

**Report to**

**Scrutiny Co-ordination Committee  
Cabinet  
Council**

**5 September 2007  
11 September 2007  
18 September 2007**

**Report of**

Chief Executive

**Title**

Discrimination Law Review: Proposals for a Single Equality Bill for Great Britain  
– Consultation Response

**1 Purpose of the Report**

- 1.1 This report summarises a proposed response to the Discrimination Law Review Consultation Paper attached as Appendix 1.

**2 Recommendations**

- 2.1 Scrutiny Co-ordination Committee is asked to consider the draft response set out in Appendix 1 of this report and forward comments to Cabinet for their consideration.
- 2.2 Cabinet is asked to consider the draft response, together with any comments from Scrutiny Co-ordination Committee, and to make the necessary recommendations to Council to enable a response to be made to the consultation paper.
- 2.3 Council is asked to consider the comments of Cabinet and to agree the Council's response.

**3 Information/Background**

- 3.1 Current discrimination law in the UK has developed over time and there are separate Acts, Regulations or guidance relating to Race, Gender, Disability, Sexual Orientation, Religion or Belief and Age. This has resulted in a legislative framework that is not always consistent across every area.
- 3.2 The Department for Communities and Local Government (DCLG) published a Green Paper "A Framework for Fairness: Proposals for a Single Equality Bill for Great Britain" for consultation on 12 June 2007. The proposals are the outcome of the Discrimination Law Review established in February 2005 to consider "*the opportunities for creating a clearer and more streamlined equality legislation framework which produces better outcomes for those who experience disadvantage ... while reflecting better regulation principles.*" It takes forward the Government's manifesto commitment to introduce a single equality bill in the lifetime of this Parliament. Responses are required by 4 September 2007.

- 3.3 The consultation document is an extensive paper consisting of 189 pages and is accompanied by a 113 page Initial Regulatory Impact Assessment and a 49 page Equality Impact Assessment. It has not been possible to take the draft response to full Council within the government's deadline. The draft response in Appendix 1 has been discussed with the Cabinet Member ( Finance, Procurement and Value for Money), and the response has been sent to the Department for Communities and Local Government clearly indicating that this is only a draft response and is subject to formal approval or amendment by Council on 18 September 2007.
- 3.4 The Green Paper covers the need to harmonise, simplify and modernise the law and to make it more effective. It suggests that the complexities and inconsistencies of the current law make it difficult for individuals to know their rights and make it equally difficult for employers and providers of services to understand their legal responsibilities. The Green Paper:
- sets out detailed proposals for a single equality bill that would simplify some provisions
  - seeks views as to whether a single equality bill should provide equal protection against discrimination or harassment on grounds of race, gender, disability, sexual orientation, religion or belief, and age or whether some aspects of different treatment should be maintained or added
  - makes proposals for revising the statutory duties that currently require public bodies to promote equality on the grounds of race, disability and gender. The consultation document contains proposals for a new single equality duty and seeks views on extending this duty to cover sexual orientation, religion or belief, and age.
- 3.5 The Green Paper mirrors the approach that the Council has taken to the production of our own Equality Strategy for 2007/2010, in that it is recommended that local authorities identify key Equality Outcomes in order to prioritise actions and make a real difference.
- 3.6 The consultation is organised into three parts:
- Part 1 – Harmonising and simplifying the law
  - Part 2 – More effective law
  - Part 3 – Modernising the law

## **4 Key proposals in the Green Paper**

### **Part 1 – Harmonising and simplifying the law**

- 4.1 It is proposed that the Council broadly supports the proposals for a single equality bill, which would replace the existing complex array of primary and secondary legislation.
- 4.2 This section also proposes that a single definition of disability discrimination should replace the current different definitions used for employment, education and the provision of goods and services. This would provide greater clarity for both individuals and also employers and service providers.
- 4.3 Providers of goods and services currently have a legal duty to make reasonable adjustments if a policy, practice or procedure or a physical feature makes it “impossible or unreasonably difficult” for a disabled person to access the service in question. However, the duty to make reasonable adjustments in relation to employment is triggered by a lower threshold of “substantial disadvantage”. The Government is proposing that the duty to make reasonable adjustments for disabled people would be triggered at a single point, so

that employers and providers of goods and services would have a duty to make reasonable adjustments wherever disabled people encounter a substantial disadvantage. This would provide greater clarity and consistency and would ultimately result in better protection of disabled people through the legal framework.

- 4.4 It is also proposed that the definition of indirect discrimination would be harmonised to cover all areas, so that indirect discrimination would occur when an apparently neutral provision, criterion or practice puts persons of a particular group at a particular disadvantage and which cannot be justified as a proportionate means of achieving a legitimate aim. This is currently the case in employment law, and the Council welcomes the proposal to increase this protection across the board to include the provision of goods and services.
- 4.5 The current “genuine occupational requirement test” would also be largely standardised. This allows direct discrimination by an employer where being of a particular race or ethnic or national origin, religion or belief, sexual orientation or age is a “genuine and determining” requirement. Again this would simplify the law and provide greater consistency across all the protected groups. The Green Paper suggests that it is not necessary to extend this provision to disabled people, but you are recommend to challenge this assumption.
- 4.6 It is proposed that the protection against discrimination in access to and provision of goods, facilities and services and functions of public authorities should be harmonised, so that the same rights, duties and exceptions would apply on all grounds. This is welcome.

