



Government  
**Equalities** Office

Putting equality at the heart of government

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

June 2009

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# Section I: Introduction

- 1.1 This Equality Impact Assessment addresses the proposals put forward in the consultation on the emerging policy for the prohibition on age discrimination against adults in the provision of services and the exercise of public functions.
- 1.2 The aim is to ensure that the implications for equality are thoroughly assessed as the proposals are developed, so that full account is taken of views expressed, and to provide assurance that changes needed to mitigate any potential adverse impacts have been identified.

## Section 2: Context and drivers for the proposals

- 2.1 The Government established the Discrimination Law Review in February 2005 to consider the opportunities for creating a clearer and more streamlined legislative framework, which produces better outcomes for those who experience disadvantage. The preliminary proposals for the Equality Bill were consulted on in a Green Paper entitled ‘A Framework for Fairness’.<sup>1</sup>
- 2.2 A separate independent Equalities Review, led by Trevor Phillips, looked at the broader issues leading to an unequal society, in particular the reasons why inequalities persist in certain areas and for certain groups and communities, despite some forty years of equality legislation. It issued an interim report in March 2006 and the final report to the Prime Minister in February 2007. The Equalities Review recognised that legislation against discrimination is a significant lever in producing changes in social and cultural attitudes and behaviour as regards equality, but that it is by no means the only factor and that social and cultural attitudes can have a significant effect on life chances.
- 2.3 Great Britain has a proud history of legislating against discrimination. The current domestic legislative framework comprises a number of separate pieces of legislation enacted over the past forty years. The first legislative measures to protect people against discrimination in Great Britain were the Race Relations Acts of 1965 and 1968. These were followed in 1970 by the Equal Pay Act the purpose of which was to ensure equal pay between men and women. These have been followed by various other statutes, which mean that the law has developed in a piecemeal way and this process of cumulative development has created a body of law which needs simplification.
- 2.4 The basic rationale behind the Equality Bill is to make discrimination law in Great Britain clearer, more consistent and more coherent. The three main objectives of the Equality Bill are therefore:
  - to simplify discrimination law where appropriate;
  - to make the law more effective;
  - to modernise the law where appropriate.

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

2.5 The Government is committed to retaining the existing levels of protection; the Equality Bill's proposals will extend protection to new areas where this is necessary and justified. The Bill therefore outlaws age discrimination against adults in the provision of services and the exercise of public functions, providing more extensive protection than currently exists.

## Section 3: The existing legislative framework for age

- 3.1 The current equality legislation relevant to age is the Employment Equality (Age) Regulations 2006<sup>2</sup>, to protect people against discrimination on grounds of age, in the workplace and in vocational training.
- 3.2 The UK currently has domestic legislation prohibiting discrimination on the grounds of disability, religion or belief and sexual orientation in the provision of goods, facilities and services, education, the provision of public functions and the disposal and management of premises. The UK does not currently have legislation prohibiting age discrimination outside the workplace.
- 3.3 Following the consultation on the Equality Bill we have decided to legislate in the area of age discrimination in the provision of services and the exercise of public functions, thereby provide people with the same legal protection against discrimination on grounds of age as is currently enjoyed by the five other protected characteristics (gender, race, disability, sexual orientation and religion or belief).

<sup>2</sup> <http://www.opsi.gov.uk/si/si2006/20061031.htm>

## Section 4: Proposal

- 4.1 The Leader of the House and Minister for Women and Equality announced in June 2008 that the Equality Bill will outlaw unjustifiable age discrimination against adults by those providing services and public functions.
- 4.2 The Equality Bill outlaws unjustifiable age discrimination in the provision of services and the exercise of public functions in the future. This means, for example, that the following practices will be unlawful:
  - a retailer assuming that older people are incapable of signing a contract without a younger person present to explain the details to;
  - a doctor failing to investigate a health complaint raised by an older person simply because of their age; or
  - a gym refusing membership to an older person because they don't fit in with the gym's "youthful" image.
- 4.3 We need to ensure that the ban on age discrimination in services and public functions outlaws only unjustified/harmful discriminatory practices – and that age-based differences in treatment which are justifiable, beneficial or neutral can continue.
- 4.4 Age differs from other protected characteristics in that it is often appropriate for society to treat people differently on grounds of their age. There is also compelling evidence that some age-specific services and functions will always be needed. The legislation will not prevent the differential provision of products and services for people of different ages where there is objective justification – meaning that practice in question is a proportionate means of achieving a legitimate aim. Legitimate age based practices will also be able to continue under specific exceptions set out in secondary legislation to provide clarity and certainty that they are lawful.
- 4.5 A combination of the scope to objectively justify practices and specific exceptions will allow justifiable, beneficial and neutral practices to continue, while ensuring that harmful/unjustified age discrimination with negative consequences is banned.

