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**Equalities** Office

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## **Equality Act 2010**

### **Ban on age discrimination in the provision of services, public functions and associations**

A guide for holiday providers,  
hotels and those letting  
holiday properties

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## About this guide

From 1 October 2012 you cannot without sufficient reason, discriminate against customers because of age.

This guide explains what you as a holiday company, hotel or holiday cottage/chalet owner can and cannot do when the age discrimination ban in the provision of services is implemented.

Customers may also find this guide useful.

## What you can still do from 1st October 2012

If you want to treat people differently because of their age there are some circumstances (exceptions) where this is still allowed by the law.

If you are providing age related group holidays (for example for the over 50's or those aged 18-30), you can still:

- Provide such group holidays.
- Refuse to provide such holidays to someone outside the target age range, without any risk of being taken to court because of age discrimination.
- Exclude children, as the age discrimination ban does not apply in respect of children aged under 18.
- Offer a holiday to someone who is outside the stated eligible age group (but not on worse terms).

## What do I have to do to use the age related group holidays exception?

To qualify for the exception the holiday offered must meet a number of conditions. It must:-

- include, as part of the “offer”, at least two of the following three elements:
  - travel,
  - accommodation,
  - access to activities or services which form a significant part of the relevant holiday service / cost, for example access to entertainment or sports facilities;
- cover a period of at least 24 hours or include overnight accommodation;
- be advertised as only open to persons of the age group in question, (though you can provide it to people outside the age range if you wish for, say, borderline cases);
- as an essential feature, bring together persons of that age group with a view to facilitating their enjoyment of facilities or services designed for that age group.

The exception only applies to organised holidays whose main purpose is to bring together people of a particular age range. It cannot therefore be used to restrict access (by barring people of a particular age or in particular age groups) to general package or other holidays, hotels or self catering accommodation which are open to the public at large. If a holiday operator wanted to apply any age limits to such holidays or accommodation, this would have to be objectively justified (see below), except a ban on those aged under 18, which is automatically allowed.

## Objective justification for other age-related decisions

If a holiday is not covered by the age related group holidays exception described above, and you as the holiday company, hotel or holiday cottage owner want to discriminate, for example, by restricting access according to age, this is still possible, so long as you can objectively justify the discrimination. “Objective justification” is a shorthand term for the legal formula to justify what would otherwise be unlawful age discrimination: age discrimination in any area is lawful if you can show, when challenged and, if necessary before a court that it is “a proportionate means of achieving a legitimate aim”.

In practice, you may never be challenged for age discrimination, so may never need formally to provide an “objective justification”. It will be up to you, the individual holiday operator whether to undertake work to understand what you might need to do to establish objective justification in particular cases.

A challenge could be informal – a customer asking why they appear to be excluded from something just because of their age – or could become formal if the customer went to the County Court to claim compensation. If this happened and you (the holiday provider) are able to satisfy the court that the action or practice was “a proportionate means of achieving a legitimate aim”, the claim will be dismissed.

If you are a holiday operator who wants to continue offering holidays to the general public without any sort of age limit or discrimination then you can continue as before without any concern. You can also continue to have a “no children” policy, if you wish.

## How does objective justification work?

### What is a legitimate aim?

Legitimate aims can often be outcomes that are socially positive or generally in the public interest.

For example:

- Enabling people of a particular age or age range to socialise together – outings, events, etc.
- Enabling people of a particular age or age ranges to enjoy activities together – hiking, sports, etc.
- Enabling people of a particular age to enjoy peace and quiet.

Business needs and efficiency could be a legitimate aim, but there would normally need to be wider social factors too. Relying purely on economic factors as a legitimate aim is unlikely to be successful.

For instance, arguing that it could be more costly to provide rooms or a cottage to all age groups will not, on its own, be a valid justification.

Social and community factors that could be legitimate aims would include behaviour such as:

- bringing people together of a certain age to enjoy activities and socialise;
- avoiding disturbance or noise in a certain area.

Health and safety can be a legitimate aim, but its use to justify treating people of a particular age differently from those of other ages will not automatically be successful. For example, restricting access to a river rafting holiday on age grounds alone would be unlikely to be a legitimate aim. The aim would be to ensure that people undertaking the holiday can do so safely, but assessment of that factor does not depend on age alone, as some older people are fitter than some younger people.

### What is a proportionate means of achieving a legitimate aim?

“Proportionate” means both appropriate and necessary. For example, if the legitimate aim can reasonably be achieved by less discriminatory or non-discriminatory means, or if the discriminatory effect is not significantly outweighed by the importance and benefits of the legitimate aim, a challenge is likely to be successful because no objective justification has been established.

