

EQUALITY BILL

INFORMATION FOR MEDIA

These notes are intended to assist those interested in the Equality Bill. They should be read in conjunction with the Bill and its accompanying Explanatory Notes. The Bill will be available on the Parliament website, www.parliament.uk, and the Explanatory Notes on the Odysseus Trust website, www.odysseustrust.org from Wednesday, January 15th 2003. In due course both documents, along with this document and additional background information will be available on the Odysseus Trust site.

The notes answer the following questions:

What is the Equality Bill?

Why is the Equality Bill needed?

What is the background to the Equality Bill?

How is the Bill structured, and what are its main provisions?

There is also a brief biography of Lord Lester of Herne Hill QC.

Any further queries about the Equality Bill should be addressed to Ms Kay Taylor or Dr Matthew Weait at The Odysseus Trust (Tel: 020 7404 4712).

What is the Equality Bill?

The Equality Bill is a private Member's bill which was introduced on 14th January 2003 in the House of Lords by Liberal Democrat Peer, Lord Lester of Herne Hill QC.

Why is the Equality Bill Needed?

There are a number of reasons why an Equality Bill is needed:

1) Existing anti-discrimination law is incoherent, piecemeal and complex

Since the enactment of the first anti-discrimination legislation, more than 25 years ago, British anti-discrimination legislation has developed in a piecemeal and incoherent manner. This has resulted in:

- (a) the absence of a generally applicable standard to be applied in all cases of unjustifiable discrimination; and

(b) increasing legal complexity. This makes it harder for employers (especially small businesses) to comply with their legal obligations, hinders victims of discrimination in their attempts to seek redress, and renders compliance with legal obligations too dependent on the willingness of individuals to take cases to court or tribunal.

- *Legislation is needed which provides a coherent, comprehensive and simplified framework to tackle unjustifiable discrimination wherever it occurs, and which facilitates the resolution of disputes and access to justice.*

2) Existing law places insufficient emphasis on the importance of organisational culture as a driver of change

Existing anti-discrimination legislation places insufficient emphasis on the importance of generating change from within organizations.

- *Legislation is needed which will serve to eliminate entrenched patterns of systemic discrimination by placing responsibility on individuals and organisations to generate such change.*

3) Existing law is under-inclusive and fails to provide protection for groups which do experience discrimination

Existing anti-discrimination law only protects those who are discriminated against on grounds of race, sex or disability.

- *There is a need for legislation which will extend these grounds, both as a matter of principle and in order to comply with EC law, and international and European human rights law.*

4) The Government's Draft Regulations implementing the EC discrimination Directives are unduly restrictive

The UK is under an obligation to enact measures prohibiting discrimination in employment and training on grounds of sexual orientation, religion and belief (by 2003) and age (by 2006). The Government has taken a restrictive approach to the implementation of these Directives and proposes to tackle the new grounds of unlawful discrimination (other than age) by way of subordinate legislation, and then only in the employment and vocational training field. It does not yet propose to make discrimination on the grounds of age unlawful.

- *Legislation is needed which will combat discrimination on all the new grounds, including age: not only in the field of employment and vocational training, but in access to goods and services, including education and transport, and in the disposal of premises.*

5) Existing anti-discrimination law does not promote equality of opportunity

The prevailing framework of legislation deals with discrimination based on grounds of race, sex and disability. The obligation not to discriminate is in most cases a negative one: i.e. it is unlawful to discriminate, but there is no obligation to promote equality. For example, other than in the case of race, there is currently no requirement that public bodies have regard, when carrying out their functions, to the need both to eliminate discrimination and to promote equality of opportunity.

- *Legislation is needed which will extend the positive duties to other grounds.*

6) The existing legal framework, which divides responsibility for the monitoring and enforcement of anti-discrimination law among three different Commissions, is not as efficient as it could be

The effectiveness of the current framework for monitoring and enforcing discrimination law depends on the work of three different Commissions, each with their own limited powers, resources and areas of expertise. This means, for example, that cases of multiple discrimination (on more than one ground) cannot be dealt with as effectively as they should be.

The Government has entered into a consultation about the desirability of a single Equality Commission, but without reviewing the case for a single Equality Act to underpin its work.

- *Legislation is needed which unifies the work of all three Commissions into a single, adequately resourced and expert Equality Commission which would be able to tackle discrimination across all grounds*

What is the background to the Equality Bill?

