

Act 11/12/05



The Leading Public Service Union

John Corey General Secretary

YOUR REF

OUR REF A/JC/KW

01 DEC 2005 (34)

By Email

Age Team
Equality and Rights Division
OFM/DFM

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30 November 2005

Dear Sir

AGE DISCRIMINATION LEGISLATION

I attach a copy of NIPSA's submission on the Draft Employment Equality (Age) Regulations (Northern Ireland) 2006.

Yours faithfully

John Corey

JOHN COREY
General Secretary

30113(e)



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**Promoting Equality of Opportunity : Consultation on
the Draft Employment Equality (Age) Regulations
(Northern Ireland) 2006**

1. NIPSA represents over 43,000 public service workers and strongly welcomes the introduction of anti age discrimination. However we have a number of points of concern.
2. A number of our concerns have been covered in the comprehensive submission by the Irish Congress of Trade Unions, to which NIPSA is affiliated. NIPSA fully supports that submission.
3. In particular NIPSA supports ICTU's contention that age discrimination protection should be enacted by primary legislation and not by means of regulations. We have made clear previously the importance of enacting a Single Equality Act in Northern Ireland to cover all equality grounds.
4. We are also concerned that the proposals represent a minimalist approach and that insufficient regard has been given to the overall equality context in which Northern Ireland legislation operates. This reinforces the need for a Single Equality Bill so that legislation avoids a hierarchy of inequalities.
5. NIPSA reiterates its opposition to:-
 - (a) a national default retirement age of 65; and
 - (b) the exclusion of most age related aspects of occupational pension schemes from the scope of the legislation.

NIPSA wishes to comment specifically on the following aspects of the proposed regulations.

6. **Draft Regulation 3** – We do not accept the approach that does not provide for an exhaustive list of legitimate aims. This is a departure from the proposals in the original 2004 consultation exercise and is in conflict with the views expressed by the majority of respondees. This approach will broaden the scope an employer has for justifying age discrimination and in effect will weaken the legislation.

7. NIPSA supports ICTU's contention that the definition of proportionality contained in the draft legislation inadequately reflects the intention of the Directive itself. Specifically it is our view that the use of the term "*proportionate*" is weaker than the Directives use of the term "*appropriate and necessary*".
8. We would advocate strongly that the wording of the legislation should follow as close as possible that of the European Directive on Age Discrimination. This reluctance to follow the wording of the Directive will open the law as enacted to legal challenge and will result in the law being interpreted more so by the courts than is necessary.
9. The legislation should take into account the provisions covering goods and services applicable to other NI equality legislation. There is no fundamental reason why age discrimination legislation should not cover the provision of goods and services, in the same fashion as in the Fair Employment legislation. Furthermore the absence of such provision must not prejudice this approach being adopted in any forthcoming Single Equality Act.
10. **Draft Regulation 7(4)** – In the previous consultative document the view was expressed that "*decisions about recruitment selection and promotion should not normally be based on age, but rather on the skills required for the job*". Unfortunately the draft regulations contain the blanket exclusion of people over 65 from the scope of the regulations. This is unacceptable. The onus should be on the employer to prove "*objective justification*". Again the proposed regulations if enacted will result in an anomaly whereby age is unjustifiably treated differently to the other discrimination strands.
11. **Draft Regulation 33** – NIPSA is opposed to the age related provisions of the National Minimum Wage and does not accept that there is any objective justification for retaining such a discriminating practice. We are therefore opposed to a blanket exemption as contained in draft Regulation 33 of the discriminating age provisions under the National Minimum Wage legislation.
12. In concluding this submission NIPSA reiterates its broad support for the detailed comments submitted by the Irish Congress of Trade Unions on behalf of all affiliated trade unions in Northern Ireland.

November 2005