



**Equalities**

## **Equality Bill: Making it work**

**Impact Assessment:  
To support the  
consultation on ending  
Age Discrimination  
in Services and  
public functions**



# Impact Assessment

## Summary: Intervention & Options

<b>Department /Agency:</b> <b>Government Equalities Office</b>	<b>Title:</b> <b>Age discrimination in the provision of goods, facilities, services and public functions.</b>	
<b>Stage:</b> Consultation	<b>Version:</b> 1	<b>Date:</b> June 2009
<b>Related Publications:</b> Discrimination Law Review: Proposals for an Equality Bill for Great Britain		

### Available to view or download at:

<http://www.equalities.gov.uk>

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### What is the problem under consideration? Why is government intervention necessary?

Age discrimination against adults outside the work place is not currently unlawful.

There are many examples of age discrimination, which have been identified by respondents to the GEO consultations on equality<sup>1,2,3</sup>. Health and social care and financial services were mentioned most frequently.

Government intervention is necessary to prevent unjustified age discrimination in the provision of goods, facilities and services and the exercise of public functions. Justified or beneficial differential age based treatment continue to be allowed, where this is objectively justified, or permitted under a cross strand exception which applies to all the protected characteristics or a specific age exception under the proposed secondary legislation.

<sup>1</sup> Discrimination Law Review Framework for Fairness –

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

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

<sup>3</sup> The Equality Bill – Government response to the consultation – <http://www.equalities.gov.uk/PDF/EqBillGovResponse.pdf>

**What are the policy objectives and the intended effects?**

**Objective**

- To ensure that all people aged 18 or older are treated fairly on grounds of age, by those providing goods, facilities and services and carrying out public functions in the future.

**Intended effects**

- Prevent harmful discrimination for all people aged 18 or over in the provision of goods, facilities and services and carrying out public functions.
- Allow justified/beneficial age differential treatment, for example bus passes to continue.
- Ensure that any barriers caused by age discrimination outside the workplace are removed, for older people, to ensure they are treated fairly, and age discrimination does not prevent them living fulfilling lives, so they are able to play a full part in society.

**What policy options have been considered? Please justify any preferred option.**

The options are :

Option 1 – Do not legislate for age discrimination outside the workplace.

Option 2 – A complete ban on all age discrimination against people aged 18 or over.

Option 3 – Prohibit discrimination against people aged 18 or over because of their age, without affecting the differential provision of products or services for people of different ages where this is justified or beneficial.

Preferred option is option 3.

This impact assessment explains our proposals for cases where differential age based treatment should be allowed because it can be reasonably justified or is beneficial.

**When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects?** The details of the policy will be reviewed following this consultation and further consultation on draft secondary legislation before the ban on age discrimination in services and public functions is brought into force.

**Ministerial Sign-off** For final proposal/implementation stage Impact Assessments:

***I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.***

Signed by the responsible Minister:

**Date:**

## Summary: Analysis & Evidence

Policy Option:

Description:

<b>COSTS</b>	<b>ANNUAL COSTS</b>		<p>Description and scale of <b>key monetised costs</b> by 'main affected groups' On the evidence currently available we estimate the costs of allowing these differential age based treatments to continue (via exemptions to the age discrimination power) are:</p> <p>Financial services – £6,150,000, Health Social Care – not known</p> <p>Other sectors – £81,250,000, one off familiarisation cost – £14,914,785</p> <p>Evidence supplied in response to this consultation will inform the calculations.</p>
	<b>One-off</b> (Transition)	<b>Yrs</b>	
	£		
	<b>Average Annual Cost</b> (excluding one-off)		
£		<b>Total Cost (PV)</b>	£
Other <b>key non-monetised costs</b> by 'main affected groups'			
<b>BENEFITS</b>	<b>ANNUAL BENEFITS</b>		<p>Description and scale of <b>key monetised benefits</b> by 'main affected groups' On the evidence currently available we estimate the benefits of allowing these differential age based treatments to continue (via exemptions to the age discrimination power) are</p> <p>Financial services – £138,500,000, Health Social Care – not known</p> <p>Other sectors – £234,450,000</p>
	<b>One-off</b>	<b>Yrs</b>	
	£		
	<b>Average Annual Benefit</b> (excluding one-off)		
£		<b>Total Benefit (PV)</b>	£
Other <b>key non-monetised benefits</b> by 'main affected groups'			
There will be non-monetised costs arising from the fairer treatment of older people by the providers of goods, facilities and services and bodies that exercise public functions.			

**Key Assumptions/Sensitivities/Risks** At present the policy is still being developed and there are certain areas where the evidence base is limited. A key purpose of this consultation and impact assessment is to obtain further details on potential costs and benefits.

Price Base Year	Time Period Years	Net Benefit Range (NPV) £	NET BENEFIT (NPV Best estimate) £
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What is the geographic coverage of the policy/option?	UK			
On what date will the policy be implemented?	–			
Which organisation(s) will enforce the policy?	County Courts, EHRC			
What is the total annual cost of enforcement for these organisations?	£			
Does enforcement comply with Hampton principles?	Yes			
Will implementation go beyond minimum EU requirements?	Yes			
What is the value of the proposed offsetting measure per year?	£			
What is the value of changes in greenhouse gas emissions?	£			
Will the proposal have a significant impact on competition?	Yes/No			
Annual cost (£-£) per organisation (excluding one-off)	Micro –	Small –	Medium –	Large –
Are any of these organisations exempt?	No	No	N/A	N/A

<b>Impact on Admin Burdens Baseline</b> (2005 Prices)		(Increase – Decrease)
Increase of £	Decrease of £	<b>Net Impact £</b>

Key:	<b>Annual costs and benefits: Constant Prices</b>	<b>(Net) Present Value</b>
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## Evidence Base (for summary sheets)

### The issue

The consultation document “Discrimination Law Review. A Framework for Fairness: Proposals for a Single Equality Bill for Great Britain”<sup>4</sup>, did not make a specific proposal to ban age discrimination in the provision of goods, facilities and services and the exercise of public functions. Rather, we asked for evidence of unfair age discrimination, sought views on whether legislation would be the best way of tackling such discrimination and on how legislation could be targeted, and invited general comments on this issue.

The majority (around 80 per cent) of the nearly 750 responses on this issue were in favour of legislation to tackle harmful age discrimination. Many considered it was needed to plug a major gap in existing anti-discrimination legislation and to send a clear signal that age discrimination is unacceptable.

The consultation responses gave many examples of age discrimination, which largely reflected the areas of concern which the consultation paper had highlighted, particularly in health and social care and financial services<sup>5</sup>.

A person directly discriminates against a person if on the ground of the person’s age they treat them less favourably than they treat or would treat a person of a different age whose relevant circumstances are the same as, or not materially different from, those of the person being discriminated against. Indirect discrimination can also take place where a practice that is apparently neutral can place people of a particular age at a disadvantage compared to others. In both cases, discrimination does not occur if the treatment is objectively justified.

It is wrong that people are treated in a discriminatory way because of their age. With the number of people aged over 85 set to double over the next two decades, we need to ensure that older people and indeed all adults are treated fairly.

### Intended effects – Objectives

The Equality Bill will prohibit unjustified age discrimination in the provision of services and the exercise of public functions and will extend the same protection to age as currently enjoyed by the other equality strands.

<sup>4</sup> <http://www.communities.gov.uk/documents/corporate/pdf/325332.pdf>

<sup>5</sup> The consultation responses can be seen at – <http://www.equalities.gov.uk/PDF/EqBillGovResponse.pdf>

We want justifiable age based activities to continue. Specific exceptions will be developed where needed, for example age is an important risk factor in insurance and age-based differential treatment should still be permitted providing that it is used in an appropriate way.

### **The current legislative framework**

Legislation outlawing age discrimination in employment and vocational training in Great Britain was introduced in October 2006 by the Employment Age Regulations 2006. There is currently no legislation prohibiting age discrimination beyond the workplace.

### **Consultation**

The ban on age discrimination is in the Equality Bill, but will only become active at a later date when it is commenced. This will allow business, the public sector and the third sector time to prepare for the new legal protections and to adapt their practices and businesses to be sure of meeting their new obligations. When the new law comes into force it will allow differences in treatment for different age groups where they can be 'objectively justified' or where they are covered by an exception.

The Equality Bill contains a power to make specific exceptions to the age discrimination ban. These age-specific exceptions will protect a number of justifiable age-based practices. They will provide legal certainty to service providers about whether certain age-based practices remain lawful, and prevent unintended consequences such as beneficial age-based services being withdrawn. Our development of policy on proposals for age-specific exceptions are the subject of this consultation.

Age-specific exceptions will not be the only means of allowing justifiable age-based practices to continue. The Equality Bill will make it possible to justify instances of differential treatment which are not subject to a specific exception, if they can be shown to be a proportionate means of achieving a legitimate aim ('objective justification').

The Bill also contains a number of general or 'cross-strand' exceptions which apply to all the protected characteristics. These will apply to the ban on age discrimination in the provision of services and the exercise of public functions when it is commenced. For example, it will not be unlawful for private clubs and associations to have age limits for membership if their specific purpose is to enable people of a particular age to socialise together (such as retirement associations for example). It will also be lawful for service providers to take positive action to help service users overcome or minimise disadvantage related to their age. For example, a local authority might provide 'silver surfer' sessions for older people, who are less likely to have had the opportunity to learn how to use the internet.

This document sets out the evidence we have on emerging potential costs and benefits of age based practices for which we believe specific exceptions may be warranted to ensure these activities are able to continue.

Normally a consultation on a policy proposal would come with a detailed impact assessment. In this case we are still developing our policy for specific exceptions, so we have included benefits and costs where possible. A more detailed impact assessment will be provided to accompany the draft secondary legislation when we consult on it. The Government Equalities Office in conjunction with other government departments and stakeholders will be continuing to gather evidence and views on the costs and benefits of the particular measures needed to achieve this and would particularly **welcome evidence from respondents to this consultation, especially for those areas for which little or no information is yet available.**

### **Options identification**

There are three options for dealing with age discrimination in the provision of goods, facilities and services and the exercise of public functions.

**Option 1:** Do nothing. Allow age discrimination in goods, facilities and services and the exercise of public functions to remain as it is now.

**Option 2:** Prohibit all differential treatment of people aged 18 or over by providers of goods facilities and services and those exercising public functions, except where it can be objectively justified.

**Option 3 (recommended):** Prohibit all differential treatment of people aged 18 or over by providers of goods facilities and services and those exercising public functions, except where it can be objectively justified, and provide a power to make provision in the legislation setting out specific exceptions to the prohibition (to be exercised after consultation).

Not intervening to prevent harmful age discrimination outside the workplace has been rejected, as the consultation responses on the Equality Bill presented significant evidence that people are treated in a discriminatory way due to their age in services and public functions. However, a complete ban on age discrimination is not desirable as in some cases differential provision may be justified or beneficial, such as, free bus passes and priority flu vaccinations for the over-60s.

Therefore Option 3 is the recommended option and appropriate exceptions from the age discrimination ban will be developed in more detail before it comes into force.

## Proposals following the consultation

We have listened to the responses to the Equality Bill consultation exercise, “A Framework for Fairness” (June 2007), which outlined ways in which discrimination law could be made more effective by modernising, harmonising and simplifying it.

After the consultation, a document called “Framework for a Fairer Future – The Equality Bill”<sup>6</sup> published in June 2008, set out intentions for the Equality Bill. It said we would legislate to make it unlawful to discriminate against someone because of their age when providing goods, facilities and services, or when carrying out public functions, and it outlined the form the legislation would take.

The “Framework for a Fairer Future – The Equality Bill”, underlined how age differs from the other equality strands in the extent to which the use of age as a differentiating factor need not be discriminatory, but can be justifiable and beneficial.

The responses to the June 2007 consultation have also been taken into account in developing these proposals for exceptions to cover differential age based treatment might be justified or beneficial.

