

Consultation Response

UN Call for Submissions for the ninth session of the Open-Ended Working Group on Ageing

1 February 2019

Ref:

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About this consultation

- The UN has issued a call for written submissions to support the preparation for the tenth session of the Open-Ended Working Group on Ageing (OEWG) in April 2019. The call is for substantive inputs on the two new focus areas of **Social Protection and social security including social protection floors** and **education, training, lifelong learning and capacity-building**.
- There has also been a call for inputs in the form of normative content for a possible international instrument on the two focus areas that were discussed in the ninth session of the OEWG in July 2018, **Autonomy and Independence**, and **Long-term and Palliative care**.

Key points and recommendations

- Older people in the United Kingdom have benefited from the State Pension scheme and other Welfare Benefits schemes. These schemes, along with increased private pension provision, have made a big difference to the numbers and proportion of older people living in poverty over the last 20 years.
- The rising cost of living, particularly for those older people with disabilities or using social care, and barriers to claiming benefits such as digital exclusion and barriers to accessing justice, are placing some older people back under the poverty line.
- Although the United Kingdom is a signatory to the International Covenant on Economic, Social and Cultural Rights, social rights, including the right to social security and social protection, have not been incorporated into domestic law. Age UK strongly believes that a UN Convention on the rights of older persons which has at its core a strong emphasis on promoting and protecting older people's rights to autonomy and independence, should include the right to social security and protection and a right to an adequate standard of living.
- All current and future pensioners should have enough money from state and private sources to live independently, with dignity and the ability to participate fully in society, as autonomous human beings. They should also have enough financial support to pay for social care, age-related health care, medication and aids.
- Personal development is important regardless of age, and as the concept of a 'job for life' becomes increasingly outdated, individuals of all ages will increasingly need access to education and training in order to remain active in the labour market.
- It is essential that all workers are fully equipped with the skills necessary to play a full part in the labour market. A right to education and training situated within a UN Convention on the rights of older persons would require governments to provide and fund training and education for older people that is appropriate to their needs.

1. Introduction

Age UK is a national charity that works with a network of partners, including Age Scotland, Age Cymru, Age NI and local Age UKs across England, to help everyone make the most of later life, whatever their circumstances. In the UK, the charity helps more than seven million older people each year by providing advice and support. It also researches and campaigns on the issues that matter most to older people. Its work focuses on ensuring that older people have enough money; enjoy life and feel well; receive high quality health and care; are comfortable, safe and secure at home; and feel valued and able to participate.

Internationally, we support programme and policy work in lower- and middle-income countries through our partner and subsidiary charity Age International, who has contributed to this submission. Age International is an active member of the HelpAge Global Network and the Global Alliance for the Rights of Older People, a large and growing coalition of civil society organisations world-wide working to strengthen older people's rights globally.

Age UK and Age International firmly believe that a UN Convention on the rights of older persons would provide a framework and focus to guide policy responses to ageing based on rights, equity and social justice. It also has the potential to create a shift from older people being considered as passive recipients of welfare, to older people as active rights holders and to reduce the level of abuse, neglect and discrimination experienced by many older people.

2. Social Protection and social security including social protection floors

State pension

The UK social security system provides a range of different types of support to individuals, the most important of which is the State Pension system. Based on an individual's National Insurance record, the State Pension system is derived from compulsory contributions from earnings with some protection for periods when people are unable to work e.g. due to ill health or caring responsibilities. It is the largest single source of income for the majority of older people although the UK spends a lower proportion of GDP on State Pensions than many other OECD countries.¹

Current legislation increases State Pension age to 66 for both men and women by 2020 and then to 67 between April 2026 and 2028. Many people who have good health and good quality jobs may choose to keep working and may not be too concerned at having to wait longer for their State Pension. However, others with poor health or caring

¹ <https://data.oecd.org/socialexp/pension-spending.htm>

responsibilities may be forced to leave work and will find it very difficult to manage until they reach a higher State Pension age. It is also important that people are aware of when they will receive their pension and have sufficient notice of any increase. Many women born in the 1950s expected to receive their State Pension at age 60, and some only found out that State Pension age had risen as they approached 60 so have had little time to change their plans.

