



**4 Nations Child Policy
Network
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Policy lead:

Children in Scotland
every child - every childhood

Discrimination against people of any age is wrong: Why the Westminster Parliament and UK Government should support universal age discrimination legislation

Age discrimination is usually thought about as something negatively affecting older people. In reality, stereotyping and mistreating people based solely upon their age happens at both ends of the age spectrum – and is equally unfair to each group.

Equalities legislation in Great Britain – including laws and policies about age discrimination – are matters reserved for the Westminster Parliament and the UK Government. Other than in Northern Ireland, the devolved nations are prohibited from charting their own course on age discrimination legislation.

There are two major policies on age discrimination now under consideration. One is the *Equality Bill* still being debated at Westminster. The other is the European Union's *Equal Treatment Directive*, which must be agreed by all Member States. In both cases, the UK Government has the stated position that there is "no evidence" of discrimination against people under the age of 18 – and therefore, no reason to protect children and young people from age discrimination through these laws and policies.

The Westminster Parliament's Human Rights Joint Committee, in its review of the Equality Bill (12 November 2009), opposes the Government's position, references evidence of discrimination and states the Bill is "an opportunity to incorporate fully children's protection from unjustified discrimination in UK law."

Key messages

- ❖ Positive age discrimination (e.g. transportation discounts for older people and children) is fine; discrimination against anyone based upon age is not acceptable.
- ❖ The ample evidence about age discrimination against under 18s is being ignored.
- ❖ The Westminster Parliament should remove clause 28(1)(a) in the *Equality Bill* (draft 4.12.09) that says its protection would apply only to people over the age of 18. The 4-nations network supports the position of the Westminster Parliament's Human Rights Joint Committee.
- ❖ The UK Government should change its position and approve the age discrimination section of the EU's *Equal Treatment Directive*.
- ❖ The forthcoming *Single Equality Bill for Northern Ireland* should apply to all ages with no minimum (or maximum) age qualifications.

Discrimination against anyone based upon age is not acceptable

Human rights should not be subject to age limits.

The four nations of the UK are signatories to the **United Nations Convention on the Rights of the Child**, which requires states that are party to the Convention to “respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind”. Similarly, the UK, as a Council of Europe member, is signatory to the **European Convention on Human Rights**, which includes no minimum age requirement for human rights to begin or have meaning.

Despite this commitment, the UNCRC Committee’s 2008 *Concluding Observations* on the UK’s report outline in full detail where the UK is failing to uphold children’s rights. These failings include age-based discrimination against children and young people.

The rights of babies, children and young people are not in conflict or opposition with those of other ages. The rights of young people and the rights of older people can be equally honoured and implemented simultaneously. Often the need for age-specific services is shared. Reduced fares on public transport, leisure services catering to different needs and interests, and age-appropriate health and social care should all be designed and delivered with the age of users in mind in order to provide the best, most appropriate and effective service.

Evidence of age discrimination against under 18s is being ignored

In a statement to the House of Commons on the *Equality Bill* in April 2009, Harriet Harman, the minister for women and equality, said: “The provisions will not cover people under 18. It is right to treat children and young people differently, for example through age limit on alcohol consumption, and there is little evidence of harmful age discrimination against young people.” This viewpoint is repeated in the UK Government’s response to the EU’s Equal Treatment Directive stating: “Earlier consultations led by GEO [Government Equalities Office] have uncovered no evidence of discrimination against under 18s.”

In fact, age discrimination against those under 18 is well documented across the UK and full details can be found in the reports listed at the end of this Briefing. Consultations carried out by each of the four nation’s commissioners for children and young people reveal consistent messages not just about individual experiences, but also about the wider negative impacts upon a society that attributes less worth to those under 18.

Government departments across the UK have also recognised the deficiencies and inconsistencies in services for those under 18 (most notably mental health services for teenagers), and made numerous recommendations for long-overdue improvements in public policy and professional practice.

