



## **Proposals for reform Strengthening Protection for all Ages**

**Protecting children and young people  
against unlawful age discrimination in the  
provision of goods and services**

**FULL REPORT**

**June 2013**

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## Introduction

1. The Equality Commission for Northern Ireland ('the Equality Commission') is an independent public body established under the Northern Ireland Act 1998. It is responsible for implementing the legislation on fair employment, sex discrimination and equal pay, race relations, sexual orientation, disability and age.
2. The Northern Ireland Commissioner for Children and Young People (NICCY) was set up under the Commissioner for Children and Young People (NI) Order 2003 with the primary aim of safeguarding and promoting the rights and best interests of children and young people. NICCY places its work within the context of the UN Convention of the Rights of the Child (UNCRC) and other relevant human rights instruments.
3. The Equality Commission and NICCY have set out below in detail their **joint recommendations** as regards the strengthening the rights of **children and young people** against age discrimination when accessing goods and services. A **summary** of our joint recommendations is also available.<sup>1</sup>
4. This paper is divided into several chapters.

**Chapter 1** outlines the Equality Commission's and the NI Commissioner for Children and Young People's joint recommendations in relation to the scope of the legislation, as it should apply to children and young people. This includes separate sections on the forms of discrimination that should be prohibited; the exceptions that should apply; and the areas that the legislation should cover.

**Chapter 2** sets out in detail the rationale underpinning our joint recommendations.

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<sup>1</sup> A summary is available on our respective websites; [www.equalityni.org](http://www.equalityni.org) and [www.niccy.org](http://www.niccy.org)

**Chapter 3** addresses the concerns highlighted in relation to this issue as raised by the debates in Great Britain and, more recently, in the Northern Ireland Assembly.

**Chapter 4** set outs our joint conclusions and our next steps as regards further engagement on this significant issue.

## **Context**

5. The NI Executive has committed in its Programme for Government to develop and consult on proposals to extend age discrimination legislation to cover the provision of goods, facilities and services.
6. In its proposals for reform: *Ending Age Discrimination in the Provision of Goods and Services*<sup>2</sup>, the Equality Commission has made it clear that it recommends that people of **all ages** should have protection against unlawful discrimination and harassment on the grounds of age when accessing goods and services.
7. These proposals for reform highlight that there is clear evidence that many people, including **older people** and **children and young people**, are subjected to unjustifiable discrimination and harassment on grounds of age.
8. Both the Equality Commission and NICCY are strongly opposed to the **blanket exclusion of minors** from statutory protection, an exclusion that currently exists under age discrimination legislation introduced in Great Britain in October 2012.
9. We consider that there is a **robust case** for strengthening the rights of children and young people against unlawful discrimination and harassment on the grounds of age in the provision of goods and services.
10. We believe that everyone, regardless of their age, has the right to be treated fairly and have the opportunity to fulfil their potential. It is important that people of **all ages**, including children and young people, do not receive an inferior service, or have access to a service

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<sup>2</sup> <http://www.equalityni.org/archive/pdf/StrengtheningProtectionAllAgesFullReport.pdf>

restricted simply on the basis of their age. People of all ages should have the right to be treated with dignity and respect when receiving a service.

11. In essence, a failure to protect children and young people under the proposed legislation will mean that they will have no right to challenge service providers or public bodies who, without justification, treat them, because of their age, in an inferior way to adults.
12. Equally, where a service provider does treat them less favourably because of their age, if children and young people are not protected, there will be no requirement on service providers to explain or justify their actions- which service providers will be required to do if the proposed law applies to adults.

# Chapter 1- Scope of the Legislation

## Introduction

13. We outline in this Chapter our joint recommendations in relation to the **scope of the legislation**, as it should apply to children and young people. This includes three separate sections;

**Section 1** outlines our recommendations as regards the forms of discrimination that should be prohibited;

**Section 2** outlines our recommendations as regards the exceptions that should apply;

**Section 3** outlines our recommendations on the areas that the legislation should cover. This includes general day to day services, health and social care, financial services, the exercise of public functions, accessing private clubs and associations, education and accommodation.

### Section 1: Forms of discrimination that should be prohibited

14. We recommend that the proposed legislation bans unjustifiable direct and indirect discrimination against children and young people on the grounds of age, as well as harassment and victimisation.
15. **Direct** discrimination is where a child or young person is unfairly treated, without justification, because of their age. For example, a shop keeper, without justification, excludes school aged young people from his shop simply because they are young people.
16. **Indirect discrimination** is where a rule applies to everyone, but puts children and young people at a particular disadvantage. Indirect discrimination is concerned with structural barriers that are not intended to disadvantage people of certain ages but which nevertheless have that effect. For example, a transport provider, without justification, fails to provide adequate or sufficient space for buggies or pushchairs.
17. **Harassment** is where a service provider treats a child or young person in a way which violates their dignity or creates an intimidating,

hostile, degrading, humiliating or offensive environment for that person. For example, a service provider treats a young person in a humiliating manner simply because they are a young person.

18. **Victimisation** is where a child or young person is treated unfairly because, for example, they have made a complaint of age discrimination. For example, a service provider refuses to serve a young person because they have made a previous complaint of age discrimination against that service provider.

### **Justifying different treatment**

19. We further recommend that policies or practices which discriminate against people of different ages and do not come within a specific exception or are a form of positive action, should be permitted if objectively justifiable.
20. In other words, the legislation should allow service providers and others to treat children and young people of different ages differently, where there are **beneficial or justifiable reasons** for doing so.
21. Children of different ages have different needs and levels of maturity and it is essential that services are targeted to meet those needs. Services to meet the needs of a five year old are, with justification, very different from those designed to meet the needs of a sixteen year old.
22. For example, in Northern Ireland, there are a range of age-appropriate services for children and young people in health and social care which are designed and delivered to meet the needs of particular age groups. This includes a number of specialist services for children and young people.
23. There are also a range of Government programmes in other sectors aimed at addressing the needs of children and young people of certain ages; for example, programmes designed to support social and emotional developments in primary school children.
24. We **recommend** that service providers and public bodies are able to directly or indirectly discriminate against children and young people

on the grounds of age **provided** such difference in treatment is **objectively justifiable**. Age appropriate services and facilities are not discriminatory if they are objectively justified.

25. In order to show objective justification, a service provider or public body would have to show that the restriction of their services to people of certain ages is a **proportionate means of achieving a legitimate aim**.
26. It is up to the courts to decide in the particular circumstances of the case if the aim is legitimate and the measures taken to achieve that aim are proportionate.
27. In deciding whether steps taken to achieve a legitimate aim are **proportionate**, a service provider or public body would need to show, for example, that the discriminatory effect of the treatment is sufficiently outweighed by the importance and benefits of the legitimate aim.<sup>3</sup>
28. We recommend that, in order to provide clarity for service providers on their responsibilities under the proposed legislation, the **legislation** should **explicitly** state that **direct** age discrimination against children and young people, or people of other ages, can only be justified where a **social policy objective** is being pursued; and the measures adopted to achieve that social policy objective are proportionate.
29. It will be noted that guidance for service providers in Great Britain on legislation prohibiting age discrimination in provision of goods and services, as it applies to adults, has indicated that **legitimate aims** can often be outcomes that are **socially positive** or generally in the

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<sup>3</sup> As regards examples of objective justification for a difference of treatment amongst adult age groups, the UK Government has indicated, for example, that the more frequent targeting of cervical screening to younger women is likely to be objectively justifiable; women aged 25-49 are invited to a cervical cancer test every three years, whereas women aged 50-64 are invited every five years. This is because statistics show that the young age groups are more susceptible to the disease than the older age group. See *Banning age discrimination in services; An overview for service providers and customers*, GEO, 2012, [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/85031/age-discrimination-ban.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/85031/age-discrimination-ban.pdf)



**public interest**; for example, they could include to enable people of a particular age or age range to socialise together, enjoy activities together, or for people of a particular age to enjoy peace and quiet.<sup>4</sup>

30. This guidance has made it clear that whilst business needs and efficiency could be legitimate aims, normally these would need to be accompanied by wider social factors too. It highlights that **relying purely on economic factors as a legitimate aim is unlikely to be successful**.
31. Our recommendations are consistent with the approach adopted by the Supreme Court in 2012 in the case of *Seldon v Clarkson, Wright and Jakes*<sup>5</sup>. In this case, which considered the approach to be adopted to **direct** discrimination in the context of direct age discrimination in the area of **employment**, the court held that in order to justify direct age discrimination, the legitimate aim **must be in accordance with an identifiable social policy of the state**.
32. The court explained that a purely private aim, such as cost reduction, or improving competitiveness, was **not** acceptable. It further indicated that a social policy objective was a policy of a '**public interest nature**'.
33. It is important to stress that we recommend that **only** the test for justification in respect of **direct** age discrimination in the provision of goods and services is limited in this manner. We **recommend** that the test for justifying **indirect** age discrimination is **not** limited to pursuing social policy objectives.
34. We further **recommend** that **guidance** on what constitutes objective justification and what are examples of appropriate aims, could helpfully be provided through Codes of Practice and/or good practice guide(s) in this area, as has been the case in other areas of equality law.

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<sup>4</sup> See footnote 3

<sup>5</sup> [2012] ICR 716

## Examples of justifiable differential treatment

35. We have set out below a number of examples where people of different ages are treated differently but which, in our view, are likely to be permitted under the proposed legislation.

- A screening programme at sixth form colleges for illness which typically affect, but are frequently undiagnosed, in 16 to 18 years olds is likely to be permitted under the positive action exception.
- Free chlamydia testing for 16 to 18 year olds is likely to be permissible under the positive action exception.
- A soft play centre dedicated to the under 2s only because children under this age are generally not strong, tall or co-ordinated enough to safely use the equipment with older children in attendance, is likely to fall within the general justification defence.
- The provision of a breakfast club at school for pupils from socially disadvantaged backgrounds is likely to be permissible under the positive action provisions or the general justification defence.

## Right to seek redress

37. The introduction of age equality legislation in the provision of goods and services, that covers children and young people, would enable a child or young person to make a complaint of discrimination where they believe that they have, without justification, been treated unfairly because of their age.

38. This will mean, for example, that a child or young person would have the **right to seek redress** in court if they, without justification receive an inferior service or are unable to access goods or services, simply because of their age.

39. Protecting children and young people under this legislation will give them **confidence** that it is **their right to be treated fairly**. In many circumstances children and young people, particularly those who are

vulnerable, do not have the confidence to challenge ageist attitudes or behaviour.

## Section 2 - Exceptions

40. As set out above, we recognise it is not always appropriate for children and young people to be treated the same way as adults. Children and young people have different levels of wisdom, maturity, physical ability, education, economic power and other means of self-determination.
41. These differences arise as a consequence of, or must be seen as part of, the **vulnerability** that children and young people have compared to adults. We are of the view that these differences do not provide a basis for no legislative provision and no enforceable rights; rather the **differences give rise to an obligation to take specific and different actions**.
42. These differences place children and young people at risk or at a disadvantage in comparison with adults and therefore need **special protective measures**.
43. In summary, where children and young people require specific, closely defined protective measures (either collectively or within different age bands) in particular circumstances, the legislation should not only allow for this differential treatment but also recognise that such different treatment may be required. The thrust of these exceptions should be to ensure the **best interests of the child**.
44. We **recommend** that the legislation includes **exceptions** which allow service providers and public bodies to treat children and young people differently because of their age in the following circumstances. The **main** exceptions which we recommend relating to children and young people are set out below.
45. It will be noted that, unless indicated above to the contrary, similar exceptions currently exist under the age discrimination legislation in

Great Britain under the Equality Act 2010 as regards the provision of goods, facilities and services, **as it applies to adults**.<sup>6</sup>

### ***Legislation***

46. We recommend that the legislation makes it explicit that the prohibition on age discrimination in goods, facilities and services is **secondary to other legislation** which imposes age limits. This would apply to legislation which both predates and post-dates the date on which the legislation comes into force.
47. In other words, we recommend that differential treatment on grounds of age is permitted **where another piece of legislation allows or requires people to be treated differently because of their age**; for example, a requirement to be 16 to be married, age based state benefits which relate to children and young people, prohibition on the selling of alcohol to under 18s; or the age at which a person can be criminally responsible, allowed to enter into different types of contracts, or to vote.
48. It is important to stress that if the law permits a child or young person to carry out these activities, then we recommend that they are protected from age discrimination if they are provided with a service or subject to a public function whilst doing these activities.

### ***Age based concessions***

49. We recommend that the legislation permits age based concessions, such as discounts or offers open only to people of a particular age group, **where justifiable**; for example, free or cheaper access for young people to local leisure facilities or public transport, discounts for children and young people by retailers or private clubs, etc.
50. It is important to note that we **do not support a blanket exception** for concessionary services, as is currently the case under the Equality Act 2010 in respect of the age discrimination legislation in Great Britain.

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<sup>6</sup> It will also be noted that there are a number of additional exceptions under the Equality Act which are mainly relevant to adults only; such as exceptions relating to residential park homes and age-related holidays.

