Age Discrimination (Goods, Facilities and Services) Bill

Briefing for The Committee of the Executive Office

November 2026

Executive Summary

It cannot be overstated the importance of the Assembly legislating for age discrimination legislation in goods, facilities and services (GFS). Northern Ireland is the only part of the UK and Ireland without such protections, and a wealth of evidence exists that demonstrates the negative impacts that the absence of such protections has on many people. These include across areas such as accessing health and social care, financial services, and retail.

The Equality Commission for Northern Ireland (the Commission) has consistently called for the law to be strengthened to prohibit age discrimination outside the workplace. We welcome the introduction of this Bill in that it addresses a longstanding gap in our equality legislation and anti-discrimination protections.

While we would wish the legislation to go further, in, for example, protecting all ages against age discrimination in GFS, we see it an imperative that current gaps in our equality law are addressed and closed and that this Bill progress within the remaining Assembly mandate.

The Commission has provided detailed recommendations on strengthening age discrimination legislation in GFS previously. This briefing, rather than reiterating that advice or reiterating the substantial evidence base on the need for legislation in this area, seeks to analyse the Bill as Introduced and to complement the oral briefing we will provide to Committee. We highlight key areas to strengthen the Bill and potential amendments for consideration by the Committee to ensure the intention of the legislation is realised.

We further highlight selected technical considerations to ensure that there is coherence with wider equality and anti-discrimination law and that duties of the Commission are accurately detailed in the Bill. We highlight that many of the issues within the Bill are related to drafting, and using both Northern Ireland equality legislation and the Equality Act 2010 as the basis of the drafting may have created some of the issues we have identified.

In our role as the equality body for Northern Ireland, we welcome the opportunity to provide comment and advice on how to further strengthen the Bill and intend on providing further detailed written advice to the Committee during the course of the Committee's consultation. In the interests of collaboration between various public

bodies, we are also happy to provide any of our further detailed analysis of the Bill to the Assembly's drafting team, particularly in the context of specific technical considerations within the Bill. We are also engaging with the Executive Office regarding key considerations under the legislation.

We reemphasize the importance of this legislation in preventing and protecting against age discrimination, and the need for it to progress this mandate.

1 Overview

Our briefing focuses on the following three key areas for consideration and scrutiny by the Committee:

- **Strengthening the provisions of the Bill**, including the need for prohibiting direct age discrimination by association and strengthening provisions on justified age discrimination.
- **Exceptions and the scope of the Bill**, including our analysis of the effect of making exceptions via regulations. We further highlight additional exceptions we feel may strengthen the Bill, as well as exceptions currently in the draft Bill that the Assembly may consider removing.
- **Functions of the Commission**, including amendments required to ensure consistency in the description of the Commission's duties with wider Northern Ireland equality and anti-discrimination law.

2 Strengthening provisions of the Bill

We have highlighted the following areas for consideration to ensure that the Bill aligns with its intention of preventing and protecting against age discrimination in GFS. We have further provided a short **Annex** of selected amendments identified by the Commission that the Committee may consider in strengthening the Bill. This list is not exhaustive and is provided for illustrative purposes. We will provide further detail in our written evidence to the Committee.

As such, our briefing focuses on the following priority areas for scrutiny.

Prohibiting direct age discrimination by association

Clause 2 (1) (a) defines direct discrimination and 2(1)(b) and (c) define indirect discrimination. Through a wording inconsistency between them – *on the ground of B's age*/*the same age group as B* – the levels of protection from discrimination are different.

2 (1) (a) defines discrimination on the ground of age as: 'on the grounds of B's age, A treats B less favorably than A treats or would treat others'. Despite Clause 2(1)(c) being expansive i.e. covering indirect age discrimination associative claims, Clause 2(1)(a) limits direct discrimination claims to those brought by persons complaining of discrimination on the ground of their age *('B's age'*), not on the ground of anyone else's age or age more generally.

The effect of this omission is demonstrated in the following scenario:

S (50) books a twin room at a hotel for herself and her son C (16). At check-in, the receptionist notices C's age and says the hotel does not accept guests under 18. Despite S having made and paid for the booking, both S and C are refused accommodation solely because C is 16.

