



Government
Equalities Office

Putting equality at the heart of government

**Equality Act 2010:
Banning age
discrimination in
services, public
functions and
associations**

Government response
to the consultation
on exceptions

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Ministerial foreword



Rt. Hon. Theresa May MP
Home Secretary and
Minister for Women and Equalities



Lynne Featherstone MP
Parliamentary Under Secretary of State
Minister for Equalities

Equality of opportunity is a core Coalition objective. It is fundamental to building a strong economy and a fair society. We want to make sure everyone can realise their potential; part of this means ensuring people are treated fairly regardless of their age.

This Government only legislates where the case is strong. We have looked closely at how age affects the way people are treated. Having carefully considered the evidence, we found that there are some particular areas where older people are at risk of unfair treatment because of their age – for example, in health and social care, and sometimes when accessing financial services.

That is why, on 1 October 2012, we intend to introduce a ban on unjustifiable age discrimination affecting customers, consumers and people receiving public services. This legislation will be targeted, fair and proportionate.

It will only apply to adults and it takes a balanced approach. The vast majority of businesses and organisations will be able to continue to operate as usual and certain areas will be exempt from the ban altogether. We consulted widely on these exceptions, and this document sets out the findings and conclusions of that consultation.

We are grateful to all who have contributed to the development of our plans. The time has come to act against unfair age discrimination, and we are confident that the action we are taking strikes the right balance between business and consumers' interests.

A handwritten signature in black ink, appearing to read 'Theresa May'.

Rt. Hon. Theresa May MP
Home Secretary and
Minister for Women and Equalities

A handwritten signature in black ink, appearing to read 'Lynne Featherstone'.

Lynne Featherstone MP
Parliamentary Under Secretary of State
Minister for Equalities

Chapter 1: Executive summary

1.1 The Government is committed to eradicating harmful and unjustifiable age discrimination. The Equality Act 2010 bans age discrimination against those aged 18 and over in the provision of services and the exercise of public functions, and by private clubs and other associations. The Government intends to bring the ban and related exceptions into force in October 2012.

1.2 We are taking a proportionate approach. We need to make sure that the new law prohibits only harmful or unjustifiable treatment that results in genuinely unfair discrimination and harassment because of or related to age. It should not outlaw the many instances of different treatment that are either justifiable or do not give rise to harm.

1.3 Once the ban is in force, service providers and others will still be able to provide different services to different people based on their age, if:

- they can show a sufficient reason (“objective justification”) if challenged; or
- they can justify extra help to an age group with particular needs; or
- the different treatment is allowed as required by law, for example free prescriptions and eyesight tests for older people, free bus passes for pensioners.

1.4 In addition, our 2011 consultation proposed various specific exceptions from the ban. We have since added further to these, and together they are intended to provide legal certainty and minimise any risk of challenge. This approach was broadly welcomed by respondents to the consultation.

1.5 The consultation focused on exceptions from a ban on age discrimination, as distinct from exceptions for harassment because of a person’s age or related victimisation. While it is clear, from the consultation, that there are good reasons to allow exceptions for discriminatory treatment in specific circumstances, we do not consider that there is any justification for allowing someone to be harassed because of their age or victimised because they have made or supported a complaint about discriminatory treatment. Therefore, none of the exceptions allows harassment or victimisation – the focus is solely on discrimination.

Summary of the Government’s decisions on specific exceptions following the consultation

1.6 Annex 1A is a copy of the revised (new) Exceptions Order, amended following the consultation, which we intend to lay before Parliament. For comparison and convenience, Annex 1B is the version of the Exceptions Order on which we consulted.

Health and social care (Chapter 3)

1.7 The consultation proposed that there should be no specific exceptions in health and social care. Some respondents wanted to know how this would work in practice, but overall the proposal was welcomed. The Government has decided to proceed as proposed. This will mean that organisations, and individuals, working in health and social care including “commissioners” (those, such

as doctors who commission services), and all providers where they are delivering public services) can continue to treat people differently because of their age. However, they will need to show, if challenged, that there is a good reason (“objective justification”) for that different treatment. This approach will contribute towards ensuring that high quality, dignified and compassionate care services are provided on the basis of need.

Financial services (Chapter 4)

1.8 To allow financial service providers (such as banks, insurance companies, credit reference agencies) to continue to use age in the provision of financial services, the consultation proposed a broad exception for financial services. However, the exception required any risk assessments to be based on relevant and reliable information.

1.9 In addition, and specifically in the case of the insurance industry, the consultation proposed two voluntary industry-operated schemes:

- for the insurance sector to make more transparent how it uses age in pricing its products;
- for insurers who cannot offer motor or travel insurance to an older customer, to refer the customer either to a company that can or to a general signposting service run by the British Insurance Brokers Association.

1.10 The financial services exception received the greatest number of comments. On the one hand, there were those, like Age UK, who objected on principle to any such exception; on the other, financial services providers broadly welcomed the overall approach while raising a number of questions seeking clarification and interpretation.

1.11 Despite the concerns expressed by some, there is insufficient evidence of harmful age discrimination in this area to justify increased legislative intervention. The Government has therefore decided to proceed with the specific exception as proposed, but redrafted to improve its clarity in response to some of the points raised. If further clarification is required, this will be addressed in the guidance to be published ahead of the Exceptions Order coming into force.

1.12 The Association of British Insurers and British Insurance Brokers Association started to operate the proposed voluntary transparency and signposting schemes, in April 2012. The Government will keep these under review.

General services (Chapter 5)

1.13 *Age-based concessions or discounts* in, for example, retailing or clubs or associations, such as cheaper deals for pensioners, discounts for older members of golf clubs. These were welcomed by respondents. The Government has decided to proceed as proposed, with minor technical revisions to the draft Exceptions Order, as set out in Annex 1A.

1.14 *Group holidays.* The original proposal was to allow specialist holiday providers to continue to provide package holidays for people in particular age groups, e.g. Saga and Club 18-30 holidays. Respondents broadly welcomed this approach, although bodies representing the holiday industry called for a wider exception, to allow holiday providers in general to use age when deciding which customers to serve. To clarify the position further and to avoid relying on the interpretation of “package”, the Government has decided to widen this exception *to make clear it applies to holidays generally that are arranged for people in particular age groups, not just package holidays as defined in European legislation.* The draft Exceptions Order has been revised accordingly as in Annex 1A.

1.15 *Immigration.* A specific exception to allow the immigration authorities to take age into account where appropriate, in determining a person’s eligibility to enter and remain in the UK. Respondents broadly welcomed this proposal. The Government has decided to proceed as proposed.

1.16 *Sport.* A specific exception to allow age-restricted sports competitions, for example, under-21 football leagues and veterans’ tennis competitions. Respondents broadly welcomed this proposal. The Government has decided to proceed as proposed, with minor modifications and technical revisions to the draft Exceptions Order, as set out in Annex 1A.

1.17 *Residential park homes.* A specific exception to allow residential park homes to continue to include age limits in their park admission rules. Respondents broadly welcomed this proposal. The Government has decided to proceed as proposed with minor modifications and technical revisions to the draft Exceptions Order, as set out in Annex 1A.

Additional specific exceptions requested during the consultation (Chapter 6)

1.18 *Age verification schemes* (such as Challenge 25) where a retailer asks for proof of age if the customer looks below a certain age before selling an age-restricted product such as alcohol, drugs etc. The Government has decided to include a specific exception for such schemes and the draft Exceptions Order has been revised accordingly, see Annex 1A.

1.19 *Car rental.* Representatives of the car rental sector called for an exception for their members, but the Government is not persuaded that a blanket specific exception is needed in this area, in the light of evidence that some customers are unable or find it difficult to get car hire when above or below a particular age limit. It will remain open to car hire firms to charge different rates or to refuse car hire in individual cases, provided they can show a good and sufficient reason (objective justification).

1.20 *Self-catering holiday accommodation.* Representatives of the self-catering holiday accommodation sector called for an exception to allow them to ban young adults, but the Government is not persuaded that a blanket specific exception is needed in this area. It will remain open to holiday providers to refuse accommodation to people of a particular age in individual cases, provided they can show good and sufficient reason (objective justification).

Next steps

1.21 We intend the ban and related exceptions to come into force in October 2012.

1.22 To bring the ban into force, two things need to happen:

- An order commencing the relevant provisions in the Equality Act 2010 needs to be signed by a Minister. This is a technical requirement; and
- An Exceptions Order needs to be made, setting out specific exceptions to the ban. A draft of this Order is at Annex 1A. These specific exceptions will be in addition to:
 - general exceptions already allowed by the Act¹;
 - positive action measures²;
 - the ability to justify age discrimination by showing, if challenged, there is a good reason (“objective justification”)³.

Both the prohibition and the exceptions will come into force at the same time.

1.23 We intend to lay the Exceptions Order before Parliament in the summer for debate and approval by both Houses. We will publish Quick-Start Guidance to support the introduction of the ban.

1.24 The age discrimination ban will be evaluated by 2015, as part of the overall evaluation of the Equality Act 2010. If the evaluation points to a need to broaden or narrow the exceptions or remove the ban altogether this will be carefully considered.

1.25 Setting a finite date for the age prohibition (“sunsetting”) was considered in line with the Government’s policy. Sunsetting specific provisions of the Equality Act is not currently feasible under the existing legislation. However, as part of the overall evaluation of the Equality Act 2010 in 2015 we would welcome dialogue with businesses and other interested parties about the policy and its implementation.

¹ A number of general exceptions in the Equality Act apply to all the particular groups that the Act protects. This includes exceptions such as free bus passes for pensioners.

² The Act allows positive action to give extra help to people who may need it because of their age, among other things, without leaving the service provider vulnerable to claims of discrimination by people outside the particular group. For example, libraries may wish to offer dedicated ‘silver surfer’ sessions to older people to help them learn how to access the internet.

³ If a service provider thinks it has a good reason to discriminate because of age, it will be able to do so in any particular case, but will be open to challenge. “Sufficient reason” in legal terms means that the service provider would have to prove before a court, if challenged, that the age discrimination is “a proportionate means of achieving a legitimate aim”. For example, a bank may ask an older person to bring someone with them to discuss financial issues, to ensure that they are giving appropriate advice and that the person fully understands the decisions which are made. It would be for the court to decide, case by case, whether this reason (otherwise sometimes referred to as “objective justification”) had been established as sufficient in the particular circumstances.

Chapter 2: Overview of consultation feedback

2.1 The consultation⁴ on specific exceptions ran from 3 March to 25 May 2011. We received:

- 165 formal consultation responses.
- 304 campaign letters from Age UK members objecting to the proposed specific exception for financial services, because in their view it would continue to perpetuate a culture of ageism.
- 208 campaign letters from members of the Association of Convenience Stores requesting a specific exception for age verification schemes such as “Challenge 25” which are designed to prevent under-age purchase of alcohol, drugs or other items on restricted sale.
- 17 campaign letters from Cornish self-catering holiday home owners seeking a specific exception to ban young people from their accommodation.

2.2 An analysis of the responses is provided as follows:

- Chapter 3: health and social care;
- Chapter 4: financial services;
- Chapter 5: general services;
- Chapter 6: requests for additional exceptions;
- Chapter 7: guidance;
- Annex 1A shows a draft of the revised Exceptions Order which we propose to lay before Parliament;
- Annex 1B shows, for comparison, the version of the Exceptions Order on which we consulted;
- Annex 2 lists the organisations which submitted formal consultation responses.

2.3 Three consultation meetings were held with stakeholders; on health and social care, financial services and on the general services sector. Separate one-to-one meetings were also held with other key stakeholders – the Association of Convenience Stores, the Tourism Alliance, the British Vehicle and Rental Association and Enterprise Rent-A-Car.

⁴ Equality Act 2010: Banning age discrimination in services, public functions and associations – A consultation on proposed exceptions to the ban.

Chapter 3: Health and social care

3.1 Questions 1 to 3 in the consultation dealt with health and social care.

What we proposed

3.2 We proposed that there should be no specific exceptions for age-related differences of treatment or services in health and social care. In practice, this means that where a person thinks that they have been subject to harmful age discrimination, the practice allegedly giving rise to the harm will be open to challenge through the county court, where any such differences would need to be objectively justified. Commissioners (doctors) and providers will need to consider whether their design and delivery of services could be objectively justified to the satisfaction of a court if challenged. Beneficial or justifiable use of age could and should continue – for example, ensuring that services and benefits are targeted at those who most need them (public health programmes based on clinical evidence), ensuring the health and safety of those using the service or others, or the wellbeing or dignity of those using the service, and responding to a legitimate desire for people to mix with their own age group.

