

Draft Order laid before Parliament under section 208(2) and (8) of the Equality Act 2010, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2012 No. 0000

EQUALITY

The Equality Act 2010 (Age Exceptions) Order 2012

Made - - - - *******

Coming into force - - *1st October 2012*

This Order is made in exercise of the powers conferred by sections 197(1) and 207(4) and (6) of the Equality Act 2010(a).

In accordance with section 208(2) and (8) of that Act, a draft of this Order has been laid before and approved by resolution of each House of Parliament.

The Secretary of State makes the following Order in exercise of those powers:

Citation, commencement and interpretation

1.—(1) This Order may be cited as the Equality Act 2010 (Age Exceptions) Order 2012 and comes into force on 1st October 2012.

(2) In this Order “the Act” means the Equality Act 2010.

Immigration

2. In Part 4 of Schedule 3 to the Act (Immigration), before paragraph 16 insert—

“*Age*

15A.—(1) This paragraph applies in relation to age discrimination.

(2) Section 29 does not apply to anything done by a relevant person in the exercise of functions exercisable by virtue of a relevant enactment.

(3) A relevant person is —

- (a) a Minister of the Crown acting personally, or
- (b) a person acting in accordance with a relevant authorisation.

(4) A relevant authorisation is a requirement imposed or express authorisation given—

- (a) with respect to a particular case or class of case, by a Minister of the Crown acting personally;

(a) 2010 c.15.

- (b) with respect to a particular class of case, by a relevant enactment or by an instrument made under or by virtue of a relevant enactment.
- (5) The relevant enactments are—
 - (a) the Immigration Acts,
 - (b) the Special Immigration Appeals Commission Act 1997(a),
 - (c) a provision made under section 2(2) of the European Communities Act 1972(b) which relates to immigration or asylum, and
 - (d) a provision of EU law which relates to immigration or asylum.
- (6) The reference in sub-paragraph (5)(a) to the Immigration Acts does not include a reference to—
 - (a) sections 28A to 28K of the Immigration Act 1971(c) (powers of arrest, entry and search, etc.), or
 - (b) section 14 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004(d) (power of arrest).”.

Financial services

3. In Part 5 of Schedule 3 to the Act (the title to which becomes “Insurance and other financial services”), after paragraph 20 insert—

“Age

20A.—(1) A person (A) does not contravene section 29, so far as relating to age discrimination, by doing anything in connection with the provision of a financial service.

(2) Where A conducts an assessment of risk for the purposes of providing the financial service to another person (B), A may rely on sub-paragraph (1) only if the assessment of risk, so far as it involves a consideration of B’s age, is carried out by reference to information which is relevant to the assessment of risk and from a source on which it is reasonable to rely.

(3) In this paragraph, “financial service” includes a service of a banking, credit, insurance, personal pension, investment or payment nature.”.

Concessionary services

4.—(1) In Part 7 of Schedule 3 to the Act (the title to which becomes “Separate, single and concessionary services, etc”), after paragraph 30 insert—

“Concessions

30A.—(1) A person does not contravene section 29, so far as relating to age discrimination, by giving a concession in respect of a service to persons of a particular age group.

(2) The reference to a concession in respect of a service is a reference to a benefit, right or privilege having the effect that the manner in which the service is provided is, or the terms on which it is provided are, more favourable than the manner in which, or the terms on which, it is usually provided to the public (or, where it is provided to a section of the public, that section).”.

(a) 1997 c.68.
 (b) 1972 c.68. Section 2(2) was amended by Part 1 of the Schedule to the European Union (Amendment) Act 2008 (c.7).
 (c) 1971 c.77. Sections 28A to 28K were inserted by section 128 of the Immigration and Asylum Act 1999 (c.33).
 (d) 2004 c.19. Section 14 has been the subject of amendments which are not relevant to this Order.

Holidays

5. In Part 7 of Schedule 3 to the Act, after paragraph 30A insert—

“Age related holidays

30B.—(1) A person (P) does not contravene section 29, so far as relating to age discrimination, by providing a relevant holiday service to persons of a particular age group.

(2) In sub-paragraph (1) “relevant holiday service” means a service—

- (a) which involves the provision of at least two of the following together for a single price—
 - (i) travel;
 - (ii) accommodation;
 - (iii) access to activities or services not ancillary to travel or accommodation which form a significant part of the service or its cost;
- (b) the provision of which is for a period of more than 24 hours or includes the provision of overnight accommodation;
- (c) which P provides only to persons of the age group in question; and
- (d) an essential feature of which is the bringing together of persons of that age group with a view to facilitating their enjoyment of facilities or services designed with particular regard to persons of that age group.

(3) P may not rely on sub-paragraph (1) unless, before providing a person with a relevant holiday service, P provides the person with a written statement that the service is provided only to persons of the age group in question.

(4) For the purpose of sub-paragraph (2)(a)(i), “travel” includes an option for an individual to make alternative travel arrangements to those included in the relevant holiday service as offered by P.”.

