



Discrimination Law Review

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

Overall summary of:
Consultation Document
Initial Regulatory Impact Assessment
Equality Impact Assessment



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June 2007
Ministry of Justice
Department for Education and Skills
Department of Trade and Industry
Department for Work and Pensions
Department for Communities and Local Government: London

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Introduction

The Government has a manifesto commitment to introduce a Single Equality Bill during this Parliament.

To take forward this commitment, the Discrimination Law Review was launched in February 2005 to consider the opportunities for creating a clearer and more streamlined discrimination law framework which produces better outcomes for those who experience disadvantage.

The Government is now consulting on proposals for a Single Equality Bill. Consultees are asked to respond by 4 September 2007.

The consultation consists of three main documents, published on 12 June 2007:

- a Consultation Document which seeks views on the Government's proposals;
- an Initial Regulatory Impact Assessment which estimates the costs and benefits of the proposals;
- an Equality Impact Assessment which looks at how the proposals affect people because of their sex, race, disability, age, sexual orientation and religion or belief.

Matters of equality should be of interest to a wide range of people: employers and service providers in the public, private and voluntary sectors; and employees and members of the public who are customers for goods and services or who make use of public or private sector facilities. The Government is keen to encourage responses to the consultation from all those interested.

The purpose of this summary is to set out briefly the main issues covered by each of the main documents so that readers can decide where their interest lies and whether they want to respond. The main documents are available at the following website address:

www.communities.gov.uk/index.asp?id=1017165 or in paper form from: communities@twoten.com. A pre-formatted response form is available at www.communities.gov.uk/index.asp?id=1017165 or responses can be submitted by letter, fax or email.

Enquiries about the consultation, including availability of the documents in alternative formats, should be made to:

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Consultation Document: A Framework for Fairness

Equality is a fundamental part of a fair society in which everyone can have the best possible chance to succeed in life. We all want to live in a society where everyone's rights are properly respected. There is also a clear business case for equality. As a nation we need to make the most of the potential talent and skills of all individuals in our increasingly diverse society. We want a flourishing economy in which all have equal opportunities to thrive and contribute.

The Consultation Document seeks views on the Government's proposals for simplifying, modernising and making more effective our framework of discrimination law. The aim is to produce a Single Equality Bill which is simpler, more effective at tackling disadvantage and fit for twenty-first century Britain – a framework for fairness.

The consultation document a 'Framework for Fairness' is in 3 parts, with 3 annexes:

- Part 1, on harmonising and simplifying the law;
- Part 2, on making the law more effective;
- Part 3, on modernising the law;
- Annex A, containing detailed tables on which specific exceptions to discrimination law we want to keep and which we want to remove;
- Annex B, containing our proposals for implementing the EU Gender Directive; and
- Annex C, a glossary of terms and abbreviations.

All of the proposals set out in this paper will, of course, be considered further in the light of responses received during the consultation period.

Part 1 – Harmonising and simplifying the law

Part 1 of this paper asks for views on proposals to promote a culture of compliance with the law; to simplify and standardise definitions and tests in discrimination law; to simplify and harmonise exceptions; to simplify and harmonise the way the law treats public functions and public services; and to bring the law of equal pay into the Single Equality Bill and update it in line with case law.

Chapter 1: promoting compliance and good practice, simplifying definitions, tests and exceptions

In this chapter we seek views on the following issues and proposals:

Promoting compliance and good practice

We want to make sure that businesses and other organisations have comprehensive, authoritative and practical guidance to support them in meeting the requirements of discrimination law. We propose that the Commission for Equality and Human Rights will have primary responsibility for issuing guidance and codes of practice, working in partnership with other bodies in the private, public and voluntary sectors.

Definitions and tests

We ask whether (and in some cases how) we should:

- keep the existing requirement for a comparator in direct discrimination claims;
- introduce a single definition of disability discrimination;
- extend protection against discrimination on the basis of association to gender reassignment, but otherwise keep the existing approach to perception and association protections;
- extend indirect discrimination protection to transsexual people, but not to introduce it as an explicit concept in disability discrimination;
- harmonise the definition of indirect discrimination;
- adopt the same objective justification test for all existing indirect discrimination provisions, and for direct discrimination on grounds of age;
- replace the different justification tests in disability discrimination law with a single objective justification test;
- establish a single threshold for the point at which the duty to make reasonable adjustments for disabled people is triggered; and
- have the same approach to victimisation in discrimination law as in employment law.

