



Government
Equalities Office

Putting equality at the heart of government

**Equality Bill:
Making it work
Ending age
discrimination in
services and public
functions**

Policy Statement

January 2010

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Foreword

Michael Foster DL MP

Parliamentary Secretary, Government Equalities Office



The Government is firmly committed to eradicating age discrimination wherever it arises. No-one should be treated badly just because of their age. The UK population is getting older. In just twenty years time, half of the adult population will be over fifty and the number of people over eighty-five will have doubled. The role of older people in our society is changing. It is no longer acceptable to treat older people as if they are ‘past it’ – either at work or outside work. That is why the Equality Bill is so important. It will introduce a new ban on age discrimination by those providing services and exercising public functions, building on the existing law which bans age discrimination at work. The new law will ensure that we have a fairer and more equal society for people of all ages. It will remove unnecessary barriers particularly for older people, but for younger people too. This new law is a key part of our aim to build a society for all ages along with the ageing strategy, which aims to give people the tools and the encouragement they need to prepare more effectively for later life and the review of the default retirement age.

In banning age discrimination, we want to take an approach which is fair, proportionate, clear and practical. These principles underpinned the proposals set out in our consultation – *Equality Bill: making it work – Ending age discrimination in services and public functions*.

The message we got in talking to people and from their written responses was that people did not want to be treated negatively because of their age. I was pleased that the proposals were warmly welcomed, as respondents backed the principle of eliminating harmful age discrimination, but agreed that there were areas where different treatment based on age was appropriate. Many respondents expressed the hope that the new law will make people and organisations examine their preconceptions and challenge stereotypes about older people, leading to a better later life for everyone. We share that aspiration and are grateful to all who contributed their views.

This document sets out consultees' views on our proposals and the Government's response to those views. It builds on the proposals set out in the earlier document, making clear the areas where we believe that age differentiation should still be permitted. In particular, it makes clear that:

- Beneficial age-based treatment such as free bus passes, discounts for pensioners and students, and age-related group holidays will still be allowed.
- The new law will ban harmful discrimination in health and social care, but allow a person's age to be taken into account where it is right to do so.
- Age will continue to be used in financial services provision, but only where it is related to risks or costs. Access to motor and travel insurance will be improved by the introduction of signposting and referral. People will be given confidence that their age is being used appropriately by the publication of aggregate industry data for motor and travel insurance that everyone can check.

This document is not the end of the process. We will continue to work with stakeholders as we prepare the draft secondary legislation which will give effect to the ban, on which we aim to consult in the autumn.

As well as banning age discrimination in services and public functions, the Equality Bill will also introduce a new single Equality Duty on public bodies, so that they will have to take into account the needs and concerns of people of all age groups in the services they provide.

By strengthening and simplifying our discrimination law, the Equality Bill will provide important new protections for individuals, underpin a fair and cohesive society and ensure that we can use all the diverse talents to support economic recovery. The Equality Bill will improve the lives of everyone in our society, now and in the future.

A handwritten signature in black ink, appearing to read 'Philip Jones', is positioned at the bottom left of the page.

Executive summary

The Government is firmly committed to eradicating harmful and unjustifiable age discrimination in the provision of services and public functions. The Equality Bill, currently before Parliament, contains provisions which will make it unlawful for providers of goods, facilities and services and those exercising public functions to discriminate against their customers simply because of their age. Subject to the Bill completing its Parliamentary process, we intend to bring these provisions into force in 2012.

Of course, treating people differently based on their age is sometimes beneficial or otherwise justified, as people's needs, expectations and circumstances change with their age. This is particularly true in the case of children, so the new ban on age discrimination will apply only to those who are 18 or over. Even in relation to adults, age-based treatment is often appropriate. That is why the age discrimination provisions in the Equality Bill differ from all the other protected characteristics in that it is possible to justify even what would otherwise be direct age discrimination on the basis that it is a proportionate means of attaining a legitimate aim. This is known as "objective justification".

Objective justification is a relatively stringent test. Establishing that particular treatment is proportionate requires demonstrating that treatment is the least discriminatory available. The lack of certainty that this brings can have a chilling effect, meaning that people might tend to take an "age-blind" approach rather than risking being unable to objectively justify age-based treatment. In some circumstances it is appropriate for legal certainty to be provided by means of specific exceptions which permit age-based treatment.

It should be noted that where age-based treatment is a requirement of other legislation (the 'statutory authority exception'), then service providers will not have to objectively justify age-based practices they undertake in order to comply with it – for example, the provision of age-based state benefits, the use of age limits in respect of adoption and fostering, the requirement to be 21 years old to hold an HGV or bus driving licence.

We consulted over the summer on how best we could achieve our aim of prohibiting unjustified age discrimination while allowing justified or beneficial practices to continue, asking people to comment on our proposals for the specific exceptions we believe are necessary. The exceptions will be inserted into the Bill by means of secondary legislation – an Order – which will come into force when the provisions banning age discrimination in services and public functions are commenced.

We received 106 responses to the consultation. There was broad support for our proposed approach. We therefore intend to proceed with preparing draft secondary legislation to provide for the following:

Health

We want the legislation to have the same effects in health and social care as in other sectors, that is:

- to eradicate harmful discrimination; and
- to permit service providers to treat people of different ages differently where this is beneficial or justifiable or for good public policy reasons;

and to ensure that:

- when services deal with individuals, they focus on the individual, taking account of his or her age where it is appropriate to do so, and where this helps to offer a personalised service.

In doing this, we will act in accordance with the relevant recommendations of the recent review *Achieving age equality in health and social care*.

Financial services

- We will create a specific exception to allow financial service providers to treat people of different ages differently, but only where this is proportionate to risks and costs. Prices can still be varied by age, where this genuinely reflects risk or costs and is not an arbitrary decision;
- We will improve transparency by requiring financial service providers to publish aggregate data in respect of certain products that anyone can check;
- We will improve access by requiring the providers of certain insurance products to operate a signposting and referrals system. Where this requirement applies and an insurer does not provide the service to a person because of their age, they will be required to refer the person to a supplier who can meet their needs or refer them to a dedicated signposting service.

General services

- Alongside the provisions relating to health and financial services, we will enable any service provider in the public or private sector to use age as a criterion to determine the eligibility for concessions or benefits, where the purpose of the concession is to benefit the age group to which it applies.
- We will provide an exception from the ban on age-discrimination to allow specialist group holidays to continue to be provided for people in particular age groups, provided that the age range for the holiday is clearly stated in the promotional material.
- Holiday accommodation providers will be able to market to specific age groups, but will have to be able to objectively justify any age limits on who can occupy their property.
- We will explore the issues further before deciding the way forward on vehicle hire, where we had not proposed an exception for age limits given firms ability to vary premiums in line with costs relating to insurance premiums.

The Equality and Human Rights Commission will produce simple, easy-to-follow guidance that explains clearly what needs to be done to implement the law.

Next Steps

We intend to consult on a draft Order in autumn this year. We will be working with the Equality and Human Rights Commission as it develops detailed supporting guidance. We plan to bring the new law into force in 2012, allowing plenty of time to prepare for implementation of the ban.

I. Overview of the consultation

- 1.1 The policy on ending age discrimination in services and public functions has developed through a series of stages.
- 1.2 The consultation document “*Discrimination Law Review. A Framework for Fairness: Proposals for a Single Equality Bill for Great Britain*”¹, asked for evidence of unfair age discrimination, sought views on whether legislation would be the best way of tackling such discrimination and on how legislation could be targeted, and invited general comments on this issue.
- 1.3 The majority (around 80 per cent) of the nearly 750 responses on this issue were in favour of legislation to tackle harmful age discrimination. Many considered it was needed to plug a major gap in existing anti-discrimination legislation and to send a clear signal that age discrimination is unacceptable.
- 1.4 We announced in June 2008² that we would use the Equality Bill to outlaw unjustifiable age discrimination against adults aged 18 and over by those providing services and exercising public functions.
- 1.5 The consultation document “*Equality Bill: Making it work – Ending age discrimination in services and public functions*”³ issued in June 2009, described how the Government was developing proposals for exceptions from the ban in the Equality Bill on discriminating against people aged 18 or over because of their age by those providing services and exercising public functions. It invited views on proposals for exceptions and invited views on when the ban should be brought into force. The questions are listed in Annex I.
- 1.6 The consultation ran for thirteen and a half weeks, from 29 June until 30 September 2009. The consultation document was published on the Government Equalities Office website. Over 500 organisations representing the interests of people who use services and public functions, and service providers from the public, private and third sectors were specifically invited to respond to it. A presentation and discussion on the consultation document took place at each of the four Equality Bill communication events held in September 2009 in Cardiff, Birmingham, Edinburgh and London.

