

# Technical Guidance on Age Discrimination in Services, Public Functions and Associations

# Technical Guidance on Age Discrimination in Services, Public Functions and Associations

This technical guidance on age discrimination is designed to be read alongside the Equality Act 2010 Statutory Code of Practice on Services, Public Functions and Associations. It is based on the Equality Act 2010, as amended by the Equality Act 2010 (Age Exceptions) Order 2012.

## Foreword

Most people, most of the time, do not need to worry about the legal protections they have at work or when buying products or using services. But when something goes wrong it is important we all know how we are protected. The Equality Act 2010 protects people from discrimination, harassment and victimisation in a range of situations. It replaced previous anti-discrimination laws with a single Act and included important new protection against age discrimination in services, public functions and associations. These provisions came into force in October 2012.

The Equality and Human Rights Commission has powers to enforce the Equality Act 2010, including by assisting or intervening in individual discrimination cases. However, our first priority is to provide information, support and encouragement so that those with responsibilities under the law can get it right first time.

This is why we have published a range of Codes of Practice and guidance that give individuals, businesses, employers and public authorities the information they need to understand the Equality Act 2010, exercise their rights and meet their obligations.

In 2014, following the new ban on age discrimination, we consulted on a draft Age Supplement to our Code of Practice on Services, Public Functions and Associations — a comprehensive and technical guide to the law which must be taken into account by courts and tribunals when relevant to a case they are considering. We received valuable responses from businesses, voluntary groups, government departments and other public bodies. Their contributions enriched and improved the text immeasurably, and we are grateful for their help.

After the consultation, we submitted the draft Age Supplement to the Government in June 2014 so that it could be approved and laid before Parliament to come into force as a Code of Practice. The Government has not yet reached a decision whether to approve it. We have therefore decided to publish the text as this technical guidance.

The technical guidance illustrates the impact of different provisions, drawing on case law and precedent where relevant. We hope it will be valuable and helpful to businesses, public authorities, courts, tribunals, lawyers and advocates – to everyone who needs to understand the ban on age discrimination or to apply it in practice.

Rebecca Hilsenrath, Chief Executive

# Table of contents

<b>Foreword</b> .....	<b>2</b>
<b>1. Introduction</b> .....	<b>6</b>
Status .....	6
Scope .....	6
How to use the technical guidance .....	7
Examples .....	7
References .....	7
Changes to the law .....	8
Use of the terms 'service provider' and 'service user' .....	9
<b>2. The protected characteristic of age</b> .....	<b>9</b>
What is the protected characteristic of age? .....	9
Who is protected under the ban on age discrimination and harassment related to age? .....	10
Who is liable for age discrimination in services, public functions and associations? .....	11
Relationships between age and other protected characteristics .....	12
Disability .....	12
Other protected characteristics .....	13
<b>3. Direct discrimination</b> .....	<b>14</b>
Introduction .....	14
What the Act says.....	14
Justifiable less favourable treatment because of age .....	14
Less favourable treatment .....	15
Discrimination by association.....	17
Discrimination by perception.....	17
Comparators .....	18
Justification of less favourable treatment because of age .....	18
Legitimate aim .....	19
What is proportionate?.....	22
Public sector equality duty and justification of less favourable treatment because of age. ....	23
<b>4. Indirect discrimination</b> .....	<b>24</b>
Introduction .....	24
What does the Act say? .....	24

There is a neutral provision, criterion or practice .....	24
One age group is put at a particular disadvantage .....	25
The service user must be put at the same disadvantage.....	26
The provision, criterion or practice cannot be objectively justified .....	27
What is a legitimate aim?.....	27
What is proportionate?.....	27
<b>5. Harassment, victimisation and other unlawful acts .....</b>	<b>28</b>
Harassment .....	28
Victimisation.....	29
Unlawful instructions and aiding contraventions of the Act .....	29
<b>6. Positive action .....</b>	<b>30</b>
Voluntary nature of positive action.....	31
Positive action and objectively justified less favourable treatment.....	31
Positive action and the public sector equality duty.....	32
<b>7. Services and public functions .....</b>	<b>33</b>
What is unlawful discrimination in relation to services? .....	33
What is unlawful discrimination in relation to the exercise of public functions? .....	35
Interaction with the public sector equality duty.....	35
Services provided by schools and other educational institutions .....	36
Services for employees .....	36
<b>8. Associations .....</b>	<b>37</b>
Prohibited conduct by an association .....	38
Direct age discrimination by an association.....	38
Restricting membership to people of a particular age group.....	39
Positive action by associations .....	40
Age exceptions for associations – concessions.....	40
What is a concession by an association? .....	41
Membership and renewal of membership.....	41
Members’ access to a benefit, facility or service.....	42
Invitations as guests .....	42
Guests’ access to a benefit, facility or service .....	43
<b>9. Application of general exceptions to the protected characteristic of age...44</b>	
Statutory authority.....	44
National security .....	44
Charities .....	45
Care within the family .....	45
Television, radio and online broadcasting and distribution .....	45

<b>10. Age specific exception: concessionary services</b> .....	<b>46</b>
What is a concession? .....	46
Limits of the exception .....	48
<b>11. Age specific exception: financial services</b> .....	<b>49</b>
Definition of a financial service .....	49
Scope .....	50
Assessment of risk.....	50
Travel and motor insurance .....	52
Financial services arranged by an employer .....	53
Situations falling outside of this exception .....	53
<b>12. Other age specific exceptions</b> .....	<b>54</b>
Age specific exception: package holidays .....	54
Scope .....	54
Definition of a ‘relevant holiday service’ .....	55
Written notice.....	55
Exclusivity.....	56
Bringing together people within the same age group.....	56
Composition of the holiday .....	57
Single price .....	57
Holidays falling outside of this exception .....	57
Age specific exception: age restricted services .....	58
Nature of age verification.....	58
Identification and licensed premises .....	59
Identification in other cases .....	59
Activities falling outside this exception.....	60
Age specific exception: residential mobile homes.....	60
When does the exception apply?.....	60
Age specific exception: sport and competitive activities .....	63
Definition of an ‘age banded activity’ .....	63
Age specific exception: immigration.....	64
<b>13. Enforcement</b> .....	<b>65</b>
Civil courts .....	65
Time limits .....	65
Burden of proof.....	66

# 1 Introduction

---

## Status

- 1.1** The Commission has prepared and issued this technical guidance on the basis of its powers under the Equality Act 2006. This technical guidance does not impose legal obligations. Nor is it an authoritative statement of the law; only the courts and tribunal can provide such an authority. However, it may be used in evidence in legal proceedings brought under the Equality Act 2010.

---

## Scope

- 1.2** This technical guidance covers age discrimination provisions relating to services and public functions as set out in Part 3 of the Equality Act 2010 and relating to associations as set out in Part 7.
- 1.3** These provisions were brought into force by the Equality Act 2010 (Commencement No. 9) Order 2012 on 1 October 2012. The exceptions to the prohibition on age discrimination are set out in the Equality Act 2010 (Age Exceptions) Order 2012 (SI 2012 No. 2466) which also came into force on 1 October 2012.
- 1.4** This technical guidance applies to England, Scotland and Wales. However, services provided or public functions exercised outside Great Britain may be covered by the Act.
-

## **How to use the technical guidance**

- 1.5** This technical guidance should be read alongside the Code of Practice on Services, Public Functions and Associations. Where there is an explanation of legal terms or concepts common to all protected characteristics, a summary with a reference to the Code has been included here. Any such summary is not intended to alter the meaning of the Code. For a full explanation please refer to the Code.
- 

## **Examples**

- 1.6** Examples of how the provisions are likely to work in a variety of situations are shown in shaded boxes. They are intended simply to illustrate the principles and concepts used in the legislation and should be read in that light. The examples use a variety of contexts relating to services, public functions and associations, in order to demonstrate the breadth and scope of the provisions.
- 

## **References**

- 1.7** ‘The Act’ means the Equality Act 2010. References to particular sections of and Schedules to the Act are shown in the margins, abbreviated as ‘s.’ and ‘Sch.’ respectively. References to ‘the Code’ are to the Code of Practice on Services, Public Functions and Associations. Occasionally there are references in the margins to the Explanatory Notes to the Act, to the Code of Practice on Employment (abbreviated as ‘Emp. code’) and to other legislation or regulations where relevant. The Commission’s Technical Guidance on the Public Sector Equality Duty is also referenced (abbreviated as ‘Technical Guidance’).
-

## **Changes to the law**

- 1.8** Readers of this technical guidance will need to keep up to date with any developments that affect the Act's provisions and should also be aware of the other codes issued by the Commission. Further information can be obtained from the Commission. See p.68 for contact details.

---

## **All Use of the terms 'service provider' and 'service user'**

In Chapters 3, 4, 5, 6 and 13 of the technical guidance, the term 'service provider' is generally used to refer to all legal persons with responsibilities under Part 3 (services and public functions) and Part 7 (associations) of the Act. Similarly, 'service user' may refer to all those with rights under Part 3 and Part 7.

## 2 The protected characteristic of age

<b>What is the protected characteristic of age?</b>		s.5
<b>2.1</b>	Age is defined in the Act by reference to a person’s age group. An age group includes people of the same age or people within a particular range of ages.	Emp. code 2.3–2.7
<b>2.2</b>	When the Act refers to people who share the protected characteristic of age, it means that they are in the same age group.	Explanatory Notes para. 36–37
<b>2.3</b>	Age groups can be wide (for example, ‘people under 50’ and ‘people aged 50 and above’). An age group can also be quite narrow (for example, ‘people aged 50’, ‘people in their mid-40s’; ‘people born in 1952’). An age group may also be relative (for example, ‘younger than A’ or ‘older than the other club members’).	
<b>2.4</b>	The meaning of certain age-related terms such as ‘youthful’ may differ according to the context – for example, a ‘young athlete’ as compared to a ‘young pensioner’. Age groups can also be linked to actual or assumed physical appearance, which may have little relationship to chronological age – for example, ‘grey-haired’ or ‘balding’.	
<b>2.5</b>	There is some flexibility in the definition of a person’s age group, and everyone can be described as belonging to a number of different age groups. Which age group is relevant in terms of a person sharing the protected characteristic of age will depend on the context.	