Q1: What we asked and what respondents said

Are there any other ways that age is used as a criterion to determine access to and eligibility for health and social care services that we have not considered?

3.3 There were 56 responses to this question. Key responses were as follows:

- Saga wanted clarity/guidelines about whether a ban would alter the National Institute for Health and Clinical Excellence's (NICE) evaluations of and clinical guidelines for certain treatments.
- NHS Health Scotland wanted further work to ensure age is not used as a proxy in the allocation, targeting and design of health services.
- Age UK commented that at the organisational level decision making and services that primarily benefit older people are often given low priority and funding.
- The British Medical Association and Breakthrough Breast Cancer wanted systems in place to accept patients for testing outside stated age limits for screening.
- Breast Cancer Care said that there is evidence that older people are under-represented in clinical trials.
- BUPA suggested that further consideration needs to be given to the impact of a ban in private provision of health and care services.
- A Dignified Revolution said that delivery of acute in-patient services is not sensitive to the needs of older people.
- NHS Greater Glasgow and Clyde and Vale Older People's Strategy Forum wanted consideration of the impact on people moving from "working age" services to "older persons" services.

- The Social Care Institute for Excellence said that older people are less likely than working age disabled people to gain access to direct payments⁵.
- NHS Cornwall and Isles of Scilly wanted more emphasis and support in enabling older people to access psychological and emotional support such as Improving Access to Psychological Therapies programmes (IAPT) (counselling for depression).
- The Association of Directors of Adult Social Services said that mental health services for older people are less well-resourced than for working age adults, leading to restrictions on provision available for those with functional mental health problems.
- Anchor said that the classification of dementia as a means-tested social care issue, rather than a health (and therefore NHS-funded) issue is a prime example of how conditions affecting older people are given lower priority than those affecting other groups.
- The Older People's Commissioner for Wales said that the failure to work in partnership could lead to discrimination, for example, older people are disproportionately affected by delayed transfers of care through a failure to locate appropriate community based support.
- Food Train were concerned that those voluntary groups who provide services to frailer older people might need to supply services to a wider age group with different needs.

Our assessment

3.4 NICE, as an independent statutory body, will need to be able to demonstrate that it is complying with its legal responsibilities including those relating to discrimination on age (or other) grounds. NICE pays very careful attention to its responsibilities in this area. We do not believe that the age discrimination legislation is of itself likely to require a fundamental change in NICE's methodologies.

3.5 The Department of Health will continue to work with partner organisations to ensure that when researchers design a clinical trial and settle the inclusion criteria, they take account of Equality legislation. All trial development through the National Cancer Research Institute (NCRI) Clinical Studies Groups will continue to include input from public and patient representatives, which provides further positive challenge to trial design. The Department of Health is also working with the National Institute for Health Research Cancer Research Network to help ensure that older people are offered entry wherever appropriate.

3.6 In relation to mental health, the Department of Health is committed to expanding provision of psychological therapies and will continue to monitor access to those services. On 26 March 2012 the Prime Minister launched his Challenge on Dementia, an ambitious programme of work designed to make a real difference to the lives of people with dementia. By building on the achievements of the

⁵ Direct payments are made by the local council. They are for people who are assessed as needing help from social services, who prefer to arrange and pay for their own care and support services. This is instead of receiving them directly from the local council.

National Dementia Strategy, the ambition is to secure greater improvements in dementia care and research so that people with dementia, their carers and families get the services and support they need.

3.7 Whilst age should not be used as a proxy for need, some health and social services are designed and delivered to meet particular needs or conditions which are likely to be more prevalent in particular age groups. Commissioners and providers of health and care services should not be discouraged from taking account of age where this is justified; and providing appropriate services for individuals with similar needs which may include age-related needs. However, chronological age must not be used as a substitute for an individual assessment of a person's needs.

3.8 Decisions about eligibility for breast cancer and other screening programmes are based on the best evidence available on a population basis and are regularly reviewed. The population-based evidence demonstrates that intervention affecting specific age groups is more beneficial and effective than for other age groups. Individuals over the age range advised by medical experts for a particular programme are able to self-refer within the agreed screening interval. For example, patients can self-refer for the Abdominal Aortic Aneurysm screening programme if they are over 65. Individuals who are outside the age limit for a particular programme are not prevented from diagnostic testing where this is clinically indicated, and can be referred by their local primary medical practitioner (GP) where appropriate.

3.9 For the age discrimination ban to work effectively in health and social care, it needs to apply in all sectors alike. The legislation prohibits discrimination in the provision of services (whether for payment or not) and in the exercise of public functions. Service providers will still be able to provide different treatment that takes account of age where this is justified.

3.10 Systems are in place to support the NHS to deliver services that are personal, fair and diverse such as the NHS Equality Delivery System⁶. Millions of people have a positive experience of the NHS, but the Government acknowledges evidence from various reports over recent years, which points to continuing cases of older patients, in particular, receiving poor treatment. A report by the Care Quality Commission in October 2011⁷ sets out good examples of NHS providers treating patients with dignity and respect as well as other more worrying examples where patients, particularly older people, experienced standards which are not acceptable in a modern health service.

3.11 Neglect of the most basic standards of cleanliness, compassion, common sense and dignity is not acceptable. Matrons, nurse managers and ward sisters are all required to act immediately if the high standards expected of staff are not being met consistently. Indeed, all nurses are required by their regulatory body, the Nursing and Midwifery Council, to make managers and leaders aware of any poor performance they witness or of conditions that pose a threat to patients.

⁶ EDS link <http://www.eastmidlands.nhs.uk/about-us/inclusion/eds/?locale=en>

⁷ Dignity and Nutrition for Older People – <http://www.cqc.org.uk/public/reports-surveys-and-reviews/themes-inspections/dignity-and-nutrition-older-people>

3.12 Caring for patients with dignity and humanity goes to the heart of the purpose of the NHS. The NHS Constitution⁸ (for England) enshrines “the right [of patients and the public] not to be unlawfully discriminated against in the provision of NHS services including on grounds of gender, race, religion or belief, sexual orientation, disability (including learning disability or mental illness) or age”.

3.13 Proceeding with the age discrimination ban in this area, and doing so without providing specific exceptions, will, we envisage, provide the extra spur and impetus required to achieve a step change in treatment. This is because hospitals and social care organisations that treat people adversely for reasons relating to age will be at risk of legal challenge and claims for compensation for discrimination from individuals. The Government is confident that the majority of hospitals and care providers operate to good standards. However, where any health or care provider unjustifiably treats elderly patients or indeed any patients less favourably because of their age, it is right that the patients concerned should have a means of redress, including the option of bringing a claim of discrimination before a court.

Q2: What we asked and what respondents said

Will implementing the ban on age discrimination in relation to health and social care without exceptions have a negative or positive impact on people of a particular age?

3.14 There were 66 responses to this question. The majority (65%) agreed that a ban with no exceptions in health and social care would have a positive impact. These included Age UK, Age Cymru, Citizens Advice, the Equality and Human Rights Commission, the Royal College of General Practitioners, NHS Health Scotland, NHS National Services Scotland and the Royal College of Nursing.

3.15 In particular:

- The Alzheimer’s Society considered that there would be a positive impact for people with dementia who are particularly at risk of age discrimination.
- The National Pensioners Convention and the Care Quality Commission said this approach would encourage health and social care providers and their staff to assess an individual’s needs properly so that they can justify how those needs have been addressed, but that it was also important to help older people understand their new rights and how they can be exercised.
- Breakthrough Breast Cancer said that people’s biological age rather than actual age would be taken into account, along with the ability of the patient to cope with the physical effects of treatment, rather than relying on assumptions based on age.

3.16 Some concerns were expressed as follows:

⁸ http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH_132961

- The Law Society of Scotland, Royal College of Physicians and Surgeons Glasgow and the Social Care Institute for Excellence said that without adequate funding of health and social care these new rights would lack meaningful content.
- The Scottish Federation of University Women said that courts would determine what can be objectively justified and this could be costly and time consuming. There would be a big onus on GPs to ascertain whether their patients needed the care they were requesting.
- The Royal College of Physicians considered there were inherent uncertainties in relying on objective justification.
- NHS Cornwall and Isles of Scilly considered that specific exceptions were necessary, otherwise positive actions in relation to particular services would be undermined and could be used to ration or restrict access.
- The Faculty of Old Age Psychiatry and the Royal College of Psychiatrists were concerned about the impact on specialist and targeted teams addressing the breadth of mental health problems.
- Food Train were concerned that specialist older people's services might be diluted if providers were forced to deal with a wider non-specific audience.
- The National LGB and T Partnership were concerned about whether the Equality and Human Rights Commission would be able to deliver help and guidance to service providers and users in light of its budget cuts.

Our assessment

3.17 The Government considers that the evidence points to legislative intervention, without any specific exceptions, to eradicate harmful age discrimination. We accept that the need for “objective justification” of different treatment according to age does inject the potential for challenge through the courts. We would expect organisations to already be familiar with the objective justification test, from the existing legislation on age discrimination in employment – and in addition the Government Equalities Office will be producing QuickStart guides that will include an explanation of objective justification. It is expected that where age is genuinely a relevant factor in decision-making, it should be capable of being objectively justified, for example, where a practitioner makes an individual assessment of clinical need, in discussion with the patient; and age can be shown to be relevant in accordance with recognised evidence-based clinical practice and professional guidelines. Provided adequate records are maintained, these should be sufficient to demonstrate the appropriateness of a particular treatment decision, if challenged. However, we recognise that court action may be brought in some cases.

3.18 The Equality Act 2010 allows positive action to provide extra help to people who may need it because of their age, without leaving the service provider vulnerable to claims of discrimination by people outside the particular group. Commissioners and providers of health and social care services need not be discouraged from taking account of age in this way when this can be justified. Indeed, the assessment of an individual's needs and circumstances by health and care professionals may need to

consider the individual's age as a factor in discussing potential interventions and care packages, as age can be a risk factor for many conditions.

3.19 We do not anticipate any negative impact on specialist and targeted teams addressing the breadth of mental health problems as a result of the age discrimination ban. The ban supports the cross-Government mental health strategy, for people from infancy to older age launched in February 2011. A report on support to commissioners and providers of services was published in May 2011⁹.

Q3: What we asked and what respondents said

Are there any areas in health and social care in Scotland and Wales where you believe that there may be differences in approach to the use of age in decision making compared to England?

3.20 There were 14 responses to this question.

- Saga said that the Scottish Medicines Consortium can and does come to different conclusions compared with NICE in the way it appraises drugs, often impacting the elderly. For example, the Scottish Medicines Consortium allows a treatment for arthritis unavailable in England and Wales.
- The Scottish Federation of University Women, Leeds City Council and Nottingham Pensioners' Action Group all said that prescriptions are free in Scotland and Wales, and that costs are lower there for residential care in care homes.
- NHS National Services Scotland and NHS Greater Glasgow and Clyde said that there were different age bands for screening, and this might cast doubt on the credibility of the age bands used and leave them open to challenge where they are different.
- The Equality and Human Rights Commission pointed to differences in allocation of resources and the organisation and funding of social care.
- The Older People's Commissioner for Wales said that there were differences in strategic underpinning in the different devolved administrations. In Wales they use the Older People's Strategy and the National Service Framework.
- The Royal College of Physicians and Surgeons said that social care provision differed in Scotland compared to England and eligibility was generally age related.

Our assessment

3.21 Each administration in England, Wales and Scotland is responsible for its own health and social care policies and budgets. Decisions are based upon the priorities set by those administrations. The age ranges for some public health and screening programmes in England, Wales and Scotland are

⁹ A long time coming: Achieving age equality in mental health services. Report of an action learning network to support the development of age equal mental health services, was commissioned from the National Development Team for Inclusion (NDTi) <http://www.ndti.org.uk/publications/ndti-publications/a-long-time-coming/>

based on expert clinical advice and the current evidence base as well as a range of factors that will differ according to demographics.

