

Response to the consultation on the 'Red Tape Challenge – Equality'

1. Who is protected?

The Equality Act sets out “protected characteristics” which cannot be used as a reason to treat people unfairly. The protected characteristics are:

- age
- disability
- gender reassignment
- marriage and civil partnership
- pregnancy and maternity
- race
- religion or belief
- sex
- sexual orientation

The Equality Act protects **everyone** against unfair treatment in one way or another – for example, it is unlawful to treat either men or women unfairly because of their sex. This does not mean that you cannot treat people differently, where it is appropriate to do so – for example, services for women who have experienced domestic violence can be delivered in a women-only setting.

The Equality Act mainly brings together what was in previous law, but also changes the definition of “gender reassignment”. It also enables Parliament to make further legislation to change the definition of “race” to include “caste”¹

Should we scrap them altogether? ²

No: the Authority has always encouraged equality in both service delivery and employment, long before some of the current legislation was put into place. It is part of our organisation’s values to promote equality and diversity, and to that end we are concerned that this piece of legislation is being viewed as burdensome rather than a guiding piece of legislation.

Could their purpose be achieved in a non-regulatory way (eg through a voluntary code)? How?

No: we feel that regulation is needed to ensure that organisations consider the needs of their communities and employees. Without legislation there will not be the same level of consideration given and that could, in turn, lead to more discriminatory practices.

¹ All the above taken from the Red Tape Challenge website

² All questions and Shropshire Fire Service responses taken from website

Could they be reformed, simplified or merged? How?

No: The Equality Act was a process of streamlining and modernising current legislation. We believe that the current 9 protected characteristics should remain in place.

However, we do believe that socio economic status would align well to our organisation, as this is an area where there is a high correlation between disadvantage and risk of fire. Many fire services use deprivation information to map the risk of fire. This may also be true of many other sectors, for example health.

We also feel that dual discrimination should be introduced as this is still an area which is not covered and we feel needs addressing.

Can we reduce bureaucracy through better implementation? How? Can we make enforcement less burdensome? How?

We do not consider The Equality Act burdensome, it has streamlined existing pieces of legislation, whilst broadening and strengthening other areas.

We would appreciate a statutory agency which provides advice and guidance on the correct implementation of this legislation.

Should they be left as they are?

Yes – with the suggestions made above.

2. Prohibited conduct

The Equality Act sets out the different ways in which it is unlawful to treat someone, such as direct discrimination, harassment and failing to make a reasonable adjustment for a disabled person. For example, it is unlawful for a landlord not to let a property to someone because they are Muslim, or for an employer to allow staff to racially abuse a colleague.

The Act mainly brings together what was in previous law. In addition it:

- widens protection to cover more people from direct discrimination. It now includes people who are wrongly perceived to have, or who are associated with, someone who has a protected characteristic (eg age, race etc)
- makes the definition of indirect discrimination more consistent and extends it to cover disability and gender reassignment
- strengthens protection for disabled people.

The Act also contains new protection from discrimination because of a combination of two protected characteristics. The Government does not intend to implement this measure.

Should we scrap them altogether? Could their purpose be achieved in a non-regulatory way (eg through a voluntary code)? How?

No: cases have proved that discrimination still exists and to have a voluntary code could dilute the message, implying reduced significance and people may then continue to push barriers and discriminate further. This legislation protects all people – there can be no good justification for removing this (particularly as we all fit into several of the protected characteristics).

Could they be reformed or merged? How?

The Equality Act has clarified definitions making it easier to follow, it does not require simplifying. It has already been merged during its development.

**Can we reduce bureaucracy through better implementation? How?
Can we make enforcement less burdensome? How?**

No: when creating The Equality Act, one of the purposes of this was to reduce bureaucracy, which it has done by making it more focussed on outcomes and not processes, as the previous legislation did.

Should they be left as they are?

Yes: we do not feel that these should be changed in any way.

3. At work

The Equality Act makes it unlawful to discriminate against, harass or victimise someone at work. For example, it is unlawful for an employer to refuse someone a promotion because they are a man, or to sexually harass a female colleague. The Act also makes it unlawful for an employer to pay men and women differently because of their sex, when they are doing the same or an equivalent job or work of equal value.

