

EXPLANATORY MEMORANDUM TO
THE EMPLOYMENT EQUALITY (AGE) (AMENDMENT) REGULATIONS
(NORTHERN IRELAND) 2009

S.R. 2009 No. 425

1. Introduction

- 1.1. This Explanatory Memorandum has been prepared by the Office of the First Minister and deputy First Minister 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. The statutory rule will make a small technical amendment to regulation 34 of the Employment Equality (Age) Regulations (Northern Ireland) 2006 (the "Age Regulations"). The amendment will preserve continuity of service when civil servants are transferred out of government departments or employees of non-departmental public bodies are transferred back into government departments so that any pay or non-pay benefits they receive based on length of service can continue without the new employer falling foul of the Age Regulations.

3. Background

- 3.1. The Age Regulations prohibit unjustified direct and indirect age discrimination in the workplace. Length of service conditions for pay and non-pay benefits (for example, incremental pay scales or extra annual leave) could amount to indirect age discrimination. The intention is not to undermine the provision of such benefits. To avoid the possibility of employers eliminating any age discriminatory element by levelling down pay and non-pay benefits, regulation 34 of the Age Regulations provides a two part exemption for benefits based on length of service. It gives an employer a defence against a claim of indirect discrimination where benefits are based on service of 5 years or less, and provides that longer periods of service may be used so long as the use of length of service as a criterion for awarding benefits appears to the employer to fulfil a business need.
- 3.2. Length of service can mean the length of time workers have been working in the same job or the length of time they have been working for the employer in total. The intention of the Age Regulations is that where employees transfer from one employer to another, service with the old employer and service with the new employer can be linked so that workers are not disadvantaged and can continue to qualify for benefits based on their overall length of service. Regulation 34 of the Age Regulations provides that this will happen where continuity of employment is preserved for the employees either under Article 14 or Article 190 of the Employment Rights (NI) Order 1996 (the "1996 Order"). Article 14 of the 1996 Order sets out the circumstances in which employment by

different employers will not break the continuity of a workers employment. For example, it preserves continuity if a trade or business or an undertaking is transferred from one person to another.

- 3.3. Civil servants transferring out of government departments or employees of non-departmental public bodies transferring back into government departments may not be caught by the provisions of Article 14 or 190 of the 1996 Order. Continuity of employment is not an issue when civil servants transfer between government departments because they have continuity of employment. However, where there is a transfer of staff from a Department to a non-departmental public body by way of a transfer scheme, their status as civil servants ceases. Article 14 of the 1996 Order does not provide for continuity of employment in these circumstances because there is no trade, business or undertaking which is being transferred.
- 3.4. The policy intention is to preserve the continuity of service when civil servants transfer to a non-departmental public body or employees of non-departmental bodies transfer back to government departments so that any pay or non-pay benefits they receive based on length of service can continue without the new employer contravening the Age Regulations. When the Age Regulations were being developed, it was the original policy intention to cover all situations in which continuity of employment is preserved when workers are transferred from one undertaking to another. The fact that statutory schemes transferring civil servants from government departments to non-departmental public bodies (and vice versa) are not covered is an unintended gap in the Age Regulations. The amendment provides that continuity of employment is preserved for the purposes of regulation 34 of the Age Regulations whenever it is expressly preserved in the legislation providing for the transfer of staff.

4. Consultation

- 4.1. The Regulations correct an unintended gap in the law. In view of the technical nature of the amendment, it was not considered appropriate to conduct a public consultation exercise.

5. Equality Impact

- 5.1. In accordance with its duty under section 75 of the Northern Ireland Act 1998, the Department conducted a screening exercise on the proposed legislative amendment. The amendment is technical and is intended to reflect the original policy intention of the Age Regulations which were subject to an Equality Impact Assessment.
- 5.2. The amendment to regulation 34 of the Age Regulations will ensure that civil servants transferring out of government departments or employees of non-departmental bodies transferring back into government departments are in exactly the same position as other employees when calculating length of service where continuity of service is preserved. The change will provide a differential impact, with benefits, for those persons with longer periods of service with the same employer. However, it is considered that benefits based on length of service which rewards loyalty, motivation and experience justifies this impact. This is in keeping with the policy

objective underpinning regulation 34 of the Age Regulations. In light of this, the Department has concluded that the proposal would not have significant implications for equality of opportunity and considers that an Equality Impact Assessment is not necessary.

6. Regulatory Impact

- 6.1. The proposed amendment does not affect business, charities or the voluntary sector. A Regulatory Impact Assessment was carried out on the Age Regulations.

7. Financial Implications

- 7.1. There are no associated financial implications with this Statutory Rule.

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 1998.

9. EU Implications

- 9.1. The Age Regulations were introduced in October 2006 to comply with the requirements of the age strand of the EU Employment Directive (2000/78/EC). These Regulations correct a drafting defect in regulation 34 of the Age Regulations.

10. Parity or Replicatory Measure

- 10.1. The corresponding Great Britain Regulations are the Employment Equality (Age) Regulations 2006 (Amendment) Regulations 2008 (SI 573/2008) which came into force on 6 April 2008. The GB Regulations contain two other unrelated amendments to correct minor drafting defects in GB's Employment Equality (Age) Regulations 2006.

11. Additional Information

- 11.1. Not applicable.