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02 DEC 2005



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01/12/2005 15:37

To: <agelegislation@ofmdfmi.gov.uk>
cc:
Subject: Responses to Draft Employment Equality (Age) Regulations Consultation

Please find attached the responses to this consultation from NICVA and from the Older People's Policy Forum. Please don't hesitate to contact me if you wish to discuss further.

Regards,
Zoë.

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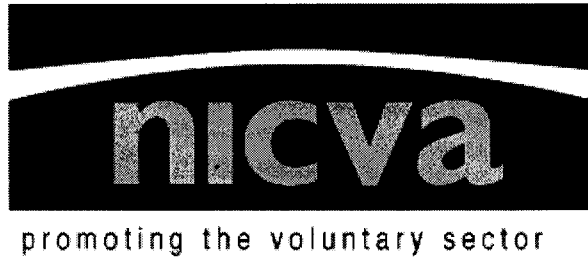
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CONS 547 -draft employment equality age.doc Age regs response.doc



Northern Ireland Council for Voluntary Action

**NICVA'S RESPONSE TO
PROMOTING EQUALITY OF
OPPORTUNITY:
DRAFT EMPLOYMENT EQUALITY
(AGE) REGULATIONS**

November 2005
CONS:547

BACKGROUND TO NICVA

NICVA (the Northern Ireland Council for Voluntary Action) is the umbrella body for the voluntary and community sector in Northern Ireland. It provides its 1,130 members with information, advice, training and support services on a wide range of issues, together with representation for the sector as a whole.

NICVA works to achieve progressive social change, based on equality and equity, working through a community development approach, to empower local communities to pursue their own needs and agendas.

NICVA welcomes the opportunity to respond to this consultation paper. This long-awaited age discrimination legislation will be very welcome in Northern Ireland, and for the first time afford real protection to employees and trainees on the grounds of age. We would note that this means equality for all ages, as although most issues have a huge effect on older people, younger people can also be victims of age discrimination.

NICVA's Policy Manifesto states that,

‘Poverty and discrimination remain significant barriers to older people enjoying a full quality of life and it is imperative that these issues are addressed by our political leaders. Older people want equality of opportunity and the choice to work as long as they choose through flexible working patterns.’

This response takes the form of a written paper with references to the consultation questions as appropriate. We would also draw your attention to the response we made in January 2004 to the initial consultation, ‘Promoting equality of opportunity: Prohibiting age discrimination in employment and training’. Many of our members across both the older people's and children and young people's sectors will be submitting their own responses, and will be able to offer much greater input on specific issues. We would highlight that some children's organisations feel this consultation focuses too much on older people.

1.0 Introduction

1.1 In our response to the last consultation, we stated that,
‘Government should aim to promote awareness and best practice immediately, and all attempts should be made to implement the legislation as soon as possible rather than at the latest date possible under the Directive.’

While welcoming the fact that this legislation will come into effect before the deadline and bring parity with older people in the other jurisdictions, the provisions need to be promoted now in order to ready employers for this change. Clear information and guidance should be made available well in advance, as it is unlikely that many employers and training providers will be involved in this consultation process.

2.0 Prohibiting Age Discrimination

2.1 In general we welcome the regulations and the rights they provide. The extension to cover trade organisations and qualifications is particularly welcome as these are often part and parcel of certain forms of employment. We also welcome the broad scope of the provision relating to vocational training and qualifications. We do not, however, endorse the approach of allowing direct discrimination to be justifiable as well as indirect discrimination – this differs from other grounds and already appears to be creating a hierarchy of legislation.

2.2 We remain concerned at the lack of provision for Goods, Facilities and Services. The previous consultation stated that this would be covered in a Single Equality Bill, which is repeated here, however there has been no visible progress on such a Bill.

2.3 Para 3.13 states that ‘unpaid volunteers will not be covered’. While making provision for volunteers in this legislation would cause unnecessary problems for organisations using volunteers and could discourage many from doing so, in this the International Year of the Volunteer, some guidance regarding good practice would be particularly welcome. This could promote allowing volunteers to be treated equally to paid employees without a legal requirement, and would be especially welcome as many older people turn to volunteering after retirement. This could also benefit younger volunteers.