- 4.6 The Equality Bill itself bans age discrimination. Secondary legislation will be needed to give the ban full effect. We will be able to bring the new law into force more quickly in those sectors which will be ready to comply earlier than others. The secondary legislation will include specific exceptions to the new law to ensure that different age-based treatment which is beneficial or justifiable can continue in the public and private sectors. A separate consultation and Equality Impact Assessment will be carried later for the draft secondary legislation.
- 4.7 Where we are convinced that an age based difference in treatment is beneficial/justifiable/or neutral, we first need to consider whether it is already protected:
- through one of the ‘cross-strand’ exceptions which apply right across the Equality Bill; or
  - through objective justification.
- 4.8 The Equality Bill contains a number of general ‘cross-strand’ exceptions which will apply right across the Bill. Of most relevance to age discrimination in services and public functions are:
- The Statutory provisions exception – which protects practices already laid down in statute (e.g. state benefits).
  - The Positive Action Provision – which allows different treatment on grounds of the protected characteristic where that addresses under representation or existing disadvantage in the activity in question.
  - The Associations Exception – which ensures that private clubs whose purpose is to bring together people who share a protected characteristic can continue to do so (eg. Retirement associations).
  - The exceptions for national security and charities may also be relevant.

- 4.9 There will also be cases where a specific exception will be created to protect an age-based practice, where a practice does not come under one of the other exceptions. These will cover practices that are beneficial or justifiable or because there are other good public policy reasons for them being excepted from the requirement not to discriminate such as the need to use finite resources in the most effective way. Specific exceptions provide a greater degree of legal certainty than the scope for objective justification, so can help ensure that services providers do not withdraw services out of concern that they may be unlawful or to avoid the process of objective justification.
- 4.10 There will be exceptions where these are appropriate. In the provision of health and social care where for example certain health screening is relevant to particular age groups. Whilst in the provision of financial services, age can be an appropriate risk factor.
- 4.11 The Bill also provides for an ‘objective justification’ defence for differential treatment, similar to that available to employers under the age regulations, whereby service providers could justify different treatment based on age provided they could justify the treatment as a ‘proportionate means of achieving a legitimate aim’. If challenged legally, and a court decides that the practice has not been objectively justified by the service provider, then the practice must cease.
- 4.12 The equality impact assessment is used to decide whether or not there is potential for the policy to result in a less favourable outcome for any of the protected equality strands:
- race, including different ethnic groups;
  - gender, including gender reassignment;
  - disability;
  - sexual orientation;
  - religion and belief;
  - age.

## Section 5: The Impact of the proposals

5.1 The answers to the following questions demonstrate that there are no anticipated negative impacts on equality as a result of the proposed services and public functions provisions.

### What is the main purpose or aims of the policy?

- 5.2 There is currently no legislation prohibiting age discrimination outside the workplace. The consultation “Framework for a Fairer Future – The Equality Bill”<sup>3</sup> sought views on whether legislation should be introduced, prohibiting age discrimination in the provision of services and the exercise of public functions. Responses were in favour of legislation, so we have decided to legislate in this area, providing people with the same legal protection against discrimination on grounds of age as is currently enjoyed for the other protected characteristics (gender, race, disability, sexual orientation and religion or belief).
- 5.3 The ban on discrimination is intended to catch only those actions or omissions that result in genuinely unfair discrimination on grounds of age. It should not outlaw the many instances of justifiably different treatment (e.g. voting ages, age of consent, pension age), or treatment which has the effect of counteracting the disadvantages certain age groups face (e.g. travel discounts for age groups likely to be on lower incomes). There should therefore be no adverse effects on people who currently benefit from these policies.
- 5.4 Some potential specific exceptions include:-
- targeting of disease prevention programmes such as cancer screening or immunisation at people of a particular age, where this can be justified by reference to clinical evidence;
  - insurance (use of age as an actuarial factor and the targeting of products at particular market segments);
  - concessions provided in good faith to people of a particular age;
  - age limits on group holidays.