In July 2000, the Centre for Public Law and Judge Institute of Management Studies in the University of Cambridge published a Report: *Equality: A New Framework – Report of the independent Review of the Enforcement of UK Anti-Discrimination Legislation*. This Report, which was authored by Professor Bob Hepple QC, Mary Coussey and Tufyal Choudhury, presented the findings of a project set up review and evaluate proposals for the reform of UK anti-discrimination legislation. The review and evaluation were based on an assessment of the experience of those affected by existing legislation.

The Hepple Report formed the basis of a draft Bill which was sent out for consultation by The Odysseus Trust to a range of stakeholders in July 2002. (The Odysseus Trust is a not-for-profit company whose remit is to conduct

research into human rights and constitutional matters, and give advice and information on an all-party basis.) Consultees included Ministers, politicians, representatives of the devolved regions and local government, civil servants, equality agencies, NGOs, religious organizations, employer and employee organizations, academics and others.

The consultation period ended on 30th September 2002, and 45 detailed responses were received – including responses from all three equality Commissions. The responses were then analysed, and many of the suggestions for improving the content and structure of the Bill were incorporated into the final version.

In addition to the Bill itself, Lord Lester has provided Explanatory Notes to assist in understanding its provisions.

How is the Bill structured, and what are its main provisions?

PART 1: PURPOSE AND GENERAL PRINCIPLES

This Part of the Bill contains general interpretative principles which inform the application of the rest of the provisions of the Bill. It explains what the purpose of the Bill is, that the Bill does not permit or require the “levelling down” of existing protection, and that any exception provided for in the Bill is to be applied carefully, with no wider effect than is strictly necessary in the particular circumstances of the case.

PART 2: MEASURES TO TARGET PARTICULAR BEHAVIOUR OR ARRANGEMENTS

This Part deals with what conduct is unlawful (discrimination, harassment and victimisation), and the fields in which the provisions apply (public functions, employment, education, the provision of goods, facilities, services, premises or clubs). Certain exceptions are provided for, and these may be found in Schedule 2. Part 2 also makes provision relating to contracts and agreements (including leases), and explains how persons and the Commission may take action to enforce the provisions contained in Part 2.

PART 3: MEASURES TO FACILITATE GENERAL PROGRESS TOWARDS EQUALITY

This Part deals with three distinct matters.

- It requires bodies exercising functions of a public nature to have due regard to the need to eliminate discrimination and promote equality of opportunity. The bodies to which the duties apply are to be specified by order of the Secretary of State. This approach allows for the phasing in of

the general duty over time, given the wide range and variety of public bodies that exist. It also allows appropriate implementation structures to be provided, having regard to the different circumstances of different bodies, or of bodies of different types or sizes. In most respects, this follows the approach taken in relation to similar duties in the Race Relations Act (which were inserted into that Act by the Race Relations (Amendment) Act 2000).

- It requires certain employers to carry out periodic reviews of the composition of their workforce and their employment policies and practices. If a review indicates that there may be failings in terms of equal opportunities or equal pay, such employers are required to draw up proposals with a view to bringing about change. The purpose of these provisions is to provide structured arrangements under which employers and interest groups (in particular, workforce representatives) can work together to bring about change where there is unjustified under-representation of “employment equity groups” (defined in clause 30(2)), or unequal pay between men and women carrying out work of equal value.
- It requires certain persons to take steps to in order to make accommodation or adjustments for disabled persons. This applies in connection with work-related matters, education matters and the provision of goods, facilities and services. The duties created here do not themselves give rise to a right to complain to a tribunal. However, non-compliance with them will constitute indirect discrimination. As such, it will be possible for a person to complain to a tribunal under clause 7.

PART 4: THE EQUALITY COMMISSION

This part establishes a single body (the Equality Commission for Great Britain) to oversee the implementation of the provisions in the Bill and to take enforcement action in appropriate cases. The Commission will replace the Equal Opportunities Commission and the Commission for Racial Equality.