2.4 With regard to harassment, we welcome the broader criteria, that a person has to show ‘**either** that their dignity has been violated **or** that they have been subject to an intimidating, hostile, degrading, humiliating or offensive environment’ (para 3.39), along with the responsibility placed on employers. Likewise we welcome the strong protection against victimisation.

3.0 Justifying Age Discrimination

3.1 The document explains that it will not be easy to meet the requirements for objective justification. We do hope that this will be the case, as in our submission on the previous consultation we stated that ‘justification must be as narrowly defined as possible – this process should not be actively seeking to widen these aims’. It would be of much more benefit to provide substantial guidance to employers on ways of making adjustments and considering the wishes of workers and trainees. Making employers aware of the benefits of continuing to employ and train older and younger people will help to achieve a culture change which can only be economically positive, and should lead to fewer discrimination cases.

3.2 Regarding the list of legitimate aims, further guidance is necessary on how additions to this list may be decided upon. It would still be better practice to take each case on an individual basis rather than making blanket provision for eg ‘the fixing of a maximum age... which is based on the training requirements of the post or the need for a reasonable period of employment before retirement’ especially as we are in favour of flexible retirement plans.

3.3 The document states that ‘the test of objective justification will not be an easy one to satisfy. **The principle remains that different treatment on grounds of age will be unlawful:** treating people differently on grounds of age will be possible but only exceptionally and only for good reasons.’ However this is buried in the document in para 4.16 whereas it should be clearly stated at the outset, in particular the phrase regarding ‘the principle’ which could serve as an overarching statement.

3.4 As we have previously stated, if flexible retirement ages are promoted, there should not be an issue around training older workers. The recruitment of workers should be based on competency alone. We again highlight that this process should not actively seek further reasons for justification – rather than listing possible justifications (para 4.41), the legislation and guidance should use positive examples and case studies to promote good practice and a wider culture change.

3.5 Further investigation and clarification is needed on the subject of insurance, particularly in the absence of any legislation on goods, facilities and services and the lack of progress on a Single Equality Bill.

4.0 Exemptions

4.1 In our response to the previous consultation, we stated that ‘Encouraging loyalty to an employer is acceptable, as long as the practice is not directly related to age. Long service will not always be directly related to age as someone aged 30 may have been in the job for equally as long a time as someone aged 60, due to greater mobility in the employment market’. Loyalty will by no means always equate to length of service, and there are many other criteria that could be used to determine loyalty, for example performance. It is vital that any criteria that are allowed under the legislation be applied equally in all circumstances and to people of all ages.

4.2 We accept that there is no jurisdiction over the National Minimum Wage and agree that those in the same band should receive the same rate of pay. However, we maintain that the lack of any Minimum Wage for those under 16 is discriminatory and should be the subject of national consultation.

4.3 Justification due to statutory legislation would only be acceptable when the existing legislation can be justified, such as the legal age for obtaining a driving license. There is no explicit mention in this document of other statutory provisions which are discriminatory, for example the differences between Disability Living Allowance and Attendance Allowance dependant on age, and free travel for those over 65 but not for women over 60 in receipt of state pension.

5.0 Retirement

5.1 In the current climate of ongoing speculation over pension ages, being regularly picked up by the media, it would be helpful to have a clear message from government

regarding pension age, how this differs from retirement age, and what the new legislation will mean for workers.

5.2 Both Age Concern and Help the Aged are strong opponents of a default or mandatory retirement age, and we support this view. If any specific age were to have been set, we would have been much more in favour of 70 as proposed in the initial consultation. We are concerned as to how the options of either no age or the use of the age of 70, put forward in the last consultation, have been lost and replaced by 65. This was not part of the original consultation. However, as the decision has already been taken at a national level, in the absence of opportunity to influence this we would endorse at the very least the reviewing of the set age. However this should take place over the course of the coming years rather than waiting, as there is a need to more fully investigate and consult on the issue now. We would hope that over this time period substantial culture change is achieved, thus negating the need for either mandatory or default age in the future. The provisions of this legislation should actively promote such a culture change. We agree that by employers taking action now (para 6.20), problems will decrease in the future, and advocate this as an approach to take when producing employer guidelines.

5.3 While advocating the removal of retirement age, we do hold one concern – that this could be used as an excuse by Government for raising the state pension age. This should not be the case, rather those who work beyond 65 should have the choice of whether to receive or defer their state pension entitlement.

