

Equality Bill Impact Assessment

Version 4 (House of Lords Introduction)

December 2009

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Structure of this document

This document starts with an overall analysis (pages 5 to 27) of the costs and benefits of the main measures in the Equality Bill including simplification benefits, familiarisation costs and general economic benefits. This is followed by individual annexes on each of the main measures, broadly in the same order as the Bill itself. Finally, the document concludes with a number of specific annexes on the competition assessment, small firms impact test etc.

Version numbers

Version numbers refer to the version of this whole document and not the version number of individual impact assessments contained within it.

Implementation dates

Some measures in this Bill will come in during October 2010 at the earliest, and others at later dates.

EXECUTIVE SUMMARY

This is the Impact Assessment for the Equality Bill. Impact Assessments used to be called Regulatory Impact Assessments.

This is the fourth version of the Impact Assessment and is being republished now because the Equality Bill is about to be introduced in the House of Lords. This document include a new policy regarding limiting the use of disability-related pre-employment questionnaires (Annex W) also brings cost estimates up to date using the median (rather than the mean) hourly pay rate as preferred by the Office of National Statistics.

The Equality Bill will do three main things:

- (i) Standardise, simplify and consolidate discrimination law where appropriate. This covers measures to simplify definitions, exceptions, provisions on equal pay and disability-related provisions, including an ability to harmonise the legislation where changes are required as a result of European law;
- (ii) Make the law more effective. This covers measures to widen the scope for voluntary positive actions, establish an integrated equality duty on public authorities to have due regard to the need to promote equality including in their procurement activities, and to achieve better handling of discrimination cases by the courts and a duty on public authorities to consider socio-economic inequalities;
- (iii) Modernise the law. This covers measures to extend protection from discrimination because of gender reassignment and pregnancy/maternity; to introduce protection against discrimination based on a combination of two protected characteristics (dual discrimination); to provide protection against unfair discrimination on grounds of age in the provision of goods, facilities and services and exercise of public functions; to provide a power to require gender pay gap reporting by the private sector, and to enable courts and tribunals to make wider recommendations and to extend statutory protection against harassment outside the workplace.

In the First Year

In the first year this Bill might cost from £237.4m to £279.0m because it will cost money for people to make themselves familiar with this new law and because of additional tribunal and court cases.

In the same year the improved efficiency as a result of this Bill might produce benefits in the range of £93.4m to £125.4m.

This means in the first year the Bill might have a net cost of between £110.9m and £184.7m.

After the first year

We think that from the second year onwards this Bill could create an average net benefit between £20.7m and a £83.0m annually.

In each case we have quoted a range of figures because it is difficult to accurately estimate what changes in legislation might cost. In summary, over 10 years, this Bill could produce a net benefit between £0.6m, and up to £635.2m.

(No figures are included for the costs/benefits of banning age discrimination. While an Impact Assessment with various figures was published as part of the consultation on age discrimination which ended 30 September 2009, we have not used these figures as they are not the complete picture, for example nothing is included in them about health and social care and they are only relevant to possible exceptions and not the wider impact of age discrimination. The Royal Assent version of the impact assessment will include robust cost / benefit data for the ban on age discrimination in services and public functions.)

Intervention & Options – Equality Bill

Department GEO	Impact Assessment - Equality Bill	
Stage: Introduction House of Lords	Version: 4	Date: December 2009
Related Publications: (1) Discrimination Law Review: Proposals for an Equality Bill for Great Britain (June 2007). (2) Proposals to simplify and modernise the law: Initial RIA (June 2007). (3) Framework for a Fairer Future (June 2008) and (4) the Government response to the consultation (July 2008) (5) Equality Bill Impact Assessment (Introduction) 27 April 2009		

Available to view or download at: <http://www.equalities.gov.uk>

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What is the problem under consideration? Why is government intervention necessary?

(i) Existing discrimination law is complex and in places opaque, because it has evolved over 40 years. This makes it difficult for clear and simple guidance to be generated so that people know their rights and responsibilities or can readily find them out. The Bill will clarify the law and simplify it, resulting in clearer guidance and better information. The Equality and Human Rights Commission will ensure that good quality appropriate guidance is available and disseminated to all relevant stakeholders 12 weeks in advance of commencement of the relevant provisions of the Equality Bill.

(ii) The existing three public sector duties in respect of race, disability and gender are potentially powerful means of minimising institutional discrimination but they are sometimes viewed as too process-driven and are limited to those three equality strands. Public authorities are not required to factor socio-economic inequalities into their planning; EU case law provides wider scope than domestic law for voluntary positive action by employers to encourage a more diverse workforce. Courts receive relatively few discrimination cases, so outcomes are less predictable.

The Bill includes measures to widen the scope for voluntary positive actions, establish an outcome-focussed integrated duty on public authorities and a duty on some public bodies to consider socio-economic inequalities in their decision making and achieve better handling of discrimination cases by the courts.

(iii) Existing discrimination law provides more protection for some equality strands than others. The Bill includes measures to extend protection from discrimination on grounds of age (outside the workplace), gender reassignment and pregnancy/maternity; to enable courts and tribunals to make wider recommendations potentially affecting the whole workforce and to extend statutory protection against harassment outside the workplace and to widen protection against discrimination based on association and perception.

What are the policy objectives and the intended effects?

This package of measures has three main objectives:

(i) to standardise, simplify and consolidate discrimination law where appropriate – for example to simplify definitions, exceptions, equal pay and disability-related provisions, resulting in better guidance and information;

(ii) to make the law more effective for example by widening the scope for voluntary positive action measures, implementing an integrated public sector equality duty (including public

procurement) and a duty on some public authorities to consider socio-economic inequalities and measures to achieve better handling of discrimination cases by the courts; and (iii) to modernise discrimination law, where appropriate – for example to extend protection on grounds of gender reassignment, pregnancy/maternity, age and harassment outside the workplace and dual discrimination.

(iv) it is important for inequality not to be hidden. The Bill makes unenforceable secrecy clauses in employment contracts which prevent employees disclosing their pay. It also provides a power to require private sector businesses with more than 250 employees to report on their gender pay gap.

What policy options have been considered?

- Duty on some public authorities to consider socio-economic inequalities (Annex A)
- Simplifying and standardising definitions/concepts for direct discrimination (including association and perception), indirect discrimination and victimisation (Annex B)
- Age discrimination in goods and services (Annex C)
- Discrimination arising from disability and indirect disability discrimination (See Annex D)
- Extending protection on the grounds of gender reassignment (Annex E)
- Extending protection on the grounds of pregnancy and maternity (Annex F)
- Simplifying the law relating to disability (Annex G)
- Requiring landlords to make adjustments to common parts where reasonable (Annex H)
- Extending protection against harassment outside the workplace (Annex I)
- Extending protection against harassment at work by third parties (Annex J)
- Updating equal pay provisions (Annex K)
- Making secrecy clauses in employment contracts unenforceable (Annex L)
- Gender pay gap reporting (Annex M)
- Outlawing discrimination by associations including private clubs on the grounds of gender and religion or belief (Annex N)
- Improving the handling of discrimination cases in the courts (Annex O)
- Widening the recommendation powers of tribunals so that recommendations could benefit the wider work force (Annex P)
- Creating an integrated public sector equality duty (Annex Q)
- Widening the scope of voluntary “positive action” measures (Annex R)
- Disability and transport (Annex S)
- Rationalising exceptions allowing discrimination (Annex T)
- Harmonisation power (Annex U)
- Dual discrimination (Annex V)

On what date will the policy be implemented?

The policy will be implemented in a phased approach as the main provisions of the Equality Bill will be commenced in October 2010 followed by the Public Sector Equality Duty in April 2011 and the age discrimination provisions are scheduled to come into force in 2012.

The Equality and Human Rights Commission will ensure that good quality appropriate guidance is available and disseminated to all relevant stakeholders 12 weeks in advance of commencement of the relevant provisions of the Equality Bill.

When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects?

Immediately, and on an ongoing basis, by the Equality and Human Rights Commission. The Government will also review after 5 years.

Summary: Analysis & evidence – OVERALL

OVERALL

Summary of the overall costs and benefits for the Equality Bill

ANNUAL COSTS		Description and scale of key monetised costs by 'main affected groups'	
One-off (Transition)	Yrs		
£ 212,790,310 To£213,790,310	2	<p>Public Sector - costs between £ 7,171,482 and £ 40,908,544</p> <p>Private Sector - costs between £ 14,823,243 and £ 21,252,934</p> <p>Individuals - costs between £ 2,381,173 and £ 3,903,879</p> <p>Voluntary Sector - costs between £ 202,572 and £ 224,360</p>	
Average Annual Cost (excluding one-off)			
£ 24,578,471 to £ 66,289,717	10	Total Cost (PV)	£ 426,891,036 to £ 785,928,366
<p>Other key non-monetised costs by 'main affected groups'</p> <p>Please see detail under each individual proposal below (Annex A to U)</p>			
ANNUAL BENEFITS		Description and scale of key monetised benefits by 'main affected groups'	
One-off	Yrs		
£ 2,625,748	2	<p>Public Sector - benefits between £ 13,153,149 and £ 43,405,800</p> <p>Private Sector - benefits between £ 11,062,476 and £ 12,246,283</p> <p>Individuals - benefits between £ 3,513,561 and £ 4,094,195</p> <p>Society - benefits between £ 63,041,633 and £ 63,047,851</p>	
Average Annual Benefit (excluding one-off)			
£ 90,770,818 to £ 122,794,129	10	Total Benefit (PV)	£ 786,489,451, to £ 1,062,136,074

COSTS

Other key non-monetised benefits by 'main affected groups'

The proposals will: (i) ensure broadly the same levels of protection for different groups and that the same definitions are used; (ii) ensure that persistent inequalities within institutions and society are reduced; (iii) improve the operation of the courts; (iv) ensure that cases do not arise out of ignorance; and (v) increase the efficient operation of business and markets as a result of a reduction in discrimination.

Key Assumptions/Sensitivities/Risks

Please see assumptions and risks detailed under each individual proposal below (Annex A to V)

Price Base Yr 2008	Time Period Years 10	Net Benefit Range (NPV) £561,085to £635,245,037	NET BENEFIT (NPV Best estimate) £ See Range
------------------------------	--------------------------------	--	--

What is the geographic coverage of the policy/option?	Mainly GB
On what date will the policy be implemented?	Different measures will come into effect at different stages
Which organisation(s) will enforce the policy?	The Equality and Human Rights Commission will provide guidance and enforce various aspects
What is the total annual cost of enforcement for these organisations?	£0 (no additional cost)
Does enforcement comply with Hampton principles?	Yes
Will implementation go beyond minimum EU requirements?	Yes
What is the value of the proposed offsetting measure per year?	£

What is the value of changes in greenhouse gas emissions?			£ 0	
Will the proposal have a significant impact on competition?			No	
Annual cost (£-£) per organisation (excluding one-off)	Micro	Small	Medium	Large
Are any of these organisations exempt?				

Impact on Admin Burdens Baseline (2005 Prices)				
				(Increase - Decrease)
Increase of	£	Decrease of	£	Net Impact
				£

Key:

Annual costs and benefits: Constant Prices

(Net) Present Value

General benefits to the economy

General benefits of proposals within the Bill

The broader value to society of a more equitable distribution of resources.

ANNUAL BENEFITS		Description and scale of key monetised benefits by 'main affected groups' This is a benefit to society in general. This concept presumes that a more equitable distribution of resources will raise economic welfare since additional consumption by poor individuals is valued more highly than it is by wealthy individuals
One-off	Yrs	
£	1	
Average Annual Benefit (excluding one-off)		Total Benefit (PV)
£ 62,497,460	10	
Other key non-monetised benefits by 'main affected groups'		

BENEFITS

Key Assumptions/Sensitivities/Risks

This applies the concept of diminishing marginal returns to income. This concept presumes that a more equitable distribution of resources will raise economic welfare since additional consumption by poor individuals is valued more highly than it is by richer individuals.

This welfare estimate is still likely to underestimate the true benefit. The method used applies an income-based consideration of reduced inequality only. For instance, it does not consider additional welfare that may be derived from greater economic participation as a result of tackling discriminatory barriers. There are wider indirect costs associated with inactivity, such as reduced self-esteem and the loss of human capital associated with inactivity, that are not accounted for by this approach.

Price Base Yr 2008	Time Period Years 10	Net Benefit Range (NPV) Up to £ 537,958,543	NET BENEFIT (NPV Best estimate) £ See Range
------------------------------	--------------------------------	--	--

What is the geographic coverage of the policy/option?		GB		
On what date will the policy be implemented?		[see box page 8]		
Which organisation(s) will enforce the policy?		[see box page 8]		
What is the total annual cost of enforcement for these organisations?		£ [see box page 8]		
Does enforcement comply with Hampton principles?		N/A		
Will implementation go beyond minimum EU requirements?		N/A		
What is the value of the proposed offsetting measure per year?		£ 0		
What is the value of changes in greenhouse gas emissions?		£ 0		
Will the proposal have a significant impact on competition?		No		
Annual cost (£-£) per organisation (excluding one-off)	Micro	Small	Medium	Large
Are any of these organisations exempt?	No	No	N/A	N/AS

Impact on Admin Burdens Baseline (2005 Prices)

(Increase - Decrease)

Increase of £ Decrease of £ **Net Impact** £

Key: Annual costs and benefits: Constant (Net) Present Value
 Prices

Familiarisation costs

**Policy Option:
Familiarisation
Costs of the
proposals**

A one-off familiarisation cost will attach to most of the proposals. It is assumed that “familiarisation”, in the great majority of cases and for most employers and individuals, will mean familiarisation with or through guidance and advice provided by the EHRC (Equality and Human Rights Commission) and/or by other advisory bodies such as ACAS (Advisory, Conciliation and Arbitration Service). It is also assumed that “familiarisation” means reaching the point where a manager or relevant employee of an organisation or business is aware of the changes in the law and how they impact on his/her organisation or business.

ANNUAL COSTS		Yrs	Description and scale of key monetised costs by ‘main affected groups’
One-off (Transition)			
£ 203,539,029	1		<p>Private Sector – Total costs up to £ 192,213,687 for up to 1,193,750 SMEs and 5,905 Large firms.</p> <p>Public Sector - Total costs up to £ 11,030,925 would be split between 25,559 public authorities.</p> <p>Landlords - Total cost £ 294,417 , which would be split between 14,000 public authorities.</p>
Average Annual Cost (excluding one-off)			
£ 0	10		Total Cost (PV)
			£ 203,539,029
Other key non-monetised costs by ‘main affected groups’			

Key Assumptions/Sensitivities/Risks

Key Assumptions include:

- Number of hours taken by firms and authorities to familiarise themselves with the policy¹;
- Definition of public authority – who is included and who is not;
- Definition of familiarisation – reaching the point where a manager or a relevant employee of a firm is aware of the changes in the law and how they impact;
- That 100% of small firms will want to familiarise themselves with the guidance in year one
- That all medium and large firms and public bodies will familiarise themselves with guidance in year one

Price Base Yr 2008	Time Period Years 10	Net Benefit Range (NPV) -£ 203,539,029	NET BENEFIT (NPV Best estimate) £ See Range
------------------------------	--------------------------------	---	--

What is the geographic coverage of the policy/option?	GB
On what date will the policy be implemented?	[see box page 8]
Which organisation(s) will enforce the policy?	[see box page 8]
What is the total annual cost of enforcement for these organisations?	£ [see box page 8]
Does enforcement comply with Hampton principles?	N/A
Will implementation go beyond minimum EU requirements?	N/A
What is the value of the proposed offsetting measure per year?	£ 0
What is the value of changes in greenhouse gas emissions?	£ 0
Will the proposal have a significant impact on competition?	No
Annual cost (£-£) per organisation (excluding one-off)	Micro Small Medium Large
Are any of these organisations exempt?	No No N/A N/A

Impact on Admin Burdens Baseline (2005 Prices)

(Increase - Decrease)

Increase of	£	Decrease of	£	Net Impact	£
Key:	Annual costs and benefits: Constant Prices		(Net) Present Value		

¹ We have assumed that firms take 0.5 to 2 hours to familiarise themselves with new legislation. A small survey of businesses indicated this might be an over estimate but we felt it was safer to retain this figure without more evidence to the contrary.

Simplification benefits general

Policy Option:
Simplification Benefits for the Equality Bill

Description:
Simplification of the law will result in simpler guidance and a better understanding of rights and responsibilities

ANNUAL BENEFITS		Description and scale of key monetised benefits by 'main affected groups'	
One-off	Yrs		
£	1		
Average Annual Benefit (excluding one-off)		Private Sector – Annual saving to all firms from simplified law of £5,557,516. Firms will also benefit from employees finding it easier to understand their rights and responsibilities by £2,175,225	Public Sector – Annual saving to public bodies of £ 97,245. Public bodies will also benefit from employees finding it easier to understand their rights and responsibilities by £ 938,972
£ 8,768,959	10	Total Benefit (PV)	£ 75,480,449
<p>Other key non-monetised benefits by 'main affected groups'</p> <ul style="list-style-type: none"> • Better understanding of the law should reduce inadvertent non-compliance that leads to claims and will reduce over compliance where firms take more action than the law requires. However it is uncertain as to whether this will be offset or even outweighed by increased claims resulting from greater awareness of rights. • Courts and tribunals should be able to interpret the law more consistently, which may reduce the time and costs of cases and the likelihood of appeal. 			

BENEFITS

Key Assumptions/Sensitivities/Risks

- That all businesses will benefit from the simplified law (20% in the first year). There will be a time saving of 1 hour per business/organisation
- That 1% of employees will seek information about the law
- That all discrimination cases sent to tribunal will be dealt with more effectively by legal firms saving 1 hour.
- That the Equality Bill and resulting guidance will only be 1/3 the size of the existing legislation
- That this will benefit all businesses including new businesses
- The number of new businesses – estimate based on previous years

Price Base Yr 2008	Time Period Years 10	Net Benefit Range (NPV) Up to £ 75,480,449	NET BENEFIT (NPV Best estimate) £ See Range
------------------------------	--------------------------------	---	--

What is the geographic coverage of the policy/option?	GB
On what date will the policy be implemented?	[see box page 8]
Which organisation(s) will enforce the policy?	[see box page 8]
What is the total annual cost of enforcement for these organisations?	[see box page 8]
Does enforcement comply with Hampton principles?	N/A
Will implementation go beyond minimum EU requirements?	N/A
What is the value of the proposed offsetting measure per year?	£ 0
What is the value of changes in greenhouse gas emissions?	£ 0
Will the proposal have a significant impact on competition?	No
Annual cost (£-£) per organisation (excluding one-off)	Micro Small Medium Large
Are any of these organisations exempt?	No No N/A N/A

Impact on Admin Burdens Baseline (2005 Prices)

(Increase - Decrease)

Increase of	£	Decrease of	£	Net Impact	£
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Key:

Annual costs and benefits: Constant Prices

(Net) Present Value

Evidence

Over the last 40 years, since the first Race Relations Act was passed in 1965, we have built up a strong body of law to protect people from discrimination and to address disadvantage. But because the law has developed in a piecemeal way, it is complex. There are 9 major pieces of primary and secondary legislation and around 100 pieces of ancillary legislation. The Equality Bill provides the opportunity to improve and modernise the law and tackle persistent inequalities. And it will simplify the law, making it easier for people to understand their rights and responsibilities.

Main concerns with current legislation

There are three main concerns with the existing structure of equality legislation. These are:

- (i) **Different levels of protection for different groups and the use of differing concepts and definitions.** The need is to put the whole of discrimination law on a consistent and coherent basis. This need not mean automatically the same level of protection for all groups, but there should be a justified rationale where the level of protection is different.
- (ii) **Persistent inequalities within institutions and in society at large**, as identified by the Equalities Review in its March 2006 interim report² and its final report³. Some proposals considered in this Impact Assessment address this concern.
- (iii) **The need to improve the operation of the courts** in handling discrimination cases.

Rationale for government intervention

The proposed measures address the following risks that would arise if there were no government intervention:

- (i) **The risk to accessibility and transparency of the law and hence cases arising out of ignorance.** A simpler, single piece of equality legislation will allow the Equality and Human Rights Commission to produce simpler and clearer guidance. These simplification gains should reduce the number of cases coming to court out of ignorance and hence save money for business, claimants and the public sector.
- (ii) **The risk to the efficient operation of business and markets, as a result of continuing discrimination and persistent disadvantage.** The Women and Work Commission report of February 2006⁴ showed the costs of failing to recognise women's skills and under-utilising their abilities in the workplace. The Annual Survey of Hours and Earnings (ASHE) 2009 shows that the overall gender pay gap currently stands at 22.0 per cent in the UK. This means the median hourly earnings excluding overtime for all female employees (full-time and part-time) were 22.0 per cent less than the earnings of male employees. A specific example of this has recently been reported on by The Equality and Human Rights Commission⁵. Men working in the UK's financial sector receive five times more in bonus payments than women, according to a survey of 44 leading companies and on average, women earn £2,875 compared with £14,554 for men⁵. Failure to utilise the talents and potential of the diverse range of individuals who make up the workforce or to respond to demand from the diverse communities has an economic cost. The benefit of Government intervention is estimated below as around £60m per year.
- (iii) **The risk to the efficient operation of the judicial system.** There is a relative imbalance of expertise between employment tribunals (which deal with discrimination cases in the workplace)

² The Equalities Review was launched and proceeded in parallel with the Discrimination Law Review. The former focused more on identifying the wider social and policy causes of persistent inequalities; the latter focused on the legislative framework.

³ Fairness and Freedom: The Final Report of the Equalities Review, February 2007.

⁴ "Shaping a Fairer Future".

⁵ EHRC inquiry into the financial sector, September 2009, http://www.equalityhumanrights.com/uploaded_files/financial_services_inquiry_report.pdf

and the courts (which deal with the relatively few discrimination cases outside the workplace). The proposals on the operation of the courts seek to provide more effective handling of discrimination cases.

Purpose and intended effect

This package of measures has three main objectives:

- (i) **To standardise, simplify and consolidate discrimination law where appropriate.** This includes measures to simplify definitions, exceptions, provisions on equal pay and disability-related provisions, including an ability to harmonise the legislation where changes are required as a result of European law;
- (ii) **To make the law more effective.** This covers measures to widen the scope for voluntary positive action, establish an outcome-focussed integrated duty on public authorities to have due regard to the need to promote equality (including in their procurement activities) and a duty on some public authorities to consider socio-economic inequalities in their strategic decisions; and to achieve better handling of discrimination cases by the courts;
- (iii) **To modernise the law.** This covers measures to extend protection from discrimination on grounds of gender reassignment and pregnancy/maternity; to provide protection against unfair discrimination on grounds of age in the provision of goods, facilities and services and exercise of public functions; to provide a power to require gender pay gap reporting by some private sector employers; to tribunals to make wider recommendations and to extend statutory protection against harassment outside the workplace and dual discrimination.

The timescale for achieving these objectives will be triggered by enacting the Equality Bill. Results such as improved guidance from the Equality and Human Rights Commission should start to be available within 3 months of enactment. (The EHRC will consult shortly on guidance and codes.) Measures to achieve better handling of discrimination cases by the courts and tribunals should take effect within 12-18 months of enactment. Other measures to make the law more effective will achieve results over a longer period of time. Most of the measures will extend Great Britain.

Options development

During the development of proposals to establish the Equality and Human Rights Commission, strong support emerged for an Equality Bill to provide a coherent legislative framework for the new Commission's work. In February 2005, the Government established the Discrimination Law Review to consider "the opportunities for creating a clearer and more streamlined equality legislation framework which produces better outcomes for those who experience disadvantage ...while reflecting better regulation principles."

Between February 2005 and June 2007 initial proposals for an Equality Bill were developed by the then Women and Equality Unit, now the Government Equalities Office, in consultation with a wide range of government departments including the Department of Health, Department for Work and Pensions, Ministry of Justice, Department for Business, Enterprise and Regulatory Reform (now the Department for Business, Innovation and Skills) and the Department for Children, Schools and Families. Others consulted included the Small Business Service (as was) and the Treasury. In addition there was some initial consultation with business representatives, including the CBI, Federation of Small Businesses, the Employers Forum on Age and others. Representatives of large and small firms were included in a Reference Group of external stakeholders overseeing both the Discrimination Law Review and the Equalities Review. The Reference Group also included representatives of the former Equality Commissions and the Unions. Initial pre-consultation submissions were received from a number of stakeholders.

During September and October 2006, several discussion meetings were held with practitioners including business representatives, academics, equality representatives and other experts on specific issues: the integrated public sector equality duty (structure and enforcement); positive action; age discrimination outside the workplace; enforcement; public-sector procurement;

harassment; and guidance.

The formal written consultation was published on 11 June 2007 and ran until 4 September 2007. We received around 4,000 responses to the consultation from a wide range of stakeholders including the former Equality Commissions, local authorities and private business. We also met numerous organisations and representatives from equality stakeholders, business, unions, religious groups, local and public authorities and others through a series of 20-30 consultation events involving seminars/discussions and one-to-one briefings.

Consultation and contacts with key stakeholders have continued on an ongoing basis since the formal consultation, including a series of regional events in Edinburgh, Cardiff, Peterborough and Newcastle in autumn 2008, the formation and monthly meetings of a Senior Stakeholder Group, specific stakeholder groups established to look at the public sector equality duty and age discrimination and one-to-one contacts and informal meetings. In April we issued a discussion document on multiple discrimination, a summary of responses is available on the GEO website⁶. Two consultations on the Equality Duty⁷ and age discrimination⁸ ended in September.

⁶

<http://www.equalities.gov.uk/pdf/Equality%20Bill%20Multiple%20Discrimination%20Summary%20of%20Response.pdf>

⁷ http://www.equalities.gov.uk/news/equality_duties.aspx

⁸ http://www.equalities.gov.uk/news/age_consultation.aspx

Analysis of overall options

This impact assessment evaluates the potential costs and benefits of the Equality Bill. Each proposal is analysed separately within Annexes A-U. In addition the general benefits and costs of the Bill are given in detail within this section. These include the overall benefits to the economy, the general familiarisation costs and the overall benefits of simplifying the law. The overall costs and benefits of the Equality Bill can be broken down as follows:

To note: the reason for the difference between these estimates and the earlier version is the addition of the new policy of dual or combined discrimination and some minor correcting of estimated costs and benefits to comply with Treasury guidance.

Costs

	Annex	One Off		Recurring	
		Low	High	Low	High
Familiarisation (1yr)	P5-27	£ 203,539,029	£ 203,539,029	£ -	£ -
Socio-economic Duty	A	£ 449,887	£ 449,887	£ 187,157	£ 187,157
Definitions	B			£ 12,476,018	£ 19,385,750
Age	C				
Discrimination arising from disability	D			£ 1,400,000	£ 2,800,000
Gender Reassignment	E			£ 34,096	£ 143,246
Pregnancy & Maternity	F			£ 178,423	£ 364,949
Disability - Capacities	G			£ 928,006	£ 2,320,014
Disability – Disadvantage Test	G			£ 2,000,000	£ 6,000,000
Disability - common parts	H			£ -	£ 26,970,000
Harassment- extension outside work	I			£ 95,788	£ 358,178
Harassment - 3rd Party	J			£ 139,631	£ 550,420
Equal pay	K			£ -	£ -
Secrecy Clauses	L			£ 2,232,557	£ 2,232,557
Gender pay gap	M				
Associations	N				
Assessors	O			£ 7,623	£ 19,728
Recommendations by tribunals	P			£ 55,588	£ 114,133
Public sector Equality Duty	Q			£ -	£ -
Positive Action	R				
Disability transport	S			£ 201,000	£ 201,000
Exceptions	T			£ 520,658	£ 520,658
Harmonisation	U			£ 37,542	£ 37,542
Dual Discrimination	V	£ 7,801,394	£ 7,801,394	£ 4,084,385	£ 4,084,385
Transparency				£ -	£ -
Pre-Employment Enquires		£1,000,000	£2,000,000	-	-
TOTAL		£ 212,790,310	£ 213,790,310	£ 24,578,471	£ 66,289,717

Benefits

	Annex	One Off		Recurring	
		Low	High	Low	High
General Benefits	P5-27			£ 62,497,460	£ 62,497,460
Simplification	P5-27			£ 8,768,959	£ 8,768,959
Socio-economic Duty	A			£ -	£ -
Definitions	B			£ 2,178,254	£ 2,389,323
Age	C			£ -	£ -
Discrimination arising from disability	D			£ -	£ -
Gender Reassignment	E			£ 10,823	£ 55,891
Pregnancy & Maternity	F			£ -	£ 8,103
Simplifying disability discrimination law	G			£ -	£ -
Disability - common parts	H			£ 10,000,000	£ 40,000,000
Harassment - extension outside work	I			£ 8,103	£ 16,206
Harassment - 3rd Party	J			£ 8,103	£ 24,309
Equal Pay	K			£ 3,942,550	£ 3,942,550
Secrecy Clauses	L			£ 326,872	£ 326,872
Gender pay gap	M				
Associations	N			£ -	£ -
Assessors	O			£ 40,593	£ 82,716
Recommendations by tribunals	P			£ 1,598,048	£ 3,211,611
Public sector Equality Duty	Q			£ -	£ -
Positive Action	R				
Transport	S			£ -	£ -
Exceptions	T			£ 757,886	£ 836,962
Harmonisation	U			£ -	£ -
Dual Discrimination	V	£ 2,625,748	£ 2,625,748	£ 633,168	£ 633,168
Transparency				£ -	£ -
TOTAL		£ 2,625,748	£ 2,625,748	£ 90,770,818	£ 122,794,129

Costs

	One-off		Recurring	
	low est	high est	low est	high est
Public Sector	£ 15,026,120	£ 16,026,120	£ 7,171,482	£ 40,908,544
Private Sector	£ 197,367,076	£ 197,367,076	£ 14,823,243	£ 21,252,934
Voluntary	£ -	£ -	£ 202,572	£ 224,360
Individuals	£ 397,114	£ 397,114	£ 2,381,173	£ 3,903,879
Society	£ -	£ -	£ -	£ -
TOTAL	£ 212,790,310	£ 213,790,310	£ 24,578,471	£ 66,289,717

Benefits

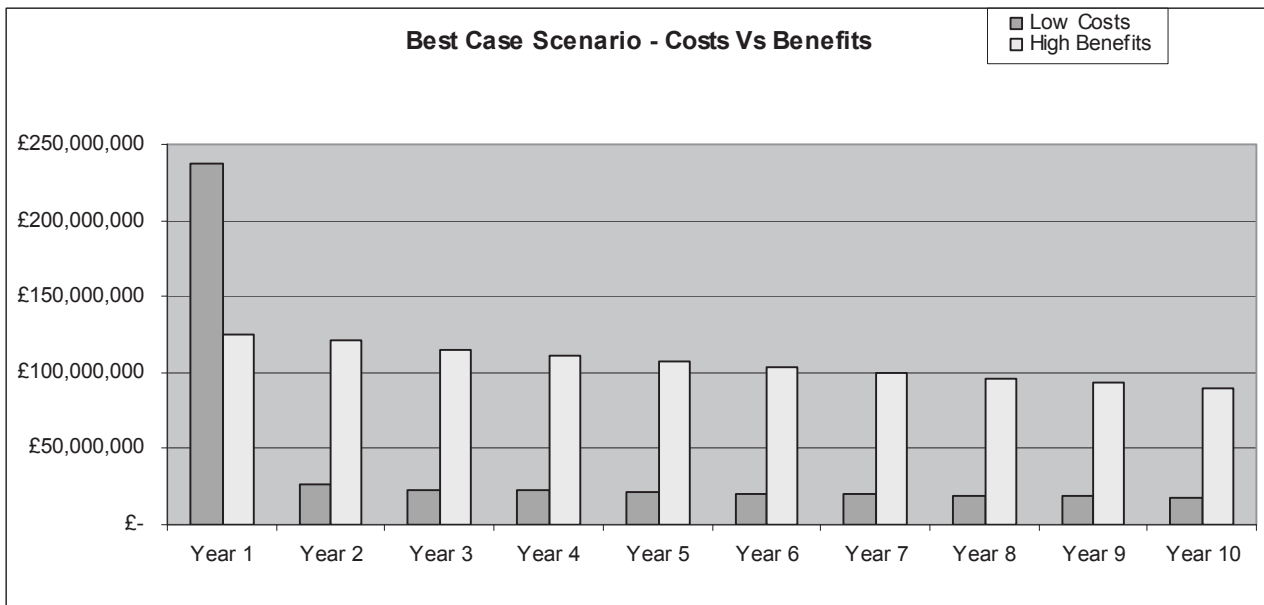
	One-off		Recurring	
	low	high	low	high
Public	£ 708,952	£ 708,952	£ 13,153,149	£ 43,405,800
Private	£ 1,916,796	£ 1,916,796	£ 11,062,476	£ 12,246,283
Individual	£ -	£ -	£ 3,513,561	£ 4,094,195
Society	£ -	£ -	£ 63,041,633	£ 63,047,851
TOTAL	£ 2,625,748	£ 2,625,748	£ 90,770,818	£ 122,794,129

The best and worst case scenarios are as follows:

Best Case Scenario

Best Case

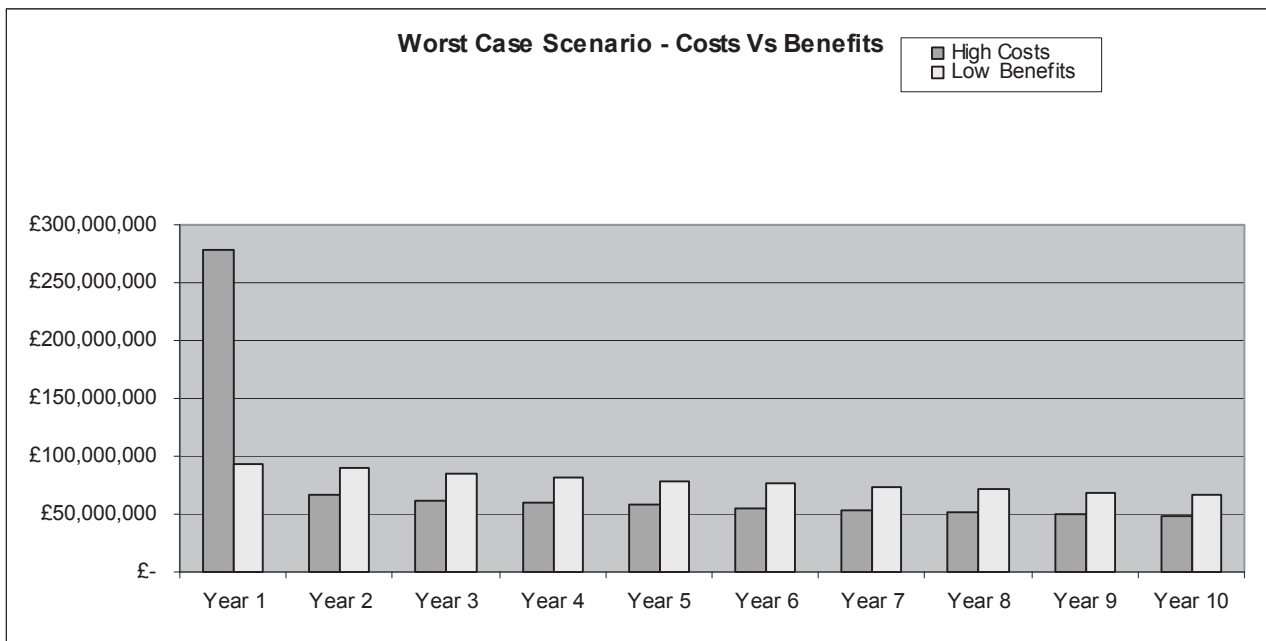
	Low Costs	High Benefits	Net Benefit
Year 1	£ 237,368,781	£ 125,419,877	-£ 111,948,904
Year 2	£ 26,284,269	£ 121,178,626	£ 94,894,356
Year 3	£ 22,944,266	£ 114,629,634	£ 91,685,368
Year 4	£ 22,168,372	£ 110,753,269	£ 88,584,897
Year 5	£ 21,418,717	£ 107,007,990	£ 85,589,272
Year 6	£ 20,694,413	£ 103,389,362	£ 82,694,949
Year 7	£ 19,994,602	£ 99,893,103	£ 79,898,502
Year 8	£ 19,318,456	£ 96,515,076	£ 77,196,620
Year 9	£ 18,665,175	£ 93,251,281	£ 74,586,106
Year 10	£ 18,033,985	£ 90,097,856	£ 72,063,871



Worst Case Scenario

Worst Case

	High Costs	Low Benefits	Net Benefit
Year 1	£ 279,080,027	£ 93,396,566	-£ 185,683,461
Year 2	£ 66,584,990	£ 90,238,228	£ 23,653,238
Year 3	£ 61,882,160	£ 84,735,530	£ 22,853,370
Year 4	£ 59,789,527	£ 81,870,077	£ 22,080,551
Year 5	£ 57,767,658	£ 79,101,524	£ 21,333,866
Year 6	£ 55,814,163	£ 76,426,593	£ 20,612,431
Year 7	£ 53,926,727	£ 73,842,119	£ 19,915,392
Year 8	£ 52,103,118	£ 71,345,043	£ 19,241,924
Year 9	£ 50,341,177	£ 68,932,408	£ 18,591,231
Year 10	£ 48,638,818	£ 66,601,361	£ 17,962,542



General benefits to the economy

It is impossible to precisely quantify the general benefits that may be generated by the creation of a more equal society. It is, however, possible to derive an indicative figure for this benefit, based on previous work in this area.

The Equalities Review interim report attempted to measure the broader value to society of a more equitable distribution of resources⁹ by applying the concept of diminishing marginal returns to income. This macro-level approach presumes that a more equitable distribution of resources will raise social welfare since additional consumption by poor individuals is valued more highly than it is by richer individuals¹⁰. The interim report estimates that 30% less inequality could be associated with a benefit of between 5.6 and 11.4 per cent of domestic expenditure, depending on the assumptions chosen. Using moderate assumptions¹¹, this benefit would equate to 7.6 per cent or £62.5bn, based on domestic expenditure on goods and services in 2008 according to the Equalities review.

This welfare estimate is still likely to underestimate the true benefit. The method used applies an income-based consideration of reduced inequality only. For instance, it does not consider additional welfare that may be derived from greater economic participation as a result of tackling discriminatory barriers. There are wider indirect costs associated with inactivity, e.g. reduced self-esteem and the loss of human capital that are not accounted for by this approach.

The Equalities Review interim report also estimated costs arising from various groups being out of work and therefore not earning a waged income - a micro-level approach. The total cost of the individual income and government revenue forgone are outlined below for some social groups experiencing severe employment disadvantage. These figures take account of government transfers to unemployed people as well as tax credits.

- **mothers:** £2.09bn in income forgone and £5.69bn in government revenue forgone;
- **mothers with children under 11:** £1.16bn in income forgone and £3.15bn in government revenue forgone;
- **disabled people:** £3.45bn in income forgone and £8.86bn in government revenue forgone;
- **Pakistani and Bangladeshi women:** £0.11bn in income forgone and £0.30bn in government revenue forgone¹².

The figures above are not additive, as some of the groups overlap, i.e. mothers with children under 11 are also considered in the calculation for mothers in general, and some may be disabled or of Pakistani or Bangladeshi heritage. We can therefore not aggregate the findings to obtain a total cost of exclusion from the labour market.

The Women and Work Commission's report 'Shaping a Fairer Future' also estimated the potential cost of micro level gender inequality. They estimated the total benefits of increasing women's employment and reducing occupational segregation could be worth between £15bn and £23bn or 1.3 to 2.0 per cent of gross domestic product¹³. This represents the returns from a more efficient use of the country's labour resources, to which some of the proposed Equality Bill measures will contribute.

The measures in this Impact Assessment most likely to affect employment of underprivileged groups and therefore to count towards the general benefits identified are those to do with **voluntary positive action measures; and the integrated public sector equality duty**. There is no suggestion that these measures alone would result in benefits of anything like the order of magnitude indicated above. However, it would be reasonable to assume that they should help

⁹ This is measured by a reduction in consumption inequality by 30 per cent.

¹⁰ Note that the gains specified here with respect to reduced consumption inequality are not intended as endorsement of redistribution directly. The debate regarding redistribution and the tensions or synergies between equity, efficiency and growth has a long history among economists. Instead, in this instance, a more equitable distribution of resources and reduced consumption inequality results from better labour market representation of disadvantaged groups who otherwise suffer from discrimination. Indeed a reduction of inequality in this way should benefit growth.

¹¹ Assumes aversion to inequality of 1.4, using the methodology set out on pages 106-111 of the Equalities Review interim report.

¹² Equalities Review interim report, March 2006, Table 1 (page 67): The cost of unemployment.

¹³ The Women and Work Commission 'Shaping a Fairer Future', Chapter 1, para 35.

achieve a fraction of the potential benefits over time.

To give a crude indication, suppose we only consider the macro benefits identified by the Equalities Review and apply a fraction of say one thousandth to represent the effect of measures considered by this Impact Assessment. This would give purely indicative benefits somewhere in the region of £62.5m. The main mechanisms in the Bill to achieve this will be **positive action widening and the expanded public sector equality duty**, as well as the extension of goods, facilities, services and premises protection where it does not already exist, which will remove market-based barriers.

Macro Benefits (Equality Review)	0.1%	Estimated general economic benefits
£62,497,460.00	0.1%	£62,497,460

As indicated, many of the measures proposed potentially go beyond employment to impact on the provision of goods, facilities and services: for example, extension of protection against discrimination on grounds of age, gender reassignment, pregnancy and maternity. Some businesses can expect extra revenue from the additional trade that will take place as a result of business no longer lost due to discrimination (or the perceived risk of experiencing it) or harassment. It is clear from the above paragraphs that creation of a fairer society has economic benefits in its own right and that they could be substantial.

General familiarisation costs

A one-off familiarisation cost will attach to most of the proposals covered by this Impact Assessment. It is assumed that “familiarisation”, in the great majority of cases for most employers and individuals, will mean familiarisation with or through guidance provided by the Equality and Human Rights Commission and/or by other advisory bodies such as ACAS (Advisory, Conciliation and Arbitration Service). It is also assumed that “familiarisation” means reaching the point where a manager or relevant employee of a firm or organisation is aware of the changes in the law and how they impact upon their business or organisation.

However, it is also assumed that at any one time, most managers or relevant employees will not be fully expert in the existing law. They will, from time to time, need to “re-familiarise” themselves with the law so that they can advise their staff or colleagues accordingly, even if the law remains unchanged. This might happen, for example, as a result of an internal enquiry or potential set of discriminatory circumstances; or a court or tribunal case.

The calculation of familiarisation costs relating to the new proposals in this Impact Assessment therefore needs to be adjusted to take account of the probability that in any one year, even if the law were unchanged, there would continue to be costs of “re-familiarisation” with the old law.

For the approximately 3.5m owner-managed firms without employees, “re-familiarisation” will consist of the owner-manager re-informing him or herself by checking available guidance. For this category of firms, we assume that the costs of familiarisation with guidance on the new law will be no greater than the costs of re-familiarisation with guidance on the old law.

However, in the approximately 1.2m small and medium enterprises and the 25,559 public sector organisations with employees we assume that familiarisation with the new proposals will involve a manager informing him or herself about the change in legislation and disseminating the information. In the 5,905 firms with more than 250 employees, we assume that familiarisation with the new proposals will involve a personnel manager with aid from a legal expert not only informing themselves about the changes in legislation but also producing new internal guidance – based on the guidance available from the Equality and Human Rights Commission and similar bodies.

We also need to consider the benefit that simplification will have on familiarisation costs. The Equality Bill will make the law more accessible, easier to understand and, easier to implement. These benefits are assumed to reduce familiarisation time by up to an hour; more detail can be

found at pages 5-27.

Small and Medium Enterprises

In small and medium enterprises (SMEs) with between 1 and 249 employees it is assumed that a general manager will be responsible for familiarisation. Data from the Annual Survey on Hours and Earnings Survey (ASHE) 2009 show that the average gross hourly wage for this occupation is £19.16¹⁴. When uplifted by 21% to allow for non-wage labour costs, this becomes £23.18. This is then multiplied by the time investment estimated to become familiar with the new guidance and reproduce it for other staff in the firm; and subsequently by the number of SMEs likely to need to become familiar with the legislation in any one year.

There are 1,193,750 SMEs in Great Britain,¹⁵ some of these businesses will seek advice because they are involved or likely to become involved in a court or tribunal case, another proportion will respond to planned Government publicity and guidance produced by the Equality and Human Rights Commission.

For the purposes of this Impact Assessment, we assume that within this pool of most relevant businesses 100% of firms are likely to need to familiarise themselves with the new law in year one and disseminate guidance for staff. We are aware this is likely to be an over estimate and a smaller number are likely to proactively familiarise themselves with the new legislation in year one but without any data to base this assumption on we have assumed 100% compliance in the first year.

Large enterprises

In large firms (250+ employees) it is assumed that there will be a dedicated personnel manager to read guidance, answer follow-up questions and disseminate information to other parts of the organisation. It is also assumed large firms will seek legal advice on high risk issues and as an indirect cost produce their own guidance for staff. The ASHE survey indicates the average gross hourly wage for a personnel manager is £20.93¹⁶ and £25.33 after inclusion of non-wage labour costs. Similarly, for legal professionals the average gross hourly wage is £24.23¹⁷ and £29.32 after inclusion of non-wage labour costs.

It is assumed that this proactive dissemination of information will take place in all 5,905 firms employing 250 or more employees in year one.¹⁸

Public sector

Familiarisation costs will also fall to the 25,599 public authorities who will need to be aware of the law. It is assumed that each of the public authorities will have a personnel officer or equivalent that is responsible for reading guidance, answering follow-up questions and disseminating information to other parts of the organisation; and that the non-wage labour costs of such a personnel manager are the same as in the private sector. The ASHE Survey shows that an average gross hourly wage for this occupation is £20.93 up lifted by 21% to allow for non-wage labour costs this becomes £25.33.

¹⁴ ASHE 2009 code 11

¹⁵ Small Business Statistics 2008

¹⁶ ASHE 2009, code 1135

¹⁷ ASHE 2009, code 241

¹⁸ Small Business Statistics 2008

Estimation of time investment and familiarisation costs

The table below shows the estimated time and costs of familiarisation with each of the proposed measures within the Impact Assessment:

Policy Area	Annex	Type of Firm	Time (Hours)	No of Firms	Hourly Cost
Socio-economic duty	A	Public Authority	3.5	695	£ 36.99
Simplifying Definitions	B	SMEs	0.5	1,193,750	£ 23.18
		Large Firms	2	5,905	£ 22.58
		Public Authority	1	25,599	£ 25.33
Age discrimination in goods, facilities and services	C	SMEs	2	1,193,750	£ 23.18
		Large Firms	2	5,905	£ 22.58
		Public Authority	2	25,599	£ 25.33
Discrimination arising from disability	D	SMEs	1	1,193,750	£ 23.18
		Large Firms	2	5,810	£ 22.58
		Public Authority	2	25,599	£ 25.33
Gender reassignment	E	SMEs	0.5	1,193,750	£ 23.18
		Large Firms	2	5,905	£ 22.58
		Public Authority	1	25,599	£ 25.33
Pregnancy & Maternity	F	SMEs	0.5	1,193,750	£ 23.18
		Large Firms	2	5,905	£ 22.58
		Public Authority	1	25,599	£ 25.33
Simplifying disability legislation	G	SMEs	0.5	1,193,750	£ 23.18
		Large Firms	2	5,905	£ 22.58
		Public Authority	0.5	25,599	£ 25.33
Disability and common parts of premises	H	Landlords	1	14,000	£ 21.03
Harassment extension third party and the provision of goods, facilities and services)	I	SMEs	0.5	1,193,750	£ 23.18
		Large Firms	2	5,905	£ 22.58
		Public Authority	1	25,599	£ 25.33
Secrecy Clauses	L	SMEs	0.5	408,020	£ 23.18
		Large Firms	2	5,905	£ 22.58
		Public Authority	1	25,599	£ 25.33
Disability and transport	S	Local Authorities			
Public sector Equality Duty	Q	Public Authority	1.5	70,771	£ 25.33
Equal Pay	K	SMEs	0.5	408,020	£ 23.18
		Large Firms	2	5,905	£ 22.58
		Public Authority	1	25,599	£ 25.33
Rationalising Exceptions	T	SMEs	0.5	1,193,750	£ 23.18
		Large Firms	2	5,905	£ 22.58
		Public Authority	1	25,599	£ 25.33
Transparency		Large Firms	0.17	15,870	£ 25.33

Dual Discrimination	SMEs	0.5	1,193,750	£ 23.18
	Large Firms	1	5,905	£ 22.58
	Public Authority	1	25599	£ 22.58

General simplification benefits

Why is simplification needed?

Discrimination law is extremely complex. There are currently nine major pieces of discrimination legislation¹⁹ and around 100 pieces of ancillary legislation. In addition, the law contains many inconsistencies because it has accumulated over more than forty years. For example, depending on the equality strand concerned, there are different definitions of indirect discrimination; different tests for justifying indirect discrimination; different protections against direct discrimination; different exceptions. These technical inconsistencies result in different real-life outcomes.

This makes it difficult for employees and customers to know their rights and employers and service providers to know their responsibilities. The large volume and complexity of the law is reflected in the volume and complexity of the guidance. The three former equality Commissions produced more than 2,500 pages of website guidance. The Equality and Human Rights Commission will ensure that good quality appropriate guidance is available and disseminated to all relevant stakeholders 12 weeks in advance of commencement of the relevant provisions of the Equality Bill.

Simplification will make the law:

- more accessible
- easier to understand
- easier to implement

How will savings arise?

