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# **Promoting Equality of Opportunity**

Consultation on the draft Employment Equality  
(Age) Regulations (Northern Ireland) 2006

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**Partial Regulatory Impact Assessment**

**September 2005**

# Partial Regulatory Impact Assessment

## Age Discrimination Legislation

### Section 1 - Introduction

- 1.1 This Regulatory Impact Assessment (RIA) considers the impact on employers and individuals in Northern Ireland of implementing age discrimination legislation. There is currently no legislation in the United Kingdom covering age discrimination.
- 1.2 Proposed legislation to implement the age strand of the European Employment Directive (Council Directive 2000/78/EC) covers employment and vocational training, including retirement, occupational pensions, recruitment, training provided by employers, promotion, pay and non-pay benefits and vocational training. Some existing legislation with age-based rules applying to employment – for example, statutory redundancy payments and unfair dismissal – is also to be changed.
- 1.3 The proposed legislation prohibiting discrimination on grounds of age is scheduled to come into operation on 1 October 2006.

## **Section 2 – Purpose and intended effect of age legislation**

### **The objective**

- 2.1 The aim of the legislation is to maximise the participation and economic (and social) contribution of groups that are currently subject to discriminatory practices both inside and outside the labour market because of their age. At the same time it is recognised that there are exceptional circumstances when some age-based practices are capable of being objectively justified, and the Directive permits this.
- 2.2 The aim in implementing the Directive is to improve opportunities and choice for individuals, and encourage labour market participation, whilst still allowing employers to manage their businesses effectively.

### **Background**

- 2.3 This partial RIA should be read in conjunction with the main consultation document on the draft Employment Equality (Age) Regulations (Northern Ireland) 2006.
- 2.4 In brief, the legislation will affect individuals of all ages, but evidence suggests that those affected most by age discrimination tend to be older workers (about 50 years or over) and young workers (up to about 25 years). It is also aimed at benefiting job seekers who face discrimination entering the labour market. The legislation should, both by providing protection to those subject to discriminatory practices and by stimulating a cultural change, increase the participation of older and younger workers in the

economy, while at the same time helping employers draw on a wider pool of workers.

- 2.5 The legislation will make it unlawful to discriminate against individuals on the basis of age in employment (including promotion, recruitment, terms and conditions including retirement and redundancy, pay and pensions), vocational training (including further and higher education) and in respect of membership and representation in professional organisations (including employers organisations and trade unions) except where these can be 'objectively justified'.
- 2.6 The Directive provides for the objective justification of differences of treatment on grounds of age so that that an aged-based difference in treatment is not unlawful discrimination where it is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary.

## **Regulatory Impact Assessment**

- 2.7 A Regulatory Impact Assessment has been carried out to measure the likely impact of proposed age discrimination legislation on the economy, firms and workers. At this consultation stage the value of an RIA lies in it identifying any potentially significant benefits and costs associated with the policy proposals underpinning the legislation, whether the costs of the proposals are proportionate to the expected benefits, and on whom the benefits and costs fall. The emphasis is, thus, on understanding the potential for impact and its possible scale, rather than on exact measurement.

- 2.8 Accordingly, this RIA sets out the analysis we have carried out to date, focusing on the costs and benefits of each element of the proposed legislation. The table at section 5 of this RIA summarises the benefits and costs of each element of the Age Regulations to firms, individuals and the macroeconomy.
- 2.9 A final RIA will be prepared following the public consultation exercise on the draft Age Regulations and before they become law.

## Section 3 – Approach

### Knowledge base

- 3.1 Much is known about age and the labour market. Older workers may find it difficult to re-enter the labour market because of negative stereotypes. Young workers face similar discrimination. This discrimination will carry a heavy economic and social cost as the qualities these groups can bring to the economy are under-utilised, not least as there is no evidence that, at least until 70, that performance at work declines with age.
- 3.2 However, much is not known, from the extent to which observable declines in participation rates amongst the over 50s reflects discrimination or a shift in attitude amongst these workers<sup>1</sup> to the changes that may arise with greater longevity for the individual and an ageing society. Implications from these changes for pension entitlements may well in turn change attitudes to the natural length of a working life.

### Focus of impact

- 3.3 Thus while age discrimination can occur at any stage of an individual's life, it is stronger at either end of the traditional working life. As age has been commonly used to determine an individual's movement from employment to retirement, it follows that the impact of the proposed Regulations is particularly significant for those approaching, at, or recently past, retirement age. Accordingly much of the analysis of impact is taken up with

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<sup>1</sup> There is evidence that those with 'interesting' jobs continue to work to a higher age than the rest of the workforce, suggesting the employee's desires are important

this group, though it is stressed that the ending of age based discrimination applies across the entire spectrum of age.

## **Implications for measurement of impact**

- 3.4 The impact of the introduction of Age Regulations prohibiting discrimination on age grounds is not easy to predict. The response of firms and employees to the new opportunities which the Regulations will open up is largely unknown, and indeed will only really be known when the legislation comes into operation. enacted.
- 3.5 In addition, determining the costs and benefits of the Age Regulations means drawing a comparison with the expected development if no age legislation were introduced. This comparison is very difficult because of uncertainties about future labour force participation in the absence of the proposed legislation. The statistics show that increasingly we are becoming an older population. This, together with the pension reforms, makes quantifying costs and benefits difficult.

## **Northern Ireland specific analysis**

- 3.6 All of the foregoing applies to all economies, and indeed the experience of the United States and Australia in addressing age discrimination is one source of guidance as to the likely impact. However, Northern Ireland has its own context that any attempt to measure impact must reflect.
- 3.7 The rate of public sector employment is higher in Northern Ireland than the United Kingdom average, and this factor might affect the impact of the legislation in Northern Ireland, in comparison with the rest of the United Kingdom. The performance of the economy, the demographics and the 'work culture' in Northern

Ireland will also all differ somewhat from that which may occur in the future in Great Britain.

- 3.8 Despite recognising this scope for difference, it is the case that survey and other work has been carried out in Great Britain, the cost of which precludes its repetition in Northern Ireland. Quantification of impacts for Northern Ireland therefore inevitably draws heavily on the Great Britain findings, though in all cases the extent to which the context in Northern Ireland may be different is considered, and where difference is believed likely, adjustments have been made accordingly. The Great Britain RIA is available at – [www.dti.gov.uk/er/equality/age](http://www.dti.gov.uk/er/equality/age)

### **Scale of impact on economy as a whole**

- 3.9 The overall impact of the legislative proposals on the economy, after an initial adjustment period, will be a positive one since the likely increase in older workers participating in the workplace will provide an increased labour supply and a corresponding increase in economic growth.
- 3.10 An exercise to model the potential benefit to the economy has been carried out in Great Britain, and this found the overall impact to be worth between £0.7bn and £2.0bn per year by 2016. This would be associated with an extra 19,000 to 51,000 employees in the workforce, some continuing rather than being forced to retire, but even more attracted fairer recruitment along with greater access to training and promotion.
- 3.11 In Northern Ireland, a simple pro-rata of the GB impact described above would suggest an eventual increase in annual GDP of £20 million to £50 million, along with 500 to 1,000 additional employees.

