



Government
Equalities Office

Putting equality at the heart of government

Equality Bill: Making it work

**Ending age
discrimination in
services and public
functions**

A consultation

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Consultation process

The Government wants to take forward these proposals on a participative basis with the full involvement of all those who have an interest in this area and comments from all are welcome.

Contact with stakeholders will continue during and after the consultation period as the proposals are further developed and refined.

This consultation process have been planned to adhere to the Code of Practice on Consultation produced by the Department for Business, Innovation and Skills (BIS), and are in line with the seven consultation criteria as detailed in Annex I.

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Ministerial Foreword

Michael Foster DL MP

Parliamentary Secretary, Government Equalities Office



There is no doubt that, as the Equalities Review concluded, “*Britain is in many ways a fairer and more equal society today than at any time in living memory.*”¹ However, inequality still exists and represents a significant barrier to people’s opportunities in life.

Age discrimination is no exception. In fact it is perceived as one of the most prevalent forms of discrimination today, at some point in our lives every one of us will be vulnerable to age discrimination.

This is unacceptable – everyone has the right to be treated fairly and have the opportunity to fulfil their potential. But equality is not only important for individual justice. Our economy and place in the world is weaker if we do not harness the talents of all our people. We all lose out when older people are excluded from our society.

What makes the issue of age equality even more urgent is the fact we as a society are growing older and living longer. This demographic revolution shows that we are enjoying a higher standard of living and advanced medical care. However that makes it even more important that our society, and particularly our health and social care services, are able to keep up with the demands brought by this change. We need to do more to ensure that people are helped to stay independent for as long as possible, have equal access to services and are treated with the respect and dignity they deserve.

The Government is determined to consign age discrimination to the past through a range of legislative and wider measures aimed at protecting people of all ages from discrimination, and helping to transform the ageist culture which has prevailed in our society for too long. This document seeks your views on our emerging proposals for exceptions from the ban on age discrimination in services and public functions.

¹ <http://archive.cabinetoffice.gov.uk/equalitiesreview/publications.html>

In my view these emerging proposals will help maintain important and beneficial or justifiable practices to ensure that age discrimination legislation only impacts areas where discrimination is harmful, thus improving the lives of all our citizens, now and in the future.

I do hope that you let us know what you think, particularly about the specific questions to which we are seeking answers. By doing so, you can help us ensure that appropriate legislation is implemented in a sensible and practical manner, and provide real benefits to consumers and the public as a whole.

A handwritten signature in black ink, appearing to read "Phil Fitch". The signature is written in a cursive, flowing style with a large initial "P" and "F".

Chapter 1: Executive Summary

Ending unjustifiable age discrimination

- 1.1 For forty years, discrimination law has helped radically change attitudes and behaviour towards women, people from ethnic minorities and other groups. In the future, the same will happen for people of different ages. It is clearly wrong that in 21st century Britain people can still be treated in a discriminatory way because of their age. Legal protection from unjustifiable age discrimination in employment and vocational training was introduced in Great Britain in 2006, but people are still not legally protected from age discrimination outside work.
- 1.2 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 goods, facilities and services and exercising public functions. This will provide important new protection, particularly for older people who often get sub-standard treatment, and will signal clearly to service providers (throughout this document we use the term “service provider” which also includes “person exercising a public function”) that it is not acceptable to treat some people worse than others simply because of their age.
- 1.3 Our approach is based on the following principles:

- Fair: people of all ages should be treated fairly and have an equal opportunity to access services provided by the public, private and voluntary sectors.
- Proportionate: it should still be possible to treat people differently where this is justifiable or beneficial or for good public policy reasons. Age is a valid criterion in the provision of many services and interfering unnecessarily would not be in the general public interest.
- Clear and transparent: for individuals about their rights and how decisions are made, and for the public, private and voluntary sectors about their legal responsibilities, avoiding unintended consequences.
- Practical and realistic: addressing real problems in a common sense way, taking account of how people of different ages live and their different needs and how businesses and other organisations operate. Based on evidence about what works and avoiding disproportionate burdens.

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

- 1.4 We are proposing a proportionate and flexible approach that does not inadvertently hurt those we are seeking to protect. The new law will not stop service providers offering age-specific goods and services which are beneficial or are justifiable – services are often targeted in this way to reach those people most likely to be in need. One such example is priority flu vaccinations for over 65s, based on evidence that susceptibility to flu and the likelihood of complications are higher than average among this age group. The new law will allow differences in treatment for different age groups protecting a number of age based practices.
- 1.5 This consultation document sets out how our proposals are developing towards specifying those age-based practices for which we believe exceptions from the ban on age discrimination in services and public functions may be warranted. It covers three main areas:
- health and social care;
 - financial services; and
 - other services, including commercial services such as group holidays and concessions for particular age groups.

Health and social care

- 1.6 There is evidence and concern that services unfairly discriminate against the needs and preferences of different age groups, particularly older people:

An Audit Commission review in 2006, found that, although older people's experience of health and social care had significantly improved, "*deep-rooted cultural attitudes to ageing*" were hampering wider Government plans to improve health and social care and local council services such as transport for older people.³

³ <http://www.audit-commission.gov.uk/nationalstudies/health/socialcare/Pages/livingwellinlaterlife.aspx#downloads>

A survey by The British Geriatrics Society, found that 47% of doctors specialising in the care and treatment of older people think that the NHS is institutionally ageist; 66% agreed that, in their experience, older people are less likely to have their symptoms fully investigated; and 72% said that older people were less likely to be referred on for essential treatments.⁴

A study of stroke patients at Mayday University Hospital found that older patients were less likely to receive diagnostic investigations and advice on how to improve their lifestyle compared to younger patients.⁵

The Healthcare Commission found that older people were being denied access to the full range of mental health services that are available to younger adults. In particular, there was poor access to out-of-hours and crisis services, psychological therapies and alcohol services.⁶

- 1.7 The prohibition of age discrimination is a very big part of our drive to improve the way that health and social care services are commissioned and delivered for different age groups.
- 1.8 We intend that the new law should ensure that access to health and social care services is based on need, not on age. In April 2009, the then Secretary of State for Health, Alan Johnson, announced a review into the practical action that is needed to tackle age discrimination in these sectors. This national review is being undertaken by the Strategic Health Authority, social care bodies and a range of local partners in the South West. It will report to the Secretary of State in October, and will include recommendations on the timing of implementation and on those areas of age-based differentiation that should be maintained. It will also include advice on implementing the age element of the public sector equality duty. More detail about the review is set out in chapter 3.

⁴ The British Geriatrics Society, on behalf of Help the Aged, surveyed a sample of 201 of its UK members from a total of 2000 UK members on the 30th May 2008

⁵ Postgraduate Medical Journal – Do older patients receive adequate stroke care? An experience of a neurovascular clinic – March 2009; 85: 115–118

⁶ Healthcare Commission – Equality in Later Life. A national study of older people's mental health services – March 2009. http://www.cqc.org.uk/_db/_documents/Equality_in_later_life.pdf

Financial services

- 1.9 Many older people are worried that they have a more limited choice of services and pay a higher price for them. They are particularly concerned about travel and motor insurance.⁷

“When I reached 75 my car insurance premium went up considerably, they said it was because of my age, but I haven’t had an accident and I’ve got 60 per cent no-claims bonus.”

“I’d like to know why travel insurance automatically goes up when you get older.”

“I discovered the cover for an old person is twice that of a young person.”

- 1.10 We commissioned an independent study, reviewing existing research findings and undertaking new research, which is published today⁸. This suggests that there is a clear problem related to finding insurance⁹. Although most people of all ages find a suitable policy easily or very easily, a small but important minority of people think this will be difficult or find it to be so. They end up without the insurance they need to drive (older and younger people) or to travel (older people). We are consulting on proposals to tackle this including signposting, referrals and transparency.
- 1.11 We believe that age used properly is a valid criterion for pricing risk. Indeed changes such as outlawing the use of age as a risk factor could actually mean everyone, including older people, losing out. This is because, in general, prices are fairly based on risk and higher prices are a result of genuinely greater costs.

⁷ Age Concern surveys suggest that people aged 75 and over are nearly ten times more likely to be refused a quote for motor or travel insurance than people aged 30 to 49. 13 per cent of people over 80 said they were put off taking holidays because of worries about getting insurance or the cost of premiums.

⁸ The use of age-based practices in financial services – a report undertaken by Oxera, available on the GEO website – <http://www.equalities.gov.uk>

⁹ The independent Oxera research indicates that in the main older people are not being denied travel insurance, or indeed young people being denied motor insurance, on a systemic basis. Where there is a bias, this tends to be in favour of older people (for travel insurance) and younger people (for car insurance). The evidence shows that insurers are more likely to lose money, than make excessive profits, on travel insurance for older people.

1.12 Restricting the extent to which the financial services industry can base prices on risks and costs would distort the market. This would lead to higher prices or lower quality products for everyone. Firms would be far less certain about the risk of claims, and how much these claims would cost. This uncertainty would lead some firms to leave the market, resulting in less competition, with those remaining charging higher prices to ensure that they could stay in business. Where age is a genuine risk factor, pricing policies on the basis of people's individual health and behaviour would be more operationally expensive, also leading to increased prices. Based on these findings we see three broad options:

- allow different treatment based on age only where it can be objectively justified.

or

- create an exception that will allow financial service providers to treat people of different ages differently, but only where this is justifiable. Prices would still vary by age, where this was in line with risk and not an arbitrary decision; and
- 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 signposting and referrals, and therefore access more generally. If supplier is unable to provide assistance they will direct people to suppliers who can meet their needs or provide a list of companies with policies for their age group. 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.

or

- Create a wide specific exception for financial services as a sector.

1.13 The options on financial services are covered in more depth in chapter 4.

Age based practices in other sectors

1.14 There are a number of other age-based practices outside financial services and health and social care which we think are likely to merit specific exceptions from the ban on age discrimination to ensure that it is clear that they can continue, and on which we are seeking views.

