

# BRIEFING NOTE ON THE EQUALITY BILL

## Equality Bill

On 27 April, the Government published its Equality Bill, after its introduction into the House of Commons on 24 April. The declared purpose of the Bill is to bring together and restate a range of existing discrimination legislation and also to bring forward additional measures “to strengthen the law to support progress on equality”. Its publication follows a lengthy period of consultation on the report of the Discrimination Law Review published in June 2007 and the Government’s proposals in the light of responses to this, published last July in *The Equality Bill – Government Response to the Consultation*, as mentioned in Network Circulars 15/08 and 19/08.

The Bill includes 205 clauses and 28 schedules. In an interesting trial innovation, the Bill has been published with the explanatory notes on it interleaved with the text of the Bill itself. Taken together, the Bill and the explanatory notes run to nearly 600 pages and obviously cannot be readily summarised. The explanatory notes give examples of how the provisions of the Bill might apply in specific instances. This Circular focuses in particular on provisions in the Bill which are relevant to an individual’s religious identity or to the work of a faith-based organisation.

The introduction to the explanatory notes sets out the historical background to the presentation of this Bill and the legislation which it is designed to consolidate and replace (and in some aspects to harmonise) in doing so. The intention is that the part of the Equality Act 2006 relating to the constitution and operation of the Equality & Human Rights Commission will remain in force.

The Bill replicates the provisions providing special treatment for religion and belief organisations contained at present in the Employment Equality (Religion or Belief) Regulations 2003; the Employment Equality (Sexual Orientation) Regulations 2003; Part 2 of the Equality Act 2006; and the Equality Act (Sexual Orientation Regulations) 2007.

The term “strand” has often been used in the past (but not in legislation) to identify the “grounds” on which protection against discrimination in various ways has been enacted. The new Bill lists what are described as “protected characteristics”. They are: age; disability; gender reassignment; marriage and civil partnership; pregnancy and maternity; race; religion or belief (including lack of belief); sex [i.e. gender] and sexual orientation. In line with earlier legislation in terms of religion or belief, a person who has a particular “protected characteristic” is defined as meaning a person of a particular religion or belief; with “religion” meaning any religion (or a lack of religion) and “belief” meaning any religious or philosophical belief (or lack of belief).

The Bill, in addition to consolidating and harmonising existing legislation, includes a number of provisions intended to strengthen the law in a number of areas. It:

- Places a new duty on Government departments, local authorities, regional development agencies, police authorities in England and NHS bodies to consider socio-economic disadvantage when taking strategic decisions about how to exercise their functions. This follows a separate consultation over recent weeks on this proposal.

- Extends the circumstances in which a person is protected against discrimination, harassment or victimisation because of a “protected characteristic”, including, for example, age in the context of the supply of goods and services, already covered in previous legislation for other “protected characteristics” including “religion and belief”.
- Creates a new general duty on listed public authorities when carrying out their functions to have due regard to: the need to eliminate conduct which the Bill prohibits, [i.e. to eliminate discrimination, harassment and victimisation]; the need to advance equality of opportunity between persons who share a relevant “protected characteristic” and those who do not; and the need to foster good relations between people who share a relevant “protected characteristic” and people who do not (which will therefore cover good relations between people of different faiths and between people who have a religious faith and those who do not).

The practical effect is that listed public authorities will have to consider how their policies, programmes and service delivery will affect people with all the “protected characteristics” listed in the Bill. At present there are “public duties”, with variations between them, only in the case of disability, gender and race. This general “public sector equality duty” will also apply to bodies which are not themselves public authorities but which exercise public functions, in which case the duty will apply to the exercise of those functions rather than to the organisation as a whole.

The Government will be consulting this summer on what this new public duty should involve in terms of more specific duties. The consultation on these specific duties will also cover the preparation of revised good practice guidance on the ways in which public procurement can be used to promote equality building on the current guidance on this from the Office of Government Commerce Guidance. At an earlier stage it had been thought that specific provisions on public procurement and equality might be included in the Bill itself, but this is not the case.

- Allows an employer or service provider or other organisation to take broader positive action so as to enable existing or potential employees or customers to overcome or minimise a disadvantage arising from a “protected characteristic”.

Currently the law only allows for limited positive action measures in relation to this context. The Bill provides scope for the adoption of voluntary “positive action” measures to alleviate disadvantage experienced by people who share a protected characteristic, reduce under-representation in relation to particular activities and to meet particular needs, providing such measures are a proportionate way of achieving the relevant aim.

- Enables employment tribunals to make recommendations in discrimination cases which apply to the whole workforce and not just to the successful complainant (who may have already left the organisation concerned).
- Seeks to promote greater transparency about pay in the workplace by outlawing contractual pay secrecy provisions; protecting those who wish to discuss their

pay with colleagues; and taking a new power to introduce regulations requiring private sector employers with at least 250 employees to publish information about the gender pay gap within their workforce.