Simplifying exceptions

We ask:

- whether we should introduce a genuine occupational requirement test for

all the grounds of discrimination, with the exception of disability where it is not necessary;

- if we still need to list any specific genuine occupational qualification exceptions;
- what the advantages or disadvantages might be to the introduction of a genuine service requirement test to allow service providers to discriminate on particular grounds where this is legitimate and proportionate;
- whether we can take a unified approach to specific exceptions that apply to more than one protected ground; retain the specific exceptions listed in Table 1 in Annex A of the consultation document, and remove the exceptions listed in Table 2 of the consultation document; and
- whether we need the exception that allows insurers to treat people differently on grounds of sexual orientation.

Chapter 2: goods, facilities and services, and public functions

In this chapter we seek views on the following issues and proposals:

- whether to adopt a harmonised approach to the way the law treats public functions and goods, facilities and services provisions across all protected grounds; and
- how to streamline exceptions in this area, and whether public authorities need more or different exceptions from private bodies.

Chapter 3: equal pay

In this chapter we seek views on the following issues and proposals:

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

Part 2 – More effective law

Part 2 asks for views on proposals to allow a wider range of balancing measures to effectively address entrenched discrimination and disadvantage; to simplify the public sector equality duties by replacing them with a single duty to tackle disadvantage more effectively; to consider extending the coverage of public sector equality duties; to explore how public authorities can actively take account of equality issues in procurement; ways to improve equality practice in the private sector; and to improve the resolution of discrimination disputes outside the workplace¹.

Chapter 4: balancing measures

In this chapter we seek views on the following issues and proposals:

- that we should confine the concept of “reasonable adjustment” to disability discrimination law as at present, and not broaden it to other protected groups;
- whether to adopt provisions to allow for wider balancing measures to allow more rapid progress to be made towards redressing under-representation and disadvantage;
- whether to allow all protected groups to benefit from measures to meet particular needs in relation to education, training and welfare or other benefits;
- to give the Commission for Equality and Human Rights a role in issuing clear practical guidance and Codes of Practice, but not in approving positive action programmes; and
- to continue if necessary, and broaden the scope of, permitted voluntary positive measures in the selection of candidates by political parties.

Chapter 5: public sector equality duties

This chapter is in 5 sections:

- A. The current equality duties;
- B. A single equality duty;
- C. Extending coverage of the duty across all the protected grounds;

¹ Workplace discrimination claims dealt with in employment tribunals have been considered separately by the Gibbons review of employment dispute resolution (DTI, March 2007).

D. Implementation of a public sector duty;

E. Public sector procurement.

We seek views on the following issues and proposals:

- that we should replace the race, disability and gender equality duties with a single duty on public authorities to promote race, disability and gender equality;
- if 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;
- whether to require public authorities to identify priority race, disability and gender equality objectives and take proportionate action towards their achievement, and to review them at least every 3 years;
- if it would be helpful for strategic equality outcomes to be set by the appropriate national Government;
- how to support effective performance of a single public sector equality duty by requiring proportionate action towards the achievement of priority equality objectives, using four key principles of consultation and involvement; use of evidence; transparency; and capability;
- whether the proposed single public sector equality duty should apply to all public authorities or, if not, how it should be targeted;
- whether a single public sector equality duty should be extended to cover age, sexual orientation, and/or religion or belief;
- over what timescale a single public sector equality duty and any extensions to it should be introduced, and whether public authorities should be given the option to implement any new approach in advance of its becoming a legal requirement;
- whether there should be a single enforcement mechanism for the proposed single public sector equality duty;
- what the role of the public service inspectorates should be in assessing compliance with public sector equality duties; and
- what issues should be included in practical guidance for public authorities on procurement and public sector equality duties.

