

# **DISCRIMINATION LAW REVIEW GREEN PAPER**

## **A Framework for Fairness: Proposals for a Single Equality Bill**

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This Green Paper, issued on 12<sup>th</sup> June, is **out for consultation until 4<sup>th</sup> September 2007**. It is the result of the Discrimination Law Review, which has been underway since February 2005. It was set up alongside the Equalities Review, chaired by Trevor Phillips, which was aimed at investigating the causes of persistent inequality and which reported its findings in February 2007.

The aim of this Green Paper is to identify those areas of anti-discrimination law that need to be revised in order to harmonise and simplify the law, to modernise it and to make it more effective.

The main proposals are:

- 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.
- 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 the six strands (age, disability, gender, race, religion/belief and sexual orientation); to explore how public authorities can actively take account of equality issues in procurement and ways to improve equality practice in the private sector.
- to determine 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 and how to improve access to, and use of, let residential premises for disabled people.

**This document focuses on the main issues that will directly affect local government. We are asking for your comments on some areas of the consultation document to help inform our response to government. To meet the Government's deadlines, we need your views by August 17<sup>th</sup> at the latest. Up until then, you can use the ESLG Community of Practice (<http://www.communities.idea.gov.uk/c/44962/home.do>) to explore and discuss the implications of the proposed changes and your views.**

The main proposals and issues for consideration are:

## **Chapter 1**

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### **1.1 Proposal:**

to replace the different justification tests in disability discrimination law with a single objective justification test; namely that the conduct in question is a proportionate means of achieving a legitimate aim. This would give employers a narrower margin of discretion; service providers will potentially have a wider range of circumstances in which they could justify discrimination but the test of whether the discrimination is in fact justified will be stricter. (para 1.50)

### **Issue for consideration:**

In your experience would this make any significant difference (positive or negative) to the way your authority applies the DDA?

### **1.2 Proposal:**

Improving access to common parts of let residential premises through the provision of reasonable adjustment at the disabled person's expense, using the proposed objective justification test. (para 13.2)

### **Issue for consideration:**

Do these proposals raise any concerns based on your experience?

## **Chapter 2**

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### **2.1 Proposal:**

whether to harmonise the approach to the provision of goods, facilities and services and public functions across all protected grounds. (para 2.11)

### **Issue for consideration:**

do you consider that harmonising the approach would cause significant problems for councils, or make it easier to deliver equitable services?

### **2.2 Proposal:**

how to streamline exceptions in this area, and whether public authorities need more or different exceptions from private bodies. (para 2.12)

### **Issue for consideration:**

What exceptions do you think would need to be made for each group or service?

## Chapter 3

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### **3.1 Proposal:**

simplifying equal pay legislation within the Single Equality Act, including principles of equal pay law arising from judgements in legal cases; maintaining the requirement for a comparator in equal pay claims. (paras 3.25 – 3.29)

### **Issue for consideration:**

The Women and Work Commission recommended that the new Act should allow for representative claims and hypothetical comparators to make the law more effective, which have not been included in these proposals. In your experience, would a hypothetical comparator make equal pay legislation easier or more difficult to operate?

## Chapter 4

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### **4.1 Proposal:**

confining the concept of “**reasonable adjustment**” to disability discrimination law and not broaden it to other protected groups. (paras 4.39 – 4.43)

### **Issue for consideration:**

would extending the concept of ‘reasonable adjustment’ to other groups have any particular benefits?

### **4.2 Proposal:**

Whether there should be wider provisions to allow for redressing under-representation and disadvantage (positive action). (paras 4.15 – 4.30)

### **Issue for consideration:**

do the current provisions for positive action go far enough? Are there wider provisions that could be applied to address issues not presently covered? Is your council likely to use the new provisions? Can you see any disadvantages to extending the current provisions?

## Chapter 5

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### 5.1 Proposal:

replacing the race, disability and gender equality duties with a single duty on public authorities to promote race, disability and gender equality that would 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.

This is a step-change that removes the specific duties and their associated schemes, allowing public bodies to focus instead on the priorities for their own communities. It follows the government's move towards local discretion as detailed in the White Paper 'Strong and Prosperous Communities' published in October 2006. (paras 5.11 – 5.90)

### Issue for consideration:

What in your view are the positive and possibly negative implications of changing the way the duty works? If the duty is made less prescriptive, what is needed to help you get the issues addressed properly in your council?

