

# **Equality Act Impact Assessment**

**Final Version (Royal Assent)**

April 2010

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# **Equality Act Impact Assessment, Version 5 (Royal Assent)**

## **Structure of this document**

This document starts with an overall analysis (pages 5 to 30) of the costs and benefits of the main measures in the Equality Act including simplification benefits, familiarisation costs and general economic benefits. This is followed by individual annexes on each of the main measures, broadly in the same order as the Act itself. Finally, the document concludes with annexes on specific impact tests, the small firms impact test and the competition assessment.

This document was written by the Government Equalities Office. Throughout, we have used “we” to mean the Government Equalities Office representing the view of Government. For example, “we have built up a strong body of law...” means “the Government has built up a strong body of law...”.

## **Version numbers**

Version numbers refer to the version of this whole document and not the version number of individual impact assessments contained within it.

## **Implementation dates**

Some measures in this Act will come into force during October 2010 at the earliest, and others at later dates.

## Executive Summary

This is the Impact Assessment for the Equality Act. (Impact Assessments used to be called Regulatory Impact Assessments.)

This is the fifth version of the Impact Assessment and it is being republished now because the Equality Act has just received Royal Assent. This document includes new cost / benefit data for the ban on age discrimination in services and public functions and some changes made to the Bill in the House of Lords.

The Equality Act will do two main things:

(i) Simplify, harmonise and consolidate discrimination law where appropriate. This covers measures to simplify:

- definitions;
- exceptions;
- provisions on equal pay, and
- disability-related provisions.

The Act also contains a new power providing the ability to harmonise the legislation where changes are required as a result of European law.

(ii) Strengthen the law. This covers measures to:

- establish a new duty on public authorities to consider socio-economic inequalities;
- widen the scope for voluntary positive actions;
- establish an integrated equality duty on public authorities to have due regard to the need to promote equality including in their procurement activities;
- achieve better handling of discrimination cases by the courts and tribunals, such as by enabling employment tribunals to make wider recommendations;
- extend protection from discrimination because of gender reassignment and pregnancy/maternity;
- introduce protection against discrimination based on a combination of two protected characteristics (dual discrimination);
- provide protection against unfair discrimination because of age in the provision of goods, facilities and services and exercise of public functions;
- provide a power to require gender pay gap reporting by the private sector, and
- extend express protection against harassment outside the workplace.

### In the first year

In the first year, the Equality Act is estimated to cost between £240.9m and £282.6m. This represents the cost of people making themselves familiar with the new law and one-off implementation costs of the Act.

In the same year it is estimated the Act could produce benefits in the range of £101.6m to £133.6m.

Overall in the first year the Act could have a net cost of between £107.3m and £181.0m.

### After the first year

Estimates show that from the second year onwards the Act could create an average net benefit of between £24.5m and £86.8m annually.

In each case a range of figures is quoted because it is difficult to accurately estimate what changes in legislation might cost. In summary, over 10 years, the Equality Act could produce a net benefit between £39.4m, and up to £674.1m (for further detail see pages 8 and 9) .<sup>1</sup>

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<sup>1</sup> The figures quoted in this executive summary have been rounded to the nearest hundred thousand for ease of reference.

## Intervention & Options – Equality Act

**Department - GEO**

**Impact Assessment - Equality Act**

**Stage: Royal Assent**

**Version: 5**

**Date: April 2010**

**Related Publications:** (1) Discrimination Law Review: Proposals for an Equality Bill for Great Britain (June 2007). (2) Proposals to simplify and modernise the law: Initial RIA (June 2007). (3) Framework for a Fairer Future (June 2008) and (4) the Government response to the consultation (July 2008) (5) Equality Bill Impact Assessment (Introduction) 27 April 2009 (6) Equality Bill Impact Assessment (House of Lords Introduction) December 2009.

The following individual annexes list other related publications relevant to that annex.

**Available to view or download at:** <http://www.equalities.gov.uk>

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### What is the problem under consideration? Why is government intervention necessary?

(i) Previous discrimination law was complex and in places opaque, because it had evolved over 40 years. This made it difficult for clear and simple guidance to be generated so that people knew their rights and responsibilities or could readily find them out. The Act simplifies, harmonises and consolidates the law, resulting in clearer guidance and better information. The Equality and Human Rights Commission is responsible for ensuring that good quality appropriate guidance is available and disseminated to all relevant stakeholders 12 weeks in advance of commencement of relevant provisions of the Equality Act.

(ii) Previous discrimination law provided more protection for some protected characteristics than others. The previous three public sector equality duties in respect of race, disability and gender were potentially powerful means of tackling institutional discrimination and promoting equality of opportunity in public services but they were sometimes viewed as too process-driven and were limited to those three protected characteristics. Public bodies were not required to factor socio-economic inequalities into their planning; EU case law provided wider scope than domestic law for voluntary positive action by employers to encourage a more diverse workforce. Courts received relatively few discrimination cases, so outcomes were felt to be unpredictable.

The Act widens the scope for voluntary positive actions, establishes an outcome-focussed integrated equality duty on public bodies and a duty on some public bodies to consider socio-economic inequalities in their decision-making and achieves better handling of discrimination cases by the courts, for example by enabling employment tribunals to make wider recommendations potentially affecting the whole workforce. The Act also includes measures to extend protection from discrimination because of age (outside the workplace), gender reassignment and pregnancy/maternity; extends express protection against harassment outside the workplace and widens protection against discrimination based on association and perception.

### What were the policy objectives and the intended effects?

This package of measures had two main objectives:

(i) to simplify, harmonise and consolidate discrimination law where appropriate – for example to

simplify definitions, exceptions, equal pay and disability-related provisions, resulting in better guidance and information;

(ii) to strengthen the law by, for example, widening the scope for voluntary positive action measures, implementing an integrated public sector equality duty (including public procurement) and a duty on some public bodies to consider socio-economic inequalities, measures to achieve better handling of discrimination cases by the courts, extending protection because of gender reassignment, pregnancy/maternity, age and harassment outside the workplace, providing protection against dual discrimination, making pay secrecy clauses in employment contracts, which prevent employees disclosing their pay, unenforceable, and providing a power to require private sector businesses with more than 250 employees to report their gender pay gap.

#### **What policy options have been considered?**

- Duty on some public bodies to consider socio-economic inequalities (Annex A)
- Simplifying and standardising definitions/concepts for direct discrimination (including association and perception), indirect discrimination and victimisation (Annex B)
- Age discrimination in goods and services (Annex C)
- Discrimination arising from disability and indirect disability discrimination (See Annex D)
- Extending protection because of gender reassignment (Annex E)
- Extending protection because of pregnancy and maternity (Annex F)
- Simplifying the law relating to disability (Annex G)
- Requiring landlords to make adjustments to common parts where reasonable (Annex H)
- Extending express protection against harassment outside the workplace (Annex I)
- Extending protection against harassment at work by third parties (Annex J)
- Updating equal pay provisions (Annex K)
- Making secrecy clauses in employment contracts unenforceable (Annex L)
- Gender pay gap reporting (Annex M)
- Outlawing discrimination by associations including private clubs because of gender and religion or belief (Annex N)
- Improving the handling of discrimination cases in the courts (Annex O)
- Widening the recommendation powers of tribunals so that recommendations could benefit the wider work force (Annex P)
- Creating an integrated public sector equality duty (Annex Q)
- Widening the scope of voluntary “positive action” measures (Annex R)
- Disability and transport (Annex S)
- Rationalising exceptions allowing discrimination (Annex T)
- Harmonisation power (Annex U)
- Dual discrimination (Annex V)
- Limiting the use of disability-related pre-employment questionnaires (Annex W)
- Provision of auxiliary aids and services in schools (Annex X)
- Diversity data reporting by political parties (Annex Y)
- Civil partnerships in religious premises (Annex Z)
- A power enabling caste to be included within the definition of race (Annex AA)

#### **On what date will the policy be implemented?**

The policy will be implemented in a phased approach. It is proposed that the main provisions of the Equality Act will be commenced in October 2010 followed by the socio-economic duty, the public sector equality duty and dual discrimination in April 2011 and the ban on age discrimination in the supply of goods and services, and performance of public functions in 2012. Pay gap reports by larger private and voluntary sector employers will be required from 2013, if sufficient progress is not made in the meantime.

The Equality and Human Rights Commission is responsible for ensuring that good quality appropriate guidance is available and disseminated to all relevant people 12 weeks in advance of commencement of the relevant provisions of the Equality Act.



