



### **Consultation on Single Equality Bill**

The Government has put out for consultation a Green Paper containing proposals for a Single Equality Act, to simplify and improve existing discrimination legislation. The consultation closes on 4th September 2007.

Discrimination law is currently contained in nine major pieces of legislation which, the Government believes, may act as an obstacle to fairness. The Government's aim is to put the law on equality and discrimination in one place, supported by clear and practical guidance.

The proposals contained in the Green Paper have been developed as part of the Discrimination Law Review ("the DLR") which was launched by the Government in February 2005. The DLR aimed to examine the domestic and European legislation making up the discrimination laws in the UK, and to consider how to make that legislation clearer and more coherent. An Equalities Review, which ran in parallel with the DLR, has examined the broader sociological issues leading to inequality in society. The Equalities Review reported to the Prime Minister on 28<sup>th</sup> February 2007 and a Government response is expected later this year.

### **The Green Paper**

The Green Paper spans the full body of equality law, covering not only employment but also the provision of goods and services, education, private clubs and the positive duties to which public authorities are subject. It is split into 3 parts: harmonising and simplifying the law, making the law more effective and modernising the law. Many of the Green Paper's proposals fall outside the employment law field. The main issues which will affect employment law are set out below.

#### *A. Harmonising and simplifying the law (Part 1 of the Green Paper)*

##### Discrimination

The Government proposes and seeks views on whether to:

- keep the existing requirement for a comparator in direct discrimination claims;
- harmonise the definition of indirect discrimination and adopt the same objective justification test for all existing indirect discrimination provisions, and for direct discrimination on the grounds of age (note that although this

will make the concept of justification easier to understand, this will impose a higher burden on employers seeking to justify disability discrimination);

- introduce a genuine occupational requirements test for all types of discrimination (except disability where it is not necessary);
- extend to gender reassignment protection against discrimination on the basis of association, but otherwise keep the existing approach to perception and association protections;
- extend indirect discrimination protection to transsexual people, but not to introduce transsexuality as a specific concept in disability discrimination;
- remove the requirement for a comparator from all victimisation provisions;
- replace the different justification tests in disability discrimination law with a single objective justification test ie that the reason for the less favourable treatment is a “proportionate means of achieving a legitimate aim”.

#### Equal pay

The Government proposes and seeks views on whether to:

- bring equal pay provision within a Single Equality Act but retain the current differences between claims relating to contractual and non-contractual issues;
- incorporate into equal pay law all settled principles of equal pay law which have come out of judgments in legal cases;
- simplify equal pay legislation further or make it easier for it to work in practice;
- continue with the current approach to comparators, which requires an actual comparator.

#### *B. Making the law more effective (Part 2 of the Green Paper)*

In this part, the Government seeks views on proposals to make the law more effective by allowing a wider range of balancing measures. In relation to employment these include:

- not extending the concept of ‘reasonable adjustment’ in disability discrimination to other types of discrimination but to permit voluntary, proportionate and time-limited balancing measures (such as positive action) where they are necessary to prevent or compensate for disadvantage or to meet special needs linked to a protected ground;
- giving the Commission for Equality and Human Rights a role in issuing clear, practical guidance and codes of practice;

- promoting good quality practice in the private sector by the development of a light-touch “equality check tool” for employers to use and consider introducing a voluntary equality standard scheme for business (note that the Government does not believe that the private sector should be subject to a positive duty to promote equality (as public authorities are), as this would impose too great a regulatory burden).

### *C. Modernising the law (Part 3 of the Green Paper)*

In relation to employment law, the Government proposes to simplify how the definition of disability operates in relation to “normal day to day activities”. There is currently no definition of “normal day to day activities” but the Disability Discrimination Act (DDA) provides that they must affect one or more of a number of capacities such as mobility, sight or manual dexterity which are listed in the Act. The proposal is to remove this list of capacities.

The Government proposes not to introduce specific protection against discrimination on the grounds of having parenting or caring responsibilities, as the Government considers that targeted provisions already found in employment legislation (such as maternity, parental, paternity and adoption leave, as well as time off for dependants and the right to request flexible working) already achieve this.

The Government proposes continuing with the current non-legislative approach to genetic predisposition (e.g. discrimination by an employer on the basis of a genetic predisposition which has become known due to genetic testing) and does not propose to introduce further legislation at this time, as the Government considers the Data Protection Act 1998 currently provides adequate protection.

### **Reaction**

Dr Katherine Rake, director of the equality group, the Fawcett Society, is disappointed with how the proposals deal with equal pay law. She said in a Fawcett [press release](#), “at the current rate of change, it’s going to take 140 years until women are paid equally - and the Government has missed a huge opportunity to speed that up. This is just tinkering round the edges.” Many of the proposals contained in a report published in April 2006 by the Fawcett Society, *Gender Equality in the 21st Century: modernising the legislation*, have not been taken up. These include the use of hypothetical comparators in equal pay cases, the extension of the public sector gender duty to the private sector, mandatory equal pay audits and the disqualification of businesses with a poor track record from tendering for public sector contracts.

Trevor Phillips, Chair of the Commission for Equality and Human Rights has welcomed the Green Paper in his [press release](#) but has also expressed some concerns, warning that “this should be an opportunity to do something more ambitious than simply ensuring that women get a place at the bar in the local golf club”.

Jenny Watson, chair of the [EOC](#) welcomed the Green Paper hoping that the consultation would result in suggestions on how to prevent equal pay problems arising. However, she expressed regret of the “missed opportunity to tackle the gender pay gap”. Similarly, the [TUC](#) welcomed efforts to simplify and consolidate the law, but regretted that those looking for “major advances” would be disappointed.

Bob Niven, Chief Executive of the Disability Rights Commission is disappointed stating that the Green Paper, “fails to measure up - either to the remit it was set or the reality of continued inequality and discrimination in Britain today”. Much of his criticism was directed towards failures to tackle inadequacies in the goods and services sector but, in general, he criticises the Green Paper’s failure to consider new ways of enforcing anti-discrimination law or to simplify the legal process to make it easier for people discriminated against to have their claims heard.

## **Conclusions**

Discrimination and equal pay law has grown up in a piecemeal fashion, resulting in many inconsistencies and gaps across the various areas of law, ranging from sex and race discrimination to disability and age discrimination. It would be more convenient for employers and employees alike to have consistent and accessible laws which clearly identify their respective rights and obligations. Equality groups would like to see laws which shift the balance away from enforcing rights to preventing discrimination problems arising in the first place and make it easier to resolve problems when they arise.

As regards disability discrimination law, the proposals for reform do not include the Disability Rights Commission’s 2006 recommendations to Government for a new definition of disability. These recommendations would have extended the scope of the DDA considerably. The Green Paper’s proposal to change the objective justification test will, however, give extra protection to employees with disabilities who fall within the protection of the DDA. This is because the proposed test (that the reason for the treatment is a proportionate means of achieving a legitimate aim) is more stringent than the current test (that the reason for the treatment is material and substantial), making it more difficult for employers to justify less favourable treatment.

The Government has made it clear that this is a Green Paper and recognises that there are strongly held views in what is a complex area. The Government says that its aim is to develop legislation that is proportionate and targeted specifically at harmful discrimination. It is hoped that the DLR will result in a full and informed debate before bringing forward legislation.

Consultation paper can be found by clicking [here](#)  
Government press release is available [here](#)

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