3.22 Whilst there is a significant correlation between the basic recommendations made by NICE and the Scottish Medicines Consortium, these bodies do reach different conclusions on some of the drugs they assess. NICE has issued positive guidance on some drugs that have not been recommended by SMC, and vice versa. We are not aware of any evidence to suggest that where such differences exist they can be attributed to a different approach to the treatment of age as a factor – indeed there is a great deal of consistency between the basic cost-effectiveness approaches that NICE and the SMC use. It is worth noting that negative NICE guidance does not prevent a drug being used in the NHS. Such decisions are ultimately for the treating clinicians and local NHS commissioners, in discussion with patients, and NICE is very clear that its guidance does not replace individual clinical judgement.

3.23 Work is under way to improve health and social care services for older people in each administration. For example, in Scotland there are initiatives to improve the inspection of acute hospitals caring for older people, so that they are treated with the respect, compassion, and dignity that they have a right to expect, and also to improve the quality and consistency of care for older people by integrating health and social care more closely, through health and social care partnerships^{10,11}.

3.24 The Department of Health (in England) is encouraging providers to increase the quality of the services to older people by sharing best practice, bringing people together, and putting in place the right system incentives. The NHS Operating Framework for 2012-13 establishes the issue of high quality, dignified and compassionate care as one of four key priorities for the NHS. Initiatives aimed at improving the standard of nursing care are being introduced, including the creation of an independently chaired Nursing and Care Quality Forum, the introduction of hourly ward rounds, and the freeing up of nurses so that they can spend more time with patients. The Department of Health is also supporting the wider system to keep older people well and out of hospital, to help older people regain their independence after a period of support, to provide older people with advice and choice around their end of life care, and to give older people a greater say in their care.

Our overall conclusion for health and social care

3.25 We have concluded that we should proceed as proposed and apply the ban on age discrimination in health and social care, without any specific exceptions. We recognise that there are a number of concerns about how this will work in practice, in particular the potential burden and costs on organisations. These are explored in the impact assessment.

¹⁰ http://www.healthcareimprovementscotland.org/programmes/inspecting_and_regulating_care/caring_for_older_people.aspx

¹¹ <http://www.scotland.gov.uk/News/Releases/2011/12/12111418>

3.26 The consideration and assurance of whether the design and delivery of services could be objectively justified primarily relates to NHS and social care policy and commissioning decisions, rather than front-line service delivery. However, good decision-making should be embedded within health and social care so that a person's chronological age is not used as a basis for need on its own. It is reasonable to expect commissioners – including local Clinical Commissioning Groups (CCGs) and providers (including public authorities, the private and voluntary sectors, and individuals) to be able to justify their decision making.

3.27 We consider any concerns are outweighed by the following:

- there can be no objection in principle to this overall approach;
- it will continue to be possible to provide different treatment for people of different ages. The expectation is that age will only be used where it can be shown to be relevant and justified based on objective evidence. The requirement to comply with equality legislation will ensure that individuals and organisations consider fully their practices in relation to age and how it is used in policies and practice;
- where a person thinks that they have been subject to harmful age discrimination, these practices should be open to challenge.

3.28 We believe, therefore, that not having exceptions is the best way of achieving the Government's aim of eradicating harmful age discrimination in health and social care, while at the same time allowing service providers to treat people of different ages differently, where this is beneficial or justifiable. There is therefore no specific exception for the health and social care sector in the draft Exceptions Order at Annex 1A.

Preparing for the ban on age discrimination

Nationally

3.29 The NHS Commissioning Board (NHSCB) Authority published an Equality Analysis on 26 January 2012, together with a paper for the Board setting out how equality is being embedded within the functions of the NHSCB and a paper on designing the NHSCB. This set out the proposal for how all NHSCB activities will contribute towards advancing equality, including age equality, in service delivery across the NHS¹².

3.30 The Equality and Diversity Council (EDC), chaired by Sir David Nicholson, aims to champion and facilitate improved equality outcomes in the NHS including age. EDC's role is confirmed to continue as part of the NHSCB Authority.

3.31 The Department of Health has worked in partnership with the EDC and NHS organisations to produce the NHS Equality Delivery System (EDS). The EDS was launched in November 2011 and

¹² All these documents are available on the NHSCB Authority website at: <http://www.commissioningboard.nhs.uk/2012/01/26/board-meeting-020212/>

provides a framework to support NHS organisations to meet equality requirements including the ban on age discrimination.

Locally

3.32 A resource pack to help local authorities and NHS organisations prepare for the legislation has been produced by health and care organisations¹³. It was developed with support from NHS staff in the South West and national experts. It has three component parts:

- *A self assessment toolkit* that health and social care organisations can use to work with their local stakeholders to identify what actions they need to take to end unjustifiable age discrimination and promote age equality.
- *A guide for NHS commissioners and providers* that helps local NHS organisations identify the actions they need to take in order to implement the recommendations from “Achieving Age Equality”.
- *A guide for social care* that has been produced by the Social Care Institute for Excellence (SCIE) to help local authority Adult Social Care Departments and providers achieve age equality in the delivery of local care services.

3.33 The National Development Team for Inclusion and the Department of Health National Mental Health Development Unit worked with two health and social care communities in the Midlands to audit local mental health services and identify actions for achieving age equality in mental health services. The reports share the findings, key messages and priorities for local and national action arising from this work, identify the critical issues that need urgent attention in order to eradicate age discrimination in mental health services, and highlight the practical steps that can be taken at a local level to deliver age-equal mental health services in partnership with older people, voluntary sector and private providers as well as health and social care organisations¹⁴.

¹³ <http://www.southwest.nhs.uk/age-equality.html>

¹⁴ <http://www.ndti.org.uk/publications/ndti-publications/a-long-time-coming>

Chapter 4: Financial services

(Article 3 of the draft Exceptions Order at Annex 1A)

4.1 Questions 4 to 7 in the consultation dealt with financial services.

What we proposed

4.2 Our previous consultations and research have revealed that there is insufficient justification for significant legislative intervention in this field, and that voluntary measures would be a more effective and efficient way of improving access to, and the understanding of, financial services. We therefore proposed a broad exception to allow financial services providers (banks, insurance companies, credit reference agencies etc) to continue to use age in the provision of financial services, for example as a factor when assessing risk and deciding prices. We also considered that market practices such as age banding and age limits should continue as they were beneficial to consumers. However, any assessment of risk must, so far as it involves a consideration of age, be based on relevant information from a source on which it is reasonable to rely.

4.3 Two voluntary schemes would be launched, working with the insurance industry:

- to improve transparency, a report will be published by the Association of British Insurers of collated data showing how age affects insurance premiums, so that consumers can be confident that age is not being misused;
- to improve accessibility, an expansion of the existing signposting scheme run by the British Insurance Brokers Association to include members of the Association of British Insurers. The scheme works by ensuring that where an insurance provider cannot provide an older person with an insurance product because of their age, they will be referred to a dedicated signposting service to assist them in finding an insurance provider for that product.

Q4: What we asked and what respondents said

Does the financial services exception in the proposed draft Order adequately achieve the policy intent?

4.4 There were 73 organisational responses to this question and a “write-in” campaign organised by Age UK.

4.5 Equality organisations such as Age UK, the Equality and Human Rights Commission and the National Pensioners Convention, as well as various individual respondents, were opposed to the exception on principle or considered it too wide. In support of this, reference was made to the same material which had been supplied in response to previous consultations. More specifically:

- The exception should be brought into line with the existing gender and disability exceptions, which are more limited in scope. The disability exception (Sch. 3 (21) Equality Act 2010) refers only to ‘insurance business’ and the gender exception (Sch. 3 (22) Equality Act 2010) specifically applies to ‘an annuity, life insurance policy, accident insurance policy or similar matter involving the assessment of risk’¹⁵. Both existing exceptions also include an additional test that is currently missing from the

¹⁵ The gender exception in the Equality Act is subject to change following the Test Achats ruling.

proposed exception for age discrimination; that is to say they require that anything done under the exception is a 'reasonable thing to do' in addition to it being with reference to relevant data on which it is reasonable to rely. (Discrimination Law Association, Age UK, Age Cymru, Equality Commission NI)

4.6 Organisations in the financial services sector, such as the Association of British Insurers, Prudential UK and Lloyds Banking Group were generally satisfied that the draft exception fulfils the policy objective, is not too prescriptive and does not create an excessively onerous requirement. In addition, other organisations in this sector made the following comments about clarification and detailed interpretation of the drafting of the exception:

- Aviva considered the drafting requires a better definition of financial services for certainty and clarity, as the term 'financial services' defined as a "service of a banking, credit or payment nature" could be confusing.
- ABI said that forward-looking projections for contracts are also important in the assessment of risk and involve the consideration of age, for example, the use of mortality tables for annuities. An explicit statement is therefore needed from the Government to provide reassurance that such projections are within the scope of the exception.
- Prudential sought clarity about age-related assumptions, specifically whether the exception permits the continued use of age-based estimates of changes in life expectancy and health.
- Clarity is needed about what is meant by 'a source on which it is reasonable to rely' as the condition attached to the use of age as a factor in risk assessment. (Aegon UK, Liverpool Victoria, Aviva and Investment and Life Assurance Group)
- What is meant by relevant 'information'? (Leeds Building Society, RSA Insurance Group PLC and UK Cards Association)
- 'Risk' needs to be defined. (Lloyds Banking Group and British Bankers Association)
- The exception is too broad and too vague. (Financial Services Consumer Panel and BUPA)
- Change the title of the exception from "Insurance, Etc." to "Financial Services", to provide clarity and make it easier for the reader to find. (British Bankers Association)
- Unclear about what level of evidence and documentation will be required to comply with the exception. (Association of British Credit Unions Ltd)
- There is a lack of an explicit reference to fraud and fraud scoring, and this would lead to unnecessary ambiguity. (CIFAS)

Our assessment

4.7 We have decided to keep the specific exception for financial services substantively as proposed, but redrafted to improve its clarity.

4.8 The material offered in support of the conclusion that age is used unfairly by financial service providers is anecdotal in nature, and does not permit general conclusions to be drawn about the conduct of the industry. Our previous research into discrimination in the insurance industry concluded that prices broadly reflect risk, and that legislating to control the use of age banding or age limits would ultimately be detrimental to consumers. This suggests that many complaints about the financial services sector reveal a perception of discrimination rather than unfair and harmful practices, and we think this is best addressed by voluntary efforts from the financial sector to explain its practices much better to consumers.

4.9 We do not consider that age is analogous to gender or disability. In particular, the widespread use of age banding and age-based market specialisation means that the existing exceptions for gender and disability cannot be replicated for age. There is insufficient evidence to support the inclusion of an additional test that anything done under the exception be “a reasonable thing to do”, and such a test is likely to have an adverse impact on practices which we consider to be beneficial to consumers, such as market specialisation. While we consider that there are some instances where consumers find it difficult to find insurance because of their age, our research indicates that insurance is available and we consider that the recently introduced signposting scheme provides a better method of improving the flow of information to such consumers than legislation. In addition, consumers have the possibility of recourse to the Financial Services Ombudsman or the Financial Services Authority.

4.10 We have clarified the definition of “financial services” and amended the heading to refer to “financial services” more generally. However, we consider that it is already clear that estimates, forward looking projections and outputs from actuarial models may be used in risk assessments. “Information” is a very broad term – it refers not just to numerical data but also to qualitative assessments and reports on, and assessments of, future trends. Provided such reports and assessments are relevant to the assessment of risk and from a source on which it is reasonable to rely, then they may be used for the purposes of assessing risk. Moreover, the outputs from actuarial models may themselves amount to relevant and reliable information for the purposes of the exception.

4.11 We do not think it is appropriate to define in more detail in legislation what is meant by “reasonable to rely” or “relevant”. These are ultimately matters for the courts to assess in all the circumstances of the case. If further clarification is needed, we consider that guidance would be preferable to legislation. We think “risk” should be construed in accordance with the natural meaning of the word.

Q5: What we asked and what respondents said

Do you agree that a service level agreement signed by both the ABI and the Government showing how age is used when assessing risk and pricing products is an effective way to achieve improved transparency?

4.12 There were 56 responses to this question. 50% of the respondents confirmed that in their view a service level agreement would be effective, whilst 30% stated that they did not believe it would be effective.

