

Equality and Diversity Coming of Age

Report on the Consultation on the
draft Employment Equality (Age)
Regulations 2006

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Abbreviations Used for Respondents Quoted in the Report

ABI	Association of British Insurers
ACCA	Association of Chartered Certified Accountants
APL	Association of Pension Lawyers
ARPO50	Association of Retired and Persons over 50
AUT	Association of University Teachers
BALPA	British Airline Pilots Association
BA	British Airways
BCC	British Chambers of Commerce
BNF	British Nuclear Fuels
BRC	British Retail Consortium
BUPA	British United Provident Association
CBI	Confederation of British Industry
CIPD	Chartered Institute of Personnel and Development
CWU	Communication Workers Union
DLA	Discrimination Law Association
EFA	Employers Forum on Age
EFD	Employers Forum on Disability
EOLG	Employers Organisation for Local Government
ELA	Employment Lawyers Association
EEF	Engineering Employers Federation
ECNI	Equality Commission for Northern Ireland
EOC	Equal Opportunities Commission
ECU	Equality Challenge Unit
FSB	Federation of Small Businesses
FDA	First Division Association
GSK	GlaxoSmithKline
GMB	GMB (the name of the union)
GLA	Greater London Authority
ISC	Independent Schools Council
MCC	Manchester City Council
NATFHE	National Association of Teachers in Further and Higher Education
NAPF	National Association of Pension Funds
NASUWT	National Association of Schoolmasters Union of Women Teachers
PCSU	Public and Commercial Services Union
TGWU	Transport and General Workers Union
TAEN	Third Age Employment Network
TUC	Trades Union Congress
UNISON	Unison (the name of the union)
USDAW	Union of Shop, Distributive and Allied Workers

The Consultation Exercise with which this Report is concerned was the final step in the Government's exchange of views with employers, unions and other interested organisations and individuals before the Age Regulations come into force on 1 October 2006.

Chapter 1

Background

1.1 The European Employment Directive¹ was agreed between member states in 2000. In 2006 the Government is introducing legislation to bring into force the age strand of the Directive.

1.2 The DTI originally sought views on age discrimination laws for Great Britain by way of the “**Age Matters**” consultation which took place from July to October 2003. Drawing on the views expressed by respondents following that consultation the Department was able to finalise its policy and produce a set of draft regulations.

1.3 The consultation document entitled **Equality and Diversity: Coming of Age** was issued on 14 July 2005 and recipients were asked to respond by 17 October 2005. Around 2000 copies of the document plus the draft regulations and other related literature were distributed to individuals and organisations and published on the DTI website. 392 responses were received. The wording of the consultation document was intended to explain as fully as possible what the legislation would require and form the basis of the Acas Guidance which will be published when the regulations have been approved by Parliament.

1.4 We are grateful to all those who responded and close attention was paid to the views expressed both in fine-tuning the regulations and influencing the format and content of the forthcoming guidance. Overall, the level of support in principle for these new anti-discrimination measures is encouraging.

1.5 The **Coming of Age** consultation, with which this report is concerned, had the following aims:

- To ascertain whether the explanation accompanying each regulation was unclear on any issues in order that such issues could be addressed in the Guidance which is to be published by Acas in 2006.
- To give recipients the opportunity to comment on whether the detailed regulations are likely to give rise to significant practical difficulties
- To seek views on whether the draft regulations effectively reflect the policy set out in the consultation document.

¹ Employment Directive 2000/78/EC

1.6 This Report deals with the issues in the order in which they appeared in the consultation document. It reflects the range of responses received but makes no comment upon them. It does not contain any Government reaction to the issues raised, nor does it represent a Government response to the consultation.

1.7 The figures and the narrative are drawn from a combination of individual and institutional responses. Some respondents requested that their views should not be identified and they are not mentioned by name in the report or its annexes but, even where confidentiality is not an issue, not every respondent is cited in relation to each and every view they may have expressed. This is because, as was to be expected, in most cases the same or very similar views will have been expressed by several respondents. The names quoted give a flavour of the range and weight of opinions aired without being exhaustive. In general, those who are cited include organisations and employers who represent a large number of members or employees. Small businesses are also represented, either through a representative organisation or through individual response. Many respondents, submitted lengthy and detailed comments which were given careful consideration but could only be referred to in severely abridged terms in this report.

1.8 This time round, the emphasis had shifted from seeking views on basic policy to the task of gathering comments on whether the draft regulations and the covering narrative in the consultative document had been made sufficiently clear and achieved their goals. Responses to this consultation (392) fell not far short of those from the previous age consultation (427) despite the reduced number of consultation documents distributed in the first place (2000 as against more than 5000).

1.9 A large number of respondents made use of the response form provided which featured boxes for respondents to tick according to which one most closely represented their views. Some respondents were content simply to tick these boxes whilst others made use of the accompanying comments boxes to expand on their views. The numerical data drawn from the boxes ticked in the response form is summarised at **Annex A**. Not every respondent ticked every box and this accounts for the fact that totals do not always tally precisely. Many respondents did not make use of the response form but set out their views at greater length in "free format" responses. These responses are not necessarily reflected in the tabular summaries at **Annex A** but are quoted extensively in the text. Some respondents submitted both types of response and in those cases their responses will be reflected in the tables. In the narrative, the names of quoted respondents are given in **bold** typeface.

1.10 Some areas covered by the regulations provided more scope for comment and query than others. This Report provides a broad overview of issues raised rather than a detailed account of who said what. Some respondents are identified where it seemed appropriate and where the respondent had not requested confidentiality but, by and

large, responses have not in every case been identified with particular respondents.

Chapter 2

Numbers of Responses

2.1 As already mentioned, the number of responses received was 392 (organisations that responded and did not request confidentiality are listed at **Annex B**). Further details are given in the following tables. (See also paragraph 1.9 above.)

2.2 Responses by type of organisation or respondent

(All respondents - those who used the response form together with those who submitted free-form responses.)

Business Organisation	162
Public Body (incl non-departmental)	63
Educational	34
Trade Union	35
Legal	38
Member of the Public	60
Total	392

2.3. Capacity in which respondent replied

(Response forms only - 135 respondents made no use of the response form)

Capacity	Number	%
As an individual	51	20
On behalf of an organisation	137	53
As an employer	56	22
Other (or unknown)	13	5
Total	257	100

2.4. Some respondents indicated the size of their organization by ticking the appropriate box; these are summarised as follows:

(Response forms only- 109 respondents who used the response form did not tick this particular box)

Between 1 and 14 employees	10
Between 15 and 49 employees	8
Between 50 and 249 employees	10
250 employees or more	120
Total	148

2.5 Some respondents indicated which economic sector they represented by ticking the appropriate box; these are summarised below:

(Response forms only)

Electricity gas and water supply	2
Construction and/or building design	2
Communications	3
Wholesale and retail trade	8
Leisure – hotels, restaurants, pubs	-
Leisure – cinemas, theatres, museums	1
Leisure – other	-
Distribution/Transport	3
Financial and/or business services	13
Legal Services	3
Advice and/or information services	2
Public Administration	20
Education/training	18
Health and social work	8
Charity/Voluntary work	7
Other	26
Total	116

Chapter 3

Outlawing age discrimination

The Age Regulations will apply to all workers and to people who apply for work. In addition they will cover access to vocational training. The Age Regulations will prohibit direct and indirect age discrimination, harassment and victimisation. The regulations do not cover the provision of goods and services. The consultation document explained who would have rights and who would have responsibilities under the regulations.

Questions asked in this section were as follows:

3a: Is our explanation of who will have rights and responsibilities under the Age Regulations clear in the consultation document?

3b: Will our approach give rise to significant practical difficulties?

3c: Do the draft regulations reflect our policy, as set out in the consultation document, effectively?

Respondents welcomed the legislation in principle

3.1 This consultation on the draft regulations gave respondents a second opportunity to comment on the issues surrounding age discrimination and they again gave their broad approval in principle to the steps the Government was taking. The **Confederation of British Industry (CBI)** said that making the most of employees and attracting new workers was vital to the competitiveness of UK firms and that these regulations would cement changes already well under way in the workplace. One large organisation in the retail sector had found the consultation document to be very helpful in providing employers with an insight into how they should be preparing for the forthcoming legislation. The **Trades Union Congress (TUC)** and other unions also welcomed the proposed legislation albeit with certain reservations. The **GMB** union applauded the Government for its intention to undertake a discrimination law review with a view to implementing a streamlined Single Equality Act^{*}. A clear majority of responses indicated that the explanations of rights and responsibilities in the consultation document were reasonably clear, although one respondent commented that the consultation document and draft regulations might have been better cross-referenced to facilitate their being read comfortably in conjunction with each other.

Respondents perceived certain areas of weakness in the draft regulations

3.2 Despite the welcome given to the regulations in principle, respondents were by no means prepared to give them their unqualified approval and, from the summary table at **Annex A**, it was evident that considerably more respondents thought it likely that some of the measures would give rise to difficulties in their implementation than thought they

^{*} The Discriminatory Law Review will develop proposals for a simpler and fairer legislative framework to be delivered through a Single Equality Bill which will be introduced in Parliament by 2010.

would not do so. They cautioned that the regulations were unnecessarily complicated and, in certain areas, fell short of complying with the Directive. Many failed to see how they could be construed as consistent with the Government's "better regulation" objectives. Others felt that allowing for any general "objective justification" defence by employers with ageist policies was, to use the TUC's phrase, "highly regrettable." Areas of particular concern included the duty-to-consider proposals relating to workers wanting to continue working beyond the age of 65, the 5 year limit on length of service schemes that could operate without "objective justification" – in itself a difficult concept – and occupational pensions. These issues are dealt with later in this report. **Thompsons Solicitors** found the draft regulations not only unnecessarily complex but also unbalanced in that some areas were covered in great detail whilst in others there was a conspicuous lack of parameters and definitions. By way of example they said there was nowhere any definition of the key concept of "retirement" which was a word without any accepted common law legal definition.

3.3 **Age Concern** were of the opinion that the whole drift of the guidance in the consultation document sent the wrong (ie negative) message to employers (see also paragraph 3.18). The **Equal Opportunities Commission (EOC)** welcomed the regulations but said that they needed to be more sensitive to gender issues. The **Third Age Employment Network (TAEN)** said that statements by Ministers held out the real prospect of movement towards equality of opportunity but they emphasised that the guidance needed to include good examples that employers and employees could relate to. They didn't consider the examples in the consultation document met this requirement.

3.4 The **Union of Shop, Distributive and Allied Workers (USDAW)** welcomed the new measures on the grounds that they would give their members greater protection than they'd previously enjoyed, but they said that, on the whole, the regulations provided substantially weaker rights than were anticipated. The **GMB** too had severe reservations about a number of aspects of the regulations and thought that, in their current form, they would prove to be "toothless" in what they called the "fight against discrimination." One employer respondent complained that "every change means we pay out more to lawyers and consultants as the law is always ambiguous and case law and precedent prevail."

Working longer should be an option

3.5 The **EOC** emphasised that working longer should be an option and not the only viable route for a woman wishing to avoid living in financial difficulty after retirement. The **National Association of Schoolmasters Union of Women Teachers (NASUWT)**, **Transport and General Workers Union (TGWU)** and **UNISON** were among those who didn't want the legislation to put pressure on workers to work longer than they would wish to under the guise of "choice".

Regulations not consistent with other discrimination law

3.6 The **Employers' Forum on Disability (EFD)** were among those who were concerned over the significant differences they perceived between the draft regulations and the laws governing other forms of discrimination. They said the present draft regulations allowed greater scope for both direct and indirect discrimination to be objectively justified than was the case in other anti-discrimination legislation. **Leonard Cheshire** (voluntary sector employer) had concerns about employers being responsible for the actions of their employees. It should be made clear that this applies only where an employee discriminates against another person on the grounds of age in the course of their employment.

Single Equality body covering all forms of discrimination

3.7 The **EOC** were also among the many respondents who stressed the vital need for a Single Equality Body to support the legislation. **TAEN** called for the Commission for Equality and Human Rights (CEHR) to be strong, professional and proactive. The **Discrimination Law Association (DLA)** recommended that the CEHR's powers should extend to taking action against any advertisement that indicated an intention to discriminate on grounds of age.

Urgent need for guidance and transitional arrangements

3.8 The **CBI**, **Engineering Employers Federation (EEF)**, **Employers Forum on Age (EFA)** and the **British Retail Consortium (BRC)** were among those who said that it was vital that arrangements were put into place to avoid employers falling foul of the regulations as a result of requirements that "back-dated" to a period before the implementation date. The **Ford Motor Company** spoke for many in stressing the importance of making the guidance available at the earliest possible moment, as time was tight for training and re-educating staff. Side by side with this went the need for more information about transitional arrangements. As it stood, the guidance failed to explain what the position would be if, for example, staff were due to retire within a few days or months of the legislation coming into force. Might not these people be then eligible to make a claim if the proper newly introduced procedures had not been followed in the months running up to the commencement date of the new laws? A transitional period was vital if employers were to be protected from unreasonable claims. Another respondent complained that too little time had been allowed for properly educating managers and changing attitudes to age.