## Impact on firms

- 3.12 It is clear that employers will have to familiarise themselves with the new legislation. This means that they will need to read and understand the new regulations and its associated guidance and decide whether they need to take any action to comply with the requirements of the legislation.
- 3.13 Smaller firms will be likely to bear comparatively higher implementation costs because of the complex nature of age discrimination. For small firms, this has been estimated as costing an average of £140 in management time, though it may be that very small firms will only familiarise themselves when recruiting or facing a request to continue working from an existing employee. Small firms are more likely to rely on informal methods, such as word of mouth and the use of informal contacts, and so may have to make more changes to comply with the Age Regulations. The impact on larger firms will be greater, though proportionately less. However all firms will see considerable benefit in being able to retain experienced workers and/or recruit from a larger pool of potential employees, and greater return from training.
- 3.14 Quantifying the benefits of being able to retain experienced workers, recruit from a larger pool of potential employees, and see a greater return from training, requires a number of assumptions to be made. The Great Britain RIA was able to rely on an evaluation<sup>2</sup> of the voluntary Code of Practice for Age<sup>3</sup>.

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<sup>2</sup> Hayward, B Taylor, S., Smith and Davies G (1997), "Evaluation of the campaign for older workers", London: The Stationery Office. The evaluation did not extend to Northern Ireland

<sup>3</sup> Code of Practice on Age Diversity in Employment and Age Diversity in Employment Guidance and Case Studies (DfEE 1999)

Reading across its findings and using the same assumptions<sup>4</sup> generates the following annual impacts (rounded) for Northern Ireland:-

- benefit of greater numbers from which to recruit from - £0.25 million to £2 million;
- benefit to employers of greater productivity / promotion - £0.5 million to £4 million;
- benefit to employers of increased training - £1 million to £10 million;
- benefit to employers of employers worker on longer - £0.1 million to £0.5 million.

3.15 These benefits have associated costs:-

- additional costs of recruitment (see following paragraph);
- costs to employers of increased training - £1 million to £9 million;
- costs to employers from promotion - £0.5 million - £4 million;
- costs to employers of associated changes to redundancy pay and unfair dismissal awards – small, but uncertain costs.

3.16 The one-off costs to employers of implementing the Regulations are similarly estimated as £6 million. Enforcement costs, complying with legislation, is a further £1 million a year, with recruitment costs (including more interviewing) perhaps a further £100,000 to £200,000, initially but falling with greater familiarity with the new legislation. It is likely that these estimates are on the high side for Northern Ireland which has a sophisticated employment framework to ensure fairness, and which

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<sup>4</sup> for example 7% of older workers felt that they had not been promoted because of their age, the analysis assumed this would inevitably overstate the case so took a lower figure (5%)

consequently will find it easier to act in a manner that is demonstrably not age discriminatory. However, in the absence of evidence to support this, the GB survey based estimates have been used.

## **Impact on individuals**

3.17 Individuals will see benefits under the new legislation from being treated more fairly when applying for jobs or being selected for training, as well as while in employment from having greater access to training, promotion and having greater control over their retirement age. Some of the benefits that individuals will see is the converse of the costs faced by employers. However, most the benefits that individuals will see is their sharing in their common surplus generated by the legislative changes.

3.18 If we repeat the above analysis, applying it to individuals, Northern Ireland employees will benefit from:-

- the delaying of retirement - £500,000 to £1.5 million in the first year, with £1 million to £8 million annually thereafter;
- a share (10%) of the surplus generated by training, via higher wages - £100,000 to £1 million;
- promotion based increases in pay of £500,000 to £4 million.

## **Great Britain Regulatory Impact Assessment**

3.19 The Great Britain RIA, which provides comprehensive detail on survey and other sources as well as the methodology employed, is available at <http://www.dti.gov.uk/er>.

## Section 4 – Options and proposals

4.1 The main options for tackling age discrimination are set out in the main consultation document. This RIA takes account of the decision (see Chapter 4 of the consultation document) to provide for employers to objectively justify some practices which treat people differently because of their age. It also takes account of the decision (see Chapter 6) to set a default retirement age of 65. In developing the proposed legislation, consideration has also been given to whether to ‘level up’ or ‘level down’ entitlement to statutory redundancy payments, the formula for which currently includes allowance for age.

4.2 In considering these options, the impact of tackling age discrimination has been assessed across the following policy areas:

<b>Strand</b>	<b>Policy area</b>	<b>Description</b>
1	Retirement age	impacts around individuals choosing to work on
2	Recruitment, training and promotion	impacts within the firm on it, its policies and employees
3	Statutory Redundancy Pay	removing age from formula
4	Unfair dismissal	equivalent changes to unfair dismissal formula
5	Occupational pensions	retention of age rules where appropriate
6	Pay and non-pay benefits	removing age from reward determination.

## **Analysis of policy strands**

- 4.3 The absence of survey data, and the disproportionate cost of gathering equivalent data means that for all policy strands, it is impossible to replicate the methodology adopted in the Great Britain RIA for the Northern Ireland context.
- 4.4 However, drawing on the findings of the Great Britain RIA, and adjusting these for the broader themes that characterise the Northern Ireland economy, enables some indication of likely impact on Northern Ireland business and employers to be made. Where uncertainty that exists in the GB analysis, this is also a factor in the Northern Ireland analysis. It is stressed, therefore, that while the following is the best available estimate of impact of introducing age discrimination legislation, it is only a projection based on the stated assumptions.
- 4.5 Much of the eventual impact of the proposed legislation will depend on society's and individuals' responses to the proposed changes, notably the freedom to work on past current retirement ages. In addition, there will be changes in the external environment, notably changes to pension levels and entitlements.
- 4.6 The approach adopted in this RIA has been to take the GB analysis and attempt to gauge whether the effect of the proposed legislation in Northern Ireland will be simply pro-rata, or whether or not there exist factors in Northern Ireland which are likely to increase or reduce the relative impact.

4.7 Each of the policy strands in this document summarises an RIA which has been carried out in Great Britain before applying a Northern Ireland context to the GB findings to create the best available indication of the likely impact of the policy decision on Northern Ireland business and employees.

## **Retirement age**

4.8 The legislation will promote greater choice for older workers as to when they retire, an issue which is growing in importance as individuals live longer. This creates benefits for employers too as older workers can make an important contribution to the overall skills pool, where they are permitted to do so. However, it is not clear to what extent older workers will take up this opportunity, not least as there may be a growing cultural acceptance of 'working on' where it becomes more popular as it becomes more common.

4.9 Employers in Northern Ireland, as elsewhere, will face some costs in deciding how to change their policies and practices to cope with the new legislation on retirement age. However, a high proportion of employment in Northern Ireland falls into one of three groups; the public sector, a branch plant of private sector headquartered elsewhere and small business. The first group has no implication for business costs, the second will see costs concentrated at head office and the last are found to only consider the issue when confronted with an example. Accordingly, the impact on firms in Northern Ireland will be somewhat smaller on a proportionate basis than will be the case in Great Britain.

## **Recruitment, training and promotion**

4.10 Firms will face compliance costs associated with the new legislation as they change their recruitment, training and promotion practices. However, these will fall with familiarity with the new legislation. These costs will be more than offset by the gains they see in having a wider pool of people to pick from and a longer timeframe in which to gain a payback from an investment in training. Individuals will see only gains, as they attain greater access to promotion opportunities and associated wages.