## **Part 2 – More Effective Law**

- 4.7 The government is proposing to widen the scope for employers and providers of services to take voluntary measures to prevent or compensate for disadvantage or to meet special needs linked to membership of a protected group. This could include fast-tracking under-represented groups through initial training where they had met the initial entry criteria, in order to speed up the achievement of a more representative workforce. For providers of services, this could include special measures to enable disadvantaged or under represented groups to enjoy the benefits of the service on equal terms.
- 4.8 The Green Paper proposes that there should be a single equality duty for race, disability and gender with the following purposes:
- addressing disadvantage
  - promoting respect for the equal worth of different groups and fostering good relations within and between groups
  - meeting different needs while promoting shared values
  - promoting equal participation.

This would clarify the position that public bodies could adopt a single Equality Scheme, rather than produce separate Race, Disability and Gender Equality Schemes as at present. Views are also sought as to whether the equality duty should be extended to other protected grounds: sexual orientation, religion or belief and age.

- 4.9 The consultation paper proposes that local authorities would be expected to “identify priority equality objectives and take proportionate action towards their achievement”. The priorities pursued by any public authority would depend on the particular circumstances of the authority, the needs of its employees and service users and national priorities. This means that action taken towards achieving equality outcomes would need to be proportionate to the size and function of a public authority, with a focus on the identified priority equality

objectives, and would not therefore be aimed at guaranteeing equal outcomes for all groups.

- 4.10 This reflects the approach that we have recently taken in the production of our new Equality Strategy 2007/2010 and the introduction of a new set of key Equality Outcomes, based on local needs and priorities and embedded into our performance management process through the Corporate Plan. It is recommended that the Council therefore welcomes this approach and supports these proposals.
- 4.11 The government is not intending to introduce any new legal obligations on the private sector, but proposes the development of a light touch equality check tool for employers and also seeks views on a voluntary equality standard for businesses. Pay and grading structures are now subject to equality impact assessments as part of the implementation process of revised pay and grading structures.

**Part 3 – Modernising the Law**

- 4.12 Part 3 seeks views on the proposals for a slightly simpler definition of disability, and also a legal duty on landlords to carry out disability-related alterations to common parts of rented residential premises if the disabled person who needs such alterations meets the costs.
- 4.13 The lack of protection against age discrimination by public and private sector bodies outside the workplace is discussed without commitment to legislate. The government is calling for more evidence on this subject, but is satisfied that age-related treatment of under-18s is generally appropriate and should not be subject to anti-discrimination legislation.
- 4.14 The consultation papers discusses different forms of protection against harassment on different grounds and in different circumstances and seeks both evidence and views on legislation that would be more consistent across all grounds.
- 4.15 The consultation document also sets out the government’s proposals for implementation of the EC goods and services gender directive, which also applies to pregnancy and gender reassignment. This will require amendment of the Sex Discrimination Act by 21 December 2007. The gender directive does not apply to schools and therefore the government is not proposing to extend protection against discrimination on the grounds of pregnancy or gender reassignment to schools. It is recommended that you ask the government to give further thought to this issue.

**5 Proposal and Other Option(s) to be considered**

- 5.1 Members are to note the proposals outlined in the Green Paper, as summarised above and approve the consultation response attached as Appendix 1.

**6 Other specific implications**

6.1

	<b>Implications (See below)</b>	<b>No Implications</b>
Neighbourhood Management		√
Best Value		√
Children and Young People		√

	Implications (See below)	No Implications
Comparable Benchmark Data		√
Corporate Parenting		√
Coventry Community Plan		√
Crime and Disorder		√
Equal Opportunities	√	
Finance	√	
Health and Safety		√
Human Resources	√	
Human Rights Act		√
Impact on Partner Organisations		√
Information and Communications Technology		√
Legal Implications	√	
Property Implications		√
Race Equality Scheme	√	
Risk Management		√
Sustainable Development		√
Trade Union Consultation		√
Voluntary Sector – The Coventry Compact		√

## 7 Equal Opportunities

- 7.1 This report provides a draft response to the Government's Green Paper *Discrimination Law Review - A Framework for Fairness: Proposals for a Single Equality Bill for Great Britain* which proposes that discrimination law is harmonised and simplified.