**When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects?**

Immediately, and on an ongoing basis, by the Equality and Human Rights Commission. The Government will also review after 5 years.

**Will the Bill increase or reduce Admin burdens?**

The provisions in the Bill do not currently add or reduce administrative burdens. However, there are powers to introduce secondary legislation in a couple of areas (the public sector equality duty and gender pay gap publishing) that could introduce administrative burdens. These will be worked out at a later stage when the regulations are finalised and if the reserve powers are used.

## OVERALL: Analysis & Evidence

### OVERALL

Summary of the overall costs and benefits for the Equality Act

COSTS	ANNUAL COSTS		Description and scale of key monetised costs by ‘main affected groups’	
	One-off (Transition)	Yrs		
	£ 212,653,561 to £213,452,561	2		
	Average Annual Cost (excluding one-off)			
	£28,278,471 to £69,989,717	10	Total Cost (PV)	£458,804,727 to £817,842,056
Other key non-monetised costs by ‘main affected groups’				
Please see detail under each individual proposal below (Annex A to AA)				

	ANNUAL BENEFITS		Description and scale of key monetised benefits by ‘main affected groups’	
	One-off	Yrs		
	£2,625,748	2		
	Average Annual Benefit (excluding one-off)			
	£98,970,752 to £130,994,064	10	Total Benefit (PV)	£ 857,071,914 to £ 1,132,718,537

### Other key non-monetised benefits by 'main affected groups'

The Act will: (i) ensure broadly the same levels of protection for different protected characteristics and that the same definitions are used; (ii) ensure that persistent inequalities within institutions and society are reduced; (iii) improve the operation of the courts; (iv) ensure that cases do not arise out of ignorance; and (v) increase the efficient operation of business and markets as a result of a reduction in discrimination.

Please see detail under each individual proposal below (Annex A to AA)

### Key Assumptions/Sensitivities/Risks

Please see detail under each individual proposal below (Annex A to AA)

Price Base Yr <b>2009</b>	Time Period Years <b>10</b>	<b>Net Benefit Range (NPV)</b> <b>£39,431,857 to £674,115,810</b>	<b>NET BENEFIT (NPV Best estimate)</b> <b>£ 356,773,834 (mid-point)</b>
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What is the geographic coverage of the policy/option?			Mainly GB	
On what date will the policy be implemented?			See separate Annexes	
Which organisation(s) will enforce the policy?			See separate Annexes	
What is the total annual cost of enforcement for these organisations?			£0 (no additional cost)	
Does enforcement comply with Hampton principles?			Yes	
Will implementation go beyond minimum EU requirements?			Yes	
What is the value of the proposed offsetting measure per year?			£	
What is the value of changes in greenhouse gas emissions?			£ 0	
Will the proposal have a significant impact on competition?			No	
Annual cost (£-£) per organisation (excluding one-off)	Micro	Small	Medium	Large
Are any of these organisations exempt?				

### Impact on Admin Burdens Baseline (2005 Prices)

(Increase - Decrease)

Increase of £ 0 Decrease of £ 0 **Net Impact** £ 0

Key: Annual costs and benefits: Constant Prices (Net) Present Value

## General benefits to the economy: Analysis & Evidence

General benefits of proposals within the Act

The broader value to society of a more equitable distribution of resources.

BENEFITS	ANNUAL BENEFITS		Description and scale of key monetised benefits by 'main affected groups'	
	One-off	Yrs		
	£ 0	1		
	Average Annual Benefit (excluding one-off)		Total Benefit (PV)	
	£ 62,497,460	10		£ 537,958,543
Other key non-monetised benefits by 'main affected groups'				

### Key Assumptions/Sensitivities/Risks

This applies the concept of diminishing marginal returns to income. This concept presumes that a more equitable distribution of resources will raise economic welfare since additional consumption by poor individuals is valued more highly than it is by wealthier individuals.

This welfare estimate is still likely to underestimate the true benefit. The method used applies an income-based consideration of reduced inequality only. For instance, it does not consider additional welfare that may be derived from greater economic participation as a result of tackling discriminatory barriers. There are wider indirect costs associated with inactivity, such as reduced self-esteem and the loss of human capital associated with inactivity, that are not accounted for by this approach.

Price Base Yr	Time Period Years	Net Benefit Range (NPV)	NET BENEFIT (NPV Best estimate)
2009	10	Up to £ 537,958,543	£ See Range

What is the geographic coverage of the policy/option?	GB
On what date will the policy be implemented?	[see box page 9]
Which organisation(s) will enforce the policy?	[see box page 9]

What is the total annual cost of enforcement for these organisations?	£ [see box page]			
Does enforcement comply with Hampton principles?	N/A			
Will implementation go beyond minimum EU requirements?	N/A			
What is the value of the proposed offsetting measure per year?	£ 0			
What is the value of changes in greenhouse gas emissions?	£ 0			
Will the proposal have a significant impact on competition?	No			
Annual cost (£-£) per organisation (excluding one-off)	Micro	Small	Medium	Large
Are any of these organisations exempt?	No	No	N/	N/

**Impact on Admin Burdens Baseline (2005 Prices)**

					(Increase - Decrease)
Increase of	£ 0	Decrease of	£ 0	<b>Net Impact</b>	£ 0

Key: Annual costs and benefits: Constant Prices (Net) Present Value

## Familiarisation costs: Analysis & Evidence

**Overall familiarisation costs of the proposals**

A one-off familiarisation cost will attach to most of the proposals. It is assumed that “familiarisation”, in the great majority of cases and for most employers and individuals, will mean familiarisation with or through guidance and advice provided by the EHRC (Equality and Human Rights Commission) and/or by other advisory bodies such as ACAS (Advisory, Conciliation and Arbitration Service). It is also assumed that “familiarisation” means reaching the point where a manager or relevant employee of an organisation or business is aware of the changes in the law and how they impact on his/her organisation or business.

ANNUAL COSTS			Description and scale of key monetised costs by ‘main affected groups’
One-off (Transition)	Yrs		
£ 203,542,779	1		
Average Annual Cost (excluding one-off)			
£ 0	10		
		Total Cost (PV)	£ 203,542,779
Other key non-monetised costs by ‘main affected groups’			

### Key Assumptions/Sensitivities/Risks

Key Assumptions include:

- Number of hours taken by firms and authorities to familiarise themselves with the policy<sup>2</sup>;
- Definition of public authority – who is included and who is not;
- Definition of familiarisation – reaching the point where a manager or a relevant employee of a firm is aware of the changes in the law and how they impact;
- That 100% of small firms will want to familiarise themselves with the guidance in year one
- That all medium and large firms and public bodies will familiarise themselves with guidance in year one

Price Base Yr	Time Period Years	Net Benefit Range (NPV)	NET BENEFIT (NPV Best estimate)
2009	10	-£203,542,779	£ See Range

What is the geographic coverage of the policy/option?	GB
On what date will the policy be implemented?	[see box page 8]
Which organisation(s) will enforce the policy?	[see box page 8]
What is the total annual cost of enforcement for these organisations?	£ [see box page 8]
Does enforcement comply with Hampton principles?	N/A
Will implementation go beyond minimum EU requirements?	N/A
What is the value of the proposed offsetting measure per year?	£ 0
What is the value of changes in greenhouse gas emissions?	£ 0
Will the proposal have a significant impact on competition?	No
Annual cost (£-£) per organisation (excluding one-off)	Micro Small Medium Large
Are any of these organisations exempt?	No No N/ N/

### Impact on Admin Burdens Baseline (2005 Prices)

(Increase - Decrease)

Increase	£ 0	Decrease	£ 0	Net	£ 0
Key:	Annual costs and benefits: Constant Prices			(Net) Present Value	

<sup>2</sup> We have assumed that firms take 0.5 to 2 hours to familiarise themselves with new legislation. A small survey of businesses indicated this might be an over estimate but we felt it was safer to retain this figure without more evidence to the contrary.

