

<p><b>Title:</b>  <u>Ending age discrimination in the provision of goods, facilities, services and public functions</u></p> <p><b>Lead department or agency:</b>  <u>Government Equalities Office</u></p> <p><b>Other departments or agencies:</b>  <u>Department of Health, HM Treasury</u></p>	<h2 style="margin: 0;">Impact Assessment (IA)</h2> <p><b>IA No:</b> GEO 1020</p> <p><b>Date:</b> 16/12/2010</p> <p><b>Stage:</b> Development/Options</p> <p><b>Source of intervention:</b> Domestic</p> <p><b>Type of measure:</b> Secondary legislation</p> <p><b>Contact for enquiries:</b>  Kate Richardson 0303 444 3029</p>
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## Summary: Intervention and Options

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

There is evidence that some people experience unjustified discrimination because of their age when being provided with services. This can mean receiving an inferior service; or having access to a product restricted, simply on the basis of age; or not being treated with dignity and respect when receiving a service. Age discrimination can impact people of all ages. We received 750 responses to the questions on age discrimination in the consultation which provided a wide range of examples and conveyed strong support for the legislation. Government intervention is necessary to give individuals a right to recourse through the courts. Justified or beneficial differential age-based treatment will continue to be allowed, where this is objectively justified, or permitted under an exception.

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

- Our objective is to ensure that all people aged 18 or older are not unjustifiably discriminated against because of age, by those providing services and carrying out public functions.
- We want to prevent harmful discrimination but allow justified / beneficial age differential treatment, to continue, for example concessions to over 60s will still be permitted.
- Legislation will help to ensure that any barriers caused by age discrimination outside the workplace are removed, so that no group is excluded from basic services and experiences social detachment as a consequence, which has significant economic, societal and health implications.
- Individuals that experience age discrimination will be given a right to recourse through the courts.

### What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)

- Option 1: Do nothing. Not commence the provisions in the Act banning age discrimination.
  - Option 2: Prohibit all discrimination against people aged 18 or over by providers of services and public functions, except where it can be objectively justified.
  - Option 3 (recommended): Prohibit all discrimination against people aged 18 or over by providers of services and public functions, except where it can be objectively justified, and provide relevant specific exceptions to ensure that justifiable age based treatment can continue.
- Preferred option is option 3. It ensures that we address real problems in a common sense way, taking account of how people of different ages live; and how businesses operate in order to avoid disproportionate burdens and unintended consequences. We have revised our proposals to use non-legislative solutions where possible, such as, when improving transparency and signposting in financial services sector.

**Will the policy be reviewed?** It will be reviewed. **If applicable, set review date:** 01/2017

**What is the basis for this review?** Duty to review. **If applicable, set sunset clause date:** Month/Year

**Are there arrangements in place that will allow a systematic collection of monitoring information for future policy review?** Yes

**SELECT SIGNATORY Sign-off** For consultation stage Impact Assessments:

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

Signed by the responsible SELECT SIGNATORY: \_\_\_\_\_ Date: \_\_\_\_\_

# Summary: Analysis and Evidence

# Policy Option 1

## Description:

Price Base Year	PV Base Year 2010	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: 79.5	High: 87.9	Best Estimate: 83.7

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	9.6	N/A	11.7
High	18.0	N/A	20.1
Best Estimate	13.8	0.25	15.9

### Description and scale of key monetised costs by 'main affected groups'

Familiarisation costs – £3.6 - 6.8m transitional costs for private sector & £0.09m for public sector. Training costs – £3.8 - 7.2m transitional costs for private sector & £1.09 - 1.63m for public sector. Compliance costs - £0.2 - 1.4m transitional costs for private sector & £0.03m for public sector. Financial services (transparency costs) - £0.72 m for private sector in transitional costs (set up data monitoring system) & £0.25m recurring for administering data collection (non-leg measure).

### Other key non-monetised costs by 'main affected groups'

Health and Social Care - Implementation will require some reallocation of resources by PCTs and local authorities. Between now and 2012 it will be possible to make these changes alongside, as well as being part of, other policies, which will make transition easier (so less costly) for PCTs, local authorities, patients, service users and carers and reduce pressure on the NHS.

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	0	N/A	N/A
High	0	N/A	N/A
Best Estimate	0	11.6	99.6

### Description and scale of key monetised benefits by 'main affected groups'

As a result of signposting and increased transparency in financial service there will be a reduction in search costs to individuals of £4.5 million and an increase in premiums to insurers of £7.1 million per annum. Also in the text we illustrate some general benefits that could arise as a result of increasing the market share of older consumers. These have not, however, been included here as they are not considered direct impacts.

### Other key non-monetised benefits by 'main affected groups'

(1) Helping to tackle social detachment in older people occurring from lack of access to services, which can result in inactivity which can accelerate the decline towards premature ill-health. (2) Presents an additional incentive to business to develop products particularly aimed at meeting the requirements of older customers. (3) Helping to improve 'Active Ageing' and independent living. This reduces costs related to medical treatment, admissions to care homes and emergency hospital care.

### Key assumptions/sensitivities/risks

Discount rate (%) 3.5

All large and public sector firms will familiarise with the legislation and between 24-48% of SMEs. Between 8-12% of large and public sector firms will incur training costs and 2.5-3.5% of small firms. 5% of large and public sector firms will incur compliance costs and between 0.5-1.5% of small firms. Almost all insurers would choose to enter into collective publication arrangements through the ABI. Estimates were based on the costs of introducing transparency requirement for gender. 50% of those aged 65+ want to purchase travel insurance, 25% are refused on 1st attempt and 7% are subsequently unable to find a supplier. Assumes 3% of those aged 65+ are refused motor insurance and 7% are unable to find alternative. Each search cost £2 and signposting will save 2.25m searches p.a.

Direct impact on business (Equivalent Annual) £m):			In scope of OIOO?	Measure qualifies as
Costs: 1.7	Benefits: 7.1	Net: -5.4	Yes	NA

## Enforcement, Implementation and Wider Impacts

What is the geographic coverage of the policy/option?	Great Britain				
From what date will the policy be implemented?	01/04/2012				
Which organisation(s) will enforce the policy?	EHRC				
What is the annual change in enforcement cost (£m)?	N/A				
Does enforcement comply with Hampton principles?	Yes				
Does implementation go beyond minimum EU requirements?	N/A				
What is the CO <sub>2</sub> equivalent change in greenhouse gas emissions? (Million tonnes CO <sub>2</sub> equivalent)	<b>Traded:</b> 0		<b>Non-traded:</b> 0		
Does the proposal have an impact on competition?	No				
What proportion (%) of Total PV costs/benefits is directly attributable to primary legislation, if applicable?	<b>Costs:</b> 0		<b>Benefits:</b> 0		
Distribution of annual cost (%) by organisation size (excl. Transition) (Constant Price)	<b>Micro</b>	<b>&lt; 20</b>	<b>Small</b>	<b>Medium</b>	<b>Large</b>
Are any of these organisations exempt?	No	No	No	No	No

## Specific Impact Tests: Checklist

Set out in the table below where information on any SITs undertaken as part of the analysis of the policy options can be found in the evidence base. For guidance on how to complete each test, double-click on the link for the guidance provided by the relevant department.

Please note this checklist is not intended to list each and every statutory consideration that departments should take into account when deciding which policy option to follow. It is the responsibility of departments to make sure that their duties are complied with.

Does your policy option/proposal have an impact on...?	Impact	Page ref within IA
<b>Statutory equality duties</b> <sup>1</sup> <a href="#">Statutory Equality Duties Impact Test guidance</a>	Yes	EIA
<b>Economic impacts</b>		
Competition <a href="#">Competition Assessment Impact Test guidance</a>	No	48
Small firms <a href="#">Small Firms Impact Test guidance</a>	Yes	48
<b>Environmental impacts</b>		
Greenhouse gas assessment <a href="#">Greenhouse Gas Assessment Impact Test guidance</a>	No	49
Wider environmental issues <a href="#">Wider Environmental Issues Impact Test guidance</a>	No	49
<b>Social impacts</b>		
Health and well-being <a href="#">Health and Well-being Impact Test guidance</a>	No	49
Human rights <a href="#">Human Rights Impact Test guidance</a>	No	50
Justice system <a href="#">Justice Impact Test guidance</a>	No	49
Rural proofing <a href="#">Rural Proofing Impact Test guidance</a>	No	50
<b>Sustainable development</b> <a href="#">Sustainable Development Impact Test guidance</a>	No	49

<sup>1</sup> Public bodies including Whitehall departments are required to consider the impact of their policies and measures on race, disability and gender. It is intended to extend this consideration requirement under the Equality Act 2010 to cover age, sexual orientation, religion or belief and gender reassignment from April 2011 (to Great Britain only). The Toolkit provides advice on statutory equality duties for public authorities with a remit in Northern Ireland.

## Evidence Base (for summary sheets) – Notes

Use this space to set out the relevant references, evidence, analysis and detailed narrative from which you have generated your policy options or proposal. Please fill in **References** section.

### References

Include the links to relevant legislation and publications, such as public impact assessments of earlier stages (e.g. Consultation, Final, Enactment) and those of the matching IN or OUTs measures.

#### No. Legislation or publication

- 1 Discrimination Law Review: proposals for an Equality Bill for Great Britain (June 2007)  
<http://www.communities.gov.uk/documents/corporate/pdf/325332.pdf>
- 2 Framework for a Fairer Future (June 2008)  
<http://www.equalities.gov.uk/PDF/FrameworkforaFairerFuture.pdf>
- 3 The Government response to the consultation (July 2008)  
<http://www.equalities.gov.uk/PDF/EqBillGovResponse.pdf>
- 4 Equality Bill: Making it Work. Impact Assessment to support the consultation on ending age discrimination in services and public functions (June 2009)  
<http://www.equalities.gov.uk/pdf/13512%20GEO%20Impact%20Assessment%203rd.pdf>
- 5 Equality Bill: Making it Work. Ending age discrimination in services and public functions: A consultation (June 2009)  
<http://www.equalities.gov.uk/pdf/13511%20GEO%20Consultation%206th.pdf>
- 6 Achieving age equality in health and social care. A report to the Secretary of State for Health by Sir Ian Carruthers OBE and Jan Ormondroyd (October 2009)  
[http://www.dh.gov.uk/prod\\_consum\\_dh/groups/dh\\_digitalassets/documents/digitalasset/dh\\_107398.pdf](http://www.dh.gov.uk/prod_consum_dh/groups/dh_digitalassets/documents/digitalasset/dh_107398.pdf)
- 7 Equality Bill: Making it Work. Ending Age Discrimination in services and public functions. Policy Statement (January 2010)  
[http://www.equalities.gov.uk/pdf/GEO\\_EqualityBillAge\\_acc.pdf](http://www.equalities.gov.uk/pdf/GEO_EqualityBillAge_acc.pdf)
- 8 Equality Act Impact Assessment (Royal Assent) (April 2010)  
<http://www.equalities.gov.uk/pdf/Equality%20Act%20Impact.pdf>

### Evidence Base

Ensure that the information in this section provides clear evidence of the information provided in the summary pages of this form (recommended maximum of 30 pages). Complete the **Annual profile of monetised costs and benefits** (transition and recurring) below over the life of the preferred policy (use the spreadsheet attached if the period is longer than 10 years).

The spreadsheet also contains an emission changes table that you will need to fill in if your measure has an impact on greenhouse gas emissions.

#### Annual profile of monetised costs and benefits\* - (£m) constant prices

	Y <sub>0</sub>	Y <sub>1</sub>	Y <sub>2</sub>	Y <sub>3</sub>	Y <sub>4</sub>	Y <sub>5</sub>	Y <sub>6</sub>	Y <sub>7</sub>	Y <sub>8</sub>	Y <sub>9</sub>
<b>Transition costs</b>	13.8									
<b>Annual recurring cost</b>	0.25	0.25	0.25	0.25	0.25	0.25	0.25	0.25	0.25	0.25
<b>Total annual costs</b>	14.0	0.25	0.25	0.25	0.25	0.25	0.25	0.25	0.25	0.25
<b>Transition benefits</b>										
<b>Annual recurring benefits</b>	11.6	11.6	11.6	11.6	11.6	11.6	11.6	11.6	11.6	11.6
<b>Total annual benefits</b>	11.6	11.6	11.6	11.6	11.6	11.6	11.6	11.6	11.6	11.6

\* For non-monetised benefits please see summary pages and main evidence base section

# Evidence Base (for summary sheets)

## PROBLEM UNDER CONSIDERATION / RATIONALE FOR INTERVENTION

There is evidence that some people experience unjustified discrimination because of their age when being provided with goods, facilities and services<sup>1</sup>. This can mean, for example, receiving an inferior service from a provider; or having access to a product restricted, simply on the basis of age and without justification; or not being treated with dignity and respect when being provided with a service.

Age discrimination can impact people of all ages. We received 750 responses to the questions on age discrimination in the consultation *A Framework for Fairness: Proposals for a Single Equality Bill for Great Britain*<sup>2</sup>. The responses gave a wide range of examples of perceived age discrimination and conveyed strong support for new legislation. Much of the evidence we have seen indicates that the beneficiaries of banning age discrimination will generally be older people, but it is important to recognise that there will be beneficiaries in younger age groups too. Young people are often subject to negative stereotyping, and it is envisaged that the age discrimination ban will help end unjustified and harmful age based practices, such as service providers refusing to provide a service to young adults based purely on their age (see examples provided in text below). Consultees were also asked if legislation was the most appropriate and proportionate way of tackling harmful age discrimination. Over 730 responses were received from equality groups, businesses, charities, education and research bodies, local authorities and public sector providers and trade unions. Of those responses 83% were in favour of legislating, 11% were not and 6% were unsure.

### **Health and social care**

In 2009 the Department of Health asked Sir Ian Carruthers and Jan Ormondroyd to lead a review of age equality in health and social care, to inform thinking about what health and social care organisations should do to ensure that people are not discriminated against because of their age. This found that despite recent progress, and the good service received by many people of all ages, age discrimination remains an issue for the health and social care system which all organisations need to address. It found that greater consistency was needed across all locations and all services in the NHS to tackle “hidden” or “covert” age discrimination and a stronger emphasis should be put on quality, personalisation, and choice. Discriminatory behaviour is often bound up with other factors contributing to poor quality care: leaders within the system need to take responsibility for tackling age discrimination as part of achieving high quality care. It therefore recommended that the ban on age discrimination should come into force for health and social care at the same time as for other sectors. Health and social care services, or parts of them, should not be removed wholesale from the scope of the ban on age discrimination.

### **Financial services**

Many older people have complained that they are discriminated against when trying to obtain various financial services; they say that they have a more limited choice of services and pay a higher price for them. They also say they have problems obtaining loans, mortgages and are particularly concerned about travel and motor insurance<sup>3</sup>. In order to better understand the scale and causes of this problem GEO commissioned an independent study by Oxera. This found that no age groups are excluded from the market and in general no age group is discriminated against, in fact older people are often subsidised. However, the findings illustrate that there is a clear problem relating to a minority of older and younger people finding insurance<sup>4</sup>. Although most people of all ages find a suitable policy easily or very easily, a small but important minority of people find it difficult to do so. 3% of the respondents to the Oxera survey aged 80 or over had been refused travel insurance cover during the last year because of their age. For motor insurance it was 1.5%, which was similar to the 1.4% refusal rate for 18-24 year

<sup>1</sup> See for example *Age of equality? Outlawing age discrimination beyond the work place* Age Concern May 2007

<sup>2</sup> A Framework for Fairness: Proposals for a Single Equality Bill for Great Britain - <http://www.communities.gov.uk/publications/communities/frameworkforfairnessconsultation>

<sup>3</sup> Age Concern surveys suggest that people aged 75 and over are nearly ten times more likely to be refused a quote for motor or travel insurance than people aged 30 to 49. 13 per cent of people over 80 said they were put off taking holidays because of worries about getting insurance or the cost of premiums

<sup>4</sup> The independent Oxera research indicates that in the main older people are not being denied travel insurance, or indeed young people being denied motor insurance, on a systemic basis. Where there is a bias, this tends to be in favour of older people (for travel insurance) and younger people (for car insurance). The evidence shows that insurers are more likely to lose money, than make excessive profits, on travel insurance for older people

olds. These people end up without the insurance they need to drive (older and younger people) or to travel (older people). Oxera believe that if there is a problem in the market, it is one of matching demand with existing supply and that an efficient response is to improve access/distribution and avoid costly changes at the underwriting/production level. This is why we are providing an exception to the ban on age discrimination for the financial services sector and seeking to improve access and transparency through a voluntary approach.

### **General services**

The Discrimination Law Review<sup>5</sup> received over 750 responses with examples of age discrimination in general services. Some of these included:-

- Being refused membership to a local golf club because you are over a certain age.
- Not being allowed to book an extra leg room seat on a particular airline if you are over a certain age.
- Not being able to book a ferry ticket online due to age.
- Older people being refused a broadband contract because of their age and told that that they could only get a contract if they visit a store with a younger person.
- Older people with queries about their bank account being asked to return with a younger member of their family.
- Younger and older people experiencing difficulties trying to rent cars.
- Being refused breakdown cover because of their age.