- Extends the permission for political parties to use women-only shortlists for election candidates to 2030;

The Bill will clearly need detailed study and will be the subject of discussion over the next few weeks both in the Religion and Belief Consultative Group and in the Equality and Diversity Forum (which brings together a wide range of voluntary sector organisations with interests in the equalities field).

A Second Reading of the Bill in the House of Commons is expected to take place in the course of May and it is expected to enter its Committee stage in June. The Government hopes that the Bill will receive Royal Assent in the spring of 2010. Most of the main provisions of the Bill are expected to come into force in the autumn of that year, with the new general “public duty” coming into force in 2011.

The Bill, with its interleaved explanatory notes, can be accessed through [www.equalities.gov.uk/equality\\_bill.aspx](http://www.equalities.gov.uk/equality_bill.aspx). Printed copies can be obtained from the Stationery Office at a cost of £44. There is a separate Government Equalities Office document entitled, *A Fairer Future: The Equality Bill and other action to make equality a reality*, describing the content of the Bill and its implications for different groups of people and for the public and private sectors. This can also be accessed through the same website.

### **Equality and Human Rights Commission**

The Equality and Human Rights Commission (EHRC) is now carrying out a consultation to identify what guidance on the Equality Bill would be helpful and informative in order to supplement the statutory codes of practice which it will be producing on the public service duty, goods, facilities and services and education. This is an online consultation survey, due to close on 7 June, which can be found at: <http://cecollect.com/vf/7530r9491Z7166F61c99>

The EHRC recently published its Equality Scheme 2009–12, setting out how it will carry out its own statutory functions, focusing on its employment practices, its service delivery and its working parties. It can be found at: [www.equalityhumanrights.com/equalityscheme](http://www.equalityhumanrights.com/equalityscheme). The EHRC is likely to be publishing in mid-May its strategic plan for 2009–12, following its major programme of consultation on this, described in Circular 25/08.

*This material was originally circulated to IFN members on Thursday, 30<sup>th</sup> April 2009.*

## **RELIGION AND BELIEF AND CURRENT EQUALITIES LEGISLATION: BACKGROUND NOTE**

1. This note sets out briefly the position in terms of current equality legislation by way of background to the introduction into the House of Commons in late April of the Government's new Equalities Bill which is the subject of a separate note.
2. In 2000, the European Council of Ministers adopted a Ministerial Directive dealing with discrimination in employment and related matters. This Directive covered the six 'strands' of race, gender, disability, religion and belief, sexual orientation and age. Subsequently, through secondary legislation, the provisions relating to discrimination, whether direct or indirect, or harassment on the grounds of religion or belief were incorporated into UK law in the form of the Employment Equality (Religion or Belief) Regulation 2003.
3. The Regulations contain exceptions which enable religion and belief organisations to discriminate where, "having regard to the nature of the employment or the context in which it is carried out, being of a particular religion or belief is a genuine and determining occupational requirement"; or in cases "where an employer has an ethos based on religion or belief", discrimination is justified in order to maintain this.
4. The provisions relating to discrimination on grounds of sexual orientation were incorporated into UK law in the form of the Employment Equality (Sexual Orientation) Regulations 2003. These regulations contained exceptions where being of a particular sexual orientation is a "genuine and determining occupational requirement"; or "where employment is for the purposes of an organised religion and the employer applies a requirement relating to sexual orientation so as to comply with the doctrines of the religion, or because of the nature of the employment and the context in which it is carried out, so as to avoid conflicting with the strongly held religious convictions of a significant number of the religion's followers".
5. The Equality Act 2006 included, in Part 2, provisions relating to discrimination in the supply of goods, facilities and services, on the grounds of religion and belief. These provisions also included exceptions relating to religion and belief organisations, as did the regulations subsequently made under the Act relating to discrimination in the supply of goods, facilities and services on the grounds of sexual orientation.
6. It should be noted that, where an obligation rests on a public body to observe particular equalities requirements, it is that public body which is responsible for meeting them. This does not, therefore, preclude the public body from seeking to accommodate requirements of conscience derived from commitment to a particular religion or belief in the case of individual employees, e.g. the rostering of registrars of marriages and civil partnerships, if this can be achieved without detriment to the service which is required and to do so could reasonably be considered good practice. There are, however, obligations on employing organisations to ensure that their staff are not harassed or placed in a hostile or

intimidating employment environment. So both considerations apply to dealing with staff within the same organisation who have conflicting beliefs and practices.

7. The European Convention for the Protection of Human Rights (incorporated in UK law through the Human Rights Act 1998) provides protection in Article 9 for “freedom of thought, conscience and religion”. But “freedom to manifest one’s religion or beliefs” is “subject [only] to such limitations as are prescribed by law and are necessary within a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others.” So the provisions in equality legislation which place restrictions on the freedom of action to engage in certain practices or behaviour by way of manifesting one’s religion or belief are not inconsistent with the human rights enshrined in UK law. At the same time, the affirmation of rights relating to religion and belief, subject to certain limitations, in the Human Rights Act supports the case for appropriate exceptions for religion and belief organisations embodied in equality legislation. The present exceptions have been repeated in the Government’s new Equality Bill.

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