## Benefits of simplified law: Analysis & Evidence

<b>Simplification benefits for the Equality Act</b>	<b>Description:</b> <b>Simplification of the law will result in simpler guidance and a better understanding of rights and responsibilities</b>
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BENEFITS	ANNUAL BENEFITS		Description and scale of key monetised benefits by 'main affected groups'	
	One-off	Yrs		
	£ 0	1		
	<b>Average Annual Benefit</b> (excluding one-off)		<p><b>Private Sector</b> – Annual saving to all firms from simplified law of £5,557,516. Firms will also benefit from employees finding it easier to understand their rights and responsibilities by £2,168,153</p> <p><b>Public Sector</b> – Annual saving to public bodies of £97,245. Public bodies will also benefit from employees finding it easier to understand their rights and responsibilities by £ 945,929</p>	
	<b>£ 8,768,893</b>	<b>10</b>	<b>Total Benefit (PV)</b>	<b>£ 75,479,882</b>
<b>Other key non-monetised benefits by 'main affected groups'</b> <ul style="list-style-type: none"> <li>Better understanding of the law should reduce inadvertent non-compliance that leads to claims and will reduce over compliance where firms take more action than the law requires. However, it is uncertain as to whether this will be offset or even outweighed by increased claims resulting from greater awareness of rights.</li> <li>Courts and tribunals should be able to interpret the law more consistently, which may reduce the time and costs of cases and the likelihood of appeal.</li> </ul>				

### Key Assumptions/Sensitivities/Risks

- That all businesses will benefit from the simplified law (20% in the first year). There will be a time saving of 1 hour per business/organisation
- That 1% of employees will seek information about the law
- That all discrimination cases sent to tribunal will be dealt with more effectively by legal firms saving 1 hour.
- That the Equality Act and resulting guidance will only be 1/3 the size of the existing legislation and guidance
- That this will benefit all businesses including new businesses
- The number of new businesses – estimate based on previous years



Price Base Yr <b>2009</b>	Time Period Years <b>10</b>	<b>Net Benefit Range (NPV)</b>  <b>Up to £ 75,479,882</b>	<b>NET BENEFIT (NPV Best estimate)</b>  <b>£ See Range</b>
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What is the geographic coverage of the policy/option?			GB	
On what date will the policy be implemented?			[see box page 8]	
Which organisation(s) will enforce the policy?			[see box page 8]	
What is the total annual cost of enforcement for these organisations?			[see box page 8]	
Does enforcement comply with Hampton principles?			N/A	
Will implementation go beyond minimum EU requirements?			N/A	
What is the value of the proposed offsetting measure per year?			£ 0	
What is the value of changes in greenhouse gas emissions?			£ 0	
Will the proposal have a significant impact on competition?			No	
Annual cost (£-£) per organisation (excluding one-off)	Micro	Small	Medium	Large
Are any of these organisations exempt?	No	No	N/	N/

Impact on Admin Burdens Baseline (2005 Prices)				
				(Increase - Decrease)
Increase	£ 0	Decrease	£ 0	<b>Net</b>
Key:	Annual costs and benefits: Constant Prices		(Net) Present Value	£ 0

## Evidence

Over the last 40 years, since the first Race Relations Act was passed in 1965, we have built up a strong body of law to protect people from discrimination and to address disadvantage. But because the law has developed in a piecemeal way, it was complex. There were nine major pieces of primary and secondary legislation and around 100 pieces of ancillary legislation. The Equality Act provided the opportunity to strengthen and modernise the law and tackle persistent inequalities. It simplifies and harmonises the law, making it easier for people to understand their rights and responsibilities.

### Main concerns with current legislation

There were three main concerns with the previous structure of equality legislation. These were:

(i) **Different levels of protection for different protected characteristics and the use of differing concepts and definitions.** We needed to put the whole of discrimination law on a consistent and coherent basis. This does not mean automatically the same level of protection for all groups, but there is a justified rationale where the level of protection is different.

(ii) **Persistent inequalities within institutions and in society at large**, as identified by the Equalities Review in its March 2006 interim report<sup>3</sup> and its final report<sup>4</sup>. Some parts of the Act

<sup>3</sup> The Equalities Review was launched and proceeded in parallel with the Discrimination Law Review. The

address this concern.

**(iii) The need to improve the operation of the courts in handling discrimination cases.**

**Rationale for government intervention**

The Act addresses the following risks that would arise if there were no government intervention:

**(i) The risk to accessibility and transparency of the law and hence cases arising out of ignorance.** A simpler, single piece of equality legislation allows the Equality and Human Rights Commission to produce simpler and clearer guidance. These simplification gains should reduce the number of cases coming to court out of ignorance and hence save money for business, claimants and the public sector.

**(ii) The risk to the efficient operation of business and markets, as a result of continuing discrimination and persistent disadvantage.** The Women and Work Commission report of February 2006<sup>5</sup> showed the costs of failing to recognise women's skills and under-utilising their abilities in the workplace. The Annual Survey of Hours and Earnings (ASHE) 2009 shows that the overall gender pay gap currently stands at 22.0 per cent in the UK. This means the median hourly earnings excluding overtime for all female employees (full-time and part-time) were 22.0 per cent less than the earnings of male employees. The Equality and Human Rights Commission<sup>5</sup> reported that men working in the UK's financial sector receive five times more in bonus payments than women, according to a survey of 44 leading companies and on average, women earn £2,875 in bonuses compared with £14,554 for men,<sup>6</sup>. Failure to utilise the talents and potential of the diverse range of individuals who make up the workforce or to respond to demand from diverse communities has an economic cost. The benefit of Government intervention is estimated below as around £60m per year.

**(iii) The risk to the efficient operation of the judicial system.** There was a relative imbalance of expertise between employment tribunals (which deal with discrimination cases in the workplace) and the courts (which deal with the relatively few discrimination cases outside the workplace). The Act provides a more effective handling of discrimination cases.

**Purpose and intended effect**

This Act has two main objectives:

**(i) To simplify, harmonise and consolidate discrimination law where appropriate.** This includes measures to simplify definitions, exceptions, equal pay and disability-related provisions, resulting in better guidance and information;

**(ii) To strengthen the law.** This covers, for example, widening the scope for voluntary positive action measures, implementing an integrated public sector equality duty (including public procurement) and a duty on some public bodies to consider socio-economic inequalities, measures to achieve better handling of discrimination cases by the courts, extending protection because of gender reassignment, pregnancy/maternity, age and harassment outside the workplace, providing protection against dual discrimination, making pay secrecy clauses in employment contracts, which prevent employees disclosing their pay, unenforceable, and providing a power to require private sector businesses with more than 250 employees to report their gender pay gap.

Results such as improved guidance from the Equality and Human Rights Commission (EHRC) should start to be available within 3 months of enactment. The EHRC is currently consulting on

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former focused more on identifying the wider social and policy causes of persistent inequalities; the latter focused on the legislative framework.

<sup>4</sup> Fairness and Freedom: The Final Report of the Equalities Review, February 2007.

<sup>5</sup> "Shaping a Fairer Future".

<sup>6</sup> EHRC inquiry into the financial sector, September 2009,

[http://www.equalityhumanrights.com/uploaded\\_files/financial\\_services\\_inquiry\\_report.pdf](http://www.equalityhumanrights.com/uploaded_files/financial_services_inquiry_report.pdf)

draft guidance and codes. Measures to achieve better handling of discrimination cases by the courts and tribunals should take effect within 12-18 months of enactment. Other measures to make the law more effective will achieve results over a longer period of time. Most of the measures will extend to Great Britain.

### **Options development**

During the development of proposals to establish the Equality and Human Rights Commission, strong support emerged for an Equality Act to provide a coherent legislative framework for the new Commission's work. In February 2005, the Government established the Discrimination Law Review 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."

Between February 2005 and June 2007 initial proposals for an Equality Bill were developed by the then Women and Equality Unit, now the Government Equalities Office, in consultation with a wide range of government departments including the Department of Health, Department for Work and Pensions, Ministry of Justice, Department for Business, Enterprise and Regulatory Reform (now the Department for Business, Innovation and Skills) and the Department for Children, Schools and Families. Others consulted included the Small Business Service (as was) and the Treasury. In addition there was some initial consultation with business representatives, including the CBI, Federation of Small Businesses, the Employers Forum on Age and others. Representatives of large and small firms were included in a Reference Group of external stakeholders overseeing both the Discrimination Law Review and the Equalities Review. The Reference Group also included representatives of the former Equality Commissions and the Unions. Initial pre-consultation submissions were received from a number of stakeholders.

During September and October 2006, several discussion meetings were held with practitioners including business representatives, academics, equality representatives and other experts on specific issues: the integrated public sector equality duty (structure and enforcement); positive action; age discrimination outside the workplace; enforcement; public-sector procurement; harassment; and guidance.

The formal written consultation was published on 11 June 2007 and ran until 4 September 2007. We received around 4,000 responses to the consultation from a wide range of stakeholders including the former Equality Commissions, local authorities and private business. We also met numerous organisations and representatives from equality stakeholders, business, unions, religious groups, local and public authorities and others through a series of 20-30 consultation events involving seminars/discussions and one-to-one briefings.

