

# Contents

---

Introduction	2
When will the new legislation come into operation?	2
Why are we holding this consultation?	2
When does this consultation close?	3
What are the main points of the new legislation?	3
New obligations	3
New rights	4
Objective justification	4
Genuine occupational requirements	5
Positive action	5
Recruitment, selection and promotion	5
Service-related pay and benefits	6
Retirement	6
❑ The “ <i>duty to consider</i> ”	7
Unfair dismissal	8
❑ “ <i>planned retirement</i> ”	8
❑ <i>Dismissals for reasons other than retirement</i>	9
Redundancy	9
Monitoring and review	9
Occupational pensions	10
Enforcement	10
Benefits and costs	10
What should you do to prepare for 2006?	11
Why you should also read the full consultation document	12
Where to get copies of the consultation documents	13

## Introduction

1. Currently, there is no law in Northern Ireland for dealing with age discrimination. This will change in October 2006, when legislation is introduced prohibiting age discrimination in employment and vocational training.
2. Age discrimination prevents people of all ages from realising their full potential in the workplace. This in turn prevents employers from getting the best performance out of their business and delivering the best service to their customers. We want employers to draw on the full range of skills and talents available to them from the whole of the working population. Tackling age discrimination is good for business, good for individuals and good for society.
3. The introduction of age discrimination legislation is necessary in order to comply with the requirements of the EU Employment Directive (2000/78/EC). This Directive requires all Member States to outlaw discrimination on the grounds of religion or belief, disability, age or sexual orientation in the areas of employment and vocational training. The final step in implementing the Directive is to bring forward legislation to prohibit age discrimination. The deadline for implementation of the age strand of the Directive is December 2006.

## When will the new legislation come into operation?

4. The Age Regulations will come into operation on **1 October 2006**.

## Why are we holding this consultation?

5. In October 2003, we issued "*Prohibiting Age Discrimination in Employment and Training: Legislation for Northern Ireland*" which sought views on our proposals for implementing the age strand of the Employment Directive. Taking into account the replies received, and after listening to the views of the main stakeholders we have finalised our policy and translated it into the draft Employment Equality (Age) Regulations (Northern Ireland) 2006. In seeking to implement the Directive in Northern Ireland, we have mirrored the policy approach taken to implementing the Directive in Great Britain.
6. We are now holding a consultation in order to:
  - let you know what the Age Regulations will require so that employers and providers of vocational training can prepare for them;

- ask you whether the explanation in the full consultation document is unclear on any issues, so that they can be addressed in the workplace guidance which the Equality Commission for Northern Ireland will issue next year;
  - give you a chance to comment on whether the details of these decisions will give rise to significant practical difficulties; and
  - seek your views on whether the draft Age Regulations effectively reflect the policy as set out in the consultation document.
7. This consultation is the last opportunity to exchange views on this matter before the Age Regulations are finalised and become law. A draft of the Northern Ireland Age Regulations accompanies this consultation.

### **When does this consultation close?**

8. This consultation closes on **30 November 2005**.
9. Details of where you can get copies of the consultation documents are at the end of this booklet. All the documents can be accessed on the website of the Office of the First Minister and Deputy First Minister at: [www.ofmdfmni.gov.uk/index/equality/age](http://www.ofmdfmni.gov.uk/index/equality/age)

### **What are the main points of the new legislation?**

10. The legislation will give individuals new rights not to be discriminated against because of their age, and new responsibilities to all employers and providers of vocational training
11. The Age Regulations will apply to all workers and to people who apply for work. They will also cover access to vocational training. The Regulations will prohibit direct and indirect age discrimination, harassment and victimisation.

### **New obligations**

12. Those with new obligations include:
- employers;
  - providers of vocational training (including adult, further and higher education) - this covers both employers who provide vocational training, and private training institutions;

- trade unions, professional associations, and employers' organisations - in relation to their membership as well as in their role as employers; and
- trustees and managers of occupational pension schemes.

## **New rights**

13. Those with new rights include:
  - employees;
  - self-employed people, including specific provisions for barristers and partners in a partnership;
  - contract workers;
  - office-holders;
  - members of trade organisations; and
  - anyone in vocational training and anyone receiving or holding a professional or trade qualification.
14. The Age Regulations will also apply to job applicants and where people make other applications in the areas covered by the Regulations - for example, people applying for a place on a vocational training course or people applying to become members of trade organisations.
15. The rights also apply after the relevant relationship has ended.