51. Under the Equality Act 2010, **all** concessions for adults are permitted. The ability to provide concessions is **not restricted** to financially vulnerable age groups. There is no need for service providers to state a reason for the concession and there is no restriction on the form of the concession.
52. Under the Equality Act 2010, such concessions also apply to **private clubs and associations**. For example, a club can offer free or cheaper access to its facilities to people of a particular age; regardless of whether there are justifiable reasons for doing so. The Equality Commission has received complaints that some private health clubs offer reduced fees for adults aged 30-40 years. In our view, under the proposed legislation, the private health club should be required to justify offering such a concession to this particular age group.
53. We recommend that concessions which have clear social policy objectives, for example, to alleviate financial disadvantage or address under-participation experienced by certain age groups, should be allowed, on the basis that they are justifiable. So, for example, free or reduced entrance fees for children and young people or older people at leisure centres would be consistent with the policy objectives of promoting healthy lifestyles or social inclusion.
54. In addition, in our view, many ‘public sector’ concessions, such as the winter fuel allowance for older people, would be permitted under the statutory authority defence outlined above. These concessions are proportionate measures which have clear social policy objectives.
55. We note that in **Canada**, the legislation makes it clear that concessions aimed at children, young people and older people **are not** discriminatory.
56. In the interests of clarity and in light of the fact that many children, young people and older people face financial disadvantage and are vulnerable to experiencing poverty, we believe there is merit in adopting a similar approach to that adopted in Canada; namely that the legislation makes it clear that **concessions aimed at children, young people and older people are not discriminatory**.

57. We are of the view that **guidance** for service providers on the types of concessions which are likely to be justifiable could also be provided through Codes of Practice and/or good practice guide(s) in this area.

58. In summary, we do not support a blanket exception which permits concessions to be targeted at certain ages, regardless of whether or not there is a good reason for the concession.

### ***Proof of age***

59. We recommend the legislation allows businesses which sell age-restricted goods such as alcohol, fireworks, cigarettes, etc, to continue to ask for proof of age, where a customer appears to be younger than a particular age, for example 18.

### ***Positive action***

60. We recommend that the legislation allows service providers and public bodies to take positive action; i.e. action to prevent or compensate for disadvantages experienced by, or to meet the particular needs of, children and young people, where objectively justified. This could include, for example, specific welfare services targeting vulnerable young people. It could also include immunisation programmes, health screening programmes, breakfast clubs targeted at children and young people.

### ***Sport***

61. We recommend that service providers are permitted to use age limits and age bands within sports at all levels, from grass roots to elite.

### ***Ad hoc exceptions***

62. Finally, we are of the view that there may be value in introducing a mechanism whereby *ad hoc exceptions* can be made to the principle of equal treatment as new scenarios are encountered. Legislation

prohibiting discrimination on the grounds of age in Australia and has already adopted such a mechanism.<sup>7</sup>

63. Such exceptions may, for example, allow service providers on a temporary basis or as part of a pilot scheme to restrict services to certain ages, with the aim of assessing and reviewing the impact on certain ages at the end of the temporary period. In line with the approach taken in these other countries, temporary exceptions could be granted by the Equality Commission.

64. It will be noted that such a mechanism does **not** currently exist under the age discrimination legislation in Great Britain under the Equality Act 2010 as regards the provision of goods, facilities and services, as it applies to adults, or under any other strand of equality law in Northern Ireland.

### ***Other exceptions***

65. Our recommendations as regards **specific exceptions which relate to particular areas**, such as financial services, education, accommodation, private clubs and public functions, are discussed in more detail in the relevant sections below.

## **Section 3 – Areas to be covered by the legislation**

66. Children and young people are, in a general sense, like adults in that they access a wide range of goods and services, such as health care, and transport, use private clubs, such as golf clubs, and, like adults, they are subject to the exercise of public functions, including those exercised by the police or prison authorities.

67. We recognise that within these areas, there may be legal restrictions placed on a child or person's ability to access certain services, such as financial services, or that differential treatment because of their age may be justified.

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<sup>7</sup> For example, in Australia the legislation contains a process by which individuals and organisations can seek "temporary exemptions" by applying to the Australian Human Rights Commission. The Australian Human Rights Commission has developed guidelines outlining the criteria it applies.

68. However, in general, we are of the view that the legislation should cover children and young people in **all** areas that they are permitted to access goods and services, private clubs, or are subject to the exercise of public functions. These broad areas should be the **same** as the areas in which adults should have protection under the proposed legislation.<sup>8</sup>
69. In addition, we recommend that the NI Executive legislates to the **highest international standard** and adopts an approach that has already been adopted in other countries, in particular, **Australia, Canada and Belgium**. This should be done, not only by ensuring that children and young people have protection under the legislation, but also by expanding the scope of the legislation to give protection against age discrimination for **all ages** when buying, selling or renting **accommodation**, as well as specific protection for children and young people when accessing **education in schools**.
70. We have highlighted below in detail our recommendations in relation to the **specific areas** that we propose are covered by the legislation, namely:
- access to **general services** (such as retail services, public transport provision or facilities for entertainment);
  - the provision of **health and social care**;
  - access to **financial services** (such as services of a banking, credit, or insurance nature);
  - discrimination by **public bodies** when exercising public functions (for example, public functions carried out by the police, or prison authorities);
  - discrimination by **private clubs** or other associations (such as golf clubs or political parties);

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<sup>8</sup> With the exception, of course, that education in schools will primarily apply to children and young people.



- **education and associated services** including services provided by schools and education and library boards; as well as institutions of further and higher education; such as universities and colleges of further education;
- **accommodation**: namely the sale, letting and management of housing accommodation, either in the private or social housing sectors.

71. We **recommend** that the legislation applies to public, private and voluntary/community sector service providers regardless of whether or not a person pays for the service.

72. It will be noted that all of the above areas, **except for education in schools and accommodation**, are covered by the legislation prohibiting age discrimination in Great Britain; as it applies to adults. Education provided by institutions of further and higher education in Great Britain is covered by the age discrimination legislation in Great Britain.

73. We explore in greater detail below our recommendations in relation to each of these areas.

### **Accessing general goods and services**

74. We **recommend** that **children and young people** have protection against unlawful discrimination and harassment on the grounds of age when accessing **general day to day services**.

75. Such services can include retail services, public transport provision or facilities for entertainment. It would mean that children and young people would have protection against age discrimination when accessing services such as those provided by bus and train operators, airports, public parks, sports stadia, leisure centres, advice agencies, theatres, cinemas, shops, post offices, restaurants etc.

76. We are of the view that if children and young people are protected under the proposed legislation, the following treatment is **likely to be unlawful** and subject to challenge,

- the exclusion of children from shops and rules limiting the number of children in shops is potentially discriminatory if they are based on stereotypical and ill-informed views;
- the exclusion of children from shops or premises using Mosquito devices, as the use of such a device is likely to be unjustifiable (i.e. a proportionate means of achieving a legitimate aim). Moreover, this type of practice may amount to harassment;
- the harassment or intimidation of children by security staff on shop premises, or forcible ejection of groups of children from cafes, based solely on stereotypical negative views of children and young people is likely to be unlawful;
- an emergency services operator treating a child or young person less seriously when calling for an ambulance simply because of their age or negative stereotype associated with youth.

77. Prejudicial and negative attitudes towards children and young people by service providers and public bodies have resulted in their receiving an **inferior service** and has impacted on their ability to access day to day services.

78. For example, as a result of stereotypical negative attitudes towards young people as anti-social trouble makers, their access to services has either been denied or restricted. This includes being refused access to shops without justification, being harassed by service providers because they are a young person, or being subjected to the indiscriminate and unjustifiable use of Mosquito devices<sup>9</sup> by a number of retailers.

79. The *Ark Young Life and Times Survey 2010*<sup>10</sup>, a survey of 16 year olds in Northern Ireland, has highlighted the high level of negative attitudes and barriers that young people face when accessing day to day services, including retail shops.<sup>11</sup> In particular:

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<sup>9</sup> Mosquito devices emit high frequency sounds that are most audible to people under 20 years.

<sup>10</sup> *Ark Young Life and Times Survey 2010*, <http://www.ark.ac.uk/ylt/>

<sup>11</sup> [http://www.niccy.org/uploaded\\_docs/2011/Publications/Findings%20of%20YLT%202010%20negative%20stereotyping%20questions.pdf](http://www.niccy.org/uploaded_docs/2011/Publications/Findings%20of%20YLT%202010%20negative%20stereotyping%20questions.pdf) (NICCY briefing paper)

- 83% of young people believed that they were judged negatively just because they were young;
- 30% of young people believed that they were treated with disrespect regularly or all the time because they were young;<sup>12</sup>
- 26% had been excluded from a shop or shopping centre;
- 67% had been treated as suspicious by staff in a shop and 58% were told to leave their schoolbag outside a shop.

80. Further, a survey conducted by NICCY Youth Panel in 2006 into the experiences of children and young people as consumers, revealed that the majority of respondents considered that children and young people were treated more negatively or with less respect by shops staff than adults. Negative experiences appeared to be exacerbated when young people were in groups. The key reason mentioned why shop staff treated young people differently to adults was that of 'negative stereotypical attitudes towards young people amongst shop staff'.<sup>13</sup>

81. The Equality Commission has also received a number of complaints from children and young people relating to less favourable treatment by retailers because of their age.

82. In addition, a recent survey by the Consumer Council on **public transport** has shown that one reason why children and young people will not travel on buses on a regular basis is due to the negative attitudes of bus drivers and other members of the public. In fact only 19% of respondents agreed that staff attitudes to young people were positive.<sup>14</sup>

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<sup>12</sup> 56% said this happened rarely (not more than once or twice a year) and 26% said this happened regularly (2 or 3 times a month)

<sup>13</sup> [http://www.niccy.org/uploaded\\_docs/Young%20Consumers%20-%20Final%20Report%2004-12-06.pdf](http://www.niccy.org/uploaded_docs/Young%20Consumers%20-%20Final%20Report%2004-12-06.pdf) (final report) and briefing on <http://www.niccy.org/News/archive/2006/youngconsumers>

<sup>14</sup> *Transport Matters Young People's Experiences, Attitudes and Ideas for Improving Public Transport*, Consumer Council and Youth Action, <http://www.consumercouncil.org.uk/filestore/documents/transportmatters.pdf>

83. The *Review of the Youth Justice system* in Northern Ireland published in 2011 has also highlighted that “discussions with young people, which mirror the findings of the Criminal Justice Inspection Northern Ireland and the Northern Ireland Policing Board, suggest that too many officers are still adopting a judgemental and prejudicial, even antagonistic attitude towards some of the young people they encounter.”<sup>15</sup>
84. It further highlights that “in a recent Northern Ireland wide survey of young people under the age of 25, of those who reported contact with the police (70%) more than a third (38%) said they experienced disrespectful behaviour and just under a third (31%) reported being wrongly accused of misbehaviour. Nearly half (47%) said the police never treated them with respect.”
85. Complaints to NICCY have also highlighted the indiscriminate use of Mosquito devices<sup>16</sup> by a number of retailers, resulting in young people facing barriers in accessing the shops in question whilst the device is in operation.

### **Health and social care**

86. We **recommend** that **children and young people** have protection against unlawful discrimination and harassment on the grounds of age when accessing **health and social care services**.
87. In general, children and young people should be entitled to receive the full range of health and social care services, including GP services and specialist services, without experiencing age discrimination. This is in recognition of their need to access services that meet their needs at different developmental stages and to ensure they access appropriate safeguards.

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<sup>15</sup> <http://www.dojni.gov.uk/index/publications/publication-categories/pubs-criminal-justice/report-of-the-review-of-the-youth-justice-system-in-ni.pdf>

<sup>16</sup> Mosquito devices emit high frequency sounds that are most audible to people under 20 years.

88. We are of the view that the legislation should contain **no specific exceptions** for age-related differences in treatment or services in health and social care. Any age based practices and rules within health and social care should be assessed against the objective justification test.
89. This is in keeping with the approach adopted in Great Britain under the age discrimination legislation outside the workplace, as it applies to adults. This legislation includes health and social care and there are **no specific** exceptions in relation to health and social care.
90. We believe that the **beneficial or justifiable** use of age, for example, public health programmes, screening or immunisation programmes which target particular children and young people, should continue. They would be permissible under the objective justification test.
91. In our view, if children and young people are protected under the proposed legislation, the following treatment is **likely to be unlawful** and subject to challenge:
- a child and young person of a certain age group unjustifiably receiving poorer health and social care services than other age groups (for example, working age adults, or older people);
  - a doctor failing to investigate a health complaint raised by a child or young person simply because of his or her age;
  - a health professional treating a child or young person in a intimidating, hostile, degrading, humiliating or offensive manner because of their age;
  - a decision by a health provider to prioritise funding for mental health services for adults as opposed to children or young people or only to provide mental health services suitable to adults, without being able to objectively justify this decision. Unless there were compelling reasons for excluding children from appropriate mental health care, the above practices are likely to amount to unlawful discrimination.

92. The legislation will mean that a service provider (such as a health and social care trust or an individual practitioner) will **have to justify**, if challenged, any aged-based decisions.

93. In particular, the provider will have to show that the less favourable treatment complained of was a **proportionate means of achieving a legitimate aim**.

### ***Evidence of discrimination***

94. There is clear evidence that children and young people in Northern Ireland experience difficulties in accessing **age-appropriate health and social care services** (including mental health services).

95. For example, the **Regulation Quality Improvement Authority** (RQIA) independent review of child and adolescent mental health services (CAMHS) in Northern Ireland in February 2011<sup>17</sup> highlighted that whilst progress has been made since the *Bamford Review* in 2006, young people continue to be admitted to adult mental health wards. The review indicated that almost 200 children in Northern Ireland were admitted to adult psychiatric wards between 2007 - 2009.<sup>18</sup>

96. The review team were of the view that the admission of young people to an adult ward is an admission to an inappropriate environment. The report also highlights that some services were not accessible in particular areas; for example, in the Northern Trust, children and young people did **not have access to any crisis intervention or alcohol services**.