¹ <http://www.communities.gov.uk/documents/corporate/pdf/325332.pdf>

² Framework for a Fairer Future – The Equality Bill – <http://www.equalities.gov.uk/PDF/FrameworkforaFairerFuture.pdf>

³ <http://www.communities.gov.uk/documents/corporate/pdf/325332.pdf>

- 1.7 The broad scope of services and public functions meant that the consultation generated responses from a wide variety of organisations in the public, private and third sector. Altogether the Government received 106 responses, which are summarised in this document.
- 1.8 The make-up of the responses was as follows:
- 9 from individuals;
 - 7 from Government related organisations (central and local);
 - 24 from financial services companies and related trade associations;
 - 7 from other businesses of which 4 were holiday/tourism related;
 - 15 from other trade associations of which 6 were holiday/tourism related;
 - 4 from equality organisations;
 - 24 from lobby/representative groups, of which 13 represented older people;
 - 9 from medical organisations;
 - 7 other groups.
- 1.9 Not all respondents commented on, or responded to each of the 25 questions in the consultation document.
- 1.10 Respondents for the most part supported the Government's aims and proposals outlined in the consultation document.
- 1.11 The consultation paper was accompanied by an impact assessment, on which we sought comments and further evidence, to take into account in the updated impact assessment for the draft secondary legislation. During the consultation, no objections to our costings have been provided. As we have not made any major changes to our original proposals, we have not revised the impact assessment at this stage. However, additional evidence has come to light which is leading us to re-visit one of our proposals around the use of age limits in the hire car industry.

We will analyse this evidence and any other information from within Government or supplied by stakeholders before deciding whether to proceed with our original proposals or an alternative. We will announce our decision when we consult on the draft Order later this year and our further analysis will be included in the revised impact assessment that we will publish at the same time. The impact assessment for the Equality Bill, which covers the costs and benefits of banning age discrimination, will also be updated and republished at Royal Assent.

2. Health and social care

What we proposed

- 2.1 Our consultation paper did not make specific suggestions on what exceptions, if any, should be created for health and social care services. It noted that the Department of Health had asked Sir Ian Carruthers and Jan Ormondroyd to lead a review of age equality in health and social care, to inform thinking in this area. The review was supported by an advisory group drawn from a wide range of people from relevant voluntary organisations, local government, the NHS, the Equality and Human Rights Commission, and others. Its report was published on 22 October 2009.⁴

What we asked

- 2.2 *What timetable should be set for implementation of the provisions in health and adult social care?*
- 2.3 *What services and practices in health and social care that differentiate on the basis of age in a positive and fair way should be retained?*
- 2.4 *What actions need to be taken to tackle age discrimination within health and social care, and by whom?*

What respondents said

Timetable

- 2.5 A majority of the respondents who addressed this question favoured or thought it would be possible to implement the ban on age discrimination against adults in health and social care in 2012 along with financial services and other services and public functions. The remainder (all local organisations and individuals) mostly thought implementation should happen as quickly as possible and without delay.
- 2.6 Some organisations voiced concerns about how quickly and effectively change could be brought about. There was a need for sufficient preparation and notice,

⁴ The review's report is available at http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH_107278
The Department of Health is consulting, to 15 February, in England on the report's non-legislative recommendations: the consultation paper is available at http://www.dh.gov.uk/en/Consultations/Liveconsultations/DH_108887

particularly as a large proportion of services are delivered by private and voluntary providers. Respondents were in agreement that it would be helpful to have a specific timescale set for implementation as soon as possible, so that everyone knew what was being worked to.

“Whilst we recognise the complexity of the issues surrounding health and social care, we believe that the implementation should not be unnecessarily prolonged” (Unison).

“We believe that 2012 is a suitable deadline in health and social care” (Age Concern and Help the Aged).

“A clear implementation timetable for full implementation by 2012 is needed to concentrate the efforts of health and adult social care organisations; they should be supported and encouraged to age-proof services and adopt age equality priorities for action well ahead of the change in the law.” (Equality and Human Rights Commission).

“We would encourage implementation as soon as possible across the UK and not in any particular region” (Medical Women’s Federation).

The age based practices that should be retained

- 2.7 Respondents generally agreed that there was a clear case for appropriate age specific services, as specific age limits could be justified due to the need to optimise health gain and minimise unnecessary treatment within constrained resources.
- 2.8 A number of respondents gave specific examples of services they believed should be retained. Those most commonly mentioned were free eye tests and prescriptions for the over 60s and annual flu vaccinations for those over 65.
- 2.9 Some respondents commented that they saw no need for specific legislative exceptions to achieve this aim; they maintained that objective justification could be relied on to ensure beneficial age-based practices continued.

“Decisions over the future of screening programmes should be made on the basis of the best available evidence, including consideration of risks and benefits to patients as well as the resource implications” (British Medical Association).

“If the differentiation is “positive and fair” then it will pass either the objective justification or positive action tests” (Age Concern and Help the Aged).

The action that needs to be taken

- 2.10 Over a third of consultation respondents answered this question, the most common theme being that attitudes to age and older people in the NHS need to be addressed, as these were seen as leading to a lack of respect for the dignity and privacy of older people.
- 2.11 Among other non-legislative actions, respondents suggested reviews of pre and post registration training for health professionals to determine skills and competencies for an ageing population. Respondents stressed that not only front line staff, but also managers, planners and commissioners of services must consider how their work impacts on age equality. Respondents also thought that the new single Equality Duty should be part of working practice for all staff in health and social care.

“ It is important that stereotypes are challenged throughout undergraduate training to reduce the chance of discrimination later, and that students and doctors realise they must not demonstrate negative attitudes towards colleagues or patients because of their age.” (British Medical Association).

“We believe that there will need to be strategic and operational actions taken by every individual health and social care organisation, backed up by a multi-agency response across geographical or SHA patches” (NHS Employers/NHS Confederation).

What we intend to do

The policy we want to achieve

2.12 We want the legislation to have the same effects in health and social care as in other sectors. That is, we want the legislation:

- to eradicate harmful discrimination; and
- to permit service providers to treat people of different ages differently where this is beneficial or justifiable for good public policy reasons. For example, sometimes a service which takes account of a person's age is the best way of providing personalised care that meets his or her individual needs.

2.13 We think it important that service providers should not only be permitted, but also positively encouraged, to treat people of different ages differently where this is beneficial. This seems particularly important in health and social care, where a large proportion of services are publicly arranged: under the public sector equality duty, the public sector has responsibilities in relation to advancing equality of opportunity as well as to eliminating unlawful discrimination.

What we want to stop

2.14 The kind of behaviour that we see as harmful discrimination and that we are determined to eliminate in health and social care includes less favourable treatment because of:

- assumptions about what services are appropriate for people in a particular age group, when a proper assessment of the person as an individual would result in the provision of services more suitable to his or her needs;
- age-related barriers to services that reflect past assumptions about what services are suitable for different age groups – for example, care packages that offer younger people support to lead active and stimulating lives in ways that meet their educational and emotional needs, while assessments of older people are narrowly focused and do not include their emotional and intellectual needs. Mental health services have also traditionally been organised separately for working age adults and for older people without considering the needs of the individual person;

- Policy making at national or other level that has unintended or unwarranted consequences for people in different age groups.

What we want to preserve

2.15 But it is important to recognise that in health and social care there can be very good reasons for taking a person's age into account in deciding what services to offer. For example:

- people of different ages may be physiologically different. Examples of this are:
 - a 90-year-old is more likely to have a number of health problems than a 20-year-old;
 - different risks are associated with pregnancies at different ages;
 - IVF is more likely to be successful for 30-year-olds than for 60-year-olds.

It would be wrong for services to be “age-blind” and to ignore these points when designing, offering and providing services in any of these cases.

- people of different ages may also have different needs in other ways. For example, arthritis mostly affects older people, younger patients with this condition, particularly those transferring from children's services, may fare better, and find it easier to comply with treatment regimes, if the clinics that deal with them make special arrangements for them, such as providing waiting areas designed for and used by others in their age group.