C has a claim for direct age discrimination, as he was refused accommodation because of his age.

S may not have a claim, even though she suffered the same detriment as C.

S was not refused accommodation because of her own age, but because of her association with a younger person. As a result, she may be left without a remedy despite being denied the service alongside C.

The Commission has called for legislation to prohibit direct discrimination due to a person's perceived or actual age, as well as discrimination due to association on grounds of age. **The current wording of the Bill does not prohibit discrimination due to association**. **We recommend amending Clause 2(1)(a) to permit claims for associative direct age discrimination.**

Strengthening provisions on justified age discrimination

Clause 2 (2) sets out that both direct and indirect discrimination on the ground of age can be justified. This provision, as it covers direct discrimination, is unique to the ground of age. The clause prescribes a single justification defence for both direct and indirect discrimination in that 'A does not discriminate against B if A can show A's treatment of B to be a *proportionate means* of achieving a *legitimate aim'*.

This test for justified age discrimination is inconsistent with the interpretation of the equivalent Regulations for Northern Ireland providing protections from discrimination on the ground of age in employment. The test should be equivalent so that age discrimination may be justified only by aims of a public-interest nature.

ECNI recommends that justification for age discrimination extend beyond a 'legitimate aim'. **We have called for the legislation to explicitly state that direct age discrimination can only be justified where a social policy objective is being pursued**; and the measures adopted to achieve that social policy objective are proportionate. A social policy objective is a policy of a 'public interest nature'; as opposed to a purely private aim of a service provider.

Limiting the scope of justification claims would make a significant difference to individuals potentially impacted by discriminatory practices, since it would be harder to justify discrimination, as illustrated by the scenario below:

D (61) pays a monthly membership to a gym. D's gym introduces a rule barring over-60s from their high-intensity classes. Their stated reasons are that their insurer has raised premiums for older participants.

D could bring a claim for direct age discrimination against his gym as a service user under the GFS Bill. However, his claim would be subject to the gym's defense under Clause 2(2).

Unless there was express language in the GFS Bill limiting the objective justification defense to a public interest aim, the gym can simply say that it is too expensive to allow over 60s to participate in high intensity classes, and that it is not financially viable to allow over 60s to participate.

While it would be for a County Court to decide whether or not the gym in the above example has met the justification test, further detail provided in the Bill will be useful in supporting the Court in making such judgements.

3 Exceptions and the Scope of the Bill

The existing structure of the Bill, which is to leave the drafting of most exceptions to future regulations, is arguably unsatisfactory in the sense that it reduces legal certainty for the providers of GFS. As drafted, the Bill does not contain the same breadth of exceptions as those provided for in the Equality Act 2010 and instead relies on Clauses 14 – 15 (Exceptions specified by regulations) being invoked. It is our view that **leaving the detail of exceptions to regulations risks reducing legal certainty regarding obligations, particularly for small organisations and businesses**.

Exceptions are helpful if they are well-crafted; they can clearly and unambiguously signal to providers of GFS what they can safely do without discriminating. For small organisations without access to sophisticated legal advice, this is particularly important as it means they can avoid the complexities associated with establishing objective justification and instead concentrate on meeting the requirements of the applicable exceptions.

Clause 14 (2) provides that exceptions by regulation may be made related to (a) financial services and insurance; (b) health and social care services; (c) age-related concessions and benefits; (d) safeguarding and welfare; and (e) sport and physical recreation. Our recommendation is that further detail and clarity on some of these areas are required within the Bill.

For example, regarding age-related concessions and benefits, the Committee may consider whether it would be useful to include the exception for age-related concessions and benefits on the face of the Bill rather than defer it to regulations (compare, for example, the concessions exception in Schedule 3, paragraph 30A EA 2010). Small organisations with minimal access to legal advice who wish to provide concessions to pensioners, for example, would benefit from certainty in the legislation, rather than being required to prove positive action or objective justification, as demonstrated by the following example:

A community café receives feedback that local pensioners are missing shared meals because of cost and social isolation. It introduces a reduced-price pensioners' lunch on one weekday, with communal seating to encourage social contact. Other customers can still buy lunch at the usual price.

