



**A
RESPONSE
BY**

INTO

The Irish National Teachers' Organisation

TO

**THE CONSULTATION ON THE DRAFT
EMPLOYMENT EQUALITY (AGE)
REGULATIONS
(NORTHERN IRELAND) 2006**

OCTOBER 2005

Introduction

The Irish National Teachers' Organisation welcomes the opportunity to respond to the draft Employment Equality (Age) Regulations (Northern Ireland) 2005. This response represents the views of its membership in Northern Ireland. INTO is a major trade union, with over 130 years experience representing teachers. INTO represents 6,500 teachers in all sectors of the education in Northern Ireland and 26,000 in the Republic of Ireland.

General Comments

INTO recognises that the approach to age discrimination in employment must differ in some aspects from the other anti-discrimination legislation. INTO however would wish to ensure that legislation will not prohibit reasonable claims of age discrimination being addressed. Furthermore we would wish to ensure that the legislation supports and is congruent with the statutory provisions placed on public sector employers by Section 75 Schedule 9 of the Northern Ireland Act 1998.

Employment policies should continue to be screened and impact assessed as required under Section 75. INTO would be uncomfortable with situation in which the primacy of legislation was Employment Equality (Age) Regulations (Northern Ireland) 2006 and that the requirements of Section 75 were lessened.

The development of these regulations must be accompanied by a process of engagement with stakeholder groups, including INTO as recognised teachers' union, to ensure proper representation of older and young workers. It is important that the regulations are carefully monitored in relation to their impact on pensions and the increase in the retirement age.

Definition of Discrimination

Direct Discrimination

INTO is concerned that the consultation document does not clearly set out what is meant by direct discrimination in the context of age. The approach of using a less favourable treatment to address age discrimination is not one INTO can support. To adopt such an approach will move age discrimination into a statistical problem rather than a discriminatory issue. Instead, discrimination should be defined as "less favourable treatment based on the grounds of a prohibited factor."

Indirect Discrimination

INTO is also concerned about the approach to indirect discrimination. It would be the view of INTO that the principle of "reasonable accommodation" should be adopted in addressing indirect discrimination. The approach used in the Race Relations Order (NI) 2000 is one which gives force to acts of indirect discrimination and one which INTO would support in the context of age discrimination.

INTO would also insist that indirect discrimination would comply with the spirit of the Framework Directive and use a test of objective justification based on a necessary rather than a legitimate aim test. This test is preferable to one based on appropriate and necessary criteria rather than some overarching statistical evidence.

Other Matters

The legislation should be stringent in dealing with issues such as harassment or victimisation.

Chapter 5

Vocational Guidance and Training

INTO would wish to have the definition of vocational guidance and training clarified in the consultation document. INTO is aware that it does not currently include all education for employment. INTO favours an approach as used in the Republic of Ireland in which vocational training is defined as "*any system of instruction which enables a person being instructed or acquire, maintain, bring up to date or perfect the knowledge or technical capacity required for the carrying out of an occupational activity and which may be considered as exclusively concerned with training for such an activity*".

Voluntary Work

INTO is concerned that voluntary work will not be included or covered by the new regulations. INTO considers that certain voluntary work may fall within the scope of the legislation, particularly when it is related to vocational training. It remains the view of INTO that volunteers who have a close relationship and a degree of permanency with the receiving organisation, and who are required to be trained, should be covered by the legislation.

Justifying Difference

INTO notes that decisions on age discrimination will be based upon merit and competence. INTO is concerned at the use of the phraseology, "exceptional circumstance" to justify adverse treatment. INTO would wish to ensure that the reference to health and safety protection is clarified to ensure that the protection is appropriate and proportionate.

INTO is concerned about the use of the wording "encouraging and rewarding loyalty" as an example of exceptional circumstance. While INTO recognises that loyalty may be based on pay scale progression, INTO does not wish to see equal pay issues arising because of age difference. INTO proposes that the criterion is reworded to reflect the need for the exceptional circumstance to be appropriate and proportionate.

INTO does not accept the use of financial planning as an exceptional circumstance. INTO views this as an attempt to discriminate on the grounds of age. INTO seeks clarification of this criterion.

Chapter 6

Retirement Age

INTO has formed the view that a compulsory retiring age should be made unlawful. INTO does not support a default retirement age of 70 as this would not only create further discrimination and the possibility of discrimination based on disability and gender.

INTO has continued to press for a system based on worker choice and their overall financial circumstances. INTO continues to strive for a situation where workers are allowed to phase their retirement through the use of step down procedures or flexible working arrangements. INTO believes that such facilities allow the dignity of the worker to be preserved as they make the decision and ultimately retire from work.

Chapter 7 & 8

Unfair Dismissal / Redundancy Payments

The implementation of age discrimination legislation must be consistent with any age related aspects of unfair dismissal and redundancy. INTO welcomes the decision to make a normal retirement age a potentially fair reason for dismissal rather than an absolute ban to an unfair dismissal claim at present. INTO draws

attention to the comment above re. chapter 6 and reiterate that INTO cannot accept a normal retirement age of 70.

INTO recognises that age discrimination will have impacts on the calculation of statutory redundancy payments. Current redundancy calculation tables end at 65. INTO does not wish to see older workers penalised or denied redundancy payments because they have chosen to work past that age and are not to be made redundant. The issue of the reduction of the redundancy payment in the 65th year by 1/12th for each month worked will also need to be reviewed. INTO seeks a removal of the 20 year cap on the number of years included in basic award calculations. INTO suggests that these pieces of legislation are now reviewed to ensure that they are non discriminatory on the grounds of age.

Chapter 9

Recruitment, Selection and Promotion

INTO would not want to see the introduction of criteria that would allow an employer to justify discrimination on age, even in exceptional circumstances. INTO believes that appointments and promotion should be based on merit and undertaken in an open and transparent manner.

INTO does not accept the use of a term such as a "decent interval" for training. This is giving unscrupulous employers justification to discriminate on the grounds of age. The employment of an individual should be based on their competency to undertake the work, rather than a perception that they will or will not be able to do the work.

Chapter 10

Pay and non-pay benefits

INTO accepts that loyalty and long service may be rewarded by progression along incremental pay scales. INTO does not however endorse an approach based on a "legitimate aim test" as a basis of an objective justification of indirect discrimination. INTO believes that younger and older workers should be paid on a competency based system and that barriers to progression should not exist on the grounds of age.

Conclusion

INTO has set out our response in the previous pages. In particular INTO draws attention to the following points:

- Age discrimination legislation should first and foremost recognise the value of the individual and clearly establish that discrimination on the grounds of age is both unlawful and unnecessary.
- The test for discrimination on the grounds of age should not be a lesser test than that used in other anti-discrimination legislation and INTO draws attention to the test used in race discrimination.
- Changes are already set in place in relation to the retirement age. INTO believes that these must fit with the age discrimination legislation.
- Current legislation and unfair dismissal and redundancy must be reviewed to ensure that this legislation is not discriminatory on the grounds of age.
- Legislation on age must be supported by the legislative framework in Northern Ireland and, in particular, the use of Section 75 of the Northern Ireland Act 1998

INTO welcomes the opportunity to respond to this consultation exercise. INTO trusts that this comment is useful in developing robust legislation that outlaws discrimination and discriminatory practices on the grounds of age.

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