Private pensions

The private pensions landscape has changed considerably in recent years. The introduction of automatic enrolment has meant many more people are now saving into a pension through their employer. All employees meeting the eligibility criteria – being aged between 21 and State Pension age and earning at least £10,000 a year – are now automatically enrolled into their employer’s pension scheme. This means that their employer puts them into the scheme, but the individual can opt-out if they do not wish to save.

The other major policy change was the introduction of pension ‘freedom and choice’ in 2015. This means that savers no longer have to turn their pension into a guaranteed lifetime income by age 75, and gives people a lot more choice over how they use their money. This flexibility means people aged 55 and above are faced with difficult choices. The recent Retirement Outcomes Review, conducted by the Financial Conduct Authority,² has found evidence that many savers are failing to take the optimal decisions. People now have to consider issues including: how fast to withdraw money; whether/where their money should remain invested; what the tax implications are of their decisions; and many other factors too.

This presents a series of challenges for individuals, the pensions industry, policy makers and regulators.

Benefits and entitlements

There are also means-tested benefits based on an assessment of income and savings (such as Pension Credit) and other non-means-tested/non-contributory benefits linked mainly to disability (such as Attendance Allowance) or age (an annual winter fuel allowance). State Pensions and benefits are broadly speaking, entitlements set out in national legislation, mainly with the same rules covering everyone in the UK, although some aspects of social security have been devolved to the Scottish Government.

The benefit and entitlement systems provide for people in retirement and for younger people who are unable to work for reasons such as disability or caring responsibilities although support may not always be adequate to meet needs. For example, Carer’s Allowance, a non-means-tested benefit for carers, is worth £64.60 a week – lower than other benefits such as Jobseeker’s Allowance and Employment and Support Allowance. It is also reduced by the amount of any State Pension you receive, so most pensioners who

² <https://www.fca.org.uk/publication/market-studies/ms16-1-3.pdf>

provide care get nothing. An additional payment for carers receiving the allowance in Scotland is being introduced.

Attendance Allowance is a weekly payment that helps older disabled people meet some of the extra costs they face. It allows older people to remain in their own homes, without having to turn to local authority social care for help.

Barriers to claiming benefits

Means-tested benefits provide a safety net to protect older people on the lowest incomes yet many miss out on this support despite work to encourage take-up of benefits. The most recent DWP analysis (which applies to 2016-17)³ shows that each year pensioners in Great Britain miss out on around 3.8 billion on means-tested benefits Pension Credit and Housing Benefit (support with rent). An estimated 1.2 million pensioner families (single people or couples) are not getting the Pension Credit due to them – around 40 per cent of those who are entitled to the benefit. Older people miss out on benefits for a range of interrelated reasons such as lack of awareness, perceived ineligibility, concern about the process and negative attitudes to claiming.

Age UK is also concerned that the move to online claiming is acting as a barrier to older people, making people even more reluctant to claim. Internet use decreases with age and around a half of people aged 75+ in the UK say they have never used the Internet. The 28.6 per cent real-terms reduction in local government spending power since 2010 has also resulted in the closure of many local advice services who traditionally provided support to older people making claims for benefits.

Legal redress

There are complaint procedures in place for people who wish to appeal social security decisions. People must first ask for the decision to be reconsidered and then have the option to take the case to an independent tribunal.

However, as part of a global movement towards digital justice, the Ministry of Justice and HM Courts and Tribunals Service are implementing a programme of digitalisation across the justice system, including the Social Security Tribunal. Age UK is very concerned about the impact of this reform programme on older people who are less likely to use online platforms. This and a severe restriction on legal aid provision, particularly within the provision of advice for welfare benefits, presents as possible barriers to older people bringing a complaint or appeal about a social security decision.

³ Income-related benefits: estimates of take-up 2016/17, DWP, 2018.