## Size of the market

The recommended proposal (option 3) remains broad and encompasses a wide range of possible outcomes depending on the specific exceptions we create. Specific exceptions will cover the private, public and third sectors. The private sector includes the wholesale and retail trade, financial services, hotels and restaurants and private health services etc. There are 4,679,080 businesses (including small and medium sized enterprises) in the private sector, although areas such as agriculture, mining, manufacturing, construction can be excluded as they are unlikely to be affected. This means that 3,171,245 enterprises, which employ 16,721,000 staff, with a turnover of £1,897,981 million (financial sector not included in turnover figure), could be affected to some degree<sup>7</sup>. All central government departments and other public authorities will be affected by this legislation. Third sector organisations could also be affected, in 2008 there were 169,498 main charities with an aggregate income of £46.16 billion in total<sup>8</sup>. There are also hundreds of thousands of small community groups and 55,000 social enterprises<sup>9</sup>. Almost 90% of the resources in the sector are controlled by only 8,935 charities or 5.3% by number, each with annual income (gross income) of more than £500,000<sup>10</sup>.

<sup>6</sup> <http://www.equalities.gov.uk/PDF/FrameworkforaFairerFuture.pdf>

<sup>7</sup> BIS Enterprise Directorate Analytical Unit 2007 data

<sup>8</sup> Charity Commission statistics

<sup>9</sup> Office of the third sector statistics

<sup>10</sup> Charity Commission statistics

In light of the current broad nature of the preferred option, further extensive work is planned to calculate meaningful costs and benefits. These will be calculated on the basis of more clarity about the detailed provision for exceptions and their quantifiable impact, which depends on key decisions to be taken in the light of further research and analysis and the responses to this consultation.

The detailed work on age discrimination legislation has been split into three areas: financial services and health and social care, which are the two areas about which most concern has been expressed in consultations, and all remaining goods, services and public functions (where less concern has been raised but there is the potential for a larger proportion of businesses to be affected), and where specific exceptions need to also be considered.

The following sections focus on each of these areas in turn, with information about the size of the sector/market to contextualise the likely impact of this policy, details of the analysis undertaken to date and the future work plan.

As information and evidence is still being obtained, the following analysis comes with significant caveats. It is an indication of the direction of the policy for specific exceptions and must only be seen as a preliminary and high-level partial estimate of potential costs and benefits.

We will draw further on the findings of our independent research into financial services and on the outcome, expected in October 2009, of the Department of Health's fundamental review of health and social care that is being led from the South West region. In the remaining areas, we will be discussing further with stakeholders the impact a ban on age discrimination could have and will firm-up proposals for specific exceptions.

# 1. Health and social care

## Implementation in health and social care

We have made clear that the legislation prohibiting age discrimination would be brought into force more quickly in those sectors which would be ready to comply with the law earlier than others. We anticipated that the health and social care sectors would require the longest transition period because implementation challenges would be greatest in those sectors. We have also made clear that the prohibition of unjustifiable age based differential treatment would not prevent continuation of justifiably different treatment on the grounds of age in these sectors, for example prioritising vaccination and screening programmes by age for certain conditions such as flu or Chlamydia.

We are committed to promoting equality in respect of age and are consequently determined to move as rapidly as possible to implement the provisions in the Equality Bill, relating to age in health and social care, in a sustainable and comprehensive manner. In deciding what a reasonable date for commencing the age discrimination provisions for health and social care should be, and whether to use secondary legislation to specify those desirable and objectively justifiable practices and/or forms of differentiation that do not constitute age discrimination, it is clear that issues of practical implementation will be of critical importance.

## Research evidence

In 2007, the Department of Health commissioned research on demonstrable age discrimination in mental health and social care services, two areas of care which serve large numbers of older people and which, it was suggested by some, were likely to be more challenged than other parts of the system in providing care equitably to all age-groups. The key finding of the two research studies, which can be viewed at [http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH\\_085763](http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH_085763), was that there were age differences in service use per individual, even after standardising for need. They estimated that the costs of removing such differences by simply expanding services for older people would be substantial – some £1.75 to £2.25 billion for mental health services and some £2 to £3 billion for social services. These findings related to the estimated cost of addressing age differences by expanding services for older people. They do not constitute the only way of achieving a cost estimate for the removal of age discrimination. In practice there are likely to be other possible solutions to addressing differences in provision, including the redistribution of resources and work to align attitudes and behaviour within the system with the legislation; and these might well yield different estimates.

The research looked, in broad terms, as differential service use adjusted for need as an indication of potential age discrimination. It should be noted that in practice capacity to benefit from services is also taken into account in the allocation of health and social care resources.

It should also be noted that these estimates are inevitably subject to various caveats and limitations, arising from the data sources. They relate specifically to mental health and social services for older people. Their findings should not be extrapolated to the whole health and social care sector.

The research concentrated on the differences in health and social care resources taken up by different age groups: the available data did not permit any findings about differences in outcomes.

### **The wider picture**

Getting the content of the legislative framework and the timing of its implementation in health and social care right will clearly be vital, and both implementation and the assessment of impact will need to be tied in closely with work to set out the values and principles of the health and social care sector and also practical measures already under way to tackle discrimination and to promote equality.

The recently published NHS Constitution set out the right of people not to be unlawfully discriminated against in the provision of NHS services – including on grounds of age when the relevant provisions of the Equality Bill are brought into force for the health sector. More broadly, the very first principle in the Constitution is that ‘the NHS provides a comprehensive service, available to all irrespective of gender, race, disability, age, sexual orientation, religion or belief’. The first principle also states that the NHS ‘has a wider social duty to promote equality through the services it provides and to pay particular attention to groups or sections of society where improvements in health and life expectancy are not keeping pace with the rest of the population’.

The Government is legislating in the Health Bill, now before Parliament, to ensure that all NHS bodies and private and third sector providers supplying NHS services are obliged by law to take account of the Constitution in their decisions and actions.

### **The health and social care sector and older people**

The health and social care sectors are a major area of central and local Government spending, and a great deal of its activity is concerned with meeting the needs of older people. The budget for the NHS is now £96 billion and around £15 billion was spent on adult social care in 2007/8. The scope of health and social care services is very wide, and includes, among other services, specialised medical and psychiatric interventions in hospital and community settings, intensive short or long term packages

of health and social care support for adults, residential care for adults (of all ages but overwhelmingly older people), services for people with complex physical, sensory and learning disabilities as well as support for other adults in particularly vulnerable and challenging circumstances.

To give some specific examples:

- About two-thirds of hospital beds are occupied by people aged 65 years and over.
- In England, 15.4 million people have a long term condition. Due to an ageing population, it is estimated that by 2025 there will be 42% more people in England aged 65 or over. This will mean that the number of people with at least one LTC will rise by 3 million to 18 million.
- We believe that there are now around 700,000 people in the United Kingdom that have dementia. It is also estimated that about 5 per cent of people over 65 have dementia, rising to about 20 per cent in the population over 80. The total number of people with dementia in the UK is forecast to increase to 940,110 by 2021 and 1,735,087 by 2051 – an increase of 38% over the next 15 years and 154% over the next 45 years .
- At any one time, around 10-15 per cent of the population aged 65 and over will have depression. More severe states of depression are less common, affecting about 3-5 per cent of older people
- Falls are the leading cause of mortality due to injury in older people aged over 75 in the UK
- Contrary to popular belief, health promotion services are popular amongst older people, with a strong evidence base for effectiveness in producing good health outcomes and reducing pressure on services and families. For example:
  - Number of people aged 60 and over who successfully quit smoking at the four week follow-up (self-reported) rose from 25,461 in 2001/02 to 60,683 in 2006/07 and, proportionally, those over 60 experience more success in giving up smoking than any other age group. (*Source: DH/Health and Social Care Information Centre*)
  - More people over the age of 60, as a proportion, successfully quit smoking than any other group. The number of people aged 60 and over who successfully quit smoking at the four-week follow up rose from 25,461 in (2001/02) to 60,683 in (2006/07)
- There are increasing numbers of older people accessing treatments and services. In elective care, the number of knee replacements amongst those aged 65 and over rose from 27,242 in 2000/01 to 45,737 in 2006/07 and the number of cataract procedures rose from 203,240 in 2000/01 to 254,000 669 in 2006/07 (*Source: Health and Social Care Information Centre*)

## **Age discrimination and the health and social care system**

The causes of age discrimination and the measures required to address it are varied. Many of those people experiencing age discrimination point to the attitudes and behaviour of individuals and organisations as being at the heart of the problem, and it is therefore likely that providers and commissioners of health and social care will need to look at the training and development of their staff and the processes employed by organisations and services in implementing the age discrimination ban. In addition, implementing the ban has potential implications for the allocation of resources within a cash-limited system. Further work in partnership with the NHS and social care and other stakeholders will work through both the behavioural and organisational issues and the financial implications in more detail.

Legislation on age discrimination in health and social care could, depending on how it is interpreted and implemented, have a substantial impact on resource allocation, and therefore on the way services and interventions are prioritised within a cash-limited system.

The health and social care system is concerned to promote the health and well-being of the population as a whole, adding “years of life and life to years” in the most cost-effective way possible. The allocation of resources therefore takes account of capacity to benefit from interventions and services.

Prohibiting age discrimination could be regarded as a way of promoting cost-effective practice. For some services, a relative shift in resources per service user from services for younger adults to services for older people might well result in improved overall outcomes, but it is also possible that such a shift would lead to an overall decline in outcomes, but it is also possible that such a shift would lead to an overall decline in outcomes. It is difficult to be certain of this in practice in the absence of clear evidence on the most cost-effective allocation of resources between age groups. For other services, there is potentially a tension between maximising “life years” or “quality-adjusted life years” and ensuring equality of access to health and social care resources for different age groups. This could arise for example if there was a shift in resources for life-saving interventions from younger to older people.

These issues will be considered as part of the further work and consultation to be conducted looking at the different factors relevant to implementing the ban on age discrimination including behavioural and organisation change and resource issues. For this reason they are not discussed further in this impact assessment, and the potential impact of any changes in resource allocation are not covered by this impact assessment.

## **Age discrimination review and wider stakeholder support**

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. 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 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.

The Department of Health is building upon work in areas such as the National Service Framework for Older People, the Dignity in Care Campaign and extension of individual budgets in adult social care all of which aim to support provision of appropriate care for older people. The Department of Health is looking to identify any 'quick wins' in tackling discrimination and promoting equality as well as considering issues such as training, information for service users, or guidance on best practice in service design. The Department of Health is drawing upon the experience of providers and users of health and social care services, looking to design solutions with rather than for them.

The Department of Health is also working with stakeholders to consider what needs to be in secondary legislation and what other action is needed to address issues of ageism. The group includes representatives of Help the Aged, Age Concern and the British Geriatrics Society as well as NHS managers, the Local Government Association and local authorities. The group's work will help define the challenge health and social care services face in complying with the prohibition on unjustifiable age based differential treatment, and the extent of the transition programme needed to support services in eliminating discriminatory practice ahead of the prohibition coming into force. Decisions on the scope and timing of secondary legislation relating to implementation of the prohibition in the health and social care sectors will need to draw upon the evidence and analysis produced by the advisory group. The Department of Health will also make use of evidence from the responses to the consultation on the European Anti-Discrimination Directive.

The health and social care system will, in the coming years, need to build on existing work to adapt to the challenges of an ageing population which is likely to bring greater need for long-term support and care. The detail of exceptions to allow differential treatment in health and social care will need to be developed in this context. Gathering more evidence through consultation and cost-benefit analysis will be a crucial part of this work.

With the help of the advisory group and drawing on a growing body of research evidence and analysis, the Department of Health is assessing the extent and variation of age discrimination and the experience of NHS and social care providers in tackling discrimination and in promoting equality. This will provide the basis for supporting the NHS and social care in meeting the requirements of the legislation and for decisions about the appropriate pace of implementation to enable the NHS and social care to tackle age discrimination and to promote equality rapidly and sustainably, building on the work already under way.

### **The devolved administrations**

While the discussion above refers to health and social care in England, similar considerations apply in Scotland and Wales. The extension of age equality 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.

## 2. Financial Services

We made clear in *The Equality Bill – Government Response to the Consultation*<sup>11</sup> that the legislation would not prevent different treatment on the grounds of age in the provision of financial services, where this was based on actuarial evidence. A total ban on age discrimination in financial services is not appropriate as age is a legitimate risk factor. However, we need to determine the shape of the exception.