2.16 Taking account of these age-related differences between people is an important part of what we mean by personalising services.

2.17 It can also be important to take age into account in designing population-based public health programmes. For example:

- there is evidence that people aged 65 and over are at increased risk of serious illness and death from seasonal flu compared to other age groups. This is why this age group is offered seasonal flu vaccination on the NHS. Conversely, there is evidence that people in younger groups (between 6 months and 5 years) are at greater risk from swine flu: this was reflected in the advice provided by the

Joint Committee on Vaccination and Immunisation which informed the decisions about the priority groups for swine flu vaccination;

- screening programmes bring both advantages (in terms of speedier identification of disease, enabling earlier and more effective treatment) and disadvantages (in terms of increased anxiety and the possibility of false positives and false negatives). It is therefore sensible to target them on the age groups where based on the best available evidence they are likely to maximise the advantages while minimising the disadvantages. This is the basis on which the NHS in England, Scotland and Wales offers screening for breast, bowel and cervical cancer to particular age groups.

2.18 To summarise, we want the legislation to help:

- ensure that, when services deal with individuals, they focus on the individual, taking account of his or her age where it is appropriate to do so, and where this helps to offer a personalised service;
- recognise that in programmes dealing with sections of the population age may be a relevant factor where it affects the risks and benefits of the intervention.

2.19 The challenge in both cases is to ensure that:

- age is taken into account only where it is relevant to do so; and
- when age is taken into account, the weight that is placed on it is appropriate.

How to deliver this policy

2.20 Meeting this challenge in a way that supports, rather than undermines, personalisation of health and social care services and the delivery of effective public health programmes requires very careful thought.

2.21 To help think through the issues involved, the Department of Health asked Sir Ian Carruthers and Jan Ormondroyd to lead a review of age equality in health and social care.

2.22 The review made two recommendations specifically on the subject of legislative exceptions. We accept both these recommendations.

2.23 The first recommendation was on the overall policy:

There are no areas within health and social care that should be removed wholesale from the scope of the ban on age discrimination (Recommendation 6).

2.24 We fully accept that recommendation. We want health and social care services to be within the scope of the equality legislation and subject to the disciplines it imposes.

2.25 The second recommendation was about the means of delivering that policy:

The Government should consider further whether any more specific exceptions are needed for health and social care. We do not think there is anything wrong in principle with such exceptions, but we have not identified a compelling need for any (Recommendation 7).

2.26 We are continuing to consider the issues raised by the second recommendation. It is now possible to do so against the background of fuller information about what exceptions are planned in other areas, and the rest of this section sets out our current thinking on this topic.

2.27 In principle, there are two main options for health and social services:

- the first would be to have no exceptions (other than those already in the Equality Bill, such as the statutory authority exception). The test of whether any age-based less favourable treatment was lawful would then be that of objective justification;
- the second would be to provide one or more provisions specifically for health and social care.

Objective justification

2.28 There could be some benefits in having no specific exceptions to the ban on age discrimination for health and social care:

- this position is clear and simple, and avoids the risk that people will perceive that we are diluting the message that age discrimination has to be eradicated;
- different treatment on age grounds would still be permitted, where it can be shown to be a proportionate means of achieving a legitimate aim;
- the objective justification test sets out a clear principle which can be applied in all cases and will not become out of date. (For example, it would not be necessary to list in the legislation means which are proportionate or aims that are legitimate).

2.29 However, we recognise that there might be disadvantages in relying purely on the objective justification test in all instances. For example:

- there is a risk that individual professionals and service providers will (faced with the possibility of litigation whenever age is an element in treatment decisions) decide it is simpler to treat people in an “age-blind” way rather than run the risk of having to show that different treatment is objectively justified in the strict legal sense;
- there is a potential risk of undermining public health programmes. For example, the age limits set for such programmes in England, Wales and Scotland are not always identical: conceivably this could lead to legal disputes over whether one approach is less discriminatory than another and should be adopted across the whole of Great Britain. This could undermine the ability of the different administrations to take decisions in line with their differing democratic mandates.

Specific provisions allowing some types of differential treatment where age is a factor

2.30 The provisions could take the form of targeted exceptions, perhaps backed up by guidance issued by Ministers on what practices would be covered by these exceptions.

2.31 As recommended by the age equality review, we want to consider further the arguments and against the options of i) relying on objective justification alone or ii) having some specific provisions as well. We want to do this in an open way that allows those outside Government to contribute their views. In considering the options, we have an open mind and are neither advocating nor rejecting the possibility of such provisions.

2.32 The aims of such provisions would be:

- to support service providers in taking appropriate account of age in the services they provide, by setting out how age can be considered in ways which are beneficial or justified;
- to minimise the risk of losing beneficial differences in services as a result of a potential chilling effect causing service providers to adopt an “age-blind” approach;
- to enable any unfair less favourable treatment to be challenged.

2.33 It is important to emphasise that:

- any provisions allowing for differential age based treatment would be created only where there is a clear need for them to support the appropriate use of age in health and social care. Currently, we think the strongest case for such provisions may be in relation to:
 - individual professional judgement following a comprehensive assessment of the patient or service user’s needs; and
 - national public health programmes.
- in examining the case for allowing certain types of age based differential treatment, we remain committed to the principle that health and social care services should use age in decision-making only where it is beneficial or justified to do so. We see no case, for example, for an exception that says that **any** instance of clinical judgement, or **any** age limit in a national programme, is not a breach of the ban on age discrimination. If we were specifically to permit particular forms of age based differential treatment, it would be essential to ensure that the relevant provisions would not be a licence to discriminate – nor perceived as such.

2.34 We recognise that designing one or more provisions of this kind would not necessarily be straightforward. For example, they would need to be able to take account of changing needs and circumstances, in a way that the objective justification test currently does. In practice, it might prove difficult to design provisions that would remain relevant in changing circumstances while still helping providers to deliver age appropriate services.

Next steps

2.35 We would like to initiate further debate on what uses of age should be able to continue, by whom and the legal way forward. We welcome comments and views on this and ask that these be forwarded to the following e-mail address by 30 April 2010: age@geo.gsi.gov.uk

2.36 It should be noted that matters relating to age discrimination within equality legislation are for the UK government but the impact of the legislation extends to many policy areas, including health and social care, that are the responsibility of the devolved administrations in Scotland and Wales. We have worked closely with the administrations in Scotland and Wales in drawing up this policy statement on health and social care and will continue to do work closely on the next steps.

2.37 We will ensure that all responses are passed to the Department of Health and the devolved administrations to consider. We will discuss this issue informally with stakeholders and representatives of those with an interest and with the advisory group that advised the age equality review, and the Scottish and Welsh administrations will be doing the same.

2.38 We will consult formally as part of the consultation on the draft Order that is planned for later in 2010. Consultation on the draft Order will enable all those with an interest in these important services to compare the merits of i) relying on objective justification alone and ii) creating particular exceptions to support the delivery of effective and personalised services.

3. Financial services

How a financial services exception might be framed

- 3.1 Our proposals for financial services were based on the findings of the Oxera research⁵ that since products are available for everyone, and there is significant competition in the market for financial services, restricting the extent to which firms can base prices on risks and costs could result in increased prices for everyone, and less well targeted services than are currently available.
- 3.2 This section details the three proposals we made, the various answers to the questions we asked to help us frame the exception and what we intend to do.

What we proposed

- 3.3 For financial services we proposed to:
- create an exception that will allow financial service providers to treat people of different ages differently, in accordance with that exception. Prices would still vary by age, where this was in line with risk or costs and not an arbitrary decision;
 - improve transparency. People need to be confident that age is not being misused. One approach would be to require the industry as a whole to publish aggregate data that everyone could check; and
 - improve access. If a supplier is unable to provide assistance to a person because of their age they will be required to refer people to a supplier who can meet their needs or refer them to a dedicated signposting service. This would provide better access and also more choice for consumers who have difficulty in obtaining the products they want. It would particularly improve access to travel insurance for older people.
- 3.4 We asked a number of questions on interrelated issues: responses to each are summarised below and then we set out what we plan to do.

⁵ <http://www.equalities.gov.uk/pdf/The%20use%20of%20age-based%20practices%20in%20financial%20services%20Executive%20summary.pdf> and <http://www.equalities.gov.uk/pdf/The%20use%20of%20age-based%20practices%20in%20financial%20services%20Final%20report.pdf>

What We Asked

- 3.5 Which of the following high level options do you prefer, and why: Option 1 (strict implementation of the ban on age discrimination, with no specific exception), Option 2 (a tailored specific exception allowing age to be used provided that it is proportionate to risk and costs) or Option 3 (a wide specific exception, which would mean that all current practices could continue)?