97. We welcome the NI Executive's recent commitment to develop policy guidance on a service model for child and adolescent mental health services (CAMHS), in response to the RQIA review.<sup>19</sup>

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<sup>17</sup> RQIA *Independent review of CAMHS in Northern Ireland*, February 2011 [http://www.rqia.org.uk/cms\\_resources/RQIA%20CAMHS%20Report%2022%20Feb%2011.pdf](http://www.rqia.org.uk/cms_resources/RQIA%20CAMHS%20Report%2022%20Feb%2011.pdf)

<sup>18</sup> As regards young people in adult wards, within a 30 month period between 1 April 2007 and 30 September 2009, 197 young people had been admitted onto an adult ward.

<sup>19</sup> See *Delivering the Bamford vision, response of NI Executive to the Bamford Review of mental health and learning disability, action plan*, DHSSPS, Nov 2012, <http://www.dhsspsni.gov.uk/2012-2015-bamford-action-plan.pdf>

98. It is of note that the UN Committee on the Rights of the Child highlighted in its Concluding Observations on the UK in 2008 that whilst one in ten children in the UK have a diagnosable mental health problem, only around 25% of them have access to the required treatment and care and that children may still be treated in adult psychiatric wards. It was particularly concerned that in Northern Ireland, due to the legacy of the conflict, the situation is particularly delicate.<sup>20</sup>
99. The UN Committee recommended that additional resources and improved capacities be employed to meet the needs of children with mental health problems; with particular attention to those at greater risk, including children deprived of parental care, children affected by conflict, those living in poverty and those in conflict with the law.
100. In addition, complaints to **NICCY** have shown that a **lack of age-appropriate mental health services** has also resulted in younger children having to access services designed for older teenagers and as a consequence specific needs were not being met.
101. It is of note that the NICCY's *Children's Rights: Rhetoric or Reality: Review of children's rights in Northern Ireland* has highlighted that the prevalence of mental health problems, though generally high amongst children and young people, has been shown to be particularly high amongst disadvantaged or marginalised groups of youth. This includes children living in poverty or areas of economic disadvantage or looked after children.<sup>21</sup>
102. The difficulties experienced by children and young people in accessing mental health services was comprehensively set out in the *Bamford Review* in 2006.<sup>22</sup> It highlighted that 'mental health services for children in Northern Ireland have received too little attention for too long and have suffered from a lack of coherent planning and investment'.

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<sup>20</sup> <http://www2.ohchr.org/english/bodies/crc/docs/AdvanceVersions/CRC.C.GBR.CO.4.pdf>

<sup>21</sup> [http://www.niccy.org/uploaded\\_docs/CRU/NICCY%20Rights%20Review%202008%20.pdf](http://www.niccy.org/uploaded_docs/CRU/NICCY%20Rights%20Review%202008%20.pdf)

<sup>22</sup> <http://www.dhsspsni.gov.uk/camh-vision-comprehensive-service.pdf>

103. NICCY's *Children's Rights: Rhetoric or Reality: Review of children's rights in Northern Ireland*, indicates that key shortcomings identified by the *Bamford Review* in relation to CAMHS included:

- inadequate information about the nature and extent of mental health needs amongst children and young people in Northern Ireland;
- inadequate expenditure on CAMHS services;
- absence of a strategic plan for service delivery and development;
- unequal distribution of services across NI;
- inadequate specialist services for eating disorders, ASD, looked after children, etc;
- long waiting lists.

104. We recognise and welcome the work undertaken by the DHSSPS to address the shortcomings highlighted in the *Bamford Review*, including through the production of the Executive's Bamford Action plan in 2009<sup>23</sup>. However, it is clear that children and young people continue to experience barriers to access health and social care services.

105. For example, a 2011 report by the Bamford Monitoring Group highlighted that "young people had difficulty finding relevant information on mental health services for young people...". Further, it highlighted that young people with learning disabilities do not always receive appropriate information about the options and support available to them on leaving school.<sup>24</sup>

106. It recommended that Health and Social Care Trusts took immediate action to improve the information about mental health services for children and young people on their websites, based on the findings of the report.

107. More recently, the **lack of investment in children's services** has also been highlighted in *Transforming Your Care: A Review of Health and Social Care in Northern Ireland* (2011). It has indicated that "it has been recognised by a number of independent reviews that,

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<sup>23</sup> [http://www.dhsspsni.gov.uk/bamford\\_action\\_plan\\_2009-2011.pdf](http://www.dhsspsni.gov.uk/bamford_action_plan_2009-2011.pdf)

<sup>24</sup> [http://www.patientclientcouncil.hscni.net/uploads/research/CAMHS\\_Report\\_FINAL.pdf](http://www.patientclientcouncil.hscni.net/uploads/research/CAMHS_Report_FINAL.pdf)



compared to other parts of the UK, there is a significant under-investment in children's services."<sup>25</sup> It also noted that it had been acknowledged by several independent authors that the level of investment in Children and Families Services in Northern Ireland is 'approximately 30% less than in other parts of the United Kingdom'.<sup>26</sup>

108. In addition, it states that "overall it is clear that child and adolescent services are continually improving and developing. However there is much work to do to develop and improve services further."
109. More recently, the Health and Social Care Board's (HSCB) post consultation report on *Transforming Your Care* (2013)<sup>27</sup> has highlighted that 'concern was expressed around the lack of inpatient facilities for children who have to go to adult wards'. The report also indicated that 'respondents felt that CAMHS at present are underfunded and there needs to be greater investment in these areas.'
110. We note that the HSCB has recognised in this report 'the need to move towards admitting all children under 16 to age appropriate paediatric settings' and we welcome the DHSSPS's commitment to review acute paediatric services, followed by a review of paediatric palliative and end of life care services.
111. Further, **improvement in the treatment and support for mental health issues** was a priority area highlighted by young people in *Young People's Priorities in Health and Social Care* (2012).
112. There were concerns about what they saw as inadequate provision for young people; the need to work to remove the stigma associated with mental ill health to encourage young people to seek help; treatment of depression, anxiety, self-harm and eating disorders; and the provision of better counselling services and education in suicide awareness.<sup>28</sup>

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<sup>25</sup> <http://www.dhsspsni.gov.uk/transforming-your-care-review-of-hsc-ni-final-report.pdf>

<sup>26</sup> It notes that it had been predicted that the number of births in NI was to decline but in fact birth rates had remained broadly static.

<sup>27</sup> Health and Social Care Board's post consultation report on *Transforming your care*, March 2013, <http://www.tycconsultation.hscni.net/consultation/>

<sup>28</sup> [http://www.patientclientcouncil.hscni.net/uploads/research/Young\\_Peoples\\_Priorities\\_Report.pdf](http://www.patientclientcouncil.hscni.net/uploads/research/Young_Peoples_Priorities_Report.pdf)

113. It is of note that this report revealed that **quality of care** was also highlighted as a priority issue for the young people surveyed (23%), who considered that ‘expertise and the need for staff to be more caring and to listen to patients’ were priorities. A notable concern was ‘the need for better communication and change of attitude by staff, with GPs, social workers and dentists in particular being criticised.’
114. Concerns have also, for example, been raised by the **National Deaf Children’s Society** about the lack of preventative tier two services under CAMHS for deaf children in comparison to tier two services for deaf adults.
115. There are also **inconsistencies within the health sector as to the age which children and young people are transferred to adult services**. This can have a significant impact on the health care that the young person receives, as services that are available to a minor may no longer be available once the young person is transferred to adult services.
116. The *Bamford Review* in 2006 into CAMHS had highlighted this issue as regards access to mental health services and made it clear that ‘the upper age limits for access to services across and within health, education and social services can lead to difficulties accessing a comprehensive service across disciplines and can also lead to inequality of services.’<sup>29</sup>
117. More recently, complaints received by NICCY show that there are variations within the health sector as to the age which children and young people are transferred to adult services; for example, in some instances children and young people are transferred at age 13 to adult services which can restrict their access to various forms of treatment.
118. In addition, complaints to NICCY reveal there has been a practice among some health professionals to discharge children with ADHD from children’s services connected with ADHD, when they reach the age of 14 or 15; as there is no ADHD service for adults.

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<sup>29</sup> See footnote 22

### ***Parallels with the experiences of older people***

119. In addition, there are parallels with the barriers experienced by older people in accessing health and social care with those experienced by children and young people.
120. For example, the *Review into achieving age equality in health and social care*<sup>30</sup> undertaken in Great Britain in 2009 by the Department of Health found that some age groups, especially older people, were more likely to receive poor services.
121. In addition, it found that the division of mental health services into adult working age and older age services, whilst it has resulted in examples of age appropriate specialist services, has also had the unintended effect of producing a **disparity of mental health service** between older and working age adults. Further, it found that it had resulted in a **transition** from one service to the other that did not always meet the needs of individuals effectively.<sup>31</sup> It made it clear the **goal must be that services are provided on the basis of need not age**.
122. They also highlighted a report by the *Healthcare Commission* in 2009 that found that older people were being **denied access** to the full range of mental health services that were available to younger adults. In particular, there were poor access to out of hours and crisis services, physiological therapies and alcohol services.<sup>32</sup>
123. As made clear in the *Review into achieving age equality in health and social care*, age discrimination and the challenge of advancing age equality is **not confined to older people**. In particular, it indicated that greater consistency across all locations and all services covering **young and old people** is needed to tackle what some people call “hidden” or “covert” age discrimination.
124. As highlighted above, as with older people, there is evidence that:

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<sup>30</sup> [http://www.cpa.org.uk/cpa/achieving\\_age\\_equality\\_in\\_health\\_and\\_social\\_care.pdf](http://www.cpa.org.uk/cpa/achieving_age_equality_in_health_and_social_care.pdf)

<sup>31</sup> *ibid*

<sup>32</sup> [http://www.cqc.org.uk/sites/default/files/media/documents/equality\\_in\\_later\\_life.pdf](http://www.cqc.org.uk/sites/default/files/media/documents/equality_in_later_life.pdf)

- children and young people experience difficulties in accessing **age appropriate** health and social care services;
- children and young people have received in certain health and social care areas **poorer services** compared to other age groups; and
- children and young people experience difficulties when in **transition** from one health and social care service to another with the result that their needs have not been met.

### **Financial services**

125. We **recommend** that **children and young people** have protection against unlawful discrimination and harassment on the grounds of age when accessing **financial services**; such as health and medical insurance, saving accounts, motor and travel insurance and unsecured personal loans.
126. As made clear in Equality Commission's *Proposals for Reform: Ending Age Discrimination in the provision of Goods and Services*<sup>33</sup>, we are of the view that the introduction of age discrimination legislation will **improve transparency and accountability** within the financial services sector so that consumers can be confident that age is not being misused.
127. It will also improve confidence for consumers in the accessibility of insurance products and help allay concerns that prices are not proportionate to risk and costs.
128. In general, we **recommend** that any use of age by financial service providers is based on relevant information which is from a source on which it is reasonable to rely. Whilst recommending that the legislation contains a **tailored specific exemption** for financial

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<sup>33</sup> See footnote 2

service providers, we have concerns in relation to the breadth of the financial service exception in Great Britain<sup>34</sup>.

129. It is important to note that **children and young people** access a range of financial services; depending on their age. For example, children aged 16 can access moped insurance; drivers aged 17 are entitled to purchase motor insurance; young people can also independently take out travel insurance, as well as operate saving accounts.
130. We recommend that children and young people who are **permitted under the law** to access financial services should have **equal protection** against unjustifiable age discrimination under the legislation as young adults or older people.
131. Like older people and young adults, they equally should have the confidence that when they purchase financial products that prices are proportionate to risk and costs. In addition, increased access to financial services, such as motor insurance or travel insurance, can promote a young person's ability to live independently.
132. It is of note that young people experience barriers not only in terms of the high premiums that they pay for certain types of insurance, but also in terms of accessing insurance.<sup>35</sup>
133. We are of the view that where financial service providers seek to justify a higher price for reasons of risk connected with a child or young person's age (for example, motor or moped insurance) that they need to produce evidence to establish that risk and expose it to public scrutiny.
134. We recognise that in certain circumstances a child or young person **may lack legal capacity** to enter into certain contracts for financial services or otherwise.

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<sup>34</sup> <http://www.equalityni.org/archive/pdf/StrengtheningProtectionAllAgesFullReport.pdf>

<sup>35</sup> For example, complaints to the Consumer Council for Northern Ireland have revealed the difficulties experienced by young people (including those aged 17) in gaining car insurance. <http://www.consumerCouncil.org.uk/newsroom/753/>

135. We are of the view that where a child has the relevant legal capacity to enter into a contract, then age discrimination should be prohibited in the same way that it is for adults. Similarly, if a child or young person lacks legal capacity to enter into the contract, so that the primary contractual relationship is between the financial service provider and a trustee/parent, then again age discrimination should be prohibited in the same way that it is for adults.
136. Financial services **should be permitted** to offer financial services on terms which discriminate between adults and children or young people, where a **reliable and credible risk assessment** has been conducted which would justify such differential treatment. For example, it should be permissible for a service provider to offer holiday insurance at a different premium to protect a ten year old, in comparison with an 80 year old; provided a reliable and credible risk assessment has been conducted.
137. It is of note that age discrimination in relation to goods and services is prohibited in the **Republic of Ireland** under the Equal Status Acts 2000-2004. Whilst the legislation does not protect people under the age of 18 years, it does provide an **exception** to this in that 17 year olds who are licensed to drive vehicles have a right not to be discriminated against by insurance companies when they are seeking insurance cover for their driving.
138. It is of note that in **Australia**, there is a prohibition on age discrimination in financial services, including services relating to banking, insurance, superannuation and the provision of grants, loans, credit or finance. There is an exception broadly similar to that contained within the legislation currently in force in Great Britain relating to the need to base decisions on relevant and reliable data.
139. Importantly, in Australia this prohibition against age discrimination in financial services **covers all ages**, including children and young people, and there are **no specific exceptions** in this area that relate only to children and young people.