Chapter 6: promoting good equality practice in the private sector

In this chapter we seek views on the following issues and proposals:

- the development of a light touch “equality check tool” for employers to use and consider introducing a voluntary equality standard scheme for businesses, which could be an independently assessed accredited standard or a non-accredited good practice and compliance tool; and
- ways in which good equality practice could be encouraged and embedded in the private sector, without introducing additional legislation specifically aimed at private sector businesses.

Chapter 7: effective dispute resolution

In this chapter we seek views on the following issues and proposals:

- how to encourage the use of Alternative Dispute Resolution to resolve discrimination disputes in the non-employment field, and how the role of Ombudsmen might be used more effectively to resolve discrimination disputes;
- how to provide for more efficient and effective handling of cases relating to the provision of goods, facilities, services, premises and the exercise of public functions including by enhancing discrimination expertise in the courts;
- whether the Additional Support Needs Tribunals in Scotland should have the power to hear disability discrimination school education cases, mirroring the situation in England and Wales;
- retention of the current approach on representative or class actions for discrimination cases outside the workplace; and
- whether more needs to be done to improve the treatment of multiple discrimination claims when resolving disputes.

Part 3 – Modernising the law

Part 3 asks for views on whether changes should be made to the statutory protected grounds; the case for prohibiting age discrimination in areas outside employment; whether to strengthen the protection on grounds of gender reassignment outside employment; whether to strengthen the protection on grounds of pregnancy and maternity outside employment; whether to strengthen prohibitions on discrimination by private clubs; how to improve access to, and use of, let residential premises for disabled people; and whether express statutory protection from harassment should be extended outside the employment area for the different grounds of discrimination.

Chapter 8: the grounds of discrimination

In this chapter we seek views on the following issues and proposals:

- whether to simplify how the definition of disability operates in relation to “normal day-to-day activities” by removing the list of capacities;
- that we should continue to deal with issues relating to parents and carers through targeted provisions and specific measures rather than a broad anti-discrimination provision;
- whether specific protection for married people and civil partners is still needed in the absence of a “marriage bar” in employment; and
- that we should continue with the current non-legislative approach to genetic predisposition.

Chapter 9: age discrimination beyond the workplace

In this chapter we call for evidence of unfair discrimination outside the workplace, and seek views on the following issues and proposals:

- whether legislation is the most appropriate and proportionate way of addressing the needs of older people and preventing harmful age discrimination outside the workplace against adults of all ages;
- how, if we do legislate, we can avoid unintended consequences and disproportionate burdens; and
- if we decide to legislate, we would propose to:
 - exclude children (i.e. people under 18) from the scope of any protection;
 - allow objective justification of age discrimination;

- include positive action provisions; and
- specifically exclude a significant number of beneficial or justifiable activities which differentiate on age grounds.

Chapter 10: gender reassignment

In this chapter we seek views on the following issues and proposals:

- whether we should prohibit discrimination on grounds of gender reassignment in the exercise of public functions, but excluding education in schools from the scope of any strengthened protection;
- whether organised religion should be allowed to treat people differently on the grounds of gender reassignment; and
- that we should keep the existing definition of gender reassignment.

Chapter 11: pregnancy and maternity

In this chapter we seek views on our proposal to prohibit less favourable treatment of a woman on grounds of pregnancy and maternity in the exercise of public functions, but to exclude education in schools from the scope of any strengthened protection.

Chapter 12: private clubs and associations

In this chapter we seek views on the following issues and proposals:

- that private clubs whose purpose is to bring together people who share a protected characteristic can continue to do so;
- to extend the protection against discrimination that disabled people already have as guests in private clubs to race and sexual orientation;
- to make it unlawful for clubs with 25 or more members which have both men and women as members to discriminate on grounds of sex;
- whether to prohibit discrimination by clubs on the grounds of religion or belief, except for clubs set up specifically for members who belong to a particular religion or hold a particular belief; and
- if there is a case for outlawing age discrimination by private clubs, other than those set up to cater for a particular age range, such as pensioners' associations.

Chapter 13: improving access to and use of premises for disabled people

In this chapter we propose that where a disabled person finds it impossible or unreasonably difficult to use the common parts of their let residential premises, the landlord should be under a duty to make a disability-related alteration to the common parts, where reasonable, and at the disabled person's expense (including any reasonable maintenance costs).

