

Equality Bill

The Bill is divided into two volumes. Volume I contains the Clauses and Volume II contains the Schedules to the Bill.

EXPLANATORY NOTES

Explanatory notes to the Bill, prepared by the Government Equalities Office, have been interleaved into the Bill and are to be found on the left-hand pages. The Introduction to the notes precedes the Bill in Volume I of this document.

EUROPEAN CONVENTION ON HUMAN RIGHTS

Ms Harriet Harman has made the following statement under section 19(1)(a) of the Human Rights Act 1998:

In my view the provisions of the Equality Bill are compatible with the Convention rights.

EQUALITY BILL (Volume I)

EXPLANATORY NOTES

INTRODUCTION

1. These explanatory notes relate to the Equality Bill [Bill 85] as introduced in the House of Commons on 24 April 2009. They have been prepared by the Government Equalities Office, the Department for Work and Pensions (in respect of provisions relating to disability), the Department for Children, Schools and Families and Department for Innovation, Universities and Skills (in respect of provisions relating to education), the Department for Transport (in respect of provisions relating to disability and transport) and the Department for Business, Enterprise and Regulatory Reform (in respect of provisions relating to work exceptions). Their purpose is to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by Parliament.

2. The notes need to be read in conjunction with the Bill. They are not, and are not meant to be, a comprehensive description of the Bill. So where a clause or part of a clause does not seem to require any explanation or comment, none is given.

3. Following the approval by the House on 30 March of the First Report from the Procedure Committee (House of Commons Paper No. 377), the notes on each clause appear opposite that clause. The aim is to make the explanatory material easier to use.

Background and summary

Background

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

5. The domestic law is now mainly contained in the following legislation (where applicable, as amended):

- the Equal Pay Act 1970;
- the Sex Discrimination Act 1975;
- the Race Relations Act 1976;

- the Disability Discrimination Act 1995;
- the Employment Equality (Religion or Belief) Regulations 2003;
- the Employment Equality (Sexual Orientation) Regulations 2003;
- the Employment Equality (Age) Regulations 2006;
- the Equality Act 2006, Part 2;
- the Equality Act (Sexual Orientation) Regulations 2007.

6. The main European Directives affecting domestic discrimination legislation are:

- Council Directive 75/117/EEC on the approximation of the laws of the Member States relating to the application of the principle of equal pay for men and women;
- Council Directive 76/207/EEC on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions, as amended by the European Parliament and Council Directive 2002/73/EC;
- Council Directive 2000/43/EC implementing the principle of equal treatment between persons irrespective of racial or ethnic origin;
- Council Directive 2000/78/EC establishing a general framework for equal treatment in employment and occupation;
- Council Directive 2004/113/EC implementing the principle of equal treatment between men and women in the access to and supply of goods and services;
- European Parliament and Council Directive 2006/54/EC (as recast) on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation. Also relevant in this context is Article 141 of the Treaty Establishing the European Community. (Official Journal C 325/33 of 24 December 2002).

7. In addition, in July 2008 the Commission of the European Communities published a new draft Directive which would prohibit discrimination on grounds of disability, religion or belief, sexual orientation and age, in access to goods and services, housing, education, social protection, social security and social advantage. This Directive is under negotiation.

8. In February 2005, the Government set up the Discrimination Law Review to address long-term concerns about inconsistencies in the current discrimination law framework. The Review was tasked with considering the fundamental principles of discrimination legislation and its underlying concepts, and the opportunities for creating a clearer and more streamlined framework of equality legislation which produces better outcomes for those who experience disadvantage. As noted in the Review's terms of reference: "Any proposals will have due regard to better regulation principles and take into account the need to minimise bureaucratic burdens on business and public services. A key priority will be seeking to achieve greater consistency in the protection afforded to different groups while taking into account evidence that different legal approaches may be appropriate for different groups."

9. In June 2007 the Department for Communities and Local Government published a consultation paper, *A Framework for Fairness: Proposals for a Single Equality Bill for Great Britain*. This was followed in June and July 2008 by two Command Papers published by the Government Equalities Office: *Framework for a Fairer Future – the Equality Bill* (Cm 7431); and *The Equality Bill – Government Response to the Consultation* (Cm 7454). In January 2009, the Government published the *New Opportunities White Paper* (Cm 7533) which, amongst other things, committed the Government to considering legislation to address disadvantage associated with socio-economic inequality.

Summary

10. The Bill has two main purposes – to harmonise discrimination law, and to strengthen the law to support progress on equality.

11. The Bill will bring together and re-state all the enactments listed in paragraph 5 above and a number of other related provisions. It will harmonise existing provisions to give a single approach where appropriate. Most of the existing legislation will generally be repealed. The Equality Act 2006 will remain in force (as amended by the Bill) so far as it relates to the constitution and operation of the Equality and Human Rights Commission; and the Disability Discrimination Act 1995, so far as it relates to Northern Ireland.

12. The Bill will also strengthen the law in a number of areas. It will:

- place a new duty on certain public authorities to consider socio-economic disadvantage when taking strategic decisions about how to exercise their functions;
- extend the circumstances in which a person is protected against discrimination, harassment or victimisation because of a protected characteristic;
- create a duty on listed public authorities when carrying out their functions and on other persons when carrying out public functions to have due regard when carrying out their functions to: the need to eliminate conduct which the Bill

prohibits; the need to advance equality of opportunity between persons who share a relevant protected characteristic and those who do not; and the need to foster good relations between people who share a relevant protected characteristic and people who do not. The practical effect is that listed public authorities will have to consider how their policies, programmes and service delivery will affect people with the protected characteristics;

- allow an employer or service provider or other organisation to take positive action so as to enable existing or potential employees or customers to overcome or minimise a disadvantage arising from a protected characteristic;
- extend the permission for political parties to use women-only shortlists for election candidates to 2030;
- enable an employment tribunal to make a recommendation to a respondent who has lost a discrimination claim to take certain steps to remedy matters not just for the benefit of the individual claimant (who may have already left the organisation concerned) but also the wider workforce.

Overview of the structure of the Bill

13. The Bill consists of 15 Parts and 28 Schedules. The general arrangement of the Bill is as follows:

<i>PART</i>	<i>SUMMARY</i>
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<i>Part 1</i>	<i>Imposes a duty on certain public authorities to have due regard to socio-economic considerations in deciding their strategic priorities.</i>
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<i>Part 2 including Schedule 1</i>	<i>Establishes the key concepts on which the Bill is based including:</i>
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- *the characteristics which are protected (age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation);*
- *the definitions of direct discrimination, discrimination arising from disability, indirect discrimination, harassment and victimisation.*

These key concepts are then applied in the subsequent Parts of the Bill.

<i>Part 3 including Schedules 2 and 3</i>	<i>Makes it unlawful to discriminate against, harass or victimise a person when providing a service (which includes the provision of goods or facilities) or when exercising a public function.</i>
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- Part 4 including Schedules 4 and 5* *Makes it unlawful to discriminate against, harass or victimise a person when disposing of (for example, by selling or letting) or managing premises.*
- Part 5 including Schedules 6, 7, 8 and 9* *Makes it unlawful to discriminate against, harass or victimise a person at work or in employment services. Also contains provisions relating to equal pay between men and women; pregnancy and maternity pay; provisions making it unlawful for an employment contract to prevent an employee disclosing his or her pay to a colleague; and a power to require private sector employers to publish gender pay gap (the size of the difference between men and women's pay expressed as a percentage) information about differences in pay between men and women.*
- Part 6 including Schedules 10, 11, 12, 13 and 14* *Makes it unlawful for education bodies to discriminate against, harass or victimise a school pupil or student or applicant for a place.*
- Part 7 including Schedules 15 and 16* *Makes it unlawful for associations (for example, private clubs and political organisations) to discriminate against, harass or victimise members, associates or guests.*
- Part 8* *Prohibits other forms of conduct, including discriminating against or harassing of an ex-employee or ex-pupil, for example: instructing a third party to discriminate against another; or helping someone discriminate against another. Also determines the liability of employers and principals in relation to the conduct of their employees or agents.*
- Part 9 including Schedule 17* *Deals with enforcement of the Bill's provisions, through the civil courts (in relation to services and public functions; premises; education; and associations) and the employment tribunals (in relation to work and related areas, and equal pay).*
- Part 10* *Makes terms in contracts, collective agreements or rules of undertakings unenforceable or void if they result in unlawful discrimination, harassment or victimisation.*

<i>Part 11 including Schedules 18 and 19</i>	<i>Establishes a general duty on public authorities to have due regard, when carrying out their functions, to the need: to eliminate unlawful discrimination, harassment or victimisation; to advance equality of opportunity; and to foster good relations.</i>
	<i>Also contains provisions which enable an employer or service provider or other organisation to take positive action to overcome or minimise a disadvantage arising from people possessing particular protected characteristics.</i>
<i>Part 12 including Schedule 20</i>	<i>Requires taxis, other private hire vehicles, public service vehicles (such as buses) and rail vehicles to be accessible to disabled people and to allow them to travel in reasonable comfort.</i>
<i>Part 13 including Schedule 21</i>	<i>Deals with consent to make reasonable adjustments to premises and improvements to let dwelling houses.</i>
<i>Part 14 including Schedules 22 and 23</i>	<i>Establishes exceptions to the prohibitions in the earlier parts of the Bill in relation to a range of conduct, including action required by an enactment; protection of women; educational appointments; national security; the provision of benefits by charities and sporting competitions.</i>
<i>Part 15 including Schedules 24, 25, 26, 27 and 28</i>	<i>Contains a power for a Minister of the Crown to harmonise certain provisions in the Bill with changes required to comply with EU obligations. Also contains general provisions on application to the Crown, subordinate legislation, interpretation, commencement and extent.</i>

Summary of the Impact Assessments

14. The (regulatory) Impact Assessment breaks down the estimated costs and benefits according to the type of measure (for example, simplification of definitions) and the sector (for example, public or private sector). It also distinguishes between one-off and recurring costs and benefits.

Public sector costs and manpower effects

15. The Bill and regulations under it will involve some costs to the public sector. The Government estimates in the Impact Assessment that one-off public sector costs will amount to around £13 million and will arise primarily from the costs of familiarisation with the new legislation. It estimates that recurring public sector costs will amount to between £5 million and £39 million per year. These recurring costs would arise primarily from an increase in the number of discrimination cases in the courts and tribunals, involving public sector organisations. The Government estimates that the costs will be offset by benefits including from simplification and harmonisation of the legislation and resulting guidance, amounting to £13 million to

£43 million per year.

16. The main measures exclusive to the public sector are new duties on public authorities.

17. The Government expects the duty on certain public authorities to consider socio-economic disadvantage (clause 1) to result in some familiarisation costs (which the Impact Assessment estimates at around £135 per authority).

18. The general public sector equality duty (clause 143), in practice will mean that the public authorities to which the duty applies will need, when thinking about or reviewing new or existing policies, programmes and services, to factor in the impact of their decisions on people with the protected characteristics of age, race, disability, sex, pregnancy and maternity, sexual orientation, religion or belief or gender reassignment.

19. Public sector costs are more likely to be associated with the specific equality duties that will be imposed under the power provided in the Bill at clause 147 and 148. The current specific equality duties in relation to race, gender and disability have included the requirements to consult, to draw up schemes or action plans and set out processes for assessing the equality impact of new policies, programmes and services as well as monitoring performance. The Government will be consulting, during the passage of the Bill, on the approach to be adopted in setting out specific duties, and a separate Impact Assessment will accompany that consultation. The aim of the new single general duty and specific duties is to achieve cost neutrality overall.

20. A further area where costs may arise for the public sector is the application of the prohibition on age discrimination in the provision of goods, facilities and services to the provision of health and social care. The extent of the costs will depend on a number of factors, on which the Government will be consulting further during the Bill's passage through Parliament. These include: the use of the power to make exceptions from the age prohibition; the ability of organisations objectively to justify differential treatment based on age (and thus make it lawful); the timing of commencement of the prohibition and accompanying exceptions.

Other costs and benefits

21. Apart from the Government's estimated costs and benefits for the equality duty and the ban on age discrimination in services and public functions, it estimates the total additional costs and benefits of the Bill to be as follows, according to the Impact Assessment:

- in year 1 following commencement, the cost will be from £233 million to £272 million as a result of additional discrimination cases and the need for people to familiarise themselves with the new law. In the same year, the improved efficiencies as a result of the Bill will produce benefits (including

wider economic benefits of £60 million) ranging from £85 million to £115 million. Therefore, in year 1, the Bill might produce a net cost of £117 million to £187 million.

- after year 1, average costs will range from £19 million to £59 million per year (consisting mainly of the costs of additional cases) and average benefits (including wider economic benefits as above) from £88 million to £120 million.
- costs to the private sector comprise one-off costs of £211 million, consisting mainly of familiarisation costs in year 1; and recurring costs of £11 million to £17 million per year, consisting mainly of costs of additional court and tribunal cases and compensation awards.

Summary of the (Equality) Impact Assessment

22. The (Equality) Impact Assessment was drawn up in accordance with guidance issued by the Equality and Human Rights Commission. It considers the impact of the Bill in terms of how it will affect people because of race, disability, sex including pregnancy or maternity, gender reassignment, age, sexual orientation and religion or belief.

23. The assessment finds that the measures set out in the Bill are designed to achieve greater consistency in the treatment of each group; and that to this extent, members of all these groups will benefit from clearer and simpler legislation.

24. The Bill's measures which the assessment identifies as having the greatest impact on certain groups are:

- the general public sector equality duty on public authorities (clause 143) which will replace the three existing duties (relating to race, gender, disability) with a single duty covering race, sex, pregnancy and maternity, gender reassignment, disability, age, sexual orientation and religion or belief. Therefore, the new duty will extend additionally to people with certain protected characteristics (age, religion or belief, sexual orientation; and fully to transsexual people). In practice, public authorities will need to think about the impact of their policies, programmes and services on these new groups of people, as well as their impact in respect of race, gender and disability;
- the definition of direct discrimination (clause 13). This also covers, in respect of the protected characteristics (except marriage and civil partnership; or pregnancy and maternity), protection of people who associate with people with those characteristics (for example, are related to or care for them as part of their family); and protection of people who are wrongly perceived to possess those characteristics. Until now, protection on grounds of association and perception has been limited to the protected characteristics of race, religion or belief and sexual orientation. For age, where protection is only provided in

employment and related areas, there is protection in relation to perception but not association. There is no protection in relation to perception or association for disability, sex, and gender reassignment. The effect of the Bill is therefore to extend protection based on association and perception to these protected characteristics across all fields in the Bill (with the exception, in relation to age, of children below the age of 18 outside the employment field);

- for people whatever their age (except children below the age of 18, who are specifically excluded), the Bill provides protection against age discrimination in the provision of goods, facilities and services and the exercise of public functions (clauses 4, 5 and 13);
- for disabled people, the Bill provides for simplification of definitions and (Schedule 4, paragraphs 5-7) a requirement on landlords to make adjustments to common parts of let residential premises, where reasonable, and for protection against discrimination arising from a person's disability (clause 14);
- for anyone who belongs to an under-represented group, in employment, or as the recipient of a service, the Bill provides scope for voluntary positive action to increase representation (clause 152);
- from the perspective of sexual orientation and religion or belief, the main impact is through including these characteristics in the public sector equality duty (see above);
- from the perspective of race, the main impact is simplification of the criteria and tests that apply, including in indirect discrimination (clause 18). This removes a series of long-standing anomalies resulting from implementation of the Race Directive in 2000 by extending protection to colour and nationality on the same terms as for all other forms of racial discrimination.

Carbon impact

25. The impact of the Bill 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.

Territorial extent and application

26. The Bill forms part of the law of England and Wales. It also, with the exception of one clause, forms part of the law of Scotland. There are also a few provisions which form part of the law of Northern Ireland.

27. As far as territorial application is concerned, in relation to Part 5 (work) and following the precedent of the Employment Rights Act 1996, the Bill leaves it to tribunals to determine whether the law applies, depending for example on the connection between the employment relationship and Great Britain. However, the

Bill contains a power to specify territorial application of Part 5 in relation to ships and hovercraft (clause 76) and offshore work (clause 77). In relation to the non-work provisions, the Bill is again generally silent on territorial application, leaving it to the courts to determine whether the law applies. However, in a limited number of specific cases, express provision is made for particular provisions of the Bill to apply (or potentially apply) outside the United Kingdom. Thus, clause 27(9) provides for the prohibitions in respect of the provision of services or the exercise of public functions to apply in relation to race and religion or belief to the granting of entry clearance, even where the act in question takes place outside the United Kingdom. Also, clause 28 contains a similar power to that in Part 5 to specify the territorial application of the services provisions of Part 3 in relation to ships and hovercraft.

Scotland

28. The Bill contains provisions that trigger the Sewel Convention in relation to Scotland. The Scottish Ministers can already impose specific equality duties on Scottish public authorities and on the devolved functions of cross-border authorities following appropriate consultation. Provisions in this Bill will replicate this situation. The Scottish Ministers will be able to impose specific duties on relevant Scottish authorities (clause 147) and by order to amend Part 3 of Schedule 19 which lists the relevant Scottish authorities to which the general public sector equality duty applies (clause 145). A procedure will be specified in relation to imposition of specific duties on cross-border Scottish authorities added to Schedule 19 by a Minister of the Crown. The procedure enables the Scottish Ministers to impose specific duties in relation to the devolved Scottish functions of the cross-border authorities. The Bill also contains a number of provisions which confer additional powers on Scottish Ministers to make secondary legislation, for example: the power to make procedural rules for the hearing of disability discrimination claims by the Additional Support Needs Tribunals for Scotland (paragraph 10 of Schedule 17); the power, on the application of the governing body of an educational establishment (and if satisfied that it would be educationally beneficial) to modify an endowment whose benefits are restricted to persons of one sex (paragraph 2 of Schedule 14); the power to prescribe the regulator, qualifications body and relevant qualifications in Scotland (clause 91); the power to make transitional exemption orders for single-sex education authorities or grant-aided schools in Scotland which alter their admissions arrangements so as to cease being a single-sex establishment (paragraph 4 of Schedule 11); a power to make regulations in relation to designated transport facilities (clause 155).

29. The Sewel Convention provides that Westminster will not normally legislate with regard to devolved matters in Scotland without the consent of the Scottish Parliament. The Deputy First Minister of Scotland has indicated agreement to seek consent on the matters indicated in the above paragraph. If there are subsequently amendments relating to such matters which trigger the Convention, or if there are provisions which alter the executive competence of Scottish Ministers, the consent of the Scottish Parliament will be sought for them.

Wales

30. Under the Welsh devolution settlement the subject matter of equal opportunities is not devolved to Wales. Clause 2 of the Bill provides a power for Welsh Ministers to add any relevant Welsh authority to the authorities subject to the duty in clause 1 to consider socio-economic inequalities. The Bill also confers powers on the Welsh Ministers in relation to the public sector equality duty. Clause 147 gives Welsh Ministers power to impose specific duties on relevant Welsh authorities and clause 145 gives them power by order to amend Part 2 of Schedule 19 which specifies relevant Welsh authorities subject to the general public sector equality duty. A procedure is specified in relation to the imposition of specific duties on cross-border Welsh authorities added to Schedule 19 by a Minister of the Crown. The procedure enables the Welsh Ministers to impose specific duties in relation to the devolved Welsh functions of the cross-border authorities or provide for specific duties to be imposed by a Minister of the Crown only after consultation with the Welsh Ministers.

Northern Ireland

31. Equal opportunities and discrimination are “transferred matters” under the Northern Ireland Act 1998. As such, with a few exceptions the Bill does not form part of the law of Northern Ireland. As a result, the Disability Discrimination Act 1995 (as amended), which extends throughout the United Kingdom, will remain in force for Northern Ireland as the repeal of that Act only forms part of the law of England and Wales and Scotland.

32. Clause 77 enables an Order in Council to provide that Northern Ireland legislation applies in the case of persons in offshore work; and the provisions of clause 100 amend the Sex Discrimination (Election Candidates) Act 2002 with the effect that the extension of the expiry date for women-only shortlists will apply in Northern Ireland as well as Great Britain.

Compatibility with the European Convention on Human Rights

33. Section 19 of the Human Rights Act requires the Minister in charge of a Bill in either House of Parliament to make a statement about the compatibility of the provisions of the Bill with the Convention rights (as defined by section 1 of the Human Rights Act).

34. The Lord Privy Seal has stated that in her view the provisions of the Bill are compatible with the Convention rights.

Transposition of EU Directives

35. The Bill does not itself implement EU Directives for the first time. It replaces earlier legislation which has implemented EU Directives, most of which is set out in paragraph 5 above.

Commencement

36. The following provisions will come into force on the day on which the Act is passed:

- the whole of Part 15 (except clauses 193 (which brings Schedule 24 into effect) and 198 (which brings the Schedules of amendments and repeals into effect));
- clause 179(2) which repeals Schedule 20 (on rail vehicle accessibility) if the Schedule is not brought into force before the end of 2010.

37. The remainder will be brought into force on a day or days appointed by commencement order made by a Minister of the Crown.

Equality Bill (Volume I)

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EXPLANATORY NOTES

COMMENTARY ON CLAUSES

Part 1 : socio-economic inequalities

Clause 1: Public sector duty regarding socio-economic inequalities

Effect

38. This clause requires specified public authorities, when making strategic decisions such as deciding priorities and setting objectives, to consider how their decisions might help to reduce the inequalities associated with socio-economic disadvantage. Such inequalities could include inequalities in education, health, housing, crime rates, or other matters associated with socio-economic disadvantage. It will be for public authorities subject to the duty to determine which socio-economic inequalities they are in a position to influence.

39. The duty applies to the listed public authorities, which have strategic functions – these include Government departments, local authorities and NHS bodies. In addition, the duty applies to other public authorities which work in partnership with a local authority to draw up the sustainable community strategy for an area, when they are drawing up that strategy. These

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Make provision to require Ministers of the Crown and others when making strategic decisions about the exercise of their functions to have regard to the desirability of reducing socio-economic inequalities; to reform and harmonise equality law and restate the greater part of the enactments relating to discrimination and harassment related to certain personal characteristics; to enable certain employers to be required to publish information about the differences in pay between male and female employees; to prohibit victimisation in certain circumstances; to require the exercise of certain functions to be with regard to the need to eliminate discrimination and other prohibited conduct; to enable duties to be imposed in relation to the exercise of public procurement functions; to increase equality of opportunity; and for connected purposes. 15

BE IT ENACTED by the Queen’s most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

PART 1

SOCIO-ECONOMIC INEQUALITIES 20

1 Public sector duty regarding socio-economic inequalities

- (1) An authority to which this section applies must, when making decisions of a strategic nature about how to exercise its functions, have due regard to the desirability of exercising them in a way that is designed to reduce the inequalities of outcome which result from socio-economic disadvantage. 25
- (2) In deciding how to fulfil a duty to which it is subject under subsection (1), an authority must take into account any guidance issued by a Minister of the Crown.
- (3) The authorities to which this section applies are—
 - (a) a Minister of the Crown; 30

partner public authorities are specified in the Local Government and Public Involvement in Health Act 2007.

40. Public authorities are required to take into account guidance issued by a Minister of the Crown when deciding how to fulfil the duty.

41. The duty does not apply to strategic decisions taken in relation to functions carried out in or in relation to Scotland, except where such matters are reserved to the United Kingdom Parliament. Nor does it require public authorities to consider how to reduce inequalities resulting from people being subject to immigration control.

Background

42. This is a new provision.

Examples

- The duty could lead a public body with strategic functions in relation to health to allocate money from its agreed budget to a separate funding stream which targets geographical areas with the worst health outcomes.
- Under the duty, a Regional Development Agency (RDA), when reviewing its funding programmes, could decide to amend the selection criteria for a programme designed to promote business development, to encourage more successful bids from deprived areas. The same RDA could also decide to continue a programme aimed at generating more jobs in the IT sector which, despite not contributing to a reduction in socio-economic inequalities, has wider economic benefits in attracting more well-paid jobs to the region. This decision would comply with the duty, because the RDA would have given due consideration to reducing socio-economic inequalities.
- The duty could lead a local education authority, when conducting a strategic review of its school applications process, to analyse the impact of its campaign to inform parents about the applications process, looking particularly at different neighbourhoods. If the results suggest that parents in more deprived areas are less likely to access or make use of the information provided, the authority could decide to carry out additional work in those neighbourhoods in future campaigns, to ensure that children from deprived areas have a better chance of securing a place at their school of choice.

Clause 2: Power to amend section 1

Effect

43. This clause enables a Minister of the Crown or, in the case of Welsh bodies, the Welsh Ministers to make regulations amending the list of public authorities which are subject to the duty in clause 1, and to limit or extend the functions of a listed body to which the duty applies.

44. It also provides that a Minister of the Crown may not apply the duty to any devolved Welsh or Scottish functions.

- (b) a government department other than the Security Service, the Secret Intelligence Service or the Government Communications Headquarters;
 - (c) a county council or district council in England;
 - (d) the Greater London Authority; 5
 - (e) a London borough council;
 - (f) the Common Council of the City of London in its capacity as a local authority;
 - (g) the Council of the Isles of Scilly;
 - (h) a Strategic Health Authority established under section 13 of the 10 National Health Service Act 2006, or continued in existence by virtue of that section;
 - (i) a Primary Care Trust established under section 18 of that Act, or continued in existence by virtue of that section;
 - (j) a regional development agency established by the Regional 15 Development Agencies Act 1998;
 - (k) a police authority established for an area in England.
- (4) This section also applies to an authority that –
- (a) is a partner authority in relation to a responsible local authority, and
 - (b) does not fall within subsection (3), 20
- but only in relation to its participation in the preparation or modification of a sustainable community strategy.
- (5) In subsection (4) –
- “partner authority” has the meaning given by section 104 of the Local Government and Public Involvement in Health Act 2007; 25
 - “responsible local authority” has the meaning given by section 103 of that Act;
 - “sustainable community strategy” means a strategy prepared under section 4 of the Local Government Act 2000.
- (6) The reference to functions in subsection (1) does not include any functions 30 that –
- (a) are exercisable in or as regards Scotland, and
 - (b) do not relate to reserved matters (within the meaning of the Scotland Act 1998).
- (7) The reference to inequalities in subsection (1) does not include any inequalities 35 experienced by a person as a result of being a person subject to immigration control within the meaning given by section 115(9) of the Immigration and Asylum Act 1999.

2 Power to amend section 1

- (1) A Minister of the Crown may by regulations amend section 1 – 40
- (a) to add a public authority to the authorities that are subject to the duty under subsection (1) of that section;
 - (b) to remove an authority from those that are subject to the duty;
 - (c) to make the duty apply, in the case of a particular authority, only in relation to certain functions that it has; 45
 - (d) in the case of an authority to which the application of the duty is already restricted to certain functions, to remove or alter the restriction.

Background

45. This is a new provision.

Examples

- A new public body is created in England to deal with regeneration. The Minister decides that it should give consideration to reducing socio-economic inequalities when making strategic decisions. The Minister makes regulations to add the body to the list in clause 1.
- Welsh Ministers decide they would like the duty to apply to local authorities in Wales, starting a year after the duty starts to apply in England. They secure agreement to this from the relevant Minister of the Crown, and make regulations to apply the duty to those bodies from their proposed commencement date.

Clause 3: Enforcement

Effect

46. This clause ensures that individuals have no recourse to private law because of a failure by a public authority to comply with the duty imposed by clause 1. This means that individuals will not be able to claim damages for breach of statutory duty for a breach of this duty. However, this clause does not prevent an individual from bringing judicial review proceedings against a public authority which is covered by the duty, if he or she believes the public authority has not considered socio-economic disadvantage when taking decisions of a strategic nature.

- (2) In subsection (1) “public authority” means an authority that has functions of a public nature.
- (3) Provision made under subsection (1) may not impose a duty on an authority in relation to any devolved Scottish functions or devolved Welsh functions.
- (4) The Welsh Ministers may by regulations amend section 1 – 5
 - (a) to add a relevant Welsh authority to the authorities that are subject to the duty under subsection (1) of that section;
 - (b) to remove a relevant Welsh authority from those that are subject to the duty;
 - (c) to make the duty apply, in the case of a particular relevant Welsh authority, only in relation to certain functions that it has;
 - (d) in the case of a relevant Welsh authority to which the application of the duty is already restricted to certain functions, to remove or alter the restriction.
- (5) In subsection (4) “relevant Welsh authority” means an authority whose ¹⁵ functions –
 - (a) are exercisable only in or as regards Wales,
 - (b) are wholly or mainly devolved Welsh functions, and
 - (c) correspond or are similar to those of an authority for the time being specified in subsection (3) of section 1 or referred to in subsection (4) of ²⁰ that section.
- (6) The Welsh Ministers may not make regulations under subsection (4) without the consent of a Minister of the Crown.
- (7) Regulations under this section may make any amendments of section 1 that appear to the Minister or Ministers to be necessary or expedient in ²⁵ consequence of provision made under subsection (1) or (as the case may be) subsection (4).
- (8) For the purposes of this section –
 - (a) a function is a devolved Scottish function if it is exercisable in or as regards Scotland and it does not relate to reserved matters (within the ³⁰ meaning of the Scotland Act 1998);
 - (b) a function is a devolved Welsh function if it relates to a matter in respect of which functions are exercisable by the Welsh Ministers, the First Minister for Wales or the Counsel General to the Welsh Assembly Government, or to a matter within the legislative competence of the ³⁵ National Assembly for Wales.

3 Enforcement

A failure in respect of a performance of a duty under section 1 does not confer a cause of action at private law.

Background

47. This is a new provision.

Examples

- An individual feels that the socio-economic disadvantages he faces should entitle him to a flat in a new social housing development, ahead of those whom he judges to be less disadvantaged. However, there is no provision in this Bill for him to bring a case against the local council or other public authority in such circumstances.

Part 2: key concepts

Chapter 1: Protected characteristics

Clause 4: The protected characteristics

Effect

48. This clause lists the characteristics that are protected by subsequent provisions in the Bill.

Background

49. The protected characteristics listed are the same as those currently protected by discrimination legislation in Great Britain.

Clause 5: Age

Effect

50. This clause establishes that where the Bill refers to the protected characteristic of age, it means a person belonging to a particular age group. An age group includes people of the same age and people of a range of ages. Where people fall in the same age group they share the protected characteristic of age.

Background

51. This clause replaces a provision in the Employment Equality (Age) Regulations 2006.

Examples

- An age group would include “over fifties” or twenty-one year olds.

PART 2

EQUALITY: KEY CONCEPTS

CHAPTER 1

PROTECTED CHARACTERISTICS

- | | | |
|----------|---|----------|
| 4 | The protected characteristics | 5 |
| | The following characteristics are protected characteristics – | |
| | age; | |
| | disability; | |
| | gender reassignment; | |
| | marriage and civil partnership; | 10 |
| | pregnancy and maternity; | |
| | race; | |
| | religion or belief; | |
| | sex; | |
| | sexual orientation. | 15 |
-
- | | | |
|----------|---|--|
| 5 | Age | |
| (1) | In relation to the protected characteristic of age – | |
| | (a) a reference to a person who has a particular protected characteristic is a reference to a person of a particular age group; | |
| | (b) a reference to persons who share a protected characteristic is a reference to persons of the same age group. | |
| (2) | A reference to an age group is a reference to a group of persons defined by reference to age, whether by reference to a particular age or to a range of ages. | |

- A person aged twenty-one does not share the same characteristic of age with “people in their forties”. However, a person aged twenty-one and people in their forties can share the characteristic of being “under fifty”.

Clause 6: Disability

Effect

52. This clause establishes who is to be considered as having the protected characteristic of disability and is a disabled person for the purposes of the Bill. With Schedule 1 and regulations to be made under that Schedule, it will also establish what constitutes a disability. Where people have the same disability, they share the protected characteristic of disability.

53. It provides for Ministers to issue statutory guidance to help those who need to decide whether a person has a disability for the purposes of the Bill.

Background

54. This clause, Schedule 1, and regulations to be made under Schedule 1 replaces similar provisions in the Disability Discrimination Act 1995 and provisions in secondary legislation made under that Act.

Examples

- A man works in a warehouse, loading and unloading heavy stock. He develops a long-term heart condition and no longer has the ability to lift or move heavy items of stock at work. Lifting and moving such heavy items is not a normal day-to-day activity. However, he is also unable to lift, carry or move moderately heavy everyday objects such as chairs, at work or around the home. This is an adverse effect on a normal day-to-day activity. He is likely to be considered a disabled person for the purposes of the Bill.
- A young woman has developed colitis, an inflammatory bowel disease. The condition is a chronic one which is subject to periods of remissions and flare-ups. During a flare-up she experiences severe abdominal pain and bouts of diarrhoea. This makes it very difficult for her to travel or go to work. This has a substantial adverse effect on her ability to carry out normal day-to-day activities. She is likely to be considered a disabled person for the purposes of the Bill.

Clause 7: Gender reassignment

Effect

55. This clause defines the protected characteristic of gender reassignment for the purposes of the Bill as where a person has proposed, started or completed a process to change his or her sex. A transsexual person has the protected characteristic of gender reassignment.

56. The clause also explains that a reference to people who have or share the common characteristic of gender reassignment is a reference to all transsexual people. A woman transitioning to being a man and a man transitioning to being a woman both share the characteristic of gender reassignment, as does a person who has only just started out on the process of changing his or her sex and a person who has completed the process.

6 Disability

- (1) A person (P) has a disability if—
 - (a) P has a physical or mental impairment, and
 - (b) the impairment has a substantial and long-term adverse effect on P's ability to carry out normal day-to-day activities. 5
- (2) A reference to a disabled person is a reference to a person who has a disability.
- (3) In relation to the protected characteristic of disability—
 - (a) a reference to a person who has a protected characteristic is a reference to a person who has a particular disability;
 - (b) a reference to persons who share a protected characteristic is a¹⁰ reference to persons who have the same disability.
- (4) This Act (except Part 12 and section 183) applies in relation to a person who has had a disability as it applies in relation to a person who has the disability; accordingly, except in that Part and that section—
 - (a) a reference (however expressed) to a person who has a disability¹⁵ includes a reference to a person who has had the disability;
 - (b) a reference (however expressed) to a person who does not have a disability includes a reference to a person who has not had the disability.
- (5) A Minister of the Crown may issue guidance about matters to be taken into²⁰ account in deciding any question for the purposes of subsection (1).
- (6) Schedule 1 (disability: supplementary provision) has effect.

7 Gender reassignment

- (1) A person has the protected characteristic of gender reassignment if the person is proposing to undergo, is undergoing or has undergone a process (or part of²⁵ a process) for the purpose of reassigning the person's sex by changing physiological or other attributes of sex.
- (2) A reference to a transsexual person is a reference to a person who has the protected characteristic of gender reassignment.
- (3) In relation to the protected characteristic of gender reassignment— 30

Background

57. This clause replaces similar provisions in the Sex Discrimination Act 1975 but changes the definition by no longer requiring a person to be under medical supervision to come within it.

Examples

- A person who was born physically male decides to spend the rest of his life living as a woman. He declares his intention to his manager at work, who makes appropriate arrangements, and she then starts life at work and home as a woman. After discussion with her doctor and a Gender Identity Clinic, she starts hormone treatment and after several years she goes through gender reassignment surgery. She would be undergoing gender reassignment for the purposes of the Bill.
- An unemployed person who was born physically female decides to spend the rest of her life as a man. He starts and continues to live as a man. He decides not to seek medical advice as he successfully ‘passes’ as a man without the need for any medical intervention. He would be undergoing gender reassignment for the purposes of the Bill.

Clause 8: Marriage and civil partnership

Effect

58. This clause defines the protected characteristic of marriage and civil partnership. People who are not married or civil partners do not have this characteristic.

59. The clause also explains that people who have or share the common characteristics of being married or of being a civil partner can be described as being in a marriage or civil partnership. A married man and a woman in a civil partnership both share the protected characteristic of marriage and civil partnership.

Background

60. This clause replaces similar provisions in the Sex Discrimination Act 1975.

Examples

- A person who is engaged to be married is not married and therefore does not have this protected characteristic.
- A divorcee or a person whose civil partnership has been dissolved is not married or in a civil partnership and therefore does not have this protected characteristic.

Clause 9: Race

Effect

61. This clause defines the protected characteristic of race. For the purposes of the Bill, “race” includes colour, nationality and ethnic or national origin.

- (a) a reference to a person who has a particular protected characteristic is a reference to a transsexual person;
- (b) a reference to persons who share a protected characteristic is a reference to transsexual persons.

8 Marriage and civil partnership 5

- (1) A person has the protected characteristic of marriage and civil partnership if the person is married or a civil partner.
- (2) In relation to the protected characteristic of marriage and civil partnership –
 - (a) a reference to a person who has a particular protected characteristic is a reference to a person who is married or is a civil partner; 10
 - (b) a reference to persons who share a protected characteristic is a reference to persons who are married or are civil partners.

9 Race

- (1) Race includes –

62. The clause explains that people who have or share characteristics of colour, nationality or ethnic or national origin can be described as belonging to a particular racial group. A racial group can be made up of two or more different racial groups.

Background

63. This clause replaces similar provisions in the Race Relations Act 1976.

Examples

- Colour includes being black or white.
- Nationality includes being a British, Australian or Swiss citizen.
- Ethnic or national origin includes being from a Roma background or of Chinese heritage.
- A racial group could be “black Britons” which would encompass those people who are both black and who are British citizens.

Clause 10: Religion or belief

Effect

64. This clause defines the protected characteristic of religion or philosophical belief or lack of such religion or belief. It is a broad definition in line with Article 9 of the European Convention on Human Rights. The main limitation for the purposes of Article 9 is that the religion or belief must have a clear structure and belief system. Denominations or sects within a religion can be considered to be a religion or belief, such as Protestants and Catholics within Christianity. Political beliefs and beliefs in scientific theories are not religious or philosophical beliefs for these purposes. This clause provides that people who are of the same religion or belief share the protected characteristic of religion or belief. Depending on the context this could mean people who, for example, share the characteristic of being Protestant or people who share the characteristic of being Christian.

Background

65. This clause replaces similar provisions in the Employment Equality (Religion or Belief) Regulations 2003 and the Equality Act 2006.

Examples

- The Baha’i faith, Buddhism, Christianity, Hinduism, Islam, Jainism, Judaism, Rastafarianism, Sikhism and Zoroastrianism are all religions for the purposes of this provision.
- Communism, Darwinism, Fascism and Socialism are not beliefs that fall within the definition; nor is adherence to a particular football team. However, beliefs such as atheism and humanism would be covered.

- (a) colour;
 - (b) nationality;
 - (c) ethnic or national origin.
- (2) In relation to the protected characteristic of race –
- (a) a reference to a person who has a particular protected characteristic is 5 a reference to a person of a particular racial group;
 - (b) a reference to persons who share a protected characteristic is a reference to persons of the same racial group.
- (3) A racial group is a group of persons defined by reference to race; and a reference to a person’s racial group is a reference to a racial group into which¹⁰ the person falls.
- (4) The fact that a racial group comprises two or more distinct racial groups does not prevent it from constituting a particular racial group.

10 Religion or belief

- (1) Religion means any religion and a reference to religion includes a reference to¹⁵ a lack of religion.
- (2) Belief means any religious or philosophical belief and a reference to belief includes a reference to a lack of belief.
- (3) In relation to the protected characteristic of religion or belief –
- (a) a reference to a person who has a particular protected characteristic is²⁰ a reference to a person of a particular religion or belief;
 - (b) a reference to persons who share a protected characteristic is a reference to persons who are of the same religion or belief.

Clause 11: Sex

Effect

66. This clause is a new provision which explains that references in the Bill to people having the protected characteristic of sex are to mean being a man or a woman, and that men share this characteristic with other men, and women with other women.

Clause 12: Sexual orientation

Effect

67. This clause defines the protected characteristic of sexual orientation as being a person's sexual orientation towards:

- people of the same sex as him or her (in other words the person is a gay man or a lesbian)
- people of the opposite sex from him or her (the person is heterosexual)
- people of both sexes (the person is bisexual).

68. It also explains that references to people sharing a sexual orientation mean that they are of the same sexual orientation. It relates to a person's feelings rather than their actions.

Background

69. The definition is designed to replicate the effect of similar provisions in the Employment Equality (Sexual Orientation) Regulations 2003 and the Equality Act 2006.

Examples

- A man who experiences sexual attraction towards both men and women is 'bisexual' in terms of sexual orientation even if he has only had relationships with women.
- A man and a woman who are both attracted only to people of the opposite sex from them share a sexual orientation.
- A man who is attracted only to other men is a gay man. A woman who is attracted only to other women is a lesbian. So a gay man and a lesbian share a sexual orientation.

11 Sex

In relation to the protected characteristic of sex –

- (a) a reference to a person who has a particular protected characteristic is a reference to a man or to a woman;
- (b) a reference to persons who share a protected characteristic is a reference to persons of the same sex.

12 Sexual orientation

(1) Sexual orientation means a person's sexual orientation towards –

- (a) persons of the same sex,
- (b) persons of the opposite sex, or
- (c) persons of either sex.

10

(2) In relation to the protected characteristic of sexual orientation –

- (a) a reference to a person who has a particular protected characteristic is a reference to a person who is of a particular sexual orientation;
- (b) a reference to persons who share a protected characteristic is a reference to persons who are of the same sexual orientation.

Chapter 2: Prohibited conduct

Clause 13: Direct discrimination

Effect

70. This clause defines direct discrimination for the purposes of the Bill.

71. Direct discrimination occurs where the reason for a person being treated less favourably than another is a protected characteristic listed in clause 4. This definition is broad enough to cover cases where the less favourable treatment is because of the victim's association with someone who has that characteristic (for example, is disabled), or because the victim is wrongly thought to have it (for example, a particular religious belief).

72. However, a different approach applies where the reason for the treatment is marriage or civil partnership, in which case only less favourable treatment because of the victim's status amounts to discrimination.

73. This clause uses the words "because of" where the current legislation contains various definitions using the words "on grounds of". This change in wording does not change the legal meaning of the definition, but rather is designed to make it more accessible to the ordinary user of the Bill.

74. The clause also provides that:

- for age, different treatment that is justified as a proportionate means of meeting a legitimate aim is not direct discrimination;
- in relation to disability it is not discrimination to treat a disabled person more favourably than a person who is not disabled;
- racial segregation is always discriminatory;
- discrimination because of religious belief can occur even where both discriminator and victim are of the same religion or belief;
- in non-work cases, treating a woman less favourably because she is breast-feeding a baby who is more than six months old amounts to direct sex discrimination; and
- men cannot claim privileges for women connected with pregnancy or childbirth.

Background

75. The clause replaces the definitions of direct discrimination in current legislation and is designed to provide a more uniform approach by removing the current specific requirement for the victim of the discrimination to have one of the protected characteristics of age, disability, gender reassignment and sex. Accordingly, it brings the position in relation to these

CHAPTER 2

PROHIBITED CONDUCT

Discrimination

13 Direct discrimination

- (1) A person (A) discriminates against another (B) if, because of a protected 5 characteristic, A treats B less favourably than A treats or would treat others.
- (2) If the protected characteristic is age, A does not discriminate against B if A can show A's treatment of B to be a proportionate means of achieving a legitimate aim.
- (3) If the protected characteristic is disability, A does not discriminate against B¹⁰ only because –
 - (a) A treats a third person who has a disability in a way which is permitted by or under this Act,
 - (b) B does not have the disability, and
 - (c) A does not treat B in that way. 15
- (4) If the protected characteristic is marriage and civil partnership, this section applies to a contravention of Part 5 (work) only if the treatment is because B is married or a civil partner.
- (5) If the protected characteristic is race, less favourable treatment includes segregating B from others. 20
- (6) If the protected characteristic is religion or belief, it does not matter whether the religion or belief is also A's.
- (7) If the protected characteristic is sex –
 - (a) less favourable treatment of a woman includes less favourable treatment of her because she is breast-feeding; 25
 - (b) in a case where B is a man, no account is to be taken of special treatment afforded to a woman in connection with pregnancy or childbirth.
- (8) Subsection (7)(a) does not apply for the purposes of Part 5 (work).
- (9) This section is subject to sections 16(6) and 17(7).

protected characteristics into line with that for race, sexual orientation and religion or belief in the current legislation.

Examples

- If an employer recruits a man rather than a woman because she assumes that women do not have the strength to do the job, this would be direct sex discrimination.
- If a Muslim shopkeeper refuses to serve a Muslim woman because she is married to a Christian, this would be direct religious or belief-related discrimination on the basis of her association with her husband.
- If an employer rejects a job application form from a white man whom he wrongly thinks is black, because the applicant has an African-sounding name, this would constitute direct race discrimination based on the employer's mistaken perception.
- If an employer advertising a vacancy makes it clear in the advert that Roma need not apply, this would amount to direct race discrimination against a Roma who might reasonably have considered applying for the job but was deterred from doing so because of the advertisement.

Clause 14: Discrimination arising from disability

Effect

76. This clause provides that it is discrimination to treat a disabled person in a particular way which, because of his or her disability, amounts to treating him or her badly and the treatment cannot be shown to be justified. For this type of discrimination to occur, the employer or other person must know, or could reasonably be expected to know, that the disabled person has a disability. Also the person who treats the disabled person in that way may still be liable for discrimination under this provision, whether or not the duty to make reasonable adjustments has been complied with.

Background

77. This clause is a new provision. The Disability Discrimination Act 1995 provided protection from disability related discrimination but following the judgment of the House of Lords in the case of *London Borough of Lewisham v Malcolm* [2008] UKHL 43, those provisions no longer provided the degree of protection from disability related discrimination that is intended for disabled people. This clause is aimed at re-establishing an appropriate balance between enabling a disabled person to make out a case of experiencing a detriment which arises because of his or her disability, and providing an opportunity for an employer or other person to defend the treatment.

Example

- An employee develops a visual impairment and can no longer operate a computer without assistive technology. The employer makes an adjustment by providing a Braille keyboard, but the firm's computer system is not compatible with assistive software. The employee is dismissed because he cannot do as much work as a non-disabled colleague. If the employer sought to justify the dismissal, he would need to show that it was a proportionate means of achieving a legitimate aim.

14 Discrimination arising from disability

- (1) A person (A) discriminates against a disabled person (B) if—
 - (a) A treats B in a particular way,
 - (b) because of B’s disability, the treatment amounts to a detriment, and
 - (c) A cannot show that the treatment is a proportionate means of achieving 5 a legitimate aim.
- (2) Subsection (1) does not apply if A shows that A did not know, and could not reasonably have been expected to know, that B had the disability.
- (3) It does not matter whether A has complied with a duty to make reasonable adjustments in relation to B. 10

- A person with a learning disability is ejected from a restaurant because she is eating in a messy way, which is an effect of her disability. As the restaurant owner shows that he did not know, or could not reasonably be expected to know, that she was disabled, he has not subjected her to a detriment because of her disability.
- If, in the example above, the restaurant owner had known that the customer was disabled, he would have subjected her to discrimination arising from her disability, unless he could show ejecting her was a proportionate means of achieving a legitimate aim.

Clause 15: Gender reassignment discrimination: cases of absence from work

Effect

78. This clause provides that it is discrimination against transsexual people to treat them less favourably for being absent from work because they propose to undergo, are undergoing or have undergone gender reassignment than they would be treated if they were absent because they were ill or injured. Transsexual people are also discriminated against in relation to absences relating to their gender reassignment if they are treated less favourably than they would be treated for absence for reasons other than sickness or injury and it is unreasonable to treat them less favourably.

Background

79. This clause is designed to replicate the effect of a similar provision in the Sex Discrimination Act 1975.

Example

- A female to male transsexual person takes time off work to receive hormone treatment as part of his gender reassignment. His employer cannot discriminate against him because of his absence from work for this purpose.

Clause 16: Pregnancy and maternity discrimination: non-work cases

Effect

80. This clause defines what it means to discriminate because of a woman's pregnancy or maternity, as distinct from her sex, in specified situations outside work. It protects a woman from discrimination because of her current or a previous pregnancy. It also protects her from maternity discrimination, which includes treating her less favourably because she is breastfeeding, for 26 weeks after giving birth and provides that pregnancy or maternity discrimination as defined cannot be treated as sex discrimination.

Background

81. This clause is designed to replicate the effect of similar provisions in the Sex Discrimination Act 1975 and extend the protection to cover discrimination in relation to public functions, further and higher education, and to associations, where no such protection currently exists.

15 Gender reassignment discrimination: cases of absence from work

- (1) This section has effect for the purposes of the application of Part 5 (work) to the protected characteristic of gender reassignment.
- (2) A person (A) discriminates against a transsexual person (B) if, in relation to an absence of B's that is because of gender reassignment, A treats B less 5 favourably than A would treat B if—
 - (a) B's absence was because of sickness or injury, or
 - (b) B's absence was for some other reason and it is not reasonable for B to be treated less favourably.
- (3) A person's absence is because of gender reassignment if it is because the 10 person is proposing to undergo, is undergoing or has undergone the process (or part of the process) mentioned in section 7(1).

16 Pregnancy and maternity discrimination: non-work cases

- (1) This section has effect for the purposes of the application to the protected characteristic of pregnancy and maternity of— 15
 - (a) Part 3 (services and public functions);
 - (b) Part 4 (premises);
 - (c) Chapter 2 of Part 6 (further or higher education);
 - (d) Part 7 (associations).
- (2) A person (A) discriminates against a woman if A treats her less favourably 20 because of a pregnancy of hers.
- (3) A person (A) discriminates against a woman if, in the period of 26 weeks beginning with the day on which she gives birth, A treats her less favourably because she has given birth.

Examples

- A café owner must not ask a woman to leave his café because she is breast-feeding her baby.
- A shopkeeper must not refuse to sell cigarettes to a woman because she is pregnant.

Clause 17: Pregnancy and maternity discrimination: work cases

Effect

82. This clause defines what it means to discriminate in the workplace because of a woman's pregnancy or pregnancy related illness, or because she takes or tries to take maternity leave. The period during which protection from these types of discrimination is provided is the period of the pregnancy and any statutory maternity leave to which she is entitled. During this period, these types of discrimination cannot be treated as sex discrimination.

Background

83. This clause is designed to replicate the effect of similar provisions in the Sex Discrimination Act 1975.

Examples

- An employer must not demote or dismiss an employee, or deny her training or promotion opportunities, because she is pregnant or on maternity leave.
- An employer must not take into account an employee's period of absence due to pregnancy-related illness when making a decision about her employment.

-
- (4) The reference in subsection (3) to treating a woman less favourably because she has given birth includes, in particular, a reference to treating her less favourably because she is breast-feeding.
- (5) For the purposes of this section, the day on which a woman gives birth is the day on which – 5
- (a) she gives birth to a living child, or
 - (b) she gives birth to a dead child (more than 24 weeks of the pregnancy having passed).
- (6) Section 13, so far as relating to sex discrimination, does not apply to anything done in relation to a woman in so far as – 10
- (a) it is for the reason mentioned in subsection (2), or
 - (b) it is in the period, and for the reason, mentioned in subsection (3).
- (7) In this section and section 17, a reference to a woman being treated less favourably is a reference to her being treated less favourably than is reasonable. 15

17 Pregnancy and maternity discrimination: work cases

- (1) This section has effect for the purposes of the application of Part 5 (work) to the protected characteristic of pregnancy and maternity.
- (2) A person (A) discriminates against a woman if, in the protected period in relation to a pregnancy of hers, A treats her less favourably – 20
- (a) because of the pregnancy, or
 - (b) because of illness suffered by her as a result of it.
- (3) A person (A) discriminates against a woman if A treats her less favourably because she is on compulsory maternity leave.
- (4) A person (A) discriminates against a woman if A treats her less favourably 25 because she is exercising or seeking to exercise, or has exercised or sought to exercise, the right to ordinary or additional maternity leave.
- (5) For the purposes of subsection (2), if the treatment of a woman is in implementation of a decision taken in the protected period, the treatment is to be regarded as occurring in that period (even if the implementation is not until 30 after the end of that period).
- (6) The protected period, in relation to a woman’s pregnancy, begins when the pregnancy begins, and ends –
- (a) if she has the right to ordinary and additional maternity leave, at the end of the additional maternity leave period or (if earlier) when she 35 returns to work after the pregnancy;
 - (b) if she does not have that right, at the end of the period of 2 weeks beginning with the end of the pregnancy.
- (7) Section 13, so far as relating to sex discrimination, does not apply to treatment of a woman in so far as – 40
- (a) it is in the protected period in relation to her and is for a reason mentioned in paragraph (a) or (b) of subsection (2), or
 - (b) it is for a reason mentioned in subsection (3) or (4).

Clause 18: Indirect discrimination

Effect

84. This clause defines indirect discrimination for the purposes of the Bill.

85. Indirect discrimination occurs when a policy which applies in the same way for everybody has an effect which particularly disadvantages people with a protected characteristic because they have that characteristic. Where a particular group is disadvantaged in this way, a person in that group is indirectly discriminated against if he or she is put at that disadvantage, unless the person applying the policy can justify it.

86. Indirect discrimination can also occur when a policy would put a person at a disadvantage if it were applied. This means, for example, that where a person is deterred from doing something, such as applying for a job or taking up an offer of service, because a policy which would be applied would result in his or her disadvantage, this may also be indirect discrimination.

87. Indirect discrimination applies to all the protected characteristics, apart from pregnancy and maternity.

Background

88. This clause replaces similar provisions in current legislation. It applies the EU definition of indirect discrimination, replacing pre-existing domestic definitions in the Sex Discrimination Act 1975 and the Race Relations Act 1976, to ensure uniformity of protection across all the protected characteristics in all areas where it applies.

89. Examples

- A woman is forced to leave her job because her employer operates a practice that staff must work in a shift pattern which she is unable to comply with because she needs to look after her children at particular times of day, and no allowances are made because of those needs. This would put women (who are shown to be more likely to be responsible for childcare) at a disadvantage, and the employer will have indirectly discriminated against the woman unless the practice can be justified.
- An observant Jewish engineer who is seeking an advanced diploma decides (even though he is sufficiently qualified to do so) not to apply to a specialist training company because it invariably undertakes the selection exercises for the relevant course on Saturdays. The company will have indirectly discriminated against the engineer unless the practice can be justified.

Clause 19: Adjustments for disabled persons

Effect

89. This clause defines what is meant by the duty to make reasonable adjustments for the purposes of the Bill and lists the Parts of the Bill which impose the duty and the related Schedules which stipulate how the duty will apply in relation to each Part. The duty comprises three requirements which apply where a disabled person is placed at a substantial disadvantage

18 Indirect discrimination

- (1) A person (A) discriminates against another (B) if A applies to B a provision, criterion or practice which is discriminatory in relation to a relevant protected characteristic of B's.
- (2) For the purposes of subsection (1), a provision, criterion or practice is discriminatory in relation to a relevant protected characteristic of B's if—
- (a) A applies, or would apply, it to persons with whom B does not share the characteristic,
 - (b) it puts, or would put, persons with whom B shares the characteristic at a particular disadvantage when compared with persons with whom B does not share it,
 - (c) it puts, or would put, B at that disadvantage, and
 - (d) A cannot show it to be a proportionate means of achieving a legitimate aim.
- (3) The relevant protected characteristics are— 15
- age;
 - disability;
 - gender reassignment;
 - marriage and civil partnership;
 - race; 20
 - religion or belief;
 - sex;
 - sexual orientation.