The United Nations Committee on the Rights of the Child delivered detailed findings about where the UK is failing to protect children’s rights and cited evidence of unacceptable discrimination.

Discrimination against under 18s can be obvious and institutional, as well as subtle. The examples outlined below are drawn from the consultation and research carried out by non-governmental agencies, by governments across the UK and by the UNCRC.

- Many young people are being prevented from gathering in public places by an electronic “Mosquito” device, which emits a high-pitched noise that can only be heard by, and is distressing to, babies, children and young people.
- Older children, often those aged 16 to 17 years, receive poorer treatment from health services. This is because they are considered too old for children’s services, but too young for adult care, and not enough age-appropriate services are available. This situation has been most commonly noted in mental health services but it is apparent in other areas such as cancer care, and in general practice. Recent guidance from the General Medical Council about children’s rights and treatment by medical providers is an implicit acknowledgement of the problem. See www.gmc-uk.org/guidance/news_consultation/children_and_young_people.asp
- Teenagers tend to receive less favourable support from child protection and safeguarding services. Young people who are homeless or who are living in unsafe accommodation often resort to more extreme self-harm in order to have their situation taken seriously by service providers because age-appropriate care and shelter are inadequate.
- Insufficient space and seating provision on public transport for babies and small children means young children and, by association, their parents or carers are treated less favourably than members of the public of other ages. Poor provision can be compounded by negative attitudes by staff.
- Shop signs restricting entry to no more than two school children stereotype and stigmatise under 18s.
- Those 16 and 17-year-olds entitled to receive benefits will receive lower rates than their counterparts aged 25 or over.
- The minimum wage rate is lower for 16 and 17-year-olds compared with those over 18, irrespective of their knowledge, experience or ability.
- Government consultation processes intended to solicit the views and advice of the public routinely exclude children and young people, *even when the topic under consideration directly impacts upon the lives and life chances of these under 18s*. This is a direct violation of Article 12 of the UNCRC that enshrines the right of children to have a say (with regard to age and maturity) and to be taken into account in decisions that affect their well-being. In Northern Ireland, failure to consult with children and young people breaches Section 75 of the Northern Ireland Act, which requires public authorities to consult directly with children and young people when developing policy that will affect their lives.

The Equality Bill should apply to people of all ages

The *Equality Bill* was published in April 2009 in the House of Commons. The *Bill* is intended to simplify and modernise existing discrimination law. The sponsors intend for it to become law in spring 2010.

The Bill should be redrafted to remove the exclusion of children from protection against age discrimination in the provision of goods, facilities and services and the exercise of public functions. Clause 26 (1)(a): "age, so far as relating to persons who have not attained the age of 18," should be removed.

Whilst legal redress is an ultimate sanction and, as such, it is important that it is available to those under 18, a universal approach to equality brings increased awareness and understanding of the need for positive, age-appropriate provision. It also challenges negative institutional and cultural attitudes towards babies, children and young people.

Including under 18s in legislation should not lead to a reduction of services for fear of litigation, nor indeed need it lead to increased litigation. Those delivering services are unlikely to be confused about treating children and young people differently and positively because of their age versus discriminating against them based upon age. After all, the distinction between the duty to help and the duty not to harm is routinely made by service providers already – and without confusion – in relation to older people, as well as to people with disabilities.

The Westminster Parliament's Human Rights Joint Committee review of the Bill, published 12 November 2009, supports removing Clause 26 (1)(a) completely. On age discrimination it states: "The total absence of protection against age discrimination for those under 18 ... means that children who are subject to unjustified discrimination are left with little or no legal protection. This may prevent children enjoying full protection of their rights as set out in the UN Convention on the Rights of the Child."

