Age Discrimination (Goods, Facilities and Services) Bill

Purpose and scope

1. This evidence is intended to assist the Committee's scrutiny of the Age Discrimination (Goods, Facilities and Services) Bill. It focuses on the Bill's drafting, how its provisions would operate and their practical implications, including the responsibilities it would place on TEO and the preparations needed for implementation. In the absence of an agreed ministerial policy position, we are not offering a view or advice on its policy merits or recommending particular policy outcomes. Our detailed review is continuing, and further issues or recommendations may emerge.

Age range

2. Clause 9 applies the main services protections from age 16, excluding under-16s from Part 3. We recommend assessing how this threshold would operate in mixed-age services, including education, and alongside "assumed age" in clause 1(4). The Explanatory and Financial Memorandum indicates that some provisions draw on the Equality Act 2010, whose services age protections apply from 18, while others draw on different legislation. Bringing together provisions from different legislative models requires careful checking to ensure that they operate consistently. Coverage of 16- and 17-year-olds may also require additional provisions, rather than simply adapting provisions developed for an adult-only framework. We recommend assessing the exceptions, safeguarding and implementation arrangements needed for the Bill's 16-plus coverage.

Clarity and consistency of protections

3. Clauses 2–4 deal separately with discrimination, harassment and victimisation. The victimisation test differs from that used in other equality legislation and appears to treat victimisation as a distinct form of unlawful conduct, rather than a form of discrimination. The Bill does not expressly define "discrimination" to include victimisation. References to discrimination elsewhere therefore do not appear automatically to cover victimisation. This affects, for example, clauses 16–19 and ECNI's code-making function in clause 22(1)(a). Clause 20's general duty also needs checking for both harassment and victimisation. We recommend reviewing references throughout the Bill to ensure that each form of conduct is covered where intended, including how the protection in clause 5(2) relates to references elsewhere to discrimination.

4. We recommend reviewing whether the Bill contains the definitions needed for its provisions to operate clearly and consistently, including “assumed age” and terms used in the employer, principal and agent provisions. We also recommend clarifying whether clause 2(1)(a) is intended to protect a person treated less favourably because of their association with someone of a particular age. Clause 2(1)(b)(ii) requires the individual to suffer a particular disadvantage. This may leave a gap where a provision, criterion or practice deters someone from seeking a service before they experience that disadvantage. Clause 2(2) refers to “treatment”, a term used in clause 2(1)(a), but not in clauses 2(1)(b) and (c). It is therefore unclear whether objective justification applies to those other forms of discrimination, including indirect discrimination. We recommend making its intended application express.

5. Clause 10 covers the terms on which a service is provided, but does not expressly refer to its quality or the manner in which it is provided. Although “any other detriment” may cover these matters, that would be left to judicial interpretation. Clause 10(3)’s reference to a person “requiring” a service may also provide narrower protection than intended. We recommend making the intended coverage clear in the Bill. Clause 30(2)’s use of “any other explanation”, rather than “an adequate explanation”, should also be reviewed alongside subsection (3) to ensure that the burden-of-proof provisions have the intended effect.

Enforcement and procedural coherence

6. Clauses 29 and 38 appear inconsistent: clause 29 contemplates individual claims involving instructions or pressure to discriminate under clauses 5 and 6, while clause 38 reserves proceedings to ECNI. The references in clauses 5 and 6 to unlawful conduct under Part 2 also warrant review against the operative prohibitions in Part 3. The individual route for associations under clause 19 is also unclear because it sits outside Part 3, to which clause 29 principally refers. We recommend clarifying the intended routes and aligning the drafting, including whether individual, ECNI only or combined enforcement is intended. Clause 38 also contains no express time limit for bringing proceedings. We recommend clarifying whether that is intended and how the applicable limitation arrangements would operate.

7. We recommend reviewing procedural provisions against current arrangements. Examples include industrial tribunal references in clauses 33(1) and 37(5), despite the county court framework; unclear powers to prescribe forms and procedures under clauses 24, 25 and 32; and older legal-aid references in clause 40(6). The review

should address not only terminology, but also whether the underlying structures, procedures and time limits drawn from older legislation are appropriate for this regime. Examination with the relevant justice bodies would also help assess offences, court arrangements and safeguards.

Delegated powers and exceptions

8. Clauses 14 and 46(2) offer potentially overlapping ways to make otherwise unlawful treatment lawful. Both involve Assembly approval, but clause 46(2), which permits amendment of Part 3, does not expressly carry clause 14's consultation and proportionality safeguards. We recommend clarifying why both powers are needed, their limits and whether the different safeguards are intended. In particular, clarification would be helpful on whether clause 46(2) is intended to address circumstances in which the limitations in clauses 14 and 15 prevent an exception considered necessary for implementation. We also recommend clarifying what additional exceptions clause 14 permits beyond the justification provision in clause 2(2). In particular, clarification would be helpful on how clause 14(3)'s proportionality requirement would operate and what additional scope or legal certainty regulations would provide beyond the justification provision in clause 2(2), whose reach also requires clarification.

9. Clause 14 leaves substantial exceptions decisions to TEO regulations. Their content and timing will materially affect providers' obligations and certainty for people using services. Developing them entails policy decisions, sectoral evidence, consultation and cross-departmental coordination. We recommend assessing that work against proposed commencement and clarifying how regulations would interact with objective justification, the Bill's express exceptions and clause 13's statutory-authority provision. Without necessary regulations, practices would be assessed under the applicable prohibitions and those existing provisions, subject to clarification of their scope. We also recommend clarifying what "differential treatment" covers in clauses 14 and 15, including whether the powers are intended to extend to harassment or victimisation. The potential for domestic legal challenge to exceptions regulations also needs assessment, including compliance with the enabling power and its consultation and proportionality requirements.

