

# Equality Bill

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# Equality Bill

This document outlines the key areas in the Government's Equality Bill, published in July 2008.

## a. Equality Duty on public sector bodies

The framework includes:

- introducing a new streamlined public sector Equality Duty to replace the race, disability and gender equality duties;
- framing the new Equality Duty in a way which makes clearer the outcomes it is designed to achieve;
- retaining the existing structure of general and specific duties (leaving open the possibility of application of different duties to different authorities, as now);
- extending the new Equality Duty to age, sexual orientation and religion or belief and to make explicit that it covers gender reassignment.

However, the Government has decided not to proceed with other elements of the proposed restructuring of the duties (identification of priority objectives).

The Government is establishing a cross-government working group to develop the detail of their public sector Equality Duty proposals for secondary legislation. This group will be supported by an expert reference group involving a full range of public bodies and other key stakeholders.

## b. Age discrimination outside of the workplace

The framework includes:

- making it unlawful to discriminate against adults aged 18 and over because of their age when providing goods, facilities and services and carrying out public functions in the future;
- not preventing the differential provision of products or services for people of different ages where this is justified.

The specifics of the new law will be set out in secondary legislation made under the Equality Bill.

The Government wants to continue to make progress on work to develop the new law and make it effective. A financial services working group, including age equality organisations, will assess the likely impact on customers and service providers of a number of legislative options. This group will submit a final report by the end of September.

The Government will also establish a working group to inform the development of the legislation to prohibit age discrimination in all sectors, other than financial services and health and social care. A key consideration will be how they can ensure that justifiable age-based practices (for example, concessionary travel for older and younger people) can continue.

Subject to the progress of the two working groups and additional work to inform an impact assessment, and in light of European developments on the draft goods and services discrimination Directive, the Government will seek to consult in 2009 on more detailed proposals for bringing the new law into force in those sectors covered by the two working groups.

The Government will make a separate statement after the Parliamentary recess (summer 2008) setting out a defined programme of work to tackle age discrimination in the health and social care sectors, and to help service providers prepare for legislation.

### **c. Transparency**

The framework includes:

- the new expanded single public sector Equality Duty will make public bodies more transparent without putting an undue administrative burden on them
- public bodies will report on important equality areas
- developing ways to help public bodies comply with the new equality duty when they are purchasing goods and services. They are exploring how public procurement can be used to further equality outcomes, and will examine a range of both legislative and non-legislative options. The Government will also be considering how it can encourage greater transparency on equality issues among private sector contractors, to contribute to the delivery of its equality targets
- outlawing pay secrecy clauses, which make it unlawful to stop employees discussing their pay
- developing non-legislative mechanisms for improving transparency amongst employers through a series of inquiries by the Equality and Human Rights Commission and development of a kite-mark scheme for employers who are transparent about reporting their progress on equality

However, it will not make equal pay job evaluation audits mandatory or allow a moratorium on claims.

### **d. Positive Action**

The framework includes:

- broadening the range of voluntary positive action measures which can be taken by employers or service providers, allowed by European law. This will be backed by comprehensive and authoritative guidance from the Equality and Human Rights Commission
- allowing employers, where they feel it is appropriate, to take under-representation into account when selecting for appointment or promotion between two equally qualified

candidates. However, making decisions irrespective of merit (i.e. quotas) or having an automatic policy of favouring those from under- represented groups will remain unlawful

- benefiting all protected groups with measures to meet particular needs in relation to education, training, welfare or other benefits
- building on progress already made in improving democratic representation by extending the expiry date for all-women election shortlists from 2015 to 2030, and take forward non-legislative measures to increase black and ethnic minority representation

However, it will not extend the concept of 'reasonable adjustments' to other protected groups besides disabled people.

## **e. Enforcement**

The framework includes:

- allowing employment tribunals to make wider recommendations in discrimination cases, which will benefit the wider workforce and help to prevent similar types of discrimination occurring in the future
- the Government working with the Employment Tribunal Service, employment judges and other relevant stakeholders to identify other means of ensuring that they learn the lessons from tribunal judgments and are able to take a more strategic approach to tackling discrimination;
- if practical, allowing discrimination claims to be brought on combined multiple grounds. This is a very complex area and the Government is exploring this further, including whether the legislation could be made to work in practice and what the costs and benefits would be;
- supporting trade union equality representatives in their roles by building on ongoing initiatives
- not making any provision for representative actions in the Equality Bill. In the light of the Civil Justice Council's recommendations in its review of collective redress mechanisms, they will consider whether there is a case for introducing representative actions in discrimination cases. They will consult on any proposals for reform;
- continuing to promote Alternative Dispute Resolution mechanisms as an effective means of resolving many disputes fairly and speedily outside the legal system, whilst recognising that the courts and tribunals will remain the most appropriate means of redress for some cases;
- exploring further the potential role of Ombudsmen in relation to equality issues. The Equality and Human Rights Commission will work with Ombudsmen to ensure that they are equipped to deal effectively with discrimination complaints which they receive, in cooperation with the relevant bodies
- not introducing equality tribunals

