

Strengthening Protection for all Ages: Updated Proposals for Reform of Age Discrimination in the Provision of Goods, Facilities and Services (GFS)

1 Introduction

- 1.1 In April 2012, the Commission published its proposals for reform of the age GFS legislation '[Proposals for reform: Strengthening Protection for all ages](#)'¹ which set out its recommendations for reform of the age GFS legislation.
- 1.2 In addition, in 2013, it further refined and developed its policy positions and published its '[Recommendations for reform: strengthening protection for children and young people](#)'² which set out its proposals for reform as regards the strengthening of rights of children and young people against age discrimination when accessing goods, facilities and services. These proposals were jointly published by the Commission with the Northern Ireland Commissioner for Children and Young People (NICCY).
- 1.3 The Commission has recently updated its recommendations for reform in light of the specific proposals set out in the OFMDFM consultation. These updated recommendations are summarised in this short paper and must be read in conjunction with the other papers referenced above..

2 ECNI Updated Recommendations *Scope of Legislation*

Exclusion of under 16s

- 2.1 The Commission continues to recommend the extension of the age GFS legislation to cover all ages; and again calls for OFMDFM to set out the key reasons why it is proposed to exclude under 16s from the scope of the legislation.
- 2.2 In the event that it is decided that children and young people aged under 16 are to be excluded from the scope of the legislation, we recommend that the legislation contains a commitment by OFMDFM to commission an independent review of the legislation, with a view to considering the merits of including children and young people under the age of 16 within the scope of the legislation. The review should be completed within a period of five (5) years from the date of implementation of the age GFS legislation.

¹ See ECNI [Proposals for reform: Strengthening Protection for all ages](#): Full Report , 2012

² See ECNI & NICCY [Recommendations for reform: strengthening protection for children and young people](#), Full Report, 2013

Age

- 2.3 The Commission recommends that the age GFS legislation covers discrimination due to association on grounds of age, as well as discrimination due to a person's perceived or actual age.

Discriminatory Behaviour

- 2.4 The Commission recommends that the legislation should prohibit discrimination after a relationship has come to an end; discriminatory practices; discriminatory advertisements; instructions to discriminate; pressure to discriminate and aiding unlawful acts.

Exceptions

- 2.5 In general, the Commission considers that all exceptions to equality legislation should be narrowly construed and justifiable. It has set out below its further views on the proposed exceptions.

Financial services exception:

- 2.6 The Commission is of the view that as a matter of principle there should be no financial services exception; and that the onus should be on financial service providers to objectively justify any differentials.
- 2.7 In particular, the burden should therefore be on financial service providers to demonstrate that age is a relevant factor in the assessment of risk and that any difference in treatment is proportionate.
- 2.8 In the event that a financial services exception is included in the legislation, we recommend that:
- it includes the requirement that any difference in treatment on grounds of age is proportionate;
 - that OFMDFM undertake within a specific period (5 years from implementation of age GFS legislation) an independent review of how the age financial services exception is operating in NI; with a view to considering whether any clear evidence exists for maintaining such an exception; whether any legislative changes are needed; and whether further non-legislative actions can be taken to address the barriers experienced by people on the grounds of their age in accessing financial services.

Services to meet particular needs:

- 2.9 We recommend that there is an exception that permits service providers to provide goods, facilities and services to meet the specific justifiable needs of a person of a particular age in regard to their education, training or welfare, or any ancillary benefits.

Public Functions:

- 2.10 We recommend there is an exception that permits the exclusion of certain public bodies when exercising certain functions from the scope of the legislation, in line with a similar exception on other equality grounds.

Charities:

- 2.11 The Commission agrees with the proposed approach that charities are covered within the scope of the legislation.
- 2.12 We recommend there is a specific exception for charities permitting them to lawfully provide benefits only to persons of a particular age, provided the charity is acting in pursuance of a charitable instrument and if the restriction is imposed by reason of, or in the grounds of, the charitable instrument.

Residential park homes:

- 2.13 The Commission recommends that there is no specific exception for residential park homes. It is of the view that residential park homes designed to meet the social preferences of people with regards to age should not automatically be permitted.
- 2.14 If there is good reason for a provider to exclude a person of a particular age, then they will be able to rely on the 'objective justification' defence or the positive action exception (i.e. a proportionate means of meeting the different needs of that age group) proposed under the legislation.

Age-related holidays:

- 2.15 The Commission recommends that the legislation does not include an exception for age-related holidays.
- 2.16 It does not support the inclusion of the proposed exception on the basis that the exception supports age segregation without any clear justifiable reason and as such is contrary to the principle of equality.
- 2.17 Whilst we agree that holiday providers should be able to advertise or market a holiday service at a specific age group, they should not be permitted, unless they can objectively justify it, to limit access to the holiday to those within that specific age group.

Retirement villages or similar accommodation:

- 2.18 The Commission recommends that retirement villages, sheltered accommodation, supported accommodation or care homes should also be covered by the legislation.
- 2.19 It considers that there does not need to be a specific exception/s to cover these types of accommodation.

Care within the Family:

- 2.20 The Commission has concerns that the proposed exception as regards care within the family is too broad in nature. In particular, it recommends that the proposed exception does not permit harassment or victimisation on grounds on age. For the purposes of clarity, the Commission is not proposing that the age GFS legislation should cover the treatment of parents when caring for their children.

Immigration:

- 2.21 The Commission recommends that there is no specific exception for immigration and that any exception to the principle of non-discrimination in the field of immigration should only be applied where objectively justifiable.

3 Commission powers and duties

- 3.1 The Commission recommends that it is granted the following general duties under the legislation:
- to work towards the elimination of discrimination and harassment;
 - to promote equality of opportunity between persons of differing age groups; and
 - to keep under review the working of the legislation and, when it is so required by OFMDFM or otherwise thinks it necessary, draw up and submit to the OFMDFM proposals for amending the legislation.
- 3.2 The Commission recommends that it is granted the following powers under the legislation:
- provision of legal advice and assistance to complainants;
 - undertake research/educational activities;
 - issue Codes of Practice and guidance;
 - power to challenge persistent discrimination; pressure to discriminate; instructions to discriminate; discriminatory advertisements and discriminatory practices.
- 3.3 The Commission also takes this opportunity to call for reform of its wider powers in relation to the age employment legislation³; as well as its recommendations as regards wider reform of its powers/duties, for example, as set out in its race law reform proposals.⁴

27 August 2015

³ For example, the ECNI has called for powers to conduct formal investigations under the age employment regulations. See *ECNI response to OFMDFM pre-consultation draft Employment Equality (Repeal of Retirement Age Provisions) Regulations (Northern Ireland) 2011* on changes to default retirement age in 2011 (unpublished) See also recommendation in *ECNI Response to OFMDFM consultation on SEB* in 2004 in which the Commission called for harmonisation of its powers of investigation across all equality grounds.

⁴ See *ECNI Race law reform proposals*, 2014