## **Statutory redundancy pay**

4.11 The removal of a number of age-related aspects from the formula for calculating statutory redundancy pay could be implemented so that all workers access the levels currently available only to older workers, i.e. 'levelling up'. Alternatively, entitlement could be levelled down to that currently applied to younger people, or brought to today's average redundancy payments. Obviously levelling up will cost firms more than at present and benefit younger individuals in particular, whilst levelling down would largely remove any cost implications to firms while reducing benefits to older individuals.

## **Unfair dismissal**

4.12 Ensuring that all workers are treated fairly when dismissed, regardless of age, requires that for the first time those over 65, or normal retirement age, are entitled to claim unfair dismissal. This would appear to guarantee that firms will see increased costs as more workers might claim unfair dismissal. However, depending on decisions taken on the formula for calculating basic awards of financial compensation, and numbers claiming unfair dismissal, it is possible to suggest that not only may the net effect be very small, it might even show a saving to firms.

## **Occupational pensions**

4.13 As the aim is to ensure that firms are not discouraged from maintaining occupational pensions for their employees, the legislation will permit many age-based rules to continue, where these are necessary for the effective and fair operation of occupational pension schemes. The impact is thus very small, limited to awareness raising amongst firms as to best practice in this area.

## **Pay and non-pay benefits**

4.14 Where age is not justified as a basis for increased pay or other benefits it must be removed. This will present employers with some costs in understanding what needs to be done in order to comply with the new legislation and then altering their performance / reward systems. However, it is suggested that many firms will find that doing so is in fact helpful to them in promoting efficiency, and thus see a benefit in going through this process.

## Section 5 – Small Firm Impact Test

### Introduction

- 5.1 A small firm impact test is intended to ensure that there is no undue adverse impact on small firms. This test is important in Northern Ireland as small employers make up much of its private sector.
- 5.2 The Small Firms Impact Assessment in GB was able to draw on a wide range of surveys and other responses most of which were not repeated in Northern Ireland. These included:
- the Evaluation of the Code of Practice on Age Diversity in Employment prepared for the Department of Work and Pensions in September 2001, which looked at practices on age discrimination across different firm size;
  - the Workplace Employment Relations Survey 1998; and
  - research Studies commissioned by the Small Business Service on the impact on small businesses on equal opportunities, and, separately on the impact of age discrimination legislation with a focus on retirement ages.
- 5.3 In 2003, the Department of Trade and Industry in GB conducted a consultation entitled “*Equality and Diversity: Age Matters*” which set out DTI’s initial proposals for age discrimination legislation. A similar consultation was carried out in Northern Ireland and we know from responses to the Northern Ireland consultation and from information obtained from the Spring 2005 Northern Ireland Labour Force Survey that, as in GB, small employers had many employees over 65.

- 5.4 The GB RIA found that employers relied on informal contracts, had no equal opportunities policy in relation to age and were at a low level of awareness as regards changes in this area. The test assumed that because all firms eventually come into contact with the issue, whether through an employee becoming older or through the recruitment process, that their less formal procedures could increase small employers likelihood of triggering a complaint to a tribunal. It is likely that this will also be the case for Northern Ireland.
- 5.5 Our previous Regulatory Impact Assessment (2003) also noted that small firms bear a disproportionate administrative burden as the same issues are spread over fewer workers. Offsetting this was a recognition that many employers would not confront the issue until it confronted them. Accordingly actual implementation costs for many small employers may be nil for a considerable period of time, making overall costs to the sector low, though rising over time. It is also likely that continuing change in the demographic context of the workforce may expose more employers to recruiting younger or older workers than at present. Thus the above deferred cost impact may be accelerated.

## **Benefits**

- 5.6 Against any costs associated with the proposed legislation, small firms will also see benefit, as does the entire economy, in having a wider choice of people to recruit from and greater returns from training and skills development, as working lives extend.

## **Impact per small firm**

- 5.7 The “best estimate” for the impact per small firm across all the strands is found to be a loss of around £210 reflecting awareness costs partially offset by a gain of around £85 from the benefits described in the preceding paragraph. This is a net cost of around £115 per firm, and is expected to arise over a 10 year period.
- 5.8 However, while average impacts are indeed likely to be small and slow to emerge, those small firms in Northern Ireland that have workers at or around retirement age, complicated performance systems and occupational pension arrangements, will see much higher costs at an early stage, which may be compounded by the costs of tribunal claims. Some firms will see a net benefit as they recruit and train more effectively, with age discrimination no longer blurring operational efficiency.

## Section 6 – Summary of impacts

### Summary of costs and benefits of age discrimination legislation on Northern Ireland

	Benefits Annual	Costs Annual	Costs One-off
<b>Employers</b>			
Total implementation costs for all policy strands (Awareness and decision making)			£4 to 4.5m
Total Enforcement Retirement	£0.1m - £0.5m	£0.2m negligible	
Average annual impact in first ten years net benefit of	£0.1m - £0.5m		
Recruitment	£0.25m - £2m	negligible	
Training	£1m - £10m	£1m - £9m	
Promotion	£0.5m - £4m	£0.5m - £4m	
<b>Total</b>	<b>£1.85m - £16.5m</b>	<b>£1.7m - £13.2m</b>	<b>£4 to 4.5m</b>
<b>Individuals</b>			
Retirement	£500k - £1.5m in first year; rising to £1m - £8m by year 10		
Training	£100k - £1m		
Promotion	£500k - £4m		
<b>Total</b>	<b>£1.1m - £2.1m in first year rising to £1.6m - £13m by year 10</b>		
<b>Macroeconomy</b>	Total macroeconomic benefit could be about £20m –50m by 2016.		

Note: table excludes potential impact arising from statutory redundancy payments and basic award for unfair dismissal

## Section 7 – Retirement Age (Strand 1)

7.1 One aim of the legislation is to promote greater choice for older workers as to when they retire. This will aid fairness by outlawing age discrimination, enabling more of those over 50 who wish to work to do so. This will also benefit the economy, through expanding the pool of available workers, while taking care to avoid negative impacts, for example on productivity or recruitment of younger workers.

### Assessment in Great Britain RIA

7.2 The Great Britain RIA notes that although life expectancy is rising, the average age for retirement is falling. It also notes that the majority of the UK workforce retires before they reach the normal retirement age in their employment. Thus, the proportion of workers who will be affected by a raising of, or removal of, a retirement age, will be small. Expressed as a proportion of the entire workforce, not just those approaching 60 or 65, this will be a very small proportion. Hence, the impact on the overall economy, and most firms, will be very small.

7.3 Those that currently do postpone retirement tend to be women aged 60 to 65, the self employed and those with 'interesting' jobs. It follows that the impact on others, e.g. employed men, will be even lower than the gross statistics suggest.

7.4 However, there remains evidence that some older people are forced to retire against their wishes while still capable of effective working. Also, there is no evidence to suggest that performance declines with age, at least up until the age of 70.