### Examples:

- A woman aged 25 could be seen as sharing the protected characteristic of age with people in a number of different age groups, including ‘25 year olds’; ‘the under 30s’; ‘the over 20s’; and ‘young adults’.
- A man of 86 could be said to share the protected characteristic of age with people in the following age

groups: '86 year olds'; 'over 80s'; 'over 65s'; 'pensioners'; 'senior citizens'; 'older people'; 'the elderly'; and 'people in later life'.

- 2.6** An age group may be identified by external factors which by their nature apply only to persons of a particular age group – for example, 'people born after the Second World War' will mean any person born after 1945 or 'people entitled to free TV licences' will mean anyone aged 75 or above.
- 2.7** Where it is necessary to compare the situation of a person belonging to a particular age group with others, the Act does not specify the age group with which a comparison should be made. It could be everyone outside the person's age group but, in many cases, the choice of comparator age group will be more specific. This will often be led by the context and circumstances.

**Example:** The man of 86 might, depending on the circumstances, compare himself to 'those 85 and under', the 'under 86s', the 'under 80s', non-pensioners, or younger people.

- 2.8** More detail on how to identify a comparator in cases of direct discrimination is set out in the Code and in Chapter 3 below.

---

### **Who is protected under the ban on age discrimination and harassment related to age?**

- 2.9** In relation to services and in the exercise of public functions, the ban on age discrimination and harassment related to age only protects people who are aged 18 or above. In relation to the treatment by associations of current or potential members, associates and guests, the ban protects all age groups including those under the age of 18. Where an association is providing a service to members of the public, under 18s are not protected by the ban.
-

## **Who is liable for age discrimination in services, public functions and associations?**

- 2.10** As with prohibited conduct relating to other protected characteristics, providers of services, persons exercising public functions and associations are liable for age discrimination, age-related harassment and victimisation.
- 2.11** Unless they have taken all reasonable steps to prevent discrimination, a service provider will be legally responsible for age discrimination by their employees in the course of their employment, and a principal will be liable for age discrimination by their agents while acting under the principal's authority. This is explained more fully in Chapter 3 of the Code.
- 2.12** As the Code explains, in most cases individual employees may be held to be personally liable for their acts of discrimination, whether or not the service provider has a defence against liability. An employee may have a defence if they can reasonably show they relied on a statement by the service provider that doing such an act would not be discrimination. Agents may be held personally liable for their (or their employees') acts of age discrimination, whether or not the principal condoned their acts, unless they can also show a similar defence.
- 2.13** The Act permits age discrimination in specified circumstances, as discussed in Chapters 9 to 12 below. If an exception applies to something done by a service provider, a person exercising a public function or an association, it will also apply to their employees and agents.

**Example:** A café gives a concession to those customers aged 60 and above, so they can enjoy a cream tea at one-third the usual price every month. This concession is permitted by an exception under the Act. The monthly teas become so popular that the café employs additional agency staff. The agency and its employees acting under the authority of the café are also covered by the exception for concessionary services.

## **Relationships between age and other protected characteristics**

- 2.14** Where the Act allows exceptions to be made for people in a particular age group, such exceptions would apply to all people within that age group regardless of their sex, ethnicity, any disability they may have, religion or belief, sexual orientation, gender identity or pregnancy or maternity. Age-specific exceptions only permit differential treatment in relation to age; service providers, persons exercising public functions and associations must ensure that they do not discriminate because of any of the other protected characteristics.

---

## **Disability**

- 2.15** A significant proportion of people in older age groups may be disabled – that is, they have a physical or mental impairment, which has a substantial and long-term adverse effect on their ability to carry out normal day-to-day activities. Please see Chapter 7 of the Code for more detailed guidance on how disability is defined by the Act.
- 2.16** A service provider may be able to justify less favourable treatment because of age (see Chapter 3 below), but the Act does not allow less favourable treatment because of disability to be justified.
- 2.17** A service provider must make reasonable adjustments for disabled people, but does not have an equivalent duty towards people simply because they are in a particular age group. Older people may, however, benefit from a reasonable adjustment made for disabled people – for example, ramp access to a shop or information printed in large-sized font. Chapter 7 of the Code gives more information about reasonable adjustments.
-

## **Other protected characteristics**

- 2.18** A person's age combined with another protected characteristic may give rise to stereotypes resulting in particular types of treatment. For example, younger women may be more likely to be subjected to harassment than older women or men.
- 2.19** Where a person considers that they have been discriminated against or harassed because of age and another protected characteristic, they would need to specify the details of each allegation of discrimination or harassment separately in the claim.

## 3 Direct discrimination

---

### Introduction

- 3.1** This chapter discusses direct age discrimination in the context of services, public functions and associations. It summarises the meaning of direct discrimination and should be read with Chapter 4 of the Code. The summary is not intended to alter the meaning of the Code. s.13 (1)  
Code 4.3
- 

### What the Act says

- 3.2** Direct discrimination occurs where a service provider treats a person less favourably than they treat or would treat others because of age, and the service provider cannot show objective justification for it. In this technical guidance, the term ‘direct age discrimination’ is used to refer to unjustified less favourable treatment because of age. Emp. code  
3.2–3.3
- 

### Justifiable less favourable treatment because of age

- 3.3** Compared with other protected characteristics, a different approach applies to age, because some age-based rules and practices are seen as justifiable. Less favourable treatment of a person because of age is not direct discrimination if the service provider can show that the treatment is ‘a proportionate means of achieving a legitimate aim’. s.13 (2)  
Emp. code  
3.36
-

---

## Less favourable treatment

- 3.4** The term ‘treatment’ includes one-off actions or omissions. It also includes rules and practices and their application in a particular case.

**Example:** A bartender refuses to admit a man aged 65 saying, ‘Sorry, you are too old’. This is a one-off act, and is less favourable treatment of the man because of his age. However, if the bar never admits anyone who is, or appears to be, over 60, this would be an age-based rule or practice. By applying the rule to the man, it would still amount to less favourable treatment because of age.

- 3.5** To decide whether a service provider has treated a service user ‘less favourably’, a comparison must be made with how they have treated other service users or would have treated them in similar circumstances.

Code  
4.5–4.6

- 3.6** Under the Act, it is not possible for the service provider to balance or eliminate less favourable treatment by offsetting it against more favourable treatment – for example, by offering an alternative service at a discount.

Code 4.7

**Example:** An orthopaedic surgeon decides that it will be inappropriate to give a hip replacement operation to a particular patient who is over 85, simply because of her age. The surgeon would be prepared to operate on a younger patient. The less favourable treatment is not eliminated by the surgeon recommending to the patient that she seek a referral to a different hospital. Unless the doctor can objectively justify the decision to refuse the operation, it would be direct discrimination because of age.

- 3.7** Treatment can be ‘because of age’ if the characteristic of age is a cause of the less favourable treatment, but it does not need to be the only or even the main cause.

Code 4.12

- 3.8** In some cases the link between age and the treatment will not be clear and it will be necessary to look at why the service provider treated the service user less favourably to determine whether this was because of age.

**Example:** A man of 50 wearing jeans tries to enter a club that generally attracts a much younger clientele. The person on the door turns the man away stating that he does not meet the club's dress code. It later emerges that on the same evening a 25-year-old man in jeans was allowed in by the same person. This is evidence that the reason why the 50 year old was excluded was not primarily because of his dress but because of his age.

- 3.9** Direct age discrimination also includes unjustified less favourable treatment of a person based on a stereotype relating to age, whether or not the stereotype is accurate.

Code 4.16

**Example:** The organiser of a cycling race assumes that no one over the age of 55 will be able to complete it within the maximum allowed time and, without doing any research, excludes those over 55 from the race. The race organiser uses a stereotype based on assumptions about this age group's physical capability, without having any evidence. The organiser's treatment of service users over 55 will be unlawful unless it can be objectively justified.

For a fuller discussion of less favourable treatment, please see Chapter 4 of the Code.

---

### Discrimination by association

- 3.10** If a service provider treats a service user less favourably because they associate the service user with someone who belongs to a particular age group, the treatment is likely to be unlawful unless the service provider can justify it. So the service user who experiences less favourable treatment does not need to belong to this age group themselves. Code  
4.18–4.19

**Example:** To avoid under-age drinking, a club owner has a door policy of refusing entry to individuals under 21. If a 25-year-old woman is refused entry because she is part of a group that consists mainly of under 21s, she is being treated less favourably because of age, owing to her association with the under 21s.

---

### Discrimination by perception

- 3.11** If a service provider treats a service user less favourably because they mistakenly think that the service user is a particular age or belongs to a particular age group, the treatment is likely to be unlawful unless the service provider can justify it. Code 4.20

**Example:** In the previous example, it is likely to be direct age discrimination if the club that bans under 25s refuses to admit a man aged 30 because from his appearance they (wrongly) assume he is under 25.

---

## Comparators

- |             |   |  |
|-------------|---|--|
| <b>3.12</b> | In most circumstances, direct age discrimination requires a comparator. The concept of comparators is covered in paragraphs 4.21 to 4.28 in the Code.   | s.13 (1)<br>Code<br>4.21–4.28          |
| <b>3.13</b> | In summary, the service user has to show that they have been treated less favourably than the way the service provider treats, has treated or would treat another service user to whom the age characteristic does not apply. This other person is referred to as a ‘comparator’. Another way of looking at this is to ask, ‘But for the protected characteristic of age, would the service user have been treated in that way?’. | s.23 (1)<br>Code 4.22<br><br>Code 4.28 |

**Example:** An 18-year-old woman enrolls on a business course with an independent provider. She is at least 10 years younger than most of the other students. She arrives 10 minutes late for the first three classes. The college manager tells her that her late arrival disrupts the concentration of the other students, and that if she arrives late again she will have to leave the course. However, an older woman has arrived late on several occasions and was not given a similar warning. If the younger woman thinks that this less favourable treatment is because of her age, she would be able to refer to the older student as an appropriate comparator.

