

**A Framework for Fairness:
Proposals for a Single Equality Bill for Great Britain**

Response Form

We welcome your views as part of the consultation. For convenience, this preformatted response form sets out all the questions in the main consultation document. It can also be downloaded from www.communities.gov.uk/index.asp?id=1017165.

Should you wish to use the form, it should be returned, once completed, to:

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The consultation closes on 4 September in 2007. Please let us have your response by that date.

When responding, it would be helpful if you could provide the following information.

Please fill in your name and address, or that of your organisation if relevant. You may withhold this information if you wish, but we will be unable to add your details to our database for future consultation exercises.

Name | Chris Ball

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Confidentiality

Under the Code of Practice on Open Government, any response will be made available to the public on request, unless respondents indicate that they wish their views to remain confidential. If you wish your response to remain confidential, please tick this box and say why. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Department.

I would like my response to remain confidential:

Please say why

You or your organisation

Q(i) In what capacity are you responding?

As an individual (if so, please go to Q1 in the main comments section)

On behalf of an organisation (if so, please go to Q(ii) below)

As an employer (if so, please go to Q(iii) below)

Other (please specify)

Q(ii) Is your organisation
(please tick the boxes that apply to your organisation)

A local authority (including health authority) / organisation

An equality lobby group or body

A statutory body

An organisation representing employers

An organisation representing financial institutions

A professional association

A university

A college of further education

A trade union/staff association

Other – please specify

Charitable Organisation

Q(iii) If responding as an employer, how many people do you employ?

Between 1 and 14 employees

Between 15 and 49 employees

Between 50 and 249 employees

250 employees or more

Q(iv) If responding as an employer please indicate which sector best describes you:

Legal services

Construction and/or building design

Communications

Wholesale and retail trade

Leisure – hotels, restaurants, pubs

Leisure – cinemas, theatres, museums

Leisure – other

Distribution/transport

Financial and/or business services

Electricity, gas and water supply

Advice and/or information services

Public administration

Education/training

Health and social work

Charity/voluntary work

Other (please tick box and specify)

Proposals for a Single Equality Bill for Great Britain

The main consultation document addresses various proposals and options for changing discrimination law in order to create a clearer, more streamlined equality legislative framework, which produces better outcomes for those who currently experience disadvantage. The following questions are reproduced from the main document, in the order and with the same numbering in which they appear there. In addition, you are asked for your comments generally on the estimated provisional costs and benefits, as shown in the Initial Regulatory Impact Assessment and the Equality Impact Assessment.

Part 1 – Simplifying the law

Chapter 1: Simplifying Definitions, Tests and Exceptions and Promoting Compliance

Simplifying Definitions and Tests

Direct Discrimination

Q1 Do you have any comments on our intention to keep the existing requirement for a comparator in direct discrimination claims?

Yes

No

If not, please give your reasons

(NB: Your questionnaire is somewhat confusing on this point. You ask if we have comments and then say 'if not, please give reasons.' We are assuming that the question is badly worded and does not convey your true intentions. The following are our comments.)

We believe that the objective should be to align definitions, comparators and exemptions as closely as possible across all grounds of discrimination. We recognise that there a number of potential justifications for direct discrimination on grounds of age which do not apply to other grounds. But it is misleading to suggest that age is the only ground on which direct discrimination is justified as a genuine occupational qualification is a justification for direct discrimination on other grounds. There is a tendency in some commentaries to exaggerate the degree of difference in respect of age from the other grounds. The limited amount of difference should be made clear in the draft Single Equality Act.

We agree that use of comparators (actual or hypothetical) in direct discrimination cases is appropriate. Discrimination law is about equal treatment, as opposed to more generally fair treatment, and so use of a comparator is fitting.

Multiple comparisons should be permitted and provisions requiring that "the circumstances in the one case are the same, or not materially different, in the other" should be omitted.

Q2 Do you have any comments on our proposal to replace the separate definitions of discrimination in Part 3 of the Disability Discrimination Act with a single definition?

Yes

No

Please provide:

We support the proposals to replace the separate definitions of discrimination in Part 3 of the DDA with a single definition.

Q3 Do you agree that we should largely keep the existing approach in relation to discrimination on the basis of perception and association, except for an extension to protect against discrimination on the grounds of association with transsexual people?

Yes

No

Please provide:

Discrimination by association should cover, not only transsexuals (as proposed), but also disability and age. The majority of carers are aged 45-65 and are therefore more likely to suffer multiple disadvantages – on grounds of their own age and because of their association with older people. We believe that such people should have legal protection against discrimination on both grounds.

Indirect Discrimination

Q4 Do you agree with our proposal to extend indirect discrimination to cover gender reassignment but not *explicitly* introduce it to disability discrimination law?

Yes

No

Please say why:

We agree that indirect discrimination should not be explicitly introduced to cover disability, but that an “anticipatory duty” should be adopted to cover disability, similar to that which already applies in relation to service delivery and education. This approach would help to tackle systemic discrimination, encouraging a proactive approach to make work environments suitable for disabled people. The low levels of employment of disabled people, who are weighted towards older age groups, makes this an important priority

Definition of indirect discrimination

Q5 Do you agree with our proposal to harmonise the definition of indirect discrimination where it applies across the protected grounds?

Yes

No

Please say why:

Yes, we think that a unified definition would ensure consistency, clarity (for individuals and organisations) and simplicity. We also support use of the European model (an apparently neutral provision, criterion or practice which puts or would put people of the claimant's group at a particular disadvantage).

Objective Justification

Q6 Do you agree with our proposal to harmonise the objective justification test?

Yes

No

Please say why:

Yes, we support the objective justification test put forward (a proportionate means of achieving a legitimate aim). We think that a unified definition would ensure consistency and clarity, which in turn would promote its use in circumstances where treatment can be shown as appropriate and necessary to achieve a legitimate aim. This, we believe, would provide sufficient flexibility within the law, adopting a common sense approach whilst retaining strong legal protection for older people. See also response to Q1

Justification of disability discrimination

Q7 Do you agree that there should be a single test of objective justification for disability discrimination in employment and vocational training, goods, facilities and services, housing, education, private clubs and public functions?

Yes

No

Yes, we think that a unified definition would help to create a simpler, clearer and more consistent legal framework, which in turn would assist employers and service providers in understanding the scope of their legal responsibilities, as well as providing clarity to disabled people as to the extent of their rights.

The threshold for reasonable adjustments

Q8 Do you have any comments on our proposal to establish a single threshold for the point at which the duty to make adjustments is triggered?

Yes

No

Please provide:

We welcome the proposal to establish a single threshold for the point at which the duty to make reasonable adjustments is triggered. We believe that a single threshold would provide clarity to individuals, employers and service providers as to their respective rights and responsibilities under the legislation.