## **Objective justification**

16. In most situations, it will be unlawful to treat people differently on the grounds of age. However, employers and others with obligations under the Age Regulations will be able to justify different treatment on the grounds of age, but only if they can show that:
  - it fulfils a legitimate aim; and
  - the particular circumstances make it appropriate and necessary.
17. A wide variety of aims may be considered as legitimate, but must reflect a real need on the part of the employer or other person with obligations under the legislation. An example in the legislation is the fixing of a maximum age for recruitment or promotion which is based on the training requirements of the post in question or the need for a reasonable period of employment before retirement.

18. Objective justification will not be an easy test to satisfy. Employers, and others with obligations under the legislation, will have to be able to produce supporting evidence, if challenged: assertions that an age-based approach was necessary will not be enough.
19. The legislation dealing with other forms of discrimination (such as sex and race) provides for only very limited possibilities of justifying direct discrimination. Age legislation will be unique in that the possibility of justification will apply equally to direct and indirect discrimination.
20. Employers will not have to objectively justify age-based decisions they have to make in order to comply with other legislation - for example, legislation prohibiting the employment of people under 18 in a bar open for the sale or consumption of intoxicating liquor.

### **Genuine occupational requirements**

21. The Age Regulations will say that an employer is entitled to use an age requirement where (having regard to the nature of the employment or the context in which it is carried out):
  - this is a genuine and determining occupational requirement; and
  - it is proportionate (that is, appropriate and necessary) for the employer to apply the requirement.

### **Positive action**

22. Anything done in connection with:
  - giving people of a particular age access to vocational training; or
  - encouraging people of a particular age to use employment opportunities,will be lawful if this is reasonably expected to prevent or compensate for disadvantages suffered by such persons.

### **Recruitment, selection and promotion**

23. Decisions about recruitment, selection and promotion should not normally be based on age, but should be based on the skills and competences required for the job. Different treatment on grounds of age in these areas will only be lawful if the employer can satisfy the strict test of objective justification.

## **Service-related pay and benefits**

24. Length of service is often used as a criterion for pay, and for non-pay benefits such as staff discounts or extra holiday entitlement. This can amount to indirect discrimination because some age groups are more likely to have the necessary length of service than others. Such benefits are used widely to motivate staff, reward loyalty, and recognise experience. Our aim is as far as possible to ensure their continuation. To that end, there will be two exemptions and a general provision covering the use of length of service.

### ***Specific exemptions***

25. The specific exemptions are:
- any length-of-service requirement of five years or less (counting both continuous and non-continuous service) is exempted and will be able to continue;
  - length-of-service requirements that mirror a similar requirement in a statutory benefit are exempted and will be able to continue. This will ensure that employers can continue to make enhanced provision for employees – for example, contractual redundancy schemes where service-related provision is more generous than under the statutory scheme.

### ***General provision***

26. There will be a provision covering length of service longer than 5 years. To rely on this exemption the employer must:
- award the benefit to reward loyalty, or to encourage motivation, or to recognise the experience of the employee; and
  - conclude that there will be a business benefit resulting from the higher level of experience of staff or from rewarding staff loyalty or increasing or maintaining staff motivation; and
  - apply the length-of-service criterion similarly to staff in similar situations.

## **Retirement**

27. There will be a default retirement age of 65. This means that it will not constitute age discrimination if employers retire employees at or above the age of 65, where there is a genuine retirement. Employers will be free to continue employing people beyond the default age. Retirement ages below 65 will, in

general be prohibited (lower retirement will be possible, but only if the employer can satisfy the strict test of objective justification).

28. For many businesses this will require a considerable adjustment. Those that set their retirement age below the default age of 65 will have to justify it or change. Growing numbers of firms are already successfully planning their workforce without fixed retirement ages, and in the longer term the aim of Government is to move to a position where business does not need to rely on a default retirement age (see paragraph 41 which deals with plans for monitoring and reviewing the default retirement age).

