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Discrimination

Member resource

The law is stated as at 21 July 2009

Please click on the individual questions below to see the answers.

- **What is the key legislation that provides protection from discrimination in the UK?**

The legislation relating to discrimination law is very complex and there are numerous relevant statutes, statutory instruments and European Directives. These are set out under separate headings below:

Main statutes

- Equal Pay Act 1970
- Sex Discrimination Act 1975
- Race Relations Act 1976 - as amended by the Race Relations (Amendment) Act 2000
- Disability Discrimination Act 1995
- Equality Act 2006

Statutory instruments

Age discrimination

- The Employment Equality (Age) Regulations 2006 (SI 2006/1031)
- The Employment Equality (Age) (Amendment) Regulations 2006 (SI 2006/2408)
- The Employment Equality (Age) (Consequential Amendments) Regulations 2007 (SI 2007/825)

Disability discrimination

- The Disability Discrimination (Meaning of Disability) Regulations 1996 (SI 1996/1455)
- The Disability Discrimination (Blind and Partially Sighted Persons) Regulations 2003 (SI 2003/712)
- The Disability Discrimination Act 1995 (Amendment) Regulations 2003 (SI 2003/1673)

Equal pay

- The Equal Pay (Question and Replies) Order 2003 (SI 2003/722)
- The Equal Pay Act 1970 (Amendment) Regulations 2003 (SI 2003/1656)

- The Occupational Pension Schemes (Equal Treatment) (Amendment) Regulations 2005 (SI 2005/1923)

Race discrimination

- The Race Relations Act 1976 (Statutory Duties) Order 2001 (SI 2001/3458)
- The Race Relations Act 1976 (Amendment) Regulations 2003 (SI 2003/1626)

Religious discrimination

- The Employment Equality (Religion or Belief) Regulations 2003 (SI 2003/1660)
- The Employment Equality (Religion or Belief) (Amendment) Regulations 2003 (SI 2003/2828)
- The Employment Equality (Sexual Orientation) (Religion or Belief) (Amendment) Regulations 2007 (SI 2007/2269)

Sex discrimination

- The Sex Discrimination (Question and Replies) Order 1975 (SI 1975/2048)
- The Sex Discrimination (Gender Reassignment) Regulations 1999 (SI 1999/1102)
- The Sex Discrimination Act 1975 (Amendment) Regulations 2003 (SI 2003/1657)
- The Sex Discrimination Act 1975 (Amendment) Regulations 2008 (SI 2008/656)

Sexual orientation discrimination

- The Employment Equality (Sexual Orientation) Regulations 2003 (SI 2003/1661)
- The Employment Equality (Sexual Orientation) Regulations (Amendment) Regulations (SI 2003/2827)
- The Equality Act (Sexual Orientation) Regulations 2007 (SI 2007/1263)
- The Employment Equality (Sexual Orientation) (Religion or Belief) (Amendment) Regulations 2007 (SI 2007/2269)

Additional statutes and statutory instruments dealing with discrimination

These include:

- The Part-time Workers (Prevention of Less Favourable Treatment) Regulations 2000 (SI 2000/1551)
- The Fixed-term Employees (Prevention of Less Favourable Treatment) Regulations 2002 (SI 2002/2034)
- Employment Rights Act 1996 (sections relating to maternity and dependant carer leave)
- Race Relations (Amendment) Act 2000
- Protection from Harassment Act 1997
- Racial and Religious Hatred Act 2006

European directives

- Equal Treatment Framework Directive (2000/78/EC)
- Equal Treatment Amendment Directive (2002/73/EC)
- Race Directive (2000/43/EC)

- Directive implementing the principle of equal treatment between men and women in the access to and supply of goods and services (2004/113/EC)
- Directive on equality between men and women in matters of employment and occupation (2006/54)

There are some proposals to try to simplify certain aspects of the legislation listed above. For more information on these proposals which are contained in the Equality Bill see the question below on future developments.

- **What forms of discrimination are there?**

Although there are differences in the law governing age, race, sex, disability, religious and sexual orientation discrimination the general forms of discrimination can be summarised under the following four headings:

Direct discrimination

An employer will directly discriminate if on the grounds of the person's age, race, sex, disability, religion or sexual orientation if they treat a person less favourably than the way in which a person not having that particular characteristic would be treated. Complainants alleging direct discrimination usually have to compare themselves with either an actual or hypothetical comparator to show less favourable treatment.

