



Office of the

**First Minister and
Deputy First Minister**

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**PROPOSALS TO EXTEND AGE DISCRIMINATION LEGISLATION
(AGE GOODS, FACILITIES AND SERVICES)**

Consultation Document

July 2015

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MINISTERIAL FOREWORD

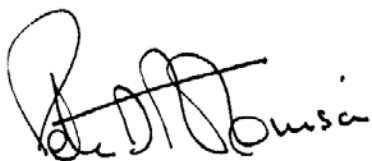
We are pleased to present our policy proposals for future legislation to protect people from discrimination on grounds of age.

Unfortunately, inequalities still exist in our society and we are working hard to eliminate these and create a fair society for everyone. We want to make sure everyone has the opportunity to realise their potential, and that people are treated fairly, regardless of their age. That is why the Executive's Programme for Government includes a commitment to extend age discrimination legislation to the provision of goods, facilities and services.

There is already an extensive body of equality legislation in place which ensures that people are protected from discrimination on grounds of sex, disability, race, sexual orientation and religious belief or political opinion. There is, however, a major gap in relation to age discrimination outside the workplace. This consultation presents our proposals to plug that gap and therefore represents another important step in the development of our equality legislation.

We want to make sure that we have a clear policy position before bringing forward any proposals for legislation. This consultation document explains what we mean by age discrimination and the types of activities and areas that we think any future age discrimination legislation should cover. It also sets out some circumstances where we think it is fair and appropriate to treat people differently because of their age.

We would encourage everyone who wants to see a fairer and more equal society to engage with the consultation process by responding to the consultation questions or by attending a consultation event. We look forward to hearing your views.



The Rt Hon Peter D Robinson MLA
First Minister



Martin McGuinness MLA
deputy First Minister

CHAPTER 1: ABOUT THIS CONSULTATION

1. Purpose of this consultation

- 1.1. We want to prohibit and eradicate unjustifiable or harmful age discrimination against people aged 16 years and over in the provision of goods, facilities and services, charities, premises, education, public functions, and private clubs and associations, while recognising that there are times where it is justifiable and beneficial to treat people differently on the basis of age. The Programme for Government 2011-15 includes a commitment to extend age discrimination legislation to the provision of goods, facilities and services (commitment 38).
- 1.2. We need to make sure that any new legislation only prohibits harmful or unjustifiable treatment that results in genuinely unfair discrimination because of age. It should not outlaw the many instances where it is justifiable or beneficial to treat people differently. We want to make sure that we have a clear and robust policy position and rationale for any exceptions to age discrimination legislation before we bring forward legislation in this area.
- 1.3. This consultation document sets out our policy proposals to protect adults and young people aged 16 years and over from discrimination on the basis of age in relation to goods, facilities and services, charities, premises, education, public functions, and private clubs and associations. The scope of the proposals is therefore broader than goods, facilities and services alone. It sets out those areas where we believe that different treatment of people of different ages is justified and where we think 'exceptions' to any future ban on age discrimination will be necessary to allow certain age-differentiated practices to continue. It also sets out our proposals to ensure that people who believe that they have been discriminated against on grounds of age have the right to challenge their treatment in the courts in line with other equality grounds. Finally, this document sets out the proposed functions and powers envisaged for the Equality Commission for Northern Ireland (ECNI) in relation to any future age discrimination legislation.

- 1.4. We have discussed our draft policy proposals with key stakeholders and have taken their comments and advice into account in developing these proposals for consultation. We are grateful to the Equality Commission for Northern Ireland, the Northern Ireland Commissioner for Children and Young People, the Commissioner for Older People for Northern Ireland, Children's Law Centre, Age NI, Age Sector Platform and the Northern Ireland Youth Forum for engaging with the Department on these proposals.
- 1.5. These proposals represent our current thinking based on the available information and evidence base. They may change when we analyse your views and review any additional information and evidence. Even where we may not have asked a specific question or covered a particular point that you consider needs to be addressed, we are open to hearing all your views. This consultation paper seeks views on the range of activities that should be covered by any future legislation on age discrimination, and on any exceptions that should be provided to ensure that the protection is effective and properly targeted.

2. How to respond

- 2.1. We welcome your views on our policy proposals for age discrimination legislation in the provision of goods, facilities and services, charities, premises, education, public functions and private clubs and associations.
- 2.2. A consultation questionnaire has been developed to assist you to comment on the development and potential content of legislation to end age discrimination in these areas. The questionnaire can be accessed online at https://www.surveymonkey.com/s/AgeGFS_Consultation. The questionnaire should be completed in association with this consultation document. It should take around twenty minutes to complete.
- 2.3. A copy of the questionnaire is available on our website www.ofmdfmi.gov.uk/age-discrimination-legislation and a list of the

consultation questions is provided at Annex C. Written responses to this consultation should be submitted in writing or by email to:

Address: Age GFS Consultation
Room E3.18
Castle Buildings
Stormont Estate
Belfast
BT4 3SR

Email: age@ofmdfmi.gov.uk

- 2.4. All responses must be received by 5pm on Thursday 8 October 2015.
- 2.5. When responding to this consultation please state whether you are responding as an individual or representing the views of an organisation. If responding on behalf of an organisation, please make it clear who the organisation represents and, where applicable, how the views of members were assembled.
- 2.6. During the consultation period we will meet with groups and individuals who are particularly interested in these policy proposals. Details of these consultation events are available on our website www.ofmdfmi.gov.uk/age-discrimination-legislation or by contacting us using the details below.

3. Queries about this document / alternative formats

- 3.1. Any queries about this consultation document or requests for alternative formats should be addressed to:

Address: Age GFS Consultation
Room E3.18
Castle Buildings
Stormont Estate
Belfast

BT4 3SR

Email: age@ofmdfmi.gov.uk

Telephone: 028 90523433

Fax: 028 90523272

Textphone: 028 9052 2526

- 3.2. You may make copies of this document without seeking permission. An electronic version of this consultation is available at www.ofmdfmi.gov.uk/age-discrimination-legislation.
- 3.3. Please contact us using the details above if you need any further printed copies, or if you need any further assistance to make a response.

4. Freedom of Information, data protection and confidentiality

- 4.1. The Freedom of Information Act 2000 gives the public a right of access to any information held by a public authority, in this case the Office of the First Minister and deputy First Minister ('the Department'). This includes access to information provided in response to a consultation exercise.
- 4.2. The Department cannot automatically consider information supplied to it during consultation as confidential if that information is subsequently requested under the Freedom of Information Act 2000. However, if there is a Freedom of Information request for information submitted during this present consultation, the Department will consider carefully whether it should be made public, or treated confidentially.
- 4.3. If we are asked to disclose responses under the Freedom of Information Act 2000, we will take any requests for confidentiality into account. However, confidentiality cannot be guaranteed.

4.4. We will handle any personal data provided during the consultation in accordance with the Data Protection Act 1998.

4.5. For further information about confidentiality of responses, please contact the Information Commissioner's Office or visit their website at: [http://ico.org.uk/about us/our organisation/northern ireland](http://ico.org.uk/about-us/our-organisation/northern-ireland)

5. After the consultation

5.1. Following the consultation period we will consider all responses received and take these into account in developing our final policy proposals. A summary of the consultation responses received, along with our final policy proposals, will be published on the Department's website (www.ofmdfmi.gov.uk).

CHAPTER 2: INTRODUCTION

1. **Background**

- 1.1. While we have an extensive body of anti-discrimination legislation in place in Northern Ireland, there remains a major gap in relation to age discrimination in the provision of goods, facilities and services, charities, premises, education, public functions, and private clubs and associations. We want to provide people with the same legal protection from discrimination in these areas on grounds of age as is currently enjoyed by people on other equality grounds.
- 1.2. This chapter sets out the legislative and policy context for our proposals, as well as the developments in other jurisdictions. It also sets out the evidence of age discrimination and the need to reform the law in relation to goods, facilities and services, charities, premises, education, public functions and private clubs and associations.

2. **Discrimination on the grounds of age in employment**

- 2.1. The Employment Equality (Age) Regulations (Northern Ireland) 2006 ('the Regulations') make discrimination on grounds of age unlawful in the areas of employment, occupation, vocational training and further and higher education. The Regulations implemented the age strand of the European Employment Framework Directive 2000/78/EC.
- 2.2. The Regulations prohibit unjustified direct and indirect discrimination, victimisation and harassment. They apply to individuals in work, seeking work or access to training, and to all employers and providers of vocational training (including further and higher education institutions).
- 2.3. The Regulations include a number of 'exceptions' where discrimination on grounds of age is permitted, such as genuine occupational requirement and the national minimum wage. The Regulations also permit direct or indirect

discrimination where the employer or other can demonstrate that their actions, provisions, criteria or practices are a proportionate means of achieving a legitimate aim (known as objective justification) or where the purpose of the differential treatment is to prevent or compensate for disadvantage linked to age suffered by persons of the targeted age or age group (known as positive action).

3. Discrimination outside the employment context

3.1. It is already unlawful for service providers to discriminate outside the employment and vocational training context on five key grounds: sex (including gender reassignment and pregnancy/maternity); disability; race; religious belief or political opinion; and sexual orientation. The relevant pieces of anti-discrimination legislation are:

- Sex Discrimination (NI) Order 1976 (as amended) ('SDO')
- Disability Discrimination Act 1995 (as amended) ('DDA')
- Special Educational Needs and Disability (NI) Order 2005 (as amended) ('SENDO')
- Race Relations (NI) Order 1997 (as amended) ('RRO')
- Fair Employment and Treatment (NI) Order 1998 (as amended) ('FETO')
- Equality Act (Sexual Orientation) Regulations (NI) 2006 (as amended) ('EASOR')

3.2. These pieces of legislation cover various areas outside the employment and vocational training context, such as the provision of goods, facilities and services, premises, public functions, and private clubs and associations. However, the way in which the law applies in these areas differs across each of the key grounds.

3.3. The law allows that people can be treated differently in certain circumstances and there are exceptions to the general principle of non-discrimination set out in the various pieces of legislation above. These exceptions vary greatly across each of the key grounds.

- 3.4. We have analysed and drawn on the pieces of legislation listed above, including examination of the differences and variations between them, in formulating our proposals to end age discrimination outside the employment context set out in this consultation document.

4. Section 75

- 4.1. Section 75 of the Northern Ireland Act 1998 requires all public authorities, in carrying out their functions relating to Northern Ireland, to have due regard to the need to promote equality of opportunity between: persons of different religious belief, political opinion, racial group, age, marital status or sexual orientation; between men and women generally, between persons with disabilities and persons without; and between persons with dependents and persons without.
- 4.2. The Northern Ireland Act 1998 does not grant an individual the right to redress in the courts in circumstances where they have, without justification, been discriminated against by a public authority on grounds of age when accessing a service or when subject to the exercise of public functions.

5. Strategic context

- 5.1. The Executive is committed to tackling inequality and disadvantage and the Programme for Government 2011-15, which has been extended until 2016, includes a commitment to extend age discrimination legislation to goods, facilities and services. The proposals put forward in this consultation document are intended to help progress that commitment. These proposals are also linked to other key policies and strategies which aim to improve the lives of people of all ages, such as the Active Ageing Strategy and the Ten Year Strategy for Children and Young People.

5.2. The Active Ageing Strategy

5.2.1. The Active Ageing Strategy is based on the UN Principles for Older People, the five themes of which (Independence, Participation, Care, Self-fulfilment and Dignity) form the basis for the Strategy's Strategic Aims. It highlights the key issues facing older people here. The Strategy is currently being finalised and following Committee briefing and Executive clearance will be published in the coming weeks. The draft Indicators for the Strategy will also be issued for public consultation at the same time.

5.3. The Ten Year Strategy for Children and Young People

5.3.1. The Ten Year Strategy for Children and Young People provides the overall strategic direction for all of the work which the Executive takes forward to improve children's lives. The Strategy focuses on six key outcomes that children and young people are: healthy; enjoying, learning and achieving; living in safety and with stability; experiencing economic and environmental well-being; contributing positively to community and society; and living in a society which respects their rights. Work on the development of a new strategy for children and young people to replace the Ten Year Strategy when it expires in 2016 has begun.

5.4. Commissioner for Older People Northern Ireland

5.4.1. The role of Commissioner for Older People was established under the Commissioner for Older People Act (Northern Ireland) 2011. The Commissioner's principal aim is to safeguard and promote the interests of older people, which is defined by legislation as including those aged 60 and over, and in exceptional circumstances those aged 50 or over. The Commissioner for Older People has promotional, advisory, educational and general investigatory duties and powers.

5.5. Northern Ireland Commissioner for Children and Young People

5.5.1. The role of Commissioner for Children and Young People was established under the Commissioner for Children and Young People Order (Northern Ireland) 2003. The Commissioner's role is to safeguard and promote the rights and best interests of children and young people. The Commissioner's work is focused on making sure children and young people have access to their rights under the United Nations Convention on the Rights of the Child in their day-to-day lives, so they have the best opportunity to reach their full potential.

5.6. Equality Commission for Northern Ireland

5.6.1. The Equality Commission for Northern Ireland was established by the Northern Ireland Act 1998. The role of the Equality Commission is to promote equality of opportunity and to work towards the elimination of unlawful discrimination and harassment. The powers and duties of the Equality Commission derive from a number of statutes which have been enacted over the last number of decades, providing protection against discrimination on the ground of age, disability, race, religion and political opinion, sex and sexual orientation. The Equality Commission also has responsibilities arising from the Northern Ireland Act 1998 in respect of the statutory equality and good relations duties which apply to public authorities.

6. Age discrimination legislation in GB

6.1. The Equality Act 2010 consolidated, widened and replaced the previous discrimination law in place in England, Scotland and Wales. The Act prohibits discrimination in most areas of activity on grounds of age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation. The Act strengthened the law in a number of areas including the introduction of the prohibition of direct and

indirect discrimination, victimisation and harassment on grounds of age in the provision of services and the exercise of public functions.

- 6.2. The Equality Act 2010 (Age Exceptions Order) 2012 brought into force age discrimination provisions relating to services, public functions and associations. The Order makes a number of specific exceptions to the application of the age discrimination provisions of the Act. The purpose of these exceptions is to provide legal certainty that some activities will always be excluded from the prohibition on age discrimination in respect of goods, facilities and services, public functions and private clubs and associations. The activities covered by exceptions are considered justifiable, harmless or, on balance, beneficial.

7. Age discrimination legislation in Ireland

- 7.1. The Equal Status Acts 2000-2008 prohibit discrimination in the provision of goods, services, accommodation and educational establishments on grounds of gender, marital status, family status, sexual orientation, religion, age, race, Traveller community and disability. The age ground only applies to people aged over 18 years except for the provision of car insurance to licensed drivers under that age. Discriminatory clubs are covered under separate provisions. The Acts prohibit different types of discriminatory behaviour including direct discrimination, indirect discrimination, discrimination by imputation and discrimination by association. The Acts also prohibit harassment, sexual harassment and victimisation.
- 7.2. The Acts include a number of general exceptions (known as 'exemptions') which permit discriminatory behaviour on all grounds in certain circumstances, as well as specific exemptions to allow people to be treated differently on grounds of age in certain circumstances. The purpose of these exemptions is to provide legal certainty about the situations in which it is permitted to treat people differently.

8. Age discrimination legislation in other jurisdictions

8.1. Age discrimination legislation in relation to goods, facilities and services is in place in many other common law countries, such as Australia, Canada, and the USA. While the legal frameworks and context differ between jurisdictions, these pieces of legislation include similar provisions to allow age based treatment to continue where it can be justified, along with a number of specific exceptions to the general ban on age discrimination.¹

9. Evidence of age discrimination

9.1. We have taken account of research reports into age discrimination outside the employment and vocational training context in Northern Ireland and the UK, where appropriate to do so. Research by Age UK found that ageism is the most widely experienced form of discrimination across Europe for every age group.²

9.2. There is some evidence that age discrimination can exist in areas such as health and social care, financial services, retail services and accommodation services³. Some examples of the unfair age based practices that have been identified in research include:

- Some insurers using age as a proxy for risk and excluding people from accessing financial services purely on the basis of age⁴;
- Some retailers assuming that older people are incapable of signing a contract without a younger person present to explain the details⁵; and
- Some older people being denied access to particular medical treatments or interventions on the basis of age⁶.

¹ For further information of age discrimination legislation in other jurisdictions see for example Glennon, L. and Dickson, B. (2009) *Making Older People Equal: Reforming the law on access to services in Northern Ireland*, Queen's University Belfast

² Age UK (2011) *Grey Matters: A Survey of Ageism across Europe*, Age UK

³ Age NI and Age Sector Platform (2014) *Stop Age Discrimination: Delivering the Programme for Government commitment to extend age discrimination legislation to the provision of goods, facilities and services*, Age Sector Position Paper

⁴ Fitzpatrick, B. and Kingston, I. (2008) *Older People's Access to Financial Services*, Equality Commission for Northern Ireland

⁵ Government Equalities Office (2012), *Equality Act 2010: Banning age discrimination in services, public functions and associations, Impact Assessment*, Government Equalities Office

- 9.3. We know that people are particularly concerned about age discrimination in health and social care and in financial services. We have discussed the evidence of age discrimination in these areas in more detail in Chapters 4 and 5.
- 9.4. As well as clear potential examples of age discrimination, we are also aware of a wider range of areas in which people experience other negative barriers because of their age or perceive age discrimination towards themselves in the these areas. We are aware that many older people in particular are treated with less respect and consideration because of their age when accessing goods, facilities and services.⁷

Question: Are you aware of any other evidence of age discrimination in the provision of goods, facilities and services, charities, premises, education, public functions, and private clubs and associations? Please give us your views.

