

**EXPLANATORY MEMORANDUM TO  
THE EQUALITY ACT 2010 (AGE EXCEPTIONS) ORDER 2012**

**2012 No.**

**1. Introduction**

1.1 This explanatory memorandum has been prepared by the Home Office (Government Equalities Office) and is laid before Parliament by Command of Her Majesty.

**2. Purpose of the instrument**

2.1 This Order provides for exceptions to the application of Part 3 (Services and public functions) of the Equality Act 2010 (c.15) (“the Act”) to the protected characteristic of age. The exceptions are to come into force at the same time as the provisions of Part 3 in relation to age are commenced under the Equality Act 2010 Commencement (No. 9) Order 2012 (S.I. 2012/ ) (C. ).

**3. Matters of special interest to the Joint Committee on Statutory Instruments**

3.1 None.

**4. Legislative Context**

4.1 Part 3 of the Act provides for the prohibition of discrimination, victimisation and harassment in respect of the provision of goods and services and of discrimination in relation to the exercise of public functions. Part 3 was commenced for all protected characteristics requiring protection, except in relation to age, on 1<sup>st</sup> October 2010 under the Equality Act 2010 (Commencement No. 4, Savings, Consequential, Transitional, Transitory and Incidental Provisions and Revocation) Order 2010 (2010/2317) (C.112). Part 7 of the Act provides for the extension of the prohibition of discrimination, victimisation and harassment to associations. Section 197 is to be commenced on the day after making by the Equality Act 2010 (Commencement No. 9) Order 2012, and that Order provides for the prohibitions in Part 3 of the Act to come into force on 1<sup>st</sup> October 2012.

4.2 Under section 208(2) and (8) of the Act, this Order may not be made unless a draft of the Order has been laid before and approved by a resolution of each House of Parliament.

**5. Territorial Extent and Application**

5.1 This instrument applies to England and Wales and Scotland.

**6. European Convention on Human Rights**

6.1 The Secretary of State for the Home Department and Minister for Women and Equalities, the Rt Hon Theresa May, MP, has made the following statement regarding Human Rights:

In my view the provisions of the Equality Act 2010 (Age Exceptions) Order 2012 are compatible with the Convention rights.

## **7. Policy Background**

7.1 Bringing into force the age discrimination ban in the provision of services and public functions (and associations) will provide protection for younger adults and older people from age discrimination, victimisation and harassment.

7.2 The intention is to ensure that the ban prohibits only harmful discrimination and permits beneficial or neutral differentiation because of age. This outcome is ensured in a number of ways:

- Through permitting direct discrimination because of age by reliance on “objective justification” as provided by section 13(2) of the Act;
- Through similarly permitting objective justification as a defence to a claim of indirect discrimination related to age;
- Through use of the “positive action” provisions at section 158 of the Act to provide extra assistance or support to people of particular age groups, again subject to objective justification;
- Through reliance on the “statutory authority” exceptions in Schedule 22 to the Act, whereby anything allowed by another legislative instrument is permitted (for example, free prescriptions for older people, free bus passes, voting age, age of consent etc);
- Through the specific exceptions provided in the draft Exceptions Order.

7.3 This Order inserts a number of specific age-related exceptions into Schedule 3 (Services and public functions – exceptions), Schedule 16 (Associations: exceptions) and section 195 (general exceptions: sport) of the Act. The objective is to put beyond doubt that such activities will always be excepted from the age discrimination prohibition in respect of services etc. They are activities which, in the Government’s view in the light of consultation, are either justifiable for public policy reasons or are harmless or on balance beneficial.

7.4 The specific exceptions allow direct and indirect discrimination, but do not permit harassment or victimisation, as such conduct is never considered to be defensible.

The specific exceptions provided by the draft Order are:

### *Immigration (Article 2)*

7.5 An exception is required so that the immigration authorities can continue to take an individual’s age into account when giving effect to immigration law and policy. Article 2 inserts a new paragraph before paragraph 16 in Part 4 of Schedule 3 to the Act (which covers exceptions relating to immigration). Its effect is to provide flexibility for a Minister of the Crown and/or the immigration authorities to impose particular requirements or conditions or

to refuse to admit or allow a person or group of persons to remain in the UK for a reason relating to their age.

#### *Financial services (Article 3)*

7.6 An exception is required so that financial services providers can still continue to use age as a criterion for pricing risk, as it is a key risk factor associated with for example, medical conditions, ability to drive, likelihood of making an insurance claim and the ability to repay a loan. Article 3 inserts a new paragraph after paragraph 20 in Part 5 of Schedule 3 (which covers exceptions relating to insurance, etc). Its effect is to provide a (qualified) exception for the use of age as a factor in assessing risk in the provision of financial services – the qualification being that any risk assessment must be carried out by reference to relevant information from a source on which it is reasonable to rely.