Impact of costs on employers

3.9 The **BRC** were very supportive of the legislation although it took the Government to task for "taking almost 2 years to decide upon the issue of the national retirement age" and it found other aspects of the legislation liable to create confusion. However, The **EEF** voiced concern at what they regarded as the onus being put on employers to bring about a cultural change which would place a financial burden on their members. They

said it was vital for the Government to bear its share of the costs involved in educating the workforce to move on from ageist culture. **Aegon UK** (part of the world wide Aegon Insurance Group) was concerned lest the extra financial burden put on employers should be such that it negatively affected their competitiveness. The perception that the legislation would be a burden on business was widely shared and was expressed by, among others, the **BRC**.

Consultation: Union Involvement

3.10 The **Communication Workers Union (CWU)** felt that this second consultation exercise had not allowed sufficient scope for it, and other unions, to influence the outcome of policies and they believed that the regulations now appeared to provide substantially weaker rights than those previously outlined by the Government – in particular they referred to Reg 98Za “dismissal on planned retirement date” which appeared to them to be very different from that contained in the previous consultation document. **UNISON** wanted to see union involvement in the compilation of advice that would be issued to employers in respect of the legislation. They expressed disappointment that some of the points they had raised in the previous consultation had not been incorporated into policy.

Statutory code of practice

3.11 **Age Concern**, the **Ford Motor Company** and many unions were alike in wanting to see a statutory code of practice enforceable in an Employment Tribunal in respect of age discrimination.

Employees reluctant to divulge age details

3.12 One respondent raised the possible difficulty that many employers would possess only inaccurate records of their employees’ ages (or might not even know them at all) and that in some cases employees themselves might be reluctant to provide their employers with this sort of information.

Educational considerations

3.13 The **National Association of Teachers in Further and Higher Education (NATFHE)** said that the guidance should make more reference to unions since, with no Commission yet in existence and no Statutory Code of Practice, the only way most workers would be able to challenge discrimination is with the support of their union. They also deplored what they called the “silence” from the Government about the meaning and implications of the new legislation for further and higher education institutions. They added that the sections in the consultation document on vocational training (3.1.25) and positive action (4.2.5) were vague and insufficient. They pointed out that the current rules on student loans were age discriminatory since they were not available to persons

aged more than 54. Others commented that there was a lack of guidance as to the extent to which the regulations covered adult learning.

Vocational Training

3.14 One respondent from the higher education sector went into more depth on vocational training. They said that the consultation document stated that it included 'vocational guidance, retraining and practical work experience' (3.1.1.) and that persons who applied for a place on a vocational training course would be covered (3.1.5.). The consultation document also said that it would be a wide concept and would include all forms of training and retraining courses, practical work experience and guidance that contributed to employability. It covered training provided by employers, further and higher education institutions and adult education programmes. The regulations themselves (regulation 19, (4)(a)) stated that the meaning of training is 'all types of all levels of training which would help fit a person for any employment'. This, said the respondent, was a very broad concept. Regulation 19, (4)(e)(a) appeared to exclude employers in relation to training for persons employed by him or her and regulation 22 implies that all courses offered by HEI's will be covered by the regulations. Some university respondents raised the issue of the fixing of a minimum age for admission to university. The **Bursars' Committee of Cambridge Colleges** thought that allowing very young people into university might present particular difficulties for colleges as residential institutions and that they could find themselves caught between age discrimination regulations and child protection legislation. The whole area required clearer definitions.

Adult Learning

3.15 The **TUC** said that community-based adult learning should be covered within the definition of vocational training. **Age Concern** thought that age discrimination in learning had not received adequate attention. They said the Department for Education and Skills should develop its own guidance and awareness raising activity. Another respondent wondered whether training providers would be liable to unfair discrimination in offering training place to certain age groups only – or would they be able to rely on the fact that they were only implementing a statutory regulation? The **CWU** wanted to know what action the Government would take to encourage older people to participate in training opportunities. **Help the Aged** said they were deeply concerned about the lack of clarity or guidance around the impact of the new legislation on adult learning. They said older people were both directly and indirectly discriminated against with regard to learning opportunities at present – a failing which would have major implications for the job opportunities of older workers in the future.

Rights of Students

3.16 In the opinion of one respondent, the rights of students under the regulations were

not sufficiently clearly stated. Section 22 of the regulations addressed higher education institutions' (HEI) functions as education providers but it was not clear whether section 19, relating to vocational training, also applied to HEIs (in relation either to their students or their staff-facing functions). One area, for example, which had not been addressed by the regulations was the position of students undertaking periods of work placement as part of a higher education course. In this case they queried whether the HEI would share liability with the workplace provider, and whether regulation 19 on vocational training would apply in place of or in addition to regulation 22. They said it would be helpful if the guidance on the final regulations could spell out more clearly what is meant by benefits in regulation 22(1)(c). In addition, it was not clear against whom and where a claim would be made in relation to a student's work placement.

Provision of Goods and Services

3.17 The **Association of Retired and Persons over 50 (ARPO50)**, **TAEN** and **UNISON** were among those who regretted that the legislation was limited in scope to employment and did not cover the provision of goods and services. The **GMB** wanted to see future legislation extended to cover these fields. The **CWU** echoed these views saying that the regulations (including those areas dealing with direct and indirect discrimination and harassment) should extend beyond the world of employment and apply to older people generally as important consumers and contributors to the economy. (See also paragraphs 4.11 and 4.12)

Guidance: More Positive Attitude Required

3.18 **Age Concern** found the whole tone of the Consultation Document wrong. It seemed to be accentuating things that employers will be permitted to do rather than focusing on what will be unlawful. Instead, guidance should set out a positive vision of age equality and include examples of good practice in achieving age diversity rather than concentrating on indicating the difference between "unlawful action" and "bare compliance." They said the adverse effects on individuals of unfair practices (even when these were lawful) should be highlighted along with the positive business case for embracing age equality. Anything that implied that some practices would be easier to justify than others should be excluded from the legislation. Others felt the balance of the document implied that 'ageism' was not as serious an offence as other 'isms.' Help the Aged said the focus on "potential legitimate reasons for discrimination" practically invited employers to justify age based practices. They said the evidence from employers about the commercial benefits of an age diverse workforce, and the extent to which these outweigh regulatory costs needed to be reinforced. The **Chartered Institute of Personnel and Development (CIPD)** commented that what was wanted was a list of what's not exempted rather than a long list of what is.

Civil Partners and Young people

3.19 The **Greater London Authority (GLA)** noted that the consultation document refers to 'spouse', unlike the regulations themselves, which also make mention of 'civil partners'. They believed that it would be helpful to remind users of the guidance that they now have to take civil partners into consideration. They also suggested that the guidance should make more mention of young people, who can also suffer from ageism, instead of referring repeatedly to older people – particularly with respect to harassment and recruitment and retention problems.

Recruitment of Young People

3.20 While on the subject of the recruitment of young people, **Centrica** said that employers tended to veer away from employing under 18s because they were not allowed to work certain shift patterns owing to working time restrictions on younger workers which derived from Working Time /Young Workers' Directives. They sought guidance as to whether a tribunal would be likely to accept compliance with the Working Time Regulations as objective justification, or whether "reasonable adjustments" in terms of resource planning would be required.

Agencies

3.21 A sizeable proportion of respondents foresaw a range of practical difficulties arising from the relationship between employers and agencies. There was concern over the lack of clarity in respect of the precise liability of individual employees for acts of discrimination/harassment etc and also to whom an agency worker who was suffering from such conduct might make a claim. **Age Concern** were worried that agencies were expected to rely on employers' assurances that age discriminatory elements included in their staff requirements was justified whereas guidance should point out that this was only reasonable where the employer could produce explicit evidence in writing to show why the restriction would be found lawful.

Partnerships

3.22 The **British Chambers of Commerce (BCC)** and a number of legal and employment law organizations as well as some partnerships such as **PricewaterhouseCoopers**, raised questions relating to the application of the regulations to partnerships. They were concerned that the regulations generally appeared to be treating "partnerships" too much in the same way as employer/employee relationships whereas there were in fact fundamental differences between them. In particular regulation 16 unlike regulation 7 dealing with applicants and employees, contained no provision relating to "partners" operating outside Great Britain. Nor was the position any clearer, it was said, with respect to overseas "partnership" entities based, for example, in the USA, which carried on business in the UK. The regulations should be clarified so that

a partner working overseas in a firm which had its head office or principal place of business in the UK would be protected by the regulations. Failure to do this would lead to overseas firms having an advantage over UK based ones.

Small Businesses

3.23 The **Federation of Small Businesses (FSB)** thought the complexity of the regulations posed particular difficulties for small businesses. They pointed out that in small businesses, flexible retirement was already common and had rarely given rise to problems. They said the regulations were viewed as yet another swathe of red tape to be cut through with new, unpleasant and expensive sanctions in the event of a wholly procedural artificial slip.

Volunteer Workers/postholders

3.24 **TAEN** and **Manchester City Council (MCC)** were among those in whose opinion volunteer workers should be included in the scope of the regulations. Another was the **TUC** who pointed out that Article 3 of the Directive included anyone undertaking an "occupation" of any kind which (they said) clearly included volunteer workers, postholders etc. **Age Concern** said that a wider range of examples was needed to explain in detail when unpaid volunteering constituted occupation, training or being a 'worker'. One respondent queried whether the term "worker" fell within the same definition as used in employment law (where they said it was differentiated from the term "employee").

Office holders and persons with dual roles

3.25 The **Employers Organisation for Local Government (EOLG)** said that some further consideration may need to be given to the case of office holders where there can sometimes be a crossover of responsibilities, which could include government departments, public authorities and others such as employers' organisations. They cited the case of the statutory role of Registrars who might be both employees of the Authority and office holders subject to control by the Registrar General (see also paragraph 7.9). They also noted areas of the regulations for which there was no corresponding explanation set out in the consultation document – they cited the example of the exception relating to work-related invalidity benefits.

Positive duty to promote equality of treatment

3.26 The **Public and Commercial Services Union (PCSU)** wanted to see public authorities use "contract compliance" methods to ensure that private sector employers performing work contracted out by these authorities were abiding by the age discrimination legislation.

Summary

3.27 Employers in general thought the regulations went too far whilst unions, organisations for older people and other organisations that were not primarily employers, were of the opinion that they didn't go far enough.

Chapter 4

Justifying Age Discrimination

Justifying age discrimination: 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 Regulation will be able to justify doing so, but only by reference to specific aims and only if it is appropriate and necessary in particular circumstances (“objective justification”). They will have to be able to produce supporting evidence if challenged: assertions will not be enough.

Questions asked in this section were as follows:

4a: Is our explanation of objective justification clear in the consultation document?

4b: Will our approach give rise to significant practical difficulties?

4c: Do the draft regulations reflect our policy as set out in the consultation document, effectively?

4d: Do you think that there should be a separate provision on genuine occupational requirements in the Age Regulations?

4e: Do you think that there should be a separate provision on positive action in the Age Regulations?

4.1 The responses in this section demonstrated broad acceptance of the explanation in the consultation document of the term “objective justification”, but this is not to say that respondents were unanimously happy about it. The concept proved controversial. A company in the manufacturing sector wanted to see clearer guidance as to how much evidence was needed to demonstrate “objective justification” and what evidence might consist of. Many respondents would have liked to have seen an exhaustive list of legitimate aims that would justify discrimination. One respondent spoke for many when she wrote, “The concept of justifying direct age discrimination is wholly unacceptable and unnecessary and inconsistent with other equality laws.” There was a fairly common perception that well-intentioned legislation was in danger of becoming seriously diluted as a result of too many compromises.

4.2 It was a frequent complaint among respondents who weren’t themselves primarily employers that there were too many scenarios where discrimination could be justified and which would therefore provide fertile ground for evasive tactics on the part of management. The **GMB** said the very concept of “justification” in relation to direct discrimination marked a major departure from established legal principles in discrimination law.

Economic Factors and Business Needs

4.3 The **AUT** felt that allowing for “economic factors” and “business needs” (consultation document 4.1.16) as possible grounds for “objective justification” was casting the remit far too widely and they did not believe it was in line with the Directive. The **EOLG** commented on the same issue. They said that paragraph 4.4.6 of the consultation document indicated that economic considerations would be relevant in connection with the provision of employment related insurance; this, they said, contradicted paragraph 4.1.16 which said that discrimination would not be justified merely because it may be more expensive not to discriminate. **Age Concern** said greater clarity was needed regarding what economic and cost considerations could be taken into account. The statement in the consultation document created uncertainty rather than clarity. This was a key issue because many justifications would be based, in essence, on costs. While they would have preferred that the principle of equal treatment should always trump financial matters, they accepted that case-law indicated that some justifications relating to the financial survival of an employer would be permitted (ie ‘costs-plus’ arguments). The Government needed to give a firm steer on the extent to which cost objectives may be taken into account.

Costs arising from insurance etc

4.4 **TAEN** said that the Regulations should make it clear that extra employment costs resulting from age-based differentials in goods and services integral to a specific job should not be grounds for an objectively justified exception. Age-based differentials in costs associated with driver insurance, frequency of medical check-ups etc can impact on the cost of an older or young employee. Cost alone is not admissible as a reason for an age-based employment decision, but there are bound to be practical problems where age-based costs or rules related to insurance etc impact on recruitment or retention for some employees.