What Respondents Said

- 3.6 Our preferred option, the introduction of a tailored specific exception, was also the option most frequently chosen by respondents to the consultation.
- 3.7 A small minority of responses favoured a strict implementation of the ban on age discrimination, but other responses pointed out that this would make it impossible for firms to accurately reflect risk in products, and would tend to restrict customer choice and increase prices.
- 3.8 The majority of responses from financial services firms favoured a wide exception, meaning all current practices could continue, but this would not have delivered the desired outcomes of removing inappropriate age discrimination, improving access to financial services products for people of all ages and improving confidence in the way financial services take account of a person's age when assessing risk and pricing products.

“Subject to further detail, particularly on signposting and referrals, we support option 2. Such an approach would bridge the gap between older people’s perceptions that they are not being treated fairly and industry practice in offering a range and choice of policies for people of all ages” (Investment and Life Assurance Group Limited).

“BIBA’s own vision of legislation is one that ensures fairness and signposting to help people, but does not force insurers to cover areas they have never dealt in” (British Insurance Brokers’ Association).

“Option 2 is an improvement on current practices experienced in Option 3 whilst not being too restrictive for all parties concerned” (Anglesey Older People’s Council).

“A tailored specific exception allowing age to be used provided that it is proportionate to risk and costs – would be the most effective option” (Financial Services Consumer Panel)

What we asked

3.9 *Do you think a requirement to publish data at industry level would serve a useful purpose for consumers and/or the financial services industry? If yes, what sort of data would you like to see published?*

What respondents said

3.10 Respondents agreed that improving transparency was important, because of the perception among many older people that the financial services industry does not use their age in a fair way. Age and equality stakeholders were keen for a publication scheme approach. Financial services firms were concerned that confidential commercial data held by individual insurers should be protected. They therefore favoured any publication scheme requiring publication of aggregated data by a central body such as the Association of British Insurers, rather than companies themselves.

“We believe that publishing industry data on the correlation between age and claims would be a useful starting point” (Financial Services Consumer Panel).

“The Commissioner believes publication of such data to be essential to transparency and accountability. Such practices should lead to more responsible decision-making” (Older People’s Commissioner for Wales).

“We would suggest requirements be as similar as possible to the existing requirements for publishing generic data arising from the implementation of the Gender Directive” (Beachcroft LLP).

“We believe the most effective means of meeting consumer needs would be to ensure they are aware of findings from studies such as the Oxera Report” (Prudential UK and Europe).

“Transparency also needs to be accompanied by initiatives to improve financial capability, especially for clients with low financial literacy and numeracy, to help them navigate the market effectively. This could fit with initiatives such as the Financial Services Authority’s Money Made Clear service and related information provision” (Equality and Human Rights Commission).

What we asked

3.11 *Do you think signposting and/or referrals would be helpful for customers looking for various financial services? Which do you prefer? How do you think such a system could best be set up?*

What respondents said

3.12 Respondents agreed that signposting and referrals would provide improved access and more customer choice. The lack of knowledge about how to access products meant that potential customers had difficulty obtaining motor and travel insurance, and respondents indicated that signposting and/or referrals would help people find products that were available to them. The key to success of signposting would be to tailor the service to the customers who will use it and to select the most appropriate delivery channels.

“Signposting...can offer more customer choice with minimum additional cost for the providers” (CBI).

“It is important that products are available for all ages hence if a provider cannot take the risk with a particular age group they should indicate where the product is available” (Medical Womens’ Federation).

“People should have equal access to a wide range of reputable service providers and not be forced to ‘go the extra mile’ in order to purchase the product they are seeking” (Equality and Human Rights Commission).

Other specific issues

3.13 We asked a number of detailed questions to help us frame the financial services exception.

What we asked

3.14 *Do you think that firms should be able to continue to set minimum and maximum age limits for products – quoting only to people within those age limits?*

3.15 *Should age-related special offers, such as age-related saver accounts and marketing still be permitted?*

What respondents said

3.16 Respondents generally agreed that age limits could continue. Financial services firms said that forcing providers to participate in sectors that they did not wish to operate in, or had no expertise in, would be harmful to consumers’ interests as well as those of financial services firms. They considered that specialisation was important and that as providers needed credible data on age groups in order to serve them, any changes would lead to pricing challenges and higher costs. Those that opposed the use of age limits did so on the grounds that they were difficult to justify, and that providers would be able to buy data from other sources for age groups with which they were unfamiliar.

- 3.17 Most respondents said that age-related special offers should be permitted. Their view was that there seemed no clear customer case for prohibiting age-related special offers and any removal would merely penalise those for whom the offer would have to be withdrawn.
- 3.18 Financial services firms said there were sound financial reasons for and benefits in promoting special savings schemes for both the young and the old; for the young, encouragement to save at an early age reward them financially in the future, and for older people such savings help to supplement pension provision.

“Insurers should be regularly reviewing their appetite for risk in order to remain competitive. Indeed, this is already the case. A couple of decades ago, not all insurers offered cover to new customers aged over 70. But with better information and experience, upper age limits have risen significantly: the average upper age limit for accepting new motor customers has risen to 82” (Association of British Insurers).

We support the use of age-based marketing and special offers that support a social objective, beyond the firm’s commercial needs. If age-based marketing and an exception for products with a legitimate aim are permitted, we do not think that exclusive special offers should be necessary”. “No age limits unless they can be shown to be objectively justified in order to achieve a legitimate aim (such as financial inclusion)” (Age Concern and Help the Aged).

“These kinds of offers are generally uncontentious and offer a positive benefit to people whose incomes are disproportionately amongst the lowest in society” (Unison).

“ Older people...rely on pensions and seek that little bit extra by investing in saver accounts which attract a slightly higher return on investment” (Anglesey Older People’s Council).

What we asked

- 3.19 Do you think restrictions should be placed on the use of age bands within financial services provision? What are your views on the advantages and disadvantages of narrowing age bands? What size should the age bands be (eg. 1 year, 2 years, 3 years, 4 years, 5 years)? Where risks are broadly similar, is a wider age band reasonable? How could firms justify a particular banding structure?

What respondents said

3.20 The majority of the respondents to the consultation did not support restrictions on age bands, because any narrowing or restriction on the width of age bands would not improve access, but would be likely to increase prices.

“The compliance costs of narrowing age bands would create more complex distribution structures and this may cause some insurers and distributors to leave the market” (Association of British Insurers).

“Restrictions should not be placed on the use of age bands. As the Oxera report says ‘...the aggregate benefits that can be expected from the removal of age limits or narrowing of age bands are small’” (RBS).

“Whilst there will always be irritation from those who fall just on the wrong side of an age band to some extent this is mitigated in a free market where providers compete with different age cut offs” (Saga Services Ltd).

“Restrictions on banding would lead to averaging of pricing across age ranges, and this would mean cost increases for customers who do not have relevant cost or risk characteristics. We would regard this as unfair” (Lloyds Banking Group).

“We recommend that the regulations are not prescriptive about exact age bands. We would expect that the proportionality test would itself encourage narrower age bands” (Age Concern and Help the Aged).

“1 year band is not practical. The difference in ageing is not usually apparent within this limit” (Cardiff Older Persons Forum).

“We are supportive of age bands but not the large increments between some bands. We would like to see a smoother graded approach between bands. This should prevent doubling of premiums between some bands. Ultimately insurers should be allowed to set their own bands according to their own data” (British Insurance Brokers’ Association).

“Narrower age bands would merely redistribute premiums.....people currently at the lower end of an age band would pay less, people at the higher end would pay more – rather than lowering them” (Association of British Insurers).

What we asked

3.21 Do you believe that the following is an adequate description of what might be acceptable evidence: “acceptable evidence should be about a risk identified by actuarial, statistical, medical or other information relating to the person’s age. It should include public or private empirical, actuarial, statistical, qualitative research or other material or data, and evidence of costs, including but not limited to administrative or operating costs. It could be from UK or international sources, based on industry-wide data, firm-specific data or the experience of another firm, provided that it was relevant, accurate and from a source upon which it was reasonable to rely”? If there are other factors that should be included or whether some elements should be removed.