#### *Concessionary services (Article 4)*

7.7 Many service providers offer age-based concessions or discounts. Article 4 inserts a new paragraph (30A) after paragraph 30 in Part 7 of Schedule 3 and amends the title of that Part. Its effect is to allow businesses and public sector organisations to provide age-related discounts, concessions or benefits. This exception is intended to ensure that “special offers” such as cheap haircuts for pensioners, cheap fish and chips for pensioners and student railcards etc. will continue to be lawful.

#### *Holidays (Article 5)*

7.8 A small number of holiday operators provide holidays for people who wish to holiday with other people of a similar age. Article 5 inserts a new paragraph (30B) in Part 7 of Schedule 3. Its effect is to allow providers of a “relevant holiday service” to provide such a service for people of a particular age group. This exception would cover, for example, holidays arranged by Saga or Club 18-30, but also any holiday (as defined) exclusively targeted at people of a particular age group. The exception does not, therefore, cover holidays provided for the public at large.

7.9 As an example, a bed and breakfast business could benefit from the exception if it offered accommodation, plus activities or travel arrangements, only to people of a particular age such as pensioners, in which case it could refuse accommodation to non-pensioners. However, if it offered accommodation, alone or with travel or other facilities, to the public at large, it could not refuse accommodation to applicants because of their age, eg young adults, unless it could provide objective justification if challenged (for example, because young people had caused damage to rooms in the past). To ensure clarity as to what is being provided and on what terms, sub-paragraph (3) makes reliance on the exception dependent on the holiday provider making a written statement before the holiday is sold.

#### *Age restricted sales (Article 6)*

7.10 Retailers are encouraged by the Government and their trade associations to challenge people with regard to their age when selling age-restricted goods such as alcohol and cigarettes, to ensure that only those of an appropriate age are sold these products. Article 6 inserts a new paragraph (30C) in Part 7 of Schedule 3. Its effect is to enable retailers of age-restricted products to continue to challenge prospective customers on the basis of their age.

Many retailers belong to schemes such as “Challenge 25” under which they routinely ask for proof of age from any customer who appears to be less than 25 years old (so as to be sure of identifying those below the legal minimum). The exception would apply not only to formal members of such schemes but to any retailer who wishes to challenge a customer buying an age-restricted product in this way. In order to be able to rely on the exception, sub-paragraph (1)(b) requires an age warning to be displayed on the premises.

#### *Residential mobile homes (Article 7)*

7.11 Article 7 inserts a new paragraph (30D) in Part 7 of Schedule 3. Its effect is to enable owners of sites containing residential mobile homes to limit their occupation to people of a particular age. The reason for this provision is primarily clarification. Part 4 (premises) of the Act does not apply to the protected characteristic of age. This potentially leaves “residential mobile homes” (where people live as their main or only residence, as distinct from holidaying) within Part 3 since such homes are not usually premises within Part 4 of the Act. The exception ensures that these are treated in a similar way to “premises” under Part 4. The site owner must include, under sub-paragraph (4), a statement that the age limitation applies.

#### *Associations (Article 8)*

7.12 Article 8 inserts a new paragraph (1A) in Schedule 16 (Associations: exceptions). Its effect is to allow a private club or association to continue to provide membership discounts, concessions or benefits related to age or length of membership.

#### *Sport (Article 9)*

7.13 Age limits and age bands are used in numerous sports events, leagues or training sessions. They are necessary to secure fair competition, secure the safety of competitors or to comply with rules determined at a national or international level or by sports governing bodies. Article 9 inserts a new subsection (7) in section 195 of the Act (general exceptions: sport). Its effect is to enable sports competitions (both physical and intellectual) to continue to be run for people of a particular age group.

## **8. Consultation outcome**

8.1 The principle of having a prohibition on age discrimination in the provision of services and public functions, and the range of specific exceptions (including a draft of the Order) have been subject to formal consultation as follows.

8.2 In June 2007 the consultation paper *A Framework for Fairness*<sup>1</sup> set out proposals for the Equality Bill. It sought views on, amongst other things, whether the Equality Bill should extend legal protection against age discrimination to services and public functions.

8.3 The consultation ran from June to September 2007. There were almost 750 responses on age discrimination. The responses gave examples of perceived age discrimination in particular areas of concern including health and social care, and motor and travel insurance. The majority (around 80%) of respondents were in favour of legislation to tackle harmful age discrimination.

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

8.4 In the response of the then Government to that consultation, it was announced in *Framework for a Fairer Future – The Equality Bill*<sup>2</sup>, published in June 2008, that the proposed Equality Bill would outlaw harmful age-differentiated practices against people aged 18 and over by those providing services and exercising public functions.