### Evidence and analysis

Financial services represent 7.5% of the GDP<sup>12</sup>. There are 22,033 UK authorised financial service firms. There are also 6,291 EEA authorised financial service firms operating in the UK.

Motor insurance is the single largest general insurance type, with gross written premiums of about £8.6 billion (or about 22% of all business written)<sup>13</sup>. Around 60 ABI members serve the motor insurance market<sup>14</sup>, although some providers may be offering policies under several brand names. The largest five companies held around 64% of net written premiums in 2007.<sup>15</sup>

The travel insurance market in the UK is significantly smaller, with gross written premiums of £642m in 2007. Around 36 companies offer travel insurance, but given the small size of the market, only few have premiums over £100m<sup>16</sup> (ABI 2009, p. 55).

The personal loan market in the UK forms the largest component of unsecured lending, with £66,956m outstanding in December 2007 (compared with £31,657m of outstanding credit card debt in the same month)<sup>17</sup>. 46 providers were active in the unsecured personal loans market in May 2008, down from 57 in May 2007<sup>18</sup>.

<sup>11</sup> <http://www.equalities.gov.uk/PDF/EqBillGovResponse.pdf>

<sup>12</sup> Pre-Budget Report 2008, pg. 44, [http://www.hm-treasury.gov.uk/d/pbr08\\_completereport\\_1721.pdf](http://www.hm-treasury.gov.uk/d/pbr08_completereport_1721.pdf)

<sup>13</sup> ABI research paper No. 12 2009 – Insurance and age-based differentiation page 21

<sup>14</sup> ABI research paper No. 12 2009 – Insurance and age-based differentiation page 22

<sup>15</sup> [http://www.abi.org.uk/Display/File/524/General\\_Net\\_Rankings\\_2007.xls](http://www.abi.org.uk/Display/File/524/General_Net_Rankings_2007.xls).

<sup>16</sup> ABI research paper No. 12 2009 – Insurance and age-based differentiation page 55

<sup>17</sup> British Bankers Association 2009

<sup>18</sup> Datamonitor 2008

## Complaints of age discrimination in financial services

Older people have reported being turned away because of their age across a number of areas: motor and travel insurance; mortgages; loans; and consumer credit<sup>19,20</sup>. Restrictions may take the form of eligibility criteria or termination-dates based on age. A survey of a sample of 45 providers on one comparison website on one day found no upper age limits on credit cards. 9 out of 30 personal loan products have upper age limits from age 65 to 74.

<b>Sample upper and lower age limits in credit cards and personal loans</b>								
Results from one UK price comparison website: June 2008								
<b>Credits Cards</b>	<b>Min Age 18</b>	<b>Min Age 21</b>	<b>Min Age 22</b>	<b>Min Age 23</b>	<b>Min Age 25</b>	<b>Max Age 65</b>	<b>Max Age 69</b>	<b>Max Age 74</b>
0% balance transfer	9	5	0	0	2	0	0	0
0% balance transfer and purchase	21	6	0	0	2	0	0	0
<b>Total</b>	<b>30</b>	<b>11</b>	<b>0</b>	<b>0</b>	<b>4</b>	<b>0</b>	<b>0</b>	<b>0</b>
<b>Personal Loans</b>	<b>Min Age 18</b>	<b>Min Age 21</b>	<b>Min Age 22</b>	<b>Min Age 23</b>	<b>Min Age 25</b>	<b>Max Age 65</b>	<b>Max Age 69</b>	<b>Max Age 74</b>
Unsecured loans £500 over five years	19	4	6	3	0	3	3	1
<i>Source: Moneysupermarket.com June 2008</i>								

<sup>19</sup> Insurance and Age: exploring behaviour, attitudes and discrimination, CM Insight, Andrew Smith Research, 2007.

<sup>20</sup> Examples are given in the Age Concern publication an age of equality? [http://www.ageconcern.org.uk/AgeConcern/Documents/ACE\\_DLR\\_report\\_FINAL\\_PDF.pdf](http://www.ageconcern.org.uk/AgeConcern/Documents/ACE_DLR_report_FINAL_PDF.pdf).

The Equality Commission for Northern Ireland carried out a small scale web based investigation into travel insurance quotes in April 2008 and found numbers of quotes more limited at higher ages in travel insurance, with no annual cover available over 75.<sup>21</sup> Other mystery shopping exercises commissioned by Help the Aged and Age Concern have found that almost 20 per cent of attempts to obtain a quotation for car or travel cover by the over-65s are unsuccessful, compared to 3 per cent for the middle aged<sup>22</sup>. It should be noted that age was not necessarily the key factor with all the unsuccessful attempts to obtain insurance and that the mystery shopping exercise did not involve brokers.

In contrast, a Saga Populus survey found that only 3 per cent of those who responded aged over 65 had been denied motor insurance on grounds of age.<sup>23</sup> Of these 7 per cent were unable to find any motor insurance.<sup>24</sup> Financial services representatives suggest that these markets are competitive and insurance is available for people of all ages, although some consumers can have difficulty finding it.

The Oxera research for the Government Equalities Office into the number of motor insurance policies available to the under 21s and the over 80s on the internet has showed that the number of policies available is significantly lower than for customers between the ages of 21-80. However, even for these groups, some 30 quotes for motor insurance are available. The decline in the number of travel insurance policies available for older people is more significant than in the case of motor insurance, based on the count of quotes available on websites. Nonetheless, an 80 year old would still have about 20 policies to choose from. It should be noted that this evidence is not a true reflection of product availability across age groups as it is not based on a full screening of the market, however, it is a good indication, in fact the evidence is likely to underestimate the true number of policies available for the older age groups. There is no market failure as far as supply is concerned, but this does not show whether age is being used appropriately.

When using age as a factor to price the risk, some providers set policy terms and conditions using broad age bands that can appear arbitrary to customers. An individual in one age band may be treated very differently to an individual who is a day or two younger or older in another age band. Age bands are used for a number of reasons, including keeping the costs of pricing and distribution low and increasing the accessibility and availability of products.

<sup>21</sup> Older people's access to financial services: a review, by Barry Fitzpatrick consulting, Simon Bridge & Associates for The Equality Commission for Northern Ireland, June 2008.

<sup>22</sup> Financial Services Experts Working group report, October 2008, page 11, quoting Andrew Smith research, CM Insight for Age Concern and Help the Aged, August 2006.

<sup>23</sup> Question asked: "Some people say they find it difficult to find insurance, others say they have no problems at all. Have you ever been refused insurance because of your age? (Motor)".

<sup>24</sup> Question asked: "Were you able to find another insurer who would cover you? [Those refused]".

Not all differential treatment is discrimination. Some is justifiable. In financial services differential treatment according to age is common because it can be a useful indicator of risk. For example, as we all recognise, in general, our health can deteriorate with age. This obviously affects insurance premiums which are adjusted to offer people similar levels of protection, but at a cost that reflects how likely we are to call upon that protection and how much it is likely to cost.

To underpin further work to progressively develop the detail for a financial services exception(s) from the ban on age discrimination and to estimate the potential impact(s) and costs and benefits of limiting the use of age-based practices by law, the Government will make use of the following evidence and information:

- The report of the Financial Services Experts Working Group.
- Research commissioned by the Association of British Insurers examining the travel and motor insurance industry.
- Independent research commissioned by the Government Equalities Office.
- Responses to the UK consultation on the proposed Equal Treatment Directive.
- The EU Commission's consultation focussing on the use of age and disability in financial services, which will be identifying current practices in Member States, possible problems of discrimination and measures to prevent discriminatory practise.
- Responses to this consultation.
- Other existing studies and research.

## **Costs and benefits**

Although the complete removal of age as a risk factor is not one of the policy options considered, it is useful to assess the impact that its removal could have<sup>25</sup>:

- Prices become more similar across age groups – this implies redistribution effects between age groups – ie, some age groups would benefit, whereas others would be worse off.
- Prices increase overall – partly because insurers are not able to estimate the risks as precisely and hence factor the uncertainty into prices, and partly because the proportion of high-risk individuals is likely to increase (ie, as they face lower prices) and the proportion of low-risk individuals to decrease (as they fact higher prices). The overall price increase relates to the inefficiencies due to adverse selection and moral hazard.

<sup>25</sup> Oxera research

- Providers would increasingly use substitute variables for age for risk classification and pricing, such as years with driving licence, which may have the effect of individuals still being discriminated on the basis of age.
- Some types of products or firms may be forced out of the market either because it becomes uneconomical to supply the product (eg. the costs associated with health screening may be too high, especially for smaller firms), or the risk is too large (eg. the market for annual worldwide travel policies may collapse due to considerable risk associated with offering such insurance to older people).

Not all providers have the expertise or capacity of pricing for all risks. This applies to age-related risk as much as to other kinds of risk, which is why some suppliers specialise. Requiring all providers to supply all ages would not only require changes to the systems in place and costs of building up the required actuarial expertise, it could also result in a reduction in the underwriting quality as providers underwrite risks for which they do not currently have the expertise.

The GIRO working party examined the effect of removing the age variable from car insurance risk models as well as any multi-way interaction effects between driver age and other factors. The implied effect on premiums was determined by comparing the results from the models including and excluding age. The working party found clear re-distributive effects between age groups, since drivers aged 41-75 would face increases in premiums of up to 24%, whereas those aged 40 or under and those aged 76 or over would see their premiums fall by up to 20%.<sup>26</sup>

In effect, this evidence demonstrates that, on average, if age is not used in the risk classification and pricing models of motor insurers, the young drivers would be cross subsidised by the older drivers. Changes in premiums is also likely to lead to different behaviour by the insured, both in terms of uptake of insurance and potentially in terms of behaviour, for example, road accidents and fatalities could increase as younger people respond to decreased premiums; this will have the effect of more risk in insurers' portfolios and exacerbated premiums for all age groups.

Age is regarded as a relevant indicator of health for holiday insurance purposes. ABI's Ipsos MORI research found that over-65s are three times more likely to make a travel insurance claim than those aged 35, and people over 85 years old are eight times more likely to claim. Claims made by people over 65 compared to under 50s are nearly three and a half times more expensive. If age was removed then there would need to be wide introduction of medical checks which would increase the premiums charged and/or a reduction in quality of cover offered.

<sup>26</sup> GIRO Working Party (2007/08), 'Free Market Pricing', section 5

The Experts' Working Group report contains results of the analysis of removing age from credit-scoring models, conducted by a major UK lender<sup>27</sup>. As this analysis shows, the removal of age has an adverse effect on providers' ability to assess an individual's ability to repay a loan. This is shown to result in either a reduction in the loan offer rate by 1.7% if the proportion of 'bad' loans is kept constant, or an increase in 'bad' loans by 0.1% if the loan offer rate is held constant.

The analysis also illustrates the effect on loan availability, with the loan offer rate increasing by 2.3% for the 18 – 25 age group (ie. additional 2.3% of the applicants in this age group would be offered loans), whereas the offer rate would decrease by 1.4% for those aged 60 or more. The lender notes that this needs to be interpreted in the context of the young having the highest predicted 'bad' loan rate (4.7%) and the old having the lowest rate (0.4%).

Therefore, removal of age from credit-scoring and loan-decision models is likely to lead to a 'cross-subsidy' from the older customers to the younger customers as was also observed in motor insurance. Moreover, the effect of removing age as a risk factor can lead to worse outcomes overall, for example, either more 'bad' loans or less loans being offered.

The use of alternative factors in risk classification was examined by Kelly and Nielson<sup>28</sup>, in risk classification and motor insurance pricing. Overall they concluded that the age variable is capturing real differences in risk of drivers that is not captured by any other of the alternative factors examined. They conclude that age cannot be eliminated from insurance processes without creating undesirable market disruptions and increases in moral hazard.

Any exception for financial services will need to take into account a number of different factors, which are detailed below.

### **Acceptable evidence and age based pricing**

Acceptable evidence should be defined relatively widely, but we need to decide how wide. Age based pricing without necessitating strict mathematical proportionality, should be permitted so long as age is used appropriately.