What respondents said

3.22 Respondents agreed that acceptable evidence when firms are setting prices and premiums should be defined relatively widely.

“We agree that the above statement is an appropriate description of what might be considered as acceptable evidence” (Financial Services Consumer Panel).

“Overall this description seems sufficiently broad but we would be keen to ensure that the definition retains some fluidity to ensure that, over time, new data sources are not excluded” (RBS).

“We accept that evidence should be defined relatively widely, as long as it is relevant, accurate and from a source on which it is reasonable to rely. In practice we accept that firms should be able to make a case for using the types of data listed in the consultation document, including unpublished data and non-actuarial data” (Age Concern and Help the Aged).

What we asked

3.23 Do you think that age based pricing should not require strict mathematical proportionality?

What respondents said

3.24 Respondents agreed that they were not seeking legislation that would require strict mathematical proportionality.

“If purist proportionality is enforced then it will throw away acknowledged achieved benefits for the very people the Bill is designed to protect. Motor and travel insurance for the most elderly would certainly be higher” (Saga Services Ltd).

“For products that are underwritten on the basis of a wide range of factors, of which age is just one, any requirement for mathematical proportionality in premiums would be meaningless, and would lead to confusion and uncertainty” (Legal and General).

“Strict mathematical proportionality should not be required. It is not straightforward to measure because prices incorporate a mix of costs which vary differently by age, and may be based on models in which the effects of age cannot be completely isolated” (Lloyds Banking Group).

What we asked

3.25 *To what extent do you think that commercial considerations should be allowed to be taken into account in financial services provision and which factors should be permitted?*

What respondents said

3.26 Financial services firms said that they should be able to take commercial considerations into account. These included the service provider’s overall risk exposure, their competitive position or their need to gain competitive advantage. Firms may choose to price to retain customers, so they reduce costs over time, or to attract more customers in different risk-categories. Firms were also keen that their products were as cheap as possible to sell and distribute, to keep costs to consumers down, using age bands and limits for example to minimise the costs of underwriting.

3.27 Some respondents said that commercial considerations should be controlled or not permitted, or allowed only where they were a proportionate means of achieving a legitimate aim.

“The use of commercial factors when pricing insurance is essential to delivering best value to customers” (Association of British Insurers).

“Premium income will need to take account of costs associated with acquiring new business, retaining business and developing new products” (Group Risk Development).

What we intend to do

3.28 In light of the positive response to our proposals, we can now confirm that we will introduce a tailored specific exception allowing age to be used where this is fair and reasonable. For example, in the pricing of financial services, price must be a proportionate response to risks or costs associated with age.

3.29 This means that differential treatment will be allowed to continue where it can be justified by data showing that it fairly reflects the varying risk profiles of different age groups. Lack of reasonably available data, market specialisation, the need to maintain an acceptable risk profile or the need to keep costs down for consumers as a whole will also be reasons for treating customers differently, provided it is done in a fair and reasonable way. So, for example, age bands that keep costs down for consumers as a whole will be permitted in the pricing of insurance, so long as they are based on appropriate data about risk.

3.30 Some providers apply age limits to their products. This will be permitted where it is relevant to risks or costs. Consultation and government-commissioned research have identified very few financial services where there is a lack of supply for specific age groups, but in those markets where there are difficulties of access (for example, travel and motor insurance for older people), specialist providers will be required to refer customers to another provider or to a signposting system that will be established.

- 3.31 Where it cannot be shown that age is a relevant risk factor, no differential treatment will be permitted because of age.
- 3.32 Older consumers and their representatives do not currently have confidence in the accessibility of financial services, and often think that prices are not proportionate to risk and costs. We have therefore decided that there will be a requirement for insurers to make data on some products available at industry level to support the differences in premiums. This scheme will be similar to that currently used for gender, which requires data related to gender to be published (whether in full or in summary form) and regularly updated in accordance with guidance issued by HM Treasury⁶, meaning there will be a publicly available central source of anonymised data in relation to specified products, in a form that is intelligible to someone who is not an insurance expert. The guidance from HM Treasury on the details will be subject to consultation. The ‘Money Made Clear’ service set up by the Financial Services Authority under the financial inclusion agenda should also help improve understanding of how financial services operate.
- 3.33 The signposting/referral system will focus on motor and travel insurance as these were the areas identified where some people find it hard to find a policy. It will help ensure that customers can obtain the insurance they require and which is right for them.
- 3.34 Where a financial services firm has declined to provide a service because of a person’s age, and fails to refer that person either to an alternative provider or a signposting and referrals scheme, this would be a breach of the prohibition on discrimination. The service provider would therefore potentially face a claim for damages.
- 3.35 We will work with industry stakeholders to ensure that appropriate signposting and referral systems are put in place. Key to success will be to ensure that the systems are tailored to and attractive to the customers who will use it. This means it will be necessary to select the most appropriate delivery channels, for example by establishing telephone, mail and internet-based services.

⁶ http://www.hm-treasury.gov.uk/d/consult_insurance070308.pdf and http://www.abi.org.uk/display/default.asp?Menu_ID=1116&Menu_All=1068,1116,0&Child_ID=904

Next steps

3.36 We are now working on the development of the exception, which will be in the draft Order. We have been speaking to relevant parties and will soon be setting up an internal working group with representation from industry stakeholders, consumer groups and HM Treasury to take forward the development of signposting and the publication scheme. All stakeholders will have an opportunity to consider the details of the legislation later this year when we consult on the draft Order accompanied by an outline of the HM Treasury guidance. This will be followed by further consultation on the detailed draft HM Treasury guidance.

4. General services

Age-based concessions

What we proposed

- 4.1 We said we were minded to introduce a specific exception to allow age-based concessions and benefits to continue. It should be noted that most public sector concessions would be covered by the statutory authority exception.

What we asked

- 4.2 *Do you agree that age-based concessions and benefits should be allowed to continue; are there any particular concessions or benefits which you believe should or should not be allowed to continue?*

What respondents said

- 4.3 Most respondents addressing this question said that a ban on providing much appreciated age-based concessions would not solve any perceived problem. Respondents were very concerned that benefits such as winter fuel payments, concessionary travel, free TV licences and swimming should be maintained, and the majority supported continuation of commercial discounts in chemists, opticians, restaurants, hairdressers, shops etc. Age Concern and Help the Aged on the other hand had a different view. They considered that private sector concessions traditionally offered to people above a specified age should be available to people of all ages, unless they can be shown to fulfil social objectives, beyond the firm's own commercial needs.

“Older people value concessions and benefits which tend to provide extra to enhance a better quality of life” (Anglesey Older People’s Council).

“Many small businesses may use these sorts of promotions or discounts to market their products at a specific age group, or even to help them access their services. Small Businesses do not do this in a way that is intended to discriminate or stereotype any particular group or people, or that this business activity is in anyway harmful” (Federation of Small Businesses).

“It would, indeed, be somewhat ironic if measures designed to eliminate age discrimination were to result in the loss of many recent initiatives that have improved the lives of older people” (Civil Service Pensioners’ Alliance).

What we intend to do

- 4.4 We share the majority of respondents’ view that benefits and concessions of this sort should remain. We will therefore provide a specific exception that allows any service provider in the public or private sector to use age as a criterion to determine the eligibility for concessions or benefits. This exception will apply where the purpose of the concession is to benefit the age group to which it applies.
- 4.5 This exception will be drafted in general terms since it would be impossible to list all likely age based concessions. It will therefore be possible in principle for financial services to rely on it in certain circumstances, for example preferential savings rates for pensioners. However, we will seek to frame this exception in ways that do not undercut the achievement our policy aims for health and social care and financial services.

Group holidays

What we proposed

- 4.6 We proposed allowing age-related group holidays to remain lawful, provided they clearly stated their age ranges in promotional material.

What we asked

4.7 Do you agree with the proposed exception to allow age targeted group holidays to continue?

What respondents said

4.8 The majority of respondents agreed that there should be a specific exception. Some equality organisations did not support the concept of age-related group holidays, except where they were objectively justifiable or fulfilled the requirements for positive action.

“To ban them simply to achieve some greater degree of theoretical age equality would be nonsense, particularly when there is a clear market and reasonable demand at both ends of the adult age spectrum for age targeted holiday products” (British Resorts and Destinations Association).

“Individual firms do not necessarily have the same experience of and expertise in serving customers of all ages” (Saga Services Ltd).