Health and Safety

4.5 The **CWU** were prepared to countenance direct age discrimination but only in very restricted circumstances. One such would be where youth and lack of maturity were definite drawbacks such as in handling dangerous situations where health and safety were paramount. Another would be in enabling older people to prepare for their retirement. The **DLA** said that age should not be used as a short cut to avoid proper health and safety considerations concerning an individual’s capability. Age was not a proper substitute for a proper health and safety assessment. They said there were real dangers in assuming that because a person was above or under a certain age they were therefore “safe” and “not at risk”. As consciousness grew of the extent to which there was age discrimination in this area such assumptions would increasingly be challenged.

Justification: Definition of words and terms

4.6 The **Law Society** and the **First Division Association (FDA)** were among those who were concerned at the sheer complexity of the justifications and exemptions. The **Law Society** were not sure that the definition of “direct discrimination” (Regulation 3) fully transposed the Directive. Expanding on this they said that in regulation 3(1)(a) the wording is “on grounds of B’s age” whereas the wording of the Directive is “on the grounds of age”. This is wide enough to cover discrimination by A against B not only on the grounds of B’s age, or B’s presumed age but also on the grounds of another person’s age, or apparent or presumed age. The Society also thought that chapters 4 and 5 of the consultation document should have been preceded by an overview so that they were not read in isolation from each other.) The **FDA** were not alone in thinking that the broad range of “justifications” now envisaged by the regulations made it far harder for employers and employees to know where they stood. **USDAW** were not satisfied with the broadening of the scope of justifying direct discrimination so that now, they said, any direct age discrimination could be regarded as potentially justifiable. Nor did they consider that it was sufficiently clear what a “legitimate aim” might be – if it included economic factors and costs to the employer this would “seriously undermine” the intention of the legislation. Both the **GMB** and **FDA** said the regulations went beyond what was permissible according to the Directive.

4.7 There was more legal criticism of the consultation document for failing to address the question of how “objective justification” applied in the context of partnerships and Limited Liability Partnerships (LLPs). One example of a difficulty was that different firms set different requirements as to the length of post qualification experience a person needed to have before they could be invited to become a partner in a partnership. If this were to be challenged how would one company be able to show that it was “necessary” to demand 8 years experience when another partnership only required 7 years?

4.8 One individual respondent complained that the regulations were ushering in “one more grey area” by leaving the definition of “objective justification” to the courts. This was going to make it difficult to provide clear guidelines to employees. The terms “proportionate”, “proportionality” and “legitimate aims” (as in the test of objective justification which was given in the consultation document (4.1.1) and the phrase “pursuing a legitimate aim” had respondents wondering how they might be defined and how evidence in relation to them might be presented, if required, to an Employment Tribunal. The examples given (4.1.7) were found by some to be variously “too vague” or “forced and unfocussed” and phrases such as “one should not discriminate more than necessary” (4.1.20) only served to make the problem worse. **TAEN** were not alone in asserting that since none of the potential “legitimate aims” given in the consultation document had any clear legal status they should be dropped from the guidance that Acas would be producing. They also took issue with the term “vocational integration”

(paragraph 4.1.7 of the consultation document) and said that some agreed interpretation of this phrase must be reached before it was used in guidance. **Lewis Silkin** were also unclear what "vocational integration" meant though they assumed that it would include encouraging people at the start of their career to enter into their chosen field and excluding certain groups from employment for health and safety reasons. They said that statements referring to a "wide variety of legitimate aims" should not appear in the guidance. **Help the Aged** also wanted this terminology clarified.

4.9 Queries were raised as to how it might be possible to measure "appropriate" and "necessary" as used in paragraph 4.1.19. Nevertheless, the **Law Society** preferred the term "appropriate and necessary" to the slightly weaker and vaguer "proportionate" because it conveyed the important element of necessity. The **TUC** also drew attention to this point saying they felt the Government had deliberately imported the word "proportionate" because employers had found the word "necessary" too threatening. The **FDA** believed that the Government's interpretation of the Directive's requirements was incorrect and that the word "necessary" should not be sidestepped by the alternative "proportionate". There were those, too, who saw practical difficulties arising over providing adequate evidence to objectively justify different treatment on the grounds of age (paragraph 4.1.14). Another respondent wondered how the regulations would impact in areas where employees might be called upon to provide an emergency response, for example at airports. The **TGWU** thought that importing the (arguably vague) word "proportionate" had simply created an "additional hurdle for courts to argue about".

Separate Provision on Genuine Occupational Requirement (GOR)

4.10 Many respondents were in favour but most of these felt it unnecessary to enlarge further upon their choice simply giving the reason (if they gave one at all) of "for the sake of clarity" or to maintain a sense of consistency with other strands of equality legislation. Attention was drawn to the phrase contained in Regulation 8(2)(a) "a characteristic related to age" and it was suggested that this might be a further example of creeping "vagueness". **Age Concern** would prefer the phrase "age or apparent age". Another respondent commented that the regulations' failure to specify what was genuine or otherwise would make it virtually impossible for tribunals to determine whether a requirement was genuine or not.

4.11 The **GMB** said that, in the Directive, differences of treatment based on age were allowed where this constituted "a genuine and determining occupational requirement, provided that the objective was legitimate and the requirement proportionate". The draft regulations (they alleged) failed to specify that the employer's objective must be legitimate and so they should be amended accordingly. The **TUC** said they could not imagine many circumstances where GORs would be held to be justified.

Age and Commercial Strategies

4.12 It was felt in some quarters that (contrary to the example given in paragraph 4.1.18 of the consultation document) selecting younger shop assistants for a youth orientated clothing shop should be one of those situations where discrimination was justifiable. The **EEF** said that targeting a young age group for one's products was not age-discriminatory. The **Association of Chartered Certified Accountants (ACCA)** were particularly concerned with this aspect of the discrimination legislation. They said that selecting a target market based on age should be seen as no less legitimate than a target market based on geography or perceived customer wealth. That being so, it should be regarded as a reasonable commercial practice for high street fashion shops aimed at the young to employ young people since persons of that age group are likely to be best able to communicate with the target market. On a similar theme, **NATFHE** said that if "satisfying customer preference" could be deemed a legitimate aim this might present colleges with a problem. If, say, the majority of students in a college were under 25, and the majority of staff were over 45, would the expressed wish of the students to be taught by people closer to them in age be a justification for discriminating against all staff over 45?

4.13 A diametrically opposed view was taken by **Age Concern** who cited the clothes shop example as a demonstration of just how much of a widespread cultural change was necessary and that legitimate aims could (or should) not be related to age discrimination in the provision of goods and services. They called the shop example "pandering to the ageism of customers". The **GLA** thought the consultation document was self-contradictory because it said that possessing a "characteristic related to age" could be a genuine occupational requirement and this was at odds with the illegitimate objective used in the clothes shop example.

Company Directors

4.14 The **ACCA** drew attention to the fact that the proposed new company law reform bill would abolish the current 70 year age "cap" for service as a director of a public company but would introduce a minimum age of 16 for directors of companies. Guidance should make it clear that the 16 year threshold would need to be defended either as a genuine occupational requirement or on the basis of a legitimate aim.

Local Authorities

4.15 **MCC** pointed out that local government often had conflicting initiatives and obligations placed on it. For example the power to promote social and economic well-being, social inclusion responsibilities and the need for the workforce to represent the community which it served (as far as possible). The age profile of the **MCC** revealed a need for action with regard to recruitment and retention of younger workers and it was therefore considered that there should be a separate provision for GOR and positive

action including a provision for taking appropriate positive action in the fields of recruitment and training.

Separate Provision on Positive Action

4.16 Like the response on GOR most respondents said "yes" there should be separate provision and again the most frequent reason given was "for the sake of clarity". There was some focus on the phrase "it reasonably appears" in Reg 28(1). They asked what evidence would be regarded as sufficient to establish such a reasonable belief on behalf of an employer? Again, the **Law Society** thought that since the general aim of the legislation was to create a shift in attitudes towards older workers, the separate section on positive action, whilst not perhaps strictly essential was nevertheless helpful in this regard. **TAEN** sought a more precise definition of the term "positive action" itself. The **FSB** thought there should be a clearer distinction drawn between positive action and positive discrimination. They wondered how small employers could be expected accurately to determine what disadvantages are suffered by certain age groups in any particular business sector and, in turn, what action would be considered as justifiably compensating for this.

Positive discrimination for older workers

4.17 The **Employment Lawyers Association (ELA)** and **Lewis Silkin** expressed particular concern about regulation 3(2)(b) which, on the face of it suggested that older workers could be paid at a higher level or provided with certain benefits unavailable to younger worker with the sole intention of recruiting or retaining them. This appeared to suggest that it could be lawful to discriminate positively in favour of older workers. If this were so, would an employer be able to set a minimum age limit to appoint someone for a job on the basis that its aim was to recruit older people? The ramifications of this issue would be so fundamental that the **ELA** was "surprised that it was not addressed in more detail in the consultation document". They proposed that regulation 3(2) be removed.

Recruitment: Age on Job Application Forms

4.18 **Help the Aged** were firm supporters of the idea that age should not be included on job application forms and they supported what the consultation document said about the advisability of moving questions about age on job application forms to a separate diversity monitoring form so that the views of those vetting the forms might not be swayed by prejudices about age. However, the **Independent Schools Commission (ISC)** pointed out that this was not appropriate in the case of schools because the **Bichard** recommendations from the **DfES** recommended that application forms for teaching posts should seek the applicant's full history including their age. In any case it was clear that a full history would pretty much give away an applicant's age even where their date of birth remained absent from the form. They suggested that the **Acas** guidance should be strengthened to indicate that employers recruiting individuals to

work with vulnerable people should not be deterred from asking for this information.

Recruitment and Selection

4.19 The **PCSU** objected very strongly to the provision in the regulations that excluded people over 65 from the protection from age discrimination in recruitment and selection for jobs. Many other unions took the same view. **Age Concern** said there was no case for permitting employers to refuse to recruit new employees aged over 65. However, if the measure was to be retained it should apply only to applicants aged over the employer's normal retirement age, and the case for including a "duty to consider" procedure should be explored.

4.20 The **FSB** said length of experience was often required in recruitment and by definition experience would put particular age groups at a disadvantage. It would, however, be unrealistic to see references to experience removed from job application forms. (See also paragraph 6.11)

Promotion

4.21 **Ford** said that, in common with many other companies, their selection process for moving hourly paid employees between jobs had a length of service element to them – so called "service based progression or seniority". If, as seemed likely, seniority based job selection practices would be deemed indirectly age discriminatory the regulations, which were currently silent on the matter, should say so.

Youth Programmes

4.22 **Ford** also raised the question of programmes such as the one they ran for school leavers. Whilst admitting that it may be possible to "objectively justify" this type of programme under the regulations as they now stood, it seemed to the Company that a safer course of action for it to take would be to discontinue them now. The Company suggested that there should be a specific exemption for this type of programme. The **EOLG** commented that the Modern Apprenticeship framework was clearly based on an intention to discriminate against persons over 25. They queried whether an employer with modern apprentices would be protected by virtue of statutory authority.

Graduate Recruitment Schemes

4.23 The **Institute of Practitioners in Advertising** said the majority of newcomers to their industry joined via graduate recruitment schemes of one sort or another. And while the regulations stated that so-called "milk rounds" would be able to be maintained, specific guidance was required on the circumstances in which such schemes would be able to continue to operate.

Chapter 5

Exemptions

Service related pay and benefits

The Age Regulations cover the use of length of service as a criterion for awarding or increasing benefits in specified circumstances. This can amount to indirect discrimination because some age groups are more likely to have the necessary length of service than others. It is intended to exempt any length-of-service requirement of 5 years or less and any benefit that mirrors a statutory benefit.

Questions asked in this section were as follows:

5a: Is our explanation of pay and non-pay benefits under the draft Age Regulations clear in the consultation document?

5b: Will our approach give rise to significant practical difficulties?

5c: Do the draft regulations reflect our policy as set out in the consultation document, effectively?

5d: To ensure the Age Regulations do not discourage employers from using the development rate of the national minimum wage, they will allow for certain exemptions. As they stand do the draft Age Regulations achieve this effect?

5.1 Here again the majority of respondents found no serious problems with the explanation of pay and non-pay benefits under the draft regulations. Most found them clear enough though the “5 year rule” (limit on service related benefits not requiring justification) proved controversial and many respondents accused it of being purely arbitrary. The **TUC** doubted whether it complied with Article 6 of the Directive and said employers should be wary of relying on it. They thought it would be preferable to leave it to employers and unions to reach collectively agreed solutions that would themselves need to be considered on a workplace basis whether or not the objective justification test in Article 6 was satisfied. The **PCSU** said their aim was to see pay progression systems that provided the shortest and quickest route possible to reflecting an employee’s effectiveness.

5.2 The “5 year rule” was frequently deemed acceptable as far as it went but many respondents went on to say that, beyond that period, the situation was left confusing and unhelpful with no clarity as to how to defend service related benefits for longer periods. What would the burden of proof and level of evidence be? Awaiting case law for guidance was not feasible when talking about potentially having to change terms and conditions for a whole business. The **EFA** said that where employers feared challenge and did not believe they would be able to produce adequate evidence – they would be tempted to terminate their present arrangements. The **AUT** were “generally comfortable” with the 5 year rule but believed there was too little detail about which service related benefits would be covered as it was not proportionate or justifiable for all of them to be exempt. **Kent and Medway Fire and Rescue Authority** reminded the Government that long pay scales were still used quite widely in local government and might prove costly

to bring into line with the regulations. On the other hand, the **MCC** detected a move well under way already towards progression based on performance appraisal and competency pay, rather than automatic progression based on age. They were more dubious about the future of other forms of long service awards such as additional leave after 20 years and long service awards after 25 years.

