



Northern Ireland
Assembly

**COMMITTEE
FOR THE OFFICE OF THE
FIRST MINISTER AND DEPUTY
FIRST MINISTER**

**OFFICIAL REPORT
(Hansard)**

**Draft Employment Equality (Repeal of
Retirement Age Provisions) Regulations
2011**

16 March 2011

NORTHERN IRELAND ASSEMBLY

**COMMITTEE
FOR THE OFFICE OF THE FIRST MINISTER AND
DEPUTY FIRST MINISTER**

**Draft Employment Equality (Repeal of Retirement Age
Provisions) Regulations 2011**

16 March 2011

Members present for all or part of the proceedings:

Mr Francie Molloy (Acting Chairperson)
Mr Allan Bresland
Mr William Humphrey
Mrs Dolores Kelly
Mr Danny Kinahan
Mr George Robinson

Witnesses:

Ms Martina Campbell)
Mr Stephen Orr) Office of the First Minister and deputy First Minister

The Acting Chairperson (Mr Molloy):

Martina and Stephen, will you brief the Committee on the regulations and leave yourself open for questions afterwards?

Ms Martina Campbell (Office of the First Minister and deputy First Minister):

Yes; sure. The Committee has just received the SL1 and the original letter that advises of the Ministers' intention. I appreciate that the Committee may not have had time to consult on the issue and that members may wish to consult their colleagues on the Committee for Employment

and Learning. However, I need to alert the Committee to the time pressure. We need to make the regulations before the Assembly is dissolved.

I intend to keep my statement short, but I have four points that I want to make. First, I apologise for the lateness of the documents being sent to the Committee and to explain a little about why that happened. Secondly, I want to explain the timeline for making the regulations, which is the next step. Thirdly, I want to explain a little about the process and the background. Fourthly, I want to explain the policy intention.

The lateness of the documents being sent to the Committee is due, in part, to the fact that the coalition Government announced their intention to remove the default retirement age on 13 January and made the relevant regulations on 16 February. However, a drafting error was discovered, and they had to be relaid on 1 March. We only received those regulations on 2 March, and that is why the Committee received the draft late.

The coalition Government announced their intention on 13 January, and they want those regulations to come into operation on 6 April. In the interests of equality and parity, the Ministers indicated their intention to follow a similar timescale, in so far as the Assembly and legislative processes will allow.

When we consulted on the original employment age regulations in 2006, the Government made a commitment to review the default retirement age in 2011. However, the coalition Government brought that forward slightly. There were two previous consultations on the policy, with a call for evidence in 2009 and a formal consultation on the proposals last year. The Ministers and the Executive agreed that we could piggyback on those consultations, and we did so. The intention was always that it would be a UK-wide decision. The coalition Government have moved extremely quickly, which is why we have been unable to come to the Committee before now.

As to the process, because of impending dissolution, the only way that we can match the GB timetable is if the Executive approve the regulations on Tuesday 22 March and make them the following day. We are using the negative resolution procedure. That means that the sitting period for the regulations will commence when the new Executive return in May, and the regulations will technically be in operation from 6 April. Technically, we will have matched the

GB timetable, but there is still the risk that the regulations will be prayed against and fall.

Let me explain a little about the policy intention, to which I alluded in previous points. As the Employment Equality (Age) Regulations 2006 stand, there is a national default retirement age, which means that an employer can retire a person at the age of 65. Given that the coalition Government are raising the state pension age, it probably makes sense in a number of ways to remove that default retirement age, which is becoming a moveable feast in any case because most of us will not be able to retire at 65 and receive the state pension.

The key dates are as follows. The last date on which employers can issue notification under the statutory retirement procedure is 30 March. That procedure gives an employee six months' notice of the employer's intention to retire them. The last date by which an employer can give the employee short notice procedure is 5 April. That procedure entitles the employee to compensation if he or she has not been given sufficient notice. The date from which employers will no longer be able to retire someone without having an objective justification is 1 October. Therefore, someone who is 65 on 1 October will be able to work beyond his or her sixty-fifth birthday unless the employer can justify and come up with a sound reason why he or she should not do so.

That was a short overview. Stephen and I are happy to take any questions.

The Acting Chairperson:

It is a very relevant topic. At council level, I have been dealing with retirement and the issue of whether an officer can stay on if there is no package for him or her to leave. This change will mean that, after 1 October, any employee can stay on beyond the age of 65. Is that right?