Adjustments for disabled persons

19 Duty to make adjustments

25

- (1) Where this Act imposes a duty to make reasonable adjustments on a person, this section, sections 20 and 21 and the applicable Schedule apply; and for those purposes, a person on whom the duty is imposed is referred to as A.

in comparison to non-disabled people. The first requirement covers changing the way things are done (such as changing a practice), the second covers making changes to the built environment (such as providing access to a building), and the third covers providing auxiliary aids and services (such as providing special computer software or providing a different service).

Background

90. This clause replaces similar provisions in the Disability Discrimination Act 1995. However, the Bill makes some changes to provide consistency across the reasonable adjustment provisions. It contains only one threshold for the reasonable adjustment duty – “substantial disadvantage” – in place of the two thresholds in the Disability Discrimination Act 1995. It also reflects current practice by applying the third requirement explicitly to employment. And it introduces consistency of language by referring to “provision, criterion or practice” rather than “practice, policy or procedure” used in some provisions in the Disability Discrimination Act 1995.

Examples

- A utility company knows that significant numbers of its customers have a sight impairment and will have difficulty reading invoices and other customer communications in standard print, so must consider how to make its communications more accessible. As a result, it might provide communications in large print to customers who require this.
- A bank is obliged to consider reasonable adjustments for a newly recruited financial adviser who is a wheelchair user and who would have difficulty negotiating her way around the customer area. In consultation with the new adviser, the bank rearranges the layout of furniture in the customer area and installs a new desk. These changes result in the new adviser being able to work alongside her colleagues.
- The organiser of a large public conference knows that hearing impaired delegates are likely to attend. She must therefore consider how to make the conference accessible to them. Having asked delegates what adjustments they need, she decides to have a palantypist and an induction loop to make sure that the hearing impaired delegates are not substantially disadvantaged.

Clause 20: Failure to comply with duty

Effect

91. This clause has the effect that a failure to comply with any one of the reasonable adjustment requirements amounts to discrimination against a disabled person to whom the duty is owed. It also provides that, apart from under this Bill, no other action can be taken for failure to comply with the duty.

- (2) The duty comprises the following three requirements.
- (3) The first requirement is a requirement, where a provision, criterion or practice of A’s puts a disabled person at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled, to take such steps as it is reasonable to have to take to avoid the disadvantage. 5
- (4) The second requirement is a requirement, where a physical feature puts a disabled person at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled, to take such steps as it is reasonable to have to take to avoid the disadvantage.
- (5) The third requirement is a requirement, where a disabled person would, but 10 for the provision of an auxiliary aid, be put at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled, to take such steps as it is reasonable to have to take to provide the auxiliary aid.
- (6) A reference in section 20 or 21 or an applicable Schedule to the first, second or third requirement is to be construed in accordance with this section. 15
- (7) A reference in this section, section 20 or 21 or an applicable Schedule (apart from paragraphs 2 to 4 of Schedule 4) to a physical feature is a reference to –
- (a) a feature arising from the design or construction of a building;
 - (b) a feature of an approach to, exit from or access to a building;
 - (c) a fixture or fitting, or furniture, furnishings, materials, equipment or 20 other chattels, in or on premises;
 - (d) any other physical element or quality.
- (8) A reference in this section, section 20 or 21 or an applicable Schedule to an auxiliary aid includes a reference to an auxiliary service.
- (9) A reference in this section or an applicable Schedule to chattels is to be read, in 25 relation to Scotland, as a reference to moveable property.
- (10) The applicable Schedule is, in relation to the Part of this Act specified in the first column of the Table, the Schedule specified in the second column.

<i>Part of this Act</i>	<i>Applicable Schedule</i>	
Part 3 (services and public functions)	Schedule 2	30
Part 4 (premises)	Schedule 4	
Part 5 (work)	Schedule 8	
Part 6 (education)	Schedule 13	
Part 7 (associations)	Schedule 15	
Each of the Parts mentioned above	Schedule 21	35

20 Failure to comply with duty

- (1) A failure to comply with the first, second or third requirement is a failure to comply with a duty to make reasonable adjustments.

Background

92. This clause replaces similar provisions in the Disability Discrimination Act 1995.

Examples

- An employee develops carpal tunnel syndrome which makes it difficult for him to use a standard keyboard. The employer refuses to provide a modified keyboard or voice-activated software which would overcome the disadvantage. This could be an unlawful failure to make a reasonable adjustment which would constitute discrimination.
- A private club has a policy of refusing entry to male members not wearing a collar and tie for evening events. A member with psoriasis (a severe skin condition which can make the wearing of a collar and tie extremely painful) could bring a discrimination claim if the club refused to consider waiving this policy for him.
- A visually-impaired prospective tenant asks a letting agent to provide a copy of a tenancy agreement in large print. The agent refuses even though the document is held on computer and could easily be printed in a larger font. This is likely to be an unlawful failure to make a reasonable adjustment which would constitute discrimination.

Clause 21: Regulations

Effect

93. This clause provides a power for a Minister of the Crown to make regulations about a range of issues relating to the reasonable adjustment duty, such as the circumstances in which a particular step will be regarded as reasonable. This power also allows amendment of the Schedules referred to in clause 19(10).

Background

94. This clause replaces similar provisions in the Disability Discrimination Act 1995.

Examples

- Regulations could be made to clarify what is and what is not included within the meaning of a “provision, criterion or practice” if, for example, research indicated that despite statutory codes of practice there was quite a high level of uncertainty among employers and service providers about the extent of the duty and how it applied.

Clause 22: Comparison by reference to circumstances

Effect

95. This clause provides that like must be compared with like in cases of direct or indirect discrimination or, in the case of disability, the failure to make reasonable adjustments. The treatment of the claimant must be compared with that of an actual or a hypothetical person – the comparator – who does not share the same protected characteristic as the claimant but who

- (2) A discriminates against a disabled person if A fails to comply with that duty in relation to that person.
- (3) A provision of an applicable Schedule which imposes a duty to comply with the first, second or third requirement applies only for the purpose of establishing whether A has contravened this Act by virtue of subsection (2); a failure to comply is, accordingly, not otherwise actionable.

21 Regulations

- (1) Regulations may prescribe –
 - (a) matters to be taken into account in deciding whether it is reasonable for A to take a step for the purposes of a prescribed provision of an applicable Schedule;
 - (b) descriptions of persons to whom the first, second or third requirement does not apply.
- (2) Regulations may make provision as to –
 - (a) circumstances in which it is, or in which it is not, reasonable for a person of a prescribed description to have to take steps of a prescribed description;
 - (b) what is, or what is not, a provision, criterion or practice;
 - (c) things which are, or which are not, to be treated as physical features;
 - (d) things which are, or which are not, to be treated as alterations of physical features;
 - (e) things which are, or which are not, to be treated as auxiliary aids.
- (3) Provision made by virtue of this section may amend an applicable Schedule.

Discrimination: supplementary

22 Comparison by reference to circumstances

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- (1) On a comparison of cases for the purposes of section 13, 18 or 19, there must be no material difference between the circumstances relating to each case.

is (or is assumed to be) in not materially different circumstances from the claimant. Those circumstances can include their respective abilities where the claimant is a disabled person.

96. The clause also makes clear that a civil partner who is treated less favourably than a married person in similar circumstances is discriminated against because of sexual orientation.

Background

97. The clause replicates similar provisions in current legislation.

Examples

- A blind woman claims she was not short listed for a job involving computers because the employer wrongly assumed that blind people cannot use them. An appropriate comparator is a person who is not blind – it could be a non-disabled person or someone with a different disability – but who has the same ability to do the job as the claimant.
- A Muslim employee is put at a disadvantage by his employer's practice of not allowing requests for time off work on Fridays. The comparison that must be made is in terms of the impact of that practice on non-Muslim employees in similar circumstances to whom it is (or might be) applied.

Clause 23: References to particular strands of discrimination

Effect

98. This clause makes clear what is meant by references to the types of discrimination referred to in the Bill, so that references elsewhere in the Bill to age, marriage and civil partnership, race, religious or belief-related, sex or sexual orientation discrimination, include references to both direct and indirect discrimination because of each of those characteristics respectively.

99. As well as direct and indirect discrimination, references to disability discrimination also include references to discrimination arising from disability and to a failure to comply with a duty to make reasonable adjustments; and references to gender reassignment discrimination also include discrimination within clause 15 (gender reassignment discrimination: cases of absence from work). Finally, references to pregnancy and maternity discrimination have the meanings derived from sections 16 and 17.

- (2) If the protected characteristic is disability, the circumstances relating to a case include a person’s abilities.
- (3) If the protected characteristic is sexual orientation, the fact that one person (whether or not the person referred to as B) is a civil partner while another is married is not a material difference between the circumstances relating to each case. 5

23 References to particular strands of discrimination

- (1) Age discrimination is –
 - (a) discrimination within section 13 because of age;
 - (b) discrimination within section 18 where the relevant protected characteristic is age. 10
- (2) Disability discrimination is –
 - (a) discrimination within section 13 because of disability;
 - (b) discrimination within section 14;
 - (c) discrimination within section 18 where the relevant protected characteristic is disability; 15
 - (d) discrimination within section 20.
- (3) Gender reassignment discrimination is –
 - (a) discrimination within section 13 because of gender reassignment;
 - (b) discrimination within section 15; 20
 - (c) discrimination within section 18 where the relevant protected characteristic is gender reassignment.
- (4) Marriage and civil partnership discrimination is –
 - (a) discrimination within section 13 because of marriage and civil partnership; 25
 - (b) discrimination within section 18 where the relevant protected characteristic is marriage and civil partnership.
- (5) Pregnancy and maternity discrimination is discrimination within section 16 or 17.
- (6) Race discrimination is – 30
 - (a) discrimination within section 13 because of race;

Clause 24: Harassment

Effect

100. This clause defines what is meant by harassment for the purposes of the Bill. There are three types of harassment. The first type, which applies to all the protected characteristics apart from pregnancy and maternity, and marriage and civil partnership, involves unwanted conduct that has the purpose or effect of creating an intimidating, hostile, degrading humiliating or offensive environment for the complainant or violating the complainant's dignity. The second type, sexual harassment is unwanted conduct of a sexual nature where this has the same purpose or effect as the first type of harassment. The third type is treating someone less favourably than another because they have either submitted or failed to submit to sexual harassment, or harassment related to sex or gender reassignment.

Background

101. Current legislation provides freestanding protection against harassment, but this protection is not uniform for the different protected characteristics. This clause is aimed at achieving uniformity of approach across all protected characteristics and in all fields where the main type of harassment described above is prohibited. Courts and tribunals will continue to be required to balance competing rights on the facts of a particular case; this would include consideration of the value of freedom of expression (as set out in Article 10 of the European Convention on Human Rights) and of academic freedom.

Examples

- A white worker who sees a black colleague being subjected to racially abusive language could have a case of harassment if the language also causes an offensive environment for her.
- An employer who displayed any material of a sexual nature, such as a topless calendar, may be harassing her employees where this makes the workplace an offensive place to work for any employee, female or male.

- (b) discrimination within section 18 where the relevant protected characteristic is race.
- (7) Religious or belief-related discrimination is –
 - (a) discrimination within section 13 because of religion or belief;
 - (b) discrimination within section 18 where the relevant protected characteristic is religion or belief. 5
- (8) Sex discrimination is –
 - (a) discrimination within section 13 because of sex;
 - (b) discrimination within section 18 where the relevant protected characteristic is sex. 10
- (9) Sexual orientation discrimination is –
 - (a) discrimination within section 13 because of sexual orientation;
 - (b) discrimination within section 18 where the relevant protected characteristic is sexual orientation.

Other prohibited conduct 15

24 Harassment

- (1) A person (A) harasses another (B) if –
 - (a) A engages in unwanted conduct related to a relevant protected characteristic which has the purpose or effect mentioned in subsection (2), 20
 - (b) A engages in any form of unwanted verbal, non-verbal or physical conduct of a sexual nature that has that purpose or effect, or
 - (c) because of B’s rejection of or submission to conduct (whether or not of A), A treats B less favourably than A would treat B if B had not rejected or submitted to the conduct. 25
- (2) The purpose or effect is –
 - (a) violating B’s dignity, or
 - (b) creating an intimidating, hostile, degrading, humiliating or offensive environment for B.
- (3) In deciding whether conduct has that effect, each of the following must be taken into account –
 - (a) the perception of B;
 - (b) the other circumstances of the case;
 - (c) whether it is reasonable for the conduct to have that effect. 30
- (4) For the purposes of subsection (1)(c), the conduct is – 35
 - (a) conduct mentioned in subsection (1)(a), if the relevant protected characteristic is gender reassignment or sex;
 - (b) conduct mentioned in subsection (1)(b).
- (5) The relevant protected characteristics are – 40
 - age;
 - disability;
 - gender reassignment;
 - race;

- A shopkeeper propositions one of his shop assistants, she rejects his advances and then is turned down for promotion which she believes she would have got if she had accepted her boss's advances. The shop assistant would have a claim of harassment.

Clause 25: Victimisation

Effect

102. This clause defines what conduct amounts to victimisation under the Bill. It provides that victimisation takes place where one person treats another badly because he or she in good faith has taken or supported any action taken for the purpose of the Bill, including in relation to any alleged breach of its provisions. It also provides that victimisation takes place where one person treats another badly because he or she is suspected of having done this or of intending to do this.

103. A person is not protected from victimisation where he or she maliciously makes or supports an untrue complaint.

104. Only an individual can bring a claim for victimisation.

Background

105. This clause replaces similar provisions in current legislation. However, under the Bill victimisation is technically no longer treated as a form of discrimination, so there is no longer a need to compare treatment of an alleged victim with that of a person who has not made or supported a complaint under the Bill.

Examples

- A woman makes a complaint of sex discrimination against her employer. As a result, she is denied promotion. The denial of promotion would amount to victimisation.
- A gay man sues a publican for persistently treating him less well than heterosexual customers. Because of this, the publican bars him from the pub altogether. This would be victimisation.
- An employer threatens to dismiss a staff member because he thinks she intends to support a colleague's sexual harassment claim. This threat could amount to victimisation.
- A man with a grudge against his employer knowingly gives false evidence in a colleague's discrimination claim against the employer. He is subsequently dismissed for supporting the claim. His dismissal would not amount to victimisation because of his untrue and malicious evidence.

religion or belief;
sex;
sexual orientation.

25 Victimization

- (1) A person (A) victimises another person (B) if A subjects B to a detriment 5
because –
 - (a) B does a protected act, or
 - (b) A believes that B has done, or may do, a protected act.
- (2) Each of the following is a protected act –
 - (a) bringing proceedings under this Act; 10
 - (b) giving evidence or information in connection with proceedings under this Act;
 - (c) doing any other thing for the purposes of or in connection with this Act;
 - (d) making an allegation (whether or not express) that A or another person has contravened this Act. 15
- (3) Giving false evidence or information, or making a false allegation, is not a protected act if the evidence or information is given, or the allegation is made, in bad faith.
- (4) This section applies only where the person subjected to a detriment is an individual. 20
- (5) The reference to contravening this Act includes a reference to committing a breach of an equality clause or rule.

PART 3

SERVICES AND PUBLIC FUNCTIONS

Preliminary

25

Part 3: services and public functions

Clause 26: Application of this Part

Effect

106. This clause provides that this Part of the Bill, which prohibits discrimination, harassment and victimisation by people who supply services (which includes goods and facilities) or perform public functions, does not apply to discrimination, harassment or victimisation of people in those circumstances because they are married or in a civil partnership or because of age if they are under 18.

107. It also states that, if an act of discrimination, harassment or victimisation is made unlawful by other Parts of the Bill covering premises, work or education, then those provisions, rather than the provisions covering services and public functions, apply. Similarly, if the act in question results in a breach of an equality clause in a person's terms of work or a non-discrimination rule in an occupational pension scheme, this Part will not apply.

Background

108. This clause generally reflects the position in current legislation. However, since the prohibition on discrimination because of age in services and public functions will not be extended to the under 18s, this clause explains that the provisions in this Part do not apply to under 18s.

Clause 27: Provision of services, etc.

Effect

109. This clause makes it unlawful to discriminate against, harass or victimise a person because of a protected characteristic when providing services (which includes goods and facilities). The person is protected both when requesting a service and during the course of being provided with a service.

110. It also makes it unlawful to discriminate against, harass or victimise a person when exercising a public function which does not involve the provision of a service. Examples of such public functions include law enforcement and revenue raising and collection. Public functions which involve the provision of a service, for example, medical treatment on the NHS, are covered by the provisions dealing with services.

111. It also imposes the duty to make reasonable adjustments set out in clause 19 in relation to providing services and exercising public functions. A person will be considered to have discriminated against a disabled person if he or she fails to comply with the duty to make reasonable adjustments.

112. However, the prohibition on harassment when providing services or exercising public functions does not cover sexual orientation or religion or belief.

113. The prohibitions in this clause apply, in relation to race or religion or belief, to any actions taken in connection with the grant of entry clearance to enter the United Kingdom, even if the act in question takes place outside the United Kingdom.

26 Application of this Part

- (1) This Part does not apply to the protected characteristic of—
 - (a) age, so far as relating to persons who have not attained the age of 18;
 - (b) marriage and civil partnership.
- (2) This Part does not apply to discrimination, harassment or victimisation— 5
 - (a) that is prohibited by Part 4 (premises), 5 (work) or 6 (education), or
 - (b) that would be so prohibited but for an express exception.
- (3) For the purposes of subsection (2)(b), section 30(3) is not an express exception.
- (4) This Part does not apply to—
 - (a) a breach of an equality clause or rule; 10
 - (b) anything that would be a breach of an equality clause or rule but for section 64 or Part 2 of Schedule 7;
 - (c) a breach of a non-discrimination rule.

Provision of services, etc.

27 Provision of services, etc. 15

- (1) A person (a “service-provider”) concerned with the provision of a service to the public or a section of the public (for payment or not) must not discriminate against a person requiring the service by not providing the person with the service.
- (2) A service-provider (A) must not, in providing the service, discriminate against 20 a person (B)—
 - (a) as to the terms on which A provides the service to B;
 - (b) by terminating the provision of the service to B;
 - (c) by subjecting B to any other detriment.
- (3) A service-provider must not, in relation to the provision of the service, 25 harass—
 - (a) a person requiring the service, or
 - (b) a person to whom the service-provider provides the service.
- (4) A service-provider must not victimise a person requiring the service by not providing the person with the service. 30
- (5) A service-provider (A) must not, in providing the service, victimise a person (B)—
 - (a) as to the terms on which A provides the service to B;
 - (b) by terminating the provision of the service to B;
 - (c) by subjecting B to any other detriment. 35

Background

114. Current legislation provides some protection from discrimination, harassment and victimisation in the provision of services and the exercise of public functions. However, the protection is not uniform for the different protected characteristics. For example, there is no protection from discrimination in the exercise of public functions because of pregnancy and maternity or because a person is intending to undergo, is undergoing or has undergone gender reassignment. Also there is no protection for discrimination because of age, either in the provision of services or in the exercise of public functions.

115. This clause replaces the existing provisions, and extends protection so that it is generally uniform across all the protected characteristics covered by this Part. However, as under existing law, there is no protection for harassment related to religion or belief or sexual orientation in either the provision of services or the exercise of public functions.

116. Examples

- A man and two female friends plan a night out at a local night club. At the entrance the man is charged £10 entry; the two women are charged £5 each. The owner explains the night club is trying to attract more women and has decided to charge them half the entrance fee. This would be direct sex discrimination.

A company which organises outdoor activity breaks requires protective headwear to be worn for certain activities, such as white water rafting and rock climbing. This requirement could be indirectly discriminatory against Sikhs unless it can be justified, for example on health and safety grounds.

- A man who suffers from long-standing and serious health problems, including partial paralysis and a severe sight impairment, is imprisoned. On his imprisonment, the man is not allocated an adapted cell, despite being assessed as requiring one within 24 hours of arriving at prison. Instead, he is allocated a standard cell. This would be discrimination resulting from a failure to make reasonable adjustments to take account of a person's disability.
- A black man goes into a bar to watch a football match. He is served a pint of beer and takes a seat at an empty table. Whilst watching the football match the bartender and a number of customers make racist remarks about some of the footballers on the pitch. When the man complains he is then called a number of derogatory names. This would be harassment because of race.

Clause 28: Ships and hovercraft

Effect

116. This clause provides that the services provisions (and for disability, the public functions provisions) will only apply to ships and hovercraft in the way set out in regulations made by a Minister of the Crown. Because ships and hovercraft may be constantly moving between waters under the jurisdiction of different States or be outside the jurisdiction of any State, such regulations are needed to give certainty for people who provide or receive services in relation to ships and hovercraft about whether the services and public functions provisions apply.

- (6) A person must not, in the exercise of a public function that is not the provision of a service to the public or a section of the public, do anything that constitutes discrimination, harassment or victimisation.
- (7) A duty to make reasonable adjustments applies to—
- (a) a service-provider; 5
 - (b) a person who exercises a public function that is not the provision of a service to the public or a section of the public.
- (8) In the application of section 24 for the purposes of subsection (3), and subsection (6) as it relates to harassment, neither of the following is a relevant protected characteristic— 10
- (a) religion or belief;
 - (b) sexual orientation.
- (9) In the application of this section, so far as relating to race or religion or belief, to the granting of entry clearance (within the meaning of the Immigration Act 1971), it does not matter whether an act is done within or outside the United Kingdom. 15
- (10) Subsection (9) does not affect the application of any other provision of this Act to conduct outside England and Wales or Scotland.

Supplementary

28 Ships and hovercraft 20

- (1) This Part (except section 27(6)) applies only in such circumstances as are prescribed in relation to—
- (a) transporting people by ship or hovercraft;
 - (b) a service provided on a ship or hovercraft.
- (2) In the application of subsection (1) to disability discrimination, the words “(except section 27(6))” are to be ignored. 25
- (3) It does not matter whether the ship or hovercraft is within or outside the United Kingdom.

Background

117. Current legislation is specific on the territorial application of the services provisions, dealing specifically with ships, aircraft and hovercraft (for example, section 36 of the Sex Discrimination Act 1975 and section 27 of the Race Relations Act 1976). As the Bill is silent on the territorial application of the services provisions regulations made under this clause will ensure that there is clarity as to when and on which ships and hovercraft the services provisions apply.

Clause 29: Interpretation and exceptions

Effect

118. This clause explains what is meant by the terms “provision of a service” and “public function” in the Bill. The definition of a “public function” is that which applies for the purposes of the Human Rights Act 1998. The public functions provisions apply only where what is being done does not fall within the definition of a “service”.

119. This clause also explains that refusing to provide or not providing a service includes providing a person with a service of different quality, or in a different way (for example hostile or less courteous) or on less favourable terms than the service would normally be provided.

120. This clause provides that where an employer arranges for another person to provide a service to a closed group of employees, then the members of that closed group are to be treated as a section of the public for the purposes of their relationship with the service-provider. This means that if the service-provider discriminates against members of that group, the prohibitions in this Part will apply. However, the employer is not to be treated as a service-provider, despite facilitating access to the service. Instead, his or her conduct in respect of his or her employees is to be governed by the provisions in Part 5 (work).

121. Further details of how the reasonable adjustments duty applies in relation to providing services and exercising public functions are contained in Schedule 2.

122. The exceptions which apply to this Part of the Bill are contained in Schedule 3.

Background

123. Much of what is contained in this clause has its origins in current legislation, but this is now brought together in an interpretation clause rather than in the substantive provisions as is the case in the current legislation. The subsection concerning employers arranging for provision of services to their employees by another person is new.

Examples

- Services include the provision of day care, the running of residential care homes and leisure centre facilities, whether provided by a private body or a local authority.
- Public functions, not involving the provision of a service, include licensing functions; Government and local authority public consultation exercises; the provision of public highways; planning permission decisions; and core functions of the prison service and the probation service.
- The definition of refusing to provide a service covers, for example, a bank which has a policy not to accept calls from customers through a third party. This could amount to

- (4) “Ship” has the same meaning as in the Merchant Shipping Act 1995.
- (5) “Hovercraft” has the same meaning as in the Hovercraft Act 1968.
- (6) Nothing in this section affects the application of any other provision of this Act to conduct outside England and Wales or Scotland.

29 Interpretation and exceptions 5

- (1) This section applies for the purposes of this Part.
- (2) A reference to the provision of a service includes a reference to the provision of goods or facilities.
- (3) A reference to the provision of a service includes a reference to the provision of a service in the exercise of a public function. 10
- (4) A public function is a function that is a function of a public nature for the purposes of the Human Rights Act 1998.
- (5) Where an employer arranges for another person to provide a service only to the employer’s employees –
 - (a) the employer is not to be regarded as the service-provider, but 15
 - (b) the employees are to be regarded as a section of the public.
- (6) A reference to a person requiring a service includes a reference to a person who is seeking to obtain or use the service.
- (7) A reference to a service-provider not providing a person with a service includes a reference to – 20
 - (a) the service-provider not providing the person with a service of the quality that the service-provider usually provides to the public (or the section of it which includes the person), or
 - (b) the service-provider not providing the person with the service in the manner in which, or on the terms on which, the service-provider²⁵ usually provides the service to the public (or the section of it which includes the person).
- (8) In relation to the provision of a service by either House of Parliament, the service-provider is the Corporate Officer of the House concerned; and if the service involves access to, or use of, a place in the Palace of Westminster which³⁰ members of the public are allowed to enter, both Corporate Officers are jointly the service-provider.
- (9) Schedule 2 (reasonable adjustments) has effect.
- (10) Schedule 3 (exceptions) has effect.

indirect discrimination against a deaf person who uses a registered interpreter to call the bank.

- An employer arranges for an insurer to provide a group health insurance scheme to his employees. The insurer refuses to provide cover on the same terms to one of the employees because she is a transsexual. This would be treated as direct discrimination in the provision of services by the insurer against the employee in the same way as if the insurance was available to the general public. However, if it was the employer, rather than the insurer, who decided that the transsexual employee should not be able to access the group health insurance scheme, such discrimination in the employee's access to benefits in the workplace would be covered by the provisions of Part 5 (work).

PART 4: PREMISES

Clause 30: Application of this Part

Effect

124. This clause provides that this Part of the Bill, which prohibits discrimination, harassment and victimisation in relation to the disposal, management and occupation of premises, does not make it unlawful to discriminate against, harass or victimise people in those circumstances because they are married or in a civil partnership or because of age.

125. It also states that, if an act of discrimination, harassment or victimisation is made unlawful by other Parts of the Bill covering work or education, then those provisions, rather than the provisions covering premises, apply. Further, where accommodation is provided either as a short-term let or where it is provided as part of a service or public function Part 3 (services and public functions) applies instead of this Part. If the act in question results in a breach of an equality clause in a person's terms of work or a non-discrimination rule in an occupational pension scheme then these provisions will not apply.

Background

126. This provision broadly reflects the position in the current legislation, which gives protection from discrimination in the disposal and management of premises across all the protected characteristics with the exception of age and marriage and civil partnership.

Clause 31: Disposals, etc.

Effect

127. This clause makes it unlawful for a person who has the authority to dispose of premises (for example, by selling, letting or subletting a property) to discriminate against or victimise someone else in a number of ways including by offering the premises to them on less favourable terms; by not letting or selling the premises to them or by treating them less favourably, for example in relation to a council house waiting list.

128. It also makes it unlawful for a person with authority to dispose of premises to harass someone who occupies or applies for them. The Bill does not however make it unlawful to harass someone because of sexual orientation or religion or belief when disposing of premises.

PART 4

PREMISES

Preliminary

30 Application of this Part

- (1) This Part does not apply to the following protected characteristics – 5
 - (a) age;
 - (b) marriage and civil partnership.
- (2) This Part does not apply to discrimination, harassment or victimisation –
 - (a) that is prohibited by Part 5 (work) or Part 6 (education), or
 - (b) that would be so prohibited but for an express exception. 10
- (3) This Part does not apply to the provision of accommodation if the provision –
 - (a) is generally for the purpose of short stays by individuals who live elsewhere, or
 - (b) is for the purpose only of exercising a public function or providing a service to the public or a section of the public. 15
- (4) The reference to the exercise of a public function, and the reference to the provision of a service, are to be construed in accordance with Part 3.
- (5) This Part does not apply to –
 - (a) a breach of an equality clause or rule;
 - (b) anything that would be a breach of an equality clause or rule but for section 64 or Part 2 of Schedule 7;
 - (c) a breach of a non-discrimination rule.

Disposal and management

31 Disposals, etc.

- (1) A person (A) who has the right to dispose of premises must not discriminate²⁵ against another (B) –
 - (a) as to the terms on which A offers to dispose of the premises to B;
 - (b) by not disposing of the premises to B;
 - (c) in A's treatment of B with respect to things done in relation to persons seeking premises. 30
- (2) Where an interest in a commonhold unit cannot be disposed of unless a particular person is a party to the disposal, that person must not discriminate against a person by not being a party to the disposal.

Background

129. This clause replaces similar provisions in current legislation.

Examples

- A landlord refuses to let a property to a prospective tenant because of her race. This is direct discrimination when disposing of premises.
- A vendor offers her property to a prospective buyer who is disabled at a higher sale price than she would to a non-disabled person, because of the person's disability. This is direct discrimination when disposing of premises.

Clause 32: Permission for disposal

Effect

130. This clause makes it unlawful for a person whose permission is needed to dispose of premises (for example, to sell, manage, let or sub-let a property) to discriminate against or victimise someone else by withholding that permission. It also makes it unlawful for such a person to harass someone who seeks that permission, or someone to whom the property would be sold or let if the permission were given. The Bill does not however make it unlawful to harass someone because of sexual orientation or religion or belief by withholding permission to dispose of premises.

131. This clause does not apply where permission to dispose of premises is refused by a court in the context of legal proceedings.

Background

132. This clause replaces similar provisions in current legislation.

Examples

- A disabled tenant seeks permission from his landlord to sublet a room within his flat to help him pay his rent. The landlord tells him that he cannot because he is disabled. This is direct discrimination in permission for disposing of premises.

- (3) A person who has the right to dispose of premises must not, in connection with anything done in relation to their occupation or disposal, harass –
 - (a) a person who occupies them;
 - (b) a person who applies for them.
- (4) A person (A) who has the right to dispose of premises must not victimise 5 another (B) –
 - (a) as to the terms on which A offers to dispose of the premises to B;
 - (b) by not disposing of the premises to B;
 - (c) in A’s treatment of B with respect to things done in relation to persons seeking premises. 10
- (5) Where an interest in a commonhold unit cannot be disposed of unless a particular person is a party to the disposal, that person must not victimise a person by not being a party to the disposal.
- (6) In the application of section 24 for the purposes of subsection (3), neither of the following is a relevant protected characteristic – 15
 - (a) religion or belief;
 - (b) sexual orientation.

32 Permission for disposal

- (1) A person whose permission is required for the disposal of premises must not discriminate against another by not giving permission for the disposal of the 20 premises to the other.
- (2) A person whose permission is required for the disposal of premises must not, in relation to an application for permission to dispose of the premises, harass a person –
 - (a) who applies for permission to dispose of the premises, or 25
 - (b) to whom the disposal would be made if permission were given.
- (3) A person whose permission is required for the disposal of premises must not victimise another by not giving permission for the disposal of the premises to the other.
- (4) In the application of section 24 for the purposes of subsection (2), neither of the 30 following is a relevant protected characteristic –
 - (a) religion or belief;
 - (b) sexual orientation.
- (5) This section does not apply to anything done in the exercise of a judicial 35 function.

Clause 33: Management

Effect

133. This clause makes it unlawful for a person who manages premises to discriminate against or victimise someone who occupies the property in the way he or she allows the person to use a benefit or facility associated with the property, by evicting the person or by otherwise treating the person unfavourably. It also makes it unlawful for a person who manages a property to harass a person who occupies or applies to occupy. The Bill does not however make it unlawful to harass someone because of sexual orientation or religion or belief in the management of premises.

Background

134. This clause replaces similar provisions in current legislation.

Examples

- A manager of a property restricts a tenant's use of a communal garden by setting fixed times when she can use the garden because she is undergoing gender reassignment, while allowing other tenants unrestricted access to the garden. This would be direct discrimination in the management of premises.
- A manager of a property refuses to allow a lesbian tenant to use facilities which are available to other tenants, or deliberately neglects to inform her about facilities which are available for the use of other tenants, because she had previously made a claim of discrimination against the manager. This would be victimisation.
- A manager of a property responds to requests for maintenance issues more slowly or less favourably for one tenant than similar requests from other tenants, because the tenant has a learning disability. This would be direct discrimination in the management of premises.

Clause 34: Leasehold and commonhold premises and common parts

Effect

135. This clause imposes the reasonable adjustments duty on those who let premises, commonhold associations, and those who are responsible for the common parts of let or commonhold premises. This clause also defines who is responsible for common parts, and includes a power to prescribe premises to which the requirements do not apply.

Background

136. Part of this clause replaces similar provisions in the Disability Discrimination Act 1995 relating to let premises and premises to let. The provisions relating to common parts are new.

33 Management

- (1) A person (A) who manages premises must not discriminate against a person (B) who occupies the premises –
 - (a) in the way in which A allows B, or by not allowing B, to make use of a benefit or facility; 5
 - (b) by evicting B (or taking steps for the purpose of securing B’s eviction);
 - (c) by subjecting B to any other detriment.
- (2) A person who manages premises must not, in relation to their management, harass –
 - (a) a person who occupies them; 10
 - (b) a person who applies for them.
- (3) A person (A) who manages premises must not victimise a person (B) who occupies the premises –
 - (a) in the way in which A allows B, or by not allowing B, to make use of a benefit or facility; 15
 - (b) by evicting B (or taking steps for the purpose of securing B’s eviction);
 - (c) by subjecting B to any other detriment.
- (4) In the application of section 24 for the purposes of subsection (2), neither of the following is a relevant protected characteristic –
 - (a) religion or belief; 20
 - (b) sexual orientation.

Reasonable adjustments

34 Leasehold and commonhold premises and common parts

- (1) A duty to make reasonable adjustments applies to –
 - (a) a controller of let premises; 25
 - (b) a controller of premises to let;
 - (c) a commonhold association;
 - (d) a responsible person in relation to common parts.
- (2) A controller of let premises is –
 - (a) a person by whom premises are let, or 30
 - (b) a person who manages them.
- (3) A controller of premises to let is –
 - (a) a person who has premises to let, or
 - (b) a person who manages them.

Example

- An agency used by a landlord to let and manage leasehold premises, is a controller of premises under this provision and therefore is under the duty to make reasonable adjustments for disabled people, such as making information about the property available in accessible formats.

Clause 35: Interpretation and exceptions

Effect

137. This clause explains what is meant by terms used in this Part. In particular it sets out the kinds of property transactions meant by “disposing of premises” in the case of premises which are subject to a tenancy, and defines what is meant by “tenancy”. It also makes it clear that the provisions apply to tenancies made before as well as after the Bill.

138. The details of how the reasonable adjustments duty applies in relation to “let premises”, “premises to let”, “commonhold land” and “common parts” of let or commonhold premises are contained in Schedule 4.

139. The exceptions which apply to this part of the Bill are contained in Schedule 5.

Background

140. This clause replaces similar provisions in current legislation.

- (4) The reference in subsection (1)(c) to a commonhold association is a reference to the association in its capacity as the person who manages a commonhold unit.
- (5) A responsible person in relation to common parts is –
 - (a) where the premises to which the common parts relate are part of commonhold land, the commonhold association; 5
 - (b) where the premises to which the common parts relate are part of a tenement in Scotland, the owner of the common parts;
 - (c) where the premises to which the common parts relate are let (and are not part of commonhold land or of a tenement in Scotland), a person by whom the premises are let. 10
- (6) Common parts are –
 - (a) in relation to let premises (which are not part of commonhold land or of a tenement in Scotland), the structure and exterior of, and any common facilities within or used in connection with, the building or part of a building which includes the premises; 15
 - (b) in relation to commonhold land, every part of the commonhold which is not for the time being a commonhold unit in accordance with the commonhold community statement;
 - (c) in relation to premises which are part of a tenement in Scotland, the structure and exterior of, and any common facilities within or used in connection with, the tenement building which includes the premises insofar as the structure, exterior and common facilities are owned in common with others. 20
- (7) A reference to letting includes a reference to sub-letting; and for the purposes of subsection (1)(a) and (b), a reference to let premises includes premises subject to a right to occupy. 25
- (8) This section does not apply to premises of such description as may be prescribed.

Supplementary

- 35 Interpretation and exceptions** 30
- (1) This section applies for the purposes of this Part.
 - (2) A reference to premises is a reference to the whole or part of the premises.
 - (3) A reference to disposing of premises includes, in the case of premises subject to a tenancy, a reference to –
 - (a) assigning the premises, 35
 - (b) sub-letting them, or
 - (c) parting with possession of them.
 - (4) A reference to disposing of premises also includes a reference to granting a right to occupy them.
 - (5) A reference to disposing of an interest in a commonhold unit includes a reference to creating an interest in a commonhold unit. 40
 - (6) A reference to a tenancy is to a tenancy created (whether before or after the passing of this Act) –
 - (a) by a lease or sub-lease,

Part 5: Work

Chapter 1: Employment, etc.

Clause 36: Employees and applicants

Effect

141. This clause makes it unlawful for an employer to discriminate against or victimise employees and people seeking work. It applies where the employer is making arrangements to fill a job, and in respect of anything done in the course of a person's employment. In respect of discrimination relating to sex or pregnancy and maternity, a term of an offer of employment which relates to pay is treated as discriminatory where, if accepted, it would give rise to an equality clause or if that is not the case where the term is directly discriminatory. It also imposes the reasonable adjustments duty set out in clause 19 on employers in respect of disabled employees and applicants.

Background

142. This clause replaces similar provisions in current legislation.

Examples

- An employer decides not to shortlist for interview a disabled job applicant because of her epilepsy. This would be direct discrimination.

An employer offers a woman a job on lower pay than the set rate because she is pregnant when she applies. She cannot bring an equality clause case as there is no comparator. However, she will be able to claim direct discrimination.

- An employer refuses to interview a man applying for promotion, because he previously supported a discrimination case against the employer brought by another employee. This would be victimisation.

- (b) by an agreement for a lease or sub-lease,
 - (c) by a tenancy agreement, or
 - (d) in pursuance of an enactment,
- and a reference to a tenant is to be construed accordingly.
- (7) A reference to commonhold land, a commonhold association, a commonhold 5 community statement, a commonhold unit or a unit-holder is to be construed in accordance with the Commonhold and Leasehold Reform Act 2002.
 - (8) A reference to a tenement or tenement building is to be construed in accordance with the Tenements (Scotland) Act 2004 (asp 11).
 - (9) Schedule 4 (reasonable adjustments) has effect. 10
 - (10) Schedule 5 (exceptions) has effect.

PART 5

WORK

CHAPTER 1

EMPLOYMENT, ETC. 15

Employees

36 Employees and applicants

- (1) An employer (A) must not discriminate against a person (B) –
 - (a) in the arrangements A makes for deciding to whom to offer employment; 20
 - (b) as to the terms on which A offers B employment;
 - (c) by not offering B employment.
- (2) An employer (A) must not discriminate against an employee of A's (B) –
 - (a) as to B's terms of employment;
 - (b) in the way A affords B access, or by not affording B access, to 25 opportunities for promotion, transfer or training or for receiving any other benefit, facility or service;
 - (c) by dismissing B;
 - (d) by subjecting B to any other detriment.
- (3) An employer (A) must not victimise a person (B) – 30
 - (a) in the arrangements A makes for deciding to whom to offer employment;
 - (b) as to the terms on which A offers B employment;
 - (c) by not offering B employment.
- (4) An employer (A) must not victimise an employee of A's (B) – 35
 - (a) as to B's terms of employment;
 - (b) in the way A affords B access, or by not affording B access, to opportunities for promotion, transfer or training or for any other benefit, facility or service;
 - (c) by dismissing B; 40

- An employer enforces a “no beards” policy by asking staff to shave. This could be indirect discrimination, because it would have a particular impact on Muslims or Orthodox Jews.

Clause 37: Employees and applicants: harassment

Effect

143. This clause makes it unlawful for an employer to harass employees and people applying for employment. It also makes the employer liable for harassment of its employees by third parties, such as customers or clients, over whom the employer does not have direct control. Liability in relation to third party harassment will however only arise when harassment has occurred on a least two occasions, the employer is aware that it has taken place, and has not taken reasonable steps to prevent it happening again.

Background

144. This clause is designed to replicate the effect of provisions in current legislation as regard harassment by employers, and extend to the other protected characteristics (apart from marriage and civil partnership and pregnancy and maternity) the position in relation to employer liability for sex harassment under the Sex Discrimination Act 1975.

Example

- A shop assistant with a strong Nigerian accent tells her manager that she is upset and humiliated by a customer who regularly uses the shop and each time makes derogatory remarks about Africans in her hearing. If her manager does nothing to try to stop it happening again, he would be liable for racial harassment.

- (d) by subjecting B to any other detriment.
- (5) A duty to make reasonable adjustments applies to an employer.
- (6) Subsection (1)(b), so far as relating to sex or pregnancy and maternity, does not apply to a term that relates to pay –
 - (a) unless, were B to accept the offer, an equality clause or rule would have 5 effect in relation to the term, or
 - (b) if paragraph (a) does not apply, except in so far as making an offer on terms including that term amounts to a contravention of subsection (1)(b) by virtue of section 13 or 17.
- (7) In subsections (2)(c) and (4)(c), the reference to dismissing B includes a10 reference to the termination of B’s employment –
 - (a) by the expiry of a period (including a period expiring by reference to an event or circumstance);
 - (b) by an act of B’s (including giving notice) in circumstances such that B is entitled, because of A’s conduct, to terminate the employment15 without notice.
- (8) Subsection (7)(a) does not apply if, immediately after the termination, the employment is renewed on the same terms.

37 Employees and applicants: harassment

- (1) An employer (A) must not, in relation to employment by A, harass a person20 (B) –
 - (a) who is an employee of A’s;
 - (b) who has applied to A for employment.
- (2) The circumstances in which A is to be treated as harassing B under subsection (1) include those where – 25
 - (a) a third party harasses B in the course of B’s employment, and
 - (b) A failed to take such steps as would have been reasonably practicable to prevent the third party from doing so.
- (3) Subsection (2) does not apply unless A knows that B has been harassed in the course of B’s employment on at least two other occasions by a third party; and30 it does not matter whether the third party is the same or a different person on each occasion.
- (4) A third party is a person other than –
 - (a) A, or
 - (b) an employee of A’s. 35

Clause 38: Contract workers

Effect

145. This clause makes it unlawful for a person (referred to as a principal) who makes work available to contract workers to discriminate against, harass or victimise them. Contract workers are separately protected from discrimination by their employer (for example, the agency for which they work and which places them with the principal) under clause 36. The clause also imposes a duty on the principal to make reasonable adjustments for disabled contract workers (in addition to the duty on the contract worker's employer).

Background

146. This clause is designed to replicate the effect of provisions in current legislation, while codifying case law to make clear that there does not need to be a direct contractual relationship between the employer and the principal for this protection to apply.

Examples

- A hotel manager refuses to accept a black African contract worker sent to him by an agency because of fears that guests would be put off by his accent. This would be direct discrimination.
- A bank treats a female contract worker less well than her male counterparts, for example by insisting that she makes coffee for all meetings. This would be direct discrimination.

Clause 39: Identity of employer

Effect

147. This clause provides that police constables and police cadets are treated as employees for the purposes of this Part of the Bill. It identifies the relevant employer as either the chief officer or the responsible authority (as defined in clause 40), depending on who commits the act in question.

148. Constables serving with the Civil Nuclear Constabulary are treated as employees of the Civil Nuclear Police Authority.

149. A constable seconded to the Serious Organised Crime Agency (SOCA) or Scottish Police Services Authority (SPSA) is treated as employed by SOCA or SPSA.

150. A constable at the Scottish Crime and Drugs Enforcement Agency (SCDEA) is treated as employed by the Director General of SCDEA.

38 Contract workers

- (1) A principal must not discriminate against a contract worker –
 - (a) as to the terms on which the principal allows the worker to do the work;
 - (b) by not allowing the worker to do, or to continue to do, the work;
 - (c) in the way the principal affords the worker access, or by not affording the worker access, to opportunities for receiving a benefit, facility or service; 5
 - (d) by subjecting the worker to any other detriment.
- (2) A principal must not, in relation to contract work, harass a contract worker.
- (3) A principal must not victimise a contract worker – 10
 - (a) as to the terms on which the principal allows the worker to do the work;
 - (b) by not allowing the worker to do, or to continue to do, the work;
 - (c) in the way the principal affords the worker access, or by not affording the worker access, to opportunities for receiving a benefit, facility or service; 15
 - (d) by subjecting the worker to any other detriment.
- (4) A duty to make reasonable adjustments applies to a principal (as well as to the employer of a contract worker).
- (5) A “principal” is a person who makes work available for an individual who is –
 - (a) employed by another person, and 20
 - (b) supplied by that other person in furtherance of a contract to which the principal is a party (whether or not that other person is a party to it).
- (6) “Contract work” is work such as is mentioned in subsection (5).
- (7) A “contract worker” is an individual supplied to a principal in furtherance of a contract such as is mentioned in subsection (5)(b). 25

Police officers

39 Identity of employer

- (1) For the purposes of this Part, holding the office of constable is to be treated as employment –
 - (a) by the chief officer, in respect of any act done by the chief officer in 30 relation to a constable or appointment to the office of constable;
 - (b) by the responsible authority, in respect of any act done by the authority in relation to a constable or appointment to the office of constable.
- (2) For the purposes of this Part, holding an appointment as a police cadet is to be treated as employment – 35
 - (a) by the chief officer, in respect of any act done by the chief officer in relation to a police cadet or appointment as one;
 - (b) by the responsible authority, in respect of any act done by the authority in relation to a police cadet or appointment as one.
- (3) Subsection (1) does not apply to service with the Civil Nuclear Constabulary 40 (as to which, see section 55(2) of the Energy Act 2004).
- (4) Subsection (1) does not apply to a constable at SOCA, SPSA or SCDEA.

Background

151. This clause is designed to replicate the provisions in current law and extends coverage to SPSA and SCDEA. It also removes the requirement to pay out of police funds compensation and related costs arising from the personal liability of chief officers for acts which are unlawful under the Bill. Payments of compensation and related costs arising from the personal liability of chief officers will instead be dealt with by the Police Act 1996 and the Police (Scotland) Act 2006, as for all other police officers.

Example

- A chief officer refuses to allocate protective equipment to female constables. The chief officer would be treated as the employer in a direct discrimination claim.

Clause 40: Interpretation

Effect

152. This clause explains what is meant by terms such as “chief officer” and “relevant Act” used in clause 39.

Background

153. This clause replaces similar provisions in current legislation, but includes some additional terms, such as those relevant to the SPSA and SCDEA.

- (5) A constable at SOCA or SPSA is to be treated as employed by it, in respect of any act done by it in relation to the constable.
- (6) A constable at SCDEA is to be treated as employed by the Director General of SCDEA, in respect of any act done by the Director General in relation to the constable. 5

40 Interpretation

- (1) This section applies for the purposes of section 39.
- (2) “Chief officer” means –
- (a) in relation to an appointment under a relevant Act, the chief officer of police for the police force to which the appointment relates; 10
 - (b) in relation to any other appointment, the person under whose direction and control the body of constables or other persons to which the appointment relates is;
 - (c) in relation to a constable or other person under the direction and control of a chief officer of police, that chief officer of police; 15
 - (d) in relation to any other constable or any other person, the person under whose direction and control the constable or other person is.
- (3) “Responsible authority” means –
- (a) in relation to an appointment under a relevant Act, the police authority that maintains the police force to which the appointment relates; 20
 - (b) in relation to any other appointment, the person by whom a person would (if appointed) be paid;
 - (c) in relation to a constable or other person under the direction and control of a chief officer of police, the police authority that maintains the police force for which that chief officer is the chief officer of police; 25
 - (d) in relation to any other constable or any other person, the person by whom the constable or other person is paid.
- (4) “Police cadet” means a person appointed to undergo training with a view to becoming a constable.
- (5) “SOCA” means the Serious Organised Crime Agency; and a reference to a constable at SOCA is a reference to a constable seconded to it to serve as a member of its staff. 30
- (6) “SPSA” means the Scottish Police Services Authority; and a reference to a constable at SPSA is a reference to a constable –
- (a) seconded to it to serve as a member of its staff, and 35
 - (b) not at SCDEA.
- (7) “SCDEA” means the Scottish Crime and Drugs Enforcement Agency; and a reference to a constable at SCDEA is a reference to a constable who is a police member of it by virtue of paragraph 7(2)(a) or (b) of Schedule 2 to the Police, Public Order and Criminal Justice (Scotland) Act 2006 (asp 10) (secondment). 40

Clause 41: Partnerships

Effect

154. This clause makes it unlawful for firms (and those intending to set up a firm) to discriminate against, harass or victimise their partners, or people seeking to be partners in the firm. Activities covered by these provisions could include the offering of partnerships or giving existing partners access to opportunities such as training and/or transfers to other branches of the firm. It imposes on firms and people setting up firms a duty to make reasonable adjustments for disabled partners and prospective partners.

155. In the case of limited partnerships, these prohibitions only apply to those partners who are involved with the operation of the firm (general partners).

Background

156. Because partners are mainly governed by their partnership agreements, rather than by employment contracts, separate provisions are needed to provide protection from discrimination, harassment and victimisation for partners in ordinary and limited partnerships. This clause is designed to replicate the effect of provisions in current legislation but provide consistent protection in respect of race (whereas currently the protection on grounds of colour and nationality differs in some respects from that on grounds of race and ethnic or national origin).

Example

- A firm refuses to accept an application for partnership from a black candidate, who is qualified to join, because he is of African origin. This would be direct discrimination.

- (8) For the purposes of this section, the relevant Acts are –
- (a) the Metropolitan Police Act 1829;
 - (b) the City of London Police Act 1839 (2 & 3 Vict. c.xciv);
 - (c) the Police (Scotland) Act 1967;
 - (d) the Police Act 1996. 5
- (9) A reference in subsection (2) or (3) to a chief officer of police includes, in relation to Scotland, a reference to a chief constable.

Partners

41 Partnerships

- (1) A firm or proposed firm must not discriminate against a person – 10
- (a) in the arrangements it makes for deciding to whom to offer a position as a partner;
 - (b) as to the terms on which it offers the person a position as a partner;
 - (c) by not offering the person a position as a partner.
- (2) A firm (A) must not discriminate against a partner (B) – 15
- (a) as to the terms on which B is a partner;
 - (b) in the way A affords B access, or by not affording B access, to opportunities for promotion, transfer or training or for receiving any other benefit, facility or service;
 - (c) by expelling B; 20
 - (d) by subjecting B to any other detriment.
- (3) A firm must not, in relation to a position as a partner, harass –
- (a) a partner;
 - (b) a person who has applied for the position.
- (4) A proposed firm must not, in relation to a position as a partner, harass a person²⁵ who has applied for the position.
- (5) A firm or proposed firm must not victimise a person –
- (a) in the arrangements it makes for deciding to whom to offer a position as a partner;
 - (b) as to the terms on which it offers the person a position as a partner; 30
 - (c) by not offering the person a position as a partner.
- (6) A firm (A) must not victimise a partner (B) –
- (a) as to the terms on which B is a partner;
 - (b) in the way A affords B access, or by not affording B access, to opportunities for promotion, transfer or training or for receiving any³⁵ other benefit, facility or service;
 - (c) by expelling B;
 - (d) by subjecting B to any other detriment.
- (7) A duty to make reasonable adjustments applies to – 40
- (a) a firm;
 - (b) a proposed firm.

Clause 42: Limited liability partnerships

Effect

157. This clause makes it unlawful for a limited liability partnership (LLP), or a group of people setting up an LLP, to discriminate against, harass or victimise a member (or prospective member). Activities covered by these provisions include offers of membership or access to opportunities that the LLP makes available to its members. It imposes on LLPs a duty to make reasonable adjustments for disabled members and prospective members.

Background

158. LLPs are distinct from general and limited partnerships, so separate provisions are needed to provide protection from discrimination, harassment and victimisation for their members. This clause is designed to replicate the effect of provisions in current legislation but achieve the same consistency in respect of race as in clause 41.

Examples

- An LLP refuses a member access to use of a company car because he has supported a discrimination or harassment claim against the LLP. This would be victimisation.
- An LLP refuses a Muslim member access to its child care scheme because all the other children who attend the scheme have Christian parents. This would be direct discrimination.

Clause 43: Interpretation

Effect

159. This clause explains what is meant by terms used in clauses 41 and 42. As well as defining the types of partnership to which these provisions apply, it establishes what is meant by expulsion from a partnership.

160. Examples

- (8) In the application of this section to a limited partnership within the meaning of the Limited Partnerships Act 1907, “partner” means a general partner within the meaning of that Act.

42 Limited liability partnerships

- (1) An LLP or proposed LLP must not discriminate against a person— 5
(a) in the arrangements it makes for deciding to whom to offer a position as a member;
(b) as to the terms on which it offers the person a position as a member;
(c) by not offering the person a position as a member.
- (2) An LLP (A) must not discriminate against a member (B)— 10
(a) as to the terms on which B is a member;
(b) in the way A affords B access, or by not affording B access, to opportunities for promotion, transfer or training or for receiving any other benefit, facility or service;
(c) by expelling B; 15
(d) by subjecting B to any other detriment.
- (3) An LLP must not, in relation to a position as a member, harass—
(a) a member;
(b) a person who has applied for the position.
- (4) A proposed LLP must not, in relation to a position as a member, harass a 20
person who has applied for the position.
- (5) An LLP or proposed LLP must not victimise a person—
(a) in the arrangements it makes for deciding to whom to offer a position as a member;
(b) as to the terms on which it offers the person a position as a member; 25
(c) by not offering the person a position as a member.
- (6) An LLP (A) must not victimise a member (B)—
(a) as to the terms on which B is a member;
(b) in the way A affords B access, or by not affording B access, to opportunities for promotion, transfer or training or for receiving any 30
other benefit, facility or service;
(c) by expelling B;
(d) by subjecting B to any other detriment.
- (7) A duty to make reasonable adjustments applies to—
(a) an LLP; 35
(b) a proposed LLP.

43 Interpretation

- (1) This section applies for the purposes of sections 41 and 42.
- (2) “Partnership” and “firm” have the same meaning as in the Partnership Act 1890. 40
- (3) “Proposed firm” means persons proposing to form themselves into a partnership.

161. A gay partner in a firm, who, because of constant homophobic banter, feels compelled to leave his position as a partner, can claim to have been expelled from the partnership because of his sexual orientation. Should an Employment Tribunal agree with him, the firm could be found to be in breach of these provisions in a similar way to how the Employment Tribunal would find for an employee who wins a claim for constructive dismissal.

