



House of Commons

Women and Equalities Committee

**Ensuring strong
equalities legislation
after the EU exit:
Government Response
to the Committee's
Seventh Report
of Session 2016–17**

First Special Report of Session 2017–19

*Ordered by the House of Commons
to be printed 13 September 2017*

HC 385

Published on 11 October 2017
by authority of the House of Commons

The Women and Equalities Committee

The Women and Equalities Committee is appointed by the House of Commons to examine the expenditure, administration, and policy of the Government Equalities Office (GEO).

Current membership

[Mrs Maria Miller MP](#) (*Conservative, Basingstoke*) (Chair)

[Angela Crawley MP](#) (*Scottish National Party, Lanark and Hamilton East*)

[Philip Davies MP](#) (*Conservative, Shipley*)

[Rosie Duffield MP](#) (*Labour, Canterbury*)

[Kirstene Hair MP](#) (*Conservative, Angus*)

[Jared O'Mara MP](#) (*Labour, Sheffield, Hallam*)

[Jess Phillips MP](#) (*Labour, Birmingham, Yardley*)

[Mr Gavin Shuker MP](#) (*Labour, Luton South*)

[Tulip Siddiq MP](#) (*Labour, Hampstead and Kilburn*)

Powers

The committee is one of the departmental select committees, the powers of which are set out in House of Commons Standing Orders, principally in SO No 152. These are available on the internet via www.parliament.uk.

Publication

Committee reports are published on the Committee's website at www.parliament.uk/womenandequalities and in print by Order of the House.

Evidence relating to this report is published on the [inquiry page](#) of the Committee's website.

Committee staff

The current staff of the Committee are Judith Boyce (Clerk), Luanne Middleton (Second Clerk), Tancy Hutchinson (Committee Specialist), Holly Dustin (Committee Specialist), Shai Jacobs (Committee Specialist), Alexandra Hunter-Wainwright (Senior Committee Assistant), Mandy Sullivan (Committee Assistant), and Liz Parratt (Media Officer).

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First Special Report

The Women and Equalities Committee published its Seventh Report of Session 2016–17, *Ensuring strong equalities legislation after the EU exit* (HC 799), on 28 February 2017. The Government's response was received on 12 September 2017 and is appended to this report.

In the Government's response, the Committee's recommendations appear in boxes and the Government's responses are in plain text.

Appendix: Government Response

Introduction

The UK Government's record on equalities is one of the best in the world and we are determined to ensure that this remains the case as, and after, we leave the European Union. We are committed to protecting and promoting equality and to eliminating discrimination – leaving the EU does nothing to change this.

Because decades of domestic legislation and transposed EU law have already been consolidated into the Equality Act 2010, this Act is the cornerstone of domestic equality law. The Government is committed to ensuring that all the protections in the Equality Act 2010 will continue to apply once we have left the EU.

The effect of these commitments will be to ensure the continued protection of people's rights not to be discriminated against, harassed or victimised in the provision of goods, services and public functions, housing, transport and education. These are rights provided by the Act, but supported by our longstanding commitment to equalities. We are absolutely clear that no one should suffer discrimination because of who they are or where they come from, and we will continue to take steps to ensure this is the case.

The government is similarly committed to maintaining the continued role of the Equality and Human Rights Commission (EHRC), the Equality Commission for Northern Ireland (ECNI) and the Northern Ireland Human Rights Commission (NIHRC), which all have important roles in enforcing and monitoring equalities and rights law within the UK. The Government supports the continued work of those bodies towards the elimination of unlawful discrimination and harassment, and values the advice those bodies provide to central and devolved Governments about equalities law.

The Report of the Committee does not deal with the responsibilities of the devolved administrations, or issues specific to Northern Ireland. The Government strongly supports continued protection of equality rights by the devolved administrations, following EU exit in areas within their competence.

In Scotland and Wales, any new equality requirements introduced under recently granted powers may supplement the Equality Act 2010, but cannot reduce protections enshrined in it.