Victimisation

Q9 Do you agree that the approach to victimisation in discrimination law should be aligned with the employment law approach?

Yes

No

Please say why:

Yes, we support the proposed alignment of the definition of victimisation currently used in employment law to the equalities laws. We do not believe that an individual should be required to show comparative less favourable treatment; evidence of detriment/disadvantage on grounds of carrying out a protected act should be sufficient to bring a victimisation claim

Simplifying Exceptions

Genuine occupational requirement test

Q10 Do you agree that a genuine occupational requirement test should be introduced for all grounds of discrimination, with the exception of disability (where it is not necessary)?

Yes

No

Please say why:

Yes, in relation to age, because there are very limited circumstances where it is appropriate for persons of a certain age group to be excluded from applying for certain posts. No mainstream job examples which require such an exemption have been identified to date.

Q11 Do you think there is a need to retain any of the genuine occupational qualifications listed in the Sex Discrimination and Race Relations Acts?

No comments

Genuine service requirement test

Q12 Do you support or oppose the introduction of a genuine service requirement test for differentiation in the provision of goods, facilities or services, housing and the exercise of public functions?

Support

Oppose

Please give your reasons and examples of what it might cover:

We believe that having a "defence" to direct discrimination in the supply of goods, facilities and services, housing and the exercise of public functions, across all equality strands is unnecessary and poses a threat to the protection that the legislation currently offers. Specific exceptions should adequately cover any justifiable exemptions, ensuring clarity and legal certainty whilst maintaining necessary protection.

Specific Exceptions

Q13 Do you agree with the proposal for a unified approach where exceptions apply to more than one protected ground, where this is appropriate?

Yes

No

Please give your reasons:

Yes. A unified approach, wherever possible, will further the aim of clearer, simpler and more consistent equalities legislation. We therefore believe that taking a unified approach, wherever possible and appropriate, is important.

Q14 Do you have any comments on our proposals for retaining the specific exceptions set out in Table 1 in Annex A?

Yes

No

Please provide

Mandatory Retirement Ages

Regulation 30 (mandatory retirement ages) of the Employment Equality (Age) Regulations 2006 should not be included in the exceptions set out at Annex A

We recognise that the default retirement procedure is due for review by 2011, but consider that there is already sufficient evidence to show how much direct and unacceptable discrimination it causes on grounds of age. This would not be acceptable if equivalent levels of discrimination were applied in the case of gender or race.

The evidence on which the Government took the policy decision in December 2005 on which this Regulation was based has been clearly demonstrated to be either unfounded or insignificant in its importance for business and the economy. It is questionable whether Regulation 30 is compatible with the Framework Employment Directive (2000/78/EC 27) and it is currently subject to a legal challenge mounted by Heyday, a branch of Age Concern England¹.

It is clear that older people want to work but are effectively prevented from doing so because of Regulation 30. More than a million 50-65 year olds who want to work can't get a job because of barriers to retaining or recruiting older staff.

We believe that chronological age is an inadequate proxy for capability. We would support the use of capability procedures that assess an individual's capability on the basis of job performance, and not age – as indeed operate in many organisations already.

An unintended consequence of the Age Regulations has been the forced retirement at age 65 of employees who would have been able to continue working beyond that age had the legislation not been introduced. According to a 2006 DWP survey² conducted to establish the effects of the forthcoming legislation, 57% of establishments had no compulsory retirement age but many have introduced one since the Regulations came into force.

Mandatory retirement age creates a barrier to opportunities for selection, promotion, training and job mobility for people in their late 50s and early 60s. A 'fixed' point at which individuals can be asked to retire inevitably influences employer decisions about their personal development and opportunities in the years leading up to it.

Older people, unpaid volunteering and upper age limits

Volunteering falls into a separate category from employment. People volunteer for a variety of reasons, but it should be recognised that the volunteer not only wishes to give but also to receive benefits in some way for himself or herself. These may be difficult to define or fairly obvious, the examples of the latter which come to mind include volunteering to gain relevant experience or learning which will help in a future job search, or volunteering to provide opportunities for social contact. In both these examples, the volunteer is gaining positively himself or herself, besides making an altruistic donation of time to a cause he or she supports.

We therefore believe that volunteering opportunities should be treated as a

¹ R on the application of the Incorporated Trustees of the National Council for Aging v The Secretary of State for Trade and Industry (Admin Ct CO/5485/2006).

² Survey of employers' policies, practices and preferences relating to age, DWP, 2006.

“facility” in legislation outlawing age discrimination in the arena of goods, facilities and services. This would ensure that older people were not excluded from volunteering positions on grounds of their age alone. Arbitrary age limits for the retirement and recruitment of volunteers are clearly discriminatory and should be abolished. Individuals should be assessed on the basis of their capability and performance, not their age.

Older people make up 74 per cent of the volunteer workforce in health and social services, the main areas where voluntary organisations are involved³, with around four and a half million over the age of 50 engaged in formal volunteering through groups, clubs and associations⁴. According to recent research by Age Concern, there would be no additional liability insurance costs to organisations in retaining older volunteers⁵.

Q15 Do you agree that the exceptions listed in Table 2 in Annex A should be removed?

Yes

No

If not, please explain why.

Q16 Is there any need to return an exception to allow insurers to treat people differently on the grounds of sexual orientation, where supported by sound actuarial evidence, beyond the end of 2008?

Yes

No

If yes, what should this seek to achieve and why:

Chapter 2: Public Functions

Q17 Do you agree that there would be benefits in adopting a harmonised approach to the way goods, facilities and services and public functions provisions are structured across all protected grounds?

Yes

³ C Rochester and B Thomas (2006), in M Lee on behalf of the Inquiry Board, “Improving services and support for older people with mental health problems”, the second report from the UK inquiry into mental health and well-being in later life, published by Age Concern England (August 2007).

⁴ Age Concern, “Age of equality? Outlawing age discrimination beyond the workplace” (2007).

⁵ Age Concern, “Age of equality? Outlawing age discrimination beyond the workplace” (2007).

No

Please say why:

Yes. Adopting a harmonised approach to the equalities legislation is consistent with the aims of the Discrimination Law Review and would help to create a simpler and more consistent legislative framework which, in turn, would assist organisations in complying with their obligations and responsibilities and provide individuals with understandable legal rights.

Q18 Do you think the exceptions could be streamlined in this area or do you think that there are any exceptions that should apply to public authorities that it would not be appropriate to apply to the provision of goods, facilities or services by private bodies?

Yes

No

Please say why:

Yes, we believe that exceptions could be streamlined for both private bodies and public authorities. Streamlining exceptions would help to create a more consistent and simplified legislative framework, avoiding a “two tier” system which creates uncertainty for providers and individual users and inhibits access to justice.