“No public policy or social benefit of any kind would result from the prohibition of age-related group holidays” (English Association of Self Catering Operators).

“At a time when inter-generational activity and understanding is being encouraged, it appears strange to allow market segmentation based on age” (National Partnership Forum for Older People in Wales).

“Marketing and branding may be used to establish a customer base within a particular age segment of the market” (Equality and Human Rights Commission).

What we intend to do

4.9 We will provide an exception from the ban on age-discrimination to allow specialist holiday providers to continue to provide holidays for people in particular age groups, provided that the eligible age range for the holiday is clearly stated in the promotional material. We agree with respondents that those who wish to holiday with people of a similar age do so for positive, not negative reasons and that age-based group holidays are a very small percentage

of the holiday market and there are plenty of holidays open to all. We see a parallel with private clubs and associations where it will not be unlawful for age to be a criterion for membership so that people in a particular age group can come together. It will be important to express the exception in a way that does not create a loophole allowing people of particular ages to be banned from holiday accommodation

Holiday accommodation

What we proposed

4.10 We were not convinced of the need to provide a specific exception allowing age limits on holiday accommodation, such as rented flats, houses, camping and caravan sites.

What we asked

4.11 *Do you agree with the proposal not to provide a specific exception allowing age limits on holiday accommodation?*

What respondents said

4.12 The majority of respondents said people should not be excluded from accessing accommodation on the basis of negative stereotypes and that there is no justification to expect particular behaviour from young or old. Evidence in the media indicates that damage to accommodation can be caused by guests in a wide age range. Such age limits would go against the principle of the age discrimination ban.

4.13 Holiday accommodation providers, in their responses, said that they are reluctant to provide a service to young people as they are concerned about anti-social behaviour. They said that although there may not be any specific or robust statistics relating to behavioural issues in holiday accommodation, they believe that there is reliable evidence on behaviour patterns and alcohol consumption of different age groups which they believed supports retention of age limits.

“We have seen no evidence of justification for these age limits” (Age Concern and Help the Aged).

“Saying ‘no under 21s’ at this hotel/B & B is no different to saying ‘no blacks/Irish’” (Sheffield City Council).

“Someone of any age could cause damage or behave antisocially” (City & County of Swansea Network 50+ Management Group).

“This is not merely prejudice and stereotypical misconception. No direct statistics can be brought in evidence because, it is impossible to provide evidence of the incidence of occurrences that are prevented from occurring at the present time” (English Association of Self Catering Operators).

What we intend to do

- 4.14 We agree with the majority of respondents that banning people from holiday accommodation because of their age seems a disproportionate response to concerns about young people’s behaviour and there is no particular evidence to justify this practice continuing. To allow a blanket ban on certain age groups would be contrary to the intention behind the new legislation.
- 4.15 As a result we have decided not to provide a specific exception to allow the use of age-limits for holiday accommodation.
- 4.16 However, holiday accommodation providers will still be able operate age limits if they are able to objectively justify their use if challenged – in other words, to demonstrate that the age limit imposed was a proportionate means of achieving a legitimate aim. They will also be able to continue to market their services in ways that may attract people of certain ages to their accommodation, for example by making clear that a cottage is unsuited to lively, noisy groups; that a hotel’s accommodation is ideal for people looking for a peaceful holiday; that a camp site is family focused.

4.17 It should also be noted that the age-discrimination in goods and services provisions in the Equality Bill do not apply to people under the age of 18. Therefore it will remain lawful to restrict holiday accommodation to adults only or impose different terms on holiday rentals for people under the age of 18.

Vehicle rental

What we proposed

4.18 We did not think an exception for vehicle hire companies to impose upper and lower age limits on vehicle hire would be appropriate. We accepted that younger and older drivers present a greater risk in terms of the likelihood of accidents and vehicle damage. As this risk must be insured, hiring vehicles to people at the lower and upper ends of the age spectrum would be more costly for hire companies, owing to higher age-related insurance premiums. Whilst we saw it as reasonable for hire companies to pass on these greater costs to older and younger customers, in the same way that insurers adjust insurance premiums according to age-based risk, we did not see a case for allowing hire companies to deny access to their service altogether to older and younger adults.

What we asked

4.19 *Do you agree that there should not be a specific exception allowing upper and lower age limits on the rental of vehicles? Do you agree that vehicle hire companies should be able to vary their prices by age to reflect age-based insurance premiums? If so, do you consider that there should be a specific exception to this effect?*

What respondents said

4.20 Most respondents addressing this question said that it was inappropriate for hire companies to deny younger and older people access to their services purely based on their age. They saw it as against the principle and spirit of anti-discrimination legislation to allow car rental companies to restrict access to their service based on rigid age limits alone. Risks are often more appropriate to a person rather than an age group.

- 4.21 The car-rental industry favoured an exception that would allow them to maintain age-restrictions. They believe that renting to younger and older drivers would increase their costs, as they pose a higher risk of accident. They also said that there could potentially be a negative impact on the UK's road safety record.
- 4.22 The majority of respondents agreed that vehicle hire companies should be able to reflect age-based differentials in insurance premiums within the hire prices they charge.

“The arbitrary age limit does not recognise that a portion of the customers using the service are careful drivers who present a low risk and are discriminated against by an age limit” (Glasgow City Council).

“An increase in cost, rather than denial of access to the service altogether, is more proportionate” (Suffolk Fire and Rescue Service).

“An exemption would remove the need for our members to use vital resources in dealing with whether they were compliant or not. avoid the uncertainty and legal costs associated with allowing the courts to determine whether such practices are objectively justified” (British Vehicle Rental and Leasing Association).

“We share the BVRLA's view that vehicle hire companies should be able to vary their prices by age to reflect age-based insurance premiums” (Association of British Insurers).

“The Commission agrees that vehicle hire companies should be able to reflect age-based differentials in insurance premiums within the hire prices they charge, provided that these premium variations comply with the tailored exemption for age and insurance under the Equality Bill” (Equality and Human Rights Commission).

What we intend to do

4.23 The responses to the consultation provided additional information about the potential costs and dis-benefits of not having a specific exception that would allow vehicle-rental companies to have age restrictions on vehicle hire. We want to ensure individuals are not barred from the vehicle hire market unjustifiably but also ensure we are consistent in our interventions and do not create unintended consequences. We will be exploring the issues further before deciding whether or not to proceed with our original proposal that as firms would be able to use the financial services exception to reflect in their prices the link between age, risks and insurance costs, no specific exception allowing blanket age limits was warranted.

5. Implementing the age discrimination ban

Timetable for implementation

What we asked

- 5.1 *What are your views on the proposed timetable for implementation of the ban on age discrimination in services and public functions?*

What respondents said

- 5.2 Responses on this were divided, with similar numbers of respondents thinking the timetable was about right; too fast or too slow.
- 5.3 Age organisations in particular were concerned about delays in implementing the age discrimination ban in health and social care and felt that the ban should be brought into force there in 2012, along with the other services and public functions. A variety of factors weighed in the views of other respondents. These included the need for business and the public and third sectors to have time to prepare, the finalisation of the draft EU Equal Treatment Directive, and the need to start marketing holidays for summer 2012.

“A little too quick. We are concerned that the Government is pushing ahead with domestic legislation before it knows the outcome of the Equal Treatment Directive” (Association of British Insurers).

“2012 allows sufficient preparation time, but a date any later than this would result in a loss of momentum and would call into question the commitment to make the changes signalled in the Bill” (Equality and Human Rights Commission).

“Too slow. It is disturbing to say the least that in the area where life chances are most likely to be affected – health and social care – the most delay is anticipated” (Liberty).

What we intend to do

- 5.4 We are aiming for the legislation to be in force in all sectors, including in health and social care, in 2012.
- 5.5 The EU Equal Treatment Directive is still being negotiated. We do not, however, see the need to wait for or rely on agreement being reached at some point in the future, when we are committed to introducing legislation in this area. The work we are undertaking means that we are leading the way in Europe and will allow us to have a strong influence on European policy development.
- 5.6 The next step is to develop the precise wording of the legislation that will implement the exceptions described in this document. We will consult on draft legislation in 2010. We intend this consultation to take place in the autumn. Following this we intend that Parliament should debate the legislation and for it to be made in 2011. The ban will then come into force in 2012.

