December 2015

**UK response to questionnaire from the UN Independent Expert on Older Persons regarding best practices in the implementation of existing laws relating to the promotion and protection of older persons.**

The UK Government has an ambition to make this country a great place in which to grow old. It has produced reports over the last two years setting out how it intends to meet that ambition. Legislation relating to the promotion and protection of older persons is covered by several Ministries in the UK. We have provided responses under the separate headings of the Equality Act 2010 and the Care Act.

**THE EQUALITY ACT 2010**

**Name of practice:**

Improving opportunities for older people

The UK remains committed to improving opportunities for older people and is reforming the welfare system in order to make it simpler. The challenges and opportunities faced by an ageing society continue to take high priority in policy and decision making.

The **Equality Act 2010** brought together existing regulations that already gave protection against ageism and other forms of discrimination, and extended them. Since October 2010 this has been the main law relating to age discrimination, protecting individuals against ageism in employment, education and training. The law maintains an individual’s right not to be disadvantaged or treated badly at work because of their age. It also covers the way an individual is treated by further and higher education organisations such as universities, and by clubs, associations and trade bodies. In addition the Equality Act gives protection to ensure older people get fair treatment when they are receiving goods and services.

Under the **Equality Act 2010**, the Government is required to have due regard to the aims of the general equality duty , which carries a requirement to assess policies against impacts on people with protected characteristics, including race, disability, gender, and age. Examples include:

* Abolished the Default Retirement Age so that people are no longer forced to retire simply due to age.
* Extended the right to request flexible working to all workers from 2014.
* Published “Fuller Working Lives – A Framework for Action.” This sets out the case for recruiting and retaining older people and draws together all the steps Government is taking to promote fuller working lives.
* Protected the income of current pensioners by applying the triple lock to the basic State Pension and an above earnings increase to the Pension Credit minimum guarantee.
* Legislated through the Pensions Act 2014 for a new State Pension scheme for people reaching State Pension age from 6 April 2016. This will clarify savings incentives, address historic inequalities and improve retirement outcomes for many. <https://www.gov.uk/new-state-pension>

Overall responsibility for monitoring the implementation and effectiveness of human rights legislation in England sits with the Ministry of Justice.

There are currently approximately 10.8 million people aged 65 and over in the UK – around 19 per cent of the total population. By the time State Pension age for women is equal with men’s, in 2018, this will have increased to 12.4million.

The number of people aged 90 and above is projected to be more than triple by 2037, the number of people age 95 and over is projected to nearly quintuple, and the number of centenarians is projected to rise from 13,000 in 2012 to 110,000 in 2037, a more than eightfold increase. We need to make sure they are treated fairly. The Equality Act 2010 legally protects this group of people from discrimination e.g. because of age and race, age and gender, age and disability etc. in the workplace and in wider society.

Underpinning public service reforms is the vision of retirement as an increasingly active phase of life where people have opportunities to continue contributing by working longer and/or volunteering in their communities; take personal responsibility for ageing well by working, saving and looking after their health and well-being, and where they live in good places to grow older.

Under the Public Sector Equality Duty (PSED), at section 149 of the Equality Act 2010, public bodies are required to understand the impact of their policies and services on people with different protected characteristics and provide evidence that this has been taken into account during the decision-making process.

Public bodies must have 'due regard' to consider the following limbs of the PSED:

* To eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act;
* Advance equality of opportunity, and;
* Foster good relations between people who share a relevant protected characteristic and those who do not.

The PSED replaced the previous single equality duties on race, gender and disability and extended protection to age, gender reassignment, pregnancy and maternity, religion or belief and sexual orientation. Public authorities also need to have due regard to the need to eliminate unlawful discrimination against someone because of their marriage or civil partnership status.

**Type of practice:**

The Department for Work and Pensions uses a range of appropriate mediums and mechanisms to consult and engage with older people in policy development.

Section 5 of the Equality Act 2010 reads as follows:

(1) In relation to the protected characteristic of age:

(a) a reference to a person who has a particular protected characteristic is a reference to a person of a particular age group;

(b) a reference to an age group is a reference to a group of persons defined by reference to age, whether by reference to a particular age or to a range of ages

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(2) A reference to an age group is a reference to a group of persons defined by reference to age, whether by reference to a particular age or to a range of ages.

The Act protects people meeting this definition of Age in the 2010 Act from direct and indirect discrimination because of Age and from harassment related to Age. This protection applies in the fields of employment, the provision of services and the exercise of public functions.

This domestic provision gives effect to Article 2 of the EU Framework Directive ([2000/78/EC](http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32000L0078:en:HTML)), which prohibits direct and indirect discrimination in employment and occupation on the grounds of age. In the area of services, discrimination because of a person’s age is prohibited by the 2012 Equality Act 2010 (Age Exceptions) Order.

In addition, under the UK Equality Act 2010, the Government is required to have due regard to the aims of the general equality duty, which carries a requirement to assess policies, including State Pension age changes, against impacts on people with protected characteristics, including race, disability, gender and age.