- 7.5 In developing policy on retirement age, 4 options were considered:
- (i) no national default retirement age (DRA) and employers not able to set their own retirement ages;
  - (ii) no national DRA, but allowing employers to set their own retirement ages which they would potentially have to justify at an industrial tribunal, i.e. employer justified retirement ages (EJRA);
  - (iii) no national DRA, allowing employers to set an EJRA and also giving employees a new right to request working beyond this; and
  - (iv) a national DRA of 65 and allowing employers to set an EJRA, and also giving employees a right to request continued working beyond the employers retirement age (if they have one) or 65 (if they choose to make use of the DRA).
- 7.6 In estimating the costs and benefits, the GB analysis noted that in relation to the numbers affected '*evidence appears to be contradictory and so these assumptions are highly uncertain*'. It also noted the range of factors that employers will face in identifying the impact of implementing the above options; the presence of workers whose performance diminishes with age (e.g. deep sea divers who face increasing risk with age), the ability to recruit younger workers (with an ageing population), or the presence of certain types of workers (e.g. women may be more likely to want to work beyond their current normal pension age because they tend to have accrued less pension entitlement, mainly due to career breaks).

7.7 Given the uncertainty and the contradictory evidence over the numbers affected, the GB analysis concludes its assumptions “are for illustrative purposes only given that predicting the future in this way is highly speculative the range of estimates is large”. Assumptions as to the numbers of those affected were then made.

#### *Benefits to firms*

7.8 Employers benefit from lower turnover of staff as some stay on, reducing recruitment costs. The GB RIA used an estimate of recruitment costs derived from Chartered Institute of Personnel Development (CIPD) surveys of £4,200 per vacancy and produced illustrative calculations based on the above assumptions as to numbers affected. This analysis found a range of costs for each of the four options, typically in the low millions per year, from £4 million to £14 million at the low end, to between £21 million and £36 million for the maximum impact. Employers also benefit from training those older workers that stay on, though this could not be quantified.

#### *Benefits to individuals*

7.9 Individuals benefit largely from earning more if they continue to work beyond their present normal retirement age. There is the possibility that those who continue to work will be eligible for promotion, but given the limited number of years left in the workforce, the impact of this will be minimal. Some of those staying on may also be eligible for training leading to increases in productivity that could be reflected in higher wages. Again, these will be few, and the impact small, compared to the financial benefits that will arise from the wages earned during any additional years worked beyond the present normal retirement age.

7.10 The impact of this varies by option from a low of £12 million to £120 million. It is important to note that, unlike the benefits to employers which are a one-off saving in recruitment costs, these benefits continue to grow for each individual while they continue to work. Thus in the first year only some are affected, but in the second year a proportion of these continue to benefit and so on. By year 10 the GB RIA estimates the benefits to individuals to be as high as £610 million in that year, with compound benefits (discounted at 3.5%) totaling some £3.5bn.

#### *Implementation costs to firms*

7.11 There are implementation costs to firms. The new regulations on retirement ages will need to be read and understood by employers. They need to decide what to do as a result of the new legislation. In the case of retirement strand, and the other policy strands, it is expected that firms will consider and seek to understand the whole of the legislation. Accordingly, each strand only focuses on the additional costs associated with that policy area, so that adding implementation costs across all strands gives the total implementation costs to firms.

7.12 While medium sized and larger firms endeavour to understand legislation once it becomes law, research evidence in Great Britain suggests that small firms do so, only when they have to. The GB RIA assumed that the average small firm will spend 1 hour on this issue, where the first option applies, 1.75 hours under the second option, and 2 hours each, if either of the last two options are followed, with each hour being costed at £25. Larger firms spend longer and have a higher wage cost per hour (£28).

- 7.13 The GB analysis found that the costs of understanding the legislation across all firms to be £31 million for the first option and £53 million, £61 million and £61 million, respectively, for the other three options. The analysis stressed that costs will vary considerably from firm to firm.
- 7.14 For all options, there will be a decision to be made by employers about any changes that need to be made to their present performance and pay systems (if any) and for options two to four about whether to adopt an employer justified retirement age.
- 7.15 The GB analysis assumed that for small firms a decision would be reached while an owner manager was reading and understanding the legislation. But for medium and larger firms this is likely to involve more discussions, at a Board meeting perhaps, and, where necessary, seeking legal advice. The GB analysis found that the costs of making decisions for all options for medium and large firms to be £38 million, £46 million, £46 million and £8.7 million respectively.

#### *Policy costs to employers*

- 7.16 The policy costs to employers will depend on their reaction to the new legislation. There may be costs arising from the need to strengthen their performance and appraisal systems, as these will become more important as the loss of ability to do the job replaces age as the main driver of forced retirement. There will also be costs to employers from defending Tribunal cases.
- 7.17 In considering the policy costs for employers, there are a number of areas where there is great uncertainty. For example, there is no evidence on the proportion of firms that have no performance systems, but who may be persuaded by the introduction of the new age legislation to adopt such systems. The possibility that a

firm might lose younger workers, who see higher posts being blocked by non-retiring older workers is also recognised but considered beyond quantification.

#### *Impact on the number of Tribunal cases*

- 7.18 The number of Tribunal applications is likely to rise as a result of the introduction of the new legislation. Experience in the US suggests that there will be an increase in the number of cases brought to Tribunals, in the same way that each new ground (gender, race etc) has seen an associated increase.
- 7.19 There will be costs to employers from defending Tribunal cases. The GB analysis drew on a 2003 survey of Tribunal applications that found the average cost to an employer of an application to be £4,750. Age cases are believed likely to be more complicated than the typical Tribunal case, which would raise this average cost. It should be noted that an RIA only measures the impact on business of compliance with new legislation. Accordingly, cases where an employer loses a Tribunal case are disregarded, as this is seen as due to a firm's non-compliance, rather than due to the introduction of the legislation itself.
- 7.20 Age discrimination based Tribunal cases may arise from interpretation of an employer's actions or systems, for example the setting of pay or other rewards, or from the introduction of a right of an employee (under options three and four) to request working past an "employer justified retirement age" or a "default retirement age".

7.21 The GB RIA sets out for both areas a set of assumptions as to the number of disputes that might arise, the costs of internal meetings and appeals where agreement is not reached, the proportion that would then advance to a Tribunal and the proportion won by employers. It finds general retirement age cases could cost (compliant) employers in Great Britain around £5.7 million a year, while first year costs to employers of right to work on cases would cost £190,000 - £530,000 for the third option (employer justified retirement ages), and £510,000 - £2.5 million for the option four (default retirement age).

7.22 The GB analysis does not attempt to measure the costs to employees who face an undignified exit, where their failing performance is held up as the reason for their forced retirement.

## **Northern Ireland context, interpretation and likely impact**

### **Context**

7.23 The relative scale of impact in Northern Ireland will be influenced by the following factors;

- differential attitudes to retirement in Northern Ireland as compared with Great Britain;
- labour market characteristics, notably ability to recruit, and sectoral and skill differences;
- recruitment costs;
- propensity to access tribunals, and cost thereof.