Indirect discrimination

Indirect discrimination occurs where 'A' applies to 'B' a provision, criterion or practice which is applied equally to persons not of the same age, race, gender, religion or sexual orientation (disability is not included), but the effect of the application is to the detriment of 'B' because a considerably smaller proportion of persons sharing 'B's characteristic are able to comply. In most indirect discrimination claims an employer may attempt to defend, or objectively justify their actions by showing that the provision they adopted was a proportionate means of achieving a legitimate business aim. It is not usually possible to attempt to justify a direct claim in this way (apart from in age discrimination claims).

Victimisation

Victimisation has a very specific meaning in discrimination law. It does not just mean singling some-one out. Victimisation makes it unlawful for one person to treat another less favourably than they would treat other people because that person has:

- brought proceedings under the relevant piece of discrimination legislation
- given evidence or information in connection with, the proceedings under the relevant piece of discrimination legislation
- otherwise done anything under the relevant piece of discrimination legislation
- alleged (in good faith) that someone has contravened the relevant piece of discrimination legislation
- or because the person believes that the victim has done or intends to do any of these things.

For information on victimisation claims and the burden of proof see the question below on whether an employer has to prove that they did not discriminate.

Harassment

Harassment occurs when, for a reason which relates to a person's age, race, sex, disability, religion or sexual orientation, another person engages in unwanted conduct which may violate the person's dignity or creates an intimidating, hostile, degrading, humiliating or offensive environment for that person.

More detailed explanations on the above are given under our separate FAQs on Age discrimination and retirement, Race discrimination, Sex discrimination, Disability discrimination, Religious discrimination, and Sexual orientation discrimination.

- [Go to Employment Law FAQs](#)

The Equality Commission for Northern Ireland has published a unified guide which aims to provide employers with practical guidance on how to comply with their responsibilities under each of the anti-discrimination laws in Northern Ireland.

- [View guide](#)

- **What is the most important thing an employer can do to prevent and defend discrimination claims?**

All employers should have an up-to-date equal opportunities policy which is readily available, regularly and consistently enforced and made known to managers, supervisors, employees and job applicants.

One of the first questions a solicitor advising a potential discrimination claimant will ask of the employer is 'What steps were taken to implement your equal opportunities policy?' It potentially inhibits an employer's defence to a discrimination claim if they have to answer 'We don't have one at all' to this question.

A good policy will:

- make clear an organisation's commitment to equal opportunities, non discriminatory procedures and practices,
- mention all forms of discrimination which are not acceptable, that is age, sex, race, religious belief, sexual orientation, disability and marital status,
- oblige all employees to respect and act in accordance with the policy,
- mention equality of opportunity for all job applicants and employees,
- explain the procedure for dealing with complaints and link to the grievance procedure,
- have the name of the manager or director with overall responsibility for policy,
- be regularly updated and communicated, and
- be used in training sessions for all employees especially line managers.

Acas has published a new guide for employers on establishing an effective equality policy.

- [View guide](#)

- **Are employers liable for acts of discrimination carried out by employees?**

Yes, the age, race, sex, disability, religious and sexual orientation discrimination legislation provides that any acts of discrimination carried out by employees in the course of their employment are to be treated as being done by the employer as well, regardless of the employer's knowledge or approval. An employer may also be liable if they are considered to have failed in their duty to prevent employees suffering discrimination in the workplace in so far as it is in their power to do so.

There is considerable case law on the meaning of acts carried out 'in the course of employment'. Examples include:

- *Jones v Tower Boot Co Ltd [1997] IRLR 168, CA*. The Court of Appeal held that 'in the course of employment' could even cover acts of torture to which workers had subjected a colleague in the workplace. This was a case concerning race discrimination but the basic principle is the same for all forms of discrimination.
- *Chief Constable of Lincolnshire Police v. Stubbs and others [1999] IRLR 81, EAT*. In this case, on the facts, sexual harassment during a social gathering between colleagues in the pub after work, and at a colleagues leaving party were acts of discrimination in the course of employment.
- *HM Prison Service and others v. Davis (unreported, EAT 1294/98 29 March 2000)*. The fact that an employer was entitled to discipline staff for acts committed outside working hours did not mean that sexual harassment of a colleague at her home was an act of discrimination in the course of employment.