Important ongoing protections include the public sector equality duties in the Equality Act 2010 and the Northern Ireland Act 1998. During the process of EU exit, these public

sector equality duties will continue to apply to all policy changes, as they do now. Public authorities will therefore need to have due regard to the potential equality implications of any changes that are being introduced as a result of the UK's exit from the EU, keeping equality at the heart of UK public policy.

The Government believes that these commitments provide a sound basis as we leave the EU, and a strong platform for further progress in the future.

The Government will continue to work towards equality and to realise important manifesto commitments in this area. As a country we have a lot to be proud of in this area, but we know that there is still more to do. We will continue to work to make this a country that works for everyone before, during and after our exit from the European Union.

The Government's policy and our inquiry

It is clear that the Government's policy intention is that there should be no erosion of the UK's equalities protections at the point of leaving the European Union. Our aim in conducting this inquiry has been to ensure that the goal of no erosion of rights and protections is attained. (Paragraph 13)

At present, domestic legislation and EU legal structures together provide the UK's strong equality protections. Stakeholders have expressed concern that the removal of the EU legal underpinning, including the court system, will lead to a weakening of equality protection in the future unless its full effects are understood. It is therefore important for the Government, during the process of leaving the EU, to ensure that robust equality protection is embedded at each milestone. The Government should ensure that equality protections—including but not limited to workers' rights—remain to the fore as negotiations begin and throughout the leaving process. (Paragraph 31)

Government response

The Government and the Committee share the goal of ensuring there is no erosion of equalities rights and protections at the point of leaving the EU. That is why we have specifically committed to retain the protections in the Equality Acts 2006 and 2010, and equivalent legislation in Northern Ireland.

The past 44 years have shown that, while the EU has indeed on occasion contributed to the development of the UK's own legislation and understanding of equalities, we do not need to be part of the EU, nor bound by EU legislation, to have strong equalities protections. For example, protections against discrimination, harassment or victimisation in the provision of goods and services to disabled people, and the public sector equality duty, both go beyond EU law. This Government has made a firm commitment to maintaining the UK's long standing record of ensuring our rights and traditional liberties are protected. The decision to leave the European Union does not change this.

Retaining the UK's strong legal equalities protections after exiting the EU

Leaving the EU provides an opportunity to return to Parliament its role to ensure that equalities are robustly protected. The Equality Act 2010 is the culmination of decades of development of domestic protection of equalities. An additional clause in that Act adding a function of a declaration of compatibility into the Equality Act would act as an entrenchment of these rights that were enacted by Parliament. (Paragraph 42)

The Government should give strong consideration to bringing forward an amendment to the Equality Act 2010 to mirror provisions in the Human Rights Act 1998. The purpose of that amendment would be to set out that public authorities must not act in a way that contravenes the Equality Act unless required to do so by another Act of Parliament; that ministers, when presenting any Bill, must make a declaration of compatibility with the Act; that interpretation of legislation by the courts must take account of the Act and be read as far as possible to comply with its provisions; and that, if any legislation is incompatible with the Act, a declaration of incompatibility should be made by the court. (Paragraph 43)

Government response

We have considered the Committee's recommendations carefully. It is however important to recognise that the Equality Act 2010 and the Human Rights Act 1998 differ in significant ways:

- The Human Rights Act incorporates Convention rights. This means that it brings into UK law rights which are set out in a European Convention which itself cannot be amended by Parliament. The Equality Act, by contrast, is a piece of domestic legislation that can be amended by Parliament.
- Under the Human Rights Act, the Minister declares whether legislation is compatible with Convention rights. There is no comparable set of rights within the Equality Act.
- It is already the case that public authorities must not breach the Equality Act unless required to do so by another Act. Furthermore, Ministers are already, and will continue to be, subject to the public sector equality duty in the Equality Act when formulating the policies which underpin legislation, whether on EU exit or other matters.