- 
- |  |  |                        |
|--|--|------------------------|
| <b>Justification of less favourable treatment because of age</b> |  | s.13 (2)               |
| <b>3.14</b>  | The protected characteristic of age is unique in that less favourable treatment because of age is not unlawful if the treatment can be objectively justified.  |                        |
| <b>3.15</b>  | Whether less favourable treatment, because of age, including an age-based rule or practice, is ‘objectively justified’ depends on whether it is a proportionate means of achieving a legitimate aim. This question should be approached in two stages: | Emp. code<br>3.36–3.41 |
| <b>3.16</b>  | <ul style="list-style-type: none"> <li>• First, is the aim of the rule or practice legal and non-discriminatory, and one that represents a real, objective</li> </ul>  |                        |

consideration ('legitimate aim')?

- 3.17**
- Second, if the aim is legitimate, is the means of achieving it proportionate (that is, appropriate and reasonably necessary) in all the circumstances?

---

### **Legitimate aim**

**3.18** If the treatment is less favourable to certain age groups then it can only be justified if it has a legitimate aim. In the context of direct discrimination, legitimate aims should be outcomes that are socially positive or in the public interest. The range of aims that can justify direct age discrimination is narrower than the range of aims that can justify indirect discrimination. Although reasonable business needs and economic efficiency may be legitimate aims, there would normally need to be wider social factors too.

**3.19** The following are examples of aims that are likely to be legitimate:

- Enabling people of particular age group(s) to socialise together (for example: outings, events, concerts).
- Enabling people of particular age groups to enjoy activities together (for example: hiking, sports).
- Enabling people of certain age groups to enjoy peace and quiet or enabling them to enjoy music at high volume.
- Ensuring the fair exercise of powers.
- Ensuring the health and safety of those using the provider's service, or others, provided risks are clearly specified.
- Preventing fraud or other forms of abuse or inappropriate use of services provided by the service provider.
- Ensuring the wellbeing or dignity of those using the service.
- Ensuring that services and benefits are targeted at those who most need them.

Code 5.30

#### **Examples:**

- A local rambling club sets up regular weekend walks for under 25s. The club wants to promote a healthy lifestyle for members of this age group, as well as giving them an

opportunity to socialise with people of a similar age. These aims would be legitimate.

- A local authority develops a contract specification to commission a day centre service primarily targeted at people aged 75 and over. Evidence suggests people in this age group are more likely to benefit from the centre because of social isolation and physical or mental health conditions. Ensuring that appropriate services are available for this age group would be a legitimate aim.

**3.20** A service provider solely aiming to reduce costs cannot expect to satisfy the test. For example, the service provider cannot simply argue that to discriminate is cheaper than not to discriminate.

Code 5.29

**Example:** The manager of a mobile phone shop decides that the shop will no longer deal with retired customers. This age group tends to need more support and guidance from staff when they buy phones, and the manager wants to cut back on staff numbers to reduce overheads. The aim of reducing costs alone would not be a legitimate one.

**3.21** The aim of less favourable treatment should not be based on a stereotype about age. Sometimes a service provider may have some aims that are legitimate mixed with aims that are illegitimate, such as those linked to stereotypes.

**Example:** A fairground concessionaire believes that people over 70 have memory problems. This belief leads the concessionaire to ban them from the centrifuge ride because he thinks they will not remember safety instructions. While the aim of reducing health and safety risks is legitimate, the concessionaire's belief about this age group is based on a stereotype rather than on supporting evidence. Therefore the aim of reducing safety risks for this age group cannot be a legitimate one.

**3.22** An aim will not be a legitimate one if it disregards fundamental principles of human dignity and self-determination.

**Example:** A local authority operates a rule under which anyone aged 65 and over needing home care is allocated fewer and shorter home care visits than people under 65. This age-differentiated policy is based on an assumption that older people only need basic personal care, and do not require support in maintaining relations with family and friends, or getting out of their house. The assumption does not respect the dignity and independence of older service users and would not provide a legitimate aim for the local authority's rule.

**3.23** At the time of the treatment, the service provider is not required to have in mind the aim that they put forward in justification. However, a court will give greater weight to a justification that had been carefully thought through before or at the time of the treatment in question.

It is good practice for the service provider to keep a record of their aim and justification (including any supporting evidence) at the time they adopt a rule or practice that treats certain service users less favourably than others because of age.

**Example:** Following agreement with the Department of Health and NHS England, Public Health England conducts an immunisation programme for an infectious disease. In announcing the programme, they explain that its aim is to maximise health protection in the population as a whole. This aim would be a legitimate one, as it is clearly in the public interest to control the prevalence of disease. Recording the aim will give it greater weight if the programme is challenged.

Whether this aim is achieved by proportionate means is considered below, in the second half of this example.

---

## What is proportionate?

**3.24** Even if the aim is a legitimate one, the means of achieving it must be proportionate. The greater financial cost of using a less discriminatory approach cannot by itself provide a justification for less favourable treatment because of age.

**3.25** Deciding whether the means used to achieve the legitimate aim are proportionate involves examining whether those means are appropriate and reasonably necessary for achieving that aim. This should include looking at the reasons for having any age threshold or age band at all (the ‘appropriate’ part of the proportionality test) and why a particular age threshold or age band has been applied (the ‘necessary’ part of the test). A court will evaluate the discriminatory effect of the less favourable treatment against the service provider’s reasons for applying it, taking into account all the relevant facts.

Code 5.31

### Examples:

- In the example above, Public Health England has access to research findings that indicate a slower and lower response to the vaccination against the disease in people over 50. Offering the vaccine only to those aged 50 and under is an approach supported by the evidence that the vaccine is likely to be more effective for that age group. This is likely to be a proportionate means of achieving the legitimate aim of maximising health protection for the population as a whole. A summary of this evidence is published, giving it greater weight if the age focus of the programme is challenged.
- With the aim of providing safe flying lessons, a flying club picks 59 as an upper age limit. The club will need to be able to show that the age of 59 was appropriate and necessary to achieve the legitimate aim of safety. As the aircraft used for the lessons are dual control machines and people taking lessons are accompanied by an instructor, the means adopted are unlikely to be appropriate or reasonably necessary to achieve the aim of maintaining safety.

- 3.26** The service provider will also need to show that the specific less favourable treatment is appropriate and necessary to achieve the legitimate aim, and that it brings benefits that outweigh any disadvantageous effects. It is the treatment itself that must be justified.

**Example:** A guest-house owner charges twice her normal rates for people under 21. The owner wants to deter under 21s from booking rooms, because in the past rooms have been damaged by some people of that age group. However genuine the owner’s concern about the risks posed by under 21s, the higher rates are unlikely to be a proportionate means of achieving the aim of discouraging damage to rooms. It would be less discriminatory to ask for a deposit: this approach would also be more likely to achieve the aim.

---

**Public sector equality duty and justification of less favourable treatment because of age**

- 3.27** A significant factor in determining whether a public authority is able to justify less favourable treatment because of age is the extent to which the authority has complied with the public sector equality duty. s.149
- 3.28** As explained in the Equality and Human Rights Commission’s Technical Guidance on the Public Sector Equality Duty, to comply with the duty a relevant body needs to have sufficient evidence of the impact of its policies and practices on people with different protected characteristics – including age. Having a reliable evidence base allows a body subject to the duty to consider whether there are ways of mitigating any adverse impact that the evidence identifies. Technical Guidance Para. 5.15–5.20

## 4 Indirect discrimination

---

### Introduction

- 4.1** This chapter discusses indirect age discrimination in the context of services, public functions and associations. It summarises the meaning of indirect discrimination and should be read with Chapter 5 of the Code. The summary is not intended to alter the meaning of the Code.
- 

### What does the Act say?

- 4.2** Indirect discrimination may occur when a service provider applies an apparently neutral provision, criterion or practice, which puts persons sharing the characteristic of age at a particular disadvantage. s.19  
Code 5.4
- 4.3** For indirect discrimination to take place, four requirements must be met. These are summarised below. Code 5.5  
s.19 (2)
- 

### There is a neutral provision, criterion or practice

- 4.4** First, the service provider must apply (or would apply) the provision, criterion or practice equally to everyone within the relevant group including a particular service user. Code 5.6

**Example:** A magazine gives a discount to loyal customers who have had a subscription for 20 years. This condition is a provision, criterion or practice and it is neutral because it applies to everyone, regardless of age.

- 4.5** The provision, criterion or practice is neutral if it is applied to everyone, regardless of age. A condition which expressly excludes people of a particular age or age group will not be neutral in this way and is likely to amount to direct discrimination. The less favourable treatment will need to be justified using the justification test for direct age discrimination, rather than the test for justifying indirect discrimination.

Code 5.7

**Example:** A variety theatre performance restricts admission to people who can remember what life was like during the Second World War. It claims this is a neutral requirement. The reality is that only people who were alive during the War will gain admission. This policy could amount to direct age discrimination against those too young to satisfy the requirement, unless it can be objectively justified.

---

**One age group is put at a particular disadvantage**

- 4.6** The provision, criterion or practice must put (or would put) people who share the service user’s age characteristic at a particular disadvantage when compared with people who do not have that characteristic.

**Example:** An optician allows customers to pay for their glasses by instalments but restricts eligibility to those in work. A pensioner points out that this puts pensioners, including her, at a disadvantage as they are less likely to be working. This is likely to be indirect age discrimination, unless it can be justified.

- 4.7** The link between age and the disadvantage might be obvious but sometimes statistics, evidence or expert evidence may help to show how people in an age group are put (or would be put) at a disadvantage.

Code  
5.12–5.14

**Example:** A gym imposes a fitness test involving 30 press-ups for people wanting to join. A 70-year-old man provides statistical evidence from a reputable source that people in his age group are unlikely to be able to do 30 press-ups as upper

body strength decreases with age. If the gym cannot objectively justify the requirement, it will be unlawful.

- 4.8** Once group disadvantage is established, the next stage is to make a comparison between the impact of the provision, criterion or practice on service users within the relevant age group and those outside the group. This involves establishing a ‘pool for comparison’. The way a comparison is carried out will depend on the circumstances.

s.19 (2) (b)  
s.23 (1)  
Code 5.16

**Example:** A local authority provides information about its mobile library service by distributing leaflets to day centres. These are normally used by people over 65. A 55-year-old resident complains that the method of distribution indirectly discriminates against those under the age of 65. The pool for comparison is those living in the local authority’s area who prefer to have information in a leaflet and who may be interested in using the mobile library. It is not the national population or the population of the local authority in general.