5.3 The **Liverpool Law Society** remarked that the consultation document was unclear at paragraph 5.1.17, which they considered reflected some confusion in Regulation 32 to which it referred. Regulation 32(2) suggested employers could choose whether to use an individual's various posts for the purpose of using a 5 year service related pay scheme, whilst 32(3) stated that an employer "shall take account of all the worker's length of service" up to a maximum of 5 years. The same respondent said they were also not sure why a 5 year period was chosen and how it was to be calculated. Reg 32(3)(b) included the phrase "absent from work" and if this were to be discounted it could discriminate against individuals on maternity leave or long-term sickness. **BRC** also queried how sick pay arrangements would fit in – particularly with respect to the period of transition. They urged clarification of this as soon as possible – before the end of 2005. The **EEF** said regulations 32 and 33 should be extended to cover all service-related employment decisions and not just the award of benefits. They also believed that it was in the interest of all parties in redundancy selection procedures for the use of length of service to be explicitly permitted on the face of the regulations, whether that service was in a particular job or with a particular employer. The **BCC** thought the rules were far too involved for the small employer to be expected to grapple with. The **National Association of Pension Funds (NAPF)** said that the draft regulations did not appear specifically to exempt benefit formulae based on a combination of age and length of service. The Government should provide clarification as to whether reliance on two separate exemptions, the one for age and the one for service, was sufficient. If it was not, an additional exemption for such benefit formulae should be added.

5.4 **Age Concern** said that the Government needed to set out the rationale for its exemption for invalidity benefits and develop guidance. It should confirm publicly that the current upper age limit for Statutory Sick Pay would be removed. The **EEF** was unclear what was intended to be covered by/excluded from "work-related invalidity benefit schemes". The **ELA** noted that "invalidity benefit" was defined widely and, as defined, would seem to include, for example, both contractual sick pay and permanent health insurance schemes. Whether or not this was so should be clarified.

5.5 The **Law Society** saw difficulties looming with this whole area of regulation saying it was likely to give rise to any number of test cases and thus generate its own body of case law. The rules for determining length of service for the purposes of the 5-year exemption they considered particularly difficult. They also noted that regulations 32 and 33 referred only to "benefits", which term is normally taken not to include pay. This was unnecessarily confusing.

5.6 The **BRC** said that the Government had given no plausible reason as to why it had chosen 5 years as the cut off point. They feared this might be an example of "gold plating" the Directive. They said that if the regulations were not changed to make service related benefits beyond 5 years exempt, there should at the very least be comprehensive guidance that clearly and unequivocally outlined exactly how a company may justify a length of service benefit that goes beyond 5 years.

Partnerships

5.7 The "5 year rule" was also challenged with respect to its application to, and impact on, "partnerships" and LLPs. The "lockstep" principle was explained in which, as partners accumulated years of service as a partner, they progressed up a profit sharing and ownership "ladder". This practice discriminated against younger partners, but if the regulations were held by a court to apply to it (as they well might) and "lockstep" were to be declared unlawful, the result would be commercially catastrophic. The legal practitioners would like to see the whole practice of profit sharing exempted entirely from the regulations or, failing that, partnerships not being required to show that their arrangements were "proportionate" to achieving the aim of encouraging motivation etc.

Concern over "levelling down" of benefits

5.8 The **CBI** were firmly of the view that implementing the regulations as they stood would cause employee relations difficulties and have the serious unintended consequence of forcing employers to level down their length of service benefits. Regulations 32-37 exempted only length-of-service benefits based on less than 5 years service (or if they mirrored a statutory benefit) The **CBI** said that this left other benefits having to be justified under the "general provision" which failed to give employers the clarity they required on this issue. Forcing employers to justify their schemes under a general provision rather than a specific exemption would leave companies liable to claims of discrimination. The possibility of a challenge might encourage employers to withdraw benefits altogether. Instead, the **CBI** suggested a full exemption of these benefits from the remit of the regulations. In support they quote a precedent under EC law which determined that an employer "...does not have to provide special justification for recourse to the criterion of length of service." The **EOC** pointed out that any pay/benefits practice that took length of service into account could amount to indirect discrimination against women and nothing in the age regulations could make a practice lawful if it was unlawful under the Equal Pay Act/Sex Discrimination Act. Only 27% of female workers had service of 10 years or more compared with 34% of male workers.

5.9 The **GMB** and **TGWU** were also concerned that service benefits might be levelled down and they saw difficulty over benefits that were aimed at rewarding "loyalty". They thought the concept of "loyalty" (see paragraph 5.1.8 of the consultation document) might be confused with long service thus making a nonsense of the legislation. For that

reason they wanted it removed. Nor did they look favourably on the exemption of length of service benefits that mirrored a statutory benefit if this was meant to include social security benefits because, as they saw it, social security benefits were themselves “riddled with unjustifiable age bias.” The **FDA** said levelling down should be specifically prevented by a “no levelling down” provision incorporated into the regulations.

Group Risk

5.10 On the issue of work-related insurance the **CBI** thought that key group-risk products such as those insuring life, income protection and critical illness policies should maintain the right to use age as an objective part of their price calculations. The calculations were based on actuarial evidence and were necessary for the continuation of affordable risk benefits. The Confederation urged the Government to recognise this in the regulations. They also drew attention to the fact that many pay and other contractual matters were based on agreements negotiated with unions and the implementation date of October 2006 might not fit well with annual bargaining schedules. **Age Concern** took a different view saying that it was “vital that the guidance lays to rest any fears about the high costs of insurance for older workers”. In most cases they said there is little evidence for these claims. If this “myth” is not tackled, misinformed employers will decide to retire employees at 65 rather than expose themselves to higher insurance costs and legal challenges. Another consultancy submitted a very detailed response which highlighted a number of significant issues pertaining to group risk insurance and said steps should be taken to ensure that the unintended consequences of the legislation (such as employers levelling down the provision of benefits) did not result in undermining the current level of employee benefit provision in the UK which would have knock-on effects for the whole economy. (see also paragraph 7.6)

Collective Agreements

5.11 **Amicus** thought an addition to the regulations was required to protect workers’ existing benefits and stop employers removing or downgrading employment benefits that formed part of a collective agreement.

5.12 One respondent was not alone in fearing that these regulations risked “reinforcing the UK’s deeply segmented labour market, creating further resentment of older workers and yet more prejudice.” Another complained
“I only understood about half – the whole thing needs to be far clearer and simpler!”

Statutory Authority Exemption

5.13 Paragraph 5.3.2 of the consultation document said that employers who had to comply with age criteria built into statute needed have no fear that in doing so they would violate age regulations. The **TUC** said that they did not understand the need for an express general statutory authority exemption (regulation 26). This was not now

provided for in other equality legislation and the policy objective was not clear, and neither was the justification for such a sweeping exemption.

National Minimum Wage

To ensure that the Age Regulations do not discourage employers from using the development rates of the NMW, they will allow for certain exemptions. As they stand do the draft Age Regulations achieve this effect?

5.14 Misgivings were expressed over the arrangements in respect of the National Minimum Wage. The **Low Pay Commission (LPC)** foresaw possible difficulties for companies which operated age-based structures for young people other than those enshrined in the National Minimum Wage legislation by virtue of which they would be protected by the age regulations. The Guidance would need to spell out more clearly that reward systems that determined pay according to age would not be covered by the minimum wage exemption unless they adhered to the minimum wage profiles. The **TGWU** said that as a measure to outlaw age discrimination this legislation utterly failed.

5.15 The **CBI** considered that the regulations failed to exempt employers paying differential rates over the minimum levels and this presented a serious problem. In their opinion there should be complete exemption for differential rates for young people and apprentices and this would at a stroke remove all confusion surrounding this area. They continued to believe that lower rates for young people provided clear incentives to employers to take on younger workers who were thereby given the opportunity to acquire workplace skills that they might not otherwise have obtained. Summing up, the **CBI** believed that it should remain possible to pay different rates to employees in different age bands even where they are being paid at a level above the adult minimum wage.

5.16 It was a commonly held belief that the regulations might have the effect of discouraging firms from paying more than the bare minimum rates. The unions were practically as one in their conviction that workers aged 18-21 should be able to claim the adult rate of pay in their particular job or that age related provisions should be done away with altogether. Fears were expressed that in some cases adherence to the regulations would lead to 21 year old workers actually having to take a pay cut. The **CWU** believed that workers in the 16/17 year old age bracket should receive the same wage rate as older workers if they were doing the same work. They referred to a movement already under way across industry for pay to be competence based rather than age based. (see also **MCC** comments at paragraph 5.2) However the union did agree that it was reasonable for an employer to restrict access to some jobs on age grounds where the operation of dangerous machinery or vehicles was involved. The **GMB** said that many of the firms with which they negotiate were readily agreeing to eradicate age rates from their pay structures.

5.17 The **BRC** said that no retailer wanted to be a minimum wage employer and in a tight labour market they competed by paying young workers more than the basic rates. The regulations as they now stood would seemingly penalise them for doing this and leave them with unpalatable and costly choices such as increasing the pay of 16-21 year olds to the same level as 22 year olds. They said that as the principle of different age bands is not deemed to be discriminatory for the purposes of the minimum wage, employers should be allowed to maintain age differentials even if the wages paid are above the adult minimum wage level.

5.18 A large company in the retail sector said that if they were obliged to increase the pay of younger workers to parity with adults, the move would cost them around £14 million. The **CIPD** said that greater clarity was required as to how the minimum wage proposals would interact with apprentice schemes. Another large retailer said that 16 and 17 year olds are paid more than the minimum rate based on their performance. This practice might have to stop under the new regulations. They urged the Government to rethink their approach.

Chapter 6

Retirement

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. Lower retirement ages will be possible if the employer can objectively justify them.

Questions asked in this section were as follows:

6a: Is our explanation of retirement (including retirement age, "planned retirement" and the duty-to-consider procedure) under the draft Age Regulations clear in the consultation document?

6b: Will our approach give rise to significant practical difficulties?

6c: Do the draft regulations reflect our policy as set out in the consultation document, effectively?

6d: Are the various deadlines and time periods set out in 6.2 and 6.3 of the consultation document for planned retirement and the new "duty-to-consider" procedure appropriate and workable?

Retirement: Default Age

6.1 Many of those who commented from the union point of view on the default retirement age (DRA) found the evidence for it weak and appearing to favour the convenience of employers. As a result of this weakness, employers would be likely to pay no more than lip service to the "duty to consider" rule. Another respondent said there was a certain negativity implicit in the DRA which suggested that retirement at 65 was the norm and that employees over that age were retained on sufferance. The **DLA** thought that, if there was to be a default age at all it should have been set at 70, but they favoured its automatic abolition from October 2011. One respondent considered that the decision to review the default age in 2011 was simply an indication that the Government realised it was on "shaky ground". **Help the Aged** were emphatically against the default age, which they regarded as a retrograde step, which undermined the principle of equality. They thought that too many people might assume the default age amounted to a mandatory age for retirement. Despite all this, the reaction was generally muted and most seemed to accept that this area of the legislation was now settled. **Amicus** provided some union support for the DRA, but overall there was a feeling that a system based on worker choice and financial circumstances would be preferable to one based on a default age.

6.2 On the whole, employers and employer organisations such as the **CBI** held firmly to the belief that the right to retire staff at age 65 remained a vital management tool and that the proposals allowed the possibility of too many challenges to planned retirements on the grounds that the dismissal was for some reason other than retirement. However, they accepted that employees staying on at work beyond the age of 65 should retain their unfair dismissal and redundancy rights. **Aegon UK** were happy that the default age had been fixed at 65 rather than 70 and that there was an opportunity provided by the regulations to retire an employee at a younger age than 65 if it could be objectively

justified. One respondent described the whole procedure as “just another way for employees to cause problems for employers and hold them to ransom!” The **CIPD** pointed out that other countries, such as New Zealand had abandoned mandatory retirement without suffering any ill effects.

Retirement and Unfair dismissal

6.3 The unions in general thought the regulations applying to retirement and unfair dismissal were too complicated and unfair. “Planned Retirement” was seen as providing a convenient loophole through which employers would be able to avoid redundancy and unfair dismissal claims. The **GMB** saw the decision to allow a DRA of 65 as “further testament to the claim that the regulations fundamentally failed in their objective of implementing the Directive.” They (and **Age Concern**) said they did not buy the argument that the default age was necessary for workforce planning and nor did they see what possible additional evidence was likely to have emerged by 2011 – the date of the proposed review. **TAEN** wanted further explanation as to how the DRA could be thought to be compatible with the Directive and of the risk that policies might have to change in response to legal challenges.