In addition research by NatCen and the University of Sheffield found that almost one in three persons aged over 80 are excluded from basic services compared to only one in 20 of those aged 50 to 59<sup>6</sup>. A person was classified as having poor access to basic services if he/she could not easily reach one or more of the following services using their usual form of transport: bank/cashpoint, chiropodist, dentist, GP, hospital, local shops, optician, post office, shopping centre, supermarket. Further analysis by the English Longitudinal Study of Ageing (ELSA)<sup>7</sup>, suggests there are many reasons why this can occur, but one key reason is the lack of access to various services including transport or modern communication technologies. In addition the final Equalities Review report stated that people aged over 80 are particularly at risk of suffering multiple exclusion.<sup>8</sup>

### **POLICY OBJECTIVE**

By commencing provisions in the Act to ban age discrimination in the provision of services and exercise of public functions we will:

- *Provide individuals that have been discriminated against with a right to recourse through the courts.*
- *Send out a strong signal that discriminating unnecessarily because of age is unacceptable, ensuring that companies and service providers consider if their age policies and practices generally are justifiable.*
- *Create a cultural shift helping society to take steps to remove entrenched disadvantages, and to provide more opportunities to members of a disadvantaged group in order that they have a genuinely equal ability to participate in society.*
- *Ensure that age discrimination is taken as seriously as other types of discrimination.*
- *Create a primary driver for change in business practices.* Results from the European Commission's European Business Test Panel of around 3,000 businesses from the 25 EU Member States, show that whilst "increasing numbers of companies stress that ethical reasons are a driver for adopting equality and diversity practices", "legislation has had a considerable impact in promoting action", proving that "for many companies legal compliance is a crucial reason for adopting equality and diversity policies"<sup>9</sup>. A report entitled *Aspects of the Economics of an Ageing Population*, produced in 2005 by the House of Lords Select Committee on Economic Affairs, felt that there was a 'generalised failure by industry and commerce to take advantage of the lucrative market represented by the ever-growing group of older people who have at their disposal what is sometimes called the Grey

<sup>5</sup> The Discrimination Law Review - <http://www.communities.gov.uk/publications/communities/frameworkforfairnessconsultation>

<sup>6</sup> The Equalities Review Interim Report - [http://www.theequalitiesreview.org.uk/upload/assets/www.theequalitiesreview.org.uk/interim\\_report.pdf](http://www.theequalitiesreview.org.uk/upload/assets/www.theequalitiesreview.org.uk/interim_report.pdf)

<sup>7</sup> Living in the 21st century: Older people in England ELSA report - [http://www.ifs.org.uk/elsa/report08/elsa\\_w3.pdf](http://www.ifs.org.uk/elsa/report08/elsa_w3.pdf)

<sup>8</sup> The Equalities Review Report - [http://www.theequalitiesreview.org.uk/upload/assets/www.theequalitiesreview.org.uk/equality\\_review.pdf](http://www.theequalitiesreview.org.uk/upload/assets/www.theequalitiesreview.org.uk/equality_review.pdf)

<sup>9</sup> Cultural Diversity and Economic Performance: Evidence from European Regions - <http://www.bepress.com/cgi/viewcontent.cgi?article=1335&context=feem>

Pound'<sup>10</sup>. They went on to argue that little had changed since the Foresight Ageing Population report in 2000. Indeed a recent report produced by the ILC UK entitled 'The Golden Economy', concluded that 'many of the market barriers remain similar to those identified almost 50 years ago'<sup>11</sup>. Legislation may therefore be necessary to bring about change in this area.

- *Create opportunities as well as costs.* When people are excluded from our society, for example, when older customers are turned away from the market place, the UK economy misses out on potential increases in business and revenue, and costs to the state increase as families suffer the ill effects of social exclusion and the failure to provide decent health and social care.

The benefits of introducing the ban outweigh any costs. Enactment of the ban would extend the same protection to age as currently enjoyed by the other equality strands and help prevent harmful discrimination for all people aged 18 or over in the provision of services. Barriers caused by age discrimination outside the workplace would be removed, for all age groups, ensuring that no group is excluded from basic services and experiences social detachment as a consequence, which has significant economic, societal and health implications. When people are excluded from our society, for example, when older customers are turned away from the market place, the UK economy misses out on potential increases in business and revenue, and costs to the state increase as families suffer the ill effects of social exclusion and the failure to provide decent health and social care.

The costs of introducing and maintaining such a law would be low and unintended consequences and disproportionate burdens avoided if the legislation is supported by clear guidance and appropriate exceptions. In addition we have looked again at whether any of our policy goals could be achieved through non legislative solutions and to that end we have decided that:

- Measures to improve transparency in the financial services sector and to help older consumers access appropriate financial services products through signposting can be dealt with through an industry level agreement rather than through legislation.

Taking into account the better regulation principles of transparency, accountability, proportionality, consistency and being targeted we believe the legislation should include the following:-

- a general requirement not to discriminate against adults aged 18 and over, because of age in the provision of services and the exercise of public functions;
- an 'objective justification' defence for different treatment where it is a proportionate means of achieving a legitimate aim;
- positive action provisions to help address disadvantage more effectively;
- specific exceptions to enable beneficial or justifiable differential treatment to continue without fear of legal challenge; and
- Codes of practice and guidance to provide explanations and practical examples of what would be covered by the new law or unaffected by it.

## **OPTIONS**

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

- **Option 1:** Do nothing. Age discrimination in the provision of services and the exercise of public functions to continue.
- **Option 2:** Prohibit all differential treatment of people aged 18 or over by providers of services and those exercising public functions, except where it can be objectively justified.
- **Option 3:** Prohibit all differential treatment of people aged 18 or over by providers of services and those exercising public functions, except where it can be objectively justified, and provide relevant specific exceptions to ensure that justifiable age based treatment can continue.

### **General Services (Preferred – Option 3)**

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<sup>10</sup> *Aspects of the Economics of an Ageing Population*, 2005 by the House of Lords Select Committee on Economic Affairs

<sup>11</sup> *The Golden Economy: the Consumer Marketplace in an Ageing Society*, ILC-UK, October 2010

We have set out a number of specific exceptions where differential treatment on the basis of age would continue to be lawful. They would help to ensure that service providers do not as a matter of course end beneficial practices or withdraw services out of concern that they may be open to legal challenge or that the process of justification undermines their ability to continue to provide the service or function on an economic basis or at all. These include:

- Age-based concessions and benefits;
- Age-related group holidays;
- Residential park homes;
- Sporting events; and
- Immigration services.

The ban applies to all those aged 18 or over as do the exceptions. A detailed rationale for having each of these exceptions is provided below.

### **Financial Services (Preferred – Option 3)**

Our independent research has found that financial services products are available to all age groups, although some age groups have more to choose from than others, and that only a very small proportion of consumers are turned down or unable to find products because of their age. Prices appear to be broadly fair, based on the risks (how likely you are to claim) and the costs (how much you claim). The research did, however, find that there was considerable mistrust regarding how age was used when calculating risks and therefore transparency needed to be improved. The research also showed that access could be improved by providing a sign-posting/referral system to help people who are refused a quote because of their age to find an alternative.

The Government has therefore decided to provide an exception that would allow financial services providers to continue to use a person's age but only when its risk assessments are based on relevant and reliable information. This is in conjunction with non-legislative measures to improve access and transparency in respect of travel and motor insurance. This approach will also allow the continued use age banding. We believe this is the right approach because restricting the extent to which the financial services industry can base prices on risks and costs would distort the market, leading to increased costs and higher prices, with the possibility of some companies leaving the market altogether.

The use of age-limits will also be able to continue. Financial service providers will not therefore be forced to participate in sectors that they do not wish to operate in, or have no experience in. We understand that providers need to have credible data on age groups in order to serve them. This helps to ensure costs are kept to a minimum which is beneficial for both providers and consumers. Providers will instead be able to specialise in providing products only to certain age groups. For example, SAGA specialises in providing for the over 50's.

### **Health and Social Care (Preferred – Option 2)**

The Department of Health has worked with external organisations and other interested parties (including respondents to previous consultations) to consider whether *targeted* exceptions around some key areas outlined by the Age Review are appropriate to support services in taking age into account when it is right and appropriate to do so. Following this consideration the Government believe there should be no exceptions in the health and social care fields to the ban on age discrimination – any age-based practices by the NHS and social care should be objectively justified.

This decision was taken because exceptions would have the potential in effect to permit 'bad' uses of age (e.g. those highlighted by the Age Review) to continue as well as protecting beneficial practices. Where harmful age-based practices are occurring, that are not objectively justifiable are occurring, it is right that this should be open to challenge. The legislation will not prevent age being taken into account in decision making where its use can be demonstrated to be a proportionate means of achieving a legitimate aim. Relying on the objective justification test will incentivise a culture shift, whereby individuals and organisations will need to consider their practices in relation to discrimination (e.g. a thorough assessment based on the individual's needs will be necessary in order to allow practitioners to demonstrate that their decisions meet the test, should that decision be challenged).



**SUMMARY TABLES OF MONETISED COSTS AND BENEFITS OF PREFERRED OPTIONS – (See annexes for detailed discussion of costs/benefits)**

**Costs (in £ millions)**

	Descriptor	COSTS							
		Transitional (one-off)				Recurring			
		Public Sector		Private Sector*		Public Sector		Private Sector*	
		High	Low	High	Low	High	Low	High	Low
<b>General</b>	Familiarisation	0.09	0.09	6.8	3.6	-	-	-	-
	Training	1.63	1.09	7.2	3.8	-	-	-	-
	Changing policies and procedures	0.03	0.03	1.4	0.2	-	-	-	-
<b>Financial Services</b>	Publishing aggregate data (voluntary measure)	-	-	0.72	0.72	-	-	0.25	0.25
<b>Health and Social Care</b>	Litigation	-	-	-	-	Not monetised		-	-
	Training and guidance	Not monetised		-	-	-	-	-	-
	System reform	Not monetised		-	-	-	-	-	-
<b>TOTAL</b>		1.76	1.21	16.1	8.32	-	-	0.25	0.25

\* Cost per large firm is equivalent to the cost per public sector organisation. Costs per SME are less per firm than the public sector.

**Benefits (in £ millions)**

	Descriptor	Benefits												
		One-off						Recurring						
		Public Sector		Private Sector		Individuals		Public Sector		Private Sector		Individuals		
		High	Low	High	Low	High	Low	High	Low	High	Low	High	Low	
<b>Financial Services</b>	Reduction in search costs for individuals from signposting	-	-	-	-	-	-	-	-	-	-	-	4.5	4.5
	Increases in premiums from signposting									7.07	7.07			
<b>Health and Social Care</b>	Better access to services	-	-	-	-	-	-	Not monetised		-	-	-	-	
	Better outcomes for patients	-	-	-	-	-	-	Not monetised		-	-	-	-	
	Reductions in complaints	-	-	-	-	-	-	Not monetised		-	-	-	-	
<b>TOTAL</b>						-	-	-		7.07	7.07	4.5	4.5	

**Net Impact (in £ millions) – See separate annexes for detailed costs/benefits**

		Costs		Benefits		Net Impact Present value
		One-off	Recurring	One-off	Recurring	
<b>Private Sector</b>	<b>High</b>	8.35	0.25	-	7.07	50.4
	<b>Low</b>	16.21	0.25	-	7.07	42.5
<b>Public Sector</b>	<b>High</b>	1.21	-	-	-	-1.2
	<b>Low</b>	1.76	-	-	-	-1.8

<b>Individuals</b>	<b>High</b>	-	-	-	4.50	38.7
	<b>Low</b>	-	-	-	4.50	38.7
<b>Total</b>	<b>High</b>	9.56	0.25	-	11.57	87.9
	<b>Low</b>	17.97	0.25	-	11.57	79.5

## **RISKS AND ASSUMPTIONS OF PREFERRED OPTIONS**

### **General Services (Preferred – Option 3)**

The following assumptions were made when calculating the general costs and benefits of legislating to ban age discrimination:

- There will be exceptions for age-based concessions, age-related group holidays, immigration, sport and residential park homes.
- *Number of firms familiarising themselves with the legislation* – The calculations assume that 100% of large firms and public sector organisations will familiarise with the legislation in year 1. It assumes that 24%-48% of small and medium enterprises (SMEs) will familiarise in year 1. This is predicated on the fact that the legislation will only impact on those organisations providing services directly to the public (retail, wholesale, hotels, restaurants, repairs, transport, communication, financial services firms etc). The other 52% of SMEs that do not provide services directly to the public (i.e. agriculture or manufacturing) or are not covered by the law (such as real estate firms) will not proactively familiarise themselves with the new legislation and will only become aware of the change when circumstances in which the age discrimination ban is engaged arise. We have assumed that between 50% and 100% of SME firms that provide services directly to the public will want to familiarise themselves with the law.
- *Time taken to familiarise themselves with the law* – The calculations assume that large firms and public sector organisations will take 2 hours to familiarise themselves with the law and SME firms will take 30 minutes. These are the same assumptions made for other new measures contained in the Equality Act and have been tested with business and consumer stakeholders at meetings
- *Number of firms incurring training costs* – After primary discussion with stakeholders the calculations assumes between 8% and 12% of large firms and public sector organisations will incur training costs and between 2.5% and 3.5% of SME service providers. We have assumed that any training will take 3 hours to complete.
- *Number of firms that need to change procedures as a result of the legislation* – Based on feedback from initial consultation exercises the calculations assume 5% of large firms and public sector organisations will incur compliance costs from amending policies, practices and procedures and between 0.5% and 1.5% of SME service providers. We have assumed this will take an average of 14 hours to complete.

### **Financial Services (Preferred – Option 3)**

The following assumptions were made when calculating the costs of measures taken to improve transparency in the financial services sector:

- The calculation assumes that almost all insurers would choose to enter into collective publication arrangements through the Association of British Insurers (ABI) or another agency.
- Estimates were based on the costs of introducing a transparency requirement for gender following the implementation of the Gender Directive. They include the costs of developing some internal reporting systems together with the development of a central collection and publication system. Estimated annual running costs were based on 15 senior managers and 20 administrator hours for a large company and 5 and 10 hours respectively for a small company, including associated overheads of 30%; central staff costs and central publication costs.

The following assumptions were made when calculating the benefits of measures taken to improve access to financial service products through signposting:

- The calculations assume that 50% of those aged 65+ want to purchase travel insurance and 25% of that number are refused on their first attempt and 7% of these are subsequently unable to find a different supplier. Figures supplied by SAGA and ABI.
- Assumes 3% of those aged 65+ are refused motor insurance and 7% of these are unable to find an alternative. Figures supplied by SAGA.

- Costs based on estimates by AA of the economic revenue for an average person driving 10,000 miles a year.
- Search costs – assumes that each search costs £2 and that a signposting/ referral system will save people carrying out 2.25 million searches a year.

## Health and Social Care (Preferred – Option 2)

Costs and benefits of banning age discrimination in health and social care are yet to be monetised. We will use the following consultation to test these assumptions:

- Legislation will not include any exceptions for age based practices in health and social care.
- Legislating to ban age discrimination could result in better outcomes for older patients as it would lead to quicker more effective treatment. This in turn would reduce dependency on the health and social care system by, for example, reducing length of stay at hospitals etc.
- Allowing older people a fairer and more equitable access to diagnosis and treatment at an earlier stage could result in significant savings for the NHS and society more generally as it will help to improve the outcomes for patients in the long term. For example, it could result in:
  - o fewer premature deaths;
  - o fewer disabilities associated with chronic diseases in older age;
  - o more people enjoying a positive quality of life as they grow older;
  - o more people participating actively as they age in the social, cultural, economic and political aspects of society, in paid and unpaid roles and in domestic, family and community life; and
  - o Lower costs related to medical treatment and care services<sup>12</sup>.
- Legislating to ban age discrimination may reduce claims for negligence as patients are treated with more dignity and respect.
- The ban on age discrimination may result in a potential rise in discrimination cases, particularly if there are no exceptions, as any health or social care practice can, in effect, be challenged in the courts as being discriminatory because of age.
- Some of the organisational changes in the health or social care system that will take place over the next two years may mean that there may be additional training costs to the system to raise awareness within the new organisations (e.g. for GP consortia).
- Implementation will require some reallocation of resources by PCTs and local authorities. Between now and 2012 it will be possible to make these changes alongside, as well as being part of, other policies, which will make transition easier (so less costly) for PCTs, local authorities, patients, service users and carers encouraging more active ageing which reduces pressure on the NHS.

## COSTS AND BENEFITS OF OTHER OPTIONS CONSIDERED

Providing an exception for a current practice, such as the offering of age-based concessions, will lead to no aggregate costs or benefit impacts. Exceptions will ensure that the status quo is maintained.

We have, however, given examples to illustrate the cost impact if an exception was not provided (option2 for financial and general services).

### General Services

The estimated benefits of having exceptions for some general service providers are as follows:

Product	Examples of recurring benefits
Age based concessions – retail sector	Loss of revenue of £75m for 1 retail firm alone of not being able to run an age based concession card scheme
Age based concessions – historical and education sector	£1.7m for 1 organisation based on having age based membership rates
Age based concessions – Culture, arts and cinema	£47.5m for one sector based on offering age based concessions at off peak times
Age related group holidays	£123.5m for the 2 largest providers of age specific

<sup>12</sup> Active Ageing: a Policy Framework, WHO, 2002

	group holidays
Age limits for residential park homes	£19.88m for park operators and home owners associated with changes in property prices and fees as result of changing the parks nature.
Source: See detailed calculations in Annex 4.	

In addition where an exception has not been provided other age specific services will be able to continue as long as the provider of that service can show that they are a proportionate means of achieving a legitimate aim. Exceptions have only been provided where the use of age is an inherent part of the service provision. In other services we would expect age segmentation to be justified.

## Financial Services

The estimated benefits to the financial services industry of allowing them to continue to use of age as a risk factor is as follows:

Product	One-off benefits	Ongoing benefits
Motor Insurance	£10.6 m	£0.1m
Travel Insurance	£1.8m	£10.6m
Pensions	Unquantifiable	Unquantifiable
PMI	£5.5m <sup>13</sup>	£4.1m <sup>14</sup>
Life insurance	£122.1m	£74.1m
Critical illness & Income Protection	£102.5 m	£30.0m
Annuities (Average)	£29.58 <sup>15</sup>	Unquantifiable
<b>Total</b>	<b>£272.08m</b>	<b>£118.9m</b>
Source: ABI research & Finance and Leasing Association		

## SUMMARY

Our approach to the commencement and operation of legislation is a practical one. We want to ensure people are treated fairly and that services are in place which meet the needs of people of all ages. However, we also want it to be possible to treat people differently because of their age where it is justifiable or beneficial to society to do so. The legislation therefore needs to take into account how people of different ages live and their different needs, as well as how businesses and other organisations operate in order to avoid disproportionate burdens and unintended consequences.

