

Prisons and Courts Bill

Equalities Statement: Judicial Appointments Commission, extending scope of assistance, and charging

Policy change summary

1. We seek to provide the Judicial Appointments Commission (JAC) with a clear legal basis for providing assistance for appointments other than those made by, or on the recommendation of, Ministers, and the ability to appropriately recover the costs of doing so. This will allow the maximum benefit to be derived from the JAC's expertise by allowing others access to it whilst ensuring that the associated costs of this assistance are met by those receiving it. The intended effects are minimal, with each use of the new power requiring instruction from the Lord Chancellor, after consideration and consultation with the Lord Chief Justice, and the JAC themselves. It is an explicit intention of the legislation that the current statutory duties of the JAC are preserved, and prioritised by this amendment, which requires that they are not adversely affected.

Equality Duties

2. The Public Sector Equalities Duties ("PSED") under the Equalities Act 2010. The PSED comprises three limbs, set out in section 149(1) of the Equality Act 2010 whereby a public authority must, in the exercise of its functions, have due regard to the need to:
 - a. eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by the Act;

[Direct discrimination - treating some people less favourably than others because of a protected characteristic].

[Indirect discrimination - where a policy is applied equally to everyone but puts some people with a protected characteristic at a particular disadvantage when compared with people who don't share that protected characteristic (and this cannot be justified)].
 - b. advance equality of opportunity between persons sharing relevant protected characteristics and persons who do not;

[Advancing equality of opportunity - includes removing or minimising disadvantages suffered by people due to their protected characteristic; taking steps to meet the needs of people who share a particular protected characteristic, and encouraging participation in public life].
 - c. foster good relations between persons sharing a relevant protected characteristic and persons who do not.
 - d. [Fostering good relations - tackling prejudice and promoting understanding].

3. As well as eliminating discrimination arising from a disability, there is also an ongoing duty to make reasonable adjustments for disabled people.
4. The protected characteristics are: age; disability; gender reassignment; marriage and civil partnership; pregnancy and maternity; race; religion or belief; sex; and sexual orientation.

Equality considerations

5. This equality statement considers the impact of the government's proposal to create new powers for the JAC to offer assistance in non-judicial appointments, and to persons other than Ministers of the Crown, at the Lord Chancellor's request.

What is proposed?

6. That the Lord Chancellor may request the JAC to provide assistance in respect of an appointment or recommendation for appointment, whether or not such appointment or recommendation is to be made by the Lord Chancellor or a Minister of the Crown through an amendment to s98 Constitutional Reform Act 2005 ("CRA"), so as to extend the scope of appointments in respect of which the Lord Chancellor may make a request. This will mean that the JAC may be asked to provide assistance without a fixed restriction based on who the appointing person is, or on the judicial nature of the post.
7. Existing safeguards will be retained and further clarified, in particular, that before making such a request, the Lord Chancellor should be required to consult the Lord Chief Justice and the JAC (as currently provided in s98(5) CRA). Although, as noted above, not all of the proposed appointments are judicial in nature, the continued involvement of the Lord Chief Justice will help to ensure that the JAC's primary statutory responsibilities of judicial appointments are not compromised; avoiding an adverse effect on the JAC's core activities will also become a statutory requirement.

Who will be affected?

8. It is unknown exactly whom will be affected, as it is not certain on what occasions the JAC will be asked to offer assistance. Whilst the appointments must be of similar nature to those that JAC currently handle, in some circumstances they may now be overseas, or non-judicial. As the persons affected can truly said to be dependent on the position which is being recruited for, there is no defined group whom this will effect.
9. All of the persons eligible to be recruited where the JAC are asked to provide assistance will be affected.

What are the protected characteristics of those affected?

10. There are no statistics recording the protected characteristics of those who will be affected by the reforms.

How will they be affected?

11. No one will be directly affected by the creation of the new powers. Their effect will only be felt when they are exercised. The new powers will not amend existing statutory

provisions relating to equality in recruitment; the appointing authority will still be required to comply with existing equalities provisions. The proposed provisions may provide that the JAC are asked to assist with ensuring such compliance.

12. The JAC has consistently demonstrated a commitment to principles of equality, and is a leading participant already in initiatives relating to equality, for example to ensure a diverse judiciary. Their expertise in this area may have a positive impact. Should they be asked to assist an organisation without such a strong commitment.
13. We have considered whether the creation of the powers (as opposed to their exercise) will put any group of persons potentially affected and sharing a protected characteristic at a disadvantage when compared to those who do not share that characteristic. We have not identified any such disadvantages.
14. The creation of the powers will not have any direct equality impacts, whether direct or indirect. The proposed provisions are enabling measures. Their impacts will be assessed when it is proposed to exercise them
15. We do not consider that the creation of the powers proposed will create a risk of harassment or victimisation.

Issues, opportunities and risks:

16. Legislative compliance: when new rules are made, or locations are specified, the department must be able to demonstrate that it had complied with the Public Sector Equality Duty (PSED) in formulating the proposed changes, including considering the need to make reasonable adjustments for disabled persons.
17. Access to Justice: any new rules should be compatible with the convention rights under the Human Rights Act 1998.
18. Taking opportunities to improving Protected Characteristics data: The JAC already collect robust data when running recruitment activities, these new provisions will enable them to do the same where appropriate when offering assistance
19. The existence of the new powers may create concern about the nature of the changes intended. Communication of the purpose of the new powers and how they differ from existing powers will be necessary.

Summary

20. We have considered the PSED in relation to the new proposed powers and have concluded that the creation of the new powers is consistent with it. The creation of the powers will not of itself result in any direct or indirect discrimination; nor will it create a risk of victimisation or harassment. The creation of the powers does not give rise to an opportunity to advance equality of opportunity or to foster good relations other than by demonstrating that we have complied with the PSED. Such opportunities may arise in relation to the exercise of the powers. Such opportunities and any equalities impacts flowing from the changes actually proposed should be assessed when the powers are being exercised.

This publication was archived in June 2017.