Chapter 14: harassment

In this chapter we seek views on whether there are groups who currently have no specific statutory protection against harassment in situations outside the workplace should be protected; and if specific exceptions should be made to the protection to make it clear what would not be regarded as harassment. We will only legislate if we consider that this is a proportionate response to a real problem; and we are sure we can avoid unintended consequences, such as limiting the right to express a legitimate view or hold a particular belief.

Annex A

This annex contains two tables of exceptions in current and forthcoming discrimination law:

Table 1 sets out exceptions that the Government considers should be retained in relation to employment and vocational training; goods, facilities and services; premises; general exceptions; education in schools; public authorities exercising public functions/services; and the public duty to have due regard to eliminate unlawful discrimination.

Table 2 sets out exceptions that the Government considers should be removed in relation to employment and vocational training; goods, facilities and services; premises; and general exceptions.

Annex B

This annex contains our proposals for implementing the EU Gender Directive through the Sex Discrimination Act 1975 (Amendment) Regulations 2007. This implements the principle of equal treatment between women and men in the access to and the supply of goods and services. The deadline for implementation is 21 December 2007.

In order to implement the Gender Directive we propose to:

- extend the Directive-based definition of indirect discrimination, as it currently applies in employment and vocational training, to goods, facilities or services and premises;

- introduce an express prohibition on harassment and sexual harassment in the field of goods, facilities or services and premises;
- apply the Directive’s burden of proof provisions to goods, facilities or services and premises, in line with that for employment and vocational training;
- amend some of the exceptions which currently exist in the Sex Discrimination Act, to ensure that they are compatible with the Directive;
- extend protection against direct discrimination on grounds of a person’s gender reassignment to goods, facilities or services and premises;
- extend protection against discrimination on grounds of pregnancy and provide protection on grounds of maternity in the field of goods, facilities or services and premises; and
- amend the Sex Discrimination Act exception relating to insurance to specify the circumstances under which insurance companies may charge different premiums or offer different benefits to men and women.

Annex C

Annex C contains a glossary of terms, definitions and abbreviations..

Regulatory Impact Assessment

The Regulatory Impact Assessment provides an analysis of the potential impacts of the proposals in terms of costs and benefits.

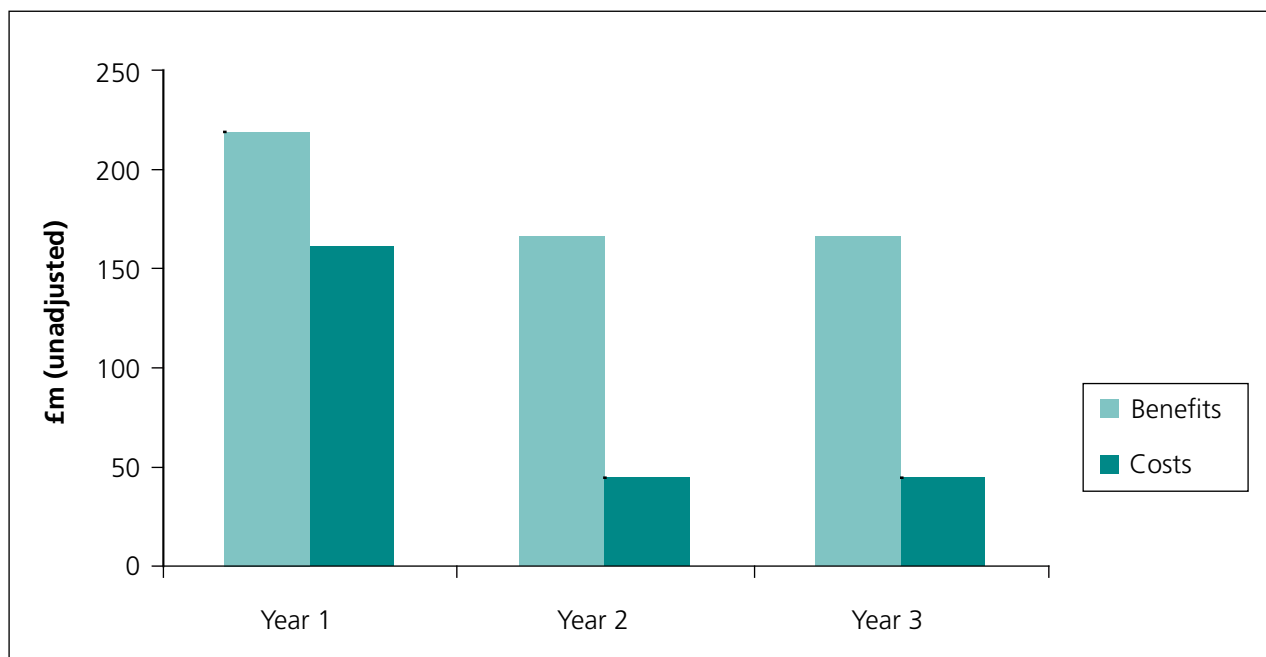
The table below provides an overall summary of **estimated** quantifiable costs and benefits (references within the table are to paragraphs and other Tables within the Initial Regulatory Impact Assessment):