Clause 44: Barristers

Effect

160. This clause makes it unlawful for a barrister or a barrister's clerk to discriminate against, harass or victimise a pupil (a trainee barrister) or tenant (including a squatter or door-tenant) in the barristers' chambers, or people seeking to be a pupil or tenant, in relation to the professional relationship between them. It also imposes on barristers a duty to make reasonable adjustments for disabled pupils and tenants.

161. It also makes it unlawful for a person instructing a barrister (for example, a client or instructing solicitor) to discriminate against, harass or victimise a barrister in relation to the giving of instructions.

Background

162. This clause replaces provisions in current legislation providing similar protection for barristers, pupils, tenants and prospective pupils or tenants in barristers' chambers. However, it no longer protects clients and clerks from discrimination by barristers because they can respectively seek redress under the "services" and other work provisions (clause 37 and clause 38) of the Bill.

Examples

- A barrister treats a female pupil less favourably than his male pupils by allowing her to be involved in a narrower range of cases. This would be direct discrimination.
- A clerk gives instructions to a Christian barrister in his chambers in preference to a Hindu barrister, because he fears that the barrister's religion would prevent him representing a Christian client properly. This would be direct discrimination.
-

- (4) “LLP” means a limited liability partnership (within the meaning of the Limited Liability Partnerships Act 2000).
- (5) “Proposed LLP” means persons proposing to incorporate an LLP with themselves as members.
- (6) A reference to the expulsion of a partner of a firm or a member of an LLP 5 includes a reference to the termination of the person’s position as such –
 - (a) by the expiry of a period (including a period expiring by reference to an event or circumstance);
 - (b) by an act of the person (including giving notice) in circumstances such that the person is entitled, because of the conduct of other partners or 10 members, to terminate the position without notice;
 - (c) (in the case of a partner of a firm) as a result of the dissolution of the partnership.
- (7) Subsection (6)(a) and (c) does not apply if, immediately after the termination, 15 the position is renewed on the same terms.

The Bar

44 Barristers

- (1) A barrister (A) must not discriminate against a person (B) –
 - (a) in the arrangements A makes for deciding to whom to offer a pupillage or tenancy; 20
 - (b) as to the terms on which A offers B a pupillage or tenancy;
 - (c) by not offering B a pupillage or tenancy.
- (2) A barrister (A) must not discriminate against a person (B) who is a pupil or tenant –
 - (a) as to the terms on which B is a pupil or tenant; 25
 - (b) in the way A affords B access, or by not affording B access, to opportunities for training or gaining experience or for receiving any other benefit, facility or service;
 - (c) by terminating the pupillage;
 - (d) by subjecting B to pressure to leave chambers; 30
 - (e) by subjecting B to any other detriment.
- (3) A barrister must not, in relation to a pupillage or tenancy, harass –
 - (a) the pupil or tenant;
 - (b) a person who has applied for the pupillage or tenancy.
- (4) A barrister (A) must not victimise a person (B) – 35
 - (a) in the arrangements A makes for deciding to whom to offer a pupillage or tenancy;
 - (b) as to the terms on which A offers B a pupillage or tenancy;
 - (c) by not offering B a pupillage or tenancy.
- (5) A barrister (A) must not victimise a person (B) who is a pupil or tenant – 40
 - (a) as to the terms on which B is a pupil or tenant;
 - (b) in the way A affords B access, or by not affording B access, to opportunities for training or gaining experience or for receiving any other benefit, facility or service;

Clause 45: Advocates

Effect

163. This clause makes it unlawful for practising advocates and their clerks to discriminate against, harass or victimise devils (trainee advocates) or members of the stable (a group of advocates working in shared premises) or people seeking to be a devil or member, in respect of the professional relationship between them. It imposes on advocates a duty to make reasonable adjustments for disabled devils and stable members.

164. It also makes it unlawful for a person instructing an advocate (for example, a direct access client or instructing solicitor) to discriminate against, harass or victimise an advocate in relation to the giving of instructions.

Background

165. This clause replaces similar provisions in current legislation. However, as with the clause on barristers, this clause no longer protects clients and clerks from discrimination by advocates because they can respectively seek redress under the “services” and other work provisions (clause 37 and clause 38) of the Bill.

Example

- An advocate treats one devil less favourably than another by refusing to allow him to be involved in a particular case because he fears the devil’s sexual orientation may affect his involvement in the case. This would be direct discrimination.
- An advocate puts pressure on a stable member to leave because the member is disabled and the advocate does not want to make reasonable adjustments. This would be direct discrimination.

- (c) by terminating the pupillage;
 - (d) by subjecting B to pressure to leave chambers;
 - (e) by subjecting B to any other detriment.
- (6) A person must not, in relation to instructing a barrister –
- (a) discriminate against a barrister by subjecting the barrister to a 5 detriment;
 - (b) harass the barrister;
 - (c) victimise the barrister.
- (7) A duty to make reasonable adjustments applies to a barrister.
- (8) The preceding provisions of this section (apart from subsection (6)) apply in 10 relation to a barrister’s clerk as they apply in relation to a barrister; and for that purpose the reference to a barrister’s clerk includes a reference to a person who carries out the functions of a barrister’s clerk.
- (9) A reference to a tenant includes a reference to a barrister who is permitted to work in chambers (including as a squatter or door tenant); and a reference to a 15 tenancy is to be construed accordingly.

45 Advocates

- (1) An advocate (A) must not discriminate against a person (B) –
- (a) in the arrangements A makes for deciding who to take as A’s devil or to whom to offer membership of a stable; 20
 - (b) as to the terms on which A offers to take B as A’s devil or offers B membership of a stable;
 - (c) by not offering to take B as A’s devil or not offering B membership of a stable.
- (2) An advocate (A) must not discriminate against a person (B) who is a devil or a 25 member of a stable –
- (a) as to the terms on which B is a devil or a member of the stable;
 - (b) in the way A affords B access, or by not affording B access, to opportunities for training or gaining experience or for receiving any other benefit, facility or service; 30
 - (c) by terminating A’s relationship with B (where B is a devil);
 - (d) by subjecting B to pressure to leave the stable;
 - (e) by subjecting B to any other detriment.
- (3) An advocate must not, in relation to a relationship with a devil or membership 35 of a stable, harass –
- (a) a devil or member;
 - (b) a person who has applied to be taken as the advocate’s devil or to become a member of the stable.
- (4) An advocate (A) must not victimise a person (B) –
- (a) in the arrangements A makes for deciding who to take as A’s devil or 40 to whom to offer membership of a stable;
 - (b) as to the terms on which A offers to take B as A’s devil or offers B membership of a stable;
 - (c) by not offering to take B as A’s devil or not offering B membership of a 45 stable.

Clause 46: Personal offices: appointments, etc.

Effect

166. This clause makes it unlawful to discriminate against, harass or victimise people who are or wish to become personal office holders. These provisions apply in so far as other work provisions do not – this means that where office holders are also employees, they will be protected by the provisions dealing with employment in respect of their employment relationship. In respect of sex or maternity/pregnancy discrimination, a term of an offer of an appointment to office which relates to pay is treated as discriminatory where, if accepted, it would give rise to an equality clause or, if that is not the case, where the term is directly discriminatory.

167. Personal office holders are people who perform a function personally at a time and place specified by another person and who, in return, are entitled to payment (other than expenses or compensation for lost income). Clause 49(4) provides that, where a personal office is a public office at the same time, it is to be treated as a public office only.

168. An office holder can be appointed by one person and then an entirely different person can be responsible for other matters, for example for providing facilities for the office holder to perform his or her functions. Because of this, the clause prohibits both the person who makes the appointment and any relevant person from discriminating against, victimising or harassing the office holder. The relevant person is the person who is responsible for the act complained of in each case.

169. This clause places a duty to make reasonable adjustments on a person who makes the appointment and any relevant person in relation to the needs of disabled people who seek or hold personal offices.

- (5) An advocate (A) must not victimise a person (B) who is a devil or a member of a stable –
- (a) as to the terms on which B is a devil or a member of the stable;
 - (b) in the way A affords B access, or by not affording B access, to opportunities for training or gaining experience or for receiving any other benefit, facility or service;
 - (c) by terminating A’s relationship with B (where B is a devil);
 - (d) by subjecting B to pressure to leave the stable;
 - (e) by subjecting B to any other detriment.
- (6) A person must not, in relation to instructing an advocate – 10
- (a) discriminate against the advocate by subjecting the advocate to a detriment;
 - (b) harass the advocate;
 - (c) victimise the advocate.
- (7) A duty to make reasonable adjustments applies to an advocate. 15
- (8) This section (apart from subsection (6)) applies in relation to an advocate’s clerk as it applies in relation to an advocate; and for that purpose the reference to an advocate’s clerk includes a reference to a person who carries out the functions of an advocate’s clerk.
- (9) “Advocate” means a practising member of the Faculty of Advocates. 20

Office-holders

46 Personal offices: appointments, etc.

- (1) This section applies in relation to personal offices.
- (2) A personal office is an office or post –
- (a) to which a person is appointed to discharge a function personally²⁵ under the direction of another person, and
 - (b) in respect of which an appointed person is entitled to remuneration.
- (3) A person (A) who has the power to make an appointment to a personal office must not discriminate against a person (B) –
- (a) in the arrangements A makes for deciding to whom to offer the³⁰ appointment;
 - (b) as to the terms on which A offers B the appointment;
 - (c) by not offering B the appointment.
- (4) A person who has the power to make an appointment to a personal office must not, in relation to the office, harass a person seeking, or being considered for,³⁵ the appointment.
- (5) A person (A) who has the power to make an appointment to a personal office must not victimise a person (B) –
- (a) in the arrangements A makes for deciding to whom to offer the⁴⁰ appointment;
 - (b) as to the terms on which A offers B the appointment;
 - (c) by not offering B the appointment.

Background

170. This clause is designed to replicate the effect of provisions in current legislation.

Examples

- A company board refuses to appoint a candidate as director because she is black. This would be direct discrimination.
- A company terminates the appointment of a director because it is discovered that she is pregnant. This would be direct discrimination.

Clause 47: Public offices: appointments, etc.

Effect

171. This clause makes it unlawful to discriminate against, harass or victimise people who are or wish to become public office holders. Like the personal office holder provisions above, these provisions apply in so far as other work provisions do not. This means that where public office holders are also employees, they will be protected by the provisions dealing with employment in respect of their employment. In respect of sex or maternity/pregnancy discrimination, a term of an offer of an appointment to office which relates to pay is treated as

- (6) A person (A) who is a relevant person in relation to a personal office must not discriminate against a person (B) appointed to the office –
- (a) as to the terms of B’s appointment;
 - (b) in the way A affords B access, or by not affording B access, to opportunities for promotion, transfer or training or for receiving any other benefit, facility or service;
 - (c) by terminating B’s appointment;
 - (d) by subjecting B to any other detriment.
- (7) A relevant person in relation to a personal office must not, in relation to that office, harass a person appointed to it. 10
- (8) A person (A) who is a relevant person in relation to a personal office must not victimise a person (B) appointed to the office –
- (a) as to the terms of B’s appointment;
 - (b) in the way A affords B access, or by not affording B access, to opportunities for promotion, transfer or training or for receiving any other benefit, facility or service;
 - (c) by terminating B’s appointment;
 - (d) by subjecting B to any other detriment.
- (9) A duty to make reasonable adjustments applies to –
- (a) a person who has the power to make an appointment to a personal office; 20
 - (b) a relevant person in relation to a personal office.
- (10) For the purposes of subsection (2)(a), a person is to be regarded as discharging functions personally under the direction of another person if that other person is entitled to direct the person as to when and where to discharge the functions. 25
- (11) For the purposes of subsection (2)(b), a person is not to be regarded as entitled to remuneration merely because the person is entitled to payments –
- (a) in respect of expenses incurred by the person in discharging the functions of the office or post, or
 - (b) by way of compensation for the loss of income or benefits the person would or might have received had the person not been discharging the functions of the office or post. 30
- (12) Subsection (3)(b), so far as relating to sex or pregnancy and maternity, does not apply to a term that relates to pay –
- (a) unless, were B to accept the offer, an equality clause or rule would have effect in relation to the term, or 35
 - (b) if paragraph (a) does not apply, except in so far as making an offer on terms including that term amounts to a contravention of subsection (3)(b) by virtue of section 13 or 17.

47 Public offices: appointments, etc.

40

- (1) This section and section 48 apply in relation to public offices.
- (2) A public office is –
- (a) an office or post, appointment to which is made by a member of the executive;

discriminatory where, if accepted, it would give rise to an equality clause or if that is not the case where the term is directly discriminatory.

172. Public office holders are people appointed by, on the recommendation of, or with the approval of, a member of the executive branch of Government, such as a Government Minister, or people who are appointed on the recommendation, or subject to the approval of, either of the Houses of Parliament, the National Assembly for Wales, or the Scottish Parliament.

173. A public office holder can be appointed by one person and then an entirely different person can be responsible for other matters, for example for providing facilities for the office holder to perform his or her functions. Because of this, the clause prohibits both the person with the power to make the appointment and the relevant person from discriminating against, victimising or harassing the office holder. The relevant person is the person who is responsible for the act complained of in each case (but does not include either of the Houses of Parliament, the National Assembly for Wales or the Scottish Parliament).

174. This clause also places on the person who has the power to make an appointment and any relevant person a duty to make reasonable adjustments for disabled people seeking or holding public offices.

Background

175. This clause for the most part is designed to replicate the effect of provisions in current legislation. It also extends protection from discrimination, harassment and victimisation to those appointed on the recommendation or approval of law making bodies such as the Scottish Parliament and the Welsh Assembly.

176. Examples

- A Government Minister with the power to appoint the non-executive board members of a non-departmental public body fails to appoint a candidate because he is gay. This would be direct discrimination.

-
- (b) an office or post, appointment to which is made on the recommendation of, or subject to the approval of, a member of the executive;
- (c) an office or post, appointment to which is made on the recommendation of, or subject to the approval of, the House of Commons, the House of Lords, the National Assembly for Wales or the Scottish Parliament.
- (3) A person (A) who has the power to make an appointment to a public office within subsection (2)(a) or (b) must not discriminate against a person (B) –
- (a) in the arrangements A makes for deciding to whom to offer the appointment; 10
 - (b) as to the terms on which A offers B the appointment;
 - (c) by not offering B the appointment.
- (4) A person who has the power to make an appointment to a public office within subsection (2)(a) or (b) must not, in relation to the office, harass a person seeking, or being considered for, the appointment. 15
- (5) A person (A) who has the power to make an appointment to a public office within subsection (2)(a) or (b) must not victimise a person (B) –
- (a) in the arrangements A makes for deciding to whom to offer the appointment; 20
 - (b) as to the terms on which A offers B the appointment;
 - (c) by not offering B the appointment.
- (6) A person (A) who is a relevant person in relation to a public office within subsection (2)(a) or (b) must not discriminate against a person (B) appointed to the office – 25
- (a) as to B's terms of appointment;
 - (b) in the way A affords B access, or by not affording B access, to opportunities for promotion, transfer or training or for receiving any other benefit, facility or service;
 - (c) by terminating the appointment; 30
 - (d) by subjecting B to any other detriment.
- (7) A person (A) who is a relevant person in relation to a public office within subsection (2)(c) must not discriminate against a person (B) appointed to the office –
- (a) as to B's terms of appointment; 35
 - (b) in the way A affords B access, or by not affording B access, to opportunities for promotion, transfer or training or for receiving any other benefit, facility or service;
 - (c) by subjecting B to any other detriment (other than by terminating the appointment). 40
- (8) A relevant person in relation to a public office must not, in relation to that office, harass a person appointed to it.
- (9) A person (A) who is a relevant person in relation to a public office within subsection (2)(a) or (b) must not victimise a person (B) appointed to the office –
- (a) as to B's terms of appointment; 45
 - (b) in the way A affords B access, or by not affording B access, to opportunities for promotion, transfer or training or for receiving any other benefit, facility or service;

Clause 48: Public offices: recommendations for appointments etc.

Effect

176. This clause makes it unlawful for a person with power to make recommendations about or approve appointments to public offices to discriminate against, harass or victimise people seeking or being considered as public office holders in respect of the recommendation or approval process. It also imposes a duty on the person with the power to make a recommendation or approve an appointment to make reasonable adjustments for disabled people who seek or are being considered for appointment to public offices.

177. This clause does not apply in respect of all public offices, only those to which the appointment is made on the recommendation or approval of a member of the executive or where the appointment is made by a member of the executive on the recommendation or approval of a relevant body (for example, a non-departmental public body).

Background

178. This clause is for the most part designed to replicate the effect of provisions in current legislation. It also extends protection from discrimination, harassment and victimisation to those appointed by a member of the executive on the recommendation or with the approval of a non-departmental public body.

Examples

- It would be direct discrimination for the Government Minister responsible for approving the appointment of members of the BBC Trust to refuse to approve the appointment of a person because he has a hearing impairment.

- (c) by terminating the appointment;
 - (d) by subjecting B to any other detriment.
- (10) A person (A) who is a relevant person in relation to a public office within subsection (2)(c) must not victimise a person (B) appointed to the office –
- (a) as to B’s terms of appointment; 5
 - (b) in the way A affords B access, or by not affording B access, to opportunities for promotion, transfer or training or for receiving any other benefit, facility or service;
 - (c) by subjecting B to any other detriment (other than by terminating the appointment). 10
- (11) A duty to make reasonable adjustments applies to –
- (a) a relevant person in relation to a public office;
 - (b) a person who has the power to make an appointment to a public office within subsection (2)(a) or (b).
- (12) Subsection (3)(b), so far as relating to sex or pregnancy and maternity, does not 15 apply to a term that relates to pay –
- (a) unless, were B to accept the offer, an equality clause or rule would have effect in relation to the term, or
 - (b) if paragraph (a) does not apply, except in so far as making an offer on terms including that term amounts to a contravention of subsection 20 (3)(b) by virtue of section 13 or 17.

48 Public offices: recommendations for appointments, etc.

- (1) A person (A) who has the power to make a recommendation for or give approval to an appointment to a public office within section 47(2)(a) or (b), must not discriminate against a person (B) – 25
- (a) in the arrangements A makes for deciding who to recommend for appointment or to whose appointment to give approval;
 - (b) by not recommending B for appointment to the office;
 - (c) by making a negative recommendation of B for appointment to the office; 30
 - (d) by not giving approval to the appointment of B to the office.
- (2) A person who has the power to make a recommendation for or give approval to an appointment to a public office within section 47(2)(a) or (b) must not, in relation to the office, harass a person seeking or being considered for the recommendation or approval. 35
- (3) A person (A) who has the power to make a recommendation for or give approval to an appointment to a public office within section 47(2)(a) or (b), must not victimise a person (B) –
- (a) in the arrangements A makes for deciding who to recommend for appointment or to whose appointment to give approval; 40
 - (b) by not recommending B for appointment to the office;
 - (c) by making a negative recommendation of B for appointment to the office;
 - (d) by not giving approval to the appointment of B to the office.

Clause 49: Interpretation and exceptions

Effect

179. This clause explains the meaning of various terms, such as “relevant person”, used clauses 46, 47 and 48.

180. It also stipulates that termination of an appointment includes the expiration of the appointment period or where unreasonable conduct of the relevant person causes the office holder to terminate the appointment. But it does not count as termination if after expiry of the appointment the person’s appointment is immediately renewed on the same terms.

- (4) A duty to make reasonable adjustments applies to a person who has the power to make a recommendation for or give approval to an appointment to a public office within section 47(2)(a) or (b).
- (5) A reference in this section to a person who has the power to make a recommendation for or give approval to an appointment to a public office within section 47(2)(a) is a reference only to a relevant body which has that power; and for that purpose “relevant body” means a body established –
 - (a) by or in pursuance of an enactment, or
 - (b) by a member of the executive.

49 Interpretation and exceptions 10

- (1) This section applies for the purposes of sections 46 to 48.
- (2) “Personal office” has the meaning given in section 46.
- (3) “Public office” has the meaning given in section 47.
- (4) An office or post which is both a personal office and a public office is to be treated as being a public office only. 15
- (5) Appointment to an office or post does not include election to it.
- (6) “Relevant person”, in relation to an office, means the person who, in relation to a matter specified in the first column of the table, is specified in the second column (but a reference to a relevant person does not in any case include the House of Commons, the House of Lords, the National Assembly for Wales or 20 the Scottish Parliament).

<i>Matter</i>	<i>Relevant person</i>	
A term of appointment	The person who has the power to set the term.	
Access to an opportunity	The person who has the power to afford access to the opportunity (or, if there is no such person, the person who has the power to make the appointment).	25
Terminating an appointment	The person who has the power to terminate the appointment.	30
Subjecting an appointee to any other detriment	The person who has the power in relation to the matter to which the conduct in question relates (or, if there is no such person, the person who has the power to make the appointment).	35
Harassing an appointee	The person who has the power in relation to the matter to which the conduct in question relates.	

- (7) A reference to termination of a person’s appointment includes a reference to 40 termination –

Clause 50: Qualifications bodies

Effect

181. This clause makes it unlawful for a qualifications body (as defined in clause 122) to discriminate against, harass or victimise a person when conferring relevant qualifications (which includes renewing or extending a qualification). It provides that applying a competence standard to a disabled person is not disability discrimination, provided the application of the standard is justified. It also imposes a duty on qualifications bodies to make reasonable adjustments for disabled people.

Background

182. This clause replaces similar provisions in current legislation. It also extends the protection to cover discrimination in the arrangements made for determining upon whom a relevant qualification should be conferred.

Examples

- A body which confers diplomas certifying that people are qualified electricians refuses to confer the qualification on a man simply because he is gay. This would be direct discrimination.
- An organisation which maintains a register of professional tradespeople refuses to include a person's details on the register because her name does not sound English. This would be direct discrimination.

- (a) by the expiry of a period (including a period expiring by reference to an event or circumstance);
 - (b) by an act of the person (including giving notice) in circumstances such that the person is entitled, because of the relevant person’s conduct, to terminate the appointment without notice. 5
- (8) Subsection (7)(a) does not apply if, immediately after the termination, the appointment is renewed on the same terms.
- (9) Schedule 6 (excluded offices) has effect.

Qualifications

- 50 Qualifications bodies** 10
- (1) A qualifications body (A) must not discriminate against a person (B) –
- (a) in the arrangements A makes for deciding upon whom to confer a relevant qualification;
 - (b) as to the terms on which it is prepared to confer a relevant qualification on B; 15
 - (c) by not conferring a relevant qualification on B.
- (2) A qualifications body (A) must not discriminate against a person (B) upon whom A has conferred a relevant qualification –
- (a) by withdrawing the qualification from B;
 - (b) by varying the terms on which B holds the qualification; 20
 - (c) by subjecting B to any other detriment.
- (3) A qualifications body must not, in relation to conferment by it of a relevant qualification, harass –
- (a) a person who holds the qualification, or
 - (b) a person who applies for it. 25
- (4) A qualifications body (A) must not victimise a person (B) –
- (a) in the arrangements A makes for deciding upon whom to confer a relevant qualification;
 - (b) as to the terms on which it is prepared to confer a relevant qualification on B; 30
 - (c) by not conferring a relevant qualification on B.
- (5) A qualifications body (A) must not victimise a person (B) upon whom A has conferred a relevant qualification –
- (a) by withdrawing the qualification from B;
 - (b) by varying the terms on which B holds the qualification; 35
 - (c) by subjecting B to any other detriment.
- (6) A duty to make reasonable adjustments applies to a qualifications body.
- (7) The application by a qualifications body of a competence standard to a disabled person is not disability discrimination unless it is discrimination by virtue of section 18. 40

Clause 51: Interpretation

Effect

183. This clause explains the meaning of various terms used in clause 50. In particular, it defines a qualifications body as a body which can confer any academic, medical, technical or other standard which is required to carry out a particular trade or profession, or which better enables a person to do so by, for example, determining whether the person has a particular level of competence or ability.

184. It also makes clear that bodies such as schools, institutions of further and higher education and education authorities which confer qualifications such as A Levels and GCSEs are not qualifications bodies for the purposes of clause 50.

Background

185. This clause is designed to replicate the effect of similar provisions in current legislation.

Example

- Examples of qualifications bodies are the Public Carriage Office (which licenses cab drivers in London), the British Horseracing Authority and the General Medical Council. Also included is any body which confers a diploma on people pursuing a particular trade (for example, plumbers), even if the diploma is not strictly necessary to pursue a career in that trade but shows that the person has reached a certain standard.

Clause 52: Employment service-providers

Effect

186. This clause makes it unlawful to discriminate against, harass or victimise a person when providing an employment service. It also places a duty on providers of employment services to make reasonable adjustments for disabled people. Employment services are defined in clause 53.

Background

187. This clause replaces the separate provisions for vocational training and employment agencies in current legislation with a single provision covering both.

Examples

- A company which provides courses to train people to be plumbers refuses to enrol women. This would be direct discrimination.
- An agency which supplies schools with teachers offers placements only to white teachers. This would be direct discrimination.

51 Interpretation

- (1) This section applies for the purposes of section 50.
- (2) A qualifications body is an authority or body which can confer a relevant qualification.
- (3) A relevant qualification is an authorisation, qualification, recognition, 5 registration, enrolment, approval or certification which is needed for, or facilitates engagement in, a particular trade or profession.
- (4) An authority or body is not a qualifications body in so far as –
 - (a) it can confer a qualification to which section 91 applies,
 - (b) it is the responsible body of a school to which section 80 applies, 10
 - (c) it is the governing body of an institution to which section 86 applies,
 - (d) it exercises functions under the Education Acts, or
 - (e) it exercises functions under the Education (Scotland) Act 1980.
- (5) A reference to conferring a qualification includes a reference to renewing or extending the conferment of a qualification. 15
- (6) A competence standard is an academic, medical or other standard applied for the purpose of determining whether or not a person has a particular level of competence or ability.

Employment services

52 Employment service-providers 20

- (1) A person (an “employment service-provider”) concerned with the provision of an employment service must not discriminate against a person –
 - (a) in the arrangements the service-provider makes for selecting persons to whom to provide, or to whom to offer to provide, the service;
 - (b) as to the terms on which the service-provider offers to provide the 25 service to the person;
 - (c) by not offering to provide the service to the person.
- (2) An employment service-provider (A) must not, in relation to the provision of an employment service, discriminate against a person (B) –
 - (a) as to the terms on which A provides the service to B; 30
 - (b) by not providing the service to B;
 - (c) by terminating the provision of the service to B;
 - (d) by subjecting B to any other detriment.
- (3) An employment service-provider must not, in relation to the provision of an employment service, harass – 35
 - (a) a person who asks the service-provider to provide the service, or
 - (b) a person for whom the service-provider provides the service.

- A firm which offers work placements must make reasonable adjustments for disabled people to have access to any equipment they may need.

Clause 53: Interpretation

Effect

188. This clause explains what the provision of an employment service includes (such as the provision of training for employment or careers guidance), and what it does not include (such as education in schools), for the purposes of clause 52.

Example

- Examples of the types of activities covered under this clause include providing CV writing classes, English or Maths classes to help adults into work; training in IT/ keyboard skills; or providing work placements.

-
- (4) An employment service-provider (A) must not victimise a person (B) –
- (a) in the arrangements A makes for selecting persons to whom to provide, or to whom to offer to provide, the service;
 - (b) as to the terms on which A offers to provide the service to B;
 - (c) by not offering to provide the service to B. 5
- (5) An employment service-provider (A) must not, in relation to the provision of an employment service, victimise a person (B) –
- (a) as to the terms on which A provides the service to B;
 - (b) by not providing the service to B;
 - (c) by terminating the provision of the service to B; 10
 - (d) by subjecting B to any other detriment.
- (6) A duty to make reasonable adjustments applies to an employment service-provider (except in relation to the provision of an employment service within subsection 53(2)(a), (b) or (c)).
- 53 Interpretation 15**
- (1) This section applies for the purposes of section 52.
- (2) The provision of an employment service includes –
- (a) the provision of vocational training;
 - (b) the provision of vocational guidance;
 - (c) making arrangements for the provision of vocational training or 20 vocational guidance;
 - (d) the provision of a service for finding employment for persons;
 - (e) the provision of a service for supplying employers with persons to do work;
 - (f) the provision of a service in pursuance of arrangements made under 25 section 2 of the Employment and Training Act 1973 (functions of the Secretary of State relating to employment);
 - (g) the provision of a service in pursuance of arrangements made or a direction given under section 10 of that Act (careers services);
 - (h) the exercise of a function in pursuance of arrangements made under 30 section 2(3) of the Enterprise and New Towns (Scotland) Act 1990 (functions of Scottish Enterprise, etc. relating to employment);
 - (i) an assessment related to the conferment of a relevant qualification within the meaning of section 50 above (except in so far as the assessment is by the qualifications body which confers the 35 qualification).
- (3) An employment service does not include a service the provision of which is otherwise than by way of a trade or profession.
- (4) This section does not apply in relation to training or guidance in so far as it is training or guidance in relation to which another provision of this Part applies. 40
- (5) This section does not apply in relation to training or guidance for pupils of a school to which section 80 applies in so far as it is training or guidance to which the responsible body of the school has power to afford access (whether as the responsible body of that school or as the responsible body of any other school at which the training or guidance is provided). 45

Clause 54: Trade organisations

Effect

189. This clause makes it unlawful for a trade organisation to discriminate against, harass or victimise a person who is, or is applying to be, a member. It also requires trade organisations to make reasonable adjustments for disabled people.

190. A trade organisation is an organisation of workers (such as a trade union) or employers (such as the Chambers of Commerce); or an organisation whose members carry out a particular trade or profession (such as the British Medical Association, the Institute of Civil Engineers and the Law Society).

Background

191. This clause is designed to replicate the effect of similar provisions in current legislation. It also extends the protection to cover discrimination in the arrangements made for determining to whom membership should be offered.

Examples

- A trade union restricts its membership to men. This would be direct discrimination.
- An organisation of employers varies membership subscriptions or access to conferences because of a person's race. This would be direct discrimination.

- (6) This section does not apply in relation to training or guidance for students of an institution to which section 86 applies in so far as it is training or guidance to which the governing body of the institution has power to afford access.
- (7) In so far as a service is an employment service –
- (a) its provision is not the provision of a service, or the exercise of a public function, for the purposes of Part 3 (services and public functions);
 - (b) it is not a benefit, facility or service for the purposes of Part 7 (associations).
- (8) “Vocational training” means –
- (a) training for employment, or 10
 - (b) work experience (including work experience the duration of which is not agreed until after it begins).
- (9) A reference to training includes a reference to facilities for training.

Trade organisations

- 54 Trade organisations** 15
- (1) A trade organisation (A) must not discriminate against a person (B) –
- (a) in the arrangements A makes for deciding to whom to offer membership of the organisation;
 - (b) as to the terms on which it is prepared to admit B as a member;
 - (c) by not accepting B’s application for membership. 20
- (2) A trade organisation (A) must not discriminate against a member (B) –
- (a) in the way it affords B access, or by not affording B access, to opportunities for receiving a benefit, facility or service;
 - (b) by depriving B of membership;
 - (c) by varying the terms on which B is a member; 25
 - (d) by subjecting B to any other detriment.
- (3) A trade organisation must not, in relation to membership of it, harass –
- (a) a member, or
 - (b) an applicant for membership.
- (4) A trade organisation (A) must not victimise a person (B) – 30
- (a) in the arrangements A makes for deciding to whom to offer membership of the organisation;
 - (b) as to the terms on which it is prepared to admit B as a member;
 - (c) by not accepting B’s application for membership.
- (5) A trade organisation (A) must not victimise a member (B) – 35
- (a) in the way it affords B access, or by not affording B access, to opportunities for receiving a benefit, facility or service;
 - (b) by depriving B of membership;
 - (c) by varying the terms on which B is a member;
 - (d) by subjecting B to any other detriment. 40
- (6) A duty to make reasonable adjustments applies to a trade organisation.
- (7) A trade organisation is –

Clause 55: Official business of members

Effect

192. This clause makes it unlawful for local authorities to discriminate against, harass or victimise their members in relation to providing access to facilities such as training which relate to the carrying out of their official business. This does not apply to election or appointment to posts within the local authority. It imposes a duty on local authorities to make reasonable adjustments for disabled members.

Background

193. This clause extends protection currently in the Disability Discrimination Act 1995 to all protected characteristics.

Example

- A local authority does not equip meeting rooms with hearing loops for a member who has a hearing impairment, in order to enable her to take full part in the business for which she has been elected. This would be direct discrimination if provision of hearing loops were considered to be a reasonable adjustment.

Clause 56: Interpretation

Effect

194. This clause explains the meaning of various terms used in clause 55. In particular, it lists the various bodies which are included in the term “local authority” and provides a power for a Minister of the Crown to add to this list of bodies. It also explains what is meant by “members of a local authority carrying out official business”.

Example

- A local authority member who is considering an application for planning permission whilst sitting on a council's Planning Committee would be undertaking “official business”.

- (a) an organisation of workers,
- (b) an organisation of employers, or
- (c) any other organisation whose members carry on a particular trade or profession for the purposes of which the organisation exists.

Local authority members

5

55 Official business of members

- (1) A local authority must not discriminate against a member of the authority in relation to the member’s carrying out of official business –
 - (a) in the way the authority affords the member access, or by not affording the member access, to opportunities for training or for receiving any other facility;
 - (b) by subjecting the member to any other detriment.
- (2) A local authority must not, in relation to a member’s carrying-out of official business, harass the member.
- (3) A local authority must not victimise a member of the authority in relation to the member’s carrying out of official business –
 - (a) in the way the authority affords the member access, or by not affording the member access, to opportunities for training or for receiving any other facility;
 - (b) by subjecting the member to any other detriment. 20
- (4) A member of a local authority is not subjected to a detriment for the purposes of subsection (1)(b) or (3)(b) only because the member is –
 - (a) not appointed or elected to an office of the authority,
 - (b) not appointed or elected to, or to an office of, a committee or sub-committee of the authority, or 25
 - (c) not appointed or nominated in exercise of an appointment power of the authority.
- (5) In subsection (4)(c), an appointment power of a local authority is a power of the authority, or of a group of bodies including the authority, to make –
 - (a) appointments to a body; 30
 - (b) nominations for appointment to a body.
- (6) A duty to make reasonable adjustments applies to a local authority.

56 Interpretation

- (1) This section applies for the purposes of section 55.
- (2) “Local authority” means – 35
 - (a) a county council in England;
 - (b) a district council in England;
 - (c) the Greater London Authority;
 - (d) a London borough council;
 - (e) the Common Council of the City of London; 40
 - (f) the Council of the Isles of Scilly;
 - (g) a parish council in England;

Chapter 2: Occupational pension schemes

Clause 57: Non-discrimination rule

Effects

195. This clause requires that every occupational pension scheme is to have a non-discrimination rule read into it. The rule prohibits “a responsible person” from discriminating, harassing or victimising a member or a person who could become a member of the scheme.

196. A responsible person is a scheme trustee or manager, an employer, and the person responsible for appointing a person to a public office, where the office holder can be a scheme member.

197. The rule does not apply to pension rights built up or benefits payable for periods of service before the commencement of this clause. Periods of service prior to this date will be subject to the previous discrimination legislation.

198. Where there has been a breach of a non-discrimination rule, proceedings may be brought against the person responsible for the breach under Part 9 of the Bill.

199. Pension credit members are not protected from discrimination because their rights are derived from an order of the court, rather than directly from employment.

200. It would not be a breach of a non-discrimination rule if an employer or the trustees or managers to maintain certain practices or make decisions in relation to age that are specified by order by Ministers.

- (h) a county council in Wales;
 - (i) a community council in Wales;
 - (j) a county borough council in Wales;
 - (k) a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994; 5
 - (l) a community council in Scotland.
- (3) A Minister of the Crown may by order amend subsection (2) so as to add, vary or omit a reference to a body which exercises functions that have been conferred on a local authority within paragraph (a) to (l).
- (4) A reference to the carrying-out of official business by a person who is a 10 member of a local authority is a reference to the doing of anything by the person –
- (a) as a member of the authority,
 - (b) as a member of a body to which the person is appointed by, or appointed following nomination by, the authority or a group of bodies 15 including the authority, or
 - (c) as a member of any other public body.
- (5) “Member”, in relation to the Greater London Authority, means –
- (a) the Mayor of London;
 - (b) a member of the London Assembly. 20

CHAPTER 2

OCCUPATIONAL PENSION SCHEMES

57 Non-discrimination rule

- (1) An occupational pension scheme must be taken to include a non-discrimination rule. 25
- (2) A non-discrimination rule is a provision by virtue of which a responsible person (A) –
- (a) must not discriminate against another person (B) in carrying out any of A’s functions in relation to the scheme;
 - (b) must not, in relation to the scheme, harass B; 30
 - (c) must not, in relation to the scheme, victimise B.
- (3) The provisions of an occupational pension scheme have effect subject to the non-discrimination rule.
- (4) The following are responsible persons –
- (a) the trustees or managers of the scheme; 35
 - (b) an employer whose employees are, or may be, members of the scheme;
 - (c) a person exercising an appointing function in relation to an office the holder of which is, or may be, a member of the scheme.
- (5) A non-discrimination rule does not apply in relation to a person who is a pension credit member of a scheme. 40
- (6) An appointing function is any of the following –
- (a) the function of appointing a person;

201. The non-discrimination rule does not apply where an equality rule operates or would operate, but for the exceptions in Part 2 of Schedule 7.

Background

202. Occupational pension schemes are already required to have non-discrimination rules in respect of age, disability, religion or belief and sexual orientation. When this provision comes into force, they will also have to have non-discrimination rules in respect of gender reassignment, marriage and civil partnership and sex.

203. Exceptions to the non-discrimination rule in relation to age are currently set out at Schedule 2 to the Employment Equality (Age) Regulations 2006 (SI 2006/1031).

Example

- A disabled person is refused membership of an occupational pension scheme because the trustees believe it is not in the person's best interest to join. This is because the person has a short life expectancy and is unlikely to build up a reasonable pension. Although the trustees believe they are acting reasonably, they may be liable to challenge because they have breached the non-discrimination rule.

Clause 58: Communications

Effect

204. This clause applies clause 114, 120 and paragraph 19 of Schedule 8 and the provisions of this Chapter, in their application to communications, to a disabled person who is:

- entitled to the present payment of dependants' or survivors' benefits under an occupational pension scheme, or
- entitled to a pension derived from a divorce settlement (pension credit member).

Background

205. This clause replaces the current provisions in the Disability Discrimination Act 1995.

Chapter 3: Equality of terms

Clause 59: Relevant types of work

Effect

206. This Chapter contains provisions designed to achieve equality between men and women in pay and other terms of employment where the work of an employee and his or her

- (b) the function of terminating a person’s appointment;
 - (c) the function of recommending a person for appointment;
 - (d) the function of approving an appointment.
- (7) The breach of a non-discrimination rule is a contravention of this Part for the purposes of Part 9 (enforcement). 5
- (8) It is not a breach of a non-discrimination rule for the employer or the trustees or managers of a scheme to maintain or use in relation to the scheme rules, practices, actions or decisions relating to age which are of a description specified by order by a Minister of the Crown.
- (9) An order authorising the use of rules, practices, actions or decisions which are 10 not in use before the order comes into force must not be made unless the Minister consults such persons as the Minister thinks appropriate.
- (10) A non-discrimination rule does not have effect in relation to an occupational pension scheme in so far as an equality rule has effect in relation to it (or would have effect in relation to it but for Part 2 of Schedule 7). 15
- (11) A duty to make reasonable adjustments applies to a responsible person.

58 Communications

- (1) In their application to communications the following provisions apply in relation to a disabled person within subsection (2) as they apply in relation to a disabled person who is a member of an occupational pension scheme— 20
- (a) section 57;
 - (b) section 114;
 - (c) section 120;
 - (d) paragraph 19 of Schedule 8 (and such other provisions of that Schedule as apply for the purposes of that paragraph). 25
- (2) A disabled person within this subsection is a disabled person who is—
- (a) entitled to the present payment of dependants’ or survivors’ benefits under the scheme, or
 - (b) a pension credit member of the scheme.
- (3) Communications include— 30
- (a) the provision of information;
 - (b) the operation of a dispute resolution procedure.

CHAPTER 3

EQUALITY OF TERMS

Sex equality 35

59 Relevant types of work

Sections 61 to 65 apply where—

comparator of the opposite sex is equal. It does so by providing for a sex equality clause to be read into the employee's contract of employment. This is designed to ensure parity of terms between the employee and his or her comparator. A similar provision – referred to as a sex equality rule – is implied into the terms of pension schemes.

207. This clause explains that the clauses mentioned which impose the equality clause and equality rule apply to employees, office holders and, by virtue of subsection (3) of clause 78, members of the armed forces, where one person's work is equal to the work of another.

208. Background

208. This is a new provision that is designed to clarify to whom the equality clause and equality rule provisions of the Bill apply. The reference to colleague and its definition clarify, but do not widen the existing provisions on who a person can use as a comparator for the purpose of a claim for breach of an equality clause or rule.

Examples

- A female employee can compare her work with that of a male colleague employed by the same employer.
- A male police officer can compare his work with that of a female police officer in the same force.

Clause 60: Equal work

Effect

209. This clause sets out when the work of two people, whose work is being compared, is taken to be equal so that an equality clause or equality rule can operate. For work to be equal, a claimant must establish that he or she is doing like work, work rated as equivalent or work of equal value to a comparator's work. The clause also sets out the factors which determine whether a person's work is within one of these categories. The fact that a discriminatory job evaluation study has been carried out which gives different values to the work of men and women is not an obstacle to the operation of an equality clause if an evaluation that set the same values for men and women would have found the jobs to be of equal value.

Background

210. This clause is designed to replicate the substance of definitions contained in the Equal Pay Act 1970.

Examples

- Male and female supermarket employees who perform similar tasks which require similar skills will be doing like work even though the men may lift heavier objects from time to time. This is because the differences are not of practical importance in relation to their terms of employment.
- A job evaluation study rated the jobs of women and their better paid male comparators as not equivalent. If the study had not given undue weight to the skills involved in the men's jobs, it would have rated the jobs as equivalent. An equality clause would operate in this situation.

- (a) a person (A) is employed on work that is equal to the work that a colleague of the opposite sex (B) does;
- (b) a person (A) holding a personal or public office does work that is equal to the work that a colleague (B) of the opposite sex does.

60 Equal work

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- (1) For the purposes of this Chapter, A's work is equal to that of B if it is –
 - (a) like B's work,
 - (b) rated as equivalent to B's work, or
 - (c) of equal value to B's work.
- (2) A's work is like B's work if – 10
 - (a) A's work and B's work are the same or broadly similar, and
 - (b) such differences as there are between their work are not of practical importance in relation to the terms of their work.
- (3) So on a comparison of one person's work with another's for the purposes of subsection (2), it is necessary to have regard to – 15
 - (a) the frequency with which differences between their work occur in practice, and
 - (b) the nature and extent of the differences.
- (4) A's work is rated as equivalent to B's work if a job evaluation study –
 - (a) gives an equal value to A's job and B's job in terms of the demands²⁰ made on a worker, or
 - (b) would give an equal value to A's job and B's job in those terms were the evaluation not made on a sex-specific system.
- (5) A system is sex-specific if, for the purposes of one or more of the demands made on a worker, it sets values for men different from those it sets for women.²⁵
- (6) A's work is of equal value to B's work if it is –
 - (a) neither like B's work nor rated as equivalent to B's work, but

Clause 61: Sex equality clause

Effect

211. This clause requires that a sex equality clause be read into the terms under which people are employed. The effect of this is that any term in the contract which is less favourable than that of the comparator of the opposite sex is modified so as to ensure that both have the same effect. Where the comparator benefits from a term which is not available to the employee, the effect of the sex equality clause is to include such a term in the employee's contract of employment.

212. A sex equality clause will operate similarly on the terms of a person who is an appointee to an office or a member of the armed forces, as it does in relation to an employee.

213. Subsection (3) is intended to ensure that the provisions relating to equality of terms at work and the provisions governing pension schemes in clauses 62 and 63 operate effectively together so that action can be taken against an employer as it could against a trustee, to ensure, for example that a defence that operates in relation to one, will operate in relation to the other.

214. Where a job evaluation study has rated the work of an employee and comparator as equivalent, the equality clause will give the employee the benefit of all of the comparator's terms, including those which have not been determined by the rating of the work.

215. Background

215. This clause is designed to replicate the effect of definitions contained in the Equal Pay Act 1970.

Example

- A male employee's contract includes a term that he can use his employer's car for private purposes. His female colleague who does equal work does not benefit from this term. A sex equality clause will have the effect of including in her contract a term corresponding to that of her male colleague.

Clause 62: Sex equality rule

Effect

216. This clause requires that every occupational pension scheme is to have a sex equality rule read into it.

217. The rule requires that men and women are treated equally to comparable members of the opposite sex in relation both to the terms on which they are permitted to join the scheme, and to the terms on which they are treated once they have become scheme members.

218. The rule, insofar as it applies to the terms on which a person is treated once they have become a member of the scheme, does not apply to pensionable service before 17 May 1990. This was the date of the European Court's decision in *Barber v Guardian Royal Exchange*

- (b) nevertheless equal to B’s work in terms of the demands made on A by reference to factors such as effort, skill and decision-making.

61 Sex equality clause

- (1) If the terms of A’s work do not (by whatever means) include a sex equality clause, they are to be treated as including one. 5
- (2) A sex equality clause is a provision that has the following effect –
- (a) if a term of A’s is less favourable to A than a corresponding term of B’s is to B, A’s term is modified so as not to be less favourable;
 - (b) if A does not have a term which corresponds to a term of B’s that benefits B, A’s terms are modified so as to include such a term. 10
- (3) Subsection (2)(a) applies to a term of A’s relating to membership of or rights under an occupational pension scheme only in so far as a sex equality rule would have effect in relation to the term.
- (4) In the case of work within section 60(1)(b), a reference in subsection (2) above to a term includes a reference to such terms (if any) as have not been¹⁵ determined by the rating of the work (as well as those that have).

62 Sex equality rule

- (1) If an occupational pension scheme does not include a sex equality rule, it is to be treated as including one.
- (2) A sex equality rule is a provision that has the following effect – 20
- (a) if a relevant term is less favourable to A than it is to B, the term is modified so as not to be less favourable;
 - (b) if a term confers a relevant discretion capable of being exercised in a way that would be less favourable to A than to B, the term is modified so as to prevent the exercise of the discretion in that way. 25
- (3) A term is relevant if it is –

Insurance Group, which established that occupational pensions were equal pay for the purposes of Article 119 of the Treaty of Rome. Where the application of the rule relates to the terms on which a person becomes a member of the scheme, it has effect from 8 April 1976. This was the date of the judgment in *Defrenne v Sabena*, where the Court, in holding that the principle of equal pay was directly effective, indicated that Article 141 (formerly Article 119) of the Treaty of Rome should not be applied to periods of service prior to the judgment.

219. Where there has been a breach of a term modified by a sex equality rule, proceedings may be brought against the person responsible for the breach under Part 9 of the Bill.

Background

220. The clause replaces equivalent equal treatment provisions in section 62 of the Pensions Act 1995.

Example

- A scheme rule requires employees to work full time before they may join the scheme. There may be a breach of the equality rule because the scheme rule may have an adverse impact on female employees, who are less able to comply with the requirement to work full-time.

Clause 63: Sex equality rule: consequential alteration of schemes

Effect

221. This clause gives trustees and managers of an occupational pension scheme the power, by resolution, to alter scheme rules to conform to the sex equality rule in clause 62.

222. They may use the power if:

- they lack the power to alter rules; or
- procedures for altering rules, including obtaining consent from another person (for example the employer), are unduly complex or would take too long.

223. In line with clause 62, where the operation of an equality rule relates to the terms on which a person becomes a member of the scheme, any alteration made relying on this section may only have effect from 8 April 1976. Where the alteration relates to a term on which a member of the scheme is treated, reliance on this section may have effect only from 17 May 1990.

- (a) a term on which persons become members of the scheme, or
 - (b) a term on which members of the scheme are treated.
- (4) A discretion is relevant if its exercise in relation to the scheme is capable of affecting –
- (a) the way in which persons become members of the scheme, or 5
 - (b) the way in which members of the scheme are treated.
- (5) The reference in subsection (3)(b) to a term on which members of a scheme are treated includes a reference to the term as it has effect for the benefit of dependants of members.
- (6) The reference in subsection (4)(b) to the way in which members of a scheme are treated includes a reference to the way in which they are treated as the scheme has effect for the benefit of dependants of members.
- (7) If the effect of a relevant matter on persons of the same sex differs according to their family, marital or civil partnership status, a comparison for the purposes of this section of the effect of that matter on persons of the opposite sex must be with persons who have the same status.
- (8) A relevant matter is –
- (a) a relevant term;
 - (b) a term conferring a relevant discretion;
 - (c) the exercise of a relevant discretion in relation to an occupational pension scheme. 20
- (9) This section, so far as relating to the terms on which persons become members of an occupational pension scheme, does not have effect in relation to pensionable service before 8 April 1976.
- (10) This section, so far as relating to the terms on which members of an occupational pension scheme are treated, does not have effect in relation to pensionable service before 17 May 1990.

63 Sex equality rule: consequential alteration of schemes

- (1) This section applies if the trustees or managers of an occupational pension scheme do not have power to make sex equality alterations to the scheme. 30
- (2) This section also applies if the trustees or managers of an occupational pension scheme have power to make sex equality alterations to the scheme but the procedure for doing so –
- (a) is liable to be unduly complex or protracted, or
 - (b) involves obtaining consents which cannot be obtained or which can be obtained only with undue delay or difficulty. 35
- (3) The trustees or managers may by resolution make sex equality alterations to the scheme.
- (4) Sex equality alterations may have effect in relation to a period before the date on which they are made. 40
- (5) Sex equality alterations to an occupational pension scheme are such alterations to the scheme as may be required to secure conformity with a sex equality rule.

Background

224. The clause replaces equivalent equal treatment provisions in section 65 of the Pensions Act 1995.

Example

- The scheme rules of a large scheme require consultation with all the members before an amendment to the rules may be made. This is impracticable, particularly as some deferred members cannot be traced. Scheme trustees may make the necessary alterations to scheme rules relying on this power.

Clause 64: Defence of material factor

Effect

225. As a general rule, if the work of two colleagues of the opposite sex is equal but their terms are not, the sex equality clause takes effect. This clause provides that neither a sex equality clause nor a sex equality rule will apply if the employer can show that the difference in terms is due to a material factor which is relevant and significant and not simply because one is male and the other female.

226. If there is evidence that the factor which explains the difference in terms is indirectly discriminatory on grounds of sex, the employer must show that it is a proportionate means of meeting a legitimate aim or the sex equality clause will apply. For these purposes, the long-term objective of reducing pay inequality will always count as a legitimate aim.

227. Subsection (4) deals with the application of the material factor defence to occupational pension schemes.

Background

228. The Equal Pay Act 1970 and Pensions Act 1995 made similar provision permitting employers and trustees to objectively justify differences to which an equality clause or rule would otherwise apply. This clause draws those separate provisions into one clause and clarifies the way in which they are to be applied. The reference in the former legislation to a difference being “genuinely” due to a material factor has not been repeated in this clause since the adverb added nothing to the meaning of the requirement, which is that the employer’s obligation is to show that the reason for the difference is genuine and not a sham. The clause incorporates the effect of EC law in respect of objective justification of indirectly discriminatory factors.

229. The reference to an employer’s objective of reducing pay inequality between men and women always being considered a legitimate aim is new.

230. Examples

- An employer introduces a bonus payment to encourage staff doing the same work to work a new night shift to maximise production. Only a small number of female staff can work at night and the bonus payments go almost entirely to male employees. Despite the disparate effect on the female employees, the employer’s aim is legitimate and the payment of a bonus to night workers is a proportionate way of achieving it.

64 Defence of material factor

- (1) The sex equality clause in A’s terms has no effect in relation to a difference between A’s terms and B’s terms if the responsible person shows that the difference is because of a material factor –
 - (a) which is not the difference of sex, or 5
 - (b) which is within subsection (2).
- (2) A factor is within this subsection if –
 - (a) A shows that, as a result of the factor, A and persons of the same sex doing work equal to A’s are put at a particular disadvantage when compared with persons of the opposite sex doing work equal to A’s,10 but
 - (b) the responsible person shows that relying on the factor is a proportionate means of achieving a legitimate aim.
- (3) For the purposes of subsection (2), the long-term objective of reducing inequality between men’s and women’s terms of work is always to be15 regarded as a legitimate aim.
- (4) A sex equality rule has no effect in relation to a difference between A and B in the effect of a relevant matter if the trustees or managers of the scheme in question show that the difference is because of a material factor which is not the difference of sex. 20
- (5) “Relevant matter” has the meaning given in section 62.
- (6) For the purposes of this section, a factor is not material unless it is a material difference between A’s case and B’s.

- A firm of accountants structures employees' pay on the basis of success in building relationships with clients (including at after hours client functions). Because of domestic responsibilities, fewer women than men can maintain regular client contact and women's pay is much lower. The employer is unable to show the way it rewards client relationship building is proportionate, taking into account the disadvantage to women employees.
- In imposing a new pay structure which seeks to remove pay inequalities between men and women employees, and to accommodate the interests of all the various groups, an employer includes measures which seek to protect the pay of the higher paid group for a short period of time. The intention to remove pay inequalities is a legitimate aim, and the question will be whether the imposition of the particular temporary pay protection arrangements is a proportionate means of achieving it.

Clause 65: Exclusion of sex discrimination provisions

Effect

230. This clause ensures that the sex discrimination provisions of the Bill do not apply where an equality clause or rule operates (or would operate in the absence of a defence of material factor or the exceptions set out in Part 2 of Schedule 7).

231. The sex discrimination provisions prohibit sex discrimination in relation to non-contractual pay and benefits such as promotion, transfer and training and in relation to offers of employment or appointment.

232. The equality of terms provisions operate only in relation to the terms of a contract of employment, the terms of appointment to a personal or public office and the terms of service of members of the armed forces.

Background

233. This provision brings together sex discrimination and equality of terms provisions previously found in the Equal Pay Act 1970 and the Sex Discrimination Act 1975 and explains how they work together.

Example

- A female sales manager is entitled under her contract to a bonus every year in proportion to the number of sales her team achieves. She discovers that a male sales manager for the same firm doing the same job has a contract which includes a larger bonus payment in relation to the same number of sales. Her claim will be dealt with under the equality clause provisions.

Clause 66: Sex discrimination in relation to contractual pay

Effect

234. This clause deals with sex discrimination in relation to contractual pay in circumstances where a sex equality clause would not operate. This could be because there is no colleague doing equal work with whom a claimant can compare their pay or other terms.

65 Exclusion of sex discrimination provisions

- (1) The relevant sex discrimination provision has no effect in relation to a term of A's that –
 - (a) is modified by, or included by virtue of, a sex equality clause or rule, or
 - (b) would be so modified or included but for section 64 or Part 2 of Schedule 7.

- (2) Neither of the following is sex discrimination for the purposes of the relevant sex discrimination provision –
 - (a) the inclusion in A's terms of a term that is less favourable as referred to in section 61(2)(a); 10
 - (b) the failure to include in A's terms a corresponding term as referred to in section 61(2)(b).