<sup>27</sup> The Experts Working Group Report, October 2008, page 166 – 167

<sup>28</sup> M.Kelly and N.Nielsen (2006), Age as a variable in insurance pricing and risk classification pages 212 – 232

Financial services practices are designed to manage risk and are determined by a cost benefit analysis. For example, the likelihood of an insurance claim may increase or decrease with age for certain products. This risk can be met with more stringent risk analysis and tighter underwriting, such as requesting medical reports. Where data is inadequate for a particular age group, firms may seek to manage this risk by imposing higher charges, lower benefits or declining applicants. Risk management is an area of competition that requires firms to balance costs, including the opportunity cost of declining customers, against risk savings. Age does not work in exactly the same way for all insurance products. For some products, the premium is calculated more precisely according to the risk posed by the individual. Insurers will look at particular characteristics known as 'rating factors', including age, and use this information to assign an appropriate level of risk.

Legislation should not prevent the use of predictive adjustments to data in financial services. Evidence or data might include public or private empirical, actuarial, statistical or qualitative experience, research or other material or data on risks. It may include evidence of costs, including but not limited to administrative or operating costs. It may be from UK or non-UK sources, provided that it is relevant. If actuarial data alone was used it would exclude material which is more qualitative, which would be unacceptable.

There are several reasons why premiums may not be directly proportional to claims costs. These include the use of fixed monetary loadings reflecting the expense of administering a policy, and marketing activity that directly or indirectly results in commercial discounts being offered for different age groups.

Insurance products work by pooling risks. Tailoring each insurance policy to the exact risk characteristics of the individual would eliminate many of the risk reduction benefits that policyholders currently seek in insurance and would significantly add to the costs.

### **Commercial factors**

The removal of commercial factors (a decision to specialise in a particular market segment, decisions about risk appetite or portfolio risk distribution, the practical impact of distribution mechanisms, pricing strategy or simply keeping transaction costs low) would have a big impact on providers. Commercial factors can be taken into account as financial services firms are run to make a profit for shareholders/owners, by providing services which people will want to use. In a competitive market, increases in transaction costs are generally passed on to consumers. Companies should be able to provide a viable cost-effective service with reasonable profit margins to allow a sustainable business. This sector is very competitive, so they need to ensure that their services are competitively priced to ensure that they attract sufficient customers.

Currently firms make a commercial decision at which age points they feel able to quote premiums based on their own data, the cost and method of distribution, capital requirements and their business model. If firms could not make a commercial decision as to what part(s) of the market they could specialise in, then they would be exposed to areas of risk which they know little about, as they do not have the supporting data. It is likely that some firms would withdraw from the market whilst others would write business at a loss initially until they have sufficient evidence to support a requirement or their premiums would be expensive as they would need to ensure that they had sufficient capital in case there was an increase in claims.

### Restrictions on age limits and age bands

If age limits were removed providers would no longer be allowed to provide products for specific parts of the market only, and instead would supply products across all age ranges.

With narrower age bands, providers would no longer be allowed to have a pricing structure with step changes for broader age groups, but instead set prices that more closely reflect the age of consumers (on, for example, an integer basis), although it would still be the case that premiums would change from one day to the next at specific relatively arbitrary dates such as birthdays and this would need to be set out in the legislation.

The economic benefits would be:

- benefits from consumers obtaining products such as insurance or loans, which they previously had difficulty accessing;
- benefits from improved search of consumers for the products on offer.

The benefits in terms of product access and improved search for older people have been quantified by CRA in the ABI research on motor and travel insurance:-

	<b>Motor insurance</b>	<b>Travel insurance</b>
Obtaining insurance (and being able to drive/go on holiday)	£3.34 million	£4.82 million
Improved search	£3.09 million	£10.66 million
<b>Total quantified benefits</b>	<b>£6.43 million</b>	<b>£15.48 million</b>
<i>Source: ABI research.</i>		

The reported estimates of economic benefits are relatively small<sup>29</sup>.

The benefits arising from better access are not equivalent to the benefits of implementing a particular policy option. For example, it is not clear that a removal of age limits would in fact achieve the desired access benefits – the policy may well result in more products being offered to certain age groups, but it may in fact not improve their product search or ultimate purchase. The economic benefits of the policy options that restrict age-based practices by product providers are likely to be small.

If all providers supplied all age groups it is unlikely to reduce prices in the market. Even if the number of providers in supplying to some age groups in the market is lower than for others, the Oxera research states that there is no evidence of systematic overcharging of these age groups at the lower levels of supply. Instead, rather than having a beneficial effect, there are good economic reasons to expect the removal of age limits to have a negative impact on prices and the competitive dynamics in the market. For example, if all providers cater for all ages, but as a result of economies of scale many of these providers are relatively expensive (justifiably, as their costs are high); the advantage of greater access (and reduced search costs) may be more than off-set by high realised prices.

On the narrowing of age bands in travel insurance, while steep increases in the level of premiums from one year to the next appear unfair as individuals jump from one age band to the next, there are unlikely to be any significant economic benefits of forcing a 'smoother' price structure. There are a lot of different models of age banding at present – for example some products have five-year age bands for older customers and others have one band for all people over, for example 50 or 65 years-old. Narrower age bands may appear to be fairer, but could also result in higher overall prices.

Overall, Oxera believe that there would be little *economic* benefit in the removal of age limits or narrowing of age bands.

Any changes to their underwriting process, product offerings and pricing structures would impose additional costs on product providers, which would be passed on to customers.

<sup>29</sup> The estimates of benefits (or costs to the elderly under the status quo) presented in the Expert Working Group report are significantly higher. However, Oxera considers that – although a willingness-to-pay approach is valid in principle – the estimates presented are not willingness-to-pay estimates. What is relevant is not the expenditure of the foregone holiday or foregone driving, but the willingness to pay for buying insurance to go on holiday or driving. It is the latter that the CRA report for the ABI seeks to measure.

There is also a risk that, if age limits were removed providers could seek to avoid such changes by simply setting prohibitively high prices to the age groups they do not want to serve, thus complying with the rule by offering the product, but effectively would never sell it. In this case, outcomes in the market (for consumers also) may not change or worsen as consumers inadvertently purchase over-priced products. In practice, such a response may not be possible, not least for commercial reasons – eg, providers may incur reputational damage from charging uncompetitively high prices (even if they reflect high costs), and there are transaction costs from pricing quotes which are not converted into sales.

Compliance cost estimates for motor and travel insurance providers are available in the in the CRA report for the ABI.

	One-off costs	Average annual costs
<b>Motor insurance</b>		
Remove minimum and maximum age limits	£10.6 million	£2.2 million
Remove maximum age limits	£5.3 million	£1.1 million
<b>Travel insurance</b>		
Remove maximum age limits	£1.3 million	£10.8 million
Remove maximum age limits and age bands	£1.8 million	£10.9 million
<i>Source: ABI research.</i>		

The Financial Services Experts' Working Group report presents somewhat higher compliance cost estimates. The report also indicates the level of compliance costs that would apply in the credit market if lenders were required to change their score cards. These costs would largely be one-off costs. As in the motor and travel insurance market, the ongoing annual costs once the changes to the systems and processes have been made are correspondingly smaller.

Overall, the total compliance costs appear relatively small on aggregate or in relation to the size of the markets, but compared to the economic benefits they may in fact be considered rather large.

The available cost estimates refer to the compliance activities at the level of providers and as such do not cover additional costs incurred by other parts of industry. For example, to the extent that the removal of age bands increases the cost of distribution (eg, system changes may be required by some distributors), additional costs would apply at distribution level. There is evidence that the additional costs at the underwriting level are indeed small (ie, based on existing models, it would be easy to fit smooth pricing curve), but the broader bands are considered helpful downstream for distribution

purposes. Similarly, in the personal loans market, additional costs may be incurred by credit reference agencies or other service providers if the restrictions on age also required changes to their models and systems.

The unintended negative market impacts that arise, in particular from the removal of age limits, are likely to present the more significant component of costs than compliance costs.

Not all providers have the expertise or capability of pricing for all age groups. This applies to age-related risk as much as to other kinds of risk, which is why there is a degree of specialisation on the supply side. Requiring all providers to supply all ages will require changes to the systems in place and costs of building up the required actuarial expertise; it could also result in a reduction in the underwriting quality as providers underwrite risks for which they do not currently have the expertise.

Specialisation allows insurance companies and lenders to realise economies of scale. To give a simple example, the market for insuring 80-year-olds and over who wish to go on holiday in the USA is simply not big enough for all insurers in the travel market to provide quotes, there would be duplication in the cost of building up the actuarial evidence, in the cost of giving quotes that are ultimately not converted into sales, etc. In addition, where either the transaction itself or the service delivery has economies of scale within age cohorts (eg, if the transaction involves materially different information from the insured or the intervention they require is materially different), there is a risk of permanent fragmentation of these small markets resulting in permanently higher unit costs.

Specialist providers that underwrite risks for the old-age group (or other segments) would be required to change their business model or exit the market.

Any reduction in the underwriting quality that may be triggered by the requirement to supply the whole age spectrum will result in incorrect actuarial pricing by individual insurers and in the market as a whole. The potential consequences of a less risk-based pricing are clear and well-established (in particular, moral hazard and adverse selection).

The potential consequences will be more limited if providers continue to be allowed to set limits on the basis of criteria that are closely correlated with age, eg, driving experience, medical record, employment status, time at address, etc. However, the effect of this will be to continue to allow firms to not supply services to largely the same group they do not supply now. The difference will be that they are refused supply not because of their age, but because of some factor correlated with age. The net benefit of this may be small or even negative in terms of the group that is being targeted for help.

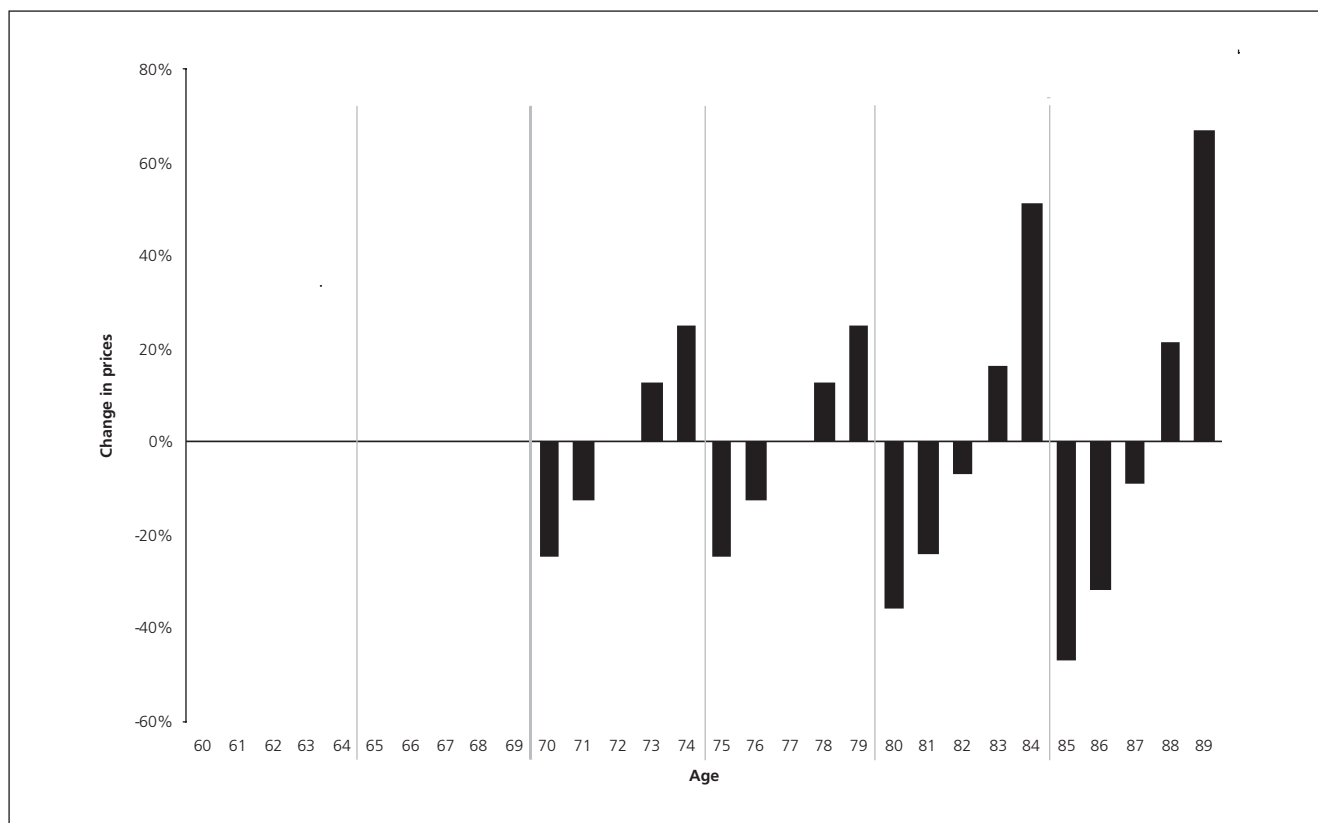
Products that are targeted to certain age groups (eg, student loans) may no longer be offered. More generally, product characteristics may need to be adjusted (or simplified) to reduce the risk exposure of insurers that would come from the requirement to offer a product to all age groups.