Table/para and description	Additional costs				Additional benefits			
	One-off Costs (£m)		Recurring Costs (Yearly) (£m)		One-off Benefits (£m)		Recurring Benefits (Yearly) (£m)	
	Low Est	High Est	Low Est	High Est	Low Est	High Est	Low Est	High Est
General – Benefits Para 4.7: increased employment of disadvantaged groups							60	60
Familiarisation Table 3: familiarisation costs of all proposals	74.71	74.71						
Simplification Para 4.26: Simplification savings							3.72	4.33
Definitions Table 4, option 2: simplification of definitions			0.820	1.455			0.196	0.196
Exceptions Table 5, option 2: simplification of exceptions			0.316	0.316			0.372	0.392
Equal pay Table 6, option 2: simplification of equal pay law	Costs not quantified				Benefits not quantified			
Disability – capacities change (table 7, para 4.76)			0.306	0.767				

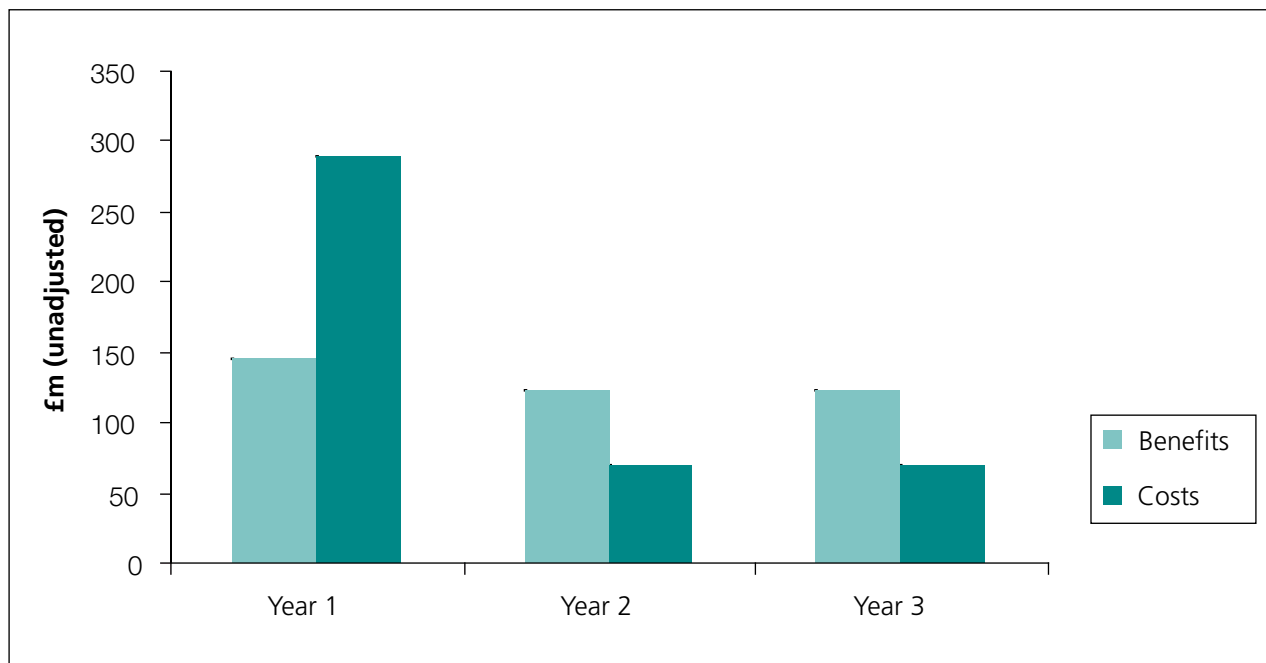
Table/para and description	Additional costs				Additional benefits			
	One-off Costs (£m)		Recurring Costs (Yearly) (£m)		One-off Benefits (£m)		Recurring Benefits (Yearly) (£m)	
	Low Est	High Est	Low Est	High Est	Low Est	High Est	Low Est	High Est
Disability – disadvantage test: (para 4.78)			2	6				
Positive action Table 8, option 2: widening scope for positive action	No mandatory costs				Proportion of benefits – row 1			
Public sector duty Table 9, option 3b: integrated public sector duty: set-up and running costs	44.1	121.9	41.9	61.1			46.1	61
Court cases Table 10, option 1: better handling of court cases	0.032	0.032	0.128	0.286			0.166	0.390
Age discrimination Table 11, option 2: extending protection against age discrimination	Minimal additional costs in most areas, where commitments to eliminate discriminatory policies and practices are already in place (e.g. mental health services) but potentially significant costs in respect of social care which have not yet been quantified.						12	39.5
Harassment Para 4.200			0.424	1.057				
Disability adjustments Table 12 (option 2): disability-related adjustments to common parts of premises	0	27			24	53		
TOTALS (quantifiable)	118.84	223.64	45.89	70.98	24.0	53.0	122.55	165.8