Chapter 3: Equal Pay

Our view is that the approach in this Chapter should be reconsidered as equal pay legislation for all grounds, not just gender. See TAEN covering letter.

Q19 Do you agree that the distinction should be retained?

Q20 Do you consider there are further areas of the law of equal pay developed by case law, which it would be helpful to codify?

Q21 Do you have further suggestions on how we could simplify equal pay legislation or make it easier to work in practice?

Yes

No

Please provide further information on how equal pay legislation could be simplified to make it easier to work in practice.

Chapter 3 is titled 'Equal Pay' but in practice is entirely about gender pay gaps. There are serious pay gaps in respect of other grounds, notably disability, race and age. The Single Equality Bill provides an opportunity to broaden the agenda on equality of pay. To date it has been perceived as a gender issue. In practice it affects a number of different grounds and the Bill should be drafted to address access to fair pay across all grounds.

We support

- An obligation on employers to identify pay gaps within their workforce and take action to tackle their causes. We believe this could be accomplished by a process of equal pay audits and/or a process under which some form of structured pay comparison is made available to employees under information and consultation arrangements. We believe that this auditing process could easily facilitate comparisons of pay according to gender, age and other sources. We would support employees having a right to request the inclusion of age and other dimensions of equality when audits are undertaken, though we believe that the principle function of such audits might well be to consider gender pay inequality in the first instance.
- We believe that it should be possible to bring a claim for equal pay by reason of disability, race, age, religion or belief or sexual orientation in addition to gender. However, it should be noted that we are not at this stage calling for the full panoply of the Equal Pay Act tribunal claims process to be applied to other dimensions of equality than gender, though we do believe that this should be kept under review. We believe that in amending the gender based equal pay law, regard should be paid to the aim of bringing other dimensions of equality within the same system.
- Our reasoning on the above point is as follows The equal pay system that applies to gender involves a complex procedure entailing the selection of actual comparators, an evaluation process and a complicated body of case law. We do not believe that this legal edifice should be replicated for other dimensions of equality, particularly as, we note, the EOC and gender campaigners are attempting to simplify it.
- We note that currently, someone who believes that they are being paid less because of their race/sexual orientation/religion or belief/age could bring an indirect discrimination case though we accept that different tests of comparison and burdens of proof apply in such an event.
- We therefore believe that equal pay legislation – both existing and any future law covering other equality dimensions – should be supported by a right to bring collective claims to the Central Arbitration Committee. Where there is evidence of discriminatory practices in collective agreements or policies having an differential adverse impact on members of a given group it would be the CAC's role to identify the existence or otherwise of the discriminatory practice and make awards accordingly. (This follows practice adopted in early years under the Equal Pay Act, which was in our view, helpful in movements towards gender pay equality.)
- The CEHR and other interested parties should also be able to challenge discriminatory pay practices by bringing representative actions to employment tribunals (in the case of gender based inequalities) or to the CAC (in the case of others).

Q22 Do you agree that allowing the use of hypothetical comparators would be unlikely to give any benefit in practice?

Yes

No

Please explain

We believe that allowing the use of a hypothetical comparator in equal pay cases would make it easier for individuals who are being paid unequally to establish their case.

Part 2: More effective law

Chapter 4: Balancing Measures

Q23 What evidence is there of the extent to which the current “positive action” provisions are being used? Do you consider that the current provisions limit the actions that employers and others would like to take?

We agree with the findings of the Equalities Review that there is currently confusion about what types of positive action measures are, and are not, allowed under the current discrimination laws and that this is preventing use of positive action provisions to prevent or compensate for disadvantages linked to a protected ground.

We are not aware of examples of current ‘positive action’ provisions which are being used in an employment context. Employers and education providers have been reluctant to push forward the boundaries of positive action. To avoid potential litigation, they have been taking a more conservative, risk averse approach than hitherto. Additionally, there is a general lack of awareness about the potential for taking positive action.

The feedback we have received from both trade unions and individuals is that some employers took advantage of the lack of awareness and understanding of the Regulations to ‘level down’ existing benefits based on length of service.

Furthermore, training providers (especially FE institutions and Community Colleges) have withdrawn courses that were offered to adult learners and cut subsidies for older learners citing the Age Regulations. The cuts have also led to staff dismissals. As stated above, little attempt seems to have been made to build positive action arguments for maintaining the provision of courses and subsidies for adult and older learners.

We believe the impact on older adult learners to have been an “unintended consequence” of the Regulations and that it would therefore help to have further clarification on this issue.

We think there are possible examples where an employer might wish to introduce measures to extend working lives, which might be seen as giving additional benefits to older people. (For example, health and learning

opportunities of different kinds.) Such examples might be described as 'positive action' measures and may well be perfectly justifiable as the law stands in terms of being a legitimate means of achieving an objective of greater equality. On the other hand, we believe there would be confusion and uncertainty around this kind of initiative were it to be proposed at the moment. In contrast, we know that some cases of such initiatives can be found in other countries.

Q24 Do you agree that it would be helpful for organisations seeking to make progress towards their goals of tackling under-representation and disadvantage to be able to use a wider range of voluntary balancing measures?

Yes

No

Please explain:

The current definitions of the case for positive action are different for different grounds in existing legislation. They should be aligned.

We agree that the evidence-based argument put forward for positive action should be rigorous and observe that this has not always been the case for some grounds. In general, we believe that a good case for positive action is likely to be supported by statistical analysis of the scale of inequality to be addressed.

We would welcome a wider range of balancing measures within the proposed Single Equality Bill. The current discrimination laws only tackle explicit forms of discrimination, seeking to treat everyone in the same way if their circumstances are similar. If disadvantage places the individual somewhere different, then they are currently offered no protection.

However, we are concerned that the green paper does not explain what it means by a "wider range" of balancing measures. In order to ensure that organisations are clear as to what steps are legally permissible, and so make use of balancing measures, we believe that further clarification is needed.

We would propose a general positive action provision which applies across all equality strands and is supplemented with provisions either in primary legislation or regulations.

Q25 Do you agree that measures to meet special needs in relation to education, training or welfare or any ancillary benefits should be permitted in respect of all protected groups?

Yes

No

Please explain why:

This positive action provision is appropriate and necessary since it allows differential treatment to meet the special needs of certain age groups, which goes further than the prevention of, or compensation for, disadvantage, recognising the diversity of every individual.

Q26 Do you agree with these proposals for issuing of guidance by the Commission for Equality and Human Rights, but that the Commission should not have a role approving positive action programmes?

Yes

No

Please explain why:

We think that a statutory Code of Practice, as well as practical guidance produced by the Commission for Equality and Human Rights (CEHR), is vital to ensure that positive action measures are understood, and utilised.

The CEHR already has the power to issue guidance and statutory codes of practice under the Equality Act 2006.