- 7.24 There is no evidence of any difference in attitudes to retirement in Northern Ireland compared with Great Britain. One distinguishing feature of the sectoral make-up of the Northern Ireland economy is the greater importance of public sector employment. Amongst other things, this is likely to reinforce a culture of traditional work patterns; i.e. long working for a single employer followed by retirement at a specified age.
- 7.25 In contrast to past decades, unemployment in Northern Ireland is now in line with that seen in Great Britain, which suggests that the issues highlighted in the GB RIA of job-blocking, recruitment and so forth, are broadly mirrored in Northern Ireland.
- 7.26 The relative use of disciplinary and grievance processes, including access to tribunals in Northern Ireland, is the subject of a current study by the Department for Employment and Learning (DEL) which is responsible for the Office of the Industrial Tribunals and Fair Employment Tribunal (OITFET). It is known that the proportion of cases that reach hearing is small but that the proportion of cases in which the employer is successful is high. This statement is open to an alternative interpretation as there is the view that employers are advised to settle cases they may lose before they reach hearing, so that the apparently high proportion of cases finding for the employer is misleading. Differing systems mean that it is not possible to compare Northern Ireland and Great Britain on a consistent basis, though the work currently being undertaken by DEL will allow comparisons to be made.

- 7.27 One area where there is likely to be a difference from Great Britain is in the extent of implementation costs. Much of the private sector employment in Northern Ireland is in firms that are headquartered in Great Britain. In some cases, this applies to an entire sector, such as the major supermarkets. Much of the implementation costs here, such as determining retirement policy etc, will fall largely outside Northern Ireland. The smaller scale of the private sector in Northern Ireland further reduces the relative impact of these implementation costs on firms.
- 7.28 The GB analysis noted that small business would work on a need to know basis and hence have smaller implementation costs. As locally owned and managed firms in Northern Ireland tend to be small it follows that most firms based in Northern Ireland will have lower than average costs.

### **Interpretation and likely impact**

- 7.29 Consideration of the above factors would suggest that Northern Ireland firms will face the same issues, and in much the same way, as their GB equivalents. However, much of the development of performance systems and decision-making for private sector employees in Northern Ireland is likely to be bound up within a GB or UK-wide decision-making context, which is then rolled out to Northern Ireland. The smaller scale of the private sector in Northern Ireland amplifies this relatively smaller impact, suggesting that implementation costs, for all of the suggested options, will be within a range of £0.5 million to £1 million.
- 7.30 In the absence of any evidence to the contrary, tribunal cases on age-related issues can only be assumed to be generated in Northern Ireland on a pro-rata basis with Great Britain, adjusting on the basis of the number of employees. Rounded, the costs to employers from defending age-related cases is around £150,000

a year. Cases involving the right to work on are likely to be few and these will be biased towards larger employers as smaller firms are more easily able to justify employees working beyond the present normal retirement age, given the greater degree of flexibility they require from their workforce.

7.31 Employers in Northern Ireland, regardless of their headquarters location, will see the same benefits from some employees working on beyond an employer-justified retirement age or the default retirement age. However, recruitment costs are, on average, lower in Northern Ireland as wages are lower. There is no significant change with passing years. Adjusting the GB analysis for the relative scale of employment in Northern Ireland, reducing for differential recruitment costs and rounding, suggests benefits for each option as follows:

- the first three options all create an annual benefit of £0.5 million - £1 million
- The fourth option is more uncertain, but smaller, £0.1 million - £0.5 million.

7.32 Each of the four options will produce the following benefits for individuals in Northern Ireland:

- the first option creates a benefit of £1 million - £3 million, rising to £6 million to £15 million in year 10;
- the second option - £1 million to £3 million but rising to £4million - £12 million (year 10);
- the third option - £1 million - £3 million – rising again to £4 million - £12 million (year 10); and
- the fourth option - £0.5 million - £1.5 million – rising to £1 million to £8 million.

## Summary of the Northern Ireland costs and benefits

### Costs to employers in Northern Ireland

Implementation costs (one off)	£0.5 m to £1 m
Tribunal costs (age issues) p.a.	£150,000
Tribunal (right to work on) p.a.	Nil for options 1 and 2, not quantified for options 3 and 4

### Annual benefits to employers in Northern Ireland

Options 1 to 3	£0.5 m - £1.0 m
Option 4	£0.1 m - £0.5 m

### Benefits to individuals in Northern Ireland

Increased wages	Year 1	Year 10
Option 1	£1m - £3m	£6m - £15m
Option 2	£1m - £3m	£4m - £12m
Option 3	£1m - £3m	£4m - £12m
Option 4	£0.5m - £1.5m	£1m - £8m

## **Section 8 – Recruitment, training and promotion (Strand 2)**

8.1 The aim of the legislation is to improve opportunities and choice for individuals, and encourage labour market participation, by removing unjustified discrimination on age grounds in recruitment, training and promotion.

### **Assessment in Great Britain RIA**

8.2 The Great Britain RIA notes that economic activity rates fall after the age of 50 and suggests that part of the reason for this fall is discrimination on the grounds of age. Activity rates are also low for young people who may find it difficult to enter the labour market.

8.3 The GB RIA considers two options:

- to implement the EC Directive by outlawing age discrimination (completely);
- to implement the Directive by outlawing age discrimination though allowing employers to objectively discriminate in certain circumstances.

8.4 The GB RIA focuses on the latter option as it is clear that permitting exceptions where these are clearly justified will achieve greater economic efficiency.

8.5 The GB RIA looked at those aged 16-24 and those aged 50 and over to represent younger and older workers. Between them, these two age groups represent around 40% of all employees in

GB. The GB RIA drew on survey material that covered both employers and individuals.

### *Awareness costs of the new legislation*

8.6 Awareness costs to business of the new legislation were estimated on the assumption that the average small firm would spend 2 hours reading and understanding the implications of the legislation relating to training, promotion and recruitment, while larger firms would take 7 hours. The hourly costs for both small and larger firms are as described in strand 1 above dealing with retirement age (£25 and £28 respectively). This gave £50 per small firm, which, with 1,160,000 small firms in GB, totaled £58m. The 35,960 medium and larger firms saw an average cost of £196 per firm which totaled £7 million, an overall awareness cost of £65 million.

### *Recruitment practice*

8.7 The main benefits to employers in changes to recruitment practice will be a wider pool of applicants from a greater supply of older and younger individuals previously subject to discrimination. The GB RIA noted that the Evaluation of the Code of Practice on Age Diversity in Employment (2001) reported that between 13% and 26% of employers had some form of age consideration in their job advertisements or selection processes. The evaluation also reported that between 12% and 16% of older workers said they had encountered discrimination in getting a new job or in obtaining a job interview. The GB RIA therefore assumed a range of 12% to 26% as capturing the instances (where employers are trying to fill vacancies) where some form of consideration of age occurs affecting individuals aged 50 and over and 16 to 24.

- 8.8 Out of a total of 2.3 million to 3 million job vacancies advertised each year, the DFES Employers Skill Survey (2003) estimated that 40% were 'hard to fill'. Applying the above range (12% to 26%) gives an estimate of 110,000 to 310,000 of hard to fill jobs where age was a consideration. Assuming that the increased pool of workers reduces the average cost of recruitment for these jobs (as they are more likely to be filled), the GB RIA estimates a saving to business of between £14 million to £85 million a year. The above estimate of potential savings to business depends on assumptions made as to how widespread current consideration of age is, and how likely those who detect that they have been discriminated against would have been in securing one of those jobs.
- 8.9 Against this, employers will need to take greater care when advertising vacancies in order to avoid differences of treatment, unless these are objectively justified. This means that management decisions on recruitment will be under greater scrutiny and consequently business will need to invest in more formal job specifications – to relevant identify skills and competences – and wider advertising to minimise litigation risks.
- 8.10 Assuming that an additional quarter of an hour / half an hour of a personnel officer's time is spent on each of the vacancies for which age was a consideration would cost about £2.1 million to £3.4 million a year. This extra attention could range from simply checking an advert to considering what other criteria to attract applicants with the appropriate skills, could be used. These costs, however, will decline as firms become used to the new legislation. Accordingly, the GB RIA assumes that the costs would half after five years and disappear after 10 years.