The removal of age limits may result in better access to the relevant products for certain age groups, but the costs of achieving this (compliance costs and pricing inefficiencies) may be borne by consumers in other age groups.

Oxera research states that in travel insurance there could be slight benefits for older people. In motor insurance and personal loans, however, the removal of age limits is likely to reduce the costs of borrowing and of driving most for the young (and to a lesser extent the old). That is, the same policy is likely to have different distributional consequences across age groups (although in all cases it tends to be the 'middle' ages that lose out).

On the narrowing of age bands, the replacement of step changes in the pricing structure between broader age bands by a smooth curve where prices vary with integer ages also has redistributive effects. The price within a band is based on the average risk of consumers in that age band (eg, 70–74 years). If the risk of consumers in the age band is identical, the price charged for consumers of different ages within the band will stay the same. If the 70-year-old has a lower risk than the 74-year-old, however, the move to integer ages would imply that the 70-year-old will now pay less than before and the 74-year-old pays more than before, although the use of age would be fairer. That is, within an age band, there can be a degree of cross-subsidy that is removed as the age bands are narrowed. While this leads to greater risk-based pricing, these may be offset by greater transaction costs.

## Hypothetical illustration of the distributional effects of removing age bands



Note: In this simple example (to be developed using 'real' data), risk-reflective pricing is assumed in the status quo (ie, prices equal to the average risk within an age band) and after abolishing the broader age bands and moving to integer ages (ie, prices equal to the risk of integer age groups). Risk is assumed to increase at an increased rate with age. The status quo involves age bands with an increment of five years (ie, 60–64, 65–69, etc), and there are equal proportions of each integer age customers within an age band. It is assumed that the 60–64 and 65–69 age groups have equal within-group risk; hence, there is no change in prices for these age groups when the age bands are removed.

Source: Oxera.

Given that travel insurance risk increases with age it may be the very old (or more generally those hitting the upper end of an age band) that see their travel insurance premiums increase most if age bands are narrowed. That is, for those concerned about the level of premiums paid by the very old, a narrowing of age bands may not have the desired distributional effects; however, age will be used more fairly and costs more proportionate.

## Industry wide publication of data

There needs to be increased transparency to show that age is being used appropriately, this could be achieved by industry level publication of data, which would also help provide a basis of fact against challenges. Publication of data is already required under the Gender Directive for some forms of insurance. The public should have access to a published source of insurance data broken down by age, for example, giving aggregated information on size and frequency of claims for different ages. Data should be compiled using the smallest practicable age ranges and should include information on the frequency of claims.

A concern is that insurance suppliers in particular, insist that their pricing structure is supported by up to date actuarial data, and that publication is an unnecessary burden on business, but they have not given an indication of the scale of these extra costs. Claims data from individual insurers is necessarily confidential and publication on a firm by firm basis would undermine competition and the ability of firms to operate their businesses on a commercial basis. It follows that if such data would thus be published as an aggregated series incorporating information from as many firms as possible, but on an anonymous basis and in a way that sought not to undermine the competitive advantage that specialist insurers gain from their better understanding of the risks of some market sectors.

Putting aggregated insurance data in the public domain illustrating the correlation of age and risk would make it easier for industry and consumers to understand how age impacts on costs of the services provided and provide a basis of fact against challenges on discrimination grounds. Companies would have a source of data to justify their products against, which would help reduce claims against age discrimination. The consequences if insurers' own data differs from aggregate data would need to be considered carefully.

Industry wide data might also reduce barriers to entry for new providers, who claim that they cannot offer services to certain age groups as they do not have sufficient data on the risk they pose.

It would also provide Government with information on the impact of age factors on premiums. This could inform further understanding of the extent to which accessibility and prices are in fact proportionate to risk and a basis from which to take further action to reduce discriminatory behaviour.

We believe that any costs generated by the requirement to produce industry wide data, would be offset by the benefits to the different groups.

We assume that almost all insurers will choose to enter into collective publication arrangements through the Association of British Insurers (ABI) or another agency. The Impact Assessment for the implementation of Gender Directive 2004/113/EC which has a publication requirement, stated one-off set-up costs estimated at £720,000 representing the development of some internal reporting systems (£5,000 for a large firm and £2,000 for a small firm) together with the development of a central collection and publication system (£110,000). Estimated annual running costs were £250,000. This was based on 15 senior manager and 20 administrator hours for a large company and 5 and 10 hours respectively for a small company (£235,000), including associated overheads of 30%; central staff costs (£5,000) and central publication costs (£10,000).

### **Signposting/referrals**

In insurance signposting/referrals would lead to improved access to products for consumers who currently have difficulties in finding providers or products that cater for their age – it would help them to obtain insurance cover and reduce their search for this cover, by better matching demand with the existing supply. By directing customers to specialists in the market, this could result in better quality products for older customers with little unintended consequences for other segments. The Association of British Insurers research undertaken by CRA provides examples of the potential costs and benefits, although the actual costs depends on the type of systems which are put into place, which will have to be considered further if it is decided to require signposting/referrals.

### ***Travel Insurance***

#### *– Signposting*

The ABI report stated that 2% of people cannot find insurance and the benefits of signposting depend on the proportion of customers who would actually use the signpost, which has been calculated as 63%.<sup>30</sup>

The efficiency of competition would be expected to increase because of changes to the search process for older customers. At present, around 25% of customers over the age of 65 have been turned down by an insurance company<sup>31</sup> (although it is not clear how much is related purely to age). Although the majority do find insurance, signposting would help eliminate some of this unproductive activity, which could allow more shopping around between providers who offer quotes.

<sup>30</sup> ABI research paper No. 12 2009 – Insurance and age-based differentiation page 83

<sup>31</sup> ABI research paper No. 12 2009 – Insurance and age-based differentiation page 84

The ABI research states that 65 – 70% of consumers across age groups would be likely to use the information provided by signposting, suggesting a potential reduction in search costs. Customers would use the signposting system to contact 4.9 providers, compared to the current 2.9 average.<sup>32</sup> Signposting is relatively easy to set up and maintain and the cost would be low as detailed below.

	<b>Total scaled up costs (£)</b>	<b>£ per million premium</b>	<b>£ per average policy</b>
Additional one-off costs	£0.5 million	£800	£0.03
Additional ongoing costs	£2.8 million	£4,400	£0.13
Average annual costs	£2.9 million	£4,500	£0.14

*Source: ABI research. One off costs have been spread over five years to obtain the average annual costs. An average premium of £31 has been used to calculate the cost per average policy.*

#### – Referral

The ABI research stated that 82% of older customers would be willing to consider purchasing insurance through a company they were referred to, so we can assume that there would be an increase in insurance policies sold<sup>33</sup>. If being the company referred to is highly profitable we would expect competition between firms to be ‘this company’ which would in turn put pressure on pricing. 72% of consumers state that the referral would make them more likely to shop around.<sup>34</sup>

Compliance costs for referrals is more difficult to predict as it would depend on exactly how the referral arrangement worked, however, an example of possible referral costs are detailed below.

	<b>Total scaled up costs (£)</b>	<b>£ per million premium</b>	<b>£ per average policy</b>
Additional one-off costs	£0.7 million	£1,200	£0.04
Additional ongoing costs	£2.8 million	£4,400	£0.14
Average annual costs	£3.0 million	£4,700	£0.14

*Source: ABI research. One off costs have been spread over five years to obtain the average annual costs. An average premium of £31 has been used to calculate the cost per average policy.*

<sup>32</sup> ABI research paper No. 12 2009 – Insurance and age-based differentiation page 85

<sup>33</sup> ABI research paper No. 12 2009 – Insurance and age-based differentiation page 87

<sup>34</sup> ABI research paper No. 12 2009 – Insurance and age-based differentiation page 88

### – Benefits from obtaining travel insurance

The ABI research demonstrates that there is the potential for increased business if insurance companies were to provide a product to those who could not get cover. Consumers over 65 account for 17% of the travel insurance market. Among them, 25% had difficulty in finding insurance and 7% could not get any cover. Were they able to get cover, the value of premiums would increase to £4.08 million.<sup>35</sup>

The ABI research shows that there would be benefits from improved search due to less time which could be costed as £1.3 million<sup>36</sup>. However, the benefits from improved search on the basis that individuals continue to spend the same amount of time searching but have an increased number of quotes from which to choose, would amount to £9.36 million.<sup>37</sup> As well as benefits arising through obtaining insurance, additional benefits arise because older people can now go on holiday with travel insurance.

### Motor insurance

#### – Signposting

The ABI research states that overall 60% of customers would be likely to use a signpost although this falls from 66% of customers in their late 60s to 55% who are aged 75 and over<sup>38</sup>. Around 55% of those aged 75 and over state that they would use the information provided by a signpost.<sup>39</sup> The ABI research stated that customers would use the signposting system to contact 5.5 providers, compared to the current 3.7 average.<sup>40</sup>

	<b>Total scaled up costs (£)</b>	<b>£ per million premium</b>	<b>£ per average policy</b>
Additional one-off costs	£1.3 million	£150	£0.05
Additional ongoing costs	£330 million	£380	£0.13
Average annual costs	£3.5 million	£410	£0.14

*Source: CRA survey. One-off costs have been spread over five years to obtain the average annual costs.*

<sup>35</sup> ABI research paper No. 12 2009 – Insurance and age-based differentiation page 90

<sup>36</sup> ABI research paper No. 12 2009 – Insurance and age-based differentiation page 91

<sup>37</sup> ABI research paper No. 12 2009 – Insurance and age-based differentiation page 92

<sup>38</sup> ABI research paper No. 12 2009 – Insurance and age-based differentiation page 44

<sup>39</sup> ABI research paper No. 12 2009 – Insurance and age-based differentiation page 45

<sup>40</sup> ABI research paper No. 12 2009 – Insurance and age-based differentiation page 46

High ongoing costs due to increased call times, although could be cheaper if sent by post instead, although there would be postal and printing costs.

– Referral

About 71% of respondents to the ABI survey stated that they would consider purchasing from the company that they were referred to<sup>41</sup>.

	<b>Total scaled up costs (£)</b>	<b>£ per million premium</b>	<b>£ per average policy</b>
Additional one-off costs	£1.6 million	£190	£0.06
Additional ongoing costs	£4.1 million	£470	£0.16
Average annual costs	£4.4 million	£510	£0.17
<i>Source: CRA survey. One-off costs have been spread over five years to obtain the average annual costs.</i>			

– Benefits from obtaining car insurance

The ABI research demonstrates that there is the potential for increased business from those who could not previously get insurance, benefits from continuing to drive and benefits from improved search.

The benefits from those obtaining insurance who currently do not, is estimated at £2.99 million<sup>42</sup>. The benefits of continuing to drive are calculated at £0.35 million<sup>43</sup>. The ABI research shows that there would be benefits from improved search due to less time along with benefits from improved search on the basis that individuals continue to spend the same amount of time searching but have an increased number of quotes from which to choose, would amount to £3.09 million<sup>44</sup>.