- We expect to provide exceptions for:
 - age-related group holidays;
 - age-based discounts and benefits (for example “10 per cent off days” offered by certain retailers to pensioners, and subsidised leisure and transport facilities for older or younger people).
- With respect to rental of holiday accommodation (such as flats, houses, camping and caravanning sites) and vehicle hire services, we have considered whether specific exceptions should be provided. However, in the majority of cases, we do not think that these age limits could be justified and we therefore do not plan to provide specific exceptions for these practices. Providers would therefore need, if challenged, to be able objectively to justify them.
 - For example, many providers of holiday accommodation impose age limits, such as “no under 21s”. Industry representatives have argued that these age limits are necessary to prevent potentially unruly young adults from causing damage to properties or disrupting other holiday makers. However, we are not persuaded by this. No quantified evidence has been presented to us on this point and we are alive to risks of stereotypical assumptions about young people.
- We are considering whether vehicle hire companies should be able to charge more to older and younger people, to reflect price differentials in age-based insurance premiums.

1.15 These proposals are covered in more depth in chapter 5.

Summary

1.16 The table below shows what is likely to remain the same and to change as the result of the new age discrimination ban.

No change	Change
<ul style="list-style-type: none">• Bus passes• Some health screening for particular age groups• Saga holidays and Club 18 – 30• Discounts for pensioners and students	<ul style="list-style-type: none">• Better access to health service and social care• Easier to find travel and car insurance• Better access to holiday accommodation for young people• Better access to hire cars

Next steps

1.17 Over the coming months we will continue to refine our policy further, in the light of the responses to this consultation and other emerging information from our discussions on the various issues both within and outside government. This consultation is particularly seeking further information and data on potential costs and benefits to help us develop our provisional impact assessment on these proposals.

1.18 There will then be further consultation on secondary legislation which will set out the precise detail of the exceptions. We are seeking views on the timetable outlined in chapter 6 of this document.

1.19 Timely guidance will be produced, to help business, public bodies and individuals understand the new requirements. The Equality and Human Rights Commission has been consulting about what guidance people would like to see under the Equality Bill and which is the most urgently needed. We are asking in this consultation for specific suggestions to help ensure that guidance relating to avoiding age discrimination within the provision of goods, facilities, services and public functions is sensible and proportionate, and helps service providers and organisations deliver fair outcomes to consumers and the public.

What we want your views on

I.20 Throughout this consultation document there are a number of questions to which we would welcome your answers to help us further develop our policy.

Chapter 2: Introduction

- 2.1 In 21st century Britain, older people should not be written off and younger adults denied opportunities just because of their age. We have made clear that we are determined to root out ageism in how services are provided and public functions are carried out. There is clear evidence that age discrimination harms people's quality of life and life chances, with older people being most affected. It is vital for our society and the economy that people of all ages can participate actively and fully in social and economic life.
- 2.2 We announced in *Framework for a Fairer Future – The Equality Bill*¹⁰, published in June 2008, that we would use the Equality Bill to outlaw harmful age-differentiated practices against people aged 18 and over by those providing services and exercising public functions. A legal definition of age discrimination from the Equality Bill, which will apply in services and public functions is reproduced in Annex 2.
- 2.3 The new law will put age discrimination outside work on a similar footing to discrimination in the workplace. It will send an unequivocal message that ageist attitudes, and the discriminatory practices they often lead to, are no longer acceptable, in much the same way that previous discrimination legislation has helped to radically change attitudes and behaviour towards women, ethnic minorities and disabled people.
- 2.4 How important it is to change attitudes and culture was underlined by a 2006 review of the Department of Health's *National Service Framework for Older People in England*. This review found that, although older people's experience of health and social care had significantly improved, "deep-rooted cultural attitudes to ageing" were hampering wider Government plans to improve health and social care and local council services such as transport for older people¹¹.
- 2.5 The new law will give individuals confidence that it is their right to be treated fairly. It will provide them with a right of redress in the courts if they are discriminated against. Legislation will also help service providers to eliminate harmful age discrimination by providing them with a clear legal framework within

¹⁰ <http://www.equalities.gov.uk/PDF/FrameworkforaFairerFuture.pdf>

¹¹ <http://www.audit-commission.gov.uk/nationalstudies/health/socialcare/Pages/livingwellinlaterlife.aspx#downloads>

which to design, commission and deliver services.

- 2.6 The new law will thus provide important new protection both for younger adults and older people. Evidence suggests that it is the latter in particular who are most likely to suffer the negative effects of age discrimination.
- 2.7 The new law will however respect the fact that, within our society, we often treat people differently according to their age and that this is often appropriate because people's needs, expectations and circumstances change with their age. Age-based treatment can play an important role in ensuring that people of all ages can participate socially and economically in their community and that services both meet people's differing needs and are delivered efficiently, benefiting individuals and society in general. For example, age is used as a qualifying condition for benefits such as free TV licences for people over 75, and the NHS targets certain disease prevention programmes, such as cancer screening, at age groups with the greatest clinical justification. Using age criteria here is an effective way of targeting finite resources at those most likely to be in need.

An age-friendly society

- 2.8 The ban on age discrimination is part of a package of measures to support older people, both within and beyond the Equality Bill.
- The new single Equality Duty in the Equality Bill will require public authorities to assess the impact and accessibility of their services to people of all ages. The age element of Northern Ireland's equality duty has already led to positive changes such as earlier consultation with and involvement of older people in the development of services, and improved awareness of the damaging effects of stereotypical attitudes and the need to take account of older people's different needs. We expect similar positive changes in the UK.
 - The publication of the Government's strategy for an ageing society in summer 2009, will detail the next steps in taking forward the Ageing Strategy, containing practical steps to be taken to address the needs of an ageing population and make a real difference to people's lives.

- On-going pension reform will make the pension system fairer, more generous and widely available. We also help older people financially in other ways, including through free prescriptions and free off-peak nationwide bus travel for over 60s, free TV licences for over 75s; grants to fund central heating installation for Pension Credit recipients aged over 60 and free loft and cavity insulation for over 70s.
- We are helping to improve older people's health and wellbeing, including through Department of Health strategies to improve the services offered to carers, people with dementia and mental health problems, and those who have suffered strokes.
- The Department of Culture, Media and Sport is promoting older people's involvement in leisure activities, and helping enable the over 60s to swim for free in local authority pools in England.
- The Department for Communities and Local Government's *Lifetime Homes, Lifetime Neighbourhoods* strategy will help to ensure there will be enough appropriate housing available to meet the needs of a rapidly ageing society.
- Joan Bakewell has been appointed as a Voice of Older People to help raise the profile of issues affecting older people.

Evidence of age discrimination

2.9 There is no doubt that harmful age-based practices persist in our society. The responses to the consultation *A Framework for Fairness: Proposals for a Single Equality Bill for Great Britain*¹² showed that age discrimination is widespread. Age equality groups cited a survey in which almost 30 per cent of adults questioned said they had been discriminated against because of their age.

¹² <http://www.communities.gov.uk/publications/communities/frameworkforfairnessconsultation>

Background to this consultation – the Discrimination Law Review

- 2.10 We made a commitment in our 2005 General Election manifesto to introduce an Equality Bill during the current Parliament. The *Discrimination Law Review* had already been launched in February 2005 to ‘consider the opportunities for creating a clearer and more streamlined equality legislation framework which produces better outcomes for those who experience disadvantage, while reflecting better regulation principles’. The findings of the *Discrimination Law Review* were published in June 2007 in the consultation paper *A Framework for Fairness*¹³, which set out proposals for a new Equality Bill to modernise, harmonise and streamline discrimination law.
- 2.11 *A Framework for Fairness* sought views on whether the Equality Bill should extend legal protection from age discrimination to services and public functions. The consultation:
- asked for evidence of unfair age discrimination;
 - invited views on whether legislation would be the best way of tackling such discrimination;
 - sought views on how such legislation could be targeted; and
 - invited general comments.
- 2.12 The consultation period ran from June to September 2007. There were almost 750 responses on age discrimination. The responses gave examples of perceived age discrimination in the areas of concern identified in the consultation paper – in particular, health and social care and financial services were highlighted by many respondents. There was strong support for new legislation from age and equality organisations. Businesses and some public sector service providers, on the other hand, were concerned about the harm that they considered legislation might cause to beneficial or justifiable age-based treatment and about the potential burden of complying with legislation.

¹³ <http://www.communities.gov.uk/documents/corporate/pdf/325332.pdf>

- 2.13 The evidence presented in response to the consultation was mainly around health and social care, and financial services (particularly travel and motor insurance). Research commissioned by the Department of Health in 2007 to investigate age discrimination in mental health and social care services found evidence of extensive differences in treatment between age groups.¹⁴ In addition, a recent study by the Healthcare Commission (2009) found that, in a number of mental health trusts, older people were denied access to the full range of mental health services that are available to younger adults, and that services which were open to older people were not always sensitive to their age-related need.¹⁵ Age Concern stated that one in five older people were unsuccessful in getting quotations at a first attempt, for motor and travel insurance. 29 per cent of attempts to get a quotation by people aged 75 and over were unsuccessful, compared to 3 per cent of those by 30 to 49 year olds¹⁶, although it should be noted that these statistics include all refusals to quote, whether because of age limits or because of health conditions for example.
- 2.14 After considering responses to the *Discrimination Law Review*, we announced in *Framework for a Fairer Future – The Equality Bill*¹⁷, published in June 2008, that the Equality Bill would outlaw age discrimination against those aged 18 and over in services and public functions. *The Equality Bill – Government response to the Consultation*¹⁸ set out the response to the consultation and made clear that there would be further consultation on specific exceptions to the ban on age discrimination in 2009.

¹⁴ http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH_085763

¹⁵ Equality in Later Life, A National Study of Older People's Mental Health Services – Healthcare Commission, 2009

¹⁶ Age Concern/Help the Aged, Insurance and age – exploring behaviour, attitudes and discrimination, March 2007 research

¹⁷ <http://www.equalities.gov.uk/PDF/FrameworkforaFairerFuture.pdf>

¹⁸ <http://www.equalities.gov.uk/PDF/EqBillGovResponse.pdf>

The Equality Bill – extending age discrimination protection to services and public functions

- 2.15 The Equality Bill, which is currently before Parliament, will simplify and strengthen discrimination law. It will simplify by bringing together in a single statute legislation enacted over the last 40 years: at least nine major enactments and measures necessary to implement several major European Directives. It will strengthen the law in a number of ways by improving protection from discrimination and introduce measures designed to encourage faster progress in tackling the inequality and disadvantage which, despite the progress which has been made, still persists in modern Britain. One of the key strengthening measures in the Bill is the banning of age discrimination in the provision of services and the exercise of public functions. This consultation relates to the Equality Bill as introduced on 24 April 2009, which might be amended as it passes through Parliament.
- 2.16 The new law will ban direct and indirect age discrimination and harassment related to age against those aged 18 and over¹⁹. This will mean that an individual who believes he or she has been treated less favourably than another person because of their age will be able to bring a legal challenge against the service provider. Where direct age-differentiation is justified it does not constitute age discrimination.