We have therefore considered carefully the extent to which beneficial age-based practices should be able to continue once a ban is in place; and how the law should facilitate this. This is why we have decided that there are justifiable or legitimate uses of age for which we want to provide specifically in the legislation through 'exceptions'.

## ADMINISTRATIVE BURDENS

This policy does not create any additional administrative burdens or savings against the department's administrative burden baseline.

## MONITORING AND REVIEW

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

## NEXT STEPS

<sup>13</sup> Based on the costs for four the large PMI insurers, with a combined market share of 87% in 2009. The costs of smaller firms are assumed to be proportionate to those costs for larger firms.

<sup>14</sup> Based on additional costs for medical underwriting resources for a large firm (£200k); MI and pricing analysis (£200k); uncertainty risk, including cost of capital to cover unexpected outcomes (£500k). Calculated on the basis of four large PMI insurers, with a combined market share of 87% in 2009 and the costs of smaller firms assumed to be proportionate to those costs for larger firms.

<sup>15</sup> Legislation on the use of age could result in the PLA and SSA market, which processes premiums totalling between £100m and £150m per annum, ceasing to exist.

This assessment of the impact, including costs and benefits, of commencing the age discrimination ban in Part 3 of the Act in respect of services and public functions and of allowing specific exceptions from that ban is an integral part of the work we have undertaken and will continue to be considered and further developed following the consultation. It is important that we fully understand and outline the costs and benefits of these policies and continue to revise the impact assessment as further information becomes available.

This impact assessment has been marked fit for purpose given the stage of the policy development, by the Regulatory Policy Committee. We accept their recommendation that some of the assumptions and evidence behind the estimates of the benefits need further testing during the consultation period and will be arranging some detailed focus groups to work through these accordingly.

An updated impact assessment will accompany the secondary legislation when it is laid before Parliament, which is planned to take place in 2011.

# Annexes

Annex 1 should be used to set out the Post Implementation Review Plan as detailed below. Further annexes may be added where the Specific Impact Tests yield information relevant to an overall understanding of policy options.

## Annex 1: Post Implementation Review (PIR) Plan

A PIR should be undertaken, usually three to five years after implementation of the policy, but exceptionally a longer period may be more appropriate. If the policy is subject to a sunset clause, the review should be carried out sufficiently early that any renewal or amendment to legislation can be enacted before the expiry date. A PIR should examine the extent to which the implemented regulations have achieved their objectives, assess their costs and benefits and identify whether they are having any unintended consequences. Please set out the PIR Plan as detailed below. If there is no plan to do a PIR please provide reasons below.

**Basis of the review:** [The basis of the review could be statutory (forming part of the legislation), i.e. a sunset clause or a duty to review, or there could be a political commitment to review (PIR)];

The Government Equalities Office is committed to reviewing the Equality Act 2010 (“the Act”) as a whole. If the provisions in the Act enabling a ban on unjustifiable age discrimination against adults aged 18 and over by those providing goods, facilities, services and exercising public functions (Part 3 in relation to Age including the power to create exceptions by Order in section 197) are commenced then this will form part of this wider review and feeding into delivery of the post implementation review planned for the Act after 3-5 years.

**Review objective:** [Is it intended as a proportionate check that regulation is operating as expected to tackle the problem of concern?; or as a wider exploration of the policy approach taken?; or as a link from policy objective to outcome?]

The review objectives will reflect those that are set for the review of the Act, to ascertain whether and the extent to which the legislation is functioning as expected. There will also be objectives specific to the age discrimination ban; the review will demonstrate where this element of legislation is operating as expected to tackle inappropriate age discrimination without any unexpected consequences in relation to stopping beneficial/ justifiable age based practices continuing.

**Review approach and rationale:** [e.g. describe here the review approach (in-depth evaluation, scope review of monitoring data, scan of stakeholder views, etc.) and the rationale that made choosing such an approach]

The precise review approach will be determined in the context of the wider Equality Act review, which will involve gathering stakeholder views, use of monitoring data and specifically commissioned primary research, but only if required and considered appropriate and proportionate.

**Baseline:** [The current (baseline) position against which the change introduced by the legislation can be measured]

The main baseline measure will be the volume of age discrimination cases referred to the courts. Currently there is no age discrimination ban, and as such the baseline position on this metric will be no cases. The number of cases of litigation a year in relation to age discrimination could be monitored from the commencement of this provision.

Where required, further baseline measures will be developed as part of the review of the Act. These will include the numbers of organisations providing goods, facilities, services and exercising public functions that ensure that their services are accessible for all ages, or have made changes to organisational practices as a consequence of the ban on unjustifiable age discrimination.

The Impact Assessment collates a number of areas in which the ban on unjustifiable age discrimination is expected to have an effect. These are: Health and Social Care, Financial Services, and General Services (accessing services tailored to meet the needs of a younger audience). However, the collated indicators of age discrimination in these areas presented in the Impact Assessment are not direct measures of the change introduced by the legislation or a direct consequence of this. Instead they are indirect indicators of the problem existing. These will be baselined to see if, on commencement of the provisions, they demonstrate any benefits such as better access to services, better outcomes from treatment and less recourse to complain under Health and Social Care.

For example, as a consequence of goods and service providers adjusting practices to reduce the exclusion of particular age groups from their services, we would expect to see an effect on the following metrics:

- Almost 1 in 3 persons aged over 80 are excluded from basic services compared to only one in 20 of those aged 50 to 59 (ELSA 2006)
- People aged over 80 are particularly at risk of suffering multiple exclusion (29% aged over 80)

excluded from 2 or more basic services compared to 6% of those aged 50 to 59) (ELSA 2006)

**Success criteria:** [Criteria showing achievement of the policy objectives as set out in the final impact assessment; criteria for modifying or replacing the policy if it does not achieve its objectives]

The precise success criteria for this section will be determined in the wider context of the overall review of the Equality Act. It will be important, in undertaking this exercise that the criteria are underpinned by success specific to the ban on unjustifiable age discrimination against adults aged 18 and over by those providing goods, facilities, services and exercising public functions. It is envisaged that these will reflect how closely the results have matched the final age discrimination ban objectives. These could include:

- Stakeholders believe that age discrimination has been reduced
- Evidence of people challenging and winning discrimination cases
- Organisations ensure that their services are accessible for all ages or change practices to ensure they do not exclude anyone
- Evidence of the systems set up through policy working, e.g. insurance signposting –people helped via the signposting system - and insurance transparency measures delivering an acceptable level of quality.

**Monitoring information arrangements:** [Provide further details of the planned/existing arrangements in place that will allow a systematic collection systematic collection of monitoring information for future policy review]

We will continue to use (where possible) the data sources set out in the evidence base summary sheets, and revise and update assumptions based on the most up-to-date statistical findings. These will be supplemented with the evaluation evidence established in the review of the Equality Act

**Reasons for not planning a review:** [If there is no plan to do a PIR please provide reasons here]

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## Annex 2: GENERAL COSTS AND BENEFITS

### Benefits of banning age discrimination in the 'general services' sector

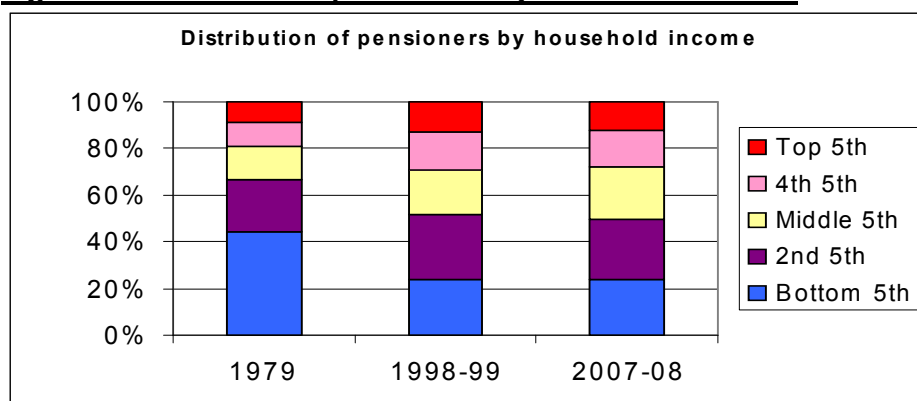
There are real economic benefits for retailers in adapting their practices to meet the needs of older consumers and part of this includes tackling unjustifiable age discrimination.

#### **Size of the market**

Analysis of the figures produced by the Office for National Statistics (ONS) in their 'Family Spending' report<sup>1</sup> show that spending by people over 75 reached £97 billion in 2008, around 15% of overall household expenditure. For people aged 50 and over, we calculate that the figure was £276 billion in 2008, around 44% of total family spending in the UK.

In addition net incomes of pensioner households grew by 25% in real terms between 1998/9 to 2007/8 compared to real earnings growth of 11% for pensioners.<sup>2</sup>

**Figure 1 Distribution of pensioners by household income**



Source: Pensioners' Incomes Series, DWP

Selling products and services to older people is therefore a major opportunity. These figures show that this is the fastest growing market in terms of population growth and market segment with increasing wealth relative to the rest of the population. 85% of national wealth<sup>3</sup> and 44% of annual consumer spending are accounted for by people over the age of 50 and this is likely to grow<sup>4</sup>. Studies show the older market will grow by 81% from 2005 to 2030, while the 18 – 59 year old market will increase by just 7%<sup>5</sup>. In the UK, the number of consumers over 60 years old could increase by 40% over the next 30 years<sup>6</sup>. Thus retailers must do more to attract older shoppers or risk losing out on the multi-billion-pound market.

This is supported by a study by Verdict Research, which found that those aged between 65 and 74 would spend on average £4,379 in the shops in 2007, and by 2017 that was expected to increase by almost 40% to £6,055, with spending significantly higher in the traditionally youth-orientated fields of fashion, beauty and electrical goods<sup>7</sup>. The second biggest increase is likely to be among those aged between 55 and 64, who would spend £7,412 in 2017 - an increase of 36.5%. In comparison, those in the age group 25 to 34 would increase their retail spending by less than 14%, although they would still spend more per head. A change in spending habits and a population increase, with the number of 65- to 74-year-olds expected to rise by 28%, will mean that some businesses need to change their approach to better target an ageing society. This should give service providers the commercial encouragement to ensure that they do not age discriminate.

<sup>1</sup> ONS Family Spending' report - <http://www.statistics.gov.uk/statbase/product.asp?vlnk=361>

<sup>2</sup> Source: Pensioners' Incomes Series, DWP

<sup>3</sup> Older richer fitter: Identifying the customer needs of Britain's ageing population, David Metz and Michael Underwood, 2005.

<sup>4</sup> ONS Family Spending' report - <http://www.statistics.gov.uk/statbase/product.asp?vlnk=361>

<sup>5</sup> EU figures quoted by Stewart – Older Customers. The Golden Economy (Research commissioned by Age UK – David Sinclair, Head of Policy and Research, ILC-UK

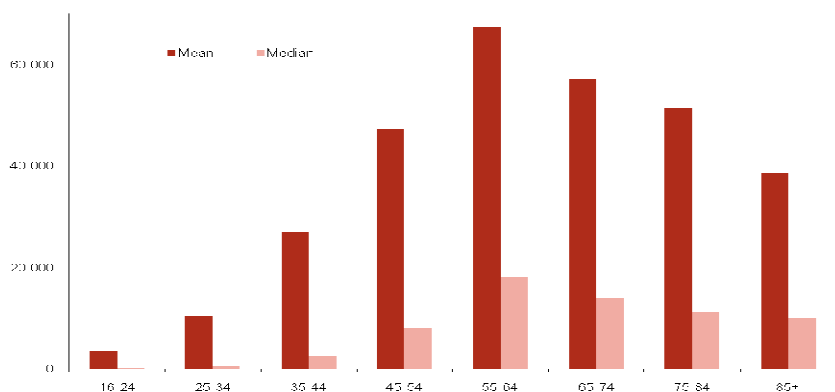
<sup>6</sup> Meneely, Burns and Strugnell (2008)

<sup>7</sup> Daily Telegraph - <http://www.telegraph.co.uk/news/uknews/1570063/Grey-pound-set-to-drive-retail-spending.html>



The distribution of net household wealth illustrates that older people generally have considerable wealth and assets compared to other age groups<sup>8</sup>.

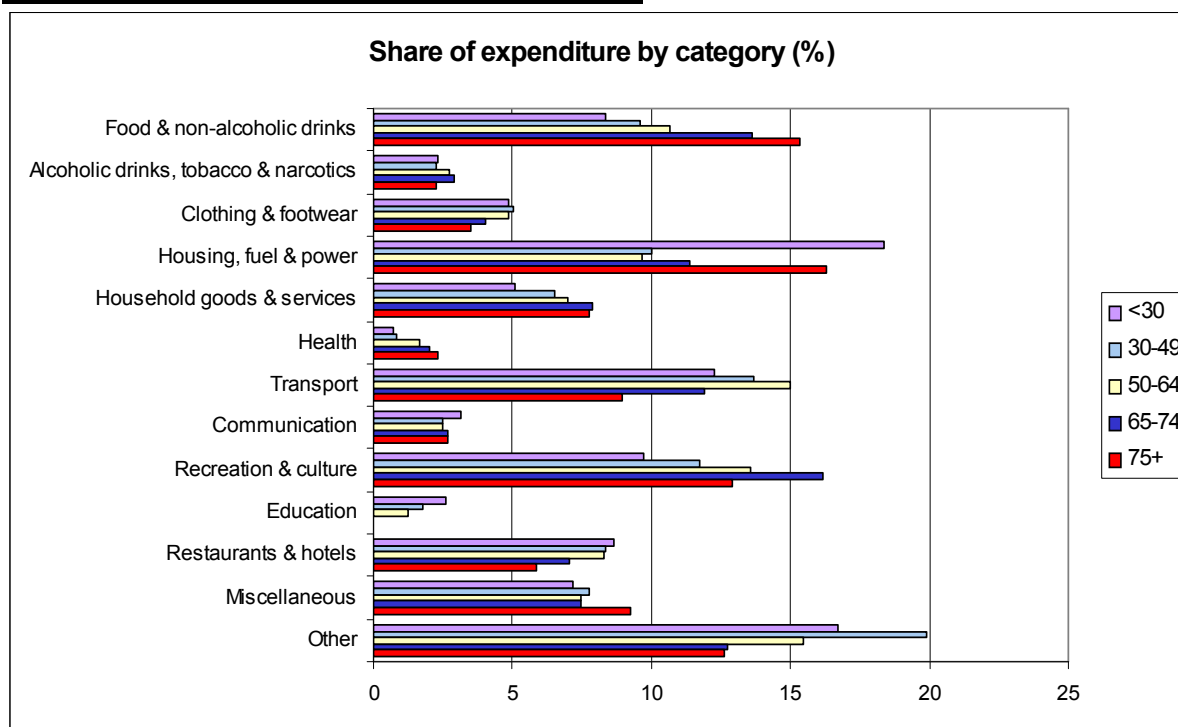
**Figure 2 Distribution of net household financial wealth**



Source: Wealth and Assets Survey

We have not as yet, however, seen a significant change in some businesses' approach to try to capitalise on the economic opportunities presented by an ageing society. Older consumers participation in retail is currently lower than average in a number of sectors including alcoholic drinks, clothing and footwear, transport, recreation, culture and restaurants and hotels<sup>9</sup>.

**Figure 3 Share of expenditure by category (%)**



Source: Family Spending Report 2008-09

Older people currently spend more than other ages on medical drugs and healthcare, personal care and coffee. They also represent a significant market for new cars and travel. However, clothing spend declines with age and less is spent on eating out, movies, theatre and petrol<sup>10</sup>.

Research by Age UK supports the fact that some businesses are slow to adjust to the evolution of an ageing society. This research shows that many older people think businesses and retailers have little

<sup>8</sup> Results exclude households with zero net financial wealth. Wealth and Assets Survey, ONS© Crown copyright 2009

<sup>9</sup> ONS Family Spending report - <http://www.statistics.gov.uk/statbase/product.asp?vlnk=361>

<sup>10</sup> Older consumers. The Golden Economy (Research commissioned by Age UK) – presentation by David Sinclair, Head of Policy and Research, ILC-UK

interest in the consumer needs of older age groups and many still face obstacles in accessing services tailored to meet the needs of a younger audience<sup>11</sup>. Older people often assume that certain products and services are not for them and therefore do not consider purchasing. They also assume that certain technologies are for younger people and don't consider their use as a means of engaging with the whole consumer market<sup>12</sup>.

In March 2010 BIS published a discussion paper entitled: '*Is business ready for an ageing nation? Economic opportunities and challenges of ageing: Discussion paper*'. This discussed in part the reasons why some businesses have been slow to react to the opportunities presented by an ageing society. Further work will follow looking at this issue in more detail and the best mechanisms for influencing behaviour.