10. Need to reform the law

- 10.1. Reform of the law is necessary to address a key gap in equality legislation, as people do not currently have any protection from age discrimination outside the employment and vocational training context. It is also necessary to ensure that people do not experience unfair and harmful age discrimination and are treated with respect and consideration.
- 10.2. We believe that there is significant support for the introduction of legislation to ban discrimination outside of employment and vocational training on grounds of age. In developing our policy proposals we have taken account of a number of submissions provided by, among others, the Equality Commission

⁶ See, for example, Age NI and Age Sector Platform (2014) *Stop Age Discrimination: Delivering the Programme for Government commitment to extend age discrimination legislation to the provision of goods, facilities and services*, Age Sector Position Paper

⁷ Jarmin, N. (2014) *Strengthening Protection for All Ages against Age Discrimination outside the Workplace: Examples to illustrate older people's experiences when accessing goods and services: A Report for the Equality Commission*, Institute for Conflict Research

NI, the Commissioner for Older People NI, the NI Commissioner for Children and Young People and the Age Sector, which all indicated strong support for age discrimination legislation to be extended to areas outside the employment context.

10.3. We believe that age discrimination legislation will help to:

- Challenge negative stereotypes, prejudice and ageist behaviours;
- Reduce social exclusion by improving the access to, and targeting of, various services;
- Improve accountability and transparency in services;
- Send a strong signal that discriminating unjustifiably on grounds of age is unacceptable;
- Act as a catalyst for service providers to proactively consider their age-based policies and practices and promote age equality in service delivery;
- Promote the dignity and worth of individuals; and
- Ensure that people can still be treated differently on grounds of age where it is necessary, beneficial and justifiable.

CHAPTER 3: GENERAL APPROACH

1. Introduction

- 1.1. The proposals set out in this consultation document relate to discrimination on grounds of age in the provision of goods, facilities and services, charities, premises, education, the exercise of public functions, and the activities of private clubs and other associations.
- 1.2. This chapter sets out the proposed scope of any future legislation, types of discriminatory behaviour and our proposed definitions of key concepts. The chapter will then consider our proposals for the general provisions and general exceptions in any future ban on age discrimination in these areas.
- 1.3. Throughout the document we have provided examples of how our proposals would be likely to work in a variety of situations. These are intended simply to illustrate the relevant principles and concepts and should be read in that light.
- 1.4. In formulating the proposals set out in this document, we have analysed and drawn on existing Northern Ireland equality legislation as outlined in the previous chapter, as well as the legislation in place in Great Britain and Ireland.

2. Proposed scope – Age

- 2.1. We propose to extend protection from discrimination on grounds of age in the provision of goods, facilities and services, charities, premises, education, the exercise of public functions, and private clubs and associations to everyone aged 16 and over. This would mean that treating a person aged under 16 years old less favourably or more favourably than another person would not be regarded as discrimination, whatever the other person's age. We recognise that there will be concerns and disappointment that those aged under 16 are not included at this stage. This consultation is a first step to ensure that legislation is brought forward as soon as possible to protect people over the age of 16 from unfair and unjustifiable age discrimination. We will continue to

work with a wide range of people within the children and young people's sector to address issues affecting children under the age of 16.

2.2. Our proposal to extend protection against age discrimination to those aged 16 and over represents a significant improvement on the age discrimination legislation currently in place in both Great Britain and Ireland, where under 18s are excluded from protection (except those aged under 18 in relation to motor insurance in Ireland).

2.3. Definition of 'age group'

2.3.1. Where we say 'age group' we mean a group of people defined by reference to a particular age (such as '18 year olds') or a range of ages (such as 'over 55s'). This would also include a person's perceived or apparent age. There is some flexibility in the definition of a person's age and everyone could be described as belonging to a number of different age groups. For example, an 86 year old could be said to share the protected characteristic of age with people in the following age groups: '86 year olds'; 'over 80s'; 'over 65s'; pensioners; senior citizens; older people; and 'the elderly'.

Question: How strongly do you agree or disagree with our current proposal to extend protection against age discrimination to those aged 16 or over? Please provide any further views that you may have on our proposal.

3. Proposed scope – Goods, facilities and services

3.1. We want to make sure that people are treated fairly by anyone who supplies goods, provides a service, or makes facilities available to the public or a section of the public. It is also important that we are as clear as possible about the responsibilities of those people and organisations that provide goods, facilities and services, as well as those circumstances when it is acceptable to treat people differently on grounds of age, so that everyone knows where they stand.

3.2. The term ‘goods, facilities and services’ is used in equality legislation to denote a very wide range of activities provided to the public or a section of the public, whether paid for or not, by a service provider in the public, private and voluntary sector. ‘Goods’ is defined in the Interpretation Act (Northern Ireland) 1954 as “*all kinds of moveable property including animals*” and, while ‘facilities’ and ‘services’ do not have specific legal definitions, other equality legislation has indicated that the types of activities covered by this term would include, for example:

- accommodation in hotels, boarding houses or similar establishments;
- access and use of public places (e.g. parks);
- financial services (e.g. banking, insurance, grants, loans and credit);
- facilities for education (e.g. schools, colleges and universities);
- facilities for entertainment, recreation, or refreshment (e.g. pubs, restaurants, sports facilities, libraries, theatres and cinemas);
- facilities for transport/travel (e.g. railway/bus stations, airports);
- services of a profession or trade (e.g. shops, law firms, health services, public utilities, employment agencies, housing associations, churches and advice agencies); and
- services and facilities provided by local councils, government departments and agencies.

3.3. In practice, the courts have interpreted the scope of ‘goods, facilities and services’ widely, ruling in individual cases that a very diverse range of activities, including those outlined above, are caught by the term. We propose that the definition of ‘goods, facilities and services’ in any future age discrimination legislation should be consistent with this approach.

3.4. Currently it is not unlawful to discriminate against someone on grounds of age in the provision of goods, facilities and services. We do not think that those providing goods, facilities and services should be permitted to discriminate (either directly or indirectly) on grounds of age unless this behaviour can be objectively justified, it amounts to positive action or it is required by other

legislation. We have set out our proposals in relation to these provisions and other general exceptions later in this chapter.

- 3.5. We recognise that there are some other circumstances where it may be appropriate to treat people differently on grounds of age and where any future age discrimination legislation may require specific exceptions to ensure that certain types of age-based behaviour are allowed to continue. We have set out our proposals for these specific exceptions later in this chapter and in Chapters 4, 5 and 6.
- 3.6. We do not think that those providing goods, facilities and services should ever be permitted to harass or victimise someone on grounds of age.
- 3.7. Some examples of the types of behaviour that we think should be considered unlawful discrimination, if they were to occur, include:
 - A bar refusing to admit a person over 60 because ‘they’re too old’;
 - A restaurant refusing to serve a group of students because ‘young people cause trouble’; or
 - The organisers of a cycle race excluding people aged over 55 from participating because, without any evidence, they assume that no one over 55 would be able to complete the race within the maximum time.
- 3.8. In relation to facilities for education, we think it is important that people are clear about how these provisions would apply to those providing facilities for education in schools. We think that it makes sense that, in relation to facilities for education, any future ban on age discrimination legislation should apply only to those who have attained the upper limit of the compulsory school age under Education and Libraries (Northern Ireland) Order 1986, as amended.

Question: How strongly do you agree or disagree with how we have defined the concept of goods, facilities and services? If you disagree please provide details of what you would like to see added to or changed in the proposed definition. Please provide any further views that you may have on our proposal.

3.9. Definition of 'service providers'

3.9.1. The term 'service provider' is used in equality legislation to mean any person or organisation that provides goods, facilities or services to the public or a section of the public, whether paid for or not. In practical terms, a 'service provider' could be a public authority, an individual, a private company, a charity, a voluntary organisation, or a private club or association. We propose that the definition of the term 'service provider' in any future age discrimination legislation should be consistent with this approach.

3.9.2. A wide range of service providers may provide services that are similar in nature, but which may be delivered in different ways to different clients. For example, an exercise class may be provided by an individual or a group for the benefit of an individual or group. The class may be held in different venues, such as a leisure centre run by the council, or a privately owned gym, or in a church hall, each of which would provide access to different facilities. Alternatively, a charity or voluntary organisation could fund an exercise class run in a leisure centre for a particular health reason. An exercise class that is run by a private club or association might be available on different terms to members of the club, guests of members and the general public. It might sometimes be appropriate to apply any proposed ban on age discrimination differently, depending on the type of organisation which is providing a particular service. Our proposals for how any future ban on discrimination should be applied in these different circumstances, and possible exceptions that may be required, are discussed later in this chapter and in Chapters 4, 5 and 6.

Question: How strongly do you agree or disagree with how we have defined the concept of service provider? Please provide any further views that you may have on our proposal.

4. **Proposed scope – Public functions**

- 4.1. We want to make sure that people are treated fairly in the exercise of public functions. We also want to make sure that public authorities are clear about their responsibilities and know when it is permitted to treat people differently on grounds of age. It is now usual for equality legislation to apply to the exercise of public functions, although this term is not used in exactly the same way across each of the protected grounds.
- 4.2. Under section 6(3)(b) of the Human Rights Act 1998, a public authority is described as “*any body certain of whose functions are functions of a public nature*”. In relation to private or voluntary organisations this covers activities carried out on behalf of the state and which are not similar in kind to services that could be performed by private persons. We propose that the meaning of the term ‘public function’ in relation to age discrimination should be consistent with this approach.
- 4.3. The type of activities that would be covered by the term ‘public functions’ would include, for example:
- the decisions of Ministers;
 - policing functions (such as the detection and investigation of crime);
 - regulatory functions;
 - licensing functions; and
 - policy-making decisions of government organisations.
- 4.4. The term ‘public functions’ would exclude the activities of public authorities which are already covered by the term ‘goods, facilities and services’, such as public library facilities and council-run refuse collections.
- 4.5. Currently the law does not provide a clear basis for challenging discrimination against someone on grounds of age in the exercise of a public function, although public authorities are subject to the statutory equality duty under Section 75 of the Northern Ireland Act 1998. Such a challenge may be possible in reliance of Article 14 of the European Convention on Human

Rights, although case law suggests that the circumstances in which such a challenge would be available are limited, or on grounds of irrationality.

- 4.6. We think that there should be a clear and general rule that those exercising public functions should not be permitted to discriminate (either directly or indirectly) on grounds of age unless this behaviour can be objectively justified, it amounts to positive action or it is required by other legislation. We have set out our proposals in relation to these provisions and other general exceptions later in this chapter.
- 4.7. We recognise that there are some other circumstances where it may be appropriate for those exercising public functions to treat people differently on grounds of age and where any future age discrimination legislation may require specific exceptions to ensure that certain types of age-based behaviour are allowed to continue. We have set out our proposals for these exceptions later in this chapter and in Chapters 4, 5 and 6.
- 4.8. We do not think that those exercising public functions should ever be permitted to harass or victimise someone on grounds of age.
- 4.9. Some examples of the types of behaviour that we think should be considered unlawful discrimination, if they were to occur, include:
 - A street trading licence officer carrying out unannounced visits to a market stall owned by a young couple because they believe that young people are more likely to break street trading laws, thereby affecting the couple's business reputation, where market stalls owned by older people are not subject to the same checks; or
 - The Planning Appeals Commission refusing hear from a older person appealing a decision without a young person present because they think that an older person would not be capable of understanding the complex issues involved.
- 4.10. In relation to education, we think it is important that people are clear about how these provisions would apply to those exercising public functions in relation to

education. We think that it makes sense that, in relation to education, any future ban on age discrimination legislation should apply only to those who have attained the upper limit of the compulsory school age under the Education and Libraries (Northern Ireland) Order 1986, as amended.

Question: How strongly do you agree or disagree with our current proposals that any future age discrimination legislation should apply to public functions? How strongly do you agree or disagree with how we have defined the concept of public function? Please provide any further views that you may have on our proposal.

5. Proposed scope – Private clubs and associations

- 5.1. We want to make sure that people are treated fairly by private clubs and associations. We also want to ensure that private clubs and associations are clear about their responsibilities and know when it is permitted to treat people differently on grounds of age.
- 5.2. The term ‘private clubs and associations’ is generally defined in other equality legislation as organisations with at least 25 members where admission to membership is regulated by its constitution. We propose that the meaning of the term ‘private clubs and associations’ in relation to age discrimination should be consistent with this approach.
- 5.3. The types of organisations that would be covered by the term ‘private clubs and associations’ would include, for example:
- organisations established to promote the interests of their members (such as an association of local allotment gardeners);
 - political parties;
 - private clubs (such as sport clubs, working men’s clubs, special interest clubs);
 - organisations such as the Scouts and Young Farmers’ Clubs; and
 - organisations such as Rotary Clubs and Grand Lodges of Freemasons.

- 5.4. The term ‘private clubs and associations’ would exclude the activities of private clubs and associations which are already covered by the terms ‘goods, facilities and services’ or ‘public functions’.
- 5.5. Currently, it is not unlawful for a private club or association to discriminate against someone on grounds of age. We do not think that private clubs and associations should be permitted to discriminate (either directly or indirectly) against members, associates, persons seeking to become members or guests on grounds of age, unless this behaviour can be objectively justified, it amounts to positive action or it is required by other legislation. We have set out our proposals in relation to these provisions and other general exceptions later in this chapter.
- 5.6. We recognise that there are some other circumstances where it may be appropriate to for private clubs and associations to treat people differently on grounds of age and where any future age discrimination legislation may require a specific exception to ensure that certain types of age-based behaviour are allowed to continue. We have set out our proposals for these exceptions in Chapter 6.
- 5.7. We do not think that private clubs and associations should ever be permitted to harass or victimise someone on the basis of age.
- 5.8. Some examples of the types of behaviour that we think should be considered unlawful discrimination, if they were to occur, include:
- A bridge club organiser making loud and rude remarks about an 85 year old being forgetful and playing badly because of their age; or
 - A social club with members spanning a wide range of ages insisting that all applications for membership are submitted online. This may place older people at a disadvantage because they are likely to feel less confident using the internet to make payments.

Question: How strongly do you agree or disagree with our current proposals that any future age discrimination legislation should apply to private clubs and associations? How strongly do you agree or disagree with the way that we have defined the concept of private clubs and associations? Please provide any further views that you may have on our proposal.

6. Proposed scope – Charities

- 6.1. We want to make sure that people are treated fairly by charities and to ensure that charities are clear about their responsibilities and know when it is permitted to treat people differently on grounds of age.
- 6.2. A charity is defined under the Charities Act (Northern Ireland) 2008 as an institution which is established for charitable purposes only and falls to be subject to the control of the Court in the exercise of its jurisdiction with respect to charities.
- 6.3. Currently, it is not unlawful for a charity to discriminate against someone on grounds of age. We think that the activities of charities should be covered by the scope of any future age discrimination legislation. We do not think that charities should be permitted to discriminate (either directly or indirectly) on grounds of age, unless this behaviour can be objectively justified, it amounts to positive action or it is required by other legislation. We have set out our proposals in relation to these provisions and other general exceptions later in this chapter.
- 6.4. We recognise that there are some other circumstances where it may be appropriate to for charities to treat people differently on grounds of age and where any future age discrimination legislation may require a specific exception to ensure that certain types of age-based behaviour are allowed to continue. We have set out our proposals for this exception later in this chapter.

6.5. We do not think that a charity should ever be permitted to harass or victimise someone on the basis of age.

Question: How strongly do you agree or disagree with our current proposals that any future age discrimination legislation should apply to charities? Please provide any further views that you may have on our proposal.

7. Proposed scope – Premises

7.1. We want to make sure that people are treated fairly in relation to the sale, letting or management of premises. We also want to ensure that those who are selling, letting or managing premises are clear about their responsibilities and know when it is permitted to treat people differently on grounds of age.

7.2. It is currently unlawful to discriminate against individuals on other equality grounds when selling, letting or managing premises. This applies to both public and private sector housing and accommodation providers including the Northern Ireland Housing Executive, housing associations, owners of hostels, private landlords, estate agents, property developers, managing agents and owner occupiers. The term ‘premises’ includes residential accommodation, commercial premises and land of any description. We propose that the meaning of the term ‘premises’ and the provisions should in relation to selling, letting and managing premises in any future ban on age discrimination should be consistent with this approach.

7.3. The scope of the term ‘premises’ would include, for example:

- the terms on which the disposal of premises is offered;
- refusing an application for the sale or letting of premises;
- the treatment of those on a list requiring housing;
- withholding any licence or consent that may be required for the disposal of premises;
- in relation to the management of premises the access to any benefit or facilities; and

- in relation to the management of premises, eviction or subjection to any other detriment.

7.4. Currently, it is not unlawful to discriminate against someone in relation to selling, letting or managing premises on grounds of age. We do not think that it should be permitted to discriminate (either directly or indirectly) on grounds of age, unless this behaviour can be objectively justified, it amounts to positive action or it is required by other legislation. We have set out our proposals in relation to these provisions and other general exceptions later in this chapter.

