



AGE EQUALITY IN HEALTH AND SOCIAL CARE

***A consultation on preparing the NHS and social care in
England for the age requirements in the Equality Bill that
affect the provision of services and exercise of public
functions***

Age Equality in Health and Social Care

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| Contact Details | Age Equality Team Room 602, Richmond House 79 Whitehall SW1A 2NS 2072105229 TBC |
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1. SUMMARY

1.1 The Equality Bill that is currently before Parliament streamlines and strengthens existing legislation on discrimination. In particular, it:

- creates a new equality duty on public bodies and others carrying out public functions. The duty applies in relation to age as well as to seven other protected characteristics;
- bans age discrimination against adults in the provision of services and exercise of public functions.

The Government has made clear that it aims to bring the new public sector equality duty into force from April 2011. A consultation paper published in June 2009 by the Government Equalities Office (GEO), which has the lead on the Bill, made clear that the Government proposes to bring the ban on age discrimination into force for all sectors, with the possible exception of health and social care, from 2012. The Government will announce its decisions following that consultation in due course.

1.2 In April 2009, the then Secretary of State for Health asked Sir Ian Carruthers OBE and Jan Ormondroyd to consider what the new measures on age would mean for health and social care. The review's report was published on 22 October 2009. It makes a number of recommendations. Some of these deal with the form that secondary legislation under the Bill should take, and those recommendations are being taken into account in coming to the decisions that will be announced in due course on the legislation. The majority of the recommendations focus on non-legislative action that the Department of Health (DH), and the National Health Service (NHS) and social care more generally, should take to prepare for the introduction of the new public sector equality duty and of the ban on age discrimination. **This consultation seeks comments on the review's non-legislative recommendations**, to feed into DH's response to the review, which we expect to publish in spring 2010.

1.3 DH is conducting this consultation in accordance with the criteria set out in the Government's *Code of Practice on Consultation*. We are sending the consultation paper to those listed in Annex B, but we welcome comments from any interested parties.

1.4 In addition to this consultation paper, DH is publishing (on the same web page as this consultation) a partial impact assessment and equality impact assessment which consider the review's recommendations.

1.5 Please send comments on the proposals in this consultation paper, the impact assessment and equality impact assessment to DH by 15 February 2010. If you use the response form published on the same web page as this consultation paper, that will help us to analyse the responses. That annex gives the address to which to send comments. If you have queries about the content or scope of the consultation, please contact Emma Benson (emma.benson@dh.gsi.gov.uk, 020 7210 5229). We are planning to hold a number of consultation events in January and February: details of these will be placed on the DH website.

1.6 This consultation is concerned with action to be taken in England. However, the Equality Bill applies throughout Great Britain. The Scottish Executive and the Welsh Assembly

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Government are considering separately what action to take to prepare the NHS and social care in Scotland and in Wales for implementation of the Equality Bill.

2. BACKGROUND ON THE EQUALITY BILL

2.1 The Equality Bill streamlines and strengthens Great Britain's discrimination legislation. It was introduced in the House of Commons on 24 April 2009.¹ Further information about the Bill more generally, and the background to it, is available on the website of GEO,² which has the lead responsibility for the Bill.

Streamlining

2.2 The Bill replaces nine major pieces of legislation³ and around a hundred other measures with a single statute.

2.3 In general, each of the predecessor pieces of legislation deals with only one protected characteristic. The Bill deals generally with eight protected characteristics (age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex, and sexual orientation) and with a further protected characteristic (marriage and civil partnership) in relation to employment.

Streamlining and strengthening

2.5 The Bill streamlines and strengthens existing discrimination law by:

- harmonising definitions and exceptions;
- removing unnecessary variations in the level of protection given to different characteristics;
- making it possible to bring claims of dual discrimination;
- extending the scope to take positive action;

and, most importantly for the purpose of this consultation,

- banning age discrimination in the provision of services and exercise of public functions; and

¹ References in this consultation paper to the Bill are to the Bill as re-presented to Parliament at the start of the 2009/10 session. The latest text, and other information about Parliament's consideration of the Bill, are available at <http://services.parliament.uk/bills/2009-10/equality.html>

² http://www.equalities.gov.uk/equality_bill.aspx

³ Including:

- the Equal Pay Act 1970; the Sex Discrimination Act 1975, the Race Relations Act 1976, and the Disability Discrimination Act 1995 (which ban sex, race and disability discrimination in employment and in the provision of services);
- the Employment Equality (Age) Regulations 2006 (2006/1031), the Employment Equality (Religion or Belief) Regulations 2003 (2003/1660), and the Employment Equality (Sexual Orientation) Regulations 2003 (2003/1661) (which ban discrimination in employment because of, respectively, age, religion or belief, and sexual orientation); and
- the Equality Act (Sexual Orientation) Regulations 2007 (2007/1263) and Part 2 of the Equality Act 2006 (which ban discrimination in the provision of services because of, respectively, sexual orientation and religion or belief).

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introducing a new equality duty, applying to public bodies and others carrying out public functions, which will extend to age.

2.6 Annex C highlights key features of the Bill that are relevant to the ban on age discrimination in services and public functions and to the equality duty as it applies to age in services and public functions.

When does the Government plan to implement the Bill?

2.7 In introducing the Bill in Parliament, the Government made clear that the aim is to bring:

- most of the Bill (the provisions that restate existing law) into force from October 2010;
- the new equality duty into force from April 2011.

2.8 GEO published a consultation paper on age discrimination in June 2009. This explained that the Government expected to see the ban on age discrimination in services and public functions come into force in all sectors, with the possible exception of health and social care, in 2012. The consultation closed on 30 September and the Government will announce its decisions on the timing of the age discrimination ban in due course.

Next steps

2.9 The consultation paper mentioned in paragraph 2.8 above also invited views on what exceptions to the ban on age discrimination in services and public functions should be created in secondary legislation, once the Bill has Royal Assent, to enable age-based practices to continue where appropriate. (See Annex C, paragraph C.12, for an explanation of the concept of exceptions). Again, the Government will be announcing its decisions on this issue in due course, and plans to consult in 2010 on a draft Order setting out exceptions to the ban.

2.10 Another consultation paper published by GEO invited views on the specific duties that should be set to help public bodies better meet the requirements of the new equality duty. This consultation also closed on 30 September and the Government will publish its response in due course.

2.11 On the Bill more generally, the Equality and Human Rights Commission (EHRC) are working to have guidance on the Bill available before the relevant provisions come into effect. Information about their plans is available on their website www.equalityhumanrights.com.

3. BACKGROUND ON THE SOUTH-WEST REVIEW

3.1 Chapter 2 notes that the Equality Bill sets new requirements in relation to age discrimination and age equality in services and public functions. DH recognised that these general requirements could pose a particular challenge for publicly arranged and funded health and social care services. Accordingly, in April 2009 the then Secretary of State for Health asked Sir Ian Carruthers OBE (Chief Executive of NHS South West and Jan Ormondroyd (Chief Executive of Bristol City Council) to undertake a review of age discrimination and age equality in the health and social care sector. The review reported to the Secretary of State for Health on 22 October and its report is available at http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/DH_107278. Also available at the same link are seven working papers produced by the review which provide some background and additional information about the work of the review. **It is important to read this consultation paper in conjunction with the review's report and (where noted) its working papers**, because we have not repeated here the background information and reasoning that led the review to make the recommendations it did.