- Organisations such as Swiss Re, the Building Societies Association, Prudential UK and the Chartered Insurance Institute were satisfied that a service level agreement would be the best approach to improving transparency.
- Liverpool Victoria wanted the service level agreement to be clear that insurers would not be forced to provide cover for a particular age category, and that decisions could be based upon the insurer's interpretation of the collective data or other externally available data.
- Legal and General, Aegon UK, BUPA and the Association of British Insurers wanted the transparency requirement to apply only in markets where a problem has been identified – motor and travel insurance.
- BUPA wanted it to be made clear that age is an important risk factor, but it is not the only factor that affects insurance premiums, and people need to understand this when viewing any figures, and that any data produced needs to be meaningful.
- Age UK, the National LGB and T Partnership, the Lesbian and Gay Foundation, Youth Link Scotland, the Law Society and Citizens Advice did not believe a service level agreement would be effective enough and the proposals should be a legislative requirement. The Financial Services Consumer Panel welcomed measures to improve transparency, but considered they would have more credibility if required by legislation and produced by an independent organisation.
- The Regional Equality & Diversity Partnership wanted the information to be accessible, easy to find, easy to read and easy to understand.
- The Equality and Human Rights Commission wanted coverage wider than just motor and travel insurance, and stated that there were concerns that the Association of British Insurers does not cover the whole of the insurance sector. It said that data would need to have two levels of publication – first a key facts consumer friendly version and secondly a technical publication.

Our assessment

4.13 As previously announced in April 2012, we have decided that the Government in conjunction with the industry should proceed with the voluntary scheme to improve transparency in how age is used in motor and travel insurance. We do not think there is sufficient evidence to warrant a legislative approach and that a voluntary scheme is proportionate and should be effective. We are only proposing to tackle transparency in these areas, because these are the areas where people have highlighted to us that they believe they are unfairly treated because of their age and they do not believe that insurers use their age proportionately when calculating premiums.

4.14 An Agreement between the Government and the insurance industry represented by the British Insurance Brokers Association and the Association of British Insurers has been finalised and

published¹⁶. This agreement began on 6 April 2012 and covers both aspects of the voluntary scheme (transparency and signposting – see below).

4.15 As far as transparency is concerned, the agreement sets out:

- the nature of the data to be collated about motor and travel insurance;
- membership of the scheme (who is signed up);
- what it will show, in terms of how age is used in the calculation of risk in these areas: for example, the impact on prices, premiums and availability of insurance;
- who will collate it;
- how it will be presented;
- the frequency of publication and updating of the data.

4.16 We will keep progress under review.

Q6: What we asked and what respondents said

Do you agree that a service level agreement signed by BIBA, ABI and the Government, agreeing that a signposting / referral system should be set up so that those refused an insurance product, because of their age, are referred to a supplier that can help them, is an effective way to achieve improved access?

4.17 There were 55 responses to this question. The majority (60%) confirmed that in their view a service level agreement would be effective. Key comments were as follows:

- The Association of British Insurers, Aviva, the Building Societies Association, Leeds Building Society and Prudential UK welcomed the proposal to deal with access by way of an industry agreement rather than legislation, as it would be a proportionate and potentially effective approach.
- The British Bankers Association, Liverpool Victoria and Lloyds Banking Group wanted the service level agreement to clearly define when a firm will be required to provide signposting, and to make clear that it will only apply to motor and travel insurance.
- Saga and Eversheds LLP wanted the signposting system to be independent and administered by a public body. Saga was concerned that the signposting system would only refer people to insurers who pay a commission to British Insurance Brokers Association members.
- Age UK, the Discrimination Law Association, Leeds City Council and the Scottish Federation of University Women did not think that a service level agreement would be effective enough and wanted a legislative requirement. The Financial Services Consumer Panel thought that signposting could be helpful to consumers, but would have more credibility if it was required by legislation, with some form of independent overview. 5050vision / Future North West and Age UK North West were also concerned about what measures would be in place to provide quality assurance.

¹⁶ <http://www.biba.org.uk/UploadedFiles/418agreement.pdf>

- Age UK and the Law Society were concerned about unintended consequences of concentrating all older people's business with a few underwriters.
- Age UK, the Equality and Human Rights Commission, Leicester City Council and the Older People's Commissioner for Wales were opposed to signposting on the principle that people should not be refused a service based on their age.

Our assessment

4.18 We decided to proceed, in conjunction with the Association of British Insurers and the British Insurance Brokers Association, with the signposting proposal so that consumers have better access and also more choice in obtaining the products they want. We consider that the voluntary approach is proportionate and should be effective.

4.19 In practice, this will mean that where a motor or travel insurance provider is unable to provide cover to a person because of their age, they will be required, as a member of the signposting scheme, to refer that person either to a specific provider who can meet their needs or to a dedicated signposting service such as the service currently operated by BIBA.

4.20 An agreement between the Government and the insurance industry represented by the British Insurance Brokers Association and the Association of British Insurers has been finalised and published¹⁷. The British Insurance Brokers Association has said it will expand its dedicated call centre and website, to meet this agreement. It covers both aspects of the voluntary scheme (signposting and transparency – see above).

4.21 As far as signposting is concerned, the agreement sets out:

- who will operate the signposting service;
- how individual companies should signpost to each other;
- membership of the scheme (who is signed up);
- monitoring and report arrangements showing annual data on the use of the scheme (number of call centre/website enquiries; number of customers referred to the signposting service; number who were successfully provided with insurance cover);
- how any complaints will be handled.

4.22 As with the part of the agreement dealing with transparency, we will keep progress under review.

Q7: What we asked and what respondents said

Are there any instances where the customer experience of people of different ages in accessing financial services causes concern and are existing safeguards adequate?

¹⁷ www.biba.org.uk/UploadedFiles/418agreement.pdf

4.23 There were 49 responses to this question. They mainly drew attention to limited access to motor and travel insurance and high costs of insurance for younger and older people.

- Financial services companies were content that existing safeguards were sufficient.
- Age Concern Blackburn and Darwen wanted staff training on age discrimination to be mandatory and quality assured so as to eliminate poor attitudes and stereotyping.
- 5050vision/Future North West and Age UK North West were concerned about hard selling of capital release products to people over 60.
- Age UK provided a couple of examples of alleged poor treatment of older people, and they did not think that current consumer safeguards in the form of the Financial Ombudsman Service (FOS) and the Office of Fair Trading (OFT) were adequate.
- The Financial Services Consumer Panel could not provide any examples, but said it was aware of difficulties experienced by both younger and older consumers in areas such as credit, banking and insurance. The Panel also questioned the feasibility of seeking redress from the Financial Ombudsman Service as the financial services exception was in its view too wide, an issue also raised by the Equality and Human Rights Commission.
- The Royal College of Physicians and Surgeons of Glasgow was also aware of anecdotal evidence of new widows / widowers being poorly treated by banks and other financial institutions when it comes to winding up the affairs of a newly deceased partner.
- The Older People's Partnership, Adult and Community Services, also raised the issue of limited access to mortgages.
- The West Midlands Later Life Forums thought it inappropriate for institutions to insist an older person is accompanied by a younger person; there should instead always be a cooling off period.

Our assessment

4.24 The purpose of this question in the consultation was to identify any evidence of unjustifiable age discrimination in the manner in which financial services are provided, as opposed to age discrimination in the product itself. While some limited anecdotal evidence was provided in the consultation about difficulties of over-the-counter treatment of older customers by banks or other financial institutions, there is insufficient evidence to justify legislative intervention under the Equality Act 2010. Instead, we consider that the existing regulation of the financial services industry is sufficient to address any real or perceived problems. Financial services firms are regulated by the Financial Services Authority (FSA) through its rules and guidance. Under the FSA's rules, firms are required to provide a prompt, fair and efficient service to all their customers, regardless of their age. Where customers feel that they have been badly treated, their first recourse should be to their firm's complaints department. If they are not satisfied with the response to their complaint, customers can take their complaint to the FOS.

4.25 Alongside this, the Government is legislating to introduce a new independent conduct of business regulator, the Financial Conduct Authority (FCA), to ensure that business across financial services and markets is conducted in a way that advances the interests of all consumers and market participants. We therefore consider that the safeguards in place and currently being introduced are sufficient to ensure that consumers' interests are protected.

Chapter 5: General services

5.1 Questions 8 to 12 dealt with general services. This covers the following areas:

- age-related discounts and concessions eg in retail and in clubs and associations (Articles 4 and 8 of the draft Exceptions Order at Annex 1A)
- age-related holidays (Article 5 of the draft Exceptions Order at Annex 1A)
- immigration (Article 2 of the draft Exceptions Order at Annex 1A)
- residential mobile homes (Article 7 of the draft Exceptions Order at Annex 1A)
- sport (Article 9 of the draft Exceptions Order at Annex 1A)

Age-related discounts and concessions *eg in retail and in private clubs and associations*

What we proposed

5.2 An exception would allow any service provider in the public or private sector to use age to determine eligibility for concessions, discounts or benefits. It would allow retailers to offer commercial discounts, such as 10% off for all those over 65 in DIY stores or cheaper fish and chips for pensioners; and public bodies to offer benefits for particular age groups, such as free access to leisure facilities. It would also allow “associations” such as private golf clubs to offer age-related discounts to certain members.

Q8: What we asked and what respondents said

Do exceptions 3 and 6 (concessionary services and associations – concessions) in the proposed draft Order adequately achieve the policy intent for both service providers and associations? If not please explain why.

5.3 There were 48 responses on this issue. The vast majority were content with the policy and the draft exception.

- Most respondents said that banning such concessions without any exception would not solve any perceived problem. However, the Discrimination Law Association and Age Cymru were opposed to the exception on principle, as they believed that concessions should only be allowed if they could be objectively justified.
- The Equality and Human Rights Commission and Eversheds LLP requested that the word “concession” be defined in the exception to provide clarity.
- Eversheds LLP, the Law Society and the Scottish Golf Union believed that the exception needed to be revised by changing “requiring” to “accessing”, as the aim is not to prohibit concessions which prevent persons outside the age group from requiring the service; rather, it is to prohibit concessions which unreasonably inhibit persons outside the age group accessing the service.
- The Society of London Theatre and the Theatrical Management Association stated that, as drafted, exception 3(3) (b) and exception 6 (6) (b) are not required (requirement for the concession to be “reasonable”).

Our assessment

5.4 The Government has decided to proceed with the specific exceptions for concessionary services and associations.

5.5 To reflect the comments received, the concessionary services exception has been simplified. The concessionary services and associations exceptions now also include a definition of what a concession is. Revised exceptions can be found in Articles 4 and 8 of the revised Exceptions Order in Annex 1A.

Age-related holidays

What we proposed

5.6 An exception would allow specialist holiday providers to continue to provide package holidays for people in particular age groups, for example, Saga holidays and Club 18-30 holidays.

Q9: What we asked and what respondents said

Does exception 4 (age related holidays) in the proposed draft Order adequately achieve the policy intent? If not please explain why.

5.7 There were 43 responses on this issue. The majority were content with the policy and that the draft exception achieved the policy intent.

- Equality organisations such as Age UK, Age Cymru and the Equality and Human Rights Commission objected to a specific exception in this area and wanted reliance solely on objective justification to enable any exceptions.
- Eversheds LLP were concerned that the exception would not protect service providers against claims of discrimination by individuals who had been denied access to a holiday package on account of their age.
- The English Association of Self Catering Operators said that the inclusion in the exception of a “package” would make the use of age groups unlawful if the components were separately purchased. The Tourism Alliance said that attempting to use the Package Travel Directive in this context as a means of defining the scope of the exception was too restrictive.
- Saga welcomed the exception but queried whether the exception would allow it to sell its standalone products exclusively to its customers.

Our assessment

5.8 We consider that an exception is necessary, because we have no intention to prohibit holidays which are specifically targeted at particular age groups and where participants select their participation on the basis of such an age restriction. No harm is being done by such operations. No-

one responding to the consultation has provided any evidence of harm resulting from an exception for age-related holidays being allowed.

5.9 The outcome of the exception will be that holiday operators will be able to continue to design, market, offer and sell holiday products to people in particular age ranges and will not need to provide any justification for doing so. If, however, they market holidays for people of all ages but apply, in particular cases, an age-related restriction, they would need to show a sufficient reason (“objective justification”) if challenged.

5.10 There are a number of technical drafting revisions which we have made to the exception to reflect points raised in the consultation. We agree that the proposed wording of the draft exception in the consultation did not fully achieve the policy intent, as it referred to “a holiday package”. This unintentionally narrowed the exception. The policy intent is to ensure that only harmful age discrimination is prohibited, in holiday provision as elsewhere, and regardless of the type of holiday, package or otherwise, to the extent that the holiday is aimed at people of a particular age. The exception has been revised accordingly (see Article 5 of the draft Exceptions Order in Annex 1A).