The changes to the State Pension age will also affect qualifying age for means tested benefit and Winter Fuel Payment for pensioners. This is gradually going up to 65 by November 2018 in line with the State Pension age increase for women. The State Pension age will increase further to 66 for both men and women by October 2020 and 67 by 2028.

Automatic enrolment into workplace pensions is designed to address the fact that millions of people are not saving enough for their retirement. The intention is that saving for retirement should be normal for most people at work. The law now requires employers to enrol all eligible workers into a qualifying workplace pension scheme and make at least a minimum contribution to their pension.

Eligible workers are those who:

* Are not already in a qualifying workplace pension scheme;
* Are at least 22 years old;
* Are below State Pension age;
* Earn more than £10,000 a year (£192 a week); and
* Work or ordinarily work in the UK (under their contract).

Other workers aged between 16 and 75 years earning under £10,000 a year (£192 a week) have the right to ask to join a pension scheme and are entitled to an employer’s contribution if they earn over £5,824 a year (£112 a week)

Automatic enrolment will give around 10 million people the opportunity to save into a workplace pension and we expect this to lead to 8 to 9 million people newly saving or saving more, generating around £11 billion a year more in workplace pension saving by 2020.

Since its introduction in October 2012, automatic enrolment has been very successful. Nearly 5.3 million people had been enrolled so far and available evidence suggests that 9 in 10 individuals have remained in their workplace pension after being automatically enrolled.

People of State Pension age in UK who have been unable to provide for their retirement may be eligible for financial support through means tested benefit.

**Level of implementation:**

National

The Equality Act 2010 is applicable in Great Britain – England, Scotland and Wales. Northern Ireland has its own separate equality legislation.

The **Government Equalities Office** (GEO) is the UK’s lead Government Department for the 2010 Act. It has responsibility for equality strategy and anti-discrimination legislation across the whole of Government. GEO also works to take action on the Government’s commitment to remove barriers to equality (including in the area of age) thereby facilitating the building of a fairer society for all.

Direct age discrimination can be objectively justified. This means that those who discriminate because of a person’s age, can if challenged, offer an explanation as to why they feel it is justified to discriminate because of a person’s age. An example of the restriction on recruitment of people because of their age in professions such as the fire service, has been held to be lawful where it is shown that minimum standards of fitness were a legitimate aim and the age criteria appropriate and necessary.

The prohibition of age discrimination in the provision of goods, facilities and services (GFS) was not immediately available in 2010 when the 2010 Act came into force. Protection became available in October 2012 by way of a Commencement Order (Equality Act 2010 (Commencement No 9) Order 2012). At the same time, regulations were also made under the 2010 Act, which contain a number of exceptions to the general prohibition of age discrimination in GFS (ie. the Equality Act 2010 (Age Exceptions) Order 2012). For instance, there are exemptions from the prohibition of age discriminating in the provision of GFS in the provision of financial services, in sports and in the provision of age restricted services, etc.

Independence and autonomy (accessibility)

Where an older person also has a disability, the 2010 Act would protect them from disability discrimination as well. Section 6 of the 2010 Act defines disability as where a person: **E+W+S**

This section has no associated Explanatory Notes

(a) has a physical or mental impairment, and

(b) the impairment has a substantial and long-term adverse effect on their ability to carry out normal day-to-day activities.

Where an older person has a condition which fits the definition of disability in the 2010 Act, they will be protected from disability discrimination too. This would include an older person’s entitlement to a reasonable adjustment (because they have a disability) in relation to their accessibility to buildings, for example.

The **Equality and Human Rights Commission** (EHRC) has a Parliamentary mandate (under the Equality Act 2006) to challenge discrimination and enforce the 2010 Act. The EHRC also has the statutory power to intervene in discrimination cases, which it considers to be of a strategic relevance to others in the same protected characteristic group.

All changes to the UK State Pension age must be in accordance with EU Directive 79/7/EEC which prohibits discrimination based on gender in member’s social security provision. In addition, under the UK Equality Act 2010, the Government is required to have due regard to the aims of the general equality duty , which carries a requirement to assess policies, including State Pension age changes, against impacts on people with protected characteristics, including race, disability, gender, and age.

**THE CARE ACT**

**Name of the Practice**

The Care Act

**Area Concerned**

Care

**Type of Practice**

Legal

Policy/Programme Strategy/Action Plan on Ageing

**Level of Implementation**

National

Local

**Please describe practice**

The UK Parliament approved the Care Act in 2014. The Act, which came into effect from 1st April 2015, represents the most significant reform of care and support in more than 60 years, putting older people and their carers in control of their care and support.

The Care Act combines various existing pieces of legislation which previously shaped how social care was arranged in England. The intention is that the Care Act will make it easier for the public to understand why things happen in a particular way.