What the age ban does not cover

Under 18s

- 2.17 The aim of the new law is to protect adults from discrimination because of age. In principle, it does not give protection to children as children. It does however in some circumstances cover children who are carers, since they will benefit from protection from discrimination through association with the person for whom they are caring. In these circumstances children are in the same position as adults who care for disabled or older people. The decision to apply the new law only to adults has not been taken lightly – but discrimination law is not the best way to promote children's well-being and help them thrive. Most examples of poor treatment of young people that have been presented to us come from negative

¹⁹ It will also be unlawful to victimise someone because they have made a complaint of age discrimination.

attitudes towards children, a general low opinion and mistrust of young people, and a lack of age appropriate services for various age groups. These matters are either outside the scope of age discrimination law, or could not be effectively dealt with through it. Age has a very significant influence on how children and young people need to be treated, the services they require, and the levels of personal responsibility and freedoms they should be afforded. A misguided extension of age discrimination legislation to under 18s could have significant negative consequences, make numerous age appropriate services for young people unlawful and hinder society's ability to effectively support, protect and develop its young people.

Where people live

- 2.18 The age discrimination ban will not apply to the disposal and management of premises. Although age criteria for access to housing is common, for example for entry to residential care homes, foyer accommodation and similar schemes (which provide rental accommodation to young homeless people aged 16-25 who are at risk of the 'no home, no job, no home cycle'), and private sector retirement villages, we have decided that age limits in this field should not be prohibited, because they enable housing providers to meet age-based need and individuals to live with other people of a similar age when they prefer to do so. The rationale for this exclusion is set out in more detail in Annex 3. The exclusion of premises from the age discrimination ban is on the face of the Equality Bill and does not form part of this consultation.

Volunteers

- 2.19 Some of the responses to the Equality Bill consultation called for the Equality Bill to protect volunteers from discrimination across all of the protected characteristics and some of the examples of discrimination which were provided related to age. The Equality Bill does not specifically prohibit discrimination against volunteers with respect to any of the protected characteristics. Annex 3 explains why we favour a non-legislative approach to tackling discrimination against volunteers and outlines the steps we are taking both to tackle discrimination and to promote and support volunteering by older people.

Commencing the ban

2.20 The ban on age discrimination is included in the Equality Bill, but will not come into force at the same time as most of the other provisions in the Bill. It will be commenced by way of one or more Orders made by a Minister at a later date. There is power to apply the new provisions to different sectors at different times. Business, the public sector and the third sector will have time to prepare for the new legal protections and, where necessary, to change how they do things so as to be sure of meeting their new obligations. At the same time, legislation to add necessary exceptions will also be made.

Tackling harmful discrimination and safeguarding justifiable different treatment

2.21 Age discrimination will be banned; but we want to make sure that the new law prohibits only harmful or unjustifiable treatment. The Equality Bill will allow certain forms of age-based differential treatment to continue in two ways. It will be possible to justify treatment that would otherwise be direct age discrimination where it is a proportionate means of achieving a legitimate aim ('objective justification' – see paragraph 2.23) and there will be a framework of exceptions together with positive action provisions to allow age differentiated treatment. Appropriate guidance will help to provide clarity for service providers about what forms of different treatment are likely to remain lawful and which amount to unlawful age discrimination.

2.22 Some of the exceptions apply to all the protected characteristics (see paragraph 2.24) and are on the face of the Equality Bill. These 'cross-strand' exceptions are not the subject of this consultation but further detail on this wider framework of exceptions is set out below as context and background for the discussion about age-specific exceptions that follows.

Objective justification

2.23 Service providers will be able to objectively justify different treatment because of age, if they can show the different treatment is a proportionate means of achieving a legitimate aim. The scope to do this recognises that differences in treatment on age grounds can be justified in a wide range of circumstances, not all of which may be captured in the exceptions we propose. Service providers who wish to use age criteria which are not subject to a specific exception would have to be able to objectively justify them if challenged. Annex 4 provides more information about objective justification.

General or ‘cross-strand’ exceptions

2.24 There are a number of general exceptions in the Equality Bill, which will apply to all of the protected characteristics. When the age discrimination ban is commenced these ‘cross-strand’ exceptions will also apply to age discrimination. These exceptions will make age-based different treatment lawful in the following circumstances:

- where this is necessary for reasons of national security;
- where age-based treatment is a requirement of other legislation (the ‘statutory authority exception’). This will mean that service providers will not have to objectively justify age-based practices they undertake in order to comply with other legislation – 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 and age limits on jury service²⁰;
- where a club or association caters for a particular age group;
- where a charity provides benefits only to people of a particular age or age group.

²⁰ Age limits for jury service are set out in section 1(a) of the Juries Act 1974. As such they will fall within the statutory authority exception and will not be outlawed by the age discrimination ban. However, the Government is currently reviewing the age limit on jury service and will publish a consultation paper before the end of 2009.

Positive action

- 2.25 The positive action provisions in the Equality Bill will also apply to age when the age discrimination ban is commenced. This will allow different treatment to prevent or compensate for the disadvantages experienced by particular groups because of their age. For example, this may allow libraries to offer dedicated ‘silver surfer’ sessions to older people to help them learn how to access the internet.

Age-specific exceptions

- 2.26 We propose a number of age-specific exceptions, some of which we are consulting on in this document, as we also need to exclude some specific age-based practices from the ban on age discrimination, either because they are beneficial or are likely to be justifiable. Once we have determined appropriate specific exceptions they will be set out in secondary legislation on which there will be a further consultation. Getting the specific exceptions right will be challenging. Specific exceptions provide a greater degree of legal certainty. They help to ensure that service providers do not end beneficial practices or withdraw services out of concern that they may be open to legal challenge or that the process of justification undermines their ability to continue to provide the service or function on an economic basis or at all. We are conscious that the legislation could have a significant practical, organisational and financial impact on service providers, including potentially large costs, in particular for the health and social care sectors. However, we must take care that the specific exceptions we create do not inadvertently allow harmful age discrimination to continue.
- 2.27 We intend to implement the new law (including the relevant age specific exceptions) in phases starting with those sectors most ready to comply, to give different service providers the time they need to address the practical and organisational issues that are likely to arise. We expect to see the legislation in force in financial services and all other services, with the exception of health and social care, in 2012. We are keen to hear from service providers about how we can ensure implementation goes as smoothly as possible.

2.28 We are seeking views in the following areas:

- health and social care (chapter 3)
- financial services (chapter 4)
- age-based concessions and group holidays (chapter 5).

2.29 We have also considered age limits for holiday rental accommodation and vehicle hire. Many providers of holiday accommodation impose age limits, such as “no under 21s”. Industry representatives have argued that these age limits are necessary to prevent potentially unruly young adults from causing damage to properties or disrupting other holiday makers. However, we are not persuaded by this. This view is based on anecdotal evidence only, compounded by stereotypical assumptions about young adults. We are, however, thinking further about whether it is justifiable for vehicle hire companies to reflect age-based differences in insurance premiums in the prices they charge and if so, whether an exception should be made to this effect. Further information on holiday rental accommodation and vehicle hire can be found in chapter 5 and we would welcome views on our proposed approach. In any event it will be open to individual service providers to objectively justify their use of age. Particular practices that are objectively justified will not be unlawful.

2.30 The following chapters set out our emerging policy proposals and issues for further discussion. We have developed them through earlier consultation on the Equality Bill, extensive liaison with stakeholders and detailed work within government.

2.31 Comments and suggestions in response to the questions put in each chapter, and more generally, will help us to further develop policy and to frame the exceptions in a precise and workable way.

2.32 In our work to date, we have taken into account:

- the need to ensure that legislation bans only unjustified age-based treatment – we want to ensure that differential, age-based provision of services and public functions which are justifiable and/or beneficial can continue;
- the costs and challenges that implementing the legislation could entail for service providers and the time they may need to be ready to comply with it.

Age-specific exceptions on which we are not consulting

- 2.33 The age discrimination ban will not prohibit the use of age as a factor in immigration decisions or the existence of age-banded or age-specific sporting events, leagues, or training facilities where the use of age criteria is necessary to secure fair competition or the safety of competitors. The necessary exceptions for these matters will be made when the age discrimination ban comes into force. Further detail can be found in Annex 3.

EU Equal Treatment Directive

- 2.34 In developing our age discrimination legislation for Great Britain, we will continue to take into account developments in Europe. The European Commission has brought forward a proposal for an EU Equal Treatment Directive which is currently going through the EU legislative process. We published a consultation document on 5 May 2009 inviting views on the proposed Directive to help inform our negotiating objectives, seeking responses by 28 July 2009. This Directive, if adopted, will introduce new Community legal requirements relating to age discrimination. We welcome the proposal to legislate on age discrimination in services at EU level. However, there remains a long way to go in the negotiations on the proposal and it will be subject to agreement by all member states.
- 2.35 We are committed to pressing ahead with our domestic legislation, as we have a clear vision of what we wish to achieve and we wish to fulfil our commitment to closing this remaining gap in GB discrimination law as soon as possible. We also believe that the work we are undertaking puts us in a strong position to influence the development of the Directive, to ensure that it takes account of the need to protect the wide range of beneficial or justifiable age-based practices discussed in this consultation document. We are of course mindful of the need for the UK and EU approaches to be compatible and ensure burdens arising from changes are minimised. We are approaching the negotiations and decisions on timing of implementation with this very much in mind.

Chapter 3: Proposals for health and social care

How age is taken into account by health and social care services

- 3.1 Age is used in a number of ways by professionals and organisations that fund, commission and provide health and social care services. It can form part (along with a range of other factors) of a clinical assessment of an individual. It can also inform decisions about the likely benefits to the population of a particular intervention (eg, the targeting of ‘flu vaccinations at older people). It can provide a helpful basis for tailoring services so that they meet the needs of particular age groups (eg, integrated care services for older people that recognise the increased likelihood amongst this group of having more than one health or social care need).