Where a holiday includes particular activities that require a degree of strength or fitness or some physical ability such as being able to swim, for the safety of both the individual seeking the holiday and others in the group (e.g. climbing or canoeing), it is unlikely that a restriction based on age alone would be justifiable.

More likely to succeed would be a requirement that those using the holiday be fit and carry insurance to a particular level of cover, for instance including emergency medical repatriation, and produce details of the valid insurance to the holiday provider.

### What you cannot do

You cannot treat someone differently if the practice is not covered by an exception or cannot be objectively justified.

Although, depending on the circumstances, you can discriminate against someone because of their age, either because you are covered by an exception or because you can show sufficient reason for doing so, you can never harass someone for reasons related to their age (for example by using derogatory language) or victimise them for making a complaint.

## Age discrimination ban: Mythbusters

### The age discrimination ban will force holiday providers to serve all age groups

- No. There is an exception to allow group holidays for certain age groups where age is a key element of the holiday. Even for other holidays, age discrimination will still be permitted if the provider can objectively justify its actions (i.e. where there is good and sufficient reason for doing so).

### I can't restrict day trips and coach excursions to certain age groups

- You can, if the trip is organised by a club which hires a coach operator, for example. An older persons' club will still be able to organise a coach trip to the theatre or other places of interest. The coach company would not have to objectively justify this because they did not advertise/market the outing.

You can also impose age restrictions if you are a coach company advertising such trips, provided the age restriction can be objectively justified. If a coach company decides to advertise an older person's day trip to the seaside this would not be covered by the exception, but it may be objectively justifiable, and probably could also be allowed under the positive action provisions of the Equality Act 2010. The coach company could justify the service by saying that the aim is to bring older people together with a common interest, the coach has facilities for older people, the service provider has provided a particular courier for the trip because of their experience with older people, there are extra comfort break stops because the service is geared to older people and the trip includes other services and elements particularly aimed at older people.

### As a self-catering holiday accommodation provider I cannot restrict access to certain age groups

- You can, provided that this can be objectively justified. Some holiday accommodation providers are reluctant to rent their properties to young adults (for example, under 25s), as they are concerned that there is a greater risk of anti-social behaviour and that this age group will damage property. There is no exception so a holiday provider would have to be able to objectively justify the practice or make the accommodation available to all age groups.

For example, you could refuse to rent properties to certain age groups in certain areas, if you can show evidence of problems they have had with that age group in the recent past or where other providers have reported such problems – for example, during large events such as festivals when large groups of younger people tend to gather. Setting a minimum age limit for occupancy may then be a proportionate means of achieving the legitimate aim of ensuring that the property is not damaged and other guests and neighbours are not unduly disturbed.

<sup>1</sup> Positive action is a form of general exception and in the case of age it allows different treatment to prevent or compensate for the disadvantages experienced by or particular needs of particular groups because of their age. Action can also be taken to encourage people from particular age groups to take advantage of opportunities when underrepresentation has been identified. Positive actions need to be objectively justified if challenged.

## Hotels cannot restrict access to adults because of their age

- They can, provided that it can be objectively justified because there is no automatic exception to allow a hotel to refuse to rent rooms to a person because they are under 25, for example (just as they could not refuse on the basis of the person’s sex or race), or because the hotel is mainly used by pensioners. Such practices must be objectively justified, if challenged.

## What about the situation where a company is able to negotiate lower rates from a hotel for older people, could they still restrict this to their older customers

- A holiday provider could still continue to offer such rooms under the Concessions exception (see the general guidance for details of the concessions exception), provided they also offer equivalent rooms to younger people. Thus if approached by younger people they could charge them the full price (higher price), whilst still charging older people the lower rate they negotiated with the hotel.

## Hotels and bed and breakfast operators can still have “No children” rules

- Yes, the age discrimination ban does not protect to children below the age of 18.

## Enforcement

Any adult can bring a complaint and ultimately a County Court action, if they feel that they have experienced unjustified age discrimination, harassment or victimisation. But they must be able to show that they were genuinely interested in using the specific service.

Further sources of information

General information about the age discrimination ban in services and public functions is available from the Government Equalities Office at:

Website: [\*\*www.homeoffice.gov.uk/equalities/\*\*](http://www.homeoffice.gov.uk/equalities/)

E-mail: [\*\*public.enquiries@homeoffice.gsi.gov.uk\*\*](mailto:public.enquiries@homeoffice.gsi.gov.uk)

Citizens advice will also be able to offer assistance:

Website: [\*\*www.citizensadvice.org.uk\*\*](http://www.citizensadvice.org.uk)