- 8.11 Greater numbers of applicants will increase the costs of the selection process including more sifting and filtering for short-listing and interviewing. There will be a limit to the number of extra applications that companies will consider and there will come a point where firms may prefer the risk of being taken to a tribunal rather than spend additional time on considering marginal applications. The GB RIA assumes that the main cost will be additional sifting rather than carrying out more interviews. Assuming an additional 15 minutes of a personnel officer's time is spent in additional sifting of each vacancy for which age was previously a consideration, will create an annual cost of about £1.9 million to £5.5 million.
- 8.12 The total costs to firms as a result of changes in their recruitment process would therefore cost about £4 million - £8.8 million each year. Deducting this cost from the estimated benefits gives a favourable net impact of £9.9 million - £76 million a year to firms.

### *Promotion*

- 8.13 On promotion, the Evaluation of the Code of Practice on Age Diversity in Employment had estimated that about 5 to 6% of older workers felt that they had not been promoted because of their age. 13% of employers had said they used age as a basis for identifying suitable promotion candidates. This created a range of 5 to 13% of individuals in the young or old groupings (i.e. 16 to 24 and 50 years or over) who could have been denied promotion because of their age.

- 8.14 Assuming a small productivity boost for employers of 0.1% to 0.5% of labour costs that is not transferred to workers through higher pay, the GB RIA estimates that firms will gain £14 million - £180 million a year (because human resources- namely talent and abilities - are allocated more efficiently as age is no longer used in the promotion process).
- 8.15 The higher wages paid to promoted individuals reflects their higher skills and productivity. The GB RIA assumes a wage premium of 5% on promotion and that much of this extra pay (90 to 95%) is pure displacement, namely that other individuals would still have been promoted if discrimination in terms of age had been used. Assuming a wage premium of 5% on promotion and that displacement is limited to 95%, the recurring annual benefit to individuals is £27 million to £140 million.

### *Training*

- 8.16 Evidence within the GB RIA (taken from the Labour Force Survey) shows that older employees are less likely to train than younger workers. While part of this may be explained by older workers having already been trained it is commonly accepted that both employers and workers see training as an investment, and the shorter the time for payback the less likely it is to be undertaken.
- 8.17 Using Labour Force Survey results that between 4 and 5% of employees experience age discrimination when being selected for training and assuming that only older workers are discriminated against, the GB analysis finds some 170,000 to 290,000 extra employees may receive training each year if age conditions are not present.

8.18 Repeating assumptions as to additional productivity and wages arising from training (see above), the GB analysis concludes that:

- businesses will benefit by £51 million - £420 million a year;
- associated costs will be £44 million - £370 million a year;
- giving an annual net gain to employers of £6.6 million - £55 million.

8.19 The GB analysis finds that individuals will capture part of the benefits of training, estimated at £5 million to £42 million annually. The analysis also notes that training may help older workers avoid unemployment or shorten its duration if they do lose their jobs. They will also gain from improved self-esteem and standing following training.

## **Northern Ireland context, interpretation and likely impact**

### **Context**

8.20 The relative scale of impact in Northern Ireland will be influenced by the following factors;

- differential attitudes to recruitment and promotion of young and old workers, and training of older workers, as compared with GB by employers;
- labour market characteristics, notably sectoral differences and availability of skills; and
- attitudes to work at different ages amongst individuals in Northern Ireland.

- 8.21 There is no evidence of any difference in attitudes to retirement in Northern Ireland compared with Great Britain.
- 8.22 While there is a constant drive to increase the level of training in Northern Ireland, this is an objective that is shared with Great Britain. Promotion opportunities are dependent on both the age structures within firms and the extent to which the economy is growing. Growth in Northern Ireland has been closely aligned with that in Great Britain over the last decade and more, and is likely to continue to track its performance, though the potential for out-performance exists.
- 8.23 The importance attached to fair employment in Northern Ireland means that employers have a highly developed recruitment process, with an emphasis on fairness. Adopting age discrimination legislation within this culture will therefore be a little easier for Northern Ireland firms.

### **Interpretation and likely effect**

- 8.24 With the exception of changes in recruitment policy, it is difficult to make a convincing case for differential impact as between Northern Ireland and Great Britain in relation to recruitment, training and promotion issues. Accordingly, the most likely case is a simple pro-rata of the GB projected impact. This is shown in the summary below.

## Summary of the Northern Ireland costs and benefits

### Costs to employers in Northern Ireland

	Annual	One-off
Awareness	----	£1.5 million
Recruitment ads changing	negligible	---
Training	£1million - £9million	----

### Benefits to employers

Recruitment (larger pool) (net)	£0.25 million - £2.0 million
Promotion	£0.5 million - £4 million
Training	£1 million - £10 million

### Benefits to individuals in Northern Ireland

<b>Increased wages</b>	
Promotion	£0.5 million - £4 million
Training	£0.1 million - £1 million

## Section 9 – Statutory Redundancy Pay (Strand 3)

- 9.1 The purpose of amending the legislation governing statutory redundancy payments is to reduce the effects of age discrimination in the workplace. The current legislation entitles redundant employees of different ages to different multiples of their years' service in calculating their statutory redundancy payments. This is direct age discrimination and cannot be justified.
- 9.2 In making changes to the present scheme, the aim is to ensure that employees who are made redundant receive at least a statutory minimum severance payment that recognises the degree of their past commitment to the employers business. The scheme also aims to promote labour market flexibility, by easing the process of job transition for redundant employers.

### **Assessment in Great Britain RIA**

- 9.3 The GB RIA considers the following changes to be required to remove age discrimination whilst preserving the valuable aspects of the statutory redundancy payments scheme:
- remove the lower age limit (18) on service taken into account for the purposes of qualification and payment calculation;
  - end use of age as a factor in payment calculation;
  - remove the upper age limit on entitlement;
  - remove the provision for reducing payment by taper between the ages of 64 and 65;

- revoke the Redundancy Payments Pensions Regulations that permit employers to offset certain pension or lump sum benefits against statutory redundancy pay.
- 9.4 Changing the calculation so that all age groups are entitled to the same number of weeks pay for each year of service in calculating entitlement, requires a choice of what this number of years should be. At present, it ranges from half a week's pay for employees between the ages of 18 and 21, one weeks pay for employees between the ages of 22 and 40 and one and a half weeks pay for employees between the ages of 41 and 65. The GB RIA considered the options of increasing the statutory upper limit for payments (currently standing at £280 per week) and the multiple used to calculate the number of service year weeks (i.e. half a week, one week or one and a half weeks).
- 9.5 The GB analysis noted that in 2001, proportionally more employees were made redundant in manufacturing than other sectors, but that this could change from year to year depending on business conditions.
- 9.6 The proposed changes will affect individuals differently, depending on their age. At both ends of the age spectrum there will be a theoretical impact but in practice survey evidence suggests that few employees under the age of 18 or over 65 are made redundant. Between these extremes (and on a simple level) the changes will transfer benefit from older workers to younger workers, unless the overall level of statutory redundancy pay is increased so that all see benefit.

