

After the EU Referendum: Policy priorities for older people

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1. Introduction

Following the 'Leave' vote in the European Union (EU) Referendum on 23 June, this paper sets out some possible implications for older people. These are very far from clear, at present, so this paper also looks forward: what are the areas of public policy where the EU has particularly touched older people's lives, what are the questions that older people have raised with us, and what will be Age UK's priorities, as the policy agenda develops, to ensure a better later life for everyone, no matter where they live?

More detail on the implications of the vote for various policy areas is available in the series of impartial briefings produced by the [House of Commons Library](#).

Note that this briefing relates to matters that are reserved to the Westminster Government. UK human rights legislation covers the whole of the United Kingdom, but enforcement is devolved. Apart from some limited exceptions, the 2010 Equality Act applies only in Great Britain and there are differences in the secondary legislation, which is devolved.

2. Equality and Human Rights

A major area of focus for Age UK will be to ensure that older people's position is strengthened, not weakened, by any possible changes to equalities and human rights legislation. Before the Referendum, the Government had already committed itself to repealing the Human Rights Act 1998 (HRA) and replacing it with a British Bill of Rights – a commitment repeated in August 2016 by the new Justice Secretary Liz Truss.

The UK's withdrawal from the EU will not automatically affect the UK's status as a signatory to the European Convention on Human Rights (ECHR). The ECHR is an international treaty distinct from the EU Treaties and EU Charter on Fundamental Rights.

British citizens are still able to rely on their rights in the ECHR in domestic courts and can still take cases to the European Court of Human Rights. In addition, they are protected by the UN Convention on the Rights of Persons with Disabilities. However, they would be affected if they could no longer rely on the European Charter of Fundamental Rights (CFR) which in particular includes many wider social and economic rights, such as the rights to fair and just working conditions, to healthcare and to have personal data protected.

Strengthening the rights of older people

The Government has previously said that it will consult fully on proposals to introduce a British Bill of Rights, although no timetable has been provided at this stage.

Age UK's position continues to be that any future human rights legislation must protect the rights and freedoms in the European Convention on Human Rights, must not

undermine the effectiveness or scope of the HRA or the potential for enforcing it and must reflect the particular circumstances of each of the four nations (England, Wales, Scotland and Northern Ireland). We will engage fully in the consultation process to ensure that older people's rights are fully protected, and strengthened where necessary. It continues to be a matter of serious concern that not all older people are currently accorded the protections of the HRA, and in particular those people whose care is funded by the NHS or who are paying for their own care (unless their care has been arranged by a local authority) outside the scope of the HRA.

Far from being a legal technicality this lack of human rights protection can have a very real detrimental impact on those receiving care. A number of cases have come to our attention recently that demonstrate this, including examples of older people facing eviction from care homes in possible breach of their rights to private life who currently have no means to challenge those decisions under the HRA. We will seek opportunities to raise this issue directly with Government and others, including the Equality and Human Rights Commission, with a view to further shrinking the protection gap.

The international dimension

In this context, Age UK's work with Age International to promote a UN Convention on the Rights of Older People becomes ever more urgent. The need for international human rights legislation is set out in our joint publication; [*A UN convention on the rights of older people: time for the UK to lead.*](#)

Since December 2012, the Open-Ended Working Group on Ageing (OEWGA) has been considering, under a mandate from the UN General Assembly, the need for such a human rights instrument. This has been complemented by the work of the Independent Expert on the enjoyment of all human rights by older persons, appointed by the Human Rights Council in 2014 to further interrogate this issue. The Independent Expert is now due to submit her final report to the Human Rights Council in September 2016 which will be followed at the end of the year by the 7th session of the OEWGA.

Equal treatment

Our age discrimination laws stem from EU treaty provisions and directives, but these have been incorporated into domestic legislation, notably through the Equality Act, so no further domestic legislation would be needed in the absence of EU legislation. The UK's existing Disability Discrimination Act was also replaced and strengthened by the Equality Act.

However, if EU legislation were to be removed or disapplied there would be nothing to prevent a future Government repealing these laws – something we would not wish to see. Additionally, we would want to ensure that the many UK nationals living and/or working in the EU would continue to have protection from other member states' discrimination against them.

Specific areas of EU law or practice that Age UK would be keen to see retained (or enacted) include:

- Proposals for a European Accessibility Act which would, if enacted, create a mechanism through which to ensure that manufacturers and providers of a wide range of products and services (including computers, phones, banking and transport) comply with agreed accessibility standards.
- Live assistance to disabled travellers (under the EU Air Passengers Regulation 2006, the Rail Passengers Regulation 2007, the Sea and Inland Waterways Regulation 2010 and the Bus and Coach Regulation 2011).
- Mutual recognition of preferential parking facilities for disabled people (e.g. the Blue Badge in the UK) under the EU Parking Badge scheme.