The Great Repeal Bill will be a significant opportunity for the Government to achieve its objective of maintaining existing equality protections at the point of leaving the EU, and to turn its policy intentions into legislative commitments. (Paragraph 58)

The Government should include a clause in the Great Repeal Bill that explicitly commits to maintaining the current levels of equalities protection when EU law is transposed into UK law. A number of different ways of drafting such a clause have been suggested to us, which we invite the Government to consider and comment on. (Paragraph 59)

The status in the UK of future EU case law is currently unclear. While the Government has been clear that existing case law will be transposed through the Great Repeal Bill, it has not provided such clarity for future case law. We therefore recommend that the proposed status of future Court of Justice of the EU case law be clarified and legislated for in the Great Repeal Bill. (Paragraph 60)

The Government's White Paper has stated that all existing legislation will be transposed into UK law as part of the Great Repeal Bill. The Government should be clear that this means all EU legal requirements that are in force on the day that the UK leaves the EU, not just those that are in force at the point of triggering Article 50. (Paragraph 61)

Government response

The purpose of the European Union (Withdrawal) Bill is to convert EU law into domestic law at the moment we leave the EU, rather than at the point when Article 50 was triggered. This means that, wherever practical and appropriate, the same rules and laws will apply on the day after we leave the EU as they did before. This approach will preserve the rights and obligations that already exist in the UK under EU law and provide a secure basis for further developments to our domestic law.

As already confirmed in the [‘Repeal Bill: White Paper’](#) published on 30 March, all protections covered in the Equality Act 2006, the Equality Act 2010, and equivalent legislation in Northern Ireland, as well as workers' rights with equality implications, will continue to apply after we have left the EU. This approach will give certainty to employers, employees, service providers and service users, creating stability in which the UK can grow and thrive.

The European Union (Withdrawal) Bill also provides that historic Court of Justice of the European Union (CJEU) case law be given the same binding, or precedent, status in our courts as decisions of our own Supreme Court. This will provide continuity in how that law is interpreted before and after we leave the EU.

We note that the Equality and Human Rights Commission has said it does not expect to be in direct communication with the Department for Exiting the EU. In order to identify implications for equality protections as the process of leaving the EU continues, that Department will need to have a strong internal lead on equalities matters and a named Ministerial lead. That lead should work with the Government Equalities Office in order to draw on its expertise. (Paragraph 66)

Government response

The EHRC's statement referred to here was based on our initial assumption about how the relationship between the Department for Exiting the EU (DExEU), the Government Equalities Office (GEO) and the EHRC would work. In practice, it has proved helpful for the EHRC and DExEU to be in direct contact, and there have been three-way discussions on EU exit between DExEU, GEO and the EHRC.

In addition, regular meetings between the Minister with EHRC sponsorship responsibilities (currently the Minister of State for School Standards and Minister for Equalities) and the EHRC Chair and CEO are provided for by the EHRC's Framework Document. This existing engagement provides a robust Ministerial link between Government and the EHRC on all issues, including EU exit.

DExEU will continue to work closely with other Departments, particularly the GEO, to ensure that due regard is given to the impact on equalities of our withdrawal from the EU. For example, an Equality Analysis has been published alongside the European Union (Withdrawal) Bill. Although there is no legal obligation on the Government to conduct and publish an equalities analysis of the Bill under the Equality Act, the Government has chosen at this early stage of EU exit to consider at a high level the potential impacts on equalities that may arise as a consequence of the provisions reflected in the Bill.

The role of civil society in UK equalities policy after exiting the EU

We believe that there is a wealth of expertise on equalities in civil society organisations that could be harnessed to enhance the development of UK equalities policies after exiting the EU. In some places, there are already platforms or structures in place that may need to be built upon. In others, they need to be developed. A joined-up approach across government departments will be important to ensure cohesive working, and with a focus on each equality area. (Paragraph 78)

The Government should develop a cross-government equality strategy, in order to ensure engagement across government departments and provide a platform for linking with and drawing on the expertise of civil society organisations. (Paragraph 79)

Government response

GEO has for some time been working very closely with the Department for Business, Energy and Industrial Strategy (BEIS), to ensure coherence between maintenance of equalities protections and workers' rights as we leave the EU. GEO is also working with a number of other Departments, including the Home Office, the Office for Disability Issues and the Department for Communities and Local Government.