- 9.7 In considering the impact on employers of any changes to the statutory redundancy payments scheme, the GB RIA noted that some employers pay more than the statutory minimum, and that Insolvency Service pays employees where employers are unable to do so. This creates an uncertainty about how much of any change employers will bear. It also means that some employers will be unaffected by any changes. The GB RIA finds that employers will have to bear between a 'low' case of 43.5% and a 'high' of 87% of the cost of the changes to the scheme.
- 9.8 With a range of assumptions as to changes in the weekly limit and the number of weeks per service year, the GB RIA generates a cost between nil and £823 million, where the weekly limit is raised to £360 and the entitlement to 2 weeks per year.
- 9.9 While companies need to gain awareness of these changes, the RIA takes the view that most employers will only do so where they are contemplating redundancies. Awareness costs may therefore be disregarded.

## **Northern Ireland context, interpretation and likely impact**

### **Context**

- 9.10 The relative scale of impact on Northern Ireland will be influenced by the following factors;
- behaviour of the Northern Ireland economy, where any slump will have a disproportionate impact on the level of redundancies;
  - employer attitudes and ability to pay over the new statutory minimum;
  - labour market characteristics, notably sectoral differences.

## **Interpretation and likely impact**

- 9.11 The base assumption is that the Northern Ireland economy continues to perform in line with the recent GB performance that the GB analysis is based on. This suggests that Northern Ireland will see a pro-rata impact.
- 9.12 While there is a greater dependency on manufacturing in Northern Ireland, this is more than offset by the greater importance of public sector employment in the local economy, which has a low level of redundancy.
- 9.13 Given the very wide disparity that the GB RIA can generate under different assumptions (nil to £823 million), the only possible assumption that could be made for Northern Ireland is that the best estimate is a simple proportion of the GB figure, reflecting the smaller scale of the Northern Ireland economy. It would be nonsensical to attempt to make subtle adjustments to such a wide cost range to reflect sectoral or other differences.

## **Summary of the Northern Ireland costs and benefits**

### **Costs to employers in Northern Ireland**

Implementation costs	Negligible
SRP payments	Nil to £20 million

### **Benefits to individuals in Northern Ireland**

- 9.14 Individuals will benefit by the amount of additional statutory redundancy pay paid by employers, plus that additional redundancy payments funded by Government when firm's are unable to meet their obligations.

## **Section 10 – Unfair dismissal (Strand 4)**

- 10.1 The aim of the legislation is to ensure that all workers are treated fairly when dismissed, regardless of age.
- 10.2 Under existing legislation, most employees who have one year's qualifying service with their employer have the right not to be unfairly dismissed. Employees who successfully claim unfair dismissal can be awarded financial compensation in the form of a basic award, calculated in the same way as a redundancy payment, and a compensatory award (which does not contain any age discriminatory aspects).

### **Assessment in Great Britain RIA**

- 10.3 As the basic award for unfair dismissal uses the same formula as that for a statutory redundancy payment, it follows that changes to the latter (see strand 3 above) will require changes in the former, if this relationship is to continue. The argument for maintaining the link is that someone dismissed unfairly should get at least as much as someone who was fairly dismissed (i.e. made redundant).
- 10.4 The GB RIA considers the options of removing the upper age limit on unfair dismissal (age 65) and bringing its calculation into line with that for redundancy payments. The proposed legislative changes would permit, for the first time, those employees over 65, or normal retirement age, to claim unfair dismissal.

- 10.5 The GB RIA notes that there is a lack of information on those being dismissed at 65 or at the employers normal retirement age. Instead the RIA uses information on the number of tribunal claims and previous work on disputes to estimate the numbers affected. The analysis notes that, based on claims to tribunals, unfair dismissal has been proportionately more common in manufacturing than the rest of the private sector. It shows too that there is a high level of claims arising from the public sector, though the impact of these is outwith an RIA, which measures the impact of regulations on business.
- 10.6 The analysis notes that, as with redundancy, the high level in manufacturing may reflect the significant restructuring seen in that sector in the past, and consequently a higher level cannot be projected into the future.
- 10.7 An earlier RIA, on dispute resolution, estimated that only 12% – 16% of disputes result in a claim to a tribunal. Grossing up from the current numbers of claims and assuming that those past retirement age are as likely to have a dispute and as likely to take it to tribunal, the GB RIA estimates there could be about 4,000 to 5,3000 disputes that are related to unfair dismissal. This could result in about 640 extra tribunal applications each year.

*Cost to firms of changes to upper age limit*

- 10.8 Firms should already be aware of legislation on unfair dismissal. They will need to note that this now applies to all employees, and how they should treat older employees when asking them to cease working for them. The cost of the latter will largely be incurred when seeking to understand the legislation on retirement ages. Consequently, the GB RIA does not envisage implementation costs to firms arising from changes to the unfair dismissal legislation.

10.9 Firms will have to deal with dismissals for those employees aged 65 and over in the same way as for other employees. In the event of a dismissal, they will be bound to follow the minimum statutory dispute resolution. Applying staff time costs as before, the additional cost to firms in respect of disputes arising from the dismissal of those aged 65 and over is projected as £0.3 million - £0.7 million each year for considering disputes in-house. In addition, the costs to firms associated with applications to tribunals is estimated to cost £2.1 million a year. This gives a total cost to employers of £2.4 million - £2.8 million each year.

*Costs to firms of changes to the award formulae*

10.10 Firms do not need to become familiar with the legislation on the award formula; should they have to pay an award, they will be told by the tribunal how much this should be. The GB RIA therefore assumes that no extra costs should be involved in becoming aware of the legislation.

10.11 As with redundancy (see strand 3 above), changing the formula for calculating awards can lead to a wide range of outcomes depending on the assumptions made. The GB analysis, using the same assumptions as for statutory redundancy payments, calculate the net effect of the changes as lying between a gain of £2.6 million each year to a cost of £21.9 million each year.

## **Northern Ireland context, interpretation and likely impact**

### **Context**

10.12 The relative scale of impact in Northern Ireland will be influenced by the following factors;

- differential attitudes to retirement in Northern Ireland as compared with GB;
- propensity of older workers to access tribunals, and cost thereof.

10.13 As noted in the strand considering retirement ages (strand 1), there is no evidence of any difference in attitudes to retirement in Northern Ireland compared with Great Britain, and the relative use of disciplinary and grievance processes, including access to tribunals in Northern Ireland is the subject of a current study by the Department for Employment and Learning.

10.14 As with the proposals for statutory redundancy pay considered above (strand 3), the possible changes to the formulae for awarding unfair dismissal produce a wide range of outcomes. They span from a gain to a loss for employers. Consequently, the estimates of impact are too wide to justify a fine-tuning of the assumptions to more closely reflect the position in Northern Ireland (even if the relevant survey data were available).