We assess that the following savings will arise from simplification:

a) **Savings to employers:** the time taken by employees working within Small and Medium Enterprises and large businesses to access the information they need to understand how the law affects their business, because of greater clarity, lower volume of material and greater consistency. The value of employees' time-saving at work is the opportunity cost of the time to the employer²⁰. Therefore these savings, equal to the gross hourly wage rate plus non-wage labour costs, will be referred to as opportunity cost savings. There are around 1.2m SMEs and large firms with employees supplying goods, facilities or services in Great Britain. In addition, there are around 25,559 public authority employers: so a total of some 1.2 million businesses and organisations²¹. In most cases it will be the guidance (produced by Equality and Human Rights Commission) that is accessed by these groups, not the legislation itself. The Bill will consist of around 200 clauses and 28 schedules i.e. about one third of the combined size of the major pieces of legislation which it will incorporate; it is assumed that this will bring about a corresponding reduction in the time taken to familiarise. This benefit can be quantified as indicated below.

b) **Savings to employees:** the time saved by individuals when accessing the relevant information. The value of the time saved by individuals is taken to be their market wage rate i.e. what they could have earned by offering that time to the labour market. Unlike for employers in (a) this saving does not include non-wage costs since these are not borne by the individual or 'earned' through labour market exchange.

¹⁹ 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; Equality Act (Sexual Orientation) Regulations 2007.

²⁰ As defined in the HM Treasury Green Book

²¹ Figures taken from Small Business Statistics 2008

Estimated savings from simplification

While there will be initial costs for existing businesses (but not new ones starting up following enactment) in adjusting to the new simplified legislation and guidance, we assume that from Day 1 of implementation of the new Act, the following savings will also arise in any one year. Benefits in terms of time savings will also apply to new firms, employers and employees as we compare the savings to what would have been required should the law remain un-simplified:

a) **Employers:** for those in group (a) above, a time saving of one hour is assumed in the time taken to find, read and comprehend how the law affects them; it is assumed that in SMEs a general manager will be responsible for familiarisation and dissemination of information. Data from the Annual Survey on Hours and Earnings 2009 (ASHE) show that the average gross hourly wage for this occupation, uplifted by 21% to allow for non-wage labour costs, is £23.18. Within large firms and public authorities a dedicated personnel manager²² will handle familiarisation and dissemination with an average gross hourly wage rate of £20.93, and £25.33 after 21% uplift for non-wage labour costs. A saving of one hour in the time taken to understand the effect of the law produces a total of:

£23.18/hour x 1 Hour x 1.2m SMEs = £27.8m.
£25.33/hour x 1 Hour x 5,905 Large Enterprises = £149,573
£25.33/hour x 1 Hour x 25,559 Public Authority = £647,409

These are, in effect, opportunity cost savings based on the value to business of the working time saved by their employees. This total assumes that everyone in this group will want or need to inform themselves about the law over time, whether because they want to ensure that they comply or because they are involved in a case. Instead, however, the calculation of annual savings will depend on assumptions about the proportion of the group needing to consider the new law in any one year. This will be dependent on two things: the 'stock' of those who already have sufficient understanding; and the 'flow' of employees who either have to look at this law for the first time or re-fresh their understanding. Indeed it is this "flow" who will be the beneficiaries of simplification year on year. If we assume that in any one year, employees in 20% of businesses benefit from looking at simplified law, the annual saving will therefore be around £5.7m/year (i.e. 20% of £28.6m).

b) **Employees:** For those in group (b) above, it is assumed that one per cent of the population in employment, around 29.0m employees²³ will seek information about the law in any one year i.e. 290,000. The labour force survey indicates that 75.0% of total employment is in the private sector and 25.0% is in the public sector. ASHE (2009)²⁴ shows the average hourly salary of an employee in the private sector is £12.10 and the public sector £15.67. A saving of one hour, as for group (a), produces a total saving of:

£12.10/hour x 1 Hour x 217,523 employees = £2.2m/year
£15.67/hour x 1 Hour x 72,508 employees = £0.9m/year

²² ASHE 2009 code 1135

²³ Labour Force Survey – Calendar Quarter Update 2009 Q3

²⁴ ASHE 2009 Table 13.6a Hourly pay - Excluding overtime (£) - For all employee jobs

Annex A – Duty to consider socio-economic inequalities

Department /Agency: GEO	Title: A duty on some public authorities to consider socio-economic inequalities when taking strategic decisions	
Stage: Introduction House of Lords	Version: 4	Date: December 2009
Related Publications: (1) Equality Bill Impact Assessment (Introduction) 27 April 2009		

Available to view or download at:

<http://www.equalities.gov.uk>.

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What is the problem under consideration? Why is government intervention necessary?

Socio-economically disadvantaged groups tend to suffer poorer outcomes in education, health, employment and other areas. Intervention is needed to ensure that public authorities have due regard to socio-economic inequalities when taking strategic decisions.

What are the policy objectives and the intended effects?

The aim of the new duty is to ensure public authorities take into account, in their planning, commissioning and resourcing of services, the need to identify and have due regard to inequalities associated with socio-economic disadvantage.

What policy options have been considered? Please justify any preferred option.

1. Do nothing.
2. Issue guidance, and spread best practice – tailored to different parts of the public sector.
- 3. Legislate, with a new duty on public authorities to address these issues – but in a light-touch way, with flexibility for different organisations to decide their roles. (Preferred option – see Evidence section for analysis.)**
4. Legislate, with a new duty on public authorities to address these issues – and ensure they comply by requiring each organisation to draw up a new action plan or scheme, with specific targets, and giving a role to a body such as the Equality and Human Rights Commission to monitor compliance.

When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects?

Monitoring and reporting arrangements which are already in place (such as the Comprehensive Area Assessment for local authorities and their partners) already gather a great deal of information relevant to this duty. From this information, the Government Equalities Office, working with such organisations as the Audit Commission, will be in a position to assess how public bodies are doing in terms of complying with the duty, and the costs associated with it.

In terms of the achievement of the desired effects, long-term monitoring of local and national statistics on education, health, employment, etc is already carried out by a range of central government departments and research organisations.

Summary: Analysis & Evidence

Policy Option:	Description:
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COSTS	ANNUAL COSTS		Description and scale of key monetised costs by 'main affected groups' Familiarisation costs are shown on page 12 onwards. Public sector authorities: One-off cost of £449,887 Recurring cost of £187,157
	One-off (Transition)	Yrs	
	£ 449,887	1	
	Average Annual Cost (excluding one-off)		
	£ 187,157		
Total Cost (PV)			£ 2,501,875
Other key non-monetised costs by 'main affected groups'			

BENEFITS	ANNUAL BENEFITS		Description and scale of key monetised benefits by 'main affected groups' Other key non-monetised benefits by 'main affected groups' Socio-economically deprived groups will benefit from a refocussing of public service provision.
	One-off	Yrs	
	£ 0		
	Average Annual Benefit (excluding one-off)		
	£ 0		
Total Benefit (PV)			£

Key Assumptions/Sensitivities/Risks - Number of hours taken by authorities to familiarise themselves with the duty - Number of authorities that will be subject to the duty

Price Base Year	Time Period Years	Net Benefit Range (NPV) up to -£2,501,875	NET BENEFIT (NPV Best estimate) £ See Range
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What is the geographic coverage of the policy/option?	England and Wales
On what date will the policy be implemented?	See page 8
Which organisation(s) will enforce the policy?	Courts
What is the total annual cost of enforcement for these organisations?	£ 0
Does enforcement comply with Hampton principles?	Yes/No
Will implementation go beyond minimum EU requirements?	Yes/No
What is the value of the proposed offsetting measure per year?	£ 0
What is the value of changes in greenhouse gas emissions?	£ 0
Will the proposal have a significant impact on competition?	No
Annual cost (£-£) per organisation (excluding one-off)	Micro Small Medium Large
Are any of these organisations exempt?	No No N/A N/A

Impact on Admin Burdens Baseline (2005 Prices)		(Increase - Decrease)
Increase of £	Decrease £	Net Impact £

Key: Annual costs and benefits: Constant Prices (Net) Present Value

EVIDENCE

1. Do nothing – perhaps on the basis that parts of the public sector are already doing work to address socio-economic disadvantage.

2. Issue guidance, and spread best practice – tailored to different parts of the public sector.

3. Legislate, with a new duty on public authorities to address this issues – but in a light-touch way, with flexibility for different organisations to decide their roles. (Preferred option.)

4. Legislate, with a new duty on public authorities to address this issue – and ensure they comply by requiring each organisation to draw up a new action plan or scheme, with specific targets, and giving a role to a body such as the Equality and Human Rights Commission to monitor compliance.

Taking the non-preferred options in turn, on option 1 it is certainly the case that many parts of the public sector are taking action to address socio-economic disadvantage. But the picture is mixed – both within particular public sector organisations, and across the public sector as a whole. Legislation should help improve consistency as well as, crucially, ensuring that different public sector organisations work together more closely on this issue.

Legislation will also establish an overall policy for future work. As it stands, much work to address inequalities is built into relatively short-term arrangements – Public Service Agreements, Local Area Agreements, Regional Economic Strategies, etc which have no more than a 3-year life span. Legislation is needed to ensure that the principle of tackling entrenched poverty is given due consideration when these arrangements come up for renewal or replacement.

A good deal of guidance and best practice (option 2), a good deal of this is issued already, across the public sector. But in many cases such guidance has little or no legislative bite, and no long-term status. We want to ensure that in future, guidance will form part of a clear legislative requirement to give consideration to this issue.

On option 4, we want to avoid being too prescriptive. We do not want to burden any part of the public sector with requirements for new plans or targets, nor with the threat of heavy-handed enforcement. We are also aware that different organisations will have very different options open to them in addressing disadvantage. So we are proposing a lighter-touch model, requiring public bodies to give consideration to this issue, but leaving it to them to decide how this requirement can be best taken forward within their own policy/service-delivery domain.

Who the duty applies to

The new duty is intended to apply to those with strategic public authority's responsibilities, such as setting outcomes and targets and planning and commissioning of services, influencing by these means the delivery of front line public services without the duty applying directly to the latter. It would for example apply to a police authority but not to the police service itself, or to a Primary Care Trust (responsible for setting local outcomes and commissioning services to meet these) but not to the services it commissions (e.g. hospitals, health visitors, GPs).

The authorities that will be affected are the following:

Type	Number
Central Government	70
Local Authorities	410
Regional Development Agencies	9
Strategic Health Authorities	10
Primary Care Trusts	152
Police Authorities	44
TOTAL	695

What the duty requires

The new duty is not intended to create new processes or functions. Rather it aims to ensure that in carrying out existing processes and functions – such as needs assessment, strategic planning and prioritisation, commissioning of services and monitoring – the public authorities covered by the duty identify and plan to address as they deem appropriate in the context of their overall functions, priorities and resources, inequalities associated with socio-economic disadvantage.

The effect of the duty is primarily intended to

- provide legislative underpinning for existing good practice and policies/programmes addressing inequalities, helping ensure that authorities continue in the future to build on this work
- help ensure that socio-economic disadvantage is taken into account in policies and services where its impact is less well known and has a lower profile (for example it is likely the impact of socio-economic disadvantage on educational attainment and employment is generally better known and understood than its impact on areas such as public health, financial inclusion and crime)
- require public authorities who are not currently meeting good practice standards to make improvements.

For public authorities who are already undertaking good practice policy-making and service commissioning, the duty is likely to have minimal additional impact as they will already be taking socio-economic disadvantage into account within their strategic planning processes.

In summary, there will be no separate monitoring, enforcement or reporting on this duty.

Costs

The cost of the legislation is taken to be the time required for authorities to familiarise themselves with it, and the time taken on an on-going basis to ensure that appropriate data feeds into the relevant decision-making processes. It is assumed that the first element will, on average, take a senior official (or equivalent) three days (21 hours), including half a day to familiarise themselves with the legislation and then a further two and a half days to integrate consideration of socio-economic disadvantage into the policy process where this is not already the case. It is assumed that the second element will take a senior official or analyst one day's work each year.

The assumption that compliance will take 21 hours initially and 7 hours on an on-going basis is the main limitation on the accuracy of this impact assessment. It is not known how long it will take authorities to familiarise themselves with the duty and to adjust their policy processes to accord with it. This will depend to some extent on the degree to which authorities are already taking socio-economic disadvantage into account when formulating policies. If the time required is less (more), then the overall cost of the duty will be correspondingly less (more). Likewise, the

efficiency of existing processes for feeding appropriate data into an organisation's key strategic decision-making processes will affect the need for, and extent of, the on-going costs.

As the approach constitutes good practice, any costs over and above familiarisation with the new legislation are judged to be "business as usual".

The cost per hour of a senior officials' time is taken to be the hourly rate (as given in the Annual Survey of Hours and Earnings 2009 code 11), uprated by 21 per cent to cover non-labour costs.

Per institution the cost is therefore:

Hours taken X hourly rate = cost per institution

For familiarisation, this is:

3.5 X £36.99 = £129.5

The total cost of familiarisation with the new duty is therefore:

Cost per institution X number of institutions = total cost

£129.5 X 695 = £90,002

This is included in the overall familiarisation costs for the Bill set out on p 12 onwards.

For implementation, this is:

Hours taken X hourly rate = cost per institution

17.5 x £36.99 = £647.3

The total implementation cost is therefore:

Cost per institution X number of institutions = total cost

£647.3 X 695 = £449,873.5

The on-going costs for each organisation will be:

Hours taken X hourly rate = cost per institution

7 X £36.99 = £258.9

The total on-going cost will therefore be:

Cost per institution X number of institutions = total cost

£258.9 X 695 = £179,935.5

Benefits

For example, in 2007 62.8 per cent of non-Free School Meals pupils achieved five or more A*-C passes at GCSE. For Free School Meals (FSM)-eligible pupils this figure was 35.5 per cent. Increasing the focus on socio-economically deprived children would be one way of addressing the relatively low achievement of FSM pupils.

Annex B - Simplifying and standardising definitions of discrimination and related concepts

Department GEO	Simplifying and standardising definitions of discrimination and related concepts	
Stage: Introduction House of Lords/Introduction House of Lords	Version: 4	Date: December 2009
Related Publications: (1) Discrimination Law Review: Proposals for an Equality Bill for Great Britain (June 2007). (2) Proposals to simplify and modernise the law: Initial RIA (June 2007). (3) Framework for a Fairer Future (June 2008) and (4) the Government response to the consultation (July 2008) (5) Equality Bill Impact Assessment (Introduction) 27 April 2009		

Available to view or download at: <http://www.equalities.gov.uk>

Contact for enquiries: Sharon Foster-King

Telephone: 0303 444 1204

What is the problem under consideration? Why is government intervention necessary?

There are different levels of protection for different equality strands as a result of the use of differing definitions and coverage of direct and indirect discrimination and harassment. This has resulted in a lack of transparency in the law and in consequence increases the risk of cases of discrimination arising out of ignorance and lack of clarity about the law. Additionally the definition of victimisation is unnecessarily complex.

What are the policy objectives and the intended effects?

A. Direct discrimination and harassment: perception and association

The 2007 consultation document did not propose any major changes in the different approaches in relation to the different groups, because the existing approaches were considered to be well-founded, although a commitment was made to extend protection on grounds of association to cover gender reassignment.

However, in view of the implications of the July 2008 European Court of Justice judgment in *Coleman v Attridge Law*, the Government has decided that, as well as fulfilling the terms of the judgment by extending protection against direct discrimination and harassment at work to non-disabled employees who look after (i.e. are associated with) disabled people, it is also appropriate to extend protection against direct discrimination and harassment based on association to certain areas where it does not already exist²⁵, that is to say: direct discrimination and harassment on grounds of disability in the provision of goods, facilities and services; direct discrimination and harassment on grounds of age in employment and the provision of goods, facilities and services; direct discrimination on grounds of sex in employment and the provision of goods, facilities and services; and direct discrimination and harassment on grounds of gender reassignment in employment and the provision of goods, facilities and services, and education.

²⁵ Protection from direct discrimination and harassment against someone based on their association with another person possessing a protected characteristic already exists in the case of discrimination on grounds of race, religion or belief and sexual orientation, in employment; and on grounds of race in the provision of goods, facilities and services. In the case of harassment based on association, protection also already exists on the ground of sex in employment and the provision of goods, facilities and services.

The Government also considers it appropriate to extend protection against direct discrimination and harassment aimed at people wrongly perceived to possess a protected characteristic, to those areas where it does not already exist²⁶, that is to say: direct discrimination and harassment on grounds of age in the provision of goods, facilities and services; direct discrimination and harassment on grounds of disability in employment and provision of goods, facilities and services; direct discrimination on grounds of sex in employment and provision of goods, facilities and services; and direct discrimination and harassment on grounds of gender reassignment in employment and the provision of goods, facilities and services.

B. Indirect discrimination: definition of cause; test for proving indirect discrimination; formulation of objective justification

The proposal is to have harmonised definitions of indirect discrimination for the following additional areas:

- Sex in areas other than employment or vocational training for over 18s; and
- Race, in relation to nationality and colour.

This will bring the approach in the above two areas in line with the existing approach in all other areas.

C. Victimisation

In line with the 2007 consultation proposals, the Government is seeking to align the definition of victimisation with that of employment law, by removing the requirement for a comparator. By defining victimisation in terms of absolute rather than comparative harm, this should make the law easier to understand and operate

What policy options have been considered? Please justify any preferred option.

- Option 1 – Do nothing
- Option 2 – Standardise Definitions (Final Proposal).

Failure to standardise definitions across all areas of discrimination law will leave businesses and individuals grappling with grey areas of discrimination law. Our final proposal is therefore option 2 as employers and service providers will benefit by having only one set of definitions to deal with. Potential claimants will benefit because they will be able to argue their case without necessarily having to produce quantitative evidence. Employers or service providers will also be subject to the otherwise standard but slightly more stringent test for assessing whether indirect discrimination is justified, that it should be “a proportionate means of achieving a legitimate aim”. This in turn may improve the success rate of cases, as well as increase the number of cases.

When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects?

After implementation and on an ongoing basis, by the Equality and Human Rights Commission. The Government will also review after 5 years.

²⁶ Protection from direct discrimination and harassment against someone wrongly perceived to possess a protected characteristic already exists in the case of discrimination on grounds of race, religion or belief and sexual orientation, in employment and the provision of goods, facilities and services; and on grounds of age in employment. . In the case of harassment, protection also already exists on the ground of sex in employment and the provision of goods, facilities and services.

Summary: Analysis & Evidence

Simplifying and standardising definitions

ANNUAL COSTS		Description and scale of key monetised costs by 'main affected groups'	
One-off (Transition)	Yrs		
£	1	<p>Public Sector - £1,410,871 to £ 2,368,175</p> <p>Private Sector - £9,849,084 to £14.640,398</p> <p>Individuals – £1,041,803 to £2,186,031</p> <p>Voluntary - £174,206 to £191,146</p>	
Average Annual Cost (excluding one-off)			
£ 12,476,018 to £19,385,750	10	Total Cost (PV)	£ 107,389,649 to £ 166,866,459
Other key non-monetised costs by 'main affected groups'			

COSTS

BENEFITS	ANNUAL BENEFITS		Description and scale of key monetised benefits by 'main affected groups'	
	One-off	Yrs		
	£ 0	1	Individuals - Compensation Awards of between £2,178,254 - £2,389,323	
	Average Annual Benefit (excluding one-off)			
	£ 2,178,254 to £ 2,389,323	10		
		Total Benefit (PV)	£18,749,728 to £ 20,566,539	
<p>Other key non-monetised benefits by 'main affected groups'</p> <ul style="list-style-type: none"> Better understanding of the law should reduce inadvertent non-compliance that leads to claims. However it is uncertain whether this will be offset or even outweighed by increased claims resulting from greater awareness of rights. Courts and tribunals should be able to interpret the law more consistently, which may reduce the time and costs of cases and the likelihood of appeal. 				

Key Assumptions/Sensitivities/Risks

Assumes a 2% increase in successful cases; assumes a 2-5% increase in the number of tribunal claims; and assumes an extra 4-6 court cases for race and sex discrimination.

Price Base Yr 2008	Time Period Years 10	Net Benefit Range (NPV) -£ 86,823,110 to -£ 148,116,731	NET BENEFIT (NPV Best estimate) £ See Range
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What is the geographic coverage of the policy/option?	GB
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On what date will the policy be implemented?	[see table p.9]			
Which organisation(s) will enforce the policy?	[see table p.9]			
What is the total annual cost of enforcement for these organisations?	[see table p.9]			
Does enforcement comply with Hampton principles?	N/A			
Will implementation go beyond minimum EU requirements?	N/A			
What is the value of the proposed offsetting measure per year?	£ 0			
What is the value of changes in greenhouse gas emissions?	£ 0			
Will the proposal have a significant impact on competition?	No			
Annual cost (£-£) per organisation (excluding one-off)	Micro	Small	Medium	Large
Are any of these organisations exempt?	No	No	N/A	N/A

Impact on Admin Burdens Baseline (2005 Prices)				
				(Increase - Decrease)
Increase of	£	Decrease of	£	Net Impact
				£

Key: Annual costs and benefits: Constant Prices (Net) Present Value

EVIDENCE

A. extending protection against discrimination and harassment based on association and perception

The European Court of Justice, in its judgment on 17 July 2008 in the case of Coleman v Attridge Law, ruled that the European Framework Employment Directive includes protection from associative direct discrimination and harassment on grounds of disability in the field of employment. That is to say, protection against discrimination includes protection for a non-disabled employee who looks after (is associated with) a disabled person.

Although the judgment specifically related to disability in the employment field, the Government thinks it appropriate to extend protection against discrimination and harassment based on association and perception in employment and non-employment areas where it is not already provided. Those areas are:

- a) direct discrimination and harassment on grounds of disability in employment and vocational training, based on association and perception;
- (b) direct discrimination and harassment on grounds of disability in the provision of goods, facilities and services, management and disposal of premises, education, public functions and private clubs, based on association and perception;
- (c) direct discrimination and harassment on grounds of age in employment and vocational training, based on association;
- (d) direct discrimination and harassment on grounds of age in the provision of goods, facilities and services, public functions and private clubs based on association and perception;

(e) direct discrimination and harassment on grounds of sex in employment and vocational training, provision of goods, facilities and services, management and disposal of premises, education, public functions and private clubs based on association and perception; and

(f) direct discrimination and harassment on grounds of gender reassignment in employment and vocational training, provision of goods, facilities and services, management and disposal of premises, public functions and private clubs based on association and perception; and direct discrimination in education based on association and perception.

B. standardisation of indirect discrimination definition and test

Simplifying and standardising definitions of discrimination and related concepts will benefit employers and service providers as they will only have one definition to deal with. Potential claimants will benefit because they will be able to argue their case without necessarily having to produce quantitative evidence. Employers or service providers will be subject to the slightly more stringent, otherwise standard, test that an indirectly discriminatory provision criterion or practice should be “*a proportionate means of achieving a legitimate aim*”. This in turn may:

- Increase the number of race and sex discrimination cases relating to provision of goods, facilities and services in the courts;
- Increase the number of race (colour and nationality) discrimination cases going to employment tribunals; and
- Increase the success rate of cases going to courts and therefore the value of compensation awarded.

Court Costs

The cost an increased number of discrimination cases relating to provision of goods, facilities and services in the courts was calculated by multiplying the average cost of a discrimination case by the additional number of cases that will be heard as a result of this change.

	Average cost of a court case	X	Additional number of cases (for race and sex)	=	Cost of proposal
LOW ESTIMATE	£1,011	X	8 (4 for Race and 4 for Sex)	=	£8,088
HIGH ESTIMATE	£1,011	X	12 (6 for Race and 6 for Sex)	=	£12,132

This calculation assumes that simplifying and standardising the definitions of discrimination will result in an increase of between 8-12 court cases.²⁷

²⁷ This calculation uses data on the average cost of a court case. These data are taken from the ETS Annual Reports 2005-06 to 2007-08. The figure provided is an average of the court costs for those 3 years.

Tribunal Costs

The cost of an increased number of race (colour and nationality) discrimination cases heard by employment tribunals was calculated by multiplying the average cost for employers, tax payers and individuals for each case by the percentage increase in the number of cases

		Number of Tribunal Cases increased by 2%	-	Number of tribunal cases	=	Increase in number of cases	X	Average cost of a tribunal case	=	Cost of proposal
LOW ESTIMATE	Employer	4004 X 102% = 4084	-	4004	=	80	X	£5393	=	£431,440
	Taxpayer	4004 X 102% = 4084	-	4004	=	80	X	£1,034	=	£82,720
	Individual	4004 X 102% = 4084	-	4004	=	80	X	£1331	=	£106,480
	Total									£620,640

		No of Tribunal Cases increased by 5%	-	No of tribunal cases	=	Increase in number of cases	X	Average cost of a tribunal case	=	Cost of proposal
HIGH ESTIMATE	Employer	4004 X 105% = 4205	-	4004	=	201	X	£5393	=	£1,083,993
	Taxpayer	4004 X 105% = 4205	-	4004	=	201	X	£1,034	=	£207,834
	Individual	4004 X 105% = 4205	-	4004	=	201	X	£1331	=	£267,531
	Total									£1,559,358

This calculation assumes that simplifying and standardising the definitions of discrimination will result in an increase of between 2 and 5% of tribunal cases²⁸.

Compensation Costs & Benefits

The costs and benefits of the increased success rate of tribunal cases of race and sex discrimination in terms of compensation awards were calculated by multiplying the increase (2%) in employment tribunal cases.

Average number of tribunal cases for race and sex	X	2%	=	Increase in cases	X	Average Compensation Award	=	Cost/ Benefit of the proposal
27108 (4004 for race and 23103 for sex)	X	2%	=	542	X	£3,608	=	£1,955,536

The figure of £1,955,536 is the estimated cost to the private/public/voluntary sectors and the benefit to individuals. This calculation is based on the assumption that the proposed change will lead to a 2% increase in the number of successful tribunal cases.²⁹

²⁸ The calculation uses data on the average cost of a tribunal case. These data are taken from the SETA (Survey of Employer Tribunal appeals) 2003. It also uses data on the average number of tribunal cases for race and sex taken from the ETS Annual Reports 2005-06 to 2007-08.

²⁹ This calculation uses data on the average number of tribunal cases for race and sex taken from the ETS Annual Reports 2005-06 – 2007-08 and data on the average value of a compensation award DTI Employment Relations Research Series No 33 - <http://www.dti.gov.uk/files/files11455.pdf?pubpdfload=04%2F1071>

From The Survey of Employment Tribunal Applications 2003, we can estimate the sector composition of employment tribunals. The table below breaks-up compensation awards by this composition to show compensation costs to each sector.

Compensation Costs	Low Est	High Est
Public Sector	£ 527,995	£ 527,995
Private Sector	£1,310,209	£1,310,209
Voluntary Sector	£ 117,332	£ 117,332
Total	£1,955,536	£1,720,850

Familiarisation costs and simplification benefits

In addition to the costs and benefits already calculated, introducing this measure will mean that firms in the private sector as well as public sector organisations will need to familiarise themselves with the new law. The familiarisation costs for the whole Bill have been calculated above. This will be offset in part by the time savings from using simplified guidance. The benefits of this have also been calculated for the whole Bill and are detailed above.

C. removing the comparator in victimisation cases

It is against the law to victimise a person, both in employment legislation and discrimination legislation. But in employment legislation, the victim does not have to show they have been treated worse than another. They simply need to show they have been treated badly; whereas in existing discrimination legislation, they must currently show they have been treated worse than another. The Bill will simplify this by aligning discrimination law with employment law so that in future a person suffering victimisation will simply have to show they have been treated badly.

Victimisation in schools

The Bill will also contain a measure preventing school children from being victimised because of a discrimination complaint made by their parents and/or a sibling. This protection, which already exists for disabled children, will be extended to cover discrimination complaints based on any of the grounds.

Any burdens are likely to be limited to training, updating of guidance manuals and advice to individual teachers, in the rare event that they are the subject of a complaint. Schools will already be familiar with the existing disability discrimination provision.

Overall, there could be a very marginal increase in the number of tribunal cases, either because parents feel more confident in bringing a claim (knowing their child won't suffer as a result) or because of increased victimisation claims where children do suffer as a result of their parent/sibling's action. But unless there is currently a significant hidden problem, this trend should be slight and is not considered to merit reflection in the overall costs figure.

Risks

The risks associated with this set of proposals are that if nothing is changed as indicated, the full benefits of simplifying the law are not achieved, and that clarity is not obtained.

Enforcement

Simplification of itself brings no changes to the enforcement regime.

(a) Direct discrimination and harassment on grounds of disability in employment and vocational training, based on association and perception

The following sets out the anticipated costs and benefits relating to protection against direct discrimination and harassment in employment arising from a person's association with a disabled person or where a person is perceived to be disabled.

Costs of additional tribunal cases (recurring costs)

Single annual cost - 2008/9

	<u>Cost to</u>	Increase in number of cases	X	Average cost of a case	=	Cost of proposal
	Taxpayer	635	X	£1,034	=	£656,590
LOW ESTIMATE	Employer	635	X	£5393	=	£3,424,555
	Individual	635	X	£1331	=	£845,185
	Total					£4,926,330

	<u>Cost to</u>	Increase in number of cases	X	Average cost of a case	=	Cost of proposal
	Taxpayer	1271	X	£1,034	=	£1,314,214
HIGH ESTIMATE	Employer	1271	X	£5393	=	£6,854,503
	Individual	1271	X	£1331	=	£1,691,701
	Total					£9.860.418

The source of the data on the average tribunal cost is the Survey of Employment Tribunal Applications (SETA) 2003 and the average value of a compensation award is taken from the (as was) Department of Trade and Industry Employment Relations Research Series No 33.

The number of additional cases has been calculated using the following steps:

1. The total number of people estimated to be associated with a disabled person was calculated by looking at the number of non-disabled people who either live with, or informally care for, a disabled person.
2. The estimated total number of people who could be perceived to be disabled was calculated by looking at all those who have an illness or impairment which is not limiting and thus are not deemed disabled.
3. The sum of these two groups came to around 13.9 million people, of which 6.5 million are economically active and therefore could be discriminated against with regards to employment.³⁰
4. The proportion of economically active disabled people who brought an employment tribunal case (around 0.2%) was then applied to those likely to be covered by the extended provisions i.e. the group mentioned above. This produces an estimate of around 13,000 possible cases for non-disabled people on the grounds of disability.
5. It is assumed that 20% of disability-related employment tribunal cases are due to direct discrimination or harassment and thus would be relevant to this extended group, unlike issues surrounding an employer's failure to make reasonable adjustment. This produces a figure of 2,600.
6. It is assumed for the high estimate that non-disabled people covered under association and perception are half as likely to be discriminated against as disabled people on grounds of disability (without rounding, this figure comes to 1271). For the low estimate this assumption drops to a quarter (again, without rounding this figure comes to 635).

³⁰ Source: Family Resource Survey 2006/7

Compensation

2008/9

	Compensation Average award (tribunal)	X	Additional number successful Cases	=	Total
Low Estimate	£3608	X	13	=	£46,904
High Estimate	£3608	X	25	=	£90,200

From The Survey of Employment Tribunal Applications 2003, we can see the sector composition of employment tribunals. The table below shows compensation costs to each sector, based on the proportion of successful cases.

Compensation Costs	Low Est	High Est
Public Sector	£ 12,664	£ 24,354
Private Sector	£ 30,488	£ 58,630
Voluntary Sector	£ 3,752	£ 7,216
Total	£ 46,904	£ 90,200

This is both a cost to the defendant/respondent and a benefit to the claimant/appellant.

- The average level of compensation has been taken from Employment Tribunal and EAT Statistics 2006/7.
- The additional number of successful cases has been calculated by multiplying the additional number of cases calculated above by 2% which is the average percentage of disability discrimination cases over 2006/7 that were successful.³¹
- It is assumed there is no difference in probability that a non-disabled person has a successful ET case compared to a disabled person. Nor is there a difference in the amount of compensation received by a disabled person and non-disabled person.

(b) Direct discrimination and harassment on grounds of disability in the provision of goods, facilities and services, management and disposal of premises, education, private clubs and public functions based on association and perception

The following sets out the anticipated costs and benefits relating to protection against direct discrimination and harassment arising from a person's association with a disabled person, or where a person is perceived to be disabled, in the provision of goods, facilities and services, premises, education, private clubs and public functions.

Compensation awards are deemed to be both a cost (to the defendant/respondent) and a benefit (to the claimant/appellant)

Costs of additional court cases (recurring costs)

	Average cost of a court case	X	Additional number of cases	=	Annual cost of proposal
Low estimate	£1,011	X	5	=	£5,055

³¹ Employment Tribunal and EAT Statistics 2006/7:

<http://www.employmenttribunals.gov.uk/Documents/Publications/AnnualStatistics0607.pdf>.

High estimate	£1,011	X	10	=	£10,110
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Assumptions:

- The number of discrimination cases on grounds of disability in the provision of goods, facilities and services, education, private clubs and functions of public bodies is 16.³²
- This applies to all disabled people in the UK which is estimated to be around 10.7 million people³³. The number of people covered under association and perception is estimated to be around 13.9 million people.³⁴ Therefore if people covered under association or perception are as likely to be discriminated against as a disabled person then around a further $(13.9/10.7 \times 16) = 20$ cases could be expected to go to court.
- However, it has been assumed that a high estimate for the likelihood of being discriminated against on the grounds of disability for people covered under association and perception compared to disabled people is $\frac{1}{2}$ and a low estimate is $\frac{1}{4}$. Therefore a high estimate for the number of additional cases is $(20 \times \frac{1}{2}) = 10$ and a low estimate is $(20 \times \frac{1}{4}) = 5$.

Compensation (recurring)

	Average level of compensation per court case	X	Additional number of successful cases	=	Annual Level of compensation given
Low estimate	£3,250	X	5	=	£16,250
High estimate	£3,250	X	10	=	£32,500

From the Survey of Employment Tribunal Applications 2003, we can estimate the sector composition of employment tribunals. The table below shows compensation costs to each sector:

Compensation Costs	Low Est	High Est
Public Sector	£ 4,388	£ 8,775
Private Sector	£ 10,563	£ 21,125
Voluntary Sector	£ 1,300	£ 2,600
Total	£16,251	£32,500

The former Disability Rights Commission noted that nearly all of the cases that it supported in this field were successful. Therefore it has been assumed that all new cases will lead to compensation.³⁵

There is no central source of data on the average level of compensation given in cases dealing with goods, facilities and services. However, the Equality and Human Rights Commission noted that a recent case dealing with discrimination on the grounds of disability and the provision of goods, facilities and services led to £6,500 of compensation which was the 'highest of its kind'.³⁶ Therefore this has been taken as a maximum value with a crude average being calculated by halving this figure (£3,250).

This annual level of compensation is deemed to be a cost to the defendant/respondent and a benefit to the claimant/appellant.

³² Source: Improving Protection From Disability Discrimination, November 2008, Office for Disability Issues.

³³ Source: Family Resources Survey 06/07

³⁴ This refers to people who either care for, or live with, a disabled person or have an illness or impairment that is not limiting according to the Family Resources Survey 06/07.

³⁵ Source: Improving Protection From Disability Discrimination, November 2008, Office for Disability Issues.

³⁶ Source: <http://www.equalityhumanrights.com/en/newsandcomment/Pages/landmarkaccessibilityruling.aspx>

(c) Direct discrimination and harassment on grounds of age in employment and vocational training based on association.

What are the policy objectives and the intended effects?

To protect employees and people undergoing vocational training from unfair age discrimination by association. To provide clarity for employers and providers of vocational training on which practices would be covered by this form of discrimination. It will be important for clear guidance to be available on the use of “objective justification” to justify differential treatment in this area.

What policy options have been considered? Please justify any preferred option.

- Option 1 Do nothing – this is not possible as the UK would risk infraction proceedings and other legal challenges, following the European Court of Justice ruling on Coleman v Attridge Law.
- Option 2 In the case of childcare assistance, leave employers and providers of vocational training to ‘objectively justify’ their actions, if challenged; or
- Option 3 Provide a specific exception for childcare assistance (this is the childcare assistance option that has been adopted)

Estimated overall costs

Option 2

One-off: negligible
Annual: £4.2 million (from external dispute resolution and informal dispute resolution)
Net present value over 10 years: £36.4 million

Key non-monetised costs: potential withdrawal of childcare assistance schemes would be detrimental to employees and trainees who rely on such assistance.

Option 3

One-off: negligible
Annual: £2.1 million (from external dispute resolution and informal dispute resolution)
Net present value over 10 years: £18.4 million

Evidence

Strategic overview

Existing Government initiatives

Direct age discrimination in employment and vocational training was prohibited in the UK in 2006³⁷. The European Court of Justice ruling in the Coleman case concluded that ‘direct discrimination’ also includes discrimination that could be related to the ‘protected characteristics’ of another person who is associated with an individual. For example a parent may feel in some sense that their employer is discriminating against them because of their association with their child.

The UK must now prohibit ‘age discrimination by association’.

³⁷ The Employment Equality (Age) Regulations 2006 came into force on October 2006. Amendment Regulations 2008 – SI 2008 No 573 – came into force on 6 April 2008.

As the effect of the European Court of Justice ruling is that it is direct discrimination for an employer to treat an employee less favourably on grounds of the age of an employee's child, there is a potential impact on the provision of facilities, such as childcare, where access is limited by reference to the child's age. For example, an employer may provide a crèche for employees' children aged two and under, or a holiday club open only to employees' children aged between 5 and 9. In each of these examples, an employee whose child does not fall within the specified age group will be treated less favourably than an employee whose child is within that age group.

Options identification

Option 1 – 'Do nothing' – It is not possible for the UK to avoid implementing the European Court of Justice's ruling as this would result in infraction proceedings and the financial risk of damages. This option is not explored further in this impact assessment.

Option 2: - In the case of childcare assistance, leave employers and providers of vocational training to 'objectively justify' their actions.

Objective justification means that a difference in treatment on grounds of age must satisfy the following conditions:

- (a) the treatment is objectively and reasonably justified by a legitimate aim and
- (b) the means of achieving that legitimate aim must be appropriate and necessary.

In principle it should be possible for an employer to justify differential age limits for childcare facilities as a proportionate means of achieving a legitimate aim, depending on the circumstances. The provision of childcare facilities can be said to pursue the legitimate aim of integrating employees who are parents or who have childcare responsibilities by enabling such employees better to co-ordinate such responsibilities with their work duties. For example, the younger the child, the greater the degree of supervision needed in the facility and, arguably, the greater the need for the facility to be close to the parent's place of work. Therefore, children below school age will need full day-time care, whereas children at school may only need such care during school holidays.

However, employers and childcare providers may be concerned at the uncertainty of having to justify individual arrangements in this way. This is why we have explored and adopted option 3 which produces a specific exemption for childcare assistance,

Benefits

Prohibiting age discrimination by association will provide protection to employees, students and trainees from being unfairly discriminated against on this basis.

Option 3: - A specific exemption for childcare assistance provided by employers and providers of vocational training.

This should include:

- Any childcare facility, provided by the employer or by a childcare provider chosen by the employer;
- Any facility whereby the employer funds or contributes to the funding of childcare for the employee's children, for example childcare vouchers;
- Any facility where the employer gives the employee leave for the purpose of childcare.

We do not think that the exception should apply to other employee benefits which do not have a sufficiently close relationship with the provision of childcare.

Analysis of options

Option 2 – In the case of childcare assistance, leave employers and providers of vocational training to ‘objectively justify’ their actions

Costs to employers – resolving disputes

Under option 2 employers and providers of vocational training would be required to objectively justify their actions, if challenged. We assume that employers and providers of vocational training will in any case as an organisation run through the reasoning behind any scheme that involves an age association element. For example a business may legitimately conclude, after considering the cost of running a nursery, the profile of its employees and likely usage, that it is appropriate to provide a scheme for children up to the age of 9. And hence firms will be running through the logic of the objective justification test even in the absence of any legislative change.

However, additional costs will fall on employers and providers of vocational training if they are challenged by an employee or student because an individual believes they are being discriminated against through association with another because of age. Costs will be incurred for employers and providers of vocational training in resolving the dispute. We assume that disputes can be resolved both informally (internally) and formally through an employment tribunal case.

In the last quarter of 2008 around 1.3%³⁸ of main jurisdictional employment tribunal complaints fell under the age discrimination heading. A single employment tribunal claim can be brought under more than one heading (for example age and sex discrimination). We assume that 1.3% of the total accepted claims are because of age discrimination being the main factor. In 2007/08 there were in total 189,397 accepted claims of which we assume 2,519 were primarily because of age discrimination. We further assume that the number of accepted claims that will result from the introduction of age discrimination by association will be equivalent to one-third of current accepted claims brought primarily under age discrimination. This equates to an estimated 840 additional accepted claims that result from introducing age discrimination by association. The above assumptions can be thought of as illustrative in that they provide a broad order of magnitude of the potential scale of disputes. The estimated number of employment tribunal claims may also be an overestimate as some claimants may add the age discrimination by association category to another claim that they would have made under another jurisdiction.

Using data from the Survey of Employment Tribunal Applications (SETA)³⁹ we estimate that on average the cost of an employment tribunal case is £4,980. The total cost of external dispute resolution therefore equates to around £4.2 million (840 x £4,980).

We assume illustratively that an equal number of individuals (840) seek informal resolution to their grievances and this involves 2 hours of a manager’s time and 1 hour of an employee’s time. The total cost of resolving disputes informally equates to around £46,000⁴⁰ (840 x £55.84).

Cost to employees and people undergoing vocational training

Any withdrawal of childcare schemes as a result of employers or training providers being deterred by the need to objectively justify such schemes in the event of a challenge could have a significant effect on employees, students and trainees, and potentially the efficiency and productivity of the business or training institution. We have not sought to quantify this effect.

Administrative costs

We assume that employers and providers of vocational education will carry out some of the ‘objective justification test’ reasoning when introducing age associated schemes as a necessary consideration when deciding on the level and coverage of such schemes. Hence the additional

³⁸ In 2008 Q4 there were 69,616 total jurisdictional complaints of which 926 or 1.3% had age discrimination as a main jurisdiction.

³⁹ Survey of Employment Tribunal Applications 2003

⁴⁰ The median gross hourly wage of managers and senior officials (SOC code 1) is £17.77 and £10.61 for all employees (source: Annual Survey of hours and earnings 2008). We add 21% to these hourly wages to account for non-wage labour costs.

administrative burden placed on employers and providers of vocational education is assumed to be negligible.

Implementation costs

Employers and providers of vocational education will need to become familiar with the new law. We assume that on aggregate these costs will be negligible and/or have subsumed in the familiarisation costs for the Bill as a whole.

Option 3: - Provide a specific exemption for employers and providers of vocational education in the area of childcare assistance

According to the 2004 Workplace Employers Relations Survey (WERS) three per cent of all workplaces provided a workforce nursery, and 6 per cent of all workplaces gave financial help with childcare. Eight per cent of all workplaces provided one or both of these arrangements. In the public sector, 18 per cent of workplaces provided childcare assistance compared with 5 per cent in the private sector. We assume that these proportions are still valid in 2009. In the absence of further evidence we assume that 18 per cent of institutions that provide vocational training also provide 'childcare assistance'.

In 2007 BERR⁴¹ estimated that there were around 1.2 million UK private sector enterprises which employ at least one employee and hence would be affected by this policy change..

Statistics for the 2006/07 academic year show that in the UK there were 124 universities, 45 other higher education institutions and 459 further education institutions or colleges. For the purposes of this impact assessment a potential pool of 638 institutions are assumed to provide vocational training, of which we assume 18 per cent will provide some form of 'childcare assistance'.

We therefore assume 5 per cent of private sector firms (a total of 60,936) and 18 per cent of providers of vocational training (a total of 115) organisations provide 'childcare assistance'.

Costs to employers – resolving disputes

We assumed in option 2 that there would be an additional 840 employment tribunal claims as a result of prohibiting age discrimination by association. A specific exemption on childcare assistance would result in fewer accepted employment tribunal claims (as the scope of the law will be narrower). We assume illustratively that the total numbers of accepted employment tribunal claims will halve (compared to option 2) to 420 employment tribunal claims, resulting in a total cost of external dispute resolution of around £2.1 million.

The cost of internal informal dispute resolution is assumed to be the same as under option 2, because an exemption will not prevent challenges from employees or others which would still need to be resolved internally only. For simplicity we use the same assumptions used in option 2 to estimate a cost of around £46,000 to resolve disputes internally and informally.

Administrative costs

Same as option 2

Implementation costs

Same as option 2

Benefits

Prohibiting age discrimination by association will provide protection to employees, students and trainees from being unfairly discriminated against on this basis.

⁴¹ <http://stats.berr.gov.uk/ed/sme/>

In addition the risk of employers and vocational training providers withdrawing schemes will be minimised if childcare assistance is exempted.

Risks

Without an exemption for childcare assistance there is a risk that employers and vocational training providers may withdraw completely their schemes if they want to avoid a potential legal challenge.

Enforcement

The Employment Tribunal Service would be responsible for hearing claims under the jurisdiction of age discrimination by association.

1. Summary table of costs and benefits

		Option 2	Option 3
Costs	External dispute resolution (cost to employers)	£4.2m	£2.1m
	Informal dispute resolution (cost to employers)	£46,000	£46,000
	Withdrawal of childcare assistance (cost to employees and users of vocational training)	Not quantified	Not quantified
Benefits	For employees and users of vocational training	Prohibition of unfair age discrimination by association	Prohibition of unfair age discrimination by association

(Figures have been rounded and totals may not sum to individual parts due to rounding.)

Monitoring and evaluation

The number of Employment Tribunal claims can be monitored using statistics from the Tribunal Service.

BERR conducts periodic benchmark surveys such as the Fair Treatment at Work Survey which can be used in the future to monitor employee rights and disputes in this field.

(d) Direct discrimination and harassment on grounds of age in the provision of goods, facilities and services, public functions and private clubs, based on association and perception

COSTS

Familiarisation Costs (one-off cost only occurring in Year 1)

Overall familiarisation costs have been estimated on page 12. It is not considered that the extension of association protection in this area will add to these costs which will be incurred anyway.

Costs of additional court cases (recurring costs)

	Average cost of a court case⁴²	X	Additional number of cases	=	Cost of proposal
Low estimate	£1,011	X	5	=	£5,055
High estimate	£1,011	X	14	=	£14,154

In reaching an assumption regarding the number of additional cases we have taken the number of cases of age discrimination in this area which are assumed for Year 1 (11 to 33, see Annex 1) and assume that it will increase by possibly 50% (so 5-14 additional cases), as potentially the number of additional cases may increase as people become more familiar with the new law and their options.

Compensation costs

	Increase in cases	X	Average Compensation Award	=	Cost/ Benefit of the proposal
Low estimate	5	X	£3,608	=	£18,040
High estimate	14	X	£3,608	=	£50,512

The above table assumes all the additional cases will be successful.

It should be noted that the resulting figures are an estimated cost to the service provider and a benefit to individuals.

The average compensation award is obtained from BERR Employment Relations Research Series No.33.

(e) Direct discrimination and harassment on grounds of sex in employment and vocational training, provision of goods, facilities and services, management and disposal of premises, education, public functions and private clubs, based on association and perception

Benefits

The main benefit of this and related measures will be more consistent, simpler law for individuals, practitioners, employers and service providers. The law will also be easier to interpret and administer by courts and tribunals. Protection will be uniform across all the relevant fields. It is difficult to put a monetary value on this, but it would not be unreasonable to assume the benefits could balance out the relatively low estimated costs in the medium to long term.

Assumptions

The inclusion of association and perception in this area is estimated to lead to between a 0.5% (low) and 1% (high) increase in sex discrimination cases taken to tribunal. This is on the basis that there may be some speculative or test cases in the first year or two but that the marginal impact of this change will settle down to well short of 1% in subsequent years.

⁴² <http://www.official-documents.co.uk/document/cm65/6565/6565.pdf>

Since the number of court cases involving sex discrimination in provision of goods, facilities or services is in single figures per year, a nil increase has been assumed in that field as a result of these proposals (since 0.5% of 9 is effectively nil). The same applies in education.

These estimates include harassment cases.

Familiarisation costs are estimated for the Bill as a whole.

Calculation of tribunal costs

The average number of sex discrimination cases before tribunals (which includes direct and indirect discrimination, harassment and victimisation and often, in the case of direct discrimination and harassment, combined cases) for the 3 years to 2006/07 is 18,043 [Source: Ministry of Justice]. As these are not broken down according to type of claim, we have assumed that 60% relate to direct discrimination and/or harassment claims, 30% to indirect discrimination claims and 10% to victimisation claims. As only direct discrimination and harassment claims (sex discrimination) will increase as a result of the perception and association changes, this results in 10826 (70%) cases to which calculations have been applied.

So 0.5% of this figure results in 54 cases and 1% produces 108 cases

Average costs for sex discrimination cases have been based on the figures for race discrimination cases, the assumption being that they broadly equate.