Older people living in poverty

The State Pension and benefits schemes, along with increased private pension provision, have made a big difference to the numbers and proportion of pensioners considered to be in poverty (defined as incomes less than 60% of median household income after housing costs) over the last 20 years. However, there are still 1.9 million pensioners in the UK (16 per cent) living in relative poverty (with incomes of less than 60 per cent of typical household income after housing costs), of whom 1.1 million are in severe poverty (incomes less than half of typical household income).⁴ The poverty measure is based on income and does not take into expenditure (other than housing costs) so is likely to underestimate the numbers living in difficult financial circumstances who have high essential costs due to reasons such as paying for social care and the extra costs of living with a disability. Since 2010/11 the numbers have remained more or less the same until 2015/16 when, worryingly, numbers rose with the figures unchanged in the latest year (2016/17).⁵

⁴ Households Below Average Income 1994/5 to 2016-17, DWP 2018

⁵ Age UK, Poverty in Later Life, April 2018

3. Education, training, life-long learning and capacity building

Article 2, Protocol 1 of the Human Rights Act 1998 protects the right to effective education within the UK's existing educational institutions. It relates to primary, secondary and higher education. This does not require the State to establish new types of education, rather it gives individuals a right to access educational facilities that already exist.

The Equality Act 2010 covers age discrimination in training, as well as employment. It is therefore illegal to discriminate on grounds of a protected characteristic, including age, when offering or delivering any workplace training. This law has most notably been put into practice in [Homer vs Chief Constable of West Yorkshire Police](#). In 2012 the Supreme Court ruled that Mr Homer had suffered indirect age discrimination because he had been refused the opportunity to apply for a promotion that required a degree level qualification as he was deemed to have insufficient time left before retirement.

However, in the majority of workplaces it is unclear how this right is carried out – many employers do not offer training, or do so only at the statutory minimum for their industry.

With State Pension ages rising and people having to work for longer than ever, it is vital that all workers are fully equipped with the skills necessary to play a full part in the labour market. Personal development is important regardless of age, and as the concept of a 'job for life' becomes increasingly outdated, individuals of all ages will increasingly need to re- and up-skill in order to remain active in the labour market. However, since 2010 there have also been substantial cuts to the training budget accessible to older workers, in favour of greater funding for apprenticeships. This has led to a marked rise in older apprentices with nearly 60,000 people aged over 45 starting an apprenticeship in 2014/15, up from approximately 10,000 in 2009/10.⁶ However, the introduction of 24+ Advanced Learning Loans for Further Education (FE) courses in 2013 and related ending of fee subsidies threatens to stifle participation in formal learning among older people, who are often unwilling to incur debt.

Older workers do want to progress and learn new skills. However often people do not take up the training that is on offer, largely because it does not meet their needs. Training is often designed for younger people, while older people may appreciate learning in a different way, for example placing less emphasis on gaining formal qualifications. These differing needs should be reflected in the public policy and legal framework, and be used to help employers design appropriate provision.

⁶ The FE Data Service 2015, Apprenticeships start statistics

The Government has piloted Mid-Life Career Reviews (also known as Mid Life MOTs) to allow people aged about 50 to get specialist advice on their career options. The pilots found that the vast majority of people benefited from taking part, and that it was a low cost and effective way of engaging them in planning for future work-based needs, and is an important tool in supporting 'Fuller Working Lives'. It recommended the reviews should be extended to everyone aged 50.⁷ In December 2014 the Government committed to rolling these out to all 50+ unemployed people, but as yet this has not been actioned.

Community learning, usually delivered in more informal settings, is also hugely important for older people, and is proven to benefit both physical and mental health. Community Learning Trusts, which are local partnerships offering a range of learning provision to suit local needs, regard older people as a priority group. However, in recent years, budgets have been cut and many courses – delivered through FE colleges and in communities – have ceased without full knowledge of the consequences for individuals and society.

University of the Third Age – known as U3A – is a nationwide network of learning groups aimed at encouraging older people to share their knowledge, skills and interests in a friendly environment. There are no age limits but the U3A is for people in their 'third age' - retired or semi-retired. For this reason it attracts a lot of members aged 50 and over. U3A groups are run by volunteers and have been a successful model for delivering informal learning to over 400,000 older people.⁸

⁷ NIACE (2015), Mid Life Career Review, Pilot Project Outcomes Phases 1, 2, and 3 (2013 – 2015)

⁸ www.u3a.org.uk

4. Normative content for the right to autonomy and independence

Affirmation:

Older persons have the right to independence, personal autonomy and control over all aspects of their lives, including the ability to make decisions for themselves. This includes the right to enjoy legal capacity on an equal basis with others.

Scope of the right

This right shall apply to autonomy, self-determination and control over all aspects of decision-making for older persons.