<sup>41</sup> ABI research paper No. 12 2009 – Insurance and age-based differentiation page 47

<sup>42</sup> ABI research paper No. 12 2009 – Insurance and age-based differentiation page 49

<sup>43</sup> ABI research paper No. 12 2009 – Insurance and age-based differentiation page 50

<sup>44</sup> ABI research paper No. 12 2009 – Insurance and age-based differentiation page 51

– Total net annual benefits

The ABI report illustrates the potential costs and benefits of signposting and referrals.

45	Signposting	Referral
Quantity	£3.0 million	£4.0 million
Quality	++	+
Variety	+	+
Efficiency	£5.9 million	£7.7 million
Total quantified benefits	£8.9 million	£11.6 million
Total quantified costs	£2.9 million	£3.0 million
<b>Net quantified benefits</b>	<b>£6.0 million</b>	<b>£8.7 million</b>
Net quantified benefits per policy	£0.29 million	£0.41 million
<i>Source: CRA calculations. + slightly positive; ++ positive</i>		

Signposting and referrals impose costs, however, these solutions avoid many of the efficiency costs associated with the other options. They are directed at facilitating the access for those consumers who currently find it difficult to obtain insurance because of their age (rather than requiring wider-reaching changes in underwriting practices, product offerings or pricing structures). As such, signposting and referrals is relatively low cost option and have less redistributive implications.

**Costs and benefits for General Insurance  
(Motor and travel Insurance)**

<b>Exception to allow</b>	<b>Costs</b>	<b>Benefits</b>
Exception to allow the continuation of the use of age in General Insurance	Nil additional costs	Saving of on-going cost of £13,000,000 <sup>(a)</sup>
Requirement to Publish data	£250,000 <sup>(b)</sup>	Need to establish benefits for this area
Introduction of signposting in insurance	£2,900,000	£8,900,000
Introduction of referrals in insurance	£3,000,000	£11,600,000
<b>Total</b>	<b>£6,150,000</b>	<b>£33,500,000</b>

<sup>(a)</sup> This is the cost to the motor and travel insurance industry if age limits were to be removed (£2.2m for motor and £10.8m for travel, taken from ABI research).

<sup>(b)</sup> This is the estimated annual running cost as outlined in the Gender Directive Impact Assessment.

**Costs and benefits for Long-term Insurance  
(Annuities, Pensions, Life assurance, Permanent health insurance and private medical insurance)**

<b>Exception to allow</b>	<b>Costs</b>	<b>Benefits</b>
Exception to allow the continuation of the use of age in Long-term Insurance	Nil additional costs	Saving of on-going cost of £105,000,000 <sup>(a)</sup>

<sup>(a)</sup> The requirement to remove the use of age would cost £275,000,000, with on-going costs of £105,000,000. These costs are the suggested one-off and on-going costs if age requirements were removed from the long term insurance sector. This does not include costs to the private medical insurance sector. Figures taken from page 42 of the Financial Services Experts Working Group Report.

### *Costs and benefits for Banking and credit*

<b>Exception to allow</b>	<b>Costs</b>	<b>Benefits</b>
Exception to allow the continuation of the use of age in Banking and Credit	Nil additional costs	Need to establish benefits for this area

### *Summary of known costs*

<b>Exception to allow the continued use of age in financial services</b>	<b>Costs</b>	<b>Benefits</b>
General insurance	£6,150,000	£33,500,000
Long term insurance	Nil additional costs	£105,000,000
Banking and credit	Nil additional costs	Need to establish benefits for this area
<b>Total</b>	<b>£6,150,000</b>	<b>£138,500,000</b>

### 3. Other Sectors

This is a smaller area than finance and health and social care, but we are in a better position at this time to provide more clarity as to our proposals.

#### Evidence and analysis

There are other age based practices outside financial services and health and social care, which, although far less significant we are minded to provide with a specific exception, because they are regarded as beneficial or justifiable or because there are other good public policy reasons for an activity being excepted from the requirement not to discriminate.

The Government has undertaken significant preliminary work to establish what age-based practices exist and, taking account of responses to the consultation on the proposals for the Equality Bill, is further refining its policy on what specific exceptions might be required. We have held meetings with relevant stakeholders and been presented with information as to why specific exceptions should be permitted to allow differential age based practices to continue. Further informal discussions will take place with stakeholders to gather more evidence about potential impacts, costs and benefits. These impacts are expected to be on a far smaller scale to those for the other two sectors. Nonetheless it is important that we get this right.

We have decided to legislate for specific exceptions where these are appropriate to ensure that the legislation will not prevent different treatment where it is beneficial or justified. We propose specific exceptions in the following areas:

- Age based concessions and benefits
- Age related holidays

The retail sector in the United Kingdom is large with UK retail sales of £278 billion in 2008. The retail sector generates almost 8% of the Gross Domestic Product of the UK. In 2007, there were 292,797 enterprises trading from about 400,000 outlets<sup>46</sup> in the UK with the retail industry employing over 2.8 million people (September 2008). This equates to 11% of the total UK workforce<sup>47</sup>. Holidays sold on the basis of someone's age, is an expanding industry, for example Saga holidays which is the leading age-based holiday company has sales of £267 million a year<sup>48</sup>.

<sup>46</sup> Figures obtained from BIS (excludes retail sales not from stores, repairs and sales of second-hand goods in stores) <http://stats.berr.gov.uk/ed/sme/>

<sup>47</sup> British Retail Consortium statistics

<sup>48</sup> Saga turnover of £267 million in 2008 (figure provided by Saga)

## **Age-based concessions and benefits**

A total ban on age-based concessions and benefits would impact both the public and private sectors. Many public sector concessions are covered by the statutory authority exception or other cross strand exceptions, however, private sector age based concessions and benefits would be banned, unless a specific exception is permitted.

In the private sector many companies would be affected, which offer a range of concessions and discounts to older and younger people. Examples include:

- Discounted goods and services such as ‘cheap OAP haircuts’ or ‘10 percent off for pensioners’ days offered by certain retailers;
- Concessionary pricing for older and younger people at leisure centres, cinemas, museums, sometimes only on particular days or during off-peak hours;
- Some private sector transport providers also provide concessionary fares, although it should be noted that this is often because they are required to do so by statute, eg. Section 28 of the Railways Act 1993 states that franchising authorities may require franchise operators to take part in schemes providing discounted fares for the young, elderly, and disabled.

In the earlier consultation a number of private sector organisations, including ASDA, B & Q and the British Retail Consortium, saw legislation as potentially problematic and complicated, with a risk of unintended consequences if the correct exceptions are not made to ensure that discounts would still be offered to pensioners, or products and services marketed to particular age groups.

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. 60% thought it would be a bad thing if legislation made it illegal to offer discounts on goods and services to people on the basis of their age. Only 13% thought it was a good thing. A Saga/Populus survey of 14,809 adults over 50 found that 84% agreed that discounts on products should be offered to specific age groups.

### ***Stakeholder concerns if an exception was not allowed***

During discussions stakeholders have raised a number of concerns that they would have if a total ban was brought in:

- There would be a negative impact for the retailer, manufacturer and the customer. It is impossible to estimate the financial consequences for retailers, as they do not know the impact this would have on retail spending. Customers may not buy the products they were intending to buy or will go for cheaper alternatives. A withdrawal of concessions may not have an impact on the economy as a whole as the money earmarked for these purchases may be spent in a different way; however, customers would have less choice in their price range if they were unable to receive discounts and may decide to make fewer purchases.
- Businesses would have to review their practices and might face legal challenge if they did not realise that their concessions were no longer lawful.
- The withdrawal of age based concessions would create a distorted trading problem, as certain products might no longer sell as well as previously, so the range of goods on offer would likely change. A ban on age discrimination would mean that retailers would have to consider different approaches to get people through the door.
- The Association of Convenience Stores which represents 33,000 members, has stated that a ban on the use of age to justify discounts would impact many small retailers. It is impossible to state how many would be impacted, as many only have a sign in the window detailing that they offer discounts. If this income stream was banned then it would be difficult for them to provide an alternative method to offer discounts.
- The removal of Admission concessions would deter visitors and the less well-off from attending museums, cultural activities etc.

### **Costs and benefits**

It is believed that concessions have a social and economic benefit as they encourage certain groups to get out into their local community, which benefits their general well-being and allows them to contribute to the economy.

A specific exception would allow existing practices to continue. Retailers state that concessions attract people into their shops, in the hope that this generates customer loyalty and increases trade during quiet trading times. This is a good practice for the retailers and also for customers as this attracts those who may not otherwise use their services. Age based concessions are generally available to older people and students. In the case of people over 60 this means that 12,927,900 (21.4% of the population) can benefit<sup>49</sup>.

A ban on the use of age for discounts would mean that a company operating a concession/card scheme based on age would need to inform all its members that the scheme was no longer in operation, this would be expensive and time consuming. For example if a company had five million concession card holders and they were to send a letter to each one informing them that the scheme would no longer operate this would cost £1.5 million just in second class postal costs alone, if the total cost of paper, printing envelopes was added and this totalled £1 per letter this would amount to £5 million. There would be a loss of good will and customer loyalty, which is impossible to calculate. If the company decided to operate a different scheme not based on age, there would also be considerable expense in setting up the new scheme.

The British Retail Consortium stated at a meeting with GEO that one company that offers discounts to over 60s has 5 million registered members and at least half of these visited one of their stores in the last year. 500,000 new members joined last year even without the company advertising their scheme and 14% of customers said they would not have made a purchase without the card. If we assume that these 14% would have visited the store once and spent £20, this would amount to £7 million in lost revenue for the retailer, if they would normally make 5 visits during the year, spending £20 a time this would amount to £35 million in lost revenue for the year.

It has been suggested that retailers could target discounts to all, at certain times of the day when they know a target audience is more likely to shop, however, this would be more difficult to manage. They could target everyone on state benefit, but this would still exclude some who would be embarrassed to show that they receive state benefits.

English Heritage have stated that a ban on age based concessions would deter the less well off and hamper English Heritage's efforts to reach groups, which have traditionally not engaged with the historic environment, one of the organisations core objectives. They have illustrated how a total ban on the use of age for admission and membership concessions could impact them. The income from admissions for the over 60s in 2007/08 was £1.9m, it is anticipated that this would fall to £1.3m.

<sup>49</sup> [http://www.statistics.gov.uk/downloads/theme\\_population/KPVS33\\_2006/FINAL\\_KPVS2006-web.pdf](http://www.statistics.gov.uk/downloads/theme_population/KPVS33_2006/FINAL_KPVS2006-web.pdf)

Senior citizen membership totalled £4.1m in 2007/08, it is anticipated that this would also reduce to £3m. If they wished to make up the shortfall in revenue, then they would need to increase prices to all concession groups (old, young and family admissions) a 20% increase would amount to £1.9m, however, this assumes that there would be no impact on visitor numbers, which is extremely unlikely. If senior citizen rates were increased to adult rates, membership income could increase by 15%; however, this assumes no impact on the number of households renewing their membership which is very unlikely. Value for money would be significantly eroded and price would become a barrier to joining<sup>50</sup>.

English Heritage state that a specific exception is required so that they are still able to continue to use pricing as a tool to engage with target groups, getting all people interested in the historic environment. Concessionary pricing enables them to target groups and invest the income in improving facilities and services. Current visitor levels need to be maintained to ensure that English Heritage can promote and protect the historic environment.

Cultural institutions contribute to the economy of the area in which they are located, because the footfall they deliver attracts businesses; reduced visits would damage the wider economy.

Cultural participation is important to ensure the promotion of equality of access to museum & library collections and social diversity in participation, and social cohesion from our shared cultural and educational history. This helps to combat social exclusion and benefits the whole community. Entrance fees, fines and charges are perceived as barriers, and even quite modest increases can cause participation to fall. This is contrary to current objectives.