Calculation of costs of additional cases

<u>Cost to</u>	Average cost (£) x 1% Increase in cases (high) = Additional high cost (£) or Low cost (£) (0.5%)			
Taxpayer	910	108	98280	49140
Employer	4,900	108	529,200	264,600
Individual	1171	108	126,468	63234

Compensation awards

The Survey of Employment Tribunal Applications 2003, the latest available, shows that 2% of discrimination cases are successful at tribunal, and the average award is £3608. Therefore the annual increase in awards would be:

$$£3608 \times (108 \text{ cases} \times 2\%) = £6305 \text{ (high) or}$$

$$£3608 \times (54 \text{ cases} \times 2\%) = £3608 \text{ (low)}$$

From SETA 2003, we can also estimate the sector composition of employment tribunals. The table below shows compensation costs to each sector, according to the estimated number of successful cases (2% of cases brought):

Compensation Costs	Low Est	High Est
Public Sector	£857	£1,715
Private Sector	£2,064	£4,128
Voluntary Sector	£254	£508
TOTAL	£3608	£6350

(f) Direct discrimination and harassment on grounds of gender reassignment in employment and vocational training, provision of goods, facilities and services, management and disposal of premises, public functions and private clubs, based on association and perception; and direct discrimination on grounds of gender reassignment in education based on association and perception

Assumptions

- More people will be protected who are perceived to be undergoing gender assignment. We estimate this pool will be thirty-two times larger than the currently protected transsexual population.
- A review of tribunal and court cases indicated the types of scenarios that could arise – for example, action over dress codes, and exclusion from premises and harassment from simply being ‘other’.
- No ready data are available on the number of cases which could be brought by association. There is no apparent occasion of association being commented on in Employment Tribunal cases. In the nine months when protection has already existed in provision of goods, facilities and services no case has been recorded. Although the likelihood is minimal it is not unknown⁴³.
- There is no breakdown of the number of employment cases on the ground of gender reassignment. As protection was only extended to the provision of goods, facilities and services in April 2008, there is no record of cases yet; so any increase is likely to be minor.
- We estimate the number of transsexual people to be around 6,800; forming 0.014% of the adult GB population. As transsexual people are more likely to be discriminated against compared with the rest of the population (say 5 times more likely), a rate of 0.07% of sex discrimination cases is estimated for this population.
- While the pool of people covered by the extension of perception is much larger than the core group, it is not expected that there will be an equivalent increase in the number of cases. Employers and some providers are likely to err on the side of caution, and there is little evidence of discrimination in these groups (mainly in cases of transvestites accessing goods, facilities and services and coming into conflict with dress codes). An upper estimate of 10%⁴⁴ of the expanded population may be affected (giving x3 upper limit). So an estimated increase will be between 50% (low) to 300% (high) of additional cases on the grounds of gender reassignment.
- The actual incidence of association is estimated to be so small it can be subsumed within the increased costs for perception.
- It has to be emphasized that this is a small population and no robust survey has been carried out to estimate incidence. Consequently assumptions are best guesses.

Court Costs

⁴³ <http://www.dailymail.co.uk/news/article-513196/Weve-run-pizza-What-staff-Pizza-Hut-allegedly-told-group-gay-men-turned-mini-skirts-high-heels.html>

⁴⁴ There are no data available on these groups, we have therefore estimated that the number of androgynous, feminine looking men, transvestites etc in the population is some 32 times larger than the transsexual population. Our upper estimate is that 10% of this increased population may take action - 3 times larger (rounded off 3.2) is 300% additional cases.

The cost of an increased number of discrimination cases due to extending gender reassignment protection in the courts was calculated by multiplying the average cost of a discrimination case by the additional number of cases that might be heard as a result of this change.

Very few court cases are envisaged. Gender reassignment protection against discrimination and harassment has existed in goods, facilities, services and premises since April 2008, but no court case is known. The low estimate is one while the high estimate is two. Such cases are likely to be taken early on and will act as precedents.

	Average cost of a court case	X	Additional number of cases (for gender reassignment)	=	Cost of proposal
LOW ESTIMATE	£1,011	X	1	=	£1,011
HIGH ESTIMATE	£1,011	X	2	=	£2,022

Tribunal Costs

The average number of sex discrimination cases per year 2005/6-2007/8 was 23,103. The estimated percentage of cases brought on the ground of gender reassignment is 0.07%; resulting in 16 cases per year. Extending protection to perception may increase numbers by an additional 8 (low: +50%) to 49 (high: +300%) per year (this is an estimated increase of 0.03% (low) to 0.21% (high) in overall number of tribunal cases). As indicated above, we are including “association” cases in these estimates, as well as “perception” cases.

		Increase in number of cases	X	Average cost of a tribunal case	=	Cost of proposal
LOW ESTIMATE	Employer	8	X	£5,393	=	£ 43,144
	Taxpayer	8	X	£1,034	=	£ 8,272
	Individual	8	X	£1,331	=	£ 10,648
	Total					£ 62,064

		Increase in number of cases	X	Average cost of a tribunal case	=	Cost of proposal
HIGH ESTIMATE	Employer	49	X	£5,393	=	£ 264,257
	Taxpayer	49	X	£1,034	=	£ 50,666
	Individual	49	X	£1,331	=	£ 65,219
	Total					£ 380,142

Compensation

The average award is £3,608. Multiplying by 8 or 49 this results in an overall award level of £28,864 (low) to £176,792 (high)

Familiarisation costs

These are subsumed in the overall calculation.

What is the problem under consideration? Why is government intervention necessary?

Current legislation does not cover age discrimination outside the work place, although there is evidence of such discrimination in a number of areas. Government intervention is necessary to ensure that there is no unjustified age-based differential treatment in the provision of goods, facilities and services and the exercise of public functions.

What are the policy objectives and the intended effects?

Objective

- To ensure that all people aged 18 or over are treated fairly on grounds of age, by those providing goods, facilities and services and carrying out public functions.

Intended effects

- Prevent age discrimination against all people aged 18 or over.
- Improve access to goods, facilities and services.
- Ensure that older people are treated fairly and are able to play a full part in society.

What policy options have been considered? Please justify any preferred option.

Option 1: Do nothing.

Option 2: Prohibit all differential treatment of people aged 18 or over providers of goods facilities and services and those exercising public functions, except where it can be objectively justified.

Option 3: Prohibit all differential treatment of people aged 18 or over by providers of goods facilities and services and those exercising public functions, except where it can be objectively justified, and provide a power to make provision in the legislation setting out specific exceptions to the prohibition (to be exercised after consultation).

When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects?

The details of the policy are being reviewed following the summer 2009 age consultation (Equality Bill making it work - Ending age discrimination in services and public functions)⁴⁵ and the Department of Health's national health and social care age review. There will be further consultation on draft secondary legislation in 2010 and there will be a Government response to the national health and social care age review and a subsequent consultation accompanied by an impact assessment. Further consultation will be undertaken, prior to commencement of the prohibition and the introduction of secondary legislation setting out exceptions. A separate Impact assessment will be prepared for that consultation.

Annex C - Age discrimination in goods, facilities and services and the exercise of public functions

Department GEO	Age discrimination in the provision of goods, facilities and services and the exercise of public functions	
Stage: Introduction House of Lords	Version: 4	Date: December 2009
Related Publications: (1) Discrimination Law Review: Proposals for an Equality Bill for Great Britain (June 2007). (2) Proposals to simplify and modernise the law: Initial RIA (June 2007). (3) Framework for a Fairer Future (June 2008) and (4) the Government response to the consultation (July 2008) (5) Equality Bill Impact Assessment (Introduction) 27 April 2009		

Available to view or download at: <http://www.equalities.gov.uk>

Contact for enquiries: Gill Rendall

Telephone: 0303 444 1204

Current legislation does not cover age discrimination outside the work place, although there is evidence of such discrimination in a number of areas. Government intervention is necessary to ensure that there is no unjustified age-based differential treatment in the provision of goods, facilities and services and the exercise of public functions.

What are the policy objectives and the intended effects?

Objective

- To ensure that all people aged 18 or over are treated fairly on grounds of age, by those providing goods, facilities and services and carrying out public functions.

Intended effects

- Prevent age discrimination against all people aged 18 or over.
- Improve access to goods, facilities and services.
- Ensure that older people are treated fairly and are able to play a full part in society.

What policy options have been considered? Please justify any preferred option.

Option 1: Do nothing.

Option 2: Prohibit all differential treatment of people aged 18 or over providers of goods facilities and services and those exercising public functions, except where it can be objectively justified.

Option 3: Prohibit all differential treatment of people aged 18 or over by providers of goods facilities and services and those exercising public functions, except where it can be objectively justified, and provide a power to make provision in the legislation setting out specific exceptions to the prohibition.

When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects?

The details of the policy are being reviewed following the summer 2009 age consultation (Equality Bill making it work - Ending age discrimination in services and public functions) and the Department of Health's national health and social care age review published on 22 October 2009. The Department of Health will be consulting, with an impact assessment, on the national health and social care age. There will be a further consultation which will be undertaken in 2010 on the secondary legislation setting out the exceptions for health and social care, financial services and other sectors.

Prohibition of age discrimination in the provision of goods, facilities and services and the exercise of public functions

Policy Option:
3

Prohibition of age discrimination in the provision of goods, facilities and services and the exercise of public functions

COSTS	ANNUAL COSTS		<p>Description and scale of key monetised costs by 'main affected groups'</p> <p>Further cost-benefit work will be done prior to producing a Government response to the recent consultation and Ministers deciding how to implement the policy.</p> <p>Research carried out to date is inconclusive in the two areas most likely to be affected: financial services and health and social care.</p>	
	One-off (Transition)	Yrs		
	£	1		
	Average Annual Cost (excluding one-off)			
	£ -	10		
		Total Cost (PV)	£ -	
Other key non-monetised costs by 'main affected groups'				

BENEFITS	ANNUAL BENEFITS		Description and scale of key monetised benefits by 'main affected groups' Further cost-benefit work will be done prior to producing a Government response to the recent consultation and Ministers deciding how to implement the policy.			
	One-off	Yrs				
	£ -	5				
	Average Annual Benefit (excluding one-off)					
	£ -	10	Total Benefit (PV)	£ -		
Other key non-monetised benefits by 'main affected groups'						

Key Assumptions/Sensitivities/Risks

Price Base Yr 2008	Time Period Years 10	Net Benefit Range (NPV) £-	NET BENEFIT (NPV Best estimate) £-
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What is the geographic coverage of the policy/option?	Great Britain
On what date will the policy be implemented?	
Which organisation(s) will enforce the policy?	County Courts, EHRC
What is the total annual cost of enforcement for these organisations?	£ 0
Does enforcement comply with Hampton principles?	Yes
Will implementation go beyond minimum EU requirements?	N/A
What is the value of the proposed offsetting measure per year?	£ 0
What is the value of changes in greenhouse gas emissions?	£ 0
Will the proposal have a significant impact on competition?	No
Annual cost (£-£) per organisation (excluding one-off)	Micro Small Medium Large
Are any of these organisations exempt?	No No N/A N/A

Impact on Admin Burdens Baseline (2005 Prices)					
					(Increase - Decrease)
Increase of	£	Decrease of	£	Net Impact	£

Key: Annual costs and benefits: Constant Prices (Net) Present Value

The Issue

The June 2007 consultation asked for evidence of unfair age discrimination, sought views on whether legislation would be the best way of tackling such discrimination and on how legislation could be targeted, and invited general comments.

The majority (around 80 per cent) of the nearly 750 responses to the Equality Bill consultation on this issue were in favour of legislation to tackle unjustifiable age based differential treatment in these fields.

The consultation responses provided many examples of age discrimination, which largely reflected the areas of concern which the consultation paper had outlined, with health and social care and financial services the most frequently mentioned.

The consultation response can be seen at:-

<http://www.equalities.gov.uk/PDF/EqBillGovResponse.pdf>

It is wrong if people are treated in a discriminatory way purely because of their age.

Objectives

- Provide legal protection against unjustifiable age-based differential treatment as is currently available for the other equality strands;
- Provide protection from age discrimination against people aged 18 or over when providing goods, facilities and services and exercising public functions.
- Allow the differential provision of products or services for people of different ages where this is justified.
- Provide an individual with the right of redress against unjustifiable age-based differential treatment.
- Reinforce the message that ageism is not acceptable.

Further consultation

The Bill will prohibit unjustifiable age-based differential treatment in the provision of goods, facilities and services and the exercise of public functions and will provide a power to make exceptions. A public consultation (Equality Bill making it work - Ending age discrimination in services and public functions) on the proposals for exceptions from the age ban was undertaken from 29 June 2009 to 30 September 2009 and the Department of Health commissioned a national review on the implementation of the ban on health and social care, which reported in October 2009. Responses to the consultation are still being analysed and the report of the health and social care review is also being considered. This impact assessment still discusses in general terms the potential impact of prohibiting age discrimination. It is not possible to present firm conclusions at this stage, as it will depend on the outcome of further work and consultation. We are committed to revising the Impact Assessment at Royal Assent to better reflect the outputs from the consultation on proposals for age exceptions, the health and social care review and the Department of Health consultation on the review.

Options identification

Option 1: Do nothing.

Option 2: Prohibit all age discrimination (i.e. different treatment that is not a proportionate means of achieving a legitimate aim) against people aged 18 or over when providing goods, facilities and services and exercising public functions.

Option 3 (recommended): Prohibit unjustifiable age based differential treatment against people aged 18 or over, but do not prevent the differential provision of products or services for people of different ages where this is justified or beneficial, taking a power to specify in secondary legislation conduct etc that does not breach the prohibition, these are known as exceptions.

Option 1 has been rejected, as the consultation responses presented a significant amount of evidence that people are treated in a discriminatory way because of their age when accessing services and in the exercise of public functions, and only legislation to ban age discrimination will provide individuals with legal redress where discrimination occurs. However, option 2 may not be desirable as it might discourage service providers from offering differential provision of services even where that is justified or beneficial, e.g. free bus passes and priority flu vaccinations for the over-60s. Therefore Option 3 is the recommended option.

The recently concluded 2009 age consultation was accompanied by an impact assessment⁴⁶; this contains all the data we have to date and further work is taking place to provide more detailed figures for Royal Assent and the proposed consultation on actual draft legislation for the age discrimination ban. The timetable will be firmed up and exceptions determined following consideration of the consultation responses and the health and social care review.

Analysis of Costs & Benefits

The areas where age discrimination appears to be most widespread and of greatest concern are financial services and health and social care.

Financial Services

Evidence and analysis - Financial Services market

Financial services represent 7.5% of the GDP⁴⁷. There are 22,033 UK authorised financial service firms. There are also 6,291 EEA authorised financial service firms operating in the UK. Financial services include banking, mortgages and related products, savings, credit and insurance. In Great Britain many of the firms providing financial services specialise in particular products or markets. Financial services firms often use age criteria to design, underwrite, price or market products or services. They use age as an indicator of changing needs and risks, linked to how people's experience, financial obligations, family circumstances, employment, health and risk of mortality vary over time. They do this partly because looking at each individual's exact circumstances (or "functional age") may be costly or intrusive. Instead, firms use a person's age (or "chronological age") to estimate his or her state of health and how he or she behaves; and how likely he or she is as a result, for example, to claim on insurance or fail to keep up loan repayments (or their level of "risk"/ the level of "actuarial risk" they present).

The effect of using age in this way is different for different age groups. For example, older people tend to get better deals on loans (because they have better credit ratings as a result of a better credit history) but often pay more than younger people for travel insurance, as statistics show that 75 year-olds in 2007 were around four times more likely to make a travel insurance claim than 35 year-olds, and 85 year-olds were over eight times more likely to make a claim.⁴⁸

The consultation document 'A Framework for Fairness: Proposals for a single Equality Bill for Great Britain'⁴⁹ noted that some people were unhappy about how age is used in financial services products. For example, there was a concern that older people buying insurance may be charged premiums, which do not fairly reflect the underlying risk they present and that some insurers did not offer some types of cover to older people. Many people responding to our 2007 consultation exercise were concerned about age discrimination in financial services. Mostly this was about older people's experience of travel and car insurance (although there were some examples about other financial services). For example, Age Concern cited surveys suggesting that those aged 75 and over are significantly more likely to be refused a quote for car or travel insurance than people aged 30 to 49 and noted that premiums can rise sharply with age. It was clear from the consultation that older people do not feel they are being treated fairly when accessing financial services products.

⁴⁶ <http://www.equalities.gov.uk/pdf/13512%20GEO%20Impact%20Assessment%203rd.pdf>

⁴⁷ Pre-Budget Report 2008, pg. 44, http://www.hm-treasury.gov.uk/d/pbr08_complereport_1721.pdf

⁴⁸ Oxera research 2009

⁴⁹ <http://www.communities.gov.uk/documents/corporate/pdf/325332.pdf>

Insurers, however, argued that they offer a range of products for customers of different ages and that those products offer customers a fair deal. They said that they use age to decide what price to charge for insurance and what cover to offer to reflect how likely someone is to make a claim and to ensure fairness, competition and choice for customers of all ages. They said that plenty of insurance policies etc were available, from a wide choice of firms, for most people; and that people of every age could find the services they need. However, they accept that more can be done to provide a better service to older people⁵⁰.

The Government established a working group of financial services representatives and age sector organisations to analyse and present evidence of the implications and impacts of making age discrimination unlawful under certain circumstances. The Group's final report was published in October 2008. The Group provided a useful forum for debate and was successful in reaching agreement between all parties on a number of areas for possible legislative options:

- objective justification – legislation should not prevent objectively justified differential treatment or regulatory initiatives;
- age-based pricing – age-based differences in treatment should be a proportionate response to increased risks;
- proportional pricing – there should not be a direct mathematical link between data tables and pricing excluding other factors but interpretation should be 'proportionate';
- type of acceptable evidence – should be defined relatively widely and not exclude predictive adjustments to data in financial services; and
- age bands – should be permitted, but not clear how wide they should be.

The report quotes age sector organisations who suggest there would be a cost of doing nothing, for those over 65 who do not go on holiday because they can not obtain travel insurance, of £96m to £170m per year; and for those who cannot drive because they cannot find motor insurance, of £35m to £1,010m per year. By removing minimum and maximum age limits, age sector organisations suggest that older customers would save £4.5m annually in search costs, and that £131m to £1,180m of consumer detriment would be removed for those over 65 in motor and travel insurance alone. In contrast, financial services representatives estimate that removal of minimum and maximum age limits in motor and travel insurance would cost around £482m in the first year with diminishing ongoing costs and for the long-term insurance sector, one-off costs could be at least £275m with ongoing costs of £105m per year. The Working Group sought broad qualitative and quantitative estimates from only a small sample of representative firms, and as such the results are subject to important caveats and must be treated with caution.

The quantification of the potential impacts identified was pitched at a very high level and was not independently verified or agreed by each member. The figures produced were not comprehensive. They do not cover all of the parties affected or use the same sets of assumptions. The figures are highly sensitive to the assumptions used and so cannot be directly compared. The report does not therefore represent a consensus view, or the view of the Government.⁵¹

As older people and their representatives and financial services firms had such different views, the Government Equalities Office commissioned Oxera Consulting to review existing research findings, and to undertake new research into people's experiences, and how age is used in travel and car insurance and personal loans. We have used the findings of this independent study to inform the development of our policy proposals. The full report of this research is available on the Government Equalities Office website⁵². We have drawn the following conclusions from that study:

- people of all ages can get travel and car insurance and personal loans, although some age groups have more to choose from than others;

⁵⁰ ABI publication - Age and Insurance: Helping older customers find the cover they need Feb 09
http://192.168.202.210:9090/progress?pages&id=1157971055&sp2&url=http://www.abi.org.uk/BookShop/ResearchReports/ABI%20Insurance%26Age_LR.pdf&fileName=ABI%20Insurance%26Age_LR.pdf&referer=htt p://www.abi.org.uk/Bookshop/default.asp&foo=3

⁵¹ http://www.hm-treasury.gov.uk/d/age_discrimination.pdf

⁵² <http://www.equalities.gov.uk/pdf/The%20use%20of%20age-based%20practices%20in%20financial%20services%20Final%20report.pdf>

- prices are based on risks (how likely you are to claim) and costs (how much you claim). Higher prices are linked to greater costs;
- restricting the extent to which firms can base prices on risks and costs could harm the insurance and loan markets. For example it could lead to higher prices (or lower quality) for everyone, but particularly the higher-risk age groups that the market currently subsidises;
- some people have real problems with finding and buying suitable insurance policies. They could be helped by being given details of other suppliers or passed on to a partner supplier who does offer a policy for them. This would increase choice for consumers and be popular with older people.

Taking into account the various responses to the 2007 consultation exercise, the Oxera study and the emerging findings from the 2009 age consultation we are considering how to frame any exception from the age discrimination ban for financial services. Our aim is to outlaw unjustified age discrimination while ensuring that financial services firms can still use age where appropriate – i.e. where it is supported by evidence and not an arbitrary assumption. We also want to give older consumers confidence that they are getting a fair deal by exposing to public scrutiny the evidence on which such decisions are made.

To sum up, although a considerable amount of work has been undertaken with stakeholders to try to estimate the impact of prohibiting age discrimination in the financial services sector and to determine where exceptions might be made, the outcome is not sufficiently robust to provide detailed figures at this stage and further work is needed to finalise proposals prior to implementation.

Health and Social care

The health and social care sectors are a major area of central and local Government spending, and a great deal of their activity is concerned with meeting the needs of older people. The budget for the NHS is now £96 billion and around £15 billion was spent on adult social care in 2007/8. The scope of health and social care services is very wide, and includes, among other services, specialised medical and psychiatric interventions in hospital and community settings, intensive short or long term packages of health and social care support for adults, residential care for adults (of all ages but overwhelmingly older people), services for people with complex physical, sensory and learning disabilities as well as support for other adults in particularly vulnerable and challenging circumstances.

The health and social care review

In April, the then Secretary of State for Health asked Sir Ian Carruthers (Chief Executive of the South West Strategic Health Authority) and Jan Ormondroyd (Chief Executive of Bristol City Council) jointly to lead a national review of age discrimination in health and social care. The review was based in the South West region but addressed the implementation of the ban on age discrimination and the public sector equality duty across England. The review also worked with the Devolved Administrations in Scotland and Wales to keep them abreast of its work.

The review looked at how health and social care organisations could ensure people receive high quality health and social care services, whatever their age. It published a report in October 2009, making recommendations on the following areas:

- > the timetable for implementation of the ban on age discrimination;
- > where it is beneficial and therefore objectively justifiable to retain age-based differentiation in services;
- > how to support the health and social care system to implement the public sector equality duty in respect of all age groups;
- > which key actions health and social care bodies should take to make demonstrable progress in meeting their obligations as quickly as possible.

The Department of Health will be consulting on the review shortly.

The work of the health and social care review

The review was supported by the Department of Health Advisory Group on tackling age discrimination, chaired by John Dixon (Director of Adult Social Services at West Sussex County Council).

In May, the review issued a call for evidence to interested groups and individuals, which complemented GEO's consultation on the proposals for age exceptions.

The review conducted an extensive programme of stakeholder engagement involving health and social care professionals, third sector groups, patient and public involvement groups and forums, providers, commissioners, Elected Members etc. This centered around the South West region but also involved nationwide engagement events.

Previous research

In 2007, the Department of Health commissioned research on demonstrable age discrimination in mental health and social care services, two areas of care which serve large numbers of older people and which, it was suggested by some, were likely to be more challenged than other parts of the system in providing care equitably to all age-groups. The key finding of the two research studies, which can be viewed at

http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH_085763

was that there were age differences in service use per individual, even after standardising for need. They estimated that the costs of removing such differences by simply expanding services for older people would be substantial - some £1.75 to £2.25 billion for mental health services and some £2 to £3 billion for social services. These findings related to the estimated cost of addressing age differences by expanding services for older people. They do not constitute the only way of achieving a cost estimate for the removal of age discrimination. In practice there are likely to be other possible solutions to addressing differences in provision, including the redistribution of resources and work to align attitudes and behaviour within the system with the legislation; and these might well yield different estimates.

The research looked, in broad terms, at differential service use adjusted for need as an indication of potential age discrimination. It should be noted that in practice capacity to benefit from services is also taken into account in the allocation of health and social care resources.

It should also be noted that the estimates produced by the research are inevitably subject to various caveats and limitations, arising from the data sources. They relate specifically to mental health and social services for older people. Their findings should not be extrapolated to the whole health and social care sector.

The research yielded useful information which was factored into the age review, but did not provide a comprehensive account of likely costs and benefits. The review's recommendations were grounded in the perspective of the South West health and care economy, and focussed on the practical and realistic steps that health and social care organisations can take and resource within their means, taking into account the financial and planning framework within which these organisations need to work at tackling age discrimination.

Implementation in health and social care

In implementing the Bill's age provisions, the health and social care systems will need to build upon work in areas such as the National Service Framework for Older People, the Dignity in Care Campaign and the National Dementia Strategy, all of which aim to support provision of appropriate care for older people.

Getting the content of the legislative framework and the timing of its implementation in health and social care right will clearly be vital, and both implementation and the assessment of impact will need to be tied in closely with work to set out the values and principles of the health and social care sector and also practical measures already under way to tackle discrimination and to promote equality.

For example, the NHS Constitution sets out the right of people not to be unlawfully discriminated against in the provision of NHS services - including on grounds of age when the relevant provisions of the Equality Bill are brought into force for the health sector. More broadly, the very first principle in the Constitution is that 'the NHS provides a comprehensive service, available to all irrespective of gender, race, disability, age, sexual orientation, religion or belief'. The first principle also states that the NHS 'has a wider social duty to promote equality through the services it provides and to pay particular attention to groups or sections of society where improvements in health and life expectancy are not keeping pace with the rest of the population'. The Health Bill will ensure that all NHS bodies and private and third sector providers supplying NHS services are obliged by law to take account of the Constitution in their decisions and actions.

Resources

The causes of age discrimination and the measures required to address it are varied. Many of those people experiencing age discrimination point to the attitudes and behaviour of individuals and organisations as being at the heart of the problem, and it is therefore likely that providers and commissioners of health and social care will need to look at the training and development of their staff and the processes employed by organisations and services in implementing the age discrimination ban.

In addition, implementing the ban has potential implications for the allocation of resources within a cash-limited system. The health and social care review worked through both the behavioural and organisational issues and the financial implications in more detail and the Government's response to the review will set out its thinking on these issues.

Legislation on age discrimination in health and social care could, depending on how it is interpreted and implemented, have a substantial impact on resource allocation, and therefore on the way services and interventions are prioritised within a cash-limited system.

The health and social care system is concerned to promote the health and well-being of the population as a whole, adding "years to life and life to years" in the most cost-effective way possible. The allocation of resources therefore takes account of capacity to benefit from interventions and services.

Prohibiting age discrimination could be regarded as a way of promoting cost-effective practice. For some services, a relative shift in resources per service user from services for younger adults to services for older people might well result in improved overall outcomes, but it is also possible that such a shift would lead to an overall decline in outcomes. It is difficult to be certain of this in practice in the absence of clear evidence on the most cost-effective allocation of resources between age groups.

These issues are being considered as part of the further work and consultation that is being conducted looking at the different factors relevant to implementing the ban on age discrimination including behavioural and organisation change and resource issues. For this reason they are not discussed further in this impact assessment, and the potential impact of any changes in resource allocation are not covered by this impact assessment. However, we will outline the impact of these proposals (including cost-benefit analysis) more following further work.

Other areas (excluding financial services and health and social care)

Evidence and analysis

Age criteria are used in a variety of ways in a number of other sectors. For example, many different age-based concessions and benefits are offered to older or younger people (including discounts offered by retailers during off-peak hours and age-targeted benefits such as free bus passes for the over 60s); most vehicle rental companies will not rent a car to people below and above certain ages; and some holiday companies offer group holidays for particular age groups.

We have received fewer complaints about harmful discrimination in sectors other than financial services and health and social care. Some respondents to the Equality Bill consultation 'A Framework for Fairness' saw providing benefits and discounts based on age as contributing to the stereotype that all older people are needy, and argued that giving discounts to all or only to people on benefits would be fairer. We have received complaints that age restrictions on vehicle hire amount to harmful discrimination, and that any restrictions should instead be based on each individual's driving experience and record, previous claims and general state of health. We have also questioned whether it is reasonable to refuse people to join a holiday because of their age, or to ban younger people from holiday camps on the grounds that they are more likely to be disruptive.

We have talked to service providers to identify other age-based differences in treatment in both the private and public sectors. A cross-Government general working group has helped develop thinking on which of these practices will require specific exceptions to the ban to ensure that only harmful age-based differential treatment is banned and to prevent unintended consequences, such as service providers withdrawing provision because they are concerned about possible legal challenge.

We need to consider the responses to the summer 2009 age consultation and have further discussions with stakeholders to gather more evidence about potential impacts, costs and benefits in these areas. Based on this evidence we will develop appropriate exceptions.

Next steps

Over the coming months we will continue to refine our policy further, taking account of the consultation responses to the summer 2009 age consultation and the health and social care age review. At this stage there remains some uncertainty about the impact the proposals will have, for example relating to costs/benefits, as we are still gathering and seeking further information to further develop policy and gather information on these issues.

We will be developing a draft Order establishing the precise detail of the exceptions to the ban in services and public functions, which will be accompanied by and developed as a result of a detailed impact assessment. The Order will make provision for exceptions across all the sectors where they are required to ensure that justifiable or beneficial age-based practices are able to continue - financial services, health and social care and beyond. The Order will come into force at the same time as the prohibition is commenced in respect of each sector. We will prepare the draft Order taking account of the responses to and evidence provided through this consultation, our consultation on the EU proposal for an Equal Treatment Directive and the EU's planned consultation on the use of age and disability by the financial services industry. We aim to consult in 2010 on the draft Order.

Following consultation on the draft legislation it will be debated and hopefully approved by both Houses of Parliament. Our current plan is to lay the Order in 2011, subject to negotiations on the Directive.

As made clear in the consultation we launched in June 2009, we expect to see the legislation come into force in financial services and all other services, with the possible exception of health and social care in 2012. We will make a statement on the outcome of the consultation shortly.

Annex D - Discrimination arising from disability: indirect disability discrimination

Department: DWP	Proposals to introduce the concept of indirect disability discrimination	
Stage: Introduction House of Lords	Version: 4	Date: December 2009
Related Publications: House of Lords judgment: Mayor and Burgesses of the London Borough of Lewisham v Malcolm ([2008] UKHL 43).		

Available to view or download at:
<http://www.officefordisability.gov.uk/indirectdiscrimination>

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What is the problem under consideration? Why is government intervention necessary?

A consequence of the House of Lords' judgment in the case of the Mayor and Burgesses of the London Borough of Lewisham v Malcolm (Malcolm) is that it is now more difficult for a disabled person to establish a case of disability-related discrimination. The Government has reviewed how protection from disability-related discrimination operates and whether it should be revised following the Law Lords' judgment and in anticipation of the legislative requirements of a proposed new European anti-discrimination Directive. Details of this case and of an earlier case covering similar grounds are set out in the footnote below⁵³.

⁵³ Clark v Novacold (1999)

1. Mr Clark sustained a back injury which resulted in his being a disabled person for the purposes of the Disability Discrimination Act. A consequence of the disability was that he would have had to be absent from work for about a year. He was dismissed from his job because of this prognosis.
2. The Court of Appeal had to decide who to compare Mr Clark with in order to determine whether he had been treated less favourably. It identified two possible comparators:
 - (a) someone who did not have a disability but who was likely to be absent from work for about a year for other reasons; or
 - (b) someone who did not have a disability and who would remain in work for that period.
3. The Court of Appeal found that the correct comparator was (b). Thus, the test of less favourable treatment was based on the **reason** for the treatment of the disabled person: the disability-related absence and not the fact that Mr Clark was disabled.
4. The effect of the Novacold judgment was to make it relatively easy for a disabled person to demonstrate that he had been treated less favourably for a reason related to his disability.
5. The Court of Appeal found that the employer would have discriminated against Mr Clark by dismissing him, unless it could show that the less favourable treatment was justified.

London Borough of Lewisham v Malcolm (2008)

6. Mr Malcolm, a tenant of a flat owned by Lewisham Council, has schizophrenia and is a disabled person for the purposes of the Disability Discrimination Act.
7. When Mr Malcolm sub-let his flat, which was in breach of his tenancy agreement, Lewisham Council commenced proceedings to evict Mr Malcolm.
8. The Disability Discrimination Act precludes a manager of premises from discriminating against a disabled person who occupies the premises by evicting him or subjecting him to any other detriment by, for example, treating the disabled person less favourably for a reason related to their disability, unless that could be justified.
9. Mr Malcolm claimed that the court could not grant a possession order against him as this would be disability-related discrimination: he claimed that, because of the effect of his impairment, he did not understand that he could not sub-let his flat nor did he understand the potential consequences of doing so.
10. The House of Lords declined to follow the approach taken in the case of Novacold regarding the comparator to be used. Instead, the House of Lords ruled that the correct approach, in the Malcolm case, was that the comparator should be someone who had sub-let their flat but who did not have a disability. Since Lewisham

What are the policy objectives and the intended effects?

To re-establish an appropriate balance between the rights of disabled people and the interests of those with related duties. The preferred option of reinstating disability-related discrimination, (without a comparator), and adopting indirect discrimination will establish this balance. It will ensure compatibility with the anticipated requirements of European equal treatment legislation and will support the aim of the Equality Bill to harmonise equality legislation, as indirect discrimination is a concept which is applied more generally.

What policy options have been considered? Please justify any preferred option.

- 1. Retain disability-related discrimination, without the comparator, in addition to adopting the concept of indirect discrimination (preferred option, adopted in this Bill).**
2. Retain disability-related discrimination, but without the requirement for a comparator, and without the adoption of indirect discrimination.
3. Modify the concept of indirect discrimination to ensure that it operates effectively for disabled people.

When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects?

After implementation, and on an ongoing basis, by the Equality and Human Rights Commission. The Government will also review after 5 years.

Reintroduce a form of disability-related discrimination, without the comparator, in addition to adopting the concept of indirect discrimination

Policy Option: 1

PREFERRED

COSTS	ANNUAL COSTS		<p>Description and scale of key monetised costs by ‘main affected groups’</p> <p>This provides an additional means of redress above that in Option 2. However, this is unlikely to increase the number of claims as indirect discrimination is unlikely to be pursued individually. Additional costs are likely to arise from familiarisation and added litigation.</p>
	One-off (Transition)	Yrs	
	£	1	
	Average Annual Cost (excluding one-off)		
	£1.4 to £2.8m	10	<p align="center">Total Cost (PV)</p> <p align="center">£12.1m to £24.1m</p>
<p>Other key non-monetised costs by ‘main affected groups’</p> <p>N/A</p>			

BENEFITS	ANNUAL BENEFITS		Description and scale of key monetised benefits by 'main affected groups'	
	One-off	Yrs		
	£ Marginal	1	Benefits for disabled people are unquantifiable but estimated to be marginal as the provision will only have an impact on the very small number of people who currently are unable to enforce their rights. Levels of compensation awards are not expected to alter as a consequence of the proposal.	
	Average Annual Benefit (excluding one-off)			
	£ Marginal	10		
		Total Benefit (PV)	£ Marginal	
Other key non-monetised benefits by 'main affected groups'				
It would make it relatively easy for a disabled person to demonstrate disability-related discrimination and allow for demonstration of indirect discrimination. This would benefit the small minority of people who cannot currently enforce their rights under other provisions.				

Key Assumptions/Sensitivities/Risks

The introduction of a further means of redress may be regarded as retaining complexity, which would be contrary to the aims of the Bill. The introduction of indirect discrimination at this stage may be seen as anticipating, too soon, the requirements of the EU Directive still under negotiation.

Price Base Yr 2008	Time Period Years 10	Net Benefit Range (NPV) £12.1m to £24.1m	NET BENEFIT (NPV Best estimate) £ See Range
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What is the geographic coverage of the policy/option?	GB
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On what date will the policy be implemented?	To be determined			
Which organisation(s) will enforce the policy?	Disabled individuals through courts and tribunals			
What is the total annual cost of enforcement for these organisations?	£ 0			
Does enforcement comply with Hampton principles?	Yes			
Will implementation go beyond minimum EU requirements?	No			
What is the value of the proposed offsetting measure per year?	£ 0			
What is the value of changes in greenhouse gas emissions?	£ 0			
Will the proposal have a significant impact on competition?	No			
Annual cost (£-£) per organisation (excluding one-off)	Micro	Small	Medium	Large
Are any of these organisations exempt?	No	No	N/A	N/A

Impact on Admin Burdens Baseline (2005 Prices)				
(Increase - Decrease)				
Increase of	£0	Decrease of	£0	Net Impact
				£0

Key: Annual costs and benefits: Constant Prices (Net) Present Value

Policy Option: 2	Retain disability-related discrimination, without the comparator, and without the adoption of indirect discrimination
REJECTED	

COSTS	ANNUAL COSTS		Description and scale of key monetised costs by 'main affected groups' This seeks to reinstate protection to a level similar to that before the Malcolm judgement. It would reverse the minor depressant effect of Malcolm on claims, resulting in a marginal increase on current levels and on monetised costs to disabled people and duty holders. There will be familiarisation costs for duty holders.	
	One-off (Transition)	Yrs		
	£	1		
	Average Annual Cost (excluding one-off)			
	£ 0 - marginal	10	Total Cost (PV)	£
Other key non-monetised costs by 'main affected groups' N/A				

BENEFITS	ANNUAL BENEFITS		Description and scale of key monetised benefits by 'main affected groups' Benefits for disabled people are unquantifiable but estimated to be marginal as the provision will only have an impact on the very small number of people who currently are unable to enforce their rights. Levels of compensation awards are not expected to alter as a consequence of the proposal.	
	One-off	Yrs		
	£ 0- Marginal	1		
	Average Annual Benefit (excluding one-off)			
	£ 0- Marginal	10		
		Total Benefit (PV)	£ 0- Marginal	
Other key non-monetised benefits by 'main affected groups' It would make it relatively easy for a disabled person to demonstrate disability-related discrimination. This would benefit the small minority of people who cannot currently enforce their rights under other provisions.				

Key Assumptions/Sensitivities/Risks It would recreate a form of disability-related discrimination and would not satisfy the aims of the Equality Bill. It would not meet the anticipated requirement for indirect discrimination under the proposed EU Directive.

Price Base Yr 2008	Time Period Years 10	Net Benefit Range (NPV) £Marginal	NET BENEFIT (NPV Best estimate) £See Range
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What is the geographic coverage of the policy/option?	GB			
On what date will the policy be implemented?	To be determined			
Which organisation(s) will enforce the policy?	Disabled individuals through courts and tribunals			
What is the total annual cost of enforcement for these organisations?	£ 0			
Does enforcement comply with Hampton principles?	Yes			
Will implementation go beyond minimum EU requirements?	No			
What is the value of the proposed offsetting measure per year?	£			
What is the value of changes in greenhouse gas emissions?	£ 0			
Will the proposal have a significant impact on competition?	No			
Annual cost (£-£) per organisation (excluding one-off)	Micro	Small	Medium	Large
Are any of these organisations exempt?	No	No	N/A	N/A

Impact on Admin Burdens Baseline (2005 Prices)					
					(Increase - Decrease)
Increase of	£ 0	Decrease of	£ 0	Net Impact	£ 0

Key: Annual costs and benefits: Constant Prices (Net) Present Value

EVIDENCE

Disability-related discrimination

- The Disability Discrimination Act provides disabled people with protection against discrimination for a disability-related reason i.e. a person, provider of services, public authority, or association discriminates against a disabled person if –
 - for a reason which relates to the disabled person’s disability, they treat him less favourably than they treat, or would treat, others to whom that reason does not, or would not, apply; and
 - they cannot show that the treatment in question is justified.
- In determining who has been the victim of disability-related less favourable treatment, it is necessary to find an actual or hypothetical comparator – a person to whom the disability-related reason does not, or would not, apply.
- The question of who the comparator should be has been subject to interpretation by the courts, including the Court of Appeal in the case Clark v Novacold. The Court of Appeal took a broad approach to the selection of comparators and the Novacold judgement established a precedent that made it relatively easy for a disabled person to demonstrate that disability-related less favourable treatment had occurred.

4. However, a recent House of Lords' judgement in the case of *Lewisham v Malcolm* declined to use the *Clark v Novacold* comparator and took a different approach in establishing who should be the correct comparator.
5. The consequence of the House of Lords' judgment is that it has moved protection away from the Government's policy intention. Whilst the protection remains sufficient to meet obligations arising from the United Nations Convention on the Rights of Persons with Disabilities, the judgment has altered the balance which the policy aims to achieve between the rights of disabled people and the interests of duty holders by making it more difficult for a disabled person to establish a case of disability-related less favourable treatment.

Preferred option:

Introduce a provision based on disability-related discrimination, without a comparator, which achieves a similar outcome for disabled people as disability-related discrimination achieved prior to the *Malcolm* judgment, in addition to adopting standard indirect discrimination for disability.

6. The Government's key policy objective is to re-establish an appropriate balance between the rights of disabled people and the interests of those with duties in a way which is compatible, as far as practicable, with the aim of the Equality Bill to simplify and harmonise equality legislation and with the anticipated requirements of proposed new European legislation, whilst also continuing to offer protection to disabled persons from discrimination that arises from a reason connected with their disability.
7. In order to achieve this policy objective, the Government's preferred option is to retain a form of disability-related discrimination, minus the need for a comparator, whilst adopting the concept of indirect discrimination. This will give disabled people a better level of protection than that which now exists in respect of disability-related discrimination as a consequence of the judgment in *Lewisham v Malcolm*. Retaining disability-related discrimination without a comparator will see legislation return to the original policy intention of the provision; it will also remove what the House of Lords considered to be a spurious comparison. The removal of the comparator will effectively concretise in legislation the non-comparator which resulted from the *Novacold* judgement. Adopting the concept of indirect discrimination for the disability provisions will achieve greater harmonisation across the Equality Bill, because that concept is already used in respect of the other protected characteristics such as race, sex, age etc. It should also ensure compatibility with anticipated European legislative requirements.

The fact that the tenant is disabled should not prevent a landlord from taking action. The Equality Bill will, amongst other things, widen the circumstances in which discrimination can be justified, subject to an objective justification defence, and so we do not consider it will lead to any additional costs.

Other options considered

8. The Government decided to adopt its preferred option following consultation. Two further options were considered but the Government considered that neither would achieve the key policy aim. These options are described briefly below.
9. Introduce a provision based on disability-related discrimination without the need for a comparator and without indirect discrimination. This would retain the ability for a person to demonstrate relatively easily a case of disability-related discrimination as is the preferred option. However, the simple retention of a revised form of disability-related discrimination would not support the harmonisation aim of the Equality Bill, nor would it enable the Government to meet the anticipated requirements of the EU Directive. This would result in indirect discrimination needing to be introduced separately at some point in the future. This would place a burden of two-stage implementation costs on business and others.

10. Modify the concept of indirect discrimination to take account of the specific nature of disability. The present standard form of indirect discrimination would require significant modification to ensure that it fully reflected the specific nature of disability and provided a level of protection that is close to the level sought by disabled people. There are unacceptable risks associated with such significant modifications to indirect discrimination which could destabilise the operation of indirect discrimination as it applies to the other protected characteristics. Given the strong policy reasons for rejecting this proposal, it has not been subject to a costed impact assessment.

Annual costs and benefits

The following is an assessment of the costs and benefits of the preferred option.

Monetised costs and benefits

11. Employment Tribunal Service data for the year ended March 2007 show that there were 5,533 employment claims of disability discrimination of which 149 were successful at a tribunal. (Source: Employment Tribunal and Employment Appeal Tribunal Statistics (GB) 1 April 2006 to 31 March 2007.) There are no centrally-held data on cases brought through the courts under the provisions of the Disability Discrimination Act 1995 governing goods, facilities and services, private clubs and functions of public bodies. However, the former Disability Rights Commission's Legal Bulletin Issue 12 (DRC Legal Achievements 2000-2007) shows that the Commission supported an average of 16 cases per year in its first seven years of operation, almost all of which were settled, or were decided in the favour of the disabled person. The Commission previously advised that it was aware of very few cases covering goods and services etc that were pursued without its assistance.
12. It is not possible to determine how many of the above claims were in respect of direct discrimination (which applies only in relation to employment and vocational training) or a failure to make reasonable adjustments and how many relate to disability-related discrimination.
13. Given that the judgment is relatively recent, and that the number of disability-related discrimination cases cannot be determined, it is not possible to estimate what impact the recent House of Lords' judgment in Malcolm has had on the number of people who seek to enforce their rights under the disability-related discrimination provisions of the existing Disability Discrimination Act 1995.
14. Following the judgment, in the vast majority of instances where a disabled person has been subjected to disability-related discrimination, the person will still be able to, and we consider will, seek redress using alternative provisions, for example the direct discrimination provisions (for employment and vocational training) or the reasonable adjustment provisions of the new Act. Therefore, it is unlikely that the judgment will have led to any appreciable reduction in enforcement. Being more restrictive it may have resulted in a slight reduction in the number of cases, particularly those involving premises, where the opportunity to use the reasonable adjustment route is more limited.
15. However, as described in Paragraph 11 above, the overall number of cases involving goods, facilities, services and premises is relatively low. Within these cases, there are likely to be very few (possibly in the tens) which involve situations where the reasonable adjustment provisions will not apply. Overall, therefore, we estimate the effect of the House of Lords' judgment to be marginal in respect of enforcement and therefore on the financial benefits, e.g. compensation awards to disabled people or on the costs to disabled people or duty holders in respect of taking legal action.
16. The aim of emulating the disability-related discrimination provision, without a comparator, whilst in addition adopting the concept of indirect discrimination is to again make it relatively easy for a disabled person to demonstrate that they have experienced disability discrimination. We consider that the proposed option will achieve that aim. It is expected

that the effect of the move to disability-related discrimination, without a comparator, and indirect discrimination on monetised benefits to disabled people will see some increase in costs with regard to litigation given the greater complexity of claims involving indirect discrimination and familiarisation costs.

Familiarisation costs and simplification benefits

These are included in Pages 12-30.

Litigation costs.

19. Respondents to the consultation indicated that introducing indirect discrimination, as well as a revised form of disability related discrimination, would lead to increased complexity, and therefore costs, of litigation. The following table sets out high and low estimates of the additional costs of this change.

	Annual Future Court Costs	-	Annual Current Court Costs	=	Annual Total Cost of Change
Low Estimate	£7m	-	£5.6m	=	£1.4m
High Estimate	£8.4m	-	£5.6m	=	£2.8m

20. The current litigation costs of around £5,6m have been calculated by taking the aggregate number of disability-related discrimination cases of 5549⁵⁴ and multiplying it by the average cost of a case - £1,011.⁵⁵
21. There are no data which allow an estimate to be made of the proportion of claims for disability discrimination which might involve indirect discrimination. As a consequence, for the purposes of this assessment it is assumed that each claim may involve indirect discrimination either as the main ground, or as an alternative ground, for the claim. The future cost of a litigation case has then been calculated assuming that the added complexity of including indirect discrimination would increase the average cost of a court case by 25%, at a low estimate, and 50%, at a high estimate. Thus the low estimate is equal to around £7m (£1,011 x 1.25 x 5549) with the high estimate equal to around £8.4m (£1,011 x 1.5 x 5549). The additional costs of the proposal are therefore estimated at between £1.4m and £2.8m per annum, respectively.

Non-monetised costs and benefits

22. Introducing disability-related discrimination together with indirect discrimination will redress the imbalance caused by the House of Lords' judgment in the case of *Lewisham v Malcolm*, which has made it harder for disabled people to successfully challenge disability-related discrimination in employment, education, and access to goods, facilities, services and premises, as well as private clubs and the functions of public authorities.
23. In the majority of cases, a disabled person would be able to enforce their rights under the direct discrimination provisions or under the duty of reasonable adjustment. However, those may not be applicable in every case. The preferred option is intended to provide disabled people with an appropriate route to enforce their rights where those other provisions would not apply. This is likely to be a small number of cases, though data do not

⁵⁴ This has been calculated by adding the number of employment tribunals – 5533 (source: <http://www.employmenttribunals.gov.uk/Documents/Publications/AnnualStatistics0607.pdf>) with the number of disability discrimination cases with regards to the provision of goods, facilities and services – 16 (source: *Improving Protection From Disability Discrimination*, November 2008, Office for Disability Issues)

⁵⁵ See Annex 1.

exist to facilitate an accurate estimate. However, there will be benefits for the small number of disabled people who are currently prevented by the House of Lords' judgment from enforcing their rights under alternative provisions.

Enforcement

24. As currently for disability-related discrimination, the preferred option would be enforced by the aggrieved individual through an Employment Tribunal, for cases involving employment and vocational training; a County Court (Sheriff Court in Scotland) in respect of access to goods, facilities, services, premises, private clubs and the functions of public authorities; or 1st Tier Tribunals (Sheriff Court in Scotland and Special Educational Needs Tribunal for Wales) in respect of education in schools, and County Court (Sheriff Court in Scotland) in respect of post-16 education.

Impact on Operations

25. Any increase in legal action to enforce disability rights in comparison to the situation before the House of Lords' judgment, is likely to be marginal. Therefore it is unlikely that the preferred option would have any appreciable impact on the operation of the tribunal and court systems.

Economic Impact

Competition Assessment

26. The preferred option should not affect competitiveness between companies. The Disability Discrimination Act 1995 already places duties on all employers regardless of size (except the Armed Forces in respect of Service personnel) and on providers of goods, facilities, services and premises. The preferred option will not have an impact on the extent to which the duties under the existing Act are applied through the new Bill.

Small Firms Impact Test

27. The preferred option should not have any undue impact on small firms. Small firms will be subject to the same need as larger firms to familiarise themselves with the new approach for disability. Similarly, they should benefit from possible marginal savings arising from harmonisation, because the disability provisions will be more in line with the concept of indirect discrimination as it applies across other equality legislation.

Community Legal Services Fund (previously Legal Aid) Impact Test

28. Most disabled people who currently experience disability-related discrimination will be able to enforce their rights using alternative provisions. Therefore, there is no evidence to suggest that the proposed provisions will result in any significant increase in the number of disabled people enforcing their rights under the legislation. There may be a marginal increase in legal action, for example in cases concerning premises, where the opportunity for disabled people to exercise their rights using the reasonable adjustments provisions of the Act is currently more limited. However, any change is unlikely to increase numbers of cases above the level which existed prior to the House of Lords' judgment. Where cases involve indirect discrimination there may be greater complexity in litigation which could result in greater costs to claimants.

Annex E - Gender reassignment: i) clarifying the definition; and ii) extending protection

Department GEO	Extending protection on the grounds of Gender Reassignment	
Stage: Introduction	Version: 4	Date: December 2009
Related Publications: (1) Discrimination Law Review: Proposals for an Equality Bill for Great Britain (June 2007). (2) Proposals to simplify and modernise the law: Initial RIA (June 2007). (3) Framework for a Fairer Future (June 2008) and (4) the Government response to the consultation (July 2008) (5) Equality Bill Impact Assessment (Introduction) 27 April 2009		

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What is the problem under consideration? Why is government intervention necessary?