Provision to protect breastfeeding mothers and babies also should be improved in this Bill. The *Equality Bill, A Fairer Future*, (April 2009) emphasises the need to protect breastfeeding mothers (and their babies), stating: "The Bill will make it clear that it is unlawful to force breastfeeding mothers and their babies out of places like coffee shops, public galleries and restaurants." That is a positive feature of this Bill and should be retained. However, because the legislation remains complex – relying on definitions of maternity in combination with sex discrimination – the Bill's wording places undue emphasis on the six-month post-natal period. This sends the wrong public health message by implying that breastfeeding beyond this period is neither normal nor necessary. The Bill should be strengthened to remove any reference to an age limit. This also serves the stated purpose of its sponsors to make equality legislation simpler and more sensible.

In Scotland, legislation already exists to make it an offence "to prevent or stop a person in charge of a child who is otherwise permitted to be in a public place or licensed premises from feeding milk to that child in that place or on those premises; to make provision in relation to the promotion of breastfeeding; and for connected purposes". In this law, a child is defined as being under two years (which is also an unnecessary age limit, albeit a more reasonable one than is proposed in the *Equality Bill*).

The Westminster Parliament's Human Rights Joint Committee review of the Bill stresses the need to make support for breastfeeding simpler: "We consider that strong arguments exist for prohibiting harassment [...] on the grounds of pregnancy or maternity. It would ensure comprehensive protection against forms of discrimination on the basis of [...] pregnancy or maternity [...] thereby improving the clarity of the legislation. In addition, it may make it easier to challenge harassment based on these characteristics rather than having to rely on the roundabout route of attempting to make out a case based on the characteristics of sex or sexual orientation."

The UK Government should approve the European Union's Equal Treatment Directive

The European Union's *Equal Treatment Directive* – a legislative act that Member States will have to implement if ratified by all of them – was published in July 2008. It covers goods and services and is intended to reduce discrimination based on age, sexual orientation, religion/belief or disability. Unlike the proposed *Equality Bill* for Great Britain, it makes no distinction between children and adults.

The UK Government is opposed to this aspect of the *Directive* on the stated grounds that there is "no evidence of discrimination against under 18s." Given the wealth of evidence available outlined or referenced in this briefing, the Government should change its current position on this EU *Directive*, and bring its proposed *Equality Bill* into line with the European position.

Section 75 Northern Ireland Act 1998 and The Single Equality Bill of Northern Ireland

In Northern Ireland, public authorities have a statutory duty to promote equality of opportunity between persons of different age under Section 75 of the Northern Ireland Act 1998. The Act recognises that the promotion of equality of opportunity requires proactive measures to be taken. Section 75 is of major constitutional importance in Northern Ireland and has not been replicated in neighbouring jurisdictions, where lesser standards apply in relation to equality of opportunity.

The *Equality Bill* for Great Britain does not extend to Northern Ireland, but this does not mean the Westminster Government should overlook the opportunity of adopting the principles of Section 75 and bring into line legal standards in relation to equality of opportunity across the jurisdictions.

The Northern Ireland Executive carried out consultation on a Single Equality Bill for Northern Ireland in 2001 and 2004. There has been no further progress. However, it is likely that the *Equality Bill* will have a significant impact on how the Single Equality Bill for Northern Ireland develops. If the Bill is replicated in Northern Ireland, it will **not** in its present form address many of the key inequalities experienced in the lives of children and young people in Northern Ireland.

While children and young people in Northern Ireland have similar experiences of age discrimination to their peers in other jurisdictions, their experience is acute in relation to healthcare and mental healthcare in particular. Children under 18 years make up approximately 25% of Northern Ireland's population and are deemed more likely to experience mental health problems than those under 18 in the rest of the UK. Despite this, in 2005 - 2006, only £2.2 million was spent on inpatient and

outpatient child and adolescent mental health services out of an overall mental health commissioning expenditure of £182.9 million.

The Children's Law Centre in Northern Ireland opposes the exclusion of those under 18 in the Equality Bill. This is also the stated position of Children in Northern Ireland. The Northern Ireland Commissioner for Children and Young People has also stated that protection from age discrimination should extend to under 18s in a Single Equality Bill for Northern Ireland. These organisations approve the age discrimination section of the EU's proposed *Equal Treatment Directive* with its inclusion of under 18s.