5.4 We welcome the stated will ‘to encourage employers and employees to extend working life beyond the national default retirement age of 65’. By doing so, the legislation and guidance have the opportunity to create a new working culture where age is insignificant and those over 50 are no longer discriminated in seeking promotion, training or new employment.

5.5 The recognition that there are many other possible reasons for dismissal other than retirement is very welcome. We agree that in cases such as redundancy or dismissal for disciplinary reasons, retirement procedures should not be applied. However any employee at any age should have equal rights to fair treatment and a correct dismissal procedure.

5.6 Planned retirement should fully involve the employee at all stages, and follow the correct procedures in all cases. Again this is an area where the guidance will be vital -- case studies and examples of good practice from employers already actively employing older people (eg those with Age Positive recognition) should be widely promoted. It is important to make employers aware that if they follow the correct retirement planning, and agree to continue to employ a person, at a later stage the same planning procedure would have to be applied again if they wished that person to retire.

5.7 The ‘duty to consider’ procedure, in light of the fact mentioned above that we do not wish to see any default retirement age, is welcome in these circumstances. It allows, to an extent, for dialogue over a period of six months or more, and we hope that if it is

correctly followed, employers will begin to realise the value of not asking staff to retire at a certain age. Some monitoring of how culture may be changed by the introduction of this procedure would be useful. It is also important that small and medium organisations, including employers in the voluntary and community sector, be given adequate notice of and information about the procedures in order that they are aware of how to act when the legislation comes into effect.

5.8 We are very concerned that at 65 and above, if the correct procedures have been followed, an employee would have no recourse if they still did not wish to retire. This is a major divergence from other equality legislation as anyone over 65 can still claim discrimination on grounds of gender, disability, sexual orientation etc.

5.9 With regard to monitoring, we have concerns about how the review of the default retirement age will take place compared to the UK-wide basis, as many of the sources being used do not collect data in Northern Ireland (the survey of Factors Affecting the Labour Market Participation of Older Workers (FALMPOW), the DTI/ DWP Survey of Employment Practices and the Employers' Pension Provision Survey (EPPS)). It is essential that the decision is taken on a UK-wide basis using equivalent data, or that these surveys extend their remit to Northern Ireland for relevant questions. The information detailed at para 6.62 does not specify any official sources, but it would be vital to identify these now in order that consultees can determine whether they are the most appropriate sources. For example, to collect 'information relevant to workforce planning', how many employers would be surveyed? Would this include public, private and voluntary sector employers, of a range of sizes and locations?

5.10 We would welcome clarity on what is meant by 'the influence of any other social policy objectives' (para 6.61). Whilst it is necessary to take into account any relevant policy agenda at the time of the review, this should not be allowed to jeopardise it in any way.

6.0 Occupational Pensions

6.1 In the current circumstances, it will be important that this legislation takes into account any Government decisions on the Turner report, and makes definite and clear provisions regarding occupational pensions.

7.0 Changes to Employment Legislation

7.1 Particularly in this chapter, we are pleased to see that the responses received to the original consultation have actually been taken into account and that details of exact figures have been provided. It is important that consultees can see where their views have been taken into account, and the document does this very well.

7.2 While we welcome the removal of age limits for statutory redundancy payments, we are concerned that the two years of continuous service qualifying period has simply not been discussed and will remain in place with no consultation. We also welcome the removal of the tapering-down rule, but would like to see further consultation on the multiplier rules as this may have an adverse impact on older workers. It will be important that adequate guidance is supplied to employers regarding contractual redundancy, particularly for smaller businesses and employers in the voluntary and community sector.

7.3 We likewise welcome the changes to unfair dismissal payments as per redundancy payments.

8.0 Support and Legal Action

8.1 As we have already mentioned above, getting the guidance and support right is vital to the success of this legislation. We welcome the extension of the duties of the Equality Commission to cover age. As they will be permitted to issue codes of practice, we would propose that they work along with those who respond to this consultation to ensure that this guidance meets the needs of both older people and employers, and that it promotes positive examples of good practice.

9.0 Section 75 Considerations

9.1 It appears that most of the document is a direct read-across from the GB legislation with little account of Northern Ireland's particular circumstances including Section 75. We would advocate that a full Equality Impact Assessment be carried out prior to the implementation of this legislation. Full account should also be taken of multiple identities.