### **Interpretation and likely impact**

10.15 Accordingly, a simple proportionate adjustment is made, to indicate the possible scale of impact in Northern Ireland. This is shown in the summary below.

## **Summary of the Northern Ireland costs and benefits**

### **Cost / gain to employers in Northern Ireland**

Change in award calculation	£50,000 gain to £0.5 million cost
Dispute based costs	£50,000

### **Benefits to individuals in Northern Ireland**

10.16 Individuals will see the reverse of the impact on employers resulting from changes to the formulae for calculating unfair dismissal awards.

## Section 11 – Occupational pensions (Strand 5)

11.1 The aim of the legislation is to ensure that employers are not discouraged from maintaining occupational pensions for their employees. This will be achieved by allowing employers and trustees to retain, as far as is possible, existing age-based rules.

### Assessment in Great Britain RIA

11.2 The EC Employment Directive allows Member States to exempt certain aspects of occupational pensions from age legislation:

- the fixing of ages for admission or entitlement to occupational pensions, including the fixing of different ages for employees or groups or categories of employees; and
- the use of age criteria in actuarial calculations.

In addition, the Directive allows for provisions of occupational pensions to remain lawful if they are justified by a legitimate aim.

11.3 Employers having to objectively all or many age-based rules in occupational pension schemes could result in considerable costs (through deciding on whether each age-based rule was objectively justified) and uncertainty for employers, as the only way to test whether those rules complied with age legislation would be through the tribunal system. There is a danger therefore that employers would be tempted to withdraw pension benefits rather than go through this process.

11.4 The GB RIA notes the sharp split between large firms, who typically do provide occupational pensions for their employees and small firms, who, mostly, do not. It also notes that many firms do not provide occupational pension for all their employees and some employers run several schemes.

*Implementation costs to employers*

11.5 Employers will need to go through all their age-based rules and consider whether they are allowable (because they are exempt by virtue of the proposed Age Regulations) or whether they need to consider keeping them and justifying them objectively themselves. This could require the input of actuaries and accountants, as well as senior Directors of firms and the trustees of pension funds.

11.6 It is assumed that larger firms will often have bespoke occupational pension rules. Each one will have to be looked at individually in detail before any decision can be made about what changes are needed. Small firms are more likely to use a more standard form of occupational pension provision, which will be much cheaper, per firm, to provide guidance on.

11.7 The greater number of small firms with pension provision roughly balances the lower unit cost, so that the cost of making a decision about changes to pensions for small firms is estimated to cost a total of £21 million, with large firms costing £27 million, giving a rounded total of £47 million. This figure rises to £51 million when allowance is made for the time spent by about 230,000 (in August 2003) pension trustees.

11.8 As the overall aim is to ensure that, as far as is possible, the rules of occupational pensions remain unchanged, it follows that there will be a very limited impact on the policy that firms adopt. Costs here are therefore minimal.

## **Northern Ireland context, interpretation and likely impact**

### **Context**

11.9 The relative scale of impact in Northern Ireland will be influenced by the differential provision of occupational pensions in Northern Ireland as compared with Great Britain.

11.10 Much of the private sector employment (measured by employees) in Northern Ireland is in firms that are headquartered in Great Britain. Some of the implementation costs here will therefore fall outside Northern Ireland. The smaller scale of the private sector in Northern Ireland further reduces the relative impact of these implementation costs on local firms.

11.11 The extent to which occupational pension provision in Northern Ireland is more standardised than in Great Britain, or is otherwise different, is unknown. There is no evidence, therefore, for the proposed legislative changes having a differential relative impact.

### **Likely impact and summary**

11.12 The one-off costs to employers in Northern Ireland will be around £1 million. There are no policy costs to employers.

## **Section 12 – Pay and non-pay benefits (Strand 6)**

12.1 The aim of the legislation is to ensure that where employers provide age-based or service based pay and non-pay benefits (that are objectively justified) that they should continue to be able to do so without the imposition of unnecessary burdens.

### **Assessment in Great Britain RIA**

12.2 Pay and non-pay benefits cover benefits an employee receives under a contract of employment, many of which will not be discriminatory for the purposes of age legislation. However, some pay structures or benefits may result in direct or indirect discrimination.

12.3 The GB analysis noted that service or age-related pay and non-pay benefits are commonly used by employers to reward experience and loyalty, and to provide incentives for staff. The majority of employers and employees accept and welcome the use of these types of benefits, and in implementing the age legislation, the intention is not to stifle business with unnecessary burdens.

12.4 On the other hand not all service-related benefits are uniformly welcomed. While service based rewards seem to overcome the concern of relying on age, they can have a negative impact on gender equality, as women are more likely to see a disruption to their service because of children.

12.5 In developing policy on pay and non-pay benefits, 3 options were considered:

- (i) do nothing – require employers to justify any discriminatory benefits on an individual basis;
- (ii) provide that benefits which meet certain criteria to be set out in regulations are justified;
- (iii) provide a blanket exemption so that the benefit in question would not need individual justification.

12.6 Option (i) would be burdensome for employers, as they would have to justify individual benefits in court, and many employers may simply withdraw benefits completely or level them down. Options (ii) and (iii) would require Government to provide justification by way of an underlying social policy. The view was taken that a blanket exemption (option iii) would not be a proportionate means of achieving a social policy aim. However, some exceptions are sustainable - for example, on the basis of rewarding loyalty.

12.7 The intention therefore is to exempt any length of service requirement of 5 years or less, and any which mirrors a statutory benefit. In addition, benefits which depend on length of service will be exempt if they are intended to reflect experience or encourage or reward loyalty or maintain motivation.

#### *Costs and benefits to individuals*

12.8 Where benefits are covered by an exemption in the Age Regulations or where employers choose to objectively certain benefits, then individuals are unlikely to be affected. If employers cannot justify certain benefits that are not covered by an

exemption, this may result initially in employers removing the benefit. While some individuals will lose out, others who would not have qualified because of unjustified discrimination may gain in terms of perceived improved fairness.

#### *Implementation costs to firms*

12.9 Firms will need to understand the legislation, and to see whether they need to justify any benefits that are dependant on length of service or age. This will take time. The main impact therefore is on awareness, followed by decision-making as required. Firms will have to consider their entire raft of pay and non-pay benefits to see that they comply with the legislation. This will impose a cost on firms, estimated for Great Britain as around £46 million. This should fall either just before or just after the legislation is implemented.

12.10 The GB analysis recognises that some firms will change their policies as a result of the legislation purely to avoid being taken to a tribunal. In these cases, the GB RIA finds it likely that the firm will suffer some detriment in terms of efficiency. However, the GB RIA also contends that firms considering realignment of their pay and non-pay benefits are likely to tune them towards increasing efficiency, which will aid those businesses. Efficiency gains or losses are likely to be modest under both scenarios. Consequently, policy costs and benefits to employers are not quantified.

## **Northern Ireland context, interpretation and likely impact**

### **Context**

12.11 Pay and non-pay benefits will be common to all firms.

Accordingly, impact in Northern Ireland will be as in Great Britain, adjusted for the smaller scale of private sector employment here and allowance for the extent to which these rewards may be determined outside Northern Ireland.

### **Likely impact and summary**

12.12 The one-off costs to employers in Northern Ireland will be around £1 million. There are no policy costs to employers.

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