(i) The current definition of gender reassignment describes it as a process undertaken under 'medical supervision'. It has become apparent during consultation that this requirement excludes some transsexual people from protection i.e. people who commit to living in their non-birth gender without being in contact with medical services; and also that many assume that genital reassignment surgery is required in order to qualify for protection – this was never the intention. To clarify this situation we will be removing the reference to medical supervision in the Bill.

(ii) Currently protection provided to those who are undergoing gender reassignment is piecemeal. Transsexual people are already protected from direct discrimination, harassment and victimisation in employment and vocational training. Specifically, protection is provided for people who plan to undergo, are undergoing or have undergone gender reassignment. There is also protection from discrimination on grounds of gender reassignment in the access to and supply of goods, services and premises, including the provision of services by public authorities. However, protection does not currently extend to the exercise of public functions and schools; and transsexual people are not currently protected from indirect discrimination.

What are the policy objectives and the intended effects?

To clarify the definition and to extend protection to ensure consistency, fairness and standardisation.

What policy options have been considered? Please justify any preferred option.

Option 1 - To retain the existing definition and piecemeal approach; or
Option 2 – (Final Proposal) – (i) to revise the existing definition by removing the reference to 'medical supervision; (ii) to prohibit discrimination on grounds of gender reassignment in the exercise of public functions and schools and to prohibit indirect discrimination against those going through gender reassignment.

Our final proposal is Option 2. The main benefits of extending protection to cover public functions and schools and indirect discrimination and other areas are consistency and fairness. The obligations of public authorities in relation to those undergoing gender reassignment would be consistent with their existing obligations towards other groups (which are already protected against discrimination in the exercise of public functions). And this would lead to a fairer outcome for transsexual people who otherwise would not have the same degree of protection. The consultation feedback shows that the overwhelming majority of respondents on this issue agree with extension,

including public authorities themselves. We consider that these are strong reasons for extending protection in the way proposed.

Revising the definition will also bring greater clarity as to who is protected from discrimination.

When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects?

After implementation and on an ongoing basis, by the Equality and Human Rights Commission. The Government will also review after 5 years.

Extending protection on the grounds of gender reassignment : Analysis & Evidence

**Policy Option:
Extending
protection on
the grounds of
gender
reassignment**

To clarify the definition; to prohibit discrimination on grounds of gender reassignment in the exercise of public functions and schools and to prohibit indirect discrimination against those going through gender reassignment

ANNUAL COSTS		Description and scale of key monetised costs by 'main affected groups' Evidence from previous studies suggests that there are around 6,800 transsexual people in GB. Clarifying the definition and extending protection to cover indirect discrimination and the exercise of public functions would have little, if any, impact on business costs. There may be very minor costs of modifying existing equality training. Likewise, it is assumed that any increase in court or tribunal costs as a result of the revised definition or claims on grounds of indirect discrimination or the exercise of public functions will be minimal. Familiarisation costs are factored into the overall familiarisation costs for the Bill, in pages 12-30.	
One-off (Transition)	Yrs		
£	1		
Average Annual Cost (excluding one-off)			
£ 30,046 - £143,246	10	Total Cost (PV)	£ 293,486 to £1,233,016
Other key non-monetised costs by 'main affected groups'			

COSTS

BENEFITS	ANNUAL BENEFITS		Description and scale of key monetised benefits by 'main affected groups' Individuals – Compensation Awards of between £9,525 and £51,131	
	One-off	Yrs		
	£ 0	1	Average Annual Benefit (excluding one-off)	
	£10,823 to £55,891	10		
		Total Benefit (PV)	£93,163 to £481,094	
Other key non-monetised benefits by 'main affected groups' Aside from improved public service, consistency with protections already available would provide a simpler and more coherent picture of the responsibilities that organisations undertaking functions of a public nature would have under the law.				

Key Assumptions/Sensitivities/Risks

Given the small number of transsexual people we estimate that there will be only a small increase in cases, between 0.017% and 0.06%/year (3-11) out of 23,103 (average number of tribunal cases/year). Total costs per case are estimated at £5393 (for the employer); £1,034 (taxpayer); £1331 (individual).

Price Base Yr 2008	Time Period Years 10	Net Benefit Range (NPV) -£1,139,853 to £187,608	NET BENEFIT (NPV Best estimate) £ See Range
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What is the geographic coverage of the policy/option?		GB		
On what date will the policy be implemented?				
Which organisation(s) will enforce the policy?		Individuals through courts		
What is the total annual cost of enforcement for these organisations?		£ 0		
Does enforcement comply with Hampton principles?		N/A		
Will implementation go beyond minimum EU requirements?		N/A		
What is the value of the proposed offsetting measure per year?		£		
What is the value of changes in greenhouse gas emissions?		£ 0		
Will the proposal have a significant impact on competition?		No		
Annual cost (£-£) per organisation (excluding one-off)	Micro	Small	Medium	Large
Are any of these organisations exempt?	No	No	N/A	N/A

Impact on Admin Burdens Baseline (2005 Prices)					
Increase of	£	Decrease of	£	Net Impact	(Increase - Decrease) £

Key: Annual costs and benefits: Constant Prices (Net) Present Value

Evidence

The protected ground of gender reassignment was introduced in 1999⁵⁶ following case law⁵⁷. Gender reassignment is defined as “a process which is undertaken under medical supervision for the purpose of reassigning a person’s sex by changing physiological or other characteristics of sex, and includes any part of such a process.”⁵⁸

Broadly speaking, the current protected group are transsexual people – who want to, or who do, live permanently in the gender opposite to their birth gender⁵⁹. While no nationwide or comprehensive survey has been carried out to determine the size of the transsexual population in the UK, it is generally viewed to be fairly small. Based on studies carried out in the late 1990s⁶⁰ we can consider the UK adult transsexual population to be around 6,800 people. This low number is supported by the number of people with Gender Recognition Certificates⁶¹ (GRCs) - since the Gender Recognition Act came into force in April 2005, some 2,307 GRCs have been awarded (by January 2009).

Although the size of the population protected by this ground is small, discrimination can occur. Qualitative examples of discrimination against transsexual people can be found in the Equalities Review report ‘Engendered Penalties’⁶².

Options Identification

Option 1: to do nothing – retain the current definition and scope of protection;
 Option 2: to clarify the definition and harmonise scope with other areas to provide clarity and simplification (**recommended**)

Option 1 would retain the current protection in employment, goods, facilities, services and premises and the current piecemeal approach in application.

However, it was quite clear from the June 2007 consultation response that there was confusion over the reference to ‘medical supervision’ in the current definition and clarification was required.

Also, since the introduction of gender reassignment protection in 1999 expansion of protection on this ground has been incremental and piecemeal. With the opportunity of the Bill to harmonise and simplify discrimination law it is clear that protection on the ground of gender reassignment can be

⁵⁶ The Sex Discrimination (Gender Reassignment) Regulations 1999 (1999/1102)

⁵⁷ *P v S and Cornwall County Council* [1996]

⁵⁸ Section 82 SDA 1975 (general interpretation provisions):

⁵⁹ Transsexual people do not identify with the gender assigned to them at birth, in terms of their social role or their body. Transgender person: a person with gender dysphoria who feels a consistent and overwhelming desire to live their life in the gender that is opposite to that assigned them at birth.

⁶⁰ Carried out in Scotland and the Netherlands, Van Kesteren PJ, Gooren LJ, Megans JA, An epidemiological and demographic study of transsexuals in The Netherlands, *Arc Sex Behav.* 1996 Dec;25(6):589-600. Wilson P, Sharp C, Carr S, The prevalence of gender dysphoria in Scotland: a primary care study, *Br J Gen Pract.* 1999Dec;49(449):991-2.

⁶¹ <http://www.grp.gov.uk/aboutus.htm>

⁶² <http://archive.cabinetoffice.gov.uk/equalitiesreview/upload/assets/www.theequalitiesreview.org.uk/transgender.pdf>

expanded in several areas for good reason.

Analysis of costs, benefits and risks of final proposals.

Option 2 – clarifying the definition and harmonising the scope with other areas.

The monetised costs and benefits under option 2 will primarily be from tribunal costs and compensation.

It should be noted that due to the relative lack of information on the transsexual population and on related court and tribunal cases these estimates are illustrative. Due to the small number of people affected and even smaller number of estimated court and tribunal cases, numbers and costs are amalgamated at the end of this section.

(i) Clarifying the definition of gender reassignment.

Costs – None. This change clarifies the definition and does not affect the number of transsexual people who rightly claim protection.

Risks – there was no significant disagreement with this proposal.

(ii) Extending the scope of protection against discrimination because of gender reassignment in the exercise of public functions

Extending protection to public functions would ensure that discrimination is unlawful across the full range of activities carried out by public authorities.

Costs – These will fall on public sector organisations and will primarily be incurred by ensuring policies and activities are non-discriminatory.

Risks - Public authorities (local authorities, health authorities and police) were virtually unanimous in supporting the proposal.

(iii) Providing protection against indirect discrimination on grounds of gender reassignment

Benefit - Indirect discrimination can occur for example when organisations do not change their records to show a person's new name or gender. This can put transsexual people at a particular disadvantage in terms of their right to privacy because it can force them to reveal their personal history. Introducing protection against indirect discrimination will eliminate minor barriers for transsexual people in achieving and living in their acquired gender.

Cost – Some minor costs may occur as a result of organisations changing their records. We also assume there will be at least one court case early on.

Risks - The main concern raised was about employers being required to change an individual's records without being able to ask for proof of their transsexual status or a Gender Recognition Certificate. Religious organisations called for adequate protection for clergy and others, if protection were extended, to enable them to refuse to alter baptismal and other church registers, if they cannot in conscience accept this. However, Church records such as Baptismal or Marriage registers are considered outside the scope of the Bill.

(iv) Extension of gender reassignment protection to schools

Benefits - This will ensure that educational establishments do not discriminate on the ground of gender reassignment in terms of admittance, application, offering benefits, facilities or services.

This measure will reduce the potential stress of children experiencing gender dysphoria.

Costs. The number of children with gender dysphoria is very small. The Gender Identity Unit at the Tavistock and Portland, the only unit in the UK which treats children with gender dysphoria, deals with around 60 new cases of gender identity disorder in children per year. Consequently there will be very few cases.

Risks: There may be issues concerning young transsexual people applying to single sex schools, wearing of school uniforms, use of appropriate PE facilities and objection by faith schools.

Court Costs

The cost of an increased number of discrimination cases due to extending gender reassignment protection was calculated by multiplying the average cost of a discrimination case by the additional number of cases that will be heard as a result of this change.

Very few court cases are envisaged. Gender reassignment protection has existed against discrimination in the provision of goods, facilities, services and premises since April 2008, but no court case is known. The low estimate is one, while the high estimate is 2. Any case is likely to be brought early on and will act as a precedent.

	Average cost of a court case	X	Additional number of cases (for gender reassignment)	=	Cost of proposal
LOW ESTIMATE	£1,011	X	1	=	£1,011
HIGH ESTIMATE	£1,011	X	2	=	£2,022

Tribunal Costs

We expect no additional tribunal cases due to the extension of the prohibition to public functions and removal of the 'medical supervision' element. Additional cases are possible due to the extension of indirect discrimination. Discrimination in schools is not covered by tribunals but by the courts (see above).

As a baseline for the number of tribunal cases which have gender reassignment as an element, the average number of sex discrimination claims over the most recent three years for which data is available (2005/6-2007/8) is 23,103 cases per year. As no breakdown is available by element we have to estimate the likely number of cases with gender reassignment as an element. Taking the transsexual population to be 0.014% of the adult GB population this leads to 3 cases per year. As it is considered that transsexual people are more likely to be discriminated against (say five times more likely) as a baseline we will assume there are 15 cases per annum involving gender reassignment.

We assume the low estimate to be a 20% increase in the number of cases as a result of extending protection to indirect discrimination (15 x 20%= three additional cases). The high estimate is assumed to be an additional 75% of cases (15 x 75%= eleven additional cases).

		Increase in number of cases	X	Average cost of a tribunal case	=	Cost of proposal
LOW ESTIMATE	Employer	3	X	£5,393	=	£ 16,179
	Taxpayer	3	X	£1,034	=	£ 3,102
	Individual	3	X	£1,331	=	£ 3,993
	Total					£ 23,274

		Increase in number of cases	X	Average cost of a tribunal case	=	Cost of proposal
HIGH ESTIMATE	Employer	11	X	£5,393	=	£ 59,323
	Taxpayer	11	X	£1,034	=	£ 11,374
	Individual	11	X	£1,331	=	£ 14,641
	Total					£ 99,979

This calculation assumes that simplifying and standardising the definitions of discrimination and extending protection to indirect discrimination on grounds of gender reassignment will result in an increase of between 3 and 11 additional tribunal and court cases.

Compensation Costs & Benefits

The costs and benefits of compensation awards were calculated as follows.

	Increase in cases	X	Average Compensation Award	=	Cost/ Benefit of the proposal
Low	3	X	£3,608	=	£ 10,824
High	11	X	£3,608	=	£ 39,688

The figure of £10,824 -£39,688 is the estimated cost to the private or public sector and also the benefit to individuals. This calculation is based on the assumption that the proposed change will lead to an increase of between 3 and 11 additional tribunal cases which are all successful.⁶³

Familiarisation Costs and Simplification Benefits

These have been calculated for the whole Bill in pages 12-30.

Non Monetised Costs and Benefits

The key non-monetised benefits are consistency in the law and greater protection for the transsexual community.

⁶³ This calculation uses data on the average number of tribunal cases for race and sex taken from the ETS Annual Reports 2005/6 – 2007/8 and data on the average value of a compensation award DTI Employment Relations Research Series No 33 - <http://www.dti.gov.uk/files/files11455.pdf?pubpdfload=04%2F1071>

Annex F - Extending protection on the grounds of pregnancy & maternity

Department GEO	Extending protection against discrimination in the exercise of public functions on the grounds of pregnancy & maternity	
Stage: Introduction House of Lords	Version: 4	Date: December 2009
Related Publications: (1) Discrimination Law Review: Proposals for an Equality Bill for Great Britain (June 2007). (2) Proposals to simplify and modernise the law: Initial RIA (June 2007). (3) Framework for a Fairer Future (June 2008) and (4) the Government response to the consultation (July 2008) (5) Equality Bill Impact Assessment (Introduction) 27 April 2009		

Available to view or download at: <http://www.equalities.gov.uk>

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What is the problem under consideration? Why is government intervention necessary?

Currently protection against discrimination provided to women who are pregnant and new mothers is piecemeal and often misinterpreted – some provisions in the Sex Discrimination Act 1975 are explicit and others are implicit. Pregnant women and new mothers are explicitly protected from direct discrimination and victimisation in employment and vocational training. Similarly, express protection on grounds of pregnancy and maternity is provided in the access to and supply of goods, facilities and services and the management and disposal of premises, including the provision of services by public authorities, insofar as they fall within the scope of the Gender Directive. However, there is no explicit protection against direct discrimination on these grounds in the exercise of public functions. Providing express protection would increase legal clarity.

What are the policy objectives and the intended effects?

To make the law as effective and consistent as is appropriate.

What policy options have been considered? Please justify any preferred option.

Options 1 - To do nothing, i.e. retain the existing piecemeal approach;
Option 2 – (Final Proposal) To prohibit discrimination on grounds of pregnancy and maternity in the exercise of public functions;

The preferred option is Option 2. This would make it clear to public authorities that they have obligations towards pregnant women and new mothers in the same way as they have towards other groups protected by discrimination law, thereby eliminating potentially confusing inconsistencies in the legislation and making it easier for authorities to provide clear and accurate guidance and training for staff. The consultation feedback shows that 97% of respondents on this issue agree that protection for pregnant women and new mothers should be extended to public authorities in the exercise of public functions. We consider that these are strong reasons for extending protection in the way proposed. Option 1 would retain the existing inconsistency in discrimination law.

When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects?

After implementation and on an ongoing basis, by the Equality and Human Rights Commission.
The Government will also review after 5 years.

Extending protection on the grounds of Pregnancy & Maternity : Analysis & Evidence

Extending protection on the grounds of Pregnancy & Maternity

To prohibit discrimination on grounds of pregnancy and maternity in the exercise of public functions

COSTS	ANNUAL COSTS		Description and scale of key monetised costs by 'main affected groups'	
	One-off (Transition)	Yrs		
	£	1	<p>The increased number of cases will have a recurring cost for the taxpayer of between £23,738 and £49,753; for employers of between £124,036 and £253,339; and for individuals of between £30,604 and £61,208</p> <p>Employers could pay out more in compensation which will cost up to £8,103</p> <p>Familiarisation costs are factored into the overall familiarisation costs for the Bill, in pages 12-30.</p>	
<p>Average Annual Cost (excluding one-off)</p> <p>£1738,423 – £364,949</p>		10	<p>Total Cost (PV)</p>	<p>£1,535,808 to £3,141,363</p>
<p>Other key non-monetised costs by 'main affected groups'</p>				

BENEFITS	ANNUAL BENEFITS		Description and scale of key monetised benefits by 'main affected groups'	
	One-off	Yrs		
	£ 0	1	Increase in compensation for individuals of up to £8,103	
	Average Annual Benefit (excluding one-off)			
£ 0 – 8,103	10	Total Benefit (PV)	£ 0 – 69,748	
Other key non-monetised benefits by 'main affected groups' This measure would increase consistency in the protection against discrimination available under discrimination law for pregnant women and new mothers.				

Key Assumptions/Sensitivities/Risks There will be an increase in cases of between 0.1% and 0.2%.
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Price Base Yr 2008	Time Period Years 10	Net Benefit Range (NPV) -£3,141,363 to -£1,466,060	NET BENEFIT (NPV Best estimate) £ See Range
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What is the geographic coverage of the policy/option?	GB			
On what date will the policy be implemented?	See page 8			
Which organisation(s) will enforce the policy?	Individuals through the courts			
What is the total annual cost of enforcement for these organisations?	£ 0			
Does enforcement comply with Hampton principles?	N/A			
Will implementation go beyond minimum EU requirements?	N/A			
What is the value of the proposed offsetting measure per year?	£			
What is the value of changes in greenhouse gas emissions?	£ 0			
Will the proposal have a significant impact on competition?	No			
Annual cost (£-£) per organisation (excluding one-off)	Micro	Small	Medium	Large
Are any of these organisations exempt?	No	No	N/A	N/A

Impact on Admin Burdens Baseline (2005 Prices) (Increase - Decrease)
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Increase of	£	Decrease of	£	Net Impact	£
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Key: Annual costs and benefits: Constant Prices (Net) Present Value

Evidence

Overview of Costs & Benefits of Final Proposal

The Sex Discrimination Act already provides protection where public authorities discriminate on the ground of sex in the exercise of their public functions. This means that pregnant women and new mothers are already implicitly protected. We are not aware of any sex discrimination claims being brought against discrimination in the exercise of public functions since this protection was introduced in April 2007. We consider therefore that any increase in the number of discrimination claims that would arise as a result of extending such protection explicitly to pregnant women and new mothers would be negligible, if any.

Data from the Employment Tribunal Service (ETS) Annual Reports 2005/6 to 2007/8 show that the average number of sex discrimination complaints registered per year with the ETS was 23,103. These statistics on sex discrimination claims are not broken down and therefore cover the different forms of sex discrimination, i.e. all claims of direct discrimination (including on grounds of pregnancy and maternity leave), indirect discrimination, harassment and victimisation. The figures below assume an increase of between 0.1% and 0.2% of cases (23 and 46 respectively) being brought as a result of extending protection against pregnancy and maternity discrimination in the exercise of public functions, with a success rate of 2% reflecting the fact that the additional cases would be with a view to testing the law.

Cost of increase in cases

The cost of an increase in the number of discrimination cases heard by courts was calculated by multiplying the average cost for employers, tax payers and individuals for each case by the percentage increase in the number of cases.

		Increase in number of cases	X	Average cost of a case	=	Cost of proposal
LOW ESTIMATE	Employer	23	X	£5393	=	£124,039
	Taxpayer	23	X	£1,034	=	£23,782
	Individual	23	X	£1331	=	£30,613
	Total					£178,434

		Increase in number of cases	X	Average cost of a case	=	Cost of proposal
HIGH ESTIMATE	Employer	46	X	£5393	=	£248,078
	Taxpayer	46	X	£1,034	=	£47,564
	Individual	46	X	£1331	=	£61,226
	Total					£356,868

This calculation is based on tribunal costs rather than county court costs as the latter are not available. The calculation uses data on the average cost of a tribunal case, taken from the SETA (Survey of Employer Tribunal appeals) 2003.

Compensation Costs & Benefits

This is a cost to the private sector and a benefit to individuals. This calculation uses the median amount of compensation awarded by employment tribunals per case in 2004/5, and assumes a success rate of 2%.

	Average compensation awarded	X	Number of additional cases	=	Additional costs
Low Estimate	£8,103	X	0	=	£0
High Estimate	£8,103	X	1	=	£8,103

From the Survey of Employment Tribunal Applications 2003, we can estimate the sector composition of employment tribunals. The table shows compensation costs to each sector.

Compensation Costs	Low Est		High Est	
Public Sector	£	-	£	2,188
Private Sector	£	-	£	5,267
Voluntary Sector	£	-	£	648
Total			£	8,103

INSURANCE

The Equality Bill replicates the insurance requirements of the Sex Discrimination Act 1975 and Disability Discrimination Act 2005.

Since publication of the Bill and first edition of the impact assessment in April 2009 we have been in discussion with the insurance industry on the possible impact of the Bill.

Pregnancy

Clause 16 of the Bill provides protection from discrimination in pregnancy and maternity in non-work cases.

This clause ensures that the Bill continues to implement European Directive 2004/113/EC (the “Gender Directive”). The Bill makes clear the Directive’s intent that discrimination based on previous pregnancies is unlawful, as well as discrimination against a current pregnancy.

The Insurance industry has alerted us to the possible impact of this requirement and we are working with industry to quantify as far as possible what this means in terms of costs and benefits.

Annex G - Simplifying the law relating to disability discrimination

Department DWP	Simplifying the law relating to disability	
Stage: Introduction	Version: 4	Date: December 2009
Related Publications: (1) Discrimination Law Review: Proposals for an Equality Bill for Great Britain (June 2007). (2) Proposals to simplify and modernise the law: Initial RIA (June 2007). (3) Framework for a Fairer Future (June 2008) and (4) the Government response to the consultation (July 2008) (5) Equality Bill Impact Assessment (Introduction) 27 April 2009		

Available to view or download at: <http://www.equalities.gov.uk>

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What is the problem under consideration? Why is government intervention necessary?

The problems we are trying to solve are:

- Confusion over the purpose of the list of 'capacities' within existing disability discrimination law, which has often incorrectly been described as a list of normal day-to-day activities. It has proved difficult for some people, particularly those with some mental impairments, to show how their impairment affects one of the 'capacities'.
- The difficulties arising from having two different 'thresholds' for making reasonable adjustments according to which field is concerned: employment, goods, facilities and services, or education within disability discrimination law.
- The complexity arising from the separate definitions of disability discrimination for goods, facilities and services; premises; public authorities and private clubs. This makes the legislation complex and difficult to follow.
- The difficulties associated with having different 'justifications' for disability discrimination.
- The different ways in which less favourable treatment amounting to direct discrimination are handled in relation to disability.
- The evidence is that the existing disability provisions would benefit from simplification in the new Equality Bill.

What are the policy objectives and the intended effects?

The policy objectives are to:

- make it easier for people to understand their rights and responsibilities by introducing streamlined provisions which retain an appropriate balance between those with rights and those with responsibilities.
- make it easier for individuals with some types of impairments to prove they meet the definition of disability.

What policy options have been considered? Please justify any preferred option.

Three options were considered and discussed in the June 2007 consultation:

Option 1: do nothing.

Option 2: (Final Proposal): simplify the provisions and align as appropriate by:

- a) removing the list of 'capacities' from the definition of disability;
- b) introducing a single threshold as a trigger for reasonable adjustments (the 'substantial disadvantage' test);

- c) introducing a single definition of disability discrimination;
- d) replacing the range of justifications with a single 'Objective Justification' defence for disability discrimination.

Option 3: as Option 2, but omitting the measure to adopt a single 'Objective Justification' defence.

The Equality Bill presents a clear opportunity to simplify and improve the current disability provisions. Option 2 is preferred over Option 3 because the latter omits a significant simplification and harmonisation measure (item d in Option 2).

When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects?

After implementation, and on an ongoing basis, by the Equality and Human Rights Commission. The Government will also review after 5 years.

a) capacities : analysis & evidence

Policy Option: Remove the list of 'capacities'	Description: We intend to simplify how the definition of disability operates in relation to "normal day-to-day activities".
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COSTS	ANNUAL COSTS		Description and scale of key monetised costs by 'main affected groups' Employers Cost of increase in the number of cases reaching courts and tribunals = £645,132 - £1,612,839 Taxpayer Cost of increase in the number of cases reaching courts and tribunals = £96,769 - £241,924 Individuals Cost of increase in the number of cases reaching courts and tribunals = £159,176 - £397,940 Familiarisation costs are factored into the overall familiarisation costs for the Bill, in pages 12-30.	
	One-off (Transition)	Yrs		
	£	1		
	Average Annual Cost (excluding one-off)			
	£ 928,006 to £ 2,320,014	10	Total Cost (PV)	£7,987,981 to £19,969,951
Other key non-monetised costs by 'main affected groups'				

BENEFITS	ANNUAL BENEFITS		Description and scale of key monetised benefits by 'main affected groups'	
	One-off	Yrs		
	£	1		
	Average Annual Benefit (excluding one-off)			
£0	10	Total Benefit (PV)	£0	
<p>Other key non-monetised benefits by 'main affected groups'</p> <p>This measure will reduce potential for confusion in the operation of the definition of disability and make it easier for individuals with some types of impairments, such as some mental health conditions, to prove they meet the definition of disability. This will result in a fairer and simpler process.</p>				

<p>Key Assumptions/Sensitivities/Risks</p> <p>That proposals will lead to an increase in cases of between 2-5%</p>

Price Base Yr	Time Period Years	Net Benefit Range (NPV)	NET BENEFIT (NPV Best estimate)
2008	10	-£19,969,951 to -£7,987,981	£ See Range

What is the geographic coverage of the policy/option?	GB			
On what date will the policy be implemented?	See page 8			
Which organisation(s) will enforce the policy?	Courts			
What is the total annual cost of enforcement for these organisations?	£ 0			
Does enforcement comply with Hampton principles?	N/A			
Will implementation go beyond minimum EU requirements?	N/A/Yes			
What is the value of the proposed offsetting measure per year?	£ 0			
What is the value of changes in greenhouse gas emissions?	£ 0			
Will the proposal have a significant impact on competition?	No			
Annual cost (£-£) per organisation (excluding one-off)	Micro	Small	Medium	Large
Are any of these organisations exempt?	No	No	N/A	N/A

Impact on Admin Burdens Baseline (2005 Prices)					(Increase - Decrease)
Increase of	£	Decrease of	£	Net Impact	£

Key: Annual costs and benefits: Constant Prices (Net) Present Value

EVIDENCE

Removing the list of 'capacities' from the definition of disability

Options Identification

See description of options earlier in this annex.

The list of 'capacities' is an element of the definition of disability which has been identified as serving little purpose in helping to confirm that a person should have protection against disability discrimination. Moreover, the list has been criticised for needlessly complicating the definition of disability, and there have been claims that people with mental health conditions have found it hard to show how their impairment has affected one of the listed capacities.

Analysis of Costs & Benefits of Final Proposal

Simplify the definition of disability

This will reduce potential for confusion in the operation of the definition of disability and make it easier for individuals with some types of impairments, such as some mental health conditions, to prove they meet the definition of disability. This will result in a fairer and simpler process.

The removal of the capacities list does not increase the number of people with rights but, since it will be easier to show that a person satisfies the definition of disability there is likely be a small increase in the number of cases reaching courts or tribunals. Using a range of 2% and 5% for the increase, the total cost would be £725,983 to £1,814,958. These costs were calculated as follows

Low Estimate

	The number of tribunal cases	X	2%	=	Increase in tribunal cases	X	Cost per case	=	Cost of proposal
Employer (Private & Public Sector)	5317	X	2%	=	106	X	£5393	=	£571,658
Taxpayer	5317	X	2%	=	106	X	£1,034	=	£109,604
Individual	5317	X	2%	=	106	X	£1331	=	£141,086
Total									£822,348

High Estimate

	The number of tribunal cases	X	5%	=	Increase in tribunal cases	X	Cost per case	=	Cost of proposal
Employer (Private & Public Sector)	5317	X	5%	=	266	X	£5393	=	£1,434,538
Taxpayer	5317	X	5%	=	266	X	£1,034	=	£275,044
Individual	5317	X	5%	=	266	X	£1331	=	£354,046
Total									£2,063,628

Familiarisation Costs and Simplification Benefits

See pages 12-30.

Non-Monetised Costs and Benefits

The main impact will be to simplify the law, making it easier to understand and comply with the duties, without detracting from the level of protection for disabled people. Improved understanding on behalf of those with duties should reduce the level of unintentional discrimination.

Where cases go to court or tribunal they should take less time to reach a conclusion. This saving in court and tribunal costs will help balance out the possibility of more cases being taken for the reasons outlined in the costs section above.

Risks

Many responses to the consultation exercise in June 2007 agreed that the list of capacities complicates the definition of disability, and 80% of responses were in favour of the proposal to remove it. Several responses also argued that the list makes it harder for people with mental health conditions to demonstrate that they meet the definition of disability. If this measure was not adopted, the Government believes that the Equality Bill would maintain an unnecessary provision which creates confusion and difficulty for disabled people.

Enforcement

The definition of disability, of which the list of capacities is currently a part, is enforced by the County/Sheriff's Court or Employment Tribunal as appropriate.

(b) single threshold for making reasonable adjustments

Policy Option		Introduce a single threshold as the trigger for making reasonable adjustments.		
COSTS	ANNUAL COSTS		Description and scale of key monetised costs by ‘main affected groups’ <u>Service Providers</u> - Increase of between 1-3% in the number of adjustments made. The total current cost of adjustments is £200m. An increase of between 1% and 3% will therefore cost between £2-6m	
	Average Annual Cost			
	£ 2,000,000 – £6,000,000	10	Total Cost (PV)	£17,215,373 to £ 51,646,119
	Other key non-monetised costs by ‘main affected groups’			
BENEFITS	ANNUAL BENEFITS		Description and scale of key monetised benefits by ‘main affected groups’	
	One-off	Yrs		
	£ 0	1		
	Average Annual Benefit			
£ 0	10	Total Benefit (PV)	£ 0	

Other key non-monetised benefits by ‘main affected groups

This will result in an increase in the number of reasonable adjustments being made by service providers, giving disabled people the opportunity to access a wider range of facilities and services. Businesses will also benefit in terms of increased custom from disabled people and others. Improved public image could increase business opportunities. Improved access will enable disabled people and others to use services that were previously unavailable to them, or they will be better able to use currently available services, and more safely. The social and personal value of this is impossible to quantify.

Key Assumptions/Sensitivities/Risks

That proposals will lead to an increase in the number of adjustments of between 1-3%

Price Base Yr 2008	Time Period Years 10	Net Benefit Range (NPV) £17,215,373 to £ 51,646,119	NET BENEFIT (NPV Best estimate) £ See Range
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What is the geographic coverage of the policy/option?		GB		
On what date will the policy be implemented?				
Which organisation(s) will enforce the policy?		N/A		
What is the total annual cost of enforcement for these organisations?		£ 0		
Does enforcement comply with Hampton principles?		N/A		
Will implementation go beyond minimum EU requirements?		N/A		
What is the value of the proposed offsetting measure per year?		£ 0		
What is the value of changes in greenhouse gas emissions?		£ 0		
Will the proposal have a significant impact on competition?		No		
Annual cost (£-£) per organisation (excluding one-off)	Micro	Small	Medium	Large
Are any of these organisations exempt?	No	No	N/A	N/A

Impact on Admin Burdens Baseline (2005 Prices)

(Increase - Decrease)

Increase of £ Decrease of £ **Net Impact** **£**

Key: Annual costs and benefits: Constant (Net) Present Value
Prices

EVIDENCE

A single threshold for making reasonable adjustments

Options Identification

There are currently two different triggers for the duty to make a reasonable adjustment:

- in the provision of goods, facilities and services etc, the duty is activated when a disabled person would find it "impossible or unreasonably difficult" to access the service if an adjustment were not made;

- for employment and education, the threshold is reached when a disabled person would experience "substantial disadvantage" without an adjustment. There is an opportunity to streamline the reasonable adjustment provisions by adopting a single trigger for the Equality Bill.

Analysis of Costs & Benefits of Final Proposal

Adopting a single threshold

The cost to service providers of making the adjustments is calculated as follows:

Average amount spent on reasonable adjustments per year	Increase	Costs
£ 200,000,000	1% Increase	£2,000,000
£ 200,000,000	3% Increase	£6,000,000

This assumes that this change will increase the number of reasonable adjustments by between 1% and 3% and therefore the annual cost will be between £2million and £6million, based on the average cost of adjustments.⁶⁴

Familiarisation Costs and Simplification Benefits

See pages 12-30.

Non-Monetised Costs and Benefits

The main impact will be to simplify the law, making it easier to understand and comply with the duties, without detracting from the level of protection for disabled people. Improved understanding on behalf of those with duties should reduce the level of unintentional discrimination.

This may mean that fewer cases have to go as far as a court or tribunal hearing and informal dispute resolution mechanisms may be more likely to result in satisfactory outcomes.

Risks

Around 80% of all responses to the consultation exercise were in favour of this proposal, recognising that it would simplify the law, not least for organisations which are service providers as well as employers. Because the new threshold would be lower for service providers, there will be an increased requirement to make adjustments, but this will be substantially mitigated by the fact that these adjustments will continue to be required only where reasonable.

If no change is made the Government believes that the reasonable adjustment provisions will remain more complicated than necessary.

Enforcement

Enforced by the County/Sheriff's Court or Employment Tribunal as appropriate.

⁶⁴ The data are taken from the 'Disability Discrimination Act – Access to Goods, Services and Facilities – Regulatory Impact Assessment', Department for Work and Pensions, 2004.

(c) Introduce a single definition of disability discrimination

Options Identification

There are currently four different definitions of disability discrimination for: goods, facilities and services; public authority functions; private clubs; and premises. This piecemeal approach to the non-employment field has attracted criticism for making the law difficult to understand. The Equality Bill offers the opportunity to simplify the law by creating a single definition of disability discrimination.

Analysis of Costs & Benefits of Final Proposal

Introduce a single definition of discrimination

This measure is intended to simply remove the complexities in the current legislation whilst retaining coverage against disability discrimination. The costs are considered to be negligible. It is unlikely this change will have an impact on the number of court or tribunal cases as it is a clarification measure and does not extend rights.

The benefit will be that disabled people will have more consistent protection, which will be easier to understand. They will be less likely to be discriminated against because those with duties have not properly understood their duties. Where they do face discrimination, it will be easier to enforce and articulate their rights.

Familiarisation Costs and Simplification Benefits

See pages 12-30.

Non-Monetised Costs and Benefits

The main impact will be to simplify the law, making it easier to understand and comply with the duties, without detracting from the level of protection for disabled people. Improved understanding on behalf of those with duties should reduce the level of unintentional discrimination.

Risks

Replicating the current separate definitions of discrimination in the Equality Bill would do nothing to address the complexity of the law in this area.

Enforcement

Enforced by the County/Sheriff's Court.

(d) Introduce a single 'objective justification' defence

Options Identification

There are currently numerous individual justification defences in disability discrimination. This regime has been criticised for being too complicated, and a new Equality Bill affords the opportunity to simplify it, and to harmonise with other anti-discrimination law by replacing it with a well-known justification defence.

Analysis of Costs & Benefits of Final Proposal

Simplifying the law and aligning it with other anti-discrimination legislation

The benefit of aligning the justifications regime for disability discrimination more closely with other anti-discrimination law is that it will make it less complex and easier to understand. The need to show 'proportionality' is a stricter test than the subjective ('reasonable opinion') part of the current justification tests. So a test of objective justification, while widening the circumstances in which discrimination can be justified, also makes it harder to justify discrimination. We therefore consider that this proposal would strike the right balance of fairness between those with rights and those with duties and that it will be cost neutral overall.

Familiarisation Costs and Simplification Benefits

See pages 12-30.

Non-Monetised Costs and Benefits

The main impact will be to simplify the law, making it easier to understand and comply with the duties, without detracting from the level of protection for disabled people. Aligning the justification regime with other anti-discrimination legislation by adopting the familiar concept of objective justification should also help those with duties to understand them and respond appropriately.

This may mean that fewer cases have to go as far as a court or tribunal hearing and informal dispute resolution mechanisms may be more likely to result in satisfactory outcomes.

Risks

If nothing is done to revise the justifications regime, the Government believes that a significant opportunity to simplify and improve this aspect of disability anti-discrimination law will have been missed.

Enforcement

Enforced by the County/Sheriff's Court or Employment Tribunal as appropriate

Annex H - Making adjustments to common parts of let residential premises

Department DWP	Making adjustments to common parts of let residential premises	
Stage: Introduction	Version: 4	Date: December 2009
Related Publications: (1) Discrimination Law Review: Proposals for an Equality Bill for Great Britain (June 2007). (2) Proposals to simplify and modernise the law: Initial RIA (June 2007). (3) Framework for a Fairer Future (June 2008) and (4) the Government response to the consultation (July 2008) (5) Equality Bill Impact Assessment (Introduction) 27 April 2009		

Available to view or download at: <http://www.equalities.gov.uk>

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What is the problem under consideration? Why is government intervention necessary?

There are currently a range of provisions to make it easier for disabled people to rent and make use of residential, commercial and other premises. These include requiring a landlord or manager of premises not to unreasonably refuse permission for disability-related alterations to the disabled person's home to be carried out. However, there is no similar requirement for disability-related alterations to the physical features of the common parts (e.g. hallways, stairs and communal areas) of residential premises. This means that some disabled people can only use the common parts of their home with difficulty, when a simple alteration may give the disabled person a greater level of independence which would allow them to participate more fully in society.

What are the policy objectives and the intended effects?

Where a disabled person is at a substantial disadvantage, compared to a non-disabled person, in the use of the common parts of their 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). Disabled people will be able to live more independently in their own homes and will not have to rely so much on friends, relatives or other services to be able to interact with society.

What policy options have been considered? Please justify any preferred option.

Option 1: no change

Option 2 (final proposal): Requiring landlords to make adjustments to common parts where reasonable.

The Review Group on Common Parts found that there was evidence of good practice by some landlords, but there was also evidence of unmet need for disability-related alterations to common parts of residential premises. They concluded that a problem does exist, but the problem does not affect just disabled people. Landlords and managers of premises, and other lessees do not know what they do, or do not, have to do to accommodate the access needs of disabled people. This can lead to acrimonious and long running disputes, which there is no established equitable format for resolving because the current law does not provide a clear framework.

Option 3: improved funding, guidance and conciliation for adjustments to common parts, (no legislative changes).

When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects?

After implementation and on an ongoing basis, by the Equality and Human Rights Commission. The Government will also review after 5 years.

Making adjustments to common parts of let residential premises : Analysis & Evidence

Requiring landlords to make adjustments to common parts
where reasonable

ANNUAL COSTS		Description and scale of key monetised costs by 'main affected groups'		
One-off (Transition)	Yrs			
£	1			
Average Annual Cost (excluding one-off)		Taxpayer Increase of up to 8000 grants to pay for adjustments to common parts at a cost of up to £27m Familiarisation costs are factored into the overall familiarisation costs for the Bill, in pages 12-30.		
Up to £26,970,000	10		Total Cost (PV)	£ Up to £232,149,305
Other key non-monetised costs by 'main affected groups'				

BENEFITS	ANNUAL BENEFITS		Description and scale of key monetised benefits by 'main affected groups'	
	One-off	Yrs		
	£ 0	1	<p>Taxpayer</p> <p>Home care savings: This produces an annual estimated saving to councils of up to £15 million (and a small saving to individuals in user charges).</p> <p>Residential Care Savings estimated to be up to £25m</p>	
	Average Annual Benefit (excluding one-off)			
£10,000,000-£40,000,000	10	Total Benefit (PV)	£86,076,865 to £344,307,460	
<p>Other key non-monetised benefits by 'main affected groups'</p> <p>We estimate that half the 57,000 disabled people facing difficulties because of inaccessible common parts (29,000 people) will make adjustments in the first year following the legislative change. This assumption is based on 50% awareness of disability legislation among disabled people.</p> <p>More disabled people will be able to move home more easily. Fewer disabled people will be 'prisoners in their own homes'. Fewer will have accidents due to inaccessible common parts. Disabled people generally will enjoy greater ability to participate in society, work and live independently.</p>				

<p>Key Assumptions/Sensitivities/Risks</p> <p>Adjustments to Common Parts - Assumes half (50%) of those with inaccessible common parts will be aware of the legislation (29,000); assumes half of those who request changes to common parts will request Government Funding (around 14,000); and assumes 40% of applications would not proceed so 8,000 grants paid</p> <p>Home Care Savings - Assumes that of the total number of disabled people making adjustments to their common parts and also receiving Council funded home care (20% of 29,000) half of those will no longer require home care</p> <p>Residential Care Savings - Assumes a reduction in the number of people entering residential care of between 1 and 5%</p>

Price Base Yr 2008	Time Period Years 10	Net Benefit Range (NPV) £-146,072,440 to £344,307,460	NET BENEFIT (NPV Best estimate) £ See Range
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What is the geographic coverage of the policy/option?	GB
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On what date will the policy be implemented?				
Which organisation(s) will enforce the policy?	Individuals through the courts			
What is the total annual cost of enforcement for these organisations?	£ 0			
Does enforcement comply with Hampton principles?	N/A			
Will implementation go beyond minimum EU requirements?	N/A			
What is the value of the proposed offsetting measure per year?	£			
What is the value of changes in greenhouse gas emissions?	£ 0			
Will the proposal have a significant impact on competition?	No			
Annual cost (£-£) per organisation (excluding one-off)	Micro	Small	Medium	Large
Are any of these organisations exempt?	No	No	N/A	N/A

Impact on Admin Burdens Baseline (2005 Prices)				
				(Increase - Decrease)
Increase of	£	Decrease of	£	Net Impact
				£

Key: Annual costs and benefits: Constant (Net) Present Value
Prices

Evidence

Options Identification

During the Lords' stages of the Disability Discrimination Bill which led to the Disability Discrimination Act 2005 there was strong cross-Party pressure to give disabled people the right to make alterations to the common parts of let residential premises.

The amendments were resisted at the time because of lack of time to resolve the complex legal issues involved. Peers accepted instead that a review should be mounted into the issues and that this review would report, by the end of 2005, to the Minister for Disabled People and the Minister for Housing and Planning. The Review Group on Common Parts was set up for this purpose and included representatives of disability organisations including the former Disability Rights Commission, landlord organisations and officials from the Department for Work and Pensions, the then Office of the Deputy Prime Minister (now Communities and Local Government), Department of Constitutional Affairs (now Ministry of Justice), Department of Health and the Scottish Executive (although the review covers England and Wales only).

The Review Group concluded that a problem does exist and made what amounts to two main recommendations (one non-legislative and one legislative) which they considered should be taken forward together.

- Non-legislative recommendation – that the Government should provide guidance, extra finance and access to conciliation services and other forms of dispute resolution.
- Legislative recommendation – that the Government should establish, through consultation, whether new primary legislation is required and seek views on the Group's specific proposals for England and Wales. These would, for example, require the landlord, where reasonable, to make an

adjustment to physical features of the common parts of residential let premises to improve access for a disabled tenant, lessee or occupier when requested to do so by the tenant or lessee and at the tenant's/lessee's expense (unless the landlord chooses to pay). Similar provisions should be developed for common-hold premises.

The non-legislative proposals were addressed by a statement to Parliament on 13 July 2006 by the Minister for Disabled People. The proposed legislation will address the legislative recommendation.

A Court case, correspondence from landlords and tenants and the response to the consultation document has shown that there are still people who need alterations but are unable to get them under the current system. The legislation would balance the needs of the disabled person and the needs of the landlord or manager of the premises.

Provision in Scotland

The Review Group on Common Parts recognising the distinct differences in housing law in Scotland recommended that the Scottish Government should consider making similar provisions to allow disability-related alterations to be made to the common parts of residential premises in Scotland. Provision for disabled people in tenanted property in Scotland was made in the Housing (Scotland) Act 2006 but in relation to common parts could cover only the consent required from the person's landlord and not that required from other common owners. The normal arrangement in Scotland is that the consent of all owners of premises in a building is required for any proposed alterations (as distinct from repairs) to the common parts of the building. The Equality Bill includes a Regulation-making power for the Scottish Government to legislate to provide for consent to be given to disabled people to enable them to make disability-related alterations to the common parts of residential property.

Analysis of Costs & Benefits of Final Proposal

Numbers affected

The Survey of English Housing identifies 270,000 households with disabled people who consider their accommodation to be unsuitable; this figure has been adjusted to get a figure for England and Wales of 285,000. It is assumed that there are some common parts in the case of all flats and maisonettes – 18% of households live in a flat or maisonette. For a small proportion of other households there will also be some common parts (e.g. shared driveways and parking areas) – it is not possible to quantify how many. It has been assumed that 20% of households have common parts. It is therefore estimated that 57,000 disabled people (20% of 285,000) are facing difficulties because of inaccessible common parts.

The actual number of disabled people affected by the proposed change will, however, be much greater. This is because disabled people who have difficulties with access are currently restricted in their choice of housing, so this proposal will increase their ability to purchase property and move home, for more suitable accommodation or to be near work. (Note – figures provided in the costings below may not sum due to rounding. Costs have been rounded to the nearest £ million and the number of adjustments to the nearest 1,000.)

Benefits to disabled people

We estimate that half the 57,000 disabled people facing difficulties because of inaccessible common parts (29,000 people) will make adjustments in the first year following the legislative change. This assumption is based on 50% awareness of disability legislation among disabled people.⁶⁵

⁶⁵ This assumption is from DWP research report 429 on 'Landlords' responses to the DDA' which states: 'that around half of the disabled tenants were aware of the DDA to a greater or lesser extent, but few realised it covered the rights of disabled tenants'.

More disabled people will be able to move home more easily. Fewer disabled people will be 'prisoners in their own homes'. Fewer will have accidents due to inaccessible common parts. Disabled people generally will enjoy greater ability to participate in society, work and live independently.

Costs to Government

There are a number of funds available for disability-related adjustments. The main source of funding is the Disabled Facilities Grant, depending on the cost of the adjustment and the tenure of the property.

It is assumed that half of those requesting adjustments to common parts will apply for government funding. Local Government Association data show that 40% of applications do not proceed. It is therefore assumed that up to 8,000 grants may be paid in the first year, with a potential value of £27m. This is split between the Disabilities Facilities Grant (4000) and the Integrated Community Equipment Services Grant (4000). This was calculated as follows: of the 29000 people making common part adjustments half will apply for funding: 14,500, of which only 60% of applications will proceed, 8700.

Disabled Facilities Grant

Estimated number of new grants applied for as a result of the change in policy	X	Cost of an average grant	=	Additional cost
4350	X	£5,700	=	£24,795,000

Integrated Community Equipment Services

Estimated number of new grants applied for as a result of the change in policy	X	Cost of an average grant	=	Additional cost
4350	X	£500	=	£2,175,000

Total cost

Additional cost of Disabled Facilities Grant	+	Additional cost of Integrated Community Equipment Services	=	Total Additional cost
£24,795,000	+	£2,175,000	=	£26,790,000

Central government grants for funding disability-related adjustments are distributed according to priority rules and budgetary constraints. The Government has increased the funding for Disabled Facilities Grants to £146m in 2008/09 rising to £156m in 2009/10. Such grants are already available for making adjustments to common parts, although evidence suggests that currently few are paid for this purpose. Removing the legal barriers (i.e. the need to get consent of a landlord) will make it easier for disabled people to make such adjustments. Current assumptions are that this could result in grants being made up to £27m, as indicated above. This may result in other lower-priority applications being refused or deferred.

The estimation of a £27 m impact on the Disabled Facilities Grant budget is based on the best information available at the time of the costing. This provides a national figure. The departments of Health, Communities and Local Government and Work and Pensions will carry out further work to understand how the proposed change will impact on different authority types. This figure is therefore being kept under review.

Supporting People

Enabling some people to go outside, possibly for the first time in years, may result in a short term need for support with things like shopping. The Communities and Local Government Supporting People scheme provides such support. However, this option should have only a negligible effect on the Supporting People Scheme.

Housing Benefit

The costs to the person making the adjustment will not be paid through their rent or service charges and therefore will not be eligible for Housing Benefit.

Benefits to Government

Benefits to Government arise from a reduced need to provide home and residential care to disabled people who have problems accessing their home. There are possible savings to the National Health Service from fewer people going into hospital because of accidents and people being able to return home sooner.

Home care savings

It is estimated that 20% of the 29,000 disabled people making adjustments to the common parts of their property receive Council funded home care that they would be able to reduce by half with an adjustment to the common parts of their property⁶⁶. This produces an annual saving of up to £15m (and a small saving to individuals in user charges).. This is calculated as follows: The Audit Commission carried out visits to people waiting for funding for adjustments to their home and found that 17% were receiving care, which could have been reduced if the adjustment was made. Data from the Department of Health suggest 25% of disabled people need adapted accommodation while data from the Scottish Executive suggest between 19% and 23% of disabled people need personal care assistance.

Based on these figures it is estimated that 20% of the 29,000 disabled people making adjustments to the common parts of their property receive Council funded home care that they would be able to reduce by half with an adjustment to the common parts of their property.

Residential care

Improving access to disabled people's homes may reduce the number needing to enter residential care. 15% of the 135,000 people entering residential care each year, i.e. 20,000 people, do so because their home is no longer suitable. If this was reduced by between just 1% and 5%, and allowance was made for need for home care for those not admitted to care homes, the annual estimated savings to councils would be up to £25 million (and a saving to individuals in respect of self funding or user charges).