The liability of an employer may also arise under the Protection from Harassment Act 1997. In *Majrowski v Guy's and St Thomas's NHS Trust [2006] UKHL 34, HL* the House of Lords held that where one employee, in the scope of their employment, harasses another, the employer may be vicariously liable for harassment under the Protection from Harassment Act 1997, if a sufficiently clear link between the work and the harassment can be established.

Employers could also be liable under the Racial and Religious Hatred Act 2006 - for more information see the question on criminal law in our Race discrimination FAQ.

- [Go to Race discrimination FAQ](#)

- **Can an employee who has suffered discrimination at the hands of a co-worker sue both the employer and the co-worker?**

Yes. Although an employer may be sued for discrimination the employee who committed the discriminatory act in question can also be held personally liable. Therefore in addition to naming the employer in any application to employment tribunal, it is common to name the individual perpetrator and join them as parties to proceedings.

- **Will an employer always be liable for discrimination when it has failed to prevent harassment of an employee by a third party?**

An employer can be liable for discrimination when it has failed to prevent sexual harassment of an employee by a third party, although this will not always be the case. A more detailed explanation is given below.

All employers must have an anti-discrimination policy (which may form part of an equal opportunities policy - see the question above on preventing and defending discrimination claims). This policy should include prohibition of employees harassing fellow employees as employers may be vicariously liable for such acts.

However, the position with respect to third parties is slightly different. Both case law and the Sex Discrimination Act 1975 (Amendment) Regulations 2008 (SI 2008/656) make it clear that an employer can be liable for sexual harassment of staff by, for example, customers. The Regulations state that the harassment must have happened at least twice before. Prudent employers will therefore take steps to protect themselves against the possibility of liability for sexual harassment of employees by third parties such as customers or clients.

Please also see the question on liability for third parties in our Race discrimination FAQ for further details of the case law in this area. In a race discrimination context there have been decisions which suggest that an employer will probably not normally be vicariously liable for discrimination because of a failure to prevent harassment of employees by a third party, unless the reason why it failed to prevent the harassment by a third party was a discriminatory reason. However, the case law has been contradictory..

- [Go to Race discrimination FAQ](#)

The safest course appears to be to assume that employers may be liable for claims based on all forms of harassment including race, disability, sex, sexual orientation, age, or religion.

Therefore, employers should:

- act promptly upon any discriminatory acts of any customers or clients against employees,
- behave supportively towards any employee who complains of such harassment,
- behave in a proactive way to prevent the harassment taking place,
- be seen to implement measures which make clients, customers or visitors aware of their obligations not to harass employees. This will include displaying a notice forbidding any potentially discriminatory comments or abuse on the grounds of age, sex, race religion, sexual orientation, although a perfunctory notice alone is very unlikely to be sufficient to protect the employer.

Although it is a relatively underdeveloped area of law, it is theoretically possible that an employer who has failed to protect an employee from extreme persistent harassment by a third party may face attempted claims under the Protection from Harassment Act 1997 - see the question above on the liability of employers for discriminatory acts carried out by employees.

- **Does an employer have to prove that they did not discriminate or does the employee have to prove that they did?**

This is a very important question. The basic principle has always been that once an employee has established some initial evidence which suggests that in the absence of adequate explanation there could have been discrimination, the employer has to prove that they have not discriminated. This is a heavy burden for employers to discharge. For example a female employee could claim that she was not selected for promotion because she was a woman. Provided she produces some evidence to that effect, her employer would then have to prove that the reason she did not get the job was for some non-discriminatory reason.

The principle relating the burden of proof applies to discrimination claims whether they are direct, indirect or harassment. However victimisation claims, and some race discrimination claims are approached differently. The Court of Appeal (CA) and Employment Appeal Tribunal (EAT) have said that to win a claim of unlawful discrimination by way of victimisation (or race discrimination claims on grounds of colour or nationality) an employee has to demonstrate the alleged discrimination rather than the employer having to disprove it. Although the main cases concerning victimisation are in a race discrimination context, it appears that all types of victimisation claim do not involve the reversal of the burden of proof. However there are some contradictory case law decisions. It is clearly unsatisfactory to have a different approach to proving discrimination claims depending upon the nature of the claim, therefore eventually there will be a need for legislation to harmonise the position.