The Act mainly brings together what was in previous law. In addition it:

- stops employers asking job applicants questions about their health or disability at early stages of recruitment
- bans employers using enforcing clauses in employment contracts, which stop people talking about their own pay

The Act also enables Parliament to make further legislation to require private and voluntary sector employers, with 250 or more employees, to report on their gender pay gap. The Government does not intend to implement this measure.

Instead, it is working with business to encourage the publication of equality workforce data on a voluntary basis.

The Act also contains a measure which makes employers liable if an employee is repeatedly harassed by a customer or supplier. The Government plans to consult later this year on removing this measure.

Should we scrap them altogether? Could their purpose be achieved in a non-regulatory way (eg through a voluntary code)? How?

No: if this legislation was removed then employees would have less protection and may not feel confident in their workplaces that they are going to be treated properly, particularly those from minority groups, that have in the past experienced unfair treatment.

With regard to the third party harassment, in some sectors employees maybe subject to repeated harassment, it should be the employer's duty to protect these employees. This part of the Act should remain in place.

Could they be reformed or merged? How?

No: The Equality Act is the result of merging several pieces of legislation to make one useable and modern framework. We are yet to see the results of The Equality Act and so to make any changes to it at this stage would be very premature.

Can we make enforcement less burdensome? How?

No: we do not consider The Equality Act burdensome or bureaucratic. It has streamlined existing pieces of legislation, whilst broadening and strengthening other areas. It is more focussed on outcomes rather than processes, which is beneficial to all people.

We would appreciate a statutory agency which provides advice and guidance on the correct implementation of this legislation.

Should they be left as they are?

Yes: we do not feel that these provisions should be reduced in any way.

4. Buying goods and using services

The Equality Act makes it unlawful to discriminate against, harass or victimise someone when providing services, goods or facilities or when carrying out a public function, such as policing. For example, it is unlawful to refuse to serve a customer because he is gay.

The Act mainly brings together what was in previous law.

The Act extends protection to ban age discrimination when providing goods and services, which was not previously included in equality legislation. This would mean, for example, that it would be unlawful for a shop to refuse to serve an older customer, but age-related discounts and concessions would still be allowed. The Government has recently consulted on bringing this ban into force and making it work in practice

Should we scrap them altogether? Could their purpose be achieved in a non-regulatory way (eg through a voluntary code)? How?

No: we do not feel that this would be the right approach; it has taken years to get to this point and to remove it now would be a backward step, particularly for service users.

Could they be reformed or merged? How?

No: The Equality Act is the result of merging several pieces of legislation to make into a useable and modern framework.

This legislation is still only relatively new and now protects more people. There should be no reason to alter this, it can only undermine what has been put in place and send a very negative message to those groups of people who were not protected until this legislation came out. It also sends an alarming message to those who continue to discriminate, if we are reducing / changing this Act.

**Can we reduce bureaucracy through better implementation? How?
Can we make enforcement less burdensome? How?**

No: we do not consider the Equality Act burdensome or bureaucratic, it has streamlined existing pieces of legislation, whilst broadening and strengthening other areas.

We would appreciate a statutory agency which provides advice and guidance on the correct implementation of this legislation.

Should they be left as they are?

Yes: we do not feel that the provisions should be reduced.

5. Specific sectors – housing, school, college, transport

Should we scrap them altogether?

Could their purpose be achieved in a non-regulatory way (eg through a voluntary code) How?

Could they be reformed or merged? How

Can we reduce bureaucracy through better implementation? How? Can we make enforcement less burdensome? How?

Should they be left as they are?

Not applicable

6. Positive action

The Equality Act enables, but does not require, people to encourage greater diversity in all the areas covered by discrimination law. For example, it allows employers to encourage people with protected characteristics (eg age, race etc), that are under-represented in the workforce, to apply for jobs. Positive action doesn't allow a less qualified person to be chosen for a job or promotion over someone who is better qualified. That would be positive discrimination and remains unlawful.

The Act mainly brings together what was in previous law. In addition it:

- allows employers to choose a candidate with a protected characteristic that is under-represented in the workforce over another candidate of equal merit when recruiting or promoting
- allows political parties to use positive action to increase the diversity of election candidates.

The Act also enables Parliament to make further legislation to require political parties to report on the diversity of their election candidates.

Should we scrap them altogether?

No: although the provisions are voluntary, it allows employers to analyse their workforce and determine their under-represented groups, and if they wish they can then use this legislation to take positive action. Many public sector organisations have been using positive action to address inequality for many years. It has given them the opportunity to offer specific events to these under-represented groups, which otherwise would be unlawful.