Age discrimination in health and social care

- 3.2 Along with helpful age-based differentiation of the kind outlined above, there is also evidence from individual testimony and more systematic research, of age being used in an inappropriate, discriminatory manner in some health and social care services. For example, a recent report by the Healthcare Commission highlighted variations in older people’s mental health services, with some mental health trusts proactively addressing age discrimination while others performed less well – in some trusts, older people were denied access to the full range of mental health services that are available to younger adults, and those services which were open to older people were not always sensitive to their age-related need²¹.
- 3.3 Organisations such as Help the Aged have also gathered individual accounts of poor treatment of older people²². Research commissioned by the Department of Health in 2007 in mental health and social care services showed differences in provision between age groups, which, the researchers concluded, were likely to be in part due to age discrimination. The research also set out a range of caveats and limitations, which need to be fully recognised²³. The research looked at a number of specific services and the findings cannot be extrapolated to the whole health and social care sector.

²¹ Equality in later life: a national study of older people’s mental health services, Healthcare Commission, March 2009. http://www.cqc.org.uk/publications.cfm?fde_id=11810.

²² Worth fighting for: ten stories of ageism, Help the Aged

²³ http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH_085763

- 3.4 The ban on age discrimination in relation to services and public functions will provide an important catalyst for improving the way health and social care services are commissioned and delivered for different age groups.

Values and commitment of health and social care

- 3.5 From their foundation, the NHS and the social care system have been rooted in the principle of fairness. In the words of the recently published *NHS Constitution* – developed following deep and extensive research into what matters to patients, public and staff – ‘Everyone counts. We use our resources for the benefit of the whole community, and make sure nobody is excluded or left behind’. The Equality Bill, by placing age among the ‘protected characteristics’ for services and public functions, is an important recognition of the need to remove age discrimination, a recognition in line with the values of NHS and social care practitioners and organisations.

What action is taking place?

- 3.6 Equality in health and social care does not mean uniformity of provision. Indeed, the reforms we are making to personalise services are all about treating people as individuals, whatever their age, circumstances or lifestyle.
- 3.7 In some cases, age can be used as a helpful component of clinical judgement and, at the population level, can provide a helpful factor in commissioning services that are effective for individual and public health. There can, therefore, be desirable and objectively justified differences in the provision of services for different age groups.
- 3.8 We also need to decide whether to use secondary legislation to specify those forms of age differentiation that do not constitute age discrimination. Different treatment because of age will anyway be allowed if it can be shown to be a proportionate means of achieving a legitimate aim, but specific exception in secondary legislation for treatment that is justifiable, beneficial or for good public policy reasons may be helpful as a basis for greater legal certainty in some specific cases.

- 3.9 It is for this reason that the then Secretary of State for Health Alan Johnson asked Sir Ian Carruthers (Chief Executive of the South West Strategic Health Authority) and Jan Ormondroyd (Chief Executive of Bristol City Council) to lead a review of age discrimination in health and social care. This national review will be rooted in the South West, and will draw upon the experience and understanding of local services and people, in addressing the way forward. It will report to the Secretary of State in October 2009, and will include recommendations on the timing of implementation and on those areas of age-based differentiation that should be retained. It will also advise the Secretary of State on how to support the health and adult social care system to implement the public sector Equality Duty in respect of age, and what key actions health and social care bodies should take to make demonstrable progress in meeting their obligations as quickly as possible. The review has issued a call for evidence to interested parties.
- 3.10 As the issues are so complex, the leaders of the national review are keen to gather as much evidence as possible from a large number of interested parties. It would therefore be premature to set out in any detail proposals for secondary legislation in relation to health and social care (including what specific exceptions might be necessary to make explicit which forms of age-based treatment are considered to be justifiable).
- 3.11 The review will operate in a transparent way, and will work closely with a wide range of stakeholders to ensure that it is realistic in its approach.
- 3.12 The review will be able to draw upon the commitment of those who work in the NHS and social care to the importance of fairness, and on recent work to promote age-appropriate, personalised services. To take one example, the *Dignity in Care Campaign*, established as part of *A New Ambition for Old Age – Next steps in implementing the National Service Framework for Older People*, aims to stop tolerance of care services that do not respect the dignity of the people using them. Over 6,000 people have signed up as Dignity Champions and many are taking positive action locally to improve dignity in the care of older people. Dignity Champions include health and social care managers and frontline staff. They also include doctors, dieticians, porters, care workers in care homes, MPs, councillors, members of local action groups and Local Involvement Networks (LINKs), and

people from voluntary and advocacy organisations. People who use care services, their relatives and carers as well as members of the public are becoming Dignity Champions. Over the coming months we will engage the Champions in helping us stimulate national and local debate about age discrimination in the NHS and social care and in helping us identify and share best practice.

- 3.13 Further information on the review is available on the Department of Health website at: http://www.dh.gov.uk/en/Publicationsandstatistics/Lettersandcirculars/Dearcolleagueletters/DH_099857 or by contacting: agediscriminationreview@dh.gsi.gov.uk.
- 3.14 Although we are not able to set out specific proposals in this consultation document, we are keen to have responses to the following questions.

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?

- 3.15 The responses to these questions will be fed into the review as well as the wider consultation exercise.
- 3.16 While the discussion above refers to health and social care in England, similar considerations apply in Scotland and Wales. The age discrimination ban is on a GB basis, and the Scottish Government and Welsh Assembly Government are considering action to ensure that their health and social care sectors are able to comply with the prohibition.

Chapter 4: Proposals for financial services

Background

- 4.1 Financial services include banking, mortgages and related products, savings, credit and insurance. In Great Britain many of the firms providing financial services specialise in particular products or markets. Financial services firms often use age criteria to design, underwrite, price or market products or services. They use age as an indicator of changing needs and risks, linked to how people's experience, financial obligations, family circumstances, employment, health and risk of mortality vary over time. They do this partly because looking at each individual's exact circumstances (or "functional age") may be costly or intrusive. Instead, firms use a person's age (or "chronological age") to estimate his or her state of health and how he or she behaves; and how likely he or she is as a result, for example, to claim on insurance or fail to keep up loan repayments (or their level of "risk"/the level of "actuarial risk" they present).
- 4.2 The effect of using age in this way is different for different age groups. For example, older people tend to get better deals on loans (because they have better credit ratings as a result of a better credit history) but often pay more than younger people for travel insurance, as statistics show that 75 year-olds in 2007 were around four times more likely to make a travel insurance claim than 35 year-olds, and 85 year-olds were over eight times more likely to make a claim.
- 4.3 The consultation document *A Framework for Fairness* noted that some people were unhappy about how age is used in financial services products. For example, there was a concern that older people buying insurance may be charged premiums which do not fairly reflect the underlying risk they present and that some insurers did not offer some types of cover to older people. Many people responding to our 2007 consultation exercise were concerned about age discrimination in financial services. Mostly this was about older people's experience of travel and car insurance (although there were some examples about other financial services). For example, Age Concern cited surveys suggesting that those aged 75 and over are significantly more likely to be refused a quote for car or travel insurance than people aged 30 to 49 and noted that premiums can rise sharply with age.

“When I reached 75 my car insurance premium went up considerably, they said it was because of my age, but I haven’t had an accident and I’ve got 60 per cent no-claims bonus.”

“I’d like to know why travel insurance automatically goes up when you get older.”

“I discovered the cover for an old person is twice that of a young person.”

- 4.4 It was clear from the consultation that older people do not feel they are being treated fairly when accessing financial services products.
- 4.5 Insurers however argued that they offer a range of products for customers of different ages and that those products offer customers a fair deal. They said that they use age to decide what price to charge for insurance and what cover to offer to reflect how likely someone is to make a claim and to ensure fairness, competition and choice for customers of all ages. They said that plenty of insurance policies etc were available, from a wide choice of firms, for most people; and that people of every age could find the services they need. However, they accept that more can be done to provide a better service to older people²⁴.
- 4.6 As older people and their representatives and financial services firms had such different views, the Government Equalities Office commissioned Oxera Consulting to review existing research findings, and to undertake new research into people’s experiences, and how age is used in travel and car insurance and personal loans. We have used the findings of this independent study to inform the development of our policy proposals. The full report of this research is available on the Government Equalities Office website²⁵. We have drawn the following conclusions from that study:

²⁴ ABI publication – Age and Insurance: Helping older customers find the cover they need Feb 09
http://192.168.202.210:9090/progress?pages&id=1157971055&sp2&url=http://www.abi.org.uk/BookShop/ResearchReports/ABI%20Insurance%26Age_LR.pdf&fileName=ABI%20Insurance%26Age_LR.pdf&referer=http://www.abi.org.uk/Bookshop/default.asp&foo=3

²⁵ <http://www.equalities.gov.uk>

- people of all ages can get travel and car insurance and personal loans, although some age groups have more to choose from than others;
- prices are based on risks (how likely you are to claim) and costs (how much you claim). Higher prices are linked to greater costs;
- restricting the extent to which firms can base prices on risks and costs could harm the insurance and loan markets. For example it could lead to higher prices (or lower quality) for everyone, but particularly the higher-risk age groups that the market currently subsidises;
- some people have real problems with finding and buying suitable insurance policies. They could be helped by being given details of other suppliers or passed on to a partner supplier who does offer a policy for them. This would increase choice for consumers and be popular with older people.

4.7 Taking into account the various responses to the 2007 consultation exercise and the Oxera study, we have been considering how to frame any exception from the age discrimination ban for financial services. Our aim is to outlaw unjustified age discrimination while ensuring that financial services firms can still use age where appropriate – ie where it is supported by evidence, not an arbitrary assumption. We also want to give older consumers confidence that they are getting a fair deal by exposing to public scrutiny the evidence on which decisions are made.

How a financial services exception might be framed

4.8 Based on the information gathered to date there are three high-level options:

Option 1 is strict implementation of the ban on age discrimination, with no specific exception. Different of treatment of customers based on age, such as minimum and maximum age limits and age bands, could take place where it was objectively justified. Because this approach would leave it to individual firms to objectively justify any differences in treatment, it could reduce the range of products they are prepared to make available, which could lead to higher prices for all.