There is potentially an additional saving from people who have entered long term residential care subsequently being able to return home. It is assumed here that this effect will be negligible.

Hospital admissions

Some reduction in the number of people admitted to hospital each year would be expected from common parts adjustments. The NHS may also incur savings from being able to send people home earlier when their accommodation is more suitable.

Benefits to carers

There are estimated to be over 5.2m informal carers in the UK. Informal carers will be able to reduce the number of hours they spend caring. This will improve the quality of their lives allowing them more time for themselves and potentially to enter the labour market. For some, this may have

⁶⁶ Based on research findings from the Audit Commission, Department of Health and Scottish Executive.

the additional effect of allowing the disabled person to live at home rather than entering residential care – for a significant number (38%) of people entering residential care, stress on carers is one of the reasons stated for moving into a residential care home⁶⁷.

Cost to other tenants or lessees

There will be no monetary cost to other tenants or lessees, as the person requesting the adjustment will be responsible for paying for it.

Benefits to other tenants or lessees

Other tenants or lessees may also benefit from the adjustments made. Research prepared for the Review Group on Common Parts⁶⁸ found that around half of households with common parts reported that adjustments to common parts had already been made. This group expressed a very high level of satisfaction with the adjustments, and no-one expressed dissatisfaction.

Costs v Benefits

The costs of funding common parts adjustments are estimated at up to £27m. The savings in formal care costs are estimated to be up to £40m. It is therefore concluded that the monetary benefits outweigh the costs – with possible savings to the Government of £13m in the first year.

There are also significant benefits to the quality of life of the disabled people affected and in many cases their carers. There are additional knock on benefits to their local communities, the economy and the housing market. This combined with findings that other lessees are unlikely to oppose adjustments they do not have to contribute to financially, suggests that there is a net benefit under option 2.

Risks

No identifiable risks

Enforcement

Like all of the premises provisions the proposed duty will be enforced through the courts.

⁶⁷ Care home for older people – admission, needs and outcomes, PSSRU, 2001.

⁶⁸ Attitudes to making adjustments to the common parts of rented and leased residential premises can be found at <http://www.dwp.gov.uk/asd/asd5/rports2005-2006/rrep317.pdf>

Annex I - Extending protection against harassment outside the workplace

Department GEO
GEO/Agency: GEO

Extending protection against harassment outside the workplace

Stage: Introduction

Version: 4

Date: December 2009

Related Publications: (1) Discrimination Law Review: Proposals for an Equality Bill for Great Britain (June 2007). (2) Proposals to simplify and modernise the law: Initial RIA (June 2007). (3) Framework for a Fairer Future (June 2008) and (4) the Government response to the consultation (July 2008) (5) Equality Bill Impact Assessment (Introduction) 27 April 2009.

Available to view or download at: <http://www.equalities.gov.uk>

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What is the problem under consideration? Why is government intervention necessary?

Currently, discrimination law makes it unlawful to harass people in employment or vocational training on grounds of race, sex, gender reassignment, disability, religion or belief, age and sexual orientation. By contrast, freestanding statutory protection against harassment outside the workplace does not currently apply in respect of religion or belief, sexual orientation, age or disability.

What are the policy objectives and the intended effects?

To make the law as effective and as consistent as possible so that it is easier for people to know their rights and responsibilities.

What policy options have been considered? Please justify any preferred option.

- Option 1: Full extension of freestanding statutory protection against harassment to all protected grounds outside the workplace. This would have the effect of providing transparency and clarity in law, making it easier to understand the protections available, and ending any perceived hierarchy of rights.
- Option 2: No extension. This would disregard the evidence of those age stakeholder groups which showed a need for such protection. Similar concerns can arise in relation to disabled people.
- **Option 3: (Final Proposal) Extend only to grounds where there is a case for doing so. This is the preferred option, as it would provide redress for people who experience poor treatment where there is no comparator against whom to measure less favourable treatment.**

When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects?

After implementation, and on an ongoing basis, by the Equality and Human Rights Commission. The Government will also review after 5 years.

Harassment outside the workplace

Option 3

Extending freestanding statutory protection against harassment outside the workplace.

ANNUAL COSTS		Description and scale of key monetised costs by 'main affected groups'	
One-off (Transition)	Yrs		
£	1	<p>Court Costs resulting from an increase in cases are estimated as between £10,110 and £39,429 per year. The increased number of cases could have a recurring cost for the taxpayer of between £22,638 and £84,132; for employers of between £59,196 and £220,856; and for individuals of between £13,306 and £51,834.</p> <p>Familiarisation costs are factored into the overall familiarisation costs for the Bill, in pages 12-30.</p>	
Average Annual Cost (excluding one-off)			
£ 95,788 to £ 358,178	10	Total Cost (PV)	£ 824,514 to £ 3,083,084
Other key non-monetised costs by 'main affected groups'			

COSTS

BENEFITS	ANNUAL BENEFITS		Description and scale of key monetised benefits by 'main affected groups'	
	One-off	Yrs		
	£ 0	1	Increase in compensation for individuals of between £8103 and £16,206	
	Average Annual Benefit (excluding one-off)			
£ 8,103 – £16,206	10	Total Benefit (PV)	£ 69,748 to £139,496	
<p>Other key non-monetised benefits by 'main affected groups'</p> <p>Extension of protection against harassment outside the workplace to include age and disability would help to ensure that where services are provided for people in particular age ranges and those who are disabled, providers have regard to the dignity of the people whom they serve.</p>				

Key Assumptions/Sensitivities/Risks

That there will be an increase in the number of cases of between 0.1% and 0.4% of which the success rate will be 5%.

Based on estimates of additional age and disability harassment claims taken to employment tribunals as data for court cases are unavailable.

Data on tribunal costs are used to estimate court costs where data are not available.

Price Base Yr 2008	Time Period Years 10	Net Benefit Range (NPV) -£3,013,336 to -£685,018	NET BENEFIT (NPV Best estimate) £ See range
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What is the geographic coverage of the policy/option?	GB
On what date will the policy be implemented?	
Which organisation(s) will enforce the policy?	Individuals /courts
What is the total annual cost of enforcement for these organisations?	£ 0
Does enforcement comply with Hampton principles?	N/A
Will implementation go beyond minimum EU requirements?	N/A
What is the value of the proposed offsetting measure per year?	£ 0
What is the value of changes in greenhouse gas emissions?	£ 0

Will the proposal have a significant impact on competition?			No	
Annual cost (£-£) per organisation (excluding one-off)	Micro	Small	Medium	Large
Are any of these organisations exempt?	No	No	N/A	N/A

Impact on Admin Burdens Baseline (2005 Prices)				
				(Increase - Decrease)
Increase of	£	Decrease of	£	Net Impact
				£

Key: Annual costs and benefits: Constant Prices (Net) Present Value

EVIDENCE

Options Identification

We considered extending protection from harassment outside the workplace across all currently unprotected grounds, in order to provide harmonised protection from harassment, simplifying the law and providing transparency.

We also whether extending protection in this way would be a proportionate response to a real problem.

In addition, we considered whether to extend legislation just to areas where there is a potential gap in protection under discrimination law, and whether extending protection would be a proportionate response in the circumstances.

Non-legislative approaches were also examined, including work by other Government Departments on combating problems in services, such as the Department of Health's work improving standards of care in residential care homes.

Analysis of Costs & Benefits of Final Proposal

Extend protection against harassment outside the workforce to age and disability only; and not to religion/belief or sexual orientation

The Care Quality Commission took over the independent regulation of health and adult social care in England in April 2009. Registration requirements have been designed to ensure that they support a human rights approach in relation to the provision of health and social care. The Health and Social Care Act 2008 enables the Care Quality Commission to take account of other enactments, including human rights and equalities legislation, in reaching decisions on registration. It is able to address equality, respect for diversity and other human rights. Therefore, these do not need to be duplicated in providers' registration requirements.

However this framework does not provide individuals with redress for poor treatment. Whilst strengthening the regulatory framework provides assurance as to the safety and quality of services, a free-standing statutory provision will add an accessible, consistent and robust protection for people against harassment. Extending the harassment provision to cover age has the potential to strengthen protection from degrading treatment, for which there is some evidence from our consultation.

Although consultation responses did not provide a great deal of evidence to support extending protection to disability as well, the sort of situations that justify extending protection to age can apply equally to disability. We have therefore decided that this explicit protection should also extend to disability.

The outcome of the consultation on proposals for the Equality Bill did not justify extending freestanding protection against harassment outside the workplace to cover either sexual orientation or religion or belief. Examples provided of harassment on these grounds were either outside the scope of discrimination law or are capable of being covered by existing provisions that make discrimination unlawful, which will continue to be the case.

Costs

We intend to extend explicit protection from harassment outside the workplace to age and disability.

This will almost certainly lead to an increased number of cases. However, we consider it unlikely that the additional number of cases will be significant, for the reasons set out in the following paragraphs.

We are unaware of any claims of racial harassment outside the workplace since 2003 when this was first prohibited, and none of harassment on grounds of sex or gender reassignment where protection was introduced in April 2008. Likewise, there have been no cases involving harassment in higher or further education institutions (prohibited under the provisions covering employment and vocational training in respect of all seven protected grounds).

In employment tribunal cases, harassment is very often listed as one of two or more judicial complaints in a single claim. Evidence is not readily available of how far this applies in non-employment cases, but it would not be unreasonable to consider that the same principle reads across to such claims.

Given there is currently no age discrimination legislation outside the workplace (though the Bill will introduce it, see Annex C), it is difficult to estimate how many cases would arise from extending protection against harassment on grounds of age. This would be largely dependent on how businesses/service providers chose to react to the legislation and how many individuals sought to test it. It would also depend on the work that the Department of Health is doing to promote dignity and respect for older people in health and social care.

Taking account of the above, the figures below assume an increase of between 0.1-0.4% of cases being brought as a result of extending freestanding statutory protection against harassment outside the workplace to age and disability, with a success rate of 5%⁶⁹.

Court Costs (outside employment)

	Average court costs	X	Number of additional cases	=	Additional costs
Low Estimate (0.1%)	£1,011	X	10	=	£10,110
High Estimate (0.4%)	£1,011	X	39	=	£39,429

⁶⁹ These percentages relate to the total number of cases from Employment Tribunal Service data from the ETS Annual Reports 2005/6 to 2007/8 on the average number of tribunal cases for age and disability as statistics on the numbers of court cases are not available.

Cost of employment tribunals

The cost of increasing the number of discrimination cases heard by courts was calculated by multiplying the average cost for employers, tax payers and individuals for each case by the percentage increase in the number of cases.

		Increase in number of cases	X	Average cost of a case	=	Cost of proposal
LOW ESTIMATE	Employer	10	X	£5393	=	£53,930
	Taxpayer	10	X	£1,034	=	£10,034
	Individual	10	X	£1331	=	£13,331
	Total					£77,295

		Increase in number of cases	X	Average cost of a case	=	Cost of proposal
HIGH ESTIMATE	Employer	39	X	£5393	=	£210,327
	Taxpayer	39	X	£1,034	=	£40,326
	Individual	39	X	£1331	=	£51,909
	Total					£302,562

This calculation is based on tribunal costs rather than county court costs as the latter are not available. The calculation uses data on the average cost of a tribunal case. This data is taken from the SETA (Survey of Employment Tribunal Applications) 2003.

Compensation Costs & Benefits

We are not aware of any cases having been brought on grounds of racial or sexual harassment outside the workplace, but it is probable that some will seek to test the law, so a success rate of 5% is assumed

	Average compensation awarded	X	Number of additional cases	=	Additional costs
Low Estimate	£8,103	X	1	=	£8103
High Estimate	£8,103	X	2	=	£16,206

This is a cost to service providers and a benefit to individuals. This calculation is based on the median amount of compensation awarded by employment tribunals per case in 2004/5.

From the Survey of Employment Tribunal Applications 2003, we can estimate the sector composition of employment tribunal cases. The table below shows compensation costs to each sector.

Compensation Costs	Low Est	High Est
Public Sector	£ 2,188	£ 4,376
Private Sector	£ 5,267	£ 10,534
Voluntary Sector	£ 648	£ 1,296
Total	£ 8,103	£ 16,206

Familiarisation Costs and Simplification Benefits

See pages 12-30

Non Monetised Costs and Benefits

Extension of freestanding protection against harassment outside the workplace to age and disability will in principle benefit all people with those protected characteristics, but is likely to be most valuable in circumstances where lack of a comparator (for example where services are provided only for a particular age group, or only for disabled people) might make it difficult to establish direct discrimination.

Risks

Extension of protection against harassment outside the workplace to age and disability goes a significant way to achieving full harmonisation within discrimination law.

This option could be seen as creating a hierarchy of rights, and could give the impression that harassment of people due to their religion or belief or sexual orientation was acceptable. However, we do not believe that this is a major risk, as we have not received a high level of support for an extension of protection against harassment to include religion or belief or sexual orientation.

Enforcement

Any cases of harassment on grounds of age or disability outside the workplace would be heard in the county or sheriff courts, in line with other cases brought under goods, facilities and services legislation.

Annex J - Protection against third party harassment

Department GEO
GEO/Agency: GEO

Extension of protection against harassment by
third parties in the workplace

Stage: Introduction

Version: 4

Date: December 2009

Related Publications: (1) Discrimination Law Review: Proposals for an Equality Bill for Great Britain (June 2007). (2) Proposals to simplify and modernise the law: Initial RIA (June 2007). (3) Framework for a Fairer Future (June 2008) and (4) the Government response to the consultation (July 2008) (5) Equality Bill Impact Assessment (Introduction) 27 April 2009

Available to view or download at: <http://www.equalities.gov.uk>

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What is the problem under consideration? Why is government intervention necessary?

In response to a High Court ruling, employers are already liable, subject to specific conditions (including the fact that the harassment must be repeated and known to the employer), if a third party such as a customer or supplier subjects an employee to sex harassment, sexual harassment or gender reassignment harassment. But this does not apply to other protected grounds thus indicating an inconsistency in the protection provided.

What are the policy objectives and the intended effects?

To make employers liable where employees are subjected to persistent harassment by third parties in the workplace, so that employees have the same level of protection against third party harassment on grounds of race, disability, religion/belief, sexual orientation and age as they currently have against sex, sexual and gender reassignment harassment. To reduce the scope for confusion about employers' obligations and the protection for employees by extending protection from third party harassment in the workplace across all grounds.

What policy options have been considered? Please justify any preferred option.

- Option 1: Do nothing. This would leave an inconsistency and leave the Government open to criticism for a failure to harmonise without good reason.
- Option 2: (Final Proposal) Impose liability where an employer knowingly fails to protect an employee from repeated harassment by a third party over whom the employer has no direct control, e.g. a customer or client, on grounds of race, disability, religion/belief, sexual orientation and age. This will ensure a consistent approach towards the treatment of harassment in the workplace.
- Option 3: Impose liability as for option 2) but also on a service provider who knowingly fails to protect a third party from repeated harassment by another third party, e.g. customer on customer. The judgment of the High Court which required the Government to impose employer liability for third party harassment did not apply outside the workplace. But in any event we do not believe that the same policy considerations on third party harassment that apply in the workplace apply outside it, as the particular relationship that exists between employer and employee is not replicated between a service provider and a customer.

When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects?

After implementation, and on an ongoing basis, by the Equality and Human Rights Commission. The Government will also review after 5 years.

Summary: Analysis & Evidence

Policy Option:

Extending to other protected grounds (race, disability, religion/belief, sexual orientation and age) the liability on employers for knowingly failing to take reasonable steps to prevent persistent harassment of their employees by third parties over whom they have no direct control which is imposed by the Sex Discrimination Act 1975.

ANNUAL COSTS		Description and scale of key monetised costs by 'main affected groups'	
One-off (Transition)	Yrs		
£	1	<p>Court Costs resulting from an increase in cases are estimated as being between £15,165 and £60,660 per year.</p> <p>The higher number of cases will have a recurring cost for the taxpayer of between £32,863 and £129,265; for employers of between £86,160 and £339,373; and for individuals of between £19,959 and £79,836.</p> <p>Employers will pay out more in compensation which will cost between £8103 and £24,309.</p> <p>Familiarisation costs are factored into the overall familiarisation costs for the Bill, in pages 12-30.</p>	
Average Annual Cost (excluding one-off)			
£ 139,631 to £ 550,420	10	Total Cost (PV)	£ 1,201,897 to £4,737,841
COSTS		Other key non-monetised costs by 'main affected groups'	

BENEFITS	ANNUAL BENEFITS		Description and scale of key monetised benefits by 'main affected groups' Increase in compensation for individuals of between £8,103 - £24,309	
	One-off	Yrs		
	£ 0	1	Average Annual Benefit (excluding one-off)	
	£ 8,103 – £24,309	10		
		Total Benefit (PV)	£69,748 to £209,244	
Other key non-monetised benefits by 'main affected groups' This measure would provide consistency as to the rights of employees and responsibilities of employers across all strands in the workplace.				

Key Assumptions/Sensitivities/Risks That there will be an increase in the number of cases of between 0.1% and 0.4% of which the success rate will be 5%.
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Price Base Yr 2008	Time Period Years 10	Net Benefit Range (NPV) -£4,668,093 to -£992,653	NET BENEFIT (NPV Best estimate) £ See Range
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What is the geographic coverage of the policy/option?	GB
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On what date will the policy be implemented?	See page 8			
Which organisation(s) will enforce the policy?	Individuals and tribunals			
What is the total annual cost of enforcement for these organisations?	£ 0			
Does enforcement comply with Hampton principles?	Yes			
Will implementation go beyond minimum EU requirements?	Yes			
What is the value of the proposed offsetting measure per year?	£ 0			
What is the value of changes in greenhouse gas emissions?	£ 0			
Will the proposal have a significant impact on competition?	No			
Annual cost (£-£) per organisation (excluding one-off)	Micro	Small	Medium	Large
Are any of these organisations exempt?	No	No	N/A	N/A

Impact on Admin Burdens Baseline (2005 Prices)				
				(Increase - Decrease)
Increase of	£	Decrease of	£	Net Impact
				£

Key: Annual costs and benefits: Constant (Net) Present Value
Prices

EVIDENCE

Option 1- Do nothing

This would leave an inconsistency and leave the Government open to criticism for a failure to harmonise without good reason.

Option 2 - Impose liability where an employer knowingly fails to protect an employee from repeated harassment by a third party on grounds of race, disability, religion/belief, sexual orientation and age as is currently the case on grounds of sex, sexual and gender reassignment

This preferred option would eliminate confusion as to the responsibilities of employers and corresponding rights of employees that apply to different protected grounds in respect of third party harassment. It would increase consistency in protection against harassment.

Option 3 - Impose liability as under Option 2 but also on a service provider who knowingly fails to protect one third party from repeated harassment by another third party

Extending liability for third party harassment outside the workplace would mean that a customer could bring a claim against a service provider should they be harassed by a fellow customer. We do not believe that making a service provider liable in this way for the behaviour of his customers would be desirable. In the employment context, there is a particular ongoing relationship between the employer and employee, and we are not convinced that the same relationship exists between service provider and customer.

Analysis of Costs & Benefits of Final Proposal

Option 2 - Impose liability where an employer knowingly fails to protect an employee from repeated harassment by a third party on grounds of race, disability, religion/belief, sexual orientation and age as is currently the case on grounds of sex, sexual and gender reassignment

This proposal would have the effect of making an employer liable should s/he knowingly fail to protect an employee from repetitive harassment by a third party over whom the employer has no direct control, for example a customer or supplier. This might have the effect of increasing the number of harassment cases brought. This would add to the costs of the legislation, but as indicated in the following paragraph, a degree of protection already exists.

It is already the case that employers who know that an employee is being subjected to harassment by a third party over whom they have no direct control, and which they effectively condone if they do not take reasonable steps to prevent it when it is clearly within their power to do so, could be in breach of the implied duty not to act in such a way which is likely to harm the relationship of trust and confidence between employer and employee. This could lead to the employee claiming a breach of contract which is so serious that it entitles the employee to resign and claim constructive dismissal under employment legislation.

Costs of legislation

As there is therefore already some legislative protection under employment law that may apply in such circumstances, we assume that many employers will already have taken or be taking steps to protect their employees from third party harassment that could occur on any of the protected grounds. For other employers, costs may result from them having to take steps appropriate to the size and type of business they run, such as putting up warning notices saying that abuse of staff members is not acceptable. If employers take a proactive approach towards creating a working environment that is free from harassment, there may also be an overall reduction in harassment claims, even if some individuals decide to bring cases to test the legislation. This could reduce the costs associated with existing legislation.

Tribunal Costs

The Impact Assessment for the Regulations⁷⁰ which introduced both a wider definition of harassment and employer liability for third party harassment in the workplace on grounds of sex, estimated that these provisions might result in a 0.5%-1% increase in harassment claims. On the basis that between 1998 and 2004 there was an average of 10,139 cases where sex discrimination⁷¹ is registered as the main jurisdictional complaint, this would result in between an extra 50 and 100 more cases. We would however attribute only some 0.1% of these additional claims to the introduction of employer liability for third party harassment, with the majority of extra claims being considered to arise because of the wider definition of harassment under these regulations.

Taking a similar approach to estimating costs for this proposal, between 2005/6 and 2007/8 there was an average of 79,350 discrimination complaints registered per year with the Employment Tribunals Service.⁷² If one removes the average number of cases where sex discrimination (where this protection already applies) and equal pay (to which this proposal does not apply) are registered as the main jurisdictional complaints, which is 64,432⁷³, this leaves an average of 14,918 discrimination cases.

The figures below assume an increase of between 0.1-0.4% of cases being brought as a result of introducing employer liability for third party harassment in the workplace on grounds of race,

⁷⁰ Employment Equality (Sex Discrimination) Regulations 2005. SI 2005/2467

⁷¹ The ETS statistics for sex discrimination claims include claims for direct and indirect discrimination, harassment and victimisation on grounds of sex and of gender reassignment. Claims for employer liability for third party harassment will be similarly aggregated under the different grounds of discrimination.

⁷² ETS Annual Reports

⁷³ ETS Annual reports

disability, religion/belief, sexual orientation and age as is currently the case on grounds of sex, sexual and gender reassignment harassment, and a 5% success rate for these new cases.

	Average tribunal costs	X	Number of additional cases	=	Additional costs
Low Estimate	£1,011	X	15	=	£15,165
High Estimate	£1,011	X	60	=	£60,660

Cost of increase in cases

The cost of the increased number of discrimination cases heard by employment tribunals was calculated by multiplying the average cost for employers, tax payers and individuals for each case by the percentage increase in the number of cases

		Increase in number of cases	X	Average cost of a case	=	Cost of proposal
LOW ESTIMATE	Employer	15	X	£5393	=	£80,895
	Taxpayer	15	X	£1,034	=	£15,510
	Individual	15	X	£1331	=	£19,965
	Total					£116,370

		Increase in number of cases	X	Average cost of a case	=	Cost of proposal
HIGH ESTIMATE	Employer	60	X	£5393	=	£323,580
	Taxpayer	60	X	£1,034	=	£62,040
	Individual	60	X	£1331	=	£79,860
	Total					£545,340

Compensation Costs & Benefits

We are not aware of any cases being brought under the April 2008 provisions which introduced employer liability for harassment by third parties but assume that some will seek to test the law, so a success rate of 5% is assumed.

	Average compensation awarded	X	Number of additional cases	=	Additional costs
Low Estimate	£8,103	X	1	=	£8,103
High Estimate	£8,103	X	3	=	£24,30

From the Survey of Employment Tribunal Applications 2003, we can estimate the sector composition of employment tribunals. The table below shows compensation costs to each sector.

Compensation Costs	Low Est	High Est
Public Sector	£ 2,188	£ 6,563
Private Sector	£ 5,267	£ 15,801
Voluntary Sector	£ 648	£ 1,945
Total	£ 8,103	£ 24,309

Benefits

In ensuring that workplace claims of third party harassment can be brought, we will be making clear that the protection that is currently provided for employees in relation to sex and gender reassignment also applies to race, disability, sexual orientation, religion or belief and age. This should remove the potential for confusion which can arise now amongst both employers and employees as to their respective responsibilities and rights.

Familiarisation Costs and Simplification Benefits

See pages 12-30.

Non Monetised Costs and Benefits

In making clear that employers may be liable for claims of third party harassment, we will be providing employees with redress for such treatment, and also encouraging all employers to ensure that their staff are reasonably protected from such treatment.

Risks

We believe that this final proposal introduces for employers and employees a clear and consistent message as to what behaviour is and is not permitted in the workplace.

Enforcement

Extension of employer liability for third party harassment in the workplace will not require changes to the enforcement framework currently in place for employment related harassment claims, whereby individuals bring cases against their employers in employment tribunals.

Annex K - Equal Pay

Department GEO		Impact Assessment - Equality Bill	
Stage: Introduction	Version: 4	Date: December 2009	
Related Publications: (1) Discrimination Law Review: Proposals for an Equality Bill for Great Britain (June 2007). (2) Proposals to simplify and modernise the law: Initial RIA (June 2007). (3) Framework for a Fairer Future (June 2008) and (4) the Government response to the consultation (July 2008) (5) Equality Bill Impact Assessment (Introduction) 27 April 2009			

Available to view or download at: <http://www.equalities.gov.uk>

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What is the problem under consideration? Why is government intervention necessary?

Currently, British law on pay-related discrimination between women and men is covered by two separate Acts which use different concepts and procedures and have different remedies. Claims for equal pay (more specifically, equal pay for work of equal value) can be complex, time-consuming and therefore costly for business and individuals. The mass of domestic and European case law can make it difficult for people to know their rights and responsibilities, and legal expertise and support is usually essential when claims are brought to tribunals. The Government believes there is potential to streamline the law, making it less confusing for employers and employees.

What are the policy objectives and the intended effects?

- Remove current confusion for employers and individuals with regard to equal pay law;
- Ensure the law is clearer and therefore potentially less subject to appeal;
- Speed up the resolution of equal pay cases;
- Maintain certainty where possible; and
- Ensure that the claimant's continuing entitlement to equal pay is legally certain.

What policy options have been considered? Please justify any preferred option.

- Option 1: do nothing
 - **Option 2: incorporate equal pay provisions along with sex discrimination provisions within a single piece of legislation (the Equality Bill), replicating the existing contract-based approach of the Equal Pay Act and the tort-based approach of the Sex Discrimination Act but also reflecting key decisions in equal pay case law, and ensuring there is neither gap nor overlap between the provisions (Final Proposal).**
 - Option 3: deal with equal pay in the Equality Bill as a form of sex discrimination, using the tort-based approach of the Sex Discrimination Act.
-
- Option 2 is the preferred option because it would remove current confusion for employers and individuals, with associated savings when bringing or defending an equal pay case. Clearer law that is potentially less subject to appeal could speed up resolution of equal pay cases with concomitant cost savings. By reflecting current case law, certainty will be maintained. Maintaining the contract-based approach to equal pay will ensure that the claimant's continuing entitlement to equal pay is legally certain.

When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects?

After implementation, and on an ongoing basis, by the Equality and Human Rights Commission. The Government will also review after 5 years.

Equal Pay - Analysis & Evidence

Simplifying the Equal Pay Provisions

Incorporate equal pay provisions along with sex discrimination provisions within a single piece of legislation (the Equality Bill), replicating the existing contract-based approach of the Equal Pay Act and the tort-based approach of the Sex Discrimination Act but also reflecting key decisions in equal pay case law.

ANNUAL COSTS		Description and scale of key monetised costs by 'main affected groups'	
One-off (Transition)	Yrs		
£ Marginal	1		
Average Annual Cost (excluding one-off)		Total Cost (PV)	
£ Marginal	10		
Other key non-monetised costs by 'main affected groups'			
ANNUAL BENEFITS		Description and scale of key monetised benefits by 'main affected groups'	
One-off	Yrs		
£	1		
Average Annual Benefit (excluding one-off)		Total Benefit (PV)	
£ 3,942,550	10		
Other key non-monetised benefits by 'main affected groups'			
<p>The mass of domestic and European case law can make it difficult for people to know their rights and responsibilities, and legal expertise and support is usually essential when claims are brought to tribunals. The Government believes there is potential to streamline the law, making it less confusing for employers and employees.</p>			

Key Assumptions/Sensitivities/Risks

Savings will result from clearer law on Equal Pay – fewer appeals and more speedy resolution of cases (1% saving assumed)

Price Base Yr 2008	Time Period Years 10	Net Benefit Range (NPV) Up to £ 33,936,230	NET BENEFIT (NPV Best estimate) £See Range
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What is the geographic coverage of the policy/option?	GB
On what date will the policy be implemented?	
Which organisation(s) will enforce the policy?	Tribunals
What is the total annual cost of enforcement for these organisations?	£ 0
Does enforcement comply with Hampton principles?	N/A
Will implementation go beyond minimum EU requirements?	N/A
What is the value of the proposed offsetting measure per year?	£
What is the value of changes in greenhouse gas emissions?	£ 0
Will the proposal have a significant impact on competition?	No
Annual cost (£-£) per organisation (excluding one-off)	Micro Small Medium Large
Are any of these organisations exempt?	No No N/A N/A

Impact on Admin Burdens Baseline (2005 Prices)				
				(Increase - Decrease)
Increase of	£	Decrease of	£	Net Impact
				£

Key: Annual costs and benefits: Constant (Net) Present Value
Prices

Evidence

Options Identification

The problem is that the law on gender discrimination is contained in a number of different measures, making it more difficult to understand and comply with. In particular there are specific provisions dealing with discrimination in contractual matters separately and in a different way from other forms of discrimination. The three logical approaches are to leave this situation as it is, to attempt to completely harmonise the provisions, or to find a middle course. The options indicated above, and which we consulted on in 2007, reflect these approaches. The final proposal is outlined below.

Analysis of Costs & Benefits of Final Proposal

Option 2: Incorporate equal pay provisions along with sex discrimination provisions within a single piece of legislation (the Equality Bill), replicating the existing contract-based approach of the Equal Pay Act and the tort-based approach of the Sex Discrimination Act but also reflecting key decisions in equal pay case law, and ensuring there is neither gap nor overlap between the provisions.

Benefits from a reduction in the number of tribunal cases

It is assumed that there will be a 1% reduction in the number of justiciable events on equal pay. Currently many claimants who believe they have been discriminated against on grounds of gender make both sex discrimination and equal pay claims in parallel, partly as a result of lack of clarity in the existing legislation, and partly to reflect the different facets of discrimination. We believe greater clarity should reduce the need for this, above the general simplification effect of the Bill. In the absence of hard evidence as to the scale of this potential effect we have opted for a low figure. It is not thought that any significant number of new cases will be generated. The benefits of this can be calculated by multiplying the estimated reduction in cases by the cost per case.

	Average number of equal pay tribunal cases per year	X	1%	=	Reduction in tribunal cases	X	Cost per case	=	Benefit of proposal
Employers	41,329	X	1%	=	413	X	£5393	=	£2,227,309
Taxpayer	41,329	X	1%	=	413	X	£1,034	=	£427,042
Individual	41,329	X	1%	=	413	X	£1331	=	£549,703

This calculation assumes that there will be a reduction of 1% in the number of tribunal cases.⁷⁴

Familiarisation Costs and Simplification Benefits

See pages 12-30.

Non Monetised Costs and Benefits

Greater clarity and simplification will increase confidence in the law, and resulting increased compliance will increase employee satisfaction.

Enforcement

Simplification of itself brings no changes to the enforcement regime.

⁷⁴ The data on the average number of tribunal cases on equal pay and costs are taken from the ETS Annual Reports 2005/6 to 2007/8

Annex L - Outlawing pay secrecy

Department GEO

Equal Pay

Stage: Introduction

Version: 4

Date: December 2009

Related Publications: (1) Discrimination Law Review: Proposals for an Equality Bill for Great Britain (June 2007). (2) Proposals to simplify and modernise the law: Initial RIA (June 2007). (3) Framework for a Fairer Future (June 2008) and (4) the Government response to the consultation (July 2008) (5) Equality Bill Impact Assessment (Introduction) 27 April 2009

Available to view or download at: <http://www.equalities.gov.uk>

Contact for enquiries: David Ware

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What is the problem under consideration? Why is government intervention necessary?

Currently, some employers impose formal or informal requirements on their employees not to discuss their pay with one another. This acts as a barrier to transparency about pay and reduces the chances for women to know whether they are being paid the full value of their work.

What are the policy objectives and the intended effects?

- Increase transparency about pay in the private and public employment sectors
- Make it easier for women to find out whether they are being paid what their work is worth
- Reduce the difficulty women have in identifying real comparators on which to base an equal pay claim

What policy options have been considered? Please justify any preferred option.

- Option 1: do nothing
- Option 2: impose a ban on pay secrecy between colleagues and make action possible by an individual who is subjected to such a ban
- **Option 3: impose a ban on pay secrecy between colleagues and make action possible when action is taken against an employee for discussing pay with a colleague (preferred)**

Option 3 is the final proposal because it would clearly prohibit the practice of banning discussions of pay between colleagues, and would be enforceable effectively at the point where enforcement is needed –when an employee does have such a discussion. Option 1 would leave it open to employers to operate discriminatory pay practices in relative secrecy. Option 2 seems unlikely to be effective since at the point when an employer purports to impose a ban a male employee may not consider it worthwhile to challenge it.

When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects?

Immediately, and on an ongoing basis, by the Equality and Human Rights Commission. The Government will also review after 5 years.

Outlawing pay secrecy : Analysis & Evidence

Policy Option: 3

Impose a ban on pay secrecy between colleagues and make action possible when action is taken against an employee for discussing pay with a colleague

COSTS	ANNUAL COSTS		Description and scale of key monetised costs by 'main affected groups'	
	One-off (Transition)	Yrs		
	£	1		
				<p>Public Sector – costs up to £342,272</p> <p>Private Sector – costs up to £1,537,263</p> <p>Voluntary Sector – costs up to £26,150</p> <p>Individuals – costs up to £326,872</p> <p>Familiarisation costs are factored into the overall familiarisation costs for the Bill, in pages 12-30.</p>
Average Annual Cost (excluding one-off)				
Up to £2,232,557	10	Total Cost (PV)	Up to £19,217,153	
Other key non-monetised costs by 'main affected groups'				

BENEFITS	ANNUAL BENEFITS		Description and scale of key monetised benefits by 'main affected groups'	
	One-off	Yrs		
	£ 0	1	Individuals – benefits up to £326,872	
	Average Annual Benefit (excluding one-off)			
£ 326,872	10	Total Benefit (PV)	£2,813,614	
<p>Other key non-monetised benefits by 'main affected groups'</p> <p>Private Sector – greater employee satisfaction due to increased perceived openness and fairness, greater attractiveness as employer</p> <p>Taxpayer – greater progress toward elimination of gender discrimination in pay, increased transparency</p> <p>Individual - greater awareness of rewards available for work, better chances to agree reward for work, greater feeling of fairness</p>				

Key Assumptions/Sensitivities/Risks
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Price Base Yr 2008	Time Period Years 10	Net Benefit Range (NPV) Up to -£16,403,539	NET BENEFIT (NPV Best estimate) £ See Range
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What is the geographic coverage of the policy/option?	GB
On what date will the policy be implemented?	
Which organisation(s) will enforce the policy?	N/A
What is the total annual cost of enforcement for these organisations?	£ 0
Does enforcement comply with Hampton principles?	N/A
Will implementation go beyond minimum EU requirements?	N/A
What is the value of the proposed offsetting measure per year?	£
What is the value of changes in greenhouse gas emissions?	£ 0
Will the proposal have a significant impact on competition?	No

Annual cost (£-£) per organisation (excluding one-off)	Micro	Small	Medium	Large
Are any of these organisations exempt?	No	No	N/A	N

Impact on Admin Burdens Baseline (2005 Prices)				
				(Increase - Decrease)
Increase of	£	Decrease of	£	Net Impact
				£

Key: Annual costs and benefits: Constant Prices (Net) Present Value

Evidence

Options Identification

It is difficult for women to know whether they are being paid equally with male colleagues doing equivalent work. The former Equal Opportunities Commission, in their response to the consultation paper on the Equality Bill, drew attention to a study showing that 22% of employers imposed secrecy of this kind.

Option 1: Do Nothing

Doing nothing would not increase the ability of women to know their pay situation in relation to others. It would remain difficult for some women to identify comparators, and leave the situation of men who discuss their pay with a female colleague in danger of reprisals. A culture of secrecy would continue to be fostered in some employment sectors.

Option 2: Ban secrecy requirements and make action by an employee possible when a restriction is imposed

This option has the apparent advantage of immediacy, by making a challenge possible when an employer first asserts that his employees may not discuss their pay with one another. However, it seems unlikely that male employees will readily consider and challenge such an instruction at that point. This may leave a complainant at a later stage vulnerable to assertions that some personal factor has caused him to act as he does, and it is to this that the employer is responding. In addition, allowing actions at this stage may raise the likelihood of unmeritorious claims based on miscommunication or misunderstanding.

Analysis of Costs & Benefits of Final Proposal

Option 3: Ban secrecy requirements and make action possible when action is taken against an employee for having such a discussion.

This option responds directly to any disadvantage suffered by an individual who has action taken against them for discussing their pay with a colleague. Like option 2, it makes clear at the same time that such a restriction cannot be upheld. It will therefore enable employees, if they choose to informally challenge such a restriction when first it is imposed or when they first become aware of it, by drawing the law to the attention of the employer. This should also help to reduce the likelihood of tribunal cases arising. Potential costs are set out in the table:

	Average number of tribunal cases per year	X	1%	=	increase in tribunal cases	X	Cost per case	=	Cost of Proposal
Employer (Private & Public Sector)	23,103	X	1%	=	231	X	£5393	=	£1,245,783
Taxpayer	23,103	X	1%	=	231	X	£1,034	=	£238,854
Individual	23,103	X	1%	=	231	X	£1331	=	£307,461

This calculation that there will be an increase of 1% in the number of gender discrimination cases at tribunal – which we consider to be an overestimate. Given clarity in the law it is unlikely that employers will seek to take action against an individual who discloses their pay – whereas at present there may be cases in which such action is taken even in circumstances when the individual could claim victimisation.

From the Survey of Employment Tribunal Applications 2003, we can estimate the sector composition of employment tribunals. The table shows compensation costs to each sector.

Compensation Costs	Estimate
Public Sector	£ 88,255
Private Sector	£ 212,467
Voluntary Sector	£ 26,150
Total	£ 326,872

Risks

Option 3 presents the minimal level of risk.

Enforcement

Enforcement will be by action at Employment Tribunal.

Annex M - Gender pay gap publishing in the private and voluntary sectors

Department /Agency: GEO		
Stage: Introduction House of Lor	Version: 4	Date: December 2009
Related Publications:		

Available to view or download at: <http://www>

Contact for enquiries: Matthew King

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What is the problem under consideration? Why is government intervention necessary?

The Government has national targets to reduce the gender pay gap. But to tackle inequality we must be able to see it. We know that across the country there is an overall pay gap between men and women of 22.6% based on median pay for full and part-time workers. However, we do not know what the picture is by employer or employment sector. Given that 79.1% of the population is employed in the private and voluntary sector⁷⁵ it is essential that we work with this sector if we are to reduce these labour market disparities

Government intervention is necessary because, while there has been some improvement in the overall figures in the past decade, the gap began to widen again in 2008. This may indicate a more fundamental continuing problem: occupational segregation remains a key feature of the UK labour market as women tend to be clustered into a narrow range of sectors of the labour market. The impact of this is people being employed below their potential, or out of the labour market altogether. If the UK economy is not fully tapping into the talents and skills of its working age population effectively, this has related, often long-term costs and potentially damages the country's competitiveness. There is a lot of evidence that paid employment is an important route out of poverty and for promoting social mobility. Whichever way viewed, the gender pay gap is holding Britain back.

What are the policy objectives and the intended effects?

We want larger employers and their staff in the private and voluntary sectors to reap the benefits of reducing their gender pay gap. This outcome first requires improved transparency, which in turn depends on encouraging larger employers to publish, in an accessible way their gender pay gap.

As well as the obvious benefit that transparency will cumulatively bring for those at the wrong end of the pay gap, the impacts for business will also be positive and should more than compensate for any initial outlay in collating and publishing the recommended or required data.

It should bring a new rigour to decision-making on remuneration with a demonstrable framework within which there is a clear linkage between performance and reward.

In turn such improved practice should raise the stock of employers with their own workforce, leading to improved productivity and better retention of talent. Employers who take these responsibilities seriously will see an improvement in their image to key outsiders – to investors, clients and potential employees. We expect business will increasingly regard reporting on their progress on equality as an important part of explaining to investors and others the prospects for the business, which will in turn alter their recruitment practices. Over time we expect this to lead to a cultural change with businesses establishing their own benchmarks to measure progress and remain economically and ethically attractive to investors and potential recruits.

⁷⁵ ONS Labour Force Survey Q2 2009

What policy options have been considered? Please justify any preferred option.

Option one - Do nothing.

Despite successive anti-discrimination and equal pay legislation there has been relatively little improvement in the pay gap over the past 10 years, with women and men concentrated in very different employment sectors. Given the limited progress towards closing the gender pay differential the Government is committed to do more, so to do nothing is not an option.

Option two – Introduce gender pay gap publishing for larger employers (preferred option).

By increasing transparency in pay, we will enable the private and voluntary sector to set benchmarks for progress without imposing disproportionate costs. Evidence suggests⁷⁶ that many leading employers already collect some of the relevant information and they may be prepared to make it public if they were not to be disadvantaged in the market place by doing so. For example CIPD⁷⁷'s 2005 survey found that only 12% of respondents did not have the data to carry out an equal pay review, suggesting the majority of employers would already have the relevant information to set out the overall gender pay gap.

The Government welcomes the Equality and Human Rights Commission’s (EHRC) work with the CBI, TUC and other stakeholders to produce a set of measurements of the gender pay gap that private and voluntary sector employers with at least 250 staff can start to use on a voluntary basis from 2010. A public consultation has taken place and the Commission will make recommendations to the Government by the end of this year.

The Equality Bill contains a power to require publication of the pay gap by such employers, but this would only be used if sufficient progress on voluntary publication is not made by 2013.

Option three – Introduce mandatory pay audits

Compel companies or businesses to carry out pay audits to identify issues relating to unequal pay. While we believe pay audits can be a powerful tool there is mixed evidence on their effectiveness. For some companies the related costs may outweigh the benefits. Research commissioned by the Equal Opportunities Commission in 2005 found that the administrative cost of carrying out an equal pay review was typically the equivalent of three to six months of the time of a single member of staff.

When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects? The EHRC will regularly report to the Government on voluntary progress by employers in publishing their pay gaps. We will also monitor the costs of so doing and will measure the benefits as they begin to accrue, though this will take time and not all benefits will easily be quantified on a monetary basis.

Similar monitoring is envisaged in the event that the power to require publication is commenced from 2013.

ANNUAL COSTS		Description and scale of key monetised costs by ‘main affected groups’
One-off (Transition)	Yrs	
£ See example	2	Private and voluntary sector employers in Great Britain that have 250 or more employees
Average Annual Cost (excluding one-off)		
£ See example		Total Cost (PV) £ -
Other key non-monetised costs by ‘main affected groups’		

⁷⁶ See Nottingham Business School Association of Chartered Certified Accountants report

⁷⁷ Chartered Institute of Personnel and Development

BENEFITS	ANNUAL BENEFITS		Description and scale of key monetised benefits by 'main affected groups' Private and voluntary sector employers in Great Britain that have 250 or more employees	
	One-off	Yrs		
	£ See example	2		
	Average Annual Benefit (excluding one-off)			
	£ See example	Total Benefit (PV) £		
Other key non-monetised benefits by 'main affected groups'				

Key Assumptions/Sensitivities/Risks

Price Base Year	Time Period Years	Net Benefit Range (NPV) £ -	NET BENEFIT (NPV Best estimate) £
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What is the geographic coverage of the policy/option?		GB		
On what date will the policy be implemented?		See notes p.3		
Which organisation(s) will enforce the policy?		EHRC		
What is the total annual cost of enforcement for these organisations?		£		
Does enforcement comply with Hampton principles?		Yes		
Will implementation go beyond minimum EU requirements?		Yes		
What is the value of the proposed offsetting measure per year?		£		
What is the value of changes in greenhouse gas emissions?		£		
Will the proposal have a significant impact on competition?		No		
Annual cost (£-£) per organisation	Micro	Small	Medium	Large
Are any of these organisations exempt?	Yes/No	Yes/No	N/A	N/A

Impact on Admin Burdens Baseline (2005 Prices)		(Increase - Decrease)	
Increase of £	Decrease £	Net Impact	£

Key: Annual costs and benefits: Constant Prices (Net) Present

Evidence Base

Background

The table below demonstrates the relatively slow progress there has been in reducing the gender pay gap over the last 10 years, despite the existing legislation. In 2008 the gradual downwards trend since 1997 was reversed and the overall figure rose for the first time since 2002; moreover there is a risk that this downward trend could be reversed in a recession.

Year	UK employment rate (%)	Overall (FT/PT) median gender pay gap (%)
1997	74.4	27.5
1998	74.9	27.3
1999	75.6	27.0
2000	76.2	26.7
2001	74.5	26.4
2002	74.1	26.9
2003	74.4	25.1
2004	74.5	24.7
2005	74.5	22.7
2006	74.4	22.2
2007	74.9	21.9
2008	74.6	22.6

Source: Labour Force Survey and Annual Survey of Hours and Earnings

Recent research⁷⁸ concluded that self-regulatory initiatives for gender pay disclosure had limited potential for improved accountability and that there was little alternative to regulation if we are to see an improvement in accountability, and to discover where inequality of opportunity lies. Reporting on performance on workplace gender issues among UK companies has improved considerably over the last decade but this is often non-comparable data, which is one of the greatest barriers to improved reporting on this issue; without transparency it remains unclear what action, if any, is needed to ensure equality of opportunity.

Research⁷⁹ has also found some businesses have withheld detailed information available internally on gender equality because of concerns that it does not reflect well on the company and also because they have experienced little demand from the public for more information; several also identified that they do not want to be the first in the industry to publish data.

In light of these evidence policy option 1 (do nothing) would not be considered appropriate.

The benefits of publishing the measured gender pay gap

On a narrow measure, inviting employers to publish by accessible means their gender pay gap will help identify areas of occupational segregation within an organisational structure as well as across sectors and in regions.

⁷⁸ *Equal Opportunity for Women in the Workplace: A Study of Corporate Disclosure* by Kate Grosser, Professor Carol Adams & Professor Jeremy Moon

⁷⁹: Private Company Reporting of Workforce Diversity Data by IFF Research and prepared for the Government Equalities Office.

Many other benefits would flow, as previously explained. The Equality and Human Rights Commission, together with the CBI and the TUC have argued that recruiting and promoting people on the basis of competence can help a business to find talent in unexpected places, and to retain those people longer. Finding the right people with the right skills and aptitudes is essential, particularly when companies are facing economic pressures.⁸⁰

Who will be encouraged to report on metrics?

Private and voluntary sector employers in Great Britain that have 250 or more employees should be publishing this information. From 2013 this group could be required to do so. To estimate this target population we have used data from the FAME⁸¹ dataset that estimates there about 16,000 active registered companies with more than 250 employees. (We are using this data to estimate the number of private and voluntary sector organisations with 250 or more employees as we believe the numbers are roughly equivalent.)

What the legislation would require

The publication of information relating to the pay of employees in order to show if there is a gender pay gap.

The Government has invited the EHRC to work with the CBI, the TUC and others to develop the appropriate 'metrics' for measuring the gender pay gap, which the companies and voluntary sector organisations covered by the power should be encouraged to report on; and options for how these should be published. The measures could, for example, include the following options:

- A single figure on hourly pay for men and women.
- Separate full-time and part-time gender pay gaps.
- The numbers of men and women in each pay band.
- The role of narrative and context, business by business, and sector and sector.
- The outcome of any equal pay reviews

The Government has also asked the EHRC to report annually on progress towards gender pay transparency. A full impact assessment would be conducted prior to any use, from 2013, of the gender pay publishing power in the Bill.

Costs

The costs of the voluntary publishing arrangements or any legislation would arise in three main areas:

- A one-off familiarisation cost
- A one-off implementation cost
- An annually recurring cost

It is assumed that “familiarisation”, in the great majority of cases and for most employers and individuals, will mean familiarisation with or through guidance and advice provided by the EHRC (Equality and Human Rights Commission) and/or by other advisory bodies such as ACAS (Advisory, Conciliation and Arbitration Service). It is also assumed that “familiarisation” means reaching the point where a manager or relevant employee of a firm is aware of the changes in the law and how they impact on the business.

The one-off implementation cost may involve the set up of new collection and reporting processes to follow the voluntary arrangements or comply with the legislation. The annually recurring cost would involve the ongoing cost associated with voluntary compliance or legislation.

⁸⁰ *Talent not Tokenism - the business benefits of workforce diversity* CBI, TUC, EHRC Report, June 2008

⁸¹ FAME (Financial Analysis Made Easy) is a database that provides financial and descriptive information on companies in the UK and Ireland. Published by Bureau van Dijk Electronic Publishing (BvDEP), <http://www.bvdep.com/en/fame.html>

A full quantitative impact assessment for this proposal will be completed when the EHRC has completed and reported on the appropriate 'metrics' for measuring the gender pay gap, and how this would be published, but certain indicative assumptions have been made in this assessment for illustrative purposes.

Although the precise details for the voluntary arrangements and any compulsory regime from 2013 may vary slightly, our assumption is that the cost per employer of publishing, for example, a single figure annually under either approach should be similar.

The example below assumes a voluntary arrangement to publish the overall median gender pay gap which compares women's median hourly pay (excluding overtime) as a percentage of men's median hourly pay (excluding overtime). All permanent employees are included, including part-time workers, and there is no weighting of employees related to the number of hours they work. The overall gender pay gap simply compares the relative positions of men and women within the organisation, there is no further granulation.