Consultation and contacts with key stakeholders have continued on an ongoing basis since the formal consultation, including a series of regional events in Edinburgh, Cardiff, Peterborough and Newcastle in autumn 2008, the formation and monthly meetings of a Senior Stakeholder Group, specific stakeholder groups established to look at the public sector equality duty and age discrimination and one-to-one contacts and informal meetings. In April 2009 we issued a discussion document on multiple discrimination, a summary of responses is available on the GEO website<sup>7</sup>. Two consultations on the Equality Duty<sup>8</sup> and age discrimination<sup>9</sup> ended in September 2009. There were also Bill events in Birmingham, Glasgow, London and Cardiff in autumn 2009.

### **Analysis of overall options**

This impact assessment evaluates the potential costs and benefits of the Equality Act. Each proposal is analysed separately within Annexes A-AA. In addition the general benefits and costs of the Act are given in detail within this section. These include the overall benefits to the economy, the

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<sup>7</sup>

<http://www.equalities.gov.uk/pdf/Equality%20Bill%20Multiple%20Discrimination%20Summary%20of%20Response.pdf>

<sup>8</sup> [http://www.equalities.gov.uk/news/equality\\_duties.aspx](http://www.equalities.gov.uk/news/equality_duties.aspx)

<sup>9</sup> [http://www.equalities.gov.uk/news/age\\_consultation.aspx](http://www.equalities.gov.uk/news/age_consultation.aspx)

general familiarisation costs and the overall benefits of simplifying the law. The overall costs and benefits of the Equality Act can be broken down as follows:

<b>Summary of Costs</b>					
	<b>Annex</b>	<b>One Off</b>		<b>Recurring</b>	
		<b>Low</b>	<b>High</b>	<b>Low</b>	<b>High</b>
Familiarisation (1yr)	P5-30	£203,542,779	£203,542,779	-	-
Socio-economic Duty	A	£449,887	£449,887	£187,157	£187,157
Definitions	B	-	-	£12,476,018	£19,385,750
Age	C	-	-	-	-
Discrimination arising from disability	D	-	-	£1,400,000	£2,800,000
Gender Reassignment	E	-	-	£34,096	£143,246
Pregnancy & Maternity	F	-	-	£178,423	£364,949
Disability - Capacities	G	-	-	£928,006	£2,320,014
Disability – Disadvantage Test	G	-	-	£2,000,000	£6,000,000
Disability - common parts	H	-	-	-	£26,970,000
Harassment- extension outside work	I	-	-	£95,788	£358,178
Harassment - 3rd Party	J	-	-	£139,631	£550,420
Equal pay	K	-	-	-	-
Secrecy Clauses	L	-	-	£2,232,557	£2,232,557
Gender pay gap	M	-	-	-	-
Associations	N	-	-	-	-
Assessors	O	-	-	£7,623	£19,728
Recommendations by tribunals	P	-	-	£55,588	£114,133
Public sector Equality Duty	Q	-	-	-	-
Positive Action	R	-	-	-	-
Disability and transport	S	-	-	£3,901,000	£3,901,000
Exceptions	T	-	-	£520,658	£520,658
Harmonisation	U	-	-	£37,542	£37,542
Dual Discrimination	V	£7,801,394	£7,801,394	£4,084,385	£4,084,385
Pre-employment Enquires	W	£798,000	£1,597,000	-	-
Provision of auxiliary aids	X	£61,500	£61,500	-	-
<b>TOTAL</b>		<b>£212,653,561</b>	<b>£213,452,561</b>	<b>£28,278,471</b>	<b>£69,989,717</b>

## Summary of Benefits

	Annex	One Off		Recurring	
		Low	High	Low	High
General Benefits	P5-30	-	-	£62,497,460	£62,497,460
Simplification	P5-30	-	-	£8,768,893	£8,768,893
Socio-economic Duty	A	-	-	-	-
Definitions	B	-	-	£2,178,254	£2,389,323
Age	C	-	-	-	-
Discrimination arising from disability	D	-	-	-	-
Gender Reassignment	E	-	-	£10,823	£55,891
Pregnancy & Maternity	F	-	-	-	£8,103
Simplifying disability discrimination law	G	-	-	-	-
Disability - common parts	H	-	-	£10,000,000	£40,000,000
Harassment - extension outside work	I	-	-	£8,103	£16,206
Harassment - 3rd Party	J	-	-	£8,103	£24,309
Equal Pay	K	-	-	£3,942,550	£3,942,550
Secrecy Clauses	L	-	-	£326,872	£326,872
Gender pay gap	M	-	-	-	-
Associations	N	-	-	-	-
Assessors	O	-	-	£40,593	£82,716
Recommendations by tribunals	P	-	-	£1,598,048	£3,211,611
Public sector Equality Duty	Q	-	-	-	-
Positive Action	R	-	-	-	-
Disability and transport	S	-	-	£8,200,000	£8,200,000.00
Exceptions	T	-	-	£757,886	£836,962
Harmonisation	U	-	-	-	-
Dual Discrimination	V	£2,625,748	£2,625,748	£633,168	£633,168
Pre-employment Enquires	W	-	-	-	-
Provision of auxiliary aids	X	-	-	-	-
<b>TOTAL</b>		<b>£2,625,748</b>	<b>£2,625,748</b>	<b>£98,970,752</b>	<b>£130,994,064</b>

<b>Costs – Breakdown by affected group</b>				
	<b>One Off</b>		<b>Recurring</b>	
	<b>Low</b>	<b>High</b>	<b>Low</b>	<b>High</b>
Public Sector	£14,889,371	£15,688,371	£7,171,482	£40,908,544
Private Sector	£197,367,076	£197,367,076	£18,523,243	£24,952,934
Voluntary Sector	-	-	£202,572	£224,360
Individuals	£ 397,114	£397,114	£2,381,173	£3,903,879
Society	-	-	-	-
<b>TOTAL</b>	<b>£212,653,561</b>	<b>£213,452,561</b>	<b>£28,278,471</b>	<b>£69,989,717</b>

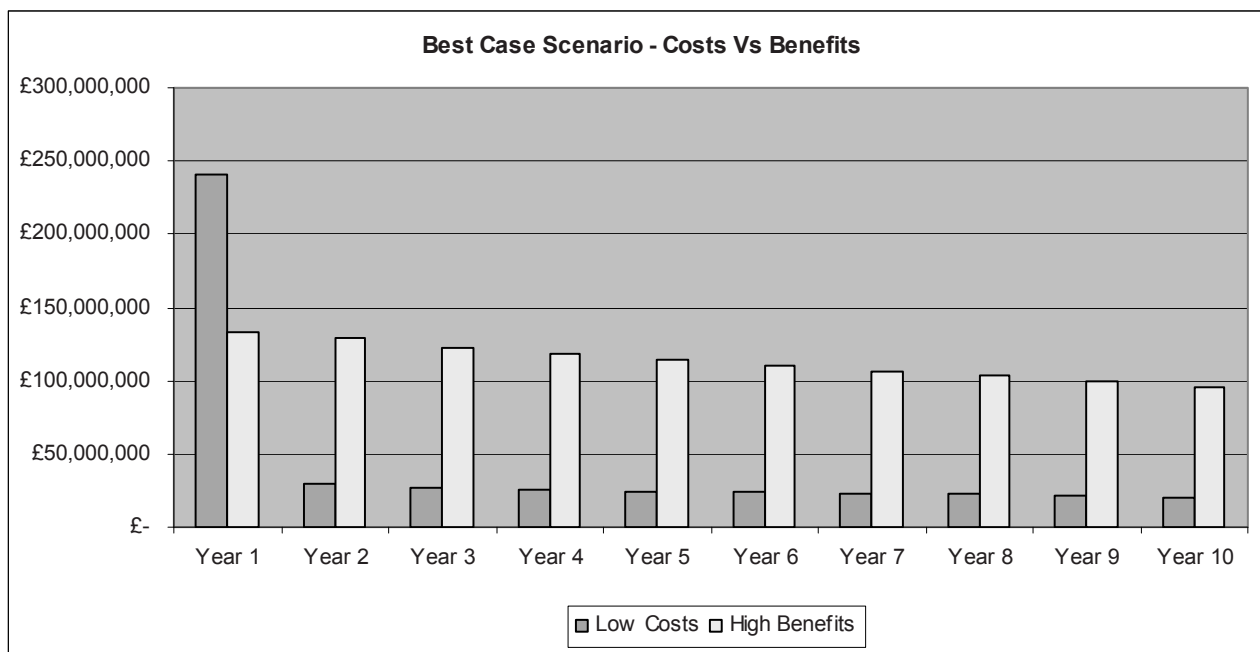
  

<b>Benefits – Breakdown by affected group</b>				
	<b>One Off</b>		<b>Recurring</b>	
	<b>Low</b>	<b>High</b>	<b>Low</b>	<b>High</b>
Public Sector	£708,952	£708,952	£13,160,155	£43,412,807
Private Sector	£1,916,796	£1,916,796	£11,055,403	£12,239,211
Individual	-	-	£11,713,561	£12,294,195
Society	-	-	£63,041,633	£63,047,851
<b>TOTAL</b>	<b>£2,625,748</b>	<b>£2,625,748</b>	<b>£98,970,752</b>	<b>£130,994,064</b>