Option 2 is a tailored specific exception allowing age to be used provided that it is proportionate to risk and costs. This approach would allow minimum and maximum age limits and the use of age bands. Evidence of risk factors and data would have to be weighed appropriately but commercial considerations could be taken into account and age-based pricing would not require strict mathematical proportionality. A signposting or referral service could be required where financial service providers do not themselves quote for specific age-groups. This option would prevent unjustifiable age discrimination, such as an insurer deciding to offer insurance to older people at inflated prices that are not related to risk. It would provide more legal certainty for providers. It facilitates access to financial services without distorting the market.

Option 3 is a wide specific exception, which would mean that all current practices could continue. It could also mean that service providers would use age as they wish and its use would not necessarily be proportionate to the risk and cost. There would be no requirement for signposting or referral. This would also mean that people would not be able to legally challenge decisions if they felt that they were being treated unfairly. This would not affect other rights of redress that might be available under financial services regulation and specifically through the Financial Ombudsman Service.

4.9 We welcome views on the three options.

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.

4.10 Option 2 is currently our preferred option. Nonetheless we welcome views on all the options expressed. The concepts outlined in option 2 are explained in further detail below:

- Evidence requirements
- Age based pricing without necessitating strict mathematical proportionality
- Commercial considerations
- Age bands
- Minimum and maximum age limits
- Signposting and referrals
- Age related special offers and marketing
- Publication requirement for data or some other mechanism to provide transparency – giving consumers confidence that quotes are justified by the available evidence.

Evidence requirements

4.11 Option 2 is likely to mean that where firms seek to justify a higher price for reasons of risk, they will need to produce evidence to establish the risk and expose it to public scrutiny. Firms and age organisations agree that a fairly wide range of evidence should be acceptable²⁶.

4.12 *We think acceptable evidence should be required to 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.*

²⁶ Financial Services Experts Working Group – http://www.hm-treasury.gov.uk/d/age_discrimination.pdf

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.

Allowing prices to be set for different ages without requiring strict mathematical proportionality

4.13 *Under option 2, we think that firms would need to be allowed to set prices by age without strict mathematical proportionality, where this is reasonable.* At present, firms are free to decide how much to charge for their products using a range of factors including age. There may be good reasons for setting prices that are not in direct proportion to the evidence available. For example, data may be adjusted to take account of forward-looking trends and forecasts, such as expected changes in health care costs or longevity – so people living longer healthier lives will be factored into pricing. This would introduce some subjectivity and judgement into how evidence is used. Similarly, it might be difficult or make little sense to use strict mathematical techniques where there is limited or no data. An example is for drivers over 95, of whom there are relatively few compared to other age groups.

Q6: Do you think that age based pricing should not require strict mathematical proportionality?

Commercial considerations

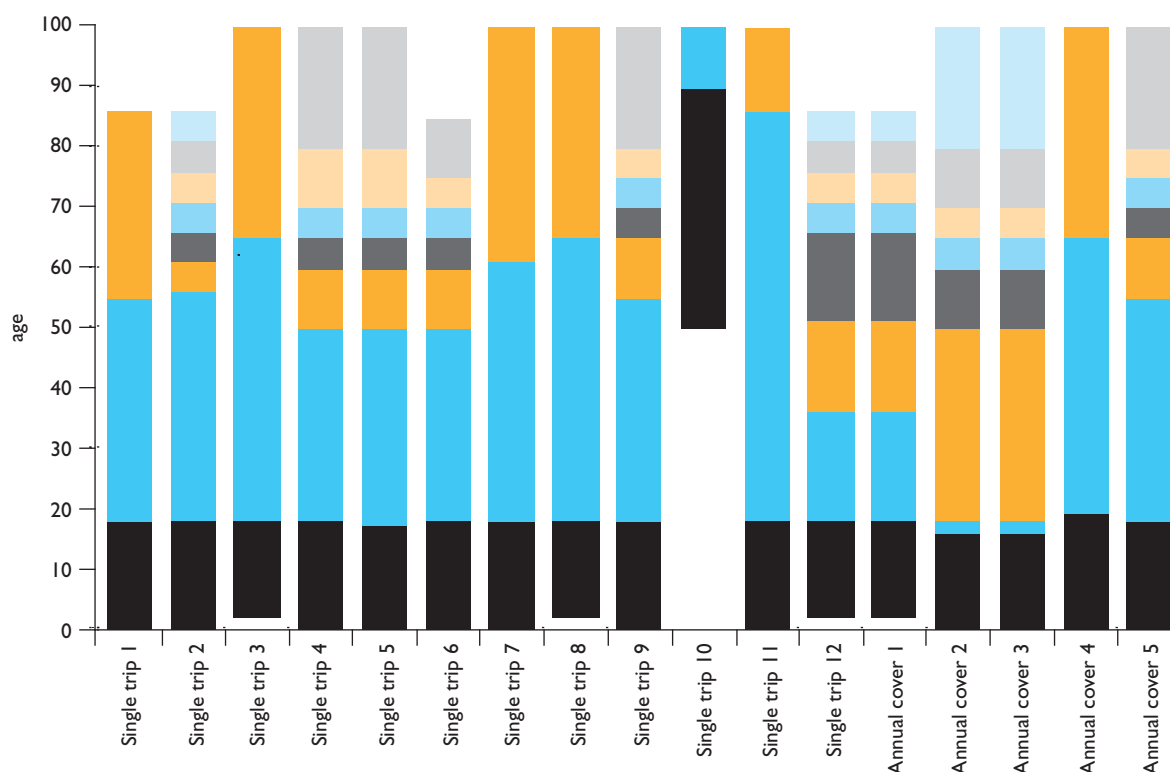
- 4.14 *Under option 2, we think that it might be appropriate to allow commercial factors to be taken into account in financial services provision for different age groups, but we would welcome views on this and the degree to which it should be allowed.*
- 4.15 For example, financial services firms are run to make a profit for shareholders, by providing services which people will want to use. Firms may choose to price to retain customers, so they reduce costs over time, or to attract more customers in different risk-categories, by producing tailored products, like silver-saver accounts. Some banks for example aim to attract older customers by marketing and branding in a certain way, such as, over-50s bank accounts. Firms are also keen that their products are as cheap as possible to sell and distribute, to keep costs to consumers down. These factors often benefit people at either end of the age spectrum. Savings accounts for very young adults and older people often have better interest rates, for example.

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?

Age bands

- 4.16 *We do not see great advantages to prohibiting age bands. However, we would welcome views on whether they should be required to be narrower. The exception we have in mind would require firms to set age bands of reasonable sizes, pooling people of broadly similar risks and charging prices in line with them. In some cases, especially travel insurance, premiums depend on which age band a customer falls in rather than his or her exact age. As the following graph shows, age bands have different limits. Some firms charge the same price to everyone over 65, others would charge an 80 year-old more than a 75 year-old.*

Figure 1: Examples of use of age bands in travel insurance



Note: Shows examples of the age bands used by travel insurance providers with respect to single-trip and annual policies. For illustrative purposes, only a sample of providers and their policies is shown.

Source: Oxera analysis, based on data from Defacto (collected at the beginning of 2009).

- 4.17 Firms use age bands to make policies easy and cheap to sell and keep costs and premiums down by bulking people of similar risk into bundles using age as an indicator of risk. Age bands do not seem to have been prohibited in other countries that provide an exemption for practices that are reasonable. Individuals can see age bands as unfair if moving from one to the next means a step change in prices or benefits at a particular age. These step changes will be greater and happen less often where age bands are wide.
- 4.18 There are advantages and disadvantages to age bands of particular sizes. Individuals towards the top of a wide age band currently benefit from significant cross-subsidies in some cases. Any travel insurance policy with age bands that charge an 85 year-old the same price as a 75 year-old is likely to be cross-subsidising the older traveller.

4.19 Narrower age bands mean the price increase from one to the next would be much smaller, but would happen more often. People at the bottom of wide age bands would probably pay less and those at the top would pay more. This is because risk is assumed to increase with age, so reducing the size of the band by removing the younger people from that band means that the lower risk members will no longer subsidise that group, which will increase the premium prices of those remaining. So there would be some winners and some losers, including among older people. Policies would cost insurers more to operate, probably meaning higher prices for everyone.

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 (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?

Minimum and maximum age limits

4.20 We can see the benefits of allowing firms to specialise in providing products to particular age groups. The development of the market for products for certain groups is the key to improving access and availability. Firms currently have a free hand to sell financial services to the age groups they choose²⁷. Although age limits can seem random, firms use them for various reasons. For example, a firm's entire business or individual services may be for a part of the market in which they have particular expertise. There may be little or no demand for a product from people of certain ages and firms take greater risks when they know relatively little about customers. Individual firms do not necessarily have the same experience of and expertise in serving customers of all ages.

²⁷ Minimum or maximum age limits are currently in use in markets including: motor insurance; travel insurance; unsecured loans and credit cards; equity release products; mortgages; funeral plans; investment bonds and health and medical insurance.

It can also be more expensive to analyse the risks linked with younger or older people. Some services are aimed at people approaching retirement, for example, so are not open to younger people.

- 4.21 Oxera's research shows that although how much of a choice you have of car insurance, travel insurance and unsecured loans varies depending on what age you are, you are not likely to be unable to find a policy or loan because of your age. While it is distressing to be refused a quote or told you cannot buy a product because you are too young or too old, the Oxera research found that only a very small proportion of consumers have this experience²⁸.
- 4.22 Other types of financial services have minimum and maximum age limits and some people see these as being a benefit, such as Over-50s 'silver saver' bank accounts. If firms were not allowed to set age limits, services for older people such as funeral plans and equity release schemes might disappear from the market.
- 4.23 What is important about age limits is that firms should keep them under review, make sure that they are not based on outdated information or prejudice about people's health and behaviour and keep up with growing demand for products from older people. The difficulty of finding and buying insurance that caters for them is one of the issues older people have complained about most. However, restricting the ability of firms to set minimum and maximum age limits – and making all providers offer quotes for all age ranges – could prevent providers from offering specialist, high quality, tailored products for different age groups which are popular. Premiums could go up for all kinds of insurance, including older people's, as providers face greater risks in catering for new customers outside their areas of expertise. We believe that improving access to the market through signposting and referrals (see paragraphs 4.24–4.27) would be a better way to support the development of the market to meet people's needs.