For more information on the CA and EAT decisions see the relevant question in our Race discrimination FAQ.

- [Go to Race discrimination FAQ](#)
- **What should an employer do if they receive a discrimination and/or equal pay questionnaire?**

If an employer does receive a discrimination and/or equal pay questionnaire they should answer it. Questionnaires may be sent to an employer by an employee in the case of any actual or prospective discrimination and equal pay claims. Questionnaires can be served in age, race, sex, disability, religious, sexual orientation discrimination and equal pay claims. It is crucial to reply to any such questionnaire as failure to respond or the provision of evasive or equivocal replies will mean that the tribunal may infer that the employer has committed the discrimination in question.

The employee will seek information relating to their complaint to enable them to establish their case. Common questions include items such as, for example, 'Does the organisation have an equal opportunities policy in place.' Or 'Please confirm when the line manager Mr X last received training in equal opportunities issues'.

The usual time limit for responding to such a questionnaire is within eight weeks from its service on the employer although subtle differences in procedure apply between different forms of discrimination. The employee must serve a questionnaire within three months of the discriminatory act. Questionnaires are often served before a claim has been brought; if proceedings have already been started however the employee should serve the questionnaire within 21 days of the claim form being lodged.

See also our Tribunal claims, settlement and compromise FAQ for further information.

- [Go to FAQ](#)
- **Is there an upper limit for compensation in discrimination claims and how are damages calculated?**

If a tribunal finds a complaint for discrimination well founded it will then proceed to consider the issue of remedy. Compensation will be awarded where a tribunal feels it is 'just and equitable' to do so. There is no **upper limit** on the amount of compensation that an employment tribunal can award in respect of a claim for discrimination.

Compensation is designed to reflect losses caused or stemming from the discrimination in question. Only losses that are foreseeable as a consequence of the treatment are recoverable. Compensation awarded in discrimination cases can be broken down into:

- **Financial loss** - this covers loss incurred from the date of the discriminatory act to the date of the remedies hearing, and loss which will be incurred after the hearing. Where the discrimination has been a dismissal the loss will encompass net wages, pension contributions, overtime, loss of private health cover and all other contractual benefits. The employee must of course still mitigate their losses by trying to obtain alternative employment.
- **Injury to feelings** - most discrimination claims will also attract an award for injury to feelings. Decisions are based upon the effect of the discriminatory treatment on the particular complainant. The guidelines set out in *Vento v Chief Constable of West Yorkshire Police (No.2)* [2003] IRLR 102, CA set out the following bands of appropriate levels of awards for injury to feelings:

Top Band	£15,000 - £25,000	the most serious cases - for example, where there has been a lengthy campaign against the employee
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Middle Band	£5,000 - 15,000	serious cases that do not justify an award in the top band
Lower Band	£500 - £5,000	less serious cases - for example, an isolated incident

Complications can arise with injury to feelings compensation if there are two forms of discrimination. In *Jumard v Clywd Leisure Ltd and others (unreported, EAT/0334/07, EAT)* the claimant established race discrimination and disability discrimination. The Employment Appeal Tribunal (EAT) held that the employment tribunal should have separately considered both forms of discrimination. If different forms of discrimination arise from the same discriminatory acts, the injury to feelings may be assessed together. However, if there were different discriminatory acts then injury to feelings must be assessed separately. The total figure must be proportionate overall and not involve double recovery.

- **Aggravated damages** - compensation for injury to feelings may also include an added element of aggravated damages in particularly serious cases of discrimination. This is appropriate where there has been malicious insulting or oppressive behaviour in committing the discriminatory act.
- **Interest on awards** - under the Employment Tribunals (Interest on Awards in Discrimination Cases) Regulations 1996 (SI 1996/2803) which came into effect on 2 December 1996, tribunals are required to consider interest on an award. These Regulations set out how such interest will be calculated.

