



COUNCIL EXECUTIVE

CONSULTATION ON EXEMPTIONS TO AGE DISCRIMINATION REGULATIONS 2012

HEAD OF CORPORATE SERVICES

A. PURPOSE OF REPORT

To present to Council Executive the draft corporate response to the consultation.

B. RECOMMENDATION

For Council Executive to approve submission of the specific query related to education policy to the national consultation.

C. SUMMARY OF IMPLICATIONS

I Council Values	Promoting equality of opportunity.
II Policy and Legal (including Strategic Environmental Assessment, Equality Issues, Health or Risk Assessment)	Equality Act 2010.
III Resources - (Financial, Staffing and Property)	None.
IV Consultations	Corporate Working Group on Equality Service Representatives. As a result of consultation closure on 25 May, response considered by Partnership and Resources PDSP 13 May 2011.

D. TERMS OF REPORT

Context

The UK Coalition Government has published a consultation related to the ban on age discrimination in service provision. The consultation on banning age discrimination in services, public functions and associations sets out those areas where the Government believes that different treatment of people of various ages is justified; and proposes how the legislation will be drafted to take account of these.

The age regulations are part of the Equality Act 2010 implemented 1 October 2010. The ban on age discrimination in the provision of services is due to come into force April 2012.

The consultation sets out the exceptions which have been prepared for the following areas:

- Age-based concessions. This exception will allow any organisation to use age to determine eligibility for concessions or benefits, provided that the purpose of the concession is to benefit the age group to which it applies.
- Group holidays. This exception will allow specialist holiday providers to continue to provide holidays for people in particular age groups, e.g. Saga and Club 18-30 holidays.
- Immigration. When determining a person's eligibility to enter and remain in the UK, age needs to be one factor that is given consideration in some applications along with other factors such as earnings.
- Sport. This exception will allow for the continuation of age-restricted sports competitions, for example, under-21s' football competitions and tennis veterans' competitions.
- Residential park homes. This exception will allow residential park homes to continue to include age limits in their park admission rules.
- Financial services. This exception will allow the use of age in the assessment of risk, in the financial services sector to continue, provided that this is based on relevant information from a source on which it is reasonable to rely. Age-banding and age limits will also be allowed. In addition, the Government will use voluntary measures to improve access to insurance products through sign posting and to increase transparency regarding how age is used when pricing these products.

The Government proposes no specific exceptions to the ban on age discrimination for health or social care services. This means that any age-based practices by the NHS and social care would need to be objectively justified, if challenged.

West Lothian Council Position

The internal council Corporate Working Group on Equality hosted a workshop to discuss key issues for the organisation in relation to implementation of the legislation in its current draft form as well as to consider areas where further exemptions may be desirable. Given the range of exceptions outlined within the consultation, officer analysis suggests that the new legislation is likely to have a minimal impact on current policy and practice within the council.

In relation to social care policy and practice, services to older people has been identified as an area for potential impact given that the Government has decided not to provide exemptions in this area. However again it is anticipated that actual impact is likely to be minimal given that provision of existing evidence of need for specific services for older people is likely to provide the objective justification under the terms of the regulations.

The key issue of concern for the council identified by officers relates to education policy. The context and detail of this issue is outlined below.

The age equality provision for services, public functions and associations has from the outset not applied to anyone under the age of 18. In theory this provision should exempt education policy from impact of the regulations.

The introduction of the Equality Act 2010 on 1 October 2010 introduced the legal concept of discrimination by association to all equality protected characteristics, including age. This legal definition in practice means that an organisation can potentially be considered to have directly discriminated against someone as a result of a connection to someone with a "protected characteristic" (for example a connection to someone of a particular age where age is the reason for any less favourable treatment).

At present pre school services such as wrap around and out of school care include consideration of the age of the child as a determining factor on provision of service. Officers are concerned that if parents or carers can claim discrimination by association (in that they are “associated” to their children and therefore are facing discrimination based on the child’s age), that it will be made impossible for what the council at present considers to be justifiable age based decision-making to continue. We therefore recommend submission of this specific issue to the national consultation process in order to ensure that it is given due attention in the final development of the regulations.

E. CONCLUSION

Council Executive is asked to approve submission of the specific query related to education policy to the national consultation.

F. BACKGROUND REFERENCES

UK Coalition Government Equality Office Age Exceptions Consultation:
http://www.equalities.gov.uk/equality_act_2010/age_consultation_2011.aspx

Appendices/Attachments: None.

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