### **Exercise of public functions**

139. We recommend that **public bodies**, when exercising **public functions**, are prohibited from unlawfully discriminating against children and young people on the grounds of age.
140. Public functions cover a wide range of important areas including law enforcement by the police, regulatory functions, receiving someone into a prison or immigration detention facility.
141. In line with the approach adopted under other existing equality legislation in Northern Ireland, certain public bodies and certain types of functions will be excluded from the scope of the legislation; such as the steps associated with the legislative approach of the NI Assembly or judicial functions, the armed forces or the use of age as a criterion in immigration decisions by immigration authorities.
142. This is in keeping with the approach adopted in Great Britain under the age discrimination legislation outside the workplace, as it applies to adults.
143. In our view, if children and young people are protected under the proposed legislation, in the area of public functions, the following treatment is **likely to be unlawful** and subject to challenge:
- the police, without justification, when carrying out their law enforcement duties, harassing a child or young person because of their age;
  - a public body, unjustifiably failing to investigate a complaint by a child or young person, simply because of their age and negative stereotypes associated with youth.
144. It is of note that research carried out in 2010<sup>36</sup>, into the views of young people in Northern Ireland about their interactions with the police<sup>37</sup>,

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<sup>36</sup> *Beyond the margins, Building trust in policing with young people*, ICR, March 2010, [http://www.conflictresearch.org.uk/icrresearch#Young\\_People](http://www.conflictresearch.org.uk/icrresearch#Young_People)

has highlighted that of those respondents that had some form of contact with the police, a large proportion experienced unacceptable police behaviour, including disrespectful behaviour, being incorrectly accused of misbehaviour and stopped without reason.<sup>38</sup>

145. The report also highlighted that there was a strong sentiment among respondents that the police did not understand youth issues and treated young people unfairly. Whilst the report did make it clear that there had been significant improvements in young people's experiences of policing over the last decade, it stated that "there remains much to be done - in particular in changing police attitudes to young people and building the confidence of young people in the police."

### **Private clubs**

146. We recommend that **private clubs and associations**, such as a local golf or tennis club, are prohibited from unlawfully discriminating against children and young people on the grounds of age.
147. We are of the view that if children and young people are protected under the proposed legislation, in the area of private clubs, the following treatment is **likely to be unlawful** and subject to challenge:
- a private club, without justification, providing an inferior service for a child or young person compared to services for adults;
  - a member of staff at a private club treating a child or young person in a intimidating, hostile, degrading, humiliating or offensive manner because of their age.
148. There are a large number of children and young people who are members of private clubs, such as golf or tennis clubs. We are of the view that it is absurd that an 18 year old member of a private club who

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<sup>37</sup> Respondents were predominantly aged between 13-18.

<sup>38</sup> 38% of these respondents felt that police behaviour was disrespectful and 13% complained of harassment.



is harassed due to their age could bring a complaint under the proposed legislation, but a 17 year old, who is subjected to the same harassment by a private club would have no grounds for redress.

149. We are of the view that the legislation should permit private clubs to offer **justifiable** concessions or discounts or targeted services to members below a certain age or based on long service or membership; for example, pensioners clubs, cheaper prices for over 60s or under 18s or free access to certain age groups at specific times.
150. As highlighted above, we do not support a blanket exception which permits private clubs to target certain ages, regardless of whether or not there is a good reason for the concession.
151. The Equality Commission has, for example, received complaints that some private health clubs offer reduced fees for adults aged 30-40 years. In our view, the private health club should be required to justify offering such a concession to this particular age group.
152. We also **recommend** that private clubs and associations are allowed to restrict membership to certain age groups; for example, clubs for young teenagers. This reflects the approach taken in Great Britain under the Equality Act 2010.

### **Education**

153. We **recommend** that the proposed legislation prohibits discrimination on the grounds of age in **education and associated services**. There should be no blanket exclusion for the education sector within the legislation.
154. In particular, we **recommend** that bodies in charge of educational establishments, including **schools** and **institutions of further and higher education**, such as **universities** and **colleges of further education**, are prohibited from discriminating on the grounds of age.

155. We further **recommend** that the education and library boards and the Council for Catholic Maintained Schools are also prohibited from unjustifiably discriminating on the grounds of age when providing services. This reflects similar responsibilities placed on these bodies under other equality legislation in Northern Ireland; for example, under the race equality legislation.
156. This would mean, for example, that it would be unlawful for an educational establishment to discriminate on the ground of a person's age by **unjustifiably** refusing or failing to accept the person's application for admission as a student, or in terms and conditions on which it is prepared to admit the person as a student.
157. It would also make it unlawful for an educational establishment to unjustifiably deny or limit access to benefits, to expel a student or subject a student to any other detriment simply on the basis of their age.
158. It is important to stress that much of the state education sector is **governed by statutory provisions**; which means that under the statutory authority exception outlined above, differential treatment on grounds of age by the education sector **will be permitted** where another piece of legislation allows or requires a child or young person to be treated differently because of their age.<sup>39</sup>
159. We recognise that there are a number of areas within education where age criteria are applied; for example, age based admission criteria for the allocation of pre-school, school, college or university places; age based criteria for free or targeted services, such as free pre-school places for three year olds.
160. The inclusion of education within the proposed legislation will mean that education providers must ensure that age-related criteria or rules are not inappropriate or arbitrary. It will encourage educational authorities to make decisions based on the actual needs of children and young people of different ages. In particular, they must ensure that age based rules or criteria are capable of objective justification or

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<sup>39</sup> For example, the *Primary School (Admissions Criteria) Regulations (NI) 1997* allow schools when selecting children for admission, to give priority to children who have attained the lower limit of compulsory school age over those who have not attained the lower limit of compulsory school age.

fall within a particular exception (for example, a positive action exception).

161. The legislation, if applied to education, will not mean that schools or other education providers cannot use age based rules; only that where they exist they must be capable of objective justification or fall within an exception, such as the positive action exception.
162. This means that educational authorities will be able to rely on the general justification defence and the positive action exemption. For example, where there is evidence to support the benefits of free or age –targeted services for children and young people, such as free pre-school places, then the positive action exception would apply.
163. In Great Britain, although education in schools is **not** covered by the age discrimination legislation, there is protection against age discrimination for students in **institutions of further and higher education**, such as **universities** and **colleges of further education**.
164. Again, we are of the view that the exclusion of children and young people from the legislation will result in **absurd inconsistencies**; with students in higher education being able to challenge unjustifiable age based criteria and practices, whereas pupils in schools will remain unable to challenge such unfair treatment.
165. Importantly, it is of note that in **Australia**, there is a very wide prohibition on age discrimination in education which covers decisions to refuse or failure to accept applications for admission, the terms and conditions on which students are admitted and decisions to expel students are subject then to any other detriment.
166. Further, in addition to the general justification defence and the positive action exception, under Australian law, there is **only one narrow exception** relating to education. This exception allows education providers to **restrict admission** to pupils with certain ages, if that educational institution is established wholly or primarily for students above a particular age.
167. In summary, we **recommend** that the proposed legislation follows a similar approach to that adopted in Australia; namely that that the

legislation applies to education **subject to the inclusion of a narrow range of exceptions.**

168. In our view, if children and young people are protected under the proposed legislation, in the area of education, the following treatment is **likely to be unlawful** and subject to challenge:

- Children and young people of a certain age experiencing difficulties in **accessing age-appropriate educational services**; where such treatment **cannot be justified**.

For example, it is likely to be unlawful for an education and library board to operate a policy which restricts access to its services to pupils in certain age groups, in circumstances where such a restriction to those age groups **cannot be justified**. Services provided by education and library boards include specialist SEN services, music services, education welfare services and access to an educational psychologist.

169. It is important to stress that where there are **good reasons** for restricting an educational service to pupils of certain ages, or certain primary/secondary year classes, then this will be lawful under the proposed legislation. It will **only be possible** to challenge age based rules that **cannot** be objectively justified or do not fall within an exception, such as the positive action exception.

170. It is of note that recent research by NICCY in 2012 on *Review of Transitions to adult services for young people with learning disabilities* has highlighted that ‘there is a clear sense that decisions about education and health and social care are often determined by what is available rather than what is in the best interests of the young person...’.<sup>40</sup>

171. This report found that young people with learning disabilities continued to encounter significant difficulties on transition from school.

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<sup>40</sup>[http://www.niccy.org/uploaded\\_docs/2012/Publications/NICCY%20Transitions%20Report%20-%20final%20Sept%2012.pdf](http://www.niccy.org/uploaded_docs/2012/Publications/NICCY%20Transitions%20Report%20-%20final%20Sept%2012.pdf)

172. Further, complaints to NICCY have also highlighted difficulties experienced by some older school pupils, approaching the end of compulsory school age (age 16), in accessing **educational welfare services** supplied by education and library boards; the complaints alleging that these services are more readily available to younger pupils.

### **Accommodation**

174. We **recommend** that the legislation prohibiting age discrimination in the provision of goods and services covers age discrimination in the disposal and management of accommodation.<sup>41</sup>
175. We are of the view that people of all ages, including children and young people should have protection against unjustifiable discrimination when for example, renting residential accommodation. We therefore do **not support** a blanket exclusion on the grounds of age in this area.
176. If children and young people are protected under the proposed legislation, in the area of accommodation, landlords would be prevented without justification, from letting their premises to young people, due to negative stereotypical assumptions about young people; for example, that they will damage the property or will disrupt other tenants.
177. We are of the view that it is likely that an accommodation provider could rely on objective justification to refuse to rent properties to young people, if they can show evidence of problems that they have had with that age group in the recent past or where other providers had reported such problems.
178. It would however be necessary for the accommodation provider to demonstrate why other less discriminatory options, such as charging deposits, are not apt or adequate.

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<sup>41</sup> See also ECNI response to UK Consultation on the European Commission proposal for an Equal Treatment Directive, July 2009, [www.equalityni.org](http://www.equalityni.org)

179. There are many young people, aged 16 or 17, particularly vulnerable young people who are homeless and have left the family home and require accommodation.
180. We are of the view that, like an adult, they should have protection against unjustifiable age discrimination. It considers that this would not, for example, prevent a landlord seeking a guarantor from a young person or refusing to rent the property to a young person who does not have a regular or steady source of income.
181. We are aware that the legislation prohibiting age discrimination in the provision of goods and services in Great Britain **does not extend** to accommodation.<sup>42</sup>
182. We consider that this is contrary to the draft goods and services Directive<sup>43</sup>, which makes it clear that the scope of the draft Directive covers access to, and supply of goods and other services which are available to the public, including housing. Under the draft Directive, Member States can provide for differences of treatment on grounds of age provided such differences are justified by a legitimate aim and the means of achieving that aim are appropriate and necessary.
183. It is of note that in the **Republic of Ireland**, age discrimination in relation to accommodation is unlawful under the Equal Status Act 2000 (as amended), subject to specific exceptions. This legislation applies only to adults. The exceptions include premises reserved for religious purposes or refuge, a nursing home, a retirement home, a home for persons with a disability, or a hostel for homeless persons.
184. In addition, in the Republic of Ireland, a person can discriminate if providing accommodation in a part of his or her own home (other than a separate or contained part) or where the provision of accommodation affects the person's private or family life or that of

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<sup>42</sup> It will be noted that the **provision of holiday accommodation** is covered by the legislation in Great Britain.

<sup>43</sup> *Draft European Union Directive on equal opportunities and access to goods, services on the basis of age, disability, sexual orientation, and religion or belief*, 2008/0140 (CNS), See Article 3 <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2008:0426:FIN:EN:PDF>

another person residing in the home. Housing authorities can also provide for different treatment depending on a person's age.

185. We **recommend** the inclusion of a small number of narrowly construed specific exceptions relating to accommodation; such as an exception that allows housing associations to provide accommodation to people of particular ages; as well as other exemptions relating to accommodation which exist under other equality grounds, such as those relating to small premises.
186. It will be further noted that legislation in both **Australia** and **Belgium**, which prohibits age discrimination outside employment and which covers children and young people, also extends to accommodation. In these jurisdictions, there are only a small number of exceptions which apply to accommodation.
187. As with financial services, we are of the view that provided a young person has the **relevant legal capacity** to enter into a contract in relation to the renting or acquisition of accommodation, then age discrimination should be prohibited in the same way that it is for adults.
188. It is of note that, in general, a young person aged 16 or 17 can make any kind of contract; though certain contracts made by 16 or 17 year olds can be set aside by the court and the validity questioned if the young person applies to the court before she/he is 21.