What you can do to help end age discrimination against under-18s

Children and young people: tell the Young Equals Campaign your views and let them know about any discrimination you have experienced or witnessed at: www.crae.org.uk/protecting/age-discrimination.html. You also can share your opinion with your MP, who will be voting on this legislation.

Children's sector workers: make sure children and young people know about this *Bill* and *Directive* and let them know how to make their voice heard. You also can encourage your professional associations to take a stand on this legislation for the children and young people you serve, as well as contacting your MP about this issue.

Children and young people's organisations: help spread the word about this *Bill* and *Directive* and rally your members/supporters to get the UK Government and Westminster Parliament to act against age discrimination. Make your own support visible to policymakers, politicians and the media.

MPs: ask for this Bill to be amended to remove clause 26(1)(a) which states that the *Equality Bill's* protection would apply only to people over the age of 18. Demand that the UK Government approves the age-related provisions of the EU's *Equal Treatment Directive*. Support the simplification of legislation protecting breastfeeding mothers and babies.

Members of the Scottish Parliament, Welsh Assembly and Northern Ireland Assembly: take appropriate action that sends a clear (even if non-binding) message to the Westminster Parliament and the UK Government about the need for them to include all ages in age discrimination legislation – and to support the measures outlined in this briefing.

MEPs: make it clear to the Westminster Parliament and the UK Government that it is out of step with the rest of Europe in relation to age discrimination. Encourage them to support the EU's *Equal Treatment Directive*.

Further information

The Equality Bill and related publications – www.equalities.gov.uk/equality_bill.aspx

*Human Rights Joint Committee - Twenty-Sixth Report
Legislative Scrutiny: Equality Bill*

www.publications.parliament.uk/pa/jt200809/jtselect/jtrights/169/16902.htm

Making the case: why children should be protected from age discrimination and how it can be done. Proposals for the equality bill, Young Equals, Children's Rights Alliance for England, 2009

www.crae.org.uk/protecting/age-discrimination.html

A child rights impact assessment of the equality bill 2009, 11 Million, 2009

www.11million.org.uk/issue_rooms/equality_and_you

Impact Assessment of draft EC Equal Treatment Directive, Government Equalities Office, 2009

www.equalities.gov.uk/pdf/GEO_EqualTreatment_final.pdf

11 Million's response to the UK consultation on the European Commission's proposal for an Equal Treatment Directive, 11 Million, 2009

www.11million.org.uk

Response from the Northern Ireland Commissioner for Children and Young People to the Government Equalities Office's UK Consultation on the European Commission Proposal for an Equal Treatment Directive, NICCY, 2009

www.niccy.org/PolicyandResearch/Whatwedo

Children in Scotland's response to the Government Equalities Office's UK Consultation on the European Commission Proposal for an Equal Treatment Directive, Children in Scotland, 2009

www.childreninscotland.org.uk/html/poly_con.htm

Children's Rights Review, Northern Ireland Commissioner for Children and Young People, 2009 www.niccy.org/PolicyandResearch/ChildrensRightsReview

UK children's commissioners' report to the UN committee on the rights of the child, 2008

www.sccyp.org.uk/UK_Childrens_Commissioners_UN_Report.pdf

Concluding observations on the United Kingdom of Great Britain and Northern Ireland, UN Committee on the Rights of the Child, 2008

www2.ohchr.org/english/bodies/crc/docs/AdvanceVersions/CRC.C.GBR.CO.4.pdf

Discrimination: global report on laws protecting children from age discrimination, and online information and advocacy toolkit, Child Rights Information Network, 2009

www.crin.org/Discrimination

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Children in Scotland, www.childreninscotland.org.uk, National Children's Bureau (England), www.ncb.org.uk, Children in Wales, www.childreninwales.org.uk, Children in Northern Ireland, www.ci-ni.org.uk