Age restricted services

6. In Part 7 of Schedule 3 to the Act, after paragraph 30B insert—

“Age restricted services

30C.—(1) This paragraph applies where a person (P)—

- (a) provides a service the provision of which is prohibited by or under an enactment to persons under the age specified in or under the enactment (“the statutory age”), and
- (b) displays on the premises on which the service is provided an age warning in relation to the provision of the service.

(2) An age warning in relation to the provision of a service is a statement to the effect that the service will not be provided to a person who—

- (a) appears to P, or an employee or agent of P’s, to be under the age specified in the statement, and
- (b) on being required to do so by P or the employee or agent, fails to produce satisfactory identification.

(3) P does not contravene section 29, so far as relating to age discrimination, by not providing the service to a person, who—

- (a) appears to P, or an employee or agent of P’s, to be under the age specified in the age warning in relation to the provision of the service, and
- (b) on being required to do so by P or the employee or agent, fails to produce satisfactory identification.

- (4) In this paragraph—
- (a) a reference to the provision of a service includes a reference to provision of access to the service, and
 - (b) “satisfactory identification”, in relation to a person, means a valid document which—
 - (i) in the case of licensed premises where an age condition applies, meets that condition, and
 - (ii) in any other case includes a photograph of the person and establishes that the person has attained the statutory age in relation to the provision of a service;
 “licensed premises” means premises in respect of which a relevant premises licence within the meaning of section 19A of the Licensing Act 2003(a) (mandatory conditions where alcohol sold) has effect; and
 “age condition” means a condition specified in an order under subsection (1) of section 19A of that Act requiring the age of certain persons to be verified in the manner specified in the condition before they are served alcohol in premises where the condition applies.”.

Residential mobile homes

7. In Part 7 of Schedule 3 to the Act, after paragraph 30C insert—

“Residential mobile homes

30D.—(1) A person (A) who is the owner of a protected site does not contravene section 29, so far as relating to age discrimination, by—

- (a) entering into a mobile home agreement with a person (B) that entitles only persons who have attained a particular age to station and occupy a mobile home on land forming part of the site, or
- (b) refusing to permit assignment by B of a mobile home agreement to any person other than a person who has attained a particular age.

(2) A does not contravene section 29, so far as relating to age discrimination, by imposing a requirement in park rules that mobile homes stationed on land forming part of the site and occupied under mobile home agreements may be occupied only by persons who have attained a particular age.

(3) A does not contravene section 29, so far as relating to age discrimination, by—

- (a) imposing in or under a mobile home rental agreement with a person (C) a requirement that the mobile home to which the agreement relates may be occupied only by persons who have attained a particular age, or
- (b) refusing to permit assignment by C of a mobile home rental agreement to any person other than a person who has attained a particular age.

(4) But A may not rely on sub-paragraph (1) or (3) unless, before doing something mentioned in that sub-paragraph, A provides B or C, as the case may be, with a written statement to the effect that the mobile home in question may be occupied only by persons who have attained the age in question.

(5) In this paragraph,

(a) 2003 c.17. Section 19A was inserted by section 32 of and paragraph 2 in Part 1 of Schedule 4 to the Policing and Crime Act 2009 (c.26). The Licensing Act 2003 (Mandatory Licensing Conditions) Order (S.I. 2010/860) specifies mandatory conditions including an age condition.

“mobile home agreement” means an agreement to which the Mobile Homes Act 1983(a) applies; and “owner”, “protected site” and “mobile home” have the same meaning as in that Act;

“park rules” means rules applying to residents of mobile homes on the protected site and required to be observed by a term in the mobile home agreement or the mobile home rental agreement as the case may be;

“mobile home rental agreement” means an agreement (other than an arrangement to occupy a mobile home for the purposes of a holiday) under which a person (“the occupier”) is entitled to occupy a mobile home on the protected site as the occupier’s residence whether for a specified period or for successive periods of a specified duration subject to payment of money and the performance of other obligations.”.

Associations

8. In Schedule 16 (associations: exceptions), after paragraph 1 insert—

“Age

1A.—(1) An association does not contravene section 101(1) or (2), so far as relating to age discrimination, by giving a concession on admission to membership for—

- (a) persons of a particular age group, or
- (b) persons who have been members of the association for more than a number of years specified by the association for this purpose.

(2) An association does not contravene section 101(2) or (3), so far as relating to age discrimination, by giving a concession on access to a benefit, facility or service for—

- (a) members of a particular age group, or
- (b) persons who have been members of the association for more than a number of years specified by the association for this purpose.

(3) An association does not contravene section 102(1), so far as relating to age discrimination, by giving a concession on invitations of persons of a particular age group as guests.

(4) An association does not contravene section 102(2), so far as relating to age discrimination, by giving a concession on access to a benefit, facility or service for guests of a particular age group.