Whilst we accept that requiring the CEHR to actively approve positive action programmes would be overly burdensome, we do see merit in strengthening their role to provide voluntary "approval", where requested. We believe that, at least initially, the CEHR should be provided with specific resources to develop its capability to provide voluntary approvals, support and reassurance in this area. Whilst such approvals would not provide total legal certainty, they would be of great reassurance to organisations and, in turn, encourage the use of such programmes. CEHR approval would also be taken into account by Courts/Tribunals when determining the legality of such programmes which, again, would provide support and encouragement to those organisations wishing to take positive and pro-active steps to prevent or compensate for disadvantage, or address the special needs, of a particular group.

Q27 Do you agree that we should have a power to continue the operation of the current provision beyond 2015, if this is still necessary and proportionate?

Yes

No

Please explain why:

Q28 Do you agree that we should widen the scope of voluntary positive measures for political parties to target the selection of candidates beyond gender?

Yes

No

Please explain:

Chapter 5: Public Sector Equality Duties

Q29 Do you agree that the race, disability and gender duties should be replaced by a single duty on public authorities to promote race, disability and gender equality?

Yes

No

X

Please state your reasons:

We do not accept the premise of Chapter 5 or the questions on it that a duty covering race, disability and gender constitutes a single duty. A single or integrated duty is by definition a duty that covers all the grounds in a Single Equality Act. We ask that the whole approach of Chapter 3 is replaced in further work which should start from the premise that a Single Equality Act means just that- an act whose major components apply to *all* strands, including age, with parity of protection and treatment.

There should be no reduction in the current levels of protection offered to each of the race, sex and disability equality strands.

We believe that a single duty would be more efficient, clearer and simpler, and so more user friendly, which in turn would greater assist public authorities with implementing, understanding and complying with their responsibilities under the duty.

An integrated duty covering all grounds would have the potential to tackle multiple discrimination, for example, particular disadvantage faced by older, disabled people such as lack of flexible transport concessions; or lesbian and gay people, such as lack of provision for same sex couples in care. We believe that an integrated positive duty would be the most effective way of supporting equality for older people, whilst minimising the burdens placed on public bodies.

This approach is consistent with the findings of the Equalities Review, which endorsed the need for a “strong, integrated public sector duty, covering all equality groups, with a focus on outcomes and not process”⁶.

⁶ The Equalities Review “Fairness and Freedom: The Final Report of the Equalities Review” (2007), page 115.

Q30 Do you agree that it would be helpful to provide a clear statement of the purpose of a single public sector duty which public authorities should use as a foundation for taking action to promote equality and good relations?

Yes

No

Please state your reasons:

We believe that a purpose clause would give direction to public sector duty provisions, and would greatly assist with clarification, application and interpretation of the duty.

We would also support the use of a purpose clause within the Single Equality Act itself. We support the view of the Equality and Diversity Forum, the DRC, EOC and CRE in this regard, and agree that a purpose clause would greatly aid public understanding of the legislation and have an educative role by providing an important statement of basic principles.

A purpose clause would serve as useful guidance for courts, tribunals and anyone else dealing with the legislation as to how it should be applied and interpreted, helping to ensure consistent judicial interpretation and decisions, which in turn leads to greater legal certainty.

The purpose clause would help to supply context for interpretation and application of the specific provisions of the Act, setting out the essential purpose, guiding principles and overall objectives, without overriding more specific legislative provisions.

A purpose clause should set out the objectives of: preventing discrimination, ensuring equality of opportunity, recognising different treatment to achieve equality in practice, tackling disadvantage, social exclusion and systematic discrimination. It should state the underlying purpose of such legislation in protecting human dignity, recognise the intention of the legislation to provide effective remedies and draw attention to the role discrimination law plays in helping to maintain good relations between different groups.

Q31 Do you agree with the four areas set out in the proposed statement of purpose?

Yes

No

If not, please give your reasons and any alternative suggestions.

We support the use of a clear statement of purpose, and the emphasis on equality of outcome. We also welcome the four areas set out in the proposed statement, all of which have resonance with older people.

Q32 Do you think that the proposed statement of purpose adequately captures the need for work to build good relations and promote positive attitudes within and between groups and underpins efforts to build integration and cohesion?

Yes

No

If not, please give your reasons and any alternative suggestions:

Q33 Do you agree that a single public sector equality duty should require public authorities to identify priority race, disability and gender equality objectives and take proportionate action towards their achievement?

Yes

No

If not, please give your reasons and any alternative suggestions:

Q34 Do you agree that public authorities should be required to review their priority equality objectives at least every 3 years?

Yes

No

If not please give your reasons and alternative suggestions

Q35 Would it be helpful for strategic equality outcomes to be set by the appropriate national Government?

Yes

No

If so, what would be an appropriate way of doing this?

Q36 We would welcome views on the proposed new approach to supporting effective performance of a single public sector equality duty by requiring proportionate action towards the achievement of priority equality objectives, and on the four key principles we have identified. Do you prefer this approach, or an extension of the type of specific

duties adopted so far in the race, disability and gender equality duties? Please give your reasons.

This proposal should be alongside, and not instead of, specific duties covering all six equality strands based on the existing specific duties covering race, disability and gender.

Removal of specific duties would mean that public authorities were no longer obliged to make their evidence and progress public, to involve and consult, and to monitor. This would be a significant regression which we strongly oppose; it would make it difficult for the public and civil society organisations to challenge public bodies on their performance and for inspectorates and the CEHR to monitor and enforce compliance because baseline evidence on compliance would not be easily accessible and comparable between like authorities.

In any event, if the public duty set down principles, as opposed to a specific legal requirement, it would not be possible to assess performance or challenge an authority's failure to inform and consult, monitor etc.

Without clear statutory guidance on the steps and activities that public bodies should take there is likely to be confusion and inaction, as well as a potentially unenforceable legal duty.

This proposal would weaken the existing protection afforded to race, disability and gender under the existing duties and goes against the stated aim of the Discrimination Law Review not to "erode existing levels of protection against discrimination".

It also goes against the view of the Equalities Panel, who state in their Final Report that: "... equality impact assessments are an integral part of policy development and, crucially, that further assessments are undertaken once policies have been implemented, so that they also feature as part of the evaluation of service delivery".

Q37 If you prefer an extension of the type of specific duties adopted so far in the race, disability and gender equality duties, which elements of the specific duties do you think should be retained for a single public sector equality duty and why?

We support the model proposed by Fredman and Spencer (Oxford Hart 2003) which advocates limiting the specific duties to a minimum essential to ensure delivery, and allow monitoring and enforcement.

Q38 Do you think that the proposed single public sector equality duty should apply to all public authorities?

Yes



No



If not, please say how you think it should be targeted and give your reasons.