Best Case Scenario – assuming low cost estimate and high benefit estimate

**Best Case**

	Low Costs	High Benefits	Net Benefit
Year 1	£ 240,932,031	£ 133,619,812	-£ 107,312,220
Year 2	£ 29,859,149	£ 129,101,267	£ 99,242,119
Year 3	£ 26,398,255	£ 122,284,360	£ 95,886,105
Year 4	£ 25,505,560	£ 118,149,140	£ 92,643,580
Year 5	£ 24,643,054	£ 114,153,759	£ 89,510,705
Year 6	£ 23,809,714	£ 110,293,487	£ 86,483,773
Year 7	£ 23,004,554	£ 106,563,755	£ 83,559,201
Year 8	£ 22,226,622	£ 102,960,150	£ 80,733,527
Year 9	£ 21,474,998	£ 99,478,406	£ 78,003,408
Year 10	£ 20,748,790	£ 96,114,402	£ 75,365,612

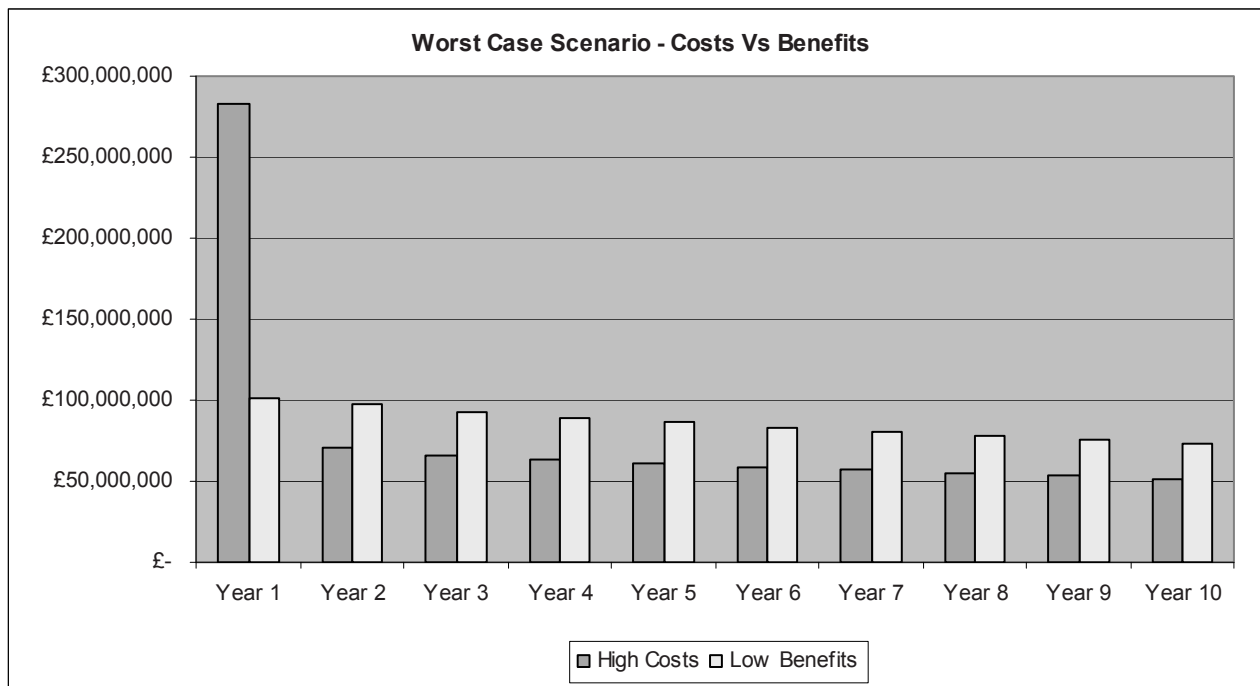


**Worst Case Scenario – assuming high cost estimate and low benefits estimate**

**Worst Case**

	High Costs	Low Benefits	Net Benefit
Year 1	£ 282,643,277	£ 101,596,500	-£ 181,046,777
Year 2	£ 70,159,869	£ 98,160,870	£ 28,001,001
Year 3	£ 65,336,150	£ 92,390,256	£ 27,054,107
Year 4	£ 63,126,715	£ 89,265,948	£ 26,139,234
Year 5	£ 60,991,995	£ 86,247,293	£ 25,255,298
Year 6	£ 58,929,463	£ 83,330,718	£ 24,401,254
Year 7	£ 56,936,680	£ 80,512,771	£ 23,576,091
Year 8	£ 55,011,285	£ 77,790,117	£ 22,778,832
Year 9	£ 53,151,000	£ 75,159,533	£ 22,008,533
Year 10	£ 51,353,623	£ 72,617,906	£ 21,264,283





### **General benefits to the economy**

It is impossible to quantify precisely the general benefits that may be generated by the creation of a more equal society. It is, however, possible to derive an indicative figure for this benefit, based on previous work in this area.

The Equalities Review interim report attempted to measure the broader value to society of a more equitable distribution of resources<sup>10</sup> by applying the concept of diminishing marginal returns to income. This macro-level approach presumes that a more equitable distribution of resources will raise social welfare since additional consumption by poor individuals is valued more highly than it is by richer individuals<sup>11</sup>. The interim report estimates that 30% less inequality could be associated with a benefit of between 5.6 and 11.4 per cent of domestic expenditure, depending on the assumptions chosen. Using moderate assumptions<sup>12</sup>, this benefit would equate to 7.6 per cent or £62.5bn, based on domestic expenditure on goods and services in 2008 according to the Equalities review.

This welfare estimate is still likely to underestimate the true benefit. The method used applies an income-based consideration of reduced inequality only. For instance, it does not consider additional welfare that may be derived from greater economic participation as a result of tackling discriminatory barriers. There are wider indirect costs associated with inactivity, e.g. reduced self-esteem and the loss of human capital that are not accounted for by this approach.

The Equalities Review interim report also estimated costs arising from various groups being out of work and therefore not earning a waged income - a micro-level approach. The total cost of the individual income and government revenue forgone are outlined below for some social groups experiencing severe employment disadvantage. These figures take account of government transfers to unemployed people as well as tax credits.

- mothers: £2.09bn in income forgone and £5.69bn in government revenue forgone;
- mothers with children under 11: £1.16bn in income forgone and £3.15bn in government revenue forgone;

<sup>10</sup> This is measured by a reduction in consumption inequality by 30 per cent.

<sup>11</sup> Note that the gains specified here with respect to reduced consumption inequality are not intended as endorsement of redistribution directly. The debate regarding redistribution and the tensions or synergies between equity, efficiency and growth has a long history among economists. Instead, in this instance, a more equitable distribution of resources and reduced consumption inequality results from better labour market representation of disadvantaged groups who otherwise suffer from discrimination. Indeed a reduction of inequality in this way should benefit growth.

<sup>12</sup> Assumes aversion to inequality of 1.4, using the methodology set out on pages 106-111 of the Equalities Review interim report.

- **disabled people:** £3.45bn in income forgone and £8.86bn in government revenue forgone;
- **Pakistani and Bangladeshi women:** £0.11bn in income forgone and £0.30bn in government revenue forgone<sup>13</sup>.

The figures above are not additive, as some of the groups overlap, i.e. mothers with children under 11 are also considered in the calculation for mothers in general, and some may be disabled or of Pakistani or Bangladeshi heritage. We can therefore not aggregate the findings to obtain a total cost of exclusion from the labour market.

The Women and Work Commission's report 'Shaping a Fairer Future' also estimated the potential cost of micro level gender inequality. They estimated the total benefits of increasing women's employment and reducing occupational segregation could be worth between £15bn and £23bn or 1.3 to 2.0 per cent of gross domestic product<sup>14</sup>. This represents the returns from a more efficient use of the country's labour resources, to which some of the Equality Act measures will contribute.

