

**EMPLOYMENT RIGHTS ACT 1996 (NHS RECRUITMENT – PROTECTED  
DISCLOSURE) REGULATIONS CONSULTATION**

- 1. Do you agree with the time limit of 3 months in draft regulation 5? Does this present any issues?**

The RCN agrees with the proposed time limit as it accords with the time limits in place for discrimination and other whistleblowing complaints.

- 2. Are there any types of cases that should be mentioned in regulation 5(3), as to the conduct for the purposes of calculating the 3 month time limit?**

We believe that any other detriment e.g. including the supply of a poor reference, a failure to promote and the harassment of a job applicant should also be included for the purposes of calculating the 3 month time limit.

- 3. Do you agree with the approach taken not to limit the amount of compensation, so that these regulations are comparable with existing whistleblowing claims?**

Yes we agree with this proposal.

- 4. Do you agree that the regulations should provide for discrimination to be actionable as a breach of statutory duty?**

Again we do agree that the regulations should provide for this type of discrimination to be actionable as a breach of statutory duty. However, we would also suggest that this is action is extended to existing whistleblowing claims so they are comparable.

- 5. Are there are any practical problems arising from Regulation 8?**

Although this would provide Claimants with another avenue in which to restrain the discrimination alleged, it would mean they would have to litigate in a costs regime unlike the Employment Tribunal which may mean this potential complaint could be under-utilised. Also, the costs associated with submitting such a complaint in the civil courts could also deter some Claimants.

- 6. Do you agree with the proposal that, for the purposes of regulations, discrimination against an applicant by a worker or agent of an NHS body, should be treated as discrimination by the NHS body itself in the above circumstances – and that the NHS body should have a defence if it can demonstrate it took all reasonable steps to prevent workers and agents from doing what they did or failing to do what they did?**

The RCN does agree because again, it corresponds with the current discrimination provisions contained within the Equality Act 2010 including the availability of a statutory defence.

- 7. Do you have any concerns about the impact of any of the proposals on people sharing relevant protected characteristics as listed in the Equality Act 2010? Is there any more we can do to advance equality of opportunity and to foster good relations between such people and others?**

The RCN has no concerns about the impact of the proposals on people sharing relevant protected characteristics as defined in the Equality Act 2010.

- 8. Do you have any concerns about the impact of any proposals may have on families and relationships? Impact on business.**

We have no concerns about the impact of any of the proposals on families, relationships or business.

**Royal College of Nursing  
10<sup>th</sup> May 2017**