6. Guidance and other issues

Feedback on guidance

What we asked

- 6.1 *Do you have any suggestions (for example regarding size, format, content, dissemination) to help ensure that guidance is sensible, proportionate and effective in helping public bodies and service providers deliver fair outcomes to consumers and the public?*

What respondents said

- 6.2 Respondents said that appropriate guidance was essential to support organisations in implementing the legislation. It must be clear and concise; to help tackle age discrimination as well as foster good practice and enable appropriate challenges to be made. It must also address all areas with sufficient clarity and be written in plain language.

“It is essential that guidance is provided which is accessible free of charge to front-line staff as well as employees, service users, consumers, and employers, and their respective organisations” (Unison).

“It should contain action-planning tools, templates, activities and checklists etc, which organisations can use as best practice guidance to improve outcomes” (Macmillan Cancer Support).

What we intend to do

- 6.3 The Government will be working with the Equality and Human Rights Commission to ensure that their guidance on the Equality Bill is of good quality and is delivered in good time in the right places such as BusinessLink for guidance users.
- 6.4 The Commission have committed to producing simple, easy-to-follow guidance that explains clearly what needs to be done to implement the law. The guidance will aim to be practical; give sensible and relevant examples, and not demand that anyone reads more than they need to in a particular situation. It will also make a clear distinction between legislative requirements and the encouragement of wider good practice.

- 6.5 The Commission intends to publish guidance at least 3 months ahead of commencement and intend to incorporate a formal 12-week consultation period ahead of publication.
- 6.6 The Commission will be guided by the BIS Code of Practice on Guidance on Regulation, and in particular its 8 “golden rules”. The Guidance will be produced in close conjunction with those who will have to implement the law.
- 6.7 An innovative “modular” approach to publication is proposed, including a mixture of web-based delivery and downloadable documents (especially for short guides or worksheets for use in training), alongside or instead of traditional printed guidance.
- 6.8 The Commission will ensure that guidance is produced in a variety of accessible formats, and reflects differences between England, Scotland and Wales.

Other issues

What we asked

- 6.9 *Are you aware of any further age-based differences in treatment which should be prohibited under the legislation prohibiting age discrimination which you consider should be allowed to continue? Should these be protected by a specific exception and if so why?*
- 6.10 *Do you believe that there is a good case for a specific exception for an area which is not covered in this consultation document?*

What respondents said

- 6.11 Respondents expressed a variety of views, including:
- concern that the legislation should make provision for creating additional specific exceptions at a later date if necessary. Such exceptions should be made in the context of a process of monitoring and review and should be properly and openly justified;
 - concern that the Challenge 21/25 policy could be outlawed. Under this scheme, people who appear to be under 25 are asked to produce a set form of identification before an age restricted sale is made to them;

- that existing age limits for the licensing of hackney carriages (taxis) and private hire vehicles are appropriate. Many licensing authorities place a minimum age requirement for applications for licences to drive taxis and/or private vehicles. This is because a person who obtains a licence at 17, after meeting the requirement of holding a licence for 12 months could become a licensed taxi/private hire vehicle driver. It is felt that this is not sufficient time to gain necessary experience, so some licensing authorities impose a minimum age limit of 21 or 25 years;
- concern that age-based pricing strategies could be prohibited;
- that the existing variety of age thresholds for example voting, marriage, becoming an MP etc should be standardised.

What we intend to do

- 6.12 **Provision for future changes** – The power in the Bill will enable further or different provision to be made in future. We will continue to monitor, and review the impact of the legislation once it is in force.
- 6.13 **Challenge 21/25 policy** – we do not propose a specific exception for this. It will be for those adopting the practice to demonstrate that it is justifiable. The aim of ensuring that those selling alcohol and other age restricted products comply with their legal responsibilities is clearly a legitimate aim. It is likely that asking for ID to ensure that someone is an appropriate age to purchase age-restricted goods is likely to be a proportionate means of achieving it. However, when challenged by someone, in particular at the higher end of this age group, it will be for those using this practice to demonstrate that the application of the policy in the particular case satisfies that test.
- 6.14 **Taxis** – it is not at present proposed to change Government guidance, which states that *“It does not seem necessary to set a maximum age limit for drivers provided that regular medical checks are made. Nor do minimum age limits, beyond the statutory periods for holding a full driver licence seem appropriate. Applicants should be assessed on their merits.”* Sections 51 (relating to drivers of Private Hire Drivers) and 59 (relating to drivers of hackney carriages) of the Local Government (Miscellaneous Provisions) Act 1976 allows a licensing authority to refuse a licence to an

applicant who has not held a full driving licence for *at least twelve months*. An authority could therefore require that an applicant had held a full driving licence for more than 12 months before granting a licence. This section of the Act also provides for licensing authorities to refuse a licence if they do not consider an applicant a fit and proper person. So, ultimately it is for the licensing authority to decide.

- 6.15 **Age-based pricing strategies** – fair and beneficial age based pricing strategies that do not inhibit access to the service concerned will be able to continue under the aged-based concessions and benefits exception, as this practice is justified.
- 6.16 **Standardisation of age thresholds** – suggestions were made that the ages at which people become entitled to benefits, concessions or capacity to do particular things should be standardised. These concessions, benefits or capacity are for the most part outside the scope of this consultation. They are considered individually on the basis of public policy considerations relevant to each area, which is entirely appropriate and will not change under the Equality Bill.

Other points raised

What we asked

- 6.17 *Do you have any other points or issues you wish to raise relating to age discrimination in the provision of goods, facilities, services and public functions?*

What respondents said

- 6.18 A number of respondents made suggestions in response to this question; however, many of these were employment or retirement-related, or concerned other areas which could not be addressed by legislation on services and public functions.

7. Next steps

Consultation on draft secondary legislation

- 7.1 A draft Order will be prepared which will legally provide for the exceptions from the age discrimination ban that we have described in this document and our final decision on vehicle hire. Interested parties will have the opportunity to comment when we consult on the draft Order – we aim to do this in autumn 2010.
- 7.2 We have through this document sought to initiate further debate on what uses of age in health and social care people want to be able to continue, by whom, and how, legislatively, this might be achieved. As we have noted, we are happy to receive people's comments and views on this and would be grateful if these could be forwarded to the following e-mail address by 30 April 2010 – age@geo.gsi.gov.uk.
- 7.3 Once we have considered this matter further, we will consult formally on specific provisions to allow particular conduct in health and social care, as part of the consultation on the draft Order, taking into account any information which we received.
- 7.4 This process will enable all those with an interest in these important services to compare the merits of i) relying on objective justification alone and ii) creating particular exceptions to support the delivery of effective and personalised services in health and social care. People will then be able to consider them and the arguments for and against them side by side.

Implementation

- 7.5 Following the decision to proceed with developing appropriate exceptions as outlined in this document we will be working to achieve full implementation of the age discrimination ban. To achieve implementation in 2012 we will:
 - further develop the approach to take in health and social care and reach a final decision on vehicle rental;
 - develop the draft secondary legislation (the Order);

- negotiate in Europe with a view to making sure that the EU model closely follows the GB one as proposed;
- consult on the draft Order in autumn 2010;
- lay the Order before Parliament in 2011;
- work with the Equality and Human Rights Commission to develop detailed supporting guidance, which will be published at least three months before the provisions come into force.

Impact assessment

7.6 We will publish revised impact assessment along side the draft legislation. This will incorporate any further evidence we can obtain from within Government and from stakeholders about costs and benefits and, in particular, the underpinning analysis for our final decision about vehicle rental. The impact assessment for the Equality Bill, which covers the costs and benefits of banning age discrimination, will also be updated and republished at Royal Assent.

Annex I: Consultation questions

Health and social care

- Q1: What timetable should be set for implementation of the provisions in health and adult social care?
- Q2: What services and practices in health and social care that differentiate on the basis of age in a positive and fair way should be retained?
- Q3: What actions need to be taken to tackle age discrimination within health and social care, and by whom?

Financial services

- Q4: Which of the following high levels options do you prefer, and why: Option 1 (strict implementation of the ban on age discrimination, with no specific exception), Option 2 (a tailored specific exception allowing age to be used provided that it is proportionate to risk and costs) or Option 3 (a wide specific exception, which would mean that all current practices could continue)? Please state your reasons.
- Q5: Do you believe that the following is an adequate description of what might be acceptable evidence: “acceptable evidence should be about a risk identified by actuarial, statistical, medical or other information relating to the person’s age. It should include public or private empirical, actuarial, statistical, qualitative research or other material or data, and evidence of costs, including but not limited to administrative or operating costs. It could be from UK or international sources, based on industry-wide data, firm-specific data or the experience of another firm, provided that it was relevant, accurate and from a source upon which it was reasonable to rely”. Please state your reasons and if there are other factors that should be included or whether some elements should be removed.
- Q6: Do you think that age based pricing should not require strict mathematical proportionality?
- Q7: To what extent do you think that commercial considerations should be allowed to be taken into account in financial services provision and which factors should be permitted?