3.2 The review was asked to produce recommendations on the timing of implementation for the age discrimination ban in health and social care, and on any exceptions to the ban that might be necessary. Its recommendations on these points are being taken into account in the decisions that the Government will announce in due course (paragraphs 2.8-9).

3.3 The review was also asked to recommend the key actions that the health and social care system should take to make demonstrable progress in meeting their obligations as quickly as possible.

3.4 The review analysed evidence of the nature, extent and variability of age discrimination in the health and social care system. It also considered what is already in place in the system to tackle age discrimination and support greater age equality. It looked at evidence from a wide variety of sources, including academic research, stakeholder submissions, personal testimony and the conclusions of a number of workshops and engagement events.

3.5 The review focused on practical solutions that connect with the language, experience and processes of NHS and social care organisations – and the people who use health and social care services.

3.6 A summary of the review's key findings is given on pages 6-7 of its report. Annex D to this consultation paper shows where each of the review's recommendations is considered in this consultation paper.

3.7 DH is grateful to Sir Ian Carruthers and Jan Ormondroyd for their leadership of the review, and to the advisory group that supported them. The views set out in the review's report are those of the review team, but they take account of the views expressed by leaders in the health and social care system who worked closely with frontline organisations to develop an approach that is sensitive to the needs of the services concerned. DH sees the report as an excellent basis for further work in health and social care to prepare for implementation of the new legislation. The remainder of this consultation paper considers the review's recommendations on:

- the legislation to be made for Great Britain – chapter 4;

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- action to be taken by DH, which we have grouped under the headings of:
 - mainstreaming the requirements of the Equality Bill into DH's own processes – chapter 5;
 - how DH can support health and social care to meet the requirements of the Bill – chapter 6;
- action to be taken by other bodies – chapter 7.

3.8 A partial impact assessment and equality impact assessment that accompany this consultation paper have been placed on the DH website, and the form for responding to this consultation paper invites comments on them.

4. LEGISLATION

Proposal 1: Timing of the ban on age discrimination

4.1 The review recommended that:

Subject to the outcome of the consultation process on the age provisions in the Equality Bill undertaken by the Government Equalities Office, the Government should set the same commencement date for the ban on age discrimination in health and social care as in other sectors [currently envisaged to be 2012] (Recommendation 5; discussed in paragraphs 4.1-3 of the review's report).

4.2 As explained in paragraph 2.8, the Government will announce in due course its decision on when to implement the ban on age discrimination in the provision of services and exercise of public functions.

4.3 DH is keen to see the ban on age discrimination implemented in health and social care as soon as possible. A number of steps are already being taken to prepare health and social care for that:

- Chapter 2 refers to EHRC's plans for producing guidance on the Equality Bill generally. The Government's general policy is that guidance on legislation should be available at least three months before the legislation comes into force.
- A resource pack is being prepared for health and social care, as described in paragraph 6.3 below.

4.4 However, *we welcome comments on the timing the review have proposed for the ban. In particular:*

- *Is there further action, additional to that outlined in this consultation paper, that needs to be taken to prepare health and social care for implementation of the ban on age discrimination?*
- *Is there any action that needs to be completed by a particular date to ensure that implementation happens smoothly?*

Proposal 2: Exceptions

4.5 In principle, the power described in paragraph C.12 could be used to remove whole areas of health and social care from the scope of the ban on age discrimination. However, the review recommended that:

There are no areas within health and social care that should be removed wholesale from the scope of the ban on age discrimination (Recommendation 6; discussed in paragraphs 4.1-2 and 4-6 of the review's report).

4.6 The review also recommended that:

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The Government should consider further whether any more specific exceptions are needed for health and social care. We do not think there is anything wrong in principle with such exceptions, but we have not identified a compelling need for any (Recommendation 7; discussed in paragraphs 4.4 and 7-9 of the review's report).

4.7 DH agrees with the review's conclusion that areas of health and social care should not be removed wholesale from the scope of the ban on age discrimination.

4.8 On specific exceptions, the Government is continuing to consider the position, and its conclusions will be set out in the policy statement that it will make in due course. Final decisions on the precise form of any exceptions to make will be taken after the Government has consulted on a draft Order in 2010.

4.9 *We encourage consultees to respond to the Government's proposals on exceptions both as set out in the forthcoming policy statement and when the draft Order is published for consultation in 2010.*

5. MAINSTREAMING THE REQUIREMENTS OF THE EQUALITY BILL INTO THE DEPARTMENT OF HEALTH'S OWN PROCESSES

5.1 The chapter looks in turn at:

- understanding the legislation;
- tools to help; and
- tasks to be carried out in relation to specific policies.

Proposal 3: Understanding the requirements of the Equality Bill

5.2 DH believes that an essential first step in mainstreaming the requirements of the Equality Bill into its processes is to ensure that the department, including its executive agencies,⁴ and the advisory non-departmental public bodies (ANDPBs)⁵ that advise DH and its agencies, all understand and meet the requirements of the legislation.⁶ As well as understanding the prohibitions on discrimination in the Bill, including the prohibition on age discrimination in the provision of services and exercise of public functions, it is important to recognise that the equality duty (see paragraph C.14 onwards) requires those bodies listed in a schedule to the Bill, and any other bodies when carrying out public functions, to have due regard to the need to:

- eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Bill;
- advance equality of opportunity between people who share a protected characteristic and people who do not share it (for example, people of different age groups); and
- foster good relations between people who share a protected characteristic and people who do not share it.

5.3 In relation to the duty, the positions of the department and its agencies, on the one hand, and of the ANDPBs on the other, are not identical:

- The Equality Bill already makes clear that the department and its executive agencies are public bodies to which the equality duty will apply.⁷ Those bodies have training and guidance in place to support staff in meeting the requirements of the existing equality duties and the new equality duty. This training and guidance will be reviewed, for example as the Government brings forward secondary legislation setting specific duties and as guidance on the new legislation becomes available from the Equality and Human Rights Commission.

⁴ DH currently has two executive agencies, the Medicines and Healthcare products Regulatory Agency (MHRA) and the NHS Purchasing and Supply Agency (NHS PASA). However, as part of the implementation of the DH/NHS Commercial Strategy and Operating Model, the functions of NHS PASA are being transferred to DH and other organisations during 2009/10.

⁵ A list of the committees that advise DH and its executive agencies is included in Annex B.

⁶ In other words, DH would take forward in relation to all these bodies a recommendation that the review made in relation to one advisory committee, that DH formally asks the Advisory Committee on Resource Allocation (ACRA) to ensure that its future recommendations comply with the age discrimination ban and the public sector equality duty in its ongoing work (Recommendation 10; discussed in paragraph 5.8 of the review's report).

