

Joint Consultative Committee 6th January 2010

Draft Equalities Bill – Summary of Employment-Related Issues

Report of the Director of Human Resources and Organisational Development

1.0 Purpose of Report

1.1 To provide the Joint Consultative Committee with a summary update about the employment related aspects of the Equalities Bill

2.0 Description of Decision

2.1 To note the content of the attached summary, and receive further progress reports in the future as appropriate.

3.0 Background

3.1 At its previous meeting, the Committee agreed to receive a summary of the employment-related aspects of the draft Equalities Bill, upon which the Government consulted with a wide range of stakeholders during 2009. A summary of the employment-related aspects of the current draft Bill (accurate at the time of writing) is attached. The content will evolve and be amended during the course of the legislative process.

3.2 The Bill is currently with the House of Lords. The first reading took place on the 4th December 2009. This stage is a formality that signals the start of the Bill's journey through the Lords. The second reading in the Lords - the general debate on all aspects of the Bill - took place on 15 Dec 2009. The Committee Stage – a line by line examination of the Bill – will take place on 11th January 2010. It is generally predicted it should receive Royal Assent some time in Spring 2010, with most provisions taking effect from Oct 2010 or or later according to what timetable is incorporated into the Bill as it evolves. For example, it seems likely that voluntary arrangements for gender pay gap publishing for those private employers with 250+ employees will be in place until 2013.

Equality Bill Summary

Source: LGE Website: last updated 8 December 2009

Update on the Equality Bill: What does it mean for local authorities as employers?

On 27 April 2009 the government published the Equality Bill, which is expected to come into force from autumn 2010. Over summer 2009, the government consulted on the specific public sector workforce equality data duties. The purpose of the Equality Bill is to consolidate existing discrimination legislation and it contains new measures, which are intended to strengthen protection against discrimination. Significant proposals to be included in the Bill that will impact on local authorities as employers are detailed below.

Equal pay

The equal pay provisions in the Bill on the whole mirror the arrangements in the Equal Pay Act. However, the Bill includes a new term which clarifies that pay protection schemes are capable of being lawful. This is because the Bill states that the long-term aim of reducing inequality between men's and women's pay is always to be regarded as a legitimate aim for the purposes of justifying pay practices that indirectly discriminate against women. Therefore, short-term pay protection schemes introduced with the aim of removing long-term inequalities in pay should be capable of being objectively justified, provided that their use is a proportionate way of achieving that aim.

Measures to address the gender pay gap

To address the gender pay gap, public sector employers with more than 150 employees will be required to publish details of the difference between what they pay men and women, as well as other information such as the number of Black, Asian and minority ethnic employees. The proposals differ from those for the private sector, where any duty to publish details of the difference between men's and women's pay will only apply to employers with 250 or more employees.

Another measure designed to address the gender pay gap is the outlawing of pay secrecy clauses, that prevent employees from discussing their pay with colleagues if they so wish.

Social and economic inequality

New provisions in the Bill will place a duty on public bodies, including local authorities, to consider reducing social and economic inequalities when taking strategic decisions. However, that new duty will not apply to decisions concerning individual employees only, although it could impact on local authorities' wider employment strategies. For example, it might require a local authority to consider encouraging applications for jobs from people living in disadvantaged areas of its community where unemployment is high. This is in addition to the public sector equality duties, which under the Equality Bill will include the existing ones based on

race, disability and sex, but also new ones based on age, religion or belief and sexual orientation.

Positive action

Where candidates for a role are both as qualified to be recruited or promoted, employers will be allowed to take into consideration perceived disadvantage or under-representation in the workforce of a candidate's race, sex etc. when deciding who to recruit. This means that where two candidates are as qualified as each other to be recruited, an employer would be entitled to favour the candidate from the under-represented or disadvantaged group.

Disability discrimination

In response to the House of Lords decision in *Malcolm v London Borough of Lewisham* which weakened the protections for disabled people, the Bill includes provisions designed to underpin and strengthen the protections. This means that an employer will discriminate against a disabled person if they treat that person in a particular way, and **because** of that person's disability the treatment amounts to a detriment, unless the employer can justify that treatment as a proportionate means of achieving a legitimate aim. In addition the indirect discrimination provisions will also apply to disability discrimination.

Pre-employment Questionnaires about health or disability during the recruitment process

During the House of Commons stage a new clause was introduced which aims to strengthen protection for disabled people against discrimination. The amendment means that employers will be deterred from asking candidates questions about their health until after they have shown they meet some of the non-health criteria of a job. If an employer asks a question before this stage, it may be found to have directly discriminated against a disabled candidate. However, the Bill gives specific instances where the employer can make health and disability-related enquiries before shortlisting a candidate after an interview. These are for the purposes of:

- * making reasonable adjustments to enable the disabled person to participate in the recruitment process;
- * monitoring diversity in applications for jobs
- * supporting positive action in employment for disabled people
- * enabling an employer to identify suitable candidates for a job where there is a genuine occupational requirement for the person to be disabled
- * national security vetting.

Employment Tribunals' Powers

Where an employment tribunal finds that an employer has discriminated against an employee, the tribunal will be given new powers to make recommendations that impact on the wider workforce, such as a recommendation that harassment policies are more effectively implemented. However, the power will not apply in equal pay claims.

Dual discrimination

Dual discrimination (initially referred to as multiple discrimination) is where a person suffers unfavourable treatment because of a combination of two protected characteristics, for example race and sex. Following consultation on a proposal to protect people from direct dual discrimination, the decision was taken to include the provision in the Equality Bill.

The decision to introduce the dual discrimination provisions was thought necessary as currently the law does not provide protection for people who experience a particular disadvantage because of a combination of protected characteristics. A person who experiences such dual discrimination has to bring two separate claims in respect of each protected characteristic, for example race and sex, whereas in fact the real reason for the unfavourable treatment was due to combination of the person's race and sex.

An example of such dual discrimination given by the Government Equalities Office is: *"An older woman applies for a job as a driving instructor. She is unsuccessful in her application and when she asks for feedback she is told that she was not appointed to the job because it is not considered a suitable job for an older woman. The driving school advises her that they don't think she would have the strength and agility needed to grab the steering wheel or be able to brake quickly. She is told that she would have been appointed had she been an older man or a younger woman."*

In the case above the woman could not succeed on a sex or age discrimination claim, as the reason for her treatment was not her sex or age, but the combination of the two.

Dual discrimination claims will be allowed for **direct** discrimination claims only, combining no more than two of the following protected characteristics:

- Age
- Disability
- Gender reassignment
- Race
- Religion or belief
- Sex
- Sexual orientation

The proposal will not apply to discrimination on the grounds of pregnancy and maternity, or civil partnership or marriage.