- (3) The relevant sex discrimination provision is, in relation to work of a description given in the first column of the table, the provision referred to in the second column so far as relating to sex. 15

<i>Description of work</i>	<i>Provision</i>
Employment	Section 36(2)
Appointment to a personal office	Section 46(6)
Appointment to a public office	Section 47(6)

66 Sex discrimination in relation to contractual pay 20

- (1) This section applies in relation to a term of a person's work –
 - (a) that relates to pay, but
 - (b) in relation to which a sex equality clause or rule has no effect.

The clause enables a person who is treated less favourably than others by being paid less because of the person's sex to pursue a claim for direct discrimination in these circumstances.

Background

235. This clause is a new provision designed to allow claims to be brought where a person can show evidence of direct sex discrimination in relation to contractual pay but is unable to gain the benefit of a sex equality clause due to the absence of a comparator doing equal work.

Example

- An employer tells a female employee "I would pay you more if you were a man". In the absence of any male comparator the woman cannot bring a claim for breach of an equality clause but she can bring a claim of direct sex discrimination against the employer.

Clause 67: Relevant types of work

Effect

236. This clause sets out the types of work that are covered by the provisions for pregnancy and maternity equality set out in the clauses which follow.

237. Background

237. This clause replaces various provisions in the Equal Pay Act 1970, which set out who is covered by the pregnancy and maternity equality requirements.

Clause 68: Maternity equality clause

Effect

238. This clause requires that a woman's contract must be read as including a maternity equality clause. Clause 69 sets out how a maternity equality clause modifies a woman's pay. No comparator is required in these cases.

239. A maternity equality clause is capable of affecting the terms of an occupational pension scheme but only in the way a maternity equality rule (as described in clause 70 would. This ensures that the provisions relating to pregnancy and maternity equality of terms at work and the provision governing pension schemes in clause 70 operate effectively together.

Background

240. This clause reflects provisions of the Equal Pay Act 1970.

- (2) The relevant sex discrimination provision (as defined by section 65) has no effect in relation to the term except in so far as treatment of the person amounts to a contravention of the provision by virtue of section 13.

Pregnancy and maternity equality

67 Relevant types of work

5

Sections 68 to 71 apply where a woman—

- (a) is employed, or
- (b) holds a personal or public office.

68 Maternity equality clause

- (1) If the terms of the woman's work do not (by whatever means) include a¹⁰ maternity equality clause, they are to be treated as including one.
- (2) A maternity equality clause is a provision that, in relation to the terms of the woman's work, has the effect referred to in section 69(1), (6) and (8).
- (3) In the case of a term relating to membership of or rights under an occupational pension scheme, a maternity equality clause has only such effect as a maternity¹⁵ equality rule would have.

Clause 69: Maternity equality clause: pay

Effect

241. This clause sets out how and when a maternity equality clause affects a woman's pay while she is on maternity leave.

242. Firstly the maternity equality clause is designed to ensure that any pay increase a woman receives (or would have received if she had not been on maternity leave) is taken into account in the calculation of her maternity-related pay where her terms do not already provide for this.

243. Secondly, a maternity equality clause will operate to ensure that pay, including any bonus, is paid to the woman at the time she would have received it if she had not been on maternity leave.

244. Thirdly, a maternity equality clause will provide for a woman's pay on her return to work following maternity leave to take account of any pay increase which she would have received if she had not been on statutory maternity leave.

Background

245. This clause is designed to replicate the effect of provisions in Equal Pay Act 1970.

Examples

- Early in her maternity leave, a woman receiving maternity-related pay becomes entitled to an increase of pay. If her terms of employment, do not already provide for the increase to be reflected in her maternity-related pay, the employer must recalculate her maternity pay to take account of the increment.
- A woman becomes entitled to a contractual bonus for work she undertook before she went on maternity leave. The employer cannot delay payment of the bonus and must pay it to her when it would have been paid had she not been on maternity leave.

69 Maternity equality clause: pay

- (1) A term of the woman’s work that provides for maternity-related pay to be calculated by reference to her pay at a particular time is, if each of the following three conditions is satisfied, modified as mentioned in subsection (5).
- (2) The first condition is that, after the time referred to in subsection (1) but before 5 the end of the protected period –
 - (a) her pay increases, or
 - (b) it would have increased had she not been on maternity leave.
- (3) The second condition is that the maternity-related pay is not –
 - (a) what her pay would have been had she not been on maternity leave, or 10
 - (b) the difference between the amount of statutory maternity pay to which she is entitled and what her pay would have been had she not been on maternity leave.
- (4) The third condition is that the terms of her work do not provide for the maternity-related pay to be subject to – 15
 - (a) an increase as mentioned in subsection (2)(a), or
 - (b) an increase that would have occurred as mentioned in subsection (2)(b).
- (5) The modification referred to in subsection (1) is a modification to provide for the maternity-related pay to be subject to –
 - (a) any increase as mentioned in subsection (2)(a), or 20
 - (b) any increase that would have occurred as mentioned in subsection (2)(b).
- (6) A term of her work that –
 - (a) provides for pay within subsection (7), but
 - (b) does not provide for her to be given the pay in circumstances in which 25 she would have been given it had she not been on maternity leave,is modified so as to provide for her to be given it in circumstances in which it would normally be given.
- (7) Pay is within this subsection if it is –
 - (a) pay (including pay by way of bonus) in respect of times before the 30 woman is on maternity leave,
 - (b) pay by way of bonus in respect of times when she is on compulsory maternity leave, or
 - (c) pay by way of bonus in respect of times after the end of the protected 35 period.
- (8) A term of the woman’s work that –
 - (a) provides for pay after the end of the protected period, but
 - (b) does not provide for it to be subject to an increase to which it would have been subject had she not been on maternity leave,is modified so as to provide for it to be subject to the increase. 40
- (9) Maternity-related pay is pay (other than statutory maternity pay) to which a woman is entitled –
 - (a) as a result of being pregnant, or
 - (b) in respect of times when she is on maternity leave.

Clause 70: Maternity equality rule

Effect

246. This clause introduces a maternity equality rule into all occupational pension schemes.

247. The effect of the rule is that any period when woman is on maternity leave should be treated as time when she is not, in particular in relation to any rule of an occupational pension scheme which can be applied in respect of:

- scheme membership,
- accrual of scheme rights, and
- determination of benefits.

248. The clause makes similar provision in relation to any discretion under scheme rules which can be exercised in a way that treats a period of maternity leave differently from time when a woman is not on maternity leave.

249. The woman's contributions to the scheme during maternity leave need be determined only by reference to the amount she is paid during maternity leave.

250. The provisions of the clause apply only to women on unpaid ordinary maternity leave where the expected week of confinement began on or after 6 April 2003.

251. The provisions of the clause apply only to a woman on unpaid additional maternity leave where the expected week of confinement began on or after 5 October 2008 and they do not apply to the accrual of scheme rights.

252. Where there has been a breach of a term modified by a maternity equality rule, proceedings may be brought against the person responsible for the breach under Part 9.

Background

253. This clause replaces the current provisions on "unfair maternity provisions" in paragraph 5 of Schedule 5 to the Social Security Act 1989 and replicates aspects of Regulations 9 and 18A of the Maternity and Parental Leave etc Regulations 1999.

Examples

- A woman who is on maternity leave will be entitled to continuing membership of the scheme throughout the period of maternity leave whether or not she is paid.
- A woman who is paid whilst on maternity leave will be entitled to accrue rights in a scheme as though she were paid her usual salary but she will only be required to make contributions based on her actual pay.

- (10) A reference to the protected period is to be construed in accordance with section 17.

70 Maternity equality rule

- (1) If an occupational pension scheme does not include a maternity equality rule, it is to be treated as including one. 5
- (2) A maternity equality rule is a provision that has the effect set out in subsections (3) and (4).
- (3) If a relevant term does not treat time when the woman is on maternity leave as it treats time when she is not, the term is modified so as to treat time when she is on maternity leave as time when she is not. 10
- (4) If a term confers a relevant discretion capable of being exercised so that time when she is on maternity leave is treated differently from time when she is not, the term is modified so as not to allow the discretion to be exercised in that way.
- (5) A term is relevant if it is – 15
- (a) a term relating to membership of the scheme,
 - (b) a term relating to the accrual of rights under the scheme, or
 - (c) a term providing for the determination of the amount of a benefit payable under the scheme.
- (6) A discretion is relevant if its exercise is capable of affecting – 20
- (a) membership of the scheme,
 - (b) the accrual of rights under the scheme, or
 - (c) the determination of the amount of a benefit payable under the scheme.
- (7) This section does not require the woman’s contributions to the scheme in respect of time when she is on maternity leave to be determined otherwise than 25 by reference to the amount she is paid in respect of that time.
- (8) This section, so far as relating to time when she is on ordinary maternity leave but is not being paid by her employer, applies only in a case where the expected week of childbirth began on or after 6 April 2003.
- (9) This section, so far as relating to time when she is on additional maternity leave 30 but is not being paid by her employer –
- (a) does not apply to the accrual of rights under the scheme in any case;
 - (b) applies for other purposes only in a case where the expected week of childbirth began on or after 5 October 2008.
- (10) In this section – 35
- (a) a reference to being on maternity leave includes a reference to having been on maternity leave, and
 - (b) a reference to being paid by the employer includes a reference to receiving statutory maternity pay from the employer.

Clause 71: Exclusion of pregnancy and maternity discrimination provisions

Effect

254. This clause provides that the pregnancy and maternity discrimination provisions of the Bill do not apply where a maternity clause or rule operates.

255. The maternity discrimination provisions prohibit discrimination in relation to non-contractual pay and benefits such as promotion, transfer and training and in relation to offers of employment or appointment.

256. The maternity equality clause provisions operate only in relation to terms of a contract of employment, the terms of appointment to a personal or public office and the terms of service of members of the armed forces and do so by including an equality clause to modify terms governing maternity-related pay.

Background

257. This provision explains the relationship between the two sets of provisions and is intended to ensure that they provide seamless protection against pregnancy and maternity-related inequality.

Example

- A woman who is line for promotion tells her employer that she is pregnant. The employer tells the woman he will not promote her because she is likely to be absent on maternity leave during a very busy period. This will be direct pregnancy discrimination.
-

Clause 72: Discussions with colleagues

Effect

258. This clause is designed to protect people who discuss their pay with colleagues (as defined in clause 74) with a view to finding out if differences exist that are related to a protected characteristic. Any action taken against them by the employer as a result of doing so is treated as victimisation, as defined in clause 25, as applied in the clauses listed in the table.

259. Terms of employment or appointment that prevent or restrict people from disclosing their pay to their colleagues are made unenforceable to the extent that they would prevent or restrict such a discussion.

Background

260. This clause is new. It is intended to ensure that there is greater transparency and dialogue within workplaces about pay.

71 Exclusion of pregnancy and maternity discrimination provisions

- (1) The relevant pregnancy and maternity discrimination provision has no effect in relation to a term of the woman’s work that is modified by a maternity equality clause or rule.
- (2) The inclusion in the woman’s terms of a term that requires modification by 5 virtue of section 68(2) or (3) is not pregnancy and maternity discrimination for the purposes of the relevant pregnancy and maternity discrimination provision.
- (3) The relevant pregnancy and maternity discrimination provision is, in relation to a description of work given in the first column of the table, the provision10 referred to in the second column so far as relating to pregnancy and maternity.

<i>Description of work</i>	<i>Provision</i>	
Employment	Section 36(2)	
Appointment to a personal office	Section 46(6)	
Appointment to a public office	Section 47(6)	15

Disclosure of information

72 Discussions with colleagues

- (1) A term of a person’s work that prevents or restricts the person (P) from being involved in discussions with colleagues about the terms of P’s work is unenforceable against P in so far as P is involved in a relevant pay discussion. 20
- (2) A relevant pay discussion is a discussion with a colleague –
 - (a) which is about pay, and
 - (b) which relates to whether or to what extent there is, in relation to the work in question, a connection between pay and having (or not having) a particular protected characteristic. 25
- (3) Being involved in a discussion includes –
 - (a) seeking the disclosure by a colleague of information;
 - (b) disclosing information to a colleague;
 - (c) receiving information disclosed by a colleague.

Examples

- A female employee thinks she is underpaid compared with a male colleague. She asks him what he is paid, and he tells her. The employer takes disciplinary action against the man as a result. The man can bring a claim for victimisation against the employer for disciplining him.
- A female employee discloses her pay to one of her employer's competitors in breach of a confidentiality clause in her contract. The employer could take action against her in relation to that breach.

Clause 73: Gender pay gap information

Effect

261. This clause enables a Minister of the Crown to make regulations requiring private sector employers with at least 250 employees in Great Britain to publish information about the differences in pay between their male and female employees. The regulations may specify, among other things, the form and timing of the publication, which will be no more frequently than annually. The regulations may also specify penalties for non-compliance. Employers who do not comply with the publication requirements could face civil enforcement procedures or be liable for a criminal offence, punishable by a fine of up to £5,000.

Background

262. This is a new provision. The Government wants large private sector employers in Great Britain to publish information on what they pay their male and female employees, so that their gender pay gap (the size of the difference between men and women's pay expressed as a percentage) is in the public domain.

263. The Government's aim is for employers regularly to publish such information on a voluntary basis. To give voluntary arrangements time to work, the Government does not intend to make regulations under this power before April 2013. The power would then be used only if sufficient progress on reporting had not been made by that time.

- (4) Being involved in a relevant pay discussion is to be treated as a protected act for the purposes of the relevant victimisation provision.
- (5) The relevant victimisation provision is, in relation to a description of work specified in the first column of the table, section 25 in so far as it applies for the purposes of a provision mentioned in the second column. 5

<i>Description of work</i>	<i>Provision by virtue of which section 25 has effect</i>	
Employment	Section 36(3) or (4)	
Appointment to a personal office	Section 46(5) or (8)	
Appointment to a public office	Section 47(5) or (9)	10

- (6) A reference to a colleague includes a reference to a person who used to be a colleague in relation to the work in question.

73 Gender pay gap information

- (1) A Minister of the Crown may by regulations require employers to publish information relating to the pay of employees for the purpose of showing¹⁵ whether, by reference to factors of such description as is prescribed, there are differences in the pay of male and female employees.
- (2) This section does not apply to –
- (a) an employer who has fewer than 250 employees;
 - (b) a person specified in Schedule 19. 20
- (3) The regulations may prescribe –
- (a) descriptions of employer;
 - (b) descriptions of employee;
 - (c) how to calculate the number of employees that an employer has;
 - (d) descriptions of information; 25
 - (e) the time at which information is to be published;
 - (f) the form and manner in which it is to be published.
- (4) Regulations under subsection (3)(e) may not require an employer, after the first publication of information, to publish information more frequently than at intervals of 12 months. 30
- (5) The regulations may make provision for a failure to comply with the regulations –
- (a) to be an offence punishable on summary conviction by a fine not exceeding level 5 on the standard scale;
 - (b) to be enforced, otherwise than as an offence, by such means as is³⁵ prescribed.
- (6) The reference to a failure to comply with the regulations includes a reference to a failure by a person acting on behalf of an employer.

Clause 74: Colleagues

Effect

264. This clause sets out the circumstances in which employees and others are taken to be colleagues for the purposes of Chapter 3. A person who claims the benefit of a sex equality clause or sex equality rule must be able to show their work is equal to that of a colleague.

265. If two persons share the same employer and work at the same establishment, they are colleagues.

266. If two persons work at different establishments but share the same employer and common terms and conditions of employment apply, they are colleagues.

267. A person can also be a colleague of another in either of the above circumstances if one is employed by a company associated with the other's employer. The clause defines when employers are taken to be associated.

268. A person holding a personal or public office is the colleague of another person holding a personal or public office if the same person is responsible for paying both of them.

269. A person holding the office of constable is treated for the purposes of Chapter 3 as holding a personal office for the purpose of determining who can be that person's colleague.

270. The clause also defines when staff of the Houses of Parliament are taken to be colleagues.

Background

271. These provisions generally reflect the effect of provisions in current legislation.

Examples

- A woman is employed by a company at a factory. A male works for the same company at another factory. Common terms of employment apply at both establishments. The woman and man are colleagues.

Clause 75: Interpretation and exceptions

Effect

272. This clause explains the meaning of terms used in Chapter 3. It also gives effect to Schedule 7 which sets out exceptions to the equality of terms provisions.

Supplementary

74 Colleagues

- (1) This section applies for the purposes of this Chapter.
- (2) If A is employed, B is a colleague of A's only if subsection (3) or (4) applies.
- (3) This subsection applies if – 5
 - (a) B is employed by A's employer or by an associate of A's employer, and
 - (b) A and B work at the same establishment.
- (4) This subsection applies if –
 - (a) B is employed by A's employer or an associate of A's employer,
 - (b) B works at an establishment other than the one at which A works, and 10
 - (c) common terms apply at the establishments (either generally or as between A and B).
- (5) If A holds a personal or public office, B is a colleague of A's only if –
 - (a) B holds a personal or public office, and
 - (b) the person responsible for paying A is also responsible for paying B. 15
- (6) If A is a relevant member of the House of Commons staff, B is a colleague of A's only if –
 - (a) B is employed by the person who is A's employer under subsection (6) of section 195 of the Employment Rights Act 1996, or
 - (b) if subsection (7) of that section applies in A's case, B is employed by the 20 person who is A's employer under that subsection.
- (7) If A is a relevant member of the House of Lords staff, B is a colleague of A's only if B is also a relevant member of the House of Lords staff.
- (8) Section 39 does not apply to this Chapter; accordingly, for the purposes of this Chapter only, holding the office of constable is to be treated as holding a 25 personal office.
- (9) For the purposes of this section, employers are associated if –
 - (a) one is a company of which the other (directly or indirectly) has control, or
 - (b) both are companies of which a third person (directly or indirectly) has 30 control.

75 Interpretation and exceptions

- (1) This section applies for the purposes of this Chapter.
- (2) The terms of a person's work are –
 - (a) if the person is employed, the terms of the person's employment that 35 are in the person's contract of employment, contract of apprenticeship or contract to do work personally;
 - (b) if the person holds a personal or public office, the terms of the person's appointment to the office.

Chapter 4: Supplementary

Clause 76: Ships and hovercraft

Effect

273. This clause provides that the employment provisions in Part 5 will apply to seafarers and the crew of hovercraft only in the way set out in regulations made by a Minister of the Crown.

Background

274. The Bill is silent on the territorial application of the employment provisions. While this approach is acceptable for most workers, who at any given time are within either the territory of United Kingdom or some other territory, seafarers work on ships that may be constantly moving between waters under the jurisdiction of different States. This clause will allow the Minister to say to which seafarers on which ships, and to which crew on which hovercraft, the employment provisions apply in accordance with international law and custom and the global practices of the shipping industry. The Minister may make provision with regard to ships outside Great Britain.

275. This clause replaces provisions concerning the territorial application and the pay of seafarers in current legislation.

- (3) If work is not done at an establishment, it is to be treated as done at the establishment with which it has the closest connection.
- (4) A person (P) is the responsible person in relation to another person if –
 - (a) P is the other’s employer;
 - (b) P is responsible for paying remuneration in respect of a personal or 5 public office that the other holds.
- (5) A job evaluation study is a study undertaken with a view to evaluating, in terms of the demands made on a person by reference to factors such as effort, skill and decision-making, the jobs to be done –
 - (a) by some or all of the workers in an undertaking or group of 10 undertakings, or
 - (b) in the case of the armed forces, by some or all of the members of the armed forces.
- (6) In the case of Crown employment, the reference in subsection (5)(a) to an undertaking is to be construed in accordance with section 191(4) of the 15 Employment Rights Act 1996.
- (7) “Civil partnership status” has the meaning given in section 124(1) of the Pensions Act 1995.
- (8) Schedule 7 (exceptions) has effect.

CHAPTER 4

20

SUPPLEMENTARY

76 Ships and hovercraft

- (1) This Part applies in relation to –
 - (a) work on ships,
 - (b) work on hovercraft, and 25
 - (c) seafarers,only in such circumstances as are prescribed.
- (2) For the purposes of this section, it does not matter whether employment arises or work is carried out within or outside the United Kingdom.
- (3) “Ship” has the same meaning as in the Merchant Shipping Act 1995. 30
- (4) “Hovercraft” has the same meaning as in the Hovercraft Act 1968.
- (5) “Seafarer” means a person employed or engaged in any capacity on board a ship or hovercraft.
- (6) Nothing in this section affects the application of any other provision of this Act to conduct outside England and Wales or Scotland. 35

Clause 77: Offshore work

Effect

276. This clause contains a power to make an Order in Council in relation to work on board offshore installations. The power may be used to apply Part 5 (with or without modification) to those working on such installations. The power may also be used in relation to any corresponding Northern Ireland legislation (with or without modification).

Background

277. This clause will enable protection to be extended to workers on offshore installations, such as oil and gas rigs and renewable energy installations (generally wind farms), to reflect the extent of current discrimination legislation.

Example

- Offshore workers are typically workers (either employees, contract workers, partners, members of an LLP, or personal or public office holders) on oil and gas rigs located in the sea within the area of the United Kingdom Continental Shelf (UKCS), and on renewable energy installations (generally wind farms) within the part of the UKCS known as the Renewable Energy Zone.

Clause 78: Interpretation and exceptions

Effect

278. This clause explains the meaning of various terms used in Part 5 of the Bill. In particular, it defines what is meant by “employment” and clarifies the status of people serving in the armed forces and people who work for the Crown and in the Houses of Commons and Lords in relation to the application of the provisions in this Part of the Bill.

77 Offshore work

- (1) Her Majesty may by Order in Council provide that in the case of persons in offshore work –
 - (a) specified provisions of this Part apply (with or without modification);
 - (b) Northern Ireland legislation making provision for purposes 5 corresponding to any of the purposes of this Part applies (with or without modification).
- (2) The Order may –
 - (a) provide for these provisions, as applied by the Order, to apply to individuals (whether or not British citizens) and bodies corporate¹⁰ (whether or not incorporated under the law of a part of the United Kingdom), whether or not such application affects activities outside the United Kingdom;
 - (b) make provision for conferring jurisdiction on a specified court or class of court or on employment tribunals in respect of offences, causes of¹⁵ action or other matters arising in connection with offshore work;
 - (c) exclude from the operation of section 3 of the Territorial Waters Jurisdiction Act 1878 (consents required for prosecutions) proceedings for offences under the provisions mentioned in subsection (1) in connection with offshore work; ²⁰
 - (d) provide that such proceedings must not be brought without such consent as may be required by the Order.
- (3) “Offshore work” is work for the purposes of –
 - (a) activities in the territorial sea adjacent to the United Kingdom;
 - (b) activities such as are mentioned in subsection (2) of section 11 of the²⁵ Petroleum Act 1998 in waters within subsection (8)(b) or (c) of that section;
 - (c) activities mentioned in paragraphs (a) and (b) of section 87(1) of the Energy Act 2004 in waters to which that section applies.
- (4) Work includes employment, contract work, a position as a partner or as a³⁰ member of an LLP, or an appointment to a personal or public office.
- (5) Northern Ireland legislation includes an enactment contained in, or in an instrument under, an Act that forms part of the law of Northern Ireland.
- (6) In the application to Northern Ireland of subsection (2)(b), the reference to employment tribunals is to be read as a reference to industrial tribunals. ³⁵
- (7) Nothing in this section affects the application of any other provision of this Act to conduct outside England and Wales or Scotland.

78 Interpretation and exceptions

- (1) This section applies for the purposes of this Part.
- (2) “Employment” means – ⁴⁰
 - (a) employment under a contract of employment, a contract of apprenticeship or a contract personally to do work;
 - (b) Crown employment;
 - (c) employment as a relevant member of the House of Commons staff;
 - (d) employment as a relevant member of the House of Lords staff. ⁴⁵

Part 6: Education

Chapter 1: Schools

Clause 79: Application of this Chapter

Effect

279. This clause provides that this Chapter of the Bill, which prohibits discrimination, harassment and victimisation in the field of education in schools, does not apply to discrimination, harassment or victimisation of people in those circumstances because of age, marriage and civil partnership or pregnancy and maternity.

Background

280. This replicates the position in current legislation.

281. Examples

- (3) This Part applies to service in the armed forces as it applies to employment by a private person; and for that purpose –
- (a) references to terms of employment, or to a contract of employment, are to be read as including references to terms of service;
 - (b) references to associated employers are to be ignored. 5
- (4) A reference to an employer or an employee, or to employing or being employed, is (subject to section 199(10)) to be read with subsections (2) and (3); and a reference to an employer also includes a reference to a person who has no employees but is seeking to employ one or more other persons.
- (5) “Relevant member of the House of Commons staff” has the meaning given in section 195 of the Employment Rights Act 1996; and such a member of staff is an employee of –
- (a) the person who is the employer of that member under subsection (6) of that section, or
 - (b) if subsection (7) of that section applies in the case of that member, the person who is the employer of that member under that subsection. 15
- (6) “Relevant member of the House of Lords staff” has the meaning given in section 194 of that Act (which provides that such a member of staff is an employee of the Corporate Officer of the House of Lords).
- (7) In the case of a person in Crown employment, or in employment as a relevant member of the House of Commons staff, a reference to the person’s dismissal is a reference to the termination of the person’s employment. 20
- (8) A reference to a personal or public office, or to an appointment to a personal or public office, is to be construed in accordance with section 49.
- (9) “Crown employment” has the meaning given in section 191 of the Employment Rights Act 1996. 25
- (10) Schedule 8 (reasonable adjustments) has effect.
- (11) Schedule 9 (exceptions) has effect.

PART 6

EDUCATION 30

CHAPTER 1

SCHOOLS

79 Application of this Chapter

This Chapter does not apply to the following protected characteristics –

- (a) age; 35
- (b) marriage and civil partnership;
- (c) pregnancy and maternity.

- It is not unlawful discrimination for a school to organise a trip for pupils in one year group, but not for pupils in other years.
- It is not unlawful discrimination for a school to organise a different timetable for a pupil who has a baby, to help her fit her education with her parenting responsibilities.

Clause 80: Pupils: admission and treatment, etc.

Effect

281. This clause makes it unlawful for the responsible body of a school to discriminate against, harass or victimise a pupil or prospective pupil in relation to the terms on which it offers him or her admission, by not admitting him or her, or in the way it treats the pupil once admitted. The responsible body for a maintained school is the local authority or the governing body, and for an independent educational institution or a non-maintained special school is the proprietor.

282. It also imposes on the responsible body of a school the duty to make reasonable adjustments for disabled pupils and prospective disabled pupils.

283. However, the prohibition on harassment of pupils or prospective pupils does not cover gender reassignment, sexual orientation or religion or belief.

284. Background

284. This clause is primarily designed to replicate the effect of provisions in current legislation applying to schools. In addition, it extends protection from discrimination to transsexual pupils.

Examples

- A school refuses to let a gay pupil become a prefect because of his sexual orientation. This would be direct discrimination.
- A selective school imposes a higher standard for admission to applicants from an ethnic minority background, or to girls. This would be direct discrimination.
- A pupil alleges, in good faith, that his school has discriminated against him because of his religion (for example claiming that he is given worse marks than other pupils because he is Jewish), so the school punishes him by making him do a detention. This would be victimisation.
- A teacher ridicules a particular pupil in class for his beliefs or because of his disability, or makes comments which have the result of making the girls in the class feel embarrassed and humiliated. This would be harassment.

80 Pupils: admission and treatment, etc.

- (1) The responsible body of a school to which this section applies must not discriminate against a person –
 - (a) in the arrangements it makes for deciding who is offered admission as a pupil; 5
 - (b) as to the terms on which it offers to admit the person as a pupil;
 - (c) by not admitting the person as a pupil.
- (2) The responsible body of such a school must not discriminate against a pupil –
 - (a) in the way it provides education for the pupil;
 - (b) in the way it affords the pupil access to a benefit, facility or service; 10
 - (c) by not providing education for the pupil;
 - (d) by not affording the pupil access to a benefit, facility or service;
 - (e) by excluding the pupil from the school;
 - (f) by subjecting the pupil to any other detriment.
- (3) The responsible body of such a school must not harass – 15
 - (a) a pupil;
 - (b) a person who has applied for admission as a pupil.
- (4) The responsible body of such a school must not victimise a person –
 - (a) in the arrangements it makes for deciding who is offered admission as a pupil; 20
 - (b) as to the terms on which it offers to admit the person as a pupil;
 - (c) by not admitting the person as a pupil.
- (5) The responsible body of such a school must not victimise a pupil –
 - (a) in the way it provides education for the pupil;
 - (b) in the way it affords the pupil access to a benefit, facility or service; 25
 - (c) by not providing education for the pupil;
 - (d) by not affording the pupil access to a benefit, facility or service;
 - (e) by excluding the pupil from the school;
 - (f) by subjecting the pupil to any other detriment.
- (6) A duty to make reasonable adjustments applies to the responsible body of such a school. 30
- (7) In relation to England and Wales, this section applies to –
 - (a) a school maintained by a local authority;
 - (b) an independent educational institution (other than a special school);
 - (c) a special school (not maintained by a local authority). 35
- (8) In relation to Scotland, this section applies to –
 - (a) a school managed by an education authority;
 - (b) an independent school;

Clause 81: Victimisation of pupils, etc. for the conduct of parents, etc.

Effect

285. This clause protects children in schools from being victimised as a result of a protected act (such as making or supporting a complaint of discrimination) done by their parent or sibling. The aim is to prevent parents being discouraged from raising an issue of discrimination with a school because of worry that their child may suffer retaliation as a result.

286. Where a parent or sibling maliciously makes or supports an untrue complaint, the child is still protected from victimisation, as long as the child has acted in good faith. But, in common with the general approach to victimisation, where a child has acted in bad faith, he or she is not protected, even where a parent or sibling makes or supports an untrue complaint in good faith.

Background

287. This clause is designed to replicate the effect of provisions in the Disability Discrimination Act 1995 and extend the protection to cover all characteristics protected under this Chapter.

288. Examples

- The parent of a pupil complains to the school that her daughter is suffering sex discrimination by not being allowed to participate in a metalwork class. The daughter is protected from being treated less favourably by the school in any way because of this complaint.
- A pupil brings a case against his school claiming that he has suffered harassment by a member of staff because of his sexual orientation. The pupil's younger brother, at the same school, is protected against any less favourable treatment by the school because of this case, even if it is later found that the older brother was not acting in good faith.

-
- (c) a school in respect of which the managers are for the time being receiving grants under section 73(c) or (d) of the Education (Scotland) Act 1980.
- (9) The responsible body of a school to which this section applies is –
- (a) if the school is within subsection (7)(a), the local authority or governing body; 5
 - (b) if it is within subsection (7)(b) or (c), the proprietor;
 - (c) if it is within subsection (8)(a), the education authority;
 - (d) if it is within subsection (8)(b), the proprietor;
 - (e) if it is within subsection (8)(c), the managers. 10
- (10) In the application of section 24 for the purposes of subsection (3), none of the following is a relevant protected characteristic –
- (a) gender reassignment;
 - (b) religion or belief;
 - (c) sexual orientation. 15

81 Victimization of pupils, etc. for conduct of parents, etc.

- (1) This section applies for the purposes of section 25 in its application to section 80(4) or (5).
- (2) The references to B in paragraphs (a) and (b) of subsection (1) of section 25 include a reference to a parent or sibling of the child in question. 20
- (3) Giving false evidence or information, or making a false allegation, in good faith is not a protected act in a case where –
- (a) the evidence or information is given, or the allegation is made, by a parent or sibling of the child, and
 - (b) the child has acted in bad faith. 25
- (4) Giving false evidence or information, or making a false allegation, in bad faith, is a protected act in a case where –
- (a) the evidence or information is given, or the allegation is made, by a parent or sibling of the child, and
 - (b) the child has acted in good faith. 30
- (5) In this section –
- “child” means a person who has not attained the age of 18;
 - “sibling” means a brother or sister, a half-brother or half-sister, or a stepbrother or stepsister.

Clause 82: Application of certain powers under Education Act 1996

Effect

288. This clause enables the Secretary of State to give directions, using powers under the Education Act 1996, to require a maintained school or a non-maintained special school to comply with its duties under clause 80. It enables the Secretary of State to require a school to stop a discriminatory practice or policy even if no complaint has been brought by an individual pupil or prospective pupil.

Background

289. Sections 496 and 497 of the Education Act 1996 empower the Secretary of State to give directions to local education authorities and to governing bodies of maintained schools to prevent them exercising their functions under the Education Acts unreasonably, or to require them to perform statutory duties where they are not doing so. This power has already been extended to require compliance with the law on sex discrimination, and this clause extends those powers to all the protected characteristics covered by clause 80.

Example

- The governing body of a school refuses as a matter of policy to let disabled pupils participate in school trips because of the extra risk management required. The Secretary of State could direct the governing body to change its policy so as to make reasonable adjustments to enable disabled pupils to participate.

Clause 83: Disabled pupils: accessibility

Effect

290. This clause introduces Schedule 10 which requires local authorities and schools to prepare and implement accessibility strategies and plans. These will increase disabled pupils' access to the curriculum and improve the physical environment and the provision of information. They are explained in more detail in the notes to that Schedule.

Clause 84: Interpretation and exceptions

Effect

291. This clause explains what is meant by terms used in this Chapter, such as “school” and “pupil”. It also makes it clear that the prohibitions in the Chapter do not apply to anything done in relation to the content of the school curriculum. This ensures that the Bill does not inhibit the ability of schools to include a full range of issues, ideas and materials in their syllabus and to expose pupils to thoughts and ideas of all kinds. The way in which the curriculum is taught is, however, covered by the reference to education in clause 80(2)(a), so as to ensure issues are taught in a way which does not subject pupils to discrimination. This clause also gives effect to Schedule 11 which provides some exceptions to the provisions in this Chapter.

82 Application of certain powers under Education Act 1996

- (1) Sections 496 and 497 of the Education Act 1996 (powers to give directions where responsible body of school in default of obligations, etc.) apply to the performance of a duty under section 80.
- (2) But neither of sections 496 and 497 of that Act applies to the performance of a 5 duty under that section by the proprietor of an independent educational institution (other than a special school).

83 Disabled pupils: accessibility

Schedule 10 (accessibility) has effect.

84 Interpretation and exceptions

10

- (1) This section applies for the purposes of this Chapter.
- (2) Nothing in this Chapter applies to anything done in connection with the content of the curriculum.
- (3) “Pupil” –
 - (a) in relation to England and Wales, has the meaning given in section 3(1)15 of the Education Act 1996;
 - (b) in relation to Scotland, has the meaning given in section 135(1) of the Education (Scotland) Act 1980.

292. Background

292. This clause is designed to replicate the effect of an exception relating to discrimination because of religion or belief in the Equality Act 2006, and extends it to other protected characteristics.

Examples

- A school curriculum includes teaching of evolution in science lessons. This would not be religious discrimination against a pupil whose religious beliefs include creationism.
- A school curriculum includes *The Taming of the Shrew* on the syllabus. This would not be discrimination against a girl.

Chapter 2: Further and higher education

Clause 85: Application of this Chapter

Effect

293. This clause provides that this Chapter of the Bill, which prohibits discrimination, harassment and victimisation in the field of education in institutions providing further and higher education, does not make it unlawful to discriminate against, harass or victimise people in those circumstances because of marriage or civil partnership status.

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- (4) “Proprietor” –
- (a) in relation to a school in England and Wales, has the meaning given in section 579(1) of the Education Act 1996;
 - (b) in relation to a school in Scotland, has the meaning given in section 135(1) of the Education (Scotland) Act 1980. 5
- (5) “School” –
- (a) in relation to England and Wales, has the meaning given in section 4 of the Education Act 1996;
 - (b) in relation to Scotland, has the meaning given in section 135(1) of the Education (Scotland) Act 1980. 10
- (6) A reference to a school includes a reference to an independent educational institution in England; and a reference to an independent educational institution in England is to be construed in accordance with Chapter 1 of Part 4 of the Education and Skills Act 2008.
- (7) A reference to an independent educational institution is a reference to – 15
- (a) an independent educational institution in England, or
 - (b) an independent school in Wales.
- (8) “Independent school” –
- (a) in relation to Wales, has the meaning given in section 463 of the Education Act 1996; 20
 - (b) in relation to Scotland, has the meaning given in section 135(1) of the Education (Scotland) Act 1980.
- (9) “Special school” has the meaning given in section 337 of the Education Act 1996.
- (10) “Local authority” means – 25
- (a) in relation to England, an English local authority within the meaning of section 162 of the Education and Inspections Act 2006;
 - (b) in relation to Wales, a Welsh local authority within the meaning of that section.
- (11) “Education authority”, in relation to Scotland, has the meaning given in section 30 135(1) of the Education (Scotland) Act 1980.
- (12) Schedule 11 (exceptions) has effect.

CHAPTER 2

FURTHER AND HIGHER EDUCATION

85 Application of this Chapter 35

This Chapter does not apply to the protected characteristic of marriage and civil partnership.

Background

294. This clause is designed to replicate the effect of provisions in the Sex Discrimination Act 1975.

Clause 86: Students: admission and treatment, etc.

Effect

295. This clause makes it unlawful for universities, colleges and other institutions in the higher and further education sectors to discriminate against, harass or victimise a student or someone who wants to become a student in relation to the arrangements it makes in deciding who to admit, the terms on which a person is admitted and the way a person is treated when admitted.

296. It also imposes on the responsible body of such an institution the duty to make reasonable adjustments for disabled students and prospective students.

Background

297. This replicates the position in current legislation.

Examples

- A college refuses admission to a man who applies to be a student, because he is gay. This would be direct discrimination.
- A university refuses to provide residential accommodation to Jewish or Muslim students. This would be direct discrimination.
- A college puts an age limit on access to a particular course. This would be direct discrimination, unless the college could show that the age limit was objectively justified.

86 Students: admission and treatment, etc.

- (1) The responsible body of an institution to which this section applies must not discriminate against a person –
 - (a) in the arrangements it makes for deciding who is offered admission as a student; 5
 - (b) as to the terms on which it offers to admit the person as a student;
 - (c) by not admitting the person as a student.

- (2) The responsible body of such an institution must not discriminate against a student –
 - (a) in the way it provides education for the student; 10
 - (b) in the way it affords the student access to a benefit, facility or service;
 - (c) by not providing education for the student;
 - (d) by not affording the student access to a benefit, facility or service;
 - (e) by excluding the student;
 - (f) by subjecting the student to any other detriment. 15

- (3) The responsible body of such an institution must not harass –
 - (a) a student;
 - (b) a person who has applied for admission as a student.

- (4) The responsible body of such an institution must not victimise a person –
 - (a) in the arrangements it makes for deciding who is offered admission as a student; 20
 - (b) as to the terms on which it offers to admit the person as a student;
 - (c) by not admitting the person as a student.

- (5) The responsible body of such an institution must not victimise a student –
 - (a) in the way it provides education for the student; 25
 - (b) in the way it affords the student access to a benefit, facility or service;
 - (c) by not providing education for the student;
 - (d) by not affording the student access to a benefit, facility or service;
 - (e) by excluding the student;
 - (f) by subjecting the student to any other detriment. 30

- (6) A duty to make reasonable adjustments applies to the responsible body of such an institution.

- (7) In relation to England and Wales, this section applies to –
 - (a) a university;
 - (b) any other institution within the higher education sector; 35
 - (c) an institution within the further education sector.

- (8) In relation to Scotland, this section applies to –
 - (a) a university;
 - (b) a designated institution;
 - (c) a college of further education. 40

- (9) A responsible body is –

Clause 87: Further and higher education courses

Effect

298. This clause makes it unlawful for local authorities securing further and higher education, and maintained schools providing further education, to discriminate against, victimise or harass a person in relation to deciding who to enrol, or in the way it provides any services when the person has been enrolled. It also imposes on them the duty to make reasonable adjustments when offering such facilities and services to disabled people.

Background

299. This clause is designed to replicate the effect of provisions in the Disability Discrimination Act 1995, and to extend protection to all the protected characteristics covered by this Chapter.

Example

- A school puts on a 10-week evening educational course for local adults but prevents applicants from enrolling who are disabled or gay. This would be direct discrimination.

- (a) in the case of an institution within subsection (7)(a), (b) or (c), the governing body;
- (b) in the case of an institution within subsection (8)(a) or (b), the governing body;
- (c) in the case of a college of further education under the management of a board of management, the board of management;
- (d) in the case of any other college of further education, any board of governors of the college or any person responsible for the management of the college, whether or not formally constituted as a governing body or board of governors.

10

87 Further and higher education courses

- (1) The responsible body in relation to a course to which this section applies must not discriminate against a person –
 - (a) in the arrangements it makes for deciding who is enrolled on the course; 15
 - (b) as to the terms on which it offers to enrol the person on the course;
 - (c) by not accepting the person’s application for enrolment.
- (2) The responsible body in relation to such a course must not discriminate against a person who is enrolled on the course in the services it provides or offers to provide. 20
- (3) The responsible body in relation to such a course must not harass a person who –
 - (a) seeks enrolment on the course;
 - (b) is enrolled on the course;
 - (c) is a user of services provided by the body in relation to the course. 25
- (4) The responsible body in relation to such a course must not victimise a person –
 - (a) in the arrangements it makes for deciding who is enrolled on the course;
 - (b) as to the terms on which it offers to enrol the person on the course;
 - (c) by not accepting the person’s application for enrolment. 30
- (5) The responsible body in relation to such a course must not victimise a person who is enrolled on the course in the services it provides or offers to provide.
- (6) A duty to make reasonable adjustments applies to the responsible body.
- (7) This section applies to –
 - (a) a course of further or higher education secured by a responsible body 35 in England or Wales;
 - (b) a course of education provided by the governing body of a maintained school under section 80 of the School Standards and Framework Act 1998;
 - (c) a course of further education secured by an education authority in 40 Scotland.
- (8) A responsible body is –
 - (a) a local authority in England or Wales, for the purposes of subsection (7)(a);

Clause 88: Recreational or training facilities

Effect

300. This clause makes it unlawful for local authorities providing any recreational or training facilities to discriminate against, harass or victimise a person in terms of deciding who should be provided with any facilities and the terms on which the facilities are provided. It also imposes on them the duty to make reasonable adjustments when offering such facilities and services to disabled people.

301. The recreational and training facilities concerned are those provided in England under sections 507A or 507B of the Education Act 1996 and include things like centres, parks and sports facilities.

Background

302. These provisions are designed to replicate the effect of provisions in the Disability Discrimination Act 1995 and to extend protection to all the protected characteristics covered by this Chapter.

Example

- A local authority which puts on a summer camp for children from local schools refuses an application from a child simply because that child is disabled or a Muslim. This would be direct discrimination.

-
- (b) the governing body of a maintained school, for the purposes of subsection (7)(b);
- (c) an education authority in Scotland, for the purposes of subsection (7)(c).
- (9) In this section – 5
- “course”, in relation to further education, includes each component part of a course if there is no requirement imposed on persons registered for a component part of the course to register for another component part of the course;
- “enrolment” includes registration for a component part of a course; 10
- “maintained school” has the meaning given in section 20(7) of the School Standards and Framework Act 1998;
- “services” means services of any description which are provided wholly or mainly for persons enrolled on a course to which this section applies.
- 88 Recreational or training facilities** 15
- (1) The responsible body in relation to facilities to which this section applies must not discriminate against a person –
- (a) in the arrangements it makes for deciding who is provided with the facilities;
- (b) as to the terms on which it offers to provide the facilities to the person;²⁰
- (c) by not accepting the person’s application for provision of the facilities.
- (2) The responsible body in relation to such facilities must not discriminate against a person who is provided with the facilities in the services it provides or offers to provide.
- (3) The responsible body in relation to such facilities must not harass a person²⁵ who –
- (a) seeks to have the facilities provided;
- (b) is provided with the facilities;
- (c) is a user of services provided by the body in relation to the facilities.
- (4) The responsible body in relation to such facilities must not victimise a person – 30
- (a) in the arrangements it makes for deciding who is provided with the facilities;
- (b) as to the terms on which it offers to provide the facilities to the person;
- (c) by not accepting the person’s application for provision of the facilities.
- (5) The responsible body in relation to such facilities must not victimise a person³⁵ who is provided with the facilities in the services it provides or offers to provide.
- (6) A duty to make reasonable adjustments applies to the responsible body.
- (7) This section applies to –
- (a) facilities secured by a local authority in England under section 507A or 40 507B of the Education Act 1996;
- (b) facilities secured by a local authority in Wales under section 508 of that Act;
- (c) recreational or training facilities provided by an education authority in Scotland. 45

Clause 89: Interpretation and exceptions

Effect

303. This clause explains what is meant by terms used in this Chapter, such as “student” and “university”. It also makes it clear that the prohibitions in the Chapter do not apply to anything done in relation to the content of the curriculum. This ensures that the Bill does not inhibit the ability of institutions in the higher and further education sectors to include a full range of issues, ideas and materials in their syllabus and to expose students to thoughts and ideas of all kinds. The way in which the curriculum is taught is, however, covered by the reference to education in clause 86(2)(a), so as to ensure issues are taught in a way which does not subject students to discrimination or harassment.

304. It also gives effect to Schedule 12 which provides exceptions to the provisions in this Chapter.

Background

305. These provisions are new, but are based on an exception relating to discrimination because of religion or belief in education in schools in the Equality Act 2006, and explicitly extends it to education in higher and further education institutions across all the protected characteristics covered by this Chapter.

306. *Examples*

- A college course includes a module on feminism. This would not be discrimination against a male student.
- A university requires students to use a computer for projects or essays. This would not be indirect discrimination against a member of a sect which rejects the use of modern technology.

- (8) A responsible body is—
 - (a) a local authority in England, for the purposes of subsection (7)(a);
 - (b) a local authority in Wales, for the purposes of subsection (7)(b);
 - (c) an education authority in Scotland, for the purposes of subsection (7)(c). 5
- (9) This section does not apply to the protected characteristic of age, so far as relating to persons who have not attained the age of 18.

89 Interpretation and exceptions

- (1) This section applies for the purposes of this Chapter.
- (2) Nothing in this Chapter applies to anything done in connection with the10 content of the curriculum.
- (3) A reference to a student, in relation to an institution, is a reference to a person for whom education is provided by the institution.
- (4) A reference to a university includes a reference to a university college and a college, school or hall of a university. 15
- (5) A reference to an institution within the further or higher education sector is to be construed in accordance with section 91 of the Further and Higher Education Act 1992.
- (6) “Further education” —
 - (a) in relation to England and Wales, has the meaning given in section 2 of20 the Education Act 1996;
 - (b) in relation to Scotland, has the meaning given in section 1(3) of the Further and Higher Education (Scotland) Act 1992.
- (7) “Higher education” —
 - (a) in relation to England and Wales, means education provided by means25 of a course of a description mentioned in Schedule 6 to the Education Reform Act 1988;
 - (b) in relation to Scotland, has the meaning given in section 38 of the Further and Higher Education (Scotland) Act 1992.
- (8) “College of further education” has the meaning given in section 36 of the30 Further and Higher Education (Scotland) Act 1992.
- (9) “Designated institution” has the meaning given in section 44 of that Act.
- (10) “Local authority” means —
 - (a) in relation to England, an English local authority within the meaning of section 162 of the Education and Inspections Act 2006; 35
 - (b) in relation to Wales, a Welsh local authority within the meaning of that section.
- (11) “Education authority” has the meaning given by section 135(1) of the Education (Scotland) Act 1980.
- (12) Schedule 12 (exceptions) has effect. 40

Chapter 3: General qualifications bodies

Clause 90: Application of this Chapter

Effect

306. This clause provides that this Chapter of the Bill, which prohibits discrimination, harassment and victimisation by qualifications bodies, does not make it unlawful for such bodies to discriminate against, harass or victimise people in the circumstances covered because of marriage or civil partnership status.

Background

307. This clause is designed to replicate the effect of similar provisions in current legislation subject to modifications that include placing a responsibility on the appropriate regulator.

Clause 91: Qualifications bodies

Effect

308. This clause makes it unlawful for a qualifications body to discriminate against, harass or victimise a person in the arrangements it makes for deciding on whom to confer qualifications, and the terms on which those qualifications are conferred. Qualifications bodies are defined in clause 92.

309. It also places a duty on qualifications bodies to make reasonable adjustments for disabled people. The clause includes a power for the Secretary of State, Scottish Ministers and Welsh Ministers to designate an “appropriate regulator”, which may then specify matters which are not subject to the reasonable adjustments duty. For example, it could be specified that the requirement to achieve a particular mark to gain a particular qualification is not subject to reasonable adjustments. The appropriate regulator may also specify which reasonable adjustments should not be made. For example, it may be appropriate to allow additional time to complete the exam or to provide a reader, but not to give an exemption from part of an exam. In doing so, the appropriate regulator must have regard to the need to ensure disabled candidates are not disadvantaged, and the need to maintain the integrity and public confidence in the qualification. Before specifying any such matter, the regulator must consult anyone it thinks appropriate and it must publish the specified matters.

310. Background

310. These provisions are designed to make similar provisions to those in the Disability Discrimination Act 1995 and to extend protection to all the protected characteristics covered by this chapter. There are some changes to the provisions concerning when reasonable adjustments do not need to be made for disabled candidates.

CHAPTER 3

GENERAL QUALIFICATIONS BODIES

90 Application of this Chapter

This Chapter does not apply to the protected characteristic of marriage and civil partnership.

5

91 Qualifications bodies

- (1) A qualifications body (A) must not discriminate against a person (B) –
 - (a) in the arrangements A makes for deciding upon whom to confer a relevant qualification;
 - (b) as to the terms on which it is prepared to confer a relevant qualification on B;
 - (c) by not conferring a relevant qualification on B.
- (2) A qualifications body (A) must not discriminate against a person (B) upon whom A has conferred a relevant qualification –
 - (a) by withdrawing the qualification from B; 15
 - (b) by varying the terms on which B holds the qualification;
 - (c) by subjecting B to any other detriment.
- (3) A qualifications body must not, in relation to conferment by it of a relevant qualification, harass –
 - (a) a person who holds the qualification, or 20
 - (b) a person who applies for it.
- (4) A qualifications body (A) must not victimise a person (B) –
 - (a) in the arrangements A makes for deciding upon whom to confer a relevant qualification;
 - (b) as to the terms on which it is prepared to confer a relevant qualification on B; 25
 - (c) by not conferring a relevant qualification on B.
- (5) A qualifications body (A) must not victimise a person (B) upon whom A has conferred a relevant qualification –
 - (a) by withdrawing the qualification from B; 30
 - (b) by varying the terms on which B holds the qualification;

Examples

- A qualifications body refuses to allow a girl to undertake a GCSE in woodwork. This would be direct discrimination.
- A visually impaired candidate is granted a modified paper (enlarged font) in order that she can read her English GCSE exam.
- The regulator identifies a maximum percentage of a qualification that qualifications bodies are able to exempt.
- The regulator publishes a requirement on qualifications bodies not to use a specific reasonable adjustment, such as a reader in the independent reading element of a GCSE English exam.

Clause 92: Interpretation

Effect

311. This clause explains what is meant by terms used in clause 91. It defines a qualifications body as an authority or body which awards a qualification, and sets out what it is not. It also defines a qualification as a certificate or endorsement of a set description.

Background

312. This clause is designed to replicate the effect of provisions in current legislation.

Examples

- Edexcel is an example of a qualifications body.
- A GCSE is an example of a qualification.

- (c) by subjecting B to any other detriment.
- (6) A duty to make reasonable adjustments applies to a qualifications body.
- (7) Subsection (6) does not apply to the body in so far as the appropriate regulator specifies provisions, criteria or practices in relation to which the body –
 - (a) is not subject to a duty to make reasonable adjustments; 5
 - (b) is subject to a duty to make reasonable adjustments, but in relation to which such adjustments as the regulator specifies should not be made.
- (8) For the purposes of subsection (7) the appropriate regulator must have regard to –
 - (a) the desirability of minimising the extent to which disabled persons are disadvantaged in attaining the qualification because of their disabilities; 10
 - (b) the need to secure that the qualification gives a reliable indication of the knowledge, skills and understanding of a person upon whom it is conferred; 15
 - (c) the need to maintain public confidence in the qualification.
- (9) The appropriate regulator –
 - (a) must not specify any matter for the purposes of subsection (7) unless it has consulted such persons as it thinks appropriate;
 - (b) must publish matters so specified (including the date from which they are to have effect) in such manner as is prescribed. 20
- (10) The appropriate regulator is –
 - (a) in relation to a qualifications body that confers qualifications in England, a person prescribed by a Minister of the Crown;
 - (b) in relation to a qualifications body that confers qualifications in Wales, a person prescribed by the Welsh Ministers; 25
 - (c) in relation to a qualifications body that confers qualifications in Scotland, a person prescribed by the Scottish Ministers.
- (11) For the purposes of subsection (10), a qualification is conferred in a part of Great Britain if there are, or may reasonably be expected to be, persons seeking to obtain the qualification who are or will be assessed for those purposes wholly or mainly in that part. 30

92 Interpretation

- (1) This section applies for the purposes of section 91.
- (2) A qualifications body is an authority or body which can confer a relevant qualification. 35
- (3) A relevant qualification is an authorisation, qualification, approval or certification of such description as may be prescribed –
 - (a) in relation to conferments in England, by a Minister of the Crown;
 - (b) in relation to conferments in Wales, by the Welsh Ministers; 40
 - (c) in relation to conferments in Scotland, by the Scottish Ministers.
- (4) An authority or body is not a qualifications body in so far as –
 - (a) it is the responsible body of a school to which section 80 applies;
 - (b) it is the governing body of an institution to which section 86 applies;

Chapter 4: Miscellaneous

Clause 93: Reasonable adjustments

Effect

313. This clause introduces the provisions of Schedule 13, concerning the making of reasonable adjustments to ensure that disabled pupils are not placed at a substantial disadvantage in comparison to non-disabled pupils. These provisions are explained in more detail in the notes to that Schedule.

Clause 94: Educational charities and endowments

Effect

314. This clause introduces the provisions of Schedule 14, concerning educational charities which restrict benefits to a single sex and provides for such restrictions to be modified.

PART 7: ASSOCIATIONS

Clause 95: Application of this Part

Effect

315. This clause provides that this Part of the Bill, which prohibits discrimination, harassment and victimisation by associations, does not make it unlawful for an association to discriminate against, harass or victimise people because of marriage or civil partnership.

316. It also provides that, if an act of discrimination, harassment or victimisation is made unlawful by the Parts of the Bill covering services and public functions, premises, work or education, then those provisions, rather than the provisions in this Part, apply.

- (c) it exercises functions under the Education Acts;
 - (d) it exercises functions under the Education (Scotland) Act 1980.
- (5) A qualifications body does not include an authority or body of such description, or in such circumstances, as may be prescribed.
- (6) A reference to conferring a relevant qualification includes a reference – 5
- (a) to renewing or extending the conferment of a qualification;
 - (b) to authenticating a qualification conferred by another person.
- (7) Subsection (11) of section 91 applies for the purposes of subsection (3) of this section as it applies for the purposes of subsection (10) of that section.