⁷ Part 1 of Schedule 19 to the Bill makes clear that the duty applies to "A Minister of the Crown" and to "A government department". Executive Agencies have the same legal personality as their parent departments.

- However, it may be less clear to ANDPBs the extent to which they are carrying out functions of a public nature and will therefore also be bound by the new equality duty.⁸

5.4 DH therefore proposes that it and its executive agencies should write formally to each of their ANDPBs, to highlight the need to comply with the requirements of the legislation, including the equality duty (in relation to the eight relevant protected characteristics, not just age), and to ensure that they are aware of the training and guidance that are available to help them meet those requirements. (This would be in addition to the less formal contacts that DH and its agencies maintain with those bodies). We envisage that this would happen once the Equality Bill has received Royal Assent, so that we are able to give the ANDPBs definitive information about the changes to the anti-discrimination provisions and the requirements of the duty.

5.5 *We welcome comments on the proposal that DH and its executive agencies should write to their advisory non-departmental public bodies to alert them to the requirements of the Equality Bill and to the training and guidance that are available.*

Tools to help

Proposal 4: Equality Impact Assessment

5.6 The review recommended that:

DH and the wider system⁹ ensure the use of tools such as Equality Impact Assessments to ensure compliance with the age discrimination ban and the public sector equality duty in all new policies (Recommendation 21, discussed in paragraph 8.3 of the review's report).

5.7 DH agrees that tools such as formal Equality Impact Assessments can be useful in helping those bound by the equality duties to ensure that they meet the requirements of the legislation. Such tools have a role to play in assessing the impact of existing, as well as new, policies and practices.

5.8 Currently, the requirement on public bodies to set out their arrangements for assessing the impact of their policies and practices on equality is contained in the specific duties created to help bodies meet the requirements of the existing equality duties, which relate to disability, gender and race. These existing specific duties will be replaced by a new set of specific duties when the public sector equality duty in the Equality Bill comes into force (which is planned to be from April 2011). The Government consulted from June to September 2009 on what specific duties might help bodies meet the requirements of the new general public sector equality duty, and is considering what future requirements to set in relation to tools such as equality impact assessment in the light of responses to the consultation. Once the Government has announced its decisions on future specific duties, DH will consider further how to take forward this recommendation from the review. Information about tools to be used will be included in the letters DH and its executive agencies propose to send to its ANDPBs and in the training and guidance they provide for their own staff.

⁸ No DH ANDPBs are currently listed in Schedule 19 to the Bill. GEO plan to update the Schedule in due course, but the Schedule is unlikely to list all the bodies that carry out public functions.

⁹ The part of this recommendation applying to "the wider system" is considered in paragraph 7.16 below.

5.9 *Meanwhile, we welcome comments on the review's recommendation.*

Proposal 5: Research

5.10 The review called on:

DH through the NHS National Institute for Health Research and its school for social care research to review the relevant guidance to ensure it is compliant with the Equality Bill, and promote further research on ageing (Recommendation 28, discussed in paragraphs 8.12-14 of the review's report).

5.11 DH agrees that guidance on clinical trials needs to reflect the requirements of equality legislation. We also recognise that further research on ageing can play a useful role in helping DH and other bodies to meet the requirements of the public sector equality duty in relation to age.

5.12 *We welcome comments on the review's recommendation.*

Proposal 6: Quality-adjusted Life Years (QALYs)

5.13 The review made clear (paragraph 5.11 of its report) that it supported the continued use of QALYs, but it noted that some have argued that there are inadequacies in the way they are used (paragraph 5.13 of its report). Further information about its thinking on QALYs is set out in its working paper 7. In the light of this, the review recommended that:

DH and the NHS¹⁰ review the use they make of quality-adjusted life years (QALYs) and other similar support tools to inform their decision-making prior to the Equality Bill coming into force. (Recommendation 11; discussed at paragraphs 5.9-13 of the review's report).

5.14 DH does not own the QALY methodology, but keeps up to date with developments and discussions such as the Euroqol work mentioned by the review.

5.15 DH agrees with the findings set out in the review that, in theory, some people could be treated less favourably because of age as a result of using QALYs, but that the alternative methodologies currently available are not practical or would result in even greater differences in treatment by age. We therefore propose to continue using QALYs, but we shall keep our processes under review to ensure that we are aware when the methodology treats an age group less favourably and consider whether there are alternatives that could be adopted.

5.16 To support us in doing this, *we welcome comments on points to take into account in the continuing review we propose.*

Proposal 7: Reviewing age criteria in national policies/age weighting

5.17 When the ban on age discrimination in services and public functions is in force, any age criteria in use in the services and functions affected by the ban will need to be either objectively justifiable (see paragraph C.7) or covered by an exception (see paragraph C.12). The review noted that age criteria are sometimes used by DH in national policies which govern how

¹⁰ The part of this recommendation that applies to the NHS is considered in paragraph 7.16 below.

services are delivered. It argued that “where it is possible to avoid using age as a criterion for providing care to an individual, by drawing instead on more pertinent and individualised evidence, age should not be employed” (3.18). Against this background it recommended that:

DH should set out how it and the Advisory Committees and Executive Agencies that it sponsors will ensure public confidence by assessing age-based criteria in a transparent manner, leading to changes in policy if required (Recommendation 8, made at paragraph 4.10 of the review’s report).¹¹

In addition, it recommended that:

DH ensures that a programme of research is commissioned that enables the Advisory Committee on Breast Screening to advise on the upper limit of the breast cancer screening programme, and regularly updates the evidence (Recommendation 3; discussed in paragraphs 3.16-19 of the review’s report);

and that:

DH should review the relative weighting of the two Relative Need Formulae (RNF) for adult social care before 2012. It should also ensure that this and future reviews of the formulae ensure compliance with the ban on age discrimination and the public sector equality duty (Recommendation 9; discussed in paragraphs 5.6-7 of the review’s report).

5.18 DH proposes to ensure that age criteria used in its policies are reviewed by the relevant policy leads in DH and its agencies, with input where appropriate from the relevant advisory committees. We want this review to prepare the way for implementing, not only the ban on age discrimination in the provision of services and exercise of public functions, but also the equality duty. We therefore intend this review to cover both:

- the age criteria used in national policies affecting adults identified in the review’s working paper 4 (published alongside its report on the DH website);

and:

- the age criteria used in national policies that affect people aged under 18;

and:

- the relative weighting of the two Relative Need Formulae (RNF) for adult social care.

5.19 The review's report proposed a deadline of 2012 for the review of the relative weighting of the Relative Need Formulae, and DH believes that this is achievable. We do not want to set an arbitrary deadline for the completion of the other reviews, since that might require decisions to be taken before valuable evidence is available. However, where reviews relate to an age criterion that may potentially be unlawful age discrimination, they need to be completed before the ban on discrimination comes into force. It will also be necessary, after these initial reviews are completed, to keep any age criteria that are retained under review. To ensure transparency, DH proposes that:

¹¹ The second part of this recommendation is considered at paragraph 7.16 below.