- not designating specific courts to hear discrimination cases but we will ensure that appropriate training is made available to judges hearing discrimination cases, as well as making provision for the use of expert assessors to advise judges in court cases involving discrimination across all the protected grounds
- transferring disability discrimination school education cases in Scotland (including education cases relating to admissions and exclusions) to the Additional Support Needs Tribunals for Scotland

## **f. Simplification measures**

The framework includes:

- retaining the requirement for a comparator in direct discrimination claims
- keeping the existing approach to discrimination on the basis of perception and association (subject to consideration of the implications of the ECJ judgement in *Coleman v Attridge Law* published on 17 July 2008) except for an extension to protect against discrimination on the grounds of association with transsexual people;
- extending protection from indirect discrimination to transsexual people;
- harmonising the definition of indirect discrimination by adopting the test of particular disadvantage arising from application of a 'provision, criterion or practice';
- aligning the approach to victimisation in discrimination law with that of employment law, by removing the requirement for a comparator for all cases of victimisation in discrimination law;
- harmonising protection for children from victimisation in the education field, where their parent or sibling does a protected act (for example makes a complaint or supports someone else's complaint) under the legislation. Currently such protection only applies to a protected act done under the Disability Discrimination Act;
- adopting a harmonised approach to the way the law treats the exercise of public functions and the provision of goods, facilities and services, across all protected grounds
- bringing equal pay provisions within the Equality Bill (and harmonise and clarify some aspects)
- retaining separate approaches to contractual and non-contractual pay matters
- not introducing hypothetical comparators into equal pay claims

## **g. Exceptions:**

- to adopt a simplified overall approach to exceptions by introducing the general occupational requirement test across all the protected grounds, except in the case of disability where such a test is not necessary
- to remove the existing specified general occupational qualifications exceptions applying to gender, colour and nationality
- to consider further whether there is a need to introduce more specific genuine occupational requirement tests in some cases to provide clarity
- to work with the Equality and Human Rights Commission to raise awareness through guidance about exceptions, so that people will understand the reasons for them and be encouraged to report misuse of exceptions (for example, in the case of advertising jobs) to the Equality and Human Rights Commission for it to take any necessary enforcement action
- not to introduce a genuine service requirement test
- to consider further what specific exceptions are appropriate as they develop the Bill, in the light of responses to the consultation
- to remove the insurance exception which allows insurers to treat people differently on the grounds of sexual orientation

## **h. Gender reassignment**

The framework includes extending protection against discrimination because of gender reassignment in a number of ways:

- providing protection against direct discrimination for people who associate with people who are planning to undergo, are undergoing or have undergone gender reassignment (but not for those who are – wrongly – perceived to be a transsexual person);
- providing protection against indirect discrimination for people who are planning to undergo, are undergoing or have undergone gender reassignment;
- providing protection against discrimination because of gender reassignment in the exercise of public functions; and
- changing the definition to make clear who is protected from gender reassignment discrimination by ensuring that a person is protected whether or not they undergo medical supervision.

The Government has also decided not to extend protection against discrimination because of gender reassignment in schools

## **i. Pregnancy and maternity**

The framework includes:

- extending the public functions provisions to cover pregnancy and maternity
- excluding schools from any increased protection
- making it absolutely clear that it is unlawful to ask a woman to leave a café or restaurant or to get off a bus because she is breastfeeding a baby

## **j. Disability**

The framework includes:

- replacing the separate definitions of discrimination currently contained in Part 3 of the Disability Discrimination Act 1995 with a single definition of disability discrimination for rights of access beyond the employment field, without diminishing the legal protection which disabled people have under current law;
- making it clear in the Equality Bill that less favourable treatment amounting to direct discrimination will not be justifiable in the provision of: goods, facilities and services; public functions; private clubs; and premises;
- replacing the different justification tests in disability anti-discrimination law with a single objective justification test;
- removing the possibility of justifying a failure to make a reasonable adjustment in the provision of: goods, facilities and services; public functions; private clubs; and premises;
- establishing a single threshold for the point at which the duty to make reasonable adjustments is triggered;
- repealing the Disability Discrimination Act's list of capacities;
- creating a duty on landlords and managers of premises to make disability-related alterations to the common parts of residential premises, where reasonable and when requested by a disabled tenant or occupier;
- making discriminatory advertisements unlawful in relation to the provision of goods, facilities and services for disabled people, as with all other equality strands;
- outlawing discrimination against disabled people in the provision of goods, facilities and services in respect of relationships which have ended, as part of a harmonisation measure across all equality strands;
- changing the law to permit both disabled and non-disabled people to make a complaint about a term of a contract etc which might be unlawful under disability anti-discrimination law;