5.11 The selling of standalone products such as booking a hotel room only to particular age groups would have to be objectively justified, as there is not an obvious age-based reason for restricting this service.

Immigration

What we proposed

5.12 An exception would allow the immigration authorities to continue to treat some people differently because of their age, where this is necessary for those authorities to fulfil their functions. When determining a person’s eligibility to enter and remain in the UK, age can be a factor that is taken into account in some applications.

Q10: What we asked and what respondents said

Does exception 1 (immigration) in the proposed draft Order adequately achieve the policy intent? If not please explain why.

5.13 There were 34 responses on this issue. The vast majority (85%) who provided an opinion were content that the draft exception adequately achieved the policy intent.

- The Discrimination Law Association thought that this is a good example of an area where legal certainty is vital for obvious reasons.
- The Equality and Human Rights Commission considered that there should not be a specific exception; and that any age-related differences in treatment by the immigration authorities should only be allowed on a case by case basis where the reliance on an age related factor can be shown to be a proportionate means of achieving a legitimate aim.

Our assessment

5.14 We have decided to proceed with this specific exception. There are no technical revisions to the exception. See Article 2 of the draft Exceptions Order in Annex 1A.

Residential mobile homes

What we proposed

5.15 An exception would allow residential park homes to include age limits in their park admission rules. The Equality Act 2010 does not apply, as far as age is concerned, to the management and disposal of *premises*. Normally, residential park homes would not be considered to be “premises”, so the grant of a right to station and occupy a mobile home is likely to be regarded as the provision of a ‘service’. We therefore proposed an exception to provide certainty that this area is outside the scope of the ban.

Q11: What we asked and what respondents said

Does exception 5 (residential mobile homes) of the proposed draft Order adequately achieve the policy intent? If not please explain why.

5.16 There were 37 responses on this issue. The vast majority (86%) who provided an opinion were content that the draft exception adequately achieved the policy intent, but a few technical issues with the exception were raised:—

- The British Holiday & Home Parks Association said that the exception needed to be revised, because as worded it would not apply to those renting park homes, only owners.
- The National Caravan Club was concerned that the inclusion of upper age limits in the exception could theoretically lead to a home owner being forced to sell up and leave the park.

Our assessment

5.17 We agree with the concern raised by the British Holiday & Home Parks Association and the exception has been revised accordingly.

5.18 In response to the concerns raised by the National Caravan Club we agree that an upper age limit could cause theoretical problems. There should be a ‘recommended’ minimum age limit that correlates to the age profile and community values that the park aspires to and the exception has been amended to remove upper age limits. A revised exception can be found at Article 7 of the draft Exceptions Order in Annex 1A.

Sport

What we proposed

5.19 An exception would allow for the continuation of age-restricted sporting competitions, where the capabilities of ‘average’ people of the particular age group would put them at a disadvantage compared to ‘average’ people of another age group as competitors. For example, this would allow under-21s’ football competitions and veterans’ tennis competitions to continue.

Q12: What we asked and what respondents said

Does exception 7 (sport) of the proposed draft Order adequately achieve the policy intent? If not please explain why.

5.20 There were 40 responses on this issue. The vast majority (78%) who provided an opinion were content that the draft exception adequately achieved the policy intent. However, a few issues were raised.

- The English Chess Federation, British Go Association and Sport and Recreation Alliance all requested that ‘intellectual games’ should be added to the exception to provide clarity on this issue.
- The Sport and Recreation Alliance asked for participation to be specifically included in the exception, as increasing or maintaining participation are often Government-set targets for sport organisations.
- The Scottish Golf Union/ Scottish Ladies Golf Association and the English Golf Union/English Women’s Golf Association confirmed that seniors’ golf is extremely popular, with the age requirements for competitions published in advance. They are concerned about whether this approach is within the principle of ensuring “fair competition”, notwithstanding that in golf a handicap system is also in operation.
- The Equality and Human Rights Commission and Scottish Golf Union/ Scottish Ladies Golf Association both pointed out that the consultation paper stated that the exception would not permit sports events to be advertised as though they were open to all but reveal age-cut offs only when someone applies to participate. However, the exception does not say this.

Our assessment

5.21 We have revised the exception to make clear that it also caters for intellectual games as well as physical sports.

5.22 We have added a paragraph to the exception to cover increasing or maintaining participation. This is needed as the Government can set targets for sports organisations through funding and often requires focus for getting particular age groups actively involved in participating in sports.

5.23 We understand that it is important for golf clubs to allow age limits and banding when setting eligibility criteria for competitions at all levels. The exception will allow seniors' golf competitions and other age bands to continue and there is no reason why a handicap system cannot also be applied.

5.24 We have considered whether the exception needs to state explicitly that it will not permit sports events to be advertised as though they are open to all but reveal age-cut offs only when someone applies to participate. We consider such a provision is not appropriate, as it is really about best practice and is more appropriate to address through guidance, which we will issue to support the introduction of the ban.

5.25 A revised exception can be found at Article 9 of the draft Exceptions Order in Annex 1A.

Chapter 6: Additional specific exceptions requested during the consultation

Q13: Do you have any further comments about the draft Order, over and above any comments you have already made about the exceptions it covers?

6.1 Responses to this question included requests for three new specific exceptions:

- Age verification schemes – to allow retailers to operate challenge schemes when selling age restricted products.
- Self catering holiday accommodation – so that service providers could refuse to rent accommodation to young adults.
- Vehicle rental – so that service providers could refuse to rent cars to people on the basis of age.

6.2 Details of what were proposed in each case and the Government's decisions are below.

Age verification schemes

What was requested

6.3 Some retailers and their trade association, the Association of Convenience Stores, asked for a specific exception for age verification schemes.

6.4 These are schemes voluntarily operated by the industry such as “Challenge 25” and similar schemes (for example, some shops operate a “Challenge 21” or “Challenge 30” scheme), to prevent the purchase of products such as alcohol and cigarettes by people below the legal age. In practice this means that when in doubt, retailers who operate such schemes ask for identification for proof of age before supplying the products, where they consider that a person looks 25 (or 21, or 30) or less. (Although the legal age limit for alcohol purchase is 18, the retailers like to include a safety margin).

6.5 Such retailers were concerned that the absence of a specific exception in this area would leave them reliant on “objective justification” alone. They estimated that there would be costs for the creation, implementation and training for a new scheme and additional on-going training costs. The Association of Convenience Stores believed that this would cost the sector £33 million. Additionally they were concerned about the uncertainty as to what a court would find was “proportionate” in any particular case, because different challenge ages are used. For example, asking a person in their late twenties for ID because they looked young might be more problematic, because the further away the customer is from the legal age, the more difficult a challenge would be to defend, and the more likely that someone would take a case to court.

6.6 In addition, the Scottish Government has introduced legislation (the Alcohol Etc (Scotland) Act 2010) to ensure that Challenge 25 becomes a condition on all drinking licences in Scotland. This came into effect on 1 October 2011. Under this legislation, all Scottish retailers of alcohol are required to adopt the Challenge 25 policy. Although the Scottish scheme would be exempt from the age discrimination ban because of the statutory authority exception in the Equality Act 2010 (which

recognises exceptions allowed elsewhere by law), the argument in principle for an exception is strengthened.

Our assessment

6.7 We have decided to add a specific exception for age verification schemes and the draft Order has been revised accordingly (see Article 6 of the draft Exceptions Order in Annex 1A). The main reasons are:

- there is a strong public policy interest, this has important wider social implications and it is Government policy to cut under-age access to alcohol and drugs;
- age verification schemes have proven to be successful in helping to reduce under-age drinking;
- there is no evidence that such schemes are harmful in terms of age discrimination;
- the absence of a specific exception in this area could leave the issue uncertain and undermine the effectiveness of the policy.

Self catering holiday accommodation

What was requested

6.8 Some self-catering operators have requested an exception from the ban so that they can refuse accommodation to young people generally. They have said that the consequences of client misbehaviour can be serious, and these are all likely to rise if groups of young people are accommodated. Problems cited include inability to prepare accommodation for the next client, trouble with neighbours, complaints by other guests, damage and extra cleaning costs.

6.9 There is no known research regarding how young people behave in self catering accommodation specifically. The concerns of the sector are based on research about young people generally as regards alcohol consumption, petty crime and anti-social behaviour.

6.10 The sector recognises that they could exclude young people in any particular case provided they could show a good reason (objective justification). However, they were concerned that it is difficult for individual operators, who are mostly small businesses, to demonstrate objective justification and that they may not have the skills, data, or time to carry out necessary research work.

Our assessment

6.11 We do not think it appropriate to add a specific exception in this case.

6.12 While we can appreciate that there may be problems from time to time with particular clients of a particular age, as a general proposition it seems unreasonable to assume that all young people will cause problems (and not, for example, older people from time to time).

6.13 The data provided by the self catering industry does not in our view present a strong case, because they are not specific enough to the sector. Data showing that younger people generally drink more and indulge in anti-social behaviour does not mean that problems will occur generally in self catering accommodation. Hotels and guest houses, which are in the same sector, have not requested a specific exception. The data does not provide comparisons with other age groups (for example, misbehaving older people). It should be noted that the age discrimination ban in services will not in any event apply to people under 18 years of age – so self-catering accommodation providers can freely exclude people under 18 years old, if they wish.

6.14 We do not want young adults as a group to be excluded from accessing holiday accommodation purely on the basis of potentially unfair stereotypes. We consider therefore that to allow a blanket ban on certain age groups using holiday accommodation, in the form of a specific exception, would be a disproportionate response to the concerns raised about some young adults' behaviour.

6.15 We accept that there are and will be problems in some cases. It is precisely for such cases that the "objective justification/good reason" test exists. On the one hand, any self-catering operator acting proportionately to achieve a legitimate aim by refusing to rent to young people (such as noise reduction; damage prevention) should have nothing to worry about; on the other hand, perfectly well behaved young people are not automatically excluded.

6.16 We therefore consider that objective justification is appropriate, and can be relied upon to enable some holiday accommodation providers to refuse to rent properties to certain age groups in certain cases. It should be noted that accommodation providers would only be called upon to show good reason in the event of a challenge. Our assumption is that they would not unnecessarily turn away potential customers and therefore would be likely to have a good reason for doing so. Such a reason might for example, be evidence of problems they or similar providers had had with people in that age group in the past or during large events such as festivals when large groups of younger people tend to gather.

6.17 Accommodation providers would also in any event still be able to refuse to accommodate large groups where there is no specific age element, such as hen parties and stag parties. This is because the age discrimination ban would only affect discrimination based on age, as distinct from size of group.

6.18 We will produce guidance to help in the understanding of objective justification and how it can be used, and will work with trade associations so that they are able to provide necessary advice to their members.

Vehicle rental

What was requested

6.19 Many vehicle rental companies currently impose lower and upper age limits on their services, generally not renting cars to those under 21 or 23, or to those over 70 or 75. The vehicle rental trade association (British Vehicle Rental and Leasing Association) and Enterprise Rent-A-Car have requested an exception to enable rental companies to continue the practice, as they believe that they provide a risk-based product similar to the financial services industry.

6.20 In particular, the industry has raised a number of concerns:–

- market failure – the industry does not consider there is a market failure in the vehicle rental sector that needs corrective legislation;
- road safety – the industry is concerned that renting to younger and older drivers could have an adverse impact on road safety, with more accidents;
- price variation – the industry is concerned about removal of the provider's ability to manage risk by stopping surcharges for higher risk customers;
- high performance cars – the industry is concerned that legislation could mean that younger people have access to high performance cars;
- legal uncertainty – the industry is concerned that relying on objective justification means uncertainty and would result in costs in terms of compliance as service providers objectively justify their age limits;
- financial services – the industry argues that they are taking similar risks to a motor insurer provider and should as a very minimum fall into the scope of the financial services exception, since rental firms provide a service which helps to limit the financial risk against damage to or loss of the rental vehicle plus insurance against third party claims on a pay as you go basis;
- cost increase – they believe that overall costs will increase to all customers.