- Q8: Do you think restrictions should be placed on the use of age bands within financial services provision? If so, please state your reasons, with examples where relevant.
- Q9: What are your views on the advantages and disadvantages of narrowing age bands? What size should the age bands be (e.g. 1 year, 2 years, 3 years, 4 years, 5 years)? Where risks are broadly similar, is a wider age band reasonable? How could firms justify a particular banding structure?
- Q10: Do you think that firms should be able to continue to set minimum and maximum age limits for products – quoting only to people within those age limits? Please state your reasons why with examples where relevant.
- Q11: Should age-related special offers, such as age-related saver accounts and marketing still be permitted? Please state the reasons for your answer.
- Q12: Do you think signposting and/or referrals would be helpful for customers looking for various financial services? Which do you prefer? How do you think such a system could best be set up?
- Q13: Do you think a requirement to publish data at industry level would serve a useful purpose for consumers and/or the financial services industry? Please state your reasons. If yes, what sort of data would you like to see published?
- Q14: Do you think that there is a better or alternative method of achieving greater transparency, to increase confidence that age is being used appropriately within financial services?

General services

- Q15: Do you agree that age-based concessions and benefits should be allowed to continue; are there any particular concessions or benefits which you believe should or should not be allowed to continue? Please state your reasons, with examples where relevant.
- Q16: Do you agree with the proposed exception to allow age targeted group holidays to continue? Please state your reasons, with examples where relevant.

- Q17: Do you agree with the proposal not to provide a specific exception allowing age limits on holiday accommodation? Please state your reasons, with examples where relevant.
- Q18: Do you agree that there should not be a specific exception allowing upper and lower age limits on the rental of vehicles? Please state your reasons, with examples where relevant.
- Q19: Do you agree that vehicle hire companies should be able to vary their prices by age to reflect age-based insurance premiums? If so, do you consider that there should be a specific exception to this effect?
- Q20: Are you aware of any further age-based differences in treatment which would be prohibited under the legislation prohibiting age discrimination which you consider should be allowed to continue? Should these be protected by a specific exception and if so why?
- Q21: Do you believe that there is a good case for a specific exception for an area which is not covered in this consultation document? Please state your reasons, with examples where relevant.

Impact Assessment

- Q22: Do you have data on costs and benefits which has not already been included in the provisional impact assessment? Where possible please give details of the sector concerned; monetary costs/benefits; non-monetary costs/benefits (eg restriction/widening of consumer choice); useful research/databases etc.

Timetable for implementation

- Q23: What are your views on the proposed timetable for implementation of the ban on age discrimination in services and public functions?
- Q24: Do you have any other points or issues you wish to raise relating to age discrimination in the provision of goods, facilities, services and public functions?

Guidance

Q25: Do you have any suggestions (for example regarding size, format, content, dissemination) to help ensure that guidance is sensible, proportionate and effective in helping public bodies and service providers deliver fair outcomes to consumers and the public?

Annex 2: Organisations who responded

Association of British Travel Agents
Action with Communities in Rural England
Actuarial Profession
Age Concern and Help the Aged
Age Concern Cymru
Amateur Swimming Association
Anglesey Older People's Council
Association of British Insurers
Association of Convenience Stores
Aviva
Association of Voluntary Organisations in Wrexham
Beachcroft LLP
Bower Farm
Breakthrough Breast Cancer
British Bankers Association
British Geriatrics Society
British Gliding Association
British Holiday & Home Parks Association Ltd
British Insurance Brokers' Association
British Medical Association
British Resorts and Destinations Association
British Retail Consortium
Bupa
British Vehicle Rental and Leasing Association
Caerphilly 50+ Positive Action partnership
Callcredit Limited
Cardiff Older Persons Forum
Care Commission
Central Council of Physical Recreation (CCPR)
Children's Law Centre
City & County of Swansea Network 50+ Management Group
Civil Service Pensioners Alliance
Community Matters
Confederation of British Industry

Co-operative
Council of Mortgage Lenders
Dorset Fire & Rescue
English Association of Self Catering Operators
Equality and Diversity Forum
Equality and Human Rights Commission
Equality Commission for Northern Ireland
Equality South West
Federation of British Historic Vehicle Clubs Ltd
Federation of Small Businesses
Finance and Leasing Association
Financial Services Consumer Panel
Forest Gate Camping Site
Forest Seniors Network
Glasgow City Council
Greenway Farm Caravan & Camping Park
Group Risk Development
Investment & Life Assurance Group
Judicial Appointments Commission
Kingfisher Group
Law Society
Leeds City Council
Liberty
Lloyds Banking Group
Lloyd's Market Association
Macmillan Cancer Support
Medical Womens' Federation
National Association of Licensing & Enforcement Officers
National Partnership Forum for Older People in Wales
National Pensioners Convention
Neurodiversity International
NHS Employers/NHS Confederation
North Yorkshire County Council
Northern Ireland Fire and Rescue Service

Older People's Commissioner for Wales
Prudential UK and Europe
RBS Insurance
Royal College of Psychiatrists
Royal Yachting Association
RSA
Saga Services Ltd
Scottish Youth Parliament
Sense
Sheffield City Council
Southampton Pensioners Forum
St Anthony's Hospital
St James's Place Wealth Management
Suffolk Fire and Rescue Service
Sunderland Carers' Centre
Tourism Alliance
UK Cards Association
UNISON
Wales Tourism Alliance
Wessex Pensioners Convention
Women's National Commission
Young Equals

Note:

- The list excludes organisations that asked for their names not to be made public.
- In addition to the above list of organisations there were also a number of responses from individuals.

Annex 3: Update on exceptions in other services and public functions

In addition to the areas where views were sought in the consultation document, there are areas outside the scope of the consultation where specific exceptions had already been agreed, as explained in the consultation document. Below is an update on these issues.

Immigration

There will be a specific exception to allow the immigration authorities to continue to treat some people differently because of their age. This is necessary because there are a number of immigration functions for which age is a criterion. For example, the UK Border Agency has introduced a Points Based System for entry and leave to remain in the UK in which applicants accrue differing numbers of points according to their age, qualifications and previous earnings.

A person's age is one factor that is taken into consideration along with the person's qualifications and previous earnings. Points are awarded for age in order to allow younger applicants the chance to access Tier 1: General of the Points Based System. Because of the significant weighting put on previous earnings (because it is the best predictor of labour market success), and because it takes time to establish a successful career and progress earnings to the necessary level, without points for age, young applicants with a high potential would not be able to access the system.

There are areas other than the PBS where age is a criterion for entry into the UK under the Immigration Rules, such as the age requirements for settlement in the UK as a spouse or as the parent, grandparent or other elderly dependent relative of a person present and settled in the UK.

To give another example, the immigration authorities may want to give extra scrutiny to applications for entry from a particular age group, if there has been evidence of immigration abuse by people of that age range.


Sport

There will be an exception for age-banded or age-specific sporting events, leagues or training facilities where the restriction is proportionate to ensure fair competition, the safety of competitors or some other legitimate aim. This exception will allow the continuation of age-restricted competitions in sports, games or other competitive activities where, for example, the capabilities of average people of one age group put them at a disadvantage compared to average people of a different age group.

For example, many tennis clubs run separate competitions for ‘veterans’ aged over 40 or 45.

Residential park homes

Premises are not covered by the age discrimination ban; however, as there is uncertainty as to whether residential park homes would fit within the definition of “premises”, we will provide an exception which will make it clear that residential park homes are permitted to include age limits in their park admission rules. Such an exception will provide legal certainty, as it is possible that a court, when faced with a question relating to age limits, could reach a number of different conclusions depending on the facts and circumstances of the individual home park and the detail of the agreement between the park operator and resident regarding whether the age limit set was justifiable. This approach is consistent with the government policy of not wanting to intervene with the arrangements people make regarding their accommodation. However, any such exception will not allow age discrimination in the provision of services once individuals have been admitted to a residential park home site.



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