Could their purpose be achieved in a non-regulatory way (eg through a voluntary code)? How?

Removing this legislation would potentially mean that no positive action could be undertaken in any form.

Could they be reformed, simplified or merged? How?

The Authority has used the general positive action provisions with some success to encourage people from under-represented groups to consider a career with us. However, we will not be using the positive action provision in respect of recruitment or promotion.

This latter provision also confuses members of the public as they do not understand fully how the process would work and may perceive that they are being discriminated against.

Can we reduce bureaucracy through better implementation? How? Can we make enforcement less burdensome? How?

No: we do not consider The Equality Act burdensome or bureaucratic, it has streamlined existing pieces of legislation, whilst broadening and strengthening other areas.

We feel that it is necessary to be able to show where under-representation or disadvantage exists in respect of protected characteristics.

Should they be left as they are?

Yes

7. Enforcing equality law

The Equality Act sets out how the employment or special needs tribunals and courts operate in this area and the rules for out-of-court settlements. The Government is looking at the case for reforming compensation for discrimination awarded by employment tribunals as part of its ongoing review of employment law. [Click here to view details of the Government's recent consultation on resolving workplace disputes \(opens in a new window\)](#)

The Act mainly brings together what was in previous law, but also widens the power of employment tribunals to make recommendations when an employer has been found guilty of discrimination. This means a tribunal can now recommend that such an employer takes action which would benefit employees other than the person discriminated against, who may no longer work there. Such recommendations are not enforceable.

The Equality and Human Rights Commission (EHRC) is the institution charged with encouraging good practice on equality and diversity and enforcing equality law in Great Britain. It can issue Codes of Practice and guidance to help businesses and others comply with the law and improve their equality practice. It also has enforcement powers. The Government recently published a consultation paper setting out proposals for refocusing the work of the Commission on its core role as a strong, modern equality regulator. [Click here to view Government's proposals for refocusing the work of the EHRC \(opens in a new window\)](#)

Should we scrap them altogether?

Could their purpose be achieved in a non-regulatory way (eg through a voluntary code)? How?

Could they be reformed or merged? How?

Can we reduce bureaucracy through better implementation? How?

Can we make enforcement less burdensome? How?

No: we feel that the EHRC has an invaluable role in ensuring that the legislation is adhered to and in providing advice and guidance in ensuring that this is implemented correctly. They should be charged with issuing statutory guidance on compliance with the law. If this function was removed then it would send a clear message that no-one is monitoring the implementation of the legislation and could result in less compliance.

Should they be left as they are?

Yes: with comments as above

8. In the public sector

Public bodies, such as local councils and hospitals, provide a range of services to a large number of people. The Equality Act contains particular rules which require public bodies to think about how their policies and services deliver equal treatment and equal opportunities for everybody.

The Act replaces three different equality duties in previous law with a single Equality Duty on public bodies. This requires public bodies to think about how different people will be affected by the decisions they make and the services they deliver, so that they are appropriate and accessible to all, and meet different people's needs.

The Act also contains a new socio economic duty requiring some public bodies to think about how their activities affect the most disadvantaged people, but the Government has announced that it does not intend to implement this measure.

Should we scrap them altogether?

No: we believe that the public sector equality duty covering all the protected characteristics is very positive.

We also believe that this should be extended to include the socio-economic duty, as this aligns particularly well with how fire services assess those most at risk from fire.

Could their purpose be achieved in a non-regulatory way (eg through a voluntary code)? How?

No: it is necessary to ensure that all public authorities consider equality and diversity issues. We do not feel that this could be achieved through a non-regulatory approach.

Could they be reformed or merged? How?

Can we reduce bureaucracy through better implementation? How?

Can we make enforcement less burdensome? How?

No: we do not consider The Equality Act burdensome or bureaucratic, it has streamlined existing pieces of legislation, whilst broadening and strengthening other areas.

We have responded to consultations on the specific duties and do not feel that these should be reduced any further. If these were to be reduced further then it would become a very weak piece of legislation. Much of the public sector duties now focus on outcomes rather than processes, which in itself reduced bureaucracy and makes the outcomes more meaningful.

Should they be left as they are?

The specific duties of the public sector equality are yet to be agreed.