One of the highest awards of compensation for race discrimination made to date was in the case of *Chaudhary v BMA (unreported, 19 June 2002, ET/2401502/00, Manchester 19 June 2002)* in which Mr Chaudhary was awarded £814,877.41 in damages for race discrimination. The figure was made up of:

- loss of earnings - £625,000
- injury to feelings for indirect discrimination - £15,000
- compensation for illness - £15,000
- victimisation - £7,500
- aggravated damages - £5,000
- costs (there were several sets of proceedings) - £94,367.11
- interest - £53,010.30.

Awards involving unsuccessful job applicants rather than employees tend to be at the other end of the financial spectrum. In *Corus Hotels v Woodward (unreported, EAT/0536/05 17 March 2006, EAT)* an applicant for a post of hotel receptionist was asked some personal questions about being a single parent and her ability to do the job. She was unsuccessful in her application, but did not receive confirmation of this or any reason for not being offered the job. She won a sex discrimination claim and was initially awarded £525 for loss of earnings and £5,000 compensation for injury to feelings following the guidelines in *Vento v Chief Constable of West Yorkshire Police*. The EAT reduced the award to £4,000, as although the interview was crassly sexist the employment tribunal had inflated the award on its own feelings regarding the hotel's conduct. The EAT said that the fact that Corus Hotels had 60 hotels and 3,500 employees was irrelevant. All employers, large and small must train interviewers in equal opportunities but larger employers should not be punished by paying higher compensation awards.

More guidance on likely amounts of compensation awarded in discrimination claims is contained in our separate FAQs on the different areas of discrimination.

- [Go to list of Discrimination FAQs](#)
- **How does an employer's failure to follow the Acas code of practice on disciplinary and grievance procedures affect the compensation payable in a discrimination claim?**

An employer or employee may fail to follow the Acas code on disciplinary and grievance matters in an issue involving allegations of discrimination. If the employee brings a successful tribunal claim in respect of their dismissal, an employment tribunal can adjust the employee's award of compensation by up to 25%. (Previously the figure was between 10-50% for failure to follow the statutory grievance, dismissal and disciplinary procedures which were repealed from 6 April 2009). For further details see our Discipline and grievance procedures FAQ.

- [Go to Discipline and grievance procedures FAQ](#)

Note that with age discrimination claims where the perceived disadvantage in the job market is greater, tribunals are also more likely to make awards.

One example can be provided in a sexual orientation context by the case of *Norris and Robertson v Lambert and another (t/a Black Bull Inn)* (unreported, ET 2504044/05 and ET 25068731/05 19 January 2006, ET). Two employees working in a public house suffered sexual orientation harassment from the proprietors on account of the employees' sexuality. Eventually there was a violent and abusive incident between one of the employees and one of the proprietors about her pay. The other employee tried to intervene and as a result was told that if he didn't like it he could leave, was marched out of the kitchen and told in homophobic language not to come back. Both employees reported the incident to the police and subsequently brought a number of claims including unfair dismissal, wrongful dismissal, unlawful deduction from wages, accrued holiday pay and sexual orientation discrimination harassment.

There was no attempt to put the reason for dismissal in writing, conduct any form of meeting about it, or offer any opportunity to appeal.

The waiter recovered £8,000 for injury to feelings. The most significant feature was the fact that the tribunal applied the maximum 50% uplift under the old system to the compensatory award for unfair dismissal and in relation to the sum for sexual orientation harassment, the unlawful deduction of wages claim and the claims for accrued holiday pay and notice money. There were no written terms of employment under the Sections 1 to 7 of Employment Rights Act 1996 and therefore the tribunal awarded the maximum of four weeks' pay to both claimants for this aspect as well.

- **What are the relevant time limits for discrimination claims?**

Claimants must usually commence discrimination claims within three months of the act complained of, subject to the possibility of an extension because the employment tribunal considers it is 'just and equitable' to extend the time. (If the complaint relates to service in the armed forces the time limit is six months).

If an employer receives a claim outside these time limits they will usually argue that the claim should not be allowed to proceed. However, employees may be able to obtain significant extensions under the 'just and equitable' test referred to above. Extensions of up to five years have been allowed in cases of extreme discrimination.

See also question below on the three month limit and continuing acts of discrimination.

