

# Equality of Opportunity Committee

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## The Equality Bill and implications for Wales

### Background

In February 2005, the United Kingdom Government set up the Discrimination Law Review to look at inconsistencies in the discrimination law framework and to consider how best to achieve a clearer and more streamlined equality legislation that results in better outcomes for those who experience disadvantage.

A Framework for Fairness: Proposals for a Single Equality Bill for Great Britain was published in June 2007. This was quickly followed by A Framework for a Fairer Future - the Equality Bill and the Equality Bill - Government Response to the Consultation, both published by the Government Equalities Office. Announced in the Queen's speech on 3<sup>rd</sup> December 2008, the Bill was introduced into the UK Parliament (Commons) in April 2009. The Bill received its second reading on 11<sup>th</sup> May. As at [20 May] no date has been set for Commons committee stage.

### Effect of the new law

It is intended that the new equality law will harmonise and strengthen UK discrimination law. When brought into force, it will establish the protected characteristics of age; disability; gender reassignment; marriage and civil partnership; pregnancy and maternity; race; religion or belief; sex and sexual orientation.

It will also give definitions of direct discrimination, discrimination arising from disability, indirect discrimination, harassment and victimisation.

The new law will also place a new duty on certain public authorities to consider socio-economic disadvantage when taking strategic decisions about how to exercise their functions. The Bill contains power for Welsh Ministers (with the consent of a Minister of the Crown) to decide when this duty will be brought into effect in Wales in respect of "relevant Welsh authorities";

create a duty on listed public authorities when carrying out their functions and on other persons when carrying out public functions to have due regard to the need to eliminate prohibited conduct; 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. The effect is that listed public authorities will have to consider how their policies, programmes and service delivery and the exercise of their functions will affect people with the relevant protected characteristics;

allow an employer or service provider or other organisation to take positive action so as to enable existing or potential employees or customers to overcome or minimise a disadvantage arising from a protected characteristic; and

enable an employment tribunal to make a recommendation to a respondent who has lost a discrimination claim to take certain steps to remedy matters not just for the benefit of the individual claimant (who may have already left the organisation concerned) but also the wider workforce.

### Current equality law

UK discrimination law has developed over more than 40 years since the first Race Relations Act in 1965. Subsequently, other personal characteristics besides race have been protected from discrimination and similar conduct, sometimes as a result of domestic initiatives and sometimes through implementing European Directives.

The UK's equality domestic law is now mainly contained in the following legislation as amended:

Equal Pay Act 1970;

Sex Discrimination Act 1975;

Race Relations Act 1976;

Disability Discrimination Act 1995;

Employment Equality (Religion or Belief) Regulations 2003;

Employment Equality (Sexual Orientation) Regulations 2003;

Employment Equality (Age) Regulations 2006;

Equality Act 2006, Part 2;

Equality Act (Sexual Orientation) Regulations 2007.

The new law will bring together all the legislation listed above, most of which will be repealed. The Equality Act 2006 will remain in force (as amended by the Bill) so far as it relates to the constitution and operation of the Equality and Human Rights Commission; and the Disability Discrimination Act 1995, so far as it relates to Northern Ireland.

### **Situation in Wales**

Under the Welsh devolution settlement, the subject matter of equal opportunities is not generally devolved although some of the levers to tackle inequality are functions that are devolved in Wales. Additionally, section 77 of the Government of Wales Act 2006 provides that the Welsh Ministers must make appropriate arrangements with a view to securing that their functions are exercised with due regard to the principle that there should be equality of opportunity for all people.

Part 1 of the Equality Bill provides that Welsh Ministers will have the power, with the consent of a Minister of the Crown, to add any "relevant Welsh authority" to the list of authorities required to consider socio-economic inequalities. Chapter 1 of Part 11 also confers powers on the Welsh Ministers to impose specific duties on "relevant Welsh authorities" listed in Schedule 19 for the purpose of enabling the better performance by them of the general public sector equality duty.

Welsh Ministers could be given powers by a Minister of the Crown to impose specific equality duties on the "devolved Welsh functions" of cross-border Welsh authorities if a Minister of the Crown lists such an authority in Schedule 19.

### **Next steps**

In the coming months, the Equality Bill will be making its way through the UK parliamentary process through the summer and should receive Royal Assent in 2010. Any specific duties on public authorities thought necessary to support implementation of the general equality duty should be brought into force in 2011.

Welsh Ministers are maintaining a close dialogue with the Solicitor General and the Minister for Equality and Women to ensure that the Bill is able to accommodate equality policy that has evolved in Wales during the ten years since devolution.

Some issues were highlighted by Members of Parliament during the Bill's second reading in the House of Commons, such as:

The importance of provisions to narrow the gender pay gap;

Provisions that allow Welsh Ministers to add, vary or amend relevant public authorities listed in the Bill and the relationship between Welsh Ministers and the Minister of the Crown in this respect;

Support for the Socio-economic duty in Wales;

Concern about the exclusion of people subject to immigration control within certain clauses; and

Age discrimination provisions that should be applied to people under the age of 18 MP

As the Bill progresses through its parliamentary stages, the Welsh Assembly Government will be considering with our partners what specific duties should be introduced in Wales that help implement the general public sector equality duty comes into force. A public consultation will take place on any specific equality duties that are subsequently proposed by Welsh Ministers.

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