

Single Equality Act

Proposals for a single, harmonised piece of legislation dealing with all the equality 'strands' still leave some strands more equal than others.

The Government has now begun consultation on a Single Equality Act. So what's the big deal? In the last 8 months alone we have had to absorb the introduction of age discrimination; new public duties in relation to disability and gender; and the extension of flexible working rights to carers. Another Act and a consolidating one at that: barely worth getting involved in the consultation! Surely? Well no actually: this is a big deal. It is the closest thing to an overhaul of our whole approach to discrimination law for 30 years.

Why the mess?

Our current equality legislation is an evolved patchwork of rights that broadly prohibit discrimination on the grounds of sex, race, disability, sexual orientation, religion or belief and age. There are a range of anomalies between these strands, some of which arise out of this Government's decision to introduce European equality directives through secondary rather than primary legislation – meaning that they then had to stick rigidly to the wording of the directives with no scope to go beyond them. But let's not be churlish, the Government now want to consolidate and harmonise, making the law more accessible and more unified – (mostly).

Perception and association

In relation to race discrimination it is currently unlawful to discriminate against a person not only because (i) he or she is a particular race, but also if (ii) the discriminator perceives that he or she is of particular race, or (iii) he or she associates with someone of a particular race. The same rules apply to religion or belief and sexual orientation. Discrimination on the basis of perceived age is also unlawful but not on the basis of association. Neither discrimination on the basis of perception nor association are unlawful in relation to disability, sex or gender reassignment.

But wait, under a Single Equality Act all this is going to be harmonised – right? Wrong! With the exception of discrimination on the grounds of associating with a transsexual person, and some changes to the harassment definition in the 'sex' strand (which have been forced on the Government anyway by the ruling in *R (Equal Opportunities Commission) v Secretary of State for Trade and Industry* [2007] IRLR 327), the Government is proposing to retain the current anomalies. So it will be fine to refuse to employ a woman because you think she

might be disabled (although in fact she is not) or a man because he has a disabled child who you think might distract him from his duties. You can also deny a promotion to a woman because you disapprove of her relationship with an older man, or refuse to give a man a pay rise because you mistakenly thought he was transsexual. So that's alright then?!

Single equality duty

Currently, public authorities have to manage general and specific duties to promote equality in relation to race, disability and gender, where each duty is framed in different terms. No such duties exist in relation to sexual orientation, religion or belief and age. But wait, a single equality duty under a Single Equality Act will presumably harmonise the legislation? Well - maybe! There does seem to be a push to harmonise duties covering race, disability and gender. There is rather less enthusiasm for including sexual orientation, religion or belief and age in that single [sic] equality duty.

The easy stuff

Some of the proposals are unlikely to be controversial: for example, retention of the requirement for a comparator in direct discrimination cases and a harmonised definition of indirect discrimination. Some change the law in very subtle ways such as the removal of the need for a comparator in victimisation cases or the possible extension of 'balancing measures.' However, there are areas where change does not appear to be bold enough and that is where participation in the consultation could make a difference.

The consultation

- The consultation was issued by the Department for Communities and Local Government on 12 June 2007
- The closing date for responses is 4 September 2007
- Take part now or you may have to wait another 30 years!

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