Level of existing data collection:

We know many private sector companies are already collecting the necessary data to calculate their companies' single figure gender pay gap. The 2008 equal pay review survey conducted by IFF Research on behalf of the Equality and Human Rights Commission (EHRC), found that 35% of all private sector companies had a company objective related to closing the gender pay. The proportion was even greater for larger firms, 46% for employers with between 100 and 499 employees, and 56% for employers with 500+ employees.

The research also looked at the incidence of equal pay review activity for the private sector in 2008. An equal pay review is a tool used by employers to ensure that their pay systems deliver equal pay, as defined by the Equal Pay Act. To carry out an equal pay review an employer needs to collect key job and personal characteristics for its employees and specific pay information data. The bare minimum for an employer would be gender, full-time or part-time, job title, basic pay, and standard or normal hours.

The findings showed that 17% of all private sector companies had conducted an equal pay review in 2008, a further 5% were in the process of conducting a review and 17% were planning to complete a review. Again engagement was higher in large companies, of employers with between 100 and 499 employees 21% had completed a review, 6% were in the process, and 21% had plans to conduct a review. The largest companies with 500+ employees had the most engagement with 32% having completed a review, a further 15% in the process, and 27% planning to conduct a review. The findings also found that of those companies that had completed a review in 2008, 85% said they would conduct another review within the next three years.

Other research conducted by IFF Research for the Government Equalities Office looked at the reporting of workforce diversity data in private companies with 250 or more employees. The findings showed that 42% of the companies reviewed collected workforce diversity data. However, only 8% of these companies went on to publish the diversity data; of the diversity data reported gender was by far the most common. The findings showed 7% of companies reviewed were publishing workforce data on gender. Overall the findings showed that over a fifth of companies reviewed were collecting diversity data, and appreciated the value of monitoring workforce diversity.

From the evidence outlined above we can assume a proportion of private sector companies with 250 or more employees are already collecting the necessary data to calculate a gender pay gap. They may be doing this to carry out equal pay reviews or it may be to monitor progress against an objective or simply an engagement with the equality agenda. Certain information is also required by legislation for companies with 250 or more employees to collect. The Companies Act 2006 requires the number of employees and average total wages over the financial year. The Employment Rights Act 1996 also requires companies to collect more detailed information of employees pay alongside hours of work.

Therefore calculations below assume 50% of private sector companies with 250 or more employees will not require implementation costs for reporting a single figure gender pay gap. (The voluntary sector has also been included in this assumption)

One-off Implementation costs

The publication of a single figure gender pay gap will involve a one-off cost to 50% of the employers in scope (8,000) to implement a new process within the organisation. We have assumed the pay data needed to calculate and publish the pay gap is already collected and available under either the Companies Act 2006 or Employment Right Act 1996.

The small one-off implementation cost will arise from the collect of gender data and the creation of a process to calculate the gender pay gap. We have calculated this cost as a full working day of a human resource manager's time⁸².

Per enterprise the cost is therefore: £177

The total cost of implementation is therefore: £1,418,217

Annually Recurring Costs

After the first year of one-off implementation and familiarisation costs, we assume the reporting of a single figure gender pay gap will become business as usual and involve minimal continued resource. Once the data collection is in place and the process of calculation is established the continued resource required would simply involve updating the data. We have calculated this cost as a one hour of a human resource manager's time⁸³.

Per enterprise the cost is therefore: £25.33

The total annual cost of calculation is therefore: £401,913

Non-Monetised Benefits

Employers who promote equality of opportunity among their workforce can draw on a wider pool of talent and experience, to create an environment where employees are valued and supported, whilst appreciating their colleagues' contribution. A climate where unlawful discrimination is fostered, condoned or ignored cannot provide these benefits.

In today's economy an organisation's success and competitiveness can depend upon its ability to embrace diversity and to draw upon the skills, understanding and experience of all people. A recent report from the CBI, TUC and EHRC⁸⁴ outlined the following benefits for core business:

- Increased employee satisfaction, which helps attract new applicants and retain current staff, this may lead to reduced recruitment costs and can increase productivity.
- Better understanding of how the company's diverse customers think and what drives their spending habits, or how to access markets they have not previously been able to tap into effectively. Including people who aren't all the same in the workforce and among key decision makers can lead to an even better understanding of how customers think. It can also assist in opening up new markets – and it can be a positive selling point with some customers.

⁸² Hourly wage £25.33 taken from the ONS Annual Survey of Hours and Earnings 2009.

⁸³ Hourly wage £25.33 taken from the ONS Annual Survey of Hours and Earnings 2009.

⁸⁴ 'Talent not Tokenism.' This guide provides advice on how to identify, nurture and promote talent. It contains good practice case studies of employers who have created a more diverse workforce and describes the benefits of doing so. Published June 2008

- It is difficult finding workers to fill skills gaps in areas with tight labour markets, and where there are not enough 'obvious candidates' for the vacancies they have. Recruiting and promoting people on the basis of competencies can help a business to find talent in unexpected places, and to hang onto those people longer. Finding the right people with the right skills and aptitudes is essential, particularly when companies are facing economic pressures.

Achieving greater gender pay transparency, through employers publishing their gender pay gaps, is an important lever to achieve greater gender diversity in the work place. If you cannot see a problem it is often very hard to tackle it. By shining a light on the issue we can help employers analyse their current position and how it might be improved as part of wider diversification in the workforce.

Gender pay transparency should be seen as a helpful management tool for change and a response to shareholders, consumers and staff who are increasingly demanding even more transparency from the companies and other organisations they have a stake in.

Recent research⁸⁵ concluded that self-regulatory initiatives for gender pay disclosure had limited potential for improved accountability and that there was little alternative to regulation if we are to see an improvement in accountability, and to discover where inequality of opportunity lies. Reporting on performance of workplace gender issues among UK companies has improved considerably over the last decade but this is often non-comparable data, which is one of the greatest barriers to improved reporting on this issue; without transparency it remains unclear what action, if any, is needed to ensure equality of opportunity.

Evidence on effectiveness of pay reviews (audits)

Mixed evidence exists for the effectiveness of pay reviews. Systemic discrimination is often hidden, not well understood, and therefore is unlikely to be eradicated if it is simply left to individuals to take cases to employment tribunals. A corporate process can therefore be valuable in making inequalities within the company clear.

However, there is some evidence that equal pay reviews only address that part of the pay gap which arises out of unlawful discrimination in pay systems and may leave other aspects such as occupational segregation, the lack of quality part-time work, skills and training, and supporting mothers in returning to work untouched. Research from the Women and Work Commission showed that many companies that had undertaken equal pay reviews found the process costly and resource intensive, and recommended a light touch approach.

In the Equal Pay and Flexible Working Bill [HL] debate in the House of Lords 23 January 2009 Baroness Prosser said: "I turn now to the question of pay audits... they are unlikely to make much difference. There are very few equal pay cases which succeed at tribunal. Many are settled before reaching court; many more are lost."

Baroness Vadera said: "A study carried out for the Equal Opportunities Commission in 2005 found that a typical audit in the private sector cost the equivalent of three to six-months' of a full-time member's staff time. Nor would it have a significant impact on the gender pay gap. It would have applied to only 125 equal pay cases in 2006-07, the latest year for which figures are available. This equates to only 2 per cent of the total number of equal pay cases in that period. In preparing our equality Bill, the Government have carefully considered the case for all employers to carry out mandatory equal pay audits. We have concluded that while equal pay audits can be useful as a way of exploring unfair pay practices in some circumstances, they can also be expensive, time-consuming and burdensome."

⁸⁵ Equal Opportunity for Women in the Workplace: A Study of Corporate Disclosure by Kate Grosser, Professor Carol Adams & Professor Jeremy Moon

Notes:

The Companies Act 2006

Information that has to be provided by companies with 250+ employees

- Average number of persons employed by the company in the financial year (Sect 411 (1)(a))
- Aggregate amounts of wages and salaries paid or payable during that financial year (Sect. 411(5)(a))
- The business review must “to the extent necessary for an understanding of the development, performance or position of the company’s business” include information about
 - the company’s employees, (Sect.417 (5)(ii))
 - analysis using Key Performance Indicators including information relating to employee matters (Sect.417 (6)(b))

The Employment Right Act 1996

Information that has to be provided by companies with 250+ employees

- Statement of initial employment particulars (1) Where an employee begins employment with an employer, the employer shall give to the employee a written statement of particulars of employment. The statement shall contain particulars of-
 - (a) the names of the employer and employee,
 - (b) the date when the employment began, and
 - (c) the date on which the employee’s period of continuous employment began (taking into account any employment with a previous employer which counts towards that period).
- The statement shall also contain
 - (a) the scale or rate of remuneration or the method of calculating remuneration,
 - (b) the intervals at which remuneration is paid (that is, weekly, monthly or other specified intervals),
 - (c) any terms and conditions relating to hours of work (including any terms and conditions relating to normal working hours),
 - (d) any terms and conditions relating to any of the following—
 - (i) entitlement to holidays, including public holidays, and holiday pay (the particulars given being sufficient to enable the employee’s entitlement, including any entitlement to accrued holiday pay on the termination of employment, to be precisely calculated),
 - (ii) incapacity for work due to sickness or injury, including any provision for sick pay, and
 - (iii) pensions and pension schemes,
- An employer must also provide employees with an itemised pay statement at or before the time at which any payment of wages or salary is made. The statement shall contain particulars of-
 - (a) the gross amount of the wages or salary,
 - (b) the amounts of any variable, and (subject to section 9) any fixed, deductions from that gross amount and the purposes for which they are made,
 - (c) the net amount of wages or salary payable, and
 - (d) where different parts of the net amount are paid in different ways, the amount and method of payment of each part-payment.

Annex N – Associations including private clubs

Department GEO	Extension of protection on the grounds of sex, gender reassignment, pregnancy and maternity, age and religion or belief in associations including private clubs and the extension of protection to guests across all strands, as is currently provided on the grounds of disability	
Stage: Introduction	Version: 4	Date: December 2009
Related Publications: (1) Discrimination Law Review: Proposals for an Equality Bill for Great Britain (June 2007). (2) Proposals to simplify and modernise the law: Initial RIA (June 2007). (3) Framework for a Fairer Future (June 2008) and (4) the Government response to the consultation (July 2008) (5) Equality Bill Impact Assessment (Introduction) 27 April 2009		

Available to view or download at: <http://www.equalities.gov.uk>

Contact for enquiries: Kate Richardson

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What is the problem under consideration? Why is government intervention necessary?

Some associations such as private clubs with mixed male/female membership still do not treat women equally. For example, they do not allow women to vote as full members; or they restrict women's access to the club's facilities. In the past we have tried to tackle this through voluntary measures but we are still receiving representations from women who feel they have been discriminated against. Similarly protection is currently not provided on the grounds of religion or belief, age, gender reassignment and pregnancy and maternity.

The number of associations in Great Britain is not known and cannot be reliably estimated, because the very fact that an association is a private organisation means that it will probably not appear in any publicly available data.

What are the policy objectives and the intended effects?

To ensure that private clubs with 25 or more members will not be able to discriminate on the grounds of gender, religion or belief, age, gender reassignment and pregnancy and maternity, as well as the grounds of race, sexual orientation and disability, to ensure consistency across all the grounds. It will also be unlawful for such bodies to discriminate against associates and guests. However, it will remain lawful for clubs to admit only members (or guests) with a particular characteristic, for example all-men or all-women clubs.

What policy options have been considered? Please justify any preferred option.

Option 1 – Do nothing.

Option 2 – Extend protection from discrimination on the grounds of sex, religion or belief, age, gender reassignment and pregnancy and maternity to ensure consistency across all grounds and also extend protection across all grounds to guests (Final Proposal).

Failure to ensure consistency across all areas of discrimination will leave grey areas of discrimination law. Our final proposal is therefore option 2 as private clubs and their members will benefit.

When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects?

After implementation, and on an ongoing basis, by the Equality and Human Rights Commission. The Government will also review after 5 years.

Associations including private Clubs : Analysis & Evidence

Policy Option: 2

Extension of protection on the grounds of sex, gender reassignment, pregnancy and maternity, age and religion or belief in associations including private clubs. Extension of protection to guests across all strands, as is currently provided on the grounds of disability

ANNUAL COSTS		Description and scale of key monetised costs by 'main affected groups' The costs of this measure would be small, but we recognise that there will be adjustment costs particularly for existing mixed male/female clubs (e.g. to provide extra changing facilities). Familiarisation costs are factored into the overall familiarisation costs for the Bill, in pages 12-30.
One-off (Transition)	Yrs	
£	1	
Average Annual Cost (excluding one-off)		Total Cost (PV)
£ Negligible	10	
Other key non-monetised costs by 'main affected groups'		

COSTS

BENEFITS	ANNUAL BENEFITS		Description and scale of key monetised benefits by 'main affected groups'	
	One-off	Yrs		
	£ 0	1		
	Average Annual Benefit (excluding one-off)			
	£ Negligible	10	Total Benefit (PV)	£ Negligible
<p>Other key non-monetised benefits by 'main affected groups'</p> <p>At the moment, the law stops some types of discrimination by private clubs but not others. We want to make the law as clear and simple as possible.</p> <p>It would also stop some people from being unfairly excluded from some private clubs altogether or being treated as second class members who have fewer rights than other members.</p>				

Key Assumptions/Sensitivities/Risks
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Price Base Yr 2008	Time Period Year 10	Net Benefit Range (NPV) £ Negligible	NET BENEFIT (NPV Best estimate) £ Negligible
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What is the geographic coverage of the policy/option?	GB
On what date will the policy be implemented?	
Which organisation(s) will enforce the policy?	N/A
What is the total annual cost of enforcement for these organisations?	£ 0
Does enforcement comply with Hampton principles?	N/A
Will implementation go beyond minimum EU requirements?	N/A
What is the value of the proposed offsetting measure per year?	£ 0
What is the value of changes in greenhouse gas emissions?	£ 0
Will the proposal have a significant impact on competition?	No

Annual cost (£-£) per organisation (excluding one-off)	Micro	Small	Medium	Large
Are any of these organisations exempt?	No	No	N/A	N/A

Impact on Admin Burdens Baseline (2005 Prices)				
		(Increase - Decrease)		
Increase of	£	Decrease of	£	Net Impact
		£		

Key: Annual costs and benefits: Constant Prices (Net) Present Value

Background

Currently, discrimination by private members’ clubs (with 25 or more members) is outlawed on the grounds of race, disability and sexual orientation. Discrimination is prohibited against members, prospective members, associates and prospective associates. Discrimination against guests is also outlawed, but *currently only on the grounds of disability*.

The June 2007 consultation asked for views on:

- Extending protection against discrimination by private members’ clubs on grounds of sex (including gender reassignment and pregnancy and maternity); on grounds of religion or belief; and on grounds of age;
- Prohibiting discrimination against guests on all the above grounds (other than disabled guests who are already protected).

None of the existing or proposed prohibitions affect or would affect private clubs that are purely for the benefit of people with shared characteristics, as regards their membership: i.e. working men’s clubs; clubs for gay men or lesbians; clubs for ethnic minority groups. **They only affect or would affect private clubs where there is mixed membership e.g. a private golf club with both male and female members.**

Moreover, private members’ sports clubs would not be forced to allow women to compete alongside men, for example. There is already an exemption which allows men and women to be treated differently in “any sport, game or other activity of a competitive nature where the physical strength, stamina or physique of the average woman puts her at a disadvantage to the average man”.

The consultation revealed a relatively high level of interest in the proposals – nearly 200 responses of which the great majority were in favour.

Costs

We expect the costs of these proposals to be small. We do not think that any physical changes will be required to premises if we extend protection on the grounds of age and religion or belief. With regard to gender, gender reassignment and pregnancy and maternity, mixed-membership clubs already admit guests of both sexes. All the law will require is that they are treated equally. These private clubs should therefore already have facilities to cater for each gender although we recognise that some alterations may be required to increase the amount of changing facilities etc available.

Non-Monetised Benefits

It is already unlawful for private clubs to discriminate against someone because they are of a different race, or because they are disabled, or because of their sexual orientation. This extension will provide for consistency across the equality strands.

We think these measures will address a real problem. People are still telling us, for example, that some private clubs with mixed male/female membership treat women unfairly. For instance, they do not allow women to vote as full members; or they restrict women's access to the club's facilities. Women golf players have written to complain about their playing times being restricted or lack of access to the bar. As recently as October 2006, the Club and Institute Union (CIU) stated that some 40% of the 2,500 working men's clubs in the Union still deny their female members full rights, including access to the Annual General Meeting where they could vote for equal treatment for women and men.

Extending protection to guests of private member's clubs on the same grounds as members and associates would provide consistency and clarity in the law. It is also important to protect guests as to do otherwise may create a hostile environment and discourage individuals from applying for membership which may lead to exclusion.

Annex O - Improving the handling of discrimination cases in the county and sheriff courts

Department GEO GEO/Agency: GEO	Improving the Handling of Discrimination Cases in the County and Sheriff Courts	
Stage: Introduction	Version: 4	Date: December 2009
Related Publications: (1) Discrimination Law Review: Proposals for an Equality Bill for Great Britain (June 2007). (2) Proposals to simplify and modernise the law: Initial RIA (June 2007). (3) Framework for a Fairer Future (June 2008) and (4) the Government response to the consultation (July 2008) (5) Equality Bill Impact Assessment (Introduction) 27 April 2009		

Available to view or download at: <http://www.equalities.gov.uk>

Contact for enquiries: Kate Richardson

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What is the problem under consideration? Why is government intervention necessary?

There is a concern that the outcomes of discrimination cases involving the provision of goods, facilities and services are unpredictable, partly as a result of relative unfamiliarity with discrimination law compared to employment tribunals which deal with discrimination cases in greater volumes.

What are the policy objectives and the intended effects?

The overall objective of these proposals is to create a more efficient and effective process for dealing with discrimination claims in county and sheriff courts and to improve the consistency of judgments made in discrimination claims.

What policy options have been considered? Please justify any preferred option.

- Option 1: do nothing.
- **Option 2 (final proposal): discrimination cases concerning the provision of goods, facilities and services, etc would be heard by a judge who would be accompanied by an assessor with discrimination expertise.**
- Option 3: discrimination cases concerning the provision of goods, facilities and services, etc would be heard by judges accompanied by two assessors with discrimination expertise.

When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects?

After implementation, and on an ongoing basis, by the Equality and Human Rights Commission. The Government will also review after 5 years.

Improving the Handling of Discrimination Cases in the County and Sheriff Courts : Analysis & Evidence

Policy Option: 2

Improving the handling of discrimination cases in the county and sheriff courts.

ANNUAL COSTS		Yrs	1	Description and scale of key monetised costs by 'main affected groups'
One-off (Transition)	£			
Average Annual Cost (excluding one-off)	£7,623 - 19,728	10		<p>Fees for Assessors – Calculated as 1 assessor per case (average duration 1 day) plus travelling expenses multiplied by the number of cases per year. These costs take account of the savings resulting from only requiring 1 assessor for race cases instead of 2.</p> <p>Between £7,623 and £19,728 per year.</p> <p>Familiarisation costs are factored into the overall familiarisation costs for the Bill, in pages 12-30.</p>
			Total Cost (PV)	
Other key non-monetised costs by 'main affected groups'				

BENEFITS	ANNUAL BENEFITS		Description and scale of key monetised benefits by 'main affected groups' Taxpayer: More efficient disposal of cases will result in savings for the taxpayer of between £4,958 and £10,103. Private Sector: More efficient disposal of cases will result in savings of between £28,582 and £58,243 .Individuals: More efficient disposal of cases will result in savings of between £7,052 and £14,371	
	One-off	Yrs		
	£ 0	1	Average Annual Benefit (excluding one-off)	
	£ 40,593 to £ 82,716			
		Total Benefit (PV)	£ 349,408 to £ 711,998	
Other key non-monetised benefits by 'main affected groups' This option could lead to more consistent judgements and greater legal certainty, which in turn should increase confidence in the courts, and create a better body of case law. It would also be relatively straightforward to implement and could also increase the efficiency of hearings, reducing the amount of time actually spent in court.				

Key Assumptions/Sensitivities/Risks

Use of data on tribunal costs to estimate county court costs where data are not available. Assumes that the number of goods, facilities and services cases will stay the same. Assumes that changes will mean a 10% (30 minute) reduction in the time spent on each case. Assumes a 10% time saving for individuals and employers. Assumes 1 assessor would be needed for 1 day on average for each case. Assumes a yearly average of between 53 and 108 cases per year across all six strands.

Price Base Yr 2008	Time Period Years 10	Net Benefit Range (NPV) £179,596 to £646,381	NET BENEFIT (NPV Best estimate) £ See Range
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What is the geographic coverage of the policy/option?	GB
On what date will the policy be implemented?	See page 8
Which organisation(s) will enforce the policy?	N/A
What is the total annual cost of enforcement for these organisations?	£ 0
Does enforcement comply with Hampton principles?	N/A
Will implementation go beyond minimum EU requirements?	N/A
What is the value of the proposed offsetting measure per year?	£
What is the value of changes in greenhouse gas emissions?	£ 0
Will the proposal have a significant impact on competition?	No

Annual cost (£-£) per organisation (excluding one-off)	Micro	Small	Medium	Large
Are any of these organisations exempt?	No	No	N/A	N/A

Impact on Admin Burdens Baseline (2005 Prices)				
		(Increase - Decrease)		
Increase of	£	Decrease of	£	Net Impact
		£		

Key: Annual costs and benefits: Constant Prices (Net) Present Value

Evidence

Options Identification

Option 1: do nothing.

Option 2 (recommended): Given that we only expect between 53 and 108 goods, facilities and services cases per year, most judges will still hear such cases infrequently. There is therefore a clear benefit in making provision for judges to be accompanied by an assessor who has expertise in discrimination law issues. Currently the use of assessors is required in Race Relations Act cases (unless both parties agree otherwise) and is optional in Sex Discrimination Act cases. The former Commission for Racial Equality, which has experience of bringing cases under the Race Relations Act, considered that the use of assessors has been beneficial, and has facilitated more efficient and effective case-handling. As the new Equality Act will prohibit discrimination in the provision of goods and services across all the protected grounds, it is necessary to extend this requirement to the other protected grounds.

We consider that the combination of a County Court judge and one expert assessor will be sufficient to ensure that the appropriate level of expertise is available in such cases. This is because judges will have gained experience as practitioners prior to appointment and are recruited having demonstrated an ability to understand and deal fairly (with equality issues); and levels of awareness of diversity and discrimination issues are higher than in the 1970s (when legislation was introduced with provisions for two assessors). In addition we have invited the Judicial Studies Board to make special training in discrimination law available to all judges as well as to provide a distance learning module to ensure that they have the appropriate level of expertise to deal with discrimination cases.

Option 3: Judges would be accompanied by two assessors with discrimination expertise. This is now considered to be unnecessary in light of the fact that judges will have access to appropriate training, and levels of awareness of diversity and discrimination issues are higher than in the 1970s.

Analysis of Costs & Benefits of Final Proposal

Benefits

Savings for Courts

This option will increase the efficiency of hearings, potentially reducing the amount of time actually spent in court. We estimate time saving of approximately 10%, or 30 minutes. The savings from this can be calculated as follows:

Low estimate

	Time spent on a case (minutes)	X	Cost per minute	=	Cost per case	X	Number of cases	=	Total cost
Current Approach	325	X	£3.11	=	£1,011	X	53	=	£53,583
Revised Approach	295	X	£3.11	=	£917	X	53	=	£48,625

Cost of Current approach	-	Cost of revised approach	=	Savings
£53,583	-	£48,625	=	£4,958

High estimate

	Time spent on a case (minutes)	X	Cost per minute	=	Cost per case	X	Number of cases	=	Total cost
Current Approach	325	X	£3.11	=	£1,011	X	108	=	£109,188
Revised Approach	295	X	£3.11	=	£917	X	108	=	£99,085

Cost of Current approach	-	Cost of revised approach	=	Savings
£109,188	-	£88,992	=	£10,103

These savings are based on the assumption that if judges hearing discrimination cases receive the appropriate training and are accompanied by an assessor it will in turn reduce the time spent on a case by approximately 10%, or 30 minutes. This is because they will have a greater understanding of the issues which arise in discrimination law cases. This uses data on the average court cost taken from the Judicial Statistics Annual Report by Ministry of Justice, 2004⁸⁶.

Savings for Business and Claimants

If cases are heard more efficiently, this will also consequently reduce the money paid by businesses and claimants for advice and representation. There are only limited data on the cost of court cases to business and claimants, particularly discrimination cases. However, SETA (Survey of Employment Tribunals Applications) 2003 provides data on the administrative cost of tribunal cases (including money spent on advice and representation and staff time) to both employees and their employers. In calculating these costs we have therefore assumed that costs will be the same in the courts as with the tribunal service. The savings are calculated below:

Low estimate

	Current cost per case	X	10%	=	Savings per case	X	No of cases	=	Total savings
Business	£5,393	X	10%	=	£474.6	X	53	=	£25,154
Claimants	£1,331	X	10%	=	£117.1	X	53	=	£6,206

⁸⁶ <http://www.official-documents.co.uk/document/cm65/6565/6565.pdf>

High estimate

	Current cost per case	X	10%	=	Savings per case	X	No of cases	=	Total savings
Business	£5,393	X	10%	=	£474.6	X	108	=	£51,257
Claimants	£1,331	X	10%	=	£117.1	X	108	=	£12,647

Costs of Assessors

The fee paid to current county court (race, sex and landlord & tenant) assessors is £261⁸⁷. Travel expenses would also be paid but these would not be significant as a larger pool of assessors will be available locally to county courts. Cases in the courts last on average 5 hours and 25 minutes. We estimate that between 53 and 108 goods, facilities and services etc cases will be brought before the courts across all discrimination strands. Requiring the use of one assessor in all discrimination cases heard in the courts would therefore incur costs of between £15,423 and £31,428 per annum. These were calculated as follows:

	Projected cost of one assessor per day for all discrimination cases	X	No of days	X	No of cases	=	Total Projected Cost
Low estimate	£291 (£261 fee per assessor plus £30 travel expenses) ⁸⁸	X	1	X	53	=	£15,423
High estimate	£291 (£261 fee per assessor plus £30 travel expenses)	X	1	X	108	=	£31,428

These costs will however be offset by the savings resulting from only requiring 1 assessor to be used in race cases as opposed to 2. We estimate there are between 26 and 39 Race Relations Act cases in the courts each year. Therefore the current cost of assessors for race cases alone is calculated at between £15,600 and £23,400 per annum⁸⁹. The savings of only using one assessor will therefore be between £7,800 and £11,700 per annum

	Current Costs	/	Only required for one day	Revised Cost
Low estimate	£15,600	/	2	£7,800
High estimate	£23,400	/	2	£11,700

The overall costs of this measure are therefore as follows:

	Cost of having 1 assessor for all strands	-	Savings from not having 2 assessors for race cases	=	Total
Low estimate	£15,423	-	£7,800	=	£7,623
High estimate	£31,428	-	£11,700	=	£19,728

Administrative costs

There may also be some minimal additional administrative costs arising from the need for court staff to make arrangements for assessors to attend all discrimination cases. These are considered too small to be quantifiable.

⁸⁷ The daily rate for existing race assessors is set by the Lord Chancellor and is often subject to two annual increases. Rates can be obtained via www.justice.gov.uk.

⁸⁸ The travel expenses are higher for existing race assessors because there is a smaller pool of assessors than of Employment Tribunal side members and assessors frequently have to travel out of their region to attend cases.

⁸⁹ This was calculated by multiplying the daily costs of 2 assessors £600 by the estimated number of race cases (26 to 39).

Non Monetised Costs and Benefits

Benefits

This measure will increase the levels of expertise and experience brought to bear in discrimination cases. This should lead to greater consistency and predictability of judgements, which in turn should increase confidence in the courts and create a better body of case law.

Costs

None identified.

Risks

The low volume of claims may mean that civil court judges will remain relatively inexperienced in dealing with discrimination claims. Our proposal is designed to mitigate this risk.

Enforcement

The use of assessors will be a requirement set out in the Equality Bill. We will work with the Equality and Human Rights Commission to agree criteria for assessors and to ensure that an up-to-date list is maintained.

Annex P - Widening the powers of tribunals so that they can make recommendations that benefit the wider work force

Department GEO	Permitting courts to make recommendations in discrimination cases (does not include equal pay)	
Stage: Introduction	Version: 4	Date: December 2009
Related Publications: (1) Discrimination Law Review: Proposals for an Equality Bill for Great Britain (June 2007). (2) Proposals to simplify and modernise the law: Initial RIA (June 2007). (3) Framework for a Fairer Future (June 2008) and (4) the Government response to the consultation (July 2008) (5) Equality Bill Impact Assessment (Introduction) 27 April 2009		

Available to view or download at: <http://www.equalities.gov.uk>

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What is the problem under consideration? Why is government intervention necessary?

Employment tribunals currently have a power to make a recommendation that the respondent “take within a specified period action appearing to the tribunal to be practicable for the purpose of obviating or reducing the adverse effect on the complainant of any act of discrimination to which the complaint relates”. Recommendations must be made for the benefit of the individual complainant, but in fact they often indirectly benefit the wider workforce as well.

In 72% of cases the claimant no longer works for the employer by the time of the hearing. In these cases no recommendation can be made because it could not be said to benefit the individual claimant. In many such cases, it may be clear to the tribunal that the respondent needs to take certain steps in order to avoid future discrimination against other employees, yet due to the way in which the law is currently drafted the tribunals are currently unable to make best use of the evidence they have heard by recommending to the respondent practical steps which should be taken to ensure future compliance with discrimination law.

What are the policy objectives and the intended effects?

- to improve compliance with the law and help respondents to avoid future claims, thereby reducing the number of employment tribunal cases;
- to improve the ability of the employment tribunals to tackle discrimination at a systemic level as well as at the level of the individual claimant.

What policy options have been considered? Please justify any preferred option.

Option 1: Do nothing.

Option 2: Improve the advice and guidance available to employers, from organisations such as Acas, the Equality and Human Rights Commission and industry bodies.

Option 3: (**Preferred option**) Enable employment tribunals to make recommendations for the benefit of individuals other than the claimant who may also be affected by the discrimination proved in the case. Evidence of compliance / non-compliance with such a recommendation could be heard as evidence if a future claim was brought against the same respondent based on similar

facts. Non-compliance would not be sanctionable by an increase in compensation to the claimant, as is the case under the existing power, because the recommendation would not have been made for the benefit of the individual claimant.

When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects?

After implementation, and on an ongoing basis, by the Equality and Human Rights Commission. The Government will also review after 5 years.

Making Recommendations : Analysis & Evidence

Policy Option: 3

Enable employment tribunals to make recommendations for the benefit of the wider workforce other than the claimant

ANNUAL COSTS		Description and scale of key monetised costs by 'main affected groups'	
One-off (Transition)	Yrs		
£	1	<p>Public Sector – costs of between £18,082 and £28,234</p> <p>Private Sector – costs of between £37,506 and £85,899</p> <p>Familiarisation costs are factored into the overall familiarisation costs for the Bill, in pages 12-30.</p>	
<p>Average Annual Cost (excluding one-off)</p>			
£ 55,588 to £114,133	10	Total Cost (PV)	£478,480 to £982,421
<p>Other key non-monetised costs by 'main affected groups'</p>			

COSTS

BENEFITS	ANNUAL BENEFITS		Description and scale of key monetised benefits by 'main affected groups'	
	One-off	Yrs		
	£ 0	1	<p>Public Sector – benefits of between £213,011 and £428,089</p> <p>Private Sector – benefits of between £1,110,932 and £2,232,650</p> <p>Individuals – benefits of between £274,105 and £550,871</p>	
	Average Annual Benefit (excluding one-off)			
	£1,598,048 to £3,211,611	10	Total Benefit (PV)	£13,755,495 to £27,644,538

Other key non-monetised benefits by 'main affected groups'

- Respondents would be more likely to learn constructive lessons from an adverse finding.
- Increased compliance with discrimination law would bring benefits to both employers and employees by ensuring that discrimination does not hold people back.
- It would trigger changes to discriminatory policies and practices which would not otherwise have been made, potentially preventing future cases.

Key Assumptions/Sensitivities/Risks			
<ul style="list-style-type: none"> • We estimate that recommendations are currently made in only about 1-3% of cases and we expect that recommendations would be made in around 3-5% of cases if the power were extended and additional training provided to employment tribunal judges. • In around 50% of cases where recommendations are made, this would prevent future cases from being brought against the respondent. • Up to 1% of potential respondents may seek to settle to avoid a recommendation being made. • 30% of respondents who are subject to recommendations under the new power would take steps to amend practice where previously they would not have done. • It would take these respondents on average one day (7 hours) to review policies and/or practices and to implement the necessary changes. 			

Price Base Yr 2008	Time Period Years 10	Net Benefit Range (NPV) £12,773,074 to £27,166,058	NET BENEFIT (NPV Best estimate) £ See Range
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What is the geographic coverage of the policy/option?	GB			
On what date will the policy be implemented?				
Which organisation(s) will enforce the policy?	N/A			
What is the total annual cost of enforcement for these organisations?	£ 0			
Does enforcement comply with Hampton principles?	N/A			
Will implementation go beyond minimum EU requirements?	N/A			
What is the value of the proposed offsetting measure per year?	£			
What is the value of changes in greenhouse gas emissions?	£ 0			
Will the proposal have a significant impact on competition?	No			
Annual cost (£-£) per organisation (excluding one-off)	Micro	Small	Medium	Large
Are any of these organisations exempt?	No	No	N/A	N/A

Impact on Admin Burdens Baseline (2005 Prices)				
				(Increase - Decrease)
Increase of	£	Decrease of	£	Net Impact
				£

Key: Annual costs and benefits: Constant Prices (Net) Present Value

Evidence

Options Identification

The problem identified was that in the majority of employment tribunal cases where the claimant is no longer employed by the respondent (72% of cases⁹⁰), employment tribunals are unable to make a recommendation that the respondent take steps which they reasonably consider will remove or reduce the risk that the discrimination proved in the case will also affect others in the workforce. This is because under the existing power, recommendations must be made for the benefit of the individual claimant. Due to the way in which the existing law is drafted tribunals are currently unable to make best use of the evidence they have heard by recommending to the respondent practical steps which would help to ensure future compliance with discrimination law in the majority of cases.

Option 1: Do nothing. Tribunals would only be able to make recommendations for the benefit of the individual claimant. As the individual claimant no longer works for the respondent by the time of the hearing in 72% of cases, in the majority of cases tribunals would continue to be unable to use the recommendation power. This reduces the ability of the tribunal to tackle discrimination at a systemic as well as individual level and reduces the opportunity to use the tribunal process to improve levels of compliance.

Option 2: Improve the advice and guidance available to employers via organisations such as Acas, the Equality and Human Rights Commission and industry bodies. However, these bodies will only be able to offer tailored guidance to a limited number of organisations. Tribunals made findings of

⁹⁰ Findings from the Survey of Employment Tribunal Applicants, BMRB Social Research, Department of Trade & Industry Employment Relations Research Series No. 33, 2003

discrimination in 2,157 cases on average over the five years from 2002/3 to 2006/7. They are therefore in an ideal position to supplement the advice and guidance provided by bodies such as ACAS and the EHRC by making specific, tailored recommendations to those organisations found to have discriminated, based on the detailed evidence which is presented in a tribunal hearing.

Option 3 (recommended): Enable employment tribunals to make recommendations for the benefit of individuals other than the claimant whom the tribunal considers may also be affected by the discrimination proved in the case. Evidence of compliance / non-compliance with the recommendations could be heard as evidence if a future claim was brought against the same respondent based on similar facts (non-compliance would not be sanctionable by an increase in compensation to the claimant, as is the case under the existing power, because the recommendation would not have been made for the benefit of individual claimant). This option will improve levels of compliance and the ability of the tribunal to tackle discrimination at a more systemic as well as individual level.

Analysis of Options

Monetised Costs and Benefits

Option 1: There would be no additional costs for respondents in terms of complying with an increased number of recommendations. However, there would also be no benefits in terms of improving compliance with discrimination law and thereby reducing the number of tribunal cases. There is therefore an opportunity cost of not accruing the benefits set out in Option 3.

Option 2: Active steps to update and improve advice and guidance on discrimination law will be taken by bodies such as ACAS, the EHRC and industry bodies in response to the new Equality Bill. As such there would be no additional costs, nor any additional benefits. However, as for option 1, there are opportunity costs in not realising the benefits of extending the tribunals' powers to make recommendations, as set out under option 3.

Option 3: Change the law to allow tribunals to make recommendations for the benefit of individuals other than the claimant who are also likely to be affected by the discrimination proved in the case.

Option 3: Monetised Benefits

The number of successful cases from 1 April 2007 – 31 March 2008 was 986⁹¹. We estimate that recommendations are currently made in 1-3% of cases, and that informal suggestions are also made in 1-3% of cases by employment tribunal judges in those cases where they are unable to use the existing power. If we assume that recommendations would also be made in 1-3% of cases under the extended power, there would be between 10 and 30 recommendations made each year under the extended recommendations power. However, tribunal judges are strongly supportive of an extended power and the senior Employment Tribunal judiciary have made a commitment to provide training to Employment Tribunal judges both to raise awareness of the extended power and to ensure it would be used effectively and appropriately. Therefore, we estimate that the number of recommendations under the new power would increase slightly from the current level. If recommendations were made under the new power in 3-5% of cases where recommendations cannot currently be made, this would equate to an additional 30-49 recommendations each year.

Recommendations will help respondents ensure that they take the necessary steps to avoid future claims being brought against them. Based on Employment Tribunal Service data on Race Relations Act cases, we estimate that over any one 3-5 year period, 15% of respondents who have an adverse finding against them will have another claim brought against them⁹². We believe that

⁹¹ The successful number of tribunal claims in 2006/07 was 747 (463 sex, 102 race, 149 disability, 12 religion and 21 sex-o). This figure is taken from the Employment Tribunal Service and we estimated that there will also be 11 successful age cases in 2006/07 (data was not yet available). This takes the total of successful cases to 758. Based on this we projected the number of successful cases in 2007/08 to be 986 (an increase of 1.3%). We chose to increase by 1.3% as this was the average increase over a 5 year period.

⁹² In 2005, the Employment Tribunal Service found 8 respondents had had more than one RRA case brought against them. This equated to 7% of all respondents in RRA cases. However, the ETS believed that the true figure for repeat

there is scope to reduce the incidence of repeat offending by way of recommendations. We assume that a higher proportion (25%-35%) of respondents who would be subject to recommendations under the extended power are potential repeat offenders, as there is evidence that tribunals do not currently make recommendations where the respondent has made clear in its evidence that it intends to take steps to redress the discriminatory policies and practices proved in the case. Conversely, tribunals are therefore more likely to make recommendations where the evidence presented by the respondent suggests they are not likely to take steps to amend discriminatory policies and practices. Based on the assumption that 25% to 35% of those respondents who are subject to a recommendation under the extended power are potential repeat offenders, recommendations have the potential to reduce repeat offending in 12-30 cases per year by triggering changes in policies and practices which would not otherwise have occurred. However, a few will simply not comply with the recommendation; some of the respondents would have taken action following the adverse finding in any case; and not all the potential future cases would have related to the same or similar facts. We therefore assume that recommendations would prevent future claims by triggering positive changes in 50% of these cases.

The savings from a reduction in 6-14 cases would be between £28,476 and £66,444 for business, between £7,026 and £16,394 for potential claimants and between £5,460 and £12,740 for the taxpayer (i.e. the tribunal service). In total the savings would be between £40,962 and £95,578 over each 3-5 period.

Low estimate

	Current cost per case	X		=	Total savings
Business	£5,393	X	6	=	£32,358
Claimants	£1,331	X	6	=	£7,986
Taxpayer	£1,034	X	6	=	£6,204
TOTAL					£46,548

High estimate

	Current cost per case	X		=	Total savings
Business	£5,393	X	14	=	£75,502
Claimants	£1,331	X	14	=	£18,634
Taxpayer	£1,034	X	14	=	£14,476
TOTAL					£108,612

Some business bodies have suggested that some potential respondents would seek to settle in order to avoid a recommendation being made against them. However, there is no evidence of this happening as the result of the existing recommendations power and there is also no evidence that the existing or future recommendations power has been or would be used inappropriately, so respondents should have no reason to fear a recommendation being made against them. We therefore consider the effect would be small.

Over the five years from 2002-03 to 2006-07, the average number of discrimination cases heard in the tribunals was 40,000. If 0.5% - 1% of all cases (n=200-400) settled rather than proceeding to a full tribunal hearing the savings in terms of tribunal costs would be between £949,200 and £1,898,400 for business, between £234,200 and £468,400 for individuals and between £182,000 £364,000 for taxpayers. In total the savings would be between £1,365,400 and £2,730,800.

offenders may actually have been higher because the way cases are recorded causes some difficulties for identifying repeat offenders. The ETS analysis only looked at repeat offenders over the course of one year. We estimate that 15% of respondents will have had another case brought against them in the previous 3-5 years.

Low estimate

	Current cost per case	X		=	Total savings
Business	£5,393	X	200	=	£1,078,600
Claimants	£1,331	X	200	=	£266,200
Taxpayer	£1,034	X	200	=	£206,800
TOTAL					£1,551,600

High estimate

	Current cost per case	X		=	Total savings
Business	£5,393	X	400	=	£2,157,200
Claimants	£1,331	X	400	=	£532,400
Taxpayer	£1,034	X	400	=	£413,600
TOTAL					£3,103,200

Costs

In total, we assume that between 21 and 43 respondents who are subject to a recommendation under the new power would make changes they would not otherwise have made. Below we estimate the cost of making these changes.

We assume that respondents would take on average two days (14 hours) to review policies and/or implement changes. This would be carried out by a manager in a small firm and a director/senior official assisted by a personnel manager and a general secretary in a medium to large private firm and public sector organisation.

We assume an hourly wage rate of £23.18 for small firms, £34.28 for medium firms and £41.01 for large firms and public organisations (the calculations at the bottom indicate how these hourly rates are arrived at).

The estimate of two days takes into account that some recommendations would require minimal action (for example ensuring staff are aware of a current equal opportunities policy, likely to take less than one day), whilst other recommendations like implementing a new equal opportunities policy and re-training staff will be more time consuming. After studying past examples of likely recommendations we can assume a firm will not be required to re-train all staff and probably just a single department or staff tier.

Small Firm

Number of recommendations giving rise to new compliance costs	X	Number of hours spent by manager to ensure compliance	X	Hourly wage	=	Total Costs
21	X	14	X	£23.18	=	£6,815
43	X	14	X	£23.18	=	£13,954

Medium Firm

Number of recommendations giving rise to new compliance costs	X	Number of hours spent by manager to ensure compliance	X	Hourly wage	=	Total Costs
21	X	14	X	£34.28	=	£10,078
43	X	14	X	£34.28	=	£20,637

Large Firm/ Public Sector Organisation

Number of recommendations giving rise to new compliance costs	X	Number of hours spent by manager to ensure compliance	X	Hourly wage	=	Total Costs
21	X	14	X	£41.01	=	£12,056
43	X	14	X	£41.01	=	£24,688

In addition we assume an average of 10% of a respondent's firm will need to be re-trained taking a single day (7 hours). We assume an hourly wage rate of £27.76 to cover both private and public sector respondents of all sizes. We assume an online training programme costing £10 per head.

Employees attending	X	One person day	+	Online training package	=	Total Costs
3	X	£194.32	+	£30	=	£613
5	X	£194.32	+	£50	=	£1022
25	X	£194.32	+	£250	=	£5108
100	X	£194.32	+	£1000	=	£20432

The total costs of implementing changes they would have previously not made are estimated at between £7428 and £14976 for small firms, £11100 and £25745 for medium firms and £17164 and £45120 for large firms and public sector organisations. In total costs to employers are estimated at between £7428 and £45120

We should also consider the costs of appeals made against recommendations. We assume 10% of respondents will think about appealing a recommendation and seek legal advice to this end. We might assume an average legal cost of £1000 (3 hours). We may also assume that 1 -2 appeals a year will go to tribunal at a cost of between £4000 and £8000 each. The total cost of appeals against recommendations is estimated at between £6000 and £20000.

Number of appeals against recommendations	X	Average legal cost	+	Cost of appeals tribunal	=	Total Costs
2	X	£1000	+	£4000	=	£6000
4	X	£1000	+	£16000	=	£20000

Low Estimate

Implementing recommendations (small firm)	+	Training Costs (small firm)	+	Cost of appeals	=	Total Costs
£6547.38	+	£612.96	+	£6000	=	£13160.34

High Estimate

Implementing recommendations (large firm)	+	Training Costs (large firm)	+	Cost of appeals	=	Total Costs
£19902.12	+	£20432.00	+	£20000	=	£60334.12

Non Monetised Costs and Benefits

Costs

Under options 1 and 2 (no legislative change) there would be no increase in the tribunals' ability to tackle discrimination at a systemic level nor any new opportunities to use the tribunal process to improve levels of compliance.

No non-monetised costs have been identified for option 3.

Benefits

Retaining the status quo (option 1) or providing advice and guidance solely through bodies such as the EHRC, Acas and industry bodies (option 2) would mean the role of the tribunals continued to be confined to administering justice to individual claimants, whilst bodies such as the EHRC seek to tackle systemic discrimination. This delineation of roles may be welcomed by some employers and service respondents.

Under option 3, claimants would gain increased levels of satisfaction from knowing that their case would have a wider impact and respondents would be more likely to learn constructive lessons from an adverse finding. An extended power would enable tribunals to assist the EHRC in its work as the EHRC would be notified of all recommendations and could assess each case to decide whether to conduct any follow up work with the respondent to help them improve their processes. Increased compliance with discrimination law would bring benefits to both employers and employees by ensuring that discrimination does not hinder the harnessing of individuals' talents. Whilst we estimate that only a relatively small number of recommendations (4-14 per year) would actually prevent a future case, a larger proportion (21-43 per year) would trigger changes to discriminatory policies and practices which would not otherwise have been made, all of which will improve levels of compliance with discrimination law and reduce discrimination, regardless of whether a future case would have been brought (only 12-15% of justiciable events result in a tribunal case).

Risks

Under **options 1 and 2**, there is a risk that some respondents will make no changes to their policies and practices following a finding of discrimination. Advice and guidance issued by Acas, the EHRC and industry bodies may not reach all employers, or may be too generic when compared with a tailored recommendation after an adverse finding.

Under **option 3** there is a small risk that some employment tribunal judges will make inappropriate recommendations. However, this risk will be mitigated by training for judges to ensure they understand when the extended power can be used and the kinds of recommendations which would be appropriate in different circumstances. Furthermore, given that judges hear substantial evidence about HR practices in the course of hearing many, often lengthy, discrimination cases and are accompanied by two side members from the management and TU sides who are both expert in HR issues and assist the judge in deciding whether a recommendation is appropriate, we consider the risk of inappropriate recommendations is extremely low.

In addition, respondents will be able to appeal recommendations which are inappropriate.

There may be a risk that some respondents will adduce additional evidence in an attempt to avoid a recommendation being made and that this will lengthen hearings and increase costs. However, only evidence relevant to the case can be heard and judges have powers to strike out irrelevant evidence.

Enforcement

Where tribunals make recommendations under the extended power, for the benefit of individuals other than the claimant, non-compliance will be admissible in evidence if a future claim is brought

against the same respondent relating to similar facts. The EHRC will be notified of recommendations, enabling claimants or their representatives to check to see if a previous recommendation has been made.

The power will not be enforceable by way of a fine or an increased payment.

Annex Q - Public sector Equality Duty

Department GEO	Creating an integrated public sector equality duty and providing a powers to regulate procurement by some public authorities	
Stage: Introduction House of Lords	Version: 4	Date: December 2009
Related Publications: (1) Discrimination Law Review: Proposals for an Equality Bill for Great Britain (June 2007). (2) Proposals to simplify and modernise the law: Initial RIA (June 2007). (3) Framework for a Fairer Future (June 2008) and (4) the Government response to the consultation (July 2008) (5) Equality Bill Impact Assessment (Introduction) 27 April 2009		

Available to view or download at: <http://www.equalities.gov.uk>

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What is the problem under consideration? Why is government intervention necessary?

The first part of this analysis deals with the creation of an integrated public sector equality duty. The second part deals with the provision of powers to regulate procurement by some public authorities.

A: An integrated public sector Equality Duty:

General Duties:

There are currently three separate public sector equality duties (for race, disability and gender), each placing slightly different requirements on public authorities. Having three separate duties results in increased burdens on public authorities and makes it more difficult for them to effectively identify and tackle discrimination. The race duty in particular has been criticised as being overly burdensome and process-driven. We want to: bring the existing duties together into a single duty; retain the "due regard" formulation and the power to make supporting specific duties in secondary legislation; and extend the coverage of the duty to age, gender reassignment (in full), sexual orientation and religion or belief.

Specific Duties: Specific duties place specific requirements on (listed) public bodies. These requirements vary for the different duties. For example, the race duty has a number of process requirements which are not required under the disability or gender duty i.e. there are numerous requirements around ethnic monitoring at every stage of the recruitment and employment process, and a requirement to publish this information. A single public sector equality duty will also mean one set of specific duties. We are developing our proposals for the specific duties. They will be built on the principles of consultation and involvement, use of evidence, transparency and capability; and will be flexible, light-touch and proportionate. We have recently closed a consultation on our policy proposals for the specific equality duties. The responses to this consultation, and further work we intend to do with our stakeholders, will inform the Royal assent version of the Impact Assessment for the Bill.

Link to the document:

http://www.equalities.gov.uk/news/equality_duties.aspx

What are the policy objectives and the intended effects?

- To shift the focus from the prohibition of discrimination to a more positive approach of promoting equality of opportunity so discrimination is prevented from occurring in the first place.
- To ensure that the race, disability and gender equality duties which currently each have slightly different features are brought together into a single, streamlined approach.
- To help public authorities to respond to their equality obligations more efficiently.
- To provide a single, effective, strategic lever for addressing discrimination and disadvantage.
- To take a proactive approach to addressing discrimination and disadvantage on the grounds of age, gender reassignment, sexual orientation and religion or belief (as well as race, gender and disability)
- For specific duties - minimise formal procedures and concentrate on outcomes for service users and employees of public authorities, focusing on the necessary and proportionate actions and reporting on their impact (This will be developed further in a separate Impact Assessment covering specific duties, which will be made through secondary legislation).