7.5. We recognise that there are circumstances in which it may be appropriate to treat people differently on grounds of age in relation to selling, letting or managing premises and where it may be necessary to include specific exceptions in any future age discrimination legislation to ensure that certain types of age-based behaviour are allowed to continue. We have set out our proposals for this exception later in this chapter.

Question: How strongly do you agree or disagree with our current proposals that any future age discrimination legislation should be applied to premises? Please provide any further views that you may have on our proposal.

8. Proposed Scope - Education

8.1. We want to make sure that people are treated fairly in matters relating to education. We also want to ensure that those who are in charge of educational establishments are clear about their responsibilities and know when it is permitted to treat people differently on grounds of age in relation to access to goods, facilities and services. In a context where children and young people are required to stay in education until the summer after their 16th birthday but, where there is a choice of pathways for young people aged 16-18, governed usually by the need to meet set criteria, we need to consider very carefully the impact of extending these proposals to young people from the age of 16. We have commenced work on assessing the impact and any

unintended consequences of extending anti discrimination legislation in the provision of goods, facilities and services to services in the education sector and we will consult further with the relevant provider bodies and stakeholders over the next few months.

Question: Are you aware of any issues which may affect how these proposals would apply in the provision of goods, facilities and services in the education sector? Are you aware of any issues which would result in any unintended consequences in the provision of goods, facilities and services in the education sector? Are there any areas where specific exceptions would be required to ensure that certain age-based practices would be allowed to continue under any future age discrimination legislation?

9. Proposed scope – Territorial application

9.1. We think it makes sense that the territorial application of any future age discrimination legislation should be consistent with other equality legislation. Any future age discrimination legislation would therefore apply only in Northern Ireland, except where it relates to goods, facilities and services provided on a ship or hovercraft outside Northern Ireland, where that ship or hovercraft is registered in Northern Ireland, or the ship or hovercraft is registered in the United Kingdom and is operated by a person who is ordinarily resident or has the principal place of business in Northern Ireland.

10. Discriminatory behaviour

10.1. There are a number of different types of discriminatory behaviour in equality legislation, including direct discrimination, indirect discrimination, harassment, victimisation, discriminatory practices, advertisements, instructions to discriminate, pressure to discriminate and aiding unlawful acts. The following sections explain how we think these terms should be defined and applied in any future age discrimination legislation. This section also explains the terms

validity of contracts and liability of employers and principals or agents, which are other common features of equality legislation.

11. Discriminatory behaviour - Direct discrimination

- 11.1. Direct discrimination is the simplest and most easily recognisable form of discriminatory behaviour. In relation to age discrimination, we propose that unlawful direct discrimination would occur if someone, on grounds of age (or perceived age), treats someone else less favourably than he treats, or would treat, other persons in circumstances that are the same or not materially different, unless this can be objectively justified. We also propose that direct discrimination would occur when someone is treated less favourably because of their association with another person of a particular age.
- 11.2. Age differs from other equality grounds in that it possible for less favourable treatment on grounds of age to be objectively justified. This is because some age-based rules and practices are seen as justifiable, whereas less favourable treatment on all other equality grounds cannot be objectively justified.
- 11.3. Some examples of age-based direct discrimination would be a 75 year old woman being ignored by staff in a mobile phone shop, or a 16 year old boy who reports a crime being taken less seriously due to his age or negative stereotypes associated with youth.
- 11.4. There may be situations where it is appropriate to treat someone differently because of their age. We think that any future legislation should be clear about the circumstances when those who provide goods, facilities and services, those who exercise public functions, and private clubs and associations are allowed to treat people differently because of their age. We think that direct discrimination should be permitted where the age based treatment is objectively justified, it amounts to positive action or it is required by other legislation. We have set out our proposals in relation to these provisions and other general exceptions later in this chapter.

11.5. We also recognise that there are other circumstances where it may be appropriate to treat people differently because of age. These situations would be included as exceptions in any future legislation and we have set out our proposals for these later in this chapter and in Chapters 4, 5 and 6.

Question: How strongly do you agree or disagree with our current proposal that any future age discrimination legislation should include direct discrimination? How strongly do you agree or disagree with the way that we have defined the concept of direct discrimination? Please provide any further views that you may have on our proposal.

12. Discriminatory behaviour - Indirect discrimination

12.1. We propose that unlawful indirect discrimination would occur if someone applies to another person a provision, criterion or practice which he applies or would apply equally to persons of a different age group, but which puts or would put people of the same age group at a particular disadvantage when compared with other persons, and which puts, or would put, the particular person at that disadvantage, unless this can be objectively justified.

12.2. Our proposed definition is slightly wider than the protection that currently exists in relation to age discrimination in employment, in that it would provide protection for people who have not actually received a service, but have been put off from even seeking the service because of a provision, criterion or practice that appears to be discriminatory.

12.3. An example of indirect discrimination on grounds of age would be where an optician allows payment for spectacles by instalments, but restricts eligibility to those in work. The optician's practice applies to everyone, but would put older persons, who are more likely to be in receipt of a pension, at a particular disadvantage.

12.4. There may be situations where it is appropriate to treat someone differently because of their age. We think that any future legislation should be clear about the circumstances when those who provide goods, facilities and services, those who exercise public functions, and private clubs and associations are allowed to treat people differently because of their age. We think that indirect discrimination should be permitted where the age based treatment is objectively justified, it amounts to positive action or it is required by other legislation. We have set out our proposals in relation to these provisions and other general exceptions later in this chapter.

12.5. We also recognise that there are other circumstances where it may be appropriate to treat people differently because of age. These situations would be included as exceptions in any future legislation and we have set out our proposals for these later in this chapter and in Chapters 4, 5 and 6.

Question: How strongly do you agree or disagree with our current proposal that any future age discrimination legislation should include indirect discrimination? How strongly do you agree or disagree with the way that we have defined the concept of indirect discrimination? Please provide any further comment that you may have on our proposal.

13. Discriminatory behaviour – Harassment

13.1. We propose that harassment would occur where, on grounds of age, someone engages in unwanted conduct which has the purpose or effect of violating another person's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for them if, having regard to all the circumstances, including in particular the perception of the person, it should reasonably be considered as having that effect.

13.2. An example of harassment would be where a computer salesman makes assumptions about an older person's ability to use a computer and makes

offensive remarks and jokes about this, or when a leisure centre repeatedly discourages someone from attending a class because of their age.

13.3. While we think that there are good reasons to allow some exceptions for discriminatory treatment in certain circumstances, we do not consider that there is ever any justification for allowing someone to be harassed because of their age. We therefore propose that none of the proposed exceptions set out later in this chapter and in Chapters 4, 5 and 6 should cover harassment and that it should not be possible to allow harassment by objective justification or positive action under any circumstances.

Question: How strongly do you agree or disagree with our current proposal that any future age discrimination legislation should include harassment? How strongly do you agree or disagree with how we have defined the concept of harassment? Please provide any further views that you may have on our proposal.

14. Discriminatory behaviour – Victimisation

14.1. We propose that victimisation would occur where someone treats another person less favourably than he treats or would treat other persons in the same circumstances because that person has, in good faith, complained of alleged discrimination on grounds of age or assisted someone else to do so.

14.2. Victimisation would also occur if someone is treated less favourably by that person because they brought proceedings against them or someone else, they gave evidence or information in relation to proceedings brought by someone else, they alleged that someone had committed an act that would be contrary to a ban on age discrimination, or they intended to or were suspected of committing any of these things.

14.3. An example of victimisation would be where a customer has arranged to be a witness and to give evidence in a court case against a service provider and in

response the service provider threatens not to serve that customer in the future if they go ahead with giving evidence.

14.4. While we think that there are good reasons to allow some exceptions for discriminatory treatment in certain circumstances, we do not consider that there is ever any justification for allowing someone to be victimised because of their age. We therefore propose that none of the proposed exceptions set out later in this chapter and in Chapters 4, 5 and 6 should cover victimisation and that it should not be possible to allow victimisation by objective justification or positive action under any circumstances.

Question: How strongly do you agree or disagree with our current proposal that any future age discrimination legislation should include victimisation? How strongly do you agree or disagree with the way that we have defined the concept of victimisation? Please provide any further views that you may have on our proposal.

15. Other types of discriminatory behaviour

15.1. There are a number of other types of discriminatory behaviour which are commonly prohibited under equality legislation on other protected grounds. These types of behaviour are discrimination after a relationship has come to an end, discriminatory practices, discriminatory advertisements, instructions to discriminate, pressure to discriminate and aiding unlawful acts.

15.2. In relation to these other types of discriminatory behaviour, we propose that any future legislation prohibiting age discrimination in the provision of goods, facilities and services should be consistent with the protections already in place in relation to other protected grounds. This would mean that the following types of behaviour would be unlawful under any future ban on age discrimination:

- In relation to a relationship which has come to an end, for one party to discriminate against another party by subjecting them to a detriment or harassment where the discrimination or harassment arises out of and is

closely connected to the relationship. An example of this would be where a builder addresses abusive and hostile remarks to a previous customer because of her age after their business relationship has ended.

- Policies, requirements or conditions which would be likely to result in unlawful indirect discrimination if applied to persons of a particular age. This would apply in circumstances where there is not an individual victim of the discriminatory practice in question. An example of this would be where a club which has informally banned people over 60 for many years and is well known for this practice. It would be unlikely that anyone over 60 would apply to join, so there might not ever be a victim of this discriminatory practice.
- Publishing, or causing to be published, an advertisement which indicates (expressly or by implication) an intention by any person to discriminate. It would also be unlawful for the person placing the advertisement to make a false statement as to the lawfulness of the advertisement. An example of this would be a radio announcement that people aged under 21 will get free admittance to a nightclub, but anyone over that age will have to pay the normal entry fee.
- Giving instructions or pressurising someone to commit an act of unlawful discrimination, for example an employer offering a financial incentive or promotion to an employee if they refuse to serve an older person.
- Helping someone to commit an act of unlawful discrimination.

Question: How strongly do you agree or disagree with our current proposal that any future age discrimination legislation should include discrimination after a relationship has come to an end, discriminatory practices, discriminatory advertisements, instructions to discriminate, pressure to discriminate and aiding unlawful acts? Please provide any other views that you may have on our proposal.

16. General provisions and exceptions

16.1. We want to ensure that people are treated fairly and that they do not experience unjustifiable age discrimination. However, we also recognise that there are some circumstances in which it is justifiable or beneficial to treat people differently because of their age. We want to ensure that our approach is practical and takes account of how people of different ages live, their different needs, and how service providers in the public, private and voluntary sectors operate, in order to avoid any future legislation having unintended consequences or placing disproportionate burdens on service providers.

16.2. This section will set out our proposals to provide for those circumstances where differential treatment on grounds of age is fair and appropriate. We propose that there should be a number of general provisions allowing age-differential treatment, along with a small number of specific exceptions. This section will also set out a small number of miscellaneous provisions which we propose should be included in any future age discrimination legislation.

17. General provisions – Objective justification

17.1. We recognise where there are some circumstances in which it may be fair and appropriate to treat people differently on grounds of age. Age differs from other equality grounds in that it is possible for direct discrimination on grounds of age in relation to employment to be objectively justified. This is because some age-based rules and practices are seen as justifiable, whereas less favourable treatment on all other equality grounds cannot be objectively justified.

17.2. Indirect discrimination on grounds of age in relation to employment, and on other equality grounds in relation to goods, facilities and services, in general terms, is capable of being objectively justified.

17.3. We propose that people should have the same protection from direct and indirect discrimination on grounds of age in relation to goods, facilities and services as currently exist in relation to employment. As we have already

explained, we do not think that harassment and victimisation on grounds of age should ever be capable of objective justification.

17.4. Objective justification allows for age-based treatment to be justified in particular circumstances. Objective justification may be established if a service provider can show that the treatment complained of is a proportionate means of achieving a legitimate aim. This is known as the 'objective justification test' and it is a well established concept in equality law. Service providers would have to meet this test to be allowed to continue with age-based practices that are not covered by another general provision or specific exception under any future legislation.

17.5. A wide variety of aims may be considered legitimate but they would have to correspond with a reasonable need on the part of the service provider. The following are examples of aims that would be likely to be legitimate under any future legislation:

- Enabling people of particular age groups to socialise together (e.g. outings, events, concerts);
- Enabling people of particular age groups to enjoy activities together (e.g. hiking, sports);
- Enabling people of certain age groups to enjoy peace and quiet or enabling them to enjoy music at high volume;
- Ensuring the fair exercise of powers;
- Ensuring the health and safety of those using the provider's service, or others, providing the risks are clearly specified;
- Preventing fraud or other forms of abuse or inappropriate use of services provided by the service provider;
- Ensuring the wellbeing and dignity of those using the service; or
- Ensuring that services and benefits are targeted at those who most need them.

17.6. In order to meet the objective justification test, the treatment in question must be proportionate, it must be an appropriate way of achieving the legitimate aim

and it must also be necessary in order to achieve it. An action or measure would not be objectively justified if the legitimate aim could reasonably be achieved by other, lesser or non-discriminatory means, or if the service provider could not show that the discriminatory effect of the treatment was sufficiently outweighed by the importance and benefits of the legitimate aim.

17.7. If challenged, it would be for the service provider to show that the aim is legitimate in any particular case, and to provide evidence to demonstrate that all of the elements described in the previous paragraph have been met. It would be for the courts to consider and decide whether the aim is legitimate and if the objective justification test is met, on the basis of the evidence provided and in light of all relevant circumstances.

17.8. Some examples of the way in which the objective justification test may work in practice include:

- Holiday accommodation providers may be reluctant to rent their properties to young adults because they are concerned that there is a greater risk that these age groups will damage property or engage in anti-social behaviour. However, damage to accommodation can be caused by guests of all ages and organisations representing holiday accommodation providers have been unable to provide robust statistics and evidence to show that younger adults pose any particular risks over other age groups. A blanket ban on certain age groups using holiday accommodation would be a disproportionate response to the concerns raised about some young adults' behaviour. However, the objective justification test could be relied upon to enable some holiday accommodation providers to refuse to rent properties to certain age groups in certain areas, if they can show evidence of problems they have had with that age group in the past or during large events such as festivals when large groups of younger people tend to gather. This is then likely to be a proportionate means of achieving the legitimate aim of ensuring that the property is not damaged and other guests and neighbours are not unduly disturbed.
- Some vehicle rental companies decline to rent vehicles to older and younger drivers because these age groups are more likely to have

accidents which could, in turn, have an impact on the company's insurance premiums, the reserves it needs to hold to make repairs and road safety. These are all valid concerns that need to be appropriately managed by the vehicle rental industry, but these concerns need to be balanced with fair access to vehicle rental which can improve people's opportunities in life, and enable greater freedom of mobility and choice for younger and older drivers. We do not think that anyone should be denied access to vehicle rental services purely because of their age, if they hold a valid driving licence. However, vehicle rental companies should be able to objectively justify certain practices as proportionate ways of achieving the legitimate objective of retaining a high proportion of the company's vehicle fleet as roadworthy and available for other customers to rent, for example:

- By requiring a minimum level of driving experience to rent a car, because inexperience is a key issue in the likelihood of accidents. For example, a customer may be required to have held a full driving licence for at least 12 months;
- By not renting cars to people with motoring convictions, points on their licence or who have had accidents within a certain time period, from a risk exposure and road safety standpoint; or
- By charging higher prices, deposits and excesses to people in age groups which are statistically more likely to have accidents, in order to reflect higher insurance premiums and the cost of repair if the car is involved in an accident.

Question: How strongly do you agree or disagree with our current proposal that any future age discrimination legislation should include a provision for an objective justification test? How strongly do you agree or disagree with how we have defined the 'objective justification' test? Please provide any further views that you may have on our proposal.

18. General provisions – Positive action

- 18.1. We recognise that there are certain circumstances where it may be appropriate to allow special treatment for people of particular age groups to achieve fuller and more effective equality outcomes for members of particular age groups which are socially or economically disadvantaged or excluded, or who otherwise face the consequences of past or present discrimination or disadvantage. We propose that service providers should be allowed to take positive action measures to treat people in a particular age group more favourably where those actions are a proportionate means of achieving the aim of overcoming disadvantage, meeting the different needs of the particular age group or increasing the participation of a particular age group in the particular activity.
- 18.2. Positive action would allow service providers to target their services to meet the needs of particular age groups if they wish to do so and to give extra help to people who may need it because of their age without leaving the service provider vulnerable to claims of discrimination by people outside of that particular age group. Positive action measures should not be mandatory and it would be up to individual service providers to decide whether or not to implement positive action measures.
- 18.3. Some examples of the way that positive action may work in practice include:
- a leisure centre which notices that older people use the facilities far less than other age groups, may arrange a special open day for older people and provide special swimming and gym taster sessions for older people. While these actions involve more favourable treatment of older people, the disadvantage to other leisure centre users is likely to be outweighed by the benefit of increasing participation of older people, and therefore these steps would be a proportionate way of achieving the aim of increasing participation by older people; and
 - a library may offer additional, dedicated ‘silver surfer’ sessions to older people to help them learn how to access the internet. This action would help to address the particular needs of older people, as this age group are

more likely to lack basic IT skills. The treatment is likely to be proportionate if the sessions are 'additional' to the usual services provided to other age groups, so that other age groups are not prevented from accessing library services and they do not experience other disadvantage which would be disproportionate to the legitimate aim of improving older people's IT skills.