Social attitudes

Following the Referendum we received a number of enquiries from people who were concerned about intergenerational tensions fuelled by perceptions of older voters as having voted largely to 'leave'. As recent research examining the dynamics of the vote has made clear, while clearly important 'age was not the only, or indeed the most important social divide'¹.

Age UK is clear that the denigration of people on the grounds of their age, disability, race, religion or belief, sex, gender or disability is wrong. A priority for our future work will be to ensure that older people are protected against denigration and discrimination.

Workforce measures

Although the UK already enjoys protection against age discrimination that goes further than the EU minimum, there are a number of other employment issues stemming from EU directives that Age UK believes should be retained or strengthened. As all these provisions are incorporated into UK law, further legislation would be needed to disapply them, but the status of European case law in relation to these rights is unclear.

As well as existing provisions against age discrimination, which are thought unlikely to come under threat, employment protections that are particularly relevant to older workers and stem from EU directives include:

- Protection for part-time and agency workers;
- Enforcement rights and powers. For example, the Government has previously proposed capping the right to compensation on discrimination claims, which is currently forbidden under EU law. We would want to see the right to full compensation continue, as well as an end to the fees for Employment Tribunals which currently restrict access to justice for victims of age and other types of discrimination.
- Protection against third party harassment, for example when an employer fails to protect staff members from discriminatory remarks by members of the public.

¹ *Brexit Vote explained: poverty, low skills and lack of opportunities*, Joseph Rowntree Foundation, 2016

- A maximum working week of 48 hours – this may be particularly relevant for workers in the care sector, for whom the ECJ has recently ruled that travelling to the first job of the day qualifies as working time.

It will ultimately be up to the government of the day to set out what they see as the necessary and appropriate legal protections for workers. However, there will be no underpinning from the EU and the government can change legislation if necessary, without reference to the European Court of Justice.

3. Health and care services

Age UK's main priorities in relation to health and care concern public funding and workforce issues. However, other areas that we will want to track include:

- Public health, and in particular ensuring cross-European prevention and control of communicable diseases;
- Medical research and regulation;
- Access to medicines and incentives for providers to seek approval in the UK, if we are no longer party to EU-wide approval mechanisms;
- Reciprocal access to healthcare (see sections 9 and 10 below); and
- The financial sustainability of care providers, many of whom have been struggling in recent years.

The health and care workforce

Traditionally, many hospitals have relied on recruiting nurses from EU and non-EU countries. We will not know until we see the terms of the negotiation if there will be restrictions on the numbers arriving.

It is estimated that around 5 per cent of NHS staff are non-UK nationals from within the EU, including 10 per cent of all doctors (if you exclude GPs). All work arrangements are subject to future negotiations, including any decisions on work visas. Nurses arriving from non-EU countries have been restricted in recent years with some suggesting this has increased the reliance on agency staff, in turn contributing to the large deficit in the NHS provider sector. However different geographical areas and clinical specialities vary significantly in the degree to which they depend on non-UK nationals for the staff and expertise they require.

It is also worth noting that current investment in training lags behind demand for new healthcare professionals, so any further future investment in education will take a number of years to significantly increase the size of the workforce.

An estimated 6 per cent of jobs in the care sector are filled by EU migrants - 80,000 people in England alone. However again there are wide regional variations with EU migrants filling 12 per cent (20,000) jobs in London and 10 per cent in in the rest of the South-East (21,000) but just 1 per cent (1,000) in the north-east.

4. State Pensions and benefits

The implications of the Referendum on State Pensions and benefits for UK citizens living in this country may, in future, depend partly on whether it has an impact on the economy. Before the vote there was speculation that in the event of increased pressure on public spending some important older person's protections will be vulnerable to change, for example the 'triple lock' on the state pension. However the Prime Minister has confirmed that the triple lock will continue to the end of this Parliament in line with previous commitments.

Age UK's priority will be to ensure that UK pensioners living in the EU, and older EU citizens living in the UK, are not adversely affected (see sections 9 and 10 below).

5. Private pensions

Age UK will be tracking the impact of the EU Referendum on the adequacy of private pension saving and individual financial planning for retirement. At the moment, the picture is one of uncertainty: for example, for people who are planning to access their defined contribution pension savings in the near future, significant volatility in the value of equities will affect the value of their funds while annuity rates, already low, have fallen further since the 'leave' vote. Many property funds which they may have chosen as part of a diversified portfolio have closed to withdrawals because of fears of the impact of the leave vote on the commercial property market.

Similarly, under the pension flexibilities many people have chosen to use some of their pension savings and leave the rest invested or transfer it to an income drawdown account. This has left many people exposed to more risk.

These uncertainties also have a significant effect on defined benefit schemes, and since the employer bears the risk, the employer themselves. According to PWC, the overall deficit in the funding levels of DB schemes has increased by almost £100bn since March.