Retirement and Redundancy

6.4 In common with other employers, **Ford** said it had always sought to manage necessary reductions in its workforce by offering voluntary severance packages to employees of pensionable age with the enhancement of a non-actuarially reduced pension and other separation benefits. If this, as seemed likely, were to be regarded as age discriminatory then companies could be faced with the anomalous position of making reluctant employees compulsorily redundant whilst at the same time declining to accept volunteers of pensionable age who did wish to leave the company. **Leonard Cheshire** said that the Consultation document made no reference to the “Last In First Out” selection criteria for redundancy still used by many organisations. As this was likely to be indirectly discriminatory it would be helpful if the Acas guidance commented on the practice.

Retirement and detriment

6.5 The **CWU** were concerned that the regulations did not make it clear whether employees would be able to maintain the same terms and conditions after the age of 65 as they had enjoyed prior to reaching that age. Employers might be tempted to bring in short-term and fixed-term contracts with reduced employment rights. **NATFHE** said that the right to continue with the same terms and conditions should be made explicit in regulation 51. The **TUC** said that those below current normal retirement ages would be worse off under the new laws than they were at present. The **Equality Commission of Northern Ireland (ECNI)** commented that the DRA was institutionalising age discrimination at the heart of statutory provisions which were supposed to be eliminating

age discrimination. They said that if retirement by “default” was likely to enjoy a high degree of protection why should employers bother to plan for a more flexible approach towards retirement?

6.6 The **EEF** raised many questions over the issue of retirement and unfair dismissal which they found not only extremely complicated (contravening Better Regulation principles) and unfair to the employer, but fraught with practical difficulties including a failure to protect employers from “unmeritorious challenges”. They were also worried about the “insecure foundation” upon which the policy was based. To their mind, where an employee was reluctant to retire, enforced retirement amounted to a dismissal thus giving employees plenty of possible grounds for challenging the retirement.

6.7 The **BRC** was another respondent who found the regulations unnecessarily complex and were of the view that this complexity would only serve to encourage employees to initiate grievance and other procedures. Indeed the **BRC** thought that many employers would simply apply the default retirement age to everyone as a defence against possible claims for performance dismissal/redundancy. The **BCC** was concerned at the 6 week notice period and **BRC** in, common with many others, wanted a 3 month rather than 6 weeks period for employees to have to declare their retirement plans. The **FSB** suggested 6 months. They also wanted a “planned retirement” made an automatically “fair dismissal” and sought further clarification surrounding the burden of proof in this area.

6.8 The **EOC** was disappointed with the introduction of a default retirement age and voiced its concern that the question of pension provision was inextricably linked to the issue of mandatory retirement age. This was of particular concern to women since women’s retirement income is only 57% of a man’s and less than 16% of women receive a full basic state pension based on their own contributions. **Age Concern** said that workers with a current retirement age of more than 65 would actually have their protection against discrimination reduced and that this would render it unlawful.

6.9 More detailed questions were raised by **GlaxoSmithKline (GSK)** who, whilst generally happy with the planned retirement process, had some concerns over clarity. They were, for example, worried that where a retirement was followed by a work reorganisation – it might be seen by a tribunal as if the reorganisation was the real reason for the retirement and that the “retirement” was, in reality, a redundancy. They could envisage a similar problem arising where a new staff member was brought in at some point before an impending retirement to “shadow” the person whose retirement was in the offering, then, when the retirement occurred there would be a fall in staff numbers – was there a danger that this could be seen as evidence of a redundancy situation? The **Law Society** found the chapter on retirement less successful than the rest of the guidance and thought it could do with more examples.

Recruitment of older people

6.10 The **Law Society** drew attention to the need for guidance to be clear about the application of regulation 7(4) which allowed employers to decline to employ persons who were older than the default retirement age. **USDAW** and **TAEN** also picked up on similar points, saying that the rule operated to exclude everyone aged 65 or over from challenging discrimination in respect of recruitment when applying for any job.

6.11 **Thompsons Solicitors** did not accept that there was any valid legal justification for the exclusion of persons aged 65 and over from protection in the recruitment process. They described it as an arbitrary cut-off point which sat uncomfortably with the demographic need to encourage more older skilled workers into the workplace. They said there was no explanation of the policy or evidence provided in support of it. There was a real risk that it would be held to be in breach of European law. In their view it directly conflicted with Recital 8 of the Directive which stated that a priority of the European Council was “the need to pay particular attention to supporting older workers, in order to increase their participation in the labour force.” Further, it also appeared to conflict with paragraph 3.2.6 of the consultation document which stated that “it would constitute direct age discrimination if an employer applied age limits for recruitment or promotion (without justification)” They said it was ironic that a person aged over 65 who was discriminated against could bring a claim on the grounds of sex, disability, race etc...but not age.

Retirement: Planned Retirement

6.12 The **CWU** and **TGWU** said the regulations appeared to be saying that retirement would be a reason for the dismissal so long as the employer gives 6 month’s notice. In this case all protection is removed from dismissals that are notified retirements. One problem envisaged by an individual respondent was that older workers who suffered from a sudden illness or disability might be prevailed on to agree that it was “time to call it a day” and retire when they should be fairly dismissed according to the proper procedures. The **TUC** was among those who believed that 6 months notice of a “planned” retirement was not sufficient for employees to review and organise their financial circumstances and future plans and that at least a year’s notice should be given. **Age Concern** was “delighted” by the introduction of planned retirement which would give employees over the age of 65 greater job security but they said the guidance should offer further examples of situations in which an employer would be likely to fail to satisfy a tribunal that a planned retirement was genuine. The **CIPD** had come to the conclusion that the concept of planned retirement was a hollow bureaucratic nightmare and was neither necessary nor useful. The **CBI** said that tightening up the regulations surrounding planned retirement would increase employers’ protection which was needed to avoid unnecessary tribunal cases. (see paragraph 8.8)

Retirement: Duty to notify

6.13 The **EEF** saw problems with the duty to notify and themselves provided a model form for employers to use to comply with the duty. One such problem would arise when an employer simply assumed an employee would retire on reaching their contractual retirement date and the idea of having to “dismiss” them has not occurred to him or her. Government guidance should ensure that employers who intended the employment of an employee to terminate by reason of retirement were made aware that they must comply with the notification provisions. Finally, the **EEF** could not see the difference between the examples on pages 64 and 70 of the consultation document, both of which were concerned with retirement.

Retirement: Duty to consider

6.14 Unions thought the “duty to consider” rules were too weak and, combined with the default retirement age, would prove ineffective in encouraging employers to retain those who wish to work beyond the age of 65. The **TUC** didn’t see how the duty-to-consider procedure could operate effectively without any obligation on the employer to give reasons for refusals. The **CBI** thought that the regulations required redrafting to ensure that the decision after the duty-to-consider procedures had been carried out were not challengeable at a tribunal. Another respondent saw possible “particularly serious consequences” for small firms over the obligation on employers to advise workers of their right to request to go on working beyond the age of 65. It was also thought that phrases used such as “consider seriously” and “in good faith” in paragraph 6 of schedule 7 of the draft regulations could do with more precise guidance as to their exact meaning. The **FSB** wanted the duty-to-consider procedure to be removed in its entirety and they and the **Women in Business Association (Birmingham)** were among those who wanted the onus of raising the question of working on beyond retirement dates shifted from the employer to the employee.

6.15 The **GMB** pointed out that with no appeal possible against a refusal, decisions taken on the basis of erroneous facts or misunderstandings would never come to light. The **GLA** and **TAEN** were among those who thought the absence of a requirement on employers to give reasons for refusals should be re-examined. **Age Concern** wanted to see a bar on employers imposing reduced terms and conditions as a price for accepting requests. The **AUT** dismissed it as a bureaucratic exercise heavily weighted in favour of the employer, said it represented a serious detriment to employees’ rights and should be amended. **UNISON** was generally of the same mind as other unions in questioning the duty to consider mechanism, but they welcomed the fact that employers who wish to set a retirement age below 65 would still be able to do so, so long as they could satisfy the general tests of objective justification.

Retirement: Appeals

6.16 One respondent, the **NASUWT**, referred to regulation 7(9) of Schedule 7 which stated that the appeal hearing against a retirement/dismissal need not take place before the “dismissal” takes effect. They said that in practical terms this would mean that after a person had retired (possibly with retirement party and gifts!) the employer would only then decide whether the appeal should be accepted. In these circumstances it was highly unlikely that the employer would agree to a return.

Retirement: Differential Treatment

6.17 One common problem that respondents could see coming was where, in response to requests to be allowed to continue working, agreement was forthcoming for one worker and not for another. The aggrieved worker would then be tempted to take action on the grounds that his (or her) removal must have been on some other grounds such as because they were less efficient or more forgetful than the worker who was allowed to stay on – otherwise, why the difference in treatment? But, coming at the same problem from a different standpoint, another respondent said that in these circumstances it would in fact be very difficult for the aggrieved employee to take any action to prove their performance or health was the main factor in the decision.

Retirement: Fixed Term contracts

6.18 A number of respondents said it was unclear how employees who were approaching the default retirement age whilst on short-term fixed contracts would be affected and what rights they would have; for example the need to discuss retirement 6 months before the retirement date.

Retirement: Time Periods

6.19 A further issue of concern to some was the imbalance between the minimum 6 month period prior to a retirement that an employer had to remind an employee of his/her right to request to work beyond the retirement age and the minimum period of only 6 weeks before the retirement date that an employee was required to make their intentions known. In the view of the **Liverpool Law Society** employees should have to make a decision within 28 days of having been notified of their right. (The **EEF** suggested 2 months after notification and no later than 4 months before the retirement date.)

6.20 Another idea put forward was that once a decision has been made an employer should not be required to go through the procedure again. It was pointed out that a 6 month notification period would, in any case, be impossible where the revised retirement date is not more than 6 months after the original intended retirement date. The 6 week period also came under attack from a company in the financial sector who said that it

would make succession planning very difficult – especially in respect of senior staff. They suggested differential periods of 6 months for senior staff and 3 months for staff in less senior positions. The **ISC** and many others also backed a 3 month period. The **TUC** and **Age Concern** were among those who thought the maximum compensation of 8 weeks pay for failure to inform of the duty-to-consider was not commensurate with the infringement and undermined the process.

6.21 The **CBI** was concerned at the confusing proliferation of time periods surrounding the planned retirement/duty-to-consider proposals. They suggest that matters would be a great deal simplified if a standard period of 28 days applied to paragraph 6.2 of Schedule 7 of the regulations (re time limit to hold an initial meeting) – *no period mentioned at present*.

- Paragraph 6(5)(b) of Schedule 7 – *2 months at present*

- Paragraph 7(3) of Schedule 7 – *14 days at present*

- The 6 week minimum period for an employee to announce their decision about whether they want to work past 65 or not was too short. They, like the **ISC** and many others, were supporters of an alternative period of 3 months.

6.22 The legislation currently laid down that following a duty-to-consider meeting the employer had to inform the employee of the decision within 2 weeks. According to **TAEN** this period should be increased to 3 months (and the penalty for not giving timely notice (8 weeks pay in the regulations) should be increased (they did not say to what.) The **FDA** thought the minimum period for notifying an employee of impending retirement should be 1 year rather than 6 months.

Retirement: Mutual Consent

6.23 In paragraph 6.1.17 of the consultation document it was stated that where retirement was by mutual consent there was no need to follow the procedures in the regulations. The **ISC** thought further guidance was needed to cover the possibility that an individual might suddenly change their mind about the mutually agreed date and request to stay on. The employers would then be in difficulties because the correct procedure – i.e. the 6 month notification period - would not have been adhered to correctly. Another respondent wondered how the legislation would affect age-based voluntary retirement i.e. at 55.

Retirement for Airline Pilots

6.24 The **British Airline Pilots Association (BALPA)** and **British Airways (BA)** both raised a problem peculiar to their industry and pertaining to retirement ages above 60. Many countries, including France and the USA, had an age restriction of 60 for their own pilots and for any pilots overflying their territory. They said the Government should press to have these restrictions removed at the earliest opportunity. **BA** also raised the question as to whether their foreign overseas staff were protected.

Retirement and Pensions

6.25 The **GMB** wanted the regulations and the guidance to articulate more explicitly the difference between retirement age and pension age. They wanted to guard against any nascent trend for occupational pension schemes to increase their existing normal pension age to 65. **Age Concern** said that no employee should be barred on the grounds of age from accruing pension rights. It should be illegal for an employer to stop funding a pension because of an employee's age (ie by refusing to continue contributing if the employee works on past normal pension age and defers their pension.)

6.26 The **EFA** found many areas where the guidance should be clearer including the ability to continue to use "golden numbers/ages" for members who joined a scheme before 1 Oct 2006; ability to continue to operate bridging pensions for members who joined a scheme before 1 October 2006 and exemption provision of lump sum benefits for ill health retirements. The **Third Age Foundation (TAF)** said that any attempt to decouple retirement and pension ages would be doomed since one of the main reasons why people wanted to defer retirement is that they could continue to contribute and thus accrue higher pensions.

Retirements found to be dismissals

6.27 The **Law Society** called for an expansion of paragraph 6.3.7 of the consultation document (when it becomes Acas guidance) to alert readers to the fact that where a tribunal finds that the reason for a dismissal was not in fact retirement the employer would then be liable to an uplift of the compensatory award because the statutory dismissal procedure had not been followed. The Society also saw a need for some guidance on criteria for "considering each case individually" when looking at requests for continued working. They also express their view that while paragraph 6.2.4 of the consultation document stated that an employee challenging a planned retirement dismissal would have a heavy burden of proof they believe that, on the contrary, Section 98ZA(9) will make it easy for an employee to challenge the stated reasons for dismissal.