---

### **The service user must be put at the same disadvantage**

- 4.9** The provision, criterion or practice must put – or would put – the individual service user at the same disadvantage as the people who share the service user’s age group.

Code  
5.8, 5.23

**Example:** In the magazine example in paragraph 4.4, the loyalty discount is likely to disadvantage people under 40 who could not have subscribed for 20 years. They could claim that they suffer a particular disadvantage compared with those over 40. Each individual would suffer the disadvantage personally even if they have not yet requested and been refused the discount.

---

**The provision, criterion or practice cannot be objectively justified**

- 4.10** If the service provider can show that the provision, criterion or practice is objectively justified as a proportionate means of achieving a legitimate aim, then it will not amount to indirect discrimination. This objective justification test applies to indirect discrimination for all protected characteristics. If challenged in the courts, it is for the service provider to produce evidence to support their assertion that the provision, criterion or practice is justified. Code  
5.25–5.26

---

**What is a legitimate aim?**

- 4.11** The aim of the provision, criterion or practice must be legal and non-discriminatory, and one that represents a real objective consideration. The range of aims, which can justify indirect discrimination, is wider than the range of aims that can justify direct age discrimination. In particular, it is not limited to aims that are socially positive or in the public interest.
- 4.12** The concept of a legitimate aim, with examples, is explained in detail at paragraphs 5.28–5.30 of the Code. Code  
5.28–5.30

---

**What is proportionate?**

- 4.13** The means used to achieve that aim must be proportionate – that is, appropriate and necessary in all the circumstances. The approach to proportionality is explained in detail in the Code. Code  
5.31–5.35

## 5 Harassment, victimisation and other unlawful acts

---

### Harassment

- 5.1** As for other protected characteristics, harassment related to age is always unlawful and is not permitted by any of the exceptions in the Act. Harassment is explained in Chapter 8 of the Code. This summary is not intended to alter the meaning of the Code.
- 5.2** Harassment occurs when a service provider engages in unwanted conduct related to age in respect of the provision of services, which has the purpose or effect of:
- violating the service user’s dignity, or
  - creating an intimidating, hostile, degrading, humiliating or offensive environment for the service user.
- s.26, s.29 (3)  
Code Chapter 8
- 5.3** The conduct does not have to relate to the service user’s own age. It is only necessary that the conduct relates to age and that it has either the purpose or the effect set out above.
- Code  
8.8–8.14

#### Examples:

- A young carer of a group of older people is upset by ageist gestures and jokes by supermarket employees whenever he helps the group do their shopping. Even though the remarks were not directed at him, he was upset by the offensive environment that they created. This could amount to harassment related to age.
- A woman in her 50s looks older due to past illness. When she applies for membership of a local social club, the membership secretary makes comments to her such as, ‘This club isn’t suitable for pensioners’ and ‘Members wouldn’t feel comfortable with someone of your age at club events’. The woman finds these remarks deeply humiliating and they could amount to harassment related to age – even though she has been wrongly perceived as belonging to an older age group.

---

## Victimisation

- 5.4** As for other protected characteristics, victimisation for raising or supporting a complaint of age discrimination is always unlawful and is not permitted by any of the exceptions in the Act. s.27  
Victimisation is explained in Chapter 9 of the Code.
- 5.5** Victimisation occurs where a service provider subjects a person to a detriment because the person has carried out – or may carry out – a ‘protected act’. A ‘protected act’ includes bringing proceedings under the Act, giving evidence in connection with such proceedings, or making an allegation that someone has breached the Act. s.27 (1) and (2)  
Code  
9.2–9.6

**Example:** A large tennis club decided to limit its social events to members aged 21 and over. An 18-year-old tennis player complained of age discrimination and her 16-year-old brother, also a club member, supported the complaint by writing a letter to the club manager. Because of this, the manager excluded him from a tournament in which he was expecting to compete. The brother could complain of victimisation.

---

## Unlawful instructions and aiding contraventions of the Act

- 5.6** Chapter 9 of the Code explains the circumstances in which the Act makes it unlawful to instruct, induce or cause someone to discriminate against, harass or victimise another person because of a protected characteristic. These provisions now also apply to age. Chapter 9 also explains that it is unlawful to aid contraventions of the Act. s.111  
Code  
9.15–9.24  
s.112

## 6 Positive action

- 6.1** This chapter summarises the positive action provisions in the Act and should be read with Chapter 10 of the Code. The summary is not intended to alter the meaning of the Code. s.158
- 6.2** The Act contains provisions that enable service providers to take proportionate action to achieve fuller and more effective equality outcomes for members of groups – including particular age groups – that are socially or economically disadvantaged or excluded, or who otherwise face the consequences of past or present discrimination or disadvantage. These are known as ‘positive action’ provisions. Code 10.3
- 6.3** The Equality and Human Rights Commission Technical Guidance on the Public Sector Equality Duty defines an ‘equality outcome’ as the results that individuals or groups actually achieve and are able to benefit from. Technical Guidance Appendix 5
- 6.4** Chapter 10 of the Code explains the statutory conditions that must be met for positive action measures to be lawful. In summary, for the protected characteristic of age a service provider must reasonably think that a particular age group: s.158 (1)
- suffers a disadvantage connected to their age;
  - has needs that are different from those of other age groups;
  - or
  - has disproportionately low participation in an activity compared to that of other age groups.

- 6.5** If one or more of these conditions is met, under the positive action measures it is lawful for a service provider to take proportionate steps with the aim of enabling or encouraging people of the particular age group to overcome the barriers that give rise to the disadvantage or low participation, or of meeting their different needs. s.158 (2)

**Example:** A private IT college has monitoring data which indicates that prospective students over 60 are more likely to request training in basic IT skills than people outside this age group. In response to the particular needs of this age group, the college could lawfully adopt a range of positive action measures. For example, it could provide dedicated training sessions for the over 60s with more intensive support, or offer one-to-one tutorials alongside its generic training courses.

---

### **Voluntary nature of positive action**

- 6.6** Positive action is optional, not a requirement. However, by taking positive action, organisations will often derive broader benefits to their business, the quality and take-up of services or improve the effectiveness and quality of public functions; associations can strengthen their membership base and improve the benefits and services they provide to all of their members. Code 10.8

---

### **Positive action and objectively justified less favourable treatment**

- 6.7** Positive action measures are designed to achieve fairer equality outcomes for groups sharing protected characteristics that face disadvantage or exclusion. Such measures are lawful provided they are a proportionate means of meeting one or more of three aims specified by the Act: reducing disadvantage; meeting needs; or increasing participation. In contrast, as explained in Chapter 3, for less favourable treatment because of age to be lawful, the aim only has to be a legitimate one, which is achieved by proportionate means.
-

---

	<b>Positive action and the public sector equality duty</b>	s.149–150
<b>6.8</b>	Public authorities and those carrying out public functions who are subject to the public sector equality duty may wish to consider using positive action to help them to comply with the duty.	Code 10.28 s.149 (1), (3) Technical Guidance para. 3.11–3.15

## 7 Services and public functions

- 7.1** This chapter explains how the provisions of Part 3 of the Act relating to services and public functions apply to the protected characteristic of age. Exceptions to the ban on age discrimination are set out in Chapters 9 to 12.
- 7.2** As set out in the Code, Part 3 applies to a wide range of services and 11.3 of the Code provides examples of the services that are covered. Code 11.3
- 7.3** The disposal and management of premises and education are addressed by other parts of the Act (Parts 4 and 6 respectively). Protection against discrimination in relation to premises does not apply to the protected characteristic of age. For education, protection against discrimination in relation to age does not apply to schools, except when they are providing services to members of the public (Part 6, Chapter 1). Age discrimination is unlawful in relation to further and higher education (Part 6, Chapter 2) and General Qualification Bodies (Part 6, Chapter 3); however, these sectors are outside the scope of this technical guidance. Code 11.38
- 7.4** Part 3 of the Act also applies to a person exercising a public function in any sector. The term ‘public function’ may cover a wide variety of actions and 11.16 of the code gives examples of functions that are covered, such as planning and licensing.

---

### What is unlawful discrimination in relation to services?

- 7.5** The Act says that it is unlawful for a service provider to discriminate, directly or indirectly, against a person requiring (or seeking to obtain or use) a service by not providing that person with the service. s.29 (1),  
31 (6)  
Code 11.18

**7.6** Discrimination in relation to services is explained in Chapter 11 of the Code. In summary, a reference to a service provider not providing a service to a person includes:

s.31 (7)

- the service provider refusing to provide the service;
- the service provider not providing the service of the quality that is usually provided to the public;
- the service provider not providing the service in the manner or on the terms that it is usually provided to the public.

**Example:** NHS guidelines on the treatment of breast cancer suggest that surgical treatment should be made available to patients regardless of their chronological age. A hospital trust operates an unwritten policy that, based on age alone, women over 85 will only be offered chemotherapy or hormone treatment. Unless this age-based rule can be objectively justified, it amounts to direct age discrimination by the service provider.

**7.7** Discriminating against a person also includes providing a service on different terms, terminating the service, or subjecting the person to any other detriment. The term ‘detriment’ is explained in the Code.

**Example:** A young man who wants to book a restaurant table for his 21st birthday party is asked to pay a 50 per cent deposit because the restaurant owner believes that younger customers are less likely to honour the booking. This is likely to be direct age discrimination in the terms of service, unless it can be justified.

**7.8** These provisions may overlap so that, for example, rude or offensive behaviour towards a customer or potential customer of a particular age will constitute a lower standard of service or a detriment. Discrimination in the terms of service could include charging more for goods or services, or imposing extra conditions for using a facility or service.

Code  
11.20–11.22

---

**What is unlawful discrimination in relation to the exercise of public functions?**

- 7.9** The Act prohibits discrimination in the exercise of a public function. The provision is a broad one and would cover, for example, refusing to allow someone to benefit from the exercise of a function, or treating someone in a worse manner in the exercise of a function. An example could be rejecting an application for a discretionary welfare benefit because of age. Code 11.26

**Example:** A couple in their early 20s bought a market stall from the previous owners who were retiring after 50 years. The local authority street trading service begins to make unannounced visits to the stall because they believe young people are more likely to break street trading laws. These visits affect the couple's business reputation. This treatment is likely to be direct age discrimination unless it can be objectively justified.