- harmonising the law by providing for the burden of proof in non-employment disability discrimination cases to be transferred to the respondent once a *prima facie* case has been made;
- repealing the Government's power to exclude certain cancers from the automatic coverage disability anti-discrimination law gives to people diagnosed with cancer; and,
- amending the law so that the duty on private clubs to make reasonable adjustments will apply fully in respect of prospective members and prospective guests

**k. Private clubs, the Government has decided to make it unlawful for private clubs with 25 or more members to discriminate:**

- between men and women members where they have mixed-sex membership (but this would not apply to single-sex clubs)
- on grounds of religion or belief, (but this would not apply to clubs for members of a particular religion or belief)
- against pregnant women or young mothers, but to allow specific clubs for pregnant women and young mothers;
- against transsexual people, but to allow specific clubs for transsexual people
- against people on grounds of their age, (but this would not apply to clubs for people of particular ages)
- against guests on any of the above grounds, as well as on grounds of race or sexual orientation

**l. Harassment**

The framework includes:

- extending the freestanding statutory protection against harassment in the Race Relations Act 1976 to apply to colour and nationality in the same way as it applies to race and ethnic and national origins. This could not be done when race harassment provisions were first introduced domestically because colour and nationality were not covered by the European Race Directive that required EU countries to introduce such provisions
- extending statutory protection against harassment related to sex, in schools, and harassment on the grounds of gender reassignment, in the exercise of public functions. These areas were outside the scope of the Gender Directive so could not be covered by the Regulations which implemented this Directive in Britain;

- not extending express statutory protection against harassment on grounds of sexual orientation or religion or belief, in the provision of goods, facilities and services, education in schools, the management or disposal of premises, and the exercise of public functions;
- giving further consideration to the case for extending liability of employers for persistent harassment of their employees by third parties in relation to race, disability, sexual orientation, religion or belief and age;
- not to impose liability on providers for third party harassment outside the employment field, e.g. by customer on customer; and
- providing statutory protection against age harassment as part of their proposals to prohibit age discrimination outside the workplace.

The Government has not yet come to a decision on how far the different definitions of harassment in discrimination law can be harmonised. To help them do this, they have been considering the consultation responses in the context of the following key principles set out in the consultation paper:

- not eroding existing levels of protection
- ensuring that harassment provisions in the Equality Bill meet the requirements of EU law; and
- legislating on harassment only if this is a proportionate response to a real problem

The Government feels it is important that they take this decision in the light of all relevant information available. The European Court of Justice has only recently handed down a judgment in the *Coleman* case which covers, among other things, the definition of harassment. The Government feels that it would be premature for it to come to a decision on how to define harassment in the Equality Bill before they it has an opportunity to consider this judgment. Subject to their decision about how harassment should be defined, they will also consider:

- extending statutory protection against harassment to the ground of disability in the provision of goods, facilities and services, education in schools, the management or disposal of premises, and the exercise of public functions.

### **m. Purpose clause**

The framework includes:

- not having a purpose clause in the Equality Bill on the basis that the legislation needs to be as clear as possible. The Government will be consulting on the possibility of a Bill of Rights and Responsibilities including a constitutional equality provision

## n. Protection under the law

The framework includes:

- not extending protection against discrimination specifically on the grounds of parenting or caring responsibilities. However, in the light of the European Court of Justice judgment in the *Coleman* case, they will consider what the implications may be for protection from discrimination against a person who associates with someone who is disabled, or with someone of a particular age
- not extending protection against discrimination on the ground of genetic predisposition. They have recently agreed to the insurance industry's proposal to extend until 2014 the existing arrangements for a voluntary moratorium on insurers' use of predictive genetic test results and consider that this, along with continued monitoring of the use of genetic testing in the UK, should provide sufficient reassurance.
- not extending protection against caste discrimination. While recognising that caste discrimination is unacceptable, they have found no strong evidence of such discrimination in Britain, in the context of employment or the provision of goods, facilities or services. They would, however, consult the Equality and Human Rights Commission about monitoring the position.
- not extending protection against discrimination on grounds of Welsh-speaking. They are not convinced of the need to legislate on grounds of language alone.
- preserving the existing protection against discrimination in employment on grounds of a person being married or a civil partner

## o. Gender directive

The framework includes:

- extending protection from direct discrimination on grounds of gender reassignment to the provision of goods, facilities, services and premises
- making it explicit that sexual harassment, sex harassment and gender reassignment harassment in the provision of goods, facilities, services and premises are unlawful
- making it explicit that less favourable treatment on the ground of a woman's pregnancy (subject to a health and safety exemption) or maternity in the provision of goods, facilities, services and premises is unlawful; and
- making it clear that, in relation to financial and insurance products, where there are differences in an individual's premiums and benefits as a result of sex being a determinant factor in risk assessment, then these differences must be proportionate, based on relevant and accurate data, and this data must be compiled, published and regularly updated

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