Ms M Campbell:

I should have said that there is a slight issue. The Committee has a draft version of the regulations. We have a query with colleagues from GB, even though they have made their regulations, about terminology. In our regulations, we refer to "workers", which is a broad term that includes an office-holder and may, I think, include council members. However, the GB regulations refer to "employees", which is a much narrower definition. Therefore, we are minded to use the wording in our original regulations. We are negotiating with GB on that, because it would leave us slightly out of step with the rest of GB. Therefore, I cannot give a definitive

answer, but when we have resolved that issue and the Ministers write to you, we can include an explanation.

Mrs D Kelly:

Although I welcome anti-discrimination legislation, at what age can employers encourage people to retire? If a person is 75 or 80 years old and still doing a fairly good job, what chance is there for young people at the other end of the scale?

Ms M Campbell:

The argument that older workers are seen as blocking jobs for younger workers came up time and time again during the consultation. The Government feel that that is not a valid argument. Indeed, in my work with older people and throughout the consultation processes — on the older people's commissioner legislation and in my other work with older people — they feel very strongly that that is not true and that they have a great deal to contribute to the economy and society.

Mrs D Kelly:

That is not what I said.

Ms M Campbell:

Sorry, I was going on to say that employers can encourage employees to retire, but they cannot compulsorily retire someone unless there is a performance management issue. The regulations mean that employers must have a robust performance management process in place because, if employees are fit and healthy and feel that they are still contributing and doing a good job, there is no reason why they should retire, unless the employer feels that they are not performing to their maximum.

Mrs D Kelly:

I understand the argument about the person's performance, but, as you say, it requires a robust process. We all know how difficult it is when it comes to the evidence trail. Of course, some people back off because they are so frightened of being —

Ms M Campbell:

— taken to a tribunal.

Mrs D Kelly:

Yes; they really are. We often hear about young teachers not getting a job because of retired teachers returning to the workforce. I can understand why employers want to keep on a trusted employee so that they do not incur recruitment costs. However, I have a concern about there being fewer opportunities for young people to get on to the employment ladder in an increasingly restricted marketplace over the next couple of years.

Ms M Campbell:

That valid concern was raised by a large number of the respondees. Do you want to add anything, Stephen?

Mr Stephen Orr (Office of the First Minister and deputy First Minister):

I will just add that the research undertaken in GB and drawn from international evidence on that question showed that the numbers of old people likely to want to stay on beyond 65 were likely to be very small.

Mrs D Kelly:

Unlike MLAs.

Ms M Campbell:

We could not possibly comment.

Mr Kinahan:

Thank you very much. I notice that the Confederation of British Industry (CBI) and Chamber of Commerce were not included in the consultation. Did anyone provide feedback on the cost to businesses? Will it help businesses or cost them more? Sometimes, people at the end of their lives are at their most expensive, because they have gone on and on, and that is one of the ways for companies to reduce costs. It is not necessarily the right thing to do, but that is what happens.

Ms M Campbell:

The regulatory impact assessment estimated that the cost to businesses was about £805,000 in total, which worked out at £11.30 for a small firm and £22.59 for a large firm. That cost relates to familiarisation with the new regulations. There would also possibly be a cost for employers

who do not operate a performance management system, but we have not been able to quantify that. The CBI did not respond to the consultation here, but the national CBI was part of the stakeholder advisory panel advising the coalition Government. I have had some discussions with the local CBI on an informal basis, and it is not too happy. However, the national CBI was part of the stakeholder advisory panel that advised the Government, and it accepted the proposal.

The Acting Chairperson:

In cases of redundancy, it is the job that must be made redundant. Would an employee have the right to complain about being made redundant on the basis of discrimination, either because he or she was nearing 65 or because the job was being done away with simply to get around legislation?

Ms M Campbell:

If I understand the question correctly, that provision probably already exists in the employment age regulations in that employers are not allowed to discriminate on the basis of age. Is that your view, Stephen?

Mr Orr:

Yes.

Ms M Campbell:

That provision already exists and will remain.

Mr Kinahan:

Does it apply to small businesses?

Ms M Campbell:

Yes, it applies to everyone.

The Acting Chairperson:

Am I correct in saying that we have no option other than to approve the regulations?

Ms M Campbell:

Yes.

Mrs D Kelly:

The different demography here as opposed to that in GB is interesting, in that we have a younger population, but there is little that we can do.

The Acting Chairperson:

Do members agree that the Committee has no objections?

Members indicated assent.