Retirement agreements to be made binding

6.28 To meet their concern that employees who had given their agreement (even in writing) to retire at a certain time might, only six weeks before the agreed date, suddenly change their minds **British Nuclear Fuels** suggested that such agreements, once entered into, should be binding. This would give the employer some degree of protection.

Retirement and Partnerships

6.29 The position of "partnerships" was again raised with legal organisations claiming

that special retirement arrangements applied. Many partnerships have a “sophisticated management structure and succession strategy which relies on the “natural turnover” of partners.” It was necessary to offer the younger new partners the prospects of an increasing profit share without fear that existing high-earning partners will remain with the firm in perpetuity. It was therefore not practical to extend the planned retirement process to include partnerships.

Retirement: Possible negative effects on individuals

6.30 A general point raised by several respondents was that the dignity of the normal retirement arrangements would be lost where an employer had to take action on other grounds to terminate an employment. Instead of retiring with “head held high” and “honours heaped on their head” so to speak, an older worker might have to suffer the ignominy of being told that the employer was having to dispense with their services on the grounds of their reduced efficiency.

Retirement on Health Grounds

6.31 One respondent raised the question of employers retired on health grounds and whether this might become an unfair dismissal issue on the basis of reduced competency and performance. Would it continue to constitute legitimate retirement on grounds of ill health? Additionally there was a perceived challenge presented by the disability legislation where there was a need for adjustments to be considered before justifying dismissal. This emphasised the need for joined up guidance to address the interrelationships between age and other discrimination law. **Ford** said that the Government may wish to consider including a provision in the Regulation similar to the “reasonable adjustments” criteria in the Disability Discrimination Act. An employer may be able to accommodate an older worker by making such adjustments and this would facilitate the acceptance of more employee requests to continue working beyond the default retirement age. Another respondent said that it would be useful for the Government to recognise that employment in sectors which have a requirement for strength or stamina may struggle to accommodate employees who could more easily be accommodated in office environments.

Retirement: Right of employee to be accompanied by union representative

6.32 The **GMB** noted the lack of an explicit provision for workers to be accompanied when they are interviewed by their employers (eg during a duty-to-consider interview). They would expect this omission to be rectified. This was a point also taken up by **Age Concern**.

Period of employment before retirement

6.33 Several respondents mentioned this, saying that employers had a right to expect

that someone recruited and perhaps expensively trained should be expected to be able to give their employer a certain minimum period of work before they subsequently retired. Opposing such an attitude the **DLA** pointed out that there was always a risk that a newly recruited employee of any age might leave before the costs of recruitment were justified. They said that there were other ways of dealing with the problem, for example paying a bonus to employees if they remained with the employer for a certain period of time – which they forfeited if they left. **Eversheds LLP** said that the wording of regulation 3(2)(c) was potentially misleading where it talks of “the training requirements of the post in question or the need for a reasonable period in post before retirement.” This could be taken as meaning that even in circumstances where an individual is not likely to retire soon, a long period of training might still be grounds for age discrimination.

Chapter 7

Occupational Pensions

Many rules in pension schemes are age-based and necessary for their proper operation. The regulations will effectively exempt most age-related rules. Scheme managers will be able to retain other age-related rules of schemes, provided they can be objectively justified. The aim is to ensure that age discrimination legislation does not undermine the provision of occupational pensions, or interfere unduly with their normal operation.

Questions asked in this section were as follows:

7a: Is our explanation of the occupational pension scheme rules under the draft Age Regulations clear in the consultation document?

7b: Will our approach give rise to significant practical difficulties?

7c: Do the draft regulations reflect our policy as set out in the consultation document, effectively?

7.1 Potential for confusion was identified by the **Liverpool Law Society** over the way in which paragraph 7.6 of the consultation document stressed discrimination against older workers in pension schemes was unlawful whilst paragraph 7.7 immediately proceeded to provide a list of situations where it would be lawful. In the opinion of the **CWU** there should be a review of occupational pensions with the purpose of enabling older workers to accrue pension savings that would give them a reasonable level of income in retirement. Disappointment was expressed in some quarters that discriminatory practices were to be allowed with respect to pension provisions for partners (“spouses”) where there was a greater than normal age gap between the partners. The **TUC** wanted the Government to encourage and provide incentives for employers to open up occupational pension schemes to younger workers. **Age Concern** observed that the guidance needed to place the exclusion of goods and services in context and explain that “employers who purchase insurance as a benefit for their employees have responsibilities. It is only the insurance provider who is exempted from the law.”

Where do Occupational Pension Schemes fit in?

7.2 The **Law Society** said that the failure of the definition of “occupational pension scheme” in Schedule 2 paragraph (1) of the regulations to include Group Personal Pensions or stakeholder pensions meant that it also failed the stated aim of the consultation document that the regulations should cover all employer contributions to personal pensions. Another consultant said they would appreciate consideration being given as to whether pension schemes offering members the option of taking retirement benefits without leaving employment, in accordance with the Finance Act 2004, could be held to be examples of indirect discrimination. The **Association of Pension Lawyers (APL)** made many detailed points in their response but, overall, they welcomed the fact that the regulations did not simply copy out the brief wording about pensions in the Directive and that the Government had instead made the effort to give trustees,

employers and members some certainty about what forms of pension provision would be lawful under the regulations.

7.3 The **Association of British Insurers (ABI)** said it was clear that personal pensions were not covered by the regulations, but they referred to paragraph 1 of Schedule 2 of the regulations where they said it was unclear where employer contributions into contract-based defined contribution schemes fitted in. They said it was essential for the future stability of work-based pensions that contributions to Group Personal Pensions and employer-designated stakeholder pensions were covered in the same way as occupational pension schemes.

7.4 **Age Concern** Sought clarity with respect to paragraph 11 of Schedule 2 to the regulations which permitted employers to provide different schemes to members of different ages. They were unclear whether this permitted the transfer of members from one scheme to another, for example once they have reached one scheme's normal pension age. Their preference would be for employers to keep employees within the same scheme, but they understood that there may be a case for permitting employers to transfer employees to a different scheme, as long as the contributions were comparable. The **GMB** said that allowing schemes to close to new entrants automatically placed the sustainability of the scheme in jeopardy whilst **TAEN** said that refusal of entry to a scheme for a new employee over a certain age appeared to be directly discriminatory.

7.5 **Aegon UK** fully supported the anti-discrimination policy but remained unclear how far the draft regulations extended where the provision of benefits for employees involved third parties, such as service providers, who were not themselves subject to prohibitions on age discrimination. They were pleased to note that the Schedule 2 exemptions helped in allowing both defined benefit and defined contribution schemes to carry on operating largely as before. As with the Law Society and others they believe these exemptions should be extended to group personal pensions and group stakeholder pensions. **Aegon**, like many other respondents, submitted further comments which, whilst too detailed to include at length in this report, were given careful consideration by the Government. **NAPF** said that it was important that the Government should ensure that "death benefit only" schemes provided by employers were covered by the same exemptions as those that applied to occupational pension schemes.

Group Risk Market (GRM)

7.6 **Aegon** also addressed the impact on the GRM saying that the regulations as presently drafted could have a detrimental effect on them over time since the financial risk on the employer will be too great for them to consider self-insuring the benefits. Faced with the prospect of large cost increases to extend cover to older employee ages employers may be prompted either to reduce benefits to affordable levels or stop offering certain types of cover altogether. A solution should be found to avoid

undermining the current level of group risk. (see also paragraph 5.10)

7.7 **BUPA** had some solutions to suggest. Whilst they fully supported the principles of anti-age discrimination, they explained that age related criteria were essential to the operation and pricing of group risk insurance. At the end of 2004 a survey had shown that there were almost 7.8 million employees covered by group life schemes and such schemes (and other related forms of insurance) were based on sound actuarial principles of which age was one of the key criteria. If the coverage of a group income protection insurance were to be revised to allow for retirement at 65 instead of 60, for example, this might lead to an increase in premiums for a scheme with an average age of 50 of around 25%. Employers might react in different ways, perhaps by reducing benefits from these schemes. With these and similar considerations in mind, BUPA urged certain changes to the regulations which included clarification that the term "entitlement" (regulation 30(1)(b)) covered the setting of a lower and upper age; that regulation 30 should be extended to cover group critical illness; and that the definition of a pension scheme should be extended to include stand-alone group life policies.

7.8 The **ABI** said premium settings for health and protection group insurances could increase with the age of a proportion of the people covered. For example, if one employee reached their 60th birthday in a scheme covering 100 people this would be unlikely to have any effect on the group premium whereas one member reaching 60 in a scheme covering 5 people could make a difference.

The level of increase would depend on the proportion of older workers covered by the scheme.

Group Personal Pension Schemes

7.9 The **Society of Pension Consultants** said they found the situation unclear in respect of Group Personal Pension Schemes (GPPS) which were provided by the employer but did not fall within the definition of occupational pension schemes. They suggested that the exemption proposed for occupational pension schemes should extend to GPPS's and stakeholder schemes. Since there was no exemption in schedule 2 to the draft regulation specifically permitting cessation of pension accrual if a certain age has been passed, they suggested that there should be such an exemption by means of an additional provision,(e) in paragraph 9, schedule 2.

Statutory Pension Schemes

7.10 The **EOLG** said that, as drafted, the exemption for occupational pension schemes did not incorporate statutory schemes such as the Local Government Pension Scheme (LGPS) as they are not established by an employer or employers but are established by Parliament. They wished to be assured that these schemes could continue to operate with rules, as at present, based on age. Moreover, since the LGP Schemes cover councillors as well as other employees the definitions of "employer" and "worker" as

presently defined, would not cover those councillors who were scheme members. At present the position of councillors appeared uncertain since they were neither employees nor were they "office holders" as defined in regulation 12. These definitions would therefore require to be reworded. Further problems could arise from the fact that in local government a number of different schemes would be running - each operating in respect of different groups of employees, eg Teachers Pension Scheme, Firefighters Pension Scheme etc. It may well be that, since these schemes are different, one staff group would have access to certain benefits before another. It would need to be made clear in the regulations/guidance that the application of the respective rules for each of the schemes would not provide a cause for a claim of age discrimination.

7.11 **GlaxoSmithKline (GSK)** was concerned that some pension arrangements which existed in their company might possibly be seen as discriminatory. They explained that under their pension arrangements the pension of an employee who retires on ill health grounds is calculated as if he or she had remained in service until normal retirement age on the same salary. Also, where an employee was retired early because of redundancy the company waives actuarial reduction in pension. The Company thought these arrangements might be seen as discriminatory and that specific exemptions might be necessary. In any case they believed that there should be greater clarity as to whether such practices would be lawful under the new regulations.

7.12 **Standard Life Insurance** also had concerns in this area saying that the regulations needed to ensure that employers making pension provision for employees through personal pension schemes were not subject to challenge and that exemptions granted to occupational pension schemes should also apply to personal and stakeholder schemes where these were provided by the employer. Additionally, **Standard Life** wanted it made clear that an employer was not obliged to contribute to a personal/stakeholder pension scheme if he or she agreed to allow an employee to continue working after the default retirement age (whether this is 65 or some justifiable earlier age.) They wanted it made explicit that it would not be unlawful for an employer to pay contributions to an occupational, personal or stakeholder pension scheme that used age criteria in, for example, the provision of money benefits.

Chapter 8

Changes to other legislation

Statutory redundancy payments: The upper age limit of 65 for unfair dismissal and redundancy rights will be removed. This means that older workers will get the same rights to claim unfair dismissal or to receive a redundancy payment as younger workers. However, retirement will not constitute unfair dismissal if it is after 65 (or a lower retirement age, if justified) and the employer has followed “duty to consider” procedure.

Unfair dismissal: As with redundancy, there is an upper age limit on the right to claim unfair dismissal which the age regulations will remove. However the length of service criterion and the 20 year cap on the years of service that can be taken into account for the calculations will both be retained. The qualifying period of one year will also be retained.

Questions asked in this section were as follows:

8a: Is our explanation of the statutory redundancy payments scheme under the Age Regulations clear in the consultation document?

8b: Will our approach give rise to significant practical difficulties?

8c: Do the draft regulations reflect our policy as set out in the consultation document, effectively?

Statutory Redundancy Pay (SRP)

8.1 Generally, respondents found the explanations in the consultation document to be clear but there was some disappointment that the document had not properly addressed the critical question of the arrangements surrounding the “multiplier”. This made it impossible for employers to gauge the effect any change would have on both employers and their employees. The **EEF** didn’t think the Government had demonstrated clearly enough that a change to the basis on which SRP payments were made was necessary. Could not the status quo be justified in the same way as the retention of different pay rates under the minimum wage? One union was pleased to see the removal of the lower and upper age limits on entitlement to redundancy but disappointed to see that the 2-year qualifying period was to be retained. They also believed that the 20 year cap on length of service was unfair and arguably indirectly discriminatory. One company in the communications sector said that until the issue of age discrimination was tackled the statutory redundancy pay should not be “levelled down” for older workers because they still had a higher risk of failing to find alternative employment. This respondent went on to say that further guidance was needed on selection for redundancy and how the calculations should be made. The **TGWU** said that the consultation document did not explain why the scheme had become less generous over the years or why the decision was taken that this measure should be “cost-neutral” to employers.