18.4. Positive action is not the same as positive discrimination. Positive discrimination refers to actions taken, most often in an employment context, to recruit or promote a person solely because they have a relevant protected characteristic. Actions that seek to redress historical inequalities through a reverse principle of discrimination in favour of a disadvantaged group, but are not a proportionate means of achieving the aim of overcoming disadvantage, meeting the different needs of the particular age group or increasing the participation of a particular age group in the particular activity, would be considered unlawful positive discrimination, unless these actions are provided for by another piece of legislation. In this case, the actions would be covered under the proposed statutory authority exception, which is discussed later in this chapter.

Question: How strongly do you agree or disagree with our current proposal that any future age discrimination legislation should include a provision for positive action? How strongly do you agree or disagree with the way that we have defined the concept of positive action? Please provide any further views that you may have on our proposal.

19. Miscellaneous provisions

19.1. There are some miscellaneous provisions which commonly exist in equality legislation to ensure that the law is clear about who is liable for discrimination and to ensure that service providers cannot avoid their responsibilities under equality legislation. We propose that any future legislation prohibiting age discrimination should be consistent with the protections already in place in relation to other protected grounds.

19.2. Liability of employers and principals or agents

19.2.1. We propose that both an employer and an employee should be liable for any discriminatory acts committed by the employee, unless the employer can show that they took reasonable steps to stop the employee from committing an act of unlawful discrimination. In addition, a person who has given another person authority to act as his or her agent should be equally liable for any discriminatory acts committed by the agent.

19.2.2. If an age-based practice is permitted by a proposed provision or exception, that provision or exception would apply equally to the employees and agents of the person or organisation to whom the provision or exception applies.

19.3. Validity of contracts

19.3.1. Service providers should not be able to avoid their responsibilities under any future ban on age discrimination by seeking to enter into agreements which would permit them to discriminate or commit other unlawful acts.

19.3.2. In any future ban on age discrimination, we think that a contract which provides for undertaking or furthering an act which is made unlawful by any future legislation should be void. Any contractual term that seeks to exclude or limit the requirements of any future legislation should be unenforceable.

20. General exceptions – Exception for statutory authority

20.1. In some cases, it may be necessary for those who provide goods, facilities and services, charities, those who sell, let or manage premises, providers of education services, those who exercise public functions, and private clubs and associations to discriminate in order to comply with a requirement of another piece of law, such as health and safety regulations. We propose that, where it

is required by law, different treatment on grounds of age should not be considered discrimination. This exception would apply to aged-based treatment required under both current and future legislation.

20.2. Some examples of the type of age-based treatment that would be permitted by this exception would include age-based state benefits, restrictions on the sale of certain goods such as cigarettes, alcohol and fireworks, concessionary bus passes and driver licensing.

Question: How strongly do you agree or disagree with our current proposal that any future age discrimination legislation should include an exception for statutory authority? Please provide any further views that you may have on our proposal.

21. General exceptions – Immigration

21.1. We propose to include an exception to allow immigration authorities to treat some people differently because of their age, where this is necessary to give effect to immigration law and policy. The effect of such a provision would be to provide flexibility for a Minister of the Crown and 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. A similar provision is in place under the Race Relations (Northern Ireland) Order 1997 and the Equality Act 2010 (Age Exceptions) Order 2012, so this would ensure consistency across the UK on what is a UK matter.

22. General exceptions – Charities

22.1. We recognise that, in many cases, the charitable purpose (as defined by the Charities Act (Northern Ireland) 2008) of a particular charity may mean that the charity limits their benefits to persons of a specific age group, such as a charity established to tackle disadvantage faced by older people, or to causes which may affect people of one age group more than another, such as a charity

established to raise funds for research into a particular medical condition that is most prevalent in people under 30.

22.2. We think that this type of age based practice should be allowed to continue as it is beneficial. We would envisage that, in many cases, a charity limiting their benefits in these ways would be able to show that the age based treatment does not amount to discrimination, by relying on the proposed general provisions of objective justification or positive action, as outlined above. However, we think that it would be helpful to include a specific exception for charities in any future legislation to ensure that there is legal certainty around the circumstances in which this kind of age based treatment should not amount to direct or indirect discrimination.

22.3. We propose to include an exception in any future legislation to allow charities that have been legitimately established to continue to limit benefits to persons of a specific age group or to causes which may affect people of one age group more than another. This would allow charities to continue to operate in line with the provisions of the charitable instrument through which they were established.

22.4. Where the objectives of a charity do not specify a beneficiary group on the basis of age (either directly or indirectly) then the exception would not apply. Any activity carried out by the charity that is not covered by an exception would be subject to the other proposed general provisions and exceptions set out in this consultation.

23. General exceptions – Premises

23.1. It is common for other equality legislation which covers the selling, letting and management of premises to include specific exceptions for those who wish to privately dispose of residential premises that they own and occupy, and for those who provide accommodation to others in their own home, in specific circumstances. We propose that any future legislation prohibiting age

discrimination should be consistent with the protections already in place in relation to other protected grounds.

23.2. We propose to include an exception in any future legislation that would allow people to dispose of their estate or interest in premises on a private basis without being subject to any future ban on age discrimination. The ban on age discrimination would not apply where a person owns an estate or interest in the premises and wholly occupies the premises. However, if that person uses the services of an estate agent or publishes an advertisement or notice in relation to the disposal of the premises, the exception would not apply. For example, someone would be permitted to sell or transfer residential or commercial premises to a younger sibling or eldest child, without being subject to any future ban on age discrimination. However, if they wished to sell residential or commercial premises to another member of the public by engaging the service of an estate agent or advertising the sale in a newspaper, then they would not be permitted to discriminate by refusing to sell the premises to someone on grounds of their age.

23.3. We also propose to include an exception in any future legislation in relation to certain small dwellings⁸, to allow people to choose who they live with in their own homes. The exception would apply to residential accommodation only and would aim to preserve an individual's right to privacy in their own home. The exception would apply only if a number of conditions are satisfied. The person with the power to dispose of the premises (or whose licence or consent is required for the disposal) referred to as the 'relevant occupier' (this includes a near relative) must reside, and intend to continue to reside, on the premises and be sharing accommodation on the premises with other people who are not members of the relevant occupier's household (such as bathroom or kitchen).

⁸ Premises would be considered small premises if: only the relevant occupier and members of his household reside in the accommodation occupied by him; the premises comprise, in addition to the accommodation occupied by the relevant occupier, residential accommodation for at least one other household; the residential accommodation for each other household is let, or available for letting, on a separate tenancy or similar agreement; and there are not normally more than two such other households. Premises would also be considered small premises if there is not normally residential accommodation on the premises for more than 6 persons in addition to the relevant occupier and any members of his household.

The shared accommodation must not be storage accommodation or a means of access and the premises must be 'small premises'.

24. General exceptions – Care within the family

24.1. We recognise that many people provide personal care services in their own home to others who require particular care and attention and who are taken into that home and treated as a member of their family. We think that people who provide health care, foster care or other similar forms of care in their own home should be protected from complaints of discrimination, harassment or victimisation in the provision of services while providing that care. It would be irrelevant whether or not the person is or has been paid for providing the care service, but this exception would not apply to people who go into another person's home to provide care. We think that it would be helpful for any future legislation to include a clear exception for care within the family to ensure that there is legal certainty that any age-based treatment within this context should not amount to discriminatory behaviour.

25. General exceptions – Services generally provided for people who share a protected characteristic

25.1. We recognise that there are some services that are generally provided only for people in a particular age group to meet their particular, specific and justifiable needs in relation to education, training and welfare. It is common for other equality legislation to include an exception for services that are generally provided for people who share a protected characteristic. We propose that any future legislation prohibiting age discrimination should be consistent with the protections already in place in relation to other protected grounds.

25.2. Services that are generally provided for people in a particular age group may include, for example:

- A housing service provider which operates a support service for older people who may have physical or mental frailty and need special assistance to live independently.

- A health and social care provider which operates a transitions service for young people aged 16 to 24 who have been in care or received social work services and need additional advice and support as they leave those services and move towards independent adult lives.

25.3. We think that this type of behaviour is beneficial and should be allowed to continue. We think that it would be helpful to include an exception in any future legislation to provide legal certainty around the circumstances in which it is permitted to deliver services only for people within particular age groups.

26. Other general exceptions

26.1. There are a number of other general exceptions which are commonly included in equality legislation to exclude certain public bodies which exercise certain constitutional and judicial functions from the scope of equality legislation on other grounds. The purpose of these exceptions is to ensure that those bodies are able to discharge these particular functions fully independently. We propose that any future ban on age discrimination in the provision of goods, facilities and services should include the same exceptions to ensure consistency with other equality legislation. The following bodies and functions would be excluded from any future ban on age discrimination:

- either House of Parliament (the House of Commons and the House of Lords), including persons exercising functions in connection with proceedings in Parliament;
- the Northern Ireland Assembly, including persons exercising functions in connection with proceedings in the Assembly;
- the exercise of a judicial function or anything done on behalf of a person exercising a judicial function;
- the Security Service;
- the Secret Intelligence Service;
- the Government Communications Headquarters; and

- the armed forces (naval, military or air forces of the Crown) where required by the Secretary of State to assist the Government Communications Headquarters in carrying out its functions.

Question: How strongly do you agree or disagree with our current proposal that any future age discrimination legislation should include general exceptions for immigration, charities, premises, care within the family, services provided for persons who share a protected characteristic and other general exceptions? How strongly do you agree or disagree with how we have defined these concepts? Please provide any further views that you may have on our proposal.

Question: Are there any other activities or functions that you consider should be covered by a general exception?

27. Provision to amend exceptions

27.1. Given the broad scope of these policy proposals, and the corresponding scope of any proposed legislation, we envisage that any legislation will include provision to allow for the addition of new exceptions and the amendment or removal of exceptions no longer considered relevant. This would likely be achieved by the inclusion of a power for the Department to make subordinate legislation in order to make any necessary changes.

28. Specific exceptions

28.1. The next three chapters set out our approach and, where appropriate, proposals for a set of specific exceptions that would allow certain age-based treatment to continue if age discrimination legislation for goods, facilities and services, charities, premises, education, public functions and private clubs and associations is put in place in the future. While we believe that these practices would be likely to meet the proposed objective justification test, we think that it would be helpful to include specific exceptions for these circumstances to

provide legal certainty about the circumstances when it would be permitted to treat people differently because of their age, and to avoid such treatment being challenged in the courts.

28.2. We have considered whether exceptions would be necessary in the following areas:

- Health and social care;
- Financial services; and
- Other general services, public functions and private clubs or associations.

CHAPTER 4: HEALTH AND SOCIAL CARE

1. Introduction

- 1.1. This chapter sets out our proposed approach to age discrimination in health and social care. We want to eradicate unfair age discrimination in health and social care, while allowing service providers to treat people differently on grounds of age where this is beneficial or justifiable. We want to ensure that high quality, dignified and compassionate health and social care services are provided on the basis of individual need, taking account of an individual's age where it is appropriate to do so.

2. Scope of health and social care

- 2.1. Health and social care in Northern Ireland falls under the remit of the Department of Health, Social Services and Public Safety. Health and social care is provided as an integrated service and there are a number of organisations which work together to plan, deliver and monitor the health and social care system. The main organisations responsible for providing statutory health and social care services are:
- the Health and Social Care Board, which is responsible for commissioning services, resource management and performance management and service improvement;
 - the Public Health Agency, which has the key functions of improving health and wellbeing and health protection, and provides professional input to the commissioning process;
 - six Health and Social Care Trusts, five of which provide integrated health and social care services across Northern Ireland, and the sixth operates the Northern Ireland Ambulance Service;
 - the Business Services Organisation, which provides a range of business support and specialist professional services to the sector; and
 - a range of other organisations and agencies providing input to the health and social care system.

- 2.2. Health and social care services are also provided by other organisations in the private and voluntary sectors, such as private hospitals, dental practices, nursing homes and hospices.

3. Age in health and social care

- 3.1. There is considerable evidence that health declines with age in Northern Ireland. For example, nearly three quarters (72%) of all adults surveyed in the Northern Ireland Health Survey considered their general health to be good or very good, compared with only 56% of those aged 65-74 and 46% of those aged 75 and over. We also know that the incidence of certain conditions increases with age, for example, only 26% of those aged 45-54 reported having high blood pressure, compared with 56% of those aged 75 and over. Older people tend to use health and social care services more than younger people, for example, 21% of over 75s attended hospital as an inpatient during the year compared to 14% for all age groups and 92% of over 75s have had at least one prescription in the previous year compared to 69% of respondents as a whole.⁹
- 3.2. In addition, the number of older people in our society is increasing. For example, there are over 110,000 more older people (aged 65 and over) here than there were in the early 1970s.¹⁰ By comparison, the number of children has fallen by 100,000 over the same period.¹¹ This trend is expected to continue over the coming decades, for example, in 2014 there were an estimated 73,000 people aged 80 or more in Northern Ireland and by 2031 this is projected to grow to 135,000, and to over 250,000 by 2061¹².
- 3.3. The ageing population is likely to have implications for the cost of delivering health and social care services. Work by the Office for Budget Responsibility quoted by the King's Fund for the UK as a whole suggests that health and social care spending could rise from 6.8% of GDP in 2016 to as high as

⁹ DHSSPS (2014) *Northern Ireland Health Survey 2012/13*

¹⁰ NISRA (2014) *Northern Ireland Mid-Year Population Estimates 2013*

¹¹ NISRA (2014) *Northern Ireland Mid-Year Population Estimates 2013*

¹² NISRA (2013) *Northern Ireland 2012-based Population Projections*

16.6% in 2061, with ageing being one of the key drivers.¹³ Work also by the King's Fund in Northern Ireland for DHSSPS also points to the pressure on services which is likely to result from changes in demographic factors here.¹⁴

- 3.4. While the ageing population presents particular challenges for health and social care services, people need to access health and social care services at all stages of life. We know that there are particular challenges facing people of all age groups, for example higher levels of mental health problems compared with the rest of the UK, particularly the high levels of suicide among young men, increasing numbers of people with chronic conditions and the impact of population health issues such as alcohol, obesity and smoking¹⁵. There are a number of key policies and strategies in place and under development which aim to improve the health and wellbeing of people of all ages by setting standards, focusing on safe and effective care, improving integration of service delivery and promoting evidence-based practice¹⁶. We recognise that the planning, budgeting and commissioning of health and social care services should be evidence based and address the health and wellbeing of the population both now and in the future.

4. How age is currently used in health and social care

- 4.1. There are certain circumstances when age criteria are used in health and social care for beneficial or justifiable reasons. Age can be used to help tailor an individual's diagnosis, treatment or care. Age can be used to ensure that services are designed and delivered to better meet the needs of people of a particular age. Taking account of age-related differences between people is an important part of personalising services.

- 4.2. Some examples of the way that age can be used in health and social care services include:

¹³ Appleby, J. (2013) *Spending on health and social care over the next 50 years: Why think long term?*, King's Fund

¹⁴ Appleby, J. (2011) *Rapid Review of Northern Ireland Health and Social Care Funding Needs and the Productivity Challenge 2011/12 – 2014/15*, King's Fund

¹⁵ HSC (2011), *Transforming Your Care: A Review of Health and Social Care in Northern Ireland*

¹⁶ See, for example, DHSSPS Service Frameworks and DHSSPS Standards

- People of different ages pay different charges for services. For example, there is an overall age exemption for sight tests in Northern Ireland so that those people aged 60 or over do not have to pay for eye tests and those aged 40 or over and with a parent, brother, sister, son or daughter diagnosed with glaucoma do not have to pay for sight tests.
- Public health programmes such as screening, vaccinations and health checks are often targeted at particular age groups. For example, abdominal aortic aneurysm screening is targeted at men aged 65 and over and influenza vaccinations are targeted at those aged 65 and over.
- Age is considered as part of the development of policy and practice for health and social care services at a national level. For example, guidance issued by DHSSPS and the National Institute for Health and Care Excellence (NICE) may include specific references to age in recommending (or not recommending) interventions at specific ages or as advice for general stages of life. The use of age in this way is normally accompanied by an evidence base as to why this criterion is included.
- Some services are designed and delivered to meet the needs of people who have particular conditions which are likely to be more prevalent in a particular age group. For example, younger people with dementia may require specialised services to meet their particular needs, as they are more likely to have financial responsibilities such as dependent children or a mortgage, to be diagnosed with rarer forms of dementia requiring specialist treatment, and to experience particular difficulties in rationalising skill loss at a young age, compared with older people.
- Health and social care professionals may need to consider the individual's age as a factor in discussing potential interventions and care packages as part of the assessment of an individual's needs and circumstances. People of different ages may be physiologically different, for example a person aged 90 may be more likely to experience a number of different health problems compared to a person aged 20.

4.3. We consider that certain age-based practices, such as these examples, can be justifiable and beneficial where they are used to ensure that services and benefits are targeted at those who need them the most, where they help to

tailor care and support to the particular needs of individuals, and where they are based on best practice and evidence. We want to make sure that any future age discrimination legislation does not prevent those who design, commission and provide health and social care services from taking age into account, where it is fair and appropriate to do so.