(5) For the purposes of this paragraph, affording only persons of a particular age group access to a benefit, facility or service for a limited time is to be regarded as a concession.

(6) The reference to a concession in respect of something done by an association is a reference to a benefit, right or privilege having the effect that the manner in which, or the terms on which, it does it are more favourable than the manner in which, or the terms on which, it usually does the thing.”.

Sport

9. In section 195 of the Act (general exceptions: sport), after subsection (6) insert—

(a) 1983 c.34. Section 1 (particulars of agreements) was amended by section 206(1) of the Housing Act 2004 (c.34), section 167 of the Housing (Scotland) Act 2006 (asp1) and the Mobile Homes Act 1983 (Jurisdiction of Residential Property Tribunals) (England) Order (S.I. 2011/1005). Section 2 and Schedule 1 were amended by sections 206(2)(a), 207, 265(1) and 266 of and paragraph 19 of Schedule 5 and Schedule 16 to the Housing Act 2004, sections 168 and 169 of the Housing (Scotland) Act 2006 and section 60 of and paragraph 2 of Schedule 3 to the Statistics and Registration Service Act 2007 (c.18) and by the Mobile Homes Act 1983 (Amendment of Schedule 1) (England) Order 2006 (S.I. 2006/1775), the Mobile Homes Act 1983 (Amendment of Schedule 1) (Wales) Order 2007 (S.I. 2007/3151), the Mobile Homes Act 1983 (Amendment of Schedule 1 and Consequential Amendments) (England) Order 2011 (S.I. 2011/1003) and by S.I. 2011/1005. There are other amendments not relevant to this Order.

“(7) A person does not contravene this Act, so far as relating to age discrimination, only by doing anything in relation to the participation of another as a competitor in an age-banded activity if it is necessary to do so—

- (a) to secure in relation to the activity fair competition or the safety of competitors,
- (b) to comply with the rules of a national or international competition, or
- (c) to increase participation in that activity.

(8) For the purposes of subsection (7), an age-banded activity is a sport, game or other activity of a competitive nature in circumstances in which 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.”.

Name

Secretary of State for the Home Department

Date

EXPLANATORY NOTE

(This note is not part of the Order)

This Order is made under section 197 of the Equality Act 2010 (c.15) (“the Act”) and will come into force on the same day as the provisions of Part 3 of and Schedules 3 and 16 to the Act are commenced in respect of the protected characteristic of age. Part 3 provides for the prohibition of discrimination, harassment and victimisation in respect of the provision of services (including for these purposes the provision of goods and facilities). The Order provides exceptions to the application of the prohibition in Part 3 in relation to discrimination because of age in respect of a number of areas. It also provides exceptions in relation to discrimination because of age in respect of associations (sections 101 and 102 of the Act) and age-banded sporting activity (section 195 of the Act).

Article 2 inserts paragraphs into Part 4 of Schedule 3 to provide for an exception in respect of age discrimination in relation to things done by Ministers or those acting in accordance with authorisation under functions relating to immigration.

Article 3 inserts a paragraph into Part 5 of Schedule 3, to create an exception for things done in connection with the provision of a financial service. But this is subject to a proviso that, where the financial service provider conducts an assessment of risk for the purposes of providing the service, that assessment of risk must, so far as it involves a consideration of their customer’s age, be done by reference to information which is relevant to the assessment of the risk and from a source on which it reasonable to rely. Under paragraph (3), “financial services” includes all activities that are regulated as financial services.

Articles 4 to 7 insert paragraphs into Part 7 of Schedule 3 to provide for exceptions from age discrimination for:

concessions and preferential treatment (such as discounts) offered by traders and service providers by reference to age (paragraph 30A);

the provision of pre-arranged holidays to groups of people limited by reference to age (paragraph 30B);

schemes operated by those selling or providing goods or services that are subject to age limits created by or under legislation, such as alcohol, tobacco or entry to a cinema in respect of particular films (paragraph 30C); and

those operating residential mobile home parks in respect of limiting occupation of mobile homes on the site to persons who have attained a particular age (paragraph 30D).

Article 8 inserts into Schedule 16 (associations: exceptions) an exception, broadly equivalent to that in article 4 in respect of concessions, in relation to various forms of special treatment by associations by reference to age.

Article 9 inserts into section 195 of the Act further subsections providing for there to be an exception from age discrimination in respect of things done in relation to the participation of persons in age-banded activities to which access is restricted by reference to age or age groups. These are defined to include sports, games and other activities and include both physical sports such as football and also more mental or intellectual activities such as bridge or chess.

The instrument has effects on the costs of business, charities or voluntary bodies. A full impact assessment of the effect that this instrument will have on the costs of business, charities and voluntary bodies is available at <http://www.homeoffice.gov.uk/publications/equalities/equality-act-publications/age-discrimination/impact-assessment> and is published along with the Explanatory Memorandum at <http://www.legislation.gov.uk>.

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