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- as a minimum, the results of the review of each age criterion should be published as they become available, along with an account of what might trigger a review of the evidence in future;
- in addition, opportunities should be sought during each review to obtain input from the public and other interested parties as appropriate. This might be done, for example, at the annual public meeting that some advisory committees are already committed to holding; and
- consideration should be given to including a round-up of the results of the various reviews in one of DH's publications on equality.

5.20 Specifically on breast cancer, DH is actively considering both whether to commission research which would enable the Advisory Committee on Breast Cancer Screening to provide further advice on the upper limit of the breast cancer screening programme, and how to keep the evidence base up to date.

5.21 *We welcome comments on:*

a) the proposal that DH should ensure there are reviews of the age criteria used in its national policies and publish the results;

b) the review's recommendation on the review of the RNF;

c) the review's recommendation on breast cancer screening research.

6. HOW THE DEPARTMENT OF HEALTH CAN SUPPORT HEALTH AND SOCIAL CARE TO MEET THE REQUIREMENTS OF THE BILL

6.1 This chapter considers the recommendations that are primarily concerned with ensuring that DH supports health and social care in meeting the requirements of the Bill.

Proposal 8: Resource pack

6.2 The review recommended that:

DH should ensure that an up-to-date pack of resources, including good practice material, is available to health and social care organisations to support them to meet the requirements of the Equality Bill relating to age, and consider whether to identify national centres of expertise to co-ordinate work at a regional level to implement the provisions of the Equality Bill (Recommendation 27, discussed at paragraph 8.10 of the review's report).

6.3 A resource pack is being prepared through a partnership between NHS South West, Government Office South West and the Association of Directors of Adult Social Services. The pack includes the following:

- **An audit tool on age discrimination** – this will enable local NHS organisations and local authorities to undertake an audit or gap analysis of their position on age discrimination and age equality.
- **Good Practice Guidance for the NHS** – this will help both commissioning and provider organisations build on the information and insight from using the toolkit and draw up action plans and identify solutions to end age discrimination and promote age equality in their organisations.
- **Illustrative Practice Guide for adult social care departments within local authorities** – this will help local authorities identify, formulate and promote good practice in encouraging age equality and tackling age discrimination in social work, social care commissioning and service provision.

The South West have offered to continue to provide leadership on this issue. DH is working with them to define the scope and nature of this.

6.4 We will make available opportunities to comment on the development of the resource pack: working drafts will be put on the age equality section of the DH website for comment, and there will be an opportunity to comment through regional events. *In addition to comments on the resource pack, we welcome comments on whether other guidance would be useful.*

Proposal 9: Age-specific dataset

6.5 The review recommended that:

DH should work with the Health and Social Care Information Centre to explore how to construct an age-specific dataset to support the resource pack and help local organisations analyse and monitor patterns of service provision by age. This must link into wider work on

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indicators, including the programmes of the Public Health Observatories and the National Indicator Set (Recommendation 24; discussed at paragraph 8.7 of the review's report).

6.6 DH is exploring with the Information Centre how an age-specific dataset might be constructed.

6.7 Meanwhile, *we welcome comments on this recommendation.*

Proposal 10: Performance measures

6.8 The review recommended that:

Future performance measures that are both proportionate and targeted should be developed in accordance with the age discrimination ban and the public sector equality duty (Recommendation 25; discussed at paragraph 8.8 of the review's report).

6.9 DH agrees with the review's recommendation. As the review acknowledges, age-related indicators remain appropriate in some circumstances: for example, where screening programmes are directed at particular age cohorts, uptake is also measured on that basis. So it is important to look at this on a case by case basis. However, there has already been movement in reducing age-related indicators: for example, DH no longer looks at emergency re-admissions for those over 75 and instead looks at all emergency re-admissions, while acknowledging that older age groups are more likely to be re-admitted. Within social care, the majority of the new indicators that DH is currently developing will be all-age and not have a cut-off.

6.10 *We welcome comments on the review's recommendation.*

Proposal 11: World Class commissioning

6.11 The review recommended that:

DH should ensure that there are clear and emphatic references to ending discrimination in relation to the eight protected characteristics (including age) and advancing equality in the 2010/11 World Class Commissioning assurance process (Recommendation 12; discussed in paragraphs 5.14-19 of the review's report).

6.12 DH agrees with this recommendation, because we think it usefully reinforces the requirements that will be put in place by the Equality Bill, and we plan to take it forward in the assurance process.

6.13 *We would welcome views on:*

a) whether it is right in principle to add references to discrimination and equality to the World Class Commissioning assurance process;

b) how this might be done, for example, should attention focus on competencies 2, 3, 5 and 6, as the review suggested?

Proposal 12: Improving quality and productivity

6.14 The review recommended that:

DH and the health and social care system ensure that work to prevent harm and waste and spread innovation within the system should be designed to help promote age equality and that measures to end age discrimination are implemented so that they improve quality and productivity (Recommendation 20, discussed in paragraph 7.7 of the review's report).

6.15 DH agrees with this recommendation, and proposes to take it forward by ensuring that the Quality, Innovation, Productivity and Prevention (QIPP) agenda includes a focus on age equality.

6.16 *We welcome comments on the review's recommendation and our proposal for taking it forward.*

Proposal 13: Registration, inspection, regulation and assessment

6.17 The review recommended that:

All relevant national regulatory organisations, especially the Equality and Human Rights Commission and the Care Quality Commission, should work together and with DH to ensure that a shared understanding of the implications of the law is the basis for registration, inspection, regulation and assessment of the health and social care system (Recommendation 26; discussed in paragraph 8.9 of the review's report).

6.18 DH accepts this recommendation. It intends to work closely with EHRC to develop guidance on the requirements of the legislation, in relation not just to age but also to the other protected characteristics, and CQC are also contributing to that process. This in itself will help to ensure that, when DH, EHRC and CQC come to assess the performance of health and social care bodies against the requirements of the legislation, they do so with a shared understanding of its implications. DH will also be working with those bodies to keep to a minimum any burdens associated with registration, inspection, regulation, and assessment, for example by ensuring that information that meets the needs of one body will also meet the needs of another.

6.19 *We welcome comments on the review's recommendation and our proposals for taking it forward.*

Proposal 14: A joint social care and health assurance process

6.20 The review recommended that:

DH develops a joint assurance process for social care and health to demonstrate progress with implementing the age equality provisions of the Equality Bill. The Equality and Diversity Council should consider how to support this process to ensure it is aligned with other assurance processes covering health and social care (Recommendation 22; discussed in paragraph 8.5 of the review's report).

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6.21 DH is asking the Equality and Diversity Council to consider how this recommendation should be taken forward. There is a case for the assurance process looking both at implementation, once the legislation is in force, and at preparation for implementation, in the run-up to commencement of the legislation.

6.22 The review also made a number of recommendations as to what health and social care bodies should do at local level. These are described in chapter 7. DH is also asking the Equality and Diversity Council to consider whether any of the actions those recommendations involve should be reported through the same assurance process.