## 8 Financial implications

- 8.1 The Initial Regulatory Impact Assessment suggests that the proposals will lead to some one-off costs for public authorities, largely consisting of the employee time spent reading and drawing up schemes/action plans in response to the requirements of the new duty. There will also be ongoing implementation costs from requirements to consult and involve employees and service users and to gather and consider data. Costs may also arise from the need for surveys/research to inform action plans. It is unlikely that these will result in significant extra costs while the production of one single Equality Scheme (rather than three separate schemes as at present) may lead to some small savings.

## 9 Human Resources, and legal implications

- 9.1 The Green Paper outlines proposals for a new legal framework for discrimination law. The anticipated single equality bill will have an impact on employment and other law. At this

stage, the City Council has been invited along with other public and private sector bodies to participate in the initial consultation process.

## 10 Race Equality Scheme

10.1 The Green Paper proposes that a single equality duty is introduced. This would replace the existing requirement to produce a Race Equality Scheme.

## 11 Timescale and expected outcomes

11.1 It is anticipated that the government will introduce a single equality bill in the lifetime of this Parliament.

	Yes	No
<b>Key Decision</b>		✓
<b>Scrutiny Consideration (if yes, which Scrutiny meeting and date)</b>	✓ Scrutiny Co-ordination Committee 5 <sup>th</sup> September, 2007	
<b>Council Consideration (if yes, date of Council meeting)</b>	✓ Council 18 <sup>th</sup> September, 2007	

### List of background papers

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Papers open to Public Inspection

### Description of paper

A Framework for Fairness: Proposals for a Single Equality Bill for Great Britain

### Location

[www.communities.gov.uk](http://www.communities.gov.uk)

**A Framework for Fairness:  
Proposals for a Single Equality Bill for Great Britain**

Response Form

We welcome your views as part of the consultation. For convenience, this preformatted response form sets out all the questions in the main consultation document. It can also be downloaded from [www.communities.gov.uk/index.asp?id=1017165](http://www.communities.gov.uk/index.asp?id=1017165).

Should you wish to use the form, it should be returned, once completed, to:

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Women and Equality Unit

Communities and Local Government  
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**The consultation closes on 4 September in 2007.** Please let us have your response by that date.

When responding, it would be helpful if you could provide the following information.

Please fill in your name and address, or that of your organisation if relevant. You may withhold this information if you wish, but we will be unable to add your details to our database for future consultation exercises.

Name

Organisation (if applicable)

Address

Postcode

## Confidentiality

Under the Code of Practice on Open Government, any response will be made available to the public on request, unless respondents indicate that they wish their views to remain confidential. If you wish your response to remain confidential, please tick this box and say why. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Department.

I would like my response to remain confidential:

Please say why

You or your organisation

**Q(i) In what capacity are you responding?**

As an individual (if so, please go to Q1 in the main comments section)

On behalf of an organisation (if so, please go to Q(ii) below)



As an employer (if so, please go to Q(iii) below)

Other (please specify)

**Q(ii) Is your organisation**

(please tick the boxes that apply to your organisation)

A local authority (including health authority) / organisation



An equality lobby group or body



A statutory body

An organisation representing employers

An organisation representing financial institutions

A professional association

A university

A college of further education

A trade union/staff association

Other – please specify

**Q(iii) If responding as an employer, how many people do you employ?**

Between 1 and 14 employees

Between 15 and 49 employees

Between 50 and 249 employees

250 employees or more

**Q(iv) If responding as an employer please indicate which sector best describes you:**

Legal services

Construction and/or building design

Communications

Wholesale and retail trade

Leisure – hotels, restaurants, pubs

Leisure – cinemas, theatres, museums

Leisure – other

Distribution/transport

Financial and/or business services

Electricity, gas and water supply

Advice and/or information services

Public administration

Education/training

Health and social work

Charity/voluntary work

Other (please tick box and specify)

## Proposals for a Single Equality Bill for Great Britain

The main consultation document addresses various proposals and options for changing discrimination law in order to create a clearer, more streamlined equality legislative framework, which produces better outcomes for those who currently experience disadvantage. The following questions are reproduced from the main document, in the order and with the same numbering in which they appear there. In addition, you are asked for your comments generally on the estimated provisional costs and benefits, as shown in the Initial Regulatory Impact Assessment and the Equality Impact Assessment.

### Part 1 – Simplifying the law

#### Chapter 1: Simplifying Definitions, Tests and Exceptions and Promoting Compliance

##### Simplifying Definitions and Tests

###### *Direct Discrimination*

Q1 Do you have any comments on our intention to keep the existing requirement for a comparator in direct discrimination claims?

Yes



No

Please give your reasons

We agree that it is better to retain the existing requirement for a comparator; as this reflects the fact that discrimination law is generally about equal treatment.

Q2 Do you have any comments on our proposal to replace the separate definitions of discrimination in Part 3 of the Disability Discrimination Act with a single definition?

Yes



No

Please provide:

We welcome the proposal to introduce a single definition for disability discrimination.

Q3 Do you agree that we should largely keep the existing approach in relation to discrimination on the basis of perception and association, except for an extension to protect against discrimination on the grounds of association with transsexual people?