<sup>3</sup> <http://www.equalities.gov.uk/PDF/FrameworkforaFairerFuture.pdf>

## Who will be the beneficiaries of the policy?

- 5.5 In general terms, the legislation will benefit adults of all ages in all protected groups, as a ban on age discrimination only allowing justifiable discrimination should ensure fairer provision of services and public functions.
- 5.6 In a recent survey<sup>4</sup>, 29% of people reported having suffered discrimination on grounds of age – more than report having experienced discrimination on any other ground.
- 5.7 In 2006, the Social Exclusion Unit reported that 20% of older people are socially excluded, and that discrimination led to some older people being denied access to services which the rest of the population take for granted, or receiving a different standard of treatment.<sup>5</sup> The interim report of the Equalities Review found that almost one in three persons aged over 80 are excluded from basic services compared to only one in 20 of those aged 50 to 59<sup>6</sup> whilst the final report stated that people aged over 80 are particularly at risk of suffering multiple exclusion.<sup>7</sup> Older people would therefore be most likely to benefit from the proposals.
- 5.8 Tackling age discrimination against older people is especially important in the context of rapid demographic change. Today, people aged over 50 make up one third of the population. By 2021 this will have increased to 40%. The number of 85-year-olds is also projected to double within the next 20 years.

## Has the policy been explained to those it might affect directly or indirectly?

- 5.9 As the policy has been developed stakeholders have been involved. The consultation exercise will inform those directly or indirectly affected in more detail, as to what is being proposed and will give them the opportunity to comment and influence the policy as it develops.

<sup>4</sup> “How Ageist is Britain?” Age Concern Research Services and the University of Kent, January 2005.

<sup>5</sup> <http://www.socialexclusionunit.gov.uk/downloaddoc.asp?id=797>

<sup>6</sup> [http://www.theequalitiesreview.org.uk/upload/assets/www.theequalitiesreview.org.uk/interim\\_report.pdf](http://www.theequalitiesreview.org.uk/upload/assets/www.theequalitiesreview.org.uk/interim_report.pdf)

<sup>7</sup> [http://www.theequalitiesreview.org.uk/upload/assets/www.theequalitiesreview.org.uk/equality\\_review.pdf](http://www.theequalitiesreview.org.uk/upload/assets/www.theequalitiesreview.org.uk/equality_review.pdf)

## Have you consulted on this policy?

- 5.10 The final proposals for the Equality Bill were developed by the Government Equalities Office in consultation with a wide range of government departments. These included the Department for Business Innovation and Skills, the Home Office, the Department for Work and Pensions, the Department for Culture, Media and Sport, the Ministry of Justice, the Department for Children, Schools and Families, HM Treasury and the Department of Health.
- 5.11 The preliminary proposals for the Equality Bill were consulted on in the Green Paper “A Framework for Fairness” between 11 June 2007 and 4 September 2007. During the consultation period we held five general public consultation events around the Great Britain as well as an event focusing on Public Sector Duties and an event specifically aimed at Business. In addition to this bilateral meetings were held with key stakeholders, including the Equality Commissions and subsequently the Equality and Human Rights Commission, the Local Government Association, business groups including the Federation of Small Businesses, Confederation of British Industry and British Chambers of Commerce, unions including the Trades Union Congress, religious groups, practitioners in the courts and tribunals, advisory bodies, lawyers and equality representatives including Age Concern and Help the Aged, Equality and Diversity Forum and others.
- 5.12 The “Framework for Fairness” consultation resulted in over 4,000 responses on all the various issues in the consultation, of which 750 responses were received on the issue of age discrimination. This level of response shows that people feel that equality is extremely important. We carefully considered the responses on the many issues raised and issued our proposals for an Equality Bill “Framework for a Fairer Future – The Equality Bill” in June 2008, which provided more details on proposals for age before we decided how to proceed.
- 5.13 This is the first opportunity for there to be a consultation specifically on how we are developing our proposals for exceptions to the ban on age discrimination against adults in the provision of services and the exercise of public functions.

### **How does this policy benefit the equality target groups, i.e. promotes equality?**

- 5.14 The policy promotes equality, as we believe that the provisions of the Equality Bill and to be made in subsequent secondary legislation relating to age discrimination in the provision of services and exercise of public functions will have a positive impact on all the equality strands.
- 5.15 There will be no regression of existing protection overall, as there is currently no ban on age discrimination outside the workplace, so the biggest benefit will be that there will be a legal framework covering services and public functions. Thus the scope of equality protection will be extended as a result of these proposals.
- 5.16 In addition legislation will send out a powerful message that unjustified ageism is not to be tolerated.