5. Evidence of age discrimination in health and social care

5.1. We are aware of some evidence from Northern Ireland and Great Britain that suggests that age discrimination can exist in health and social care.¹⁷ Some examples of unfair and harmful age-based practices that may exist include:

- Older people experiencing inappropriate care, poor quality care and a lack of dignity and respect in nursing homes¹⁸;
- Older people being under-referred to psychological treatments (talking therapies such as Cognitive Behaviour Therapy) that are available for younger people, or to specialist mental health units¹⁹;
- People experiencing ageism in cancer services, coronary care units, prevention of vascular disease, mental health services, and the management of strokes²⁰; and
- Young adults with learning disabilities experiencing difficulties and varying levels of support during the transition process when they move from child to adult health and social care services.²¹

5.2. We are also aware that other, more subtle ageist practices and attitudes can exist in health and social care²² and that there may also be a public

¹⁷ See, for example, Northern Ireland Human Rights Commission (2012) *In Defence of Dignity: the human rights of people in nursing homes*, Institute for Conflict Research (2014) *Strengthening Protection for All Ages against Age Discrimination outside the Workplace* and ARK (2012) *Age-related discrimination in goods, facilities and services*, review carried out for OFMDFM

¹⁸ Northern Ireland Human Rights Commission (2012) *In Defence of Dignity: the human rights of people in nursing homes*

¹⁹ Age NI and Age Sector Platform (2014) *Stop Age Discrimination: Delivering the Programme for Government commitment to extend age discrimination legislation to the provision of goods, facilities and services*, Age Sector Position Paper

²⁰ Glennon, L. and Dickson, B. (2009) *Making Older People Equal: Reforming the law on access to services in Northern Ireland*, Queen's University Belfast

²¹ Lundy, L. et al. (2012) *Review of Transitions to Adult Services for Young People with Learning Disabilities*, NICCY

perception that people in certain age groups, particularly older people, are treated less favourably than other age groups. For example, the Northern Ireland Life and Times Survey in 2008 found that 62% of younger respondents (aged under 65) felt that health and social care workers treat older people less well in terms of their attitudes towards them.

- 5.3. We want to make sure that any future age discrimination legislation protects people from unfair and harmful age-based practices in health and social care. We want to ensure that everyone is able to access the safe and effective health and social care services that they require, on the basis of their individual assessed need.

6. Our proposals

- 6.1. We have considered whether health and social care services should be included in the scope of any future age discrimination legislation and whether any specific exceptions for health and social care would be required. In reaching the proposals set out below, we have considered the evidence outlined above on how age can be used for justifiable or beneficial reasons and on how unfair and harmful age discrimination can occur in health and social care services.
- 6.2. We have considered the approach taken in Great Britain under the Equality Act 2010 as amended by the Equality Act 2010 (Age Exceptions) Order 2012. In Great Britain, health and social care is included within the scope of equality legislation, on grounds of age, without any specific exceptions.
- 6.3. We have also taken into account submissions and feedback from the age sector, the Commissioner for Older People NI and the Equality Commission NI.

²² Glennon, L. and Dickson, B. (2009) *Making Older People Equal: Reforming the law on access to services in Northern Ireland*, Queen's University Belfast

- 6.4. We propose that all health and social care services should be included in the scope of any future age discrimination legislation, without any specific exceptions. We think that this is the best way to reinforce the message that age discrimination in health and social care is unacceptable and must be eradicated. We have set out the details and rationale for this proposal and explained how this would work in practice in the following sections.

7. Our proposals – Scope

- 7.1. We propose that all health and social care services should be included in the scope of any future age discrimination legislation. This would include all those organisations responsible for planning, commissioning and delivering statutory health and social care services, as well as other providers in the private and voluntary sectors, such as private hospitals, dental practices, nursing homes and hospices.
- 7.2. All health and social care services would be covered by the proposed definition of the term ‘goods, facilities and services’ set out above in Chapter 3. The providers of health and social care services would be covered by the proposed definition of the term ‘service providers’, also set out above in Chapter 3. In addition, there are some activities carried out by the Department for Health, Social Services and Public Safety and other providers of health and social care services than may fall under the proposed definition of the term ‘public functions’, also set out above in Chapter 3. Health and social care services would therefore be included in the proposed scope of any future age discrimination legislation.

8. Our proposals – Exceptions

- 8.1. We propose that any future age discrimination legislation should not include a specific exception for health and social care. We think that this would be the best approach to protect people from discrimination on grounds of age in health and social care, while ensuring that some age-based criteria could still

be used to design, plan, commission and deliver health and social care services, where it is fair and appropriate to do so.

- 8.2. We think that the objective justification test and other general provisions and exceptions would provide clear principles that could be applied in all circumstances to determine whether age-based treatment is fair and appropriate and should be allowed to continue. It would also help to encourage service providers to carefully consider their use of age-based practices and ensure that, where unfair age-based practices do occur, that people are able to challenge these in the courts.
- 8.3. In practice, this proposal would mean that any age-based treatment on grounds of age in health and social care would be unlawful, unless that treatment could be shown to be objectively justified or a positive action measure, or there was a statutory basis for that treatment, or the treatment was otherwise covered by the other general exceptions outlined in Chapter 3. We have explained how these provisions and exceptions would apply in general terms in Chapter 3.
- 8.4. As we have already stated in Chapter 3, we do not think that it should ever be permitted to harass or victimise someone because of age, and we would therefore propose that all provisions in any future age discrimination legislation should apply to health and social care in the same way as other goods, facilities and services and public functions.

9. How our proposals would work in practice

- 9.1. Some examples of the types of age-based behaviour that would be permitted to continue under these proposals may include:
 - Services which are designed for people with a particular group of needs who may generally be within a particular age range or who may benefit by the provision of services in a particular way. If a person's age is relevant because they will benefit from services which are delivered in an age appropriate manner, this should be permitted. Commissioners and

providers should not be discouraged from providing age appropriate services and facilities.

- As part of an assessment of individual need, health and social care professionals would be allowed to consider an individual's age in relation to which potential interventions and care packages would work best, as age can be a risk factor for many conditions, but they would not be able to use age by itself, as a proxy for need. Any decisions taken on the basis of assessment would need to be capable of being objectively justified, if challenged. This would require health and social care professionals to carry out a thorough assessment based on the individual's needs, best practice evidence and a range of other factors including lifestyle, aspirations and background, and maintain good records of the decision-making process, for example why a particular intervention or care package was chosen or, if the person's age was a factor in that decision making process, why it was necessary to factor this in).
- Any charging mechanisms set out in legislation, such as different charges for certain age groups accessing sight tests, would be allowed to continue under the proposed statutory authority exception.

Question: How strongly do you agree or disagree with our current proposal that health and social care should be included in the scope of any future age discrimination legislation, without any specific exceptions? Please provide any further views that you may have on our proposal.

CHAPTER 5: FINANCIAL SERVICES

1. **Introduction**

- 1.1. This chapter sets out our proposed approach to age discrimination in financial services. We know that some people are concerned about the way in which age is used by the financial services industry when providing and pricing products²³, that some older and younger people feel that the premiums they are charged for some financial service products do not fairly reflect the underlying risk they present in respect of age and other people are concerned that some financial service providers refuse to provide certain products and services to people of particular age groups.
- 1.2. We also know that age can be a legitimate risk factor that financial services take into account in determining prices for some financial products. We want to eradicate age discrimination in financial services while also ensuring that financial service providers are able to take age into account where it is fair and appropriate to do so.

2. **Scope of financial services**

- 2.1. Financial services in Northern Ireland can include services of a banking, credit, insurance, personal pension, investment or payment nature. This would include services and products such as mortgages, loans, home and motor insurance, current and savings accounts, investment products, personal pensions, debt management and equity release. Financial services can be provided by a wide range of organisations including banks, building societies, credit unions, insurers and investment firms.
- 2.2. The financial services sector is currently regulated on a UK wide basis by the Financial Conduct Authority. The role of the Financial Conduct Authority is to

²³ ARK (2008) *Northern Ireland Life and Times Survey*

ensure that business across financial services and markets is conducted in a way that advances the interests of all consumers and market participants.

- 2.3. Financial services, including insurance, is a reserved matter under the Northern Ireland Act 1998.

3. How age is currently used in financial services

- 3.1. Financial services firms often use age criteria to design, underwrite, price or market products or services and European guidance on gender-neutral pricing on insurance specifically recognises age as a legitimate risk-rating factor to determine prices²⁴. Age is used as an indicator of changing needs and risks, linked to how factors such as a person's financial obligations, health and risk of mortality vary over time, and can therefore be used to determine, for example, the frequency and likely costs of meeting claims under insurance policies or the likely risk of default on a bank loan or mortgage. This is known as the level of actuarial risk a person presents. For example, travel insurance data shows that older people make more claims and that these are also more expensive for insurers to settle, thus older people are often charged more for travel insurance.
- 3.2. In Northern Ireland, financial service providers are currently free to decide how much to charge for their products using a range of factors including age. Financial service providers may have good reasons for setting prices that are not in direct proportion to the evidence available. For example, data may be adjusted to take account of forward looking trends and forecasts, or it could be difficult to use strict mathematical techniques in areas where there is limited data, for example drivers aged over 85, where relatively few people fall into this age group compared to others.

²⁴ European Commission http://ec.europa.eu/justice/newsroom/gender-equality/news/121220_en.htm

4. Evidence of age discrimination in financial services

- 4.1. We are aware of some evidence that suggests that age discrimination can occur in financial services at a UK level, particularly in relation to the pricing and provision of travel and motor insurance. Some research has found motor and travel insurance policies can differ depending on the age of the customer, with older people having to pay more than any other age group to obtain similar cover.²⁵ 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, and that half of all attempts to get a motor insurance quotation for people aged 80 and over were initially unsuccessful, although a third then found an insurance provider.²⁶
- 4.2. In relation to travel insurance, it has been reported that 13% of people aged over 80 have reported that they were put off taking holidays because of worries about getting insurance or the cost of premiums and one-third of quotation attempts for people over 80 were initially unsuccessful, although the majority were offered an alternative provider.²⁷ A SAGA Populus survey found that 25% of people over 65 had been refused travel insurance on the grounds of age.²⁸ Research for the Association of British Insurers (ABI) found that 25% of customers aged 65 and over had been refused travel insurance because of their age, although 93 percent of these people went on to find another insurer who would provide cover.²⁹
- 4.3. A study commissioned by the Government Equalities Office in Great Britain found that, although age-based practices varied across products and providers, similar patterns of behaviour occurred across the financial services sector. In general, no age group was excluded from the financial services market, although some age groups did have more to choose from than others. The research found that some people did have problems finding and buying

²⁵ Oxera (2009) *The Use of Age-based Practices in Financial Services*, Oxford

²⁶ Age UK (2011) *Agenda for Later Life: Policy Priorities for Active Ageing*, Age UK, London

²⁷ Age UK (2011) *Agenda for Later Life: Policy Priorities for Active Ageing*, Age UK, London

²⁸ cited in HM Treasury (2008) *Age Discrimination in Financial Services: Final report of the Experts' Working Group*

²⁹ ABI (2009) *Insurers and age-based differentiation*, Research paper No.12 2009, ABI, London

suitable insurance policies and it was accepted they could be helped by being given details of other suppliers able to offer a suitable policy.³⁰

- 4.4. The report found that prices appear to be broadly fair, based on the risks (how likely you are to claim) and the costs (how much you claim). However, the research also found that there was considerable mistrust regarding how age was used when calculating risks and that transparency needed to be improved. The research also showed that access could be improved by providing a sign-posting or referral system to help people who are refused a quote because of their age to find an alternative provider.³¹
- 4.5. Local research into age discrimination in financial services in Northern Ireland has been more limited and is generally anecdotal in nature, but it does tend to support the findings from UK surveys. For example, research undertaken by the Northern Ireland Consumer Council on motor insurance³² supports the finding that some age groups face particular difficulties in accessing some financial services such as insurance.
- 4.6. We are also aware that there may be perception, particularly among older people, they are not getting a fair deal from the finance industry and they are unable to find the financial services they require. For example, work for the Equality Commission quoted examples of premiums rising considerably when people attained a certain age, as well as difficulties in obtaining insurance at all.³³
- 4.7. Older people in particular face a range of other barriers to accessing financial services that, while not necessarily amounting to discrimination, nevertheless may make older people wary of financial services, for example:
 - A 'knowledge gap', closely related to a lack of familiarity with computers and the internet;
 - A lack of understanding of some financial products;

³⁰ Oxera (2009) *The Use of Age-based Practices in Financial Services*, Oxford

³¹ Oxera (2009) *The Use of Age-based Practices in Financial Services*, Oxford

³² Northern Ireland Consumer Council (2009) *Quote Unquote*

³³ Fitzpatrick, B and Kingston, I (2008) *Older People's Access to Financial Services*, Equality Commission, Belfast

- Inability to access online accounts or online sources of information;
- Post Offices are often a preferred financial services provider, and therefore branch closures may cause anxiety;
- Difficulty in understanding much of the explanatory material for financial services which is necessarily written in high-level and unfamiliar language, compounded by high rates of literacy problems among older people;
- A reluctance to ask for help;
- Physical and mental health problems that can make access to bank accounts and other services difficult and may also lead to mismanagement of money; and
- Many older people dislike using complicated call centre services which are often used by the financial services sector.³⁴

4.8. We are also aware of concerns that older customers, in particular, feel they are not always treated in a way that is fair in relation to customer services, for example, where an older person may be asked to bring a younger companion when discussing financial services products. However, the financial services industry is already heavily regulated with regard to the way it deals with consumers, with safeguards available under both the Financial Conduct Authority and the Financial Ombudsman Service. Many instances of unfair treatment in customer service would also be dealt with under existing customer service principles by which the firm is required to operate, such as requirements about how firms deal with potentially vulnerable people.

5. **How age discrimination in financial services has been addressed in Great Britain**

5.1. Given that financial services are regulated on a UK-wide basis, we think it makes sense to consider the way in which age discrimination in the provision of financial services has been dealt with under the Equality Act 2010, as amended by the Equality Act 2010 (Age Exceptions) Order 2012. This legislation includes an exception that allows financial service providers to

³⁴ Fitzpatrick, B and Kingston, I (2008) *Older People's Access to Financial Services*, Equality Commission, Belfast

continue to use a person's age as a criterion in designing financial services products. However, the exception makes clear that all risk assessments must, so far as they involve a consideration of age, be done by reference to information which is both relevant to the assessment of risk and from a source on which it is reasonable to rely.

- 5.2. In developing this legislation and considering the need for a specific exception for financial services in Great Britain, the Government Equalities Office commissioned a study by Oxera. Overall, the report indicated that there would be little economic benefit in restricting the use of age as a criterion in designing financial services products. If the use of age was restricted, the report found that any resulting changes to underwriting processes, product offerings and pricing structures would likely impose additional costs on product providers, which would in turn be passed on to customers. It was considered that while some anecdotal evidence was provided about difficulties of over-the-counter treatment of older customers by banks or other financial institutions, there was insufficient evidence to justify legislative intervention.³⁵
- 5.3. In April 2012 the UK Government and the insurance industry represented by the British Insurance Brokers Association (BIBA) and the Association of British Insurers (ABI) launched two voluntary schemes aimed at addressing particular difficulties in relation to transparency and access to insurance providers and products. In order to improve transparency and confidence in how financial services providers use age when calculating premiums for motor and travel insurance in particular, ABI has agreed to publish collated data on an annual basis for these areas setting out how age is used in the calculation of risk. In relation to access difficulties, a voluntary signposting scheme has been introduced so that, where a motor or travel insurance provider is unable to provide cover to a person because their age is outside any upper age limits they have in place, the provider is required to refer that person either to a specific provider who can meet their needs or to the dedicated signposting service. This aims to help people compare prices and

³⁵ Oxera (2009) *The Use of Age-based Practices in Financial Services*, Oxford

obtain more competitive quotes. These voluntary schemes are expected to be reviewed in 2015.

- 5.4. By way of comparison, in Ireland under the Equal Status Acts 2000-2008 people of different ages can be treated differently in relation to annuities, pensions, insurance policies or any other matters related to the assessment of risk where the treatment is effected by reference to actuarial or statistical data from a source on which it is reasonable to rely or other relevant underwriting or commercial factors and reasonable having regard to the data or other relevant factors.

6. Our proposals

- 6.1. We have considered whether financial services should be included in the scope of any future age discrimination legislation and whether any specific exceptions for financial services would be required. In reaching the proposals set out below, we have considered the evidence outlined above on how age is currently used in the provision of financial services.
- 6.2. Given that financial services are currently regulated on a UK-wide basis, we have also considered the approach taken in Great Britain under the Equality Act 2010 as amended by the Equality Act 2010 (Age Exceptions) Order 2012. We have also considered the approach taken in Ireland under the Equal Status Acts 2000-2008.
- 6.3. We have also taken into account submissions and feedback from the age sector, the Commissioner for Older People NI and the Equality Commission NI.
- 6.4. We propose that any future age discrimination legislation should include a specific exception to allow financial service providers to continue to use a person's age as a criterion in designing financial services products. We propose that all risk assessments so far as they involve a consideration of age, must be done by reference to information which is both relevant to the

assessment of risk and from a source on which it is reasonable to rely. This proposed approach is identical to that adopted in Great Britain under the Equality Act 2010 as amended by the Equality Act 2010 (Age Exceptions) Order 2012.