Q39 Do you think that a single public sector duty should be extended to cover:

a) age Yes No

a) sexual orientation; and/or Yes No

b) religion or belief; Yes No

Please state your reasons, including examples of the types of disadvantage you believe are experienced by people because of their age, sexual orientation or religion or belief which could be addressed effectively through such a duty.

See the response to Q29.

Parity of protection and fair access to justice demand the extension of public sector duties to all equality strands.

The experience of other equalities legislation is that individual legal rights to challenge potentially discriminatory practices are not sufficient to bring about equality in practice. Whilst discrimination laws help to secure equal treatment, equality of opportunity is a much wider concept which goes beyond treating everyone equally and includes taking proactive steps to combat entrenched disadvantages and recognising every individual's diversity.

Public sector equality duties were introduced *because* it was recognised that anti-discrimination legislation was not sufficiently effective to shift entrenched and institutional inequalities for race, gender and disability. The same principle applies equally to those grounds currently without public sector duties.

Demographic change has been described as one of the greatest challenge facing public authorities, yet public authorities have no systematic process for taking the ageing population into account. By considering the economic contribution of older people, whether paid or unpaid, public authorities can prevent unintended economic consequences and promote the economic, as well as social and civic, inclusion of older people.

Barbara Follett, Minister for Equality, commented during a Commons debate on age equality (10 July 2007, Column 412WH): "A positive duty could be particularly effective in ensuring that public service providers take the needs of people of all ages into account when planning and commissioning services and providing staff training. That could play quite a part in the cultural shift that we need to bring in"⁷.

Without an extension of the equality duty to all equality strands, equalities legislation would continue to be piecemeal and complex; this goes against the aim of the Discrimination Law Review and the proposed Single Equality Bill, the purpose of which was to address inconsistencies in the law with a view to harmonising and simplifying it.

A two tier system would emerge, which could ultimately result in deepening the disadvantage to those equality groups not covered by the equality duty

⁷ JCHR, "The Human Rights of Older People in Healthcare", Eighteenth Report of Session 2006-07, Volume 1, page 25.

due to the requirement on public authorities to prioritise the disadvantage and inequality associated with disability, gender and race above that experienced by the other equality strands. This cannot be the intention of Government.

There is a clear need for an integrated positive duty which covers age, as well as age discrimination legislation in the arena of goods, facilities and services:

- Positive duties currently require public bodies to have due regard to the need to eliminate “unlawful discrimination”; therefore, if there is no legislation in place for goods, facilities and services, older people will not benefit from this part of the general duty. As well as leaving older people with very limited protection (i.e. they would have no legal remedy if a public body was discriminating on grounds of age outside of the workplace), this “hybrid” duty goes entirely against the stated aims of the Discrimination Law Review to harmonise laws and create consistency and is likely to cause confusion amongst public bodies and older people as to the extent of the duty.
- In addition, it will be very difficult for public bodies to effectively “promote equality of opportunity” for older age groups when the legal system does not afford older people equality of opportunity and there is no legislative backing (i.e. anti-discrimination laws) for promotion of equality for older people outside of the workplace.
- Crucially, if there is no goods, facilities and services legislation for age then older people will effectively have no protection from age discrimination in the wider society by the private sector.

Q40 Might there be disadvantages in extending the duty to any of these groups?

Yes

No

If so please give examples

In relation to the proposed extension to age:

Whilst extension of the duty would mean that public authorities would have to take account of a greater number of protected grounds than previously, we do not believe that it is acceptable or justifiable to exclude any of the equality strands from protection for this reason. To support this argument undermines the very principle of equal treatment and is not, we believe, sustainable.

Q41 Over what timescale do you think a single public sector duty and any extensions to it should be implemented to ensure we have learned as much as possible from recently introduced duties on disability and gender?

We would advocate for an integrated public sector duty to be implemented as soon as possible, without delay. We believe that a public sector duty for age will have a very real, very positive impact on the lives of older people and so would encourage immediate and considered action.

Guidance and clarification about the scope and application of the new duty will be vital and we recognise the important role of the CEHR in this regard.

Q42 Do you think public authorities should be given the option to implement any new approach in advance of it becoming a legal requirement, enabling these authorities who have already taken an integrated approach to build on existing work?

Yes



No



Please explain:

Yes. Those organisations that have championed for equality in its true sense (i.e. equal opportunities for all people, irrespective of their age, sex, race, etc) should be commended and enabled to continue with their work.

Enforcements of Public Sector Duties

Q43 Do you think that there should be a single enforcement mechanism for the proposed single equality duty, enabling the Commission for Equality and Human Rights to issue a compliance notice with or without an assessment, as appropriate in the circumstances, enforceable in the county court or Sheriff's court in Scotland?

Yes

No

If not, please give your reasons

Public Service Inspectorate

Q44 What do you think should be the role of the public service inspectorates in assessing compliance with public sector equality duties?

We believe that inspectorates should monitor progress on equality as part of their routine performance assessment (para 5.89, an approach which is also supported by the DRC) and use the information public bodies produce to assess compliance with the duty (para 5.90).

Inspectorates are well placed to complete effective monitoring because of their in-depth knowledge of their sectors.

Furthermore, we believe that there is a case for placing a clearer statutory requirement on public service inspectorates for their compliance assessment responsibility in respect of the public duties; a move endorsed by the Equalities Review. This could be achieved by including specific responsibilities within the parent statute of each inspectorate or accompanying regulations.

- Q45 What issues would you like to see included in practical guidance on how public sector procurement can be used to achieve equality outcomes in the delivery of public services by the private sector, whilst ensuring that the guidance works well for business?

We believe that there is a need for clarity on the face of the legislation that the public sector equality duties apply to the procurement functions of public authorities.

This is acknowledged in the green paper, which provides that experience of the race equality duty suggests that “some public authorities are unclear about the extent to which equality objectives can be pursued through procurement”.

There is already a considerable amount of guidance on this issue and yet there is still clear uncertainty on entitlement and obligation; this tried and tested method is ineffective and we must now look to the legislation (as well as *statutory* guidance) to ensure that public bodies are clear about their entitlements and obligations in this regard, which will in turn promote consistent practice.

In the words of the GLA: “The Code of Practice route has effectively failed to deliver significant results”⁸. We agree with the assertion of the GLA that “only legislative provision will provide the clarity and focus which is required in this area”.

We endorse the view of the Equalities Review: “the Government has so far failed to do enough to ensure that an equalities dimension is part of the public sector’s procurement or commissioning decisions. The public sector spends billions of pounds a year on procurement. The Panel believes that public agencies should require suppliers to adopt the same principles under which they themselves are required to operate.” Further, that there is “scope for doing more” but “little clarity” exists amongst procurement and commissioning professionals about what can or should be done.