### **The “*duty to consider*”**

29. There will be a new procedure for any compulsory retirement of employees at any age - the "duty to consider" procedure. This will allow employees to request working beyond a compulsory retirement age. If the employee makes such a request, the employer will have to consider it seriously.
30. Under this procedure, an employer who wishes to retire an employee will have a duty to:
  - notify the employee in writing not more than 12 months and not less than six months beforehand of the intended date of retirement;
  - tell the employee of the right to request working beyond the intended moment of retirement.
31. If the employee makes such a request, the employer will have to consider it seriously. There are a number of steps involved:
  - the request can be made between 12 months and six weeks before the notified date of retirement;
  - the employer must hold a meeting with the employee to discuss it (unless the employer agrees to the request);
  - the employer must notify the employee of the decision within two weeks of the meeting. Employment will continue until this has been done, even if it is after the notified date of retirement;
  - the employee will have two weeks to appeal to the employer. If the employee does appeal, the appeal meeting can take place after retirement has taken effect.
32. The existing statutory dismissal procedure (the “three step” procedure) will not apply to retirement dismissals: only the duty-to-consider procedure will apply.

## Unfair dismissal

33. The current upper age limit of 65 for unfair dismissal will be removed. This means that older workers will get the same rights to claim unfair dismissal as younger workers.

### ***“planned retirement”***

34. However, retirement will not constitute unfair dismissal if:
- it is on or after 65 (or a lower retirement age, if justified);
  - the employer has notified the employee of the retirement at least six months in advance;
  - the employer has subsequently followed the duty to consider procedure; and
  - it is a genuine retirement.
35. This is called "planned retirement", and under it:
- the employer has to inform the employee in writing of the retirement date – whether the default age, or an earlier objectively justified age – at least six months in advance;
  - retirement at that age, or at an extended date agreed as a result of the employee successfully exercising the “right to request” working longer, will be retirement and an unfair dismissal claim will not succeed unless:
    - the employee can prove that the employer would have dismissed him or her for a reason other than retirement; or
    - the employer fails to follow the duty-to-consider procedure.
- This ensures certainty for the employer.
- if the employer announces retirement out of the blue or with less than six months warning, an unfair dismissal (or a redundancy) claim would be likely to succeed unless the employer can prove that it is a retirement. This will protect the employee.
36. Employers who fail to inform employees properly can be penalised, and in the most serious cases a retirement dismissal will be automatically unfair.

37. Where the employee does not want to continue working, no procedure will be required and the employee will simply leave with the agreement of both sides. This will be the situation in many cases - employees will be happy to retire on the due date. If they have agreed to continue working for a specific period but their health or performance deteriorates unexpectedly, they may also agree it is time to call it a day.

### ***Dismissals for reasons other than retirement***

38. Where an employee of any age is dismissed for a reason other than retirement, the normal dismissal procedures will apply and the employer will need to follow the normal statutory dismissal procedures.
39. The employer will not be able to avoid the requirements by applying the retirement procedures where the dismissal is actually a redundancy, or a dismissal on grounds of competence or conduct.

### **Redundancy**

40. Employees who are made redundant at any age will have the same entitlement to a redundancy payment – the upper age limit will be abolished. The basis of the calculation will be changed to remove some of the age-based provisions, but the 20-year service maximum will remain.

### **Monitoring and review**

41. The default retirement age will be monitored from the outset so that in 2011 it can be formally reviewed to decide whether it continues to be necessary. The review will be evidence based, looking at relevant data on:

- trends in life expectancy;
- the number of individuals working beyond 65; and
- the impact of the Age Regulations on business, including the extent to which businesses still rely on retirement ages for workforce planning.

The default retirement age will be abolished if the evidence shows that the expected culture change has been achieved and the default age ceases to be necessary.

## **Occupational pensions**

42. Many rules in pension schemes are necessarily age-based and are required for schemes' proper operation. The Age Regulations will effectively exempt most age-related rules and practices. For instance, it will remain possible for employers to offer new employees a pension scheme which is different from the one held by existing employees.

## **Enforcement**

43. Where a person feels discriminated against, harassed or victimised on the grounds of age, it is usually best to raise this with the responsible person (the employer or other person with obligations under the Age Regulations, such as a provider of vocational training). It may be possible to find a solution in this way.
44. If the dispute is an employment matter other than a dismissal, the employee will need to follow the statutory grievance procedure before he or she can take legal action.
45. Age discrimination claims relating to employment and vocational training will be dealt with through the Industrial Tribunals.
46. The main exception to this rule is that claims against providers of further or higher education (as opposed to other vocational training) must be brought in the county courts.