Yes



No

Please provide:

We welcome the extension to protect against discrimination on the grounds of association with transsexual people.

### Indirect Discrimination

Q4 Do you agree with our proposal to extend indirect discrimination to cover gender reassignment but not explicitly introduce it to disability discrimination law?

Yes

No



Please say why:

We welcome the proposal to extend indirect discrimination to cover gender reassignment, however, we believe that this should also be extended to include disability discrimination law, so that there is consistency in the legal framework across all protected groups.

*Definition of indirect discrimination*

Q5 Do you agree with our proposal to harmonise the definition of indirect discrimination where it applies across the protected grounds?

Yes



No

Please say why:

We welcome the proposal to harmonise the definition of indirect discrimination across all protected groups in order to promote a clear understanding of this.

*Objective Justification*

Q6 Do you agree with our proposal to harmonise the objective justification test?

*Note: Indirect discrimination (and, on grounds of age only, direct discrimination) is not unlawful where it can be justified if certain conditions are met. There are currently inconsistencies in how this is applied and the consultation paper proposes to adopt the same justification test for all indirect discrimination provisions, and for direct discrimination on grounds of age. It is proposed that the formulation of the test should be “a proportionate means of achieving a legitimate aim”*

Yes



No

Please say why:

We welcome the proposal to provide consistency across all protected groups.

*Justification of disability discrimination*

Q7 Do you agree that there should be a single test of objective justification for disability discrimination in employment and vocational training, goods, facilities and services, housing, education, private clubs and public functions?

Yes



No

We welcome the introduction of a single objective justification test as this would be less subjective and also more straightforward to understand and apply, as well as bringing disability discrimination law in line with the other protected groups.

*The threshold for reasonable adjustments*

Q8 Do you have any comments on our proposal to establish a single threshold for the point at which the duty to make adjustments is triggered?

Yes



No

Please provide:

We welcome the proposal to establish a single threshold, as this would provide greater consistency and also greater protection for disabled people.

## Victimisation

Q9 Do you agree that the approach to victimisation in discrimination law should be aligned with the employment law approach?

Yes



No

Please say why:

We believe that the proposed approach would provide greater consistency across the legislation.

## Simplifying Exceptions

### *Genuine occupational requirement test*

Q10 Do you agree that a genuine occupational requirement test should be introduced for all grounds of discrimination, with the exception of disability (where it is not necessary)?

Yes



No

Please say why:

We welcome the increased consistency in this area that this proposal would bring. However, we do not agree with the proposal to exempt disabled people from this.

Q11 Do you think there is a need to retain any of the genuine occupational qualifications listed in the Sex Discrimination and Race Relations Acts?

Yes

No



If so please explain why:

We believe that the introduction of a genuine occupational requirement test would negate the need for this.

*Genuine service requirement test*

Q12 Do you support or oppose the introduction of a genuine service requirement test for differentiation in the provision of goods, facilities or services, housing and the exercise of public functions?

Support



Oppose

Please give your reasons and examples of what it might cover:

We support this proposal as we believe that it would bring consistency within the employment field and also enable us to target specific groups for services to meet specific needs such as sexual health services, counselling services, female only swimming sessions etc.

*Specific Exceptions*

Q13 Do you agree with the proposal for a unified approach where exceptions apply to more than one protected ground, where this is appropriate?

Yes



No

Please give your reasons:

We welcome increased consistency in this area.

Q14 Do you have any comments on our proposals for retaining the specific exceptions set out in Table 1 in Annex A?

*Note: Table 1 sets out the detailed provisions in current discrimination law and outlines the current exceptions that the Government propose should be retained.*

Yes

No



Q15 Do you agree that the exceptions listed in Table 2 in Annex A should be removed?

*Note: Table 2 sets out the detailed provisions in current discrimination law and outlines the current exceptions that the Government propose should be removed.*

Yes



No

If not, please explain why.

Q16 Is there any need to retain an exception to allow insurers to treat people differently on the grounds of sexual orientation, where supported by sound actuarial evidence, beyond the end of 2008?

Yes

No



If yes, what should this seek to achieve and why:

## Chapter 2: Public Functions

Q17 Do you agree that there would be benefits in adopting a harmonised approach to the way the goods, facilities and services and public functions provisions are structured across all protected grounds?

Yes



No

Please say why:

We believe that a harmonised approach would offer greater clarity and consistency across all protected groups with regard to its approach and implementation. It would also reduce the time taken in cross checking one field of discrimination against another.



Q18 Do you think the exceptions could be streamlined in this area

Yes



No

Please say why:

As above

### Chapter 3: Equal Pay

*Note: The Government proposes to bring equal pay provisions within a single Equality Act but to retain the current distinction between contractual and non-contractual pay matters.*

Q19 Do you agree that the distinction should be retained?

Yes



No

Please say why

This approach appears to be working effectively at the current time.