Given the (acknowledged) importance of procurement as a lever for promoting equality in the private and voluntary sectors, and the fact that the public sector procures £125 billion worth of goods and services annually⁹, we feel that there is a clear need for stronger, clearer and more enforceable legislation.

Obligations regarding procurement should be stated within the general duty (as an additional part of the duty), and that there should not be a specific duty on procurement. Regulations to assist public bodies to comply with this element of the duty are also, we believe, necessary to ensure that all public bodies embed equality into the procurement process.

Chapter 6: Promoting good equality practice in the private sector

Q46 Do you think that an “Equality Standard” would be beneficial to businesses, employees and customers?

⁸ DCLG, “Two Years On” report on the National Procurement Strategy for Local Government identified that, in 2004, just 34% of authorities specifically addressed equality and diversity in their procurement strategies.

⁹ Taken from the Green Paper, page 108.

Yes



No



Please give reasons for your answers

Whilst we support the use of an equality standard, we are concerned that voluntary measures will fail to deliver significant or widespread improvements on equality in the private sector. The Hepple Report¹⁰ supports this view.

We believe that many private organisations are already implementing policies which mirror the current public sector equality duties, and so making such duties a legal requirement for the private sector would ensure a more level playing field; those who chose not to implement best practice are not placed at a competitive advantage from doing so¹¹. Indeed, the CBI has reported that some public authorities adopt a “lowest cost mentality” when awarding contracts, regardless of equalities criteria¹².

Furthermore, without the extension of positive duties to the private sector there will be a two tier system, where public sector employees are more likely to have equal opportunities and less likely to be discriminated against in practice because of the mechanisms accompanying positive duties¹³.

The need for parity of opportunity in the private sector as well as the public sector is underlined by the fact that it provides approximately 80 per cent of all employment opportunities in the UK¹⁴.

We endorse the view of the GLA that extending positive duties to the private sector would be an important step towards making workforces more representative of the entire population and help to address under-representation of sectors of the population in senior jobs, professions and sectors, as well as tackling inequality in pay and employment.

Whilst we accept that different considerations will apply as between the public and private sectors (and particularly for SME's), we are disappointed to note the green paper's complete rejection of this option without further comment. We would welcome further debate on this issue.

If yes, would you prefer an accredited or a non-accredited good practice and compliance tool?

Accredited

Non-accredited

Q47 We would welcome your suggestions for other ways in which good equality practice could be encouraged and embedded in the private sector

¹⁰ B Hepple QC, M Coussey and T Choudhury, “Equality: A New Framework Report of the Independent Review of the Enforcement of UK Anti-Discrimination Legislation”, Hart Publishing (2000).

¹¹ C O’Cinneide, “Taking Equal Opportunities Seriously” (2005).

¹² HC Communities and Local Government Committee “Equality”, Sixth Report of Session 2006-07.

¹³ M Rubenstein, “Equality, the private sector and the Discrimination Law Review: A preliminary report” (2007).

¹⁴ Office of National Statistics, “Public sector employment”, taken from HC Communities and Local Government Committee “Equality”, Sixth Report of Session 2006-07.

Chapter 7: Effective dispute resolution

Promoting Early Resolution of Disputes

Q48 Can you suggest ways in which Alternative Dispute Resolution could be used more effectively or widely to resolve discrimination disputes in the field of goods, facilities, services, premises and the exercise of public functions?

We support the use of mediation and conciliation services with a view to avoiding costly and complex litigation.

We welcome the green paper’s proposals for alternative dispute resolution procedures but remain concerned that there are many barriers that older people face in their quest for access to justice which will not be resolved by increased use of ADR.

A particular concern in the public law field has been the inequality of bargaining power between a public body/state institution and an individual and the vulnerable position of the individual coerced into ADR proceedings (e.g. mediation arrangements) that may have the effect of denying them access to judicial review where they would be legally represented and there would be a more equal playing field.

Furthermore, the outcome of ADR proceedings is necessarily individualistic and so does not give rise to the wider principles needed to tackle entrenched inequalities.

We believe that ADR provides a very useful remedy for those individuals who will not be eligible for public funding and for whom legal action would be financially prohibitive. To this end, we support effective (i.e. properly trained advocates, both in advocacy skills and in the substantive law) and independent advocacy services.

Q49 Can you suggest ways in which the role of Ombudsmen might be used more effectively to resolve discrimination disputes?

Improving the handling of Discrimination Cases in the Courts

Q50 Do you have any views on our proposals for enhancing discrimination expertise in the county and sheriff courts?

Access to justice

We do not support the proposal to designate certain courts to hear all non-employment discrimination cases. We believe that this will cause difficulties for older and disabled people in terms of accessing the courts. Furthermore, we do not believe that it will eradicate the issues that are currently deterring individuals from lodging claims of discrimination in the provision of goods,

facilities and services; namely the cost of litigation (including court fees and legal representation costs), fear of costs orders, complexity of litigation and court procedures (necessitating legal assistance), time delays and potentially low damages (ineffective sanctions acting as a disincentive to litigate).

Within the context of disability discrimination, research has shown that a major reason why complaints about services discrimination (including housing, private clubs and public functions) are not escalated to legal claims is because of the expense and complexity of the court process¹⁵.

It is unrealistic to expect the CEHR to provide the only effective mechanism for enforcing discrimination laws. Other mechanisms are required to increase access to justice and ensure that those who are discriminated against have the means to challenge discriminatory treatment. Without access to justice legal rights become meaningless, inequalities persist and a culture of complacency (due to a dearth of cases and weakness of sanctions) dominates. This cannot be allowed to continue.

A call for “Equalities Tribunals”

We believe that goods, facilities and services cases should be dealt with within the tribunal system, using the discrimination law expertise of employment tribunal chairs and their members. We would propose specialist “equality tribunals” which sit alongside the current employment tribunals and replicate the employment tribunal model.

There is much support for this approach, notably from the DRC, CRE and EOC, as well as the Parliamentary Scrutiny Committee on the Disability Discrimination Act 2005 and the findings of the Hepple Report¹⁶.

We do not share the concerns of the green paper that this approach would divert specialist resources from the employment tribunals; in fact, we believe that fewer resources would be needed to train chairs in an area already familiar to them than to train judges in the civil courts who may have very little knowledge of the discrimination laws.

The green paper also cites that there would be “significant jurisdictional problems” where claims combine both discrimination and civil wrongs, the latter which would need to be heard in a civil court. This has not proved to be a significant problem for employment tribunals, who can deal with discrimination cases but not personal injury claims, and have limited jurisdiction to deal with contract cases (claims of up to £25,000).