Our assessment

6.21 We have decided not to add a specific exception in this area, for the following reasons:

- There continue to be complaints about people being excluded from renting vehicles by reason of their age. Apart from correspondence to Ministers and MPs over the years, the consultation response included comments from a number of respondents to the effect that car hire companies must not be allowed to impose age limits. We have also received correspondence from people who are concerned about the discrimination they have experienced, as a result of being turned away by rental companies purely because they did not meet certain age criteria and regardless of their driving experience or – more significantly – their driving record.

- A blanket specific exception would be disproportionate to the element of risk involved and contradictory to general DVLA standards which allow, for example, young people to be employed driving vehicles for businesses.
- Arbitrary age limits do not recognise that many younger and older people are careful drivers who present a low risk and do not take into account the individual's experience or capability. It is difficult to understand why ability to rent a car should depend entirely on the person's age, if they have a clean driving licence and a good claims history. It is fairer and more proportionate for points on licences and driving experience to be taken into account, rather than using rigid age limits.
- According to data available on the internet¹⁸ it appears to be easier for older people to hire cars because of the lack of any maximum age limits in a number of other countries, such as Austria, Croatia and Sweden. It is a slightly different situation for younger people, although again still easier in some other countries than in the UK, for example, Croatia, Germany, Sweden and Estonia. It is common that those under 25 pay heavy surcharges on the base rental rate. It is not clear why car hire companies in those countries can operate without needing to restrict accessibility, or restricting it differently, whereas the situation in Great Britain is presented as requiring restrictions on accessibility.
- We examined closely the policies and practices of two Europe-wide rental companies and found that their age requirements in other countries were more favourable compared to the UK¹⁹:–
 - Company A – a minimum driving requirement of 23 in the UK; however, in Germany it was 18, Austria and Sweden 19, Norway 20, 21 in France and Croatia.
 - Company B – a minimum age requirement of 21 in the UK, but 18 in Austria, France and Sweden, 19 in Germany, Croatia and Norway.
- According to the British Vehicle Rental and Leasing Association, 10% of car rental firms in GB/UK do not apply minimum or maximum age limits²⁰. It is not clear why this approach should not apply more widely.
- Even without a specific exception, car rental companies will still be able to:
 - charge more to hire vehicles to people of a particular age;
 - restrict availability of high performance vehicles according to people's age;
 - refuse to hire to people because of their age;
 provided that the company can show it has a sufficient reason in the particular case (objective justification).

6.22 Specifically in response to the industry's concerns:–

¹⁸ <http://blog.arguscarhire.com/age-limits-for-renting-a-car/>

¹⁹ Research undertaken by examining both companies internet sites (October 2011)

²⁰ BVLRA data provided to the GEO

- Market failure – the number of letters we have received, responses to this consultation²¹ as well as results of the 2009 age discrimination consultation support the fact that there is market failure in relation to fair access. 77.3% of respondents to the 2009 age discrimination consultation agreed that there should not be a specific exception for age limits on the rental of vehicles. Industry data show that only 16% of the rental market will rent a car to people aged 21 or under²², and although 22-24 year olds do have more choice there may be unmet demand due to lack of widespread supply.
- Road safety – the rental industry is not the guardian of road safety. The DVLA issues driving licences and if a person has qualified for a driving licence they should not be denied a service based purely on their age, unless there is a good reason for doing so.
- Price variation – differential pricing will be allowed where it can be justified.
- High performance cars – rental companies will still be able to justify refusing to rent a vehicle, or a type of vehicle, to someone on the basis of their age and/ or level of experience.
- Legal uncertainty – different treatment because of age can be justified as long as it can be shown that there is a sufficient reason for not providing a service. Relying on objective justification should not involve extra costs. If a company has evidence of problems they and other similar companies have encountered hiring to younger and older age groups, and do not wish to hire to these age groups, then this evidence could be used to support the line that a refusal to rent on grounds of age is a proportionate means to attain a legitimate aim. The most likely outcome would be that the client would look elsewhere.
- Financial services – part of the service which rental companies provide is insurance, but it is only part of the service. And the rental companies are not underwriting the insurance – that is subcontracted, so they are not in the same situation as financial services companies.
- Cost increase – we do not agree that there need be increased costs to the industry, as companies will be able to vary prices, charging the riskier age groups more based on the risk they present as some companies already do by charging supplements to certain age groups.

6.23 We recognise the industry's concerns and its need to manage risks appropriately. Even though a specific exception is not available in this area, the car rental industry will still be able to make business decisions based on age where the decision is not arbitrary and the practice could be justified in any particular case.

²¹ Equality Bill: Making it work – Ending age discrimination in services and public functions – A consultation

²² Figure provided by the BVRLA

Chapter 7: Guidance and other issues

Guidance

What we asked and what respondents said

Q14: What would you like guidance to cover to ensure that businesses and organisations are clear about what they need and do not need to know?

Q15: What particular types of business or organisations do you think will need tailored guidance on how the changes affect them?

Q16: What do you see as the best way to communicate this guidance to businesses and organisations? Where would you normally go for guidance on discrimination law?

7.1 57 respondents commented on what they would like guidance to cover. Key comments are as follows:

- Good quality guidance is essential to service providers.
- It is important to update existing guidance – the Code of Practice on Services, Public Functions and Associations and non-statutory guidance produced by the Equality and Human Rights Commission and the Government Equalities Office – to fully reflect the new requirements.
- Guidance needs to be produced in consultation with stakeholders and should be written in a concise and accessible format.
- Organisations such as Sport Scotland and the English Association of Self Catering Operators said that guidance is necessary about the objective justification test for areas not covered by specific exceptions.
- The British Chambers of Commerce emphasised that it is crucial that a ‘myth-busting’ guide is published to make it clear to businesses that cheap cinema tickets/haircuts etc are not banned under this policy.
- Citizens Advice requested that guidance should include clear references to redress; so that people know that they can take action, and where to get help and advice if they believe they have been discriminated against. Guidance should set out the statutory requirements, clarify the meaning and consequences of age discrimination, enable businesses to assess whether any services they offer fall within the scope of the ban or exceptions easily, provide relevant examples of practices or processes to highlight both direct and indirect age discrimination, encourage businesses and organisations to carry out a proper audit of their processes so as to be able to identify potentially discriminatory practices and encourage staff education and training.

7.2 52 respondents commented on the particular types of business or organisations where tailored guidance would be useful.

- Businesses and organisations in the public, private and third sectors all requested access to tailored guidance, with clear specific examples.

7.3 55 respondents commented on how best to communicate guidance to businesses and organisations.

- Respondents agreed that the Equality and Human Rights Commission website would be the most appropriate way of providing guidance to businesses and organisations, as is already the case for most other statutory guidance on the Equality Act, along with the Home Office website.
- The Business Link website, trade associations and consumer organisations can also play a key role in informing their members.
- The Department of Health should play a key role in communicating information within the health and social care sector.

Our assessment

7.4 Our immediate intention is to produce Quick Start Guidance ahead of implementation of the ban. There will be a general guide applicable across all sectors. It will aim to set out:

- what the age discrimination ban covers;
- the specific exceptions;
- how it applies in particular areas: health, financial services;
- how “objective justification” works;
- positive action;
- other exceptions allowed elsewhere by law.

7.5 Further more detailed and specific guidance will be worked up as necessary in conjunction with key delivery partners, such as relevant trade associations. For example, guides for clubs and associations, financial services and holidays. The aim will be to publish these ahead of implementation of the ban.

Impact assessments

What we asked and what respondents said

Q17: Can you provide any data on costs and benefits, which have not already been included in the impact assessment? Do you have any comments on the assumptions or estimates we have made?

Q18: Can you provide any further information or views to help us calculate the economic benefits of reducing discrimination?

Q19: Does the equality impact assessment properly assess the implications for each of the equality target groups? If not, please explain why.

7.6 15 respondents answered the question about any data on costs and benefits, which had not already been included in the impact assessment. 12 respondents answered the question about any further information or views to help us calculate the economic benefits of reducing discrimination.

7.7 The responses did not provide much information that could be used in the further development of the impact assessment.

- Health organisations such as the Association of Directors of Adult Social Services and Social Care Institute for Excellence said that there are too few areas of health service delivery which are founded on robust evidence and more consideration needed to be given to social care.
- Organisations such as the British Holiday and Home Parks Association said that the potential impact of the policy on holiday accommodation providers needs to be considered, but did not provide any data on costs to back up their argument for an exception.
- The Association of British Insurers requested that the impact assessment needs to include data on costs and benefits of signposting and referrals for younger drivers.
- The National LGB and T Partnership and the Lesbian and Gay Foundation confirmed that the economic benefits of reducing age discrimination are significant.

7.8 26 respondents stated that the equality impact assessment properly assessed the implications for each of the equality target groups. 12 respondents queried the equality impact assessment.

- The majority of respondents confirmed that the equality impact assessment properly assesses the implications for each of the equality target groups.
- The National LGB and T Partnership and the Lesbian and Gay Foundation both said that there is a growing body of qualitative research on the needs and experiences of older lesbian, gay and bisexual people, which was not fully referred to in the equality impact assessment.
- Health organisations such as the Association of Directors of Adult Social Services and Social Care Institute for Excellence said that the equality impact assessment was better informed about health care than social care.
- The Association of British Insurers and Aviva said that the equality impact assessment did not fully bring out the beneficial impact for younger people of improvements in transparency and signposting in the insurance industry.

Our assessment

7.9 Following the consultation we have further developed and refined the regulatory impact assessment.

Chapter 8: Next steps

8.1 We intend to bring into force the ban on age discrimination in the provision of services and exercise of public functions, and by private clubs and other associations in October 2012, along with the related exceptions.

8.2 Because of the timing of parliamentary recesses this means that it is most likely that the necessary draft exceptions Order will be laid before Parliament in the summer, along with guidance. This will allow businesses and organisations sufficient time to familiarise themselves with how the new provisions will work before they come into force in October 2012.

8.3 We are working with key stakeholders to ensure that appropriate guidance is in place to enable those with responsibilities under the provisions to understand those responsibilities and how to comply with them and people with rights under the provisions to understand those rights and how to exercise them.

8.4 We have considered whether it would be possible to set a finite date for the new legislation (“sunsetting”). This is not legally possible at present because the provision banning age discrimination is contained in the Equality Act 2010, which does not itself contain any sunsetting provisions. The ban will be brought in by using a separate commencement order and there is no power in the Act to provide for sunsetting of a commencement order. The Exceptions Order will provide for exceptions from the age discrimination ban, but there would be no point in sunsetting the exceptions if the ban itself cannot be curtailed, since by itself this would just impose additional burden on service providers.

8.5 However, we are committed to evaluating the prohibition by 2015, as part of the overall evaluation of the Equality Act 2010. We would welcome dialogue with business and other interested parties about the policy and its implementation.

The Revised (new) Exceptions Order

Equality Act 2010 (Age Exceptions) Order 2012*Made - - - - - 00 July 2012**Coming into force - - - in accordance with article 1*

The Secretary of State makes the following Order, in exercise of the powers conferred by sections 197(1) and 207(4) and (6) of the Equality Act 2010⁽²³⁾:

Citation, commencement and interpretation

1.—(1) This Order may be cited as the Equality Act 2010 (Age Exceptions) Order 2012 and comes into force on [1st October 2012].

(2) In this Order “the Act” means the Equality Act 2010.

Immigration

2. In Part 4 of Schedule 3 to the Act (Immigration), before paragraph 16 insert—

“Age

15A.—(1) This paragraph applies in relation to age discrimination.

(2) Section 29 does not apply to anything done by a relevant person in the exercise of functions exercisable by virtue of a relevant enactment.

(3) A relevant person is —

- (a) a Minister of the Crown acting personally, or
- (b) a person acting in accordance with a relevant authorisation.

(4) A relevant authorisation is a requirement imposed or express authorisation given —

- (a) with respect to a particular case or class of case, by a Minister of the Crown acting personally;
- (b) with respect to a particular class of case, by a relevant enactment or by an instrument made under or by virtue of a relevant enactment.

(5) The relevant enactments are —

- (a) the Immigration Acts,
- (b) the Special Immigration Appeals Commission Act 1997⁽²⁴⁾,
- (c) a provision made under section 2(2) of the European Communities Act 1972⁽²⁵⁾ which relates to immigration or asylum, and
- (d) a provision of EU law which relates to immigration or asylum.