Q20 Do you consider there are further areas of the law of equal pay developed by case law, which it would be helpful to codify?

Yes



No

Please give details of these areas of legislation and any case law relevant to these

The idea of simplifying complex law on equal pay would be welcome but the proposal depends on identifying principles that have been settled by case law and are "unlikely to be challenged". Much of the new case law is not settled and it will be necessary to select principles for incorporation into legislation. However, it may be appropriate to include details/examples of the current state of case law in any guidance issued.

Q21 Do you have further suggestions on how we could simplify equal pay legislation or make it easier to work in practice?

Yes



No

Please provide further information on how equal pay legislation could be simplified to make it easier to work in practice.

The Local Government Employers Organisation has proposed that the introduction of an equal pay moratorium would mean that it would be free from challenge for a set period during which any pay discrimination could be rectified. Coventry City Council supports this proposal.

Q22 Do you agree that allowing the use of hypothetical comparators would be unlikely to give any benefit in practice.

Yes



No

Please explain

It is unclear what benefits would be provided in allowing such a comparison to be made. Rather than simplifying the law, it could lead to a greater uncertainty and the retention of the need for an actual comparator would be preferred.

## **Part 2: More effective law**

### **Chapter 4: Balancing Measures**

Q23 What evidence is there of the extent to which the current “positive action” provisions are being used? Do you consider that the current provisions limit the actions that employers and others would like to take?

There is generally very little evidence of using positive action. Current provision may be limiting for employers

Q24 Do you agree that it would be helpful for organisations seeking to make progress towards their goals of tackling under-representation and disadvantage to be able to use a wider range of voluntary balancing measures?

- Yes
- No

Please explain:

It would provide a consistent approach for addressing imbalance in organisations.

Q25 Do you agree that measures to meet special needs in relation to education, training or welfare or any ancillary benefits should be permitted in respect of all protected groups?

- Yes
- No

Please explain why:

This proposal would allow greater consistency across all protected groups.

Q26 Do you agree with these proposals for issuing of guidance by the Commission for Equality and Human Rights, but that the Commission should not have a role approving positive action programmes?

- Yes
- No

Please explain why:

Individual organisations should have autonomy to make local decisions. However, the Commission should give advice and guidance on such schemes regarding whether they are likely to be lawful.

Q27 Do you agree that we should have a power (to allow political parties to take positive measures towards women's increased participation) to continue the operation of the current provision beyond 2015, if this is still necessary and proportionate?

*Note: The Sex Discrimination Act allows political parties to take positive measures towards women's increased participation, such as providing mentoring and training programmes and all-women shortlists. This provision will expire in 2015 unless specifically extended.*

Yes



No

Please explain why:

This provides stability and gives organisations some time to make progress.

Q28 Do you agree that we should widen the scope of voluntary positive measures for political parties to target the selection of candidates beyond gender?

Yes



No

Please explain:

This would be a logical extension to the proposal above

## Chapter 5: Public Sector Equality Duties

Q29 Do you agree that the race, disability and gender duties should be replaced by a single duty on public authorities to promote race, disability and gender equality?

Yes



No

Please state your reasons:

We welcome proposals to introduce a Single Public Sector Equality Duty as there are many areas of discrimination that are common to all protected groups. We believe that the Single Duty should cover all protected groups.

Q30 Do you agree that it would be helpful to provide a clear statement of the purpose of a single public sector duty which public authorities should use as a foundation for taking action to promote equality and good relations?

Yes

No

Please state your reasons:

We believe that this would provide greater clarity for both the City Council and the public.

Q31 Do you agree with the four areas set out in the proposed statement of purpose?

*Note: The four areas referred to are:*

*Addressing disadvantage*

*Promoting respect for the equal worth of different groups*

*Meeting different needs while promoting shared values*

*Promoting equal participation*

Yes

No

If not, please give your reasons and any alternative suggestions.

N/a

Q32 Do you think that the proposed statement of purpose adequately captures the need for work to build good relations and promote positive attitudes within and between groups and underpins efforts to build integration and cohesion?

Yes

No

If not, please give your reasons and any alternative suggestions:

N/a

Q33 Do you agree that a single public sector equality duty should require public authorities to identify priority race, disability and gender equality objectives and take proportionate action towards their achievement?

Yes



No

If not, please give your reasons and any alternative suggestions:

This is similar to the model recently adopted by Coventry City Council. As part of the production of our Corporate Equality Strategy for 2007/2010 a set of key equality outcomes have been identified that clearly link to the Council's Corporate Objectives.

Q34 Do you agree that public authorities should be required to review their priority equality objectives at least every 3 years?

Yes



No

If not please give your reasons and alternative suggestions

N/a

Q35 Would it be helpful for strategic equality outcomes to be set by the appropriate national Government?

Yes

No



If so, what would be an appropriate way of doing this?

It may be helpful to take a combined approach with a number of nationally set equality outcomes, but there should be an opportunity to develop local equality outcomes that reflect local need.

