

EXPLANATORY MEMORANDUM TO

The Employment Equality (Repeal of Retirement Age Provisions) Regulations (Northern Ireland) 2011

SR No. 168

1. Introduction

- 1.1. This Explanatory Memorandum has been prepared by the Office of the First Minister and deputy First Minister (the Department) to accompany the Statutory Rule (details above) which is laid before the Northern Ireland Assembly.
- 1.2. The Statutory Rule is made under section 2(2) of the European Communities Act 1972 and is subject to the negative resolution procedure.

2. Purpose

- 2.1. These Regulations revoke and amend provisions in the Employment Equality (Age) Regulations (Northern Ireland) 2006 (and amend certain provisions in the Employment Rights (Northern Ireland) Order 1996) which except certain dismissals made on the basis of retirement from constituting direct age discrimination and unfair dismissal. A new provision relating to insurance arranged by an employer for the employer's employees and other persons in connection with that employment is also made.

3. Background

- 3.1. The Office of the First Minister and deputy First Minister proposes to make a statutory rule using powers under the European Communities Act 1972. The purpose of the statutory rule is to amend the Employment Equality (Age) Regulations (Northern Ireland) 2006 and the Employment Rights (Northern Ireland) Order 1996. These amendments are intended to remove the Default Retirement Age (DRA) of 65.
- 3.2. When consulting on the introduction of age discrimination legislation in 2006, the Government gave a commitment to monitor the DRA and to formally review its effectiveness in 2011.
- 3.3. The Coalition Government's Programme for Government commits to phasing out the DRA and it laid its Regulations to give effect to this commitment at Westminster on 1 March to come into operation on 6 April 2011. There is limited scope for the Executive to do anything differently here including needing to use the same operational date for our Regulations to maintain parity.

4. Consultation

- 4.1. On 29 July 2010, the Department for Business Innovation and Skills and the Department for Work and Pensions jointly issued a consultation document seeking views on their proposals to phase out the DRA and on the support that individuals and businesses might need to manage in its absence. The First Minister and deputy First Minister agreed that we

should be included in that consultation and letters were issued to relevant organisations here, including to the Assembly Committee for the Office of the First Minister and deputy First Minister. There had previously been a call for evidence on this issue which commenced on 28 October 2009 (and to which organisations here also contributed).

- 4.2. The most recent consultation closed on 21 October 2010 and the Coalition Government issued its response on 13 January 2011. Six responses were received from organisations here: the Northern Ireland Civil Service, EEF NI, the Older People's Advocate, the Equality Commission, Changing Ageing Partnership and NIPSA.

5. Equality Impact

- 5.1. In line with section 75 of the Northern Ireland Act 1998, the Department has considered the impact of the policy proposal on the nine section 75 categories by conducting a Section 75 equality screening exercise to determine whether a full Equality Impact Assessment is necessary. Given that the equality screening did not suggest that there was a disproportionate impact on any of the Section 75 groups it was not considered necessary to conduct a full equality impact assessment. The Regulations may indeed promote equality of opportunity in terms of enabling older workers to mentor younger workers.

6. Regulatory Impact

- 6.1. An Impact Assessment was prepared by the Coalition Government. Using the information included in its Assessment the Department has concluded that the cost to business here of the proposed Regulations will comprise of £805,483 of familiarisation costs, at a unit cost of £11.30 for small firms and £22.59 for large firms and the public sector. There are likely to be additional costs to some businesses around the introduction and maintenance of performance appraisal systems. It is not possible to quantify these costs. However, any cost to business will be offset by the savings of not having to operate a right to request procedure. In addition, other costs are likely to be saved by being able to defer recruitment until current workers actually retire. The Department is satisfied that the benefits justify the costs.

7. Financial Implications

- 7.1. Please see paragraph 6.1 above for the financial implications for businesses.

8. Section 24 of the Northern Ireland Act 1998

- 8.1. The Department is satisfied that this legislation is compliant with section 24 of the Northern Ireland Act.

9. EU Implications

- 9.1. The Employment Equality (Age) Regulations (Northern Ireland) 2006 which were made under section 2(2) of the European Communities Act 1972, implemented here Council Directive 2000/78/EC of 27th November 2000 which established a general framework for equal treatment in employment so far as it relates to discrimination on grounds of age. The

Regulations made it unlawful to discriminate on grounds of age in employment and vocational training. They prohibit direct discrimination, indirect discrimination, victimisation, instructions to discriminate and harassment. Under the Regulations not all differences of treatment on grounds of age are unlawful: there are exceptions including in relation to retirement through a Default Retirement Age of 65.

- 9.2. These Regulations remove the exception in relation to the Default Retirement Age. A Transposition Note is not required as these Regulations are covered by the Transposition Note to the Employment Equality (Age) Regulations (Northern Ireland) 2006.

10. Parity or Replicatory Measure

- 10.1. These Regulations are necessary to maintain parity with the position in Great Britain. As explained at paragraph 3.3 above, the Coalition Government's Programme for Government commits to phasing out the DRA and it laid its Regulations to give effect to this commitment at Westminster on 1 March to come into operation on 6 April 2011. There is limited scope for the Executive to do anything differently here including needing to use the same operational date for our Regulations to maintain parity. Maintaining parity is critical for organisations operating here that have headquarters in England, Scotland or Wales.

11. Additional Information

- 11.1. Not applicable.