CHAPTER 4 10

MISCELLANEOUS

93 Reasonable adjustments

Schedule 13 (reasonable adjustments) has effect.

94 Educational charities and endowments

Schedule 14 (educational charities and endowments) has effect. 15

PART 7

ASSOCIATIONS

Preliminary

95 Application of this Part

- (1) This Part does not apply to the protected characteristic of marriage and civil20 partnership.
- (2) This Part does not apply to discrimination, harassment or victimisation –
- (a) that is prohibited by Part 3 (services, etc.), Part 4 (premises), Part 5 (work) or Part 6 (education), or
 - (b) that would be so prohibited but for an express exception. 25
- (3) For the purposes of subsection (2)(b), section 30(3) is not an express exception.

Background

317. This clause is designed to replicate the position in current legislation.

Clause 96: Members and associates

Effect

318. This clause makes it unlawful for an association to discriminate against, harass or victimise an existing or potential member, or an associate. This means that an association cannot refuse membership to a potential member or grant it on less favourable terms because of a protected characteristic. It does not, however, prevent associations restricting their membership to people who share a protected characteristic (see Schedule 16). It also means that an association cannot, among other things, refuse an existing member or associate access to a benefit or deprive him or her of membership or rights as an associate respectively because of a protected characteristic covered by this Part.

Background

319. Current legislation provides protection from discrimination, harassment and victimisation by associations against existing or potential members and associates because of race, disability and sexual orientation. This clause is designed to replicate the effect of the provisions in current legislation, and to extend protection to the characteristics of gender, age, religion or belief, pregnancy and maternity, and gender reassignment.

Examples

- A gentlemen's club refuses to accept a person's application for membership or charges them a higher subscription rate because he is Muslim. This would be direct discrimination.
- A private members' golf club, which has members of both sexes, requires its female members to play only on certain days while allowing male members to play at all times. This would be direct discrimination.

Clause 97: Guests

Effect

320. This clause makes it unlawful for an association to discriminate against, harass or victimise existing or potential guests. In particular, an association cannot refuse to invite a

Membership, etc.

96 Members and associates

- (1) An association (A) must not discriminate against a person (B) –
 - (a) in the arrangements A makes for deciding who to admit to membership; 5
 - (b) as to the terms on which A is prepared to admit B to membership;
 - (c) by not accepting B’s application for membership.
- (2) An association (A) must not discriminate against a member (B) –
 - (a) in the way A affords B access, or by not affording B access, to a benefit, facility or service; 10
 - (b) by depriving B of membership;
 - (c) by varying B’s terms of membership;
 - (d) by subjecting B to any other detriment.
- (3) An association (A) must not discriminate against an associate (B) –
 - (a) in the way A affords B access, or by not affording B access, to a benefit, facility or service; 15
 - (b) by depriving B of B’s rights as an associate;
 - (c) by varying B’s rights as an associate;
 - (d) by subjecting B to any other detriment.
- (4) An association must not harass – 20
 - (a) a member;
 - (b) a person seeking to become a member;
 - (c) an associate.
- (5) An association (A) must not victimise a person (B) –
 - (a) in the arrangements A makes for deciding who to admit to membership; 25
 - (b) as to the terms on which A is prepared to admit B to membership;
 - (c) by not accepting B’s application for membership.
- (6) An association (A) must not victimise a member (B) –
 - (a) in the way A affords B access, or by not affording B access, to a benefit, facility or service; 30
 - (b) by depriving B of membership;
 - (c) by varying B’s terms of membership;
 - (d) by subjecting B to any other detriment.
- (7) An association (A) must not victimise an associate (B) – 35
 - (a) in the way A affords B access, or by not affording B access, to a benefit, facility or service;
 - (b) by depriving B of B’s rights as an associate;
 - (c) by varying B’s rights as an associate;
 - (d) by subjecting B to any other detriment. 40

97 Guests

- (1) An association (A) must not discriminate against a person (B) –

person as a guest because of a particular characteristic or invite that person on certain conditions which the association would not apply to other would-be guests. Equally, a guest cannot be refused access to a benefit simply because of a protected characteristic or subject to any other detriment.

Background

321. Current legislation provides protection to existing and potential guests of associations because of disability only. This clause extends similar protection to all protected characteristics covered by this Part.

Example

- An association refuses to invite the disabled wife of a member to attend an annual dinner, which is open to all members' partners, simply because she is a wheelchair user. This would be direct discrimination.

Clause 98: Sections 96 and 97: further provision

Effect

322. This clause imposes on associations the duty to make reasonable adjustments for disabled members and guests.

323. This clause also provides that the Bill does not prohibit harassment of members, potential members, associates, guests and potential guests because of religion or belief or sexual orientation.

Clause 99: Selection of candidates

Effect

324. This clause allows registered political parties to make arrangements in relation to the selection of election candidates to address the under-representation of people with particular protected characteristics in elected bodies.

325. These arrangements include single-sex shortlists for election candidates, but not shortlists restricted to people with other protected characteristics.

- (a) in the arrangements A makes for deciding who to invite, or who to permit to be invited, as a guest;
 - (b) as to the terms on which A is prepared to invite B, or to permit B to be invited, as a guest;
 - (c) by not inviting B, or not permitting B to be invited, as a guest. 5
- (2) An association (A) must not discriminate against a guest (B) invited by A or with A's permission (whether express or implied) –
- (a) in the way A affords B access, or by not affording B access, to a benefit, facility or service;
 - (b) by subjecting B to any other detriment. 10
- (3) An association must not harass –
- (a) a guest;
 - (b) a person seeking to be a guest.
- (4) An association (A) must not victimise a person (B) –
- (a) in the arrangements A makes for deciding who to invite, or who to permit to be invited, as a guest;
 - (b) as to the terms on which A is prepared to invite B, or to permit B to be invited, as a guest;
 - (c) by not inviting B, or not permitting B to be invited, as a guest.
- (5) An association (A) must not victimise a guest (B) invited by A or with A's permission (whether express or implied) –
- (a) in the way A affords B access, or by not affording B access, to a benefit, facility or service;
 - (b) by subjecting B to any other detriment.
- 98 Sections 96 and 97: further provision 25**
- (1) A duty to make reasonable adjustments applies to an association.
 - (2) In the application of section 24 for the purposes of section 96(4) or 97(3), neither of the following is a relevant protected characteristic –
 - (a) religion or belief;
 - (b) sexual orientation. 30

Special provision for political parties

99 Selection of candidates

- (1) This section applies to an association which is a registered political party.
- (2) A person does not contravene this Part only by acting in accordance with selection arrangements. 35
- (3) Selection arrangements are arrangements –
 - (a) which the party makes for regulating the selection of its candidates in a relevant election, and

326. This provision applies to the selection of candidates in relation to elections to Parliament, local government, the European Parliament, to the Scottish Parliament and to the National Assembly for Wales.

Background

327. For sex, the clause replicates similar provisions in the Sex Discrimination Act 1975, as amended by the Sex Discrimination (Election Candidates) Act 2002, relating to the selection of candidates. For the other protected characteristics this clause introduces new provisions allowing political parties to take action in their selection arrangements in order to address under-representation in elected bodies, short of shortlists restricted to people with a particular protected characteristic. This will, for instance, allow political parties to reserve places on relevant electoral shortlists for people with a specific protected characteristic such as race, disability etc.

Examples

- A political party can have a women-only short-list of potential candidates to represent a particular constituency in Parliament, provided women remain under-represented in the party's Members of Parliament.
- A political party cannot shortlist only black or Asian candidates for a local government by-election. However, if Asians are under-represented amongst a party's elected councillors on a particular Council, the party could choose to reserve a specific number of seats for Asian candidates on a by-election shortlist.

Clause 100: Time limited provision

Effect

328. This clause is linked to the provisions in clause 99 relating to the selection of candidates by registered political parties. It provides that the provision in clause 99(7) which permits single-sex shortlists for election candidates in order to address under-representation in elected bodies will be repealed automatically at the end of 2030 unless an order is made by a Minister of the Crown to extend it beyond that date.

329. This clause also extends the expiry date for the similar provisions in the Sex Discrimination (Election Candidates) Act until 2030, so far as they apply to Northern Ireland.

Background

330. The clause replicates similar provisions in the Sex Discrimination (Election Candidates) Act 2002, but extends the expiry date for those provisions to 2030.

Clause 101: Interpretation and exceptions

Effect

331. This clause explains what is meant by terms used in Part 7 of the Bill. It defines an association as a body with 25 or more members where access to membership is controlled by rules and involves a genuine selection process based on personal criteria. It gives a Minister

- (b) the purpose of which is to reduce inequality in the party's representation in the body concerned.
- (4) The reference in subsection (3)(b) to inequality in a party's representation in a body is a reference to inequality between –
 - (a) the number of the party's candidates elected to be members of the body 5 who share a protected characteristic, and
 - (b) the number of the party's candidates so elected who do not share that characteristic.
- (5) For the purposes of subsection (4), persons share the protected characteristic of disability if they are disabled persons (and section 6(3)(b) is accordingly to be 10 ignored).
- (6) Selection arrangements do not include short-listing only such persons as have a particular protected characteristic.
- (7) But subsection (6) does not apply to the protected characteristic of sex.
- (8) The following elections are relevant elections – 15
 - (a) Parliamentary elections;
 - (b) elections to the European Parliament;
 - (c) elections to the Scottish Parliament;
 - (d) elections to the National Assembly for Wales;
 - (e) local government elections within the meaning of section 191, 203 or 204 of the Representation of the People Act 1983 (excluding elections for the Mayor of London).

100 Time-limited provision

- (1) Section 99(7) is repealed at the end of 2030 unless an order is made under subsection (2). 25
- (2) At any time before the end of 2030, a Minister of the Crown may by order provide that subsection (1) is to have effect with the substitution of a later time for that for the time being specified there.
- (3) In section 3 of the Sex Discrimination (Election Candidates) Act 2002 (expiry of that Act), in subsection (1) for “2015” substitute “2030”. 30
- (4) The substitution made by subsection (3) does not affect the power to substitute a later time by order under section 3 of that Act.

Supplementary

101 Interpretation and exceptions

- (1) This section applies for the purposes of this Part. 35
- (2) An “association” is an association of persons –

of the Crown power to amend this definition so as to change the number of members required by the definition.

332. It also provides that people who have any kind of membership of a particular association are protected by this Part, as are associates, who are not members of an association, but have many of the rights of members as a consequence of being a member of another association.

333. The exceptions which apply to this part of the Bill are contained in Schedule 16.

Background

334. The substance of the definition of an association remains unchanged from that used in the Race Relations Act 1976.

Examples

- Associations include: private members' golf clubs and gentlemen's clubs where applicants for membership are required to make a personal application, be sponsored by other members and go through some kind of selection process.

Membership would cover full membership, associate membership, temporary membership and day membership.

- Casinos, nightclubs and gyms, where payment of the requisite "membership" fee is all that is required to secure admittance are not associations for the purposes of this Part. These are covered instead by the provisions in Part 3 concerning services provided to the public.
- A book club run by a group of friends which has no formal rules governing admittance or whose membership is less than 25 is not an association for the purposes of this Part.

Part 8: Prohibited conduct: ancillary

Clause 102: Relationships that have ended

Effect

335. This clause makes it unlawful to discriminate against or harass someone after a relationship covered by the Bill has ended.

336. It covers any former relationship in which the Bill prohibits one person from discriminating against or harassing another, such as in employment, or in the provision of goods, facilities and services. It is designed to ensure that treatment of the kind made unlawful by the Bill which results from, and is closely linked to, the existence of a relationship is still unlawful even though the relationship no longer exists.

337. This provision applies to conduct which takes place after the Bill is commenced, whether or not the relationship in question ended before that date. If the conduct occurred before this clause was commenced, it would be dealt with under the current legislation.

338. This clause also requires reasonable adjustments to be made for disabled people even after a relationship has ended, if they continue to be at a substantial disadvantage in comparison to people without a disability. A person will be considered to have discriminated

- (a) which has at least 25 members, and
 - (b) admission to membership of which is regulated by the association’s rules and involves a process of selection.
- (3) A Minister of the Crown may by order amend subsection (2)(a) so as to substitute a different number for that for the time being specified there. 5
- (4) It does not matter –
- (a) whether an association is incorporated;
 - (b) whether its activities are carried on for profit.
- (5) Membership is membership of any description (other than membership that is by reference to a protected characteristic); and a reference to a member is to be construed accordingly. 10
- (6) A person is an “associate”, in relation to an association, if the person –
- (a) is not a member of the association, but
 - (b) in accordance with the association’s rules, has some or all of the rights as a member as a result of being a member of another association. 15
- (7) A reference to a registered political party is a reference to a party registered in the Great Britain register under Part 2 of the Political Parties, Elections and Referendums Act 2000.
- (8) Schedule 15 (reasonable adjustments) has effect.
- (9) Schedule 16 (exceptions) has effect. 20

PART 8

PROHIBITED CONDUCT: ANCILLARY

102 Relationships that have ended

- (1) A person (A) must not discriminate against another (B) if –
- (a) the discrimination arises out of and is closely connected to a relationship which used to exist between them, and
 - (b) conduct of a description constituting the discrimination would, if it occurred during the relationship, contravene this Act. 25
- (2) A person (A) must not harass another (B) if –
- (a) the harassment arises out of and is closely connected to a relationship which used to exist between them, and
 - (b) conduct of a description constituting the harassment would, if it occurred during the relationship, contravene this Act. 30
- (3) It does not matter whether the relationship ends before or after the commencement of this section. 35
- (4) A duty to make reasonable adjustments applies to A in so far as B continues to be placed at a substantial disadvantage as mentioned in section 19.

against a disabled person if he or she fails to comply with the duty to make reasonable adjustments.

339. A breach of this clause triggers the same enforcement procedures as if the treatment had occurred during the relationship. However, if the treatment which is being challenged constitutes victimisation, it will be dealt with under the victimisation provisions and not under this clause.

Background

340. This clause replaces similar provisions in current legislation. It also extends the protection after a relationship has ended to cover discrimination outside the workplace because of religion or belief and sexual orientation. It will provide similar protection against age discrimination and harassment outside the workplace when the age protection provisions are commenced.

Examples

- A school or employer refuses to give a reference to an ex-pupil or ex-employee because of their religion or belief. This would be direct discrimination.
- A builder or plumber addresses abusive and hostile remarks to a previous customer because of her gender after their business relationship has ended. This would be harassment. It would not be harassment, however, where the reason for the treatment was not the customer's gender but, for example, a dispute over payment.
- A disabled former employee's benefits include life-time use of the company's in-house gym facilities. The employer or owner of the premises must make reasonable adjustments to enable the former employee to continue using the facilities even after she has retired.

Clause 103: Liability of employers and principals

Effect

341. This clause makes employers and principals liable for acts of discrimination, harassment and victimisation carried out by their employees in the course of employment or by their agents acting under their authority. It does not matter whether or not the employer or principal knows about or approves of those acts.

342. However, employers who can show that they took all reasonable steps to prevent their employees from acting unlawfully will not be held liable.

343. Employers and principals cannot be held liable for any criminal offences under the Bill that are committed by their employees or agents, except for those in the provisions on transport services for disabled people in Part 12 of the Bill.

Background

344. This clause replaces similar provisions in current legislation. It is designed to ensure that employers and principals are made responsible for the acts of those over whom they have control. The clause works together with the provisions on "Liability of employees and agents" (clause 104), "Instructing and causing discrimination" (clause 105), and "Aiding

- (5) For the purposes of subsection (4), sections 19, 20 and 21 and the applicable Schedules are to be construed as if the relationship had not ended.
- (6) For the purposes of Part 9 (enforcement), a contravention of this section relates to the Part of this Act that would have been contravened if the relationship had not ended. 5
- (7) But conduct is not a contravention of this section in so far as it also amounts to victimisation of B by A.

103 Liability of employers and principals

- (1) Anything done by a person (A) in the course of A's employment must be treated as also done by the employer. 10
- (2) Anything done by an agent for a principal, with the authority of the principal, must be treated as also done by the principal.
- (3) It does not matter whether the thing is done with the employer's or principal's knowledge or approval.
- (4) In proceedings against A's employer (B) in respect of anything alleged to have been done by A in the course of A's employment it is a defence for B to show that B took all reasonable steps to prevent A –
 - (a) from doing the thing, or
 - (b) from doing anything of that description.
- (5) This section does not apply to offences under this Act (other than offences under Part 12 (disabled persons: transport)). 20

contraventions” (clause 106) to ensure that both the person carrying out an unlawful act and any person on whose behalf they were acting can be held to account where appropriate.

Examples

- A landlord (the principal) instructs an agent to collect rent at a property. The agent harasses an Asian couple, who bring a claim in which the agent is held to have acted unlawfully. The principal may be held liable for breaching the harassment provisions even if unaware of the agent’s actions.
- A shop owner becomes aware that her employee is refusing to serve disabled customers. The employer tells the employee to treat disabled customers in the same way as other customers and sends the employee on a diversity training course. However, the employee continues to treat disabled customers less favourably. One such customer brings a claim against both the employee and the employer. The employer may avoid liability by arguing that she took all reasonable steps to stop the employee from acting in a discriminatory way.

Clause 104: Liability of employees and agents

Effect

345. This clause makes an employee personally liable for unlawful acts committed in the course of employment where, because of clause 103, the employer is also liable - or would be but for the defence of having taken all reasonable steps to prevent the employee doing the relevant thing. An agent would be equally personally liable under this clause for any unlawful acts committed under a principal’s authority. However, an employee or agent will not be liable if he or she has been told by the employer or principal that the act is lawful and he or she reasonably believes this to be true.

346. Subsections (4) and (5) make it an offence, punishable by a fine of (currently) up to £5,000, for an employer or principal to make a false statement in order to try to get an employee or agent to carry out an unlawful act.

347. This clause does not apply to discriminatory acts done by an employee or agent on the grounds of disability in relation to schools because claims for disability discrimination in schools cannot be enforced against individuals.

Background

348. This clause incorporates some of the elements in the “Aiding unlawful acts” provisions in current discrimination legislation. It takes a more direct approach and unlike the existing provisions it is not necessary to show that the employee or agent knew that the act was unlawful.

Example

- A factory worker racially harasses her colleague. The factory owner would be liable for the worker’s actions, but is able to show that he took all reasonable steps to stop the harassment. The colleague can still bring a claim against the factory worker in an employment tribunal.

104 Liability of employees and agents

- (1) A person (A) contravenes this section if—
 - (a) A is an employee or agent,
 - (b) A does a thing which, by virtue of section 103(1) or (2), is treated as having been done by A's employer or principal (as the case may be),⁵ and
 - (c) the doing of the thing by A amounts to a contravention of this Act by the employer or principal (as the case may be).
- (2) It does not matter whether, in any proceedings, the employer is found not to have contravened this Act by virtue of section 103(4).¹⁰
- (3) A does not contravene this section if—
 - (a) A relies on a statement by the employer or principal that doing the thing is not a contravention of this Act, and
 - (b) it is reasonable for A to do so.
- (4) A person (B) commits an offence if B knowingly or recklessly makes a¹⁵ statement mentioned in subsection (3)(a) which is false or misleading in a material respect.
- (5) A person guilty of an offence under subsection (4) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- (6) Part 9 (enforcement) applies to a contravention of this section by A as if it were²⁰ the contravention mentioned in subsection (1)(c).
- (7) The reference in subsection (1)(c) to a contravention of this Act does not include a reference to disability discrimination in contravention of Chapter 1 of Part 6 (schools).

- ²A principal instructs an agent to sell products on her behalf. The agent discriminates against a disabled customer. Both the principal and the agent are liable, but the courts are able to determine that evidence provided by the principal indicate the authority given to the agent did not extend to carrying out an authorised act in a discriminatory manner. The disabled customer can still bring a claim against the agent.
-

Clause 105: Instructing and causing discrimination

Effect

349. This clause makes it unlawful for a person to instruct, cause or induce someone to discriminate against, harass or victimise another person, or to attempt to do so.

350. It provides a remedy for both the recipient of the instruction and the intended victim, whether or not the instruction is carried out, provided the recipient or intended victim suffers a detriment as a result.

351. However, the clause only applies where the person giving the instruction is in a relationship with the recipient of the instruction in which discrimination, harassment or victimisation is prohibited.

352. The Equality and Human Rights Commission can enforce this clause using its statutory powers under the Equality Act 2006. Equally, both the recipient of the instruction and the intended victim can bring individual claims for breach of this clause against the person giving the instructions. A claim brought by the recipient of the instruction will be dealt with in the same forum (employment tribunal or county courts) as a direct claim for discrimination, harassment or victimisation against the person giving the instruction would be. A claim brought by the intended victim against the person giving the instruction will be dealt with in the same forum as a claim for discrimination, harassment or victimisation against the person carrying out the instruction would be.

Background

353. This clause replaces provisions in current legislation in relation to race, sex, gender reassignment, pregnancy and maternity, age (within the workplace) disability (within the workplace), religion or belief (outside of the workplace) and sexual orientation (outside of the workplace). It extends protection to all protected characteristics in all areas covered by the Bill and allows the Equality and Human Rights Commission to bring enforcement proceedings in relation to any action in breach of the clause. (Previously Equality and Human Rights Commission's enforcement powers were not uniform even between the strands and fields where there were provisions on instructions to discriminate). The provision expressly allowing persons instructed to bring proceedings is new (other than in relation to age for the workplace where such provision already exists), and is designed to codify the current position in common law (see *Weathersfield v Sargent* [1999] IRLR 94). The provision expressly allowing the intended victim to bring proceedings, even where the instruction is not carried out, is also new and is designed to ensure greater clarity about the protection under current legislation.

Example

- A GP instructs his receptionist not to register anyone with an Asian name. The receptionist would have a claim against the GP if subjected to a detriment for not doing so. A potential patient would also have a claim against the GP if she discovered

105 Instructing and causing discrimination

- (1) A person (A) must not instruct another (B) to do in relation to a third person (C) anything which contravenes Part 3, 4, 5, 6 or 7 or section 102(1) or (2) or 106(1) (a basic contravention).
- (2) A person (A) must not cause another (B) to do in relation to a third person (C) anything which is a basic contravention. 5
- (3) A person (A) must not induce another (B) to do in relation to a third person (C) anything which is a basic contravention.
- (4) For the purposes of subsection (3), inducement may be direct or indirect.
- (5) Proceedings for a contravention of this section may be brought – 10
 - (a) by B, if B is subjected to a detriment as a result of A's conduct;
 - (b) by C, if C is subjected to a detriment as a result of A's conduct;
 - (c) by the Commission.
- (6) For the purposes of subsection (5), it does not matter whether – 15
 - (a) the basic contravention occurs;
 - (b) any other proceedings are, or may be, brought in relation to A's conduct.
- (7) This section does not apply unless the relationship between A and B is such that A is in a position to commit a basic contravention in relation to B.
- (8) A reference in this section to causing or inducing a person to do a thing²⁰ includes a reference to attempting to cause or induce the person to do the thing.
- (9) For the purposes of Part 9 (enforcement), a contravention of this section is to be treated as relating –
 - (a) in a case within subsection (5)(a), to the Part of this Act which, because of the relationship between A and B, A is in a position to contravene in²⁵ relation to B;
 - (b) in a case within subsection (5)(b), to the Part of this Act which, because of the relationship between B and C, B is in a position to contravene in relation to C.

the instruction had been given and was put off applying to register. The receptionist's claim against the GP would be brought before the employment tribunal as it relates to employment, while the potential patient's claim would be brought in the county court as it relates to services.

Clause 106: Aiding contraventions

Effect

354. This clause makes it unlawful for a person to help someone carry out an act which he or she knows is unlawful under the Bill. However, this is not unlawful if the person giving assistance has been told that the act is lawful and he or she reasonably believes this to be true.

355. It makes it an offence, punishable by a fine of (currently) up to £5,000, to make a false statement in order to try to get another person's help to carry out an unlawful act.

356. For the purposes of enforcement, breaches of the prohibition on aiding contraventions are dealt with under the same procedures in the Bill as the contraventions themselves.

Background

357. This clause is designed to replicate the effect of similar provisions in current legislation. It ensures that a person who helps another to do something which they know to be prohibited by the Bill is liable in their own right. Taken together with the provisions "Liability of employers and principals" (clause 103), "Liability of employees and agents" (clause 104) and "Instructing and causing discrimination" (clause 105) of the Bill.

Example

- On finding out that a new tenant is gay, a landlord discriminates against him by refusing him access to certain facilities, claiming that they are not part of the tenancy agreement. Another tenant knows this to be false but joins in with the landlord in refusing the new tenant access to the facilities in question. The new tenant can bring a discrimination claim against both the landlord and the tenant who helped him.

Part 9: Enforcement

Chapter 1: Introductory

Clause 107: Proceedings

Effect

358. This clause applies the provisions of Part 9 to claims made under the Bill. These claims must be brought either in a county court (sheriff court in Scotland) or in an employment tribunal. Clauses 108 and 114 set out which claims should be brought in the civil courts and which in tribunals.

359. This clause does not affect the enforcement powers of the Equality and Human Rights Commission which are in Part 1 of the Equality Act 2006. Nor does it prevent judicial review

106 Aiding contraventions

- (1) A person (A) must not knowingly help another (B) to do anything which contravenes Part 3, 4, 5, 6 or 7 or section 102(1) or (2) or 105 (a basic contravention).
- (2) It is not a contravention of subsection (1) if— 5
 - (a) A relies on a statement by B that the act for which the help is given does not contravene this Act, and
 - (b) it is reasonable for A to do so.
- (3) B commits an offence if B knowingly or recklessly makes a statement mentioned in subsection (2)(a) which is false or misleading in a material¹⁰ respect.
- (4) A person guilty of an offence under subsection (3) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- (5) For the purposes of Part 9 (enforcement), a contravention of this section is to be treated as relating to the provision of this Act to which the basic contravention¹⁵ relates.
- (6) The reference in subsection (1) to a basic contravention does not include a reference to disability discrimination in contravention of Chapter 1 of Part 6 (schools).

PART 9

20

ENFORCEMENT

CHAPTER 1

INTRODUCTORY

107 Proceedings

- (1) Proceedings relating to a contravention of this Act must be brought in²⁵ accordance with this Part.
- (2) Subsection (1) does not apply to proceedings under Part 1 of the Equality Act 2006.
- (3) Subsection (1) does not prevent—

proceedings (or the equivalent in Scotland) or certain immigration proceedings related to compliance with the Bill's provisions.

Background

360. This provision replaces similar provisions in the current legislation.

Chapter 2: Civil courts

Clause 108: Jurisdiction

Effect

361. This clause sets out what types of claims under the Bill a county court or (in Scotland) the sheriff court has jurisdiction to hear. These are claims related to provision of services, the exercise of public functions, disposal and management of premises, education (other than in relation to disability), and associations.

362. There is a presumption that a judge or sheriff will appoint an assessor to assist the court when hearing discrimination cases. However, an assessor need not be appointed where there are good reasons not to (for example, after an assessment of the judge's own level of experience, the nature of the case and the wishes of the claimant).

Background

363. This clause is designed to replicate the effect of provisions in current legislation. However, for the first time the Bill enables disability discrimination in schools cases in Scotland to be heard in the Additional Support Needs Tribunals (Scotland) rather than the sheriff courts, where they are heard at present.

364. Currently, two assessors sit with judges in cases involving race and sex discrimination only. This clause extends the requirement to have assessors for cases of discrimination based on any protected characteristic, such as sexual orientation or religion or belief, but reduces the number of assessors used in each case to one.

Examples

- A woman has joined a golf club but, because she is a woman, she is allowed to play golf only on Tuesday afternoons and is not allowed access to the club bar. She could bring a discrimination claim in the county or (if the golf course is in Scotland) sheriff court.

- (a) a claim for judicial review;
 - (b) proceedings under the Immigration Acts;
 - (c) proceedings under the Special Immigration Appeals Commission Act 1997;
 - (d) in Scotland, an application to the supervisory jurisdiction of the Court of Session. 5
- (4) This section is subject to any express provision of this Act conferring jurisdiction on a court or tribunal.
- (5) The reference to a contravention of this Act includes a reference to a breach of an equality clause or rule. 10
- (6) Chapters 2 and 3 do not apply to proceedings relating to an equality clause or rule except in so far as Chapter 4 provides for that.
- (7) This section does not apply to –
- (a) proceedings for an offence under this Act;
 - (b) proceedings relating to a penalty under Part 12 (disabled persons:15 transport).

CHAPTER 2

CIVIL COURTS

108 Jurisdiction

- (1) A county court or, in Scotland, the sheriff has jurisdiction to determine a claim²⁰ relating to –
- (a) a contravention of Part 3 (services and public functions);
 - (b) a contravention of Part 4 (premises);
 - (c) a contravention of Part 6 (education);
 - (d) a contravention of Part 7 (associations); 25
 - (e) a contravention of section 102, 105 or 106 that relates to Part 3, 4, 6 or 7.
- (2) Subsection (1)(a) does not apply to a claim within section 109.
- (3) Subsection (1)(c) does not apply to a claim within section 110.
- (4) For the purposes of proceedings on a claim within subsection (1)(a) –
- (a) a decision in proceedings on a claim mentioned in section 109(1) that an³⁰ act is a contravention of Part 3 is binding;
 - (b) it does not matter whether the act occurs outside the United Kingdom.
- (5) The county court or sheriff –
- (a) must not grant an interim injunction or interdict unless satisfied that no criminal matter would be prejudiced by doing so; 35
 - (b) must grant an application to stay or sist proceedings under subsection (1) on grounds of prejudice to a criminal matter unless satisfied the matter will not be prejudiced.
- (6) In proceedings in England and Wales on a claim within subsection (1), the power under section 63(1) of the County Courts Act 1984 (appointment of⁴⁰ assessors) must be exercised unless the judge is satisfied that there are good reasons for not doing so.

- A gay man applies for residential housing in a local authority area, but is told that he can choose from only three housing blocks because all homosexual people are housed together. He could bring a discrimination claim in the county or sheriff court.

Clause 109: Immigration cases

Effect

365. This clause sets out which claims under the Bill are outside the jurisdiction of the county or sheriff courts because they are being dealt with in immigration proceedings. These are claims in relation to decisions on whether a person may enter or remain in the UK and claims where the question of whether there has been a breach of Part 3 of the Bill (dealing with services and public functions) has either been raised in immigration proceedings and rejected, or could be raised on appeal.

Background

366. This provision is designed to replicate the effect of provisions in current legislation.

Clause 110: Education cases

Effect

367. This clause sets out which education-related claims under the Bill are outside the jurisdiction of the county and sheriff courts. These are claims about discrimination because of disability in schools which should be brought instead in specialist tribunals (there is a separate tribunal for England, for Wales and for Scotland).

- (7) In proceedings in Scotland on a claim within subsection (1), the power under rule 44.3 of Schedule 1 to the Sheriff Court (Scotland) Act 1907 (appointment of assessors) must be exercised unless the sheriff is satisfied that there are good reasons for not doing so.
- (8) The remuneration of an assessor appointed by virtue of subsection (7) is to be 5 at a rate determined by the Lord President of the Court of Session.

109 Immigration cases

- (1) A claim is within this section if it relates to the act of an immigration authority in taking a relevant decision and –
 - (a) the question whether the act is a contravention of Part 3 has been or 10 could be raised on an appeal which is pending, or could be brought, under the immigration provisions, or
 - (b) it has been decided on an appeal under those provisions that the act is not a contravention of Part 3.
- (2) The relevant decision is not – 15
 - (a) subject to challenge in proceedings on a claim within section 108(1)(a), or
 - (b) affected by the decision of a court in such proceedings.
- (3) For the purposes of subsection (1)(a) a power to grant permission to appeal out of time must be ignored. 20
- (4) Each of the following is an immigration authority –
 - (a) the Secretary of State;
 - (b) an immigration officer;
 - (c) a person responsible for the grant or refusal of entry clearance (within the meaning of section 33(1) of the Immigration Act 1971). 25
- (5) The immigration provisions are –
 - (a) the Special Immigration Appeals Commission Act 1997, or
 - (b) Part 5 of the Nationality, Immigration and Asylum Act 2002.
- (6) A relevant decision is –
 - (a) a decision under the Immigration Acts relating to the entitlement of a 30 person to enter or remain in the United Kingdom;
 - (b) a decision on an appeal under the immigration provisions relating to a decision within paragraph (a).
- (7) An appeal is pending if it is pending for the purposes of section 104 of the Nationality, Immigration and Asylum Act 2002 or (as the case may be) for the 35 purposes of that section as it is applied by section 2(2)(j) of the Special Immigration Appeals Commission Act 1997.

110 Education cases

- (1) A claim is within this section if it may be made to – 40
 - (a) the First-tier Tribunal in accordance with Part 2 of Schedule 17,
 - (b) the Special Educational Needs Tribunal for Wales in accordance with Part 2 of that Schedule, or
 - (c) an Additional Support Needs Tribunal for Scotland in accordance with Part 3 of that Schedule.

Background

368. The position for England and Wales remains unchanged. As noted in relation to clause 108 the Bill for the first time enables disability discrimination in schools cases in Scotland to be heard in the Additional Support Needs Tribunals (Scotland) rather than the sheriff courts, where they are heard at present.

Clause 111: National security

Effect

369. A county or sheriff court may need to take various steps during proceedings in order to safeguard national security. This clause enables the Civil Procedure Rules Committee (for England and Wales) and the Sheriff Court Rules Council (for Scotland) to make rules of court to enable the court to exclude a claimant, representative or assessor from part or all of the proceedings; permit a claimant or representative who has been excluded to make a statement before the proceedings begin; and ensure that part or all of the reasons for a decision on the merits of the case are kept secret. Where the claimant or his or her representative is excluded from proceedings, a special advocate can be appointed to represent the claimant's interests.

Background

370. This provision is designed to replicate and extend powers in current legislation. The existing powers apply in relation to some discrimination proceedings but not to those involving sexual orientation and age. This provision extends the power so that it applies across all the protected characteristics.

Clause 112: Time limits

Effect

371. A person must bring a claim under the Bill in the county and sheriff courts within six months of the alleged unlawful act taking place. If a person wants to make a claim after that period it is at the courts' discretion whether they grant permission to allow this. The test applied by the courts is what is "just and equitable" in the circumstances. This test is used to decide whether to extend time limits in other types of claims such as negligence personal injury claims and is used in the current legislation.

372. The exception to this rule is for claims which have been referred to a student complaints scheme within six months or to the Equality and Human Rights Commission for conciliation. In these instances the time limit for bringing a claim is increased to nine months. The six month period will only begin, in a claim involving a decision of an immigration body, when that body has ruled that there is a breach of Part 3 and that ruling can no longer be appealed.

- (2) A claim is also within this section if it must be made in accordance with appeal arrangements within the meaning of Part 4 of that Schedule.
- (3) Schedule 17 (disabled pupils: enforcement) has effect.

111 National security

- (1) Rules of court may, in relation to proceedings on a claim within section 108, 5 confer power as mentioned in subsections (2) to (4); but a power so conferred is exercisable only if the court thinks it expedient to do so in the interests of national security.
- (2) The rules may confer power to exclude from all or part of the proceedings –
 - (a) the claimant or pursuer; 10
 - (b) a representative of the claimant or pursuer;
 - (c) an assessor.
- (3) The rules may confer power to permit a claimant, pursuer or representative who has been excluded to make a statement to the court before the commencement of the proceedings, or part of the proceedings, to which the 15 exclusion relates.
- (4) The rules may confer power to take steps to keep secret all or part of the reasons for the court’s decision.
- (5) The Attorney General or, in Scotland, the Advocate General for Scotland may appoint a person to represent the interests of a claimant or pursuer in, or in any 20 part of, proceedings to which an exclusion by virtue of subsection (2)(a) or (b) relates.
- (6) A person (P) may be appointed under subsection (5) only if –
 - (a) in relation to proceedings in England and Wales, P is a person who, for the purposes of the Legal Services Act 2007, is an authorised person in 25 relation to an activity which constitutes the exercise of a right of audience or the conduct of litigation;
 - (b) in relation to proceedings in Scotland, P is an advocate or qualified to practice as a solicitor in Scotland.
- (7) P is not responsible to the person whose interests P is appointed to represent. 30

112 Time limits

- (1) Proceedings on a claim within section 108 may not be brought after the end of –
 - (a) the period of 6 months starting with the date of the act to which the claim relates, or 35
 - (b) such other period as the county court or sheriff thinks just and equitable.
- (2) If subsection (3) or (4) applies, subsection (1)(a) has effect as if for “6 months” there were substituted “9 months”.
- (3) This subsection applies if – 40
 - (a) the claim relates to the act of a qualifying institution, and

373. Where the conduct in respect of which a claim under the Bill might arise continues over a period of time, the time limit starts to run at the end of that period. Where it consists of a failure to do something, the time limit starts to run when the person decides not to do the thing in question. In the absence of evidence to the contrary, this is either when the person does something which conflicts with doing the act in question; or at the end of the time when it would have been reasonable for them to do the thing.

Background

374. This clause is designed to replicate the effect of provisions in the current legislation, except that the provision allowing a longer time limit in respect of complaints referred to the student complaints scheme and for conciliation by the Equality and Human Rights Commission is new.

Clause 113: Remedies

Effect

375. This clause gives powers to county and sheriff courts hearing claims under the Bill to grant any remedy that the High Court or Court of Session in Scotland can grant in proceedings in tort or in a claim for judicial review. The main remedies available are damages (including compensation for injuries to feelings), an injunction and a declaration. In cases based on indirect discrimination, if the respondent proves that he or she did not intend to treat the claimant unfavourably then the award of damages can not be considered until a court has looked at the other remedies available to it.

376. A court cannot grant some remedies, such as an injunction, if it would prejudice a criminal investigation or proceedings.

377. Background

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- (b) a complaint relating to the act is referred under the student complaints scheme before the end of the period of 6 months starting with the date of the act.
- (4) This subsection applies if –
- (a) the claim relates to a dispute referred for conciliation in pursuance of 5 arrangements under section 27 of the Equality Act 2006, and
 - (b) subsection (3) does not apply.
- (5) If it has been decided under the immigration provisions that the act of an immigration authority in taking a relevant decision is a contravention of Part 3 (services and public functions), subsection (1) has effect as if for paragraph (a) 10 there were substituted –
- “(a) the period of 6 months starting with the day after the expiry of the period during which, as a result of section 108(2), proceedings could not be brought in reliance on section 108(1)(a);”.
- 15
- (6) For the purposes of this section –
- (a) conduct extending over a period is to be treated as done at the end of the period;
 - (b) failure to do a thing is to be treated as occurring when the person in question decided on it.
- 20
- (7) In the absence of evidence to the contrary, a person (P) is to be taken to decide on failure to do a thing –
- (a) when P does an act inconsistent with doing the thing, or
 - (b) if P does no inconsistent act, on the expiry of the period in which P might reasonably have been expected to do the thing.
- 25
- (8) In this section –
- “immigration authority”, “immigration provisions” and “relevant decision” each have the meaning given in section 109;
 - “qualifying institution” has the meaning given by section 11 of the Higher Education Act 2004;
 - “the student complaints scheme” means a scheme for the review of qualifying complaints (within the meaning of section 12 of that Act) that is provided by the designated operator (within the meaning of section 13(5)(b) of that Act).
- 30

113 Remedies 35

- (1) This section applies if a county court or the sheriff finds that there has been a contravention of a provision referred to in section 108(1).
- (2) The county court has power to grant any remedy which could be granted by the High Court –
- (a) in proceedings in tort; 40
 - (b) on a claim for judicial review.
- (3) The sheriff has power to make any order which could be made by the Court of Session –
- (a) in proceedings for reparation;
 - (b) on a petition for judicial review. 45

377. This provision is designed to replicate the effect of provisions in the current legislation.

Chapter 3: Employment tribunals

Clause 114: Jurisdiction

Effect

378. This clause sets out what types of claims under the Bill the employment tribunals have jurisdiction to hear. These are cases involving discrimination in a work context (which includes contract workers, partners, office holders and barristers and advocates). Their jurisdiction also includes cases about the terms of collective agreements (which can cover any of the terms of employment) and rules of undertakings which are unenforceable under clause 139 because they provide for treatment which is prohibited by the Bill.

379. An employment tribunal also has jurisdiction to determine a complaint relating to a breach of an equality clause or an equality rule. This includes a complaint about arrears of pay, benefits or damages.

380. An employment tribunal can also make a ruling on an application made by the trustees or managers of an occupational pension scheme for a declaration about their rights and those of a member or prospective member of the scheme.

Background

381. This clause is designed to replicate the effect of provisions in the current legislation.

Examples

- A worker is racially abused by a co-worker. She could bring a discrimination claim in the employment tribunal.
- A gay man has applied to become a partner in a firm of accountants but because he is homosexual has not been invited for an interview despite being equally or better qualified than other candidates who were invited for an interview. He could bring a discrimination claim in the employment tribunal.

- (4) An award of damages may include compensation for injured feelings (whether or not it includes compensation on any other basis).
- (5) In the case of a contravention by virtue of section 18 of a provision referred to in section 108(1), the county court or sheriff must not make an award of damages –
 - (a) if satisfied that the provision, criterion or practice was not applied with the intention of discriminating against the claimant or pursuer, or
 - (b) without considering whether to make any other disposal.
- (6) The county court or sheriff must not grant a remedy other than an award of damages or the making of a declaration unless satisfied that no criminal matter would be prejudiced by doing so.

CHAPTER 3

EMPLOYMENT TRIBUNALS

114 Jurisdiction

- (1) An employment tribunal has, subject to section 115, jurisdiction to determine a complaint relating to –
 - (a) a contravention of Part 5 (work);
 - (b) a contravention of section 102, 105 or 106 that relates to Part 5.
- (2) An employment tribunal has jurisdiction to determine an application by a responsible person (as defined by section 57) for a declaration as to the rights of that person and a worker in relation to a dispute about the effect of a non-discrimination rule.
- (3) An employment tribunal also has jurisdiction to determine an application by the trustees or managers of an occupational pension scheme for a declaration as to their rights and those of a member in relation to a dispute about the effect of a non-discrimination rule.
- (4) An employment tribunal also has jurisdiction to determine a question that –
 - (a) relates to a non-discrimination rule, and
 - (b) is referred to the tribunal by virtue of section 116.
- (5) In proceedings before an employment tribunal on a complaint relating to a breach of a non-discrimination rule, the employer –
 - (a) is to be treated as a party, and
 - (b) is accordingly entitled to appear and be heard.
- (6) Nothing in this section affects such jurisdiction as the High Court, a county court, the Court of Session or the sheriff has in relation to a non-discrimination rule.
- (7) Subsection (1)(a) does not apply to a contravention of section 50 in so far as the act complained of may, by virtue of an enactment, be subject to an appeal or proceedings in the nature of an appeal.

Clause 115: Jurisdiction in armed forces cases

Effect

382. This clause establishes that, before bringing a claim under the work provisions of the Bill to an employment tribunal, a member of the armed forces must raise his or her complaint through the armed services internal complaints procedure and not withdraw that complaint. If the complainant fails properly to progress his or her internal complaint then it may, in certain circumstances, be treated as if it had been withdrawn. The internal service complaint procedures do not have to be concluded before the complainant brings a claim to an employment tribunal.

Background

383. This clause is designed to replicate the effect of provisions in the current legislation.

Example

- A black soldier who thinks he has been discriminated against by being passed over for promotion would have to make an internal service complaint before bringing his claim to an employment tribunal.

Clause 116: References by court to tribunal, etc.

Effect

384. The Bill does not prevent the civil courts from considering a claim that a pension scheme operates in a discriminatory manner. This clause enables a court to strike out such a claim if it would be more convenient for an employment tribunal to deal with it, or to refer an issue relating to such a claim to an employment tribunal.

Background

385. Employment tribunals have the specialist knowledge and procedures to handle claims relating to discrimination in the work context and this clause gives a court power to refer such issues to a tribunal. This clause reflects similar provisions in current legislation.

Example

- An employee who is member of a pension scheme sues his employer in court alleging the employer operates the scheme in a discriminatory manner. The court decides to refer the issue to an employment tribunal and postpones the case until the tribunal's decision.

115 Jurisdiction in armed forces cases

- (1) Section 114(1) does not apply to a complaint relating to an act done when the complainant was serving as a member of the armed forces unless –
 - (a) the complainant has made a service complaint about the matter, and
 - (b) the complaint has not been withdrawn. 5
- (2) If the complaint is made under the service complaint procedures, it is to be treated for the purposes of subsection (1)(b) as withdrawn if –
 - (a) neither the officer to whom it is made nor a superior officer refers it to the Defence Council, and
 - (b) the complainant does not apply for it to be referred to the Defence Council. 10
- (3) If the complaint is made under the old service redress procedures, it is to be treated for the purposes of subsection (1)(b) as withdrawn if the complainant does not submit it to the Defence Council under those procedures.
- (4) The reference in subsection (3) to the old service redress procedures is a reference to the procedures (other than those relating to the making of a report on a complaint to Her Majesty) referred to in –
 - (a) section 180 of the Army Act 1955,
 - (b) section 180 of the Air Force Act 1955, or
 - (c) section 130 of the Naval Discipline Act 1957. 20
- (5) The making of a complaint to an employment tribunal in reliance on subsection (1) does not affect the continuation of the service complaint procedures or (as the case may be) the old service redress procedures.

116 References by court to tribunal, etc.

- (1) If it appears to a court in which proceedings are pending that a claim or counter-claim relating to a non-discrimination rule could more conveniently be determined by an employment tribunal, the court may strike out the claim or counter-claim.
- (2) If in proceedings before a court a question arises about a non-discrimination rule, the court may (whether or not on an application by a party to the proceedings) –
 - (a) refer the question, or direct that it be referred by a party to the proceedings, to an employment tribunal for determination, and
 - (b) stay or sist the proceedings in the meantime. 30

Clause 117: Time limits

Effect

386. This clause deals with time limits for cases in the employment tribunals. A person must bring a claim within three months of the alleged conduct taking place. The exception to that rule is a case involving an armed forces complaint, which must be brought within six months. If a person wants to make a claim after that period it is at the tribunals' discretion whether they grant permission to allow them to do so. The test applied by the tribunals is what is "just and equitable" in the circumstances. This test is used to decide whether to extend time limits in other types of claims such as negligence personal injury claims and is used under the current legislation.

387. Where the conduct in respect of which a claim under the Bill might arise continues over a period of time, the time limit starts to run at the end of that period. Where it consists of a failure to do something, the time limit starts to run when the person decides not to do the thing in question. In the absence of evidence to the contrary, this is either when the person does something which conflicts with doing the act in question; or at the end of the time when it would have been reasonable for them to do the thing. This clause does not apply to a breach of an equality clause or an equality rule, which are covered by clause 123 below.

Background

388. This clause is designed to replicate the effect of provisions in current legislation.

Clause 118: Remedies: general

Effect

389. This clause sets out the remedies available to employment tribunals hearing cases under the Bill. It does not however apply to a breach of an equality clause or an equality rule, which are dealt with in clauses 126, 127 and 128.

390. An employment tribunal can make a declaration regarding the rights of the complainant and/or the respondent; order compensation to be paid, including damages for injury to feelings; and make an appropriate recommendation. The measure of compensation is that which applies in tort claims, for example claims of negligence, which is to put the claimant in the same position, as far as possible, as they would have been if the unlawful act had not taken place.

391. Where a tribunal makes a recommendation it does not have to be aimed only at reducing the negative impact on the individual claimant(s) of the respondent's actions which gave rise to the successful claim, but can be aimed at reducing that impact on the wider workforce. The recommendation must state that the respondent should take specific action within a specified period of time. A tribunal has the power in any case where a recommendation made for the benefit of the individual claimant only is not complied with, to award compensation or increase any award already made.

117 Time limits

- (1) Proceedings on a complaint within section 114 may not be brought after the end of—
 - (a) the period of 3 months starting with the date of the act to which the complaint relates, or 5
 - (b) such other period as the employment tribunal thinks just and equitable.
- (2) Proceedings may not be brought in reliance on section 115(1) after the end of—
 - (a) the period of 6 months starting with the date of the act to which the proceedings relate, or
 - (b) such other period as the employment tribunal thinks just and equitable. 10
- (3) For the purposes of this section—
 - (a) conduct extending over a period is to be treated as done at the end of the period;
 - (b) failure to do a thing is to be treated as occurring when the person in question decided on it. 15
- (4) In the absence of evidence to the contrary, a person (P) is to be taken to decide on failure to do a thing—
 - (a) when P does an act inconsistent with doing the thing, or
 - (b) if P does no inconsistent act, on the expiry of the period in which P might reasonably have been expected to do the thing. 20

118 Remedies: general

- (1) This section applies if an employment tribunal finds that there has been a contravention of a provision referred to in section 114(1).
- (2) The tribunal may—
 - (a) make a declaration as to the rights of the complainant and the respondent in relation to the matters to which the proceedings relate; 25
 - (b) order the respondent to pay compensation to the complainant;
 - (c) make an appropriate recommendation.
- (3) An appropriate recommendation is a recommendation that within a specified period the respondent takes specified steps for the purpose of obviating or reducing the adverse effect of any matter to which the proceedings relate—
 - (a) on the complainant;
 - (b) on any other person. 30
- (4) Subsection (5) applies if the tribunal—
 - (a) finds that a contravention is established by virtue of section 18, but 35

392. In a case of indirect discrimination where the respondent proves that there was no intention to treat the claimant unfavourably, a tribunal cannot award damages to a claimant unless it has first considered making either a declaration or recommendation.

Background

393. This clause is designed generally to replicate the effect of provisions in current legislation. However, under current legislation, employment tribunals can make a declaration, order compensation to be paid and make recommendations. However, currently the recommendations that they can make can only be for the benefit of the individual claimant(s). The Bill will extend the recommendations power so that employment tribunals can make recommendations which benefit persons other than the claimant.

Example

394. A tribunal could recommend that the respondent:

- introduces an equal opportunities policy;
- ensures its harassment policy is more effectively implemented;
- sets up a review panel to deal with equal opportunities and harassment/grievance procedures;
- re-trains staff; or
- makes public the selection criteria used for transfer or promotion of staff.

Clause 119: Remedies: national security

Effect

395. This clause sets out the restrictions on the types of remedies available to an employment tribunal in cases which have been designated as “national security proceedings”. National security proceedings are those where an order has been made under various provisions of the Employment Tribunals Act 1996 or regulations made under the Act.

396. In national security proceedings a recommendation must not be made for the benefit of the respondent’s wider workforce, if the recommendation would affect anything done by the Security Service, the Secret Intelligence Service, Government Communications Headquarters or the part of the armed forces which assist the Government Communications Headquarters. In such cases the tribunal is limited to making recommendations for the benefit of the individual claimant or claimants.

Background

397. Because the Bill will extend the recommendations power to benefit persons other than the claimant, this provision is necessary to ensure that such recommendations do not affect national security.

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- (b) is satisfied that the provision, criterion or practice was not applied with the intention of discriminating against the complainant.
 - (5) It must not make an order under subsection (2)(b) unless it first considers whether to act under subsection (2)(a) or (c).
 - (6) The amount of compensation which may be awarded under subsection (2)(b) 5 corresponds to the amount which could be awarded by a county court or the sheriff under section 113.
 - (7) If a respondent fails, without reasonable excuse, to comply with an appropriate recommendation in so far as it relates to the complainant, the tribunal may –
 - (a) if an order was made under subsection (2)(b), increase the amount of 10 compensation to be paid;
 - (b) if no such order was made, make one.

119 Remedies: national security

- (1) In national security proceedings, an appropriate recommendation (as defined by section 118) must not be made in relation to a person other than the 15 complainant if the recommendation would affect anything done by –
 - (a) the Security Service,
 - (b) the Secret Intelligence Service,
 - (c) the Government Communications Headquarters, or
 - (d) a part of the armed forces which is, in accordance with a requirement 20 of the Secretary of State, assisting the Government Communications Headquarters.
- (2) National security proceedings are –
 - (a) proceedings to which a direction under section 10(3) of the Employment Tribunals Act 1996 (national security) relates; 25
 - (b) proceedings to which an order under section 10(4) of that Act relates;
 - (c) proceedings (or the part of proceedings) to which a direction pursuant to regulations made under section 10(5) of that Act relates;
 - (d) proceedings (or the part of proceedings) in relation to which an employment tribunal acts pursuant to regulations made under section 30 10(6) of that Act.

Clause 120: Remedies: occupational pension schemes

Effect

398. This clause sets out the additional remedies available to employment tribunals in cases involving occupational pension schemes. These are cases in which the respondent is an employer, or the trustee or manager of the pension scheme; and the complaint relates to the terms on which membership is offered to a pension scheme or how members of an existing scheme are treated. In these cases the tribunal can in addition to the remedies of declaration, compensation and recommendation, also make a declaration about the terms on which a person should be admitted as member to that scheme or a declaration about the rights of an existing member of that scheme to not be discriminated against.

399. However, a tribunal can award compensation only for injured feelings or for failure to comply with a recommendation; it cannot compensate the claimant for loss caused by the unlawful discrimination.

Background

400. This provision is designed to replicate the effect of provisions in current legislation.

Chapter 4: Equality of terms

Clause 121: Jurisdiction

Effect

401. This clause sets out the types of cases relating to equality of terms which employment tribunals have jurisdiction to hear. Tribunals may hear and decide claims (including those referred to them by courts) involving equality in the rules of occupational pension schemes and claims relating to an equality clause, including claims relating to pregnancy and maternity equality.

402. A responsible person (as defined in clause 75, such as an employer, or a pension scheme trustee or manager) can also ask a tribunal for a declaration of each party's rights in relation to a dispute or claim about an equality clause or rule.

403. Members of the armed forces must bring a complaint under service complaints procedures before they can bring a claim to a tribunal.

404. This clause does not alter any jurisdiction the courts or the sheriff have in relation to an equality clause or rule.

Background

405. This clause is designed to replicate the effect of provisions in current legislation.

120 Remedies: occupational pension schemes

- (1) This section applies if an employment tribunal finds that there has been a contravention of a provision referred to in section 114(1) in relation to –
 - (a) the terms on which persons become members of an occupational pension scheme, or 5
 - (b) the terms on which members of an occupational pension scheme are treated.
- (2) In addition to anything which may be done by the tribunal under section 118 the tribunal may also by order declare –
 - (a) if the complaint relates to the terms on which persons become members 10 of a scheme, that the complainant has a right to be admitted to the scheme;
 - (b) if the complaint relates to the terms on which members of the scheme are treated, that the complainant has a right to membership of the scheme without discrimination. 15
- (3) The tribunal may not make an order under subsection (2)(b) of section 118 unless –
 - (a) the compensation is for injured feelings, or
 - (b) the order is made by virtue of subsection (7) of that section.
- (4) An order under subsection (2) – 20
 - (a) may make provision as to the terms on which or the capacity in which the claimant is to enjoy the admission or membership;
 - (b) may have effect in relation to a period before the order is made.