(6) The reference in sub-paragraph (5)(a) to the Immigration Acts does not include a reference to —

- (a) sections 28A to 28K of the Immigration Act 1971⁽²⁶⁾ (powers of arrest, entry and search, etc.), or
- (b) section 14 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004⁽²⁷⁾ (power of arrest).”.

²³ 2010 c.15.

²⁴ 1997 c.68.

²⁵ 1972 c.68

²⁶ 1971 c.77, sections 28A to 28K were inserted by s. 128 of the Immigration and Asylum Act 1999 (c.33)

²⁷ 2004 c.19.

Financial Services

3. In Part 5 of Schedule 3 to the Act (the title to which becomes “Insurance and other financial services”), after paragraph 20, insert—

“Age

20A.—(1) A person (A) does not contravene section 29, so far as relating to age discrimination, by doing anything in connection with the provision of a financial service.

(2) Where A conducts an assessment of risk for the purposes of providing the financial service to another person (B), A may rely on sub-paragraph (1) only if the assessment of risk, so far as it involves a consideration of B’s age, is carried out by reference to information which is relevant to the assessment of risk and from a source on which it is reasonable to rely.

(3) In this paragraph, “financial service” includes a service of a banking, credit, insurance, personal pension, investment or payment nature.”.

Concessionary services

4.—(1) In Part 7 of Schedule 3 to the Act (the title to which becomes “Separate, single and concessionary services, etc”), after paragraph 30 insert—

“Concessions

30A.—(1) A person does not contravene section 29, so far as relating to age discrimination, by giving a concession in respect of a service to persons of a particular age group.

(2) The reference to a concession in respect of a service is a reference to a benefit, right or privilege having the effect that the manner in which the service is provided is, or the terms on which it is provided are, more favourable than the manner in which, or the terms on which, it is usually provided to the public (or, where it is provided to a section of the public, that section).”.

Holidays

5. In Part 7 of Schedule 3 to the Act, after paragraph 30A insert—

“Age related holidays

30B.—(1) A person (P) does not contravene section 29, so far as relating to age discrimination, by providing a relevant holiday service to persons of a particular age group.

(2) In sub-paragraph (1) “relevant holiday service” means a service—

(a) which involves the provision of at least two of the following together for a single price—

(i) travel;

(ii) accommodation;

(iii) access to activities or services not ancillary to travel or accommodation which form a significant part of the service or its cost;

(b) the provision of which is for a period of more than 24 hours or includes the provision of overnight accommodation;

(c) which P provides only to persons of the age group in question; and

(d) an essential feature of which is the bringing together of persons of that age group with a view to facilitating their enjoyment of facilities or services designed with particular regard to persons of that age group.

(3) P may not rely on sub-paragraph (1) unless, before providing a person with a relevant holiday service, P provides the person with a written statement that the service is provided only to persons of the age group in question.

(4) For the purpose of sub-paragraph (2)(a)(i), “travel” includes an option for an individual to make alternative travel arrangements to those included in the relevant holiday service as offered by P.”.

Age restricted services

6. In Part 7 of Schedule 3 to the Act, after paragraph 30B insert—

“Age restricted services

30C.—(1) This paragraph applies where a person (P)—

- (a) provides a service the provision of which is prohibited by or under an enactment to persons under the age specified in or under the enactment (“the statutory age”), and
- (b) displays on the premises on which the service is provided an age warning in relation to the provision of the service.

(2) An age warning in relation to the provision of a service is a statement to the effect that the service will not be provided to a person who—

- (a) appears to P, or an employee or agent of P’s, to be under the age specified in the statement, and
- (b) on being required to do so by P or the employee or agent, fails to produce satisfactory identification.

(3) P does not contravene section 29, so far as relating to age discrimination, by not providing the service to a person, who—

- (a) appears to P, or an employee or agent of P’s, to be under the age specified in the age warning in relation to the provision of the service, and
- (b) on being required to do so by P or the employee or agent, fails to produce satisfactory identification.

(4) In this paragraph—

- (a) a reference to the provision of a service includes a reference to provision of access to the service, and
- (b) “satisfactory identification”, in relation to a person, means a valid document which—
 - (i) in the case of licensed premises where an age condition applies, meets that condition, and
 - (ii) in any other case includes a photograph of the person and establishes that the person has attained the statutory age in relation to the provision of a service;

“licensed premises” means premises in respect of which a relevant premises licence within the meaning of section 19A of the Licensing Act 2003⁽²⁸⁾ (mandatory conditions where alcohol sold) has effect; and

“age condition” means a condition specified in an Order under subsection (1) of section 19A requiring the age of certain persons to be verified in the manner specified in the condition before they are served alcohol in premises where the condition applies.”.

Residential Mobile Homes

7. In Part 7 of Schedule 3 to the Act, after paragraph 30C, insert—

“Residential mobile homes

30D.—(1) A person (A) who is the owner of a protected site does not contravene section 29, so far as relating to age discrimination, by—

- (a) entering into a mobile home agreement with a person (B) that entitles only persons who have attained a particular age to station and occupy a mobile home on land forming part of the site, or
- (b) refusing to permit assignment by B of a mobile home agreement to any person other than a person who has attained a particular age.

(2) A does not contravene section 29, so far as relating to age discrimination, by imposing a requirement in park rules that mobile homes stationed on land forming part of the site and occupied under mobile home agreements may be occupied only by persons who have attained a particular age.

²⁸ 2003 c.17. Section 19A was inserted by section 32 of and paragraph 2 in Part 1 of Schedule 4 to the Policing and Crime Act 2009. The Licensing Act 2003 (Mandatory Licensing Conditions) Order (S.I. 2010/860) specifies mandatory conditions including an age condition.

(3) A does not contravene section 29, so far as relating to age discrimination, by—

(a) imposing in or under a mobile home rental agreement with a person (C) a requirement that the mobile home to which the agreement relates may be occupied only by persons who have attained a particular age, or

(b) refusing to permit assignment by C of a mobile home rental agreement to any person other than a person who has attained a particular age.

(4) But A may not rely on sub-paragraph (1) or (3) unless, before doing something mentioned in that sub-paragraph, A provides B or C, as the case may be, with a written statement to the effect that the mobile home in question may be occupied only by persons who have attained the age in question.

(5) In this paragraph,

“mobile home agreement” means an agreement to which the Mobile Homes Act 1983⁽²⁹⁾ applies; and “owner”, “protected site” and “mobile home” have the same meaning as in that Act;

“park rules” means rules applying to residents of mobile homes on the protected site and required to be observed by a term in the mobile home agreement or the mobile home rental agreement as the case may be;

“mobile home rental agreement” means an agreement (other than an arrangement to occupy a mobile home for the purposes of a holiday) under which a person (“the occupier”) is entitled to occupy a mobile home on the protected site as the occupier’s residence whether for a specified period or for successive periods of a specified duration subject to payment of money and the performance of other obligations.”.

Associations

8. In Schedule 16 (Associations: exceptions) insert after paragraph 1—

“Age

1A.—(1) An association does not contravene section 101(1) or (2), so far as relating to age discrimination, by giving a concession on admission to membership for —

(a) persons of a particular age group, or

(b) persons who have been members of the association for more than a number of years specified by the association for this purpose.

(2) An association does not contravene section 101(2) or (3), so far as relating to age discrimination, by giving a concession on access to a benefit, facility or service for —

(a) members of a particular age group, or

(b) persons who have been members of the association for more than a number of years specified by the association for this purpose.

(3) An association does not contravene section 102(1), so far as relating to age discrimination, by giving a concession on invitations of persons of a particular age group as guests.

(4) An association does not contravene section 102(2), so far as relating to age discrimination, by giving a concession on access to a benefit, facility or service for guests of a particular age group.

²⁹ 1983 c.34. Section 1 (particulars of agreements) was amended by section 206(1) of the Housing Act 2004 (c.34), section 167 of the Housing (Scotland) Act 2006 (ASP1) and the Mobile Homes Act 1983 (Jurisdiction of Residential Property Tribunals) (England) Order (S.I. 2011/1005). Section 2 and Schedule 1 were amended by sections 206(2)(a), 207, 265(1) and 266 of and paragraph 19 of Schedule 5 and Schedule 16 to the Housing Act 2004, sections 168 and 169 of the Housing (Scotland) Act 2006 and section 60 of and paragraph 2 of Schedule 3 to the Statistics and Registration Service Act 2007 (c.18) and by the Mobile Homes Act 1983 (Amendment of Schedule 1) (England) Order 2006 (S.I. 2006/1775), the Mobile Homes Act 1983 (Amendment of Schedule 1) (Wales) Order 2007 (2007/3151), the Mobile Homes Act 1983 (Amendment of Schedule 1 and Consequential Amendments) (England) Order 2011 (S.I.2011/1003) and by S.I.2011/1005. There are other amendments not relevant to this Order.

(5) For the purposes of this paragraph, affording only persons of a particular age group access to a benefit, facility or service for a limited time is to be regarded as a concession.

(6) The reference to a concession in respect of something done by an association is a reference to a benefit, right or privilege having the effect that the manner in which, or the terms on which, it does it are more favourable than the manner in which, or the terms on which, it usually does the thing.”.

Sport

9. In section 195 of the Act (general exceptions: sport) insert after subsection (6)—

“(7) A person does not contravene this Act, so far as relating to age discrimination, only by doing anything in relation to the participation of another as a competitor in an age-banded activity if it is necessary to do so —

(a) to secure in relation to the activity fair competition or the safety of competitors,

(b) to comply with the rules of a national or international competition, or

(c) to increase participation in that activity.

(8) For the purposes of subsection (7), an age-banded activity is a sport, game or other activity of a competitive nature in circumstances in which the physical or mental strength, agility, stamina, physique, mobility, maturity or manual dexterity of average persons of a particular age group would put them at a disadvantage compared to average persons of another age group as competitors in events involving the activity.”.

Theresa May
Secretary of State for the Home Department

Date

EXPLANATORY NOTE

(This note is not part of the Order)

This Order is made under s.197 of the Equality Act 2010 (c.15) and will come into force on the same day as the provisions of Part 3 of and Schedules 3 and 16 to the Act are commenced in respect of the protected characteristic of age. Part 3 provides for prohibition of discrimination, harassment and victimisation in respect of the provision of services (including for these purposes the provision of goods and facilities). The Order provides exceptions to the application of the prohibition in Part 3 in relation to discrimination because of age in respect of a number of areas. It also provides exceptions in relation to discrimination because of age in respect of associations (sections 101 and 102 of the Act) and age-banded sporting activity (section 195 of the Act).

Article 2 inserts paragraphs into Part 4 of Schedule 3 to provide for an exception in respect of age discrimination in relation to things done by Ministers or those acting in accordance with authorisation under functions relating to immigration.

Article 3 inserts a paragraph into Part 5 of Schedule 3 to provide for an exception in respect of age discrimination in relation to things done in the provision of financial services, but with a requirement that where age is used as a factor in the assessment of risk the information relied on must be relevant to the assessment of the risk and from a source on which it is reasonable to rely.

Articles 4 to 7 insert paragraphs into Part 7 of Schedule 3 to provide for exceptions from age discrimination for:

concessions and preferential treatment (such as discounts) offered by traders and service providers by reference to age (paragraph 30A);

the provision of pre-arranged holidays to groups of people limited by reference to age (paragraph 30B);

schemes operated by those selling or providing goods or services that are subject to age limits created by or under legislation, such as alcohol, tobacco or entry to a cinema in respect of particular films (paragraph 30C); and

those operating residential mobile home parks in respect of limiting occupation of mobile homes on the site to persons who have attained a particular age (paragraph 30D).

Article 8 inserts into Schedule 16 (associations: exceptions) an exception, broadly equivalent to that in article 4 in respect of concessions, in relation to various forms of special treatment by associations by reference to age.

Article 9 inserts into section 195 of the Act further subsections providing for there to be an exception from age discrimination in respect of things done in relation to the participation of persons in age-banded activities to which access is restricted by reference to age or age groups. These are defined to include sports, games and other activities and include both physical sports such as football and also more mental or intellectual activities such as bridge or chess.

The instrument has effects on the costs of business, charities or voluntary bodies. A full impact assessment of the effect that this instrument will have on the costs of business, charities and voluntary bodies is available from www.##### and is published along with the Explanatory Memorandum on #####.