- 7.10** Harassment and victimisation related to age are also prohibited under the services and public function provisions. Code 11.34–11.36

---

**Interaction with the public sector equality duty**

- 7.11** Public authorities and those carrying out public functions that are subject to the public sector equality duty may find it easier to show they have met the requirements of the duty if they take account of the requirements relating to the ban on age discrimination in services and public functions. Conversely, complying with the public sector equality duty will help them to meet their obligations under the services and public functions provisions relating to age discrimination. Code 11.62

For all three of the aims of the equality duty, age is a protected characteristic. In relation to services and public functions, the aim of having due regard to the need to eliminate age discrimination applies only to discrimination against people aged 18 and over.

---

---

## Services provided by schools and other educational institutions

- 7.12** Protection against age discrimination does not apply to schools when they are providing education (Chapter 1, Part 6 of the Act). However, as explained in the Code, certain activities and functions of governing bodies and proprietors of schools and institutes of further and higher education fall under the services and public functions provisions in Part 3 of the Act and so are subject to the ban on age discrimination. These could include non-educational activities, such as hiring out their facilities. Code 11.40

**Example:** A secondary school has a swimming pool, which it allows members of the public to use at weekends when pupils are not at school. When a man in his 80s wants to use the pool, the school’s lifeguard refuses to let him do so because he thinks the man will swim so slowly that he will get in the way of other pool users. This is likely to amount to direct age discrimination by the school, unless it can be objectively justified.

---

## Services for employees

- 7.13** As explained in Chapter 11 of the Code, where an employer arranges with another person to provide services to their employees, it is the person providing the service, rather than the employer, who is the ‘service provider’. Under such arrangements the employees are protected by Part 3 of the Act as ‘service users’. Examples of these services might include medical check-ups, catering facilities, retirement planning and lunchtime keep-fit classes. s.31(5)  
Code  
11.46–11.49

**Example:** An employer arranges for a contractor specialising in fitness training to provide lunchtime sessions for their employees. The contractor informs the employer that employees over 60 will not be included in this programme. Several employees over 60 complain about this. Unless it can be shown that excluding this age group is objectively justifiable, this is likely to amount to direct age discrimination by the contractor.

## 8 Associations

- |            |   |  |
|------------|---|--|
| <b>8.1</b> | Chapter 12 of the Code explains how the Act applies to associations, including what is meant by the term ‘association’ and what is unlawful under the Act in relation to members, people seeking to become members, associates, guests and people seeking to become guests of an association.   | Part 7<br>Code<br>Chapter 12           |
| <b>8.2</b> | This chapter explains how the provisions of the Act relating to associations apply to the protected characteristic of age. It also explains the age-related concessions that an association may lawfully offer to its members, potential members and guests.  |  |
| <b>8.3</b> | The Act says it is unlawful for an association with at least 25 members to discriminate against, harass or victimise its members, potential members, associates, guests and potential guests.   | Code<br>12.15,<br>12.17                |
| <b>8.4</b> | The ban on discrimination, harassment and victimisation by an association applies to people of any age. This contrasts with the ban on age discrimination by service providers and persons exercising a public function that applies only to individuals aged 18 or above.  |  |
| <b>8.5</b> | An association may restrict its members to people of a particular age group. It can also take positive action measures under the Act to benefit people of a particular age group.   | Part 7<br>Chapter 12<br>s.158          |
| <b>8.6</b> | An association can also be a provider of services to non-members, for example by opening its restaurant to the public. When acting as a service provider, an association must comply with the prohibition on age discrimination and age-related harassment under the Act in respect of any person aged 18 or above. As a service provider, an association may also be able to provide age-related services by relying on the exceptions discussed in Chapters 9–12 below. | s.28 (1) (a)<br>and s.29<br>Code 12.10 |
-

---

## Prohibited conduct by an association

- 8.7** The Code explains the circumstances in which the Act makes it unlawful for an association to discriminate against, harass or victimise a member, a person seeking to become a member, an associate, a guest or a person seeking to become a guest. Code  
12.19–12.42

---

## Direct age discrimination by an association

- 8.8** As discussed in Chapter 3, to treat a person less favourably because of age is direct discrimination unless the treatment can be objectively justified as a proportionate means of achieving a legitimate aim.

**Example:** A motorcycle club has recently introduced an upper age limit of 55 for new members. The club's experience suggests that some older members lack the stamina to manage the club's famous two-day events. A 56-year-old man who is rejected for membership, points out that the club is not planning to take away membership from its members over 55 who joined when they were younger. As this age limit is unlikely to be objectively justified it could amount to direct age discrimination.

- 8.9** Indirect age discrimination is discussed in Chapter 4 above, and in Chapter 5 of the Code.

**Example:** A social club with members spanning a wide range of ages insists that all applications for membership are submitted online, through the club's website. This places at a disadvantage many older club members, who are less likely to feel confident using the internet to make payments. This arrangement could be indirect age discrimination, unless the club is able to objectively justify it.

**8.10** Harassment related to age is summarised in Chapter 5 and explained more fully in Chapter 8 of the Code.

**Example:** A woman brings her 85-year-old mother to a large bridge club. The club’s organiser makes loud and rude remarks about the mother being forgetful and playing badly because of her age. She has impaired hearing and does not hear these remarks but her daughter does and is very upset. This is likely to be age-related harassment as the unwanted conduct is related to a particular age group – even though not to the daughter’s own age group.

**8.11** Victimisation when the protected act concerns prohibited conduct because of, or related to, age is summarised in Chapter 6 and explained more fully in Chapter 9 of the Code.

**Example:** A man who recently joined a club complains that the way the club nominated members for its committee amounted to indirect age discrimination. As a result of this complaint, his membership is terminated. Terminating his membership in these circumstances would amount to victimisation.

---

**Restricting membership to people of a particular age group**

- |             |  |  |
|-------------|--|--|
| <b>8.12</b> | As discussed in the Code, the Act permits associations, other than political parties, to restrict their membership to people who share a protected characteristic. This now includes the protected characteristic of age. So it is lawful to have a travel club for people over 50 or an association of young gardeners for people under 16.                       | Sch. 16<br>para. 1(1)<br>Code<br>12.46–12.51   |
| <b>8.13</b> | If an association restricts membership to people of a particular age group, then that association may: <ul style="list-style-type: none"> <li>• restrict the access by associates to benefits, facilities or services to associates of that age group, and</li> <li>• invite as guests or permit to be invited as guests only people of that age group.</li> </ul> | Sch. 16<br>para. 1(2)<br>Sch. 16<br>para. 1(3) |
-

---

## Positive action by associations

- 8.14** The Act permits two forms of positive action by associations: s.158
- Positive action to overcome disadvantage, low participation of people of a particular age group or to meet their different needs. This is explained in the Code and discussed above in Chapter 6.
  - Positive action by political parties.
- 8.15** The Code explains the ways in which a registered political party may make arrangements to select its candidates to achieve greater equality in the party's representation in specified elected bodies including parliament and a local authority. Such arrangements may be used to reduce inequalities related to age. s.104  
Code  
12.54–12.62

**Example:** A political party has no elected councillor under 25 on a local authority. In this situation, it could:

- adopt special procedures to identify party members under 25 who might wish to be nominated for election;
- offer training for members under 25; and/or
- reserve 15 per cent of places on its candidate shortlist for members under 25.

---

## Age exceptions for associations – concessions

- 8.16** The Act makes it lawful for an association to give age-based concessions on admission to membership, members' access to benefits, facilities or services, invitations as guests or access by guests to benefits, facilities or services. It will not be age discrimination for an association to give any one of these four types of concessions. Sch. 16  
para. 1 (2)
-

---

## What is a concession by an association?

- 8.17** In relation to associations, a concession is a way of doing something which gives a benefit to potential members, members, potential guests or guests, or places them in a more advantageous position. Compared to the way in which (or the terms on which) an association usually does something, a concession takes a more favourable approach for a particular age group, or a group defined by length of membership. Sch.16  
para. 1A (6)

**Example:** A golf club offers discounted membership fees to people over 60. Another golf club discounts its fees for people who have been members for five years or more. A third club offers a similar concession to people of any age who have been members for over 10 years. All three concessions would be lawful under the age exception for associations.

- 8.18** Please see paragraphs 10.5 to 10.7 below for a fuller explanation of a concession.

---

## Membership and renewal of membership

- 8.19** Under the Act, an association may give a concession on admission to membership or renewal of membership. Sch. 16  
para. 1A (1)

**Example:** An association normally operating a six-month waiting time between application and acceptance as a member reduces this waiting time to three months for applicants over 60. This would be lawful as a concession under the Act. But if the association decided to increase the waiting time for people under 60, this would not qualify as a concession, since a concession must involve doing something more favourably for the benefit of a particular age group.

- 8.20** Concessions on admission to membership, or renewal of membership, may be given only to:
- people of a particular age, or
  - people who have been members of the association for a specified period.

- 8.21** Such concessions could include:
- waiver of a club membership fee, for example waiving the fee for the first two months for people under 25;
  - reduced fee for membership renewals for people with long standing membership.

---

### **Members' access to a benefit, facility or service**

- 8.22** Under the Act an association may give a concession on access to a benefit, facility or service. Such concession may only be given to: Sch. 16  
para. 1A (2)
- members of a particular age group; or
  - people who have been members of the association for a specified period.

- 8.23** Concessions for members could include:
- individuals who have been members for more than 10 years to have first choice for the club's summer outings
  - members under 12 to be given two free lessons
  - members over 60 to be given at-table service in the members' bar
  - allowing reduced price use of facilities at certain times, for example half price use of a golf club's driving range for members under 20 on Wednesday evenings.

---

### **Invitations as guests**

- 8.24** Under the Act, an association may give a concession for people of a particular age group being invited as guests. Sch. 16  
para. 1A (3)  
s.102 (1)

**Example:** A dance club normally allows members to invite only one guest to each social event. For a forthcoming event, it allows members to invite two guests under 30. This would be a lawful concession.