States Parties shall:

1. Take appropriate measures to provide older persons with access to the support and services they may require in exercising their right to autonomy and independence and to maximise their participation in any decision-making process.
2. Take appropriate measures to ensure that older persons will have the necessary care and support to enable them to live independently and in an environment of their choosing. This support should be of a standard that allows persons to have choice of and equal access to live in the home, community or residential setting.
3. Take appropriate measures to ensure that older persons will have the necessary care, personal assistance and support to enable them to have control and autonomy over the tasks and activities that make up their daily lives as well as access to community services and facilities that enable them to participate in community and public life.
4. Ensure that all measures that relate to the exercise of legal capacity provide for appropriate and effective safeguards to prevent abuse in accordance with international human rights law. Such safeguards shall ensure that measures relating to the exercise of legal capacity respect the rights, will and preferences of the person, are free of conflict of interest and undue influence, are proportional and tailored to the person's circumstances, apply for the shortest time possible and are subject to regular review by a competent, independent and impartial authority or judicial body. The safeguards shall be proportional to the degree to which such measures affect the person's rights and interests.

5. Take appropriate measures to ensure that older persons are not deprived of their liberty unlawfully or arbitrarily, and that any deprivation of liberty is in conformity with the law.

5. Normative content for the right to Long-term care

Affirmation:

Older persons have the right to affordable, high quality, and holistic long- term social care and support services which are adapted to their individual needs, and promote and protect their well-being and maintain their autonomy and independence.

Scope:

The right to long-term care and support applies in all settings including the home, the community and in residential settings.

State parties shall take appropriate measures to:

1. Ensure that older persons have access to a range of in-home, residential and other community services, including personal assistance necessary to support active living and inclusion in the community.
2. Ensure that older persons have the right to choose where they receive long-term care and support and are not obliged to live in a particular living arrangement and that all efforts are made to fulfil uphold their autonomy over their care arrangements.
3. Ensure that older persons have the right long-term care that is personalised to their needs.
4. Ensure that older persons have the right to participate in any decision making about any aspect of their long-term care and needs.
5. Ensure that older persons have access to services that promote and maintain people's ability to live independently and autonomously.
6. Promote the development of initial and continuing training for professionals and staff working in long-term social care.
7. Ensure the availability, affordability and use of assistive devices and technologies for older people as they relate to the care, support, mobility and habilitation of older persons.

8. Ensure that quality standards for care and support services are based on human rights principles.
9. Ensure that older persons have access to administrative or judicial processes to seek redress for practices that restrict their liberty and autonomy.

6. Normative content for the right to palliative care

Affirmation:

Older persons have the right to expect services and support that help them to achieve a dignified and pain-free death, with choice in how they are cared for at the end of their life, regardless of where they live or their diagnosis.

Scope of the right:

The right to palliative care and support applies in all settings including the home, the community and in residential settings.

State parties shall take appropriate measures to:

1. Ensure that older persons who are approaching the end of life are entitled to equal access to high-quality, holistic palliative care services (including pain management) without delay, which support physical, psychological and spiritual needs.
2. Ensure that diagnosis, place of residence, care setting or individual circumstances should not act as a barrier to receiving high quality end of life care.
3. Ensure that the wishes and preferences of older persons are taken into account when planning palliative care which should encompass a right to choose where to die, to refuse medical treatment or withdraw consent.
4. Ensure that older persons nearing the end of their life are provided with services that uphold their autonomy, independence, and participation in community and social life.
5. Ensure that older persons have access to medicinal pain relief to prevent unnecessary cruel, inhuman and degrading treatment arising from failure to treat pain and other symptoms.
6. Ensure that personal choice (including where advance decisions are made) and dignity are maintained at all times with regard to the delivery of palliative care.
10. Promote the development of initial and continuing training for professionals and staff delivering palliative care for older persons.

11. Promote the integration of palliative care into the health system and ensure that there is effective co-ordination between health, social, community and palliative care services.
12. Ensure that processes for advanced and supported decision making are provided and that older persons have access to a range of support to exercise their legal capacity including the appointment of one or more trusted persons to assist them to make decisions.
13. Ensure that a support system is made available to the family of the older persons during whilst the care is being provided and in their own bereavement.