²⁸ Oxera research found that 3% of over-80s in travel insurance, 1.5% of over-80s in motor insurance and 2.4% under-24s in personal loans were refused a quote. Age Concern research in 2007 stated that one in five older people were unsuccessful in getting quotations **at a first attempt**, for motor and travel insurance. 29 per cent of attempts to get a quotation by people aged 75 and over were unsuccessful, compared to 3 per cent of those by 30 to 49 year olds. The figures are different due to the different methodology and sample sizes used.

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.

Signposting and referrals

- 4.24 We believe that there would be value in firms putting in place a signposting/ referrals system to help people find the financial services they want. The biggest problem relates to finding and buying insurance. The Oxera study shows that most people of all ages find a suitable policy easily or very easily. But a small minority of people think this will be difficult or find it to be so. They end up without the insurance they need to drive (older and younger people) or to travel (older people).
- 4.25 A signposting or a referral system would help people who currently have problems to find the insurance policies they want.
- 4.26 A signposting service gives contact details by post, telephone or email of other firms that can/will provide travel or car insurance to that particular customer. The customer can then contact these firms directly. It helps people compare prices and therefore obtain more competitive quotes.
- 4.27 A referrals system is when one firm has a contract with another who has policies for particular age groups to pass on business enquires that they cannot meet. It helps people buy insurance quickly and easily.
- 4.28 Signposting and referrals would, for example, help older people get quotes for travel and car insurance and would help younger people obtain motor insurance. It would cut the time that people spend searching without success and would enable people to compare different quotes. This could increase competition, leading to a better deal for customers. We also believe that signposting and referrals will encourage growth in the market, by helping match demand with

supply and encouraging more people to persist in their search for a product. Suppliers could have better information about potential demand and respond by expanding what they provide for those age groups in which there are potential new customers.

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?

Transparency

- 4.29 *We see merits in greater transparency in the relationship between age and costs within financial services.* The 2007 consultation exercise found evidence of a perception among some older consumers that financial services are not operating fairly. Older consumers and their representatives do not currently have confidence in the accessibility of financial services, and that prices are proportionate to risk and costs. It is important that both consumers and Government are able to be confident about these issues. Greater confidence could be achieved if there was more transparency about how the financial services industry operates in relation to age and costs.
- 4.30 One way to achieve this would be for the new legislation to require data to be published so that the public can see it. For example, one approach would be a publicly available central source of anonymised travel and car insurance data, broken down by age. This could give aggregated and anonymised annual information on size and frequency of claims. The Gender Directive requires something similar for some forms of insurance²⁹.
- 4.31 While protecting commercial confidence, publishing aggregated travel and car insurance data could benefit firms, as a published source of data showing the correlation of age and risk and would make it easier for the industry and consumers to understand how age impacts on costs and benefits of policies. It would meet our aim of improving everyone's understanding of the basis on which

²⁹ 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

age-related decisions are made. It would also provide a basis of fact against which challenges on discrimination grounds would be easier to assess. New firms would find it easier to enter the market, as they could draw on this data when they have not yet built up their own through experience.

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?

Enforcement

- 4.32 Once the ban on unjustifiable age discrimination in financial services comes into force, it will be enforced as described below.
- 4.33 If someone feels that a financial service provider has unlawfully discriminated against them, they can bring a claim against the financial services provider in the county court or (in Scotland) the sheriff court. If the claim succeeds, the usual remedy would be damages.
- 4.34 The Equality and Human Rights Commission also has powers to enforce the law at an institutional level. For example, it may carry out inquiries and investigations, notify a person that they are breaking the law, and bring court proceedings against them to ensure compliance in the future.
- 4.35 Depending on the circumstances, it may be that there are other avenues of redress open to consumers. For example, in most cases a consumer will be able to complain to the Financial Services Ombudsman, who will decide the complaint by reference to what, in his or her opinion, is fair and reasonable in all the circumstances of the case.

After the consultation

- 4.36 We will examine the responses to the consultation, to help in our further work on developing an exception for the financial services sector. Further discussions will be held with stakeholders to ensure that what we develop will work effectively.

Chapter 5: Proposals for other sectors

How age is used in other sectors

- 5.1 Age criteria are used in a variety of ways in a number of other sectors. For example, many different age-based concessions and benefits are offered to older or younger people (including discounts offered by retailers during off-peak hours and age-targeted benefits such as free bus passes for the over 60s); most vehicle rental companies will not rent a car to people below and above certain ages; and some holiday companies offer group holidays for particular age groups.

Evidence of discrimination in other sectors

- 5.2 We have received fewer complaints about harmful discrimination in sectors other than financial services and health and social care. Some respondents to the Equality Bill consultation *A Framework for Fairness* saw providing benefits and discounts based on age as contributing to the stereotype that all older people are needy, and argued that giving discounts to all or only to people on benefits would be fairer. We have received complaints that age restrictions on vehicle hire amount to harmful discrimination, and that any restrictions should instead be based on each individual's driving experience and record, previous claims and general state of health. We have also questioned whether it is reasonable to refuse people to join a holiday because of their age, or to ban younger people from holiday camps on the grounds that they are more likely to be disruptive.

Recent policy development

- 5.3 We have talked to service providers to identify other age-based differences in treatment in both the private and public sectors. A cross-Government general working group has helped develop thinking on which of these practices will require specific exceptions to the ban to ensure that only harmful age-based differential treatment is banned and to prevent unintended consequences, such as service providers withdrawing provision because they are concerned about possible legal challenge.
- 5.4 Below we set out and seek views on a number of proposals for age-specific exceptions. We also outline a number of further areas where we have considered but ruled out the need for exceptions.

Private and public sector concessions and benefits

- 5.5 Age-based concessions and benefits are offered in both the public and private sectors. The majority of public sector concessions would be permitted under the statutory authority exception (see section 2.24). On balance, we think that banning age-based concessions and benefits would have no clear benefit for society as a whole. Many would be objectively justified or be permitted under positive action exceptions, so a specific exception will provide certainty for suppliers. We are therefore minded to introduce a specific exception to allow age-based concessions and discounts to continue.
- 5.6 Public sector concessions include such things as:
- statutory free off-peak bus travel funded by the Government for older people;
 - discounted access to (local authority) leisure facilities;
 - free TV licences for over 75s;
 - targeted payments for older people, eg the Winter Fuel Allowance and free loft insulation.
- 5.7 Private sector concessions include:
- discounted goods and services such as ‘cheap haircuts for pensioners’ or ‘10 percent off for pensioners’ days offered by some retailers;
 - discounts for older and younger people at leisure centres or cinemas, sometimes only on particular days or during off-peak hours;
 - cheap fares offered on a commercial basis by some private sector transport providers.
- 5.8 Some argue that concessions and benefits for particular age groups should be outlawed, pointing out that:
- the people who receive concessions and benefits are not necessarily on low incomes. It would be fairer to offer, for example, cheap haircuts or cinema tickets to all during off-peak periods, or discount days at retailers to everyone on state benefits, rather than just to pensioners and students. State benefits

such as the Winter Fuel Allowance could be means-tested to ensure they are targeted at those most in need;

- the main purpose of private sector discounts is to increase custom during slack periods, or attract new customers;
- concessions for older people reinforce the view that older people are needy and vulnerable;
- allowing age-based concessions undermines the principle of equal treatment of all age groups.

5.9 On the other hand there are also good arguments for allowing age-based concessions and benefits to continue:

- age-based concessions and benefits allow public authorities to target finite resources at those most likely to be in need, without the need for costly means testing;
- we have not seen strong evidence that people of different ages object to age-based concessions and benefits. A British Market Research Bureau survey of 2,004 adults found that 93% do not object to goods and services being offered at a discount to people of a particular age. Banning age-based concessions and benefits would be unpopular with both those who receive them and the businesses and other organisations which offer them. Age-based concessions and benefits enable older and younger people to participate more fully in society and the economy and increase their sense of well-being.

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.

Holidays

5.10 We have always been clear that we are not convinced of the need to prohibit holidays which are specifically targeted at particular age groups. A small number of tour operators provide holidays for those who wish to holiday with people of a similar age. For example, there are holidays exclusively for the over 50s and those aimed at people aged 18-30.

5.11 The case for this centres on the following points:

- wishing to holiday with people of a similar age is little different from joining a club or association for people of a similar age, which the Equality Bill will allow. It would therefore be inconsistent to ban holidays of this kind;
- most people who choose age-targeted holidays do so for positive, not negative reasons – they wish to holiday with like-minded people of a similar age, whom they consider are likely to share their interests and outlook. Banning age-based group holidays would be unpopular with both the individuals who go on such holidays and the businesses which offer them. A British Market Research Bureau survey of 2,004 adults found that only 9% thought that it would be good if holidays confined to a certain age group were banned;
- different operators can specialise in providing holidays that appeal to different age bands. Age-based holidays are anyway a very small percentage of the group holiday market and plenty of holidays open to all ages are available.

5.12 The case against age based holidays is mainly one of principle. It could be said that it is no more reasonable to ban a 35 year old from joining a group of over-50s on holiday than it would be to ban a woman joining a group of men, or a person joining a group of another ethnicity. If the location, activities, accommodation and cost of the holiday appeal to potential travellers, then why should they be excluded simply on account of their age?

5.13 On balance, we believe that there is a case for allowing age-targeted group holidays to remain lawful provided they clearly state their age ranges in promotional material. We propose therefore to provide a specific exception to allow this. This would give age-targeted holidays similar protection to that

envisaged for clubs and associations which might choose to include age among their membership criteria. As different operators cater to different age bands, the general existence of age-targeted holidays does not impose or enshrine any single age bar on group holidays. But this exception will not allow age limits to be imposed on holidays which do not explicitly include an age-based element in their marketing material. A specific exception for age-targeted holidays should not, for example, allow a walking holiday to bury an upper-age limit in the terms and conditions. Age limits on holidays which are not explicitly aimed at particular age groups would have to be objectively justified.

Q16: Do you agree with the proposed exception to allow age targeted group holidays to continue? Please state your reasons, with examples where relevant.