Clause 12 could permit the café to provide the pensioners' lunch concession as positive action if it reasonably believes that the relevant age group experiences age-related disadvantage, has different needs or is underrepresented in an activity, and the concession is a proportionate means of addressing that disadvantage, meeting those needs or encouraging participation.

In the above example, while there may be a route to providing pensioners' lunches under Clause 12, it is our view that including more carefully crafted and detailed exceptions in the Bill, rather than leaving to regulations, will increase legal certainty and reduce the burden on providers of GFS. We further highlight the risk in the Bill coming into effect without regulations in place (for example, if not drafted within the 12-month commencement period). Having greater detail within the Bill would reduce any potential legal uncertainties arising from such a scenario.

However, given the current time pressures on the Bill's passage, the Committee may also wish to consider whether it would be more expedient to strengthen Clause 14 (exceptions by regulation), providing further detail as to what constitutes a legitimate aim. This would act as a safeguard, ensuring that future exceptions are drafted in alignment with the principles of the Bill.

We have highlighted our position previously that any exceptions should be narrowly construed and objectively justifiable. Clause 14 (3) of the Bill provides that 'Regulations under this section must require that any excepted treatment is (a) a proportionate means of achieving a legitimate aim; and (b) no more than is necessary to achieve that legitimate aim'. As per above, we have called for the Bill to explicitly state that direct age discrimination can only be justified where a social policy objective is being pursued; and the measures adopted to achieve that social policy objective are proportionate.

We further welcome that in making regulations the Department must consult the Commission and others, and that any exceptions that are specified by regulations under this section will be subject to the draft affirmative procedure.

Inclusion of additional exceptions

While further noting that 14 (1) (f) includes regulations on 'any other matter that the Department consider appropriate', we highlight that important areas have not been included within the Bill. These additional areas should be provided for in the Bill, but given the aforementioned challenges regarding the limited time remaining within this mandate, the Committee may seek to satisfy itself that these additional areas may be covered within a more comprehensive set of regulations (for example, by amending 14 (2)). The Commission has highlighted the following areas, currently not covered by the Bill:

Charities

For example, the operations of charities are not provided with a specific exception on the face of the Bill, such as that provided for in Section 193 of the Equality Act 2010. The Sex Discrimination (Northern Ireland) Order 1976 has special rules for charities in Article 44. See also Reg 26 The Equality Act (Sexual Orientation) Regulations (Northern Ireland) 2006, and Article 34 pf the Race Relations Order 1997.

An exception for charities should allow them to lawfully provide benefits only to persons of a particular age, provided the charity is acting in pursuance of a charitable instrument and if the restriction is imposed by reason of, or in the grounds of, the charitable instrument.

Where the objectives of a charity do not specify a beneficiary group on the basis of age (either directly or indirectly) then the exception should not apply. In Great Britain, charities must show that the provision of benefits is a proportionate means of achieving a legitimate aim or for the purpose of compensating for a disadvantage linked to age.

Education, training or welfare

There is no exception for education, which is significant given that Clause 10(6)(d) defines ‘facilities for education’ as within the scope of the Bill and the cut-off age is 16 for the prohibition on discrimination. The Sex Discrimination Order 1976 has a bespoke regime on education (Articles 24 to 28), and in GB Schedule 3, paragraph 9 of the Equality Act 2010 excepts age discrimination in connection with school curricula, admissions, transport and the establishment, alteration or closure of schools.

The legislation should include an exception so as to permit service providers to provide goods, facilities and services to meet the specific justified needs of a person of a particular age in regard to their education, training or welfare, or any ancillary benefits.

This is in line with similar exceptions that exist under other equality grounds. For example, the sexual orientation GFS legislation allows for the provision of goods, facilities and services to meet the specific and justified needs of a person of a particular sexual orientation in regard to their education, welfare or other ancillary benefits.