## Guests' access to a benefit, facility or service

- 8.25** Under the Act, an association may give guests of a particular age group a concession on access to a benefit, facility or service.

Sch. 16  
para. 1A (4)  
s.102 (2)

**Example:** A tennis club, which normally charges guests for coaching sessions, could offer one free session to each guest over 60. The club could also permit guests over 18, accompanied by their host, to continue to use the bar after 10pm. Both these concessions would be lawful.

## 9 Application of general exceptions to the protected characteristic of age

- 9.1** In addition to the age-specific exceptions discussed in Chapter 8 and in Chapters 10–12, the Act contains exceptions that apply to all or most protected characteristics. These exceptions permit discrimination that would otherwise be unlawful in the provision of services, the exercise of public functions or the activities of associations. Chapter 13 of the Code explains these general exceptions in more detail and they are summarised below. The summary is not intended to alter the meaning of the Code. Code 13

---

### Statutory authority

- 9.2** For the protected characteristic of age it is not a breach of the Act as it applies to services, public functions and associations to do anything that is required under another law. Sch. 22.  
Para. 1  
Code  
13.10–13.14

**Example:** The Concessionary Bus Travel Act 2007 requires English local authorities that are Travel Concession authorities to issue concessionary bus passes to older people of eligible age. A younger person excluded from this scheme would not be able to claim that this was age discrimination.

---

### National security

- 9.3** The Act permits a service provider to take proportionate action to safeguard national security, even if this would otherwise amount to age discrimination. s.192  
Code  
13.17–13.21
-

---

## Charities

- 9.4** A charity will not breach the Act by providing benefits only to people of a particular age group if this is in accordance with its charitable instrument and is either:
- s.193 and 194  
Code  
13.31–13.40
- a. a proportionate means of achieving a legitimate aim, or
  - b. for the purpose of preventing or compensating for a disadvantage linked to that age group.

**Example:** A local charity that is established to provide support to vulnerable people of all ages in a particular area organises a twice-weekly luncheon club for people over 65. The charity has evidence that older people in the area face problems arising from social isolation and poor diets and it therefore provides a nourishing meal in a congenial setting to help them overcome these disadvantages.

---

## Care within the family

- 9.5** It is not age discrimination for a person to take only individuals of a particular age group into their own home to provide them with care, whether such care is for payment or not.
- Sch. 3  
para. 15  
Code 13.102

---

## Television, radio and online broadcasting and distribution

- 9.6** The Act does not prohibit age discrimination, harassment or victimisation in decisions relating to the content or scheduling of television or radio programmes, the depiction of people of a particular age group or the people selected to take part in a television or radio programme.
- Sch. 3  
para. 31 (1)  
Code 13.105

## 10 Age specific exception: concessionary services

- 10.1** The Act provides an exception to the ban on age discrimination for what are called concessionary services. Sch. 3, Part 7 para. 30A
- 10.2** For the purpose of this exception, the term ‘age discrimination’ means direct age discrimination and indirect age discrimination. The exception does not apply to harassment or victimisation, which are always unlawful. s.25
- 10.3** The Act says that it will not be age discrimination for a service provider or a person exercising public functions to give a concession to people of a particular age.
- 10.4** Because the Act does not prohibit age discrimination in access to services and functions by people under 18, there is no restriction on service providers giving concessions to people under 18 in any age group (for example, everyone under 18, or children aged 10 to 16).

---

### What is a concession?

- 10.5** The Act says that a concession is a benefit, right or privilege making the **manner** in which the service is provided more favourable than the way it is usually provided to the public or a section of the public. Sch. 3 para. 30A (2)
- 10.6** It is also a concession to offer a benefit, right or privilege making the **terms** on which a service is provided more favourable than the terms on which it is usually provided to the public or section of the public. This means that a service provider can offer more favourable treatment to people of particular age groups.

- 10.7** 'Benefit' might include reduced costs. 'Rights and privileges' cover entitlements as well as preferential treatment afforded to service users.

**Example:** A health spa offers students two hours of massage therapy for the price of a one-hour treatment. This is preferential treatment that is lawful because of the exception for concessionary services. Because students are more likely to be in younger age groups, this might otherwise amount to indirect age discrimination.

- 10.8** 'Manner' is the way in which the service is provided. An example of a concession relating to the manner in which a service is provided might be 'out of hours' provision for certain age groups, such as later than usual in the evening, or earlier in the morning.

**Example:** A council-run leisure centre opens its swimming pool early on Friday mornings for people over 65. This out-of-hours provision for a particular age group would qualify as a concessionary service.

- 10.9** The 'terms' on which a service is provided refer to what is agreed between the service provider and the service user as to the provision of the service. The terms will include the conditions of the service and the charge to the service user.

**Example:** A hairdresser offers reduced rates for pensioners on Tuesdays. This falls within the exception for concessionary services, so a younger customer cannot complain about direct age discrimination in the terms of service because of not being offered a reduced rate for their haircut.

## Limits of the exception

- 10.10** This exception does not apply to a refusal of service. This means that a service provider cannot refuse to serve an individual because they are not part of a particular age group.

**Example:** In the hairdresser example above, a woman aged 40 asks for an appointment on a particular Tuesday when appointments are still available. As she is not a pensioner, she is refused. This refusal to provide the service falls outside the exception for concessions. It will amount to direct age discrimination unless the treatment can be justified as being a proportionate means of achieving a legitimate aim.

- 10.11** The exception does not apply to harassment or victimisation.

**Example:** A bar wishing to attract young customers offers under 25s their first drink free of charge and at-table service. These are lawful concessions. However, when an older couple ask for at-table service, the security staff ask them to leave in an aggressive and abusive manner, emphasising that their custom is not wanted by the bar. This creates a hostile and degrading environment for the couple. The treatment is likely to amount to harassment related to age and would be unlawful.

- 10.12** A service provider may give such favourable treatment to one age group that a different age group is effectively excluded from receiving this service. The concession exception permits what would otherwise be direct or indirect discrimination, and so such treatment may be lawful. However, if it amounts to harassment it would not be permitted by the exception for concessions.

## 11 Age specific exception: financial services

- 11.1** The Act provides an exception from the age discrimination provisions for financial services. Sch. 3, Part 5 para. 20A (1)
- 11.2** For the purpose of this exception, the term ‘age discrimination’ means direct age discrimination and indirect age discrimination only. The exception does not apply to harassment or victimisation, which are always unlawful.

---

### Definition of a financial service

- 11.3** The Act defines a financial service as including those of a banking, credit, insurance, personal pension, investment or payment nature. Sch. 3, Part 5 para. 20A (3)
- 11.4** Mortgages, annuities, current accounts, savings accounts, cheque cashing services, loans, bank overdrafts, credit cards, charge cards, debt advice, debt management services, e-money services, equity release, fraud and credit scoring used by financial services companies, spread betting services and investment advice all fall within the exception. This is not an exhaustive list.

**Example:** An accountancy firm completes its customers’ VAT returns, charging less to customers over 50. This VAT service is within the scope of the exception for financial services as it is of a payment nature. The same accountancy firm charges less to customers over 50 for advice on restructuring their businesses. This activity is not of a banking, credit, insurance, personal pension, investment or payment nature, so the price reduction is not covered by the financial services exception. However, it is very likely to fall within the exception for concessionary services.

---

## Scope

- |             |   |                                 |
|-------------|---|---------------------------------|
| <b>11.5</b> | The Act says that it will not be age discrimination for a service provider to do anything in connection with the provision of financial services.   | Sch. 3, Part 5<br>para. 20A (1) |
| <b>11.6</b> | This means that the exception will apply to all actions or omissions by any financial service provider relating to age thresholds or age bands – although the provider cannot rely on the exception in defending claims of victimisation or harassment. |                                 |

### Examples:

- For customers aged 60, a High Street bank offers a ‘silver saver’ account with higher interest than other savings products. This will be lawful as the bank can rely upon the exception for financial services. A woman in her 40s complains to the bank that their ‘silver saver’ account amounts to age discrimination. Even though she is incorrect, because of her complaint the bank refuses to allow her to open an ordinary current account. This amounts to victimisation and would not be covered by the financial services exception.
- A woman in her 70s believes that there are unauthorised purchases on her credit card statement. She tells her credit card provider that she suspects her card has been cloned. The provider tells her she is probably just being ‘forgetful’ and that she should contact them via a younger relative. The woman feels humiliated by her treatment. This is likely to amount to harassment related to age and would not be covered by the financial services exception.

---

## Assessment of risk

- |             |   |                                 |
|-------------|---|---------------------------------|
| <b>11.7</b> | Sometimes a financial services provider undertakes a risk assessment, which takes into account the age of the service user – for example, deciding what premium to charge a customer for motor or travel insurance. | Sch. 3, Part 5<br>para. 20A (2) |
|-------------|---|---------------------------------|

- 11.8** When this type of risk assessment is undertaken a service provider will only be able to rely on the exception for financial services if:
- the information used for the risk assessment is relevant, and
  - the information comes from a source on which it is reasonable to rely.
- 11.9** Information which might be relevant to the assessment of risk includes actuarial or statistical data, future projections or a medical report. It cannot include untested assumptions, stereotypes or generalisations in respect of age.
- 11.10** The following additional factors may be relevant to determining whether the information comes from a source on which it is reasonable to rely:
- the information is current
  - where data is involved, the method of collection is suitable
  - the information is representative
  - the information is credible; for example, it is generally accepted by the scientific or actuarial community.

**Examples:**

- A 19-year-old man in stable, full-time employment applies to a finance company for a short-term car loan. Believing that people under 21 are less reliable, the company only offers him a loan at a significantly higher rate of interest than would be charged to older motorists. This conclusion is not based on an assessment of risk using data or other relevant information relating to the man's age. In these circumstances, charging the higher rate of interest is unlikely to come within the financial services exception and would therefore be unlawful.
- A couple, both aged 60, apply for a 15-year mortgage to buy a new home. The mortgage lender wants to assess the risk that they will be unable to afford the mortgage repayments in future, and so asks them about their retirement plans and post-retirement income. This information is relevant to the assessment of risk relating to age, and comes from a source on which it is reasonable to

rely – the couple themselves. The lender can therefore rely on the financial services exception.