CHAPTER 4

EQUALITY OF TERMS 25

121 Jurisdiction

- (1) An employment tribunal has, subject to subsection (6), jurisdiction to determine a complaint relating to a breach of an equality clause or rule.
- (2) The jurisdiction conferred by subsection (1) includes jurisdiction to determine a complaint arising out of a breach of an equality clause or rule; and a reference 30 in this Chapter to a complaint relating to such a breach is to be read accordingly.
- (3) An employment tribunal also has jurisdiction to determine an application by a responsible person for a declaration as to the rights of that person and a worker in relation to a dispute about the effect of an equality clause or rule. 35
- (4) An employment tribunal also has jurisdiction to determine an application by the trustees or managers of an occupational pension scheme for a declaration as to their rights and those of a member in relation to a dispute about the effect of an equality rule.
- (5) An employment tribunal also has jurisdiction to determine a question that – 40
 - (a) relates to an equality clause or rule, and
 - (b) is referred to the tribunal by virtue of section 122(2).

Example

- An employment tribunal can hear claims brought by an employee, office holder or member of the armed forces in relation to a breach of an equality clause and in relation to breach of an equality rule in relation to a pension scheme.

Clause 122: References by court to tribunal, etc.

Effect

406. The Bill does not prevent the civil courts from considering a contractual claim relating to an equality clause or rule or a non-discrimination rule. However, this clause gives a court the power to strike out such a claim if it would be more convenient for a tribunal to deal with it, or to refer an issue relating to such a claim to an employment tribunal.

Background

407. Employment tribunals have the specialist knowledge and procedures to handle claims relating to equality of terms and this clause gives a court power to refer such issues to a tribunal. This clause replaces similar provisions in current legislation.

Example

- An employer sues an employee in a civil court for breach of her employment contract. In response, the employee counterclaims for breach of an equality clause. The court decides to refer the counterclaim to an employment tribunal and postpones the case until the tribunal's decision.

Clause 123: Time limits

Effect

408. A person, who wishes to bring a claim for breach of an equality clause or rule, or to apply for a declaration about the effect of such a clause or rule, must normally do so within six months of the end of the employment contract. In certain circumstances, this clause gives a claimant more time to make a claim. This applies where the employer conceals certain information from the claimant or where the claimant is under an incapacity (as defined in clause 135). Members of the armed forces have an additional three months in which to bring a claim because they must first make a complaint under the service complaint procedures.

-
- (6) This section does not apply to a complaint relating to an act done when the complainant was serving as a member of the armed forces unless –
- (a) the complainant has made a service complaint about the matter, and
 - (b) the complaint has not been withdrawn.
- (7) Subsections (2) to (5) of section 115 apply for the purposes of subsection (6) of this section as they apply for the purposes of subsection (1) of that section.
- (8) In proceedings before an employment tribunal on a complaint relating to a breach of an equality rule, the employer –
- (a) is to be treated as a party, and
 - (b) is accordingly entitled to appear and be heard. 10
- (9) Nothing in this section affects such jurisdiction as the High Court, a county court, the Court of Session or the sheriff has in relation to an equality clause or rule.

122 References by court to tribunal, etc.

- (1) If it appears to a court in which proceedings are pending that a claim or counter-claim relating to an equality clause or rule could more conveniently be determined by an employment tribunal, the court may strike out the claim or counter-claim.
- (2) If in proceedings before a court a question arises about an equality clause or rule, the court may (whether or not on an application by a party to the proceedings) –
- (a) refer the question, or direct that it be referred by a party to the proceedings, to an employment tribunal for determination, and
 - (b) stay or sist the proceedings in the meantime.

123 Time limits

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- (1) This section applies to –
- (a) a complaint relating to a breach of an equality clause or rule, or
 - (b) an application for a declaration referred to in section 121(3) or (4).
- (2) Proceedings on the complaint or application may not be brought in an employment tribunal after the end of the qualifying period. 30

Background

409. This provision replaces similar provisions in current legislation. Time limits provide certainty by requiring claims to be brought within specified periods and also take into account factors which may affect a claimant's ability to assert his or her claim.

Example

- A former member of the armed forces wishes to bring a claim about her terms of service. She first makes a service complaint and then brings a claim for breach of an equality clause in an employment tribunal. The claim for breach of an equality clause must be brought in an employment tribunal within nine months after her period of service ended.

- (3) If the complaint or application relates to terms of work other than terms of service in the armed forces, the qualifying period is, in a case mentioned in the first column of the table, the period mentioned in the second column.

<i>Case</i>	<i>Qualifying period</i>	
A standard case	The period of 6 months beginning with the last day of the employment or appointment.	5
A stable work case (but not if it is also a concealment or incapacity case (or both))	The period of 6 months beginning with the day on which the stable working relationship ended.	
A concealment case (but not if it is also an incapacity case)	The period of 6 months beginning with the day on which the worker discovered (or could with reasonable diligence have discovered) the qualifying fact.	10
An incapacity case (but not if it is also a concealment case)	The period of 6 months beginning with the day on which the worker ceased to have the incapacity.	15
A case which is a concealment and incapacity case.	The period of 6 months beginning with the later of the days on which the period would begin if the case were merely a concealment or incapacity case.	20

- (4) If the complaint or application relates to terms of service in the armed forces, the qualifying period is, in a case mentioned in the first column of the table, the period mentioned in the second column.

<i>Case</i>	<i>Qualifying period</i>	
A standard case	The period of 9 months beginning with the last day of the period of service during which the complaint arose.	25
A concealment case (but not if it is also an incapacity case)	The period of 9 months beginning with the day on which the worker discovered (or could with reasonable diligence have discovered) the qualifying fact.	30
An incapacity case (but not if it is also a concealment case)	The period of 9 months beginning with the day on which the worker ceased to have the incapacity.	
A case which is a concealment and incapacity case.	The period of 9 months beginning with the later of the days on which the period would begin if the case were merely a concealment or incapacity case.	35

Clause 124: Section 123: supplementary

Effect

410. Under clause 123, the time limit for bringing a claim for breach of an equality clause is six months (nine months for members of the armed forces) from the date on which employment ended in a standard case. Different time limits apply to non-standard cases. This clause defines what is not a standard case.

411. In a stable work case, a series of fixed or short term contracts and breaks between contracts is treated as a continuing single contract. In a standard case, the time limit would start at the end of the contract of employment. In a stable work case, the time limit only begins to run when the stable working relationship ends.

412. In a concealment case, the employer deliberately conceals relevant information from the employee. The time limit starts to run when the employee discovers, or could reasonably have discovered, the information.

413. In an incapacity case, the appropriate time limit will start to run when the incapacity ends. Clause 135 sets out when a person has an incapacity.

414. The clause makes similar provisions for claims by members of the armed forces and in relation to occupational pension schemes.

Background

415. This provision replaces similar provisions in the current legislation.

Examples

- A woman's employment ends due to mental health problems which result in her temporary loss of capacity to make decisions for herself. She could make a claim for breach of an equality clause to an employment tribunal but is not well enough to do so. The six month time limit will start when she recovers sufficiently to make a claim.
- A woman suspects that her male colleagues who do the same work are better paid. Her employer reassures her that she and her colleagues get the same salary but he deliberately does not tell her that the men also receive performance bonuses under their contracts. Her male colleagues refuse to discuss their pay with her. The woman only discovers the discrepancy between her pay and the men's when one of the men tells her 18 months after she ceases employment. Within six months, she makes an equal pay claim to a tribunal based on the value of the bonus payments she would have received if her contract had provided for them. Although the woman's claim is made more than six months after her employment ends, she shows that her employer deliberately misled her into believing her salary was the same as the men's. She had no way of discovering the truth earlier. Her claim can proceed as a concealment case.

124 Section 123: supplementary

- (1) This section applies for the purposes of section 123.
- (2) A standard case is a case which is not –
 - (a) a stable work case,
 - (b) a concealment case, 5
 - (c) an incapacity case, or
 - (d) a concealment case and an incapacity case.
- (3) A stable work case is a case where the proceedings relate to a period during which there was a stable working relationship between the worker and the responsible person (including any time after the terms of work had expired). 10
- (4) A concealment case in proceedings relating to an equality clause is a case where –
 - (a) the responsible person deliberately concealed a qualifying fact from the worker, and
 - (b) the worker did not discover (or could not with reasonable diligence have discovered) the qualifying fact until after the relevant day. 15
- (5) A concealment case in proceedings relating to an equality rule is a case where –
 - (a) the employer or the trustees or managers of the occupational pension scheme in question deliberately concealed a qualifying fact from the member, and 20
 - (b) the member did not discover (or could not with reasonable diligence have discovered) the qualifying fact until after the relevant day.
- (6) A qualifying fact for the purposes of subsection (4) or (5) is a fact –
 - (a) which is relevant to the complaint, and 25
 - (b) without knowledge of which the worker or member could not reasonably have been expected to bring the proceedings.
- (7) An incapacity case in proceedings relating to an equality clause with respect to terms of work other than terms of service in the armed forces is a case where the worker had an incapacity during the period of 6 months beginning with the later of –
 - (a) the relevant day, or
 - (b) the day on which the worker discovered (or could with reasonable diligence have discovered) the qualifying fact deliberately concealed from the worker by the responsible person. 35
- (8) An incapacity case in proceedings relating to an equality clause with respect to terms of service in the armed forces is a case where the worker had an incapacity during the period of 9 months beginning with the later of –
 - (a) the last day of the period of service during which the complaint arose, or 40
 - (b) the day on which the worker discovered (or could with reasonable diligence have discovered) the qualifying fact deliberately concealed from the worker by the responsible person.
- (9) An incapacity case in proceedings relating to an equality rule is a case where the member of the occupational pension scheme in question had an incapacity during the period of 6 months beginning with the later of –
 - (a) the relevant day, or

Clause 125: Assessment of whether work is of equal value

Effect

416. Where an employment tribunal has to decide if the work of a claimant and comparator are of equal value, this clause gives it the power to require an independent expert, designated by the Advisory, Conciliation and Arbitration Service to prepare a report on the matter.

417. Unless the tribunal withdraws its request for a report (in which case it can ask the expert to give it any documents or other information the expert has to help it make a decision) it must wait for the expert's report before deciding whether the work is of equal value.

418. If there has been a job evaluation study in relation to the work involved and the study finds that the claimant's work is not of equal value to the work of the comparator, the tribunal is required to come to the same decision unless it has a good reason to suspect that the study is discriminatory or unreliable.

Background

419. This provision replaces similar provisions in current legislation.

Example

- A woman claims that her job is of equal value to that of a male comparator. The employer produces a job evaluation study to the tribunal in which the woman's job is rated below her comparator's job. The employer asks the tribunal to dismiss the woman's claim but the woman is able to show that the study is unreliable because it is out of date and does not take account of changes in the jobs resulting from new technology. The tribunal can disregard the study's conclusion and can proceed to decide if the work of the claimant and comparator are of equal value.

- (b) the day on which the member discovered (or could with reasonable diligence have discovered) the qualifying fact deliberately concealed from the member by the employer or the trustees or managers of the scheme.
- (10) The relevant day for the purposes of this section is – 5
- (a) the last day of the employment or appointment, or
 - (b) the day on which the stable working relationship between the worker and the responsible person ended.

125 Assessment of whether work is of equal value

- (1) This section applies to proceedings before an employment tribunal on – 10
- (a) a complaint relating to a breach of an equality clause or rule, or
 - (b) a question referred to the tribunal by virtue of section 122(2).
- (2) Where a question arises in the proceedings as to whether one person’s work is of equal value to another’s, the tribunal may, before determining the question, require a member of the panel of independent experts to prepare a report on 15 the question.
- (3) The tribunal may withdraw a requirement that it makes under subsection (2); and, if it does so, it may –
- (a) request the panel member to provide it with specified documentation;
 - (b) make such other requests to that member as are connected with the 20 withdrawal of the requirement.
- (4) If the tribunal requires the preparation of a report under subsection (2) (and does not withdraw the requirement), it must not determine the question unless it has received the report.
- (5) Subsection (6) applies where – 25
- (a) a question arises in the proceedings as to whether the work of one person (A) is of equal value to the work of another (B), and
 - (b) A’s work and B’s work have been given different values by a job evaluation study.
- (6) The tribunal must determine that A’s work is not of equal value to B’s work 30 unless it has reasonable grounds for suspecting that the evaluation contained in the study –
- (a) was based on a system that discriminates because of sex, or
 - (b) is otherwise unreliable.
- (7) For the purposes of subsection (6)(a), a system discriminates because of sex if 35 a difference (or coincidence) between values that the system sets on different demands is not justifiable regardless of the sex of the person on whom the demands are made.
- (8) A reference to a member of the panel of independent experts is to a person –
- (a) who is for the time being designated as such by the Advisory, 40 Conciliation and Arbitration Service (ACAS) for the purposes of this section, and
 - (b) who is neither a member of the Council of ACAS nor one of its officers or members of staff.
- (9) “Job evaluation study” has the meaning given in section 75(5). 45

Clause 126: Remedies in non-pensions cases

Effect

420. If a claim for breach of an equality clause (other than in relation to a pension scheme) succeeds, the court or employment tribunal can make a declaration clarifying what the rights of the parties to the claim are.

421. The court or tribunal can also order the employer to pay the claimant arrears of pay or damages. The period used for calculating arrears depends on the type of case. There are different periods for claims brought in England and Wales and in Scotland. The basic period in relation to England and Wales is six years from the date a claim is made. In relation to Scotland, the period is five years. Special provision is made for claims involving concealment and/or incapacity (as set out in clause 129).

Background

422. This provision replaces similar provisions in current legislation.

Example

- A woman successfully establishes that her work is the same as her male comparator's and that in addition to a discrepancy between her pay and that of her male colleague, she has been denied access to the benefit of a company car. The claimant is entitled to claim the difference in pay going back up to six years from the date of the claim. She is also entitled to monetary compensation for not having had the use of a company car.

Clause 127: Remedies in pensions cases

Effect

423. This clause allows an employment tribunal to declare that in cases where equality rule or equality clause has been breached in relation to:

- scheme membership, the complainant is entitled to be admitted to the scheme from a date specified by the tribunal, although the date cannot be earlier than 8 April 1976;
- scheme rights, the complainant is entitled to have any rights which would have accrued under the scheme secured from a date specified by the tribunal, although the date cannot be earlier than 17 May 1990.

424. However, the clause prevents a tribunal ordering an award of compensation to the complainant.

126 Remedies in non-pensions cases

- (1) This section applies to proceedings before a court or employment tribunal on a complaint relating to a breach of an equality clause, other than a breach with respect to membership of or rights under an occupational pension scheme.
- (2) If the court or tribunal finds that there has been a breach of the equality clause, 5 it may –
 - (a) make a declaration as to the rights of the parties in relation to the matters to which the proceedings relate;
 - (b) order an award by way of arrears of pay or damages in relation to the complainant. 10
- (3) The court or tribunal may not order a payment under subsection (2)(b) in respect of a time before the arrears day.
- (4) In relation to proceedings in England and Wales, the arrears day is, in a case mentioned in the first column of the table, the day mentioned in the second column. 15

<i>Case</i>	<i>Arrears day</i>
A standard case	The day falling 6 years before the day on which the proceedings were instituted.
A concealment case or an incapacity case (or a case which is both).	The day on which the breach first occurred. 20

- (5) In relation to proceedings in Scotland, the arrears day is the first day of –
 - (a) the period of 5 years ending with the day on which the proceedings were commenced, or
 - (b) if the case involves a relevant incapacity, or a relevant fraud or error, 25 the period of 20 years ending with that day.

127 Remedies in pensions cases

- (1) This section applies to proceedings before a court or employment tribunal on a complaint relating to –
 - (a) a breach of an equality rule, or 30
 - (b) a breach of an equality clause with respect to membership of, or rights under, an occupational pension scheme.
- (2) If the court or tribunal finds that there has been a breach as referred to in subsection (1) –
 - (a) it may make a declaration as to the rights of the parties in relation to the 35 matters to which the proceedings relate;
 - (b) it must not order arrears of benefits or damages or any other amount to be paid to the complainant.
- (3) Subsection (2)(b) does not apply if the proceedings are proceedings to which section 128 applies. 40

Background

425. This clause replicates requirements in the Equal Pay Act 1970, as modified by the Occupational Pension Schemes (Equal Treatment) Regulations 1995.

426. The restrictions on dates derive from judgments of the European Court:

- for scheme membership: 8 April 1976, the date of the Court's judgment in *Defrenne v Sabena*. The Court, in holding that the principle of equal pay was directly effective, held that Article 141 (formerly Article 119) of the Treaty of Rome should not be applied to periods of service before the judgment.
- for scheme rights: 17 May 1990, the date of the Court's judgment in *Barber v Guardian Royal Exchange Insurance Group*, which established that occupational pensions were equal pay for the purposes of Article 119 of the Treaty of Rome.

Clause 128: Remedies in claims for arrears brought by pensioner members

Effect

427. This clause allows a court or an employment tribunal to require compensation to be paid to a pensioner member for a breach of an equality clause or rule in relation to an occupational pension scheme and sets out the period for which arrears may be awarded for different types of cases. In a standard case in England and Wales, the period is six years before the date when a claim is made. Different periods apply to cases brought in England and Wales and to cases brought in Scotland. Special provision is made for claims involving concealment and/or incapacity (as set out in clause 129).

Background

428. This clause replicates requirements in the Equal Pay Act 1970, as modified by the Occupational Pension Schemes (Equal Treatment) Regulations 1995.

- (4) If the breach relates to a term on which persons become members of the scheme, the court or tribunal may declare that the complainant is entitled to be admitted to the scheme with effect from a specified date.
- (5) A date specified for the purposes of subsection (4) must not be before 8 April 1976. 5
- (6) If the breach relates to a term on which members of the scheme are treated, the court or tribunal may declare that the complainant is, in respect of a specified period, entitled to secure the rights that would have accrued if the breach had not occurred.
- (7) A period specified for the purposes of subsection (6) must not begin before 1710 May 1990.
- (8) If the court or tribunal makes a declaration under subsection (6), the employer must provide such resources to the scheme as are necessary to secure for the complainant (without contribution or further contribution by the complainant or other members) the rights referred to in that subsection. 15

128 Remedies in claims for arrears brought by pensioner members

- (1) This section applies to proceedings before a court or employment tribunal on a complaint by a pensioner member of an occupational pension scheme relating to a breach of an equality clause or rule with respect to a term on which the member is treated. 20
- (2) If the court or tribunal finds that there has been a breach referred to in subsection (1), it may –
 - (a) make a declaration as to the rights of the complainant and the respondent in relation to the matters to which the proceedings relate;
 - (b) order an award by way of arrears of benefits or damages or of any other amount in relation to the complainant. 25
- (3) The court or tribunal must not order an award under subsection (2)(b) in respect of a time before the arrears day.
- (4) If the court or tribunal orders an award under subsection (2)(b), the employer must provide such resources to the scheme as are necessary to secure for the complainant (without contribution or further contribution by the complainant or other members) the amount of the award. 30
- (5) In relation to proceedings in England and Wales, the arrears day is, in a case mentioned in the first column of the table, the day mentioned in the second column. 35

<i>Case</i>	<i>Arrears day</i>
A standard case	The day falling 6 years before the day on which the proceedings were commenced.
A concealment case or an incapacity case (or a case which is both).	The day on which the breach first occurred. 40

- (6) In relation to proceedings in Scotland, the arrears day is the first day of –

Clause 129: Supplementary

Effect

429. The amount an employment tribunal can award a successful claimant is affected by how far back in time it can go in making its calculation. The type of case before the tribunal determines this period. This clause defines the different types of cases.

Background

430. This clause replicates the effect of similar provisions in current legislation.

- (a) the period of 5 years ending with the day on which the proceedings were commenced, or
- (b) if the case involves a relevant incapacity, or a relevant fraud or error, the period of 20 years ending with that day.

129 Supplementary

5

- (1) This section applies for the purposes of sections 126 to 128.
- (2) A standard case is a case which is not –
 - (a) a concealment case,
 - (b) an incapacity case, or
 - (c) a concealment case and an incapacity case. 10
- (3) A concealment case in relation to an equality clause is a case where –
 - (a) the responsible person deliberately concealed a qualifying fact (as defined by section 124) from the worker, and
 - (b) the worker commenced the proceedings before the end of the period of 6 years beginning with the day on which the worker discovered (or *15* could with reasonable diligence have discovered) the qualifying fact.
- (4) A concealment case in relation to an equality rule is a case where –
 - (a) the employer or the trustees or managers of the occupational pension scheme in question deliberately concealed a qualifying fact (as defined by section 124) from the member, and 20
 - (b) the member commenced the proceedings before the end of the period of 6 years beginning with the day on which the member discovered (or could with reasonable diligence have discovered) the qualifying fact.
- (5) An incapacity case is a case where the worker or member –
 - (a) had an incapacity when the breach first occurred, and 25
 - (b) commenced the proceedings before the end of the period of 6 years beginning with the day on which the worker or member ceased to have the incapacity.
- (6) A case involves a relevant incapacity or a relevant fraud or error if the period of 5 years referred to in section 126(5)(a) is, as a result of subsection (7) below, *30* reckoned as a period of more than 20 years.
- (7) For the purposes of the reckoning referred to in subsection (6), no account is to be taken of time when the worker or member –
 - (a) had an incapacity, or
 - (b) was induced by a relevant fraud or error to refrain from commencing *35* proceedings (not being a time after the worker or member could with reasonable diligence have discovered the fraud or error).
- (8) For the purposes of subsection (7) –
 - (a) a fraud is relevant in relation to an equality clause if it is a fraud on the part of the responsible person; 40
 - (b) an error is relevant in relation to an equality clause if it is induced by the words or conduct of the responsible person;
 - (c) a fraud is relevant in relation to an equality rule if it is a fraud on the part of the employer or the trustees or managers of the scheme;

Chapter 5: Miscellaneous

Clause 130: Burden of proof

Effect

431. This clause provides that, in any claim where a person alleges discrimination, harassment or victimisation under the Bill, the burden of proving their case starts with the claimant. Once the claimant has established sufficient facts to point to a breach having occurred, in the absence of any other explanation, the burden shifts onto the respondent to show that he or she did not breach the provisions of the Bill. The exception to this rule is if the proceedings relate to a criminal offence.

Background

432. Under current legislation, in most cases the burden of proof is reversed once the claimant has established a case to an initial level. However, the burden of proof is currently not reversed in race discrimination claims brought on grounds of colour and nationality; claims of victimisation which relate to race discrimination; non-work disability discrimination claims; and sex discrimination claims which relate to the exercise of public functions. In these areas the burden of proof will now be reversed once the claimant establishes his or her case to an initial level.

Example

- A man of Chinese ethnic origin applies for a promotion at work but is not given an interview for the job. He finds that a number of white colleagues were given interviews despite having less experience and fewer qualifications. He brings a case for race discrimination before the employment tribunal and provides sufficient evidence to show that he had been treated less favourably because of his ethnic origin. It would then be up to his employer to prove that she had not discriminated against him in the promotion process.

-
- (d) an error is relevant in relation to an equality rule if it is induced by the words or conduct of the employer or the trustees or managers of the scheme.
- (9) A reference in subsection (8) to the responsible person, the employer or the trustees or managers includes a reference to a person acting on behalf of the person or persons concerned. 5
- (10) In relation to terms of service, a reference in section 126(5) or subsection (3) or (5)(b) of this section to commencing proceedings is a reference to making a service complaint.
- (11) A reference to a pensioner member of a scheme includes a reference to a person who is entitled to the present payment of pension or other benefits derived through a member. 10
- (12) In relation to proceedings before a court –
- (a) a reference to a complaint is to be read as a reference to a claim, and
 - (b) a reference to a complainant is to be read as a reference to a claimant. 15

CHAPTER 5

MISCELLANEOUS

130 Burden of proof

- (1) This section applies to any proceedings relating to a contravention of this Act.
- (2) If there are facts from which the court could decide, in the absence of any other explanation, that a person (A) contravened the provision concerned, the court must hold that the contravention occurred. 20
- (3) But subsection (2) does not apply if A shows that A did not contravene the provision.
- (4) The reference to a contravention of this Act includes a reference to a breach of an equality clause or rule. 25
- (5) This section does not apply to proceedings for an offence.
- (6) A reference to the court includes a reference to –
- (a) an employment tribunal;
 - (b) the Asylum and Immigration Tribunal; 30
 - (c) the Special Immigration Appeals Commission;
 - (d) the First-tier Tribunal;
 - (e) the Special Educational Needs Tribunal for Wales;
 - (f) an Additional Support Needs Tribunal for Scotland.

Clause 131: Previous findings

Effect

433. This clause provides, that if a person has brought a case under any of the current legislation which this Bill will replace which is listed in this clause, and a finding by a tribunal or court has been finalised, the issues decided in that case cannot be re-opened and litigated again under the provisions in this Bill.

Background

434. This provision is necessary because the Bill is re-enacting many of the provisions in the legislation listed at subsection (2). This re-enactment should not provide a way to re-open issues before the courts which have been decided in proceedings under the existing legislation.

Clause 132: Obtaining information etc.

Effect

435. This clause provides a mechanism for a person who thinks that he or she may have been unlawfully discriminated against, harassed or victimised to obtain information from the person they think has acted unlawfully against them (that is to say, the potential respondent or defendant). The person may ask questions either on a form prescribed by order by a Minister of the Crown or in some other form.

436. The questions and the answers are admissible as evidence in a case brought under the Bill and the court or tribunal may draw inferences from a failure by the respondent to answer the questions posed within eight weeks or from evasive or equivocal answers.

437. However the court or tribunal cannot draw such adverse inferences in certain specified circumstances. These are if the respondent says that to answer differently would have prejudiced criminal proceedings or revealed the reason for criminal proceedings being withdrawn or not being brought and this is reasonable. The clause contains a power for a Minister of the Crown to specify by order additional circumstances where the adverse inferences would not apply.

Background

438. This provision is designed to replicate the effect of provisions in current legislation.

131 Previous findings

- (1) A finding in relevant proceedings in respect of an act which has become final is to be treated as conclusive in proceedings under this Act.
- (2) Relevant proceedings are proceedings before a court or employment tribunal under any of the following – 5
 - (a) section 19 or 20 of the Race Relations Act 1968;
 - (b) the Equal Pay Act 1970;
 - (c) the Sex Discrimination Act 1975;
 - (d) the Race Relations Act 1976;
 - (e) section 6(4A) of the Sex Discrimination Act 1986; 10
 - (f) the Disability Discrimination Act 1995;
 - (g) Part 2 of the Equality Act 2006;
 - (h) the Employment Equality (Religion and Belief) Regulations 2003 (S.I. 2003/1660);
 - (i) the Employment Equality (Sexual Orientation) Regulations 2003 (S.I. 2003/1661);
 - (j) the Employment Equality (Age) Regulations 2006 (S.I. 2006/1031);
 - (k) the Equality Act (Sexual Orientation) Regulations 2007 (S.I. 2007/1263).
- (3) A finding becomes final –
 - (a) when an appeal against the finding is dismissed, withdrawn or 20 abandoned, or
 - (b) when the time for appealing expires without an appeal having been brought.

132 Obtaining information etc.

- (1) In this section – 25
 - (a) P is a person who thinks that a contravention of this Act has occurred in relation to P;
 - (b) R is a person who P thinks has contravened this Act.
- (2) A Minister of the Crown must by order prescribe –
 - (a) forms by which P may question R on any matter which is or may be 30 relevant;
 - (b) forms by which R may answer questions by P.
- (3) A question by P or an answer by R is admissible as evidence in proceedings under this Act (whether or not the question or answer is contained in a prescribed form). 35
- (4) A court or tribunal may draw an inference from –
 - (a) a failure by R to answer a question by P before the end of the period of 8 weeks beginning with the day on which the question is served;
 - (b) an evasive or equivocal answer.
- (5) Subsection (4) does not apply if – 40
 - (a) R reasonably asserts that to have answered differently or at all might have prejudiced a criminal matter;
 - (b) R reasonably asserts that to have answered differently or at all would have revealed the reason for not commencing or not continuing 45 criminal proceedings;

Clause 133: Interest

Effect

439. This clause enables a Minister of the Crown to make regulations enabling an employment tribunal to add interest payments to any award of compensation made to a claimant as a result of a discrimination case brought under this Bill. The regulations can set out how the tribunal should calculate how much interest should be paid.

440. The regulations may provide that interest is to be calculated in a different way in discrimination proceedings from how it is in other cases before the employment tribunals, so they can modify the effect of an order made under the Employment Tribunals Act 1996 about interest calculations which applies to employment cases more generally.

Background

441. This replicates powers contained in current legislation.

Example

- A claimant is awarded compensation for being discriminated against by his employer. Regulations made under this clause may provide that if the award is not settled by the respondent within 14 days of the employment tribunal's decision then interest is to accrue on this award. The current regulations specify that the rate of interest applied to unpaid awards is fixed at 8%. A different rate can be applied if this is provided in regulations.

-
- (c) R's answer is of a kind specified for the purposes of this paragraph by order of a Minister of the Crown;
 - (d) R's answer is given in circumstances specified for the purposes of this paragraph by order of a Minister of the Crown;
 - (e) R's failure to answer occurs in circumstances specified for the purposes 5 of this paragraph by order of a Minister of the Crown.
- (6) The reference to a contravention of this Act includes a reference to a breach of an equality clause or rule.
- (7) A Minister of the Crown may by order –
- (a) prescribe the period within which a question must be served to be 10 admissible under subsection (3);
 - (b) prescribe the manner in which a question by P, or an answer by R, may be served.
- (8) This section –
- (a) does not affect any other enactment or rule of law relating to interim or 15 preliminary matters in proceedings before a county court, sheriff or employment tribunal, and
 - (b) has effect subject to any enactment or rule of law regulating the admissibility of evidence in such proceedings.

133 Interest

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- (1) A Minister of the Crown may by regulations make provision –
- (a) for enabling an employment tribunal to include interest on an amount awarded by it in proceedings under this Act;
 - (b) specifying the manner in which, and the periods and rate by reference 25 to which, the interest is to be determined.
- (2) A Minister of the Crown may by regulations modify the operation of an order made under section 14 of the Employment Tribunals Act 1996 (power to make provision as to interest on awards) in so far as it relates to an award in proceedings under this Act.

Clause 134: Conduct giving rise to separate proceedings

Effect

442. This clause enables an employment tribunal to transfer a case to a county or sheriff court, or a court to transfer a case to an employment tribunal, if it is based on the same conduct as one or more separate cases and one of the claims relates to instructing, causing or inducing a person to discriminate against, harass or victimise another person. It also provides that an employment tribunal or court cannot make a decision about such a case which is inconsistent with an earlier decision about the same conduct.

Background

443. This is a new provision which will allow for the transfer of certain types of connected cases between the tribunals and courts.

Example

- An employer instructs an employee to discriminate against a customer. The customer brings a case against the employer or an employee in a county court. The employee brings a case against the employer in an employment tribunal. These claims both arise out of the same conduct and so the court and the tribunal can transfer one set of proceedings so that they can be dealt with together as this is a better way of managing the cases.

Clause 135: Interpretation, etc.

Effect

444. This clause explains the meaning of various terms used in this Part.

Part 10: Contracts, Etc.

134 Conduct giving rise to separate proceedings

- (1) This section applies in relation to conduct which has given rise to two or more separate proceedings under this Act, with at least one being for a contravention of section 105.
- (2) A court may transfer proceedings to an employment tribunal. 5
- (3) An employment tribunal may transfer proceedings to a court.
- (4) A court or employment tribunal is to be taken for the purposes of this Part to have jurisdiction to determine a claim or complaint transferred to it under this section; accordingly –
 - (a) a reference to a claim within section 108(1) includes a reference to a claim transferred to a court under this section;
 - (b) a reference to a complaint within section 114(1) includes a reference to a complaint transferred to an employment tribunal under this section.
- (5) A court or employment tribunal may not make a decision that is inconsistent with an earlier decision in proceedings arising out of the conduct. 15
- (6) “Court” means –
 - (a) in relation to proceedings in England and Wales, a county court;
 - (b) in relation to proceedings in Scotland, the sheriff.

135 Interpretation, etc.

- (1) This section applies for the purposes of this Part. 20
- (2) A reference to the responsible person, in relation to an equality clause or rule, is to be construed in accordance with Chapter 3 of Part 5.
- (3) A reference to a worker is a reference to the person to the terms of whose work the proceedings in question relate; and, for the purposes of proceedings relating to an equality rule or a non-discrimination rule, a reference to a worker includes a reference to a member of the occupational pension scheme in question.
- (4) A reference to the terms of a person’s work is to be construed in accordance with Chapter 3 of Part 5.
- (5) A reference to a member of an occupational pension scheme includes a reference to a prospective member.
- (6) In relation to proceedings in England and Wales, a person has an incapacity if the person –
 - (a) has not attained the age of 18, or
 - (b) lacks capacity (within the meaning of the Mental Capacity Act 2005). 35

Clause 136: Unenforceable terms

Effect

445. This clause makes terms of contracts which discriminate against a person or would otherwise lead to conduct prohibited by the Bill unenforceable in that respect. But a person who would have been disadvantaged by any such term will still be able to rely on it so as to obtain any benefit to which it entitles him.

446. For disability alone, this clause also applies to terms of non-contractual agreements relating to the provision of employment services (within clause 53(2)(a) to (e)) or group insurance arrangements for employees. These terms are referred to in the clause as “relevant non-contractual terms”.

447. This clause does not apply to a term of contract modified by an equality clause under Part 5, Chapter 3, because once the term is modified it is no longer discriminatory. Nor, as a result of clause 142, does it deal with contractual terms which may breach the public sector equality duty (Part 11) or the public sector duty regarding socio-economic inequalities (Part 1), to which different enforcement mechanisms apply.

448. Background

448. The clause replaces provisions in current legislation which have a similar effect, and maintains the specific protection for certain non-contractual provisions currently given in the Disability Discrimination Act 1995.

449. Example

- A term in a franchise agreement which included a requirement that the franchisee should only employ Asian people could not be enforced by the franchisor unless he could objectively justify it (unless an exception applies). But the franchisee could still obtain any benefit he is due under the term, for example he could continue operating

- (7) In relation to proceedings in Scotland, a person has an incapacity if the person –
- (a) has not attained the age of 16, or
 - (b) is incapable (within the meaning of the Adults with Incapacity (Scotland) Act 2000). 5
- (8) “Service complaint” means a complaint under section 334 of the Armed Forces Act 2006; and “service complaint procedures” means the procedures prescribed by regulations under that section (except in so far as relating to references under section 337 of that Act)
- (9) “Criminal matter” means – 10
- (a) an investigation into the commission of an alleged offence;
 - (b) a decision whether to commence criminal proceedings;
 - (c) criminal proceedings.

PART 10

CONTRACTS, ETC. 15

Contracts and other agreements

136 Unenforceable terms

- (1) A term of a contract is unenforceable against a person in so far as it constitutes, promotes or provides for treatment of that or another person that is of a description prohibited by this Act. 20
- (2) A relevant non-contractual term is unenforceable against a person in so far as it constitutes, promotes or provides for treatment of that or another person that is of a description prohibited by this Act, in so far as this Act relates to disability.
- (3) A relevant non-contractual term is a term which – 25
- (a) is a term of an agreement that is not a contract, and
 - (b) relates to the provision of an employment service within section 53(2)(a) to (e) or to the provision under a group insurance arrangement of facilities by way of insurance.
- (4) A reference in subsection (1) or (2) to treatment of a description prohibited by 30 this Act does not include –
- (a) a reference to the inclusion of a term in a contract referred to in section 65(2)(a) or 71(2), or
 - (b) a reference to the failure to include a term in a contract as referred to in section 65(2)(b). 35
- (5) Subsection (4) does not affect the application of section 142(2) to this section.

the franchise. However, if the franchisee complied with the discriminatory term, a person discriminated against under it could make a claim against the franchisee for unlawful discrimination under other provisions in the Bill.

Clause 137: Removal or modification of unenforceable terms

Effect

449. This clause allows a county court (or a sheriff court in Scotland) to modify or remove a contractual (or relevant non-contractual) term which is made unenforceable under clause 136, when asked to do so by a person who has an interest in the contract (which includes anyone affected by it). The court may also decide that the term is to be treated as having been removed or modified during the period prior to the making of the order.

450. The court must first ensure that anyone who would be affected has been told of the proceedings and given an opportunity to make their views known. Rules of court determine what the court must do to meet this obligation.

Background

451. This clause replaces similar provisions in current legislation.

Example

- A person renting an office in a serviced office block could ask for a term in the rental contract to be amended if the term discriminated indirectly, for example by including an unjustified requirement that people entering the premises remove any facial covering (thus discriminating against Muslim women). The term could be adjusted by the court or sheriff to allow special arrangements to be made to satisfy both genuine security needs of other users and the religious needs of Muslim women visiting the claimant.

Clause 138: Contracting out

Effect

452. Under this clause, contractual and relevant non-contractual terms which try to exclude or limit the operation of any provision in the Bill (which includes those dealing with equality of terms) are unenforceable by the person in whose favour the term operates. There are exceptions to this to allow negotiated settlement of claims in the following circumstances:

- a contract settling a claim in an employment tribunal (including an agreement settling a claim for a breach of an equality clause) that has been negotiated with the help of a conciliation officer or which meets the standards set out in clause 141 (meaning of qualifying contracts). This includes an arbitration agreement made in accordance with a scheme under section 212A of the Trade Union and Labour Relations (Consolidation) Act 1992 (where the parties agree to submit a dispute to arbitration).
- a contract settling a county or sheriff court claim;

137 Removal or modification of unenforceable terms

- (1) A county court or the sheriff may, on an application by a person who has an interest in a contract, or other agreement, which includes a term that is unenforceable as a result of section 136, make an order for the term to be removed or modified. 5
- (2) An order under this section must not be made unless every person who would be affected by it—
 - (a) has been given notice of the application (except where notice is dispensed with in accordance with rules of court), and
 - (b) has been afforded an opportunity to make representations to the 10 county court or sheriff.
- (3) An order under this section may include provision in respect of a period before the making of the order.

138 Contracting out

- (1) A term of a contract is unenforceable by a person in whose favour it would 15 operate in so far as it purports to exclude or limit a provision of this Act.
- (2) A relevant non-contractual term (as defined by section 136) is unenforceable by a person in whose favour it would operate in so far as it purports to exclude or limit a provision of this Act, in so far as the provision relates to disability.
- (3) This section does not apply to a contract which settles a claim within section 20 108.
- (4) This section does not apply to a contract which settles a complaint within section 114 if the contract—
 - (a) is made with the assistance of a conciliation officer, or
 - (b) is a qualifying compromise contract. 25

Background

453. This clause replaces similar provisions in current legislation.

Examples

- A woman who thinks she may have a claim for unlawful discrimination upon being made redundant may give up any right to pursue the claim under the Act in return for payment. She will not then be able to ask a court to modify or remove that term so as to pursue the claim at a later date.
- However, if the agreement was not reached with the assistance of a conciliation officer or was not a qualifying compromise agreement, it would be unenforceable (and thus would not prevent the claimant pursuing the claim before an employment tribunal).

Clause 139: Void and unenforceable terms

Effect

454. This clause deals with collective agreements (which are defined in the Trade Union and Labour Relations (Consolidation) Act 1992).

455. It also deals with rules of undertakings of employers, trade organisations and qualifications bodies (which are defined in Part 5).

456. Any term of a collective agreement is rendered void to the extent that it discriminates against a person or would otherwise lead to conduct prohibited by the Bill. Terms of collective agreements are made void rather than unenforceable because making them unenforceable would be of no help to those affected, since they are unenforceable in any case unless incorporated into a contract. The term is therefore made of no effect at all, leaving the interested parties to renegotiate.

457. A rule of an undertaking which discriminates against a person or would otherwise lead to conduct prohibited by the Bill is made unenforceable. A rule of an undertaking is defined in clause 142 as a rule made by a qualifications body or trade organisation in relation to membership or conferral of a qualification, or a rule made by an employer for application to employees and prospective employees.

Background

458. This clause replaces similar provisions in current legislation.

Example

- A collective agreement which required jobs in a particular part of a factory to be given only to men would be void, so a woman who applied could not be refused on those grounds.
- An indirectly discriminatory rule of a qualifications body (providing for example a professional qualification for plumbers) which required that applicants must have two years' previous experience with a British firm would be unenforceable against a person who had the equivalent experience with a foreign firm. It would still be enforceable against a person who did not have the required experience at all (provided it was justified).

- (5) A contract within subsection (4) includes a contract which settles a complaint relating to a breach of an equality clause or rule or of a non-discrimination rule.
- (6) A contract within subsection (4) includes an agreement by the parties to a dispute to submit the dispute to arbitration if –
 - (a) the dispute is covered by a scheme having effect by virtue of an order 5 under section 212A of the Trade Union and Labour Relations (Consolidation) Act 1992, and
 - (b) the agreement is to submit the dispute to arbitration in accordance with the scheme.

Collective agreements and rules of undertakings

10

139 Void and unenforceable terms

- (1) A term of a collective agreement is void in so far as it constitutes, promotes or provides for treatment of a description prohibited by this Act.
- (2) A rule of an undertaking is unenforceable against a person in so far as it constitutes, promotes or provides for treatment of the person that is of a¹⁵ description prohibited by this Act.

Clause 140: Declaration in respect of void term, etc.

Effect

459. This clause enables an employment tribunal to declare a term of collective agreement void, or a rule of an undertaking unenforceable, as set out in clause 139, when a person thinks that it might in the future have the effect of discriminating against him or her. Because collective agreements apply to many people in many (possibly varying) situations, it is not appropriate for a tribunal to modify them and so they are made void, rather than subject to modification or amendment, and the parties are left to renegotiate, bearing all those potentially affected in mind.

460. The clause sets out who can make a complaint in each instance. Terms of discriminatory collective agreements can be challenged by employees or prospective employees. Rules of undertakings of employers can be challenged by employees or prospective employees; those of trade organisations by members or prospective members; and those of qualifications bodies by persons seeking or holding relevant qualifications (clause 51).

Background

461. This clause replaces similar provisions in current legislation.

462. Examples

- A person who is studying for an engineering qualification who is told he will only be eligible for it if he passes a test of his ability to write English can ask a tribunal to declare that the rule requiring the test is indirectly discriminatory and therefore, if unjustified, unenforceable.

140 Declaration in respect of void term, etc.

- (1) A qualifying person (P) may make a complaint to an employment tribunal that a term is void, or a rule is unenforceable, as a result of section 139.
- (2) But subsection (1) applies only if—
 - (a) the term or rule may in the future have effect in relation to P, and 5
 - (b) where the complaint alleges that the term or rule provides for treatment of a description prohibited by this Act, P may in the future be subjected to treatment that would (if P were subjected to it in present circumstances) be of that description.
- (3) If the tribunal finds that the complaint is well-founded, it must make an order¹⁰ declaring that the term is void or the rule is unenforceable.
- (4) An order under this section may include provision in respect of a period before the making of the order.
- (5) In the case of a complaint about a term of a collective agreement, where the term is one made by or on behalf of a person of a description specified in the¹⁵ first column of the table, a qualifying person is a person of a description specified in the second column.

<i>Description of person who made collective agreement</i>	<i>Qualifying person</i>	
Employer	A person who is, or is seeking to be, an employee of that employer	20
Organisation of employers	A person who is, or is seeking to be, an employee of an employer who is a member of that organisation	
Association of organisations of employers	A person who is, or is seeking to be, an employee of an employer who is a member of an organisation in that association	25

- (6) In the case of a complaint about a rule of an undertaking, where the rule is one made by or on behalf of a person of a description specified in the first column³⁰ of the table, a qualifying person is a person of a description specified in the second column.

<i>Description of person who made rule of undertaking</i>	<i>Qualifying person</i>	
Employer	A person who is, or is seeking to be, an employee of that employer	35
Trade organisation or qualifications body	A person who is, or is seeking to be, a member of the organisation or body	
	A person on whom the body has conferred a relevant qualification	40

Clause 141: Meaning of “qualifying compromise contract”

Effect

461. This clause sets the conditions under which a compromise contract settling a case can be lawful, even though it seeks to limit the application of the Bill under clause 138.

462. It must be a written contract which meets each of the following conditions (and says that it does). The conditions are that the complainant in the case has received independent advice from a named person who is insured or indemnified against the risk of a claim against him arising from that advice.

463. The clause describes who can be an independent adviser and includes a power to add new descriptions of people who may be independent advisers in the future. It makes clear that a conflict of interest prevents a person being an independent adviser and defines what a conflict of interest is.

Background

464. The clause replaces provisions in current legislation which have the same purpose. The power to add to the kinds of person who may be independent advisers could be used to add, for example, Fellows of the Institute of Legal Executives employed by a solicitors' practice.

465. Examples

- An employee who settled a claim at employment tribunal on the advice of a lawyer who works for the employer he was seeking to sue would still be able to pursue the claim (assuming a conciliation officer was not involved in the settlement). The settlement agreement would be unenforceable because the lawyer had a conflict of interest and therefore the agreement would not be a qualifying compromise contract.
- Relying on advice from an advice agency which is not insured against being sued as a result of giving bad advice would be risky for both claimant and adviser. Because of this, a settlement contract agreed on the advice of such an agency would not be a qualifying compromise contract so any term in it limiting the person's rights under the Bill would be unenforceable.

<i>Description of person who made rule of undertaking</i>	<i>Qualifying person</i>
	A person seeking conferment by the body of a relevant qualification

Supplementary

5

141 Meaning of “qualifying compromise contract”

- (1) This section applies for the purposes of this Part.
- (2) A qualifying compromise contract is a contract in relation to which each of the conditions in subsection (3) is met.
- (3) Those conditions are that – 10
 - (a) the contract is in writing;
 - (b) the complainant has, before entering into the contract, received advice from an independent adviser about its terms and effect (including, in particular, its effect on the complainant’s ability to pursue the complaint before an employment tribunal); 15
 - (c) on the date of the giving of the advice, there is in force a contract of insurance, or an indemnity provided for members of a profession or professional body, covering the risk of a claim by the complainant in respect of loss arising from the advice;
 - (d) the contract identifies the adviser; 20
 - (e) the contract states that the conditions in paragraphs (b) and (c) are met.
- (4) Each of the following is an independent adviser –
 - (a) a qualified lawyer;
 - (b) an officer, official, employee or member of an independent trade union certified in writing by the trade union as competent to give advice and as authorised to do so on its behalf; 25
 - (c) a worker at an advice centre (whether as an employee or a volunteer) certified in writing by the centre as competent to give advice and as authorised to do so on its behalf;
 - (d) a person of such description as may be specified by order. 30
- (5) Despite subsection (4), none of the following is an independent adviser in relation to a qualifying compromise contract –
 - (a) a person who is a party to the contract or the complaint;
 - (b) a person who is connected to a person within paragraph (a);
 - (c) a person who is employed by a person within paragraph (a) or (b); 35
 - (d) a person who is acting for a person within paragraph (a) or (b) in relation to the contract or the complaint;
 - (e) a person within subsection (4)(b) or (c), if the trade union or advice centre is a person within paragraph (a) or (b);
 - (f) a person within subsection (4)(c) to whom the complainant makes a payment for the advice. 40
- (6) A “qualified lawyer”, for the purposes of subsection (4)(a), is –
 - (a) in relation to England and Wales, a person who, for the purposes of the Legal Services Act 2007, is an authorised person in relation to an

Clause 142: Interpretation

Effect

465. This clause explains what is meant by various terms used in this Part of the Bill, or applies definitions provided elsewhere. These are referred to in the notes on earlier clauses.

Part 11: Advancement of Equality

- activity which constitutes the exercise of a right of audience or the conduct of litigation;
- (b) in relation to Scotland, an advocate (whether in practice as such or employed to give legal advice) or a solicitor who holds a practising certificate. 5
- (7) “Independent trade union” has the meaning given in section 5 of the Trade Union and Labour Relations (Consolidation) Act 1992.
- (8) Two persons are connected for the purposes of subsection (5) if—
- (a) one is a company of which the other (directly or indirectly) has control, or 10
- (b) both are companies of which a third person (directly or indirectly) has control.
- (9) Two persons are also connected for the purposes of subsection (5) in so far as a connection between them gives rise to a conflict of interest in relation to the contract or the complaint. 15
- (10) In relation to a qualifying compromise contract—
- (a) a reference to a complaint is a reference to the complaint settled by the contract;
- (b) a reference to a complainant is a reference to the person whose complaint is settled by the contract. 20

142 Interpretation

- (1) This section applies for the purposes of this Part.
- (2) A reference to treatment of a description prohibited by this Act does not include treatment in so far as it is treatment that would contravene—
- (a) Part 1 (public sector duty regarding socio-economic inequalities), or 25
- (b) Chapter 1 of Part 11 (public sector equality duty).
- (3) “Group insurance arrangement” means an arrangement between an employer and another person for the provision by that other person of facilities by way of insurance to the employer’s employees (or a class of those employees).
- (4) “Collective agreement” has the meaning given in section 178 of the Trade30 Union and Labour Relations (Consolidation) Act 1992.
- (5) A rule of an undertaking is a rule within subsection (6) or (7).
- (6) A rule within this subsection is a rule made by a trade organisation or a qualifications body for application to—
- (a) its members or prospective members, 35
- (b) persons on whom it has conferred a relevant qualification, or
- (c) persons seeking conferment by it of a relevant qualification.
- (7) A rule within this subsection is a rule made by an employer for application to—
- (a) employees,
- (b) persons who apply for employment, or 40
- (c) persons the employer considers for employment.
- (8) “Trade organisation”, “qualifications body” and “relevant qualification” each have the meaning given in Part 5 (work).

Chapter 1: Public sector equality duty**Clause 143: Public sector equality duty**

Effect

466. This clause imposes a duty, known as the public sector equality duty, on the public authorities listed in Schedule 19 to have due regard to three specified matters when exercising their functions. The three matters are:

- a) eliminating conduct that is prohibited by the Bill, including breaches of non-discrimination rules in occupational pension schemes and equality clauses or rules which are read, respectively into a person's terms of work and into occupational pension schemes;
- b) advancing equality of opportunity between people who share a protected characteristic and people who do not share it; and
- c) fostering good relations between people who share a protected characteristic and people who do not share it.

467. The second and third matters apply to the protected characteristics of age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation. They do not apply to the protected characteristic of marriage and civil partnership.

468. Subsections (3) and (4) expand on what it means to have due regard to the need to advance equality of opportunity and foster good relations.

469. As well as the public authorities listed in Schedule 19, the clause also imposes the public sector equality duty on others that exercise public functions, but only in respect of their public functions. Clause 144 explains what is meant by "public function".

470. The clause makes clear that complying with the duty might mean treating some people more favourably than others, where doing so is allowed by the Bill. This includes treating disabled people more favourably than non-disabled people and making reasonable adjustments for them, making use of exceptions which permit different treatment, and using the positive action provisions in Chapter 2 of this part where they are available.

471. Schedule 18 sets out persons and functions to which the equality duty does not apply.

Background

472. This clause replaces section 71 of the Race Relations Act 1976, section 49A of the Disability Discrimination Act 1995 and section 76A of the Sex Discrimination Act 1975. These provisions impose similar public sector equality duties in relation to race, disability and gender (including pregnancy and maternity as an implicit part of gender, and partly covering gender reassignment) respectively. There are no equivalent public sector equality duties for age, religion or belief or sexual orientation in current legislation. The clause extends the new

PART 11

ADVANCEMENT OF EQUALITY

CHAPTER 1

PUBLIC SECTOR EQUALITY DUTY

- 143 Public sector equality duty** 5
- (1) 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 or under this Act;
 - (b) advance equality of opportunity between persons who share a relevant¹⁰ protected characteristic and persons who do not share it;
 - (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.
- (2) A person who is not a public authority but who exercises public functions must, in the exercise of those functions, have due regard to the matters¹⁵ mentioned in subsection (1).
- (3) Having due regard to the need to advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it involves having due regard, in particular, to the need to –
- (a) remove or minimise disadvantages suffered by persons who share a²⁰ relevant protected characteristic that are connected to that characteristic;
 - (b) meet the needs of persons who share a relevant protected characteristic that are different from the needs of persons who do not share it;
 - (c) encourage persons who share a relevant protected characteristic to²⁵ participate in public life or in any other activity in which participation by such persons is disproportionately low.
- (4) Having due regard to the need to foster good relations between persons who share a relevant protected characteristic and persons who do not share it involves having due regard, in particular, to the need to – 30
- (a) tackle prejudice, and
 - (b) promote understanding.
- (5) Compliance with the duties in this section may involve treating some persons more favourably than others; but that is not to be taken as permitting conduct that would otherwise be prohibited by or under this Act. 35
- (6) The relevant protected characteristics are –
- age;
 - disability;
 - gender reassignment;
 - pregnancy and maternity; 40
 - race;
 - religion or belief;
 - sex;
 - sexual orientation.

public sector equality duty to cover gender reassignment in full, age, religion or belief and sexual orientation.

Examples

- The duty could lead a police authority to review its recruitment procedures to ensure they did not unintentionally deter applicants from ethnic minorities, with the aim of eliminating unlawful discrimination.
- The duty could lead a local authority to target training and mentoring schemes at disabled people to enable them to stand as local councillors, with the aim of advancing equality of opportunity for different groups of people who have the same disability, and in particular encouraging their participation in public life.
- The duty could lead a local authority to provide funding for a black women’s refuge for victims of domestic violence, with the aim of advancing equality of opportunity for women, and in particular meeting the different needs of women from different racial groups.
- The duty could lead a large government department, in its capacity as an employer, to provide staff with education and guidance, with the aim of fostering good relations between its transsexual staff and its non-transsexual staff.
- The duty could lead a local authority to review its use of internet-only access to council services; or focus “Introduction to Information Technology” adult learning courses on older people, with the aim of advancing equality of opportunity, in particular meeting different needs, for older people.
- The duty could lead a school to review its anti-bullying strategy to ensure that it addresses the issue of homophobic bullying, with the aim of fostering good relations, and in particular tackling prejudice against gay and lesbian people.
- The duty could lead a local authority to introduce measures to facilitate understanding and conciliation between Sunni and Shi’a Muslims living in a particular area, with the aim of fostering good relations between people of different religious beliefs.
-

Clause 144: Public authorities and public functions

Effect

473. This clause supplements clause 143. It introduces the Schedule that lists the public authorities that are subject to the public sector equality duty and provides for them to be subject to this duty in respect of all of their functions unless such an authority is listed only in respect of some of its functions, in which case the duty only applies to those specified functions.

474. “Public function” is given the same meaning as it has in the Human Rights Act 1998. This term is used in subsection (2) of clause 143, which extends the public sector equality duty to persons not listed in the Schedule but who exercise public functions.

- (7) A reference to conduct that is prohibited by or under this Act includes a reference to—
 - (a) a breach of a non-discrimination rule;
 - (b) a breach of an equality clause or rule.
- (8) Schedule 18 (exceptions) has effect. 5

144 Public authorities and public functions

- (1) A public authority is a person who is specified in Schedule 19.
- (2) In that Schedule—
 - Part 1 specifies public authorities generally;
 - Part 2 specifies relevant Welsh authorities; 10
 - Part 3 specifies relevant Scottish authorities.
- (3) A public authority specified in Schedule 19 is subject to the duty imposed by section 143(1) in relation to the exercise of all of its functions unless subsection (4) applies.