6.23 *We welcome comments on the review's recommendation.*

7. PROPOSALS RELATING TO ACTION BY OTHER BODIES

Providers and commissioners of health and social care: general

7.1 The review made a number of recommendations addressed, not to DH, but to providers and commissioners of health and social care. Some of these are cross-cutting, while others are concerned with specific services. Where they call for “review” of current practices, it is important to recognise that this is unlikely to be a one-off process; rather, practices need to be kept under review as further information (including the final form of any legislation and of guidance by EHRC) becomes available. These recommendations are for bodies other than DH to take forward, but in each case *we welcome comments on:*

- *whether these are appropriate steps to take;*
- *whether progress on any should be considered for inclusion in the assurance process considered under Proposal 8;*
- *whether there is action that DH should take to support health and social care in meeting these recommendations, over and above production of the resource pack that is already planned.*

Proposal 15: Visible leadership

7.2 Amongst the general recommendations is one that:

Leaders of health and social care organisations, including the boards of those organisations and Elected Members, will want to set out a clear commitment to their staff and the wider public to meeting the requirements of the age discrimination ban and the public sector equality duty and demonstrate how the health and social care sector can show leadership in tackling ageism in society (Recommendation 17; discussed in paragraph 6.10 of the review’s report)

Proposal 16: Joint working

7.3 Another general recommendation is that:

Local social care and health commissioners and providers will want to work together to implement the age provisions in the Equality Bill. We are producing a resource pack to support local communities and recommend that the local approaches share the following features/outcomes:

- Led by Primary Care Trusts (PCTs) and Local Authorities (LAs), with joint audit of services, systems and processes across health and social care;
- Joint action planning across health and social care that sets out how local organisations will meet the public sector equality duty and comply with the age discrimination ban;
- Work with NHS, LA, third and independent sector providers and those working in them to embed actions in provider improvement plans;
- Assessment and agreement of the local resource consequences of implementation within local funding parameters;

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- Involvement of members of the public in the work through Local Involvement Networks (LINKs), forums and other networks and discussion of the conclusions of the local analysis by NHS Boards and Elected Members in public;
- Use the local scrutiny processes and bodies such as Health Overview and Scrutiny Committees to provide transparency and build public confidence;
- Build on existing approaches to implementing equalities and quality improvement but recognise that the age provisions in the Bill are a new requirement (Recommendation 19; discussed in paragraphs 7.3-5 of the review's report).

The resource pack will be available for April 2010 so it can be used during 2010-11.

Proposal 17: Local authority assessment procedures

7.4 The review also recommended that:

Local authorities review their assessment procedures and the resulting packages of care and funding arrangements for both service users and carers in preparation for the new legislation focusing on the outcomes that are delivered for service users and their carers (Recommendation 13; discussed in paragraphs 5.20-24 of the review's report).

Providers and commissioners of health and social care: specific services and functions

Proposal 18: Mental health

7.5 The review recommended:

Every provider and commissioner of mental health services will need to consider how to achieve non-discriminatory, age-appropriate services, drawing on insights from reports such as *Equality in Later Life* and other sources of good practice (Recommendation 2; discussed in paragraphs 3.12-15 of the review's report).

Proposal 19: Prevention

7.6 The review recommended that:

Health and social care organisations work in partnership to implement demonstrated best practice in prevention programmes that improve the quality of life of older people (Recommendation 4; discussed in paragraphs 3.20-23 of the review's report).

Proposal 20: Training

7.7 The review recommended that:

Local statutory organisations should build into their contracts with providers of training programmes (including third sector and private organisations) the need for an explicit focus on age equality that supports staff in providing high quality services to people of all ages (Recommendation 16; discussed in paragraph 6.9 of the review's report).

Proposal 21: Complaints

7.8 The review recommended that:

Local NHS and social care commissioners and providers, and the people that work in them, consider how they can use the new NHS and social care complaints process to achieve rapid resolution of individual instances of potential discrimination (Recommendation 18; discussed in paragraph 6.15 of the review's report).

Proposal 22: Joint Improvement Partnerships

7.9 The review recommended that:

Local authorities use the Joint Improvement Partnership process to share learning and progress, thus ensuring linkage with the implementation of *Putting People First* (Recommendation 23; discussed in paragraph 8.6 of the review's report).

Other recommendations

7.10 Two other recommendations are directed at, respectively, professional regulators and providers of education and training.

Proposal 23: Professional regulatory bodies

7.11 The review recommended that:

All professional regulatory organisations will need to review and, if necessary, revise their standards, codes of conduct and education programmes to advance equality and to ensure that age discriminatory behaviour is clearly identified as unacceptable and a failure in professional standards (Recommendation 14; discussed in paragraphs 6.4-7 of the review's report).

7.12 DH agrees with this recommendation. Most of the bodies concerned¹² are fully independent of DH but accountable to Parliament. (Only the General Social Care Council has an accountability relationship to DH). However DH has already written to the bodies concerned to alert them to the requirements of the Bill.

7.13 *We welcome comments on this recommendation.*

Proposal 24: Education and training in health and social care

7.14 The review recommended that:

All organisations responsible for education and training in health and social care will need to ensure that their curricula and programmes enable staff and trainees to apply the law effectively in time for its commencement. We recommend that the providers of education develop ways of involving older people in the delivery of education programmes, especially

¹² Council for Healthcare Regulatory Excellence; General Chiropractic Council; General Dental Council; General Medical Council; General Optical Council; General Osteopathic Council; General Pharmaceutical Council; General Social Care Council; Health Professions Council; Nursing and Midwifery Council; Office of the Health Professions Adjudicator

to trainees at an early stage in their learning (Recommendation 15; discussed in paragraphs 6.8 of the review's report).

7.15 *We welcome comments on the review's recommendation.*

Proposal 25: Mainstreaming the Equality Bill in other parts of the health and social care system

7.16 Three of the recommendations that have been considered in chapter 5 in relation to DH's own processes also apply to other parts of the health and social care system. These are:

Arms-length Bodies, such as Executive Non-departmental Public Bodies, should satisfy themselves that any age-based criteria they apply comply with the new legislation (Recommendation 8; made in paragraph 4.10 of the review's report);

DH and the NHS review the use they make of quality-adjusted life years (QALYs) and other similar support tools to inform their decision-making prior to the Equality Bill coming into force. (Recommendation 11; discussed at paragraphs 5.9-13 of the review's report);

and

DH and the wider system ensure the use of tools such as Equality Impact Assessments to ensure compliance with the age discrimination ban and the public sector equality duty in all new policies (Recommendation 21, discussed in paragraph 8.3 of the review's report).

7.17 DH plans to alert the executive non-departmental public bodies that it sponsors to the requirements of the Equality Bill, and to update them on thinking about tools such as equality impact assessment, in the same way as it plans to alert its advisory non-departmental public bodies (see Proposal 3).