6. Financial services

The FCA has issued a statement reminding financial service companies that 'nothing changes' immediately in relation to financial regulation. All applicable EU laws and regulations continue to apply and will continue to apply until a future UK government makes an explicit change by law or regulation.

Further out, the decision to leave the EU may of course have significant effects. For example, the Directive on the transparency and comparability of payment account fees, payment account switching and access to a basic payment account introduces the right to a basic bank account. A current topic is implementation of the Payment Services

Directive 2 (PSD2) which has implications for competition among payment services providers. While it is 'business as usual' in the short run, the government may (or may not) decide to change or amend its future approach.

The impact on savings will be a matter of concern for Age UK. The likelihood is that in order to stimulate the economy we will continue to see low interest rates and a continuation of the policy of Quantitative Easing which has over the past few years had a significant impact on pensioner incomes.

7. Consumer protection

A huge amount of consumer protection legislation is derived from the EU - the Consumer Rights Act 2015 is an example. The existing system, based on laws, codes and consumer rights is likely to remain unchanged, unless abrogated by Parliament. As with workforce measures, the question would be whether a future Government seeks to relax existing protections. New European product standards would not apply in the UK unless we specifically provided for them through new legislation, but in practice UK manufacturers may need to comply with any new EU standards anyway.

Much would depend on whether the UK seeks to join the European Economic Area (EEA), as EEA members participate in EU consumer protection programmes.

Particular areas that Age UK is likely to wish to track include:

- Continued rights to access European consumer protection mechanisms, such as FIN-NET, a financial dispute resolution network of national out-of-court complaint schemes in the European Economic Area countries
- Cross-European mechanisms for preventing cross-border frauds (such as 'boiler-room' investment scams)
- Consumer protection in cases of distance marketing.

8. Housing and energy

Most of the housing implications of the referendum are indirect, depending on how the economy responds, and in particular whether financial uncertainty means that house prices drop or less retirement housing is developed. However, there are some questions around energy, including:

- VAT rates - if the UK is no longer required to harmonise VAT rates with EU rates, the Government would be free to introduce zero rates for particular products, and potentially energy (currently 5 per cent). However, whether this is possible would depend on the overall strength of the economy
- Whether the loss of EU regeneration grants affects insulation and renovation initiatives.

9. Older British citizens abroad

Issues, and outcomes of negotiations between UK and other countries, may vary depending on the country. This is certainly likely to increase the demand for expert information and advice. Some common questions are below.

What there be any changes to access to health services for UK citizens who are abroad on a temporary or permanent basis? For example will people still be able to get an EHIC card or equivalent?

The use of the EHIC card does not rely on EU membership (people can already use it in non-EU countries such as Switzerland and Norway). However, it would likely be subject to future negotiations in our relationship with the EU.

If people visiting EU countries will need more private health insurance this could particularly affect those with existing health problems who may have found it difficult to buy private insurance and who may have relied on the EHIC for medical cover.

Following the decision to leave the EU will British citizens living abroad continue to receive annual increases to State Pensions?

The State Pension is payable in any country but the key question is whether British Citizens living abroad will receive annual increases. Annual increases are currently paid to people in EU, EEA and a limited number of other countries with whom the UK has reciprocal agreements. At present the State Pension and any other benefits payable abroad continue to be paid on the same basis and there is no further information about whether, and if so when, the position will change.

What will be the impact on older people resident abroad who may want to move back? Some citizens may wish to move back to UK because of a reduction in support or concerns about the possible impact. If so there are likely to be questions around their access to housing, care and other services.

Other questions that will need to be answered are:

- *Will people living in the EU continue to have access to other current benefits eg Winter Fuel Payments (subject to the temperature test) and Attendance Allowance?*
- *Will people still be able to use GB driving licence in EU countries, and for disabled drivers will the Blue Badge still be valid?*
- *Will UK citizens need visas to work in EU?*

10. Specific issues for older non-British EU citizens living in UK

There are also the following questions to be answered for citizens of other EU countries living in the UK:

- *Will EU citizens settled in the UK continue to have a right to reside?*
- *What about those planning to move to UK, perhaps to be near younger relatives working here?*
- *Will there be any changes in access to health care?*
- *Will there be any changes in entitlement to benefits? (To some extent this is likely to depend on residency status.) However any right to UK state pension based solely on UK contributions should not be affected.*
- *Will older EU citizens feel unwelcome or face abuse/discrimination and, if they do and want to move to country of origin will they have resources/ability to move back?*

11. International collaboration

Age UK is keen to collaborate internationally, in both research and policy. The Government has guaranteed research funding for EU-funded projects signed before the 2016 Autumn Statement. Longer-term, Age UK hopes to see cross-European research into ageing continue.