## Chapter 2 - Rationale in support of reform

### Introduction

189. This chapter sets out in detail the rationale underpinning our recommendations.
190. We consider that there is a **robust case** for strengthening the rights of children and young people against unlawful discrimination and harassment on the grounds of age in the provision of goods and services.
191. Children and young people should not, without good reason, have access to a service restricted, or receive an inferior service, simply because of their age.
192. We are of the view that this legislation will ensure that where a child or young person's age is used as a factor in providing a service, it is used in a fair and transparent way.
193. It will provide a clear legal framework within which providers can design, commission, and deliver age-appropriate services to children and young people, and ensure that there are no inappropriate or harmful barriers caused by age discrimination and that no age group is unjustly excluded from services.
194. In summary, the **key reasons** underpinning our recommendations are as follows:
- There is **compelling evidence** that children and young people are subjected to less favourable treatment on the grounds of age when accessing goods and services.
  - The legislation will help challenge **negative stereotypes, prejudicial attitudes, harassment** and **ageist behaviours** directed towards children and young people by service providers and others, and help **build a culture** where children and young people are treated with respect and feel valued when receiving a service.



- It will mean that service providers, public bodies and others will **proactively examine** whether the restriction of services to children and young people of certain ages is justifiable.
- Providing protection for children and young people against discrimination in this area is consistent with the current commitments of the NI Executive as set out in the **OFMDFM *Strategy for Children and Young People*** which pledges ‘a drive towards a culture which respects and progresses the rights of the child or young person’.

It is also in keeping with the NI Executive’s proposals to improve the lives of children and young people through the ***Delivering Social Change Framework***. We are of the view that it will help **improve outcomes** for children and young people in Northern Ireland, including those with **multiple identities**, such as disabled children and young people.

It is also consistent with the recent ***Together: Building a United Community*** strategy announced by OFMDFM wherein children and young people are named as a key priority and where the aim is to “build a community where they can play a full and active role in building good relations”.<sup>44</sup>

- Providing protection for children and young people against discrimination in this area is in line with the UK Government’s **international obligations**. In particular, we believe that excluding children and young people from the scope of the legislation would be a **breach of the general principle of equal treatment** and accordingly would itself amount to discrimination.
- Further, whilst Section 75 of the Northern Ireland Act 1998 does not apply directly to the Assembly, in our view, the Assembly, by legislating to give protection to children and young people under the legislation, is **acting in a manner consistent with the Section 75 duty**, which applies to other public authorities.

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<sup>44</sup> [http://www.ofmdfmni.gov.uk/together\\_building\\_a\\_united\\_community.pdf](http://www.ofmdfmni.gov.uk/together_building_a_united_community.pdf)

- In addition, the extension of age discrimination legislation to children and young people will **build on and extend** the existing responsibilities on public bodies towards children and young people under **Section 75**.
- There is also the opportunity for the NI Executive to adopt a **best practice approach** that is designed to safeguard and promote children's rights; in line with the approach that has already been adopted in **other countries**; in particular, **Australia, Canada and Belgium**.

Further, the legal systems of these countries, have shown that children and young people can be protected against age discrimination and suitable exceptions formulated without encountering drafting difficulties or creating any undesirable or unintended consequences.

- Providing protection for children and young people against age discrimination outside employment is consistent with an approach which recognises that **age** is the very factor that makes children and young people more **vulnerable** than adults. This vulnerability may stem from a range of factors including a lack of wisdom and maturity, physical ability, education, economic or other power over self-determination.

These differences place children and young people at risk or at a disadvantage in comparison with adults and therefore they require **special protective measures**; rather than **no protection** from age discrimination when accessing services.

- Further, including children and young people in the scope of this legislation is consistent with **European consumer protection law** which recognises that there should be enhanced levels of protection for vulnerable consumers.
- In addition, we consider that including children and young people within the legislation, will ensure there is a **consistency of treatment** between children and adults; where justifiable. This will

ensure that the legislation does not result in **unjustifiable and absurd** inconsistencies of treatment.

- We consider that there are **no legally compelling reasons** for limiting the scope of the legislation to adults. We address in detail in **Chapter 3** the concerns on this issue raised as part of the debate in Parliament and in the recent debate in the Northern Ireland Assembly in March 2013.
- The legislation will ensure that children and young people have similar protection against discrimination when accessing goods and services as they have under **other areas of equality legislation**; for example, protection against discrimination on the grounds of religious belief and or political opinion, sex, sexual orientation, disability and race.
- Providing protection for children and young people against discrimination in this area is in line with the **draft European Commission Directive** on the provision of goods and services.<sup>45</sup>
- The inclusion of children and young people in this legislation can also have **positive impacts for businesses** and public bodies. Restricting access to services for people of certain ages has economic implications; for example, when children and young people as customers are either refused service or restrictions are placed on their ability to access services, the economy misses out on increased business and revenue.

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<sup>45</sup>*Draft European Directive prohibiting discrimination outside the workforce on the grounds of religion or belief, age, disability or sexual orientation.*  
<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2008:0426:FIN:EN:PDF>

## **Detailed overview of the reasons**

195. A detailed overview of the reasons underpinning our recommendations is set out below.

### **Compelling evidence of discrimination**

196. Firstly, we believe that there is **compelling evidence** that children and young people are subjected to less favourable treatment on the grounds of age when accessing goods and services.
197. Examples across a range of sectors have been outlined in detail above. In summary, these examples include the following:
- The exclusion of children and young people, particularly older children, from access to shops without justification, or refused entry to shops at certain times, or have been asked to leave their bags at the door; where such conduct has been solely based on stereotypical and negative views of children and young people.
  - The indiscriminate and unjustifiable use of **Mosquito devices**<sup>46</sup> by a number of retailers, so as to exclude children and young people from their premises.
  - Harassment of children and young people by service providers and public bodies exercising public functions, based on stereotypical negative views of children and young people.
  - A disparity of service provision between children and young people and adults. This includes difficulties experienced by children and young people in accessing **age-appropriate health and social care services** (including mental health services). It also includes examples where health and social care services for children and young people have been inferior to those available to adults.

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<sup>46</sup> Mosquito devices emit high frequency sounds that are most audible to people under 20 years.

- Difficulties experienced by children and young people when in transition from children to adult health and social care services.
198. These **examples** illustrate either a **complete lack of services** for children and young people or a **lack of age –appropriate service provision**. Critically, it will be for the service provider or public body in the particular circumstances of each case, to **objectively justify** this difference in treatment.
199. In addition to evidence of discrimination, it is important to note that **young people are also of the view that they are discriminated against because of their age**.
200. For example, a survey of 16 year olds in Northern Ireland in 2010, revealed that 83% of young people believed that they were judged negatively just because they were young.<sup>47</sup>

### **Challenge prejudicial attitudes and encourage proactive approach**

201. Secondly, we are of the view that the legislation will help challenge **negative stereotypes, prejudicial attitudes, harassment and ageist behaviours** directed towards children and young people by service providers and others, and help **build a culture** where children and young people are treated with respect and feel valued when receiving a service.
202. Importantly, it will also mean that service providers, public bodies and others will **proactively examine** whether the restriction of services to children and young people of certain ages is justifiable.

### ***Prejudicial and negative attitudes***

203. Prejudicial and negative attitudes towards children and young people by service providers and public bodies **have resulted in their receiving an inferior service**.

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<sup>47</sup> Ark Young Life and Times Survey 2010, <http://www.ark.ac.uk/ylt/>

204. For example, as a result of stereotypical negative attitudes towards young people as anti-social trouble makers, their access to services has either being denied or restricted; this includes, being refused access to shops without justification, being treated with disrespect by service providers because they are a young person, or being subjected to the indiscriminate and unjustifiable use of Mosquito devices<sup>48</sup> by a number of retailers.
205. The **link** between prejudicial and stereotypical attitudes and the way in which this negatively impacts on a person's ability to access services, was clearly recognised by the UK Government in its equality impact assessment on the age equality legislation introduced in Great Britain in October 2012<sup>49</sup>.
206. In particular, it referred to the fact that "younger adults will benefit from the policy as they are often subject to prejudice and stereotypical misconception, for instance that all young adults are irresponsible and commit anti-social behaviour" which they state impacts on the availability of some services to them.
207. However there is a wide range of evidence showing that such prejudice and stereotypical misconceptions **apply not only to young adults but also to children and young people**.
208. For example, the **UN Committee on the Rights of the Child** in its Concluding Observations on the UK in 2008, expressed its concern about the "general climate of intolerance and negative public attitudes towards children, especially adolescents and which may be often the underlying cause of further infringements of their rights."<sup>50</sup>
209. In addition, numerous research reports have highlighted widespread negative attitudes towards children and young people in Northern Ireland and the impact that these attitudes have had.
210. For example, the NICCY *Children's Rights: Rhetoric or Reality: A Review of Children's Rights in Northern Ireland* has raised concerns about the 'increasingly negative portrayal of youth - in the media,

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<sup>48</sup> Mosquito devices emit high frequency sounds that are most audible to people under 20 years.

<sup>49</sup> <http://sta.geo.useconnect.co.uk/pdf/110301%20EIA.pdf>

<sup>50</sup> <http://www2.ohchr.org/english/bodies/crc/docs/AdvanceVersions/CRC.C.GBR.CO.4.pdf>

political circles and society at large - which have negatively impacted upon children's ability to enjoy the rights afforded to them under the UNCRC within the realm of the public domain'.<sup>51</sup>

211. The *Review* also concluded that 'the findings of this review reveal that children continue to experience discrimination on the basis of their age, most obviously in respect of the increasing demonisation of youth within the public sphere and the consequent application of negative stereotypes'.
212. The *Childhood in Transition*<sup>52</sup> report in 2009 further highlighted that there was a major shift in how children were perceived as they moved out of 'childhood', and the expectations placed on them in the home, in school and in the community, alongside a **public climate of persistent rejection** presented real difficulties in making this transition.
213. It further commented that 'young people were **viewed with suspicion, distrust and disrespect**. Consequently their self-confidence was undermined and often they felt worthless, depressed and even suicidal.'
214. In addition, a recent report<sup>53</sup> commissioned by the Department of Education, *Taking Boys Seriously*, has highlighted that:

"Boys also spoke of feeling alienated from their communities and distant from the world of adults and decision-making processes. This alienation was underpinned by a perception from boys that adults increasingly viewed them with suspicion and distrust, particularly as they got older - a perception that was also apparent in attitudes towards the police and young men from different communities."

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<sup>51</sup> [http://www.niccy.org/uploaded\\_docs/CRU/NICCY%20Rights%20Review%202008%20.pdf](http://www.niccy.org/uploaded_docs/CRU/NICCY%20Rights%20Review%202008%20.pdf)

<sup>52</sup> *Childhood in Transition*, 2009 QUB, Princes Trust and Save the Children, <http://www.statewatch.org/news/2009/nov/ni-children-in-transition.pdf>

<sup>53</sup> <http://www.socsci.ulster.ac.uk/sociology/research/y%20publications/Taking%20Boys%20Seriously%20DE%20FINAL%20PDF.pdf>

215. It further highlighted that “while it is important that adolescent boys are accepted and promoted as part of communities and family life, at present there appears to be little in place to facilitate this process.”
216. Further, a *Human Rights Schematic Review: Children and young people* by the Northern Ireland Policing Board (2011) highlights the difficulties caused by the negative stereotyping of children and young people and the need for society to address collectively the false perceptions of anti-social behaviour. The report highlights that young people are more likely to be victims of offending behaviour than perpetrators.<sup>54</sup>
217. Further, research carried out in 2010<sup>55</sup>, into the views of young people in Northern Ireland about their interactions with the police<sup>56</sup>, concluded that ‘the perceptions of young people among adults in general and the police in particular, appear to be shaped by a tendency to place disproportionate blame on young people for crime levels than is justified by the statistics.’
218. In addition, a key issue raised by young people during the recent consultation by the Department of Education on its *Priorities for Youth* was the negative perceptions of young people by adults; with the vast majority of those children and young people surveyed indicating that adults viewed children and young people negatively, in particular, as “troublemakers, irresponsible and/or as unimportant.”<sup>57</sup>
219. Finally the recent ***Together: Building a United Community*** strategy announced by OFMDFM highlights the impact of negative attitudes towards young people. In particular, it indicates that “we know that the negative portrayal of young people can marginalise greater numbers even further from their community.”<sup>58</sup>

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<sup>54</sup> [http://www.nipolicingboard.org.uk/human\\_rights\\_thematic\\_enquiry\\_children\\_young\\_people\\_final\\_pdf.pdf](http://www.nipolicingboard.org.uk/human_rights_thematic_enquiry_children_young_people_final_pdf.pdf)

<sup>55</sup> *Beyond the margins, Building trust in policing with young people*, ICR, March 2010, [www.icr.org.uk](http://www.icr.org.uk)

<sup>56</sup> Respondents were predominantly aged between 13-18.