7.18 *We welcome comments on these recommendations and on DH's proposals for taking them forward.*

Annex A: The Consultation Process

Criteria for consultation

A.1 This consultation follows the 'Government Code of Practice on Consultations'. In particular we aim to:

1. consult at a stage when there is scope to influence the policy outcome
2. consult for at least 12 weeks with consideration given to longer timescales where feasible and sensible
3. ensure the consultation documents are clear about the consultation process, what is being proposed, the scope to influence and the expected costs and benefits of the proposals
4. ensure the consultation exercise is accessible to, and clearly targeted at, those people the exercise is intended to reach
5. keep the burden of consultation to a minimum so that consultations are effective and consultees' buy-in is obtained
6. carefully analyse responses and give clear feedback to participants following the consultation
7. provide guidance to officials in how to run an effective consultation and share what they have learned from the experience

The full text of the code of practice is on the Better Regulation website at:

www.berr.gov.uk/files/file47158.pdf

Comments on the consultation process itself

A.2 If you have concerns or comments which you would like to make relating specifically to the consultation process itself please

Contact: Consultations Co-ordinator
Department of Health
3E48, Quarry House
Leeds
LS2 7UE

e-mail: Consultations.co-ordinator@dh.gsi.gov.uk

Please do not send consultation responses to this address.

Confidentiality of information

A.3 We manage the information you provide in response to this consultation in accordance with the Department of Health's [Information Charter](#).

A.4 Information we receive, including personal information, may be published or disclosed in accordance with the access to information regimes (primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004).

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A.5 If you want the information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence. In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Department.

A.6 The Department will process your personal data in accordance with the DPA and in most circumstances this will mean that your personal data will not be disclosed to third parties.

A.7 Responses will be analysed to inform DH's decisions on what action is necessary to prepare health and social care for implementation of the new legislation.

Summary of the consultation

A8. A summary of the response to this consultation will be made available before or alongside any further action and will be placed on the Consultations website at:
<http://www.dh.gov.uk/en/Consultations/Responsestoconsultations/index.htm>

ANNEX B: WHO ARE WE SENDING THIS CONSULTATION PAPER TO?

This is a consultation of the public by the UK Government. The list below therefore does not include UK Government departments, including DH or its agencies.

Local authorities in England with social services responsibilities

NHS bodies in England

- Strategic health authorities
- Primary care trusts
- NHS trusts
- NHS foundation trusts
- Special health authorities¹³

Advisory non-departmental public bodies sponsored by the Department of Health

Bodies mentioned in legislation

- Administration of Radioactive Substances Advisory Committee
- Advisory Board on the Registration of Homeopathic Products
- British Pharmacopoeia Commission
- Commission on Human Medicines
- Herbal Medicines Advisory Committee
- Independent Review Panel on the Classification of Borderline Products
- Independent Review Panel for Advertising
- Joint Committee on Vaccination and Immunisation
- National Information Governance Board for Health and Social Care

Bodies not mentioned in legislation

- Advisory Committee on Antimicrobial Resistance & Healthcare Associated Infections
- Advisory Committee on Borderline Substances
- Advisory Committee on Clinical Excellence Awards
- Advisory Committee on Dangerous Pathogens
- Advisory Committee on Resource Allocation
- Advisory Committee on the Safety of Blood, Tissues & Organs
- Advisory Group on Hepatitis
- Committee on Carcinogenicity of Chemicals in Food, Consumer Products and the Environment
- Committee on Medical Aspects of Air Pollution
- Committee on Medical Aspects of Radiation in the Environment
- Committee on Mutagenicity of Chemicals in Food, Consumer Products and the Environment
- Committee on the Safety of Devices
- Expert Advisory Group on AIDS
- Gene Therapy Advisory Committee
- Genetics & Insurance Committee

¹³ Health and Social Care Information Centre; NHS Blood and Transplant; NHS Business Services Authority; NHS Professionals; NHS Institute for Innovation and Improvement; NHS Litigation Authority; National Institute for Health and Clinical Excellence; National Patient Safety Agency; National Treatment Agency for Substance Misuse.

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Human Genetics Commission¹⁴
Independent Advisory Group on Sexual Health & HIV
Independent Reconfiguration Panel
NHS Pay Review Body
Medical Education England
National Joint Registry Steering Committee
Review Body on Doctors and Dentists Remuneration
Scientific Advisory Committee on Nutrition
National Clinical Audit Advisory Group
Persons Appointed Panel
Health Innovation Council
National Skills Authority for Social Care

Executive non-departmental public bodies sponsored by the Department of Health

Alcohol Education & Research Council
Appointments Commission
Care Quality Commission
Health Protection Agency
Human Fertilisation and Embryology Authority
Human Tissue Authority
Independent Regulator of NHS Foundation Trusts
Postgraduate Medical Education and Training Board

Health and social care regulatory bodies

Council for Healthcare Regulatory Excellence
General Chiropractic Council
General Dental Council
General Medical Council
General Optical Council
General Osteopathic Council
General Pharmaceutical Council¹⁵
General Social Care Council
Health Professions Council
Nursing and Midwifery Council
Office of the Health Professions Adjudicator¹⁶

Equality stakeholders

11 Million
Action on Elder Abuse
African Caribbean Care Group for the Elderly
Age Concern/Help the Aged
Age of Diversity
Alzheimer's Society

¹⁴ The Hearing Aid Council is not included in this list, as an order under the Health and Social Act 2008 has been made to abolish it in March 2010, when its functions will transfer to the Health Professions Council.

¹⁵ The General Pharmaceutical Council is expected to be operational from spring 2010.

¹⁶ The Office of the Health Professions Adjudicator is expected to be operational from April 2011.

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Anchor Trust
Arthritis Care
Association of Directors of Adult Social Services
Audit Commission
Beth Johnson Foundation
Black and Ethnic Minority Diabetes Association
Breakthrough Breast Cancer
Breast Cancer Care
British Geriatric Society
British Society of Gerontology
Carers UK +
Centre for Ageing and Mental Health, Staffs University
Centre for Policy on Ageing
Children's Rights Alliance for England
Contact the Elderly
Counsel and Care
CSIP Mental Health
Demos
Diabetes UK
Disabled Living Centres Council
Disabled Living Foundation
Equality and Human Rights Commission
Equality and Diversity Forum
Four Seasons
Hackney Link
Housing 21
Idea
inControl
Independent Health Advisors
Institute for Public Policy Research
International Longevity Centre UK
Jewish Care
Joseph Rowntree Foundation
Kings Fund
Local Involvement Networks (LINKs)
London Visual Impairment Forum
Macmillan
Making Space
Men's Health Forum
Mencap
Mental Health Foundation
MIND
NACRO
National Association of Registered Nursing Homes
National Black Carers Workers Network
National Care Association
National Care Forum
National Centre for Social Research
National Council for Palliative Care
National Council for Voluntary Organisations

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National Heart Forum
National Pensioners Convention
National Prescribing Centre
National Voices
NHS Confederation
Older People's Advocacy Alliance
Parkinson's Disease Society
Patients Association
Policy & Research in Ethnicity & Ageing
Policy Studies Institute
Press for Change
PRIAE (University of Central Lancashire)
Prison Reform Trust
Psychology Specialists working with Older People
Queer Youth Network
Race Equality Foundation
RADAR
Relatives & Residents Association
Research in Practice for Adults
Rethink
RNIB
RNID
Saga
Sainsbury Centre for Mental Health
Sense
Sickle Cell Society
Skills for Care
Skills for Health
Social Care Institute for Excellence
Stonewall
Stroke Association
The Red Cross
UK Home Care Association
UK Public Health Association
Unison
Unite
Voluntary Organisation Disability Group
WRVS
YWCA

ANNEX C: KEY FEATURES OF THE EQUALITY BILL

C.1 This annex provides an overview of the provisions in the Equality Bill that are most relevant in the context of:

- banning age discrimination in the provision of services and exercise of public functions; and
- extending the public sector equality duty to apply to age.¹⁷

C.2 However, it is important to bear in mind that most of the clauses in the Bill are generic: that is, they generally apply to eight protected characteristics: age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex, and sexual orientation. (There are only two clauses in the Bill that are specific to age).¹⁸ The provisions described in this annex are generic, except where otherwise stated.