Background

475. The public sector equality duties in current legislation specify which bodies are subject to the duties in different ways. The Race Relations Act 1976 uses a list, while the Disability Discrimination Act 1995 and the Sex Discrimination Act 1975 apply the disability equality duty and the gender equality duty to those who have “functions of a public nature”. The Bill combines the two approaches by including a list of public authorities subject to the duty, to provide legal certainty, and in addition applying the duty to anyone else who is exercising public functions (in subsection (2) of clause 143).

Clause 145: Power to specify public authorities

Effect

476. The Schedule (Schedule 19) listing public authorities subject to the public sector equality duty will initially comprise 3 parts. This clause enables a Minister of the Crown to make an order amending any of these parts of the Schedule. The changes might consist of adding a new body or removing an existing body, or moving a body from one Part of the Schedule to another. It also enables the Welsh Ministers and the Scottish Ministers, with the consent of a Minister of the Crown, to amend Parts 2 and 3 of the Schedule respectively, which list relevant Welsh and Scottish authorities subject to the duty.

477. Relevant Welsh and Scottish authorities (as defined in clause 151) cannot be added to Part 1 of the Schedule. They must be included in Parts 2 and 3 respectively. Nor can cross-border Welsh and Scottish authorities (as defined in clause 151). Only a Minister of the Crown has the power to amend the Schedule in relation to cross-border Welsh and Scottish authorities. They must be added to what will become a new Part 4, which will be created when the first cross-border authority is added to the Schedule.

478. The powers to add to the Schedule can be only used where the person exercising the power considers that the person being added is exercising at least one public function. This means that a wholly private company could not be added unless it was carrying out what the person exercising the power considered to be a public function.

Examples

- A Minister of the Crown may decide that a new public authority which has just been created should be included in the Schedule, and add it to the appropriate Part.
- A public authority might cease its devolved activities, and so a Minister of the Crown might move it to Part 1 of the Schedule from another Part of the Schedule.

Clause 146: Power to specify public authorities: consultation and consent

479.

Effect

479. This clause sets out who a Minister of the Crown must consult before exercising a power under clause 145 to amend Schedule 19. On each occasion the Minister must consult Equality and Human Rights Commission. If the Minister is modifying the Schedule in respect of a relevant Welsh authority, or a cross-border Welsh authority, then he or she must also consult the Welsh Ministers. And similarly, if the amendment relates to a relevant Scottish

- (4) A public authority specified in that Schedule in respect of certain specified functions is subject to that duty only in respect of the exercise of those functions.
- (5) A public function is a function that is a function of a public nature for the purposes of the Human Rights Act 1998. 5

145 Power to specify public authorities

- (1) A Minister of the Crown may by order amend Part 1, 2 or 3 of Schedule 19.
- (2) The Welsh Ministers may by order amend Part 2 of Schedule 19.
- (3) The Scottish Ministers may by order amend Part 3 of Schedule 19.
- (4) The power under subsection (1), (2) or (3) may not be exercised so as to add an entry –
 - (a) to Part 1 relating to a relevant Welsh or Scottish authority or a cross-border Welsh or Scottish authority;
 - (b) to Part 2 relating to a person who is not a relevant Welsh authority;
 - (c) to Part 3 relating to a person who is not a relevant Scottish authority. 15
- (5) A Minister of the Crown may by order amend Schedule 19 so as to make provision relating to a cross-border Welsh or Scottish authority.
- (6) On the first exercise of the power under subsection (5) to add an entry relating to a cross-border Welsh or Scottish authority to Schedule 19, a Minister of the Crown must – 20
 - (a) add a Part 4 to the Schedule for cross-border authorities, and
 - (b) add the cross-border Welsh or Scottish authority to that Part.
- (7) Any subsequent exercise of the power under subsection (5) to add an entry relating to a cross-border Welsh or Scottish authority to Schedule 19 must add that entry to Part 4 of the Schedule. 25
- (8) An order may not be made under this section so as to extend the application of section 143 unless the person making it considers that the extension relates to a person by whom a public function is exercisable.

146 Power to specify public authorities: consultation and consent

- (1) Before making an order under a provision specified in the first column of the 30 Table, a Minister of the Crown must consult the person or persons specified in the second column.

authority or a cross-border Scottish authority, there is a requirement to consult the Scottish Ministers.

480. The clause also provides that, before the Welsh Ministers amend Part 2 of the Schedule with respect to relevant Welsh authorities, they must first consult Equality and Human Rights Commission and obtain the consent of a Minister of the Crown. The same requirements apply to Scottish Ministers with respect to Part 3 of the Schedule and relevant Scottish authorities.

Background

481. The Race Relations Act 1976 does not contain a requirement for the Lord Privy Seal to consult before amending the Schedule of bodies subject to the general race equality duty. Neither the Scottish Ministers nor the Welsh Ministers have the power to amend the Schedule. The Disability Discrimination Act 1995 and the Sex Discrimination Act 1975 do not adopt a list-based approach to the general duty.

Clause 147: Power to impose specific duties

482.

Effect

482. This clause enables a Minister of the Crown to make regulations imposing specific duties on public authorities listed in Part 1 of Schedule 19 to enable them to carry out the public sector equality duty more effectively. The Welsh Ministers can similarly impose specific duties on relevant Welsh authorities listed in Part 2 of the Schedule, and the Scottish Ministers can impose specific duties on relevant Scottish authorities listed in Part 3 of the Schedule.

483. Clause 148 deal with the imposition of specific duties on public authorities listed in Part 4 of the Schedule.

484. The Equality and Human Rights Commission must be consulted before specific duties are imposed.

Background

485. This clause replaces similar provisions in current legislation for the Lord Privy Seal and the Scottish Ministers to impose specific duties for the race and gender public sector equality duties, and for the Secretary of State and the Scottish Ministers to impose specific duties for the disability public sector equality duty. The Welsh Ministers currently do not have the power to impose specific duties on Welsh authorities.

486. The power has in the past been used to require listed public authorities to prepare and publish race, disability and gender equality schemes.

<i>Provision</i>	<i>Consultees</i>	
Section 145(1)	The Commission	
Section 145(1), so far as relating to a relevant Welsh authority	The Welsh Ministers	
Section 145(1), so far as relating to a relevant Scottish authority	The Scottish Ministers	5
Section 145(5)	The Commission	
Section 145(5), so far as relating to a cross-border Welsh authority	The Welsh Ministers	
Section 145(5), so far as relating to a cross-border Scottish authority	The Scottish Ministers	10
(2) Before making an order under section 145(2), the Welsh Ministers must –		
(a) obtain the consent of a Minister of the Crown, and		
(b) consult the Commission.		
(3) Before making an order under section 145(3), the Scottish Ministers must –		15
(a) obtain the consent of a Minister of the Crown, and		
(b) consult the Commission.		

147 Power to impose specific duties

- (1) A Minister of the Crown may by regulations impose duties on a public authority specified in Part 1 of Schedule 19 for the purpose of enabling the better performance by the authority of the duty imposed by section 143(1). 20
- (2) The Welsh Ministers may by regulations impose duties on a public authority specified in Part 2 of Schedule 19 for that purpose.
- (3) The Scottish Ministers may by regulations impose duties on a public authority specified in Part 3 of Schedule 19 for that purpose. 25
- (4) Before making regulations under this section, the person making them must consult the Commission.

Clause 148: Power to impose specific duties: cross-border authorities

487.

Effect

487. This clause sets out the process for determining who imposes specific duties on any cross-border Welsh and Scottish authorities that may in time be added to Part 4 of the Schedule.

488. Whenever a body is listed in Part 4 of the Schedule, beside its entry will appear a letter corresponding to the procedure to be followed.

489. For all the procedures, the person imposing the specific duties must consult the Equality and Human Rights Commission.

Background

490. In respect of the existing disability and gender public sector equality duties the Scottish Ministers currently have the power to impose specific duties on the devolved functions of Anglo-Scottish cross-border bodies, subject to consultation with the Lord Privy Seal. The Lord Privy Seal has the power to impose specific duties on the non-devolved, or reserved, functions of those Anglo-Scottish cross-border bodies, again subject to consultation with the Scottish Ministers. Before imposing specific duties in respect of the existing race, disability and gender public sector equality duties which relate to functions in Wales exercisable by a person who is not a Welsh public authority, the Lord Privy Seal must consult the Welsh Ministers.

148 Power to impose specific duties: cross-border authorities

- (1) If a Minister of the Crown exercises the power in section 145(5) to add an entry for a public authority to Part 4 of Schedule 19, the Minister must include after the entry a letter specified in the first column of the Table in subsection (3).
- (2) Where a letter specified in the first column of the Table in subsection (3) is included after an entry for a public authority in Part 4 of Schedule 19, the person specified in the second column of the Table—
 - (a) may by regulations impose duties on the authority for the purpose of enabling the better performance by the authority of the duty imposed by section 143(1), subject to such limitations as are specified in that column;
 - (b) must in making the regulations comply with the procedural requirement specified in that column.
- (3) This is the Table—

<i>Letter</i>	<i>Person by whom regulations may be made and procedural requirements</i>	
A	Regulations may be made by a Minister of the Crown in relation to the authority’s functions that are not devolved Welsh functions.	15
	The Minister of the Crown must consult the Welsh Ministers before making the regulations.	20
	Regulations may be made by the Welsh Ministers in relation to the authority’s devolved Welsh functions.	
B	The Welsh Ministers must consult a Minister of the Crown before making the regulations.	25
	Regulations may be made by a Minister of the Crown in relation to the authority’s functions that are not devolved Scottish functions.	
	The Minister of the Crown must consult the Scottish Ministers before making the regulations.	30
C	Regulations may be made by the Scottish Ministers in relation to the authority’s devolved Scottish functions.	
	The Scottish Ministers must consult a Minister of the Crown before making the regulations.	
	Regulations may be made by a Minister of the Crown in relation to the authority’s functions that are neither devolved Welsh functions nor devolved Scottish functions.	35
	The Minister of the Crown must consult the Welsh Ministers and the Scottish Ministers before making the regulations.	40

Clause 149: Power to impose specific duties: supplementary

Effect

491. This clause provides that a specific duty imposed using the powers in clauses 147 and 148 may require public authorities to consider matters set out elsewhere by a Minister of the Crown, or the Welsh or Scottish Ministers.

492. This clause also makes clear that a Minister of the Crown or the Welsh or Scottish Ministers may impose specific duties on public authorities listed in Schedule 19 that are also contracting authorities for public procurement purposes in relation to their public procurement functions, for example when buying goods and services from a private firm. “Public procurement functions” are those activities that fall within the European law public procurement regime. The provisions on public procurement do not affect the extent of any other provision that may be made using the powers in clauses 147 and 148 outside this immediate field.

493. This clause also provides that a Minister of the Crown and the Welsh and Scottish Ministers may modify or remove duties that they have imposed. A duty imposed by one Minister of the Crown may be modified by a different Minister of the Crown.

Background

494. The current public sector equality duties do not provide for the imposition of specific duties which require public authorities to take into account matters set out elsewhere. It is inherent, but not explicit, in the current public sector equality duties that duties may be imposed which apply to that body’s public procurement functions.

Examples

- A person exercising the power may decide to impose a specific duty that requires specified public authorities to take into account particular national priorities set out in a Public Service Agreement when setting their equality objectives.

<i>Letter</i>	<i>Person by whom regulations may be made and procedural requirements</i>
	<p>Regulations may be made by the Welsh Ministers in relation to the authority’s devolved Welsh functions.</p> <p>The Welsh Ministers must consult a Minister of the Crown before making the regulations. 5</p> <p>Regulations may be made by the Scottish Ministers in relation to the authority’s devolved Scottish functions.</p> <p>The Scottish Ministers must consult a Minister of the Crown before making the regulations. 10</p>
D	<p>The regulations may be made by a Minister of the Crown.</p> <p>The Minister of the Crown must consult the Welsh Ministers before making the regulations.</p>

- (4) Before making regulations under subsection (2), the person making them must consult the Commission.

149 Power to impose specific duties: supplementary

- (1) Regulations under section 147 or 148 may require a public authority to consider such matters as may be specified from time to time by –
- (a) a Minister of the Crown, where the regulations are made by a Minister of the Crown; 20
 - (b) the Welsh Ministers, where the regulations are made by the Welsh Ministers;
 - (c) the Scottish Ministers, where the regulations are made by the Scottish Ministers. 25
- (2) Regulations under section 147 or 148 may impose duties on a public authority that is a contracting authority within the meaning of the Public Sector Directive in connection with its public procurement functions.
- (3) In subsection (2) –
- “public procurement functions” means functions the exercise of which is regulated by the Public Sector Directive; 30
 - “the Public Sector Directive” means Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts, as amended from time to time. 35
- (4) Subsections (1) and (2) do not affect the generality of section 147 or 148(2)(a).
- (5) A duty imposed on a public authority under section 147 or 148 may be modified or removed by regulations made by –
- (a) a Minister of the Crown, where the original duty was imposed by regulations made by a Minister of the Crown; 40
 - (b) the Welsh Ministers, where the original duty was imposed by regulations made by the Welsh Ministers;

- A Minister may decide to impose a specific duty which requires contracting authorities to set out how they will use their procurement functions to better meet the requirements of the public sector equality duty. This might lead a hospital in an ethnically diverse area which outsources its catering to identify a need to put conditions in the contract that Halal and Kosher food is made available.

Clause 150: Enforcement

Effect

495. This clause is designed to make it clear that the duties imposed by or under Chapter 1 of Part 11 do not create any private law rights for individuals. These duties, are, however, enforceable by way of judicial review.

Background

496. This clause is new, but it reflects the position under current legislation.

Examples

- A local council fails to give due regard to the requirements of the public sector equality duty when deciding to stop funding a local women's refuge. An individual would not be able to sue the local council as a result and claim compensation. They would need to consider whether to pursue judicial review proceedings.

Clause 151: Interpretation

497.

Effect

497. This clause defines the terms used in this Chapter to refer to devolved issues.

498. The other clauses in this Chapter refer to relevant Welsh and Scottish authorities, cross-border Welsh and Scottish authorities and devolved Welsh and Scottish functions. This clause explains what those terms mean.

- (c) the Scottish Ministers, where the original duty was imposed by regulations made by the Scottish Ministers.

150 Enforcement

A failure in respect of a performance of a duty imposed by or under this Chapter does not confer a cause of action at private law. 5

151 Interpretation

- (1) This section applies for the purposes of this Chapter.
- (2) A relevant Welsh authority is a person whose functions –
(a) are exercisable only in or as regards Wales, and
(b) are wholly or mainly devolved Welsh functions. 10
- (3) A cross-border Welsh authority is a person other than a relevant Welsh authority who has any function that –
(a) is exercisable in or as regards Wales, and
(b) is a devolved Welsh function.
- (4) A function is a devolved Welsh function if it relates to – 15
(a) a matter in respect of which functions are exercisable by the Welsh Ministers, the First Minister for Wales or the Counsel General to the Welsh Assembly Government, or
(b) a matter within the legislative competence of the National Assembly for Wales. 20
- (5) A relevant Scottish authority is a public body, public office or holder of a public office –
(a) which is not a cross-border Scottish authority or the Scottish Parliamentary Corporate Body,
(b) whose functions are exercisable only in or as regards Scotland, and 25
(c) at least some of whose functions do not relate to reserved matters.
- (6) A cross-border Scottish authority is a cross-border public authority within the meaning given by section 88(5) of the Scotland Act 1998.

Chapter 2: Positive action

Clause 152: Positive action: general

Effect

499. This clause provides that the Bill does not prohibit the use of positive action measures to alleviate disadvantage experienced by people who share a protected characteristic, reduce their under-representation in relation to particular activities, and meet their particular needs. It will, for example, allow measures to be targeted to particular groups, including training to enable them to gain employment, or health services to address their needs. Any such measures must be a proportionate way of achieving the relevant aim.

500. The extent to which it is proportionate to take positive action measures which may result in people not having the relevant characteristic being treated less favourably will depend, among other things, on the seriousness of the relevant disadvantage, the extremity of need or under-representation and the availability of other means of countering them. This provision will need to be interpreted in accordance with European law which limits the extent to which the kind of action it permits will be allowed.

501. To provide greater legal certainty about what action is proportionate in particular circumstances, the clause contains a power to make regulations setting out action which is not permitted under this clause.

502. If positive action measures are taken in recruitment or promotion under clause 153(3) or the selection of political candidates under clause 99, those provisions will apply rather than this clause.

503. Should the provision allowing single-sex shortlists for the selection of political candidates (99 (6)) be repealed, this clause will not permit action to be taken similar to that permissible under that provision.

504. This clause does not allow any action to be taken that would be prohibited by other legislation.

Background

505. This clause is new. There are existing positive action provisions in current legislation, but these apply to different protected characteristics in different ways and in some cases are specific about the types of action they permit. This clause extends what is possible to the extent permitted by European law, and applies in relation to all protected characteristics.

Examples

- Having identified that its white male pupils are underperforming at maths, a school could run supplementary maths classes exclusively for them.

- (7) A function is a devolved Scottish function if it –
 - (a) is exercisable in or as regards Scotland, and
 - (b) does not relate to reserved matters.
- (8) Reserved matters has the same meaning as in the Scotland Act 1998.

CHAPTER 2

5

POSITIVE ACTION

152 Positive action: general

- (1) This section applies if a person (P) reasonably thinks that –
 - (a) persons who share a protected characteristic suffer a disadvantage connected to the characteristic, 10
 - (b) persons who share a protected characteristic have needs that are different from the needs of persons who do not share it, or
 - (c) participation in an activity by persons who share a protected characteristic is disproportionately low.
- (2) This Act does not prohibit P from taking any action which is a proportionate ¹⁵ means of achieving the aim of –
 - (a) enabling or encouraging persons who share the protected characteristic to overcome or minimise that disadvantage,
 - (b) meeting those needs, or
 - (c) enabling or encouraging persons who share the protected characteristic ²⁰ to participate in that activity.
- (3) Regulations may specify action, or descriptions of action, to which subsection (2) does not apply.
- (4) This section does not apply to –
 - (a) action within section 153(3), or 25
 - (b) anything that is permitted by virtue of section 99.
- (5) If section 99(7) is repealed by virtue of section 100, this section will not apply to anything that would have been so permitted but for the repeal.
- (6) This section does not enable P to do anything that is prohibited by or under an enactment other than this Act. 30

- In response to a national survey which indicates that lesbians have an increased risk of breast cancer due to lifestyle issues, such as being less likely to have children, less likely to seek gynaecological care, a local NHS Trust could set up a breast cancer screening programme targeted specifically at lesbian women.

Clause 153: Positive action: recruitment and promotion

Effect

506. This clause permits an employer to take a protected characteristic into consideration when deciding who to recruit or promote, where people having the protected characteristic are at a disadvantage or are under-represented. This can be done only where the candidates are equally qualified, and the clause does not allow employers to have a policy of automatically treating people who share a protected characteristic more favourably than those who do not.

507. The clause defines recruitment broadly, so that for example offers of partnership or pupillage, or tenancy in barristers' chambers, are included.

Background

508. This clause is new. While current legislation allows employers to undertake a variety of positive action measures, for instance offering training and encouragement for certain forms of work, it does not allow employers to take any form of positive action at the actual point of recruitment or promotion. This clause extends what is possible to the extent permitted by European law, and applies in relation to all protected characteristics.

Examples

- A police service which employs disproportionately low numbers of people from an ethnic minority background identifies a number of equally qualified candidates for recruitment and gives preferential selection to a candidate from an ethnic minority background. This would not be unlawful, provided the comparative merits of other candidates were also taken into consideration.
- An employer offers a job to a woman on the basis that women are under-represented in the company's workforce when there was a male candidate who was more qualified. This would be unlawful direct discrimination.

Part 12: Disabled persons: transport

153 Positive action: recruitment and promotion

- (1) This section applies if a person (P) reasonably thinks that –
 - (a) persons who share a protected characteristic suffer a disadvantage connected to the characteristic, or
 - (b) participation in an activity by persons who share a protected characteristic is disproportionately low.
- (2) Part 5 (work) does not prohibit P from taking action within subsection (3) with the aim of enabling or encouraging persons who share the protected characteristic to –
 - (a) overcome or minimise that disadvantage, or 10
 - (b) participate in that activity.
- (3) That action is treating a person (A) more favourably in connection with recruitment or promotion than another person (B) because A has the protected characteristic but B does not.
- (4) But subsection (2) applies only if – 15
 - (a) A is as qualified as B to be recruited or promoted, and
 - (b) P does not have a policy of treating persons who share the protected characteristic more favourably in connection with recruitment or promotion than persons who do not share it.
- (5) “Recruitment” means a process for deciding whether to – 20
 - (a) offer employment to a person,
 - (b) make contract work available to a contract worker,
 - (c) offer a person a position as a partner in a firm or proposed firm,
 - (d) offer a person a position as a member of an LLP or proposed LLP,
 - (e) offer a person a pupillage or tenancy in barristers’ chambers, 25
 - (f) take a person as an advocate’s devil or offer a person membership of an advocate’s stable,
 - (g) offer a person an appointment to a personal office,
 - (h) offer a person an appointment to a public office, recommend a person for such an appointment or approve a person’s appointment to a public 30
office, or
 - (i) offer a person a service for finding employment.
- (6) This section does not enable P to do anything that is prohibited by or under an enactment other than this Act.

Chapter 1: Taxis etc.

Clause 154: Taxi accessibility

Effect

509. This clause contains a power for the Secretary of State to make regulations specifying the technical standards applying to licensed taxis and imposing requirements on taxi drivers, to enable disabled people to access taxis safely, even when seated in a wheelchair, and be carried in safety and reasonable comfort. It makes it an offence, punishable by a fine of up to £1,000, for a driver of a regulated taxi to fail to comply with the requirements of the regulations.

Background

510. This clause is designed to replicate the effect of conditions in section 32 of the Disability Discrimination Act 1995.

511. These conditions do not apply to taxis which are drawn by horses or other animals.

Examples

- It would be an offence for a taxi driver not to comply with a requirement to have a ramp or other device to enable a disabled person in a wheelchair to access the taxi in safety.
- It would be an offence for a taxi driver not to comply with a requirement to ensure the correct position of a wheelchair in the taxi so as to ensure the disabled person can travel in safety.

Clause 155: Designated transport facilities

Effect

512. This clause enables the Secretary of State in England and Wales, or Scottish Ministers in Scotland, to make regulations applying taxi provisions contained in or made under Chapter

PART 12

DISABLED PERSONS: TRANSPORT

CHAPTER 1

TAXIS ETC.

- 154 Taxi accessibility regulations** 5
- (1) The Secretary of State may make regulations (in this Chapter referred to as “taxi accessibility regulations”) for securing that it is possible for disabled persons –
- (a) to get into and out of taxis in safety;
 - (b) to do so while in wheelchairs; 10
 - (c) to travel in taxis in safety and reasonable comfort;
 - (d) to do so while in wheelchairs.
- (2) The regulations may, in particular, require a regulated taxi to conform with provision as to –
- (a) the size of a door opening for the use of passengers; 15
 - (b) the floor area of the passenger compartment;
 - (c) the amount of headroom in the passenger compartment;
 - (d) the fitting of restraining devices designed to ensure the stability of a wheelchair while the taxi is moving.
- (3) The regulations may also – 20
- (a) require the driver of a regulated taxi which is plying for hire, or which has been hired, to comply with provisions as to the carrying of ramps or other devices designed to facilitate the loading and unloading of wheelchairs;
 - (b) require the driver of a regulated taxi in which a disabled person is being carried while in a wheelchair to comply with provisions as to the position in which the wheelchair is to be secured. 25
- (4) The driver of a regulated taxi which is plying for hire or has been hired commits an offence –
- (a) by failing to comply with a requirement of the regulations, or 30
 - (b) if the taxi fails to conform with any provision of the regulations with which it is required to conform.
- (5) A person guilty of an offence under subsection (4) is liable, on summary conviction, to a fine not exceeding level 3 on the standard scale.
- (6) In this section – 35
- “passenger compartment” has such meaning as is specified in taxi accessibility regulations;
 - “regulated taxi” means a taxi to which taxi accessibility regulations are expressed to apply.
- 155 Designated transport facilities** 40
- (1) The appropriate authority may by regulations provide for the application of any taxi provision (with or without modification) to –

1 of Part 12 of the Bill or under section 20(2A) of the Civic Government (Scotland) Act 1982 to private hire vehicles used in the provision of services under a franchise agreement.

Background

513. This clause is designed to replicate the effect of provisions in section 33 of the Disability Discrimination Act 1995.

514. Franchise agreements exist between operators of transport facilities (premises which form part of railway stations, airports, ports and bus stations) and operators of private hire cars, in order to provide services to members of the public so that they can travel from, for example, the mainline station to their destination. This clause allows requirements to be placed on vehicles used under a franchise agreement and their drivers to ensure accessibility for disabled people.

Examples

515. Regulations could require that the vehicles entering, and for use in, an airport to fulfil the terms of a franchise agreement must be accessible to wheelchair users.

Clause 156: Taxi licence conditional on compliance with taxi accessibility regulations

Effect

516. This clause prevents a licensing authority granting a licence for a taxi to ply for hire unless the vehicle complies with the regulations made under clause 155, so as to ensure that licensed taxis in use are accessible by disabled passengers. The provisions do not apply if a taxi has been licensed in the preceding 28 days, so that existing vehicles can continue to be used even if they do not meet the accessibility requirements.

Background

517. This clause is designed to replicate the effect of provisions in section 34 of the Disability Discrimination Act 1995.

Examples

- Someone making an application for a taxi licence will need to ensure the taxi will be accessible by disabled people.

-
- (a) vehicles used for the provision of services under a franchise agreement,
or
(b) drivers of such vehicles.
- (2) A franchise agreement is a contract entered into by the operator of a designated transport facility for the provision, by the other party to the contract, of hire car services –
- (a) for members of the public using any part of the facility, and
(b) which involve vehicles entering any part of the facility.
- (3) In this section –
- “appropriate authority” means – 10
- (a) in relation to transport facilities in England and Wales, the Secretary of State;
(b) in relation to transport facilities in Scotland, the Scottish Ministers;
- “designated” means designated by order made by the appropriate authority; 15
- “hire car” has such meaning as is specified in regulations made by the appropriate authority;
- “operator”, in relation to a transport facility, means a person who is concerned with the management or operation of the facility; 20
- “taxi provision” means a provision of –
- (a) this Chapter, or
(b) regulations made in pursuance of section 20(2A) of the Civic Government (Scotland) Act 1982,
which applies in relation to taxis or drivers of taxis; 25
- “transport facility” means premises which form part of a port, airport, railway station or bus station.
- (4) For the purposes of section 2(2) of the European Communities Act 1972 (implementation of Community obligations), the Secretary of State may exercise a power conferred by this section on the Scottish Ministers. 30

156 Taxi licence conditional on compliance with taxi accessibility regulations

- (1) A licence for a taxi to ply for hire must not be granted unless the vehicle conforms with the provisions of taxi accessibility regulations with which a vehicle is required to conform if it is licensed.
- (2) Subsection (1) does not apply if a licence is in force in relation to the vehicle at any time during the period of 28 days immediately before the day on which the licence is granted.
- (3) The Secretary of State may by order provide for subsection (2) to cease to have effect on a specified date.
- (4) The power under subsection (3) may be exercised differently for different areas or localities. 40

- A driver renewing the licence for a taxi will not need to show that the vehicle meets the accessibility requirements as long as it was licensed in the 28 days preceding the grant of the new licence.

Clause 157: Exemption from accessibility regulations

Effect

518. This clause contains a power for the Secretary of State to make regulations allowing a licensing authority to apply for an order exempting it from the requirements of clause 156 if it has undertaken a consultation, published the outcome and taken into account any representations. A licensing authority may only apply for an exemption order if applying clause 156 would reduce the number of taxis in the area to an unacceptable level.

519. The Secretary of State may grant or refuse such an order but, before deciding whether or not to do so, is required to consult the Disabled Persons Transport Advisory Committee and any other appropriate persons. In granting an exemption order, the Secretary of State may impose certain conditions. Where exemption is given from the full accessibility requirements, taxis may instead be required to be fitted with swivel seats and to conform to any safety conditions when such seats are in use.

Background

520. This clause is designed to replicate the effect of provisions in section 35 of the Disability Discrimination Act 1995.

Example

- A particular licensing area can apply for an exemption order if it considers that requiring all taxis to comply with the accessibility requirements would mean that licensed taxi drivers in the area would transfer from being hackney carriage drivers to private hire vehicle drivers, because the cost of purchasing accessible taxis would make their business unprofitable. The Secretary of State can agree to make an exemption order but, in doing so, can require a certain number of accessible taxis to be available in the area.

Clause 158: Passengers in wheelchairs

Effect

521. This clause places duties on drivers of designated taxis and private hire vehicles to carry a disabled passenger while in a wheelchair; to not make an additional charge; if the passenger chooses to sit in a passenger seat, to carry the passenger's wheelchair; to carry the passenger in safety and in reasonable comfort; and to provide reasonable assistance to enable the passenger to use the taxi. A taxi or private hire vehicle is designated if it appears on a list maintained by the local licensing authority under clause 160.

157 Exemption from taxi accessibility regulations

- (1) The Secretary of State may by regulations provide for a relevant licensing authority to apply for an order (an “exemption order”) exempting the authority from the requirements of section 156.
- (2) Regulations under subsection (1) may, in particular, make provision requiring 5 an authority proposing to apply for an exemption order –
 - (a) to carry out such consultation as is specified;
 - (b) to publish its proposals in the specified manner;
 - (c) before applying for the order, to consider representations made about the proposal; 10
 - (d) to make the application in the specified form.In this subsection “specified” means specified in the regulations.
- (3) An authority may apply for an exemption order only if it is satisfied –
 - (a) that, having regard to the circumstances in its area, it is inappropriate 15 for section 156 to apply, and
 - (b) that the application of that section would result in an unacceptable reduction in the number of taxis in its area.
- (4) After consulting the Disabled Persons Transport Advisory Committee and such other persons as the Secretary of State thinks appropriate, the Secretary of State may – 20
 - (a) make an exemption order in the terms of the application for the order;
 - (b) make an exemption order in such other terms as the Secretary of State thinks appropriate;
 - (c) refuse to make an exemption order.
- (5) The Secretary of State may by regulations make provision requiring a taxi 25 plying for hire in an area in respect of which an exemption order is in force to conform with provisions of the regulations as to the fitting and use of swivel seats.
- (6) Regulations under subsection (5) may make provision corresponding to section 156. 30
- (7) In this section –

“relevant licensing authority” means an authority responsible for licensing taxis in any area of Great Britain other than the area to which the Metropolitan Public Carriage Act 1869 applies;

“swivel seats” has such meaning as is specified in regulations under 35 subsection (5).

158 Passengers in wheelchairs

- (1) This section imposes duties on the driver of a designated taxi which has been hired –
 - (a) by or for a disabled person who is in a wheelchair, or 40
 - (b) by another person who wishes to be accompanied by a disabled person who is in a wheelchair.

522. A driver of a designated taxi or private hire vehicle who refuses to carry a wheelchair user commits an offence punishable by a fine of up to £1,000.

Background

523. This clause is designed to replicate the duties contained in section 36 of the Disability Discrimination Act 1995 but it is being amended to apply the duties to drivers of both licensed taxis and private hire vehicles that have been designated as being wheelchair accessible by the local licensing authority.

Examples

- A person in a wheelchair hires a wheelchair accessible taxi or private hire vehicle. The driver must help the passenger into and out of the vehicle by using a ramp or lift and helping the passenger onto the lift or up the ramp. The driver must ensure the wheelchair is correctly positioned in the vehicle and secured so that the passenger travels safely and in reasonable comfort.
- If a passenger in a wheelchair wishes to travel in a passenger seat, the driver must assist the passenger into and out of the vehicle and transport the wheelchair.
- A driver must load a disabled passenger's luggage into and out of the taxi.
- A driver cannot charge a person in a wheelchair more than any other passenger.

-
- (2) This section also imposes duties on the driver of a designated private hire vehicle, if a person within paragraph (a) or (b) of subsection (1) has indicated to the driver that he or she wishes to travel in the vehicle.
- (3) For the purposes of this section –
- (a) a taxi or private hire vehicle is “designated” if it appears on a list 5 maintained under section 160;
 - (b) “the passenger” means the disabled person concerned.
- (4) The duties are –
- (a) to carry the passenger while in the wheelchair;
 - (b) not to make any additional charge for doing so; 10
 - (c) if the passenger chooses to sit in a passenger seat, to carry the wheelchair;
 - (d) to take such steps as are necessary to ensure that the passenger is carried in safety and reasonable comfort;
 - (e) to give the passenger such mobility assistance as is reasonably 15 required.
- (5) Mobility assistance is assistance –
- (a) to enable the passenger to get into or out of the vehicle;
 - (b) if the passenger wishes to remain in the wheelchair, to enable the passenger to get into and out of the vehicle while in the wheelchair; 20
 - (c) to load the passenger’s luggage into or out of the vehicle;
 - (d) if the passenger does not wish to remain in the wheelchair, to load the wheelchair into or out of the vehicle.
- (6) This section does not require the driver –
- (a) unless the vehicle is of a description specified in regulations made by 25 the Secretary of State, to carry more than one person in a wheelchair, or more than one wheelchair, on any one journey;
 - (b) to carry a person in circumstances in which it would otherwise be lawful for the driver to refuse to carry the person.
- (7) A driver of a designated taxi or designated private hire vehicle commits an 30 offence by failing to comply with a duty imposed on the driver by this section.
- (8) A person guilty of an offence under subsection (7) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (9) It is a defence for a person charged with the offence to show that at the time of the alleged offence – 35
- (a) the vehicle conformed to the accessibility requirements which applied to it, but
 - (b) it would not have been possible for the wheelchair to be carried safely in the vehicle.
- (10) In this section and sections 159 and 160 “private hire vehicle” means – 40
- (a) a vehicle licensed under section 48 of the Local Government (Miscellaneous Provisions) Act 1976;
 - (b) a vehicle licensed under section 7 of the Private Hire Vehicles (London) Act 1998;
 - (c) a vehicle licensed under an equivalent provision of a local enactment; 45
 - (d) a private hire car licensed under section 10 of the Civic Government (Scotland) Act 1982.

Clause 159: Passengers in wheelchairs: exemption certificates

Effect

524. The Secretary of State may make regulations which allow a licensing authority to exempt a driver from the duties contained in clause 159 if it is satisfied that the driver cannot provide assistance due to a medical or physical condition.

525. The exemption certificate must be displayed in the vehicle.

Background

526. This clause is designed to replicate the exemption provision that was contained in section 36 of the Disability Discrimination Act 1995. An exemption certificate needs to be exhibited on a taxi and must be carried in the private hire vehicle. The driver of a private hire vehicle must show the certificate if requested by a disabled passenger or person accompanying a disabled passenger.

Examples

- A driver is not required to provide physical assistance to help a passenger in a wheelchair into and out of a vehicle if he is medically unfit to do so.

Clause 160: List of wheelchair-accessible vehicles

Effect

527. This clause permits a licensing authority to maintain a list of wheelchair accessible taxis and private hire vehicles that serve an area. A licensing authority can restrict the list to those taxis and private hire vehicles in its area that provide local bus services. The duties contained in clause 158 will apply to drivers of taxis or private hire vehicles that appear on the list of wheelchair accessible vehicles.

528. The clause permits the Secretary of State to issue guidance to licensing authorities and the licensing authority must have regard to any guidance issued.

Background

529. This clause is designed to replicate some of the provisions contained in Section 36A of the Disability Discrimination Act 1995. It is also designed to enable licensing authorities to designate the taxis and private hire vehicles in their area that are wheelchair accessible.

Examples

- A licensing authority will maintain a list of taxis and private hire vehicles that have been designated as being wheelchair accessible in its area.

159 Passengers in wheelchairs: exemption certificates

- (1) A licensing authority must issue a person with a certificate exempting the person from the duties imposed by section 158 (an “exemption certificate”) if satisfied that it is appropriate to do so –
 - (a) on medical grounds, or 5
 - (b) on the ground that the person’s physical condition makes it impossible or unreasonably difficult for the person to comply with those duties.
- (2) An exemption certificate is valid for such period as is specified in the certificate.
- (3) The driver of a designated taxi is exempt from the duties imposed by section 10 158 if –
 - (a) an exemption certificate issued to the driver is in force, and
 - (b) the prescribed notice of the exemption is exhibited on the taxi in the prescribed manner.
- (4) The driver of a designated private hire vehicle is exempt from the duties 15 imposed by section 158 if –
 - (a) an exemption certificate issued to the driver is in force, and
 - (b) the prescribed notice of the exemption is exhibited on the vehicle in the prescribed manner.
- (5) For the purposes of this section a taxi or private hire vehicle is “designated” if 20 it appears on a list maintained under section 160.
- (6) In this section and section 160 “licensing authority”, in relation to any area, means the authority responsible for licensing taxis or, as the case may be, private hire vehicles in that area.

160 Lists of wheelchair-accessible vehicles 25

- (1) For the purposes of section 158 a licensing authority may maintain a list of vehicles falling within subsection (2).
- (2) A vehicle falls within this subsection if –
 - (a) it is either a taxi or a private hire vehicle, and
 - (b) it conforms to such accessibility requirements as the licensing authority 30 thinks fit.
- (3) A licensing authority may, if it thinks fit, decide that a vehicle may be included on a list maintained under this section only if it being used, or is to be used, by the holder of a special licence under that licence.
In this subsection “special licence” has the meaning given by section 12 of the 35 Transport Act 1985 (use of taxis or hire cars in providing local services).
- (4) “Accessibility requirements” are requirements for securing that it is possible for disabled persons in wheelchairs –
 - (a) to get into and out of vehicles in safety, and
 - (b) to travel in vehicles in safety and reasonable comfort, 40either staying in their wheelchairs or not (depending on which they prefer).
- (5) The Secretary of State may issue guidance to licensing authorities as to –
 - (a) the accessibility requirements which they should apply for the purposes of this section;

- The driver of a vehicle that is included on the list will provide assistance to passengers in wheelchairs and will not charge them an additional fare.

Clause 161: Assistance dogs in taxis

Effect

530. This clause places duties on drivers of taxis to transport a disabled person's assistance dog, for example, a blind person's guide dog, and allow it to stay with the passenger without making any additional charge.

531. A driver of a taxi who refuses to carry an assistance dog commits an offence that is punishable by a fine of up to £1,000.

Background

532. This clause is designed to replicate the main provision contained in section 37 of the Disability Discrimination Act 1995.

Examples

- A person with an assistance dog hails a taxi. The driver must not refuse to transport the assistance dog and must let it accompany the passenger in the taxi.

Clause 162: Assistance dogs in taxis: exemption certificates

Effect

533. This clause permits a licensing authority to exempt a driver of a taxi from the duties contained in clause 161 if it is satisfied that the driver cannot carry an assistance dog on medical grounds, or that the vehicle is not suitable for the carriage of assistance dogs.

534. The exemption certificate must be displayed on the taxi.

Background

535. This clause is designed to replicate the exemption provision that was contained in section 37 of the Disability Discrimination Act 1995.

Example

- A driver is not required to carry an assistance dog if he has a medically certified allergy.

- (b) any other aspect of their functions under or by virtue of this section.
- (6) A licensing authority which maintains a list under subsection (1) must have regard to any guidance issued under subsection (5).

161 Assistance dogs in taxis

- (1) This section imposes duties on the driver of a taxi which has been hired – 5
(a) by or for a disabled person who is accompanied by an assistance dog, or
(b) by another person who wishes to be accompanied by a disabled person with an assistance dog.
- (2) The driver must –
(a) carry the disabled person’s dog and allow it to remain with that person; 10
(b) not make any additional charge for doing so.
- (3) The driver of a taxi commits an offence by failing to comply with a duty imposed by this section.
- (4) A person guilty of an offence under this section is liable to a fine not exceeding level 3 on the standard scale. 15

162 Assistance dogs in taxis: exemption certificates

- (1) A licensing authority must issue a person with a certificate exempting the person from the duties imposed by section 161 (an “exemption certificate”) if satisfied that it is appropriate to do so on medical grounds.
- (2) In deciding whether to issue an exemption certificate the authority must have 20 regard, in particular, to the physical characteristics of the taxi which the person drives or those of any kind of taxi in relation to which the person requires the certificate.
- (3) An exemption certificate is valid – 25
(a) in respect of a specified taxi or a specified kind of taxi;
(b) for such period as is specified in the certificate.
- (4) The driver of a taxi is exempt from the duties imposed by section 161 if –
(a) an exemption certificate issued to the driver is in force with respect to the taxi, and
(b) the prescribed notice of the exemption is exhibited on the taxi in the 30 prescribed manner.
- The power to make regulations under paragraph (b) is exercisable by the Secretary of State.
- (5) In this section “licensing authority” means –

Clause 163: Assistance dogs in private hire vehicles

Effect

536. This clause places duties on operators and drivers of private hire vehicles to transport a disabled person's assistance dog and allow it to stay with the passenger without making any additional charge.

537. An operator or driver of a private hire vehicle who refuses to carry an assistance dog commits an offence that is punishable by a fine of up to £1,000.

Background

538. This clause is designed to replicate the main provision contained in section 37A of the Disability Discrimination Act 1995.

Examples

- A driver of a private hire vehicle cannot impose an additional charge for carrying an assistance dog.
- An operator of a fleet of private hire vehicles accepts a booking from a passenger with an assistance dog. The driver cannot refuse to carry the assistance dog.

Clause 164 Assistance dogs in private hire vehicles: exemption certificates

Effect

539. This clause permits a licensing authority to exempt a driver of a private hire vehicle from the duties contained in clause 163 if it is satisfied that the driver cannot carry an assistance dog because of a medical condition, or that the vehicle is not suitable for the carriage of assistance dogs.

- (a) in relation to the area to which the Metropolitan Public Carriage Act 1869 applies, the Secretary of State or the holder of any office for the time being designated by the Secretary of State;
- (b) in relation to any other area in England and Wales, the authority responsible for licensing taxis in that area. 5

163 Assistance dogs in private hire vehicles

- (1) The operator of a private hire vehicle (O) commits an offence by failing or refusing to accept a booking for the vehicle—
 - (a) if the booking is requested by or on behalf of a disabled person or a person who wishes to be accompanied by a disabled person, and 10
 - (b) the reason for the failure or refusal is that the disabled person will be accompanied by an assistance dog.
- (2) O commits an offence by making an additional charge for carrying an assistance dog which is accompanying a disabled person.
- (3) The driver of a private hire vehicle commits an offence by failing or refusing to 15 carry out a booking accepted by O—
 - (a) if the booking is made by or on behalf of a disabled person or a person who wishes to be accompanied by a disabled person, and
 - (b) the reason for the failure or refusal is that the disabled person is accompanied by an assistance dog. 20
- (4) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (5) In this section—
 - “driver” means a person who holds a licence under—
 - (a) section 13 of the Private Hire Vehicles (London) Act 1998 (“the 25 1998 Act”),
 - (b) section 51 of the Local Government (Miscellaneous Provisions) Act 1976 (“the 1976 Act”), or
 - (c) an equivalent provision of a local enactment;
 - “licensing authority”, in relation to any area in England and Wales, means 30 the authority responsible for licensing private hire vehicles in that area;
 - “operator” means a person who holds a licence under—
 - (a) section 3 of the 1998 Act,
 - (b) section 55 of the 1976 Act, or
 - (c) an equivalent provision of a local enactment; 35
 - “private hire vehicle” means a vehicle licensed under—
 - (a) section 6 of the 1998 Act,
 - (b) section 48 of the 1976 Act, or
 - (c) an equivalent provision of a local enactment.

164 Assistance dogs in private hire vehicles: exemption certificates 40

- (1) A licensing authority must issue a driver with a certificate exempting the driver from the offence under section 163(3) (an “exemption certificate”) if satisfied that it is appropriate to do so on medical grounds.

Background

541. This clause is designed to replicate the exemption provision that was contained in section 37A of the Disability Discrimination Act 1995.

Example

- A driver is not required to carry an assistance dog if he has a medically certified allergy to dogs.

Clause 165: Appeals

Effect

542. If a taxi or a private hire vehicle driver is refused a certificate exempting him or her from the requirements to assist disabled passengers in wheelchairs or to carry assistance dogs, this clause gives a right of appeal to a magistrates' court.

Background

543. This clause is designed to replicate the provisions of section 38 of the Disability Discrimination Act 1995.

Example

- A taxi driver applies for a certificate exempting him from the requirement to assist disabled passengers in wheelchairs because he has a bad back. His application is refused by the licensing authority but the driver believes insufficient consideration was given to the medical information supporting his application, so he lodges an appeal within 28 days of the decision. The appeal is successful and the court directs the licensing authority to issue an exemption certificate to the driver.

Clause 166: Interpretation

Effect

544. This clause explains the meaning of the terms, "accessibility requirements", "assistance dog", "taxi" and "taxi accessibility regulations".

-
- (2) In deciding whether to issue an exemption certificate the authority must have regard, in particular, to the physical characteristics of the private hire vehicle which the person drives or those of any kind of private hire vehicle in relation to which the person requires the certificate.
- (3) An exemption certificate is valid – 5
- (a) in respect of a specified private hire vehicle or a specified kind of private hire vehicle;
 - (b) for such period as is specified in the certificate.
- (4) A driver does not commit an offence under section 163(3) if – 10
- (a) an exemption certificate issued to the driver is in force with respect to the private hire vehicle, and
 - (b) the prescribed notice of the exemption is exhibited on the vehicle in the prescribed manner.
- The power to make regulations under paragraph (b) is exercisable by the Secretary of State. 15
- (5) In this section “driver”, “licensing authority” and “private hire vehicle” have the same meaning as in section 163.

165 Appeals

- (1) A person who is aggrieved by the refusal of a licensing authority to issue an exemption certificate under section 159, 162 or 164 may appeal to a magistrates’ court or, in Scotland, the sheriff before the end of the period of 28 days beginning with the date of the refusal.
- (2) On an appeal under subsection (1), the magistrates’ court or sheriff may direct the licensing authority to issue the exemption certificate to have effect for such period as is specified in the direction. 25
- (3) A person who is aggrieved by the decision of a licensing authority to include a vehicle on a list maintained under section 160 may appeal to a magistrates’ court or, in Scotland, the sheriff before the end of the period of 28 days beginning with the date of the inclusion.

166 Interpretation

30

- (1) In this Chapter –
“accessibility requirements” has the meaning given in section 160(4);

Chapter 2: Public service vehicles

Clause 167: PSV accessibility regulations

Effect

545. This clause enables the Secretary of State to make Public Service Vehicle Accessibility regulations specifying the technical standards applying to buses and coaches, to provide greater accessibility to disabled passengers including when seated in a wheelchair. The requirements can relate to the construction, use and maintenance of the vehicle, to the design and carriage of equipment, and to wheelchair restraints and wheelchair position.

Background

546. This clause replicates the provisions of section 40 of the Disability Discrimination Act 1995.

Example

- Buses and coaches must meet certain technical standards in respect of equipment and design to ensure accessibility by disabled passengers. If accessibility features, such as hand rails or other aids, were present when the vehicle was approved but have subsequently been removed, the bus must not be used on the road.

“assistance dog” means –

- (a) a dog which has been trained to guide a blind person;
- (b) a dog which has been trained to assist a deaf person;
- (c) a dog which has been trained by a prescribed charity to assist a disabled person who has a disability that consists of epilepsy or otherwise affects the person’s mobility, manual dexterity, physical co-ordination or ability to lift, carry or otherwise move everyday objects;
- (d) a dog of a prescribed category which has been trained to assist a disabled person who has a disability (other than one falling within paragraph (c)) of a prescribed kind;

“taxi” –

- (a) means a vehicle which is licensed under section 37 of the Town Police Clauses Act 1847 or section 6 of the Metropolitan Public Carriage Act 1869, and 15
- (b) except in sections 161 to 164, also includes a taxi licensed under section 10 of the Civic Government (Scotland) Act 1982, but does not include a vehicle drawn by a horse or other animal;

“taxi accessibility regulations” has the meaning given by section 154(1).

- (2) A power to make regulations under paragraph (c) or (d) of the definition of “assistance dog” in subsection (1) is exercisable by the Secretary of State.

CHAPTER 2

PUBLIC SERVICE VEHICLES

167 PSV accessibility regulations

- (1) The Secretary of State may make regulations (in this Chapter referred to as “PSV accessibility regulations”) for securing that it is possible for disabled persons –
 - (a) to get on to and off regulated public service vehicles in safety and without unreasonable difficulty (and, in the case of disabled persons in wheelchairs, to do so while remaining in their wheelchairs), and 30
 - (b) to travel in such vehicles in safety and reasonable comfort.
- (2) The regulations may, in particular, make provision as to the construction, use and maintenance of regulated public service vehicles, including provision as to –
 - (a) the fitting of equipment to vehicles; 35
 - (b) equipment to be carried by vehicles;
 - (c) the design of equipment to be fitted to, or carried by, vehicles;
 - (d) the fitting and use of restraining devices designed to ensure the stability of wheelchairs while vehicles are moving;
 - (e) the position in which wheelchairs are to be secured while vehicles are moving. 40
- (3) In this section “public service vehicle” means a vehicle which is –
 - (a) adapted to carry more than 8 passengers, and
 - (b) a public service vehicle for the purposes of the Public Passenger Vehicles Act 1981; 45

Clause 168: Offence of contravening PSV accessibility regulations

Effect

547. This clause makes it an offence to fail to comply with the requirements of the regulations or to use or allow to be used on the road a public service vehicle which does not meet the requirements of the regulations. If an offence is found to have been committed by or with the consent of a responsible person, such as a director, manager or company secretary, that individual, as well as the company, is guilty of the offence.

548. The offence is punishable by a fine of up to £2,500.

Background

549. This clause replicates the offence provisions of section 40 of the Disability Discrimination Act 1995.

Example

- A bus has an accessibility feature removed and is subsequently used on a registered service. By using, or permitting the vehicle to be used in this condition, an offence is committed and may lead to the driver and the operator being convicted of the offence and a fine of up to £2,500 being imposed.

Clause 169: Accessibility certificates

Effect

550. This clause requires a regulated public service vehicle to have an accessibility certificate to demonstrate that it meets the requirements of the Public Service Vehicle Access regulations (see clause 167), or an approval certificate (see clause 170), before it can be used on a road. It also allows the Secretary of State to make regulations relating to applications and the issue (or copies) of accessibility certificates and providing for vehicle examinations.

and in this Chapter “regulated public service vehicle” means a public service vehicle to which PSV accessibility regulations are expressed to apply.

- (4) The regulations may make different provision –
 - (a) as respects different classes or descriptions of vehicle;
 - (b) as respects the same class or description of vehicle in different 5 circumstances.
- (5) The Secretary of State must not make regulations under this section or section 169 or 170 without consulting –
 - (a) the Disabled Persons Transport Advisory Committee, and
 - (b) such other representative organisations as the Secretary of State thinks 10 fit.

168 Offence of contravening PSV accessibility regulations

- (1) A person commits an offence by –
 - (a) contravening a provision of PSV accessibility regulations;
 - (b) using on a road a regulated public service vehicle which does not 15 conform with a provision of the regulations with which it is required to conform;
 - (c) causing or permitting such a regulated public service vehicle to be used on a road.
- (2) A person guilty of an offence under this section is liable on summary 20 conviction to a fine not exceeding level 4 on the standard scale.
- (3) If an offence under this section committed by a body corporate is committed with the consent or connivance of, or is attributable to neglect on the part of, a responsible person, the responsible person as well as the body corporate is 25 guilty of the offence.
- (4) In subsection (3) a responsible person, in relation to a body corporate, is –
 - (a) a director, manager, secretary or similar officer;
 - (b) a person purporting to act in the capacity of a person mentioned in paragraph (a);
 - (c) in the case of a body corporate whose affairs are managed by its 30 members, a member.
- (5) If, in Scotland, an offence committed by a partnership or an unincorporated association is committed with the consent or connivance of, or is attributable to neglect on the part of, a partner or person concerned in the management of the association, the partner or person as well as the partnership or association is 35 guilty of the offence.

169 Accessibility certificates

- (1) A regulated public service vehicle must not be used on a road unless –
 - (a) a vehicle examiner has issued a certificate (an “accessibility certificate”) that such provisions of PSV accessibility regulations as are prescribed 40 are satisfied in respect of the vehicle, or
 - (b) an approval certificate has been issued under section 170 in respect of the vehicle.
- (2) Regulations may make provision –

Background

551. This clause replicates the provisions contained in section 41 of the Disability Discrimination Act 1995.

Example

- A bus must have an accessibility certificate showing that it conforms to requirements about accessibility features, for example, ramps, handrails and wheelchair spaces. The certificate shows that the bus meets the minimum acceptable standard to enable disabled passengers to get on and off it and be carried on it in reasonable safety and comfort.

Clause 170: Approval certificates

Effect

552. This clause allows the Secretary of State to approve a public service vehicle as a “type vehicle” if the relevant technical requirements are met, and the issue of an approval certificate if a particular vehicle conforms with a “type vehicle”. This allows a design of vehicle to be approved as meeting the technical and accessibility requirements. It also contains a power for the Secretary of State to make regulations relating to applications and the issue (or copies) of approval certificates and providing for vehicle examinations.

553. The Secretary of State can withdraw approval for a “type vehicle” at any time. When this happens, no further approval certificates may be issued. The certificates issued prior to withdrawal remain valid.

Background

554. This clause replicates the provisions contained in section 42 of the Disability Discrimination Act 1995.

Example

- A particular bus manufacturer’s chassis in combination with a body is approved as a “type vehicle”, and approval certificates are issued in respect of buses conforming to this design. Modifications are subsequently made to the “type vehicle” which mean that it no longer meets the technical requirements, so its approval as a “type vehicle” is withdrawn and no approval certificates will be issued in respect of buses conforming to the modified design.

- (a) with respect to applications for, and the issue of, accessibility certificates;
 - (b) providing for the examination of vehicles in respect of which applications have been made;
 - (c) with respect to the issue of copies of accessibility certificates which 5 have been lost or destroyed.
- (3) The operator of a regulated public service vehicle commits an offence if the vehicle is used in contravention of this section.
- (4) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 4 on the standard scale. 10
- (5) A power to make regulations under this section is exercisable by the Secretary of State.
- (6) In this section “operator” has the same meaning as in the Public Passenger Vehicles Act 1981.

