

THE DISCRIMINATION LAW ASSOCIATION

RESPONSE TO:

Advancing equality for men and women: government's proposals for a gender duty

Introduction

1. The Discrimination Law Association ('DLA') is a membership organisation established to promote good community relations by the advancement of education in the field of anti-discrimination law and practice. It achieves this by, among other things, the promotion and dissemination of advice and information; the development and co-ordination of contacts with discrimination law practitioners and similar people and organisations in the UK and internationally. The DLA is concerned with achieving an understanding of the needs of victims of discrimination amongst lawyers, law makers and others and of the necessity for a complainant-centred approach to anti-discrimination law and practice. With this in mind the DLA seeks to secure improvements in discrimination law and practice in the United Kingdom, Europe and at an international level.
2. The DLA is a national association with a wide and diverse membership. The membership is growing and currently consists of over 400 members. Membership is open to any lawyer, legal or advice worker or other person substantially engaged or interested in discrimination law and any organisation, firm, company or other body engaged or interested in discrimination law. The membership comprises, in the main, persons concerned with discrimination law from a complainant perspective.
3. We are a company limited by guarantee.

4. There are a number of general points we would like to make before dealing with the questions raised in the consultation paper. The DLA welcomes the planned introduction of general and specific gender equality duties, and welcomes the introduction of a prohibition on sex discrimination by public authorities. We have a number of concerns about the Consultation Paper approach however. In particular, we wish to draw attention to the following:
 - Shortcomings in the proposed coverage of the general and specific equality duties and in the proposals concerning enforcement of the general gender equality duty;
 - Regrettable failures to require radical action in the form of mandatory, funded pay reviews to address the continuing problem of women's underpayment, and to achieve a reduction in the gender pay gap through imposing a specific duty in relation to procurement.
5. In the response to question 1 below we deal with the specific duties. We would wish however to make a number of comments about the general duty which are not made elsewhere in this response.
6. In our view no public authorities should be exempted from the obligation to comply with the general gender equality duty which requires only that those to whom it applies have due regard to the need to achieve gender equality.
7. We are very concerned that the Consultation Paper proposes that the general gender equality duty can be enforced only by the CEHR, and that no cause of action in private law may arise from a failure to comply with that duty. This opens up a gap between the SDA, on the one hand, and the RRA, on the other, and is objectionable in principle.
8. In our view, the failure of the Equality Bill to include trans persons fully within the public authority duties (and the prohibition on discrimination in goods and services) is indefensible both in principle and because the implementation of the goods and services directive will in any event have the effect that any resulting legislation will have to be amended in 2007. There is no justification for failing to take the opportunity presented by the Equality Bill and the associated legislation to remedy this.

Question 1: The Government would welcome your comments on the proposals for specific duties. We welcome suggestions on how the duty can best be framed to achieve the aims set out in [the consultation document]

9. The DLA welcomes the aims set out in paras 2.9 and 2.10. It is however vital that the Government gives effect to these laudable aims by making a commitment to fund funding for the implementation of gender equality, in particular, the process and outcome of equal pay reviews. Without a commitment to such funding, the eradication of pay discrimination simply cannot be achieved.
10. We are concerned about the degree of discretion given to public authorities as to the goals selected under the specific duties. The combination of this discretion and the “outcome focussed model” risks creating the temptation for authorities to select “soft targets” for action.
11. Public procurement has proved little short of disastrous for gender equality in public sector employment. It is our very strong view that there should be a specific duty to incorporate gender equality principles at all stages of procurement processes.

Question 2: The Government would welcome views on the proposal 3.35 above. It would also welcome suggestions as to what other requirements might be contained in a pay policy

12. Para 3.35 provides as follows:

... The Government is proposing to include provisions in the specific duties on the following lines:

Public authorities must develop and publish a policy on developing equal pay arrangements between women and men – including measures to promote equal pay, ensure fair promotion and development opportunities and tackle occupational segregation – between women and men which must be reviewed at regular intervals (for example, every three years).