The superseded version of the Exceptions Order on which we consulted

Equality Act 2010 (Age Exceptions) Order 2012 (Consultation version)

Made - - - - -

Coming into force in accordance with article 1

The Secretary of State, in exercise of the powers conferred by sections 197(1) and 207(4)(b) and (6) of the Equality Act 2010⁽³⁰⁾, makes the following Order:

Citation, commencement and interpretation

10.—(1) This order may be cited as the Equality Act 2010 (Age Exceptions) Order 2011 and comes into force on [6 April 2012].

(2) In this Order “the Act” means the Equality Act 2010.

Immigration

11. In Part 4 of Schedule 3 to the Act (Immigration), before paragraph 16 insert—

“Age

15A.—(1) This paragraph applies in relation to age discrimination.

(2) Section 29 does not apply to anything done by a relevant person in the exercise of functions exercisable by virtue of a relevant enactment.

(3) A relevant person is —

- (a) a Minister of the Crown acting personally, or
- (b) a person acting in accordance with a relevant authorisation.

(4) A relevant authorisation is a requirement imposed or express authorisation given —

- (a) with respect to a particular case or class of case, by a Minister of the Crown acting personally;
- (b) with respect to a particular class of case, by a relevant enactment or by an instrument made under or by virtue of a relevant enactment.

(5) The relevant enactments are —

- (a) the Immigration Acts,
- (b) the Special Immigration Appeals Commission Act 1997,
- (c) a provision made under section 2(2) of the European Communities Act 1972 which relates to immigration or asylum, and
- (d) a provision of European Union law which relates to immigration or asylum.

(6) The reference in sub-paragraph (5)(a) to the Immigration Acts does not include a reference to —

- (a) sections 28A to 28K of the Immigration Act 1971 (powers of arrest, entry and search, etc.), or
- (b) section 14 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 (power of arrest).”

³⁰ 2010 c.15

Financial Services

12. In Part 5 of Schedule 3 to the Act (Insurance, etc), after paragraph 20, insert—

“Age

20A.—(1) It is not a contravention of section 29, so far as relating to age discrimination, to do anything in connection with the provision of a financial service, provided that any assessment of risk carried out for the purposes of providing the financial service must, so far as it involves the consideration of a person’s age, be carried out by reference to information which is relevant to the assessment and from a source on which it is reasonable to rely.

(2) In this paragraph, “financial service” includes a service of a banking, credit or payment nature.”

Concessionary services

13.—(1) In the title of Part 7 of Schedule 3 to the Act for the words after “SEPARATE” substitute “, SINGLE AND CONCESSIONARY SERVICES”.

(2) After paragraph 30 insert—

“Concessions

30A.—(1) A person (P) does not contravene section 29, so far as relating to age discrimination—

(a) by providing a concession on a service when providing it to persons of a particular age group, or

(b) by otherwise providing a service to persons of a particular age group on terms that are more favourable than the terms on which P provides the service to other persons.

(2) For the purposes of sub-paragraph (1), providing a concession on a service includes providing a service for a limited time.

(3) Sub-paragraph (1) applies only in so far as the concession, or more favourable term—

(a) does not have the effect of preventing persons of other age groups from requiring the service, and

(b) is reasonable.

(4) Subparagraph (1) does not apply where P relies on paragraph 20A (Age) in Part 5 of Schedule 3 (Insurance, etc).”

Holidays

14. In Part 7 of Schedule 3, after paragraph 30A insert paragraph 30B—

“Age related holidays

30B.—(1) A person (P) does not contravene section 29, so far as relating to age discrimination, by providing a holiday package, the main purpose (or one of the main purposes) of which is to bring together persons of a particular age group.

(2) In sub-paragraph (1) “holiday package” has the same meaning as “package” in Council Directive 90/314/EEC on package travel, package holidays and package tours⁽³¹⁾.

(3) P may not rely on sub-paragraph (1) unless P includes in a prominent position in all of P’s promotional material relating to the holiday package a statement that the holiday package is provided in accordance with this paragraph.

(4) A statement under sub paragraph (3) must specify the age group for which the holiday package is provided.”

Residential Mobile Homes

15. In Part 7 of Schedule 3, after paragraph 30B, insert paragraph 30C—

³¹ OJ L158, 23.6.1990 pages 59-64.

“Residential mobile homes

30C.—(1) The owner of a protected site does not contravene section 29, so far as relating to age discrimination, by entering into mobile home agreements that entitle only persons of a particular age group to station and occupy a mobile home on land forming part of the site.

(2) The owner of a protected site does not contravene section 29, so far as relating to age discrimination, by imposing a requirement in park rules that mobile homes stationed on land forming part of the site and occupied under mobile home agreements may be occupied only by persons of a particular age group.

(3) The owner of a protected site must include in all notices, advertising or publicity in relation to admittance to the protected site as a resident a prominent statement that the owner operates a limitation as to age in respect of the protected site.

(3) “Mobile home agreement” means an agreement to which the Mobile Homes Act 1983 applies; and “owner”, “protected site” and “mobile home” have the same meaning as in that Act.

(4) “Park rules” means rules applying to residents of mobile homes on the protected site and required to be observed by a term in the relevant agreement.”

16. In Schedule 16 (Associations: exceptions) insert after paragraph 1—

“Age

1A.—(1) An association does not contravene section 101(1), so far as relating to age—

- (a) by providing a concession on admission to membership for persons of a particular age group, or
- (b) by otherwise admitting persons of particular age group to membership on preferential terms.

(2) An association does not contravene section 101(2) or (3)—

- (a) by providing a concession on access to a benefit facility or service for members of a particular age group, or
- (b) by otherwise affording members of a particular age group access to a benefit, facility or service in a way that is more favourable than the way in which the association affords other members access to the benefit, facility or service.

(3) An association does not contravene section 102(1) by—

- (a) providing a concession on invitations of persons of a particular age group as guests, or
- (b) by otherwise inviting persons of a particular age group, or permitting such persons to be invited, as guests on terms that are more favourable than the way in which the association offers other persons to be invited, as guests.

(4) An association does not contravene section 102(2) by—

- (a) providing a concession on access to a benefit, facility or service for guests of a particular age group, or
- (b) by otherwise affording to guests of a particular age group access to a benefit, facility or service in a way that is more favourable than the way in which the association affords other guests access to the benefit, facility or service.

(5) For the purposes of this paragraph affording only persons of a particular age group access to a benefit, facility or service for a limited time is to be regarded as a concession

(6) Sub-paragraph (1), (2), (3) or (4) applies only in so far as the concession, or more favourable term—

- (a) does not have the effect of preventing persons of other age groups from requiring the service, and
- (b) is reasonable.”

Sport

17. In section 195 of the Act insert after sub-section (6)—

“(7) A person does not contravene this Act, so far as relating to age, only by doing anything in relation to the participation of another as a competitor in an age-banded activity if it is necessary to do so —

(a) to secure in relation to the activity fair competition or the safety of competitors, or

(b) to comply with the rules of a national or international competition.

(8) An age-banded activity is a sport, game or other activity of a competitive nature in circumstances in which the physical strength, stamina, physique, mobility, maturity or manual dexterity of average persons of a particular age group would put them at a disadvantage compared to average persons of another age group as competitors in events involving the activity.”.

Signatory text

Name
Secretary of State for the Home Department

[Date]

EXPLANATORY NOTE

(This note is not part of the Order)

This Order is made under s.197 Equality Act 2010 (c.15) and will come into force on the same day as the provisions of Part 3 of and Schedule 3 to the Act are commenced in respect of the protected characteristic of age. Part 3 provides for prohibition of discrimination, harassment and victimisation in respect of the provision of services (including for these purposes the provision of goods and facilities), It provides for exceptions from the application of the prohibition in Part 3 in relation to age in respect of a number of areas.

Exceptions are created in respect of

- The use of age in respect of certain matters relating to immigration control in Part 4 of Schedule 3;
- The use of age in financial services in Part 5 of Schedule 3;
- concessions and preferential treatment in Part 7 of Schedule 3;
- holiday packages in Part 7 of Schedule 3;
- occupation of mobile homes as a person’s only or main residence in Part 7 of Schedule 3;
- age limitations in sporting competitions (article 8) by adding age to provisions in s.195 of the Act; and membership of associations (article 7).

Organisations which responded

Organisations which provided formal consultation responses were as follows:-

Action with Communities in Rural England	BUPA
A Dignified Revolution	Care Quality Commission
Aegon UK	Chartered Insurance Institute
Age Concern Blackburn & Darwen	Chesterfield Borough Council
Age Cymru	Children in Scotland
Age UK	CIFAS - The UK's Fraud Prevention Service
Agewell Sandwell	Citizens Advice
Alzheimers Society	Civil Service Pensioners Alliance
Amateur Swimming Association	CJ Lang & Son Limited
Anchor	Classic Cottages
Association of British Credit Unions Ltd	Consumer Credit Association
Association of British Insurers	Co-operative
Association of British Travel Agents	Derbyshire County Council
Association of Convenience Stores	Discrimination Law Association
Association of Directors of Adult Social Services	Driving Instructors Association
Aviva	Eastleigh Southern Older People's Forum
Beachcroft LLP	English Association of Self Catering Operators
Bradford District Care Trust	English Chess Federation
Breast Cancer Campaign	English Golf Union / English Women's Golf Association
Breast Cancer Care	Enterprise Rent-a-Car
Breakthrough Breast Cancer	Equality and Human Rights Commission
British Association of Social Workers	Equality Commission NI
British Bankers Association	Equifax Ltd
British Beer & Pub Association	Eversheds LLP
British Chamber of Commerce	Experian
British Destinations	Faculty of Old Age Psychiatry Royal College of Psychiatrists
British Go Association	Finance and Leasing Association
British Holiday & Home Parks Association	Financial Services Consumer Panel
British Insurance Brokers Association	5050vision / Future North West & Age UK North West
British Medical Association	Food Train
British Retail Consortium	GEM Motoring Assist
British Vehicle Rental and Leasing Association	
Building Societies Association	

Herringston Estates Co Ltd
 HM Coastguard
 International Automotive News Service Ltd
 Investment & Life Assurance Group
 John Bray Cornish Holidays
 Lancashire Teaching Hospitals NHS Foundation Trust
 Law Society
 Law Society of Scotland
 Leeds Building Society
 Leeds City Council
 Legal & General
 Leicester City Council
 Lesbian & Gay Foundation
 Liverpool Victoria
 Lloyds Banking Group
 Merseytravel
 Morrisons
 National Association of Schoolmasters/Union of Women Teachers
 National Caravan Council
 National LGB&T Partnership
 National Pensioners Convention
 NHS Ayrshire & Arran
 NHS Cornwall & Isles of Scilly
 NHS Greater Glasgow and Clyde
 NHS Health Scotland
 NHS National Services Scotland
 NHS Norfolk Community Health and Care
 Nottingham Pensioners' Action Group
 Older People Specialist Forum
 Older People's Commissioner for Wales
 Older People's Partnership, Adult & Community Services
 Parfett's
 Prudential UK
 Regional Equality and Diversity Partnership


Royal College of General Practitioners
 Royal College of Nursing
 Royal College of Psychiatrists in Scotland
 Royal College of Physicians
 Royal College of Physicians and Surgeons of Glasgow
 Royal Yachting Association
 RSA Insurance Group PLC
 Rural Shops Alliance
 SAGA services Ltd
 Scotland's Commissioner for Children and Young People
 Scottish Ambulance Service
 Scottish Borders Elder Voice
 Scottish Federation of University Women - Glasgow Association
 Scottish Golf Union & Scottish Ladies Golfing Association
 Scottish Grocers Federation Ltd
 Social Care Institute for Excellence (SCIE)
 Society of London Theatre & Theatrical Management Association
 Somerset Primary Care Trust
 South Ayrshire Council
 Sport & Recreation Alliance
 Sport Scotland
 Standard Life Assurance Ltd
 Stirling Council
 Swiss Re
 The Actuarial Profession
 Total UK Ltd
 Tourism Alliance
 Trading Standards Institute
 UK Cards Association
 Unum Limited
 Vale Older Peoples' Strategy Forum
 Welsh Sports Association

West Lothian Council
West Midlands Later Life Forums
White Lodge Farm Cottages
Wine and Spirit Trade Association
YouthLink Scotland

Note:

The list excludes organisations that asked for their names not to be made public or for their response to be in confidence.

In addition to the above list of organisations there were also a number of responses from individuals.



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