Q36 We would welcome views on the proposed new approach to supporting effective performance of a single public sector equality duty by requiring proportionate action towards the achievement of priority equality objectives, and on the four key principles we have identified. Do you prefer this approach, or an extension of the type of specific duties adopted so far in the race, disability and gender equality duties? Please give your reasons.

We support the new approach, backed up by practical guidance from Commission for Equality & Human Rights

Q37 If you prefer an extension of the type of specific duties adopted so far in the race, disability and gender equality duties, which elements of the specific duties do you think should be retained for a single public sector equality duty and why?

N/a

Q38 Do you think that the proposed single public sector equality duty should apply to all public authorities?

Yes

No

If not, please say how you think it should be targeted and give your reasons.

N/a

Q39 Do you think that a single public sector duty should be extended to cover:

a) age Yes  No

a) sexual orientation; and/or Yes  No

b) religion or belief; Yes  No

Please state your reasons, including examples of the types of disadvantage you believe are experienced by people because of their age, sexual orientation or religion or belief which could be addressed effectively through such a duty.

Examples of the types of disadvantage experienced include:  
Homophobic bullying and hate crime  
Inability to attend mixed swimming by women from particular religious groups.  
Pre-conceived ideas service givers may have about particularly young or old people – e.g. views that a young person is more likely to cause trouble or an older person is more likely to be more judgemental and set in their ways.

Q40 Might there be disadvantages in extending the duty to any of these groups?

Yes

No



If so please give examples

Q41 Over what timescale do you think a single public sector duty and any extensions to it should be implemented to ensure we have learned as much as possible from recently introduced duties on disability and gender?

Phased implementation over 3 years in line with the requirement to review the separate equality schemes every 3 years.

Q42 Do you think public authorities should be given the option to implement any new approach in advance of it becoming a legal requirement, enabling these authorities who have already taken an integrated approach to build on existing work?

Yes



No

Please explain:

This would enable lessons to be learned and good practice to be shared.

#### *Enforcements of Public Sector Duties*

Q43 Do you think that there should be a single enforcement mechanism for the proposed single equality duty, enabling the Commission for Equality and Human Rights to issue a compliance notice with or without an assessment, as appropriate in the circumstances, enforceable in the county court or Sheriff's court in Scotland?

Yes



No

If not, please give your reasons

N/a



*Public Service Inspectorate*

Q44 What do you think should be the role of the public service inspectorates in assessing compliance with public sector equality duties?

Public service inspectorates should include an assessment of the effectiveness of work to promote equalities as part of mainstream inspections.

Q45 What issues would you like to see included in practical guidance on how public sector procurement can be used to achieve equality outcomes in the delivery of public services by the private sector, whilst ensuring that the guidance works well for business?

Guidance could include good practice examples from organisations who have successfully put this into practice; practical advice about how and when it is appropriate to include equality clauses into contracts; systems for testing compliance with equality requirements. There should be an emphasis on how procurement policies can be used to improve equality outcomes.

**Chapter 6: Promoting good equality practice in the private sector**

Q46 Do you think that an “Equality Standard” would be beneficial to businesses, employees and customers?

Yes



No

Please give reasons for your answers

It would be beneficial for customers and potential customers for all businesses to consider equality issues. Any equality standard should not be process led.

If yes, would you prefer an accredited or a non-accredited good practice and compliance tool?

Accredited

Non-accredited

Q47 We would welcome your suggestions for other ways in which good equality practice could be encouraged and embedded in the private sector

Showcase events demonstrating the benefits gained by private sector organisations who have already adopted good equality practices.

## Chapter 7: Effective dispute resolution

### *Promoting Early Resolution of Disputes*

Q48 Can you suggest ways in which Alternative Dispute Resolution could be used more effectively or widely to resolve discrimination disputes in the field of goods, facilities, services, premises and the exercise of public functions?

We support the use of informal resolution where possible, and consider that mediation services, such as those introduced in Manchester, may also be beneficial.

Q49 Can you suggest ways in which the role of Ombudsmen might be used more effectively to resolve discrimination disputes?

The Local Government Ombudsman has the power to investigate failure to follow procedures or the law, but these might be better publicised.

### *Improving the handling of Discrimination Cases in the Courts*

Q50 Do you have any views on our proposals for enhancing discrimination expertise in the county and sheriff courts?

We welcome the recognition that expertise needs to be enhanced.

### *Disability Discrimination Education Cases in Scotland*

Q51 Do you think that the powers of the Additional Support Needs Tribunals for Scotland should be extended to include consideration of disability discrimination cases in education?

No comment

### *Multiple Discrimination*

Q52 Can you provide us with evidence illustrating any difficulties of gaining legal redress in cases of multiple discrimination?

We are not aware of any cases but this does not necessarily mean that such difficulties do not exist.

Q53 Are there particular issues you would want to see addressed in relation to multiple discrimination claims?

