challenge.

Finally Help the Aged reiterate our clear belief that a default retirement age is discriminatory. It sends the wrong message to employers and employees and mitigates against cultural and attitudinal change. We maintain that the fairest and most commonsense reasons for retirement should be competency, capacity, financial security and personal choice.