The measures in this Impact Assessment most likely to affect employment of underprivileged groups and therefore to count towards the general benefits identified are those to do with voluntary positive action measures; and the integrated public sector equality duty. There is no suggestion that these measures alone would result in benefits of anything like the order of magnitude indicated above. However, it would be reasonable to assume that they should help achieve a fraction of the potential benefits over time.

To give a crude indication, suppose we only consider the macro benefits identified by the Equalities Review and apply a fraction of say one thousandth to represent the effect of measures considered by this Impact Assessment. This would give purely indicative benefits somewhere in the region of £62.5m. The main mechanisms in the Act to achieve this will be positive action widening and the expanded public sector equality duty, as well as the extension of goods, facilities, services and premises protection where it does not already exist, which will remove market-based barriers.

Macro Benefits (Equality Review)	0.1%	Estimated general economic benefits
£62,497,460.00	0.1%	£62,497,460

As indicated, many of the measures proposed potentially go beyond employment to impact on the provision of goods, facilities and services: for example, extension of protection against discrimination because of age, gender reassignment, pregnancy and maternity. Some businesses can expect extra revenue from the additional trade that will take place as a result of business no longer lost due to discrimination (or the perceived risk of experiencing it) or harassment. It is clear from the above paragraphs that creation of a fairer society has economic benefits in its own right and that they could be substantial.

### **General familiarisation costs**

A one-off familiarisation cost will attach to most of the proposals covered by this Impact Assessment. It is assumed that "familiarisation", in the great majority of cases for most employers and individuals, will mean familiarisation with or through guidance provided by the Equality and Human Rights Commission and/or by other advisory bodies such as ACAS (Advisory, Conciliation and Arbitration Service). It is also assumed that "familiarisation" means reaching the point where a manager or relevant employee of a firm or organisation is aware of the changes in the law and how they impact upon their business or organisation.

However, it is also assumed that at any one time, most managers or relevant employees will not be fully expert in the existing law. They will, from time to time, need to "re-familiarise" themselves with the law so that they can advise their staff or colleagues accordingly, even if the law remains unchanged. This might happen, for example, as a result of an internal enquiry or potential set of

<sup>13</sup> Equalities Review interim report, March 2006, Table 1 (page 67): The cost of unemployment.

<sup>14</sup> The Women and Work Commission 'Shaping a Fairer Future', Chapter 1, para 35.

discriminatory circumstances; or a court or tribunal case.

The calculation of familiarisation costs relating to the new proposals in this Impact Assessment therefore needs to be adjusted to take account of the probability that in any one year, even if the law were unchanged, there would continue to be costs of “re-familiarisation” with the old law.

For the approximately 3.5m owner-managed firms without employees, “re-familiarisation” will consist of the owner-manager re-informing him or herself by checking available guidance. For this category of firms, we assume that the costs of familiarisation with guidance on the new law will be no greater than the costs of re-familiarisation with guidance on the old law.

However, in the approximately 1.2m small and medium enterprises and the 25,612 public sector organisations with employees we assume that familiarisation with the new proposals will involve a manager informing him or herself about the change in legislation and disseminating the information. In the 5,905 firms with more than 250 employees, we assume that familiarisation with the new proposals will involve a personnel manager with aid from a legal expert not only informing themselves about the changes in legislation but also producing new internal guidance – based on the guidance available from the Equality and Human Rights Commission and similar bodies.

We also need to consider the benefit that simplification will have on familiarisation costs. The Equality Act will make the law more accessible, easier to understand and, easier to implement. These benefits are assumed to reduce familiarisation time by up to an hour; more detail can be found at pages 5-27.

### ***Small and Medium Enterprises***

In small and medium enterprises (SMEs) with between 1 and 249 employees it is assumed that a general manager will be responsible for familiarisation. Data from the Annual Survey on Hours and Earnings Survey (ASHE) 2009 show that the average gross hourly wage for this occupation is £19.16<sup>15</sup>. When uplifted by 21% to allow for non-wage labour costs, this becomes £23.18. This is then multiplied by the time investment estimated to become familiar with the new guidance and reproduce it for other staff in the firm; and subsequently by the number of SMEs likely to need to become familiar with the legislation in any one year.

There are 1,193,750 SMEs in Great Britain,<sup>16</sup> some of these businesses will seek advice because they are involved or likely to become involved in a court or tribunal case, another proportion will respond to planned Government publicity and guidance produced by the Equality and Human Rights Commission.

For the purposes of this Impact Assessment, we assume that within this pool of most relevant businesses 100% of firms are likely to need to familiarise themselves with the new law in year one and disseminate guidance for staff. We are aware this is likely to be an over estimate and a smaller number are likely to proactively familiarise themselves with the new legislation in year one but without any data to base this assumption on we have assumed 100% compliance in the first year.

### ***Large enterprises***

In large firms (250+ employees) it is assumed that there will be a dedicated personnel manager to read guidance, answer follow-up questions and disseminate information to other parts of the organisation. It is also assumed large firms will seek legal advice on high risk issues and as an indirect cost produce their own guidance for staff. The ASHE survey indicates the average gross hourly wage for a personnel manager is £20.93<sup>17</sup> and £25.33 after inclusion of non-wage labour costs. Similarly, for legal professionals the average gross hourly wage is £24.23<sup>18</sup> and £29.32 after inclusion of non-wage labour costs.

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<sup>15</sup> ASHE 2009 code 11

<sup>16</sup> Small Business Statistics 2008

<sup>17</sup> ASHE 2009, code 1135

<sup>18</sup> ASHE 2009, code 241

It is assumed that this proactive dissemination of information will take place in all 5,905 firms employing 250 or more employees in year one.<sup>19</sup>

### ***Public sector***

Familiarisation costs will also fall to the 25,612 public authorities who will need to be aware of the law. It is assumed that each of the public authorities will have a personnel officer or equivalent that is responsible for reading guidance, answering follow-up questions and disseminating information to other parts of the organisation; and that the non-wage labour costs of such a personnel manager are the same as in the private sector. The ASHE Survey shows that an average gross hourly wage for this occupation is £20.93 up lifted by 21% to allow for non-wage labour costs this becomes £25.33.

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<sup>19</sup> Small Business Statistics 2008

### ***Estimation of time investment and familiarisation costs***

The table below shows the estimated time and costs of familiarisation with each of the measures within the Impact Assessment:

<b>Policy Area</b>	<b>Annex</b>	<b>Type of Firm</b>	<b>Time (Hours)</b>	<b>No of organisations</b>	<b>Hourly Cost</b>
Socio-economic Duty	A	Public Authority	3.5	695	£ 36.99
Simplifying definitions	B	SMEs	0.5	1,193,750	£ 23.18
		Large Firms	2	5,905	£ 22.58
		Public Authority	1	25,612	£ 25.33
Age discrimination in goods, facilities and services and the exercise of public functions	C	SMEs	2	1,193,750	£ 23.18
		Large Firms	2	5,905	£ 22.58
		Public Authority	2	25,612	£ 25.33
Discrimination arising from disability: indirect	D	SMEs	1	1,193,750	£ 23.18
		Large Firms	2	5,810	£ 22.58
		Public Authority	2	25,612	£ 25.33
Gender reassignment	E	SMEs	0.5	1,193,750	£ 23.18
		Large Firms	2	5,905	£ 22.58
		Public Authority	1	25,599	£ 25.33
Pregnancy & maternity	F	SMEs	0.5	1,193,750	£ 23.18
		Large Firms	2	5,905	£ 22.58
		Public Authority	1	25,612	£ 25.33
Simplifying disability legislation	G	SMEs	0.5	1,193,750	£ 23.18
		Large Firms	2	5,905	£ 22.58
		Public Authority	0.5	25,612	£ 25.33
Disability and common parts of premises	H	Landlords	1	14,000	£ 21.03
Harassment extension third party and the provision of goods, facilities and services	I and J	SMEs	0.5	1,193,750	£ 23.18
		Large Firms	2	5,905	£ 22.58
		Public Authority	1	25,612	£ 25.33
Equal Pay	K	SMEs	0.5	408,020	£ 23.18
		Large Firms	2	5,905	£ 22.58
		Public Authority	1	25,612	£ 25.33
Pay secrecy clauses	L	SMEs	0.5	408,020	£ 23.18
		Large Firms	2	5,905	£ 22.58
		Public Authority	1	25,612	£ 25.33
Gender pay reporting	M	Large Firms	0.17	15,870	£ 25.33
Public sector Equality Duty	Q	Public Authority	1.5	70,771	£ 25.33
Disability and transport		Local Authorities			
Rationalising exceptions	T	SMEs	0.5	1,193,750	£ 23.18
		Large Firms	2	5,905	£ 22.58
		Public Authority	1	25,612	£ 25.33
Dual discrimination	V	SMEs	0.5	1,193,750	£ 23.18
		Large Firms	1	5,905	£ 22.58
		Public Authority	1	25,612	£ 22.58

## General benefits of simplified discrimination law

### Why is simplification needed?

Discrimination law before the Equality Act had become extremely complex. There were nine major pieces of discrimination legislation<sup>20</sup> and around 100 pieces of ancillary legislation. In addition, the law contained many inconsistencies because it had accumulated over more than forty years. For example, depending on the protected characteristic concerned, there were different definitions of indirect discrimination; different tests for justifying indirect discrimination; different protections against direct discrimination; different exceptions. These technical inconsistencies resulted in different real-life outcomes.