8.5 In June 2009 a further consultation “*Equality Bill: Making it work – Ending age discrimination in services and public functions*”<sup>3</sup> was published on the Government Equalities Office website and in paper form. It described how the then Government was developing proposals for exceptions from the age discrimination ban. It invited views on proposals for exceptions and on when the ban should be brought into force.

8.6 The consultation ran from 29th June until 30th September 2009. Over 500 organisations representing the interests of people who use services and public functions, and service providers from the public, private and third sectors were specifically invited to respond to it. A presentation and discussion on the consultation document took place at each of four Equality Bill communication events held in September 2009 in Cardiff, Birmingham, Edinburgh and London. 106 responses were received from a wide variety of organisations in the public, private and voluntary sectors. They were broadly in favour of the proposed exceptions.

8.7 In March 2011 a further consultation “*Equality Act 2010: Banning age discrimination in services, public functions and associations*”<sup>4</sup>, was published on the Government Equalities Office website and in paper form. It contained the draft Exceptions Order and supporting Regulatory and Equality Impact Assessments. It invited views on the proposed draft exceptions from a ban on age discrimination in the provision of services and public functions.

8.8 The consultation ran from 3rd March until 25th May 2011. Over 800 interested parties were contacted directly to alert them to the consultation and to invite them to comment on the proposals. Three consultation events were held with stakeholders, on health and social care, financial services and the general services sector. Separate one-to-one meetings were also held with other key stakeholders. We received:-

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

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<sup>2</sup> <http://www.equalities.gov.uk/PDF/FrameworkforaFairerFuture.pdf>

<sup>3</sup> <http://www.equalities.gov.uk/pdf/13511%20GEO%20Consultation%206th.pdf>

<sup>4</sup>

<http://webarchive.nationalarchives.gov.uk/20110608160754/http://www.equalities.gov.uk/pdf/110301%20Consultation%20doc.pdf>

8.9 Following the consultation it was decided to proceed with the specific exceptions described in section 7 above. These include all those proposed by the Government, plus one additional requested exception (for challenges relating to age restricted sales) reflecting the comments by the Association of Convenience Stores.

8.10 Subsequently, during the drafting of the Order, there has been informal consultation with representatives of the financial services sector, the retail sector and holiday providers.

## **9. Guidance**

9.1 The Government Equalities Office will publish “quick-start” non-statutory guidance in good time ahead of the ban on age discrimination coming into effect. Further, more detailed and specific guidance will be worked up as necessary in conjunction with key parties, such as the Equality and Human Rights Commission, businesses and their representative and trade associations.

## **10. Impact**

10.1 The impact on business, charities or voluntary bodies is estimated as a cost of £5.2-£8.8million over 10 years.

10.2 The impact on public sector bodies is estimated as a cost of £7.7-£9.5million over 10 years.

10.3 The impact on individuals is estimated as a benefit of £44million over 10 years.

10.4 The final impact assessment was published on 12 June 2012 with the Government response to the 2011 consultation on exceptions, and is available at <http://www.homeoffice.gov.uk/publications/equalities/equality-act-publications/age-discrimination/impact-assessment> and published alongside the Explanatory Memorandum on [www.legislation.gov.uk](http://www.legislation.gov.uk).

## **11. Regulating small business**

11.1 The legislation applies to small business. The age discrimination ban in services and public functions will apply to businesses of all sizes, as will the exceptions to the ban.

11.2 To minimise the impact of the requirements on firms employing up to 20 people, they will still be able to provide age differentiated services where they are covered by an exception or where it can be objectively justified, as other businesses can.

11.3 The basis of this decision was that the Government considered whether to exempt micro or small businesses from the ban as a group. However, 82% of employers in the services sector are micro-businesses, so exempting them from the ban *en bloc* could greatly reduce the effectiveness of the policy. Instead, the Government considers that the approach adopted, through the combination of exceptions and objective justification outlined in section 7 above and the specific exceptions provided in the Exceptions Order, is both proportionate and effective and tailored to the concerns expressed in the various consultations on this issue.

## **12. Monitoring and review**

12.1 The Government is committed to reviewing the Equality Act. The operation of the age discrimination ban in the provision of services and public functions will be monitored and reviewed as part of this exercise over the next three years.

## **13. Contacts**

13.1 Matthew King (Tel: 020 7035 8092) or Mark Reed (Tel: 020 7035 8126) at the Government Equalities Office can answer any questions regarding the age discrimination ban and this Order or e-mail [age@geo.gsi.gov.uk](mailto:age@geo.gsi.gov.uk).