<sup>57</sup> [http://www.deni.gov.uk/executive\\_summaries\\_-\\_children\\_managers\\_and\\_youth\\_workers\\_-\\_final-2.doc](http://www.deni.gov.uk/executive_summaries_-_children_managers_and_youth_workers_-_final-2.doc)

<sup>58</sup> [http://www.ofmdfmni.gov.uk/together\\_building\\_a\\_united\\_community.pdf](http://www.ofmdfmni.gov.uk/together_building_a_united_community.pdf)



### ***Encourage proactive approach by service providers***

- 220. We consider that providing children and young people, with protection under the proposed legislation, will send out a **strong unequivocal message** to public bodies and service providers that discriminating unjustifiably because of a child or young person's age is unacceptable.
- 221. It will help **build a culture of respect** for children's rights and help ensure greater consistency, transparency, accountability and higher standards in relation to the treatment of children and young people across a range of sectors.
- 222. Whilst it is important that individuals have a right of redress in courts if standards fall and they are discriminated against, the impact of the legislation goes beyond individual redress.
- 223. It will mean that service providers, public bodies and others will **proactively examine** whether the restriction of services to children and young people of certain ages is justifiable.
- 224. Children and young people already have protection against discrimination and harassment on other equality grounds, such as disability and race. This has, for example, **helped to change discriminatory attitudes and behaviour** by service providers and public bodies towards disabled children or children from a minority ethnic background.
- 225. In addition, under Section 75 of the Northern Ireland Act 1998, designated public bodies must have due regard to the need to promote equality of opportunity on the grounds of age when carrying out their functions. This duty applies to people of all ages **including children and young people**.
- 226. The inclusion of children and young people under the Section 75 duty has helped to ensure that services are designed and delivered in a way that does not disproportionately impact on children and young people. For example, the Equality Commission's review of the effectiveness of Section 75 highlighted that "Section 75 specifically

drew attention to the inequality experienced by young people accessing services...”<sup>59</sup>

### **Consistent with NI Executive’s commitments to children and young people**

227. We consider that strengthening the rights of children and young people against unlawful discrimination and harassment on the grounds of age in the provision of goods and services is in line with the **NI Executive’s commitments** to children and young people.
228. The NI Executive has committed under its current ***Children and Young People Strategy*** to improve outcomes for all children and young people and ensure that all future policies and services accessed by children and young people are based on identified need and on evidence about what works.<sup>60</sup>
229. One of the key outcome measures to evaluate the success of the ***Children and Young People Strategy*** on the lives of children and young people in Northern Ireland is ‘living in a society which respects their rights’. In addition, one of the key values underpinning the Strategy is that children and young people have ‘rights as individuals’.
230. As highlighted above, the OFMDFM *Strategy for Children and Young People* also pledges ‘a drive towards a culture which respects and progresses the rights of the child or young person’.
231. We consider that our recommendations are also in keeping with the Executive’s proposals to improve the lives of children and young people through the **Delivering Social Change Framework**.
232. We are of the view that they are also consistent with the recent ***Together: Building a United Community*** strategy announced by OFMDFM wherein children and young people were named as a key priority and where the aim is to “build a community where they can play a full and active role in building good relations”.<sup>61</sup>

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<sup>59</sup> S75 *Keeping it Effective, Final report*, 2008, ECNI, [www.equalityni.org](http://www.equalityni.org)

<sup>60</sup> *Our Children and Young People: Our Pledge: A ten year strategy for children and young people in Northern Ireland 2006-2016*, OFMDFM, <http://www.ofmdfmni.gov.uk/ten-year-strategy.pdf>

<sup>61</sup> [http://www.ofmdfmni.gov.uk/together\\_building\\_a\\_united\\_community.pdf](http://www.ofmdfmni.gov.uk/together_building_a_united_community.pdf)

233. In addition, the NI Executive, together with the other administrations, in its joint commitment to take action in response to the UN Committee on the Rights of the Child's Concluding Observations in 2009, has indicated that 'one of our most important goals is to make England, Wales, Scotland and Northern Ireland the best place for all children and young people to live' and "are committed to working progressively towards implementing the UNCRC."<sup>62</sup>
234. When considering the impact of ensuring that children and young people have protection under the proposed legislation, it is important to reflect on the fact that recent statistics show that approximately **23%** of the Northern Ireland population **is aged under 18 years**.<sup>63</sup>
235. Inequalities in childhood can have a **major impact** on a child or young person's life chances and experiences in their early years can a profound impact on the rest of their lives.
236. We consider that strengthening the rights of children and young people against unlawful discrimination and harassment on the grounds of age in the provision of goods and services will **improve outcomes** for children and young people.
237. For example, it will help:
- improve health outcomes for children and young people by ensuring greater access to age appropriate health and social care services, including mental health services;
  - build their self esteem and confidence by helping to build a society that respects children and young people's rights;
  - enhance their ability to live more independently through removing unjustifiable barriers to accessing financial services and accommodation.

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<sup>62</sup> Joint commitment to take action in response to the UN Committee on the Rights of the Child's Concluding Observations, DCSF, 2009, [http://www.ofmdfmi.gov.uk/21866\\_uk\\_action\\_plan\\_aw\\_v7.pdf](http://www.ofmdfmi.gov.uk/21866_uk_action_plan_aw_v7.pdf)

<sup>63</sup> Census 2011, <http://www.nisra.gov.uk/Census.html>

238. Further, it will help improve outcomes for **children and young people with multiple identities**. For example, **disabled children or young people** (including those with learning disabilities or mental ill health) who face barriers, when they reach a certain age, in accessing services; including transitional services relating health and social care.
239. Experiences of age discrimination against children and young people when accessing services can be compounded by the barriers they experience due to having multiple identities. Many children and young people, due to a range of factors, are already vulnerable and marginalised.
240. For example, as made clear in the UN Committee on the Rights of the Child in its Concluding Observations on the UK Government, certain groups of children continue to experience discrimination and social stigmatization, such as Irish Travellers' children, LGBT children and young people, and children belonging to minority groups.
241. Excluding children and young people from services solely due to their age can have a **significant impact** on the lives of the individual child or young person subjected to the treatment, as well as their families. It can also have wider societal implications.

### **Consistent with international obligations**

242. We believe that providing protection for children and young people against discrimination in this area is in line with the UK Government's **international obligations**.
243. In particular, we consider that excluding children and young people from the scope of the legislation would be a **breach of the general principle of equal treatment** and accordingly would itself amount to discrimination.
244. We recommend that the NI Assembly legislates to the highest international equality and human rights norms. In particular, we **recommend** that the NI Assembly legislates in a manner that is consistent with the principle of equality in respect of age as set out in

**the UN Convention of the Rights of the Child (UNCRC), the European Convention on Human Rights (ECHR), the European Social Charter, the European Charter of Fundamental Rights and through its membership of the EU.**

245. The principle of equal treatment is a fundamental right that underpins both European and wider international human rights law. By excluding children and young people from the legislation, **it does not afford children and young people equality before and under the law**. This is inconsistent with the principle of equal treatment and human rights law.
246. Human rights, including the principle of equality, are universal and **no age limits** are placed on the application of that principle in international and European human rights law. We are of the view that the Northern Ireland Executive **should not water down** its domestic legislation to a level less than the international commitments that have been made.
247. We consider that it is not appropriate that it should legislate so that there is a general inequality before the law. This, for example, would be inconsistent with the right to equality before the law as set out in the UN Universal Declaration of Human Rights.<sup>64</sup>
248. The principle of equal treatment in respect of age **requires** Northern Ireland to treat children and young people the same as adults **in analogous or comparable situations**, unless there is an objective justification for treating them differently.
249. In other words, under human rights law, a State is permitted to treat people differently by reference to age even if they are in a comparable position, provided that it can demonstrate that there is an objective and reasonable justification for the differential treatment.

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<sup>64</sup> UN Universal Declaration of Human Rights 10 December 1948. Article 6 and 7 of the UN Declaration of Human Rights: "Article 6. Everyone has the right to recognition everywhere as a person before the law. Article 7. All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination and violation of this declaration and against incitement to such discrimination".

However the burden of proof is on the State to establish the justification.<sup>65</sup>

### ***UN Convention of the Rights of the Child***

250. Firstly, we **recommend** that the NI Assembly legislates in a manner that is consistent with the rights contained within the **UN Convention of the Rights of the Child** (UNCRC) and the recommendations of the UN Committee on the Rights of the Child.<sup>66</sup>
251. The UNCRC is the most important protective provision at the international level for children and young people. This Convention requires that the “best interests” of the child be pursued and in that context that there is no discrimination against children and young people.
252. In addition, “non-discrimination” is a fundamental principle underpinning the UN Convention on the Rights of the Child (UNCRC).
253. **Article 2** of the UNCRC makes it clear that States must ensure that children are able to enjoy **all** the rights outlined in the Convention **without discrimination of any kind**.
254. In particular, Article 2 states that “State Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child’s or his or her parent’s or legal guardian’s race, colour, sex, language, religion, political opinion or other opinion, national, ethnic or social origin, property, disability, birth or other status.”
255. It is important to note that there are a **wide range of rights** contained within the UNCRC which relate to children’s rights **when accessing goods and services and public functions**; for example, the right to education, right to an adequate standard of living, the right to seek, receive and impart information and the right to enjoy the highest attainable standard of health.

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<sup>65</sup> *DH & Others v Czech Republic* (2008) EHRR3/177

<sup>66</sup> <http://www2.ohchr.org/english/bodies/crc/docs/AdvanceVersions/CRC.C.GBR.CO.4.pdf>

256. Further, **Article 3** of the UNCRC makes its clear “that in all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the **best interests** of the child shall be a primary consideration”.
257. In our view, the principle in Article 3 enables legislation to provide for better treatment of children and young persons, “*in the best interests of the child*” **but not for worse**.
258. Both the Supreme Court and the House of Lords have recognised that the principles enshrined within the UNCRC are relevant when assessing the lawfulness of the State’s actions and form a consideration in interpreting and applying the European Convention on Human Rights.<sup>67</sup>
259. As regards recommendations of the UN Committee in relation to Article 2 (non-discrimination) of the UNCRC, the UN Committee in its **Concluding Observations on the UK** in 2008 made it clear that it was recommending that the UK:
- “take all necessary measures to ensure that cases of discrimination against children in all sectors of society are addressed effectively, including with disciplinary, administrative or if necessary, penal sanctions.”<sup>68</sup>

### ***European Convention on Human Rights***

260. Secondly, we **recommend** that the NI Assembly legislates in a manner that is consistent with the principle of equal treatment insofar as it engages with the rights guaranteed under the **European Convention on Human Rights (ECHR)**.
261. In particular, **Article 14** of the ECHR prohibits discrimination by reference to the substantive rights guaranteed by the Convention. In particular it states that:

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<sup>67</sup> See for example, *R v Secretary of State for the Home Department ex parte Venerables* [1997] AC 407

<sup>68</sup> <http://www2.ohchr.org/english/bodies/crc/docs/AdvanceVersions/CRC.C.GBR.CO.4.pdf>

262. “The enjoyments of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.” It is important to note that “other status” includes age.<sup>69</sup>
263. In addition, a number of the free-standing rights within the ECHR are subject to Article 14 and are relevant to the provision of goods and services and the exercise of public functions. For example, Article 8 (right to respect for private and family life etc), Article 11 (right to associate), Article 5 (right to liberty and security of the person) and Article 6 (right to a fair trial).

### ***EU law***

264. Thirdly, we **recommend** that the NI Assembly legislates in a manner that is consistent with the principle of equality in respect of age as set out in **the European Social Charter, the European Charter of Fundamental Rights and through its membership of the EU.**
265. A fundamental principle of EU law is the principle of equality which applies to age.<sup>70</sup> In addition, the principle of equality because of age is embodied in both Article 19 of the Consolidated Version of the Treaty on the Functioning of the European Union (TFEU) and Article 21 of the **Charter of Fundamental Rights of the European Union.**<sup>71</sup>
266. In particular, **Article 21** states that “any discrimination based on any ground such as sex, race, colour, ethnic or social origin, generic features, language, religion or belief, political or any other opinion, membership of an national minority, property, birth, disability, age or sexual orientation shall be prohibited.”
267. In our view, this principle of equality because of age enshrined in Article 19 applies to both children and adults. There is no indication that this principle was intended only to apply to adults.

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<sup>69</sup> This point was conceded by the UK in *BB v UK* (2004) 39 EHRR 30 [22]

<sup>70</sup> See, for example, case C - 555/07 *CEDA, Kucukdevici v Swedex GMBH & CO.KG* [2011] 2CMLR27

<sup>71</sup> [http://www.europarl.europa.eu/charter/pdf/text\\_en.pdf](http://www.europarl.europa.eu/charter/pdf/text_en.pdf)



268. Further, Article 17 of the **European Social Charter**, which is a Council of Europe Treaty, provides that children should be provided with effective social and economic protection.<sup>72</sup>
269. In particular, it states that “with a view to ensuring the effective exercise of the right of mothers and children to social and economic protection, the Contracting Parties will take all appropriate and necessary measures to that end, including the establishment or maintenance of appropriate institutions or services.”

### **Consistent with Section 75 duty**

270. Further, whilst Section 75 does not apply directly to the Assembly, in our view, the Assembly by legislating to give protection to children and young people under the legislation, is **acting in a manner consistent with the Section 75 duty** which applies to other public authorities.
271. In addition, the extension of age discrimination legislation to children and young people will **build on and extend** the existing responsibilities on public bodies towards children and young people under **Section 75** of the Northern Ireland Act 1998. Public bodies must have due regard to the need to promote equality of opportunity on the grounds of age when carrying out their functions. This duty already applies to people of all ages, including children and young people.

### **Opportunity to adopt best practice**

272. We **recommend** that the NI Executive adopt an approach that is designed to safeguard and promote children’s rights; in line with the ‘model of best practice’ approach that has already been adopted in **other countries**; in particular, **Australia, Canada and Belgium**.