Key concepts

Discrimination

C.3 Discrimination law is generally about a person's treatment relative to that of a **comparator**, not about absolute standards. The comparator may be real or (except in equal pay cases) hypothetical.

C.4 When comparing cases for the purpose of establishing whether discrimination has occurred, "there must be **no material difference** between the circumstances relating to each case" (clause 23(1)).

C.5 When comparing cases, it is necessary to compare the way the same person treats **both** the person complaining of discrimination **and** the comparator. A claim of discrimination cannot be based on the fact that one person treated A less well than a different person treated B. If a person can show that s/he has been discriminated against, s/he can claim damages in respect of any loss that s/he has suffered, and often for injury to feelings. It is only necessary for a claimant to prove facts from which the court can decide, in the absence of any other explanation, that discrimination has occurred, whereupon the burden of proof shifts to the respondent to show that it has not acted in a discriminatory way.

C.6 The same basic definitions of discrimination apply across all protected characteristics, with some variations. Broadly speaking:

Direct discrimination is treating someone *less favourably because of a protected characteristic* (clause 13). This does not have to be the victim's own characteristic: the Bill also provides protection if the victim does not have the characteristic but associates with others who do, or if the victim is (wrongly) perceived to have the characteristic.

¹⁷ The equality duty applies to public bodies in relation to all the functions they exercise. The review, and this consultation paper, focus on what it might mean in relation to services and public functions.

¹⁸ Clause 5, which defines what it is to share the protected characteristic of age; and clause 192 which provides a power to make secondary legislation in relation to age.

Indirect discrimination is applying to someone a provision, criterion or practice which puts him/her, and persons with whom s/he shares a protected characteristic, *at a particular disadvantage* (clause 19).

C.7 However, disadvantageous treatment that would otherwise be indirect discrimination (for any protected characteristic), or less favourable treatment that would otherwise be direct discrimination (for age only), is **not discrimination** if the person applying it can show it to be a proportionate means of achieving a legitimate aim. (If the person applying the treatment can show this, the different treatment is sometimes said to be “objectively justified”).

C.8 The Bill does not define “legitimate aim” or “proportionate means”. This will be a judgement for the courts to make. It is worth recognising that:

- Judgements about what is proportionate (and perhaps also legitimate) are likely to change over time. For example, something which is impossible (and therefore not proportionate now) may become proportionate in future if a new technology develops that means it can be done easily and cheaply. Something that is proportionate now may cease to be proportionate, perhaps because a less discriminatory way of achieving the same aim becomes available.
- The fact that an aim is legitimate does not imply that any means of achieving it is proportionate. For example, distributing health care resources to Primary Care Trusts on the basis of the number of older people in their populations— and assuming that other age groups have no need for health care – is unlikely to be proportionate. It is rarely possible to justify discriminatory conduct on the basis of lack of available funds. Nor is it possible to justify such conduct where other less discriminatory means are available.
- The decision will rarely be simple and will depend on the circumstances of the case.

Harassment and victimisation

C.9 The Bill defines harassment and victimisation as well as discrimination. For simplicity, this annex concentrates on discrimination, but, broadly speaking:

- **harassment** is unwanted conduct related to a protected characteristic which, for example, violates the dignity of a person with the characteristic (clause 25);
- **victimisation** means subjecting a person to detriment because he or she has brought or supported proceedings under discrimination legislation or is suspected of doing so (clause 26).

Services and public functions

C.10 Clause 28 of the Bill makes clear that discrimination in the provision of services and exercise of public functions is unlawful. This ban applies to discrimination because of the eight protected characteristics (including age) listed above.

C.11 Discrimination on most protected grounds (for example, race, sex, disability) is banned against people of any age, but age discrimination is banned only in relation to people aged 18 or over. (This is because it often is appropriate to treat children differently because of their age).

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C.12 The Bill sets out a number of “exceptions” to the ban on discrimination: that is, it makes clear that behaviour or policies etc falling within the scope of an exception do not breach the ban on discrimination.

- Some exceptions apply in relation to all the relevant protected characteristics. For example clause 186 and Schedule 22 make clear that it is not a breach of the law on discrimination to do something that is required by an Act of Parliament or other legislation.
- Other exceptions are more specific. For example, paragraph 14 of Schedule 3 to the Bill makes clear that it is not unlawful to refuse, in certain circumstances, to provide a service to a pregnant woman for health and safety reasons.

The Bill also includes powers to create further “exceptions” in secondary legislation (after the Bill has received Royal Assent). The power to create exceptions in relation to most protected characteristics in relation to services and public functions is at the end of Schedule 3. The power to create exceptions in relation to age is in clause 192. (As explained in paragraph 2.9 above, GEO will shortly be announcing the Government’s decisions on what age exceptions to create).

Enforcement

C.13 The Bill includes provisions on how the ban on discrimination in services and public functions may be enforced. Briefly:

- an individual can bring a claim of discrimination in the county court, and EHRC can help him or her to do so;
- if the court finds that unlawful discrimination has occurred, it may award damages, including for injury of feelings, and/or make an injunction (requiring a person to do, or stop doing, something) or a declaration (that there was unlawful behaviour);
- both the person carrying out the unlawful act and the person/body on whose behalf they were acting can be held to account where appropriate.

Public sector equality duty

The general duty

C.14 The Equality Bill also strengthens existing legislation by replacing the three separate equality duties that currently apply to the public sector in relation to disability, race and sex with a new duty which applies in relation to the eight protected characteristics listed above. The duty applies to people of all age groups.

C.15 The new duty means that a public authority in the exercise of its functions (and a person carrying out a public function in the exercise of that function) must have due regard to the need to:

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- (a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Bill;
- (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
- (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it (for example, persons of different age groups).

Clause 145 of the Bill provides more detail on what is meant by having due regard to the need to “advance equality of opportunity” and to “foster good relations”.

Specific duties

C.16 The Bill also provides a power to impose additional duties, in secondary legislation, on public authorities bound by the general duty. The intention is that these specific duties will help public authorities meet the requirements of the general duty. GEO recently conducted a consultation on what specific duties might be set: information about this is on the GEO website.

Enforcement

C.17 Briefly:

- the general duty can be enforced by EHRC or by judicial review;
- the specific duties are enforceable only by EHRC.