The “multiplier”

8.2 The **CBI** was firmly in favour of retaining the existing “three-step” system for calculating SRP which provided 0.5 weeks pay per year of service for workers under the age of 21, 1 week’s pay for workers between the ages of 22 and 40 and 1.5 weeks pay for workers aged 41 or older. They believed the prospect of a single multiplier raised fears that the overall costs to employers would be increased. Moreover, the proposed system would produce “losers”, that is those older workers who were currently entitled to a 1.5 week multiplier which might fall to a lower level yet to be set and that the disruption caused by the changeover might well lead to employee relations problems. Legal advice provided to the **CBI** was that the current SRP regime could be retained through reference to Article 6.1(a) of the Directive. They believed it would be foolish to abandon the present scheme at short notice and there may be benefit from its being reviewed in 5 year’s time like the default retirement age. The **BRC** and the **EEF** were among those employers who backed a “cost neutral” approach whilst the **BRC** and the **Newspaper Society** supported a compromise multiplier of 1.2 weeks pay per year.

8.3 Still on the subject of the “multiplier”, **Help the Aged**, **TAEN** and a number of unions put the case strongly for “levelling up” which meant a single multiplier of at least 1.5 weeks pay per year of service – because anything less would disadvantage older workers. Attention was drawn to the fact that the level of statutory redundancy payments in the UK was already among the lowest in the EU. These respondents were also among those supporting the case for a “no levelling down” clause in the regulations. The **TUC** said they would like to see further legal, labour market and economic evidence on the statutory redundancy age bands at the earliest opportunity.

8.4 **Age Concern** said that employers were going to be the beneficiaries from the increased supply of older workers, larger pool of potential recruits and increased access to workers to meet skills needs that the end of age discrimination would bring. In view of these benefits that employers would enjoy there was no reason to heap further favours on them by adopting a “cost neutral” approach to the multiplier.

8.5 A company in the financial services area said that their terms and conditions were subject to negotiations with their unions and they needed time to respond to the new regulations. Another respondent said that increased payments to older workers were deeply embedded in their agreements and practices and were seen as fair and necessary to all – indeed it was likely that where formal agreements exist there may well be a refusal to amend them. The only way then to comply with the regulations would be to level up payments to younger employees which would present employers with an unacceptable cost burden.

Unfair Dismissal

The questions asked in this section was as follows:

8d: Is our explanation of unfair dismissal under the draft Age Regulations clear in the consultation document?

8e: Will our approach give rise to significant practical difficulties?

8f: Do the draft regulations reflect our policy as set out in the consultation document, effectively?

8.6 Many respondents welcomed the removal of the upper age limit in unfair dismissal claims. However, the same problems arose in respect of the unfair dismissal basic award as they did in respect of a statutory redundancy payment. The **Liverpool Law Society** said they hoped that paragraph 8.2.10 of the consultation document was misleading as it suggested that if an employer had not yet held a meeting and a dismissal had taken place the effect would automatically be an unfair dismissal. This should not, in their view, be the case (for example where an employee has unreasonably refused to attend a meeting), moreover this did not seem to reflect the regulations themselves.

8.7 The **CWU** said that as the regulations failed to provide that compensation would be levelled up on the basis of at least 1.5 week's pay per year of service (the currently multiplier for those aged between 41 and 65) they believed many workers who were made redundant would end up worse off than they would have been under the current arrangements. While other unions welcomed the removal of the upper age limit on claiming unfair dismissal it was generally doubted whether this would prove very effective because employers would have the right to dismiss an employee solely on the basis that the employee had reached the age of 65 or above. **ARPO50** welcomed the extension of unfair dismissal rules to those beyond the age of 65 but doubted whether "people of that age will enter the maelstrom of legal challenge, the courts and tribunals simply because their employer, without "objective justification" says "no" to their request to stay on."

8.8 From the employers' point of view the **CBI** said that giving employment tribunals the power to effectively "second guess" the fairness or otherwise of a retirement/unfair dismissal would be of serious concern to employers. Tribunal referrals were already running at high levels and the **CBI** and the **FSB** referred to the recent **CBI Employment Trends Survey** which showed worrying evidence that firms were settling out of court at tribunals rather than face possibly unaffordable defence costs – even where they had been told by legal advisers that they had a good case. This especially affected small firms where the survey showed that companies with fewer than 50 staff had settled every claim they had faced in 2004 despite the fact that in 46% of the cases they had been advised that they would win.

8.9 **Age Concern** said that the explanation of Unfair Dismissal was scattered across three chapters of the consultation document (retirement; changes to other legislation and support and legal action). They found this confusing and suggested that future guidance should draw these explanations together.

Chapter 9

Support and Legal Action

The process for pursuing legal action will mirror the procedures for pursuing legal action under other strands of equality legislation, however specific burden of proof rules for unfair dismissal will be introduced.

Questions asked in this section were as follows:

9a: Does the consultation document explain clearly the requirement for proving discrimination, harassment and victimisation?

9b: Do the draft regulations reflect our policy as set out in the consultation document, effectively?

9.1 The **Equality Challenge Unit** drew attention to the passage in the consultation document (paragraph 9.2.3) which said that claims against providers of further or higher education must be brought in the County Courts (England and Wales) or the Sheriff Courts (Scotland), but did not give the nuance that this only applied to students – claims of employees in FE/HE institutions would go to Employment Tribunals as usual. The **AUT** and **NATFHE** also referred to paragraph 9.2.3 and said that there was no explanation of the processes involved in going to court and what penalties Higher Education Institutes might face. Consequently, they would welcome the establishment of an enforcement body of some kind to ensure that employers were complying with the regulations and which could offer advice on what to do if they were not.

Access to justice

9.2 The **ECNI** commented that many cases would be likely to arise in which it would be difficult for younger and older persons to undertake litigation themselves. They regarded it as essential that the Discrimination Law Review considered new possibilities for access to justice in equality law cases. **Help the Aged** said that a lack of legal aid could result in differential access to justice with poorer people less able to challenge unfair age discrimination than those who were better off, no matter what the justice of their case.

Harassment

9.3 The **TUC** and **FDA** believed the test for harassment should be in accordance with the Directive and that there should not be a requirement of “reasonableness” in the assessment of whether harassment has taken place(paragraph 3.3.6 of the Consultation Document). **Age Concern** also had doubts about “reasonable” in this context and added that the consultation document does not mention that protection is extended to people who are harassed because of their association with someone of a certain age (eg a young woman with an older partner).

9.4 The **FSB** wanted the regulations to return to the Directive definition of harassment

where a complainant would need to show that their dignity had been violated and they had been subject to an intimidating, hostile, degrading, humiliating and offensive environment. It was unclear to some whether a school would be liable for harassment inflicted by pupils or similar harassment inflicted by trainees on employees of a training organisation or indeed on fellow trainees. **Help the Aged** said that the provision that harassment existed when someone's dignity has been violated even where this is not intended (paragraph 3.3.6 of the consultation document) is an important statement which should be highlighted in the guidance. They also believed the guidance should include examples of what was considered reasonable and what unreasonable. **Leonard Cheshire** pointed out that, in the care sector where staff were providing personal services to the elderly, there could easily arise situations where a person's dignity was violated and this needed to be carefully dealt with in the Acas guidance (preferably with examples).

Burden of Proof/ Indirect Discrimination

9.5 The **EEF** had trouble with the comparator clause dealing with indirect discrimination (regulation 3(1)(b)). It appeared that claimants could assign themselves to whatever age group best suited their purpose whilst it was not then clear with whom he or she was entitled to compare respective impacts of the provision, criterion or practice under challenge. It would seem (they said) that it was apparently permitted for a claimant to point to any two or more persons who were not of the same age group and not adversely affected by the provision, criterion or practice and, on such a flimsy basis, require the employer to justify that provision, criterion or practice. They said if this really was the intention of the legislation then employers would regard it as unacceptable.

9.6 The **FSB** said that comparator pools were beyond the scope of small firms to cope with properly and they recommended that the comparator must be drawn from fellow employees of the same employer. **TAEN** also found the explanation of "comparator pools" misleading in its emphasis on the need to provide evidence of a differential impact on different age group. It should be made clear (in the guidance) that in some cases there would be no need for a pool – evidence that chronological age has been the basis for a decision will be sufficient.

9.7 The **ECNI** also mentioned the problems that had occurred with previous case law on indirect discrimination which they said was "bedevilled by searches for "pools of comparison". However, they saw it as possibly less of a problem in age cases and generally welcomed the broad approach towards "comparison pools" now being adopted.

Chapter 10

Benefits and Costs

This section calls for views of individuals and organisations on the estimate of costs and benefits summarised in chapter 10 of the Consultation Document.

10.1 Many respondents thought that small firms would be hit particularly badly by the new legislation not least because of the effort of learning all the new requirements without the benefit of having their own human resource or personnel departments. However, the **CWU** believed that the difficulties likely to be faced by small firms had been exaggerated – many small firms already thought there was anti-age discrimination law in force and had taken steps to eliminate such discrimination. **TAEN** believed that benefits were bound to accrue from increased employment rates and better matching of jobs to people. There would be costs, of course, such as those arising from having to deal with requests from employees who wished to carry on working but overall they expected these to be of lower magnitude than the benefits.

10.2 The **TGWU** said that the Government should attempt to estimate the positive economic and social impact of levelling up employment rights and benefits as a result of age equality legislation. They should also consider the impact of redundancy on individuals resulting from the decisions of employers.

10.3 The **EFA** itemised some costs likely to be faced by employers including carrying out a policy review, amending and communicating policy changes to employees, amending pension schemes, introducing employee education programmes, introducing effective monitoring and measuring techniques to name but some. Similar information was provided by a company in the communications sector which listed their on-costs which included paying to attend seminars due to the limited information they had been given, conducting a full policy review, creating a working group - and embarking on training exercises. The **BCC** emphasised that the changeover will add to the pressure on small and medium sized firms,

10.4 A large company in the retail sector strongly disputed the Government's costings saying that they failed to recognize:

- the cost of levelling up young people's wages (if this option was taken)
- cost of reducing qualifying periods for benefits
- the cost of allowing employees to remain in the pension scheme for longer
- the cost of policy reviews, legal fees and other "hidden" costs
- as yet unknown costs of statutory redundancy payments

10.5 The **FSB** said the quoted implementation cost of £140 per small business seemed to be a gross underestimate. The cost of a single visit to a legal professional is likely to

be significantly more than £140 in itself.

Chapter 11

Other Comments

This sections calls for general comments about the proposals set out in the consultation document.
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11.1 One individual respondent from a small business had this to say: "Parts [of the regulations] are beneficial but others merely increase the legislative burden on employers and associated costs. Labour disputes severely disrupt small businesses and the increased extent of this type of legislation gives disgruntled employees all the ammunition they need."

Monitoring the Policy

11.2 **Ford** was among those respondents who mentioned the monitoring of the policy and they requested the Government provide specific guidance on the monitoring methodology to be used, ensuring that such methodology avoids placing any unrealistic burden on organisations. The **GMB** would like the Government to undertake an ongoing review to equality proof all legislative requirements to ensure compliance with the age discrimination regulations. The union is seriously concerned that the regulations might actually encourage employers to worsen the terms and conditions of some groups of workers.

Additional Website

11.3 One respondent suggested that employers would have to shop around to find the best insurance deals when they start to employ older people. This practice might influence the market place. They suggested that some helpful activity by the Government is required such as creating a website to assist in the process of seeking out the best deals.

Timescale for the legislation

11.4 The **BCC** and **EEF** were among those who thought the major changes which the new law would bring about required a longer period of adjustment than is currently envisaged between its enactment and its coming into force. Another respondent suggested that the introduction of the new legislation should be delayed for another year to give more time for the Government to re-think its approach from first principles – especially as the Equality Commission was not due to start until 2007.

11.5 Many respondents were in favour of allowing the provisions of the regulations to "unwind" gradually with implementation taking place "as soon as possible" after 1

October 2006. And whether or not this could be arranged, respondents believed that practical help over and above Acas guidance should be provided to help employers and employees navigate safely through the early stages of the new laws.

11.6 The **GLA** said it was already in the process of drafting an Age Equality Scheme of its own and lent its voice to those urging the swift introduction of a Single Equality Act to harmonise and level up all the existing and planned anti-discrimination legislation.

11.7 The **CBI** added that examples of age discrimination in the workplace needed to be managed carefully – workplace banter still, on occasion, involved references to a colleague's age.

Summary of the Annex A Tables

The following tables record the numbers of boxes ticked by those respondents who made use of the consultation response form. Many respondents returned "free-form" responses and these could not be summarised in tabular form. This is why the totals in the tables fall short of the overall total of 392 responses received. Moreover, not all those who used the form filled in every box and this is why the totals for each question on the form will not necessarily tally.