- 6.5. We would intend that any future age discrimination legislation would also include provision for voluntary agreements with the financial services sector to improve transparency and access, similar to the agreements already in place in Great Britain.
- 6.6. The term 'information' would include public or private empirical, actuarial, statistical, medical, qualitative research or other material or data and evidence of costs, included but not limited to administrative or operating costs. It could be from the UK or international sources, based on industry-wide data, firm specific data or the experience of another firm, provided that it is relevant, accurate and from a source upon which it is reasonable to rely. This is consistent with the approach taken under the Equality Act 2010 as amended by the Equality Act 2010 (Age Exceptions) Order 2012.
- 6.7. The terms 'relevant' 'reasonable to rely' and 'risk' would be very difficult to define in legislation and that they should be matters for a court to assess in all the circumstances of the case. We consider that the term "risk" should be interpreted in accordance with the natural meaning of the word. This is consistent with the approach taken under the Equality Act 2010 as amended by the Equality Act 2010 (Age Exceptions) Order 2012.
- 6.8. The proposed exception would not apply to harassment or victimisation as we do not think it should ever be permitted to harass or victimise someone because of their age.
- 6.9. We have set out the details and rationale for this proposal and explained how this would work in practice in the following sections.

7. Our proposals – scope and exceptions

- 7.1. We consider that there is insufficient justification for financial services to be included in any future age discrimination legislation. We think that a lot of the evidence of age discrimination in financial services is anecdotal in nature and it does not permit general conclusions to be drawn about the conduct of the industry. The research also suggests that many of the complaints about the financial services sector reflect a perception of age discrimination or other barriers to accessing financial services, rather than practices that are actually unfair and harmful. The evidence also suggests that significant legislative intervention would be unnecessary as the pricing of financial service products broadly reflects actuarial risk.
- 7.2. This evidence suggests that it would be appropriate to include a specific exception for financial services in any future age discrimination legislation. We think that it would sense to be consistent with the approach taken in GB, given that financial services are provided and regulated on a UK wide basis. We think that any deviation from the GB position would cause practical problems in implementation and an uncertain position for financial service providers and customers in Northern Ireland. This approach is also broadly consistent with that adopted in Ireland under the Equal Status Acts 2000-2008.
- 7.3. We also considered whether age discrimination in financial services could be addressed without a specific exception. This would mean that any age-based treatment on grounds of age in financial services would be unlawful, unless that treatment could be shown to be objectively justified or a positive action measure, or there was a statutory basis for that treatment, or the treatment was otherwise covered by the other general exceptions outlined in Chapter 3. We have explained how these provisions and exceptions would apply in general terms in Chapter 3.
- 7.4. We consider that this approach would place restrictions on the extent to which financial service providers could use age when assessing risk and deciding

the prices of products. We have concerns that this could have a number of unintended and unwanted consequences that would be detrimental to the financial services sector and to customers. For example:

- Financial service providers could be required to produce very detailed data at individual firm level, rather than aggregate data at industry level, in order to meet the objective justification test in the event of any challenge in the courts, as industry-wide information may not necessarily provide the evidence needed to justify age-based practices in individual cases. The requirement for individual firms to hold more detailed data at could result in higher administrative and other costs. For example, it could be more costly for individual firms to prove that a particular price increase is justified for 74 year olds turning 75 than it would be to rely on industry-wide statistics on the actuarial correlation between age and risk, as individual firms would likely have fewer data on these age groups and may have to use other factors to set prices such as introducing detailed medical or other tests in an attempt to measure the true functional age of an individual.
- Individual financial service providers would be subject to additional legal risks in relation to potential challenges in court and the need to objectively justify any age-based practices. This could trigger more cautious underwriting or force providers to hold back more capital for the same level of risk, resulting in increased costs being passed on to customers.
- Small or newer firms could also be at an additional disadvantage because they would have fewer statistical data or a shorter history of statistical data to support their assessment of risk. This means it would be more difficult for them to develop a commercial strategy that is both economic and capable of objective justification, if challenged.
- This approach may also hinder the development of new financial services products because providers would not be able to provide sufficient evidence to objectively justify new schemes and they would not be able to limit their risk by restricting availability to a specific risk class when piloting an innovative scheme.

7.5. On balance, we think that it would be most appropriate to adopt a similar approach as currently exists in Great Britain under the Equality Act 2010 as amended by the Equality Act 2010 (Age Exceptions) Order 2012.

8. How our proposals would work in practice

8.1. Under these proposals, financial service providers would be allowed to continue to use age when assessing risk and deciding the prices of products. They would also be able to continue the use of age limits or bands. Financial service providers would also be able to take commercial considerations into account in the provision of different products and services for people of particular age groups, and in trying to attract customers from different age groups. Financial service providers would not be forced to participate in sectors in which they have no experience. This position recognises that providers need to have credible data on different age groups in order to provide appropriate services and ensure that costs are kept to a minimum, which would be beneficial for both providers and consumers. Under these proposals providers would be allowed to continue to specialise in providing products only to certain age groups, for example, by providing financial services only for people aged over 50.

8.2. Individuals would be able to challenge a financial service provider in the courts if they think that a risk assessment has been arbitrarily based on their age rather than on the basis of relevant information which is from a source on which it is reasonable to rely.

8.3. Some examples of how these proposals may work in practice include:

- A 65 year old woman applies for travel insurance for a one year 'round the world' trip to celebrate her retirement. She declares several health problems which are in remission and shows the insurance company a medical report which states that, because of her age, the conditions are likely to recur. In refusing the travel insurance, the insurance company makes an assessment of risk based on relevant information from a source

on which it is reasonable to rely. Consequently, it could rely on the proposed financial services exception to refuse cover.

- A 19 year old man in stable, full-time employment applies to a finance company for a short term car loan. Believing that people under 21 are less reliable, the company only offers him a loan at a significantly higher rate of interest than would be charged to other motorists. This conclusion is not based on an assessment of risk using data or other relevant information relating to the man's age. In these circumstances, charging the higher rate of interest is unlikely to come within the proposed financial services exception and would therefore be unlawful.
- A high street bank offers a 'silver saver' account with a higher rate of interest for customers aged 60 or over. This would be lawful under the proposed financial services exception. A woman in her 40s complains to the bank that the 'silver saver' account amounts to age discrimination. Even though she is incorrect, because of her complaint the bank refuses to allow her to open an ordinary current account. This would amount to victimisation and would not be covered by the proposed financial services exception.

Question: How strongly do you agree or disagree with our current proposal that any future age discrimination legislation should include a specific exception for financial services? How strongly do you agree or disagree with the proposed exception to allow financial service providers to continue to use age as a criterion to design and price financial products, provided that all assessments of risk, insofar as it involves a consideration of age, must be based on relevant information on from a source on which it is reasonable to rely? Please provide any further views that you may have on our proposal.

CHAPTER 6: OTHER SPECIFIC EXCEPTIONS

1. Introduction

- 1.1. We have considered a number of additional areas where specific exceptions may be necessary to ensure that certain age-based practices are permitted to continue under any future age discrimination legislation. We want to ensure that the law is clear about the circumstances when it would be permitted to treat people differently because of their age, and to avoid such treatment being challenged in the courts.
- 1.2. This chapter sets out our proposals for specific exceptions in the following areas:
- Age-based concessions;
 - Age-related holidays;
 - Sporting and recreational activities and events;
 - Residential park homes;
 - Private clubs and associations; and
 - Age restricted schemes.
- 1.3. In reaching these proposals we have considered the equality legislation in place in Great Britain and Ireland, which both include some specific exceptions to a general ban on age discrimination.

2. Age-based concessions

- 2.1. Many service providers offer age-based concessions or limited preferential access to specific age groups. A concession is a benefit, linked to the provision of goods, facilities and services, which is offered only to certain groups of people who are linked to a common characteristic, such as age.
- 2.2. A concession might be offered by providing a service to persons of a particular age group at a lower price than that charged to people outside the

age group, or a service might be provided on more favourable terms. For example, some retailers offer discounts to people under or over a specified age during off peak hours, some leisure centres offer free or reduced access to leisure facilities at certain times, and over 60s are entitled to free travel on public transport.

- 2.3. We think that age-based concessions should be permitted under any future age discrimination legislation as they can help to attract new customer groups, boost trade during quiet periods and ensure greater participation in society and the economy by under-represented groups.
- 2.4. We would propose to include an exception to continue to allow a service provider or someone exercising a public function to provide benefits, rights or privileges that make the manner in which a service is provided, or in the terms in which a service is provided, more favourable for people of a particular age group than is usually provided to the public or a section of the public. However, a service provider or someone exercising a public function would not be permitted to offer an age-based concession that would have the effect of deterring people who do not qualify for them from accessing a service at all, or of unreasonably making access to a service difficult or impossible for those people who are outside the target age group.
- 2.5. In practice, this would mean that any service provider would be able to use age to determine eligibility for concessions and offer concessions for purely commercial reasons. There would be no requirement to have a social policy aim or to address disadvantage or under-participation. There would also be no restrictions on the nature of the concession, so service providers would be able to offer discounts (such as cheaper cinema tickets), benefits in kind (such as a free meal) or enhanced services (such as higher interest rates on savings accounts).
- 2.6. Some examples of the types of preferential treatment that would be permitted include a health spa offering students two hours' massage therapy for the price of one hour (which may otherwise amount to indirect discrimination as

students are more likely to be in younger age groups), or a leisure centre opening its swimming pool early on Friday mornings for people over 65.

- 2.7. A service provider would not be permitted to refuse to provide the service outside of the target age group. For example, a hairdresser would be permitted to offer reduced rates for pensioners on Tuesdays, but it would not be permitted to refuse a woman aged 40 to book an appointment for a Tuesday when appointments are still available.
 - 2.8. Any age-based treatment falling outside this proposed exception may be still be lawful if it could be shown to be objectively justified or if it is covered under any of the other proposed general provisions or exceptions set out in Chapter 3.
3. Any exception for age-based concessions in any future age discrimination legislation would not apply to harassment or victimisation.

Question: How strongly do you agree or disagree with our current proposal that any future age discrimination legislation should include an exception for age-based concessions? Please provide any further views which you may have on our proposal.

3. Age-related holidays

- 3.1. A small number of tour operators design, market, offer and sell holidays for people who wish to holiday with people of a similar age. For example, there are holidays exclusively for people aged over 50 and holidays aimed at people aged between 18 and 30. Age-related holidays provide opportunities for people to come together and associate with people of a similar age to themselves.
- 3.2. Sometimes age is used as a marketing tool to attract prospective clients and to provide an indication of the overall character and level of social interaction and activity associated with different types of holiday. In some cases, the company may restrict its services to people within a specified age group, and

there may be additional requirements for family members or other companions to have attained a minimum age.

- 3.3. The tour companies who provide this type of holiday form a very small part of the overall market, and we do not see any harm in allowing holiday companies to continue to meet individuals' preferences to holiday among people of a similar age. We would therefore propose to include a specific exception in any future age discrimination legislation to allow this age-based treatment to continue.
- 3.4. The proposed exception could only be used for holidays where an essential feature of the holiday is to bring people of a particular age range together. The eligible age group must be clearly indicated at the time the holiday is offered. The exception would only apply to holidays which include at least two elements of travel, accommodation and access to activities or services for a single price. The holiday should be for a period of at least 24 hours or include the provision of overnight accommodation.
- 3.5. The exception would not apply to standalone services, such as hotel rooms or flights, as there is not an obvious age-related reason for restricting this type of service. The exception would not cover circumstances where a holiday operator markets holidays for people of all ages, but applies age related restrictions in the provision of this service.
- 3.6. A company which provides age-based holidays would still be permitted to provide its services to a person who isn't in the usual age group, but it would not be able to offer the holiday on less favourable terms than those offered to people in the usual age group. Where age is used as an indicator but the provision of the holiday is not restricted to that particular age group, this would not normally be considered discriminatory practice.
- 3.7. Any age-based treatment falling outside this proposed exception may be still be lawful if it could be shown to be objectively justified or if it is covered under any of the other proposed general provisions or exceptions set out in Chapter

3. An exception for age-related holidays in any future age discrimination legislation would not apply to harassment or victimisation.

Question: How strongly do you agree or disagree with our current proposal that any future age discrimination legislation should include an exception for age-related holidays? Please provide any further views that you may have on our proposal.

4. Sporting events

4.1. Age limits and age bands are used in numerous sporting and recreational activities and events, leagues and training sessions. These age-based practices may be considered fair and appropriate, and in some cases necessary, for a wide range of reasons, including:

- To enable certain age groups to meet and socialise together;
- To help to alleviate disadvantage experienced by particular certain age groups and helping them to avoid isolation and stay healthy;
- To reduce under-representation by certain age groups in particular activities;
- To meet particular needs for people in a certain age group;
- To secure fair competition;
- To secure the safety of competitors and spectators; and
- To comply with rules set by national, international or sports governing bodies.

4.2. We think that it would be helpful to include a specific exception in any future legislation to provide legal certainty on the circumstances in which age limits or bands are acceptable in sport.

4.3. The proposed exception would apply to any sport, game or other activity of a competitive or strenuously participative nature in which the physical strength, stamina, physique, mobility, maturity or manual dexterity of 'average' people of a particular age group would put them at a disadvantage compared to

average people of another age group as competitors in events involving the activity. It would allow, for example, selection on the basis of age for under - 21 football tournaments or veteran tennis leagues, or for age limits to be used to determine the provision of training, facilities and other support to competitors.

- 4.4. The exception would cover all levels of sporting events, including grass-roots, amateur, elite and professional levels, and it would include intellectual games, such as chess and bridge. The exception could be used by any individual or organisation involved in the organisation or administration of sporting activities, the provision of training or facilities, and others participating in an official capacity, such as coaches, umpires and referees.
- 4.5. There are some circumstances in which the proposed exception would not apply, for example where sporting events are advertised as open to all but reveal age cut-offs only when prospective participants apply to take part. Age limits or bands which are applied for purely historical or social reasons, such as local bowling club competitions that restrict competitors to people over 70, would not be allowed under the proposed exceptions, because a restriction of this type would not be considered necessary to ensure fair competition or the safety of competitors, or to comply with the rules of national or international competition.
- 4.6. Any age-based treatment falling outside this proposed exception may be still be lawful if it could be shown to be objectively justified or if it is covered under any of the other proposed general provisions or exceptions set out in Chapter 3. An exception for sporting events in any future age discrimination legislation would not apply to harassment or victimisation.

Question: How strongly do you agree or disagree with our current proposal that any future age discrimination legislation should include an exception for sporting and recreational activities and events? Please provide any further views that you may have on our proposal.

5. Residential park homes

- 5.1. Residential park homes are sites where static caravans are used as permanent places of residence. They are predominantly used by people aged over 50 and the owners of these sites often stipulate a lower age limit for residents to ensure that the sites retain the character and qualities that appeal to their core market.
- 5.2. We think that this type of age-based treatment is fair as it relates to people's individual preferences to live among people of a similar age. We think it would be helpful to provide a specific exception for residential park homes, as there may be some uncertainty about whether these would be considered a 'service' or 'premises'.
- 5.3. The exception would permit park owners to set, maintain or amend age limits to restrict the owning or rental of park home units to people of a certain age, on the condition that this requirement is set out clearly in the agreement covering use of a mobile or in park rules. These could include both lower and upper age limits. A site operating an age limit policy could still decide to provide a park home unit to a person who is not in the usual age group eligible to become a resident, but it would not be allowed to do so on worse terms compared to someone in the usual age group.
- 5.4. The proposed exception would not allow age restrictions to be imposed on people visiting residential park homes or on the provision of services on the site once residents have been admitted. The exception would not apply to holiday mobile homes as there is no obvious reason why age-related practices should be applied in relation to holiday accommodation.
- 5.5. Any age-based treatment falling outside this proposed exception may be still be lawful if it could be shown to be objectively justified or if it is covered under any of the other proposed general provisions or exceptions set out in Chapter

3. An exception for residential park homes in any future age discrimination legislation would not apply to harassment or victimisation.

Question: How strongly do you agree or disagree with our current proposal that any future age discrimination legislation should include an exception for residential park homes? Please provide any further views that you may have on our proposal.

6. Private clubs and associations

6.1. Private clubs and associations sometimes treat people differently on ground of age by offering concessionary membership rates to people of a particular age group, for example by offering concessions on admission to membership or concessions regarding access to benefits, facilities or services to people of a particular age group or people who have been members of the club for a certain number of years according to club rules, or their guests. Other clubs may restrict membership to people of a particular age group to bring people of a similar age and with similar interests together and to provide facilities and services in a manner that responds to that particular age group's needs and experiences.

6.2. We think that these types of age-based treatment are fair because they allow clubs and associations to take proportionate steps to encourage membership among under-represented age-groups, to help overcome disadvantage, or to meet the particular needs of their members. We think it would be helpful to include specific exceptions to ensure legal clarity for private clubs and associations and their members, associates and guests.

6.3. We propose to include a specific exception for age-based concessions in private clubs and associations in any future legislation. This exception would be similar to the proposed exception for general age-based concession outlined above. Under these proposals, private clubs and associations would be permitted to offer or determine eligibility for concessions purely on grounds of age.