### 5.2 Proposal:

This outline proposal will remove some elements of each of the public duties. The present general and specific duties would be replaced by a 'Statement of Purpose' based on

- Ø addressing disadvantage
- Ø promoting respect and fostering good relations
- Ø meeting different needs while promoting shared values
- Ø promoting equal participation (para 5.29)

### Issue for consideration:

would developing a 'statement of purpose' enable your council to improve performance on equality? Are the general and specific duties barriers or drivers for improvement? Would this approach complement your work on the Equality Standard? Are there any drawbacks to this change in the law?

**5.3 Proposal:**

whether it would be helpful for strategic equality outcomes to be set by national Government through a mechanism such as the Equalities Review's Equality Scorecard. (para 5.41)

**Issue for consideration:**

The Equality Scorecard measures high level indicators such as individual, family and social life; participation in decision-making and physical security. If such outcome measures were set by national government, to what extent would you find them measurable and achievable?

**5.4 Proposal:**

four key principles will underpin effective performance of the single equality duty: consultation and involvement; use of evidence; transparency (access to information on corporate equality objectives) and capability (staff capacity to implement them). Assessment will be carried out by the CEHR. (para 5.44)

**Issue for consideration:**

If you have been working with the Equality Standard, do you anticipate any difficulty in adapting your practice to accommodate these principles?

**5.5 Proposal:**

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. (paras 5.73-4)

**Issue for consideration:**

would incremental introduction of an extended public sector duty period be useful to test approaches to more complex legislation?

**5.6 Proposal:**

what the role of the public service inspectorates should be in assessing compliance with public sector equality duties. (paras 5.84-90)

**Issue for consideration:**

consideration was given to requiring inspectorates to assess compliance with the single duty on a statutory basis. The DLR rejected this proposal and relies instead on the development of strong links between the inspectorates and the CEHR, and the new model of the four key principles. In your experience, how should the inspectorates assess equality?

**5.7 Proposal:**

the Green Paper does not propose to do anything in terms of legislation on public sector procurement. Instead, it intends to produce more straightforward guidance as agreed between the CEHR and Government; encourage good practice networks and consider developing standard equality conditions for use in contracts. (para 5.93)

**Issue for consideration:**

the Equalities Review recommended action to clarify the legislation relating to public sector procurement. The Government does not believe this to be necessary as procurement is covered by the public duties. Clarification will therefore come from CEHR guidance. Do you agree that there is no need for legislative clarification on equalities and public procurement? What issues require clarification (either in law or guidance) to integrate equality into the procurement process? Will the proposed change to a single public duty promote equality in procurement without further legislation?

**5.8 Proposal:**

The Government says that further action is needed to encourage good practice, simplify processes and explore the scope to develop streamlined approaches and minimise burdens on the private sector and public authorities alike. (para 5.100)

**Issue for consideration:**

Does your authority already use any of the standardised pre-qualification tools already available (such as the West Midlands Common Standard, Constructionline or EXOR) to assess contractors' performance on equalities? What other standard templates, clauses or support would be helpful?

### **5.9 Proposal:**

The Government proposes a light touch “equality check tool” for private sector employers to use and will 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. (paras 6.7 – 6.10)

### **Issue for consideration:**

Would such a tool for private sector employers be helpful to the selection process for procurement contracts?

## **Chapter 9**

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### **9.1 Proposal:**

whether a single public sector equality duty should be extended to cover age, sexual orientation, and/or religion or belief. A significant aspect of this would be the implications for services that are aimed at people above (or below) a certain age; this proposal would not apply to those under 18. The intention is to address disadvantage, not remove positive benefits for specific groups. In this situation, the implications for e.g. social care provision for older people, should be considered.

### **Issue for consideration:**

are there any particular issues that extending the single public sector duty should take into account? Can you give examples of services that would be affected by this proposal?

## **Chapter 10**

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### **10.1 Proposal:**

implementing the Gender Directive to extend protection of transsexual people from discrimination in the exercise of public functions; the Directive does not extend to services offered by organised religions. (paras 10.10/10.13)

### **Issue for consideration:**

are there situations in which organised religions can justify differential treatment on the grounds of gender reassignment? Does this have an impact on public services?

## Chapter 14

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### **14.1 Proposal:**

there is a proposal to extend protection from harassment outside of the workplace. Examples of harassment that is outside of current legislation are requested.

### **Issue for consideration:**

Can you provide examples of harassment that have no redress under current legislation?

### **Note:**

This document is necessarily an overview of aspects of the green paper, and other, equally important issues have not been included for the sake of brevity. However, we welcome any comments you wish to make on any aspect of the consultation document. Please return comments to [mandy.wright@idea.gov.uk](mailto:mandy.wright@idea.gov.uk) or [michael.macauley@idea.gov.uk](mailto:michael.macauley@idea.gov.uk)

Thank you.