### **Examples of the economic benefits of tackling discrimination**

There are numerous case study examples of how tackling discrimination in other areas and improving diversity can increase market growth. For example:

- The Dove soap marketing campaign underpinned by a clear diversity philosophy and message is estimated to have resulted in a 700% increase in sales for Unilever<sup>13</sup>.
- By identifying and working with ethnic minority suppliers to increase their ethnic food ranges and expand their ethnic minority supplier base, ASDA has experienced incremental sales and profit across ethnic categories with 118% sales growth. ASDA has also seen increased customer satisfaction measured by 'Ethnibus' and listening groups, and has increased investment into Ethnic Trading initiatives<sup>14</sup>.
- Adecco set targets and objectives relating to the work placement and employment of people with disabilities. In 2004 it facilitated access to work for 9,578 persons with disabilities across Europe an increase of 9% on 2003. The commitment to disability inclusion has been a key factor in Adecco winning calls for tenders with some clients<sup>15</sup>.
- Since 2004, Deutsche Telekom has provided free Internet courses to more than 42,500 over 50's, contributing to recent high growth in home-based Internet access amongst the over 50s in Germany and to Deutsche Telekom's continuing strong sales in Internet service provision<sup>16</sup>.
- Volvo car designed by women has had wide cross-over appeal because of its many user-friendly features, originally designed with women drivers in mind<sup>17</sup>.
- L'Oreal, the beauty products manufacturer, unveiled Jane Fonda, who was 69, as the new face of its television advertising in 2006, while Marks & Spencer started to use Twiggy (in her late 50s) to help sell their clothes, which had a positive result as Marks & Spencer then announced better-than-expected half-year profits, in part driven by the success of its clothing range<sup>18</sup>.

Equality can be a means to promote economic growth rather than a cost or issue that can be postponed by:

- Enhancing a company's reputation and image and consequently its standing within the local community. For example, transport can be a major barrier to the market; some shops are concentrated in places that require access by motor cars, which cause difficulties for those who can

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<sup>11</sup> Age UK: The Grey Pound set to hit £100bn - <http://www.ageuk.org.uk/latest-news/archive/the-grey-pound-set-to-hit-100bn-mark/>

<sup>12</sup> Older consumers. The Golden Economy (Research commissioned by Age UK) – presentation by David Sinclair, Head of Policy and Research, ILC-UK

<sup>13</sup> The business impact of equality and diversity: the international evidence

<sup>14</sup> Business in the Community case study - [http://www.bitc.org.uk/workplace/diversity\\_and\\_inclusion/race/case\\_studies/asda\\_case\\_studies.html](http://www.bitc.org.uk/workplace/diversity_and_inclusion/race/case_studies/asda_case_studies.html)

<sup>15</sup> The Business case for diversity: Good Practices in the workplace. European Commission. Directorate-General for Employment, Social Affairs and Equal Opportunities, September 2005

<sup>16</sup> The Business case for diversity: Good Practices in the workplace. European Commission. Directorate-General for Employment, Social Affairs and Equal Opportunities, September 2005

<sup>17</sup> The Business case for diversity: Good Practices in the workplace. European Commission. Directorate-General for Employment, Social Affairs and Equal Opportunities, September 2005

<sup>18</sup> Daily Telegraph - <http://www.telegraph.co.uk/news/uknews/1570063/Grey-pound-set-to-drive-retail-spending.html>

no longer drive. Also Sainsbury's and Tesco opening smaller local and metro branches in town centres help older people who may have access problems, but at the same time benefits all the local community by providing access to their services in town centres;

- Improving innovation, by enhancing the ability to develop new products and services and take advantage of potential new markets. For example, in 2008 DIY company B&Q launched a "Can Do range" of products endorsed by the Disabled Living Foundation. The products are designed to make daily life easier for those suffering from age-related impairments, such as failing strength, dexterity, sight and hearing. It includes a body drier, low-level kitchen units, ovens with side-opening doors, plugs with handles, and garden tools with extra grip and long handles<sup>19</sup>;
- Helping companies to gain a competitive advantage in the market place by increasing repeat business and referrals to new customers;
- Being more 'older friendly', which can enable a company to keep its current customers, but at the same time attract new clientele. In 2009 Tesco announced it was building an older person friendly retail environment complete with wider shopping aisles and brighter lights, from which everyone would benefit<sup>20</sup>;
- Helping businesses to survive through big societal changes (i.e. the demographic shift the UK is facing. The over 85 group is projected to more than double in the next 25 years to reach 3.3 million)<sup>21</sup>.

Indeed the vast majority (83%) of the 495 companies taking part in the European Business Test Panel (EBTP) are convinced about the business benefits of diversity and tackling discrimination<sup>22</sup>. In addition the test panel concluded that "legislation has had a considerable impact in promoting action", proving that "for many companies legal compliance is a crucial reason for adopting equality and diversity policies".

### **Illustrative monetised benefits**

It is difficult to estimate the extent to which participation in the retail sector, by people over the age of 50, would increase as a result of banning unjustifiable age discrimination. However, the case studies below illustrate how individual discriminatory decisions, policies and practices can impact on a company's revenue.

#### **Real Life Examples and Case Studies**

**Broadband contract:** A lady of 70 is refused a broadband contract because of her age and told that she could only contract with the company if she visited one of its stores accompanied by a younger person. For the company this treatment could cost them the value of a mobile phone contract each year.

**Ferry travel:** A man was told that he was unable to book a ferry ticket online because he was over the age of 65. If this caused so much inconvenience for the passenger that he decided to travel using a different route resulting in the company losing the value of that fare.

**Air travel:** An airline restricts the booking of extra leg room seats (for which they charge a fee) to persons under 65. This restriction is applied because the airline assume that anyone over the age of 65 would be unable to help the air crew open the emergency exit doors, which were located next to the extra leg room seats, without considering each individual case on its merits. As a result of this policy the couple may not fly with this operator again. This could cost the airline/holiday provider the value of a ticket next year.

<sup>19</sup> Retail Week - <http://www.retail-week.com/bq-targets-grey-pound/538402.article>

<sup>20</sup> Older consumers. The Golden Economy (Research commissioned by Age UK) – presentation by David Sinclair, Head of Policy and Research, ILC-UK

<sup>21</sup> Analysis Note: The Economic Case for Gender Equality, Mark Smith and Francesca Bettio, August 2008

<sup>22</sup> The Business case for diversity: Good Practices in the workplace. European Commission. Directorate-General for Employment, Social Affairs and Equal Opportunities, September 2005

**Banking:** A lady of 70 had a query about her bank account. When she asked a cashier to explain this he asked that she return with a younger member of her family. If the lady subsequently decided to change her bank this treatment could cost the bank the annual value of that bank account.

**Golf club:** A keen golfer wanted to join a local golf club after he moved home. His application was refused because of his age (58). This policy could cost a significant amount in membership fees alone.

**Garage services:** A man was refused the use of a courtesy car by a garage because of the age limit that applied (65 years). The reasons for this restriction were not explained. If, as a result of this policy the man decided not to use this garage again it would cost them the average cost of undertaking a car service each year.

**Breakdown cover:** A man was refused breakdown cover on the grounds of his age. He complained to the company, asking what a person's age has to do with the likelihood of a vehicle breaking down or getting a puncture. This policy could cost the breakdown recovery business the cost of annual roadside assistance membership.

### ***Non-monetised benefits***

There are also significant benefits from banning unjustifiable age discrimination that are difficult to put a monetary value on. These include:

- ***Increasing freedom, mobility and choice for younger and older people by removing inequalities which represent a significant barrier to people's opportunities in life.*** The benefits from this range from helping people make new friends, maintaining or improving their health and fitness to developing new skills.
- ***Helping to tackle social detachment in older people.*** According to the *English Longitudinal Study of Ageing (ELSA)*<sup>23</sup> and the *General Household Survey 2006*<sup>24</sup>, one-in-ten older people experienced social detachment. There are many reasons why this can occur but one key reason is the lack of access to various services, transport, financial products or modern communication technologies. For example:-
  - Older people without access to public or private transport were six times more likely to have experienced persistent social detachment than those with access to private or public transport (25% compared with 4%).
  - Older people with no landline telephone, or with no mobile phone or internet access, had an increased risk of persistent social detachment (18% and 8%, respectively).
  - Over one in ten of older people with no bank account (12%) and with no other financial products (15%) experienced persistent social detachment. It may be that being without these financial products meant that participating in society was difficult – for example, being unable to pay for services with a debit card – although it could also be the case that these older people faced other associated disadvantages, such as being income poor. This is an issue of access and is one we are tackling through our voluntary sign posting scheme.
  - 17% of older people with difficulties accessing basic services such as a post office or shops experienced persistent social detachment.
  - The proportion of older people persistently detached was four times higher for those who did no physical activity (16% compared to 4% who were physically active). Of course, physical activity itself may be a form of social *participation*, particularly if done with other people or as part of a club.

Social detachment can result in inactivity and isolation which in turn can accelerate the physical and psychological decline towards premature, preventable ill-health<sup>25</sup>. For example, only 31% of 50-54 year olds, 27% of 60-64 year olds, 16% of 70-74 year olds and 4% of 80-84 year olds achieve the physical activity guidelines (30 minutes of activity 5 days a week). By improving access to services,

<sup>23</sup> English Longitudinal Study of Ageing (ELSA)- [http://www.ifs.org.uk/elsa/report08/elsa\\_w3.pdf](http://www.ifs.org.uk/elsa/report08/elsa_w3.pdf)

<sup>24</sup> General Household Survey 2006 - <http://www.statistics.gov.uk/statbase/product.asp?vlnk=5756>

<sup>25</sup> Making life better for older people (ODPM) -

[http://www.cabinetoffice.gov.uk/media/cabinetoffice/social\\_exclusion\\_task\\_force/assets/publications\\_1997\\_to\\_2006/making\\_older\\_people.pdf](http://www.cabinetoffice.gov.uk/media/cabinetoffice/social_exclusion_task_force/assets/publications_1997_to_2006/making_older_people.pdf)

by eliminating unjustifiable age discrimination, this will go some way to addressing the causes of social detachment in older people.

- ***It sets a benchmark for the fair treatment of people of all ages and sends clear signals about the standard of treatment which society finds acceptable.***
- ***The creation of new business opportunities.*** Widening availability of goods and services is important especially with demographic change; it presents opportunities to business in products and services particularly those aimed at meeting the requirements of older customers, such as health care, recreation, leisure and financial services. The ageing population, combined with the potential increase in relative spending power of older consumers, presents significant business opportunities. A report entitled *Aspects of the Economics of an Ageing Population*, produced in 2005 by the House of Lords Select Committee on Economic Affairs, felt that there was a 'generalised failure by industry and commerce to take advantage of the lucrative market represented by the ever-growing group of older people who have at their disposal what is sometimes called the Grey Pound'<sup>26</sup>. They went on to argue that little had changed since the Foresight Ageing Population report in 2000. Indeed a recent report produced by the ILC UK entitled 'The Golden Economy', concluded that 'many of the market barriers remain similar to those identified almost 50 years ago'<sup>27</sup>. Given the lack of change it may be as a European Commission's European Business Test Panel of around 3,000 businesses concluded that, legislation is necessary in order to have 'a considerable impact in promoting action'<sup>28</sup>. This is the conclusion the ILC-UK report also came to and recommended that the 'Government should review within three years the impact of the Equality Act 2010 on the supply of goods and services to older people'.

## **Costs of banning age discrimination in the 'general services' sector**

### ***Familiarisation Costs (transitional)***

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

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

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

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

However, in the approximately 1.2m small and medium enterprises we assume that familiarisation with the new proposals will involve a manager informing him or herself about the change in legislation and disseminating the information. In the 5,755 firms with more than 250 employees and the 1,792 public sector organisations in Great Britain<sup>29</sup>, which the law applies to, we assume that familiarisation with the new proposals will involve a personnel manager, possibly with aid from a legal adviser not only informing

<sup>26</sup> *Aspects of the Economics of an Ageing Population*, 2005 by the House of Lords Select Committee on Economic Affairs

<sup>27</sup> *The Golden Economy: the Consumer Marketplace in an Ageing Society*, ILC-UK, October 2010

<sup>28</sup> Cultural Diversity and Economic Performance: Evidence from European Regions - <http://www.bepress.com/cgi/viewcontent.cgi?article=1335&context=feem>

<sup>29</sup> Whole of Government Accounts 2009/2010; [http://www.hm-treasury.gov.uk/psr\\_government\\_accounts.htm](http://www.hm-treasury.gov.uk/psr_government_accounts.htm)

themselves about the changes in legislation but also producing new internal guidance – based on the guidance available from the Equality and Human Rights Commission and similar bodies.

### Smaller and Medium Enterprises

In small and medium enterprises (SMEs) with between 1 and 249 employees it is assumed that a general manager will be responsible for familiarisation. Data from the Annual Survey on Hours and Earnings Survey (ASHE) 2009 shows that the median gross hourly wage for this occupation is £19.16<sup>30</sup>, when uplifted by 21% to allow for non-wage labour costs, this becomes £23.18. This is then multiplied by the time investment estimated to become familiar with the new guidance and reproduce it for other staff in the firm; and subsequently by the number of SMEs likely to need to become familiar with the legislation in any one year.

There are 1,177,470 SMEs in Great Britain<sup>31</sup>; some of these businesses will seek advice because they are involved or likely to become involved in a court case, while others will respond to planned Government publicity and guidance produced by the Equality and Human Rights Commission.

For the purposes of this Impact Assessment, we assume that within this pool of businesses, between 24% and 48% firms are likely to need to familiarise themselves with the new law at any one time and disseminate guidance for staff. The figure of 48% includes all firms providing services directly to the public (retail, wholesale, hotels, restaurants, repairs, transport, communication, financial services etc). The other 52% of SMEs that do not provide services directly to the public (i.e. agriculture, manufacturing, real estate etc) will not proactively familiarise themselves with the new legislation and will only become aware of the change when a situation arises; it is believed these costs would have existed even if the law had not changed. We have assumed that between 50% and 100% of firms that provide services directly to the public will want to familiarise themselves with the law. This assumption has been tested with business and consumer stakeholders at meetings conducted during previous consultation exercises.

### Large Enterprises

In large firms (250+ employees) it is assumed that there will be a dedicated personnel manager to read guidance, answer follow-up questions and disseminate information to other parts of the organisation. It is also assumed large firms will seek legal advice on high risk issues and as an indirect cost produce their own guidance for staff. The ASHE survey indicates the average gross hourly wage for a personnel manager is £20.93<sup>32</sup> and £25.33 after inclusion of non-wage labour costs.

It is assumed that this proactive dissemination of information will take place in all 5,755 firms employing 250 or more employees<sup>33</sup>.

### Public sector

Familiarisation costs will also fall to the 1,792 public bodies that will need to be aware of the law. The law does not apply to schools. It is assumed that each of the public authorities will have a personnel officer who is responsible for reading guidance, answering follow-up questions and disseminating information to other parts of the organisation; and that the non-wage labour costs of such a personnel manager are the same as in the private sector.

### Estimation of time investment and familiarisation costs

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

#### **High Estimate**

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<sup>30</sup> ASHE 2009 code 11

<sup>31</sup> Small Business Statistics 2009

<sup>32</sup> ASHE 2009, code 1135

<sup>33</sup> Small Business Statistics 2009

Type of Firm	Total Number of Firms	% of Firms Familiarising in Year 1	Number of Firms familiarising in Year 1	Hourly Cost	Number of Hours	TOTAL FAMILIARISATION COST
SMEs	1,177,470	48%	565,186	£23.18	0.5	£6,551,518
Large Firms	5,775	100%	5,775	£25.33	2	£291,494
Public Authority	1,792	100%	1,792	£25.33	2	£90,783
						<b>£6,933,795</b>

### Low Estimate

Type of Firm	Total Number of Firms	% of Firms Familiarising in Year 1	Number of familiarising in Year 1	Hourly Cost	Number of Hours	TOTAL FAMILIARISATION COST
SMEs	1,177,470	24%	282,593	£23.18	0.5	£3,275,759
Large Firms	5,775	100%	5,775	£25.33	2	£291,494
Public Authority	1,792	100%	1,792	£25.33	2	£90,783
						<b>£3,658,036</b>

Source: SME stats, ASHE 2009, GEO estimates

### Training Costs (transitional)

After familiarisation we recognise that a few firms will need to re-train staff. We estimate that this will take half a day (3 hours). We assumed an hourly wage rate of £23.18<sup>34</sup> for SMEs and £25.33<sup>35</sup> for public sector and large firms.

Employees attending (depending on organisation size)	X	Half a day training	=	Costs of training per organisation
3	X	£69.55	=	<b>£209</b>
5	X	£69.55	=	<b>£348</b>
25	X	£75.98	=	<b>£1,899</b>
100	X	£75.98	=	<b>£7,598</b>

Source: ASHE 2009, GEO estimates

We estimate that between 8% and 12% of large firms and public authorities will need to retrain some staff and around 2.5% and 3.5% of small and medium size firms that have familiarised themselves with the law. The costs will be as follows:

### High Estimate

Type of organisation	Total number of organisation	Number of organisations that need to carry out training	Cost per organisation	TOTAL COST
Public Authority	1,792	215	£7,598	£1,633,786
Large	5,755	690	£7,598	£5,246,896
SME	565,186	9495	£209	£1,981,179
				<b>£8,861,861</b>

### Low Estimate

<sup>34</sup> ASHE 2009 Code 11, incl. 21% for non-wage labour costs

<sup>35</sup> ASHE 2009 Code 1135 incl. 21% for non-wage labour costs

Type of organisation	Total number of organisation	Number of organisations that need to carry out training	Cost per organisation	TOTAL COST
<b>Public Authority</b>	1,792	143	£7,598	£1,089,191
<b>Large</b>	5,755	460	£7,598	£3,497,930
<b>SME</b>	282,593	1696	£209	£353,782
				<b>£4,940,903</b>

Source: SME stats, ASHE 2009, GEO estimates

#### Compliance costs of changing policies and practices (transitional)

For a smaller number of firms, along with retraining and familiarisation costs, there may also be a transitional compliance cost associated with physically changing policies or practices. We estimate that this will only affect 5% of large firms and public sector organisations and between 0.5% and 1.5% of small and medium firms that have familiarised themselves with the law will also have these types of costs. We assume that this will take 14 hours. The costs will be as follows:

#### High Estimate

Type of Firm	Total Number Firms	Number of Firms occurring Compliance Costs	Number of Hours	Hourly Cost	TOTAL
Public Sector	1,792	90	14	£25.33	£31,768
Large	5,755	288	14	£25.33	£102,023
SME	565,186	4,069	14	£23.18	£1,320,786
					<b>£1,454,577</b>

#### Low Estimate

Type of Firm	Total Number Firms	Number of Firms occurring Compliance Costs	Number of Hours	Hourly Cost	TOTAL
Public Sector	1,792	90	14	£25.33	£31,768
Large	5,755	288	14	£25.33	£102,023
SME	282,593	339	14	£23.18	£110,066
					<b>£243,857</b>

Source: SME stats, ASHE 2009, GEO estimates



## Annex 3: HEALTH AND SOCIAL CARE

### Introduction

The Department of Health recognised that one of the key sectors in which age discrimination needed to be eradicated was health and social care. To assess the scale and scope of the issue they recently commissioned an in depth review of how the ban on age discrimination could be practically applied across the health and social care sector. During 2009, Sir Ian Carruthers OBE, Chief Executive of NHS South West, and Jan Ormondroyd, Chief Executive of Bristol City Council led a detailed review into age equality in health and social care.