GEO, together with DExEU, has convened a cross-government working group of these interests, to ensure that policy on equality-related issues is properly co-ordinated as we move towards EU exit. This group will also ensure that policy across these areas reflects this Government's longstanding commitment to protecting and promoting equality.

Both DExEU and the GEO have been engaging stakeholders on the questions raised by EU exit, through civil society consultation work and senior officials addressing NGO events on EU exit. GEO welcomes further engagement from NGOs on these issues.

Research on and funding for equalities after exiting the EU

We welcome the commitment by the Government to consult with stakeholders to review all EU funding. We urge that consultation with equality stakeholders begin immediately. (Paragraph 92)

As the UK leaves the EU, the UK Government should actively seek to maintain and embed participation in international networks for equalities research. Networks based around the United Nations, the Organisation for Economic Co-operation and Development and the International Labour Organisation are likely to become increasingly important. (Paragraph 93)

In addition, leaving the EU does not mean that the UK cannot continue to play a part in European networks. This may mean opting into these networks on a pro-rata basis, which may require funding that was previously provided as part of EU membership. The Government should seek to set aside funding for ensuring that UK research and civil society organisations can maintain international links that are vital for ensuring strong equality protection. (Paragraph 94)

The Government should assess the extent of research and other equality initiatives that currently receive EU funds. It should then work with research and civil society organisations to identify and develop alternative sources of funding from either state or non-state sources. These funds should be ring-fenced for the same purposes as they were originally allocated for by the EU to allow the current equalities research to continue uninterrupted. (Paragraph 95)

Government response

Questions about continuation of EU funding for research need to be seen in the context of the UK being a net contributor to the EU. However, the Minister for Women and Equalities' letter of 7 February 2017 to the Chair of the Committee noted that the GEO is working closely with the Ministry of Justice to assess the activities supported by the €439m Rights, Equality and Citizenship Programme 2014-2020, and the impact of changes on these activities following EU exit.

Particular aspects of this assessment include:

- the breakdown of the Programme's funding between projects in individual member states on the one hand and Europe-wide bodies or the Commission itself on the other;
- the split between Group 1 and Group 2 projects (respectively those to promote equality and combat discrimination in the first Group and those to prevent violence against vulnerable groups, promote children's rights, protect privacy and consumers' rights in the internal market in the second); and
- the cost/benefit analysis of different elements of the programme.

More broadly, the Equality and Diversity Forum, a national network of equality and human rights organisations, is seeking to map major funding streams financed by the EU that directly or indirectly target disadvantaged groups and promote human rights. DExEU and the GEO are in contact with the Forum and its researchers as this work, which is expected to report in autumn 2017, progresses.

The UK has a proud history of leading and supporting cutting-edge research and innovation within the EU. As we exit the EU, we would welcome agreement to continue to collaborate with our European partners on major science, research and technology initiatives. There may be specific European programmes that we might still want to participate in, and we will consider this as part of the negotiation.

In the meantime, the Government acted quickly to reassure participants in EU competitively funded research programmes. In August 2016, we announced that UK businesses and universities should continue to bid for competitive EU funds while we remain a member of the EU and we will work with the Commission to ensure payment when funds are awarded. The Treasury will underwrite the payment of such successful awards, even when specific projects continue beyond the UK's departure from the EU. The Government has also reassured organisations that Structural and Investment Fund projects signed before the UK withdraws from the EU, will be guaranteed by the Treasury after we leave. These projects will have to provide strong value for money evidence and be in line with UK strategic priorities.

This Government's sustained and consistent investment underscores our commitment to ensure the UK remains a leading destination for research and innovation. We were pleased to announce at Autumn Statement a substantial investment in this area, committing to spend an extra £2 billion a year by 2020/21, the biggest increase in decades.