People experiencing discrimination should clearly receive adequate redress. It is important that any such cases should be publicised so that organisations can improve their policies and procedures

**Part 3 – Modernising the law**

**Chapter 8: The grounds of discrimination**

*Disability*

Q54 Do you have any comments on whether we should remove the list of ‘capacities’ from the definition of disability?

Yes



No



Please provide:

We welcome the proposal to remove the list of capacities in order to provide greater clarity and greater protection for disabled people with a range of impairments including a learning disability or mental health problem.

Q55 Do you have any comments on our approach to addressing the needs of parents and carers?

Yes



No



Please provide:

*Married Persons and Civil Partners*

Q56 Do you consider that the protection for married persons and civil partners is still needed in the absence of a "marriage bar" in employment?

- Yes
- No

Please give your reasons for supporting/opposing its removal?

We support the view that this provision is no longer required for its original purpose.

*Genetic Predisposition*

Q57 Do you agree that there is no current justification for legislating to prohibit genetic predisposition discrimination?

- Yes
- No

Please say why:

We agree subject to the safeguards described in paras 8.30 and 8.31 of the Green Paper

**Chapter 9: Age discrimination**

Q58 What instances of unfair age discrimination outside the workplace against people of any age, are you aware of?

Please give details of any examples below:

Issues in terms of health provision – GPs putting ailments and pains down to 'old age', and receiving care in hospital with less dignity and respect  
The perceptions some people have of older people, and not respecting their individuality

Q59 Is legislation the most appropriate and proportionate way of tackling harmful age discrimination?

Yes

No

What would be the likely costs of legislation?

We anticipate that most changes would be in regard to attitudes towards older people and it is unlikely that these would have significant costs

Q60 Do you have any views on how, if we decide to legislate, we can target the legislation to avoid unintended consequences and disproportionate burdens on both public and private sectors?

Yes

No

Please give details below:

We support the proposals in para 9.5 and especially the proposal that any legislation must pass a common sense test

Q61 Do you have any comments on any of the issues which would arise with a legislative approach to tackling age discrimination?

Yes

No

Please provide:

Legislation provides an important framework and sets out the expectation that people should not be treated unfairly on grounds of age. We accept that there will need to be exceptions such as those listed in para 9.33

## Chapter 10: Gender reassignment

Q62 Do you agree that we should prohibit discrimination on the grounds of gender reassignment in the exercise of public functions?

Yes



No

What are your reasons for supporting/opposing this?

We welcome the proposal to prohibit discrimination on the grounds of gender reassignment and to bring this in line with protection offered to other protected groups.

Q63 Do you agree that it is unnecessary to include school pupils and education in any extension to protect on the grounds of gender reassignment?

Yes

No



What are your reasons for supporting/opposing this?

We do not agree that this is unnecessary. The fact that it will affect very few people is not a reason to deny them protection from discrimination. We believe that any people undergoing gender reassignment should be given equal protection and this would also include young people who are undergoing medical treatment, young people who are undergoing the 'real life' test and also young people who may be subject to discrimination due to having a family member who has undergone gender reassignment.

Q64 Are there any circumstances in which you consider that it is necessary for organised religions to treat people differently on grounds of gender reassignment?

Yes



No

Please explain what they are:

If it is central to the belief of the religion to have a man presiding over an act of worship then there may be a justification for differential treatment at some stages of transition. This would apply to things that are central to the ethos of the religion or the act of worship itself, and would therefore cover things like a priest or an Imam and not an ancillary worker.

Q65 Do you agree that we should retain the existing definition of gender reassignment?

Yes

No



Please say why:

The definition focuses very much on a medical model and medical intervention and does not cover other forms of gender dysphoria.

### Chapter 11: Pregnancy and maternity

Q66 Do you agree that we should make less favourable treatment of a woman on grounds of pregnancy and maternity unlawful in the exercise of public functions?

Yes



No

What are your reasons for supporting/opposing this?

We welcome proposals to bring this in line with existing sex discrimination law.

Q67 Do you agree that it is neither necessary nor appropriate to extend protection on grounds of pregnancy and maternity to school pupils and education in schools?

Yes

No



Please say why:

We believe it is essential that young women in schools should also be protected from discrimination on the grounds of pregnancy and maternity.

## Chapter 12: Private clubs and associations

Q68 Do you agree that it is a positive benefit to have clubs which are set up for the purpose of offering the benefits of membership to a particular group, including single sex clubs catering for particular religions or beliefs or age ranges, along with those currently permitted under race, disability and sexual orientation law?

Yes



No

We support the intention to permit the existence of clubs such as those described in the question, providing that any restriction on membership is clearly related to the purpose of the club.

Q69 Do you agree with the proposal to make it unlawful for private clubs with 25 or more members (other than single sex clubs or those set up for members who are a particular religion or belief) to discriminate on grounds of sex and religion or belief?