The review's report, *Achieving Age Equality in health and social care (The Age Review)*, was published on 22 October 2009. It identified a number of areas where age discrimination was occurring within the NHS and social care and made recommendations around how the ban on age discrimination could best be implemented. These recommendations are now being implemented.

The July 2010 NHS *White Paper, Equity and Excellence - Liberating the NHS* highlighted the Government's commitment to implementing the ban on age discrimination in NHS services. This was underpinned by a general objective to tackle inequality in health commissioning and delivery as a key strand throughout this vision for the NHS. This consultation ended on 11 October 2010 and the Government's response to this, *Liberating the NHS: Legislative framework and next steps*<sup>36</sup> was published on the 15 of December. This describes how the Government has developed its plans in the light of consultation and gives further detail on the NHS reforms and a timetable for implementation.

In considering how the ban on age discrimination should be implemented across the NHS and social care, the Government's aim is to eradicate harmful discrimination, while at the same time allowing service providers to treat people of different ages differently where this is beneficial or justifiable. The Government also wants to ensure that when services deal with individuals, they focus on the individual, taking account of his or her age where it is appropriate to do so. For these reasons a decision has been taken not to provide any exceptions for age-based practices in health and social care. Age based practices will therefore need to be objectively justified if challenged in court.

### Scale and scope

The health and social care sectors are one of the largest areas of Government spending. The total NHS budget for 2010-11 is £103.8 billion and this will increase year on year to £114.4 billion in 2014-15. Funding allocated to support social care is £1.3 billion in 2010-11 and this will increase to £3.4 billion in 2014-15<sup>37</sup>.

The scope of services being provided by the NHS are wide-ranging, and includes among other things specialised medical and psychiatric interventions in hospital and community settings, intensive short of long term packages of health and social care support for adults, services for people with complex physical, sensory and learning disabilities.

The number of services delivered each year are summarised below:

#### **Health Care**

- There were approximately **300 million consultations in general practice** a year, between clinicians and patients.
- There were **approximately 40 million courses on treatment in dentistry** a year.
- There were **approximately 12 million NHS sight tests in England** a year
- There were **approximately 17 million finished consultant episodes, 85 million outpatient appointments, and approximately 16 million A&E attendances** a year.

#### **Social Care**

- There were **approximately 2 million clients receiving packages of care, 1 million adults receiving community based services and approximately 700,000 new clients** for whom the

<sup>36</sup> Liberating the NHS: Legislative framework and next steps <http://www.dh.gov.uk/en/Healthcare/LiberatingtheNHS/index.htm>

<sup>37</sup> HM Treasury Spending Review - [http://www.hm-treasury.gov.uk/spend\\_index.htm](http://www.hm-treasury.gov.uk/spend_index.htm)

### ***Scale of discrimination occurring on the basis of age in health and social care***

The Age Review (Department of Health) commissioned a series of five literature reviews from the Centre for Policy on Ageing to look at the evidence of age discrimination in health and social care services, and the costs and impacts<sup>38</sup>. This identified comprehensively areas where age discrimination might be occurring within health and social care services, (which were highlighted in the Age Review Report), however, the extent of this is difficult to quantify. Age discrimination is rooted in the behaviour and attitudes of health and care organisations and staff – and wider society – tackling it will require addressing issues at the level of systems and processes, but also changes to the ways in which people within and beyond the system think about and behave towards people of different ages. The Government believes this challenge can be met through the implementation of the Age Review recommendations, alongside legislation to ban age discrimination to invoke a cultural shift.

### **General benefits of tackling age discrimination in health and social care – why legislate?**

#### ***Recurring monetised benefits***

It is difficult to estimate how much discrimination costs the NHS a year and therefore the monetised benefits of tackling it. However, we suggest that a legislative ban on age discrimination could potentially result in:

- Better access to services - allowing older people a fairer and more equitable access to diagnosis and treatment by ensuring that age is no longer used as an arbitrary indicator, rather than the individual's health.
- Better outcomes from treatment and consequent savings for the NHS.
- Less recourse to other means of complaint such as clinical negligence claims.

#### **Better access to services**

We know from the Age Review that older patients are less likely than younger patients to be referred for surgical intervention for certain illnesses, such as cancer, heart disease and stroke. This may in part be the result of perceptions of how the older patient will cope with a surgical procedure or course of treatment but indicates at least some potential unmet demand in services for older people.

Allowing older people a fairer and more equitable access to diagnosis and treatment at an earlier stage could result in significant savings for the NHS and society more generally as it will help to improve the outcomes for patients in the long term. For example it could result in:

- fewer premature deaths in the highly productive stages of life;
- fewer disabilities associated with chronic diseases in older age;
- more people enjoying a positive quality of life as they grow older;
- more people participating actively as they age in the social, cultural, economic and political aspects of society, in paid and unpaid roles and in domestic, family and community life; and
- Lower costs related to medical treatment and care services<sup>39</sup>.

It is difficult to quantify the benefits of this for the NHS or society more generally. We have looked at whether benefits could be quantified using a 'willingness to pay' calculation. We looked at data on take up of private medical insurance<sup>40</sup> and the reasons for this; and data from the national patient's choice survey about why a particular health care provider was chosen<sup>41</sup>. There is no obvious link between age and why patients choose to go to a private sector provider.

<sup>38</sup> Centre for Policy on Ageing - [www.cpa.org.uk/agediscrimination/age\\_discrimination.html](http://www.cpa.org.uk/agediscrimination/age_discrimination.html)

<sup>39</sup> Active Ageing: a Policy Framework, WHO, 2002

<sup>40</sup> More than 7 million people in the UK have some form of private medical insurance (PMI), either through a policy they've bought themselves or through their employer, according to the Association of British Insurers (ABI). People use private healthcare for a number of reasons. [www.netdoctor.co.uk](http://www.netdoctor.co.uk)

<sup>41</sup> In the latest national patient choice survey, only 740 (1%) patients taking part in the survey went to IS providers. Of those offered a choice of provider, IS hospital patients often gave the length of wait or the location as the single most important factor when choosing, whilst more NHS hospital patients gave the location or their own experience. The proportion of patients who were able to go to the hospital they wanted increased with age, whilst the proportion who had no preference decreased with age. [ref: [http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsStatistics/DH\\_116958](http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsStatistics/DH_116958)]

## Better outcomes for patients

Legislating to ban age discrimination could result in better outcomes for older patients as it would lead to quicker more effective treatment. This in turn would reduce dependency on the health and social care system by, for example, reducing length of stay at hospitals etc.

Analysis by the Care Quality Commission suggests that, if every local area could reduce emergency stays in hospital for people over the age of 75 years to the levels seen in the best performing parts of the country, this would result in eight million fewer days in hospital for people, and a saving of about £2 billion a year for NHS hospitals. This was derived by looking at emergency occupied bed days for people aged 75 and over who had experienced two or more emergency admissions in the financial year. Occupied bed-day rates per 1,000 people were applied to the national population, to estimate how many bed days would be saved if all areas performed at a level equal to five areas with the highest levels of performance in England. It was assumed that each day in hospital costs £300.

Clearly, making savings on this scale would be extremely challenging and require a considerable redesign of services in the areas concerned. In addition tackling age discrimination is only one small part of the problem and a vast array of other factors needed to be considered. The Care Quality Commission report<sup>42</sup> set out that the progress in reducing emergency admissions has not been as clear as it could have been. It had appeared that the rise in repeated admissions had begun to level off (only a 1% rise for both 2006/07 and 2007/08). However, in 2008/09, the rate for people aged 75 and over rose again, by 9% – from 63.5 people per 1,000 to 69.2. This may have been partly due to more severe weather and flu epidemics, but may also reflect the quality of data in some cases. Similarly, while 8% of areas have reduced repeated emergency admissions for people aged 75 and over in the last five years, and there are examples of excellent progress being made, 15% of areas have seen a rise of a third or more. In 2008/09, there was a four-fold variation in the rate of occupied bed days associated with repeated emergency admissions for people aged 75 and over. Those areas that are struggling to improve need to better understand the pattern of repeated emergency admissions and occupation of beds. And services need to work together to give effective support to those people whose circumstances put them at the greatest risk. However, what is clear is if local areas reduced their rates of emergency admissions and the associated occupied bed days, this could have a significant impact overall.

By providing older patients with quicker more effective treatment we are hoping that there will be a shift in resources and culture away from institutional and hospital-based 'crisis' care towards earlier, targeted interventions for older people in their homes and communities. An evaluation found that Partnerships for Older People Projects (POPP) services were helping to reduce emergency bed days, and that every additional investment of £1 in them produced £1.20 additional benefit in savings on emergency bed days. These financial benefits were seen throughout the local system along with improvements in older people's quality of life.

## Reduction in complaints

Legislating to ban age discrimination may reduce claims for negligence. To estimate these benefits we looked at the clinical negligence claims recorded by the NHS Litigation Authority (NHS LA). The NHS LA is a Special Health Authority responsible for the management and settlement of current and future liabilities attached to NHS bodies – which accrue predominantly but not wholly as a result of clinical negligence.

Claims around clinical negligence must show harm or detriment to a person which has occurred in breach of a duty of care –the NHS LA does not ordinarily provide assistance with claims relating to equalities, and so this cause would not feature in the coding of the claims against which the NHS LA can run claims reports. It is not unreasonable, however, to expect some claims that the NHS LA has assisted with to have an element relating to equalities.

We estimate there is a minimal amount of cases where discrimination would be brought under this banner. It is more likely that discrimination cases would be brought under a fitness to practice claim via the Professional Bodies (where not discriminating is included in professional standards) – which could result in a clinician not being able to practice any more. It is important to note that these claims are all

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<sup>42</sup> The State of Care, 2009

handled within existing resource limits. Potential reductions in cases could help to save resources in this area however. However, this would also be weighed up against possible increased claims through other means such as the age discrimination legislation.

### ***Non-monetised benefits – why legislate?***

There are a number of non-monetised benefits of legislating to ban age discrimination in health and social care. These could include:

- Helping to improve 'Active Ageing'. An active ageing approach to policy and programme development has the potential to address many of the challenges of both individual and population ageing. It allows people to realize their potential for physical, social, and mental well being throughout the life course and to participate in society according to their needs, desires and capacities. In terms of health and social care it helps to reduce premature deaths in the highly productive stages of life; reduce disabilities associated with chronic diseases in older age and consequently reduce costs related to medical treatment and care services<sup>43</sup>.
- Help to improve independent living. The CQC State of Care Report 2009 found that more people are being supported to live independently at home and the amount of intermediate care is growing. And there are signs that, across the country, there is better joint planning when people are discharged from services. Banning age discrimination should help this trend to continue. If people are supported to live as independently as possible, it not only improves the quality of their daily lives but also minimises permanent admissions to care homes and the need for emergency hospital care. This intermediate care prevents people being admitted to hospital unnecessarily, enables them to leave hospital earlier than might otherwise be possible, and prevents them being admitted to long-term residential care prematurely or unnecessarily. The amount of intermediate care available in England has risen significantly. The number of people receiving council funded non-residential intermediate care to prevent hospital admissions has nearly doubled in the last five years, from around 65,000 to 128,000, while the corresponding residential care has increased by more than 25% from around 16,000 to 20,000.

### **General costs of banning age discrimination in health and social care**

#### ***Monetised Costs***

##### Litigation costs

The ban on age discrimination may result in a potential rise in legal costs, particularly if there are no exceptions, as any health and social care practice can, in effect, be challenged in the courts as being discriminatory because of age.

The previous overall Age Discrimination Impact Assessment<sup>44</sup> as included in the Equality Act 2010 impact assessment, estimated that there would approximately be an additional 7 cases of litigation a year in relation to age discrimination across the public sector; resulting in a insignificantly increased likelihood of litigation for the health and social care sector.

However, we have re-looked at the potential for litigation within the context of having no specific exceptions for health and social care. Since there is no existing ban on age discrimination, we have looked at a number of areas where the NHS and social care can currently be challenged, around treatment of patients, in order to try to estimate this. The number of clinical negligence claims (through the NHS LA) involving an age discrimination aspect (in employment) is negligible.

We also looked at the potential for cases of discrimination taken in the county courts, as well as the extent of existing judicial reviews to see whether any of these might be age, or discrimination related. In relation to Judicial Reviews 9,097 applications were received but only 2,132 related to matters other than immigration, asylum and criminal proceedings. Of the 2,132 received only 107 were allowed<sup>45</sup>. Unfortunately because the figures on judicial review applications are not broken down in any further

<sup>43</sup> Active Ageing: a Policy Framework, WHO, 2002

<sup>44</sup> Equality Act Impact Assessment - <http://www.equalities.gov.uk/pdf/Equality%20Act%20Impact.pdf>

<sup>45</sup> Judicial and court statistics 2009 - <http://www.justice.gov.uk/publications/docs/jcs-stats-2009-211010.pdf>

detail it is impossible to determine with any accuracy the number of cases relating to discrimination currently brought - however, this does give an indication that the number is likely to be very small.

However, as an indication of potential costs, the average costs of bringing a judicial review is in the region of £10,000 to £20,000 for a straightforward case, higher for a more complex matter – if the claimant is unsuccessful they are likely to be liable for the defendant's costs as well as their own, therefore looking at a legal bill of **£30,000** upwards if they lose<sup>46</sup>.

In county court cases commenced in 2009/10 there were 468 actions against defendants with names including the word "health authority", "PCT", "GP", or "practice". Of those there were only 6 actions against defendants in which "discrimination" being recorded in the "brief details of claim" field.

The final area we explored to try and ascertain potential litigation costs in health and social care was around the work of the Parliamentary and Health Service Ombudsman. During 2009/10 there were 15,579 health complaints closed by the Ombudsman in 2009/10 of which 58% of complaints were premature or not properly made and 219 were resolved by intervention. 63% of complaints were upheld or partly upheld and 25% of outcomes included the NHS agreeing to apologise<sup>47</sup>.

Of these, the top reasons for complaints were clinical care and treatment (3705), attitudes of staff (1043); diagnostic delay failure to diagnose or misdiagnosis (976); communication and information (855) and access to services (625).

We can conjecture that a very small proportion of these complaints would fall under age discrimination, and that patients in the future may decide to take legal action (as estimated above). However, we also know that the main outcome that patients wanted was for the NHS to apologise – and if this pattern continues we can see no reason to expect these cases to 'convert' to legal challenge under age discrimination. In these instances there is no monetary cost of this solution for the NHS or administrative burden.

### Training and guidance

Aside from the familiarisation and training costs set out above, there may also be some minimal potential costs of the Royal Medical Colleges amending training for clinicians. We estimate this would involve a minimal change of emphasis since their code of practice already covers the need for clinicians not to discriminate.

Some of the organisational changes in the health and social care system that will take place over the next two years may mean that there may be additional costs to the system to raise awareness within the new organisations (e.g. for GP consortia) – these costs would be borne nationally out of existing allocations (e.g. by utilising existing channels).

### System Reform

The Spending Review (SR) 2010 set out the protection of the health budget. In addition those groups which are more likely to need social care such as elderly women or those with disabilities will also benefit from the £2 billion a year of additional resources given to social care by 2014-15 within the health and local government budgets. There are also likely to be benefits for these groups as a result of the reforms being made to these services, such as increased personalisation in social care.

However, the SR also set out the expectation that the NHS will need to make efficiencies to deal with rising demand from an ageing population and the increased costs of new technology. The NHS has already committed to make up to £20 billion of annual efficiency savings by the end of the Spending Review period through the Quality, Innovation, Productivity and Prevention (QIPP) programme. To ensure value for money, the reforms set out in *Equity and Excellence – Liberating the NHS* will give GPs power to commission the care their patients need and promote patient choice and provider competition to deliver a higher quality and more efficient health service. The implementation of age discrimination should be seen within this context and implemented to the same principle (e.g. within a real terms

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<sup>46</sup> Public Law Project: How to fund a judicial review claim - <http://www.publiclawproject.org.uk/documents/FundJRNoLegalAid.pdf>

<sup>47</sup> Parliamentary and Health Service Ombudsman - <http://www.ombudsman.org.uk/improving-public-service/reports-and-consultations/reports/health/listening-and-learning-the-ombudsmans-review-of-complaint-handling-by-the-nhs-in-england-2009-10>

increase of 0.4% above inflation). There will therefore be no additional costs associated with the legislation banning age discrimination for health and social care. Instead it is likely to have the effect of producing a different and more equitable distribution of resources.

### ***Non-monetised costs***

None identified.

### **Protecting the beneficial uses of age in the health and social care system**

The Age Review identified six main areas within the health and social care sector where age is used in a beneficial or justifiable way in the decision-making process. These were, across health and social care:

- Age based charging
- Public health programmes
- Age appropriate services and facilities
- Individual assessment of need
- Advice and guidance on policy and practice
- National resource allocation formulae

The issue being considered in this impact assessment is therefore whether the aim of eliminating harmful age discrimination in health and social care services, whilst allowing the retention of these 'beneficial' uses of age is best achieved through having some targeted exceptions to the ban on age discrimination, or relying solely on objective justification.