## **Benefits and costs**

47. Over time, there will be overall net economic (not to mention social) benefits from the legislation. It is expected that these benefits will arise principally due to increased employment rates and better matching of jobs to people.
48. There will be costs associated with the legislation as well, for instance the cost to employers of dealing with requests by those who wish to continue working past the firm's retirement age. However, it is expected that overall these costs will be of a lower magnitude than the benefits.

## What should you do to prepare for 2006?

49. If you are an employer or provider of vocational training, you should act now to ensure that you are ready when the legislation comes into operation.
50. If you are an employer, you should - if you have not already done so - start a review of your employment practices and procedures now. You should identify where changes need to be made to comply with the legislation, and where necessary you should enter into discussions with your employees or any trade unions involved to ensure that you can make those changes before 1 October 2006.
  - **You should check your recruitment procedures:** if you use a recruitment agency, make sure you do not ask them to act unlawfully. If you do the recruitment yourself, check that, for instance, your job advertisements are not age-discriminatory.
  - **You should check your application procedures:** ensure that those who conduct interviews and make decisions on job offers do not have any prejudices in relation to age.
  - **You should check your employment rules and procedures:** including the employment contracts you use, the staff handbook and the employment benefits (salary and otherwise) you provide. The consultation document describes more fully a few limited exceptions where difference of treatment on grounds of age will be allowed, but otherwise you should remove any age discrimination, and (where necessary) agree this with your employees, employee representatives and trade unions.
  - **You should check your retirement procedures:** if you use a retirement age for your staff, you should consider whether you need to keep this in place. If so, you will have to make changes to the procedures you use as described earlier in this summary and set out more fully in the consultation document.
  - **You should tackle harassment:** make it clear to all your managers and other employees that harassment on grounds of age will not be tolerated.

- **You should know your staff:** the legislation will not contain any obligation to collect information on the age profile of your workforce. However, it can be good practice to do so, since this will make it easier for you to check whether age discrimination is occurring. You will for instance be able to check whether older workers are receiving significantly less training than younger workers within your business. If you do, make sure that you follow the Code of Practice on data protection in employment (see [www.informationcommissioner.gov.uk/eventual.aspx?id=437](http://www.informationcommissioner.gov.uk/eventual.aspx?id=437)).
51. If you are a provider of vocational training, you should follow the above steps for you own employees (for instance your teachers), but, in addition, you will have to make sure that you are not discriminating on grounds of age against your students and those applying for places on your courses.
  52. The full consultation document is a straightforward explanation of how the draft Age Regulations will work. However, the Regulations are not yet final, and the consultation document is not guidance. We do not expect the final Regulations to be substantially different, but there may be changes as a result of the responses to this consultation.
  53. Guidance explaining the provisions of the Age Regulations will be published once they have become law. In addition, workplace guidance will be published by the Equality Commission on practical issues arising under the Regulations.

## **Why you should also read the full consultation document**

54. If you are an employer or a provider of vocational training, you should also read the full consultation document. This will give you more information to decide what you need to do to ensure that your firm will be ready for the age discrimination legislation when it comes into operation in October 2006.
55. If you are an employee or student who has suffered age discrimination, or if you are generally interested in your rights, the consultation document will give you the most extensive preview so far of your new rights.

## **Where to get copies of the consultation documents.**

56. Copies of this and other documents in this consultation can be obtained from:

**Age Team  
Equality and Rights Division  
Office of the First Minister and Deputy First Minister  
Freepost 3900  
Room E3.18  
Castle Buildings  
Stormont  
BELFAST  
BT4 3SR**

Phone: 028 9052 3194  
Textphone: 028 9052 2526  
Fax: 028 9052 3272  
Email: [agelegislation@ofmdfmni.gov.uk](mailto:agelegislation@ofmdfmni.gov.uk)

57. The consultation documents can also be accessed on the website of the Office of the First Minister and Deputy First Minister at: [www.ofmdfmni.gov.uk/index/equality/age](http://www.ofmdfmni.gov.uk/index/equality/age)
58. Alternative formats are available on request.