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<sup>72</sup> <http://conventions.coe.int/Treaty/en/Treaties/Html/035.htm>

273. Northern Ireland equality law has previously, in other key equality areas adopted a different, more robust and comprehensive approach than legislation in other jurisdictions; including other parts of the United Kingdom.
274. For example, Northern Ireland led the way with the fair employment legislation which imposed specific duties on employers in Northern Ireland; duties were more comprehensive than those implemented in Great Britain. This legislative framework has been used as a benchmark by other countries in developing solutions to their own unique circumstances.
275. In addition, Northern Ireland led the way in 1998 with the introduction of Section 75 of Northern Ireland 1998; a landmark and transformative piece of legislation which was largely replicated in Great Britain under the Equality Act 2010 over a decade later.
276. We believe that the coverage of children and young people will not only promote children's rights within Northern Ireland but also enable Northern Ireland to **lead the way on an international** stage on this issue.
277. In addition, the legal systems of other countries, specifically **Australia, Canada and Belgium** have shown that children and young people can be protected against age discrimination and suitable exceptions formulated **without encountering drafting difficulties or creating any undesirable or unintended consequences**.
278. We have set out in **Appendix 1** a short outline of the age discrimination legislation in the provision of goods and services as it applies in these countries.
279. It is important to note that whilst children and young people are not currently protected against age discrimination in the provision of goods and services in the Republic of Ireland, a recent **constitutional amendment in the Republic of Ireland**<sup>73</sup> has

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<sup>73</sup> Referendum held on 10 November 2012. For details of the amendment see- [http://www.referendum.ie/downloads/12.10.24-Bill\\_as\\_Passed\\_by\\_Both\\_Houses\\_-\\_Reprinted\\_and\\_Redistributed.pdf](http://www.referendum.ie/downloads/12.10.24-Bill_as_Passed_by_Both_Houses_-_Reprinted_and_Redistributed.pdf)

strengthened the rights of children and young people. This amendment requires legislation to be enacted making it clear that the State recognises and affirms the **'natural and imprescriptible rights of all children and shall, as far as practicable, by its laws protect and vindicate those rights'**.

280. This legislation will also make provision for the best interests of the child to be paramount and for the views of the child to be heard in proceedings concerned with the safety and welfare of a child, concerning guardianship, custody or access.

### **Adopt special protective measures due to vulnerability of children and young people**

281. We are also of the view that providing protection for children and young people against age discrimination outside employment is **consistent** with an approach which recognises that **age** is the very factor that makes children and young people more **vulnerable** than adults.
282. This vulnerability may stem from a range of factors including a lack of wisdom and maturity, physical ability, education, economic or other power over self-determination.
283. These differences place children and young people at risk or at a disadvantage in comparison with adults and therefore they require **special protective measures; rather than no protection** from age discrimination when accessing services.
284. As highlighted above, where children and young people require specific, closely defined protective measures (either collectively or within different age bands) in particular circumstances, the legislation should not only allow for this differential treatment but also recognise that such different treatment may be required.
285. The fact that children and young people have special needs **should not be a reason for denying them all protection from**

**discrimination**; rather the focus should be on addressing their need for special protective measures.

### **Consistent with European consumer protection law**

286. Further, we consider that including children and young people in the scope of this legislation is **consistent with European consumer protection law** which recognises that there should be **enhanced** levels of protection for vulnerable consumers.
287. In particular, the recital to the Consumer Rights Directive<sup>74</sup> makes it clear that when providing information, traders should take into account the specific needs of customers who are particularly vulnerable because of a number of factors including their age.
288. Overall consumer protection law has recognised that because some consumers are vulnerable (for example, because they are older or younger) there should be **enhanced levels** of, but not no, consumer protection.

### **Ensures consistency of treatment across ages**

289. In addition, we are of the view that the inclusion of children and young people within the legislation, will ensure there is a consistency of treatment between children and adults; where justifiable.
290. For example, it is illogical for the law to protect an older person or an 18 year old from harassment because of their age but consider it perfectly legal for shop owners, health and social care professionals and other service providers to treat a 16 or 17 year old in this manner. The 17 year old must wait until his or her 18<sup>th</sup> birthday before they can have protection under the legislation.
291. In June 2008 the Government Equalities Office's discussion paper on the Equality Bill indicated that "the new law will ban unjustifiable age

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<sup>74</sup> Recital 34 of Directive 2011/83/EU of the European Parliament and of the Council of 25 October 2011 on consumer rights.

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:304:0064:0088:EN:PDF>

discrimination over-18 year olds. For example, a doctor failing to investigate a health complaint raised by an older person or not providing treatment simply because of their age”.

292. In the our view, there is no clear reason why the law should not equally prohibit a doctor from failing to investigate a health complaint raised by a child or young person or from not providing treatment simply because of a child’s age.<sup>75</sup>
293. It is also inconsistent that, for example, a ban on 18 year olds entering a department store would be unlawful direct age discrimination unless justifiable. However, a ban on a 17 year old would be perfectly lawful. There would be no requirement for store to justify their actions.
294. In addition a car insurer would be prohibited from discriminating because of age against a person in their 40s seeking insurance when assessing “risk”; if the information used to make that assessment is irrelevant or from a source upon which it would not be reasonable to rely. However it would be perfectly lawful to discriminate in this way towards a 17 year old seeking to purchase car insurance.
295. In our view there is no logical basis for such an approach. In both of these examples the 17 year old is in a comparable situation to an adult. There is no difference between their situations which could justify affording protection to one and not the other.<sup>76</sup>
296. The inconsistencies are compounded by the fact that, it is likely that the legislation will protect young people who are aged under 18 if they are **perceived** to be 18 or older, even if they themselves have not reached the age of 18.
297. In addition, the legislation is likely to protect children and young people under the age of 18 from unlawful discrimination and

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<sup>75</sup> *Framework for a Fairer Future; The Equality Bill*, GEO  
[http://www.cpa.org.uk/cpa/The\\_equality\\_bill\\_2008.pdf](http://www.cpa.org.uk/cpa/The_equality_bill_2008.pdf)

<sup>76</sup> There may of course be differences between children and young people in comparison with adults and it maybe therefore justifiable in a particular case to deny insurance to the 17 year old on the same terms as for an older driver.

harassment due to their **association** with young adults; even if they themselves have not reached the age of 18.

### **Ensures parity of protection with other equality grounds**

- 298. Protecting children and young people from discrimination and ensuring that they have enforceable rights under the equality legislation is not a new concept.
- 299. Children and young people already have rights against unlawful discrimination when accessing goods and services on other equality grounds. For example, children and young people have protection against discrimination on the grounds of religious belief or political opinion, sex, sexual orientation, disability and race.
- 300. These protections exist for children and young people outside employment, including in the provision of goods and services, education, when accessing private clubs, etc.
- 301. In our view, it would have been unacceptable for discrimination law in relation to these other equality grounds to have only applied to adults.
- 302. It is of note that children and young people over the age of 13 **already have protection** against unlawful discrimination and harassment on the grounds of **age** in the areas of **employment and vocational training**.
- 303. In our view it is illogical for the law to protect some children and young people against age discrimination in employment yet exclude them from protection when they access goods and services.

### **Consistent with draft European Commission Directive**

- 304. Our recommendations are in line with the draft European Commission Directive on the provision of goods and services.<sup>77</sup>

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<sup>77</sup> *Draft European Directive prohibiting discrimination outside the workforce on the grounds of religion or belief, age, disability or sexual orientation.*  
<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2008:0426:FIN:EN:PDF>

305. The need for effective protection against age discrimination when accessing goods and services was recognised by the European Commission in its proposal for a European Union Directive on equal opportunities and access to goods, services on the basis of age, disability, sexual orientation, and religion or belief.
306. The European Commission **did not propose** that the Directive should only protect against age discrimination in the provision of goods and services as regards adults. In other words, the draft Directive did not contain an exception in this area excluding children and young people from protection against age discrimination.
307. In the event that the Directive is adopted, it will require, the UK Government to extend its legal framework to address age discrimination outside the workplace to children and young people within two years of adoption.

### **Strong case for Business and the Economy**

308. We are of the view that the inclusion of children and young people in this legislation can also have positive impacts for businesses and public bodies. There is a strong business case for removing age-related barriers that children and young people face when accessing services.
309. Restricting access to services for people of certain ages has economic implications; for example, when children and young people as customers are either refused service or restrictions are placed on their ability to access services, the economy misses out on increased business and revenue.
310. For example, a report by NICCY Youth Panel in 2006 into young people's shopping habits reveal that some young people were "removing their custom from shops that they feel least welcome in", which, the report noted had 'significant repercussions for potential store revenue'.<sup>78</sup>

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<sup>78</sup> See footnote 13.

311. Improving access to services for children and young people will help promote a more diverse customer base and the potential for increased business and revenue, as well as ensuring a better match of need with resources.
312. The legislation will not prevent age from being taken into account by service providers in decision-making where its use can be demonstrated to be a proportionate means of achieving a legitimate aim.
313. Service providers should also be able to continue to provide concessions to children and young people (for example, discounts for children and young people using leisure centres and cinemas etc.) provided they are justifiable.
314. The legislation will ensure, for example, that health and social care services are provided on the basis of the needs of children and young people and that any differential treatment can be justified.
315. In addition, as highlighted in Great Britain in the report *Review into achieving age equality in health and social care*<sup>79</sup>, “care that is non-discriminatory is, by definition, a better match of need with resource and so we can see alignment between the equality agenda and work to meet the challenge of the financial climate of the coming years.”
316. The current reform proposals being progressed in Northern Ireland within the health and social care sector are also in keeping with this legislation; in particular, placing the individual at the centre of any model by promoting a better outcome for the service user, carer and their family; promoting independence and personalisation of care and a focus on prevention and tackling inequalities.
317. Whilst there will inevitably be some impact on service providers, we are of the view that in light of the compelling evidence of discrimination against children and young people, that it is a **proportionate response** to ensure they have protection against discrimination. In addition, as in Great Britain, the legislation would

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<sup>79</sup> [http://www.cpa.org.uk/cpa/achieving\\_age\\_equality\\_in\\_health\\_and\\_social\\_care.pdf](http://www.cpa.org.uk/cpa/achieving_age_equality_in_health_and_social_care.pdf)



not be introduced immediately and therefore there would be a period of time in which to allow service providers to change potentially discriminatory practices and to prepare for the legislation.

## Chapter 3 - Debates in Parliament and NI Assembly

### Introduction

315. In this chapter we address in detail the concerns that have been raised both as part of the debate in Parliament and in a recent debate in the Northern Ireland Assembly in March 2013<sup>80</sup>, on whether the legislation prohibiting age discrimination outside employment should cover children and young people.

316. In summary, these concerns primarily relate to the following:

- it will have the unintended effect of diluting or undermining protections for children and young people and result in the removal of age based services;
- that the legislation will require extensive exceptions which will make it unworkable;
- that parents may become the subject of litigation by their children;
- that the requirement for parental consent would be undermined;
- that service providers would be subject to litigation if they refused to sell goods which could only be sold to adults;
- that certain concessions for children would not be permitted.

We address these concerns in detail below. In summary, **we are not aware of any legally compelling reasons** for limiting the scope of the proposed legislation to adults.

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<sup>80</sup> <http://www.niassembly.gov.uk/Assembly-Business/Official-Report/Reports-12-13/11-March-2013/#9>

## Debate in Parliament

317. As noted above, the age discrimination legislation introduced in Great Britain in October 2012 did not extend protection against age discrimination to children and young people when accessing goods and services.
318. It is of note that the UK Government has indicated that it was not in favour of extending age discrimination to children and young people on the basis that it could have “unintended effect of diluting protections that are in place” rather than enhancing them.<sup>81</sup>
319. It has stated that it was concerned that by extending protection it “might not be able to provide age-appropriate services aimed specifically at children or at children of specific ages.”
320. In particular, it has indicated that:

“Age discrimination provisions do not extend to the under 18s because it is almost always appropriate to treat children of different ages in a way which is appropriate to their particular stage of development, abilities, capabilities and level of responsibility.”

Children of different ages have different needs, which should be reflected by the support and services they receive. Many services provided for young people are organised on the basis of age and some services are exclusively targeted at, or give priority to young people.

We would wish to preserve such services that could be under threat if a prohibition on age discrimination extended to under 18s, since adults, or children of any age, could claim discrimination for not receiving the same level of service. For example, if a local council

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<sup>81</sup> See UK Government response to recommendations of Joint Committee on Human Rights recommendations on children's rights. *Children's rights: Government response to the Committee's 25<sup>th</sup> Report of session 2008/09*. <http://www.publications.parliament.uk/pa/jt200910/jtselect/jtrights/65/65.pdf>

offered certain recreational facilities for children of specific ages, which were not accessible to adults or children of other ages.”<sup>82</sup>

321. In addition, it stated that ‘children just above or just below any age limit might argue that they were suffering unfair discrimination by exclusion’ and that there was ‘a risk of service providers deciding not to provide age-related services rather than take any risk of legal challenge’.
322. However, it is of note that the **Joint Committee on Human Rights** questioned the validity of the reasons set out by the UK Government; namely the UK Government’s concern that by extending protection it might not be able to provide age appropriate services aimed at children or at children of specific ages.
323. In particular, the Joint Committee indicated that it “doubted that prohibiting age discrimination against children would have the unintended consequences mentioned by the Minister.” It was of the view that the legislation could be drafted to prohibit all discrimination on the grounds of age in relation to goods, facilities and services, except where it can be justified. It stated that this would “allow age-appropriate services to be provided where there is good reason for doing so, such as to respond to the needs of a young child.”<sup>83</sup>
324. The Joint Committee on Human Rights recommended that the UK Government extend protection from age discrimination to people regardless of their age in relation to the provision of goods, facilities and services, except where discrimination on the grounds of age can be justified.
325. We **agree** with the conclusions of the Joint Committee on Human Rights and **support** its recommendation that the age discrimination legislation applies to children and young people.
326. We are of the view that the coverage of children and young people in the proposed legislation **is unlikely to have the unintended**

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<sup>82</sup> *ibid*

<sup>83</sup> *Joint Committee on Human Rights, Committee’s 25<sup>th</sup> Report of session 2008/09*  
<http://www.publications.parliament.uk/pa/jt200809/jtselect/jtrights/157/157.pdf>

**consequence of diluting existing protections against children and young people.**

327. It is important to stress that the prohibition on age discrimination is not a blanket ban as there will be a range of exceptions. The legislation will therefore not have the unintended consequence of removing age based services as they would still be permissible under the positive action exemption or have the potential to be objectively justified.
328. We are of the view that the UK Government has **not identified a legally compelling basis** for excluding children and young people from the prohibition on age discrimination in the provision of goods and services.
329. Further, whilst we recognise that a large number of services provided for children and young people are organised on the basis of age, including some services that target young people, equally there are a wide range of services that target adults of different ages, including services specifically for older people.
330. This has not prevented the UK Government protecting adults from unlawful discrimination on the grounds of age under the legislation in Great Britain, even though there is the potential for a service provider in such circumstances to have to justify the age limits set (i.e. only available to older people), as well as the general principle of age-related provision.
331. We recognise that children and young people are not a homogenous group and that the needs of a young child differ from that of a teenager. However, adults are not a homogenous group either and the needs of an 18 year old are very different from that of a 75 year old. The prohibition on age discrimination in the provision of goods and services for all ages will not stop age-appropriate rules or practices.
332. In addition, we are not aware of evidence that requiring service providers to treat all consumers equally, subject to relevant legislative exceptions and defences, results in a total withdrawal of service.