Importantly the Care Act also changes many aspects of how support is arranged, and aims to give greater control and influence to those in need of support. Among the most significant developments are:

• A new set of criteria that makes it clearer when local authorities across the country will have to provide support to people, and aims to ensure a fairer national system which reaches those most in need.

• A change to the way in which local authorities complete assessments with those in need of support - people in need of support will be encouraged to think about what outcomes they want to achieve in their lives - these outcomes can be anything, big or small, which will enable them to feel a greater sense of physical or emotional well-being.

• New rights for carers which put them on the same footing as the people they care for. All carers are entitled to an assessment. If a carer is eligible for support for particular needs, they have a legal right to receive support for those needs, just like the people they care for.

• A greater emphasis on protecting the most vulnerable people in our society from abuse and neglect.

• A greater emphasis on prevention - local authorities and other providers of support will encourage and assist people to lead healthy lives which will reduce the chances of them needing more support in the future.

• A greater emphasis on local authorities providing clear information and advice which will help the public to make informed choices on their support arrangements, and enable them to stay in control of their lives.

• A greater emphasis on existing Personal Budgets which give people the power to spend allocated money on tailored care that suits their individual needs as part of their support plan.

• A greater emphasis on those most in need being given access to someone to speak up on their behalf when they are dealing with social care professionals.

• Greater regulation for those who provide professional care and support, and tougher penalties for those who do not provide care and support of a high enough standard.

• Changes to when and how people will be asked to contribute towards the cost of support which has been arranged in conjunction with their local authority - most of these changes will not come into effect until 2020.

As part of the process for developing the Care Act the Department of Health carried out an equality impact assessment (EIA) to ensure the proposed legislation did not adversely affect older people. The results, including the impact on a number of protected categories such as race and gender, are detailed in Annex A of the EIA in the following link (page 176): <http://www.legislation.gov.uk/ukpga/2014/23/impacts>

**Which actors are involved in the development and implementation of such practice**

These range from national Government, local authorities, care providers, care regulators and civil society organisations.

**Which rights of older persons does the practice promote and protect**

The Care Act ensures certainty that older people who are assessed as needing care and support will receive suitable care from the most appropriate source.

**How does the practice promote or protect such rights**

The Care Act changes many aspects of how care support is arranged, and aims to give greater control and influence to those older people in need of support. It gives greater emphasis on protecting the most vulnerable people in society from abuse and neglect. It ensures clarity over when local authorities across the country will have to provide support to older people, and aims to ensure a fairer national system which reaches those most in need.

**What groups of older people if any particularly benefit from the practice?**

The Care Act ensures that all groups are treated equally. Provision of care is based on need rather than belonging to any particular group.

**How has practice been assessed and monitored? Please provide specific information on the impact of the practice with data, indicators.**

At a national level national Government hosts the Care and Support Reform Programme Board. Membership includes representatives from national government, local authorities and care regulators.

The main purpose of the Board is to:

• ensure that national plans to implement and support reform of the care and support system as set out in the Care Act are in place;

• ensure that there is a robust assurance process to monitor and assess progress towards implementation and delivery of expected benefits; and

• embody and underpin the principle of co-production between national and local government and other partners in the delivery of the reforms.

Further information is available at <http://www.local.gov.uk/web/guest/care-support-reform/-/journal_content/56/10180/6531090/ARTICLE>

As regards data the Health and Social Care Information Centre is the national provider of information, data and IT systems for commissioners, analysts and clinicians in health and social care. It is responsible for a number of duties including:

* collecting, analysing and presenting national health and social care data
* publishing a register of all the information it collects and produces
* creating indicators that can be used to measure the quality of health and care services

Further information is available at <http://www.hscic.gov.uk/social-care>

**What lessons do you believe could be learnt from this practice? How could it be improved?**

The legislation behind the Care Act only came into force from 1 April 2015. It is therefore too early to give a definitive response on what works well in the Act and what needs to change. However, there are a number of organisations that hold examples of best practice in implementation of the Care Act and the care of older people more generally. These include:

* The Department of Health and other agencies have commissioned the Social Care Institute for Excellence (SCIE) to develop a range of freely available resources. SCIE is a leading social care improvement agency. It produces practical and accessible online resources to improve the knowledge, skills and practice of care staff and commissioners, and to support coproduction with people who use services and carers. Further information is available at <http://www.scie.org.uk/>
* Think Local Act Personal which is a national partnership of more than 50 organisations committed to transforming health and care through personalisation and community-based support.
* The Local Government Association and the Association of Directors of Adult Social Services have a dedicated website which gives further background on the Care Act and includes examples of resources and products to help local authorities and care providers best implement the Care Act. Further information is available at <http://www.local.gov.uk/care-support-reform>

**How could this practice be a model for other countries?**

All the best practice set out in above websites is developed by experts and professionals with knowledge in social care. It is difficult to say whether this would directly apply to other countries given the differences in care models, legislative systems and societal frameworks that exist in other countries.