10. We recommend reviewing how the justification provision in clause 2(2), once its scope is clarified, would operate alongside the Bill's exceptions. Clause 13 requires analysis to establish the intended reach of its statutory-authority exception. This includes

whether it is broader than intended and how it applies to discretionary age-based practices carried out under statutory powers. Its existence should not be assumed to resolve every interaction with statutory age rules. Clause 12(3) also needs clarity about who makes regulations limiting positive action.

11. Clauses 16 and 17 take different approaches to the protections in clause 10: the small-dwellings exception retains protection against harassment and victimisation, while the care-in-the-home exception disapplies those protections as well as discrimination protection. Clause 19 prohibits discrimination in associations but does not expressly cover harassment or victimisation. We recommend confirming that these differences reflect the policy intention and clarifying the drafting where necessary.

Financial services

12. Clause 15 does not itself exempt financial services. It constrains future clause 14 regulations, ruling out a blanket exemption and requiring exceptions to be conditional and evidence based. We recommend assessing the scope of any exception needed and the rationale for imposing these particular constraints on financial services, rather than other potential areas of exception. That assessment would help establish whether the different approach is justified and workable. It should also consider the relationship with clause 14's proportionality requirements and clause 46(2)'s power to amend Part 3. Sectoral evidence would help assess the implications for age-based risk assessment and the availability, affordability and accessibility of products. We also recommend clarifying the meaning of "blanket exemption", how TEO would demonstrate compliance with clause 15(1), and the implications for the validity of regulations if those requirements were not met. We also recommend clarifying how the requirement to have regard to consistency with provisions elsewhere in the United Kingdom would operate alongside the prohibition on a blanket exemption, particularly if the relevant powers elsewhere permit such an exemption.

Guidance, commencement and transition

13. Under clause 49, Part 5 and clause 49 itself commence the day after Royal Assent; the remaining provisions commence twelve months after Royal Assent. We recommend testing this sequence against the policy decisions, regulations, guidance, codes and operational preparation required. This includes assessing what ECNI would need to have in place when Part 5 begins, before the main services prohibitions and supporting exceptions take effect. The risk is that duties begin before supporting arrangements are ready. We recommend that the Committee consider alternative

commencement models, including a longer preparation period or a power for TEO to commence the substantive duties by order, with or without a backstop, to support orderly implementation.

14. Clause 44 requires TEO to issue guidance before the "substantive duties" begin, but the Bill does not clearly identify which duties that expression covers. Clause 44 itself also appears to commence alongside the provisions to which the guidance would relate. We recommend specifying the relevant duties and clarifying the legal basis and timing for advance preparation and publication, including the availability of any anticipatory powers. We also recommend checking the reference to prohibitions in the largely definitional Part 2 and clarifying the guidance's legal status, while recognising the courts' role in interpreting the law.

15. We recommend clarifying the respective purposes, scope and legal effects of TEO guidance under clause 44 and ECNI codes under clause 22. This includes how their preparation and revision would be coordinated, how duplication or inconsistent guidance would be avoided, and how each would be treated in legal proceedings. The evidential status of ECNI codes should be made clear. Revised codes retain draft publication and representations, but do not expressly attract clause 22(4)'s consultation requirement.

16. We recommend assessing whether existing contracts, products, arrangements or ongoing services need transitional or saving provision when the new prohibitions begin. Clause 46(3) provides for transitional provision in connection with regulations, so its availability for wider transitional arrangements should not be assumed. We recommend clarifying whether provision is needed in the Bill itself or through a separate power. Separately, we recommend checking whether clause 43 makes appropriate provision for agreements settling claims under the Bill.

Existing law, consent and departmental responsibilities

17. We recommend checking the Bill's interaction with existing equality law, court procedures and ECNI's statutory framework as a whole. This includes assessing whether further interpretative, procedural or consequential provisions of the kind found in other equality legislation are needed for the Bill to operate coherently alongside existing legislation. This includes whether consequential amendments should be made by the Bill itself or whether a suitably defined power is needed to make them.

18. Clauses 14–15 on financial services and clause 47 on Crown application also raise reserved or excepted matter considerations. The sponsor has confirmed Secretary of State consent for the Bill to proceed. We recommend establishing the scope of that consent and, separately, assessing whether any proposed amendments or regulations would require further consent.

19. Clauses 14 and 46 give TEO regulation-making responsibilities; clauses 44 and 45 impose guidance and recurring review duties. We recommend assessing the information and arrangements needed, including whether information-gathering powers are required, the relationship with ECNI's review role and the coordination of TEO guidance with ECNI codes. We recommend clarifying whether clause 20(1)(c) is intended to enable ECNI to recommend amendments to the Act or regulations made under it, rather than to propose regulations themselves. The provision should distinguish ECNI's advisory role from TEO's regulation-making responsibilities. Coordinated work across departments, ECNI, justice bodies and providers would help establish preparation, staffing and funding requirements.

20. Taken together, these issues affect how the Bill as drafted would operate and what would be needed to implement it. We recommend clarifying the intended effect of the provisions and addressing the technical uncertainties identified. Where those matters depend on policy decisions, particularly on age scope and exceptions, those decisions will be central to developing a clear and workable framework.