Holiday accommodation

5.14 We are not convinced of the need to provide a specific exception allowing age limits on holiday accommodation. Representatives of the holiday industry have requested an exception to allow for age limits on holiday accommodation such as rented flats, houses, camping and caravans. Many providers of holiday accommodation impose age limits, such as “no under 21s”. Industry representatives have argued that these age limits are necessary to prevent potentially unruly young adults from causing damage to properties or disrupting other holiday makers, and that landlords should be able to protect their properties. However, this is based on the perception that young adults are more likely to cause damage to a property, anecdotal evidence and compounded by stereotypical assumptions. People of any age may cause damage to a property and landlords can withhold deposits to cover their costs or go to the small claims court if necessary to seek damages. Providers would therefore need, if challenged to be able to objectively justify any age limits that they have.

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.

Vehicle rental

- 5.15 We are not convinced of the case for a specific exception allowing upper and lower age limits on the rental of vehicles. Most car hire operators impose lower and upper age limits on their services, and representatives of the vehicle rental industry have requested an exception to allow these age limits to continue. The industry argues that age limits are justified by the higher insurance premiums they would be charged if they rented vehicles to very young or old drivers. They also point to statistics suggesting that very young and old drivers pose a higher risk of accident or damage to vehicles.
- 5.16 We accept that because younger and older drivers present a greater risk in terms of the likelihood of accidents and vehicle damage, a risk which must be insured, hiring vehicles to people at the lower and upper ends of the age spectrum is/ would be more costly for hire companies, owing to higher age-related insurance premiums.
- 5.17 Whilst we consider it may be justifiable for hire companies to pass on this increased costs to older and younger customers, in the same way that insurers adjust insurance premiums according to age-based risk, we do not believe that hire companies should deny access to their service altogether to older and younger adults.
- 5.18 As such, we do not propose to provide an exception to vehicle hire companies to continue to impose upper and lower age limits on vehicle hire. With respect to age-related price differentials, we are considering whether it should be for service providers to seek to objectively justify age-based pricing, or whether to provide a specific exception. Such an exception could potentially be linked to the proposed exception for insurance. It would be intended to enable vehicle-hire companies to vary their prices in accordance with insurance premiums, subject to requirements relating to evidence and transparency.

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?

Is there a need for any other specific exceptions?

5.19 We want to know if there are any other age-related activities, which would be prohibited under the legislation that we should consider whether they require a specific exception.

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.

Chapter 6: Next steps and timetable

Impact Assessment

- 6.1 Over the coming months we will continue to refine our policy further, taking account of the consultation responses along with the other emerging information on age discrimination in services and public functions. The provisional impact assessment for our proposals can be found on the GEO website³⁰. At this stage there remains some uncertainty about the impact the proposals will have, for example relating to costs/benefits, as this consultation is seeking further information to further develop policy and gather information on these issues.

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 (e.g. restriction/widening of consumer choice); useful research/databases etc.

Development of draft legislation

- 6.2 Following this consultation exercise the next stage will be to develop a draft Order establishing the precise detail of the exceptions to the ban in services and public functions. The Order will make provision for exceptions across all the sectors where they are required to ensure that justifiable or beneficial age-based practices are able to continue – financial services, health and social care and beyond. The Order will come into force at the same time as the prohibition is commenced in respect of each sector. We will prepare the draft Order taking account of the responses to and evidence provided through this consultation, our consultation on the EU proposal for an Equal Treatment Directive and the EU's planned consultation on the use of age and disability by the financial services industry. Evidence gathered through the national review of age discrimination, which will report in October 2009 will also be available. We aim to consult in 2010 on the draft Order.

³⁰ <http://www.equalities.gov.uk>

- 6.3 Following consultation on the draft legislation it will be debated and approved by both Houses of Parliament. Our current plan is to lay the Order in 2011, subject to progress on the review of health and social care and negotiations on the Directive.

EU Equal Treatment Directive

- 6.4 The EU proposal was published in July 2008 and negotiations have been taking place. We welcome the proposal to legislate on age discrimination in services and public functions at EU level. 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.
- 6.5 There remains a long way to go on the negotiations on the EU's proposal, and it will be subject to agreement by all member states. We believe it is right to press ahead with our commitment to prohibit unjustifiable age discrimination in services, rather than rely on agreement possibly being reached by all member states at some uncertain point in the future. We are of course mindful of the need for both ours and EU approaches to be compatible, and to ensure burdens arising from changes are minimised. We are approaching the negotiations and decisions on timing of implementation with this very much in mind. Our current estimate is that, subject to the progress of the negotiations, the Directive may be adopted in early to mid 2010.

Implementation

- 6.6 We have always been clear that business, the public sector and the third sector would need time to prepare for the new legal protections as there will be practical and organisational issues that are likely to arise. That is why we will bring the new law into force more quickly in those sectors which will be ready to comply with the law earlier than others.
- 6.7 We will consider what respondents to this consultation think about the timetable for implementation before taking final decisions. We want to strike the right balance between giving service providers and public bodies sufficient time to prepare, and eliminating harmful discrimination on the basis of age as quickly as possible.

- 6.8 We expect to see the legislation come into force in financial services and all other services, with the possible exception of health and social care, in 2012. Decisions on the commencement of the legislation in health and social care will be taken in the light of the national review that will report in October this year. The new public sector Equality Duty is expected to come into force in April 2011, and the age element of that duty will help public bodies to prepare for the ban on age discrimination.

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

- 6.9 Timely guidance will also be produced, to help business, public bodies and individuals understand the new requirements. The Equality and Human Rights Commission has been consulting about what guidance people would like to see under the Equality Bill and which is the most urgently needed.
- 6.10 Good quality guidance can play an important part in ensuring that equality outcomes are delivered to consumers without placing undue burdens on service providers. We would welcome specific suggestions to help the Equality and Human Rights Commission ensure that any guidance it issues relating to avoiding age discrimination within the provision of goods, facilities, services and public functions is sensible and proportionate, while helping deliver fair outcomes to consumers and the public.

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?

Chapter 7: Responding to this consultation

Responses

- 7.1 The consultation period is from 29 June 2009 to 30 September 2009.
- 7.2 When responding to the consultation, please do so using the proforma which is available on the GEO website:
- <http://www.equalities.gov.uk>
- 7.3 Responses should be sent to:
- by e-mail: age@geo.gsi.gov.uk
or
by post: Age Discrimination Consultation Responses
Age Team
Government Equalities Office
9th Floor, Eland House
Bressenden Place
London
SW1E 5DU
- 7.4 When responding, please indicate whether you are responding as an individual or representing the views of an organisation. If responding on behalf of an organisation, please make it clear who the organisation represents and, where applicable, how the views of members were assembled.

Queries about this document

- 7.5 Any queries about the subject matter of this document should be made to:
- | | |
|--|--|
| Paul Howarth | Mark Reed |
| Telephone: 020 7944 0597 | Telephone: 020 7944 0825 |
| e-mail: age@geo.gsi.gov.uk | e-mail: age@geo.gsi.gov.uk |
- 7.6 We have sent this document to a large number of people and organisations who we believe have an interest in the proposal. Please do share this document with, or tell us about, anyone you think will want to respond.

7.7 We will consider any requests for accessible formats that may be required.
Please send your request to:

e-mail: age@geo.gsi.gov.uk

or

post: Age Discrimination Consultation Responses – accessible formats
Age Team
Government Equalities Office
9th Floor, Eland House
Bressenden Place
London
SW1E 5DU

Annex I: The Department for Business, Innovation and Skills Code of Practice on Consultation

This document and the consultation process have been planned to adhere to the Code of Practice on Consultation produced by the Department for Business, Innovation and Skills (BIS) and are in line with the seven consultation criteria:

1. When to consult

Formal consultation should take place at a stage when there is scope to influence the policy outcome.

2. Duration of consultation exercises

Consultations should normally last for at least 12 weeks with consideration given to longer timescales where feasible and sensible.

3. Clarity of scope and impact

Consultation documents should be clear about the consultation process, what is being proposed, the scope to influence and the expected costs and benefits of the proposals.

4. Accessibility of consultation exercises

Consultation exercises should be designed to be accessible to, and clearly targeted at, those people the exercise is intended to reach.

5. The burden of consultation

Keeping the burden of consultation to a minimum is essential if consultations are to be effective and if consultees' buy-in to the process is to be obtained.

6. Responsiveness of consultation exercises

Consultation responses should be analysed carefully and clear feedback should be provided to participants following the consultation.

7. Capacity to consult

Officials running consultations should seek guidance in how to run an effective consultation exercise and share what they learned from the experience.

Annex 2: Equality Bill definitions³¹ of direct and indirect age discrimination

Discrimination can be direct or indirect and could be unintentional.

Direct age discrimination – Clause 13

The definition of direct age discrimination refers to a person being treated less favourably than another because of their age. This covers discrimination against people both because of their age, and because of their perceived age. It also covers less favourable treatment of an adult because of his or her association with another person of a particular age.

A person directly discriminates against a person because of age if he or she treats them less favourably than he or she treats or would treat another person of a different age, perceived age or who does not associate with a person of a certain age where that is the reason for the less favourable treatment. The relevant circumstances of the other person must be the same as, or not materially different from, those of the person being discriminated against in order for a proper comparison of the treatment in both cases.

Further, different treatment because of age can be objectively justified as a proportionate means of achieving a legitimate aim so that such treatment is not discrimination.

Indirect discrimination – Clause 18

Indirect discrimination occurs when the use of a provision, criterion or practice that is apparently neutral places people of a particular age at a disadvantage compared to others, unless this can be objectively justified.

Harassment – Clause 24

Harassment, as applied to the protected characteristic of age, is unwanted conduct related to the complainant's age, perceived age or because of their association with another person of a certain age that violates a person's dignity or creates an intimidating, hostile, degrading, humiliating or offensive environment for that person. A key concept is that harassment is defined by either the intent of the person causing offence or the perception of the victim (ie how it feels to the recipient). It also includes where the victim is treated less favourably following the victim's initial rejection of or submission to the conduct.

³¹ Equality Bill – http://www.publications.parliament.uk/pa/cm200809/cmbills/085/09085_iw/09085_iw_en_1.htm

Victimisation – Clause 25

Victimisation occurs when an individual is treated in a way that is detrimental because they:

- have made a complaint in good faith about being discriminated against or harassed under the equality legislation;
- intend to make a complaint about discrimination or harassment;
- have acted or intend to act as a witness or give evidence or information in support of another person(s) relating to a complaint about discrimination or harassment; or
- are suspected of doing or intending to do any of the above.