### **If there is a negative impact on any equality target group, is the impact intended or legal?**

- 5.17 There will not be a negative impact on any particular group or individuals or one equality target group. Adults of all age groups will benefit whatever equality strand they are covered by.

### **What actions could be taken to amend the policy to minimise the low negative impact?**

- 5.18 No negative impact was identified for the different equality target groups.

### **Are any groups excluded from the proposed policy?**

- 5.19 Although not an equality target group, particular consideration has been given to how legislation on age could impact on children (under-18s). A child's age is closely related to his or her levels of development and need, something which is not generally true of an adult's age. It is almost always right to treat children of different ages in a way that is appropriate to their age and stage of development. It is therefore important that services for children are tailored in an age-appropriate way – a child of three is very different from a child of ten, or a teenager. The basic principle of age discrimination legislation, that people should be treated the same regardless of their age, is therefore rarely appropriate to the treatment of children.

- 5.20 The Discrimination Law Review consultation in 2007 outlined the Government's intention to exclude children from protection against age discrimination in the provision of services and the exercise of public functions and a number of respondents to the consultation argued against this proposal which the Government carefully considered. However, the vast majority of examples submitted as evidence would already be covered by existing human rights legislation, existing domestic discrimination legislation or more thoroughly dealt with through public sector duties. The Government therefore continues to believe that age discrimination legislation is not an appropriate way to ensure that children's needs are met.
- 5.21 Any such legislation would require a large number of exceptions to ensure, for example, that a child could not insist on the same treatment as an older child or adult, or an adult claim the same treatment as a child. Even with numerous exceptions in place, the risk of unintended consequences and a chilling effect, whereby service providers withdraw appropriate age-specific services through fear of litigation would be high.
- 5.22 The Government has continued to consult with children and their representatives on the issues that affect them. For example, in August 2007, the Children's Rights Alliance for England was commissioned to run a dedicated consultation event for children. Some attendees were later invited to meet directly with Ministers. More recently, officials have met with 11 Million, the Children's Commissioner for England, the Scottish Commissioner for Children and Young People, and the Children's Rights Alliance for England to discuss how best to address their concerns.

**If there is no evidence that the policy promotes equality, equal opportunities or improves relations within equality target groups, what amendments could be made to achieve this?**

- 5.23 No negative impact was identified for the different equality target groups.

## **How will the policy be implemented?**

5.24 The policy will be implemented through secondary legislation made under the Equality Bill, following further development of the policy and further consultation on the proposals.

## **When will the policy be reviewed?**

5.25 It will be reviewed following the summer 2009 consultation as the draft secondary legislation is being prepared.

5.26 When legislation is made the Commission for Equality and Human Rights will have a responsibility to keep the discrimination legislation and the Human Rights Act under review.

## **What will be the monitoring arrangements?**

5.27 The Equality and Human Rights Commission has a duty, under section 11 of the Equality Act 2006, to monitor the effectiveness of the equality and human rights enactments. It may advise central or devolved government about the effectiveness of any of those enactments and make recommendations for amendment.


5.28 More broadly, the Equality and Human Rights Commission also has a duty to monitor progress towards the development of a society in which (under section 3 of the Equality Act 2006):

- people's ability to achieve their potential is not limited by prejudice or discrimination;
- there is respect for and protection of each individual's human rights;
- there is respect for the dignity and worth of each individual;
- each individual has an equal opportunity to participate in society, and
- there is mutual respect between groups based on understanding and valuing of diversity and on shared respect for equality and human rights.

5.29 The Government will be looking to the Equality and Human Rights Commission therefore to monitor the effectiveness of the Equality Bill and the provision of services and the exercise of public functions legislation once enacted.

## Section 6: Conclusion

- 6.1 The Government believes that the proposals set out in the consultation document, will have a positive impact and will benefit all adults. By banning age discrimination, but allowing justifiable, beneficial or neutral age-based different treatment people of all ages in all equality strands will benefit. All adults will have the same rights not to be discriminated against or harassed because of their age when they are accessing services and public functions as they do when they are at work. There will be no regression of existing protection overall, as age was afforded less protection under current law. Extending the scope of equality law to cover age outside the workplace extends the scope of protection, so age will have the same protection as the other equality strands.



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