We believe that there would be substantial benefits in this proposal, including:

- Greater access to justice for those who need it most because of a less intimidating, more informal and simpler legal system which can be navigated as a litigant in person for free, without the fear of a costs order (save in very limited circumstances);
- An increased likelihood of economic settlement before litigation due to the service provider’s inability to recover costs;
- Legal aid for claim form preparation (England and Wales) and advocacy (Scotland);

¹⁵ RNIB, “The Price of Justice”, (2000); DWP/Institute of Employment Studies, “Monitoring the DDA 1995, Phase3”, (2004).

¹⁶ B Hepple QC, M Coussey and T Choudhury, “Equality: A New Framework Report of the Independent Review of the Enforcement of UK Anti-Discrimination Legislation”, Hart Publishing (2000).

- The needs of the disabled claimant can be taken into account by the Tribunal Chair (unlike in the civil courts where judicial decisions fall outside the remit of positive duties and goods, facilities and services legislation).

In short, the more a judge knows about discrimination the more likely it is that a fairer outcome will be achieved.

Access to justice is already limited due to, amongst other things, legal aid restrictions (and current reforms are likely to disproportionately impact on discrimination cases) and the CEHR will take very few legal cases. Without providing a more accessible legal system for individuals to challenge discrimination in goods, facilities and services legal rights will become meaningless.

Expert Assessors

We support the call for increasing the use of expert assessors in discrimination cases.

More effective sanctions

We also support the DRC's call for a broader range of effective sanctions, and agree with their assertion that the sanctions awarded for breach of the Single Equality Act should be set at a level which encourages compliance with the law; it should always be much more expensive to break the law than to follow it.

Formal recommendations

Furthermore, we would advocate giving Employment Tribunals strengthened powers to make formal recommendations to employers regarding their policies and practices, so that recommendations can be made as appropriate to ensure that similar acts of discrimination do not recur, irrespective of whether or not the recommendation would have an effect on the individual claimant. We believe that this would significantly improve the impact of discrimination cases in helping employers (and their staff) improve upon poor equality practices.

Representative and class actions

We strongly support the case for representative and class actions, which will assist individuals who do not wish to pursue proceedings alone in accessing justice.

Finally, we support the call of the CRE to extend the current power of the CEHR to bring "own name" proceedings to other interested and relevant bodies, such as trade unions.

Disability Discrimination Education Cases in Scotland

Q51 Do you think that the powers of the Additional Support Needs Tribunals for Scotland should be extended to include consideration of disability discrimination cases in education?

Multiple Discrimination

Q52 Can you provide us with evidence illustrating any difficulties of gaining legal redress in cases of multiple discrimination?

We support a change in the law to allow cases of discrimination on multiple grounds to be brought before the courts as set out by the Equality and Diversity Forum

Q53 Are there particular issues you would want to see addressed in relation to multiple discrimination claims?

The current legal provisions should be amended to ensure that:

- Multiple comparisons should be expressly permitted
- Provisions requiring that “the circumstances in the one case are the same, or not materially different, in the other” should be omitted
- Where there are any provisions allowing different treatment, for example certain exceptions, these should be treated as cumulative and
- Awards of damages should reflect multiple grounds.

We believe that this approach would be likely to save court time, as Tribunals and Courts would not have to reach separate conclusions under each separate head of claim. Furthermore, the proposals would be in compliance with the relevant European anti-discrimination directives.

Part 3 – Modernising the law

Chapter 8: The grounds of discrimination

Disability

Q54 Do you have any comments on whether we should remove the list of ‘capacities’ from the definition of disability?

Yes

No

Please provide:

We support the removal of the list of capacities from the definition of disability, believing that it will be less prescriptive and easier for older disabled people to secure their rights in full.

Q55 Do you have any comments on our approach to addressing the needs of parents and carers?

No comments

Married Persons and Civil Partners

Q56 Do you consider that the protection for married persons and civil partners is still needed in the absence of a "marriage bar" in employment?

No comments

Genetic Predisposition

Q57 Do you agree that there is no current justification for legislating to prohibit genetic predisposition discrimination?

No comments

Chapter 9: Age discrimination

TAEN does not accept the premise of this chapter and its place in the Discrimination Law review. The principle of the DLR and a Single Equality Act is to align legislation in one system with parity of treatment. It is not acceptable that the DLR should apply this principle to most of the grounds in earlier chapters and then pose the question whether the same principles should apply to age. It is in contradiction with the whole exercise.

Q58 What instances of unfair age discrimination outside the workplace against people of any age, are you aware of?

Please give details of any examples below:

We are not clear why this question is posed in relation to age and not other grounds. The Government will have been aware of extensive reports published by Help the Aged, Age Concern England and others on the evidence for age discrimination outside the workplace which were available to the DLR team.

Q59 Is legislation the most appropriate and proportionate way of tackling harmful age discrimination?

Yes

No

GFS across all grounds is a precondition for a Single Equality Act not only because parity of treatment is essential and because of the evidence of age discrimination in services but because of its knock on effect on employment. Differential costs of insurance and financial services, different rules of access based on age and different rules related to transport especially driving based on age all create barriers to employment for older and younger people. TAEN has received numerous representations from employees who have been faced with extra costs of working passed on by employers because of their age; also of cases from employers who wish to employ older or younger people but

find that there are incremental costs which are not justified by actuarial or other evidence.

Q60 Do you have any views on how, if we decide to legislate, we can target the legislation to avoid unintended consequences and disproportionate burdens on both public and private sectors?

Yes

No

Please give details below:

The passage of all employment and anti discrimination law has been accompanied by warning of dire costs and threats to the competitiveness of UK business. What causes disproportionate burdens is a failure to employ the skills and experience of all ages in the workforce.

In the case of age discrimination the costs of employing older people in the UK falls compared to younger age groups. This is different to our major international competitors where wage costs rise with age. There is therefore a direct competitive UK advantage in maximising the employment of older people in the workforce. Any legislation that removes barriers to that employment (as legislation in age discrimination in goods and services would) has a positive impact on the UK economy.

Q61 Do you have any comments on any of the issues which would arise with a legislative approach to tackling age discrimination?

Yes

No

Please provide:

Concerns have been raised about the feasibility of legislating on age discrimination in the area of insurance. Legislation is needed to address the discrimination that younger and older people face on grounds of their age when accessing insurance (be it car, travel or health insurance). The extensive discussion of this issue show that the concerns of the insurance industry can be overcome.

We do not believe that age should be used as a proxy for risk. The European experience shows us that use of age as a proxy for risk may be flawed. In the example of health insurance (using age as a proxy for risk to determine the level of fees for private health insurance) in Belgium, sharp rises in health insurance premiums for those aged 60+ were held not to be objectively justified; actual costs had risen equally for all groups. This shows the value of legislation forbidding unjustified differences in treatment on grounds of age in providing a framework to challenge the unjustified discrimination and secure objectivity in decision-making around pricing¹⁷.

¹⁷ AGE, "Building the case for more action at European level to combat age discrimination in access to goods, facilities and services" (March 2007).