What policy options have been considered? Please justify any preferred option.

The options considered were:

- Option 1: do nothing. Retain the existing separate public sector duties but do not extend to the new strands.
- Option 2: integrate the three existing separate public sector duties to create a single duty covering race, disability and gender, using the current approach (i.e. general duty supported by specific duties).
- **Option 3: integrate the three existing public sector duties and extend to cover age, gender reassignment, sexual orientation and religion or belief, using the current approach (i.e. general duty supported by specific duties) (preferred option).**

Final Proposal - Option 3.

This will provide a simpler and more efficient framework than three existing separate duties. Extending the duty to cover age, gender reassignment, sexual orientation and religion or belief will ensure that public authorities consider the full breadth of the needs of their communities and employees, and provide a framework under which current activity to eliminate discrimination and promote equality on these grounds can be standardised across the public sector.

When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects?

The EHRC will review the operation of the new duty on an ongoing basis, following implementation, and will also be responsible for enforcing it. The Government will separately review its operation within five years after implementation.

Summary: Analysis & Evidence

Creating an integrated public sector equality duty for all 7 strands

Creating an integrated duty on public authorities to have due regard to the need to eliminate discrimination and promote equality across all protected areas of discrimination law (race; gender; gender reassignment; disability; religion or belief; sexual orientation; age) based on the model of the existing duties.

ANNUAL COSTS		Description and scale of key monetised costs by 'main affected groups' We expect that the changes to the general public sector Equality Duty will result in initial familiarisation costs, which are subsumed in the overall familiarisation costs shown in pages 12-30.	
One-off (Transition)	Yrs		
£	1		
Average Annual Cost (excluding one-off)		Total Cost (PV)	
£ 0	10		
COSTS		Other key non-monetised costs by 'main affected groups'	
		No costs at this stage. The majority of costs associated with the public sector equality duty will arise from the specific duties. These are currently being developed in consultation with stakeholders and will be subject to further consultation and a separate Impact Assessment.	

BENEFITS	ANNUAL BENEFITS		Description and scale of key monetised benefits by 'main affected groups'	
	One-off	Yrs		
	£ 0	1		
	Average Annual Benefit (excluding one-off)			
	£0	10	Total Benefit (PV)	£ 0
Other key non-monetised benefits by 'main affected groups'				
<p>The advantages of an integrated, single duty are that: it ensures public authorities consider the different needs of all members of the community, thus addressing disadvantage and proactively tackling the sources of discrimination; it avoids skewing public authority resources and priorities towards meeting a particular legislative obligation when the demands of the local community may require different priorities; it extends protection across all the protected grounds.</p>				

Key Assumptions/Sensitivities/Risks

We expect that the changes to the public sector Equality Duty will result in initial set-up costs but these costs will be offset by the efficiency savings of having one (wider consistent) duty rather than the current three separate and different duties.

Price Base Yr 2008	Time Period Years 10	Net Benefit Range (NPV) £-	NET BENEFIT (NPV Best estimate) £0
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What is the geographic coverage of the policy/option?		GB		
On what date will the policy be implemented?		To be decided		
Which organisation(s) will enforce the policy?		EHRC		
What is the total annual cost of enforcement for these organisations?		£ 0		
Does enforcement comply with Hampton principles?		N/A		
Will implementation go beyond minimum EU requirements?		N/A		
What is the value of the proposed offsetting measure per year?		£ 0		
What is the value of changes in greenhouse gas emissions?		£ 0		
Will the proposal have a significant impact on competition?		No		
Annual cost (£-£) per organisation (excluding one-off)	Micro	Small	Medium	Large

Are any of these organisations exempt?	No	No	N/A	N/A
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Impact on Admin Burdens Baseline (2005 Prices)				
				(Increase - Decrease)
Increase of	£	Decrease of	£	Net Impact
				£

Key: Annual costs and benefits: Constant Prices (Net) Present Value

Non-legislative options

The only non-legislative option available would be to introduce a voluntary approach to promoting age, sexual orientation and/or religion or belief equality. This would risk inconsistencies depending on the various standards and other frameworks available to different public bodies which include all of the protected grounds covered by discrimination law i.e. the Local Government Equality Standard. There is evidence of a need to put such action on a more formal legal footing to ensure that protection for e.g. black and minority ethnic people does not unduly outweigh the level of protection for e.g. lesbian, gay or bisexual people; or to ensure that action more generally is not dependent on geographical location and/or the leadership of the local authority.

Overall costs and benefits of the integrated duty (option 3)

There are currently three different equality duties on race, gender and disability and each of the three duties has different requirements and timetables. The race equality duty requires public authorities to have 'due regard' to the need to eliminate unlawful racial discrimination, to promote equality of opportunity for persons of different racial groups, and to promote good race relations. The disability equality duty requires public authorities to have due regard to the need to eliminate unlawful discrimination, the need to eliminate harassment that is linked to a disabled person's disabilities, the need to promote positive attitudes towards disabled people and to encourage their participation in public life, and to take steps to take account of disabled people's disabilities. The gender equality duty requires public authorities to have due regard to the need to eliminate unlawful discrimination and harassment and to promote equality of opportunity between women and men.

Benefits

The new equality duty will bring together these three different duties and extend the scope to cover age, sexual orientation, religion or belief and gender re-assignment. A single duty will be more efficient than the existing duties, since it will bring together three different duties with different requirements and timetables into one integrated duty. The new duty will therefore require public authorities in carrying out their functions to have 'due regard' to the need to eliminate unlawful discrimination, harassment and victimisation, advance equality of opportunity and foster good relations across the seven strands indicated. Public authorities will no longer be required to consider the three duties and their elements separately.

Costs

In June 2007 we published an impact assessment giving estimated costs and benefits of a number of approaches to the public sector Equality Duty on which we were consulting. This can be found at <http://www.equalities.gov.uk/PDF/DLRRIBkkmk16.pdf>. Our preferred policy at that time was to create a new model for a single Equality Duty which moved away from the separate concepts of general and specific duties. However, in the light of consultation responses our policy changed

and we decided to retain the concepts of general and specific duties in relation to the new expanded single Duty. As a result, those earlier estimates are no longer relevant or useful. This impact assessment covers the familiarisation costs arising from the new expanded general Equality Duty contained in the Bill. The Bill also contains powers to make specific duties by secondary legislation, with separate powers for the devolved administrations. The new specific duties will be the subject of a further impact assessment, and more detailed costings, as they are developed for consultation. However, the Government's policy aim in developing the new specific duties is that the new Equality Duty should be cost neutral overall when set against the savings arising from the replacement of the existing race, disability and gender duties.

Risks

The main risks are associated with the specific duties which will be the subject of a separate consultation prior to secondary legislation.

There is a risk of increasing burdens on the public sector without achieving the policy aim of a more outcome-focused approach if the specific duties are not designed to be flexible, proportionate and light-touch. The work being done by the specific duties working group set up by the Government Equalities Office and consisting of relevant stakeholders, together with additional input through further consultation, should help minimise this risk.

B: A power to impose specific duties on public procurement by some authorities

Equality is a key social policy objective for government. Up to £175 billion is spent each year by the public sector through contracts with the private sector. There is evidence that there are opportunities to use the power of procurement more effectively to further equality objectives and Government intervention is necessary to encourage and enable public authorities to use their procurement activities more actively in this way. The Bill therefore contains a power to impose specific duties on the procurement activities of some public authorities.⁹³

What are the policy objectives and the intended effects?

The policy objective is to harness more effectively the power of public procurement to further equality objectives. By taking a power in the Bill to prescribe specific duties setting out how certain public bodies should promote equality when exercising their public procurement functions, we are making a very clear link between the role of procurement and the general equality duty. This will serve to avoid doubt about the need to have due regard to equality when undertaking public procurement and thus will begin a cultural shift in how public authorities think and plan about how they pursue equality objectives through their procurement activities.

What policy options have been considered? Please justify any preferred option.

In reaching its preferred option, the Government considered the following:

- Option 1: do nothing in legislation and rely on guidance, including the publication of the Office of Government Commerce Pamphlet, "Make Equality Count", out reach and training for procurement professionals, and the development of a toolkit to improve equality outcomes through the various stages of the procurement process. It is considered that any further guidance would benefit from a legislative framework to deliver greatest impact. Option1 was therefore discounted.

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⁹³ These authorities will be those known as "contracting authorities" for the purpose of the European Public Sector Directive 2004/18/EC of the European Parliament and of the Council of March 2004 on the coordination of procedures of the award of public works contracts, public supply contracts and public service contracts.

- **Option 2: Use primary legislation to avoid doubt about the relationship between public procurement and the public sector Equality Duty.**

Option 2: To make a clear link between public procurement and improved equality through the public sector Equality Duty, thus avoiding doubt and encouraging and enabling public authorities to consider their procurement activities in relation to their performance of the general equality duty. This would be done through a regulation making power that enables specific equality duties to be imposed upon public authorities in relation to their public procurement functions.

It is important to note that the provisions in the Bill do not impose any costs in this area, but any specific duties imposed under this power may do. The following estimated costings within this Impact Assessment are based upon one example of a duty the regulations could impose upon public authorities. However, the specific details of the duties will be subject to cross government and public consultation. The legislative approach, when backed up by the non legislative processes, will lead to a cultural shift in how equality considerations are built into the procurement process as a means of fulfilling the requirements of the public sector Equality Duty and improving equality outcomes in Great Britain.

Summary: Analysis & Evidence

Policy Option 2:

Regulations may impose duties on some public authorities in connection with their procurement functions.

COSTS	ANNUAL COSTS		Description and scale of key monetised costs by 'main affected groups'	
	One-off (Transition)	Yrs		
	£ 1,077,280	1	We expect that this clarification may result in an initial familiarisation cost to these sectors: Public: £ 1,077,280 Private: £ 0	
	Average Annual Cost (excluding one-off)			
£ 0	10	Total Cost (PV)	£ 1,077,280	
Other key non-monetised costs by 'main affected groups'				

BENEFITS	ANNUAL BENEFITS		Description and scale of key monetised benefits by 'main affected groups'	
	One-off	Yrs		
	£ 0	1	The advantages of imposing duties in respect of the procurement function of certain public authorities (that are contracting authorities within the meaning of the Public Sector Directive) are that it provides the impetus for bodies to consider the implications of spending public money to achieve a social good alongside value for money, thus addressing disadvantage and proactively encouraging such bodies to tackle discrimination. Further overall benefits of such a result can be found in the General Benefit section of this impact assessment (to the extent that such an approach by public authorities may encourage greater workforce diversity amongst contracting firms).	
	Average Annual Benefit (excluding one-off)			
£0	10	Total Benefit (PV)	£ 0	
Other key non-monetised benefits by 'main affected groups'				

Key Assumptions/Sensitivities/Risks

We expect that the proposed change will result in initial familiarisation and implementation cost. As we consult to define the actual duties that will be implemented, we will further develop and measure the long term benefits

Price Base Yr 2008	Time Period Years 10	Net Benefit Range (NPV) -£ 1,077,280	NET BENEFIT (NPV Best estimate) £See Range
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What is the geographic coverage of the policy/option?	Great Britain			
On what date will the policy be implemented?	To be decided			
Which organisation(s) will enforce the policy?	EHRC			
What is the total annual cost of enforcement for these	£ 0			
Does enforcement comply with Hampton principles?	Yes			
Will implementation go beyond minimum EU requirements?	Yes			
What is the value of the proposed offsetting measure per year?	£ 0			
What is the value of changes in greenhouse gas emissions?	£ 0			
Will the proposal have a significant impact on competition?	No			
Annual cost (£-£) per organisation (excluding one-off)	Micro	Small	Medium	Large
Are any of these organisations exempt?	No	No	N/A	N/A

Impact on Admin Burdens Baseline (2005 Prices)					
					(Increase - Decrease)
Increase of	£	Decrease of	£	Net Impact	£

Key: Annual costs and benefits: Constant Prices (Net) Present Value

Evidence Base

Preferred Option 2.

There is a clear rationale for making greater use of the £175bn that the public sector spends every year on procuring goods and services, by making equality a key consideration in the public procurement process. It has been well established that public procurement can and should be used to support wider objectives including social issues and further guidance from the Office Of Government Commerce specifically in relation to equality, stresses that the public sector has an important opportunity to use its purchasing power to promote equality where possible.⁹⁴

Costs

In itself, the power in the Bill does not impose any additional costs to the public or private sector. Any costs may arise from the specific duties that are imposed upon certain public authorities through the use of this regulation making power.

⁹⁴ "Make Equality Count", OGC, December 2008

We will fully consult on and examine costs before deciding on the scope of any potential duties and how they may operate. To enable initial costings to be made, we have set out one possible indicative duty.

This indicative duty would be to impose a specific duty that would direct contracting authorities to set out what steps they will be taking to ensure improved equality outcomes are considered as part of their procurement activities.

Public sector:

The Office of Government Commerce estimates that there are 4,000 contracting authorities that are likely to carry out procurement exercises above the threshold required for the EU procurement rules to come into force. It is assumed for the purposes of this example that only bodies carrying out above threshold procurement exercises would be captured by the specific duty on procurement.

The cost of the duty is therefore taken to be the time required for relevant bodies to familiarise themselves with it and consider how implement it within their procurement process.

Familiarisation costs:

It is assumed that, on average, it will take a senior official (or equivalent) 30 minutes (0.5 hour) to familiarise themselves with the duty and any associated guidance. The cost per hour of a senior official's time is taken to be the hourly rate (as given in the Annual Survey of Hours and Earnings 2008 code 11), uprated by 21% to cover non-labour costs:

Per contracting authority the cost is therefore:

Hours taken X Hourly rate = Cost per contracting authority

$$0.5 \times \text{£}36.99 = \text{£}18.50$$

The total cost of familiarisation with the new duty is therefore:

Cost per contracting authority X Number of contracting authorities = Total cost

$$\text{£}18.50 \times 4,000 = \text{£}74,000$$

One-off Implementation costs:

We assume that a senior official (or equivalent) will then take 6.5 hours to decide what and establish the steps an authority will take to ensure compliance

This is costed in the same method as the familiarisation costs resulting in:

Per contracting authority the cost is:

Hours taken X Hourly rate = Cost per contracting authority

$$6.5 \times \text{£}36.99 = \text{£}240.44$$

The total cost of this stage of implementation of the new duty is therefore:

Cost per contracting authority X Number of contracting authorities = Total cost

$$\text{£}240.44 \times 4,000 = \text{£}961,760$$

Total cost of familiarisation and implementation of complying this potential specific due amount to **£1,035,760**

Private Sector costs:

It is recognised that this particular example of how regulations may be used to impose duties, does not include private sector costs. As already stated, the Government's policy aim in developing such duties is that the new Equality Duty, and the express power to impose specific duties on public authorities that are contracting authorities, should be cost neutral overall when set against the savings arising from the replacement of the existing race, disability and gender duties.

As we continue to consult and finalise upon what duties the regulations may impose, we will develop a full impact assessment.

Enforcement and guidance costs:

Enforcement and guidance will be carried out by the Equality and Human Rights Commission as part of the overall guidance and enforcement of the Equality Bill as a whole and the public sector Equality Duty, under which this regulation making power sits.

Benefits

These duties will encourage certain public bodies to use their purchasing activity to further the Government's equality objectives and improve equality outcomes across society.

As we consult to agree and develop what specific duties may be imposed by these regulations, we will define and measure the full impact of the benefits.

When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects?

Immediately and on an ongoing basis, by the Equality and Human Rights Commission. The Government will separately review its operation after five years of implementation.

Risks

As is the case with the wider public sector Equality Duty there is a risk of increasing burdens on the public sector if the duties are not designed to be flexible and proportionate. The work being done on the specific duties, and through further consultation, will minimise this risk.

Annex R - Positive action

Department GEO

Widening the scope of voluntary “positive actions” within existing EU parameters

Stage: Introduction

Version: 4

Date: December 2009

Related Publications: (1) Discrimination Law Review: Proposals for an Equality Bill for Great Britain (June 2007). (2) Proposals to simplify and modernise the law: Initial RIA (June 2007). (3) Framework for a Fairer Future (June 2008) and (4) the Government response to the consultation (July 2008) (5) Equality Bill Impact Assessment (Introduction) 27 April 2009

Available to view or download at: <http://www.equalities.gov.uk>

Contact for enquiries: Steve Porch

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What is the problem under consideration? Why is government intervention necessary?

While in many spheres of society some individuals from groups which have suffered discrimination and disadvantage have made it to the top, generally those groups still remain under-represented. Organisations themselves have expressed frustration at their inability to bring about more rapid change within the current legal framework. And the benefits of a diverse workforce have been indicated by the joint 2008 CBI / TUC/ EHRC publication⁹⁵. Without Government intervention at this stage, these inequalities will persist for far longer than would otherwise be the case.

What are the policy objectives and the intended effects?

Where progress towards giving everyone an equal chance of participation is still too slow, we want to:

- remove unnecessary barriers to equality of opportunity;
- allow proportionate and voluntary action to be taken to address a real problem;
- allow positive action to be taken for any group identified by a protected characteristic, not just those groups more usually associated with under-representation or disadvantage;
- explain what we are doing and why, and ensure that the need for action is understood, and commands the widest possible consensus.

What policy options have been considered? Please justify any preferred option.

The 2 options considered were: Option 1: do nothing; and Option 2 (final proposal): extending the range of voluntary positive actions as wide as is permitted under EU legislation, but without discarding the merit principle.

The final proposal is Option 2 as this would allow a wider range of actions to be taken to address disadvantage and under-representation, particularly in regard to employment: in particular, employers will be allowed, in choosing between two or more equally suitable candidates for recruitment or promotion, to take account of any under-representation of people with a protected characteristic (e.g. race, gender, sexual orientation) in their workforce. As indicated by the joint 2008 CBI/ TUC/ EHRC report, a more diverse workforce would allow businesses to draw on more talent, increase productivity and widen their market opportunities. As these would be voluntary

⁹⁵ *Talent not Tokenism; the business benefits of workforce diversity* TUC/CBI/EHRC Published 3 June 2008

measures there would be no mandatory additional costs for those organisations that did not want or need to use the new provisions. Organisations could evaluate the likely costs of any positive action measures that they were considering introducing against the likely benefits that they would generate and determine at that stage whether or not it was economically viable for them to do so. A third option – the use of positive discrimination – was identified but discounted as it would have been unlawful under both current domestic and European legislation because it would discard the merit principle.

When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects?

After implementation, and on an ongoing basis, by the Equality and Human Rights Commission. The Government will also review after 5 years.

Positive Action: Analysis & Evidence

Policy Option: Positive Action	Widening the scope of voluntary “positive actions” within existing EU parameters
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COSTS	ANNUAL COSTS		Description and scale of key monetised costs by ‘main affected groups’	
	One-off (Transition)	Yrs		
	£	1	No mandatory costs. Familiarisation costs are factored into the overall familiarisation costs for the Bill, in pages 12-30.	
	Average Annual Cost (excluding one-off)			
	£ 0	10	Total Cost (PV)	£ Marginal
Other key non-monetised costs by ‘main affected groups’				

BENEFITS	ANNUAL BENEFITS		Description and scale of key monetised benefits by 'main affected groups'	
	One-off	Yrs		
	£ 0	1		
	Average Annual Benefit (excluding one-off)			
	£0	10	Total Benefit (PV)	£ Marginal
<p>Other key non-monetised benefits by 'main affected groups'</p> <p>This would allow a wider range of actions to address disadvantage and under-representation, especially in the workforce, for the groups concerned.</p> <p>Firms and public authorities would be able to maximise the potential of their staff, increase workforce satisfaction, achieve greater productivity through greater efficiency in use of resources</p>				

Key Assumptions/Sensitivities/Risks
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Price Base Yr 2008	Time Period Years 10	Net Benefit Range (NPV) £0 - Marginal	NET BENEFIT (NPV Best estimate) £See Range
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What is the geographic coverage of the policy/option?	GB			
On what date will the policy be implemented?				
Which organisation(s) will enforce the policy?	N/A			
What is the total annual cost of enforcement for these organisations?	£ 0			
Does enforcement comply with Hampton principles?	N/A			
Will implementation go beyond minimum EU requirements?	N/A			
What is the value of the proposed offsetting measure per year?	£ 0			
What is the value of changes in greenhouse gas emissions?	£ 0			
Will the proposal have a significant impact on competition?	No			
Annual cost (£-£) per organisation (excluding one-off)	Micro	Small	Medium	Large

Are any of these organisations exempt?	No	No	N/A	N/A
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Impact on Admin Burdens Baseline (2005 Prices)				
				(Increase - Decrease)
Increase of	£	Decrease of	£	Net Impact
				£

Key: Annual costs and benefits: Constant Prices (Net) Present Value

Evidence

Options Identification

Various stakeholders have, over the past few years, called for a widening of the domestic provisions in order to allow them to redress persistent under-representation in a variety of circumstances, notably employment.

Three options were identified in this way, including the “do nothing” option, and of these two were included in the June 2007 consultation. The third option – that of introducing positive discrimination measures – was discounted as it would be unlawful under both current domestic and European legislation.

Why may a legislative approach be necessary?

The existing domestic legislation is too narrowly drawn to allow the breadth of positive action measures that is permissible under European law. As such, only a legislative approach could create the required changes.

Analysis of Costs & Benefits of Final Proposal

Extending the range of voluntary positive actions as wide as is permitted under EU legislation

Benefits

This would allow a wider range of actions to address disadvantage and under-representation, especially in the workforce, for the groups concerned. Employers would have a freer hand than at present to improve opportunities for specific groups. This could significantly improve opportunities for under-represented groups, particularly in organisations that wish to make faster progress than is possible at present.

Firms and public authorities would be able to maximise the potential of their staff, increase workforce satisfaction, achieve greater productivity through greater efficiency in use of resources and increase their responsiveness to their customers and communities through employing staff who are more representative of those customers and communities. There could be reputational gains for firms. Individuals in the groups affected should have better employment and promotion opportunities and will benefit from services designed to address their special needs.

Costs

Since these would be voluntary measures there would be no mandatory additional costs.

Risks

Extending the range of voluntary positive actions as wide as is permitted under EU legislation

There are no readily identifiable risks associated with this option. It will however be important for the Equality and Human Rights Commission to issue clear guidance about the new provisions.

Enforcement

Any broader positive action provisions that were introduced would be on a voluntary basis.

Any perceived breaches as a result of the new provisions would be enforced through the domestic courts or tribunals by an individual making a personal claim.

Annex S – Disability and transport

Department DFT	(i) Taxi accessibility (ii) Public service vehicles (iii) Rail vehicles	
Stage: Introduction House of Lords	Version: 4	Date: December 2009
Related Publications: February 2009 consultation document on improving access to taxis.		

Available to view or download at: <http://www.equalities.gov.uk>

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(i) Taxi accessibility

What is the problem under consideration? Why is government intervention necessary?

To put all related discrimination law in one place the taxi accessibility provisions of the Equality Bill have been transcribed from the Disability Discrimination Act (“DDA”) 1995. The provisions which they contain are therefore not new. However, there is evidence that drivers are refusing to carry and assist disabled passengers; so one provision has been changed to enable it to be brought into effect separately; and to apply to private hire vehicles e.g. mini-cabs as well as taxis.

What are the policy objectives and the intended effects?

The original DDA 1995 provisions were necessary to provide a national standard for the accessibility of all licensed taxis to ensure consistency of application, that disabled people could be confident that they would have proper access to taxis.

The duties are on drivers of taxis (now extended to drivers of public hire vehicles) to:

- Carry a passenger while they remain in their wheelchair without additional charge
- To carry the wheelchair if the passenger wishes to sit in the front seat
- To ensure the passenger is carried safely and in reasonable comfort
- To provide such assistance as is reasonably required.

The objective of the change is to enable separate and wider implementation of the provisions e.g. to mini-cabs, so that access is improved for disabled people.

The Department for Transport will keep the operation of these provisions under review.

What policy options have been considered? Please justify any preferred option.

As noted above, the provisions of the Bill are a transcription of pre-existing measures which were present in the DDA 1995. The preferred option is to enable local authorities to enforce the access provisions.

When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects?

The Department for Transport is currently consulting on this area. The consultation is available at: <http://www.dft.gov.uk/consultations/open/consulttaxis/>

Disabled people having access to and using taxis: Analysis & Evidence

ANNUAL COSTS		Description and scale of key monetised costs by 'main affected groups' Local authorities will have to publicise the change and then prosecute where necessary. Prosecutions will also involve court costs. The appraisal here is presented over 10 years. Familiarisation costs are factored into the overall familiarisation costs for the Bill, in pages 12-30.
One-off (Transition)	Yrs	
£	1	
Average Annual Cost (excluding one-off)		Total Cost (PV)
£ 201,000	10	
Other key non-monetised costs by 'main affected groups'		

COSTS

BENEFITS	ANNUAL BENEFITS		Description and scale of key monetised benefits by 'main affected groups' Specific research would be required to assess the level of annual benefits.	
	One-off	Yrs		
	£ Not known		Average Annual Benefit (excluding one-off)	
	£ Not known		Total Benefit (PV)	£ Not known
Other key non-monetised benefits by 'main affected groups' Disabled users of taxis will have greater consistency while travelling in taxis and mini-cabs. We envisage that more trips will be undertaken as a result, as disabled users will have more confidence in using taxis and are afforded a level of protection.				

Key Assumptions/Sensitivities/Risks
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Price Base Yr 2008	Time Period Years 10	Net Benefit Range (NPV) -£1,730,145	NET BENEFIT (NPV Best estimate) £See Range
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What is the geographic coverage of the policy/option?	GB
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On what date will the policy be implemented?	2012			
Which organisation(s) will enforce the policy?	Local Authorities			
What is the total annual cost of enforcement for these organisations?	£ 106,000			
Does enforcement comply with Hampton principles?	Yes			
Will implementation go beyond minimum EU requirements?	Yes			
What is the value of the proposed offsetting measure per year?	£			
What is the value of changes in greenhouse gas emissions?	£ 0			
Will the proposal have a significant impact on competition?	No			
Annual cost (£-£) per organisation (excluding one-off)	Micro	Small	Medium	Large
Are any of these organisations exempt?	No	No	N/A	N/A

Impact on Admin Burdens Baseline (2005 Prices)				
		(Increase - Decrease)		
Increase of	£	Decrease of	£	Net Impact
		£		

Key: Annual costs and benefits: Constant Prices (Net) Present Value

Costs

The costs of commencing and enforcing the duties are estimated to be as follows:

- local authority publicity for the measure – through communiqués with taxi owners and drivers, and private hire cars – assuming a cost of £1.00 per licensed driver = one-off cost of £1.00 x 219,000 drivers = £219,000;

- enforcement costs (no prosecution brought, but letter sent to offending driver – on basis of observation or public complaint) – extent not known, but assume 1 action per 100 vehicles per year @ £5.00 per action = 2,190 x £5 = £10,950; and

- enforcement costs (prosecution brought) – extent not known, but assume 1 action per 1,000 vehicles per year. There will be two elements of cost under this heading:

(a) Court costs: The Cost of Criminal Justice (Home Office, 1999/00) indicates an average cost of £550 (£680 in 2007/08 prices) to take proceedings in relation to a motoring offence to a magistrates court with a guilty plea, and £1,700 (£2,100 in 2007/08 prices) for a 'not guilty' plea. Offenders would go to proceedings in a magistrate's court; it is assumed that 65 per cent of offenders will plead guilty (in line with the average for all cases, Crown Prosecution Service Annual Report, 2007/08). This implies an annual cost of £63,686 for cases with 'not guilty' pleas, and £30,977 for cases with guilty pleas (£94,663 in all);

(b) Costs to the prosecuting local authority – likely to be of a similar order of magnitude to the court costs (£95,000 pa).

Benefits

There will be journey time reductions to a proportion of disabled people who would otherwise have to wait until the second passing taxi to pick them up, or make more than one booking with a private hire company. It is envisaged that this measure will allow consistency across the country and enable disabled travellers to be more confident about using taxis, with a resultant increase in journeys undertaken.

(ii) Public service vehicle accessibility

What is the problem under consideration? Why is government intervention necessary?

To put all related discrimination law in one place, the Public Service Vehicle accessibility provisions of the Equality Bill have been transcribed in their entirety from the Disability Discrimination Act (“DDA”) 1995. The provisions which they contain are therefore not new and the Public Service Vehicle Accessibility Regulations made under these DDA provisions have been in place for some time.

What are the policy objectives and the intended effects?

The original DDA 1995 provisions were necessary to provide a national standard for the accessibility of all public service vehicles to ensure consistency of application and that disabled people could be confident that they would have good access to buses.

The Public Service Vehicle Accessibility Regulations stipulate end dates for compliance. The regulations require all buses and coaches, both old and new, to comply from 2015 (through to 2017) for buses and from 2020 for coaches.

What policy options have been considered? Please justify any preferred option.

The provisions of the Bill are a transcription of pre-existing measures which were present in the DDA 1995. The Bill reflects no change of policy in this respect.

When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects?

The Department for Transport will keep the regulations under review in line with research and operational experience.

Background

The Public Service Vehicle Accessibility Regulations (PSVAR) were introduced in 2000. Guidance on the provisions of the regulations can be found at:

<http://www.dft.gov.uk/transportforyou/access/buses/pubs/psvar/>

The full text of the regulations can be found at:

<http://www.opsi.gov.uk/si/si2000/20001970.htm>

(iii) Rail vehicle accessibility

What is the problem under consideration? Why is government intervention necessary?

To put all the related discrimination law in one place, the rail vehicle accessibility provisions of the Equality Bill have been transcribed in their entirety from the Disability Discrimination Act (“DDA”)

1995 and no substantive amendments have been made. The provisions which they contain are therefore not new and the accessibility regime has been in place, with some revisions, for over a decade. The introduction of new European standards for passenger rail vehicles in July 2008 has removed heavy rail vehicles (i.e. in practice most passenger trains which operate on the UK main line rail system) from the scope of the DDA 1995 and the provisions of this Bill are therefore now only applicable to the accessibility of rail vehicles operated on light rail, metro and underground systems and prescribed guided modes of transport.

What are the policy objectives and the intended effects?

The original DDA 1995 provisions were necessary to provide a national standard for the accessibility of all rail vehicles to ensure consistency of application and that disabled people could be confident that they would have the same facilities available regardless of the class, model or service they were using.

A number of amendments were made during the passage of the DDA 2005 including the setting of an end date, of no later than 1 January 2020, by which time all rail vehicles must meet accessibility standards, and applying accessibility regulations to older rail vehicles when they are refurbished. The setting of the end date in particular is intended to facilitate an accessible transport chain by ensuring that all trains, buses and coaches are accessible by the same date thereby reducing social exclusion.

What policy options have been considered? Please justify any preferred option.

The provisions of the Bill are a transcription of pre-existing measures which were present in the DDA 1995 (including measures not commenced). The Bill reflects no change of policy in this respect.

However, following the introduction of the new European standards noted above, the Department for Transport has reassessed the domestic light rail accessibility regime and has completed a consultation exercise on proposals to amend this.

The provisions of the Bill were written to reflect the existing legislation and not pre-empt the outcome of that consultation. However, analysis of the responses indicates that the proposals are widely supported by all stakeholders and the Government therefore intends to proceed with implementation on this basis.

Please see www.dft.gov.uk/consultations/closed/rvarconsul for more information.

When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects?

The Department for Transport will continue to ensure future franchise specifications address accessibility, and implementation of the policy will be monitored and evaluated to ensure gradual progression to achieve accessibility by 2020.

Background

Although there is nothing new within the Bill in terms of rail vehicle accessibility, it may be useful for those seeking to understand the implications of the regime to refer to previous impact assessments produced by the Department for Transport that assess the impact of particular aspects of the regime.

Measures included in the DDA 2005:
www.dwp.gov.uk/publications/dwp/2005/ria/dda-2005-final.pdf

Setting of the end date for heavy rail vehicles:
www.dft.gov.uk/consultations/archive/2008/railvehicleaccessibility

The Department for Transport has recently completed a consultation exercise on amendments to the light rail vehicle accessibility regime which will include the setting of an end date for rail vehicles used on light rail, metro and tram systems and prescribed modes of guided transport. Please see www.dft.gov.uk/consultations/closed/rvarconsul for more information.

Annex T - Rationalising exceptions allowing discrimination

Department GEO	Impact Assessment - Equality Bill	
Stage: Introduction House of Lords	Version: 4	Date: December 2009
Related Publications: (1) Discrimination Law Review: Proposals for an Equality Bill for Great Britain (June 2007). (2) Proposals to simplify and modernise the law: Initial RIA (June 2007). (3) Framework for a Fairer Future (June 2008) and (4) the Government response to the consultation (July 2008) (5) Equality Bill Impact Assessment (Introduction) 27 April 2009		

Available to view or download at: <http://www.equalities.gov.uk>

Contact for enquiries: Kate Richardson

Telephone: 0303 444 1204

What is the problem under consideration? Why is government intervention necessary?

Inconsistency in the way exceptions are treated across the equality strands results in unnecessary costs to employers arising from uncertainty (and the need to seek advice) as to whether an act can be classified as justifiably discriminatory.

What are the policy objectives and the intended effects?

To ensure consistency in the way exceptions are treated across the equality strands. This will make it easier for employers to decide if discriminatory acts are justifiable. This will produce savings for employers by reducing the amount they are required to spend on legal advice, and lead to a slight fall in the number of cases and hence some small savings for employers, taxpayers and individuals alike as indicated below.

What policy options have been considered? Please justify any preferred option.

- Option 1: do nothing
- **Option 2: apply the genuine occupational requirement test consistently across all strands, keeping specific exceptions where appropriate (final proposal)**
- Option 3: apply the genuine occupational requirement test in all discrimination strands and remove all specific exceptions

The above options were consulted on in June 2007.

Our preferred option as adopted in the Bill is option 2. Extending the (wider) genuine occupational requirement test to sex and race (nationality and colour) will enable an employer to justify discriminatory acts in a way that was not possible before in those areas. While we might see an initial slight increase in the number of cases, the new test is likely, if anything, to result in greater success for employers. In time, we expect this to lead to a slight fall in the number of cases and hence some small savings as indicated below.

When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects?

After implementation, and on an ongoing basis, by the Equality and Human Rights Commission.
The Government will also review after 5 years.

Rationalising exceptions - Analysis & Evidence

Rationalising exceptions allowing discrimination

Rationalising exceptions allowing discrimination. The main proposal is to replace the existing genuine occupational qualifications in respect of sex and race (nationality and colour) with the genuine occupational requirement test that already applies in other equality strands; and to keep specific identified exceptions as appropriate.

ANNUAL COSTS		Description and scale of key monetised costs by 'main affected groups'	
One-off (Transition)	Yrs		
£	1	Individuals - Cost of losing more cases = £520,658 Familiarisation costs are factored into the overall familiarisation costs for the Bill, in pages 12-30.	
Average Annual Cost (excluding one-off)			
Up to £ 520,658	10	Total Cost (PV)	Up to £ 4,481,664
Other key non-monetised costs by 'main affected groups'			

COSTS

BENEFITS	ANNUAL BENEFITS		Description and scale of key monetised benefits by 'main affected groups' Public Sector - Savings from winning more cases and Savings from reduction in justiciable events = £357,614 - £390,043 Private Sector - Savings from winning more cases and Savings from reduction in justiciable events = £357,614 - £390,043 Individuals - Savings from reduction in justiciable events = £24,004 - £ 32,005 Society - Savings from reduction in justiciable events = £18,654 -£ 24,871	
	One-off	Yrs		
	£ 0	1	Average Annual Benefit (excluding one-off)	
	£ 757,886 to £ 836,962	10		
		Total Benefit (PV)	£ 6,523,645 to £ 7,204,305	
Other key non-monetised benefits by 'main affected groups' Extending the (wider) genuine occupational requirement test to sex and race (nationality and colour) will enable an employer to justify discriminatory acts in a way that was not possible before in those areas. While we might see an initial increase in the number of cases, the new test is likely, if anything, to result in greater success for employers. In time, we expect this to lead to a slight fall in the number of cases and hence some small savings as indicated below.				

Key Assumptions/Sensitivities/Risks

That there will be a reduction in the number of tribunal cases brought on sex and race discrimination grounds (between 12 and 16 per annum); and that employers will be successful in an extra 0.5% cases in race discrimination and 0.5% in sex discrimination

Price Base Yr 2008	Time Period Years 10	Net Benefit Range (NPV) £ 2,041,980 to £ 2,722,640	NET BENEFIT (NPV Best estimate) £ See Range
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What is the geographic coverage of the policy/option?	GB
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On what date will the policy be implemented?					
Which organisation(s) will enforce the policy?					Tribunals
What is the total annual cost of enforcement for these organisations?					£ 0
Does enforcement comply with Hampton principles?					N/A
Will implementation go beyond minimum EU requirements?					No
What is the value of the proposed offsetting measure per year?					£ 0
What is the value of changes in greenhouse gas emissions?					£ 0
Will the proposal have a significant impact on competition?					No
Annual cost (£-£) per organisation (excluding one-off)	Micro	Small	Medium	Large	
Are any of these organisations exempt?	No	No	N/A	N/A	

Impact on Admin Burdens Baseline (2005 Prices)				
				(Increase - Decrease)
Increase of	£	Decrease of	£	Net Impact
				£

Key: Annual costs and benefits: Constant Prices (Net) Present Value

Evidence

Analysis of Costs & Benefits of Final Proposal

Option 2: apply the *genuine occupational requirement* test consistently across all strands keeping specific exceptions where appropriate (final proposal)

Extending the (wider) genuine occupational requirement test to sex and race (nationality and colour) will enable an employer to justify discriminatory acts in a way that was not possible before in those areas.

Discrimination law currently sets out specific circumstances (exceptions) where differential treatment is lawful. For example discriminatory acts are not unlawful where they are necessary to safeguard national security. The Bill will:

- Adopt a more simple approach to exceptions by introducing a genuine occupational requirement test across all of the protected characteristics
- Remove the existing specified genuine occupational qualification exceptions applying to gender, colour and nationality.

The new test is likely to result in:

- An increase in the number of successful tribunal cases for employers; and
- A slight fall in the number of justiciable events.

Benefits from a reduction in the number of justiciable events

It is assumed that there will be a 0.01% reduction in the number of justiciable events for race and sex as a result of rationalising the exceptions which allow discrimination. The benefits of this can be calculated by multiplying the estimated reduction in cases by the cost per case.

		The number of justiciable events	X	0.01%	=	Reduction in justiciable events	X	Cost per case	=	Benefit of proposal
LOW ESTIMATE	Private Sector	169,422 (144,396 sex and 25,027 race)	X	0.01%	=	17	X	£5393	=	£91,681
	Public Sector	169,422 (144,396 sex and 25,027 race)	X	0.01%	=	17	X	£5393	=	£91,681
	Taxpayer	169,422 (144,396 sex and 25,027 race)	X	0.01%	=	17	X	£1,034	=	£17,578
	Individual	169,422 (144,396 sex and 25,027 race)	X	0.01%	=	17	X	£1331	=	£22,627

		The number of justiciable events	X	0.01%	=	Reduction in justiciable events	X	Cost per case	=	Benefit of proposal
HIGH ESTIMATE	Private Sector	225,897 (192,528 sex and 33,369 race)	X	0.01%	=	23	X	£5393	=	£124,039
	Public Sector	225,897 (192,528 sex and 33,369 race)	X	0.01%	=	23	X	£5393	=	£124,039
	Taxpayer	225,897 (192,528 sex and 33,369 race)	X	0.01%	=	23	X	£1,034	=	£23,782
	Individual	225,897 (192,528 sex and 33,369 race)	X	0.01%	=	23	X	£1331	=	£30,613

This calculation assumes that there will be a reduction of 0.01% in the number of justiciable events. The data on the number of justiciable events are based on the average number of cases registered where discrimination is the main jurisdiction.⁹⁶

Savings from winning more cases

This is calculated by multiplying the average number of tribunal cases (sex and race) per year by the average amount awarded per case. This is then multiplied by 0.5% which is the savings in the increased number of cases won.

⁹⁶ LSR (Legal Research Centre) Periodic Survey findings 2003 and Genn, Paths to Justice Survey 1998

Number of cases	X	Average amount of compensation	=	Total average compensation paid	X	Increase in successful cases (0.5%)	=	Benefit of proposal
21,776 (18043 sex and 3733 race)	X	£3,608	=	£78,567,808	X	0.5%	=	£392,839.

These savings are split between public sector and private sector employers. This would however amount to a loss for individual claimants. The calculation of these savings assumes that there will be a 0.5% increase in the number of successful cases.⁹⁷.

Familiarisation Costs and Simplification Benefits

Are included in those for the whole Bill in pages 12-30.

Enforcement

Simplification of itself brings no changes to the enforcement regime.

⁹⁷ The data on the average number of tribunal cases for race and sex taken from the ETS Annual Reports 2003-04 to 2006-07 and data on the average value of a compensation award DTI Employment Relations Research Series No 33 <http://www.dti.gov.uk/files/files11455.pdf?pubpdfload=04%2F1071>

Annex U – Harmonisation power

Department GEO

Stage: Introduction
House of Lords

Version: 4

Date: December 2009

Related Publications: (1) Discrimination Law Review: Proposals for an Equality Bill for Great Britain (June 2007). (2) Proposals to simplify and modernise the law: Initial RIA (June 2007). (3) Framework for a Fairer Future (June 2008) and (4) the Government response to the consultation (July 2008) (5) Equality Bill Impact Assessment (Introduction) 27 April 2009

Available to view or download at: <http://www.equalities.gov.uk>

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What is the problem under consideration? Why is government intervention necessary?

One of the key objectives of the Equality Bill is to rationalise, simplify and harmonise existing equality law into a consistent, coherent and easy to understand format. However, it will be necessary to maintain harmonisation in the context of changing European legislation and case law.

The European Communities Act enables the Government to amend domestic legislation to align with European developments, but only to the extent required by the particular Directive or judgment and in relation to matters that are quite closely related to it. There is currently no facility, other than new primary legislation, that would enable the Government to make any additional changes to domestic law necessary to maintain consistency.

What are the policy objectives and the intended effects?

The harmonisation power will future-proof the new Act so that changes required by Europe could be extended at the margins to maintain overall consistency in the domestic legislation.

For example, had this power been in place at the time that the United Kingdom was required to implement the Race Directive, it would have been possible to avoid the creation of the existing “two tier” approach where there are different provisions for colour and nationality (not covered by the Directive but already present in domestic law), as compared with provisions on race and ethnicity. The Bill will itself remove this two tier approach, but in future the harmonisation power would allow such alignments without the need for primary legislation.

What policy options have been considered? Please justify any preferred option.

The options were:

- Take no harmonisation power
- Make any harmonising amendments through new primary legislation
- Make any harmonising amendments using the Regulatory Reform Act
- **Take a harmonising power in the Equality Bill (preferred option)**

If the Government took no power, the simplified, harmonised new law in the Equality Bill could be short lived, since European legislation and case law must be implemented but do not always exactly map onto domestic law.

Seeking a suitable vehicle to achieve harmonisation through primary legislation would be difficult and if one was found, time consuming to the extent that the required changes would be implemented ahead of the harmonising domestic changes, thereby defeating the object. Proposing an Act solely for this purpose each time an issue arose would be untenable.

Using the Regulatory Reform Act route (which requires a mandatory "Super affirmative" procedure) would also be prohibitively time-consuming and would effectively preclude regulations made under section 2(2) of the European Communities Act being considered and implemented in parallel with the harmonising regulations.

Use of the harmonisation power will be subject to the affirmative resolution procedure in Parliament and there will be consultation and guidance prior to and following its use on each occasion. An Equality Minister will also report to Parliament periodically on the power's use. With these built-in safeguards it was considered the most suitable option by the Government for future proofing the Bill.

The power would only be exercisable in relation to those anti discrimination provisions of the Equality Bill that are outside the scope of section 2(2) of the European Communities Act, for example:

- It would not be exercisable in relation to any of the parts of the Bill relating to employment and vocational training, other than in respect of nationality⁹⁸.
- It would not be exercisable in relation to goods facilities and services provisions concerning either race (other than nationality) or gender - or, if the new proposed Anti-Discrimination directive is in force, any of the other strands.
- It would not be exercisable in relation to any matters outside the scope of European legislation, for example the provisions of the public sector Equality Duty.

When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects?

The provisions contain a requirement on the Equality Minister to report to Parliament on the power's use every 5 years, which will provide a further opportunity for the Impact Assessment to be reviewed and revised when actual annual costs and benefits have been demonstrated.

⁹⁸ Although the current legislation has different provisions covering both colour and nationality, recent case law of the Employment Appeal Tribunal now indicates that the Race Directive covers colour - *Abbey National -v- Chaggar*. Unless this is overturned, then this will be the position.

Harmonisation : Analysis & Evidence

Policy Option:

Description: A supplementary power that will help to future-proof the Equality Bill, so that it remains coherent, harmonised and easy to understand well after enactment – key objectives for the Bill. It would enable continued consistency between the provisions that implement EU law and those that do not.

COSTS	ANNUAL COSTS		Description and scale of key monetised costs by 'main affected groups'	
	One-off (Transition)	Yrs		
	£	1		
	Average Annual Cost (excluding one-off)			
	£37,542	10	Total Cost (PV)	£323,153
<p>Other key non-monetised costs by 'main affected groups'</p> <p>To enable the Government to make those additional changes to the domestic law necessary to maintain consistency with European law.</p>				

BENEFITS	ANNUAL BENEFITS		Description and scale of key monetised benefits by 'main affected groups'	
	One-off	Yrs		
	£ 0	1	Benefits are subsumed within the figure benefits of simplification in pages 12-30	
	Average Annual Benefit (excluding one-off)			
	£ 0	10		
		Total Benefit (PV)	£ 0	
Other key non-monetised benefits by 'main affected groups'				

Key Assumptions/Sensitivities/Risks

That the average annual cost would be analogous to the average costs of Race and Gender Directives, multiplied by a factor of 10%

That the power would be used in a way that impacted on business about once every 7.5 years

Other usages of the power would not impact on business or would do so in a negligible way.

Price Base Yr 2008	Time Period Years 10	Net Benefit Range (NPV) Up to -£323,153	NET BENEFIT (NPV Best estimate) £See Range
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What is the geographic coverage of the policy/option?	GB
On what date will the policy be implemented?	To be decided
Which organisation(s) will enforce the policy?	N/A
What is the total annual cost of enforcement for these	£ 0
Does enforcement comply with Hampton principles?	N/A
Will implementation go beyond minimum EU requirements?	N/A
What is the value of the proposed offsetting measure per year?	£
What is the value of changes in greenhouse gas emissions?	£ 0
Will the proposal have a significant impact on competition?	No

Annual cost (£-£) per organisation (excluding one-off)	Micro	Small	Medium	Large
Are any of these organisations exempt?	No	No	N/A	N/A

Impact on Admin Burdens Baseline (2005 Prices)					
				(Increase - Decrease)	
Increase of	£	Decrease of	£	Net Impact	£

Key: Annual costs and benefits: Constant Prices (Net) Present Value

Evidence

The Race Directive 2003 provides the main template for our assumptions, being the most recent example of where the power would clearly have been used, but we have averaged its cost (£5.38M) with that of the 2008- implemented Gender Directive (£0.25m) to achieve a more representative figure (£2.815m).

In relation to the Race Directive, extending implementation to colour and nationality as well as national origin, which the power would have enabled the Government to do, would have likely increased annual implementation costs by around 10% (£0.282m). This is on the basis that the absence of nationality and colour from the terms of the Race Directive had a limited impact because people who felt that they had experienced discrimination on grounds of race related to colour and nationality would in many cases still have because of the overlaps in interpretation of national origin and race.

For example, a person from central Africa who suffers discrimination in the UK would probably do so because of his colour (in the eyes of the discriminator) but since virtually everyone from central Africa is black, a case could also be made out that discrimination was due to his national origins.

The same arguments read across to why we think some uses of the power would not have any cost impacts for business. Some changes will purely be about ensuring that the legislation remains consistent and easy to understand. It may not increase the number of claims overall, but will make them less speculative because people will have a clear idea on which basis they may want to seek compliance.

To account for inflation we have used the Treasury Gross Domestic Product deflator series which shows that in 2008-09 prices are higher than in 2003-04 by a ratio of 1:15.

Although the exact incidence is difficult to assess, the power would not be used very often. We have assumed once every 7.5 years (this has been used to estimate the average annual cost of £37,500) based on the incidence of previous Directives and court judgments and the frequency of these throwing up anomalies for the domestic legislation, once implemented.

A full Impact Assessment would be completed prior to use of this power along with other safeguards:

The main safeguards would comprise:

- a requirement that exercise of the power would be subject to affirmative procedure;
- consultation before any instrument were laid; and
- Ministerial reporting to Parliament every 5 years on how the power has been used.

Consultation prior to use would ensure that all parties with an interest in the proposals would be able to articulate any concerns. Impacts on business would be addressed, giving stakeholders the opportunity to probe and test our assumptions. Since the changes to legislation required by the European legislation or case law would in most cases also need to be consulted on, this could be done in a joint exercise, so that the burden of consultation should not be a significant issue.

Requiring affirmative procedure for any instrument made using the power would mean that where section 2(2) of the European Communities Act is also relied on in the same instrument, the procedure would always be affirmative for the whole instrument, even though section 2(2) can be exercised using the negative procedure. This would increase the level of Parliamentary scrutiny in some cases for the EU elements of any combined instrument.

A Ministerial commitment to report to Parliament on use of the power is an important accountability measure.