- The Disability Rights Commission (“DRC”) will continue to exist and will discharge the functions of the Commission conferred by this Bill. In so far as these are inconsistent with the DRC’s functions under existing legislation, these can be repealed or amended by the powers conferred in clauses 92 and 93.
- Alternatively, the DRC’s existing functions can continue to exist. In this case, the provisions of the Bill that apply to discrimination on the grounds of disability might not be brought into effect at all until an order is made.
- The Secretary of State is also given power to make an order transferring the functions of the DRC to the Equality Commission and providing for the DRC to cease to exist. Such an order could include any remaining functions which the DRC has under existing legislation. However, no order may be made until at least three years after the establishment of the Equality Commission.

In addition to the Equality Commission's oversight and implementation functions in respect of the provisions of the Bill, the Commission must also have regard, in carrying out those functions, to the international obligations of the United Kingdom in the field of human rights. It must also conduct its affairs in the public interest, and with an appropriate degree of independence.

PART 5: ENFORCEMENT

This Part brings together the mechanisms for ensuring that provisions of the Bill are observed and that there are effective remedies for persons who are victims of unlawful acts. Enforcement may be by way of complaint, or by the Commission taking action to secure compliance with the Bill's provisions. There is provision, where a complaint is made, for advice, assistance and conciliation arrangements to be provided by the Commission.

- Where a tribunal is satisfied that an unlawful act has been done, it may make such recommendations as it thinks appropriate (including the specification of steps which it considers reasonable in order to prevent, remove or reduce the adverse effect complained of as arising from the unlawful act).
- A tribunal may require, for example, the payment of compensation, or the employment, re-employment or re-instatement of a particular person.

PART 6: MISCELLANEOUS AND SUPPLEMENTAL

This Part contains various miscellaneous and supplemental provisions

The Bill also contains a number of Schedules:

- **Schedule 1: Definitions relating to the meaning of disability**

Among other things, this Schedule provides that certain persons (such as those who have been certified as being blind or partially sighted by a consultant ophthalmologist) are to be deemed to be disabled. The effect of this is to ensure that such persons are not put to proof that they are disabled.

- **Schedule 2: Protected areas of activity, and exclusions**

Among other things, this Schedule defines those areas in which unlawful acts may take place (such as acts in the employment or education fields). It also identifies narrowly defined situations in which an act which would otherwise be unlawful is permissible. An example would be the employment of a person by a charitable body whose principal purpose is the promotion of a particular religion or belief. There is an exclusion which

provides that it is not unlawful for such a body to limit employment to a person sharing that body's particular religion or belief provided that the body can show it is a genuine and determining requirement that the person hold that religion or belief and that it is proportionate having regard to the ethos of the body, the nature of the job and the context in which the job is to be carried out.

- **Schedule 3: The duty to facilitate access by disabled persons**

This Schedule sets out provisions which supplement the duties imposed to facilitate access in clauses 34-36 of the Bill.

- **Schedule 4: The Equality Commission**

This Schedule sets out requirements for the Commission's constitution and related matters

- **Schedule 5: Procedure for making codes of practice**

This Schedule sets out the procedure for preparing and issuing draft codes of practice and for their approval by the Secretary of State and for laying the codes before Parliament.

- **Schedule 6: Procedure of the Special Educational Needs and Disability Tribunal**

This Schedule provides that the Special Educational Needs and Disability Tribunal is to exercise the jurisdiction conferred on it by the Bill.

- **Schedule 7: Investigations**

This Schedule sets out the powers of the Commission in connection with investigations.

Biography of Lord Lester of Herne Hill QC

Lord Lester of Herne Hill QC is a Liberal Democrat Peer, and a practising member of Blackstone Chambers. He specialises in public law and European human rights law. He was Special Adviser to the Home Secretary (the late Roy Jenkins) from 1974-76 with responsibility for policy advice on human rights. In that capacity he was centrally involved in the preparation of the Sex Discrimination Act and the Race Relations Act. More recently, he introduced two Private Members Bills in the Lords to incorporate the European Human Rights Convention into UK law and a Civil Partnerships Bill. He has argued

many leading cases (including cases on free speech and on discrimination) not only before English courts, but also before European and Commonwealth courts.

Lord Lester is President of INTERIGHTS (the International Centre for the Legal Protection of Human Rights), and has published numerous books and articles on constitutional law and human rights.

He is a member of the Joint Parliamentary Select Committee on Human Rights, and the Lords' Select Committee on EU Law and Institutions. He chaired the Advisory Group of the University of Cambridge Independent Review of the Enforcement of UK Anti-Discrimination Legislation.