Annex 3: Issues not covered in this consultation

Issues outside the scope of this consultation

Exclusion of premises from the scope of the age discrimination ban

Some forms of housing are available only to people in a particular age range, because it meets the needs of a disadvantaged group (defined by age), or so that individuals can live exclusively with people of a similar age.

There are many examples of housing for particular age groups:

- Retirement, care and nursing homes (both in the public and private sectors).
- Private retirement villages (including residential home parks i.e. static caravans).
- Social housing allocated to particular age groups so that tenants' or potential tenants' who prefer this can live with people of a similar age (for example, older people not wishing to live in close proximity to families with young children).
- Some registered social landlords are specifically set up to provide housing to either younger or older age groups. This objective is often set out in covenants/ leases restricting the sale or rental of property to people outside the relevant age group (for example, Almshouses).
- Foyer and similar schemes provide rental accommodation to young people aged 16-25 who are at risk of the 'no home, no job, no home cycle'.

We believe that housing providers should be able to continue to set age limits in order to effectively cater for age-related needs and individuals' preference to live with people of a similar age. We do not wish to interfere with the private arrangements individuals make for their accommodation.

The consultation exercise on the Equality Bill did not reveal instances of harmful age discrimination in the disposal and management of premises which would warrant a ban on age-differentiated practices in this field. We therefore decided not to ban age-differentiated practices in the disposal and management of premises. Excluding premises from the scope of the age discrimination ban means that exceptions do not need to be created to protect beneficial or justifiable age practices in this field. The exclusion is on the face of the Equality Bill and does not form part of this consultation.

Under some circumstances residential home parks and units in them will be classified as premises for the purposes of the Equality Bill. There are also circumstances in which accommodation and units in such a park and other services provided to residents will fall under the goods, facilities and services provisions and therefore be subject to the ban on age discrimination. Individual cases will turn on their specific facts. If necessary, we will provide a specific exception from the age discrimination ban to make certain that residential home parks can continue to restrict entry on the basis of age. Any such exception would not allow age discrimination in the provision of goods, facilities and services once individuals had been admitted to a residential home park. It would not be lawful to treat residents differently on the basis of their age – for example by offering 65-75 year old residents a different service to residents aged over 75 (unless this could be objectively justified under the proposed objective justification defence).

Exclusion of under 18s from the scope of the age discrimination ban

Children and young people are protected under the Equality Bill. Like adults, they are protected from direct and indirect discrimination because of their disability, race, religion or belief, sex and sexual orientation, and from harassment because of disability, race and sex. We thought carefully before deciding not to prohibit age discrimination against under-18s. We concluded that age discrimination legislation is not the best way to promote the well-being of children and young people and help them thrive. The age at which the age discrimination ban takes effect is set out on the face of the Equality Bill and does not form part of this consultation.

There are better ways to tackle the problems that children and young people face. These include specific, tailored non-legislative measures; existing legislation such as the Human Rights Act; and the new equality duty which is included in the Equality Bill. For example:

- The new equality duty could lead local authorities reviewing the availability of leisure facilities or the accessibility of public transport for young people, or to consider whether looked-after young people have sufficient say in decisions made about their care.

- The Human Rights Act may provide a framework for developing policies on areas such as curfews, dispersal zones and stop and search procedures that respect children and young people's right to freedom and free association, as well as a way of addressing any concerns that do arise.
- The Department of Health has committed to eliminating the use of adult psychiatric wards for adolescents except where more mature, independent adolescents prefer to be admitted to an adult ward which also specialises in treating young adults. Money is being made available to the NHS for this purpose.

Most of the examples of poor treatment of young people presented to us come from negative attitudes towards children, a general low opinion and mistrust of young people, and a lack of age appropriate services for various age groups. These matters are either outside the scope of age discrimination law, or could not be effectively dealt with through it. Also, age is a good indicator of a young person's level of development and need for protection – it significantly influences how they need to be treated, the services they require, and the levels of personal responsibility and freedoms they should be afforded. A child of 2 has very different needs from a child of 4, who in turn has very different needs to a child of 6. It is quite right to deal with these needs in a way that takes account of a child's age and stage of development.

A well meaning but misguided extension of age discrimination legislation to under-18s could have significant negative consequences, make numerous age appropriate services and activities for young people unlawful and hinder society's ability to effectively support, protect and develop its young people. Any such legislation would require a large number of exceptions to ensure, for example, that a child could not insist on the same treatment as an older child or adult, or an adult claim the same treatment as a child. So for example, a playground for toddlers, or an adventure playground for older children, or an area provided by a local authority for teenagers to meet, could all become open to challenge under the law as constituting direct age discrimination.

Even with numerous exceptions and an objective justification defence, the risk of unintended consequences would be high. Children's welfare would worsen because the tailoring of services for children in an age appropriate way would be compromised. There is a real risk that service providers would standardise services across all age groups or withdraw from providing age appropriate services all together out of fear of being tied up in complaints that could end up in court.

Immigration decisions

The Equality Bill will provide limited exceptions for immigration functions from some of the prohibitions on discrimination which will be placed on public authorities, to enable differential treatment to take place in particular circumstances. These exceptions would enable, for example, the immigration authorities to impose different visa requirements on nationals of different countries, without this constituting unlawful race discrimination.

When the ban on age discrimination comes into force we will also need to introduce an exception so that the immigration authorities can continue to take an individual's age into account when giving effect to immigration law and policy. To give one example, age is a criterion under which points are awarded to assess applicants' eligibility to enter the UK under the Points Based System in order to work.

Age-specific sporting events

When the age discrimination ban is brought into force, an exception will be made to make it clear that age-banding or age-specific sporting events, leagues, or training facilities will continue to be lawful where these promote fair competition or the safety of competitors. The age exception will be similar to the exceptions in the Equality Bill that apply to single sex sporting competitions and events and will allow age-banded sporting competitions where physical strength, stamina or physique are major factors in determining success or failure and in which people in one age group are generally likely to be at disadvantage in comparison with people in another age group. For example, many tennis clubs run separate competitions for 'veterans' aged over 40 or 45.

Volunteering

Age discrimination in volunteering, particularly against older volunteers has been raised as an issue. Stakeholders have told us that some organisations have introduced upper age limits for volunteering because they say that older people cannot be covered by insurance. However, this appears to be an incorrect assessment of the market. A 2006

Home Office commissioned study³² found that “*there are no insurance-related grounds for imposing compulsory retirement ages upon volunteers. Primary insurance protection for volunteers should be provided through an organisation’s liability policies and these have no exclusions on the basis of age*”.

- Volunteering is important for older people as it can provide a means of maintaining links with the community and can be a gateway to paid employment. The Government is committed to promoting and increasing volunteering among older people and the Ageing Strategy will set out steps to support this.

Much volunteering takes place within small organisations which operate on very limited resources and the capacity of such organisations to accommodate new regulatory burdens is limited. The diversity in the nature of volunteering and in the relationships between volunteers and the organisations that engage them creates difficulties in deciding where the line of anti-discrimination protection might be drawn and whether all types or only certain types of volunteering should be covered. Much volunteering is informal and sporadic in nature, for example a grandparent who offers to run a stall at a school fete once a year.

For these reasons, the Government favours a non-legislative approach to tackling discrimination against volunteers. A legislative approach would risk placing an undue burden on small voluntary and community sector organisations and could have a negative impact on the growth and development of the voluntary and community sector. Legislation could ‘kill the spirit’ and flexibility of volunteering and could discourage organisations from using volunteers for fear of litigation.

Non-legislative initiatives are already in place to tackle discrimination in volunteering. The Government has agreed ‘The Compact’ with the voluntary and community sector which is supported by a code of practice on volunteering. One of the Code’s key principles is that volunteering should be open to all, no matter what their background, age, race, sexual orientation or faith. The Compact is currently being refreshed to ensure it remains relevant and up to date, and a consultation on the new Compact will be carried out this summer.

³² Barrier or opportunity: Insurance for older volunteers, Unell Research Consultants Ltd for Volunteering in the Third Age, June 2006.

Annex 4: Objective justification

To ensure that the elements of the Bill that relate to goods, facilities and services and public functions do not impinge upon beneficial or justifiable different treatment because of age, there will be exceptions. In some cases it will be clear that age discrimination is permitted as it is covered by a cross strand exception (National security, Charities and Statutory authority) or by a specific exception. However, direct discrimination because of age, as well as indirect discrimination will also be permitted if it is objectively justified.

What is objective justification?

Different treatment because of age can sometimes be justified. However, this does not mean that unfair discrimination will be allowed to continue. Service providers will not be able to make arbitrary decisions, which are not supported by evidence.

We want to preserve the opportunity to take an age-based approach where it is appropriate. Objective justification is the test that service providers will have to use if they want to continue to undertake age-based practices where they are not supported by an exception.

The objective justification test is met where a service provider can show that the treatment complained of is a proportionate way of achieving a legitimate aim.

What constitutes a legitimate aim?

A wide variety of aims may be considered legitimate, but they must correspond with a reasonable need on the part of the service provider. Economic factors such as business needs and efficiency may be legitimate aims, but arguing that it could be more expensive not to discriminate will not in itself be a valid justification.

It will be for the service provider to show that the aim is legitimate. Ultimately though, if challenged it will be for the courts to decide what constitutes a legitimate aim.

What is proportionate?

The treatment in question must be an appropriate way to achieve the aim referred to above, and it must also be necessary in order to achieve it. Thus if, for example, the legitimate aim can reasonably be achieved by less, or non-discriminatory means, or if the service provider cannot show that the discriminatory effect of the treatment is sufficiently outweighed by the importance and benefits of its legitimate aim, then the defence of objective justification will not be made out.

In practice, it will be necessary to provide evidence if the age-based practices are challenged in order to demonstrate all the elements discussed above. The service provider's assertions alone will not be sufficient.

Annex 5: Summary of consultation questions

The following is a summary of the consultation questions.

The responses to the questions should be made on the proforma available for download on the GEO website <http://www.equalities.gov.uk>

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?

Other sectors

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?



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