170 Approval certificates 15

- (1) The Secretary of State may approve a vehicle for the purposes of this section if satisfied that such provisions of PSV accessibility regulations as are prescribed for the purposes of section 169 are satisfied in respect of the vehicle.
- (2) A vehicle which is so approved is referred to in this section as a “type vehicle”.
- (3) Subsection (4) applies if a declaration in the prescribed form is made by an 20 authorised person that a particular vehicle conforms in design, construction and equipment with a type vehicle.
- (4) A vehicle examiner may issue a certificate in the prescribed form (an “approval certificate”) that it conforms to the type vehicle.
- (5) Regulations may make provision – 25
- (a) with respect to applications for, and grants of, approval under subsection (1);
 - (b) with respect to applications for, and the issue of, approval certificates;
 - (c) providing for the examination of vehicles in respect of which 30 applications have been made;
 - (d) with respect to the issue of copies of approval certificates in place of certificates which have been lost or destroyed.
- (6) The Secretary of State may at any time withdraw approval of a type vehicle.
- (7) If an approval is withdrawn –
- (a) no further approval certificates are to be issued by reference to the type 35 vehicle; but
 - (b) an approval certificate issued by reference to the type vehicle before the withdrawal continues to have effect for the purposes of section 169.
- (8) A power to make regulations under this section is exercisable by the Secretary of State. 40
- (9) In subsection (3) “authorised person” means a person authorised by the Secretary of State for the purposes of that subsection.

Clause 171: Special authorisations

Effect

555. This clause contains a power for the Secretary of State to authorise the use of a public service vehicle in certain circumstances where such a vehicle may not meet the requirements of regulations under clause 167. It also allows restrictions or conditions to be placed on the use of such vehicles.

Background

556. This clause replicates the provisions contained in section 43 of the Disability Discrimination Act 1995.

Example

- A new design of vehicle, which does not conform to the current accessibility regulations, is to be trialled. The Secretary of State makes an order allowing the use of the vehicle in a restricted environment, specifying the permitted areas and times of operation, so that its performance can be tested.

Clause 172: Reviews and appeals

Effect

557. If the Secretary of State refuses to approve a vehicle as a “type vehicle”, this clause allows the applicant to ask the Secretary of State to review of the decision on payment of a fee. It also gives a right of appeal to the Secretary of State of any refusal to issue an accessibility or approval certificate. It also allows the Secretary of State to set out the appeals procedure in regulations.

Background

558. This clause replicates the provisions contained in section 44 of the Disability Discrimination Act 1995.

Example

- A vehicle manufacturer is refused approval of a new bus design as a “type vehicle”. The manufacturer asks the Secretary of State to review the decision and pays the required fee. The Secretary of State must review the decision and any supporting written evidence or representations, and can confirm, vary or reverse the original decision.

171 Special authorisations

- (1) The Secretary of State may by order authorise the use on roads of –
 - (a) a regulated public service vehicle of a class or description specified by the order, or
 - (b) a regulated public service vehicle which is so specified. 5
- (2) Nothing in sections 167 to 170 prevents the use of a vehicle in accordance with the order.
- (3) The Secretary of State may by order make provision for securing that provisions of PSV accessibility regulations apply to regulated public service vehicles of a description specified by the order, subject to any modifications or 10 exceptions specified by the order.
- (4) An order under subsection (1) or (3) may make the authorisation or provision (as the case may be) subject to such restrictions and conditions as are specified by or under the order.
- (5) Section 194(2) does not require an order under this section that applies only to 15 a specified vehicle, or to vehicles of a specified person, to be made by statutory instrument; but such an order is as capable of being amended or revoked as an order made by statutory instrument.

172 Reviews and appeals

- (1) Subsection (2) applies if the Secretary of State refuses an application for the 20 approval of a vehicle under section 170(1) and, before the end of the prescribed period, the applicant –
 - (a) asks the Secretary of State to review the decision, and
 - (b) pays any fee fixed under section 173.
- (2) The Secretary of State must – 25
 - (a) review the decision, and
 - (b) in doing so, consider any representations made in writing by the applicant before the end of the prescribed period.
- (3) A person applying for an accessibility certificate or an approval certificate may appeal to the Secretary of State against the refusal of a vehicle examiner to issue 30 the certificate.
- (4) An appeal must be made within the prescribed time and in the prescribed manner.
- (5) Regulations may make provision as to the procedure to be followed in 35 connection with appeals.
- (6) On the determination of an appeal, the Secretary of State may –
 - (a) confirm, vary or reverse the decision appealed against;
 - (b) give directions to the vehicle examiner for giving effect to the Secretary of State's decision.
- (7) A power to make regulations under this section is exercisable by the Secretary 40 of State.

Clause 173: Fees

Effect

559. This clause contains a power for the Secretary of State make fees regulations and to charge fees in accordance with them for processing applications for approval as a “type vehicle”, processing accessibility and approval certificates, issuing duplicate certificates and conducting reviews and appeals. Fees are not likely to be greater than the amount needed to cover costs. The clause allows provision for repaying fees in whole or part in certain circumstances, for example, on a successful appeal.

Background

560. This clause replicates the provisions contained in section 45 of the Disability Discrimination Act 1995.

Example

- An applicant may have to pay a fee for accessibility and approval certificates for a public service vehicle, to cover the cost of dealing with the application and inspection process.

Clause 174: Interpretation

Effect

561. This clause explains the meaning of terms used in this chapter, for example, “accessibility certificate”, “approval certificate”, “PSV accessibility regulations” and “regulated public service vehicle”.

Chapter 3: Rail vehicles

Clause 175: Rail vehicle accessibility regulations

Effect

562. This clause includes powers for the Secretary of State to make regulations to ensure that trains, trams and certain other guided transport systems are accessible to disabled people including wheelchair users.

563. However, due to the limited definition of “rail vehicle” used in this clause, its scope is limited to rail vehicles which do not operate on the “interoperable rail system”. Regulations made under this clause could therefore only be applicable for the most part to light rail vehicles (those used on metro, underground and tram systems and prescribed modes of guided transport).

173 Fees

- (1) The Secretary of State may charge such fees, payable at such times, as are prescribed in respect of –
 - (a) applications for, and grants of, approval under section 170(1);
 - (b) applications for, and the issue of, accessibility certificates and approval 5 certificates;
 - (c) copies of such certificates;
 - (d) reviews and appeals under section 172.
- (2) Fees received by the Secretary of State must be paid into the Consolidated Fund. 10
- (3) The power to make regulations under subsection (1) is exercisable by the Secretary of State.
- (4) The regulations may make provision for the repayment of fees, in whole or in part, in such circumstances as are prescribed.
- (5) Before making the regulations the Secretary of State must consult such 15 representative organisations as the Secretary of State thinks fit.

174 Interpretation

In this Chapter –

- “accessibility certificate” has the meaning given in section 169(1);
- “approval certificate” has the meaning given in section 170(4); 20
- “PSV accessibility regulations” has the meaning given in section 167(1);
- “regulated public service vehicle” has the meaning given in section 167(3).

CHAPTER 3

RAIL VEHICLES

175 Rail vehicle accessibility regulations 25

- (1) The Secretary of State may make regulations (in this Chapter referred to as “rail vehicle accessibility regulations”) for securing that it is possible for disabled persons –
 - (a) to get on to and off regulated rail vehicles in safety and without unreasonable difficulty; 30
 - (b) to do so while in wheelchairs;
 - (c) to travel in such vehicles in safety and reasonable comfort;
 - (d) to do so while in wheelchairs.

564. All rail vehicles must comply with accessibility standards, or have an appropriate exemption in place, by no later than 1 January 2020.

565. Before making any regulations under this clause, the Secretary of State must first consult with the Disabled Persons Transport Advisory Committee and other representative organisations.

Background

566. This clause replicates the provisions of section 46 of the Disability Discrimination Act 1995 as amended by the Disability Discrimination Act 2005.

Example

- All new rail vehicles introduced on metro, underground or tram systems, or prescribed modes of guided transport, will need to be fully accessible or seek an exemption (under clause 176) if there are compelling circumstances which mean they cannot comply.

-
- (2) The regulations may, in particular, make provision as to the construction, use and maintenance of regulated rail vehicles including provision as to –
- (a) the fitting of equipment to vehicles;
 - (b) equipment to be carried by vehicles;
 - (c) the design of equipment to be fitted to, or carried by, vehicles; 5
 - (d) the use of equipment fitted to, or carried by, vehicles;
 - (e) the toilet facilities to be provided in vehicles;
 - (f) the location and floor area of the wheelchair accommodation to be provided in vehicles;
 - (g) assistance to be given to disabled persons. 10
- (3) The regulations may contain different provision –
- (a) as respects different classes or descriptions of rail vehicle;
 - (b) as respects the same class or description of rail vehicle in different circumstances;
 - (c) as respects different networks. 15
- (4) In this section –
- “network” means any permanent way or other means of guiding or supporting rail vehicles, or any section of it;
 - “rail vehicle” means a vehicle constructed or adapted to carry passengers on a railway, tramway or prescribed system other than a vehicle used²⁰ in the provision of a service for the carriage of passengers on the high-speed rail system or the conventional TEN rail system;
 - “regulated rail vehicle” means a rail vehicle to which provisions of rail vehicle accessibility regulations are expressed to apply.
- (5) In subsection (4) – 25
- “conventional TEN rail system” and “high-speed rail system” have the meaning given in regulation 2(3) of the Railways (Interoperability) Regulations 2006 (S.I. 2006/397);
 - “prescribed system” means a system using a mode of guided transport (“guided transport” having the same meaning as in the Transport and³⁰ Works Act 1992) that is specified in rail vehicle accessibility regulations;
 - “railway” and “tramway” have the same meaning as in the Transport and Works Act 1992.
- (6) The Secretary of State must exercise the power to make rail vehicle accessibility³⁵ regulations so as to secure that on and after 1 January 2020 every rail vehicle is a regulated rail vehicle.
- (7) Subsection (6) does not affect subsection (3), section 176(1) or section 194(3)(a).
- (8) Before making regulations under subsection (1) or section 176 the Secretary of State must consult – 40
- (a) the Disabled Persons Transport Advisory Committee, and
 - (b) such other representative organisations as the Secretary of State thinks fit.

Clause 176: exemptions from rail vehicle accessibility regulations

Effect

567. This clause contains a power for the Secretary of State to make orders (“exemption orders”) authorising a regulated rail vehicle to be used in passenger service even though it does not comply with accessibility standards, or the way it is to be used would not comply with such standards.

568. It provides for regulations to specify who may apply for an exemption order, what information needs to be supplied, how the exemption regime will operate, how long an exemption order can apply and measures for revocation. This list is not exhaustive.

569. Before granting an exemption order, the Secretary of State must first consult with the Disabled Persons Transport Advisory Committee and such other persons as considered appropriate.

Background

570. This clause replicates the provisions of section 47 of the Disability Discrimination Act 1995 as amended by the Disability Discrimination Act 2005.

571. Example

572. The exemption power can be used to exempt a specified rail vehicle, or a rail vehicle of a specified description or the use of such a vehicle in specified circumstances. So, for example, all the vehicles used on a particular network (such as a heritage or tourist railway or tramway) could be exempted.

Clause 177: Procedure for making exemption orders

Effect

571. This clause provides that exemption orders made under clause 176 may, at the discretion of the Secretary of State, be subject to either the draft affirmative resolution or the negative resolution procedure. It sets out the procedure for the exercise of this discretion and enables regulations to be made setting out the criteria under which a decision will be made.

572. The Secretary of State is required to consult Disabled Persons Transport Advisory Committee, and other appropriate persons, before making such regulations, which are themselves subject to the draft affirmative resolution procedure.

Background

573. This clause replicates section 67(5A) and 67A of the Disability Discrimination Act 1995 as inserted by the Disability Discrimination Act 2005 (and in force).

176 Exemptions from rail vehicle accessibility regulations

- (1) The Secretary of State may by order (an “exemption order”) –
 - (a) authorise the use for carriage of a regulated rail vehicle even though the vehicle does not conform with the provisions of rail vehicle accessibility regulations with which it is required to conform; 5
 - (b) authorise a regulated rail vehicle to be used for carriage otherwise than in conformity with the provisions of rail vehicle accessibility regulations with which use of the vehicle is required to conform.
- (2) Authority under subsection (1)(a) or (b) may be for –
 - (a) a regulated rail vehicle that is specified or of a specified description, 10
 - (b) use in specified circumstances of a regulated rail vehicle, or
 - (c) use in specified circumstances of a regulated rail vehicle that is specified or of a specified description.
- (3) The Secretary of State may by regulations make provision as to exemption orders including, in particular, provision as to – 15
 - (a) the persons by whom applications for exemption orders may be made;
 - (b) the form in which applications are to be made;
 - (c) information to be supplied in connection with applications;
 - (d) the period for which exemption orders are to continue in force;
 - (e) the revocation of exemption orders. 20
- (4) After consulting the Disabled Persons Transport Advisory Committee and such other persons as the Secretary of State thinks appropriate, the Secretary of State may –
 - (a) make an exemption order in the terms of the application for the order;
 - (b) make an exemption order in such other terms as the Secretary of State 25 thinks appropriate;
 - (c) refuse to make an exemption order.
- (5) The Secretary of State may make an exemption order subject to such conditions and restrictions as are specified.
- (6) “Specified” means specified in an exemption order. 30

177 Procedure for making exemption orders

- (1) A statutory instrument that contains an order under section 176(1), if made without a draft having been laid before, and approved by a resolution of, each House of Parliament, is subject to annulment in pursuance of a resolution of either House. 35
- (2) The Secretary of State must consult the Disabled Persons Transport Advisory Committee before deciding which of the parliamentary procedures available under subsection (1) is to be adopted in connection with the making of any particular order under section 176(1).
- (3) An order under section 176(1) may be made without a draft of the instrument 40 that contains it having been laid before, and approved by a resolution of, each House of Parliament only if –
 - (a) regulations under subsection (4) are in force; and
 - (b) the making of the order without such laying and approval is in accordance with the regulations. 45

Clause 178: Annual Report on exemption orders

Effect

574. This clause requires the Secretary of State to produce an annual report (“the report”) on the use of powers to exempt regulated rail vehicles from accessibility requirements. The report will be produced for each calendar year and must contain details of all exemption orders made under clause 176. It must also contain information about the consultation on both applications for exemption orders and the exercise of discretion under clause 177. The report must be laid before both Houses of Parliament.

Background

575. This clause replicates the provisions of the Disability Discrimination Act 1995 section 67B as inserted by the Disability Discrimination Act 2005 (and in force).

Clause 179: Rail vehicle accessibility: compliance

Effect

576. This clause relates to the provisions of Schedule 20 which contain powers to introduce compliance certification and a civil enforcement regime with associated penalties.

577. Commencement of subsection (1) would bring Schedule 20 into effect. However, subsection (2) provides that, if not commenced (either fully or to any extent) before the end of 2010, the clause and Schedule 20 would be automatically repealed.

Background

578. Schedule 20 replicates the provisions of the Disability Discrimination Act 1995 sections 47A to 47M as inserted by the Disability Discrimination Act 2005 (but not yet in force).

579. This clause is necessary since the Department for Transport is currently consulting¹ on the reappraisal of the introduction of compliance certification and civil enforcement powers for rail vehicle accessibility, as provided for by amendments introduced into the Disability Discrimination Act 1995 by the Disability Discrimination Act 2005 but not yet in force. The

1. Rail Service for Disabled People - Consultation on Improving Accessibility of Light Rail Vehicles. Available from www.dft.gov.uk/consultations/open.

- (4) The Secretary of State may by regulations set out the basis on which the Secretary of State, when making an order under section 176(1), will decide which of the parliamentary procedures available under subsection (1) is to be adopted in connection with the making of the order.
- (5) Before making regulations under subsection (4), the Secretary of State must 5 consult—
 - (a) the Disabled Persons Transport Advisory Committee; and
 - (b) such other persons as the Secretary of State considers appropriate.

178 Annual report on exemption orders

- (1) After the end of each calendar year the Secretary of State must prepare a report 10 on—
 - (a) the exercise in that year of the power to make orders under section 176(1);
 - (b) the exercise in that year of the discretion under section 177(1).
- (2) A report under subsection (1) must (in particular) contain— 15
 - (a) details of each order made under section 176(1) in the year in question;
 - (b) details of consultation carried out under sections 176(4) and 177(2) in connection with orders made in that year under section 176(1).
- (3) The Secretary of State must lay before each House of Parliament each report 20 prepared under this section.

179 Rail vehicle accessibility: compliance

- (1) Schedule 20 (rail vehicle accessibility: compliance) has effect.
- (2) This section and that Schedule are repealed at the end of 2010 if the Schedule is not brought into force (either fully or to any extent) before the end of that year. 25

consultation period ends on 3 July 2009 but, in order to accommodate possible outcomes of the consultation exercise (i.e. implementation of compliance certification and civil enforcement powers or otherwise) on the face of the Bill, it has been necessary to include these provisions in the Schedule.

Clause 180: Interpretation of Chapter 3

Effect

580. This clause includes cross references to explanations as to what is meant by the terms “rail vehicle”, “regulated rail vehicle” and “rail vehicle accessibility regulations” used throughout this Chapter of the Bill. It also defines what is meant by use “for carriage”.

Background

581. This clause replicates the provisions of the Disability Discrimination Act 1995 as amended by the Disability Discrimination Act 2005.

Chapter 4: Supplementary

Clause 181: Forgery etc.

Effect

582. This clause makes it a criminal offence for a person to forge, alter, use, lend, or allow another person to use a, public service vehicle accessibility certificate, public service vehicle ‘type’ certificate or any exemption certificate issued in respect to assisting disabled passengers in taxis or carriage of assistance dogs, or to make or have in his possession a document which resembles such a certificate, with intent to deceive. It is also an offence to knowingly make a false statement in order to obtain any of these certificates.

Background

583. This clause replicates the effect of provisions inserted in the Disability Discrimination Act 1995 by the Disability Discrimination Act 2005.

part 13: disability: miscellaneous

180 Interpretation

- (1) In this Chapter –
 - “rail vehicle” and “regulated rail vehicle” have the meaning given in section 175(4);
 - “rail vehicle accessibility regulations” has the meaning given in section 175(1).
- (2) For the purposes of this Chapter a vehicle is used “for carriage” if it is used for the carriage of passengers.

CHAPTER 4

SUPPLEMENTARY

10

181 Forgery etc.

- (1) In this section “relevant document” means –
 - (a) an exemption certificate issued under section 159, 162 or 164;
 - (b) a notice of a kind mentioned in section 159(3)(b), 162(4)(b) or 164(4)(b);
 - (c) an accessibility certificate (see section 169); 15
 - (d) an approval certificate (see section 170).
- (2) A person commits an offence if, with intent to deceive, the person –
 - (a) forges, alters or uses a relevant document;
 - (b) lends a relevant document to another person;
 - (c) allows a relevant document to be used by another person; 20
 - (d) makes or has possession of a document which closely resembles a relevant document.
- (3) A person guilty of an offence under subsection (2) is liable –
 - (a) on summary conviction, to a fine not exceeding the statutory maximum; 25
 - (b) on conviction on indictment, to imprisonment for a term not exceeding 2 years or to a fine or to both.
- (4) A person commits an offence by knowingly making a false statement for the purpose of obtaining an accessibility certificate or an approval certificate.
- (5) A person guilty of an offence under subsection (4) is liable on summary conviction to a fine not exceeding level 4 on the standard scale. 30

Clause 182: Reasonable adjustments

Effect

584. This clause applies the supplementary provisions on reasonable adjustments set out in Schedule 21 to the fields of services, premises, work, education, and associations where a person providing a service, or delivering functions, an employer, or an education provider, or an association is required to consider reasonable adjustments to premises which it rents and would require the landlord's consent to proceed.

Clause 183: Improvements to let dwelling houses

Effect

585. This clause provides a procedure for a disabled tenant or occupier of rented residential premises to seek consent to make a disability-related improvement to the premises where the lease allows a tenant to make an improvement only with the consent of the landlord. The landlord may not unreasonably withhold consent, but may place reasonable conditions on the consent. A landlord who refuses consent must set out the reasons for that refusal. In deciding whether a refusal or condition is unreasonable, the onus is on the landlord to show that it is not. This clause applies to all leases of residential property used as the occupier or tenant's only or main residence, other than a protected tenancy, a statutory tenancy or a secure tenancy. That is because similar rights already apply in respect of those tenancies under the Housing Acts 1980 and 1985.

586. This clause applies only in England and Wales.

Background

587. This clause replaces similar provisions in the Disability Discrimination Act 1995.

Examples

- A disabled tenant who has mobility problems asks her landlord to consent to the installation of a walk-in shower and a grab rail to help her use the lavatory. Her landlord refuses consent. It would be for the landlord to give reasons for the refusal, and to show that it was not unreasonable.
- The landlord consents to the fitting of the grab rail and shower, on condition that their colour matches the other bathroom fittings, and that they must be removed if the disabled person moves out of the property. These might be reasonable conditions, but it is for the landlord to show that they are.

PART 13

DISABILITY: MISCELLANEOUS

182 Reasonable adjustments

Schedule 21 (reasonable adjustments: supplementary) has effect.

183 Improvements to let dwelling houses

5

- (1) This section applies in relation to a lease of a dwelling house if each of the following applies—
 - (a) the tenancy is not a protected tenancy, a statutory tenancy or a secure tenancy;
 - (b) the tenant or another person occupying or intending to occupy the¹⁰ premises is a disabled person (D);
 - (c) D occupies or intends to occupy the premises as D's only or main home;
 - (d) the tenant is entitled, with the consent of the landlord, to make improvements to the premises;
 - (e) the tenant applies to the landlord for consent to make a relevant¹⁵ improvement.
- (2) Where the tenant applies in writing for the consent—
 - (a) if the landlord refuses to give consent, the landlord must give the tenant a written statement of the reason why the consent was withheld;
 - (b) if the landlord neither gives nor refuses to give consent within a²⁰ reasonable time, consent must be taken to have been unreasonably withheld.
- (3) If the landlord gives consent subject to a condition which is unreasonable, the consent must be taken to have been unreasonably withheld.
- (4) If the landlord's consent is unreasonably withheld, it must be taken to have²⁵ been given.
- (5) On any question as to whether—
 - (a) consent was unreasonably withheld, or
 - (b) a condition imposed was unreasonable,it is for the landlord to show that it was not. 30
- (6) If the tenant fails to comply with a reasonable condition imposed by the landlord on the making of a relevant improvement, the failure is to be treated as a breach by the tenant of an obligation of the tenancy.
- (7) An improvement to premises is a relevant improvement if, having regard to D's disability, it is likely to facilitate D's enjoyment of the premises. 35

Part 14: General exceptions

Clause 184: Statutory provisions

Effect

588. This clause gives effect to Schedule 22, which allows differential treatment which would otherwise be made unlawful by specific parts of the Bill, where that is required by law. It also allows differential treatment of pregnant women for their own protection, and allows people of particular religions or beliefs to be appointed to specified educational posts. It also allows rules about Crown employment to provide for differential treatment on the basis of nationality.

Clause 185: National security

Effect

589. This clause ensures that the Bill does not make it unlawful to do anything which is proportionate in order to safeguard national security.

Background

590. The clause replaces similar exceptions in current legislation, narrowing those which excuse disability discrimination in some areas or sex discrimination. For the first time, it provides a national security exception in relation to age and sexual orientation discrimination outside work.

- (8) Subsections (2) to (7) apply only in so far as provision of a like nature is not made by the lease.
- (9) In this section –
- “improvement” means an alteration in or addition to the premises and includes – 5
 - (a) an addition to or alteration in the landlord’s fittings and fixtures;
 - (b) an addition or alteration connected with the provision of services to the premises;
 - (c) the erection of a wireless or television aerial; 10
 - (d) carrying out external decoration.
 - “lease” includes a sub-lease or other tenancy, and “landlord” and “tenant” are to be construed accordingly;
 - “protected tenancy” has the same meaning as in section 1 of the Rent Act 1977; 15
 - “statutory tenancy” must be construed in accordance with section 2 of that Act;
 - “secure tenancy” has the same meaning as in section 79 of the Housing Act 1985.

PART 14

20

GENERAL EXCEPTIONS

184 Statutory provisions

Schedule 22 has effect.

185 National security

A person does not contravene this Act only by doing, for the purpose of safeguarding national security, anything it is proportionate to do for that purpose.

Example

- Denying people of a particular nationality access to sensitive information is not unlawful race discrimination under the Bill if it is proportionate in order to guard against terrorist attacks.

Clause 186: Charities

Effect

591. This clause allows charities to provide benefits only to people who share the same protected characteristic (for example sex, sexual orientation or disability), if this is in line with their charitable instrument and if it is objectively justified or to prevent or compensate for disadvantage. It remains unlawful for them to limit their beneficiaries by reference to their colour – and if they do their charitable instrument will be applied as if that limitation did not exist.

592. Charities must not restrict benefits consisting of employment, contract work or vocational training to people who share a protected characteristic, except that the clause does allow people to provide, and the Government to agree, arrangements for, supported employment only for people with the same disability, or disabilities of a description to be set out in Regulations.

593. The clause also allows certain charities to make acceptance of a religion or belief a condition of membership, if they have done so since before 18 May 2005. It also allows single-sex activities for the purpose of promoting or supporting a charity (such as women only fun-runs), and allows the charity regulators to exercise their functions in a charity's interests, taking account of what is said in its charitable instrument, without contravening the Bill.

Background

594. This clause replicates the effect of separate exceptions in current discrimination law allowing charities to benefit only people who share a protected characteristic, and creates new exceptions along these lines for charities benefiting only people of the same age group or with the same disability.

Examples

- It is lawful for the Women's Institute to provide educational opportunities only to women.
- It is lawful for the RNIB to employ, or provide special facilities for, visually impaired people in preference to other disabled people.
- A charitable instrument enabling the provision of benefits to black members of a community actually enables the benefits to be provided to all members of that community.
- It is lawful for the Scout Association to require boys joining the Scouts to promise to do their best to do their duty to God.

186 Charities

- (1) A person does not contravene this Act only by restricting the provision of benefits to persons who share a protected characteristic if—
 - (a) the person acts in pursuance of a charitable instrument, and
 - (b) the provision of the benefits is within subsection (2). 5
- (2) The provision of benefits is within this subsection if it is—
 - (a) a proportionate means of achieving a legitimate aim, or
 - (b) for the purpose of preventing or compensating for a disadvantage linked to the protected characteristic.
- (3) It is not a contravention of this Act for— 10
 - (a) a person who provides supported employment to treat persons who have the same disability or a disability of a prescribed description more favourably than those who do not have that disability or a disability of such a description in providing such employment;
 - (b) a Minister of the Crown to agree to arrangements for the provision of 15 supported employment which will, or may, have that effect.
- (4) If a charitable instrument enables the provision of benefits to persons of a class defined by reference to colour, it has effect for all purposes as if it enabled the provision of such benefits—
 - (a) to persons of the class which results if the reference to colour is ignored, 20 or
 - (b) if the original class is defined by reference only to colour, to persons generally.
- (5) It is not a contravention of this Act for a charity to require members, or persons wishing to become members, to make a statement which asserts or implies 25 membership or acceptance of a religion or belief.
- (6) Subsection (5) applies only if—
 - (a) the charity, or an organisation of which it is part, first imposed such a requirement before 18 May 2005, and
 - (b) the charity or organisation has not ceased since that date to impose 30 such a requirement.
- (7) It is not a contravention of section 27 for a person, in relation to an activity which is carried on for the purpose of promoting or supporting a charity, to restrict participation in the activity to persons of one sex.
- (8) A charity regulator does not contravene this Act only by exercising a function 35 in relation to a charity in a manner which the regulator thinks is expedient in the interests of the charity, having regard to the charitable instrument.
- (9) Subsection (1) does not apply to a contravention of—
 - (a) section 36;
 - (b) section 37; 40

- Race for Life, a women-only event which raises money for Cancer Research UK, is lawful.

Clause 187: Charities: supplementary

Effect

595. This clause makes it clear that clause 186 does not allow charities to restrict their benefits to people because of colour.

596. It explains what is meant by “charity” and related expressions used in clause 186.

Clause 188: Sport

Effect

597. This clause allows separate sporting competitions to continue to be organised for men and women where physical strength, stamina or physique are major factors in determining success or failure, and in which one sex is generally at a disadvantage in comparison with the other. It also makes it lawful to restrict participation of transsexual people in such competitions if this is necessary to uphold fair or safe competition, but not otherwise.

598. This clause allows the existing selection arrangements of national sports teams, regional or local clubs or related associations to continue. It also protects “closed” competitions where participation is limited to people who meet a requirement relating to nationality, place of birth or residence.

Background

599. This clause replaces similar provisions in current discrimination law.

Examples

- It would be lawful to make men and women, though not necessarily younger boys and girls, compete in separate 100 metre races.
- It would be lawful to require participants in a county tennis championship to have been born in that county or to have lived there for a minimum period prior to the event.

- (c) section 38;
 - (d) section 52, so far as relating to the provision of vocational training.
- (10) Subsection (9) does not apply in relation to disability.

187 Charities: supplementary

- (1) This section applies for the purposes of section 186. 5
- (2) That section does not apply to race, so far as relating to colour.
- (3) “Charity” –
 - (a) in relation to England and Wales, has the meaning given by the Charities Act 2006;
 - (b) in relation to Scotland, means a body entered in the Scottish Charity 10 Register.
- (4) “Charitable instrument” means an instrument establishing or governing a charity (including an instrument made or having effect before the commencement of this section).
- (5) The charity regulators are – 15
 - (a) the Charity Commission for England and Wales;
 - (b) the Scottish Charity Regulator.
- (6) “Supported employment” means facilities provided, or in respect of which payments are made, under section 15 of the Disabled Persons (Employment) Act 1944. 20

188 Sport

- (1) A person does not contravene this Act, so far as relating to sex, only by doing anything in relation to the participation of another as a competitor in a gender-affected activity.
- (2) A person does not contravene section 27, 31, 32 or 33, so far as relating to 25 gender reassignment, only by doing anything in relation to the participation of a transsexual person as a competitor in a gender-affected activity if it is necessary to do so to secure in relation to the activity –
 - (a) fair competition, or
 - (b) the safety of competitors. 30
- (3) A gender-affected activity is a sport, game or other activity of a competitive nature in circumstances in which the physical strength, stamina or physique of average persons of one sex would put them at a disadvantage compared to average persons of the other sex as competitors in events involving the activity.
- (4) In considering whether a sport, game or other activity is gender-affected in 35 relation to children, it is appropriate to take account of the age and stage of development of children who are likely to be competitors.
- (5) A person who does anything to which subsection (6) applies does not contravene this Act only because of the nationality or place of birth of another or because of the length of time the other has been resident in a particular area 40 or place.
- (6) This subsection applies to –

Clause 189: General

Effect

600. This clause gives effect to Schedule 23, which contains a number of general exceptions to the prohibitions against discrimination and harassment, covering acts authorised by statute or the Government, organisations relating to religion or belief, communal accommodation and training provided to people who are not resident in the EEA.

Clause 190: Age

Effect

601. This clause enables a Minister of the Crown to make orders setting out exceptions to the prohibition on discriminating against people outside the workplace because of age if they are over 18. These exceptions can relate to particular conduct or practices, or things done for particular purposes, or things done under particular arrangements, as set out in any order made under this power

602. Orders under this power may amend primary legislation including the Act resulting from this Bill and (under clause 194(2)) are subject to the affirmative resolution procedure.

Background

603. This is a new provision designed to allow exceptions to be made from the new prohibitions on age discrimination in the provision of services and the exercise of public functions.

Examples

604. Appropriate age based treatment may include the following:

- concessionary travel for older and young people;
- disease prevention programmes such as cancer screening targeted at people in particular age groups on the basis of clinical evidence;
- age differences in the calculation of annuities and insurance programmes which are reasonable and based on adequate evidence of the underlying difference in risk;
- holidays for particular age groups.

- (a) selecting one or more persons to represent a country, place or area or a related association, in a sport or game or other activity of a competitive nature;
- (b) doing anything in pursuance of the rules of a competition so far as relating to eligibility to compete in a sport or game or other such activity.

189 General

Schedule 23 (general exceptions) has effect.

190 Age

- (1) A Minister of the Crown may by order amend this Act to provide that any of the following does not contravene this Act so far as relating to age –
 - (a) specified conduct;
 - (b) anything done for a specified purpose;
 - (c) anything done in pursuance of arrangements of a specified description.
- (2) Specified conduct is conduct – 15
 - (a) of a specified description,
 - (b) carried out in specified circumstances, or
 - (c) by or in relation to a person of a specified description.
- (3) This section is not affected by any provision of this Act which makes special provision in relation to age. 20
- (4) The references to this Act in subsection (1) do not include references to –
 - (a) Part 5 (work);
 - (b) Chapter 2 of Part 6 (further and higher education).

PART 15

GENERAL AND MISCELLANEOUS 25

Community obligations

Part 15: General**Clause 191 Harmonisation**

Effect

605. This clause enables a Minister of the Crown to amend the Act resulting from the Bill and the Equality Act 2006, to ensure consistency across the legislation where changes required by European law would otherwise result in inconsistent provision. Section 2(2)(a) of the European Communities Act 1972 allows a Minister by regulations or order to give effect to a right or obligation arising out of a Community law provision. Where provisions of this Bill and equality law of the UK more generally deal with a sector on a single basis some of the matters covered may not be within the reach of European community law and so outside s.2(2)(a). This arises for instance in the case of nationality and colour which are not dealt with under the Community law provisions on race discrimination but are covered by the UK provisions. Section 2(2)(b) of the European Communities Act 1972 would not allow amendment of all relevant parts of the legislation in these circumstances, because the change required in respect of, say nationality or colour, would not be consequential on or arising out of the Community obligation. In order to retain the unitary approach to discrimination law it is necessary to have a power such as this so that in appropriate cases amendments can also be made to those areas of the Bill unaffected by new Community law obligations

606. A Minister may use this power only after consulting interested parties, and any regulations must be laid before each House of Parliament for approval. A Minister must report to Parliament every five years on use of this power.

Background

607. This is a new provision designed to ensure that the areas of the Bill that are covered by European law and those that are domestic in origin do not get out of step, as was the case with the current legislation.

Example

- A future European Court of Justice judgment on the Race Directive requires an amendment to alter the definition of indirect discrimination. This power could be used to ensure that any such amendment applies to the “colour and nationality” elements of race in the Bill, as well as those in relation to which EU law applies.

Clause 192: Crown application

Effect

608. This clause sets out how the Bill applies to Ministers, government departments and certain statutory bodies – collectively known as the Crown. The clause does not affect the Sovereign in her private capacity.

191 Harmonisation

- (1) This section applies if –
 - (a) there is a Community obligation of the United Kingdom which a Minister of the Crown thinks relates to the subject matter of the Equality Acts, 5
 - (b) the obligation is to be implemented by the exercise of the power under section 2(2) of the European Communities Act 1972 (the implementing power), and
 - (c) the Minister thinks that it is appropriate to make harmonising provision in the Equality Acts. 10
- (2) The Minister may by order make the harmonising provision.
- (3) Before making the order, the Minister must consult persons and organisations the Minister thinks are likely to be affected by the harmonising provision.
- (4) The consultation must be in such form or manner as the Minister thinks appropriate. 15
- (5) Unless the Minister thinks that the making of the order is a matter of urgency, the Minister must not make the order before the end of the period of 12 weeks after the consultation starts.
- (6) The Equality Acts are the Equality Act 2006 and this Act.
- (7) Harmonising provision is provision made in relation to relevant subject matter 20 of the Equality Acts –
 - (a) which corresponds to the implementing provision, or
 - (b) which the Minister thinks is necessary or expedient in consequence of or related to provision made in pursuance of paragraph (a) or the implementing provision. 25
- (8) The implementing provision is provision made or to be made in exercise of the implementing power in relation to so much of the subject matter of the Equality Acts as implements a Community obligation.
- (9) Relevant subject matter of the Equality Acts is so much of the subject matter of those Acts as does not implement a Community obligation. 30
- (10) A harmonising provision may amend a provision of the Equality Acts.
- (11) The reference to this Act does not include a reference to this section or Schedule 24 or to a provision specified in that Schedule.
- (12) A Minister of the Crown must report to Parliament on the exercise of the power under subsection (2) – 35
 - (a) at the end of the period of 5 years starting on the day this section comes into force;
 - (b) at the end of each succeeding period of 5 years.

Application

192 Crown application

40

- (1) The following provisions of this Act bind the Crown –
 - (a) Part 1 (public sector duty regarding socio-economic inequalities);

Background

609. This clause replicates the effect of similar provisions in current legislation. The principle is that the machinery of government, both elected and administrative, should be subject to the Bill in the same way as everybody else, unless there are good reasons for it not being. The clause also replicates the arrangements in the current discrimination legislation for taking proceedings against the Crown.

Example

- A government department as employer must not discriminate against an employee on the grounds of race, just as any other employer is prohibited from doing so under the Bill.

Clause 193: Information society services

Effect

610. This clause gives effect to Schedule 24, which sets out how the clauses which make it unlawful to discriminate against, harass or victimise a person because of a protected characteristic apply to information society service providers (see the explanatory notes to Schedule 24).

Background

611. The provisions in Schedule 24 are new.

Clause 194: Exercise of power

612. This clause makes provision for the powers to make secondary legislation under the Bill. Unless it is stated otherwise, they will be exercised by a Minister of the Crown and be statutory instruments. It also provides that orders and regulations may deal with different situations differently and include consequential and other provisions dealing with transition to the new provisions. Under subsection (6), in some cases, such as on commencement of the provisions of the Act the consequential provision can be used to amend an enactment and can make specific provision to deal with situations that exist at the time the provisions come into force.

- (b) Part 3 (services and public functions), so far as relating to the exercise of public functions;
 - (c) Chapter 1 of Part 11 (public sector equality duty).
- (2) Part 5 (work) binds the Crown as provided for by that Part.
- (3) The remainder of this Act applies to Crown acts as it applies to acts done by a private person.
- (4) For the purposes of subsection (3), an act is a Crown act if (and only if) it is done –
- (a) by or on behalf of a member of the executive;
 - (b) by a statutory body acting on behalf of the Crown; 10
 - (c) by or on behalf of the holder of a statutory office acting on behalf of the Crown.
- (5) A statutory body or office is a body or office established by an enactment.
- (6) The provisions of Parts 2 to 4 of the Crown Proceedings Act 1947 apply to proceedings against the Crown under this Act as they apply to proceedings in England and Wales which, as a result of section 23 of that Act, are treated for the purposes of Part 2 of that Act as civil proceedings by or against the Crown.
- (7) The provisions of Part 5 of that Act apply to proceedings against the Crown under this Act as they apply to proceedings in Scotland which, as a result of that Part, are treated as civil proceedings by or against the Crown. 20
- (8) But the proviso to section 44 of that Act (removal of proceedings from the sheriff to the Court of Session) does not apply to proceedings under this Act.

193 Information society services

Schedule 25 (information society services) has effect.

Subordinate legislation

25

194 Exercise of power

- (1) A power to make an order or regulations under this Act is exercisable by a Minister of the Crown, unless expressly provided to the contrary.
- (2) Orders, regulations or rules under this Act must be made by statutory instrument. 30

Clause 195: Ministers of the Crown

Effect

613. This clause establishes which Parliamentary procedures apply to the regulations and orders which can be made by Ministers of the Crown under the Bill.

Background

614. In common with any Bill containing powers to make secondary legislation, this clause is needed to set out the arrangements for how Parliament is to control the use of powers in the Bill. It provides for any instrument amending any Act (including the Act resulting from this Bill), any Act of the Scottish Parliament or Act or Measure of the Welsh Assembly to be made only using the affirmative procedure. There are some exceptions. In a few other cases – for example where regulations under clause 73 are made to introduce a requirement on employers to report on their gender pay gap the affirmative procedure must also be used and the relevant order or regulations must be approved by both Houses of Parliament before they can come into force.

- (3) Subsection (2) does not apply to—
 - (a) a transitional exemption order under Part 1 of Schedule 11,
 - (b) a transitional exemption order under Part 1 of Schedule 12, or
 - (c) an order under paragraph 1(3) of Schedule 14 that does not modify an enactment. 5
- (4) Orders or regulations under this Act—
 - (a) may make different provision for different purposes;
 - (b) may include consequential, incidental, supplementary, transitional, transitory or saving provision.
- (5) Nothing in section 156(4), 167(4) or 175(3) affects the generality of the power10 under subsection (4)(a).
- (6) The power under subsection (4)(b), in its application to section 147, 148(2), 149(5), 190 or 203 or to paragraph 7(1) of Schedule 11 or paragraph 1(3) or 2(3) of Schedule 14, includes power to amend an enactment (including, in the case of section 190, this Act). 15

195 Ministers of the Crown

- (1) This section applies where the power to make an order or regulations under this Act is exercisable by a Minister of the Crown.
- (2) A statutory instrument containing (whether alone or with other provision) an order or regulations that amend this Act or another Act of Parliament, or an20 Act of the Scottish Parliament or an Act or Measure of the National Assembly for Wales, is subject to the affirmative procedure.
- (3) But a statutory instrument is not subject to the affirmative procedure by virtue of subsection (2) merely because it contains—
 - (a) an order under section 2 (socio-economic inequalities); 25
 - (b) an order under section 56 (local authority functions);
 - (c) an order under section 145 (power to specify public authorities for the purposes of the public sector equality duty);
 - (d) an order under paragraph 1(3) of Schedule 14 that modifies an enactment (educational charities and endowments). 30
- (4) A statutory instrument containing (whether alone or with other provision) an order or regulations mentioned in subsection (5) is subject to the affirmative procedure.
- (5) The orders and regulations referred to in subsection (4) are—
 - (a) regulations under section 28 (services: ships and hovercraft); 35
 - (b) regulations under section 73 (gender pay gap information);
 - (c) regulations under section 76 (work: ships and hovercraft);
 - (d) an order under section 100 (election candidates: expiry of provision);
 - (e) regulations under section 147 or 148(2) (public sector equality duty);
 - (f) regulations under section 177(4) (rail vehicle accessibility: procedure40 for exemption orders);
 - (g) an order under section 191 (Community obligations: harmonisation);
 - (h) regulations under paragraph 9(3) of Schedule 20 (rail vehicle accessibility: determination of turnover for purposes of penalties).

Clause 196: The Welsh Ministers

Effect

615. This clause establishes the Parliamentary procedures that apply to regulations and orders under the Bill made by Welsh Ministers.

616. Most do not automatically need to be considered by the National Assembly for Wales. However, in most cases they can be opposed, in which case they may be considered by the Assembly in plenary session. Instruments imposing specific duties on public authorities or cross border authorities must be considered before they can come into force.

Background

617. In common with any Bill containing powers to make secondary legislation, this clause is needed to set out who is to make regulations and orders (usually a Minister), how their effect may vary according to particular circumstances and the arrangements for Assembly control over their exercise.

Clause 197: The Scottish Ministers

Effect

618. This clause establishes the parliamentary procedures that apply to regulations and orders under the Bill made by Scottish Ministers.

619. Most do not automatically need to be debated by the Scottish Parliament. However, in most cases they can be opposed, in which case a debate may be held. Instruments imposing

- (6) A statutory instrument other than one mentioned in subsection (2) or (4) is subject to the negative procedure.
- (7) But a statutory instrument is not subject to the negative procedure by virtue of subsection (6) merely because it contains –
 - (a) an order under section 176(1) (rail vehicle accessibility: exemptions); 5
 - (b) an order under section 203 (commencement) that does not amend an Act of Parliament, an Act of the Scottish Parliament or an Act or Measure of the National Assembly for Wales.
- (8) If a statutory instrument is subject to the affirmative procedure, the order or regulations contained in it must not be made unless a draft of the instrument¹⁰ is laid before and approved by a resolution of each House of Parliament.
- (9) If a statutory instrument is subject to the negative procedure, it is subject to annulment in pursuance of a resolution of either House of Parliament.
- (10) If a draft of a statutory instrument mentioned in subsection (2) or (4) would, apart from this subsection, be treated for the purposes of the Standing Orders¹⁵ of either House of Parliament as a hybrid instrument, it is to proceed in that House as if it were not a hybrid instrument.

196 The Welsh Ministers

- (1) This section applies where the power to make an order or regulations under this Act is exercisable by the Welsh Ministers. 20
- (2) A statutory instrument containing (whether alone or with other provision) regulations mentioned in subsection (3) is subject to the affirmative procedure.
- (3) The regulations referred to in subsection (2) are –
 - (a) regulations under section 147 or 148(2) (public sector equality duty: powers to impose specific duties); 25
 - (b) regulations under section 149(5) that amend an Act of Parliament or an Act or Measure of the National Assembly for Wales (public sector equality duty: power to modify or remove specific duties).
- (4) A statutory instrument other than one mentioned in subsection (2) is subject to the negative procedure. 30
- (5) If a statutory instrument is subject to the affirmative procedure, the regulations contained in it must not be made unless a draft of the instrument is laid before and approved by a resolution of the National Assembly for Wales.
- (6) If a statutory instrument is subject to the negative procedure, it is subject to annulment in pursuance of a resolution of the National Assembly for Wales. 35

197 The Scottish Ministers

- (1) This section applies where the power to make an order, regulations or rules under this Act is exercisable by the Scottish Ministers.
- (2) A statutory instrument containing (whether alone or with other provision) regulations mentioned in subsection (3) is subject to the affirmative procedure. 40

specific duties on public authorities or cross border authorities must be debated before they can come into force.

Background

620. In common with any Bill containing powers to make secondary legislation, this clause is needed to set out who is to make regulations and orders (usually a Minister), how their effect may vary according to particular circumstances and the arrangements for Parliamentary control over their exercise.

Clause 198: Amendments, repeals and revocations

Effect

621. This clause gives effect to Schedules 26 and 27. Schedule 26 contains amendments to other Acts which are necessary as a consequence of the Bill's provisions. Schedule 27 lists the provisions in current legislation which will cease to have effect when the relevant provisions of the Bill are brought into force.

Clause 199: General interpretation

Effect

622. This clause explains what is meant by various words and phrases which appear in more than one Part of the Bill.

Background

623. While a key objective of the Bill is to present discrimination law in plain language and most words used in the Bill have an ordinarily obvious meaning, it is sometimes necessary to make clear the specific legal meaning of some words and phrases that are used several times in the Bill.

624. Other important words and phrases appear in only one Part or Chapter of the Bill. Where necessary these are defined in the Part or Chapter where they appear. Others are not defined at all, either because they are clear, or because they are to be interpreted in accordance with the Interpretation Act 1978.

Examples

- It is necessary to clarify in this clause that “detriment” excludes harassment, to prevent an overlap with victimisation, which uses “detriment” to describe bad or unfavourable conduct in retaliation for a person doing some action under the Bill.

- (3) The regulations referred to in subsection (2) are—
 - (a) regulations under section 147 or 148(2) (public sector equality duty: powers to impose specific duties);
 - (b) regulations under section 149(5) that amend an Act of Parliament or an Act of the Scottish Parliament (public sector equality duty: power to modify or remove specific duties).
- (4) A statutory instrument other than one mentioned in subsection (2) is subject to the negative procedure.
- (5) If a statutory instrument is subject to the affirmative procedure, the regulations contained in it must not be made unless a draft of the instrument is laid before 10 and approved by a resolution of the Scottish Parliament.
- (6) If a statutory instrument is subject to the negative procedure, it is subject to annulment in pursuance of a resolution of the Scottish Parliament.

Amendments, etc.

198 Amendments, repeals and revocations 15

- (1) Schedule 26 (which contains amendments) has effect.
- (2) Schedule 27 (which contains repeals and revocations) has effect.

Interpretation

199 General interpretation

- (1) In this Act—20
 - “armed forces” means any of the naval, military or air forces of the Crown;
 - “the Commission” means the Commission for Equality and Human Rights;
 - “detriment” does not include conduct which amounts to harassment;
 - “the Education Acts” has the meaning given in section 578 of the 25 Education Act 1996;
 - “employment” and related expressions are (subject to subsection (10)) to be read with section 78;
 - “enactment” means an enactment contained in—30
 - (a) an Act of Parliament,
 - (b) an Act of the Scottish Parliament,
 - (c) an Act or Measure of the National Assembly for Wales, or
 - (d) subordinate legislation;
 - “equality clause” means a sex equality clause or maternity equality clause;
 - “equality rule” means a sex equality rule or maternity equality rule; 35
 - “man” means a male of any age;
 - “maternity equality clause” has the meaning given in section 68;
 - “maternity equality rule” has the meaning given in section 70;

- The Equality and Human Rights Commission is mentioned in a number of clauses. It therefore makes sense to refer to “the Commission” throughout and define it in this clause.
- “Parent” is used in a number of places in the Bill, including the victimisation provisions and several Schedules. Rather than seeking to produce a new definition, this clause explains that the existing definitions in the relevant Education Acts apply.

- “non-discrimination rule” has the meaning given in section 57;
- “occupational pension scheme” has the meaning given in section 1 of the Pension Schemes Act 1993;
- “parent” has the same meaning as in –
- (a) the Education Act 1996 (in relation to England and Wales); 5
 - (b) the Education (Scotland) Act 1980 (in relation to Scotland);
- “prescribed” means prescribed by regulations;
- “profession” includes a vocation or occupation;
- “sex equality clause” has the meaning given in section 61;
- “sex equality rule” has the meaning given in section 62; 10
- “subordinate legislation” means –
- (a) subordinate legislation within the meaning of the Interpretation Act 1978, or
 - (b) an instrument made under an Act of the Scottish Parliament or an Act or Measure of the National Assembly for Wales; 15
- “trade” includes any business;
- “woman” means a female of any age.
- (2) A reference (however expressed) to an act includes a reference to an omission.
- (3) A reference (however expressed) to an omission includes (unless there is express provision to the contrary) a reference to – 20
- (a) deliberate omission to do a thing;
 - (b) refusal to do it;
 - (c) failure to do it.
- (4) A reference (however expressed) to providing or affording access to a benefit, facility or service includes a reference to facilitating access to the benefit, 25 facility or service.
- (5) A reference to occupation, in relation to premises, is a reference to lawful occupation.
- (6) The following are members of the executive –
- (a) a Minister of the Crown; 30
 - (b) a government department;
 - (c) the Welsh Ministers, the First Minister for Wales or the Counsel General to the Welsh Assembly Government;
 - (d) any part of the Scottish Administration.
- (7) A reference to a breach of an equality clause or rule is a reference to a breach of 35 a term modified by, or included by virtue of, an equality clause or rule.
- (8) A reference to a contravention of this Act does not include a reference to a breach of an equality clause or rule, unless there is express provision to the contrary.
- (9) “Member”, in relation to an occupational pension scheme, means an active 40 member, a deferred member or a pensioner member (within the meaning, in each case, given by section 124 of the Pensions Act 1995).
- (10) “Employer”, “pension credit member”, “pensionable service”, “pensioner member” and “trustees or managers” each have, in relation to an occupational pension scheme, the meaning given by section 124 of the Pensions Act 1995. 45

Clause 200: References to maternity leave, etc.

Effect

625. This clause explains what is meant by the different periods of maternity leave which are referred to in the Bill.

Background

626. The rights of female employees to statutory maternity leave are provided for in the Employment Rights Act 1996. Compulsory maternity leave, ordinary maternity leave and additional maternity leave are the three types of maternity leave provided for in sections 72(1), 71(1) and 73(1) of that Act respectively.

Clause 201: Index of defined expressions

Effect

627. This clause gives effect to, and introduces Schedule 28, which provides an index of the expressions that are defined in the Bill.

Clause 202: Money

Effect

628. This clause is included to comply with rules of procedure on financial matters. It does not, of itself, authorise expenditure that is not covered elsewhere in the Bill.

- (11) A reference to the accrual of rights under an occupational pension scheme is to be construed in accordance with that section.

200 References to maternity leave, etc.

- (1) This section applies for the purpose of this Act.
- (2) A reference to a woman on maternity leave is a reference to a woman on— 5
- (a) compulsory maternity leave,
 - (b) ordinary maternity leave, or
 - (c) additional maternity leave.
- (3) A reference to a woman on compulsory maternity leave is a reference to a woman absent from work because she satisfies the conditions prescribed for 10 the purposes of section 72(1) of the Employment Rights Act 1996.
- (4) A reference to a woman on ordinary maternity leave is a reference to a woman absent from work because she is exercising the right to ordinary maternity leave.
- (5) A reference to the right to ordinary maternity leave is a reference to the right 15 conferred by section 71(1) of the Employment Rights Act 1996.
- (6) A reference to a woman on additional maternity leave is a reference to a woman absent from work because she is exercising the right to additional maternity leave.
- (7) A reference to the right to additional maternity leave is a reference to the right 20 conferred by section 73(1) of the Employment Rights Act 1996.
- (8) “Additional maternity leave period” has the meaning given in section 73(2) of that Act.

201 Index of defined expressions

Schedule 28 lists the places where expressions used in this Act are defined or 25 otherwise explained.

Final provisions

202 Money

There is to be paid out of money provided by Parliament any increase attributable to this Act in the expenses of a Minister of the Crown. 30

Clause 203: Commencement

Effect

629. This clause sets out when some of the provisions in the Bill come into effect, and how the rest will be brought into force. The clauses relating to commencement, short title, subordinate legislation and interpretation will all come into force automatically on the day on which the Act receives royal assent. The rest of the Bill will be brought into force by commencement orders made by a Minister of the Crown. The orders will set out the date on which specific provisions start to have legal effect.

Clause 204: Extent

Effect

630. This clause explains that all of the provisions of the Bill are part of the law of England and Wales.

631. All of the provisions of the Bill, except for clause 183 (improvements to let dwelling houses), are also part of the law of Scotland.

632. In relation to Northern Ireland, the Bill is not part of Northern Ireland's law, except for the following,

- clause 77 (offshore work),
- clause 100 (expiry of Sex Discrimination (Election Candidates) Act 2002).

Clause 205: Short title

203 Commencement

- (1) The following provisions come into force on the day on which this Act is passed –
 - (a) section 179(2);
 - (b) this Part (except sections 193 and 198). 5
- (2) The other provisions of this Act come into force on such day as a Minister of the Crown may by order appoint.

204 Extent

- (1) This Act forms part of the law of England and Wales.
- (2) This Act, apart from section 183 (improvements to let dwelling houses), forms *10* part of the law of Scotland.
- (3) Each of the following also forms part of the law of Northern Ireland –
 - (a) section 77 (offshore work);
 - (b) section 100(3) and (4) (expiry of Sex Discrimination (Election Candidates) Act 2002). 15

205 Short title

This Act may be cited as the Equality Act 2009.

Equality Bill

A

B I L L

To make provision to require Ministers of the Crown and others when making strategic decisions about the exercise of their functions to have regard to the desirability of reducing socio-economic inequalities; to reform and harmonise equality law and restate the greater part of the enactments relating to discrimination and harassment related to certain personal characteristics; to enable certain employers to be required to publish information about the differences in pay between male and female employees; to prohibit victimisation in certain circumstances; to require the exercise of certain functions to be with regard to the need to eliminate discrimination and other prohibited conduct; to enable duties to be imposed in relation to the exercise of public procurement functions; to increase equality of opportunity; and for connected purposes.

*Presented by Ms Harriet Harman
supported by
The Prime Minister, Mr Chancellor of the Exchequer,
Secretary Jack Straw, Secretary Alan Johnson,
Secretary Hazel Blears, Secretary Geoff Hoon,
Secretary Ed Balls, Secretary James Purnell,
The Solicitor General, Mr Pat McFadden and Maria Eagle*

*Ordered, by The House of Commons,
to be Printed, 24 April 2009.*

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LONDON – THE STATIONERY OFFICE LIMITED
Printed in the United Kingdom by
The Stationery Office Limited
£x.xx