- A 75-year-old woman applies online for travel insurance to visit family in the USA. She declares several health problems that are in remission, and shows the insurance company a medical report, which states that, because of her age, the conditions are likely to recur. In refusing the travel insurance, the insurance company has made an assessment of risk based on relevant information from a source on which it is reasonable to rely. Consequently it can rely on the financial services exception to refuse cover.

---

## Travel and motor insurance

- 11.11** The Government, the Association of British Insurers (ABI) and the British Insurance Brokers' Association (BIBA) have reached a voluntary agreement that applies when service providers refuse travel and motor insurance to a service user because their age falls above the upper age limit for the product. The agreement obliges service providers to:
- refer the service user to another company that can help, or
  - direct the service user to a signposting system, which should be able to identify more suitable service providers.
- 11.12** The BIBA signposting service can be contacted as follows:
- Telephone: 0879 950 1790 (9.00am – 5.00pm Mon. to Fri.).
  - Online: [www.biba.org.uk/](http://www.biba.org.uk/)
- 11.13** Signposting a service user does not mean that an insurer will have complied with their obligations under the Act, that they will have been justified in refusing to provide a service or that they can avoid liability for breaches of the Act.
- 11.14** The voluntary agreement between the Government and the insurance industry also includes a transparency measure which requires publication of data on the impact of age on motor and travel insurance. The ABI publishes annual aggregate data showing claims costs under motor and travel insurance, broken down by age ranges. The data on which this is based may

include, but is not limited to, publicly available data such as Government and commercially available statistics, published research and material such as proprietary company research, claims and other data. The data may be from UK or non-UK sources.

The published aggregate data can be found on:

[http://www.abi.org.uk/Facts\\_and\\_Figures/Data\\_by\\_Age\\_and\\_Gender.aspx](http://www.abi.org.uk/Facts_and_Figures/Data_by_Age_and_Gender.aspx)

---

### **Financial services arranged by an employer**

<b>11.15</b>	This is addressed in the Services Code.	Sch. 3, Part 5 para. 20 (1) Code para. 13.90
--------------	---	---

---

### **Situations falling outside of this exception**

- 11.16** If a financial services provider cannot rely on this exception, they may be able to rely on the exception for concessionary services or may be able to objectively justify any less favourable treatment because of age.

## 12 Other age specific exceptions

**12.1** Five other age-specific exceptions are discussed in this chapter. As with the age-specific exceptions discussed above, the term ‘age discrimination’ means direct age discrimination and indirect age discrimination only. These exceptions do not apply to harassment or victimisation, which are always unlawful.

---

### Age specific exception: package holidays

Sch. 3, Part 7  
para. 30(B)

**12.2** The Act provides an exception from the age discrimination provisions for a ‘relevant holiday service’ provided to people of a particular age group.

**12.3** Holiday companies, hotels, owners/letting agents of holiday cottages/chalets may be covered by this exception if they provide ‘relevant holiday services’.

**12.4** A local authority providing holidays for particular age groups might also fall within this exception.

---

### Scope

**12.5** The Act says that it will not be age discrimination for a service provider to provide a ‘relevant holiday service’ to people of a particular age group.

**12.6** This exception only allows direct or indirect age discrimination in relation to a decision about whether or not to allow a person to enjoy a ‘relevant holiday service’. It does not extend to other related matters such as the terms on which the service is provided or a decision to terminate it.

**Example:** A holiday company providing accommodation and travel requires 18 to 25 year olds to pay a higher damage

deposit for self-catering rentals, believing this age group to be less responsible. This practice would fall outside the exception for package holidays because it relates only to the terms on which the accommodation is provided. As it involves less favourable treatment of a particular age group, it would only be lawful if it can be objectively justified.

---

### **Definition of a ‘relevant holiday service’**

- 12.7** A ‘relevant holiday’ service means a service where:
- a service user pays a single price for at least two of the following: travel; accommodation; access to activities or services forming a significant part of the service or its cost;
  - the holiday is for more than 24 hours or includes overnight accommodation;
  - the holiday is provided only to people in a certain age group and;
  - an essential feature of the holiday is bringing together people in that age group with a view to facilitating their enjoyment of facilities or services designed with particular regard to people of that age group.

The different elements of this definition are explained in more detail below.

---

### **Written notice**

- 12.8** The exception will only apply if the service provider provides the service user with a written statement before the start of the holiday to explain that the holiday service is only available to people of a particular age group.
-

## **Exclusivity**

- 12.9** The service provider must provide the holiday only to service users of a particular age group.

**Example:** A tour operator has promoted a weekend of guided country walks exclusively for people over 55. The operator extends the holiday to the 21-year-old daughter of one of the travellers in the tour group. Two weeks later, another tour member asks if his 30-year-old son can join the trip but the operator refuses. If the man and his son complain, the tour operator would not be able to rely on the exception for holiday services because it has not provided the holiday exclusively for one age group.

---

## **Bringing together people within the same age group**

- 12.10** An essential element of the holiday must be that people in the same age group are brought together:
- with the intention of helping them to enjoy facilities or services, and
  - in circumstances where those facilities or services have been designed with that age group particularly in mind.

**Example:** An operator opens up a package holiday resort exclusively for people over 60. However, the services and facilities on offer within the resort have not been tailored to this age group. In fact, they are identical to services and facilities in the company's other resorts, which were designed for younger adults and their children. The operator cannot show that the facilities and services on offer have been designed with the target age group particularly in mind and so could not rely on the exception for holiday services.

## Composition of the holiday

- 12.11** The holiday must include at least two of the following:
- travel (even if there is an option for the service user to make alternative travel arrangements)
  - accommodation, or
  - access to activities or facilities not ancillary to travel or accommodation, which form a significant part of the service or its cost.

**Example:** A hotel provides accommodation restricted to people under 35 along with optional horse riding lessons. No other services or facilities are provided. The lessons are not ancillary to the travel or accommodation. However, the hotel could not rely on the exception for holiday services because the lessons are not a significant part of the service or its cost.

---

## Single price

- 12.12** To fall within the exception, the service user must pay a single price for the holiday as a package.

**Example:** A holiday company only provides cheap hotel accommodation and does not provide any other services. It follows that none of its holidays fall within the exception for holiday services. Once at the hotel, a customer can choose to pay extra for tours of local villages and transfers back to the airport. The exception still does not apply because at the time of booking, the customer only paid for accommodation.

---

## Holidays falling outside of this exception

- 12.13** If a holiday falls outside this exception, the provider may still be able to justify any less favourable treatment because of age. Because the ban on age discrimination in the provision of services does not extend to under 18s, excluding children from holidays is lawful.
-

---

**Age specific exception: age restricted services**

- |              |   |                               |
|--------------|---|-------------------------------|
| <b>12.14</b> | The Act provides an exception to the ban on age discrimination for services provided to members of the public who are age-restricted by legislation, for example selling alcohol, cigarettes and fireworks where certain conditions are met.                                | Sch. 3<br>Part 7<br>para. 30C |
| <b>12.15</b> | It can be difficult accurately to assess the age of customers. For this reason, all providers of age restricted services should ensure that they adhere to the Act by asking for age verification when it appears to them that a customer may be under the legal age limit. |                               |

---

**Nature of age verification**

- |              |  |  |
|--------------|--|--|
| <b>12.16</b> | It will not be age discrimination where a service user is denied an age-restricted service in the following circumstances: <ul style="list-style-type: none"> <li>• it appears to the service provider, its employees or agents that the service user is under-age for the service</li> <li>• the service user is not able to provide satisfactory identification proving otherwise and</li> <li>• there has been an age warning.</li> </ul>   |  |
| <b>12.17</b> | An ‘age warning’ means that the service provider has done the following: <ul style="list-style-type: none"> <li>• displayed a statement at the premises where the age-restricted service is provided and</li> <li>• the statement explains that, in the absence of satisfactory identification, the age-restricted service will not be provided to individuals who appear to the service provider, its employees or agents to be under the age of 18 or any higher age that is specified in the service provider’s age verification policy.</li> </ul> | Sch. 3<br>Part 7<br>para.<br>30C (1) (b) |

**12.18** The display must be readily and easily visible to service users in a public area.

**Example:** An off-licence adopts an age verification policy that requires individuals who appear to be under 25 to produce satisfactory identification before selling them alcohol. It displays a sign warning that customers who appear to be under 25 will be asked to show appropriate identification proving that they are old enough to buy alcohol. This would qualify as an ‘age warning’ under the exception for age restricted services. On the other hand, if the sign were to be almost completely obscured by a row of wine bottles, the off licence would not be able to rely on the exception as the age warning is not readily and easily visible in a public area.

---

**Identification and licensed premises**

<b>12.19</b>	<p>If the age-barred service relates to licensed premises within the meaning of s.19A of the Licensing Act 2003, then a satisfactory identification means a document which includes the service user’s:</p> <ul style="list-style-type: none"> <li>• photograph,</li> <li>• date of birth, and</li> <li>• a holographic mark</li> </ul> <p>A passport or driving licence would fall into this category.</p>	<p>19A of the Licensing Act 2003 The Licensing Act 2003 (Mandatory Licensing Conditions) Order 2010 schedule</p>
--------------	---	--

---

**Identification in other cases**

<b>12.20</b>	<p>In all other cases, a satisfactory identification means a document that includes a photograph of the service user and proves that they are not under-age. A Citizen Card would fall into this category.</p>	<p>Sch. 3 Part 7 para. 30C (4) (b) (ii)</p>
<b>12.21</b>	<p>An identification document will only be satisfactory if a reasonable person would consider it to be satisfactory in the circumstances.</p>	

- 12.22** The exception applies to the actual provision or refusal of a service but does not extend to other related matters such as the manner in which the service is provided.

**Example:** The owner of a newsagent shop makes aggressive demands for age verification to all customers who appear to be under age when they try to buy alcohol. This relates to the manner of providing the service and so goes beyond what is permitted by this exception. It could also amount to harassment.

---

### Activities falling outside this exception

- 12.23** Where a service provider asks for age verification in circumstances that fall outside this exception, it may still be possible for them to justify any less favourable treatment because of age.