Our preferred option is that the legislation would not contain any exceptions for health and social care; objective justification would be used in all situations, including the areas of age-based decision-making identified in previous reviews.

If the age discrimination ban is commenced without exceptions, an individual who feels discriminated against, on the basis of age by a health or social care provider (which could be an organisation or an individual) can mount a legal challenge in the crown court. To establish a successful defence to such a claim the provider will need to show that their decision to use age was objectively justifiable: a proportionate means of achieving a legitimate aim. The final decision as to whether a practice is objectively justifiable in any particular case is therefore made by the courts.

The benefits to this approach are that any age-based practice or treatment that is undesirable will be able to be challenged by the public – which will provide an important incentive to ensure that age discrimination does not occur in health or social care services. This position is clear and simple and so avoids the risk that people will perceive that we are diluting the message that age discrimination has to be eradicated – and sets out a clear principle which can be applied in all cases and will be more future proof.

The following sections examine further the potential effects of having no exceptions in the secondary legislation, for the six areas of age-based decision making in health and social care.

### ***Age-based charging and entitlements***

#### **Introduction**

Currently individuals pay different charges depending on their age for certain NHS and publicly funded social services. The two known examples in the NHS are prescriptions and eye tests, which are currently free to individuals aged 60 or over<sup>48</sup>. Both of these exemptions are determined nationally. These are set out in law and are therefore exempt from the provisions of the Equality Act as a result of the statutory authority exception.

Under the current framework for publicly funded social care, the assessment of eligibility and charges for residential care are determined by national guidance, Charges for Residential Accommodation Guide

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<sup>48</sup> Note, both prescriptions and eye test are chargeable for adults under age 60, unless they meet specific criteria

(CRAG), while charges for non-residential care are set at the discretion of local authorities. Both residential and non-residential social services do not use age directly to determine the charges individuals pay, however, there may be some second order effects. For example, there may be interactions between the benefit systems, which have important age based differences, and the assessment of charges (i.e. some local authorities' charging criteria take an individual's pension into account but earned income is disregarded).

#### Potential benefits and costs of not providing an exception

We have concluded that given both NHS and non-residential charging and entitlement fall within the statutory authority exception and no local authorities appear to use age as the main factor when determining charges or eligibility for non-residential care it is very unlikely an age discrimination claim would be successfully brought. ***Having no exceptions for age based charging and entitlements would therefore not incur any additional costs and benefits.***

#### Risks and mitigating action

The Department of Health have identified and assessed all the known examples of national charges to ensure they are covered by the statutory authority exception. However, locally determined charges and applications of means tests may exist and these would not be covered by this exception. The Age Review and subsequent consultations have explored the potential evidence for this and no examples have arisen. However, when preparing for the ban, local areas can use the toolkit produced by NHS South West to assess any locally determined charges and assess whether these are justifiable.

### ***National resource allocation formulae***

#### Introduction

In both health and social care, the formula for allocating resources nationally to local PCTs uses the age profile of a local population as one of a number of proxies for degree of need when calculating the allocation. The NHS allocation formula uses five year age bands up to age 85 and over for Hospital and Community Health Services, and five year age bands up to age 75 and over for prescribing. The actual amount allocated to a PCT is determined by its historic allocation and the pace of change (determined by ministers) from the historic allocation to the target allocation.

The social care allocation formula allocates two amounts the first for working age adults (aged 18 to 65); and the second for older adults (aged over 65), which includes a top up determined by the number of people aged over 90. However, local authorities set their own budgets, and, in the recent past, it would have been common for them to allocate more than the formula indicates.

Changes to the current allocation of resources were set out in the White Paper, '*Equity and excellence: Liberating the NHS*'. The majority of the PCT commissioning function is to be transferred to GP consortia, the remainder will be commissioned by the new independent NHS Commissioning Board, which is to take over responsibility for commissioning guidelines and the allocation of resources from the Department of Health. The way in which funds are distributed to the consortia will be a matter for the Board. However, ACRA has been asked by the Secretary of State to continue to provide advice on the equitable distribution of NHS resources during the transition period.

#### Potential benefits and costs of not providing an exception

Statistical modelling by academics has examined the relationship across small geographical areas between the utilisation of health services and age. These models have been used to decide which age bands to include in the formula as indicators of need, and with what relative weights. Department of Health therefore thinks that the use of age as opposed to any other factor in the National Resource Allocation formulae could be objectively justified. ***Therefore, having no exceptions for National Resource Allocation formulae would not incur any additional costs and benefits.***

### ***Public health programmes***

#### Introduction

There are a number of public health programmes, where age is used to identify some or all of the programme's target group. Examples include:

- **Breast screening** - Women aged 50 to 70 are invited every three years for breast screening by mammography. This is currently being expanded to women aged 47 to 73. Women aged over 70 are able to self refer every three years if they wish.
- **Cervical screening** - Women aged 25 to 49 are invited for a cervical screening test every three years, women aged 50 to 64 are invited every five years. Women aged over 64 are invited if they have never been screened or if their last three tests showed abnormalities.
- **Seasonal flu vaccination** - people aged 65 and over are able to receive seasonal flu vaccination (other criteria apply for people under 65).
- **NHS Health Checks** - this programme is aimed at people between 40 and 74 years old at risk from coronary heart disease, stroke, diabetes and kidney disease.

#### Potential benefits and costs of not providing an exception

Although, screening and health check programmes are not available to individuals outside their target population, an individual who is worried about one of the illnesses covered by the programme can visit their local primary medical practitioner (GP), who will undertake a consultation and decide on further treatment based on the clinical symptoms presented. Therefore, although an individual outside the selected age band may not necessarily receive the same testing as an individual inside the age band, they do experience an equivalent outcome. It is unlikely therefore that an individual who is not in the target population for a screening or health check programme will be denied access to diagnosis tests on the basis of their age alone. ***There are therefore no additional benefits or costs for the screening and health check programmes of banning age discrimination because these screening and health check programmes are already available to people outside these age groups, if necessary.***

#### Risks and mitigating actions

There are risks associated with this approach. They are as follows:

- *Specific age thresholds may be challenged.* Age thresholds may be challenged, which may result in potentially long and costly legal cases about marginal differences in age bands. Such cases would cause evidence to be examined and service provision altered if the age threshold is found to be inconsistent with evidence.
- *Lengthy research time.* There is a time lag between identifying a potential discriminatory practice and the findings from research being available to provide more robust evidence on what is the best practice, and a decision being taken regarding what may be objectively justifiable.

We estimate that the likelihood of these risks occurring is minimal. To mitigate against these risks we have worked extensively with policy leads, who have reviewed the evidence base for these programmes and will continue to do so on a regular basis.

#### **Advice and guidance on policy and practice**

##### Introduction

The Department of Health and a range of NHS and social care organisations issue advice and guidance on policy and practice in health and social care services. This is either best practice guidance or statutory guidance.

#### Potential benefits and costs of not providing an exception

As advice and guidance are, on the whole, based on a review of research evidence which shows the incidence of many diseases and the effectiveness of interventions vary with age. Therefore, where a particular set of advice or guidance is challenged as being age discriminatory in the courts it should be objectively justifiable so ***there would be no additional benefits or costs because the ban has no impact on the current systems.***

#### Risks and mitigating actions



There is a difference between the level of certainty required by a court for a potentially age based action to be objectively justified and the level of certainty required for advice or guidance to be issued. The objective justification test is likely to be more stringent. There may therefore be a risk to specific types of guidance, for which the use of age bands and the particular bands chosen are determined primarily based on cost effectiveness and may be rational in light of the available evidence, but may not be objectively justifiable as the two tests do not address exactly the same issues.

Health and social care service providers would need to be aware that just referring to the advice and guidance does not objectively justify their actions, they must ensure their actions both address a legitimate aim and are proportionate. This will be stressed in guidance to health care providers.

In addition both the Department of Health and NICE are subject to equality duties, and therefore ensure that all guidance is assessed for the impact on equalities.

## ***Individual Assessment of Need***

### Introduction

Age is one of the factors that health and social care professionals consider when discussing potential interventions and care packages. This is because at certain ages, people are more or less likely to have certain diseases. Age is also a factor in determining the effectiveness of interventions: for certain age groups the benefits tend to outweigh the risks for some interventions and treatments.

The research evidence on which guidance on when to perform certain diagnostic tests or prescribe certain interventions is based will often be presented in age bands. These are not absolute factors that determine diagnosis or treatment but age is a factor to help the clinician in providing advice. However, in a few instances, services or treatment options will only be available to patients of specific ages.

### Potential costs and benefits of not providing an exception

Age discrimination results from the decisions and actions of an individual service provider. Evidence has shown that there is a tendency for health professionals to give disproportionate weighting to chronological age as a risk factor when deciding interventions and to use age to pre-judge the needs of an individual. If the ban is commenced in the secondary legislation without an exception, and a health or social care professional acted in this way, the service user could mount a clinical negligence claim or an age discrimination claim, which would require the health or social care professional to justify their actions<sup>49</sup>.

A position of no exceptions would make clear that any 'bad' age-based practices are not acceptable – clinicians would still be free to use age as one factor, to ensure personalisation of care – and the best care, and best outcomes for that individual. ***We have estimated the costs of any additional cases in the general cost section above.***

## ***Age Appropriate Services and Facilities***

### Introduction

Age appropriate services and facilities are designed and delivered to meet the needs of particular age groups. There are three key categories of age appropriate services: social care services, mental health services, and geriatric services. Within all three services, services are divided into working age (age 18 - 64) and old age (age 65 or over). However, the age threshold for the transition from working age to old age services is fluid, an assessment of an individual's needs should be used to decide which service is most appropriate for the individual's needs. Below are some examples of age appropriate services in the three areas:

- *Mental health* - older people specialist dementia day services
- *Social care* - specialist day centres and residential homes for older people and old age psychiatry and psychiatric liaison services

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<sup>49</sup> Note, the likelihood of a clinical negligence and age discrimination case running in tandem is negligible

- *Geriatric* - Specific wards in NHS Trusts, sheltered/supported housing for older people and intermediate care/re-ablement services for older people

### Potential benefits and costs of not providing an exception

Age appropriate services are one way in which the particular needs of people can be addressed and met. Indeed, they can also help overcome identified disadvantages. We believe this approach could be objectively justified so would be able to continue. **Therefore an exception is not needed and no additional costs would occur.**

### Risks and mitigating actions

Without an exception, risk averse service providers may decide to replace existing age appropriate services with single all age services. This may result in certain age groups receiving lower priority and thus having poor access. We estimate that the likelihood of this occurring to be marginal – but could be mitigated against through appropriate guidance and training – this is explored in more detail below.

### Ensuring effective implementation

As we set out in the previous IA, to ensure that this policy is implemented effectively the Department of Health need to ensure that all NHS staff are aware of the ban on age discrimination, and whether services commissioned or provided could be objectively justified.

The NHS South West have therefore produced a toolkit<sup>50</sup>, which will help NHS and social care organisations prepare for implementing the ban to ensure they are taking an age appropriate approach, which was commissioned as part of the Age Review. The pack has been developed with support from staff in the South West and national experts and 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 age discrimination and promote age equality in order to help them prepare an action plan;
- A Guide for NHS commissioners and providers that helps the local NHS organisations identify the actions they need to take in order to implement 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.

This toolkit has already been produced as part of work on the Age Review and rolled out to all organisations and there are **therefore no additional costs associated with this.**

In addition we are working with the National Mental Health Development Unit to launch an action learning network focusing on promoting age equality in mental health – this will involve testing the toolkit in mental health services in some localities, with the aim of capturing and disseminating examples of best practice and exploring whether lessons learnt should feed into any additional help or guidance for the NHS and social care.

We are also working with the Equality and Human Rights Commission and the Care Quality Commission to explore what guidance would be needed for individual patients and health care providers.

### Administrative burden

The administrative burden on all private and third sector organisations has been considered as part of the GEO’s estimation of the administrative burden of the primary legislation. The Age Review’s recommendations are mainly aimed at public bodies that are not part of the administrative burdens exercises. Therefore, it is not thought that the majority of private or third sector providers in health and

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<sup>50</sup> Toolkit available at: <http://www.southwest.nhs.uk/age-equality.html>

social care would experience higher administrative burdens than these, so the costs have not been added here<sup>51</sup>.

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<sup>51</sup> DH Implementation of age discrimination IA

## Annex 4: FINANCIAL SERVICES

### Problem under consideration

The Equality Act 2010 will make it unlawful to discriminate against adults aged 18 and over by those providing services and public functions. The issue problem under consideration is how this should apply to the provision of financial services when the ban is introduced in 2012.

Following the consultation in 2009<sup>52</sup> the previous government proposed that the legislation would not prevent different treatment because of age in the provision of financial services. This proposal was set out in a policy statement published in January 2010<sup>53</sup>. Age is a legitimate risk factor in many financial service products and a total ban on age discrimination in financial services was not appropriate.

After assessment of the market, Motor and Travel insurance were particularly highlighted as areas of concern. Research commissioned by the Government Equalities Office and carried out by Oxera (henceforth, “the Oxera research”) found that no age groups were excluded from the market, but that age makes a difference to matters such as price, special offers, the application process and distribution channels etc. These differences can be explained by the economics of supply: that prices reflect the risk and cost associated with providing the service to people of different ages, and also market specialisation by providers. In addition, there was no evidence of systemic overcharging of older age groups; in travel insurance any pricing bias tended to work in favour of high risk groups. However, some older people found it difficult to find insurance for motor and travel insurance, despite the availability of products.

The policy statement proposed to create a specific exception that would allow financial services to continue to treat people of different ages differently. In the areas of travel and motor insurance it sought to improve access and transparency, where the main of age discrimination were highlighted.

Since January 2010, the Coalition Government has looked again at this issue, considering legal drafting and the possible unintended consequences of a specific exception. The Government believes a wider exemption is more appropriate, coupled with a non-legislative requirement to improve access and transparency in the areas of motor and travel insurance.

This impact assessment will focus on the costs and benefits of:

- a total ban on age discrimination in financial services; and
- an exception which allows firms to continue to use age.

This impact assessment should be read in conjunction with the drafted exception as set out in the accompanying consultation paper.

### Rationale for intervention

The Oxera research, and research by Age UK in January 2010, which looked at the travel and motor insurance markets for older people<sup>54</sup>, showed age was a significant factor in determining how prospective customers are treated in the sector, including whether a service is provided at all and at what price.

Age UK showed that for motor insurance half of quotation attempts for people aged 80 and over were initially unsuccessful; however, a third were then offered an alternative provider. For travel insurance, one-third of quotation attempts for people over 80 were initially unsuccessful, though the majority were offered an alternative provider. The Oxera research also showed that the price of motor and travel insurance policies differs depending on the age of the customer, with older people paying more than any other age group to obtain similar cover. The research also showed providers of motor and travel

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<sup>52</sup> Equality Bill: Making it work – Ending age discrimination in services and public functions – a consultation - <http://www.equalities.gov.uk/pdf/13511%20GEO%20Consultation%206th.pdf>

<sup>53</sup> Equality Bill: Making it work – Ending age discrimination in services and public functions – Policy statement - [http://www.equalities.gov.uk/pdf/GEO\\_EqualityBillAge\\_acc.pdf](http://www.equalities.gov.uk/pdf/GEO_EqualityBillAge_acc.pdf)

<sup>54</sup> [http://www.ageconcern.org.uk/AgeConcern/Documents/Turned\\_away\\_older\\_people\\_and\\_insurance.pdf](http://www.ageconcern.org.uk/AgeConcern/Documents/Turned_away_older_people_and_insurance.pdf)

insurance specialise. Targeting specific age groups and refusing to supply other age groups is therefore common practice.

However, the Oxera research also showed no age group is totally excluded from the market in the sense that no provider at all is willing to supply cover. For example, Oxera found more than 30 separate motor insurance quotes for those aged 80 and over on one price comparison website alone. They also found motor insurance companies generally do not apply age limits to existing customers, so policy renewal is not a problem.

Financial services representatives suggest that these markets are competitive and insurance is available for people of all ages. This claim is supported by the Oxera research which suggested that the smaller provision of services for older age groups can be explained by legitimate business practices reflecting the different costs of supplying services to different age groups. The research concluded that if there are failures in the financial services market they originate in how the market currently matches demand and supply – the evidence showed some consumers have greater difficulty in finding relevant products or providers because of their age.

The research concluded that there was no economic justification in preventing insurers using age as a factor in underwriting risk, or requiring providers to supply all age groups. Any access problems would be better addressed at the distribution level.

### **Policy objective**

In light of the evidence that there is no specific discrimination in financial services, but that certain groups do have difficulty accessing financial services, we believe that an exception is still appropriate to allow the industry to continue all current practices and operate effectively, and that a voluntary scheme to improve access and transparency in respect of travel and motor insurance should be pursued.

### **Current cost of age discrimination**

The current cost of age discrimination in the financial service sector is difficult to quantify. The Oxera research made it clear that only a small proportion of consumers are turned down or unable to find insurance products because of their age<sup>55</sup>. The study suggested that discrimination per se is not being carried out in the provision of financial services, with some cover available for all age sections of the market<sup>56</sup>.

It is, however, clear that certain groups feel that they being discriminated against because of the greater difficulty they have in accessing insurance, although the Oxera research demonstrated that this was not necessarily due to discrimination, it is possible to quantify the cost to the economy of the failure of some groups to access insurance.