- **How does the three month time limit apply if an employee claims a continuing act of discrimination?**

Claimants must usually commence discrimination claims within three months of the act complained of, subject to the possibility of an extension in certain circumstances. See the question above on relevant time limits.

If the potentially discriminatory events are linked to establish an 'act extending over a period' ('a continuing act') then the claim must be brought within three months of the final incident of discrimination. If such a pattern is not established, each incident is treated as an isolated act carrying its own three-month time limit. Of course

if the incidents are isolated acts carrying their own three-month time limits a claimant will often be out of time for the purposes of making a complaint in respect of the earlier incidents.

A 'continuing act' does have to be linked, but it does not have to be a policy, practice or regime. For example:

- In *Hendricks v Commissioner of Police of the Metropolis* [2003] IRLR 96, CA a black female police officer alleged that she had suffered sex and race discrimination for 11 years. She made nearly 100 allegations of discrimination involving 50 or more other police officers. The police argued she was out of time to bring a complaint. The Court of Appeal held that the harassment and bullying was a continuing act of discrimination which was still continuing at the date of the hearing and her claim could proceed to a full merits hearing. The Court held that the focus should be on the substance of the complaint and not on whether there was a 'policy', 'practice' or 'rule' in existence, but on whether the acts complained of were linked.
- The same approach was applied in *Lyfar v Brighton and Sussex University Hospitals Trust* (unreported, [2006] EWCA Civ 1548, 14 November 2006, CA). Here a black employee of Afro-Caribbean origin employed as a clinical bio-chemist by Brighton and Sussex University Hospitals Trust ('the Trust') presented a total of 17 complaints of alleged race discrimination to an employment tribunal. The Trust argued the complaints were brought outside the time limit. The tribunal grouped the complaints into four categories:
 - complaints about the Trust's internal investigation,
 - complaints about the disciplinary hearing,
 - complaints about the general manager's actions after the disciplinary hearing, and
 - complaints about the handling of the employee's grievance.

The Court of Appeal found that on the facts that the four different categories of complaint were not part of one continuing act as the first two categories of complaint ended when the disciplinary charges against her were dismissed. The Court of Appeal also found the tribunal had not erred in its conclusion not to hear the out-of-time claims under the 'just and equitable' principle.

- **Do both employees and the self employed qualify to bring discrimination claims? Is there a qualifying period of employment?**

The definition of 'employee' in discrimination legislation is wider than that contained in other employment legislation and protection extends to, for example:

- job applicants
- persons employed under a contract for services (self-employed)
- those who personally execute any work or labour
- apprentices
- publishers and advertisers of discriminatory advertisements
- trainees
- Crown employees ie staff working for ministers
- House of Commons and House of Lords staff
- members of the armed forces, although if on actual service they may have to pursue internal procedures first
- police officers are also covered, the latter are treated as being employed by the chief officer of their force.

There is no qualifying period of employment for any discrimination claim.

- **What is the role of the Equality and Human Rights Commission?**

The Equality and Human Rights Commission (EHRC) was established under the Equality Act 2006. It became operational from 1 October 2007, taking on responsibility for race, sex, disability, religious, sexual orientation and age discrimination issues as well as fulfilling the role of a human rights commission. Before then, there had been no statutory body overseeing the operation of legislation governing age, sexual orientation or religious discrimination.

The EHRC replaced the previous Equal Opportunities Commission (EOC), Commission for Racial Equality (CRE) and the Disability Rights Commission (DRC) and brings together the work of those three previous equality commissions as well as taking on responsibility for the other aspects of equality. Trevor Phillips was re-appointed as chair of the EHRC in July 2009.

The EHRC is a non-departmental public body accountable for its public funds, but independent of government. It will consult with other bodies in the private, public and voluntary sectors to ensure all groups have an opportunity to participate and engage in its work. It will monitor progress on equality, human rights and good relations between communities, through publishing a regular 'state of the nation' report and has pledged to promote good relations between and within communities, across all sections of society.

It will take on responsibility for producing Codes of Practice and other guidance.

More information is available on the Commission's website.