We do recognise that the legislation will need to allow for different treatment on grounds of age in the supply of insurance products, as is currently the case under sex and disability legislation.

We support the green paper's proposal that different treatment in the supply of insurance products is allowed *provided always* that this treatment is both reasonable and based on actuarial or other data or information from a source on which it is reasonable to rely. This two stage test will require insurers to justify any different treatment by reference to actual data; it will no longer be acceptable simply to refuse to insure someone, or radically increase premiums, on grounds of their age alone without further justification to demonstrate the *actual* (as opposed to *assumed*) increased risk that that age group poses, if any. We feel that this is entirely reasonable, long overdue and not unduly onerous on the insurance sector.

There is the lack of transparency and large hikes in premiums at certain age thresholds. Whilst most accept that premiums are likely to increase with age, a refusal to quote is discriminatory. We feel that the proposed legislative provision will resolve this issue, whilst allowing insurers the freedom to quote based on actual (as opposed to assumed) risk.

Due to practical constraints, we accept that people will still be put into age groupings, rather than individually assessed on the basis of their specific age and individual characteristics. To assess the risk that each individual poses with reference to their health, age etc we accept would currently be too onerous a burden on the insurance sector.

However, the green paper goes on to propose an exception in relation to "insurance companies designing and providing services for specific market segments", and gives an example of younger or older drivers. Whilst we are not opposed to certain market segments being *marketed* to, we would strongly oppose any attempt to allow the "provision" of insurance for certain age groups only; the risk being that insurance companies refuse to quote older people and try to use this proposed exception as justification.

Some insurance companies that refuse to quote above a certain age have said that, if they are forced to open up their insurance to all ages, they will lose their competitive edge and so be unable to provide specialist, and competitive quotes to certain age groups, including older people. We do not believe that this is a valid objection.

Likely costs (insurance)

The Impact Assessment¹⁸ estimates that a 0-1% fall in travel and motor insurance premiums for the over-65s would represent savings of up to £16.5 million to older consumers, as well as helping them to maintain their independence and mobility for longer. It also provides that employers may also benefit from a reduced risk of significant increases in group insurance costs resulting from employing older workers, as well as boosting sales for insurance providers and encouraging older people's participation in the consumer market.

We support the findings of the DCLG Impact Assessment which provides that, in relation to insurance and the extension of goods, facilities and services legislation to cover age, the impact on the insurance sector should

¹⁸ DCLG, "Proposals to simplify and modernise discrimination law: Initial Regulatory Impact Assessment", DCLG: London (June 2007).

be “relatively small”. This is because differential premiums based on age would be allowed provided they were referable to actuarial data; already standard practice within the insurance industry. Any fall in premiums would be likely to be recouped by adjusting premiums across the board and would not, according to the Impact Assessment, represent an overall cost to insurance companies. The Irish experience (under the Equal Status Act 2000) is that very few cases have been brought under this head.

Chapter 10: Gender reassignment

No comments

Chapter 11: Pregnancy and maternity

No comments

Chapter 12: Private clubs and associations

No comments

Chapter 13 – Improving access to and use of premises for disabled people

Q72 Do you agree with our proposal for requiring disability-related alterations to the common parts of let residential premises?

No comments

Chapter 14: Harassment

No comments on this chapter

Annex A Simplifying exceptions

See commentary on various questions. Regulations 30-34 and Schedule 2 should not be retained in their present form. They should be revised/added to the list of items which are not retained.

The application of the Age Regulations to the public funding of training needs to be clarified before a Single Equality Act. The Government has interpreted the situation to exempt itself from the Age Regulations which make it unlawful for training providers and other to discriminate in the terms and conditions of the provision of training on grounds of age.

Annex B – Implementing the Gender Directive

No comments

Costs and Benefits

Q83 Please let us have your views on the estimate of costs and benefits summarised in the Initial Regulatory Impact Assessment.

Compelling case for age, benefits underestimated, cost should never be a justification for discrimination.

Equality Impact Assessment

Q84 Please let us have your views on the Equality Impact Assessment.

Other Comments

Q85 Do you have any other comments about the consultation documents or the consultation exercise itself?

Consultation

As an organisation acting for and on behalf of older people we wish to point out that legislating on grounds of age discrimination is a relatively new concept and one which is necessarily complex. Whilst the older people that we have engaged with on this issue have provided us with numerous examples of the age discrimination that they have suffered when accessing goods, facilities and services, and been very vocal in their call for legislation in this area, it is not necessarily the case that they will be willing or able to respond to this consultation directly.

As far as possible we have sought to capture the information given to us by older people and include it in our response. We have also provided additional information to our members about the consultation and helped to facilitate their response. However, there are many older people who are not members of older people's organisations, often those who are the most marginalised and isolated members of society, whose voices have yet to be heard. It is for them that the positive equality duty (underpinned by legislation for age in the provision of goods, facilities and services) will have the most significant and positive impact and we would urge the government to take this into account when considering the quantitative data on age discrimination outside of the workplace.¹⁹

Conclusion

TAEN believes that all people, irrespective of their age, are entitled to be treated equally and with fairness, respect and dignity. Evidence proves that, time and time again, older people are being discriminated against solely on the grounds of their age.

We believe that it is totally unacceptable that, in the 21st century, older people can legitimately and lawfully be refused access to goods, facilities and services on the grounds of their age alone and that they are ignored in the planning and provision of basic public services.

As the proposals to consolidate the existing equalities legislation in Great Britain take shape, it is vital that legislation is put into place to ensure that older people are afforded the same rights and protections as everyone else. Legislation ensuring equal access to goods, facilities and services, and the public sector duty, must extend to older people, as for all other vulnerable groups.

¹⁹ Age Concern, "Ageism: A benchmark in public attitudes in Britain" (2006), which found that younger people reported discrimination of all forms. Older people reported the least.

It is simply indefensible to leave a vulnerable group without the means to address the persistent inequalities that they face in this area, all of which are well documented.

By failing to legislate society is effectively condoning discriminatory behaviour against certain groups in society and sending a clear message to the public that older people do not deserve to be treated equally, and that it is acceptable to treat certain groups less favourably than others. This is an outrage and cannot be allowed to continue.

Additional Comment – The Economic Benefits of Extending Age Discrimination Law

We believe that extending protection against age discrimination to cover goods, facilities and services will also have the virtuous outcome of increasing the number of jobs and employment opportunities overall. This is because new markets and provision will open up which will need to be served and serviced. TAEN therefore believes that the extension of legal protection under consideration, far from being an economically damaging regulation (which may be argued in some quarters), would provide an impetus to the economy. Moreover, it is of interest that the regions of the UK most in need of economic stimulus are those most likely to benefit, precisely because they are regions in which greater proportions of the population reside.

Thank you for completing this response form.