Yes



No

If you do not, please explain why:

We support the proposal but consider that it should also apply to clubs with fewer than 25 members

Q70 Do you agree that private clubs with 25 or members should not be permitted to discriminate against guests on the grounds of sex, race, sexual orientation and religion or belief, as is already the case on the grounds of disability?

Yes



No

Please explain:

We support the proposal but consider that it should also apply to clubs with fewer than 25 members



Q71 Do you think that the law should address unjustified age discrimination by private clubs with 25 or more members (other than those set up to cater for a particular age range) if age discrimination is made unlawful in the provision of goods, facilities and services?

Yes



No

If you do not, please explain why:

We support the proposal but consider that it should also apply to clubs with fewer than 25 members

### Chapter 13 – Improving access to and use of premises for disabled people

Q72 Do you agree with our proposal for requiring disability-related alterations to the common parts of let residential premises?

Yes



No

Please say why:

We welcome the proposals to enable disabled people to have disability-related alterations made to the common parts of their let residential premises.

### Chapter 14: Harassment

Q73 Can you provide examples of harassment you think is occurring or could occur on grounds of religion or belief, sexual orientation, age or disability, which would fall outside the existing protections in discrimination and other law?

Please list examples below:

We are not aware of any cases but this does not necessarily mean that such difficulties do not exist.

Q74 Do you think that express statutory protection against harassment on grounds of:

religion or belief; sexual orientation; age; and disability should or should not be provided in any of the following:

- the provision of goods, facilities and services?

Yes



No

Please say why.

We welcome protection against harassment in each of these areas in order to provide consistency and equal protection across the board.

- education in schools?

Yes



No

Please say why.

As above

- the management or disposal of premises?

Yes



No

Please say why.

As above

- the exercise of public functions?

Yes



No

Please say why.

As above

Q75 Were statutory protection against harassment to be extended to one or more of the above grounds in one or more of the above areas, do you think that specific exceptions would be desirable?

Yes

No



If yes, please say why and the types of exceptions, if any, you would like to see in the legislation:

N/a

Q76 Do you think that harassment on grounds of religion or belief should be treated differently from the other protected grounds and that a different definition of harassment would be appropriate in this case?

Yes



No

If so, please state your reasons why:

We accept that harassment on grounds of religion or belief must be based on more than people being offended by their expression or manifestation of beliefs other than their own.

Q77 Do you think there is a valid distinction to be made between harassment in an "open" and in a "closed" environment and that the approach to its prohibition should be differentiated accordingly?

*Note: A closed environment would be defined as one where there is a special relationship (for example, an employer-employee relationship or a prison, immigration detention centre, benefits office, housing office etc) whereas an open environment would be where there is an element of choice as to whether to enter that environment in the first place (for example, a shop, pub, club etc)*

Yes

No



Please say why:

There needs to be consistency in the legal framework in order to protect both parties, e.g. the employer and the employee or the service provider and the service receiver.

Q78 Do you have any evidence of harassment by third parties in the workplace in relation to protected grounds other than sex? If so do you consider that it should be dealt with in a similar way?

Yes



No

If so, please state your reasons why:

Whilst we are not aware of any such cases locally, it would be logical to extend protection to cover any cases such as those described in para 14.30.

### **Annex B – Implementing the Gender Directive**

Q79 Do you agree with the proposals in Table 1 (*This shows detailed proposals in relation to the implementation of the EU Gender Directive. The deadline for implementation is 21 December 2007 and it must therefore be put into effect in advance of the proposed Single Equality Bill.*)

Yes



No

If not, please give details of those you disagree with and your reasons for doing so.

Q80 Do you have any comments on the likely impact of the Gender Directive's insurance provisions on providers and/or customers of insurance and related financial products?

Yes

No



Please provide:

Q81 Should the ban on differences due to maternity or pregnancy costs be implemented in December 2007 or deferred until December 2009?

December 2007

December 2009

Please explain

There appears to be no good reason for deferral

Q82 Do you think 'maternity' should be defined for the purposes of the Sex Discrimination Act provisions covering goods, facilities or services and premises?

Yes

No

Please explain how:

We support the proposal in para B34 i.e. one year after the birth of the child

#### Costs and Benefits

Q83 Please let us have your views on the estimate of costs and benefits summarised in the Initial Regulatory Impact Assessment.

We do not envisage that any changes would result in any significant additional costs to the Council. The potential issues raised for public authorities in the Initial Regulatory Impact Assessment are largely good practice..

#### Equality Impact Assessment

Q84 Please let us have your views on the Equality Impact Assessment.

We have no comments on the EIA.

#### Other Comments

Q85 Do you have any other comments about the consultation documents or the consultation exercise itself?

We welcome the opportunity to comment and appreciate the care taken to explain the proposals and the reasons for them clearly and in plain language. While we support the intention to place a single duty to promote equality on local authorities, we do not consider that local authorities should have an enforcement role.

Thank you for completing this response form.