### ***Travel insurance***

Research by Age UK has shown that 6.6% of people over 65 (and 9.4% of those over 75) have, at some point decided against a holiday or a particular trip because they were unable to find travel insurance or gave up looking following initial disappointment<sup>57</sup>. A separate SAGA Populus survey<sup>58</sup> found that 25% of people aged over 65 had been refused travel insurance because of age<sup>59</sup> and 7% of these were unable to find travel insurance<sup>60</sup>.

The Office for National Statistics estimates in 2009 that there were 10,097,766 people aged 65 and over in the UK<sup>61</sup>. If we assume 50% of this population demand travel insurance and apply the SAGA results, 88,355 people each year are not be able to find travel insurance. The average value of a holiday in 2009

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<sup>55</sup> Oxera : The use of age-based practices in financial services, p52

<sup>56</sup> Oxera : The use of age-based practices in financial services, Executive Summary, p (iv)

<sup>57</sup> Insurance and Age: exploring behaviour, attitudes and discrimination, CM Insight, Andrew Smith Research 2007

<sup>58</sup> 10,6613 individuals aged 50 and over carried out between 8 and 14 August 2008

<sup>59</sup> Question asked – “Some people say they find it difficult to find insurance, others say they have no problems at all. Have you ever been refused insurance because of your age?”

<sup>60</sup> Question asked – “Were you able to find another insurer who would cover you? [Those refused]”

<sup>61</sup> ONS: Population estimates - [http://www.statistics.gov.uk/populationestimates/flash\\_pyramid/default.htm](http://www.statistics.gov.uk/populationestimates/flash_pyramid/default.htm)

was around £270<sup>62</sup>, using the principle of willingness to pay; this can be used as a proxy for value. This results in a possible loss of expenditure in the economy for those over 65 who want to go on holiday in the region of £24 million per year<sup>63</sup>. These are therefore indirect benefits of banning age discrimination. We have not, however, included these in our overall total benefits of banning age discrimination because they are not direct impacts and are difficult to estimate accurately as they will depend heavily on consumer spending patterns.

In addition the ABI research paper 12, 2009 shows that the loss in premium due to not supplying to this group is £4.08m annually. These are direct benefits of banning age discrimination.

### **Motor insurance**

Age UK research found that 6% of those over 65 were declined car insurance because of their age. Around 43% of people aged over 65 currently have car insurance<sup>64</sup>, and, as motor insurance is compulsory for all UK drivers, we assume this 43% also have access to a vehicle. If 6% of this 43% were refused car insurance because of age and then stopped searching and gave up driving as a result, 260,522 people over 65 would be unable to drive as a result of their age.

The Saga populus survey found that 3% of those who responded aged over 65 had been denied motor insurance because of age<sup>65</sup>, of these 7% were unable to find any motor insurance<sup>66</sup>. This would equate to about 9,118 people over 65 who are unable to drive as a result of their age.

A person of retirement age tends to drive around 8,000 miles a year and drive a smaller car, such as a Ford Fiesta, with a purchase price of approximately £10,000. Estimates by The AA show for people driving 10,000 miles per year, the average cost per year is estimated at £4,014 in 2009<sup>67</sup>. Again using the principle of willingness to pay, this would result in a possible loss of expenditure in the economy to those over 65 who want to drive but cannot of approximately £36.6 million per year<sup>68</sup>. Again these are indirect benefits of banning age discrimination so are not included in our overall benefits of banning age discrimination.

The ABI research paper 12, 2009 shows that the premium lost due to the not supplying to this group is a loss in premiums of £2.99m annually. These are direct benefits of banning age discrimination.

### **Search costs**

The Age UK research found that after two attempts 23% of people aged 65 plus failed to get a travel quotation and 19% failed to get a motor insurance quote. They estimate this would equate to 1.5 million of the 6.5 million older people travelling each year, and 750,000 of the over 4 million drivers aged over 65 failing to get an insurance quote after two attempts. These 2.25 million people may have been able to get cover, but there would have been a cost involved in terms of time and effort. Assuming that each extra search cost £2<sup>69</sup>, a single extra search per person would amount to £4.5 million a year. These are direct benefits of banning age discrimination.

### **Summary**

Table 1 shows the estimated costs associated with failure to access insurance

<b>FIRST ORDER BENEFITS</b>	

<sup>62</sup> Home and Away holiday rentals survey May 2009, estimated that a family holiday for 4 people would be £1,082.03 (made up of travel £545.50, accommodation £461.35 and Airport parking / hotels £75.18) <http://www.holiday-rentals.co.uk/info/press/press-releases/press-releases-2009/average-cost-of-a-holiday>

<sup>63</sup>  $10,097,766 \times (0.5 \times 0.25 \times 0.07) \times 270 = \text{£ } 23,855,972$

<sup>64</sup> GfK/NOP 2006 in Insurance and Age: exploring behaviour, attitudes and discrimination, CM Insight, Andrew Smith Research, 2007

<sup>65</sup> Question asked: "Some people say they find it difficult to find insurance, others say they have no problems at all. Have you ever been refused insurance because of your age?"

<sup>66</sup> Question asked – "Were you able to find another insurer who would cover you? [Those refused]".

<sup>67</sup> The AA, [http://www.theaa.com/allaboutcars/advice/advice\\_costs\\_petrol\\_table.jsp](http://www.theaa.com/allaboutcars/advice/advice_costs_petrol_table.jsp). Costs include: depreciation; cost of capital; insurance; road tax; and running costs

<sup>68</sup>  $10,097,766 \times 0.43 \times 0.03 \times 0.07 \times 4,014 = \text{£ } 36,600,787$

<sup>69</sup> £2.00 extra search cost figure obtained from the Final Report of the Financial Services Experts Working Group October 2008, page 30

Additional costs of searching for insurance	£4.5m
Lost premiums – Motor	£2.99m
Lost premiums – Travel	£4.08m
<b>Total</b>	<b>£11.57m</b>
<b>INDIRECT/SECOND ORDER BENEFITS (not included in the total monetised benefits of banning age discrimination)</b>	
Money not spent on a Holiday	£23.86m
Money not spent running a car	£36.6m
<b>Total</b>	<b>£60.46m</b>

Overall, the direct cost of a failure to access insurance (which is often perceived as age discrimination) amounts to £11.57m and the indirect cost £60.46m. The Government believes this could be addressed at a very minimal cost by further encouraging the voluntary approach taken by the industry to signpost individuals who find it difficult to find travel and motor insurance to another provider.

### **Benefits of providing an exception**

#### ***Impact of a ban on the use of age as a risk factor***

A ban on the use of age as a risk factor could lead to substantial costs for the industry and ultimately higher cost for consumers. The main concerns are<sup>70</sup>:

- Prices converge across age groups – this implies redistribution effects between age groups – i.e., some age groups would benefit, whereas others would be worse off.
- Prices increase overall – partly because insurers are not able to estimate the risks as precisely and hence factor uncertainty into prices, and partly because the proportion of high-risk individuals is likely to increase (i.e., as they face lower prices) and the proportion of low-risk individuals to decrease (as they face higher prices).
- Providers would increasingly use substitute variables for age for risk classification and pricing, such as years with driving licence, which may lead to individuals still being discriminated on the basis of age.
- Some types of products or firms may be forced out of the market either because it becomes uneconomical to supply the product (e.g. the costs associated with health screening may be too high, especially for smaller firms), or the risk is too large (e.g. the market for annual worldwide travel policies may collapse due to considerable risk associated with offering such insurance to older people).

A General Insurance Research Organization (GIRO) working party examined the effect of removing the age variable from car insurance risk models as well as any multi-way interaction effects between driver age and other factors. The implied effect on premiums was determined by comparing the results from the models including and excluding age. The working party found clear re-distributive effects between age groups, since drivers aged 41 -75 would face increases in premiums of up to 24%, whereas those aged 40 or under and those aged 76 or over would see their premiums fall by up to 20%<sup>71</sup>.

In effect, this evidence demonstrates that, on average, if age is not used in the risk classification and pricing models of motor insurers, drivers under 40 would be cross subsidised by drivers over 40 years old. Changes in premiums are also likely to lead to different behaviour by the insured, both in terms of uptake of insurance and, for example, road accidents and fatalities could increase as younger people respond to decreased premiums; this will have the effect of more risk in insurers' portfolios and exacerbated premiums for all age groups.

Age is regarded as a relevant indicator of health for holiday insurance purposes. Research commissioned by ABI and conducted by Ipsos MORI found that the over-65s are three times more likely to make a travel insurance claim than those aged 35, and people over 85 years old are eight times more likely to claim. Claims made by people over 65 compared to people under 50 are nearly three and a half times more expensive. If age was removed then there would need to be wide introduction of medical

<sup>70</sup> Oxera research

<sup>71</sup> GIRO Working Party (2007/08), 'Free Market Pricing', section 5

checks for all people seeking insurance which would increase the premiums charged to everyone and/or a reduction in quality of cover offered.

The Financial Services Experts' Working Group report contains results of the analysis of removing age from credit-scoring models, conducted by a major UK lender<sup>72</sup>. The analysis shows the removal of age would have an adverse effect on the providers' ability to assess an individual's ability to repay a loan. This is shown to result in either a reduction in the loan offer rate by 1.7% if the proportion of 'bad' loans is kept constant, or an increase in 'bad' loans by 0.1% if the loan offer rate is held constant.

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

Therefore, removal of age from credit-scoring and loan-decision models is likely to lead to a 'cross-subsidy' from customers over 60 to customers under 25 years old as was also observed in motor insurance. Moreover, the effect of removing age as a risk factor can lead to worse outcomes overall, for example, either more 'bad' loans or less loans being offered.

The use of alternative factors in risk classification was examined by Kelly and Nielson<sup>73</sup>, in risk classification and motor insurance pricing. Overall they concluded that the age variable is capturing real differences in the risk drivers are prepared to take that is not captured by any other of the alternative factors examined. They conclude that age cannot be eliminated from insurance processes without creating undesirable market disruptions and decreasing the ability to price risk.

Some of the major concerns in respect of the removal or restriction of the use of age as a risk factor are around the implications on practices such as age limits and age bands which are used within both the Banking and Insurance industries would no longer be permissible.

### **Costs of a ban on the use of age as a risk factor**

ABI research and the findings of the experts working group suggest the costs of restricting current practices of using age as a risk factor could be as set out below.

**Table 2 - Estimated cost to the insurance industry of a ban on the use of age as a risk factor**

<b>Product</b>	<b>One-off costs</b>	<b>Ongoing costs</b>
Motor Insurance	£10.6 m	£0.1m
Travel Insurance	£1.8m	£10.6m
Pensions	Unquantifiable	Unquantifiable
PMI	£5.5m <sup>74</sup>	£4.1m <sup>75</sup>
Life insurance	£122.1m	£74.1m
Critical illness & Income Protection	£102.5 m	£30.0m
Annuities (Average)	£29.58 <sup>76</sup>	Unquantifiable
<b>Total</b>	<b>£272.08m</b>	<b>£118.9m</b>

(Source: ABI research)

In respect of banking products the cost implications to change the use of credit scoring models due to restrictions in the use of age would increase costs for all lenders. The Finance and Leasing Association (FLA) have looked in to the cost implications of this. The costs to a single small lender on annual basis

<sup>72</sup> The Final Report of the Financial Services Experts Working Group October 2008, page 166 - 167

<sup>73</sup> M.Kelly and N.Nielsen (2006), Age as a variable in insurance pricing and risk classification pages 212 - 232

<sup>74</sup> Based on the costs for four the large PMI insurers with a combined market share of 87% in 2009. The costs of smaller firms are assumed to be proportionate to those costs for larger firms

<sup>75</sup> Based on additional costs for medical underwriting resources for a large firm (£200k); MI and pricing analysis (£200k); uncertainty risk, including cost of capital to cover unexpected outcomes (£500k). Calculated on the basis of four large PMI insurers with a combined market share of 87% in 2009 and the costs of smaller firms assumed to be proportionate to those costs for larger firms

<sup>76</sup> Legislation on the use of age could result in the PLA and SSA market, which processes premiums totalling between £100m and £150m per annum, ceasing to exist



would be around £0.54m. With 30 FLA members classed as small this would be a cost of £16.2m. One off costs for a single lender would be £0.16m for a small lender and £750 for a larger lender. With 30 smaller lenders and 30 larger lenders in FLA's membership this would mean £4.8m one off costs for smaller lenders and £22.5m for larger lenders.

Table 3 - Estimated cost to the banking industry of a ban on the use of age as a risk factor

<b>Practice</b>	<b>One-off costs</b>	<b>Ongoing costs</b>
Score card changes – small lenders	£4.8m	£16.2m
Score card changes – large lenders	£22.5m	Unquantifiable
<b>Total</b>	<b>27.3m</b>	<b>£16.2m</b>

(Source: Finance and Leasing Association)

### **Summary**

Based on the information above it is clear that there no market failure in respect of age discrimination. The cost of failure to access insurance can be met via a voluntary approach by the industry at a minimal cost whereas a ban would cost the industry well over £299m in one off costs and over £135m in annual ongoing costs. These costs may increase prices for consumers and provide very little benefit. In addition the changes in the industry would result in higher prices for those in higher risk groups, for example, travel insurance for older people due to the redistribution of prices.

Table 4 – Total estimated cost of a ban on the use of age as a risk factor

<b>Product</b>	<b>One-off costs</b>	<b>Ongoing costs</b>
Motor Insurance	£10.6 m	£0.1m
Travel Insurance	£1.8m	£10.6m
Pensions	Unquantifiable	Unquantifiable
PMI	£5.5m <sup>77</sup>	£4.1m <sup>78</sup>
Life insurance	£122.1m	£74.1m
Critical illness & Income Protection	£102.5 m	£30.0m
Annuities (Average)	£29.58 <sup>79</sup>	Unquantifiable
Score card changes – small lenders	£4.8m	£16.2m
Score card changes – large lenders	£22.5m	Unquantifiable
<b>Total</b>	<b>£299.38m</b>	<b>£135.1m</b>

(Source: ABI Research and Finance and Leasing Association)

### **Improving access through signposting**

The costs of age discrimination as set out above can be overcome by improving access to motor and travel insurance. Improving access would help those that find it difficult to find insurance to obtain insurance cover and reduce their search cost for this cover, by better matching demand with the existing supply. By directing customers to specialists in the market, this could result in better quality products for older customers with little unintended consequences for other segments.

Currently an insurer is able to refer customers to an alternative insurer who is better placed to provide insurance if the initial insurer is unable to do so. We believe this practice should be further encouraged to improve access to insurance for older people.

The British Insurance Brokers Association (BIBA) operates a signposting system which helps those that find difficulty in finding insurance. This system and those like it can be more widely used to improve access. BIBA state that any increase in throughput can be absorbed at no extra cost.

<sup>77</sup> Based on the costs for four the large PMI insurers with a combined market share of 87% in 2009. The costs of smaller firms are assumed to be proportionate to those costs for larger firms

<sup>78</sup> Based on additional costs for medical underwriting resources for a large firm (£200k); MI and pricing analysis (£200k); uncertainty risk, including cost of capital to cover unexpected outcomes (£500k). Calculated on the basis of four large PMI insurers with a combined market share of 87% in 2009 and the costs of smaller firms assumed to be proportionate to those costs for larger firms

<sup>79</sup> Legislation on the use of age could result in the PLA and SSA market, which processes premiums totalling between £100m and £150m per annum, ceasing to exist

Our proposal is for a non legislative requirement with the Association of British Insurers facilitated by an agreement and code of practice to use the facility provided by the British Insurers Brokers Association or a facility that meets the principles of a signposting service agreed via the Signposting Steering Committee.

Table 5 - Estimated benefits of tackling issues of access to insurance through signposting

<b>FIRST ORDER BENEFITS</b>	
Additional costs of searching for insurance	£4.5m
Lost premiums – Motor	£2.99m
Lost premiums – Travel	£4.08m
<b>Total</b>	<b>£11.57m</b>
<b>INDIRECT/SECOND ORDER BENEFITS (not included in the total monetised benefits of banning age discrimination)</b>	
Money not spent on a Holiday	£23.86m
Money not spent running a car	£36.6m
<b>Total</b>	<b>£60.46m</b>

(Source: HMT estimates)

### Improving transparency

Some people are not confident that age is not being misused particularly in the fields of motor and travel insurance. One approach is to require the industry to publish aggregate data that everyone could check.

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

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

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

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

Table 6 – Costs of improving transparency

<b>Transparency Requirement</b>	<b>One-off costs</b>	<b>Ongoing costs</b>
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	£0.72m	£0.25m
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(Source: HMT estimates)

It is likely that any additional costs due to a requirement for a publication scheme, to illustrate the impact of age on insurance will be minimal. It appears that existing data and procedures used for gathering gender data could also be used for age.

However, age is one of a number of risk factors used in assessing risk and the publication of data is not a good test of whether the sector is acting fairly. Insurers base their decisions on qualitative factors (such as medical screening) as well as statistical data, so there may not be a strictly mathematical relationship between the published data and individual prices. Indeed, to a “man on the street”, published data may well prove to be rather confusing.

In addition there is no clear case to why the sector needs to be monitored when there is no evidence of market failure.

Industry has been taking proactive steps to improve transparency and confidence by some consumers, the ABI for example recently published information about how premiums relate to risk. Industry has also agreed to voluntarily further improve transparency with the main “did you know?” FAQs about insurance, these will be more useful to consumers than aggregate data.

We propose a voluntary scheme for industry to improve transparency, to publish aggregate data by way of a targeted approach for travel and motor insurance where consumer confidence is the lowest. The costs of this are expected to be minimal, with minimal disruption to the industry and we believe such an approach will be more beneficial to consumers than a legislative requirement to produce wider aggregate data.