Sport

The GFS Bill does not currently contain a sport exception, although this is identified as an area for possible future regulation under Clause 14(2)(e). We consider that service providers should be permitted to use age limits and age bands within sports and other competitive activities, at all levels, from grassroots to elite, with the aim of protecting participants.

Although sporting organisers or clubs could feasibly rely on the objective justification defence in such circumstances, we view the inclusion of a specific exception as preferable, as it would provide greater certainty. There is a sports exception for age

in s 195(7)-(8) EA 2010 by way of example, and Northern Ireland equality law contains sport exceptions for other characteristics (Article 45 SDO 1976).

Exceptions to remove

As highlighted, we note that 14 (2) provides that exceptions by regulation may be made related to (a) financial services and insurance; (b) health and social care services; (c) age-related concessions and benefits; (d) safeguarding and welfare; and (e) sport and physical recreation.

Without commenting on the specific value of different exceptions in detail, we broadly do not agree that there should be a specific exception for financial services. We consider that the onus should be on financial service providers to objectively justify any differential treatment due to age. While we welcome that Clause 15 rules out a blanket exception, we consider that the burden should be on financial service providers to demonstrate that age is a relevant factor in the assessment of risk and that any difference in treatment is proportionate. Any use of age by financial service providers should be based on relevant information which is from a source from which it is reasonable to rely. In the event that an exception is included in the legislation, it should not apply to harassment or victimisation; as there should be no circumstances in which law should permit financial service providers to harass or victimise a customer due to their age. Any exception should also be subject to statutory review.

We have also consistently argued against specific exceptions for health and social care, and that any age-based practices and rules within health and social care should be assessed against the public interest justification test. We consider that only objectively justifiable differential treatment on the basis of age in these settings, for example, in the delivery of public health programmes, screening or immunisation programmes targeting particular ages, should continue.

Regarding the territorial applications of the Bill, Clause 11 highlights that the provisions of the Bill would not apply to financial facilities, including insurance, where they are for a purpose to be carried out or in connection with risks wholly or mainly arising outside Northern Ireland. It is not clear why all financial products relating to travel outside of NI should be excluded where the discrimination occurs in NI (e.g. an older person who ordinarily lives in NI is charged an onerous travel insurance premium to travel to Spain by an operator in Belfast or there is a complete refusal by a Belfast provider to provide travel insurance to people over 60 travelling outside of the jurisdiction).

If there was a good reason to refuse a product or charge a higher premium because of risks abroad, for example, then that would be addressed via the objective justification defence. The Committee may consider amending Clause 11 so that the Bill covers financial product decisions made in NI rather than the existing broad exemption which we consider would likely cover all aspects of non-NI travel insurance even where the discrimination happened in NI.

4 Functions of the Equality Commission for Northern Ireland

The Equality Commission's functions under the proposed Bill are outlined in Part 5 of the Bill. Our analysis is that what is provided for in this Bill departs from the way in which the Commission's powers and duties are set out in the equivalent statutes for other grounds. The implications of the Bill's different wording may have consequences for the most important powers and duties for the intention of the Bill and in assistance to potential and actual complainants.

There are inconsistencies in the way in which the Commission's general duties are set out in comparison to how the duties of the Commission are described in other anti-discrimination legislation. For example, Clause 20 provides for general statutory duties and refers to (a) the 'elimination of discrimination'. It is worth noting that it does not refer to the elimination or prevention of harassment or victimisation. 20 (b) refers to equality of access, rather than the more general duty of promoting equality of opportunity.

We recommend the duties of the Commission are amended to better reflect other equality legislation in Northern Ireland. We previously recommended that the Commission have general duties under the legislation to work towards the elimination of discrimination and harassment; to promote equality of opportunity between persons of differing age groups; and to keep under review the working of the legislation and, when considered necessary, draw up and submit to TEO proposals for amending the legislation.

The Bill contains provisions for assisting individuals for cases to the County Court. It also includes provisions for investigations, which are not included in the equivalent Sexual Orientation (SO) regulations in 2006.