Reduced entry prices at museums and exhibitions supports life long learning. Age concessionary pricing for loans of audio-visual materials, including talking books, in libraries allowing older people on reduced income to continue to participate in popular cultural activities. Active living which contributes to health and wellbeing supports independent living for older people for longer, and opportunities for intergenerational interaction helping to combat isolation. Visiting museums enhances a sense of place and belonging.

Concessions at museums and for library services demonstrate that institutions and authorities value diversity and understand the pressures on older people and parents. It is believed that this improves the well-being of residents and may have a positive effect on civic pride and engagement.

<sup>50</sup> Information provided by English Heritage to DCMS and GEO

Continued age based concessionary pricing at cinemas will enable them to continue to act as a social hub for local communities and in particular for those groups, which would otherwise be socially excluded because of cost. As the pricing policy attracts a wide age group to the cinema, then the community benefit as they are then able to show a wide range of cultural films for mixed audiences.

The cinema industry has stated that there were 164.2 million cinema admissions in 2008 with box office revenue of £950m. The removal of concessions would relate to an increased monetary cost to the wider cinema going public if they had to substitute for the loss of concessions in higher full paying ticket prices. Cinema-going is the most popular cultural activity, adding to the cultural education through programming of world cinema, documentaries and the screening of 'alternative content', including opera and ballet, as well as through initiatives such as Film Education's National Schools Films Week. Without access to this cultural engagement offered by concessionary pricing some people would be culturally disadvantaged. If we assume that there would be 5% less admissions if concessions were not allowed this could amount to £47.5 million.

Cinemas provide an important social inclusion role, by being an affordable leisure option would be impacted by a ban. Local cinemas often host special events such as film festivals, special screenings and educational initiatives which often reach underserved subgroups of the population. These benefits to the community could be lost if concessionary pricing was banned. A wide range of customers encourages cinemas to offer a diverse range of films, a ban on could stop some older people going to the cinema, thus the range of films offered would be much narrower, this would impinge on the cultural engagement of the wider population.

Cinemas make significant efforts to engage older audiences, by holding regular matinee screenings, to provide an opportunity to see films as part of social occasions. These prove particularly valuable for those that do not like going out in the evenings, and where lack of independence or mobility, poor access to transport and lack of disposable income are identified as common issues for older people. Cinemas' ability to provide this role would be diminished if concessionary ticketing was not allowed: older people would miss out on the social opportunity of "silver screen" showings.

Film production could be impacted for example if older people were priced out of the cinema as there would be a decrease in demand for the kind of films normally targeted towards them, which in turn would have an effect on the whether those films actually get made.

Businesses would have to review their practices and might face legal challenge if they did not realise that their concessions were no longer lawful. In 2006/07 there were 972 accepted employment tribunal claims for age discrimination, and if we estimated on the basis of the ratio of GFS cases to employment cases for race, gender and disability – assume a similar ratio for age – a range of 0.24 – 0.75% of employment cases and the number of GFS cases by strand in Ireland, then we can assume that there would be up to seven cases a year. The cost of these can be costed at £1,011<sup>51</sup> a case and if we also assume a compensation award of £3,175<sup>52</sup> a case this would amount to £29,302. Discounts and concessions are enjoyed by older and younger people and a ban on these is likely to prove unpopular with those who receive them and the businesses that provide concessions.

There is also a need for the exception to cover aged based concessions and benefits, which provide lower cost access to beneficial activities to improve socio-economic equality and improve participation. For example:

- The Government's free swimming for those over 60 and those aged under 16 for swimming pools owned by local authorities in England. If this scheme was banned swimming would have to be offered to everyone or the Free Swimming Programme would need to be abandoned. £80 million was made available to local authorities to offer the scheme to the two relevant groups. This would need to be significantly increased if open to all. Up to 20 million people aged 60 or over and 16 or under would be unable to benefit from the Free Swimming Programme, and be denied the attendant health benefits of increased participation in physical activity and sport. The benefits are difficult to calculate, but are expected to far exceed the cost as in terms of Government outcomes, action on tackling child obesity, good ageing and social cohesion would be affected. Providing people with the opportunity to participate in sport and physical activity, where previously cost may have been a barrier, can improve health and wellbeing and reduce health risks, leading to a potential decrease in future cost burdens to the healthcare sector for interventions to address, for example, obesity and associated co morbidities.
- The Arts Council announced a two year scheme costing £2.5m, which commenced in February 2009, to give free theatre tickets to the under 26s, to encourage attendance by young people and in the long term generate more interest and new audiences. Judith Hibberd, Arts Council regional head of performing arts, said: "We must make it easy for young people to experience powerful and inspiring art, show them that the arts are for them and hopefully help create a new generation of arts audiences." Arts and culture have the ability to enhance and change people's lives and the Government is committed to increasing access to the arts for everyone. It is hard to calculate the benefits, but in the long run they should far exceed the cost of the scheme.

<sup>51</sup> <http://www.official-documents.co.uk/document/cm65/6565/6565.pdf>

<sup>52</sup> the average value of compensation award DTI Employment Relations Research Series No.33

- Schemes such as “Find your talent”, which are aimed at young people under 19 years of age. Getting young people participating in cultural activities, to develop important life skills such as creativity, confidence, self-discipline, effective communication and the ability to work in teams. The cultural and creative industries are increasingly important to our economic future. These industries already account for 7.3% of all economic activity in the UK, contributing £60 billion to the economy, and this is only going to grow<sup>53</sup>.

Exception for the continued use of age in concessions and benefits	Costs	Benefits
Retail	Need to establish costs for this area	Need to establish costs for this area
Historic and educational	Nil	£1,700,000
Culture and Arts Cinemas	£1,250,000	£48,750,000
Swimming <sup>(c)</sup>	£80,000,000	£80,000,000
<b>Total known costs and benefits</b>	<b>£81,250,000</b>	<b>£130,450,000</b>

(a) This covers English Heritage, Museums and Libraries. The cost identified is for English Heritage. Estimated costs and benefits still required for other sectors.

(b) This covers cinemas (£47, 500,000 would be the cost of withdrawing concessions) and the Arts Council free theatre (£1,250,000 scheme with matching benefits, although the benefits are expected to far exceed the costs in the long run, but are difficult to calculate in the short term so for the purposes of showing in year cost compared to benefit, we have assumed that this will be the same).

(c) The benefits are expected to far exceed the costs in the long run, but are difficult to calculate in the short term so for the purposes of showing in year cost compared to benefit, we have assumed that this will be the same.

## Age-related holidays

In 2007, UK residents are estimated to have taken around 123 million trips of one night or more within the UK. The average tourism trip was 3.2 nights. Tourism expenditure on these domestic trips was £21 billion, representing an average spend of £172 per trip. By relating these to the total population, the average level of tourism per head of population can be calculated. In 2007 the average UK resident took 2.1 tourism trips of one night or more, stayed away for 6.6 nights in total on tourism trips in the UK and spent £353 in total on domestic tourism trips<sup>54</sup>. There were also 45,437,000 holiday trips abroad by UK residents in 2007<sup>55</sup>.

<sup>53</sup> <http://www.findyourtalent.org/content/about.html>

<sup>54</sup> The UK Tourist statistics 2007 as provided by Tourism Alliance

<sup>55</sup> Travel trends 2007 by the Office for national Statistics

The Age and Employment Network have stated that age limits for group holidays are discriminatory, whilst Saga holidays believe that private sector providers should be able to target their products or services at particular niche markets defined by age.

A survey of 500 Saga travel customers found that 78% prefer to go on holiday with others aged 50 and over and 97% do not object to holiday companies that offer holidays for particular age groups. 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.

### ***Stakeholder concerns if an exception was not allowed***

- A total ban on the use of age limits would impact age targeted holidays, the whole basis of the package certain companies provide would change and products could be withdrawn.
- If age discrimination was banned this would be addressing a problem that does not exist. Such legislation would be deeply unpopular with those who enjoy these holidays, for example, Saga state that they have very high repeat business and 97% of customers rate them as good to excellent<sup>56</sup>, because they are having a holiday tailored to their needs. Saga have never received a complaint that they discriminate against youth, who after all enjoy niche marketing from their own dedicated suppliers, as well as access to a plethora of generalist operators.
- People may decide not to take a holiday, as some people want age based holidays and will not want to take other types of holidays. There will be loss in economic activity and potentially jobs.
- There could be impaired enjoyment for existing customers, if for example other age groups went on holidays enjoyed by a certain age cohort, for example, it would only take a few exuberant youths to disturb the enjoyment of a holiday geared towards older people.
- Impaired enjoyment of new younger customers, if a holiday designed for older people was open to younger people, then they may find themselves on a holiday tailored to the needs of people who are over 50. This may not be the holiday they wanted – for them too it may be a disappointment.
- There could be higher prices if companies had to cater for different age groups, as well as withdrawal of some holiday types.

<sup>56</sup> Saga response to the consultation exercise

### *Costs and benefits*

A small number of tour operators currently offer age targeted holidays; for example Saga provides for the over 50s, while Club 18-30 caters for the younger end of the age spectrum. Age is an integral part of the package that these companies provide; an exception would allow them to continue to provide the same service. These holidays are very popular, for example in 2008 201,000 people went on a Saga holiday.

Age based holidays are based on providing a service to a certain age group, the whole ethos and business model of these companies would be damaged if age restrictions and concessions were removed. These holidays were built on a demand for the type of product they provide. They provide a like minded experience; people enjoy activities with others of their generation, as most people who choose age-targeted holidays do so for positive, not negative reasons. They join a peer group for the duration of a holiday, as they wish to be with others who share a common interest, and where social and other events are tailored to meet their interests, which is not harmful.

The removal of age limits would cause the withdrawal of products, possible withdrawal from the market; less choice for holiday makers and possibly some people will decide not to go on holiday. 78% of Saga customers prefer to go on holiday with others aged 50, so there is a willingness to pay for this service. Thus we can assume that 78% of Saga's turnover indicates a willingness to pay for this type of product, which would amount to £208.2 million<sup>57</sup>.

Saga has highlighted the likelihood that a ban on the use of age would result in higher prices. They state that they are able to negotiate better prices from suppliers because of the characteristics of their customers, this include factors such as their propensity to eat at the hotel and to take excursions. If Saga had to contract on the basis of being available to all age ranges the pricing they are able to negotiate is likely to be impaired. The main Saga European buyer estimates this might put up this element of the tour cost by 10%.

Saga has stated that there could be a withdrawal of some holiday types, for example the all-inclusive holidays, which are very popular with their target age group. For example, many hotels will not contract on an all inclusive basis for wider age groups. The Saga chief buyer has estimated that perhaps only 5% of the hotels that they contract with would consider all-inclusive arrangements for an 18+ clientele and those that do would be likely to charge between a quarter and a third more for this element of the tour cost.

<sup>57</sup> Based on Saga turnover of £267 million in 2008 (figure provided by Saga)

Age based holidays form a very small percentage of the group holiday market, their existence does not disadvantage others, who will still have a very wide range of group holidays to choose from.

Policy Area (exemption)	Costs	Benefits
Age-related holidays <sup>(a)</sup>	Nil additional costs	£104.100,000
<sup>(a)</sup> This only includes a willingness to pay for the Saga holidays product, information is needed for other age-related holidays. This figure assumes that 50% of the people who stated a willingness to pay for the Saga product would not book a holiday with someone else (50% of £208,200,00 = £104,100,000).		

### Familiarisation costs

A one-off familiarisation cost will attach to most of the proposals covered by this Impact Assessment. It is assumed that “familiarisation”, in the great majority of cases for most employers and individuals, will mean familiarisation with or through guidance provided by the Equality and Human Rights Commission and/or by other advisory bodies such as ACAS (Advisory, Conciliation and Arbitration Service). It is also assumed that “familiarisation” means reaching the point where a manager or relevant employee of a firm is aware of the changes in the law and how they impact upon business.

However, it is also assumed that at any one time, most managers or relevant employees will not be fully expert in the existing law. They will, from time to time, need to “re-familiarise” themselves with the law so that they can advise their staff or colleagues accordingly, even if the law remains unchanged. This might happen, for example, as a result of an internal enquiry or potential set of discriminatory circumstances; or a court case.