- 6.4. We also propose to include a specific exception to allow private clubs and associations to restrict membership on grounds of age, for example by restricting membership only to students or people aged over 50.
- 6.5. These exceptions would only apply to private clubs and associations with at least 25 members and where admission to membership is regulated by rules and includes a process of selection.
- 6.6. Any age-based treatment falling outside this proposed exception may be still be lawful if it could be shown to be objectively justified or if it is covered under any of the other proposed general provisions or exceptions set out in Chapter 3. An exception for private clubs and associations in any future age discrimination legislation would not apply to harassment or victimisation.

Question: How strongly do you agree or disagree with our current proposal that any future age discrimination legislation should include exceptions for private clubs and associations? Please provide any further views that you may have on our proposal.

7. Age restricted schemes

- 7.1. Age restricted schemes are schemes operated voluntarily by some retailers to prevent the purchase of age-restricted products, such as alcohol and tobacco, by people below the legal age, such as the 'Challenge 21' and 'Challenge 25' schemes. In practice, this means that, when a retailer is in doubt about a customer's age, the retailer will ask for identification for proof of age before supplying an age-restricted product.
- 7.2. We think that this type of age-based practice is fair and appropriate because it is in the public interest to reduce the sale of age-restricted products to people below the legal age and, in particular, to reduce under-age drinking. We think it would be helpful to provide a specific exception to provide legal certainty for retailers and customers in the sale and purchase of age restricted products.

- 7.3. We propose to include a specific exception for age-restricted schemes in any future age discrimination legislation. The exception would only apply to goods and services which are subject to a statutory age and when the retailer has clearly displayed that they will ask for proof of age in this way. The retailer would be permitted to refuse to sell age restricted products to a person who does not provide satisfactory identification when asked to do so.
- 7.4. Any age-based treatment falling outside this proposed exception may be still be lawful if it could be shown to be objectively justified or if it is covered under any of the other proposed general provisions or exceptions set out in Chapter 3. An exception for age restricted schemes in any future age discrimination legislation would not apply to harassment or victimisation.

Question: How strongly do you agree or disagree with our current proposal that any future age discrimination legislation should include an exception for age restricted schemes? Please provide any further views that you may have on our proposal.

Question: Are there any other areas of activity that you consider should be covered by an exception in any future age discrimination legislation?

CHAPTER 7: IMPLEMENTATION AND ENFORCEMENT

1. Introduction

- 1.1. One of the key aims of any future legislation which makes age discrimination in the provision of goods, facilities and services unlawful will be to change harmful and unfair behaviour and practices. However, there will inevitably be times when acts of unlawful discrimination will continue to occur. We want to make sure that people are clear about their rights and responsibilities under any future age discrimination legislation and can challenge unfair treatment and practices if they do occur.
- 1.2. We have considered the implementation and enforcement provisions of other Northern Ireland equality legislation in reaching our proposals.

2. Enforcement provisions

- 2.1. We think that it makes sense that the enforcement and implementation provisions of any future age discrimination legislation are consistent with other equality legislation. Under this proposal, any future age discrimination legislation would include the following enforcement provisions:
 - a person who believes that they have been discriminated against may bring proceedings before a county court to get a ruling on whether discrimination has occurred and to seek a remedy for the wrong doing, usually in the form of financial compensation;
 - a time limit that proceedings would only be allowed to be brought within six months from when the act of alleged unlawful discrimination occurred. This time limit may be waived with the permission of a court;
 - a person who is a victim of alleged discrimination and is considering bringing proceedings under the regulations should have the benefit of a standard form by which to question the alleged discriminator, and that there should be a similar form available for the alleged discriminator to respond; and

- other provisions on evidence, burden of proof and remedies consistent with other equality legislation that applies to goods, facilities and services.

3. The role of the Equality Commission for Northern Ireland

- 3.1. We think that it makes sense that the Equality Commission for Northern Ireland (ECNI) should have the same duties and powers in relation to any future age discrimination legislation as it currently has in relation to other equality legislation relating to sex, disability, race, sexual orientation and religious belief and political opinion.
- 3.2. We propose that ECNI would have a range of general duties under any future age discrimination legislation, such as working towards the elimination of discrimination and to promoting equality of opportunity between people of different age groups. We propose that ECNI would provide guidance and information on any future age discrimination legislation when it comes into force. It would work with businesses, service providers and the public sector to promote good practice and compliance with the legislation. ECNI would be able to issue a Code of Practice, as it sees fit, to help people to understand how the law would work in practice and to ensure or facilitate compliance with any future age discrimination legislation.
- 3.3. We propose that ECNI would also have an enforcement role. It would be able to provide legal advice and assistance to actual or proposed complainants bringing proceedings before a court, under the terms of its Enforcement Policy for the Provision of Legal Advice and Assistance. The Commission would be able to enforce provisions on discriminatory practice, discriminatory advertisements, instructions to discriminate and pressure to discriminate.
- 3.4. ECNI would be able to conduct formal investigations for any purpose connected with its duties, and it would be able to make recommendations for changes in policies or procedures following those investigations, or to advise the Office of the First Minister or deputy First Minister on necessary changes to equality legislation.

Question: How strongly do you agree or disagree with our current proposals for the enforcement and implementation provisions of any future age discrimination legislation? Please provide any further views that you may have on our proposal.

DRAFT EQUALITY IMPACT ASSESSMENT**1. Introduction**

- 1.1. Section 75 of the Northern Ireland Act 1998 requires all public authorities, in carrying out their functions relating to Northern Ireland, to have due regard to the need to promote equality of opportunity between:
- Persons of different religious belief, political opinion, racial group, age, marital status and sexual orientation;
 - Men and women generally;
 - Persons with a disability and persons without; and
 - Persons with dependents and persons without.
- 1.2. In addition, without prejudice to this obligation, public authorities must also have regard to the desirability of promoting good relations between persons of different religious belief, political opinion and racial group.
- 1.3. The purpose of this draft Equality Impact Assessment is to consider the impact of the policy proposals to extend age discrimination legislation on each of the nine Section 75 groups, to identify any adverse impacts and, if necessary, to consider any possible changes or actions required to mitigate any adverse impacts.
- 1.4. Initial screening indicated that an Equality Impact Assessment would be required on these policy proposals.
- 1.5. This draft Equality Impact Assessment represents our current thinking based on the available information and evidence base. This may change when we analyse your views and review any additional information and evidence. We are open to hearing all your views and these will help us to refine and finalise the policy proposals and the draft Equality Impact Assessment.

2. Aims of the Policy

- 2.1. The overall aim of the proposals is to establish a robust policy position prior to bringing forward draft legislation to protect those aged 16 or over from discrimination on grounds of age in the provision of goods, facilities and services, charities, premises, education, public functions, and private clubs and associations.
- 2.2. While there is an extensive body of anti-discrimination legislation in place in Northern Ireland, there remains a major gap in relation to age discrimination in relation to these areas. The proposals aim to provide people with the same legal protection from discrimination in these areas on grounds of age as is currently enjoyed by people on other equality grounds and on grounds of age in relation to employment and vocational training.
- 2.3. The Programme for Government 2011-15 includes a commitment to extend age discrimination legislation to the provision of goods, facilities and services (commitment 38).
- 2.4. The extension of age discrimination legislation should help to:
- Challenge negative stereotypes, prejudice and ageist behaviours;
 - Reduce social exclusion by improving the access to, and targeting of, various services;
 - Improve accountability and transparency in services;
 - Send a strong signal that discriminating unjustifiably on grounds of age is unacceptable;
 - Act as a catalyst for service providers to proactively consider their age-based policies and practices and promote age equality in service delivery;
 - Promote the dignity and worth of individuals; and
 - Ensure that people can still be treated differently on grounds of age where it is necessary, beneficial and justifiable.

3. Consideration of Available Data and Research

- 3.1. In developing these policy proposals and the potential impact of each of the Section 75 groups we have taken account of a range of research reports, submissions and evidence on age discrimination in Northern Ireland and the UK, where appropriate. We have also engaged directly with a number of key stakeholders on the draft policy proposals to seek their views on the potential impacts on Section 75 groups. A full list of the sources that we have considered is provided at **Annex B**.
- 3.2. There is evidence that age discrimination and other ageist practices exist [or are perceived to exist] across a wide range of areas that are covered by the policy proposals, such as health and social care, financial services, retail services and accommodation services. Some examples that have been identified in research have been highlighted in the main consultation document in Chapters 2, 4 and 5.
- 3.3. However, there are significant limitations and gaps in the evidence that is currently available. There is a general lack of information and research into age discrimination in Northern Ireland specifically, particularly in areas such as financial services. In these circumstances it has been necessary to rely on information from Great Britain, since there are no indications that there are any significant differences in age discrimination between the jurisdictions.
- 3.4. Research has tended to focus primarily on the experiences of older people, particularly in relation to health and social care, and while there is some evidence available in relation to younger people we are not aware of any research on age discrimination and ageism experienced by people in other age groups. In addition, much of the research that exists in relation to age discrimination in Northern Ireland is anecdotal in nature and based on case studies and small sample sizes. While this evidence is useful in illustrating the experiences and perceptions of older people, it does not provide any clear indication of the prevalence of age discrimination in Northern Ireland.

- 3.5. The limited evidence we have suggests that older people are more likely to experience age discrimination outside the workplace than other age groups. Anecdotal evidence and case study research suggests that older people may experience a range of age discrimination or other ageist behaviours, including refusal of services, limited access or reduction of services, exclusion, negative attitudes, abusive treatment, neglect, lack of respect, being ignored, lack of consideration and stereotypical assumptions. Outside of employment, age discrimination against older people appears to be most prevalent in the areas of health and social care and financial services and insurance. Older people may also experience age discrimination in retail services, public transport and in public areas.³⁶
- 3.6. There is also evidence to suggest that older people experience a range of other barriers which, while not amounting to discrimination, may also impact on their ability to access services, particularly in relation to financial services.³⁷ These barriers may also contribute to a wider perception that older people are discriminated against. For example, a survey for Age NI highlighted that 45% of older people surveyed were aware of instances where older people had been treated with less dignity and respect when accessing services because of their age.³⁸ The Northern Ireland Life and Times Survey 2008 found that 43% of respondents thought that older people are, on the whole, treated worse than people in the general population because of their age.
- 3.7. We are also aware that the 2014 Northern Ireland Life and Times Survey (Ark) included a specific module on ageism. The results of this survey are expected to be published in June 2015, and this data may inform this Equality Impact Assessment over the coming months.
- 3.8. The population of Northern Ireland is ageing rapidly and the pace of change is expected to accelerate over the coming years. There are over 110,000 more

³⁶ See for example Jarmin, N. (2014) *Strengthening Protection for All Ages against Age Discrimination outside the Workplace: Examples to illustrate older people's experiences when accessing goods and services: A Report for the Equality Commission*, Institute for Conflict Research

³⁷ Fitzpatrick, B. and Kingston, I. (2008) *Older People's Access to Financial Services*, Equality Commission for Northern Ireland

³⁸ Age NI, Millward Brown research for Age NI, August 2010

people aged 65 and over here than there were in the early 1970s.³⁹ By comparison, over the same period the number of children has fallen by 100,000. The number of older people is expected to grow sharply over coming decades. In 2014 there were an estimated 73,000 people aged 80 or over in Northern Ireland. This is projected to grow to 135,000 by 2031 and to over 250,000 by 2061.⁴⁰ In 2014 there were almost 286,000 people aged 65 or over in Northern Ireland⁴¹.

3.9. There is also evidence that children and young people may experience discrimination on grounds of age and other ageist behaviours. As with older people, the evidence is mostly anecdotal in nature and based on small case studies. The evidence suggests that children and young people can experience a range of age discrimination and other ageist behaviour including stereotypical negative attitudes, prejudice and intolerance, negative media coverage, harassment, refusal of access to services, poorer services, lack of respect and incorrect accusations of misbehaviour.⁴² Age discrimination against children and young people appears to be most prevalent in health and social care, criminal justice and general services.

3.10. In 2014 there were almost 384,000 people aged between 0 and 15 years old in Northern Ireland.⁴³ While the population of children and young people is falling, they still make up a significant proportion of the population. There is evidence to suggest that the perception of age discrimination among children and young people is very high, for example, 83% of respondents to the Northern Ireland Young Life and Times Survey 2010 agreed that, in general, young people are judged negatively just because they are young.

3.11. There is some evidence that people who experience age discrimination may also experience discrimination on other equality grounds, such as racial group,

³⁹ NISRA (2014) *Northern Ireland Mid-Year Population Estimates 2013*

⁴⁰ NISRA (2013) *Northern Ireland 2012-based Population Projections*

⁴¹ NISRA (2015) *Northern Ireland Mid-Year Population Estimates 2014*

⁴² Jarmin, N. (2014) *Strengthening Protection for All Ages against Age Discrimination outside the Workplace: Examples to illustrate older people's experiences when accessing goods and services: A Report for the Equality Commission*, Institute for Conflict Research

⁴³ NISRA (2015) *Northern Ireland Mid-Year Population Estimates 2014*

gender, political belief/religious opinion, sexual orientation or disability.⁴⁴ People who experience discrimination on two or more grounds may have particular vulnerabilities to be considered and can potentially face more acute challenges than others.

3.12. We welcome the provision of any further information and evidence that may advance and enhance our assessment of the impact of these policy proposals on each of the Section 75 groups. We have not commissioned any new research as part of this process, but we may consider the need for additional research to address particular identified gaps in the evidence base in the future.

Question: Are you aware of any other evidence or data which you think we should take into account in this Equality Impact Assessment? Please provide details of any additional evidence and any other comments you may have on the available evidence and data.

4. Assessment of Impacts

4.1. In general terms, any future ban on age discrimination in the provision of goods, facilities and services, charities, premises, education, public functions and private clubs and associations will benefit all of those aged 16 and over in each of the Section 75 groups, by addressing an identified gap in equality legislation. However, there may be particular positive or adverse impacts on each of the specific groups, and we have taken the available research and data into account in considering these below.

4.2. Age

4.2.1. In considering the potential impact on people of different ages, we have looked at the specific impacts on people within the following broad age groups: children and young people aged 0-15, people of working age 16-65 and people aged 65 and over. However, these groups are not

⁴⁴ See for example Jarmin, N. (2014) *Strengthening Protection for All Ages against Age Discrimination outside the Workplace: Examples to illustrate older people's experiences when accessing goods and services: A Report for the Equality Commission*, Institute for Conflict Research

homogenous, and there are sub groups within these groups that may be impacted in very different ways by some of the policy proposals. For example, in some instances people aged 60 may experience age-based treatment that is much more similar to someone aged 65 than to someone aged 18. We are also aware that many people may experience discrimination on grounds of age that is compounded by discrimination on other equality grounds. We have considered these specific impacts in relation to other Section 75 groups below.

4.2.2. We are aware of particular issues that affect children and young people and evidence to suggest that children and young people experience age discrimination and other ageist behaviour. While this policy will not directly impact those aged under 16, as this age group is not included in these proposals, we are aware that a number of stakeholders, particularly those representing the interests of children and young people, are disappointed that the current proposals only apply to people aged 16 and over. These stakeholders wish to see the inclusion of all children and young people in the proposed legislation to ensure that they are protected from age discrimination on an equal basis to others.

4.2.3. This policy may mean that children and young people aged under 16 may not be able to access the particular age based services that they need, and they may therefore be placed at a disadvantage compared with those aged 16 and over. This may have a particular adverse impact on children and young people aged under 16 who experience other forms of discrimination, or who are considered to be in vulnerable groups, such as young mothers or parents, children who are lesbian, gay or, bisexual, children who are transgender, children who belong to ethnic minority groups, young carers, and looked after children who may not be able to access particular services that they require due to age, such as counselling, extra support in schools, and health and social care services.

4.2.4. In general terms, this policy should benefit all those aged 16 and over by reducing and eliminating discrimination on grounds of age. This policy is

likely to have a particular impact on older people within this age group, who may experience age discrimination and ageist behaviours on grounds of age in a similar way to those aged 65 and over. These people may experience particular issues in relation to health and social care and in relation to the availability and pricing of financial services products, particularly motor and travel insurance⁴⁵.

- 4.2.5. This policy is expected to have a positive impact on young people, particularly those aged 16 and 17, who may experience discrimination in a number of areas including mental health services, transitions, housing and financial services. In particular, this policy may have a positive impact on young people aged 16 and 17, who the evidence shows may experience a range of difficulties in the transition from childhood to adulthood, by helping to ensure that they are able to access the appropriate services that they need. This policy should also help to remove other ageist behaviours and barriers that they may experience and which may place them at a disadvantage, such as negative stereotyping and prejudice.
- 4.2.6. We are aware of anecdotal evidence which suggests that young drivers in particular often pay extremely high premiums for motor insurance. The policy proposals will ensure that age can only be used in risk assessment where it is supported by relevant and reliable information, and therefore help to improve confidence in the pricing and availability of insurance products to younger people.
- 4.2.7. It is expected that this policy would have the most significant impact on older people, who are the age group most likely to experience age discrimination. It is likely that all those aged over 65, and many others in younger age groups, will benefit from these proposals as they should help to reduce and eliminate age discrimination and ageist behaviours, particularly in those areas where age discrimination is most prevalent. In general, these policy proposals should help to increase the freedom,

⁴⁵ Fitzpatrick, B. and Kingston, I. (2008) *Older People's Access to Financial Services*, Equality Commission for Northern Ireland

independence, mobility and choice for older people by reducing inequalities and removing some of the barriers that they face in accessing health and social care, financial and other services.