- [Go to EHRC website](#)

- **Are there any future developments expected in the area of discrimination law?**

The major future development which has been expected in the area of discrimination law for some time is the Equality Bill. The Bill intends replacing the following legislation:

- Equal Pay Act 1970,
- Sex Discrimination Act 1975,
- Race Relations Act 1976,
- Disability Discrimination Act 1995,
- Equality Act 2006 (some provisions),
- The Employment Equality (Religion or Belief) Regulations 2003,
- The Employment Equality (Sexual Orientation) Regulations 2003,
- The Employment Equality (Age) Regulations 2006, and
- The Equality Act (Sexual Orientation) Regulations 2007.

Although heralded as an opportunity to harmonise and simplify the legislation governing equality and discrimination, much of the focus of the consultation seems to be outside the workplace and to concern public sector issues. Also the actual substantive changes to the law do not seem to address some of the inconsistencies in the existing legislative framework.

A consultation paper entitled *Framework for fairness* published in June 2008 set out its proposals for a Equality Bill before the Bill itself was published in July 2008.

The Bill which is currently going through Parliament identifies nine 'protected characteristics'. They are:

- age,
- disability,
- gender reassignment,
- marriage and civil partnership,
- pregnancy and maternity,
- race,
- religion or belief,

- o sex,
- o sexual orientation.

Key employment-related measures in the Bill, which are subject to amendment as it progresses through Parliament, include:

- o Banning secrecy clauses in employment contracts which prevent people discussing their own pay.
- o Employers of over 250 people will have to report on their gender pay gaps from 2013 if not enough progress has been made voluntarily.
- o Public authorities with over 150 employees will be required from 2011 to publish annual details of their pay gap and ethnic minority and disability employment rates.
- o Extending positive action so that employers can take into account when selecting between two equally qualified job candidates, the underrepresentation of disadvantaged groups. This would expand existing positive action rules relating to training or encouragement to take up certain types of work and would have to be justified by an employer as a proportionate way of achieving the relevant aim.
- o Placing a new broader, single equality duty on public authorities which will extend to all protected characteristics, except marriage and civil partnership.
- o Introducing a new duty on public authorities to consider reducing socio-economic inequalities.
- o Allowing tribunals to make wider recommendations in discrimination cases, not only benefiting the individual, but also the wider workforce where the discrimination has taken place.
- o Making tribunal judgments available and searchable online so that recommendations will be made public.
- o Introducing a new definition of direct discrimination across all the protected characteristics to cover both 'associative' and 'perceived' discrimination and replaces the phrase 'on the grounds of' with the word 'because'. This will bring the law into line with Coleman v Attridge Law.
- o Extending indirect discrimination across all the protected characteristics, except pregnancy and maternity.
- o Pregnancy or maternity-related treatment would only be discriminatory if the treatment of the employee is 'unfavourable'.
- o Extending employers' liability for third party harassment beyond sexual harassment to other protected characteristics.
- o Harmonising the definition of harassment to cover 'associative' and 'perceived' harassment.
- o Harmonising the concept of justification in discrimination cases 'as a proportionate means of achieving a legitimate aim'.
- o Introducing an 'occupational requirement' defence across all protected characteristics and removing the 'genuine occupational qualifications' (GOQs) in sex, gender reassignment and race cases.
- o Addresses the Malcom decision by replacing the concept of 'disability-related discrimination' with the new concepts of indirect discrimination and 'discrimination arising from disability.'
- o The test for establishing whether a person has a disability will be widened.
- o Differences between discrimination based on nationality and colour and discrimination on other racial grounds in the Race Relations Act 1976 are removed.
- o Changing the definition of gender reassignment discrimination by removing the need for a person to be under medical supervision to come under it.
- o Allowing claims for multiple discrimination based on two, but no more, different types of discrimination,
- o Ensuring that age discrimination covers organisations providing goods, facilities and services and carrying out public services as well as in the employment sector,
- o Ensuring that public bodies promote equality through their purchasing function.

It is intended that once the Bill has completed the Parliamentary process, it will receive Royal Assent in Spring 2010 and will start to be implemented from Autumn 2010.

More information on the the Bill and its Parliamentary progress is available on the Government Equalities Office website. Information is also available on the Equality and Human Rights Commission website.

- [Go to GEO website](#)
- [Go to EHRC](#)

For details of developments in discrimination legislation, including the Equality Bill, since this update see our Recent developments section.

- [Go to Recent developments](#)

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