More broadly, we highlight that the current drafting of the Bill, which includes both guidelines being produced by the Department (Clause 44) as well as a Code of Practice being produced by the Commission, risks creating confusion and duplication, and is not reflective of wider equality law in Northern Ireland. This may be an area which the Committee seeks to further scrutinise.

5 Annex – Amendments for consideration

We have provided the following analysis of selected clauses, including recommendations on specific amendments that we feel would strengthen the Bill. **This list is not exhaustive** and is provided for **illustrative purposes** to highlight some of the amendments the Committee may wish to explore. We will provide further evidence and a comprehensive analysis of amendments required in our written briefing to the Committee.

Protected Characteristic of Age

Clause 1(4) is inconsistent with the equivalent provision in the regulations in Northern Ireland providing protection against age discrimination in employment. The intention to capture discrimination by perception is welcome, but there are no compelling reasons to have different terms between the GFS Bill and the Employment Age Regulations.

We recommend consideration being given to changing the wording "assumed age" to "apparent age" to match Reg 3(3)(b) Employment Age Regulations.

Discrimination of the ground of age

As highlighted previously, the current drafting of the Bill does not prohibit direct age discrimination by association.

We recommend consideration being given to amending Clause 2(1)(a) from '*on the ground of B's age*' to '*on the ground of age*' to permit claims for associative direct age discrimination.

We also highlighted that the provisions on objective justification are weak and not consistent with the test applied under the Employment Age Regulations.

We recommend consideration being given to amending Clause 2(2) to state expressly that direct age discrimination may be justified only by aims of a public-interest nature.

Instructions and pressure to discriminate

Clause 5 and Clause 6 set out provisions to make instructions to discrimination and pressure to discriminate unlawful. However, they do so with reference to Part 2 only, rather than Part 3. It is in Part 3 that the scope of the unlawful acts is set out, i.e. in the provision of goods, facilities and services.

We recommend consideration being given to that Clauses 5 and 6 should be amended and extended to Part 3.

Provisions of a service

Clause 10 does not include a specific reference to the exercise of public functions, which are not the provision of a service. The Clause is in the same terms as s31(3)/(4) Equality Act 2010 but has no equivalent of s29 (6) Equality Act 2010, which separately prohibits discrimination, harassment and victimisation in the exercise of

public functions that are not the provision of a service. Without this, public functions which do not take the forms of a service may fall outside the scope of the GFS Bill.

We recommend consideration being given to including an equivalent of s29(6) of the Equality Act 2010.

Exception for statutory authority

Clause 13 excludes liability for acts of discrimination done 'in pursuance of any statutory provision'. However, the EA 2010 sets a higher bar (Schedule 22 paragraph 1) and the GFS Bill is also at odds with the equivalent provision in the Employment Age Regulations (Reg 28). Consideration may be further given to explicitly stating that the prohibition on age discrimination in goods, facilities and services is secondary to other legislation which imposes age limits and that this would apply to legislation which both predates and post-dates the date on which the proposed legislation comes into force.

We recommend consideration being given to harmonising provisions on statutory authority with existing equality law.

Small dwellings exception

Clause 16 disapplies clauses 10(1) and (2) generally and is not limited to the provision of accommodation. This is different from equivalent provisions in other NI statutes. In other cases, it only applies to the provision of accommodation in, or disposal of, the premises.

We recommend consideration being given to amending the Bill to ensure full coverage and any potential errors in drafting are resolved.

Associations and private members clubs

Clause 19 prohibits discrimination in associations but does not expressly cover harassment or victimisation. This clause does not extend protection, as it does in the Equality Act 2010, to guests and there is no prohibition on harassment or victimisation of members.

We recommend consideration being given to including a provision that prohibits harassment or victimisation of members

Functions of the Commission

As previously highlighted, the functions of the Commission as drafted are inconsistent with wider Northern Ireland equality and anti-discrimination legislation. This includes that the Bill does not refer to duties regarding the elimination or prevention of harassment or victimisation. The Bill further refers to the duty to promote equality of access, rather than the more general duty of promoting equality of opportunity.

We recommend consideration being given to amending the duties of the Commission to better reflect other equality legislation in Northern Ireland.