

Scotland's Children's Sector Forum

Briefing: Consultation about age discrimination in the UK Equality Act

Equality Act 2010: Banning age discrimination in services, public functions and associations - a consultation on proposed exceptions to the ban

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 equalities legislation.

The Equality Act 2010, brought together previous equality legislation into a single Act in an attempt to simplify and strengthen provisions for various factors, including age. Some parts of this Act came into force in October 2010, while others are due to commence later. Some provisions are still under consideration by the Coalition Government. One of the provisions currently under consideration is the prohibition of age discrimination in services and public functions. Age discrimination bans are already in place in the areas of work and further and higher education. The UK Government Equalities Office is therefore consulting on the new age discrimination provisions, currently due to come into force in April 2012. The Consultation ends on 25 May 2011, see http://www.equalities.gov.uk/equality_act_2010/age_consultation_2011.aspx

When the Act was originally passed, people under the age of 18 were excluded from the age discrimination provisions as the previous UK Government had the stated position that there was no evidence of discrimination against them and, therefore, no reason to protect this group from age discrimination.

Prompted by a variety of groups, including Children in Scotland,

concerns were raised by the then opposition parties – specifically by Conservative members of the House of Lords – about the public sector equality duty in relation to age for children, but the Bill was not amended.

The new Coalition Government has continued the position of the previous Government, stating:

'The extended ban ... does not apply to the under-18s because a child's age is closely related to his or her levels of development and need. Therefore, the basic principle of age discrimination legislation – that people should be treated the same regardless of their age – is rarely appropriate to the treatment of children. A 3-year-old would usually need to be treated differently from a teenager for example.'

The consultation

The consultation focuses chiefly on the extension of the ban on age discrimination to cover the provision of services, the exercise of public functions and the membership and activities of private clubs and other associations. It highlights health and social care, financial services and other general services, public functions and private clubs or associations as areas in which specific exceptions from a ban may be necessary. For example, the Government proposes that financial providers should still be allowed to take age as a criterion in designing their products, or for sporting events to be age-restricted e.g. under 21s football. The consultation applies to England, Scotland and Wales.

Key messages from Scotland's Children's Sector Forum

1. Positive age discrimination (e.g. transportation discounts for older people and children) is fine; however, discrimination against anyone based upon age is not acceptable and human rights should not be subject to age limits.
2. The evidence about age discrimination should be taken into account and lead to changing the Act, so that age discrimination provisions also apply to children and young people.

The UK nations are signatories to the United Nations Convention on the Rights of the Child, which requires them 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 outlines where the UK is failing to uphold children's rights. These failings include age-based discrimination against children and young people. The rights of young people and the rights of older people can be honoured equally and implemented simultaneously.

Evidence of age discrimination against under 18s is being ignored

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.

The Children's Rights Alliance¹ for England has done good work in this area, bringing and supporting test cases, providing information and advice, raising awareness of (and conducting research on) children's human rights and their access to these rights.

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 UNCRC delivered detailed findings about where the UK is failing to protect children's rights and cited evidence of unacceptable discrimination.² The Scottish Government response in its report, *Do the Right Thing*, listed 21 priority areas on which the Scottish Government agreed to take action. This included promoting children's rights and raising awareness of the UNCRC.³

Key areas of concern for under 18s

Discrimination against under 18s can

be both obvious and institutional, and subtle and individual. The eight examples outlined below are drawn from consultation and research carried out by non-governmental agencies, devolved governments across the UK and by the UN Committee.

1. 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 only

2. Older children (16-17), often receive poor treatment from health services. Frequently they are considered too old for children's services, but too young for adult care. Not enough age-appropriate services are available. This situation has been noted most commonly in mental health services but it is apparent in other areas such as cancer care and 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.⁴ A recent report by the Long-term Conditions Alliance Scotland on the experience of children and young people with disabilities and chronic illnesses (*Seen and Not Heard*)⁵ indicates many areas where services were inappropriate or insufficient, in comparison with other groups. This was particularly true when young people suffered from a condition more prevalent in the adult population.

3. In England, a recent study found

that teenagers tend to receive less favourable support from child protection and safeguarding services than younger children.⁶

4. There is an inadequate supply of appropriate accommodation and support for care leavers and young homeless people. Many such young people experience repeated episodes of homelessness. This increases their exposure to, and likelihood of involvement in, drug abuse and commercial sex. It also raises significantly their risk of long-term physical and mental health problems.

5. Despite there being statutory provision in Scotland for young people to be looked after by the local authority up to the age of 18, there is an 'expectation and culture' that young people leave the care system at 16.⁷ Many feel inadequately prepared and that they are being 'pushed out'.

6. 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 other members of the public. Poor provision can be compounded by negative attitudes by staff.

7. Shop signs restricting entry to no more than two school children stereotype and stigmatise those under 18.

8. The minimum wage rate is lower for 16- and 17-year-olds compared with those over 18, irrespective of their knowledge, experience or ability.

The consultation *Equality Act 2010: Ending age discrimination in services, public functions and associations - A consultation closes on 25 May 2011*. Please respond to the consultation directly to the UK Government stating why you feel under 18s should be covered by age discrimination legislation, and/or contact Children in Scotland at policy@childreninscotland.org.uk or on 0131 222 2412 to share your thoughts or for more information about Scotland's Children's Sector Forum

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References

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- http://www.gmc-uk.org/guidance/ethical_guidance/children_guidance_index.asp
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