The calculation of familiarisation costs relating to the new proposals in this Impact Assessment therefore needs to be adjusted to take account of the probability that in any one year, even if the law were unchanged, there would continue to be costs of “re-familiarisation” with the old law.

For the approximately 3.4m owner-managed firms without employees, this “re-familiarisation” will consist of the owner-manager re-informing him or herself by checking available guidance. For this category of firms, we assume that the costs of familiarisation with guidance on the new law will be no greater than the costs of re-familiarisation with guidance on the old law.

However, in the approximately 1.2m small and medium enterprises and the 25,481 public sector organisations we assume that familiarisation with the new proposals will involve a manager informing him or herself about the change in legislation and disseminating the information. In the 5,180 firms with more than 250 employees, we assume that familiarisation with the new proposals will involve

a personnel manager with aid from a legal council not only informing themselves about the changes in legislation but also producing new internal guidance – based on the guidance available from the Equality and Human Rights Commission and similar bodies.

### ***Smaller and Medium Enterprises***

In small and medium enterprises (SMEs) with between 1 and 249 employees it is assumed that a general manager will be responsible for familiarisation. Data from the Annual Survey on Hours and Earnings Survey (ASHE) 2008 shows that the average gross hourly wage for this occupation is £22.81<sup>58</sup>, when uplifted by 21% to allow for non-wage labour costs, this becomes £27.60. This is then multiplied by the time investment estimated to become familiar with the new guidance and reproduce it for other staff in the firm; and subsequently by the number of SMEs likely to need to become familiar with the legislation in any one year.

There are 1,174,945 SMEs in Great Britain,<sup>59</sup> some of these businesses will seek advice because they are involved or likely to become involved in a court case, another proportion will respond to planned Government publicity and guidance produced by the Equality and Human Rights Commission.

For the purposes of this Impact Assessment, we assume that within this pool of most relevant businesses 20% or 234,989 firms are likely to need to familiarise themselves with the new law at any one time and disseminate guidance for staff. The other 80% of SMEs will not proactively familiarise themselves with the new legislation and will only become aware of the change when a situation arises; it is believed these costs would have existed even if the law had not changed. Therefore they do not constitute an additional cost imposed by the Bill.

### ***Large Enterprises***

In large firms (250+ employees) it is assumed that there will be a dedicated personnel manager to read guidance, answer follow-up questions and disseminate information to other parts of the organisation. It is also assumed large firms will seek legal advice on high risk issues and as an indirect cost produce their own guidance for staff. The ASHE survey indicates the average gross hourly wage for a personnel manager is £25.41<sup>60</sup> and £30.75 after inclusion of non-wage labour costs. Similarly for legal professionals the average gross hourly wage is £28.14<sup>61</sup> and £34.05 after inclusion of non-wage labour costs.

<sup>58</sup> ASHE code 11

<sup>59</sup> Small Business Statistics 2007

<sup>60</sup> ASHE 2008, code 1135

<sup>61</sup> ASHE 2008, code 241

It is assumed that this proactive dissemination of information will take place in all 5,810 firms employing 250 or more employees<sup>62</sup>.

### **Public sector**

Familiarisation costs will also fall to the 25,481 public authorities who will need to be aware of the law. It is assumed that each of the public authorities will have a personnel officer who is responsible for reading guidance, answering follow-up questions and disseminating information to other parts of the organisation; and that the non-wage labour costs of such a personnel manager are the same as in the private sector. The ASHE Survey shows that an average gross hourly wage for this occupation is £25.41<sup>63</sup> uplifted by 21% to allow for non-wage labour costs this becomes £30.75.

### **Estimation of time investment and familiarisation costs**

The table below shows the estimated time and costs of familiarisation.

<b>Policy Area</b>	<b>Type of Firm</b>	<b>Time (Hours)</b>	<b>No of Firms</b>	<b>Hourly Cost</b>	<b>Total Familiarisation cost</b>
Age discrimination	SMEs	2	234,989	£ 27.60	£12,971,440
	Large Firms	2	5,810	£ 32.40	£376,462
	Public Authority	2	25,481	£ 30.75	£1,566,883
<b>Total</b>					<b>£14,914,785</b>

### **Monitoring and review**

The Commission for Equality and Human Rights will have a responsibility to keep the discrimination legislation and the Human Rights Act under review.

<sup>62</sup> Small Business Statistics 2007 – <http://stats.berr.gov.uk/ed/sme/smestats2007.xls#'UK Whole Economy'!A1>

<sup>63</sup> ASHE code 1135

## Summary and recommendation

While it is not possible to provide a precise estimate of the benefits that are likely to accrue from allowing exceptions, we anticipate that there will be advantages to the individual and business from increased/maintained take-up of services.

There will be an exception for financial services. We need to ensure that there is scope to take account of all the circumstances and impacts of particular practices, but ensuring that age is only used where it can be justified. In particular we would wish so far as possible not to impose significant extra cost on the industry or its customers.

Further work in partnership with the NHS and social care and other stakeholders will work through both the behavioural and organisational issues and the financial implications in the provision and delivery of health and social care in more detail.

In the other areas, there are areas which can be covered by cross-strand exceptions and objective justification, but some specific exceptions are proposed:-

- Private sector concessions as there is no clear benefit for society as a whole from prohibiting these.
- Age based holidays as these are booked in anticipation of joining a peer group for the duration of the holiday.
- Age limits on holiday accommodation, as some holiday providers wish to provide a certain holiday experience.

## Next steps

As mentioned in previous sections a large body of analysis work is required to aid the development of specific exceptions to ensure that we fully understand the costs and benefits of these policies and to mitigate against unintended consequences.

This assessment of the impact, including costs and benefits, of allowing specific exceptions from the age discrimination ban is an integral part of the further work currently being undertaken. The responses to the consultation will inform development of draft secondary legislation, which will be accompanied by an updated impact assessment on which there will be further consultation before secondary legislation is laid before Parliament.

## Specific Impact Tests: Checklist

Use the table below to demonstrate how broadly you have considered the potential impacts of your policy options.

**Ensure that the results of any tests that impact on the cost-benefit analysis are contained within the main evidence base; other results may be annexed.**

Type of testing undertaken	Results in Evidence Base?	Results annexed?
Competition Assessment	No	Yes
Small Firms Impact Test	No	Yes
Legal Aid	No	Yes
Sustainable Development	No	Yes
Carbon Assessment	No	Yes
Other Environment	No	Yes
Health Impact Assessment	Yes	Yes
Race Equality	No	Yes
Disability Equality	No	Yes
Gender Equality	No	Yes
Human Rights	No	Yes
Rural Proofing	No	Yes

## Annexes

### Annex A

#### COMPETITION ASSESSMENT

A detailed competition assessment is not necessary for any of the proposals put forward in this Impact Assessment as the proposals for exceptions are unlikely to have negative effects on competition. They do not favour one sector of society or business over another.

Competition filter test	
Question	Answer Yes/No
Q1: In the market(s) affected by the proposed legislation, does any firm have more than 10% market share?	No
Q2: In the market(s) affected by the proposed legislation, does any firm have more than 20% market share?	No
Q3: In the market(s) affected by the proposed legislation, do the largest three firms together have at least 50% market share?	No
Q4: Would the costs of the proposed legislation affect some firms substantially more than others?	No
Q5: Is the proposed legislation likely to affect the market structure, changing the number or size of firms?	No
Q6: Would the proposed legislation lead to higher set-up costs for new or potential firms that existing firms do not have to meet?	No
Q7: Would the proposed legislation lead to higher on-going costs for new or potential firms that existing firms do not have to meet?	No
Q8: Is the sector characterised by rapid technological change?	N/A
Q9: Would the proposed legislation restrict the ability of firms to choose the price, quality, range or location of their products?	No

As the answers in the above table are “No” (or, in the case of question 8, “not applicable”) to all nine questions of the competition filter test, a competition assessment is not required.

## **Annex B**

### **SMALL FIRMS IMPACT TEST**

The proposed exceptions are unlikely to have a disproportionate impact on smaller businesses than larger businesses. Most would recognise that avoiding discrimination in any form is in line with best business practice.

The costs and benefits of each proposed measure for small businesses will vary. In general, the impact is unlikely to be substantial on any particular small business. This is because the existing method of enforcing discrimination law is essentially reactive, through claims brought by individuals before employment tribunals or the county courts. There are no proposals to change this basic approach.

Enforcement of discrimination law does not involve routine interventionist or invasive mechanisms. The Equality and Human Rights Commission has power to conduct investigations, but this is intended for use on a strategic basis. Under discrimination law there are no inspectorates or agencies with powers to search and seize company documentation or to enter company premises; and there is no mandatory reporting requirement on companies covering, for example, the composition or pay of their workforce.

As a result, there are no mandatory administrative burdens on small business arising from form-filling or reporting. The Government is not proposing to change this existing light-touch approach.

On the costs side, there will be some administrative burdens on small firms as a result of the need to familiarise themselves with adjustments to the law, as reflected in new or amended guidance produced by the Equality and Human Rights Commission and others.

On the benefits side the main benefits for small business will arise from simplification and standardisation of the law. It is not that small businesses (or even large businesses) regularly or ever look at the law itself – their main experience of the law is likely to be if a case is brought. However, small businesses during the course of the consultation on establishing the Equality and Human Rights Commission made clear that they supported the Commission as a one-stop-shop for advice and guidance. Simplifying and standardising the law will enable the Commission and other individuals and bodies advising small firms to produce simpler and clearer guidance. The general benefits of simplification are indicated above.

Small businesses, like big businesses, should also benefit from the opening up of a more diverse customer market.

## **Annex C**

### **OTHER SPECIFIC IMPACT TESTS**

#### **Legal Aid**

The exceptions do not create new criminal sanctions or civil penalties.

#### **Sustainable Development**

The proposed exceptions are not contrary to the shared UK principles of sustainable development.

#### **Carbon Assessment**

The exceptions will have no effect on carbon emissions.

#### **Other Environment**

The exceptions will have no implications in relation to climate change, waste management, landscapes, water and floods, habitat and wildlife or noise pollution.

#### **Health**

Health and social care is covered in the impact assessment.

#### **Race/Disability/Gender**

There are no limitations on meeting the requirements of the proposal on the grounds of race, disability or gender. The proposal does not impose any restriction or involve any requirement that a person of a particular racial background, disability or gender would find difficult to comply with. Conditions apply equally to all individuals and businesses involved in the activities covered by the proposal.

#### **Human Rights**

The proposed policy does not contravene individuals' human rights and is consistent with the Human Rights Act 1998.

#### **Rural Proofing**

The exceptions do not adversely impact the rural community. As the proposed policy will apply equally to people who live in rural areas and urban areas.

## Annex D

### PROFORMA FOR ADDITIONAL INFORMATION ON COSTS AND BENEFITS

We would welcome your help in strengthening the evidence base with costs and benefits of potential exception. It would be particularly helpful if you could use the proforma below to provide information about the costs and benefits of creating or not creating an exception for your business area.

You may not know with any great certainty, however, estimated costs will be helpful so long as you can set out how the costs were arrived at, including the assumptions you made.

Please return the completed proforma by email or post:

by e-mail:      [age@geo.gsi.gov.uk](mailto:age@geo.gsi.gov.uk)

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

*The proforma is available for download on the GEO website  
<http://www.equalities.gov.uk>*

#### 1. Details of the sector concerned.

Please define the type of business, eg. motor insurance, retail sector

#### 2. What would be the monetary cost if the exception described in the consultation document was not created?

Please state what the exception is and provide examples of the financial impact, showing how the costs were arrived at, in particular the assumptions on which they are based.

3. What would the wider impact be if an exception was not created?

Please provide details, eg. if older people could not afford to go to the cinema this could reduce their opportunities to go out as much, as well as their choices.

4. What would be the monetary benefits of allowing the exception outlined in the consultation document was not allowed?

Please provide examples of the financial benefits, showing how their values were arrived at, in particular the assumptions used.

5. What would be the wider impacts of allowing an exception?

Please provide details of any benefits.

6. Please provide details of any additional information about costs and benefits, useful databases and research of which you are aware.

Proforma completed by:


Response completed by (name):

Name of organisation

Contact number

Contact e-mail address





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