This made it difficult for employees and customers to know their rights and employers and service providers to know their responsibilities. The large volume and complexity of the law was reflected in the volume and complexity of the guidance. The three former equality Commissions produced more than 2,500 pages of website guidance. The Equality and Human Rights Commission will ensure that good quality appropriate guidance is available and disseminated to all relevant stakeholders 12 weeks in advance of commencement of the relevant provisions of the Equality Act.

Simplification makes the law:

- more accessible
- easier to understand
- easier to implement

### How will benefits arise?

We assess that the following savings will arise from simplification:

a) **Benefits to employers:** the time taken by employees working within Small and Medium Enterprises and large businesses to access the information they need to understand how the law affects their business, because of greater clarity, lower volume of material and greater consistency. The value of employees' time-saving at work is the opportunity cost of the time to the employer<sup>21</sup>. Therefore these savings, equal to the gross hourly wage rate plus non-wage labour costs, will be referred to as opportunity cost savings. There are around 1.2m SMEs and large firms with employees supplying goods, facilities or services in Great Britain. In addition, there are around 25,612 public authority employers: so a total of some 1.2 million businesses and organisations<sup>22</sup>. In most cases it will be the guidance (produced by Equality and Human Rights Commission) that is accessed by these groups, not the legislation itself. The Act consists of 218 clauses and 28 schedules i.e. about one third of the combined size of the major pieces of legislation which it will incorporate; it is assumed that this will bring about a corresponding reduction in the time taken to familiarise. This benefit can be quantified as indicated below.

b) **Benefits to employees:** the time saved by individuals when accessing the relevant information. The value of the time saved by individuals is taken to be their market wage rate i.e. what they could have earned by offering that time to the labour market. Unlike for employers in (a) this saving does not include non-wage costs since these are not borne by the individual or 'earned' through labour market exchange.

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<sup>20</sup> Equal Pay Act 1970; Sex Discrimination Act 1975; Race Relations Act 1976; Disability Discrimination Act 1995; Employment Equality (Religion or Belief) Regulations 2003; Employment Equality (Sexual Orientation) Regulations 2003; Employment Equality (Age) Regulations 2006; Equality Act 2006; Equality Act (Sexual Orientation) Regulations 2007.

<sup>21</sup> As defined in the HM Treasury Green Book

<sup>22</sup> Figures taken from Small Business Statistics 2008



### ***Estimated benefits from simplified discrimination law***

While there will be initial costs for existing businesses (but not new ones starting up following enactment) in adjusting to the new simplified legislation and guidance, we assume that from Day 1 of implementation of the new Act, the following benefits will also arise in any one year. Benefits in terms of time savings will also apply to new firms, employers and employees as we compare the savings to what would have been required should the law remain un-simplified:

**i) Employers:** for those in group (a) above, a time saving of one hour is assumed in the time taken to find, read and comprehend how the law affects them; it is assumed that in SMEs a general manager will be responsible for familiarisation and dissemination of information. Data from the Annual Survey on Hours and Earnings 2009 (ASHE) show that the average gross hourly wage for this occupation, uplifted by 21% to allow for non-wage labour costs, is £23.18. Within large firms and public authorities a dedicated personnel manager<sup>23</sup> will handle familiarisation and dissemination with an average gross hourly wage rate of £20.93, and £25.33 after 21% uplift for non-wage labour costs.

A saving of one hour in the time taken to understand the effect of the law produces a total of:

$$\begin{aligned}\text{£23.18/hour} \times 1 \text{ Hour} \times 1.2\text{m SMEs} &= \text{£27.8m.} \\ \text{£25.33/hour} \times 1 \text{ Hour} \times 5,905 \text{ Large Enterprises} &= \text{£149,573} \\ \text{£25.33/hour} \times 1 \text{ Hour} \times 25,612 \text{ Public Authority} &= \text{£648,758}\end{aligned}$$

These are, in effect, opportunity cost savings based on the value to business of the working time saved by their employees. This total assumes that everyone in this group will want or need to inform themselves about the law over time, whether because they want to ensure that they comply or because they are involved in a case. Instead, however, the calculation of annual savings will depend on assumptions about the proportion of the group needing to consider the new law in any one year. This will be dependent on two things: the 'stock' of those who already have sufficient understanding; and the 'flow' of employees who either have to look at this law for the first time or re-refresh their understanding. Indeed it is this "flow" who will be the beneficiaries of simplification year on year. If we assume that in any one year, employees in 20% of businesses benefit from looking at simplified law, the annual saving will therefore be around £5.7m/year (i.e. 20% of £28.6m).

**ii) Employees:** For those in group (b) above, it is assumed that one per cent of the population in employment, around 29.0m employees<sup>24</sup> will seek information about the law in any one year i.e. 290,000. The labour force survey indicates that 75.0% of total employment is in the private sector and 25.0% is in the public sector. ASHE (2009)<sup>25</sup> shows the average hourly salary of an employee in the private sector is £12.10 and the public sector £15.67. A saving of one hour, as for group (a), produces a total saving of:

$$\begin{aligned}\text{£12.10/hour} \times 1 \text{ Hour} \times 217,523 \text{ employees} &= \text{£2.2m/year} \\ \text{£15.67/hour} \times 1 \text{ Hour} \times 72,508 \text{ employees} &= \text{£0.9m/year}\end{aligned}$$

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<sup>23</sup> ASHE 2009 code 1135

<sup>24</sup> Labour Force Survey – Calendar Quarter Update 2009 Q3

<sup>25</sup> ASHE 2009 Table 13.6a Hourly pay - Excluding overtime (£) - For all employee jobs

## Annex A – Duty to consider socio-economic inequalities

<b>Department /Agency:</b> <b>GEO</b>	<b>A duty on some public authorities to consider socio-economic inequalities when taking strategic decisions</b>	
<b>Stage: Royal Assent</b>	<b>Version: 5</b>	<b>Date: April 2010</b>
<b>Related Publications:</b> (1) Equality Bill Impact Assessment (Introduction) 27 April 2009 (2) Equality Bill Impact Assessment (House of Lords Introduction) December 2009		
<b>Available to view or download at:</b> <a href="http://www.equalities.gov.uk">http://www.equalities.gov.uk</a> <b>Contact for enquiries:</b> Tim Morgan		
		<b>Telephone: 0303 444 1204</b>

### What is the problem under consideration? Why is government intervention necessary?

Socio-economically disadvantaged groups tend to suffer poorer outcomes in education, health, employment and other areas. Intervention is needed to ensure that public authorities have due regard to socio-economic inequalities when taking strategic decisions.

### What were the policy objectives and the intended effects?

The new duty will ensure that public authorities take into account, in their planning, commissioning and resourcing of services, the need to identify and have due regard to inequalities associated with socio-economic disadvantage.

### What policy options have been considered? Please justify any preferred option.

- Option 1. Do nothing.
- Option 2. Issue guidance, and spread best practice – tailored to different parts of the public sector.
- **Option 3. Legislate, with a new duty on public authorities to address these issues – but in a light-touch way, with flexibility for different organisations to decide their roles. (Chosen option – see Evidence section for analysis.)**
- Option 4. Legislate, with a new duty on public authorities to address these issues – and ensure they comply by requiring each organisation to draw up a new action plan or scheme, with specific targets, and giving a role to a body such as the Equality and Human Rights Commission to monitor compliance and enforce.