---

### Age specific exception: residential mobile homes

- 12.24** The Act provides an exception to the ban on age discrimination in relation to residential mobile homes. Sch. 3  
Part 7  
para. 30D

---

### When does the exception apply?

- 12.25** The exception applies in relation to the owners of 'protected sites' within the meaning of the Mobile Homes Act 1983, where the rules for the particular site specify an age restriction. It covers situations where mobile homes are brought onto, or bought on, a protected site or are rented out by the owner of the protected site.
- 12.26** A 'protected site' is any site requiring a site licence other than one for which the planning consent or site licence permits holiday use alone, or prohibits the stationing of mobile homes for residential use all year round. In addition, local authority sites and certain Gypsy and Traveller sites that are for residential use all year round fall within the definition of 'protected site' (although such sites do not require a licence).

<b>12.27</b>	The Act says that it will not be age discrimination for the owner of a protected site (the owner) to enter into a mobile home agreement with someone, where a park rule that is a term of that agreement entitles only people who have reached a particular age to station and occupy a mobile home on the site.	Sch. 3 Part 7 para. 30D (1)
<b>12.28</b>	A ‘mobile home agreement’ means an agreement to which the Mobile Homes Act 1983 applies. This includes any agreement permitting a person to station a mobile home on a ‘protected site’ and to occupy the mobile home as their only or main residence.	Sch. 3 Part 7 para. 30D (5)
<b>12.29</b>	It is also an exception to the ban on age discrimination for the owner to: <ul style="list-style-type: none"> <li>• enter into a mobile home rental agreement with a person which imposes a requirement that the mobile home in question may be occupied only by people who have attained a particular age, or</li> <li>• refuse to permit a person who has not reached a particular age to rent the home, where the rules for that site specify an age restriction.</li> </ul>	Sch. 3 para. 30D (3)
<b>12.30</b>	A ‘mobile home rental agreement’ means an agreement that entitles a person to occupy a mobile home on the ‘protected site’ as their residence in exchange for the payment of money and the performance of other obligations. The agreement may be for a specified period or for successive periods of a specified duration. An arrangement to occupy a mobile home for a holiday does not qualify as a mobile home rental agreement.	Sch. 3 Part 7 para. 30D (5)
<b>12.31</b>	However, if the owner wishes to rely on either of these two provisions, they must provide the person concerned with a written statement that specifies that the mobile home may be occupied only by people who have reached the relevant age.	Sch. 3 Part 7 para. 30D (4)
<b>12.32</b>	The exception only applies in situations where the owner imposes a requirement in park rules that mobile homes stationed on the site and occupied under mobile home agreements may be occupied only by people who have reached a particular age.	Sch. 3 Part 7 para. 30D (2)

**12.33** 'Park rules' refer to rules (made so as to comply with relevant legislation) applying to residents of mobile homes on the protected site, which, under the mobile home agreement or the mobile home rental agreement, must be observed.

Sch. 3  
Part 7  
para. 30D (5)

**Examples:**

- A couple in their 60s put their mobile home up for sale. Another couple in their 30s want to purchase it. The home is on a mobile home park where the park rules forbid occupiers under 60. This restriction would be lawful and could be included as an express term of the mobile home agreement. If the younger couple occupied the mobile home on that site, they would be in breach of their agreement and the site owner would be entitled to terminate it.
- A couple in their 70s want to place their mobile home on a site. The owner enters into an agreement with the couple, which states that they can place their mobile home upon his site on condition that they and any future occupants of the mobile home are over 65. He gives them in advance a written statement to this effect. This would be lawful as it falls within the residential mobile homes exception.

**12.34** The exception only covers the use of minimum ages in mobile home agreements and park rules. It does not permit treatment that would amount to age-related harassment.

**Example:** The couple in the previous example have two sons, both in their twenties, who use the on-site bar when visiting their parents. The bar staff ignore the sons' requests to be served and subject them to repeated comments about being too young to be on the site, making them feel uncomfortable and unwelcome. This is likely to amount to age-related harassment and, if so, will be unlawful as harassment falls outside all the age specific exceptions.

---

### Age specific exception: sport and competitive activities

- 12.35** The Act provides an exception to the ban on age discrimination for service providers doing anything in relation to the participation of a person in competitive activities that are ‘age banded’. s.195 (7)
- 12.36** The exception can be used by any individual or body involved in any aspect of the competitive activity, for example coaching, umpiring, refereeing, organising or training.
- 12.37** The action taken by the individual or body in relation to the participation of a competitor must be necessary in order to:
- secure a fair competition
  - ensure the safety of competitors
  - comply with the rules of a national, or international competition, or
  - increase participation in that activity.
- 12.38** The requirement that it be necessary for one of these four purposes is central to the operation of this exception.

---

### Definition of an ‘age banded activity’

- 12.39** An ‘age banded activity’ means competitive activities where the physical or mental strength, agility, stamina, physique, mobility, maturity or manual dexterity of average persons of a particular age group would put them at a disadvantage compared to average persons of another age group as competitors in events involving the activity. This includes activities such as bridge or chess.

**Example:** A running club wishes to increase the participation in 10 kilometre events of local men and women over 50. To achieve that aim, it organises age banded races as follows: under 18s, 19 to 49, 50 plus. The age banding of these races would fall within the exception and would therefore be lawful.

---

### Age specific exception: immigration

- |              |   |   |
|--------------|---|---|
| <b>12.40</b> | The Act provides an exception from the ban on age discrimination for service providers carrying out certain immigration functions.  | Sch. 3<br>Part 4<br>Para. 15A<br>Code 13.91 |
| <b>12.41</b> | <p>The exception relating to age discrimination mirrors the exception in the Act relating to nationality and ethnic and national origins. It applies to anything done:</p> <ul style="list-style-type: none"> <li>• by a Minister acting personally, or</li> <li>• a person acting under a relevant authorisation</li> <li>• in the exercise of functions under a ‘relevant enactment’: these include UK and EU immigration legislation (excluding provisions providing powers of arrest, entry, search etc.) listed in the Act and in the Code.</li> </ul> | Code<br>13.95–13.97                         |
| <b>12.42</b> | A relevant authorisation is a requirement imposed or an express authorisation with respect to a particular case or class of cases given by a Minister of the Crown acting personally or by a relevant enactment or a statutory instrument made under a relevant enactment.  | Sch. 3<br>Part 4<br>para. 15A (4)           |

**Example:** An entry clearance officer in Australia interviews a 28-year-old woman who wishes to be given a visa to enter the UK under the Youth Mobility Scheme. Applicants can only qualify for the scheme if they are aged between 18 and 30. Applying the Immigration Rules, the officer questions the young woman in order to confirm her age. This questioning will come within the exception; it will not be age discrimination because of the requirements for the scheme set out in the Rules. Similarly, granting her a visa under the scheme will not amount to age discrimination, even though a woman over 30 in comparable circumstances would not be eligible.

## 13 Enforcement

- 13.1** Chapter 14 of the Code explains how the Act is enforced. s.114  
 Anyone who believes that they have experienced age discrimination, harassment related to age, victimisation or other unlawful act in services, public functions or associations can pursue a claim through the civil courts using the mechanisms outlined in the Code.

---

### Civil courts

- 13.2** Civil proceedings take place in the county court in England and Wales and the sheriff court in Scotland (the civil court) and the rules of civil procedure relating to the civil court should be followed before and during proceedings. s.114  
Code 14.2

---

### Time limits

- 13.3** Court action must be started within six months (minus a day) of the alleged unlawful act. The civil courts have discretion to hear a claim outside these time limits if they consider it just and equitable to do so. s.118  
Code  
14.16–14.18
- 13.4** The Code discusses when the time period begins, which in most cases is the date on which the unlawful act occurred – for example, the day when a service provider refused to provide a service to a person of a particular age group. Code 14.19
- 13.5** The Code explains how the time period is defined when the unlawful act involves a failure to act, when there is a continuing state of affairs or where the unlawful act is carried out under a continuing policy. Code  
14.20–14.23
-

---

## Burden of proof

- |             |   |  |
|-------------|---|--|
| <b>13.6</b> | As the Code explains, the initial burden of proof falls on the claimant or pursuer to prove facts from which the court could draw an inference that age discrimination, victimisation or harassment has occurred. If the claimant or pursuer can do this, the burden of proof then shifts to the defendant or defender. | s.136<br>Code<br>14.32–14.36                         |
| <b>13.7</b> | The use of judicial review procedures in the courts, the special rules relating to immigration cases and to national security matters are explained in the Code.  | s.115, s.117<br>Code<br>14.38–14.49                  |
| <b>13.8</b> | Remedies which the civil court can award are explained in the Code.   | s.119<br>Code<br>14.50–14.58                         |
| <b>13.9</b> | The Commission has enforcement powers in relation to unlawful acts under the Act, which are discussed in the Code.  | s. 20–32<br>Equality Act 2006<br>Code<br>14.60–14.64 |

# Contacts

This publication and related equality and human rights resources are available from the Commission's website: [www.equalityhumanrights.com](http://www.equalityhumanrights.com).

For advice, information or guidance on equality, discrimination or human rights issues, please contact the Equality Advisory and Support Service, a free and independent service.

Website [www.equalityadvisoryservice.com](http://www.equalityadvisoryservice.com)  
Telephone 0808 800 0082  
Textphone 0808 800 0084  
Hours 09:00 to 20:00 (Monday to Friday)  
10:00 to 14:00 (Saturday)  
Post FREEPOST Equality Advisory Support Service  
FPN4431

Questions and comments regarding this publication may be addressed to: [correspondence@equalityhumanrights.com](mailto:correspondence@equalityhumanrights.com). The Commission welcomes your feedback.

## Alternative formats

This guide is available as a PDF file and as a Microsoft Word file from [www.equalityhumanrights.com](http://www.equalityhumanrights.com). For information on accessing a Commission publication in an alternative format, please contact: [correspondence@equalityhumanrights.com](mailto:correspondence@equalityhumanrights.com).

© 2016 Equality and Human Rights Commission

Published March 2016

You can download this publication from

[www.equalityhumanrights.com](http://www.equalityhumanrights.com)

© 2016 Equality and Human Rights Commission

Published: March 2016