13. If the gender equality duty is to make any significant impact on pay inequality between men and women in the public sector it ought to require equal pay audits and elimination of the gender differences in pay highlighted thereby. In order to avoid the manipulation of results by employers it is essential that recognised trade unions are involved in the equal pay review process from the earliest stages (that is, in the design of any review as well as in its implementation). The specific duty on equal pay needs to be prescriptive as to the requirements of a pay review, that is, the collection of detailed statistics on workforce composition and pay (including all benefits); it must require the careful scrutiny of existing methods of job evaluation for their gender neutrality and it must demand pay transparency.
14. No matter how good any specific duty on equal pay might be, it will not be effective in practice without government commitment to funding the costs of equal pay. Equal pay is not a cost-neutral exercise, at least in the short term, and women cannot be expected to pay for equal wages by redundancies and additional work intensification. If the proposals concerning pay equality are to mean anything at all, they must be accompanied by government commitments on funding.

Question 3: The Government would be interested in public authorities' views on how far their work, already in hand, will cover gender duty requirements on equal pay, and if the proposal will result in additional burdens

15. In our view the current proposals on equal pay are too weak to impose any significant burdens on public authorities.

Question 4: The Government would welcome your views on the proposal to require public authorities to conduct GIAs, and the consideration to undertake initial screening as described

16. The DLA welcomes the GIA proposals but would raise two questions in relation to them:
- Why should these assessments be prospective only? Existing policies may have significant gender impacts and there is no reason why they should be shielded from scrutiny (other than "scanning");

- The DLA is also concerned by the suggestion that only “major” proposed developments in employment, practices and legislation should be subject to full scrutiny. The impact of a development on gender equality may have little relationship with whether a change is “major” or not and “initial screening” ought to be concerned only with likely gender impact rather than with the question whether a proposed change is “major”.

Question 5: The Government would welcome your views as to what guidance would be required by public authorities to allow them to properly carry out GIAs

17. The Government should build on the existing work done by the former women’s unit, the Women’s Budget Group, the EOC, and other organisations and should require that public authorities consult and involve trade unions and other relevant stakeholders in full.

Question 6: The Government would welcome your views as to suitable criteria to assist public authorities in deciding what constitutes a ‘major’ service or policy development

18. See above.

Question 7: The Government would welcome views on the necessary content of guidance to assist bodies to apply the duty to promote equality when planning the procurement of relevant goods and services

19. We state above that this matter should be the subject of a specific duty given its significance to gender equality in the public sector. Any guidance relating to the specific duty should clarify the position in EC law, this being an area in which there is a great deal of confusion whose effect is frequently to paralyse public authorities. Consideration ought to be given to making any changes necessary in domestic law to facilitate the pursuit of equality in the procurement process.

20. The imposition of a specific duty in relation to procurement would significantly reduce the area of uncertainty as to which contractors will themselves be subject (as performers of public functions) to the equality duty. Uncertainty in this context is particularly problematic given that those contractors which are regarded as performing public functions are likely to be so regarded only as far as their "public" functions are concerned. "Public" functions do not include the employment function.

Question 8: The Government would welcome views on the criteria for determining whether public authorities should be subject to the specific duties

21. In our view very strong reasons need to be put forward to exclude any public authorities from the specific duties. In particular, we see no justification for excluding education/schools as has been suggested.

Question 9: The Government would welcome views on the range of bodies it intends to require to comply with the specific duties

22. See previous answer.

Question 10: The Government would welcome views on the guidance that should be offered to smaller bodies in order to assist them to comply with the general duty to promote equality

23. It will be important in our view to target different guidance at different groups, and to consult widely within the target organisations as well as with interested bodies as to the content and shape of that guidance.

Discrimination Law Association
PO Box 6715
Rushden
NN10 0HQ
Tel/Fax 01933 228742

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