4.2.8. Older people may experience higher levels of social exclusion and may struggle to maintain their independence as they age. The proposed positive action provisions and exceptions for age-based concessions, private clubs and associations, and services for people who share a protected characteristic and positive action provisions will help older people to maintain their independence while ensuring that they are still able to access age-appropriate services designed to meet their specific needs.

4.3. Disability

4.3.1. There is a clear relationship between age and the increasing prevalence of disability. For example, the prevalence of disability in those aged between 60 and 74 is four times more than in those aged between 26 and 44⁴⁶ and approximately 75% of people aged 85 and over have a disability⁴⁷. This means that these proposals aimed at eliminating age discrimination and improving the lives of older people will also have a positive effect on older people with disabilities.

4.3.2. The majority of older people accessing health and social care services have a long-term condition or disability, so the proposals to ban age discrimination in health and social care should have a positive impact on these people. Our proposals mean that people should receive the treatment that they require based on their individually assessed need, rather than on the basis of age alone.

4.3.3. People with disabilities may experience similar difficulties to older people in relation to financial services in particular. For example, people with disabilities may have difficulties in terms of accessibility, may be less

⁴⁶ NISRA (2006) *Northern Ireland Survey of People with Activity Limitations and Disabilities*

⁴⁷ Government Equalities Office (2012), *Equality Act 2010: Banning age discrimination in services, public functions and associations, Impact Assessment*, Government Equalities Office

mobile and therefore impacted by local branch closures, may have difficulty understanding the complex language of financial information and may have difficulties in using online services or call centres. While this policy is not aimed particularly at these groups, it should raise awareness of the issues which prevent people from accessing services and encourage service providers to improve accessibility and customer service standards. It may therefore have a positive impact on people with disabilities.

4.3.4. These proposals may also have a positive impact on young people and younger adults with disabilities. The evidence suggests that this group currently experiences difficulties and discrimination in a number of areas, including the transition between child and adult services, in relation to health and social care and education. These proposals to reduce and eliminate age discrimination would have a positive impact on this group by removing some of the barriers and improving access to services. It is expected that this policy could have a potential adverse impact on people with disabilities aged under 16 who would not be covered by the proposed legislation.

4.3.5. People with disabilities, particularly older people, may experience higher levels of social exclusion and may struggle to maintain their independence. The policy proposals would help to break down these barriers by eliminating discrimination and challenging ageist behaviours in the provision of general services, such as public transport and retail services. The proposed positive action provisions and exceptions for age-based concessions, private clubs and associations, and services for people who share a protected characteristic and positive action provisions will help people with disabilities, particularly older people, to maintain their independence while ensuring that they are still able to access age-appropriate services designed to meet their specific needs.

4.4. Religious belief

4.4.1. We are not aware of any evidence to suggest that there would be any significant or obvious impacts on people of different religious beliefs.

4.5. Political opinion

4.5.1. We are not aware of any evidence to suggest that there would be any significant or obvious impacts on people of different political opinions.

4.6. Racial group

4.6.1. While it is not anticipated that any future ban on age discrimination would have a direct impact on people who experience racial discrimination and racism, this policy may be a positive impact on those who experience discrimination on multiple grounds. There is evidence to show that people's experiences of age discrimination may be compounded with other factors including racial group. For example, older people from ethnic minority groups may experience particular challenges when accessing services such as health and social care and financial services, particularly in relation to language and cultural barriers, and lack of respect.

4.6.2. People from ethnic minority groups, particularly older people, may experience barriers and challenges in relation to financial services that are similar to those faced by older people generally, such as accessibility issues, wariness or reluctance to use online services and difficulty understanding complex financial information due to language barriers or low literacy levels. While this policy is not aimed particularly at these groups, it should raise awareness of the issues which prevent people from accessing services and encourage service providers to improve accessibility and customer service standards. This may in turn have a positive impact on other Section 75 groups who experience difficulty accessing particular services, such as people from ethnic minority groups.

4.7. Marital status

4.7.1. It is not anticipated that any future ban on age discrimination would have a particular impact on people of different marital status. However, as the policy is most likely to benefit older people, there may be a positive impact on those who are widowed as 30% of those aged 65 and over are widowed compared with 2% of those aged 16-64.⁴⁸

4.8. Sexual orientation

4.8.1. It is not anticipated that any future ban on age discrimination would have a particular impact of people of different sexual orientation, and there is a lack of available research on older people who are lesbian, gay or bisexual (LGB). However, there is some anecdotal evidence to suggest that this group may experience multiple discrimination and difficulties accessing services. For example, organisations who provide care or accommodation may not take account of the sexuality and particular needs of older LGB people and this may result in unfair treatment or lack of dignity and respect.⁴⁹

4.9. Men and women

4.9.1. It is not anticipated that any future ban on age discrimination would have a particular impact on men and women. However, as the policy is most likely to benefit older people, there may be a positive impact on women as, on average, women still live longer than men. For example, the proportion of females is higher in the aged 65 and over group than in those aged 0 to 64 (57per cent compared with 50 per cent).⁵⁰ However, there is also some evidence that older men face higher levels of perceived age discrimination

⁴⁸ NISRA, Northern Ireland Census 2011

⁴⁹ Government Equalities Office (2012), *Equality Act 2010: Banning age discrimination in services, public functions and associations, Impact Assessment*, Government Equalities Office

⁵⁰ NISRA, Northern Ireland Census 2011

in comparison with women⁵¹ and it is highly likely that older men and women will both benefit from the policy.

4.10. Persons with dependants and persons without

4.10.1. It is expected that this policy will have direct benefits for older people in particular, and any measures to improve the health, wellbeing and quality of life of older people will have a positive impact on their families and carers.⁵² People and families with older dependents may benefit from older people being able to access age-appropriate services and appropriate treatment which in turn may reduce the physical, emotional and financial pressures that many carers experience. For example, we are aware of evidence that suggests that older people, particularly those with disabilities, may experience detrimental changes and reductions in social care services, such as home help services, when they move to older people's services when they turn 65. In some cases, this may result in the older person and their families having to make up the difference through privately-financed services. These policy proposals should help to reduce and eliminate these detrimental changes in service provision based on arbitrary age limits. Under these policy proposals, this type of age-based treatment could be challenged in the courts and it would be for the service provider to show that it is objectively justified.

4.10.2. It is also expected that this policy would benefit young people aged 16 and over, who may experience discrimination in a number of areas including mental health services and transitions. This may in turn have a positive impact on parents, guardians and carers as the pressures on whole families should be reduced when children and young people are able to access the support and services that they require.

⁵¹ Jarmin, N. (2014) *Strengthening Protection for All Ages against Age Discrimination outside the Workplace: Examples to illustrate older people's experiences when accessing goods and services: A Report for the Equality Commission*, Institute for Conflict Research

⁵² Glennon, L. and Dickson, B. (2009) *Making Older People Equal: Reforming the law on access to services in Northern Ireland*, Queen's University Belfast

4.10.3. It is expected that this policy would have a potential adverse impact on those aged under 16 who would not be covered by the proposed legislation. This would in turn have a potential adverse impact on the parents, guardians and carers of those aged under 16 who may not be able to ensure that the children and young people for whom they are responsible can access the services that they need in a way that is not discriminatory. In relation to children with particular needs, such as children with disabilities, this may have a particular detrimental impact in that parents and carers may be expected to plug the gap in support for these children and young people.

Question: Have the potential equality impacts of our proposals been correctly identified and assessed? Please provide any comments or views that you may have on the assessment of impacts.

5. Possible measures to mitigate any adverse impact and alternative policies which might better achieve the promotion of equality of opportunity

5.1. It is expected that this policy will have a positive impact on everyone aged over 16 generally, and a particularly positive impact on older people. The policy is also expected to have a positive impact on some people from other Section 75 groups, such as people with disabilities and people from ethnic minority groups. However, the assessment of impacts has identified a potential adverse impact on children and young people aged under 16, and on their parents, carers and families.

5.2. In considering any possible mitigation actions, we are aware of the need to balance the potential adverse impact on these groups with the likely benefits for people aged over 16, particularly older people. We are aware that there may be a significant adverse impact on older people in particular if our commitment to bring forward age discrimination legislation is not progressed through the development of and consultation on these policy proposals.

- 5.3. On balance, we are persuaded of the need to bring forward age discrimination legislation as swiftly as possible to protect older people who evidence shows are most at risk from age discrimination and other ageist practices.
- 5.4. One possible option to mitigate the impact of this on children and young people aged under 16, as well as their parents, guardians and carers, is to progress other actions which are designed to improve their lives, reduce inequalities and raise awareness of issues that affect them. We are already taking this forward, for example, work on the development of a new strategy for children and young people, to replace the Ten Year Strategy for Children and Young People that expires in 2016, has already begun. The current Strategy provides the overall strategic direction for the work which the Executive takes forward to improve outcomes for children and young people. We are open to considering other steps that we can take to improve the lives of children and young people.
- 5.5. We are committed to working with a wide range of people within the children and young people's sector to consider and address the particular issues that affect those aged under 16.
- 5.6. We are also open to considering other possible mitigation measures and we would welcome your views on any other actions that could be taken to mitigate the impact on those aged under 16 and their parents, guardians and carers.

Question: Have the potential mitigation measures and alternative policies been correctly identified and assessed? Please provide any comments or views that you may have on the possible measures.

6. Consultation

- 6.1. The Department recognises the need for meaningful consultation and we are committed to consulting in an open and inclusive manner. We are keen to ensure that all barriers to effective consultation are removed and that everyone is able to give their views on our policy proposals and the draft Equality Impact Assessment. The Department will consider any requests for meetings with

organisations or individuals with particular interests in relation to any of the Section 75 groups, or equality issues generally.

- 6.2. An electronic version of this draft Equality Impact Assessment and the Consultation on Proposals to Extend Age Discrimination Legislation (Age Goods, Facilities and Services) can be found at www.ofmdfmni.gov.uk/age-discrimination-legislation. Further information on how to respond to the consultation, Freedom of Information, data protection, confidentiality, requests for alternative formats and contact details for any queries can be found in Chapter 1 of the policy consultation document.

7. Decision of Public Authority and Publication of Report on Results of Equality Impact Assessment

- 7.1. Following the consultation period we will consider all responses received to the consultation on the policy proposals and the draft Equality Impact Assessment, and take these into account to develop our final policy proposals and make a final decision on the content of any future draft age discrimination legislation.
- 7.2. A summary of all consultation responses received, along with our final policy proposals, will be published on the Department's website (www.ofmdfmni.gov.uk/age-discrimination-legislation).

8. Monitoring for Adverse Impact in the Future and Publication of the Results of Such Monitoring

- 8.1. The Department is committed to ensuring that its policies do not have an adverse impact on any section of society and will work to ensure that any outstanding potential negative impacts are monitored in accordance with guidance issued by the Equality Commission for Northern Ireland.
- 8.2. We will monitor and report on any adverse impact that this policy may have in the future in accordance with the OFMDFM Equality Scheme (<http://www.ofmdfmni.gov.uk/ofmdfm-equality-scheme-2013.pdf>).

Question: Please provide any further comments or views that you may have in relation to this Equality Impact Assessment.

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LIST OF CONSULTATION QUESTIONS

1. Are you aware of any other evidence of age discrimination in the provision of goods, facilities and services, charities, premises, education, public functions, and private clubs and associations? Please give us your views.
2. How strongly do you agree or disagree with our current proposal to extend protection against age discrimination to those aged 16 or over? Please provide any further views that you may have on our proposal.
3. How strongly do you agree or disagree with how we have defined the concept of goods, facilities and services? If you disagree please provide details of what you would like to see added to or changed in the proposed definition. Please provide any further views that you may have on our proposal.
4. Do you agree or disagree with how we have defined the concept of service provider? Please provide any further views that you may have on our proposal.
5. How strongly do you agree or disagree with our current proposals that any future age discrimination legislation should apply to public functions? How strongly do you agree or disagree with how we have defined the concept of public function? Please provide any further views that you may have on our proposal.
6. How strongly do you agree or disagree with our current proposals that any future age discrimination legislation should apply to private clubs and associations? How strongly do you agree or disagree with the way that we have defined the concept of private clubs and associations? Please provide any further views that you may have on our proposal.
7. How strongly do you agree or disagree with our current proposals that any future age discrimination legislation should apply to charities? Please provide any further views that you may have on our proposal.
8. How strongly do you agree or disagree with our current proposals that any future age discrimination legislation should be applied to premises? Please provide any further views that you may have on our proposal.
9. Are you aware of any issues which may affect how these proposals would apply in the provision of goods, facilities and services in the education sector? Are you aware of any issues which would result in any unintended consequences in the provision of goods, facilities and services in the education sector? Are there any areas where specific exceptions would be required to ensure that certain age-

based practices would be allowed to continue under any future age discrimination legislation?

10. How strongly do you agree or disagree with our current proposal that any future age discrimination legislation should include direct discrimination? How strongly do you agree or disagree with the way that we have defined the concept of direct discrimination? Please provide any further views that you may have on our proposal.
11. How strongly do you agree or disagree with our current proposal that any future age discrimination legislation should include indirect discrimination? How strongly do you agree or disagree with the way that we have defined the concept of indirect discrimination? Please provide any further views that you may have on our proposal.
12. How strongly do you agree or disagree with our current proposal that any future age discrimination legislation should include harassment? How strongly do you agree or disagree with how we have defined the concept of harassment? Please provide any further views that you may have on our proposal.
13. How strongly do you agree or disagree with our current proposal that any future age discrimination legislation should include victimisation? How strongly do you agree or disagree with the way that we have defined the concept of victimisation? Please provide any further views that you may have on our proposal.
14. How strongly do you agree or disagree with our current proposal that any future age discrimination legislation should include discrimination after a relationship has come to an end, discriminatory practices, discriminatory advertisements, instructions to discriminate, pressure to discriminate and aiding unlawful acts? Please provide any further views that you may have on our proposal.
15. How strongly do you agree or disagree with our current proposal that any future age discrimination legislation should include a provision for an objective justification test? How strongly do you agree or disagree with how we have defined the 'objective justification' test? Please provide any further views that you may have on our proposal.
16. How strongly do you agree or disagree with our current proposal that any future age discrimination legislation should include a provision for positive action? How strongly do you agree or disagree with the way that we have defined the concept of positive action? Please provide any further views that you may have on our proposal.

17. How strongly do you agree or disagree with our current proposal that any future age discrimination legislation should include an exception for statutory authority? Please provide any further views that you may have on our proposal.
18. How strongly do you agree or disagree with our current proposal that any future age discrimination legislation should include general exceptions for immigration, charities, premises, care within the family, services provided for persons who share a protected characteristic and other general exceptions? How strongly do you agree or disagree with how we have defined these concepts? Please provide any further views that you may have on our proposal.
19. Are there any other activities or functions that you consider should be covered by a general exception?
20. How strongly do you agree or disagree with our current proposal that health and social care should be included in the scope of any future age discrimination legislation, without any specific exceptions? Please provide any further views that you may have on our proposal.
21. How strongly do you agree or disagree with our current proposal that any future age discrimination legislation should include a specific exception for financial services? How strongly do you agree or disagree with the proposed exception to allow financial service providers to continue to use age as a criterion to design and price financial products, provided that all assessments of risk, insofar as it involves a consideration of age, must be based on relevant information on from a source on which it is reasonable to rely? Please provide any further views that you may have on our proposal.
22. How strongly do you agree or disagree with our current proposal that any future age discrimination legislation should include an exception for age-based concessions? Please provide any further views that you may have on our proposal.
23. How strongly do you agree or disagree with our current proposal that any future age discrimination legislation should include an exception for age-related holidays? Please provide any further views that you may have on our proposal.
24. How strongly do you agree or disagree with our current proposal that any future age discrimination legislation should include an exception for sporting and recreational activities and events? Please provide any further views that you may have on our proposal.

25. How strongly do you agree or disagree with our current proposal that any future age discrimination legislation should include an exception for residential park homes? Please provide any further views that you may have on our proposal.
26. How strongly do you agree or disagree with our current proposal that any future age discrimination legislation should include exceptions for private clubs and associations? Please provide any further views that you may have on our proposal.
27. How strongly do you agree or disagree with our current proposal that any future age discrimination legislation should include an exception for age restricted schemes? Please provide any further views that you may have on our proposal.
28. Are there any other areas of activity that you consider should be covered by an exception in any future age discrimination legislation?
29. How strongly do you agree or disagree with our current proposals for the enforcement and implementation provisions of any future age discrimination legislation? Please provide any further views that you may have on our proposal.

Draft Equality Impact Assessment (EQIA)

30. Are you aware of any other evidence or data which you think we should take into account in this Equality Impact Assessment? Please provide details of any additional evidence and any other comments you may have on the available evidence and data.
31. Have the potential equality impacts of our proposals been correctly identified and assessed? Please provide any comments or views that you may have on the assessment of impacts.
32. Have the potential mitigation measures and alternative policies been correctly identified and assessed? Please provide any comments or views that you may have on the possible measures.
33. Please provide any further comments or views that you may have in relation to this Equality Impact Assessment.