333. As regards the **risk of litigation** against service providers, drawing on its own experience of dealing with discrimination complaints and the experience of other countries that have implemented similar legislation, in particular, Australia, Canada and Belgium, we are of the view that the coverage of children and young people is **unlikely to result in excessive litigation**.
334. In particular, the introduction of age discrimination legislation outside the workplace which covers children and young people has **not resulted in excessive litigation** in Australia. In fact a recent review of the Age Discrimination Act 2004<sup>84</sup> reveals a relatively low number of overall complaints in the area of goods, facilities and services.<sup>85</sup>
335. In addition, where children are already covered under equality legislation in relation to the provision of goods and services in Northern Ireland, for example, in relation to sex, sexual orientation, race and disability, the Equality Commission has received a **very low number of complaints from children** claiming unlawful discrimination.
336. The vast majority of enquiries which the Equality Commission receives and cases which it funds regarding the provision of goods and services, **relate to the treatment of adults**, with most enquiries being in the area of disability.<sup>86</sup>

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<sup>84</sup> *The Road So Far - The Age Discrimination Act 2004*, Australian Human Rights Commission, December 2011,

[http://www.humanrights.gov.au/sites/default/files/document/publication/ADA\\_road\\_2011.pdf](http://www.humanrights.gov.au/sites/default/files/document/publication/ADA_road_2011.pdf)

<sup>85</sup> The report has highlighted that the Australian Human Rights Commission received approximately 129 age discrimination complaints per year. It received an average of approximately 20.7% of complaints between 2004/5 and 2009/10 on age discrimination in goods and services. The report also highlighted the majority of complaints about age discrimination are in the area of employment and are on the basis of being "too old". There have only been a small number of complaints in other areas such as accommodation, education, and advertisements.

<sup>86</sup> For example, between 01.04.12 - 31.03.13, the Equality Commission received 408 enquiries relating to discrimination on the grounds of goods, facilities and services. This was approximately 12% of all enquiries and most of the enquiries on goods and services related to disability (48%; namely 201 enquiries).

## Debate in NI Assembly

### *Exceptions*

- 337. Concerns were also raised as part of the recent debate in the Northern Ireland Assembly that including children and young people within the scope of the legislation would require numerous exceptions which would make it unworkable.
- 338. Discrimination legislation often contains exceptions and this has not rendered the legislation unworkable. It is of note that the age discrimination legislation in Great Britain contains a raft of exceptions relating to the treatment of adults.
- 339. In addition, as noted below, the legal system of other countries, specifically Australia, Canada and Belgium have shown that children and young people can be protected against age discrimination and suitable exceptions formulated without encountering drafting difficulties or creating any undesirable or unintended consequences.
- 340. Provided exceptions are clearly and carefully drafted, we do not envisage that the inclusion of a range of exceptions will either weaken the legislation or make it unworkable.

### *Actions against parents/parental consent*

- 341. Concerns were also raised as part of the Assembly debate that the legislation would mean that parents may become the subject of litigation by their children and that the requirement for parental consent would be undermined.
- 342. It is important to stress that if children and young people are protected by the legislation, action can only be taken against **service providers** and this would mean that parents, acting in a personal and private capacity, could not be subject to litigation by their children.
- 343. In addition, we are of the view that the legislation will not undermine the requirement for parental consent as regards accessing certain services; for example, medical care. The requirement to have

parental consent is likely to be justifiable. Accordingly a school nurse would not be stopped from seeking parental consent before administering a vaccination.

### ***Age verification***

- 344. Concerns were raised as part of the Assembly debate that service providers would be subject to litigation if they refused to sell goods which could only be sold to adults.
- 345. It is important to note that the legislation will not mean that service providers will be liable if they refuse to sell goods to a child because those items can be legally only be sold to those over 18. As noted above, it is recommended that the legislation contains an **exception** that will allow service providers to verify the age of children and young people and to refuse them the goods where they can legally only be sold to adults, such as alcohol or cigarettes.

### ***Concessions for children***

- 346. Concerns were raised as part of the Assembly debate that certain concessions for children, in particular, that holiday providers would not be allowed to offer 'children-go-free' holidays, would be unlawful if children and young people were protected under the legislation.
- 347. As highlighted above, we recommend that the legislation permits age based concessions, such as discounts or offers open only to people of a particular age group, **where justifiable**; for example, free or cheaper access for young people to local leisure facilities or public transport, discounts for children and young people by retailers or private clubs, etc.
- 348. We are of the view that concessions for children and young people, as well as older people, which have clear social policy objectives, for example, to alleviate financial disadvantage, should be allowed, as they are justifiable.



349. We consider that concessions for children, including ‘children-go-free’ holidays, are likely to be lawful.
350. In addition, free or reduced entrance fees for children and young people or older people at leisure centres would be consistent with the policy objectives of promoting healthy lifestyles or social inclusion.
351. As noted above, in the interests of clarity and in light of the fact that many children, young people and older people face financial disadvantage, we believe there is merit in adopting a similar approach to that adopted in Canada; namely that the legislation makes it clear that **concessions aimed at children, young people and older people are not discriminatory**.

### ***Impact on other ages***

352. Finally, we are of the view that the legislation will **not** have any unintended negative consequences for the protection of **other ages** (for example, older people) under the legislation. In contrast, by ensuring protection for children and young people under the legislation, it may **enhance** protection for adults in comparable situations. For example, it may be open for an adult to bring a claim of unlawful age discrimination where a child or young person in a comparable situation is, without justification, and provided an exception does not apply, treated more favourably.

## Chapter 4- Conclusions

353. In conclusion, it is clear that there is a **robust case** for strengthening the rights of children and young people against unlawful discrimination and harassment on the grounds of age in the provision of goods and services.
354. It is also clear that legislation prohibiting age discrimination outside the workplace, if introduced, will have a **significant impact** on addressing key inequalities which people of **all** ages, including older people and children and young people, face when accessing goods and services provided by the public, private and voluntary/community sectors.
355. Both the Equality Commission and NICCY are committed to ensuring that robust age discrimination legislation that strengthens and enhances the rights of people of all ages to access services without discrimination is introduced in Northern Ireland.
356. We have taken, and will continue to take, proactive steps to raise awareness of our recommendations for reform of this important age equality legislation outside the workplace; including our recommendation that children and young people should have protection against unlawful discrimination and harassment on the grounds of age when accessing goods and services.
357. We will continue to proactively engage on this issue with a wide range of stakeholders, including MLAs, Assembly Committees, representatives from the children and young people sector, as well as directly with children and young people themselves.
358. We call on the NI Executive to progress as a **matter of urgency** the introduction of robust legislation that protects people of all ages from age discrimination outside the workplace.

**Equality Commission and Northern Ireland Commissioner for Children and Young People**

**June 2013**

# Appendix 1

We have set out below a short outline of the age discrimination legislation in the provision of goods and services as it applies in **Australia, Canada and Belgium**.

- **Australia**

Children and young people have been protected from age discrimination in the provision of goods and services at a federal level in Australia since 2004 by virtue of the **Age Discrimination Act 2004**. This Act covers not only access to goods, facilities and services but also education, accommodation, access to premises and the administration of Commonwealth laws and programmes.

The Age Discrimination Act 2004 contains a wide range of exceptions which apply to all ages relating to discrimination on the grounds of age outside employment. There are, for example, exceptions which relate to education, provision of accommodation where the service provider is also a resident, wills or gifts, positive discrimination, charities, religious bodies, voluntary bodies, certain financial services, acts done in compliance with other laws including tax laws, pensions and certain social security benefits, schemes designed to decrease unemployment, certain health programmes such as mass vaccination, provision of health goods and services, the administration of certain health legislation, migration and citizenship.

The Age Discrimination Act 2004 also contains a process by which individuals and organisations can seek ‘temporary exemptions’ by applying to the Australian Human Rights Commission. A number of temporary exemptions have been granted by the Australian Human Rights Commission.

A recent review of the Age Discrimination Act 2004<sup>87</sup> reveals a relatively low number of overall complaints in the area of goods, facilities and services.<sup>88</sup>

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<sup>87</sup> *The Road So Far - The Age Discrimination Act 2004*, Australian Human Rights Commission, December 2011, [http://www.humanrights.gov.au/sites/default/files/document/publication/ADA\\_road\\_2011.pdf](http://www.humanrights.gov.au/sites/default/files/document/publication/ADA_road_2011.pdf)

<sup>88</sup> See footnote 80

- **Canada**

Equality provisions in Canadian law operate on a federal and provincial level in each of the nine provinces. Federal jurisdiction covers area including criminal law, immigration, trade and defence, whilst provincial jurisdiction extends to areas such as education, healthcare and property law.

Age discrimination against children and young people when accessing goods and services is prohibited under the **Canadian Charter of Rights and Freedoms** (CCRF) which forms part of the Canadian Constitution. It operates on a federal level and is the constitutional bedrock of other Canadian equality legislation.

The CCRF contains an **equality clause** that prohibits discrimination on a range of equality grounds including age. There is no limitation on 'age' as a prohibited ground of discrimination within this clause and subsequent case law has confirmed that age discrimination cases can be brought under the CCRF by children and young people.

CCRF permits positive action; i.e. laws, programmes or activities which aim to address a disadvantage on the grounds of age or other equality grounds. In addition, federal or provincial government may impose limits on the rights guaranteed under the equality clause of the CCRF provided those limits are "reasonable" and "can be demonstrably justified in a free and democratic society".

In addition, the **Canadian Human Rights Act 1978**, which also operates at a federal level, prohibits discrimination on a range of equality grounds when accessing **goods and services** and **accommodation**. The prohibited grounds include 'age' and there is **no limitation** within the Canadian Human Rights Act 1978 on the definition of 'age'.

The legislation makes it clear that it is not unlawful to discriminate on the grounds of age or other equality grounds if there is a *bona fide* justification for the discrimination. The Canadian Human Rights Act 1978 also allows organisations to treat people more favourably because of their age where there is a need for positive action.

The **Canadian Human Rights Commission** is empowered to issue guidelines setting out exceptions to the principle of equal treatment because of age. These guidelines make it clear that discounts for **younger and older age groups** are not discriminatory.

It will be noted that the Ontario Human Rights Code (OHRC), which sets out the equal treatment provisions applicable in Ontario, limited protection against age discrimination to adults. This anomaly with federal law was challenged and the Human Rights Tribunal of Ontario concluded that the relevant provision of the OHRC was invalid.<sup>89</sup>

The 2012 annual report of the **Canadian Human Rights Commission** indicates that they received 146 complaints relating to **age** discrimination of which 130 were accepted by it. This represented **7%** of total complaints. It does not indicate which of these age complaints related to goods and services or the age profile of the individuals making the age discrimination complaint. Other statistics reveal that, in general, the vast majority of complaints relate to areas **other than goods and services**.<sup>90</sup>

- **Belgium**

Federal law in Belgium prohibits age discrimination in the provision of goods, facilities and services and **all ages** are protected.

Both direct and indirect discrimination on the grounds of age can be objectively justified. In addition there are no exceptions to the prohibition on age discrimination in the provision of goods, facilities and services other than a positive action exemption and a provision making it clear that the ban does not preclude any legislation permitting differential treatment because of age.

There is a mechanism within the legislation whereby the relevant competent body can be asked to identify whether certain measures would fall within the positive action exception. The identity of the competent body is determined by the subject matter of the measure.

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<sup>89</sup> See *Arzem v Ontatio (Community and Social Services)* 2006 HRTO 17,

<sup>90</sup> Goods and services complaints comprise 15% of all complaints  
[http://www.chrc-ccdp.ca/sites/default/files/chrc-annual-report-2012\\_0.pdf](http://www.chrc-ccdp.ca/sites/default/files/chrc-annual-report-2012_0.pdf)

As regards age discrimination complaints, in 2009 the Centre for Equal Opportunities and Opposition to Racism opened 86 new files concerning alleged cases of age discrimination. Only 3% of these related to complainants who were under 18.