The results that emerge from the summary tables show that a significant majority of respondents found the explanations of policy in the consultation document to be clear and understandable. At the same time it is evident that considerably more respondents thought it likely that some of the measures would give rise to difficulties in their implementation than thought they would not do so. In general those who believed the regulations would cause difficulties tended to reflect this attitude in more than one area of their response except where respondents focused on a single issue as was often the case in respect of occupational pensions for example. What this raw data does not show is the degree to which respondents reacted to the questions, that is to say how vehemently they believed that difficulties would be caused and how serious those difficulties were thought likely to be – these are set out at length in the main Consultation Report.

Generally speaking, it was only to be expected that this new and complex area of legislation would be broadly perceived as tending to cause difficulties; changes to time-honoured practices and entrenched ways of doing things usually are, as many of the responses recognised. Many of the concerns felt are nevertheless very real and the Government is grateful to all those who responded and it paid close attention to the views expressed while fine-tuning the regulations. Respondents' comments have also been passed to Acas who will be taking them into account in the preparation of the guidance for the new legislation.

Overall, the level of support in principle for these new anti-discrimination measures has been encouraging.

Tabular Summary of Responses

3: Outlawing Age Discrimination				
		Yes	No	No Strong Feelings
3a	Is our explanation clear?	164	57	21
	<i>Percentage (rounded)</i>	67	24	9
3b	Will approach cause difficulties?	109	78	49
	<i>Percentage</i>	46	33	21
3c	Do regs correctly represent policy?	145	50	38
	<i>Percentage</i>	62	22	16

4: Justifying Age Discrimination				
		Yes	No	NSF
4a	Is explanation of "objective justification" clear?	150	79	15
	<i>Percentage</i>	62	32	6
4b	Will approach cause difficulties?	136	56	46
	<i>Percentage</i>	57	24	19
4c	Do regs correctly represent policy?	151	42	49
	<i>Percentage</i>	63	17	20
4d	Should there be separate provision on genuine occupational requirements ?	132	49	53
	<i>Percentage</i>	57	20	23
4e	Should there be separate provision on positive action ?	158	32	52
	<i>Percentage</i>	65	13	22

5 : Exemptions				
5.1: Service Related Pay and Benefits				
		Yes	No	NSF
5a	Is explanation of non-pay benefits clear?	150	70	24
	<i>Percentage</i>	61	29	10
5b	Will approach cause difficulties?	132	71	37
	<i>Percentage</i>	55	30	15
5c	Do regs correctly reflect policy?	124	40	67
	<i>Percentage</i>	54	17	29
Exemptions				
5.2: National Minimum Wage				
		Yes	No	NSF
5d	Do regs avoid discouraging employers from using the development rates?	143	29	63
	<i>Percentage</i>	61	12	27

6: Retirement				
		Yes	No	NSF
6a	Is our explanation of retirement arrangements clear?	174	55	19
	<i>Percentage</i>	70	22	8
6b	Will approach cause significant difficulties?	162	55	14
	<i>Percentage</i>	65	22	13
6c	Do regs correctly reflect policy?	134	48	52
	<i>Percentage</i>	58	21	21
6d	Are the deadlines/time periods workable ?	107	97	38
	<i>Percentage</i>	44	40	16
7: Occupational Pensions				
		Yes	No	NSF
7a	Is our explanation of occupational pension scheme rules clear?	164	38	35
	<i>Percentage</i>	69	16	15
7b	Will approach cause significant difficulties?	76	85	74
	<i>Percentage</i>	32	36	32
7c	Do regs correctly reflect policy?	132	33	68
	<i>Percentage</i>	57	14	29
8: Changes to other legislation				
8.1: Statutory Redundancy Payments				
		Yes	No	NSF
8a	Is our explanation of Redundancy Scheme clear?	155	55	33
	<i>Percentage</i>	64	22	14
8b	Will approach cause significant difficulties?	104	90	48
	<i>Percentage</i>	43	37	20
8c	Do regs correctly reflect policy?	138	32	64
	<i>Percentage</i>	59	14	27
8: Changes to other legislation				
8.2: Unfair Dismissal				
		Yes	No	NSF
8d	Is our explanation of Unfair Dismissal clear?	181	28	27
	<i>Percentage</i>	77	12	11
8e	Will approach cause significant difficulties?	84	107	48
	<i>Percentage</i>	35	45	20
8f	Do regs correctly reflect policy?	147	25	55
	<i>Percentage</i>	65	11	24
9: Support and Legal Action				
		Yes	No	NSF
9a	Are the requirements for discrimination, harassment and victimisation, clear?	169	29	42
	<i>Percentage</i>	70	12	18
9b	Do regs correctly reflect policy?	145	26	57
	<i>Percentage</i>	64	11	25

10: Benefits and Costs				
		Significant Response	Insignificant Response	No Response
10	Views invited on estimated costs and benefits.	24	42	87
	<i>Percentage</i>	<i>16</i>	<i>27</i>	<i>57</i>

11 Other Comments				
		Significant Comments	Insignificant Comments	No Comment
11	Any other comments?	23	57	115
	<i>Percentage</i>	<i>12</i>	<i>29</i>	<i>59</i>

Annex B

Organisations who responded to the “Coming of Age” Consultation and did not request confidentiality²

Acas Council
Actis Group
Aegon UK/Scottish Equitable
Age Concern – England
Age Concern – Port Talbot/ Wales
Agile Devon Action Group
Aiken & Perry Partnership
Allen & Overy
Amicus
Ashurst
Association of British Insurers (ABI)
Association of Chartered Certified Accountants (ACCA)
Association of College Management (ACM)
Association of Consulting Actuaries (ACA)
Association of Convenience Stores (ACS)
Association of Graduate Recruiters (AGR)
Association of Pension Lawyers (APL)
Association of Professionals in Education and Children’s Trusts (Aspect) (formerly NAEIAC)
Association of Retired and Persons over 50
Association of Scottish Colleges (ASC)
Association of Teachers and Lecturers (ATL)
Association of University Teachers (AUT)
AXA Sunlife Services (pensions)

Baker and McKenzie
Barclays Bank plc
Barnes Associates
Beachcroft Wansbrough
Big Lottery Fund
Birmingham City Council
Birmingham Law Society (Employment Law sub-committee)
Blackpool Council
Boots Group plc
Bradford Chamber of Commerce and Industry
Bradford Grammar School
Bradford, City of, Metropolitan District Council
British Airline Pilots Association (BALPA)
British Australian Pensioner Association
British Chambers of Commerce
British Hospitality Association

² The names of the 60 individuals who responded are not listed.

British Medical Association (BMA)
British Nuclear Fuels plc
British Psychological Society
British Retail Consortium (BRC)
British Sikh Federation
British United Provident Association (BUPA)
Bursar's Committee of Cambridge Colleges
Business Services Association (BSA)
Business Services Centre

Cadbury Schweppes plc
Campaign Against Age Discrimination in Employment (CAADE)
Canada Life
Centrica plc
Chamber of Shipping
Chartered Institute of Personnel and Development (CIPD) London
Chartered Institute of Personnel Development (CIPD) (Third Age Interest Group)
Chartered Institute of Personnel Development (CIPD) (West Yorkshire)
Chemical Industry's Association
Cheshire & Merseyside Strategic Health Authority
Cheshire Constabulary
Christ Church
Church of Scotland
City of London Law Society
City of Westminster & Holborn Law Society
City University
Civil Aviation Authority (CAA)
Communication Workers Union (CWU)
Confederation of British Industry (CBI)
Connect
Construction Industries Training Board (CITB)
Convention of Scottish Local Authorities (COSLA)
Co-operative Employers Association
Co-operative Group (pensions response)
Corporation of London
Council of Employment Tribunal Members Assoc (Cetma)
Council of Heads of Medical Schools
Counsel and Care
Craegmoor Healthcare
Croner Consulting Ltd

Darbari Trust UK
Derbyshire County Council
Devon County Council
Devon Fire and Rescue Service
Disability Rights Commission
Discrimination Law Association
DLA Piper Rudnick Grey Cary
Doncaster Chamber of Commerce
Dundee Equality Diversity Partnership

Durham County Council

Employers Forum on Age (EFA)
Employers Forum on Disability (EFD)
Employers Organisation for Local Government (EOLG)
Employment Lawyers Association (ELA)
Engineering Construction Industry Training Board (ECITB)
Engineering Employers Federation (EEF)
Equal Opportunities Commission (EOC)
Equality Challenge Unit (ECU)
Equality Commission for Northern Ireland (ECNI)
Ernst & Young LLP
Essex County Council
Evangelical Alliance
Eversheds LLP
Exeter University Law School
Experience Corps Ltd

Faculty of Advocates
Falkirk Council
Federation of Small Businesses (FSB)
Fidelity International
Field Studies Council
Fire Brigades Union (FBU)
Fire Officers' Association (FOA)
First Division Association (FDA)
Fisher Research Ltd
Food and Drink Federation
Ford Motor Company
Forum of Private Business
Future of Rural Society

Gateley Wareing LLP
Girls' Day School Trust, The
GlaxoSmithKline
Gloucester City Council
GMB
Grampian Fire and Rescue Service
Greater London Authority (GLA)
Greater Manchester Chamber of Commerce
Greater Manchester Fire and Rescue Service
Greater Manchester Police
Group Risk Development (GRID)

Hammonds Solicitors
Help the Aged
Heptonstalls
Hertfordshire County Council
HSBC Bank plc

Impact Commercial Development Ltd
Independent Schools Council
Indian Senior Citizens Centre
Institute of Directors
Institute of Education
Institute of Practitioners in Advertising
Investment & Life Assurance Group (ILAG)
Investors in People (IIP)
ITS Training Services

John Stamford & Associates Ltd
Johnson Controls Ltd
Justice

Kent and Medway Fire & Rescue Authority
Kingfisher plc (Inclusive of B&Q response)
KPMG LLP

Ladbrokes Ltd
Lancashire County Council
Law Society of England & Wales
Law Society of Scotland
Leeds University Innovation Centre (Silver Foxes)
Leonard Cheshire Central Office
Lewis Silkin Solicitors
Liverpool John Moore's University
Liverpool Law Society
Lloyds TSB Bank
Lobby to End Age Discrimination (LEAD)
London Chamber of Commerce and Industry (LCCI)
London Development Agency (LDA)
Low Pay Commission (LPC)

Manchester City Council
Martineau Johnson
Methodist Church
Mid-Yorkshire Chamber of Commerce and Industry
Momart Ltd
MRS Distribution Ltd

Nabarro Nathanson
National Association of Head Teachers (NAHT)
National Association of Schoolmasters Union of Women Teachers (NASUWT)
National Association of Teachers in Further and Higher Education (NATFHE)
National Association of Pension Funds (NAPF)
National Farmers Union (NFU)
National Institute for Adult Continuing Education (NIACE)
National Museum Directors Conference (NMDC)
National Union of Rail Maritime and Transport Union (NURMT)
National Union of Teachers (NUT)

Newspaper Society
 North & Western Lancashire Chamber of Commerce & Industry
 North Lanarkshire Council
 North West Regional Equalities Network
 Northampton Borough Council

 Occupational Pensioners Alliance (OPA)
 Origin

 Pensions Management Institute
 Periodical Publishers Assoc (PPA)
 Police Federation of England and Wales
 Price Waterhouse Cooper LLP (employers response)
 Price Waterhouse Cooper LLP(partnership response)
 Prison Officers Association (POA)
 Prospect
 Public and Commercial Services Union (PCSU)

 Rank Gaming Division Ltd
 Recruitment and Employment Federation (REC)
 Road Haulage Association Ltd (RHA)
 Rolls Royce plc
 Royal College of Midwives
 Royal Mail Group plc (RMG)
 Royal National Institute for the Deaf (RNID)

 Scottish Qualifications Authority (SQA)
 Scottish Rural Property & Business Association (SRPBA)
 Scottish Widows
 Secondary Heads Association (SHA)
 SERCO Group
 Simmons and Simmons
 Society of London Theatre and the Theatrical Management Association
 Society of Pension Consultants (SPC)
 Society of Personnel Officers in Government Service (SOCPO)
 Soroptimists International (Great Britain and Ireland)
 Soroptimists International (Richmond and Dales)
 South East Employers
 Standard Life (pension providers)

 Third Age Employment Network (TAEN)
 Third Age Foundation
 Thompsons Solicitors
 TLT Solicitors
 Torfaen County Borough Council
 Transport and General Workers Union (TGWU)
 Transport and General Workers Union TGWU – Retired Members Association (Cymru)
 Transport and General Workers Union TGWU (Birmingham Airport)
 Transport and Salaried Staffs Association (TSSA)
 TUC

Union of Shop & Allied Distributive Worker's USDAW – (Legal Services)
Union of Shop & Allied Distributive Worker's USDAW – (Research and Economics)
UNISON
Unison Cymru Retired Members Committee
Unison Retired Members (United Utilities) Branch
United Reformed Church
University and Colleges Employers Association (UCEA)
University of Aston
University of Hertfordshire
University of Leicester
University of Northumbria
University of Oxford
University of Salford
University of Wales, Aberystwyth
University of Westminster
Unum Provident

Walsall Metropolitan Borough Council
Warwickshire County Council
Watson Wyatt Ltd
West Dunbartonshire Council
West Midlands Local Government Association
Wirral Age Discrimination Scrutiny Panel
Women Builders Ltd
Women in Business Association (Birmingham)
Wrinklies Direct Ltd

XpertHR

York and District Citizens Advice Bureau

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