ANNEX D: CONCLUSIONS AND RECOMMENDATIONS BY THE SOUTH WEST REVIEW

| | Recommendation | Where considered in this consultation paper |
|---|--|--|
| 1 | The review recommended that: The Department of Health consults formally on the action it proposes to take in the light of this report | Met by this consultation paper as a whole |
| 2 | Every provider and commissioner of mental health services will need to consider how to achieve non-discriminatory, age-appropriate services, drawing on insights from reports such as <i>Equality in Later Life</i> and other sources of good practice | 7.5 |
| 3 | The Department of Health ensures that a programme of research is commissioned that enables the Advisory Committee on Breast Screening to advise on the upper limit of the breast cancer screening programme, and regularly updates the evidence | 5.17 |
| 4 | Health and social care organisations work in partnership to implement demonstrated best practice in prevention programmes that improve the quality of life of older people | 7.6 |
| 5 | Subject to the outcome of the consultation process on the age provisions in the Equality Bill undertaken by the Government Equalities Office, the Government should set the same commencement date for the ban on age discrimination in health and social care as in other sectors [currently envisaged to be 2012] | 4.1 |
| 6 | There are no areas within health and social care that should be removed wholesale from the scope of the ban on age discrimination. | 4.5 |
| 7 | The Government should consider further whether any more specific exceptions are needed for health and social care. We do not think there is anything wrong in principle with such exceptions, but we have not identified a compelling need for any. | 4.6 |
| 8 | The Department of Health should set out how it and the Advisory Committees and Executive Agencies that it sponsors will ensure public confidence by assessing age-based criteria in a transparent manner, leading to changes in policy if required. Arms-length Bodies, such as Executive Non-departmental Public Bodies, should satisfy themselves that any age-based criteria they apply comply with the new legislation. | 5.17 7.16 |

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| 9 | The Department of Health should review the relative weighting of the two Relative Need Formulae (RNF) for adult social care before 2012. It should also ensure that this and future reviews of the formulae ensure compliance with the ban on age discrimination and the public sector equality duty. | 5.17 |
| 10 | The Department formally asks the Advisory Committee on Resource Allocation (ACRA) to ensure that its future recommendations comply with the age discrimination ban and the public sector equality duty in its ongoing work | 5.2 footnote 6 |
| 11 | The Department of Health and the NHS review the use they make of quality-adjusted life-years (QALYs) and other similar support tools to inform their decision-making prior to the Equality Bill coming into force | 5.13 |
| 12 | The Department of Health should ensure there are clear and emphatic references to ending discrimination in relation to the eight protected characteristics (including age) and advancing equality in the 2010/11 World Class Commissioning assurance process. | 6.11 |
| 13 | Local Authorities review their assessment procedures and the resulting packages of care and funding arrangements for both service users and carers in preparation for the new legislation focusing on the outcomes that are delivered for service users and their carers. | 7.4 |
| 14 | All professional regulatory organisations will need to review and, if necessary, revise their standards, codes of conduct and education programmes to advance equality and to ensure that age discriminatory behaviour is clearly identified as unacceptable and a failure in professional standards. | 7.11 |
| 15 | All organisations responsible for education and training in health and social care will need to ensure that their curricula and programmes enable staff and trainees to apply the law effectively in time for its commencement. We recommend that the providers of education develop ways of involving older people in the delivery of education programmes, especially to trainees at an early stage in their learning. | 7.14 |
| 16 | Local statutory organisations should build into their contracts with providers of training programmes (including third sector and private organisations) the need for an explicit focus on age equality that supports staff in providing high quality services to people of all ages. | 7.7 |
| 17 | Leaders of health and social care organisations, | 7.2 |

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| | including the boards of those organisations and Elected Members, will want to set out a clear commitment to their staff and the wider public to meeting the requirements of the age discrimination ban and the public sector equality duty and demonstrate how the health and social care sector can show leadership in tackling ageism in society. | |
| 18 | Local NHS and social care organisations consider how they can use the new NHS and social care complaints process to achieve rapid resolution of individual instances of potential discrimination. | 7.8 |
| 19 | <p>Local social care and health commissioners and providers will want to work together to implement the age provisions in the Equality Bill. We are producing a resource pack to support local communities and recommend that the local approaches share the following features/outcomes:</p> <ul style="list-style-type: none"> • Led by Primary Care Trusts (PCTs) and Local Authorities (LAs), with joint audit of services, systems and processes across health and social care; • Joint action planning across health and social care that sets out how local organisations will meet the public sector equality duty and comply with the age discrimination ban; • Work with NHS, LA, third and independent sector providers and those working in them to embed actions in provider improvement plans; • Assessment and agreement of the local resource consequences of implementation within local funding parameters; • Involvement of members of the public in the work through Local Involvement Networks (LINKs), forums and other networks and discussion of the conclusions of the local analysis by NHS Boards and Elected Members in public; • Use the local scrutiny processes and bodies such as Health Overview and Scrutiny Committees to provide transparency and build public confidence; • Build on existing approaches to implementing equalities and quality improvement but recognise that the age provisions in the Bill are a new requirement. | 7.3 |
| 20 | The Department and the health and social care system ensure that work to prevent harm and waste | 6.14 |

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| | and spread innovation within the system should be designed to help promote age equality and that measures to end age discrimination are implemented so that they improve quality and productivity. | |
| 21 | The Department of Health and the wider system ensure the use of tools such as Equality Impact Assessments to ensure compliance with the age discrimination ban and the public sector equality duty in all new policies. | 5.6, 7.17 |
| 22 | The Department of Health develops a joint assurance process for health and social care to demonstrate progress with implementing the age equality provisions of the Equality Bill. The Equality and Diversity Council should consider how to support this process, to ensure it is aligned with other assurance processes covering health and social care. | 6.20 |
| 23 | Local Authorities use the Joint Improvement Partnership process to share learning and progress, thus ensuring linkage with the implementation of <i>Putting People First</i> | 7.9 |
| 24 | The Department of Health should work with the Health and Social Care Information Centre to explore how to construct an age-specific dataset to support the resource pack and help local organisations analyse and monitor patterns of service provision by age. This must link into wider work on indicators, including the programmes of the Public Health Observatories and the National Indicator Set. | 6.5 |
| 25 | Future performance measures that are both proportionate and targeted should be developed in accordance with the age discrimination ban and the public sector equality duty. | 6.8 |
| 26 | All relevant national regulatory organisations, especially the Equality and Human Rights Commission and the Care Quality Commission, should work together and with the Department of Health to ensure that a shared understanding of the implications of the law is the basis for registration, inspection, regulation and assessment of the health and social care system. | 6.17 |
| 27 | The Department of Health ensures that an up-to-date pack of resources, including good practice material, is available to health and social care organisations to support them to meet the requirements of the Equality Bill relating to age, and consider whether to identify national centres of expertise to co-ordinate work at a regional level to | 6.2 |

Age Equality in Health and Social Care

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| | implement the provisions of the Equality Bill. | |
| 28 | The Department of Health through the NHS National Institute for Health Research and its school for social care research should review the relevant guidance to ensure it is compliant with the Equality Bill, and promote further research on ageing | 5.10 |

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