Annex V – Dual Discrimination

Department /Agency:
GEO

Title:
Impact Assessment of Dual Discrimination

Stage: Introduction House of

Version: 4

Date: December 2009

Related Publications: (1) Discrimination Law Review: Proposals for an Equality Bill for Great Britain. (2) Proposals to simplify and modernise the law: Initial RIA. (3) Framework for a Fairer Future (June 2008) and (4) the Government response to the consultation (July 2008) (5) Equality Bill: Assessing the Impact of a Multiple Discrimination Provision A Discussion Document (April 2009) (6) Equality Bill Impact Assessment (Introduction) 27 April 2009

Available to view or download at:

<http://www.equalities.gov.uk>

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What is the problem under consideration? Why is government intervention necessary?

The current domestic anti-discrimination framework has been criticised for preventing claims of discrimination because of a combination of characteristics from succeeding because it forces claimants to separate their claims in respect of each protected characteristic and in some circumstances, it is impossible for the claims to be proven when considered separately.

As a result of this, a gap in current protection has been identified. For example, a black woman alleges discrimination on grounds of sex and race in applying for a job, requiring comparison with the treatment of a man (for the sex claim) and a person who is not black (for the race claim), the employer can show that they employ both men and women within their workforce and that their workforce is racially diverse (warranting the conclusion that the treatment of the claimant was not on grounds of either sex or race). Therefore, he may evade liability even if his failure to appoint the claimant was discriminatory (on grounds of being a black woman, i.e., the combination of sex and race). While the current legislative framework provides a remedy for those who experience single strand discrimination, there is a gap for those who experience discrimination because of a combination of characteristics.

What are the policy objectives and the intended effects?

Our policy objectives are:

- to ensure that the law more accurately reflects the discrimination which people actually experience;
- to ensure that individuals who experience unlawful discrimination because of a combination of protected characteristics can bring a claim and achieve the appropriate remedy;
- to avoid unduly complicating the law or placing undue burdens on employers and services providers by placing limits on the number of protected characteristics and types of claims which can be combined.

What policy options have been considered? Please justify any preferred option.

Option 1 – do nothing.

Option 2 – allow claims of discrimination because of a combination of characteristics without any limitations on the type or number of claims and protected characteristics which can be combined.

Option 3 – allow discrimination claims for direct discrimination and victimisation enabling claims of combinations up to a maximum of three characteristics.

Option 4 – Final proposal allow discrimination claims restricted to direct discrimination and for a **combination of 2 characteristics only**. If the treatment would amount to victimisation under the Bill, it would be dealt with as victimisation and not under this provision. This is the preferred option as it would enable courts and tribunals, businesses and organisations to become familiar with this new area of discrimination law and ensure that the provisions work in practice and any complications that arise can be resolved before any further extension.

When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects?

After implementation, and on an ongoing basis, by the Equality and Human Rights Commission.

Summary: Analysis & Evidence

Policy Option: 4	Description: Allow combined discrimination dual characteristic claims restricted to direct discrimination and for a combination of 2
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COSTS	ANNUAL COSTS		Description and scale of key monetised costs by 'main affected groups' Public Sector: One Off: £2,545,308, Annual: £1,395,472 Private Sector: One Off: £4,858,972 Annual: £2,424,110 Individuals: One Off: £397,114, Annual: £264,803	
	One-off (Transition)	Yrs		
	£ 7,801,394	2		
	Average Annual Cost (excluding one-off)			
	£ 4,084,385		Total Cost (PV)	£ 42,847,413
Other key non-monetised costs by 'main affected groups' Businesses and employers will need to familiarise themselves with dual discrimination. We have costed familiarisation for businesses and employers but there is concern they may over-comply with the requirements which we have not monetised.				

BENEFITS	ANNUAL BENEFITS		Description and scale of key monetised benefits by 'main affected groups' Individuals: One Off Benefit: £2,625,748 Annual Benefit: £633,168	
	One-off	Yrs		
	£ 2,625,748	2		
	Average Annual Benefit (excluding one-off)			
	£ 633,168		Total Benefit (PV)	£ 8,031,463
Other key non-monetised benefits by 'main affected groups' These provisions will protect those who experience dual discrimination but would otherwise be without an adequate remedy. Benefits in the workplace include increased motivation and improved morale, retention of staff, developing talents and reduction in absence rates.				

Key Assumptions/Sensitivities/Risks

- We consider the large majority of cases which concern dual discrimination are already being brought as single characteristic claims. We expect 7.5% of discrimination cases involve claims concerning two or more strands, and that 4% would include a dual discrimination claim.
- We expect an increase of 10% in cases following the introduction of multiple discrimination provisions until case law has been firmly established. Once there is more certainty as to how courts and tribunals will interpret the provision, we expect this to fall to 5%.
- We do not anticipate an increase in the overall number of case, beyond the 10% increase, but rather a change in the way that 4% of the existing case load are brought.

Price Base Year 2008	Time Period Years 10	Net Benefit Range (NPV) up to -£34,815,950	NET BENEFIT (NPV Best estimate) See Range
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What is the geographic coverage of the policy/option?	GB
On what date will the policy be implemented?	April 2011
Which organisation(s) will enforce the policy?	
What is the total annual cost of enforcement for these organisations?	£ -

Does enforcement comply with Hampton principles?		Yes/No		
Will implementation go beyond minimum EU requirements?		N/A		
What is the value of the proposed offsetting measure per year?		£ Nil		
What is the value of changes in greenhouse gas emissions?		£ Nil		
Will the proposal have a significant impact on competition?		No		
Annual cost (£-£) per organisation (excluding one-off)	Micro -	Small -	Medium -	Large -
Are any of these organisations exempt?	No	No	N/A	N/A
Impact on Admin Burdens Baseline (2005 Prices)		(Increase - Decrease)		
Increase of £ Nil	Decrease £ Nil	Net Impact	£ Nil	

Evidence Base

Problem/Intervention

At present, claims of discrimination on a combination of characteristics cannot be brought. Currently, most individuals are likely to seek a remedy through one or more single strand claims, however, this is often complicated, difficult and sometimes impossible.

Options

Option 1: Do nothing.

This option was discounted because it would mean that individuals who experience discrimination because of a combination of characteristics will continue only to be able to bring claims under separate protected grounds. These claims would not reflect the reality of discrimination. The gap in protection will continue to exist.

Option 2: Allow claims to be brought for any type of prohibited conduct on any combination of the nine protected characteristics.

This option was rejected because it is considered unlikely that a significant proportion of cases involving such discrimination would occur beyond a combination of two protected characteristics, and that enabling an unlimited combination of protected characteristics within a claim would be impracticable and a disproportionate response to the actual need. There is also limited evidence that other prohibited conduct such as indirect discrimination and harassment requires a combined approach in order to achieve a remedy.

Option 3: combined discrimination claims for a combination of up to 3 characteristics.

It was considered that enabling claims of up to 3 characteristics from the outset would prove unduly complex and burdensome for employers and service providers.

Option 4: [Final preferred proposal] is to allow combined discrimination claims restricted to direct discrimination and for a combination of 2 characteristics only.

This would ensure protection against the vast majority of potential incidents of dual discrimination.

Dual discrimination claims would not cover indirect discrimination or harassment as there is limited evidence that the existing approach prevents individuals from achieving a remedy in these instances.

If the treatment would amount to victimisation under the Bill, it would be dealt with as victimisation and not under this provision.

The proposal also excludes pregnancy/maternity from dual discrimination claims as pregnancy and maternity claims do not require a comparator. It is difficult to see how pregnancy and maternity could be included in a dual discrimination claim in combination with another protected characteristic which does not require a comparator.

Thirdly, the proposal excludes marriage and civil partnerships from dual discrimination claims because it is considered that such claims are likely to be brought on a sex or sexual orientation basis respectively in any case. There was no evidence presented during the consultation that demonstrated that pregnancy and maternity or marriage and civil partnership, when combined with other characteristics, cause problems in practice.

Claims relating to discrimination arising from disability and the duty to make reasonable adjustments will be excluded from this new provision which will encompass direct discrimination only because of disability. This will not preclude claimants from bringing a discrimination arising from disability claim and/or failure to make reasonable adjustments claim alongside a separate claim for dual discrimination.

There is no existing dual discrimination provision in the UK, there is limited evidence demonstrating impact of discrimination because of a combination of characteristics, for any number of combinations. We have therefore based our assumptions in light of the feedback we received following the publication of our discussion document *Equality Bill: Assessing the impact of a multiple discrimination provision*, research conducted by Citizens Advice and evidence collated from international examples.

We consider this the most appropriate and proportionate approach to claims of discrimination because of a combination of characteristics, ensuring that the changes do not unduly complicate the law or place undue burdens on employers and service providers, or the courts and tribunals.

Costs and Benefits

Option 4 (final proposal)

We received 53 written responses to our discussion document *Equality Bill: Assessing the impact of a multiple discrimination provision*, from a wide range of stakeholders including equality representatives, trade unions, employers and business representatives. We have used these responses to inform the cost and benefit analysis of this impact assessment.

In addition, research was commissioned in the form of a study of discrimination cases handled by the Citizens Advice Bureaux (CAB). The purpose of the research was to provide further evidence of those currently experiencing discrimination because of a combination of characteristics and their experience on the processes by which they seek remedy.

We have also drawn on the limited international examples available, in particular claims brought in the Irish Equality Tribunals, to help inform our assessment.

Sectors Affected

We intend for dual discrimination to apply to employment and goods, facilities and services. We therefore expect that both the public and private sector will be affected by our proposals and have factored this into our cost assessment.

Number of existing cases likely to include dual discrimination

Data on the number of people in the UK who are subject to intersectional dual discrimination in the workplace but are without a remedy in law is not collected because it is not currently possible for people to bring such claims. In estimating the number of people subject to discrimination because of a combination of characteristics, but who are without a remedy in law, we have drawn on comparisons with the Irish Equality Tribunals. We have used this comparison because while there is no similar dual discrimination provision in operation, there is provision in the Republic of Ireland for claims of additive discrimination to be investigated as a single case.

Based on the average number of tribunal cases, over the last three years to 2008, we estimate that approximately 2612 of the total 34,828 claims could have been brought as a dual discrimination claim. As there is currently no dual discrimination provision, these claims were brought as single strand claims.

Evidence provided by the Irish Equality Tribunals shows that over the last 3 years, an average of 7.5% of claims brought before them per year included multiple grounds. Whilst the figure based on the Irish Equality Tribunal provides a useful evidence base to assess the impact of our proposed provision, we believe this to be an over-estimation of the potential impact of the provision. The figure from Ireland is based on the total number of claims brought, some of which would have been unsuccessful or were additive rather than combined. The provision in Ireland also includes a number of areas that the provision will not provide for:

- Indirect discrimination and harassment cases,
- Discrimination arising from disability and reasonable adjustment claims, which we are not proposing to include in our multiple discrimination legislation;
- Collective agreement cases, which we are not proposing to include in the dual discrimination legislation.

Research conducted by the CAB supports the above assumption. The CAB conducted 23 interviews with CAB advisors across the UK. The research examined 1375 discrimination cases were and revealed that 7.71% of these discrimination cases involved more than one protected characteristic. This research also showed that while 7.71% of these cases involved more than one ground, only 4% of these cases related to intersectional discrimination (i.e. was because of the combination of both protected characteristics) and included the grounds included within this provision. This evidence suggests that, should the provision be applied here 1393 discrimination cases (4%) would include a dual discrimination claim.

Given that this is a new provision, we anticipate that there will be a number of claimants who allege discrimination on two single strand grounds who then also include a dual discrimination claim, when, in fact, dual discrimination did not occur. For this reason, for the first year of the provision, we have estimated that all those who bring two claims for single strand discrimination will also include a dual discrimination claim. This equates to 2616, which is 7.5% of all discrimination cases. Through awareness of the nature of this provision, we anticipate that this figure will fall to 6% (2090 cases) in the second year before settling at 4% thereafter (1393 cases).

These figures also includes a number of cases where, currently, a person experiences discrimination because of a combination of two grounds, but where they cannot bring a dual discrimination claim and they do not feel able to pursue a claim under one of the individual single strand claims. These individuals currently, drop one single strand claim, pursuing only one of their potential claims. The CAB research identified that 17% of their clients who presented with a case involving discrimination because of a combination of characteristics eventually dropped one of the strands, seeking to proceed to court or tribunal with their strongest single claim. This view is corroborated by the responses to our discussion which indicated that there will be a proportion of cases which are currently being considered as a single strand claim, and which would include a dual claim as a result of introducing this provision. For these claimants this provision would enable them to bring a dual discrimination claim alongside their single ground claim. The dual discrimination provision would not restrict the claimant from bringing both single ground claims, should they wish to, as currently, but we recognise that in 17% of these cases, (202 cases) a claimant who is currently pursuing only a single ground claim, would be likely to also bring a dual discrimination claim. We recognise that the claimant has the option to include the second single strand claim within their case; however, as they are not prevented from taking that action currently, we have concluded that the potential for including this second strand claim should not be factored into this impact assessment, which is concerned with the impact of the dual discrimination provision

Success rate of cases involving dual discrimination

We estimate a small increase in success rate for cases brought including a dual discrimination claim. As it is difficult, complicated and sometimes impossible or some people who experience discrimination because of a combination of characteristics to get a legal remedy, introducing a provision for dual discrimination would lead to an increase in the rate of successes for these cases. For example, if a black woman has been discriminated against because of her combination of race and sex, the respondent can currently adduce evidence about how they treat black men or white

women as proof that they do not discriminate on the grounds of race or, separately, sex. The latest available figures provided by The Survey of Employment Tribunal Applications 2003 show that 2% of discrimination cases are successful at tribunal. We therefore, anticipate that the new provision will mean that dual discrimination cases will have a greater success rate compared to other discrimination cases.

However, any increase in the success rate is likely to be offset by an increase in claims which will be brought, as a result of the new provision, where claimants have not, in fact, suffered dual discrimination, and which will not be successful (unmeritorious or vexatious claims). We, therefore, expect the success rate to remain at 2%.

Of the estimated 1393 cases we consider would be brought to include a dual discrimination claim, we expect 2% would be successful and this equates to a further 28 successful claimants per year.

As claims for dual discrimination are not currently made, we have been unable to calculate how many of these 1393 cases will be withdrawn before hearing, struck out, dismissed or result in a default judgment. It is important to consider, therefore, that the figure of 1393 that has been calculated is an inflated estimate of the number of cases which will proceed to a hearing or trial.

New dual discrimination cases

In addition to these 1393 existing discrimination cases which would also include a dual discrimination claim as described above, we also assume an increase in the total number of cases which will be brought as a result of the new provision. These are cases which could not have been brought before as there had been no provision to enable this, *and* which were not brought as single claims.

Responses to our recent discussion recognised that, as with any new provision there is likely to be a surge in claims until there is better understanding as to how courts and tribunals interpret this provision. In light of these responses, we think that there will be an increase of 10% during this period. Our estimate of an increase in cases by 10% equates to a further 139 dual discrimination cases per year. In addition to the 1393 cases which were brought as single claims due to lack of provision enabling multiple claims, we therefore expect 1532 dual discrimination cases per year for 2 years until case law is firmly established. With a success rate of 2%, we therefore expect that there will be 31 successful dual discrimination cases per year until there is more certainty as to how courts and tribunals interpret these provisions.

Once there is a better understanding of the interpretation of these provisions, we think that this figure will drop so that there will be a 5% increase in the total number of cases which will be brought as a result of this new provision. An increase in cases by 5% equates to a further 70 dual discrimination cases per year. In addition to the 1393 cases which were brought as single claims due to lack of provision enabling dual discrimination claims, we therefore expect 1463 dual discrimination cases per year after the 2 years that courts and tribunals are likely to take to establish firm case law. With a success rate of 2%, we expect 29 successful dual discrimination cases per year.

Cost of new compensation awards

We have estimated that 1393 cases are currently brought under a single ground claim that would have included a dual discrimination claim, and estimate that 28 of these cases are successful at tribunal. With the inclusion of a dual discrimination provision, we would expect between 1463 - 1532 and cases which would include a dual discrimination claim to be brought per year, of which 29 - 31 cases would be successful. We therefore need to cost the increase in compensation awards for the 1 - 3 additional successful cases per year.

The compensation costs are shown in the table below:

Cost of Compensation	Currently	First 2yrs including one-	Estimate after
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Awards		off case spike	2yrs
Number of DD cases	1393 (cases)	1532 (cases)	1463 (cases)
Assume 2% success rate	28 (cases)	31 (cases)	29 (cases)
Mean Compensation Award	£9207	£9207	£9207
Total Cost	£257,796	£285,417	£267,003
Net additional cost		£27,621	£9,207

Cost of new out of court settlement awards (privately and through the Advisory, Conciliation and Arbitration Service (ACAS))

As stated above, we expect 3056 cases which include a dual discrimination claim per year. A number of responses to our discussions have stated that large organisations (250+ employees) would be more likely to try and settle cases which include a dual discrimination claim out of court until case law has been firmly established. Perception that the complexity of these cases may lead to costs associated with an increased time at court may also mean these organisations are more likely to settle. We therefore estimate that until there is more certainty as to how courts and tribunals will interpret these provisions, there will be a 20% increase in the proportion of cases which would settle as a result of dual discrimination provisions. This will result in 72%⁹⁹ of cases overall which will settle out of court. We have also factored the following into the calculation.¹⁰⁰

- 60% of Employment Tribunal cases are currently settled
- 90% of settlements involve monies.
- The mean settlement in discrimination cases is £5333.

We know that of the 1393 cases, 836 settle out of court. We estimate if a dual discrimination provision were available, between 965 and 1103 cases would settle out of court. This would lead to an additional 129 and 267 cases having settled out of court.

The table below shows calculated costs for out of court settlements.

Out of court Settlements	Currently	First 2yrs including one-off case spike	New Estimate after 2 years
Number of DD cases	1393 (cases)	1532 (cases)	1463 (cases)
Previously 60% Settled	836 (cases)	-	-
New Estimate based on 72% and 66% that would settle	-	1103 (cases)	965 (cases)
90% money settlements	752 (cases)	993 (cases)	869 (cases)
Mean settlement	£5333	£5333	£5333
Total Cost	£4,010,416	£5,295,669	£4,634,377
Net additional cost		£1,285,253	£623,961

Cost Summary

Responses to our discussion indicated that it is likely that more time will be required for employers prepare for multiple discrimination cases due to the analysis of the workforce and the likely use of hypothetical comparators, but that this would not be a significant amount of time. We therefore anticipate that enabling individuals to bring dual discrimination claims rather than having to bring claims which relate to a single incident under a number of different characteristics, each of which must be considered separately, will not lead to a significant increase in time spent at court or tribunal.

⁹⁹ This figure incorporates the cases settled via ACAS and settled privately.

¹⁰⁰ All taken from the Survey of Employment Tribunal Applications 2003.

The Employment Tribunal Service suggested this would not be more than a 50% increase in time. One response provided data to show that multiple discrimination provisions may lead to 33% more time on these cases, which could roughly equate to a 33% increase in costs.

We consider this figure to be appropriate because the evidence which will have to be prepared and presented by the respondent and claimant will remain broadly the same – the case is likely to relate to the same single incident and set of facts. Rather, the tribunal will be able to consider the evidence in relation to the combination of characteristics rather than each strand separately. In addition, the claim will better reflect the actual incident of discrimination, which we anticipate would make consideration of the claim, easier for courts, tribunals, businesses and organisations. Evidence which may have previously needed to have been manipulated to fit single claims could be, with this provision, presented more easily.

The table below shows calculated **costs** of the extra 70-139 dual discrimination cases, compensation costs for the extra 1-3 successful cases and awards in out of court settlements for the 129-267 cases for the Public and Private sector and individuals.

COST OF NEW CASES

	One-off Costs from Case spike	Average Annual Costs
Exchequer		
Increase in Tribunal Cases	£94,798	£23,870
Public Sector Employers		
Increase in cases	£137,885	£ 34,719
Compensation Awards from successful cases	£ 14,915	£ 2,486
Increase in out of court settlements	£ 694,037	£ 168,469
Private Sector Employers		
Increase in cases	£ 372,801	£ 93,871
Compensation Awards from successful cases	£ 40,327	£ 6,721
Increase in out of court settlements	£ 1,876,469	£ 455,492
Individuals (Claimants)		
Increase in cases	£ 50,318	£ 12,670
Total	£ 3,281,550	£ 798,298

The table below shows calculations of the additional costs (33% increase) to the 1393 existing cases which we expect will now include a dual discrimination claim.

ADDITIONAL COST FOR EXISTING CASES

	One-Off Costs	Average Annual Costs
Exchequer		
Increase in Tribunal costs	£653,356	£ 475,013
Public Sector Employers		
Increase in costs	£ 950,317	£ 690,914
Private Sector Employers		
Increase in costs	£ 2,569,375	£1,868,027

Individuals (Claimants)		
Increase in costs	£ 346,796	£ 252,133
Total	£ 4,519,844	£ 3,286,087

BENEFITS

The table below shows how the inclusion of a provision for dual discrimination could benefit individuals through an increase in the compensation awarded in respect of the additional 1-3 successful cases, and awards in the 129-267 out of court settlements.

Individuals	One-Off Benefits	Average Annual Benefits
Compensation from increase in successful cases	£ 55,242	£ 9,207
Increase in out of court settlements	£ 2,570,506	£ 623,961
Total	£ 2,625,748	£ 633,168

In light of the responses to our discussion it is also clear that the benefits in the workplace which come with all equality initiatives will equally apply when introducing a dual discrimination provision. These include increased motivation and improved morale, retention of staff, developing talents and reduction in absence rates all of which will be beneficial to employers and businesses generally.

Familiarisation costs

We have recognised that familiarisation with any new provisions will incur a one-off cost for most employers and service providers. It is assumed that “familiarisation”, as opposed to the dissemination of information and putting the policies into practice, means reaching the point where a manager or relevant employee of an organisation is aware of the changes in the law and how they impact upon their organisation. It is also assumed that this will be achieved through guidance provided by the Equality and Human Rights Commission and/or by other advisory bodies such as ACAS.

There are approximately 1.2 million small and medium enterprises (SMEs). It is assumed that a general manager will be responsible for informing themselves about the change in legislation before disseminating this information. We estimate that this process will take half an hour. Data from the Annual Survey on Hours and Earnings Survey (ASHE) 2008 shows that the average gross hourly wage for this occupation (allowing also for non-wage labour costs) is £23.18. We have multiplied this by the time investment of one hour, and subsequently multiplied by the number of SMEs likely to need to become familiar with the legislation in any one year.

We therefore estimate that familiarisation costs for SMEs will be about £14 per SME

There are approximately 5180 enterprises with 250+ employees (large enterprises). It is assumed that a dedicated personnel manager with the aid of a legal expert will be responsible for informing themselves about the change in legislation before disseminating this information. It is also assumed that large enterprises will, as an indirect cost, produce their own guidance for staff. We estimate that large enterprises will spend one hour on familiarisation. Data from the ASHE 2008 survey indicates that the average gross hourly wage for a personnel manager (allowing also for non-wage labour costs) is £25.33. Similarly for legal professionals, the average gross hourly wage is £29.32 after inclusion of non-wage labour costs. Again, we have multiplied this by the time investment of one hour, and subsequently multiplied by the number of large enterprises likely to need to become familiar with the legislation in any one year.

We therefore estimate that familiarisation costs for large enterprises will be about £32 per large enterprise.

Risks

Allowing dual discrimination claims represents a significant change to the single strand model of discrimination law. Therefore, there is a risk of unforeseen consequences. Responses to our discussion suggested that such unintended consequences could be: that individuals may find it harder to prove discrimination and identify the cause of action; there could be less self-representation because individuals will need legal advice; alienating employers and overloading human resources with too many changes already and we may be creating a hierarchy of rights because the provision will be limited. However, all these risks have been mitigated as far as possible by considering the implications of the proposed changes with legal practitioners and other experts.

Enforcement

Enforcement will continue to be through individuals bringing claims to courts or tribunals.

Annex W - Limiting the Use of Disability-related Pre-employment Enquiries.

Department for Work and Pensions	Permit enquiries relating to reasonable adjustments to recruitment processes and to facilitate diversity monitoring	
Stage: Introduction House of Lords	Version: 4	Date: December 2009
Related Publications: Related Publications:		

Available to view or download at:

Contact for enquiries: Peter Nokes

Telephone: 0207 449 5057

What is the problem under consideration? Why is government intervention necessary?

The Government has received evidence that enabling disability-related enquiries at the initial stages of applications for employment and occupation can result in opportunities for this information to be used to discriminate against disabled people in recruitment. It has also been suggested that the making of such enquiries prior to the point of the offer of employment acts as a disincentive to some disabled people, particularly those with mental health conditions, making applications for employment, thus reducing disabled people's opportunities in the labour market.

What are the policy objectives and the intended effects?

One of the Equality Bill's aims is to tackle discrimination against disabled people and to facilitate their participation in society. The proposal will limit opportunities to seek disability-related information prior to the point at which the candidate has had the opportunity to demonstrate suitability, except health requirements, for the post. This will benefit disabled people by limiting opportunities for disability-related information to be used to discriminate during recruitment. It will also reduce the deterrent effect that disability-related enquiries can have on job applications.

What policy options have been considered? Please justify any preferred option.

- 1) Limit pre-employment enquiries to those necessary for reasonable adjustments (RAs) to recruitment processes and to support monitoring of applications from disabled people and the positive action and genuine occupational requirement (GOR) provisions of the Bill. It supports the RA duty and facilitates monitoring to inform recruitment policies for disabled people and supports opening up further opportunities for their participation in the labour market through positive action/GORs.
- 2) Limit pre-employment enquiries to those required to support RAs in recruitment.
- 3) Do nothing.

When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects?

After implementation, and on an ongoing basis, by the Equality and Human Rights Commission.
The Government will also review after 5 years.

Summary: Analysis & Evidence

Simplifying and standardising definitions

ANNUAL COSTS		Description and scale of key monetised costs by 'main affected groups'	
One-off (Transition)	Yrs		
£ 1m - £2m	1	<p>One-off familiarisation costs factored into overall familiarisation costs for the Bill. Other one-off costs estimated at £1m - £2m.</p> <p>Minimal ongoing annual costs involved in reviewing formal recruitment processes, where enquiries are used.</p>	
Average Annual Cost (excluding one-off)			
	10	Total Cost (PV)	1m - £2m
Other key non-monetised costs by 'main affected groups'			
None identified			

COSTS

BENEFITS	ANNUAL BENEFITS		Description and scale of key monetised benefits by 'main affected groups'	
	One-off	Yrs		
	£ Minor	1	Minor, but unquantifiable financial savings for employers from greater clarity in the legislation.	
	Average Annual Benefit (excluding one-off)			
Minor	10	Total Benefit (PV)	Minor	
<p>Other key non-monetised benefits by 'main affected groups'</p> <p>Reduced risk for disabled people of disability-related information being used to discriminate during recruitment. Reduction in the deterrent effect of disability-related questions on disabled people's applications for work: thereby promoting labour market participation.</p>				

Key Assumptions/Sensitivities/Risks

Not all organisations make disability enquiries in recruitment. Where they do, there will be marginal impact on recruitment processes. For small firms which generally do not operate formalised, written processes, there will be no adaptation costs. The proposal will have a neutral effect on discrimination claims.

Price Base Yr 2008	Time Period Years 10	Net Benefit Range (NPV) 0	NET BENEFIT (NPV Best estimate) £ 0
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What is the geographic coverage of the policy/option?	GB
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On what date will the policy be implemented?	[see table p.9]			
Which organisation(s) will enforce the policy?	[see table p.9]			
What is the total annual cost of enforcement for these organisations?	[see table p.9]			
Does enforcement comply with Hampton principles?	Yes			
Will implementation go beyond minimum EU requirements?	No			
What is the value of the proposed offsetting measure per year?	£ 0			
What is the value of changes in greenhouse gas emissions?	£ 0			
Will the proposal have a significant impact on competition?	No			
Annual cost (£-£) per organisation (excluding one-off)	Micro	Small	Medium	Large
Are any of these organisations exempt?	No	No	N/A	N/A

Impact on Admin Burdens Baseline (2005 Prices)				
		(Increase - Decrease)		
Increase of	£	Decrease of	£	Net Impact
				£

Key: Annual costs and benefits: Constant Prices (Net) Present Value

EVIDENCE

1. Currently, there is no provision in the Equality Bill to prevent an employer from asking disability-related or health-related questions of applicants for a job. Such enquiries are permitted because the Government recognises that disability-related information can enable an employer to decide whether a disabled person would need reasonable adjustments, under the Equality Bill's employment provisions, to a recruitment process and/or in respect of the job that is on offer. However, the Equality Bill makes it unlawful to use disability-related information to discriminate against the candidate because of that person's disability.

Why intervention is necessary

2. The Government has received anecdotal evidence from a range of disability organisations that information provided in response to disability-related pre-employment enquiries can, and does, lead to discrimination against disabled people in recruitment. This was considered to be particularly the case where candidates have mental health conditions or HIV/AIDS. Research published by the National Aids Trust in August 2009, ("Working with HIV") indicated that nearly a fifth of HIV positive respondents reported that they had specifically been asked about their HIV status in a pre-employment health questionnaire for their current job.

3. There are little data to indicate the numbers of disabled people who experience discrimination in the recruitment process as a consequence of their having provided disability-related information in a job application. However, the Disability Charities Consortium reported in its written evidence to the Equality Bill Public Bill Committee that a snapshot poll by Mind conducted in October 2008 found that 1 in 4 people had a job offer withdrawn after disclosing a mental health problem. In giving oral evidence to the Bill Committee, RADAR said that a restriction on the use of pre-employment enquiries "is probably the single biggest difference and improvement that could be made through the Equality Bill" in relation to the employment of disabled people. It also pointed out that a restriction would assist, not only in tackling discrimination in the early stages of

recruitment, but also in mitigating against the deterrent effect that such enquiries can have on some disabled people making job applications. In “Working with HIV”, the National Aids Trust reported that almost three-quarters (72%) of those asked about their HIV status in pre-employment questionnaires reported that it made them feel uncomfortable.

4. The Government has decided that intervention is necessary to restrict the use of disability-related pre-employment enquiries and it proposes to include a new provision to this effect in the Equality Bill.

Policy proposal

To restrict the use of pre-employment enquiries to those needed to:

- (a) identify the requirement for reasonable adjustments to the recruitment process;
- (b) facilitate monitoring by the employer of diversity in the range of people making job applications;
- (c) deliver positive action for disabled people; and
- (d) facilitate recruitment to posts where having a particular disability is a genuine occupational requirement.

6. In the context of this proposal, pre-employment enquiries are those made prior to the point at which a candidate has undergone an assessment to demonstrate the qualifications, skills, abilities and/or competencies (other than for reasons of health) required for the job or where no assessment is made, the point at which a conditional or unconditional job offer is made. At that point, disability-related enquiries would be permitted to, for example:

- identify any need for reasonable adjustments in relation to the job itself; or
- ascertain whether the successful candidate can meet a particular health or fitness requirement for the post.

7. The proposal has been developed following discussions with, and input from, a range of organisations representing disabled people, business organisations and employers: the Disability Charities Consortium, National Aids Trust, Terrence Higgins Trust, Rethink, Royal College of Psychiatrists, the Confederation of British Industry, NHS Employers, the Engineering Employers’ Federation, the Federation of Small Businesses, the Equality and Human Rights Commission, the British Chambers of Commerce and the Trades Union Congress. It is intended to apply not just to recruitment for employment, but also to recruitment in other areas of occupation covered by the provisions of the Equality Bill: contract workers, office holders, partnerships, barristers and advocates, practical work experience and employment services.

Enquiries related to reasonable adjustments to recruitment processes.

8. The principle of reasonable adjustment underpins disability discrimination legislation and opens up opportunities for disabled people to participate in the labour market. Therefore, it is important that any restriction on disability-related pre-employment enquiries should allow enquiries that are specifically for the purpose of identifying the need for reasonable adjustments to the recruitment process. This would include, for example, whether a disabled person requires a reasonable adjustment in relation to an interview venue, or to any pre-recruitment tests. The proposal would permit pre-employment enquiries in such circumstances.

9. Disability-related enquiries for the purposes of identifying the need for any reasonable adjustments to aspects of, or in relation to, the job itself would not be permitted until the stage at which a disabled candidate has demonstrated the qualifications, skills or competencies required for the post. At this stage, in the case of a potential successful candidate who meets these requirements, an employer may need to consider the requirement for any reasonable adjustments to the job itself, or the person's ability to meet any essential health-related criteria for the post, before the job offer can be finalised.

Enquiries to support diversity monitoring of job applications

10. It had been suggested by some disability organisations that pre-employment enquiries should be permitted to facilitate workplace monitoring of job applications particularly from disabled people. There was strong support for this proposal from disability organisations and representatives of larger employers. Diversity monitoring is viewed as an important tool in modern workplace planning as it can inform recruitment policies and methods to improve representation of disabled people among the workforce. It can potentially open up opportunities for disabled people in the labour market, not least through its capacity to inform decisions on whether to exercise positive action under the Equality Bill.

Permitting pre-employment questions to support positive action

11. The Equality Bill includes a provision allowing an employer to take positive action where a group of people with a protected characteristic is under-represented or disadvantaged in the workforce. Positive action may be exercised in favour of candidates with a particular protected characteristic – including disability. The Government considered whether there was a case for permitting disability-related pre-employment enquiries specifically in relation to positive action. It does not wish to open up unduly the range of circumstances in which disability-related enquiries may be made. However, it considers that the ability to exercise positive action in favour of people with particular disabilities could significantly increase opportunities for their participation in the labour market. It does not wish to inadvertently restrict or discourage employers who wish to exercise positive action by limiting their ability to identify at an early stage in recruitment those candidates who they are targeting. Consequently, the Government has decided to permit disability-related pre-employment enquiries which support positive action. It will also ensure that the legislation should not limit the activity of organisations such as Remploy whose sole or main purpose is to assist disabled people to gain employment.

Permitting pre-employment enquiries related to a genuine occupational requirement

12. The Equality Bill applies provisions relating to genuine occupational requirements to disability. The Government considered whether it should permit pre-employment enquiries linked to a genuine occupational requirement to enable an employer to satisfy itself that the candidate meets that requirement. Discussions with disability and business organisations indicated that they had some reservations with this approach. They considered that the genuine occupational requirement provisions in the Bill would be little used and that legislating to permit pre-employment enquiries in this additional, and very specific, set of circumstances could lead to confusion for employers.

13. The Government recognises the concerns of stakeholders, but it is keen to avoid uncertainty for employers or applicants, as to how the applicant could show that they meet the requirements of the post where a genuine occupational requirement applies, without necessarily disclosing their disability. It has concluded, therefore, that it should permit such enquiries as this would avoid nugatory work for an employer, who would be able to identify and exclude ineligible candidates at an early stage in the selection process.

Other options considered

Limit pre-employment enquiries to those required to support reasonable adjustments in recruitment.

14. When developing the proposal, the Government considered whether the use of pre-employment enquiries should be restricted only to those required to identify the need for reasonable adjustments. However, discussions with representatives of employers and disabled people highlighted the value of permitting enquiries for the specific purpose of monitoring job applications from disabled people as part of wider diversity monitoring. Also, for the reasons set out above, the Government was convinced that there would be significant value in permitting pre-employment enquiries to support the exercise of positive action and the operation of genuine occupational requirements in order to improve disabled people's opportunities in the labour market.

Do nothing option

15. If the Government did nothing, some disabled people would remain exposed to the risk of discrimination in the initial stages of recruitment and would not progress to interview or other selection stages. In addition, allowing unlimited use of pre-employment disability-related questions would continue to have a deterrent effect on some disabled people making job applications, thus restricting their participation in the labour market. It would be inappropriate to allow this situation to continue, particularly in the light of recognition among disability and employer organisations that a restriction on the use of pre-employment enquiries would overcome these barriers to disabled people.

Potential additional requirements

16. Disability organisations, particularly those representing people with mental health impairments or HIV/AIDS, were keen that the legislation should make clear that where pre-employment enquiries are made, the provision of disability-related information should be voluntary. However, the provision of information by an applicant for a job to an employer is on a voluntary basis, as it is the applicant who decides to apply for the job and provide the information. Consequently including a provision in the Bill specifying that providing information is voluntary would be superfluous, particularly as the opportunities for making enquiries are to be restricted to specified and legitimate circumstances.

Potential additional requirements

17. Some disability organisations had suggested that the Equality Bill should also place legal requirements on employers to:

- specify, when making enquiries, the reasons for seeking the information and to provide an assurance that the information will not be used for other purposes;
- anonymise disability-related information, keep it separate from the application form, and confidential from interviewers/recruiters, unless they need this information for the purposes of making reasonable adjustments to the recruitment process, e.g. arrangements for interviews or tests.

18. However, a legislative requirement that disability-related information should be anonymised and kept confidential from interviewers would be impractical and unenforceable in small organisations which do not have separate human resources departments. Discussions with employers' organisations led the Government to conclude that such provisions would be too detailed and not be appropriate for inclusion in the Equality Bill, but might be considered as good practice and be included in guidance and Codes of Practice on the Bill's provisions.

Economic impact

19. For all organisations involved in recruitment, there will be one-off costs associated with familiarisation with the new provisions, but these have not been considered separately. The impact assessment for the Equality Bill incorporates aggregated familiarisation costs for the new legislation, and these will need to be reviewed in the light of all amendments made to the legislation as the Bill completes its passage through Parliament.

20. A duty already exists for an organisation to make reasonable adjustments to its recruitment arrangements where that organisation is aware that a job applicant is disabled. To ascertain the need for any reasonable adjustments to the recruitment process, or in connection with the job itself, many organisations will already include disability-related enquiries in their recruitment documentation or processes, or for the purposes of monitoring diversity among job applicants. Where an organisation seeks disability-related information for reasonable adjustment purposes, the cost of including the questions in application forms, and managing the information, already applies. Therefore, the proposal will not add costs to those currently incurred.

21. Where an organisation does not already make disability-related enquiries at the initial stages of recruitment, but does so at the point of job offer – in order to identify the need for reasonable adjustments in relation to the job itself – the proposal will similarly not have any impact on that organisation's costs. This is because the proposal envisages that enquiries would continue to be made once the person has been given the opportunity to demonstrate his ability to meet the qualifications, skills or competencies for the job, in particular to ascertain what requirement there may be for reasonable adjustments to aspects of the job itself.

22. The Department has no data on the numbers of companies and organisations that make disability-related enquiries as part of a formal written application process. However, discussions with employer organisations indicate that such formal processes, and particularly monitoring of diversity, are normally only conducted by large employers. Therefore, the proposal is unlikely to have any significant resource implications for small businesses who would not have to adapt formal application forms or procedures. The proposal may involve small revisions to recruitment and/or monitoring processes or documentation, though representatives of larger employers indicated that the costs of such revisions are expected to be minimal.

23. Some additional costs may be involved where, currently, an employer routinely asks for disability-related information, but does not restrict enquiries to those required specifically for the purposes of reasonable adjustments to the recruitment process or to facilitate monitoring. However, discussions with employer organisations indicated that most additional costs were anticipated to be incidental and one-off. This is because, where recruitment procedures were formalised, they may require some minor adaptation of application forms or processes, to comply with the more restricted use of pre-employment enquiries. Ongoing costs, if any, were again considered by employer organisations to be minimal and incidental.

24. There are no data on the numbers and types of organisations that routinely make disability-related enquiries at the initial application stage, but for the purposes of this assessment, it is assumed that, generally, it will be larger organisations and public bodies. Low and high estimates that 25 and 50 per cent of large organisations and public bodies make such enquiries have been assumed.

Number of Large firms:	5,810	(18.5%)
Number of Public bodies:	25,599	(81.5%)
Total:	31,409	

One off costs: Revision of processes:

Estimate (Hours)	Number Hourly rate	Time Total	Large Firms (18.5%)	Public Bodies (81.5%)			
Low - 25% of 31,409	7,852	4	£25.33	£0.966 m	£0.179 m	£0.787 m	
High - 50% of 31,409	15,705	4	£25.33	£1.932 m	£0.357 m	£1.575 m	

[Note: Base data for estimates is from Annex (V) of the Impact Assessment for the Equality Bill as a whole. Hourly rate of £25.33 is for a personnel officer, uplifted to include non-labour costs.]

Ongoing costs

Minimal, if any.

25. The impact of the proposal on numbers of Employment Tribunal claims, and therefore on legal and compensation costs is expected to be neutral. There are no data to indicate the proportion of claims that arise from alleged discrimination during the recruitment process. However, anecdotal evidence indicates that very few cases are brought in respect of discrimination during recruitment. The vast majority relate to discrimination that occurs where the disabled person is in employment or occupation. The proposal will reduce opportunities for employers and others recruiting disabled people to gain disability-related information and to discriminate as a consequence of obtaining that information. This should reduce opportunities for claims of discrimination. This effect may be balanced out, however, because the new provisions will place new restrictions on employers asking pre-employment questions, and it may open up some scope for challenge where such enquiries are made in circumstances other than those allowed under the proposal. Thus the overall effect is estimated to be neutral.

Annex X – Base data

Number of Firms

Type of Firm		Number	Number familiarising themselves in Year 1	Source of Data
SMEs	Without Employees	3,456,990	N/A	Small Business Statistics 2008
	1-249 Employees	1,193,750	1,193,750	Small Business Statistics 2008
Large Firms	250+ employees	5,905	5,905	Small Business Statistics 2008
Public Bodies		25,599	25,599	ONS
Landlords		14,000	14,000	ONS

Wage Costs

	Gross Hourly Wage	21% uplift for non labour costs	Source of Data
Small and Medium Enterprises			
General manager	£19.16	£23.18	Annual Survey on Hours and Earnings (ASHE) 2009, Code 11
Large Firms			
Dedicated personnel manager	£20.93	£25.33	Annual Survey on Hours and Earnings (ASHE) 2009, Code 1135
Legal Professional	£28.14	£29.32	Annual Survey on Hours and Earnings (ASHE) 2009, Code 241
Public bodies			
Dedicated personnel manager	£20.93	£25.33	Annual Survey on Hours and Earnings (ASHE) 2009, Code 1135
Landlords			
Dedicated personnel manager	£20.93	£25.33	Annual Survey on Hours and Earnings (ASHE) 2009, Code 1135
Average UK Wage	£10.99	£13.30	Average hourly earnings 2009

Number of Employment Tribunal Cases

Type of Discrimination	1998/9	1999/0	2000/0	2001/0	2002	2003	2004/0	2005/06	2006/07	2007/08	2008/9
		0	1	2	/03	/04	5				
Sex	6203	4926	17200	10092	8128	14284	11726	14250	28153	26,907	18,637
Race	2746	3246	3429	3183	3039	2830	3317	4103	3780	4,130	4,983
Equal Pay	5018	2391	6586	5314	3077	4159	8229	17268	44013	62,706	45,748
Age									942	2,949	3,801
Disability	1430	1743	2100	2624	2716	2764	4942	4585	5533	5,833	6,578
Sexual Orientation							349	395	470	582	600
Religion or Belief							307	486	648	709	832
Total	15397	12306	29315	21213	16960	24037	28214	40206	83539	103,816	81,179

Data Source: Employment Tribunal Service Annual Reports 98/99-08/09

Number of County Court Cases

Type of Discrimination	Number of cases in county court involving GFS per annum			Data Source
	Low Range	High Range	Mid-point	
Race	26	39	33	258 applications for assistance to CRE in non employment areas. Assumes 10-15% go to court
Sex	4	9	7	EOC received 175 calls assumes 2-5% go to court
Disability	10	20	15	Research conducted by Income Data Services on DDA 1995 - http://www.dti.gov.uk/files/file26518.pdf . 50 cases bought in 4 years = 10-20 a year
Religion or Belief	1	4	2	The figures for Sex-O, Religion or Belief and Age have been estimated on basis of: No. of court cases to date under the Sex O Regulations and Equality Act Part 2 (Religion or Belief) Ratio of GFS cases to employment cases for race, gender and disability - assume similar ratio for age, Sex-O and Religion or Belief - a range of 0.25 - 0.75% of employment cases. Number of GFS cases by strand in Ireland
Sexual Orientation	1	3	2	
Age	11	33	22	
TOTAL	53	108	80	

Tribunal Costs

	Average amount awarded in employment tribunal discrimination cases	Data Source
Employer	£5,393	SETA (Survey of Employment Tribunal Applications) 2003 at 2008/9 prices
Taxpayer	£1,034	
Individual	£1,331	

Tribunal Compensation Awards

Median Amount awarded per case	Data Source
£3,608	DTI Employment Relations Research Series No 33. Table 8.14 at 2008/9 prices

County Court Compensation Awards

	Median Award 2004	Median Award 2005	Average for 2004-5	Data Source
Compensation Awarded	£ 5,856	£ 10,349	£ 8,103	HMCS 05/06

County Court Costs

Average Court Cost Per Day	Data Source
£1,011	HMCS Statistics 05/06

Annex Y - Specific impact tests

Use the table below to demonstrate how broadly you have considered the potential impacts of your policy options.

Ensure that the results of any tests that impact on the cost-benefit analysis are contained within the main evidence base; other results may be annexed.

Type of testing undertaken	<i>Results in Evidence Base?</i>	<i>Results annexed?</i>
Competition Assessment	Yes	Yes
Small Firms Impact Test	Yes	Yes
Legal Aid	No	No
Sustainable Development	No	No
Carbon Assessment	No	No
Other Environment	No	No
Health Impact Assessment	No	No
Race Equality	Yes	No
Disability Equality	Yes	No
Gender Equality	Yes	No
Human Rights	No	No
Rural Proofing	No	No

Community Legal Services Fund (previously Legal Aid) Impact Test

There may be a marginal increase in legal action; however, any change is unlikely to increase numbers of cases above the level which existed prior to the House of Lords' judgment.

Sustainable Development

Environmental Impact

The proposal does not have an impact on the environment.

Carbon and Greenhouse Gas Assessment

Any impact of the preferred option on the environment, in terms of using raw materials for the production of guidance, leaflets and similar materials is likely to be minimal. This is because information about the new legislation will simply replace what would have been produced to explain the legislation it replaces.

Social Impact

Health Impact Assessment Test

The proposal will only have an impact on well-being or health inequalities under secondary legislation which will have its own impact assessment.

Race Equality

These proposals do not disproportionately affect one ethnic group more than another except where there is promotion of racial equality. See also the accompanying Equality Impact Assessment.

Gender Equality

These proposals do not disproportionately affect one gender group more than another except where there is promotion of gender equality. See also the accompanying Equality Impact Assessment.

Disability Equality

The change is intended to promote rights for disabled people. See also the accompanying Equality Impact Assessment.

Human Rights

The preferred options do not contravene individuals' human rights.

Rural Proofing

The preferred option will apply equally to people who live in rural areas and urban areas.

Specific impact tests

Annex Z - Small firms' impact test

The costs and benefits of each proposed measure for small businesses will vary. In general, the impact is unlikely to be substantial on any particular small business. This is because the existing method of enforcing discrimination law is essentially reactive, through claims brought by individuals before employment tribunals or the county courts. There are no proposals to change this basic approach.

Enforcement of discrimination law does not involve routine interventionist or invasive mechanisms. The Equality and Human Rights Commission has power to conduct investigations, but this is intended for use on a strategic basis. Under discrimination law there are no inspectorates or agencies with powers to search and seize company documentation or to enter company premises; and there is no mandatory reporting requirement on companies covering, for example, the composition or pay of their workforce.

As a result, there are no mandatory administrative burdens on small business arising from form-filling or reporting. The Government is not proposing to change this existing light-touch approach.

On the costs side, there will be some administrative burdens on small firms as a result of the need to familiarise themselves with adjustments to the law, as reflected in new or amended guidance produced by the Equality and Human Rights Commission and others. Estimated costs are shown in above and amount to £189 per small business (£43.51m divided by 230,000 small firms).

On the benefits side the main benefits for small business will arise from simplification and standardisation of the law. It is not that small businesses (or even large businesses) regularly or ever look at the law itself – their main experience of the law is likely to be if a case is brought. However, small businesses during the course of the consultation on establishing the Equality and Human Rights Commission made clear that they supported the Commission as a one-stop-shop for advice and guidance. Simplifying and standardising the law will enable the Commission and other individuals and bodies advising small firms to produce simpler and clearer guidance. The general benefits of simplification are indicated above.

Small businesses, like large businesses, should also benefit from being able to draw on a more diverse pool of labour, thereby improving skill matching with vacancies; opening up more diverse customer markets; and from reduced likelihood and more efficient processing of tribunal and court cases.

Annex AA - Competition assessment

A detailed competition assessment is not necessary for any of the proposals put forward in this Impact Assessment. The options presented apply across the board and across all sectors of the economy. They do not favour one sector of employment or business activity over another. The answer is “No” (or, in the case of question 8, “not applicable”) to all nine questions of the competition filter test:

Table 13: Competition Filter Test

Question	Answer Yes/No
Q1: In the market(s) affected by the new regulation, does any firm have more than 10% market share?	No
Q2: In the market(s) affected by the new regulation, does any firm have more than 20% market share?	No
Q3: In the market(s) affected by the new regulation, do the largest three firms together have at least 50% market share?	No
Q4: Would the costs of the regulation affect some firms substantially more than others?	No
Q5: Is the regulation likely to affect the market structure, changing the number or size of firms?	No
Q6: Would the regulation lead to higher set-up costs for new or potential firms that existing firms do not have to meet?	No
Q7: Would the regulation lead to higher ongoing costs for new or potential firms that existing firms do not have to meet?	No
Q8: Is the sector characterised by rapid technological change?	N/A
Q9: Would the regulation restrict the ability of firms to choose the price, quality, range or location of their products?	No

Nonetheless, as highlighted in the general benefits section, the proposals may impact on labour market involvement of disadvantaged groups, improving skills match, filling vacancies, and therefore raising productivity. This can be expected to improve the international competitiveness of the UK more generally.

Ministerial Sign-off For Introduction Impact Assessment:

I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.

Signed by the responsible Minister:

A handwritten signature in black ink, appearing to read 'Baroness Royall of Blaisdon', written in a cursive style.

Baroness Royall of Blaisdon

2 December 2009



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