The charts below show the overall costs and benefits according to the best and worst case scenarios

Best Scenario



Worst Scenario



Equality Impact Assessment

The Equality Impact Assessment considers the impact of the proposals in terms of how they would affect people on grounds of race, disability, gender including gender reassignment, age, sexual orientation and religion or belief.

Overall, the assessment is that the proposals will have a positive impact on all the equality groups. The precise effect will differ for each group, partly because the rights and protections currently available may also differ for each group. The overall impact will be to achieve greater consistency as appropriate in the treatment of each group. There is no automatic levelling up of protection where it would not be appropriate. For example, there is no proposal to include association in the definition of direct discrimination on grounds of sex. This would be unnecessarily wide since everyone in the country associates with both men and women. The point is that where provisions are inconsistent this will be based on a reasoned proposition.

There will be no loss of existing protections overall. The biggest benefit will be for those groups that are afforded less protection under current law and for whom the scope of protection will be extended by these proposals.

As an illustration, some key impacts, according to each equality group, are as follows:

Impact on race

- One of the simplification proposals is to remove inconsistencies which currently mean that different rules apply in respect of indirect discrimination – depending on whether the discrimination is on grounds of racial or ethnic origin; or on the basis of colour or nationality.

Impact on gender

- Currently the majority of equal pay claims are brought by women, so to this extent, the proposals to simplify equal pay provisions will benefit women more than men.

Impact on disability

- There are a number of proposals that are intended to benefit disabled people, including changes to require landlords to make adjustments to common parts of let residential premises, where reasonable.

Impact on age

- There is currently no protection against age discrimination outside the workplace. The Consultation Document proposes excluding children below the age of 18. So if legislation were introduced in this area following consultation, the likely impact would be to benefit people over 18.

Impact on sexual orientation

- Probably the greatest impacts in this area would arise if we were to extend the public sector duty to require public authorities to promote equality of opportunity between those of a different sexual orientation; and/or if we were to extend protection against harassment on grounds of sexual orientation to cover situations outside the workplace.

Impact on religion or belief

- As with sexual orientation, probably the greatest impacts in this area would arise if we were to extend the public sector duty to require public authorities to promote equality of opportunity between those of a different religion or beliefs and/or if we were to extend protection against harassment on grounds of religion or belief to cover some situations outside the workplace.