### **Summary of costs and benefits of the voluntary approach**

Table 7 - Summary of costs and benefits

		<b>Costs</b>		<b>Benefits</b>	
		<b>One off</b>	<b>Recurring</b>	<b>One off</b>	<b>Recurring</b>
<b>Transparency</b> – publishing data showing how age is used in insurance	<b>Private Sector</b>	£0.72m	£0.25m	Not monetised	Not monetised
<b>Signposting</b> – improving access to insurance products	<b>Private Sector</b>	No additional cost	No additional cost		£7.07m
	<b>Individual</b>	No additional cost	No additional cost		£4.5m
<b>TOTAL*</b>		£0.72m	£0.25m		£11.57m

\* Providing an exception will lead to no aggregate costs or benefit impacts. Exceptions will ensure that the status quo is maintained. The benefits given above in table 4 simply illustrate the impact if an exception was not provided.

# Annex 5: RATIONALE FOR THE OTHER EXCEPTIONS TO THE BAN ON AGE DISCRIMINATION

## Introduction

There are other age-based practices outside financial services and health and social care, which, although far less significant still need to be considered. We have classified these 'general services'.

We propose specific exceptions in the following areas:-

- Age-based concessions and benefits;
- Age-related group holidays;
- Residential park homes;
- Sporting events; and
- Immigration services.

A detailed rationale for having each of these exceptions is provided below.

**Providing an exception would lead to no aggregate costs or benefit impacts. Exceptions will ensure that the status quo is maintained. The benefits given below simply illustrate the impact if an exception was not provided.**

## Age-based concessions and benefits

### *Rationale for providing this exception*

There are many age-based concessions offered to specific age groups, including discounts offered by retailers during off-peak hours as 'cheap OAP haircuts' or '10% off for pensioners' days, cheaper membership rates to join clubs, and age-targeted benefits provided by the public sector, such as free bus passes for the over 60s.

We are proposing to provide an exception to allow age-based concessions and benefits to continue because they help to ensure greater participation in society and the economy by young and old alike and withdrawing concessions would have a negative impact for the retailer, manufacturer and the customer. The vast majority of respondents to the previous consultation on age saw no disadvantage in allowing public and private sector age-based concessions to continue.

### *Examples of the costs associated with not providing an exception for age-based concessions*

#### Retail Sector

The British Retail Consortium provided an example of one company that offers discounts to over 60s. This company has five million registered members and at least half of these visited one of their stores in the last year. 14% of customers said they would not have made a purchase without the discount card. If we assume that these 14% would have visited the store once and spent £20, this would amount to £14 million in lost revenue for the retailer if they were no longer able to offer these concessions. If this 14% would normally make 5 visits during the year, spending £20 a time this would amount to **£70 million** in lost revenue for the year.

In addition the company would need to inform all its members that the concession scheme was no longer in operation, which would be expensive and time consuming. For example, if a company had five million concession card holders and they were to send a letter to each one informing them that the scheme would no longer operate this would cost £1.6 million just in second class postal costs alone, if the total cost of paper, printing envelopes was added and this totalled £1 per letter this would amount to **£5 million**. There would also be a loss of good will and customer loyalty, which is impossible to calculate.

#### Historical and education sector

English Heritage has illustrated how a total ban on the use of age based concessions could impact them. Their income from admissions for the over 60s in 2007/08 was £1.9m, it is anticipated that this would fall to £1.3m. In addition senior citizen membership fees totalled £4.1m in 2007/08, it is anticipated that this would also reduce to £3m<sup>80</sup>. Therefore English Heritage would anticipate losing **£1.7 million** of revenue on older people alone.

There is also a wider economic impact as cultural institutions contribute to the economy of the area in which they are located, because of the footfall they deliver. Also a reduction in income would impact the ability of organisations such as English Heritage to protect the historic environment and invest in improving visitor facilities and services.

### Culture, arts and cinema

The cinema industry has stated that there were 164.2 million cinema admissions in 2008 with box office revenue of £950m. If we assume that there would be 7% fewer admissions if age based concessions were not offered this would amount to £66.5 million lost revenue. However, we need to take into account that when these people do attend they will be paying more so we can assume that the £66.5 million deficit, would reduce to **£47.5 million** as there would be an additional £19 million from charging everyone full rates if we assume a modest 2% in adjusted revenue.

In addition the Arts Council announced a two year scheme to give free theatre tickets to the under 26s. This scheme was designed to encourage attendance by young people and in the long term generate more interest and new audiences. It is hard to calculate the benefits, but in the long run they should far exceed the cost of the scheme (currently £1.75 million).

### Age-related holidays

#### ***Rationale for providing this exception***

A small number of tour operators provide holidays for people who wish to holiday with other people of a similar age. For example, there are holidays exclusively for the over 50s and those aimed at people aged 18-30. Such holidays form a very small percentage of the holiday market as a whole. Age-related holidays provide a space in which people can come together and associate with people of a similar age to themselves. Their existence does not disadvantage others, who will still have a very wide range of group holidays to choose from. We therefore propose to have an exception to allow tour operators to continue to restrict the holidays they provide to people of a particular age.

#### ***Size of the market***

A small number of tour operators currently offer age-related group holidays; for example Saga provides for the over 50s, while Club 18-30 caters for the younger end of the age spectrum. These holidays are very popular. For example 201,000 people went on a Saga holiday in 2008 equating to sales of £267 million<sup>81</sup>. Club 18-30 takes around 110,000 guests each year with a turnover of £50 million<sup>82</sup>.

#### ***Examples of the costs associated with not providing an exception for age-related holidays***

We know that 78% of Saga customers prefer to go on holiday with others aged 50+, so there is a willingness to pay for this service. This amounts to £208.2 million<sup>83</sup> of Saga's turnover. If we assume that 50% of the people who stated a willingness to pay for the Saga product would not book a holiday with someone else we can see that the cost of withdrawing this service to the economy could be as much as **£104 million**. This is the estimated benefit of providing an exception to allow this service to continue. If we also say that 78% of Club 18 to 30 customers prefer to go on these holidays, and would not otherwise book a holiday, then the willingness to pay would amount to £39 million of Club 18 to 30's turnover<sup>84</sup>. However, if we make a broad assumption that only 50% of these people would not book a holiday with someone else, then the costs of withdrawing the service could be **£19.5 million**.

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<sup>80</sup> Data supplied by English Heritage

<sup>81</sup> Saga turnover of £267 million in 2008 (figure provided by Saga)

<sup>82</sup> Club 18-30 turnover - [http://en.wikipedia.org/wiki/Club\\_18-30](http://en.wikipedia.org/wiki/Club_18-30)

<sup>83</sup> Based on Saga turnover of £267 million in 2008 (figure provided by Saga)

<sup>84</sup> Based on the Club 18-30 turnover as stated in - [http://en.wikipedia.org/wiki/Club\\_18-30](http://en.wikipedia.org/wiki/Club_18-30)

## ***Savings if an exception was not provided***

These specialist holiday providers could attract additional customers from other age groups who would want to go on one of the group holidays advertised, but can't because of the current restrictions. It is unlikely, however, that the revenue from these new customers would offset the loss of their existing customer base.

## **Residential Park Homes**

### ***Rationale for providing this exception***

Many residential parks apply age limits for those buying or renting park homes. This reflects the fact that many consumers prefer to live with people of a similar age. Residential park homes are considered a valued part of the housing market, providing accommodation of choice for some people and meeting the needs of others<sup>85</sup>. Many people have purchased homes on residential home parks because they want a certain life style and the quality of life they were looking for could be dramatically changed if age restrictions were lifted so we propose to include an exception to allow them to continue.

### ***Size of the market***

There are approximately 2,050 park home sites in England and Wales providing 89,500 homes and housing an estimated 170,000 residents. In 2002 economic consultants ascertained that 65% of parks stated a minimum age requirement, with the most common age limit set at 50<sup>86</sup>. The main sources of income for park operators are generated from pitch fees, re-assignment commissions, and gross sales of homes and renting where applicable. The average annual income of a park is £182,590 per park. However, park size varies greatly. For example, the top 10% have income well in excess of £470,000<sup>87</sup>.

### ***Examples of the costs associated with not providing an exception for residential park homes***

If age limits were no longer allowed then this would generate costs for park owners and thus park residents. These will be offset in part by the revenue generated from additional residents from other age groups who would want to live in the park but can't because of the current restrictions. It is unlikely, however, that the revenue from these new residents would offset the loss of their existing resident base.

### **Impact on sales opportunities and fees**

When the residents sell their homes they pay a commission to the park operator. The average value of a home upon assignment in 2002 was £25,500 for a single and £43,500 for a twin. The commission is normally 10% which would be £2,550 and £4,350<sup>88</sup>. The annual park fee in 2002 averaged £1,131 for single homes and £1,237 for twins<sup>89</sup>. By opening up the parks to all ages this could result in less sales of property and consequently less fees collected. If we assume that the 65% of the 2,050 parks which have a minimum age requirement would need to increase fees to potentially meet the shortfall in income, and we assume that the average annual fee in these parks would rise by 10% or £113 for the 58,175 homes, this would amount to **£6.58million**<sup>90</sup> a year.

### **Impact on property prices**

Many existing residential park home owners purchased their homes based on the age limits currently in operation. The removal of age limits could see the value of their property change (positively or negatively) and more importantly, the quality of life they were looking for when they purchased their home could be dramatically changed.

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<sup>85</sup> Figures provided by the BH&HPA

<sup>86</sup> Economics of the Park Homes Industry report 2002 page 39

<sup>87</sup> Economics of the Park Homes industry report 2002 page 46 states income of £155,000 and over £400,000, we have increased these figures to bring them up to date by applying the 2008/09 HMT GDP deflator of 17.8%.

<sup>88</sup> Economics of the Park Homes Industry report 2002 page 9

<sup>89</sup> Economics of the Park Homes Industry report 2002 page 9 states income of £960 for singles and £1,050 for doubles per annum, we have increased these figures to bring them up to date by applying the 2008/09 HMT GDP deflator of 17.8%

<sup>90</sup> 58,175 homes at £100 each = £5,817,500

Opening up to a wider age group could mean that demand could far outstrip availability beyond the figures detailed above, as these figures assumed that park age limits would remain in place, so any removal of age limits could potentially see this increase even more, which could price many potential buyers out of the market. Alternatively, a potential widening of entrants could have a negative impact as older people may turn away from parks and prices may drop. The real impact is uncertain but will be tested further as part of the consultation.

### Park operating costs and fees

A ban on age limits would mean that many park owners would have to consider changing their facilities on their parks and in the homes to cater for a different clientele, which would increase the park operating costs, which average between £173,166 and £115,444 per park<sup>91</sup>. This would further increase the fees which park owners charge. If a park owner had to spend £10,000 to make changes to a park to upgrade the facilities this expense would be passed onto residents. If we assume that the 65% of the 2,050 parks which have a minimum age requirement would need to spend this money, this would amount to on a total **£13.3 million** on 1,332 parks, £229 for each of the 58,175 homes.

### Immigration

#### ***Rationale for providing this exception***

When determining a person's eligibility to enter and remain in the UK, age can be/has been one factor that is given consideration in some applications along with other factors such as earnings. Age is used because other criteria such as earnings are likely to favour older people with established careers, so the weighting is adjusted for younger applicants with demonstrable potential. We propose to have an exception to ensure that immigration policy can continue to be delivered effectively. Differential treatment on the grounds of age is integral to so many immigration functions that this exception is required to avoid the necessity in every case of justifying such treatment under section 13 of the Act.

#### ***Examples of the costs associated with not providing an exception for immigration***

Not currently calculated

### Sport

#### ***Rationale for providing this exception***

Age limits or age bands are currently used in sporting events where it is necessary to secure fair competition, or the safety of competitors. We propose to include an exception to ensure this practice can continue. The benefits of allowing an exception for age-restricted sports competitions are as follows:-

- *It enshrines the principles of fair competition* - For many sports, success in competition is dependent upon the size, weight, strength, flexibility, dexterity, stamina or experience of the competitor. Taking account of a person's age is important therefore in ensuring that a player does not gain an unfair advantage, as this would contradict the ethics of sport and fair play.
- *It promotes safe competition* - There are notable links between injury rates and the age of competitors. In response to this, some sports impose minimum age requirements to protect young athletes. For example, gymnastics,<sup>92</sup> weightlifting and contact sports competitions.
- *The approach is in line with international practice* - Taking account of the age of a competitor is often necessary in order to comply with rules determined at an international level or by international sports governing bodies. For example, there are many different age requirements for sport at international level, such as under 21 football tournaments.

#### ***Examples of the costs associated with not providing an exception for sport***

Not currently calculated

<sup>91</sup> Economics of the Park Homes Industry report 2002 states average operating costs of between £147,000 and £98,000 per park, we have increased these figures to bring them up to date by applying the 2008/09 HMT GDP deflator of 17.8%

<sup>92</sup> BBC News - <http://news.bbc.co.uk/sport1/hi/olympics/gymnastics/7575929.stm>

## **Age Verification**

### **Rationale for providing this exception**

There are many products such as alcohol and cigarettes which have age restrictions placed on them at point of sale. Retailers need to be careful to avoid selling these products to people below the legal age and, when in doubt, ask for identification as proof of age before supplying the products. To protect themselves from fines or losing their licences, retailers have developed the Challenge scheme; the most popular scheme is Challenge 25, which entails retailers seeking proof of age from anybody who appears to be under the age of 25, prior to purchasing age restricted goods.

Retailer-led age verification schemes have been successful in reducing underage sales<sup>93</sup> and are supported by the Home Office, the police, local councils, trading standards, primary care trusts, schools and businesses across the UK, as they help safeguard the health and well-being of young people as well as reducing instances of anti-social behaviour.

Although the Government believes that these schemes can be objectively justified, since challenging someone for identification is a legitimate action to ensure that a retailer meets their legal responsibility, it has been decided that we do not want retailers to face significant costs in refreshing their schemes and that there should not be any uncertainty in challenging people about their age in the sale of age restricted goods and services.

### **Size of the market**

We have worked with the Association of Convenience Stores (ACS) to consider this issue. They represent 33,500 local shops. There are 40,000 stores in the convenience sector alone.

### **Examples of the costs associated with not providing an exception for age verification**

Stores may need to overhaul their existing age verification scheme, make staff aware of the new restrictions or attempt to implement a new policy. This would lead to additional costs for the sector. A recent Local Better Regulation Office (LBRO) report found that members of the Retail of Alcohol Standards Group invested over £3 million in the introduction of 'Challenge 25' in 2009<sup>94</sup>. This figure represents additional cost of implementing a new version of the scheme and would represent the costs required to implement a new version of the scheme if an exception is not introduced. The ACS has provided expected costs, which estimates the training and material cost for introducing a new age verification policy across two different size members. A 500 store estate estimates a minimum cost of £342,583 on top of the current investment in age related sales and for a smaller member with 80 stores it would cost £250,500. However, there would also be other costs, such as time to design and try and gain cross-industry agreement on a new scheme. This cost also cannot take into account the full impact on a business of the requirement to roll out different schemes across different local authorities and devolved administrations<sup>95</sup> and also the increase in costs caused by additional enforcement actions if there is an increase in underage sales.

ACS believes a more realistic figure is the cost to stores for introducing Challenge 21/25 policies. An ACS member with 500 petrol forecourt stores has provided figures to the LBRO report which estimated that to introduce a new policy it would cost £830,000. This cost covers the creation, implementation and training for a new scheme and is additional to on-going training costs. If this cost of £830,000 is reproduced across the 40,000 stores in the convenience sector alone, this would equate to a £33.2 million compliance cost<sup>96</sup>. Additionally there would be the possibility of legal challenges if there was not an exception.

<sup>93</sup> Test purchase failures for underage alcohol sales have fallen from 32% in the off trade in 2004 to 14% in 2008

<sup>94</sup> LBRO *Age Restricted Sales* p. 12 See <http://www.lbro.org.uk/docs/age-restricted-products-report-short.pdf>

<sup>95</sup> Some licensees have a licence condition that they must operate Challenge 25 and in Scotland it is also a legal requirement. Therefore in these stores there would be the need to either undergo a costly process to remove the condition and/or the need to have two different age verification systems in place in store.

<sup>96</sup> The ACS calculations are available on request.



## Annex 6: SPECIFIC IMPACT TESTS

### COMPETITION ASSESSMENT

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

#### Age Related Group Holidays

Saga has 20% of the age-related market, but not 20% of the whole holiday market. An exception to allow age related group holidays will maintain the status quo so should not have any impact on competition.

#### Objective Justification

Where an exception has not been provided other age specific services will be able to continue as long as the provider of that service can show that they are a proportionate means of achieving a legitimate aim. We are not therefore expecting this to have a significant impact on competition.

#### Competition filter test

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

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

## **SMALL FIRMS IMPACT TEST**

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

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

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

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

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

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

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

## **JUSTICE**

There may be a marginal increase in legal action; but this is unlikely to have a significant impact on Legal Aid costs.

## **SUSTAINABLE DEVELOPMENT**

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

## **GREENHOUSE GASES**

The exceptions will have no effect on carbon emissions.

## **WIDER ENVIRONMENTAL ISSUES**

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

## **HEALTH AND WELLBEING**

Health and social care is covered in the impact assessment.

## **EQUALITY DUTIES**

There are no implications from meeting the requirements of the proposal on the other equality strands. The proposal does not impose any restriction or involve any requirement that a person of a particular racial background, disability, sexual orientation, religion or belief or gender would find difficult to comply with. Conditions apply equally to all individuals and businesses involved in the activities covered by the proposal.

Indeed the legislation should help these groups. For example, there is a clear relationship between age and increasing prevalence of disability. Proposals aimed at addressing the needs of people in later life can therefore be expected to have a positive impact on a large number of people with disabilities. For example, earlier diagnosis and better mental health services for those over 65 should help the 1.4 million people over 65 suffering from 'major' depression and the 700,000 suffering from dementia<sup>97</sup> to live a better more active life.

More details of the equality impact can be found in the Equality Impact Assessment.

## **HUMAN RIGHTS**

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

## **RURAL PROOFING**

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

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<sup>97</sup> Alzheimer's Society