### When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects?

Monitoring and reporting arrangements which are already in place (such as the Comprehensive Area Assessment for local authorities and their partners) already gather a great deal of information relevant to this duty. From this information, the Government Equalities Office, working with such organisations as the Audit Commission, will be in a position to assess how public bodies are doing in terms of complying with the duty, and the costs associated with it.

In terms of the achievement of the desired effects, long-term monitoring of local and national statistics on education, health, employment, etc is already carried out by a range of central government departments and research organisations.



## Summary: Analysis & Evidence

**Policy Option: 3**

**A duty on some public authorities to consider socio-economic inequalities when taking strategic decisions**

COSTS	ANNUAL COSTS		Description and scale of <b>key monetised costs</b> by ‘main affected groups’  Familiarisation costs are shown on page 12 onwards.  <b>Public Sector:</b> <ul style="list-style-type: none"><li>○ One-off cost of £449,887</li><li>○ Recurring cost of £187,157</li></ul>
	One-off (Transition)	Yrs	
	£ 449,887	1	
	Average Annual Cost (excluding one-off)		
	£ 187,157		
	Total Cost (PV)		
		£ 2,501,875	
Other <b>key non-monetised costs</b> by ‘main affected groups’			

BENEFITS	ANNUAL BENEFITS		Description and scale of <b>key monetised benefits</b> by ‘main affected groups’	
	One-off	Yrs		
	£ 0			
	£ 0		Total Benefit (PV)	£ 0
	Other <b>key non-monetised benefits</b> by ‘main affected groups’			
Socio-economically deprived groups will benefit from a refocussing of public service provision.				

### Key Assumptions/Sensitivities/Risks

- Number of hours taken by authorities to familiarise themselves with the duty
- Number of authorities that will be subject to the duty

Price Base Year	Time Period Years	Net Benefit Range (NPV)	NET BENEFIT (NPV Best estimate)
2009	10	up to -£2,501,875	-£1,250,937 (mid-point)

What is the geographic coverage of the policy/option?		GB		
On what date will the policy be implemented?		See page 8		
Which organisation(s) will enforce the policy?		HM Courts		
What is the total annual cost of enforcement for these organisations?		£ 0		
Does enforcement comply with Hampton principles?		N/A		
Will implementation go beyond minimum EU requirements?		N/A		
What is the value of the proposed offsetting measure per year?		£ 0		
What is the value of changes in greenhouse gas emissions?		£ 0		
Will the proposal have a significant impact on competition?		No		
Annual cost (£-£) per organisation (excluding one-off)	Micro	Small	Medium	Large
Are any of these organisations exempt?	No	No	N/A	N/A

Impact on Admin Burdens Baseline (2005 Prices)				(Increase - Decrease)
Increase	£ 0	Decrease	£ 0	<b>Net Impact £ 0</b>

Key:

Annual costs and benefits: Constant Prices

(Net) Present Value

## **Evidence**

### **What policy options have been considered?**

Option 1. Do nothing – perhaps on the basis that parts of the public sector are already doing work to address socio-economic disadvantage.

Option 2. Issue guidance, and spread best practice – tailored to different parts of the public sector.

**Option 3. Legislate, with a new duty on public authorities to address this issues – but in a light-touch way, with flexibility for different organisations to decide their roles (chosen option).**

Option 4. Legislate, with a new duty on public authorities to address this issue – and ensure they comply by requiring each organisation to draw up a new action plan or scheme, with specific targets, and giving a role to a body such as the Equality and Human Rights Commission to monitor compliance and enforce.

### **What policy options were rejected and why?**

Taking the rejected options in turn, on option 1 it is certainly the case that many parts of the public sector are taking action to address socio-economic disadvantage. But the picture is mixed – both within particular public sector organisations, and across the public sector as a whole. Legislation will help improve consistency as well as, crucially, ensuring that different public sector organisations work together more closely on this issue.

Legislation will also establish an overall policy for future work. As it stands, much work to address inequalities is built into relatively short-term arrangements – Public Service Agreements, Local Area Agreements, Regional Economic Strategies, etc which have no more than a 3-year life span. Legislation will ensure that the principle of tackling entrenched poverty is given due consideration when these short-term arrangements come up for renewal or replacement.

A good deal of guidance and best practice (option 2), is issued already, across the public sector. But in many cases such guidance has little or no legislative bite, and no long-term status. The new duty will ensure that in future, such guidance forms part of a clear legislative requirement to give consideration to this issue.

On option 4, we want to avoid being too prescriptive. We do not want to burden any part of the public sector with requirements for new plans or targets, nor with the threat of heavy-handed enforcement. We are also aware that different organisations have very different options open to them in addressing disadvantage. So we have chosen a lighter-touch model, requiring public bodies to give consideration to this issue, but giving them some discretion in deciding how this requirement can be best taken forward within their own policy/service-delivery domain.

### **Description of chosen policy option**

Our chosen option is 3 – to legislate, with a new duty on public authorities to address this issue but in a light-touch way, with flexibility for different organisations to decide their roles.

### ***Who the duty applies to***

The new duty will apply to listed public authorities when deciding how to exercise their strategic functions – in particular when setting outcomes and targets, and planning and commissioning services. The duty will therefore influence the delivery of front line public services without applying directly to them. It will apply, for example, to police authorities but not to the police service itself; and to Primary Care Trusts (responsible for setting local outcomes and commissioning services to meet these) but not to the providers of services it commissions (e.g. hospitals, health visitors, GPs).

The authorities affected are the following:

Type	Number
Central Government	70
Local Authorities	410
Regional Development Agencies	9
Strategic Health Authorities	10
Primary Care Trusts	152
Police Authorities	44
Total	695

### ***What the duty requires***

The new duty does not create new processes or functions. Instead it will ensure that, in carrying out existing processes and functions, public bodies look to identify inequalities resulting from socio-economic disadvantage, and plan to address them. The duty will apply when public bodies carry out processes such as needs assessments, strategic planning and prioritisation, the commissioning of services, and monitoring. They will consider the duty in the context of their overall functions, priorities and resources.

The duty:

- provides legislative underpinning for existing good practice and policies/programmes addressing inequalities, ensuring that authorities continue in the future to build on this work
- helps ensure that socio-economic disadvantage is taken into account in policies and services where its impact is less well known and has a lower profile (for example, the impact of socio-economic disadvantage on educational attainment and employment is generally better known and understood than its impact on areas such as financial inclusion and crime)
- requires public authorities which are not currently meeting good practice standards to make improvements.

For public authorities who are already undertaking good practice policy-making and service commissioning, the duty will have minimal additional impact as they are already taking socio-economic disadvantage into account within their strategic planning processes.

In summary, there are no separate monitoring, enforcement or reporting on this duty.

### **Costs of chosen option**

The cost of the legislation is taken to be the time required for authorities to familiarise themselves with it, and the time taken on an on-going basis to ensure that appropriate data feeds into the relevant decision-making processes. It is assumed that the first element will, on average, take a senior official (or equivalent) three days (21 hours), including half a day to familiarise themselves with the legislation and then a further two and a half days to integrate consideration of socio-economic disadvantage into the policy process where this is not already the case. It is assumed that the second element will take a senior official or analyst one day's work each year.

The assumption that compliance will take 21 hours initially and 7 hours on an on-going basis is the main limitation on the accuracy of this impact assessment. It is not known how long it will take authorities to familiarise themselves with the duty and to adjust their policy processes to accord with it. This will depend to some extent on the degree to which authorities are already taking socio-economic disadvantage into account when formulating policies. If the time required is less or more, then the overall cost of the duty will be correspondingly less or more. Likewise, the efficiency of existing processes for feeding appropriate data into an organisation's key strategic decision-making processes will affect the need for, and extent of, the on-going costs.

As the approach constitutes good practice, any costs over and above familiarisation with the new legislation are judged to be "business as usual".

The cost per hour of a senior official's time is taken to be the hourly rate (as given in the Annual Survey of Hours and Earnings 2009 code 11), uprated by 21 per cent to cover non-labour costs.

Per institution the cost is therefore:

Hours taken X hourly rate = cost per institution

For familiarisation, this is:

$$3.5 \times £36.99 = £129.5$$

The total cost of familiarisation with the new duty is therefore:

Cost per institution X number of institutions = total cost

$$£129.5 \times 695 = £90,002$$

This is included in the overall familiarisation costs for the Act set out on page 12 onwards.

For implementation, this is:

Hours taken X hourly rate = cost per institution

$$17.5 \times £36.99 = £647.3$$

The total one off implementation cost for all institutions is therefore:

Cost per institution X number of institutions = total cost

$$£647.3 \times 695 = £449,873.5$$

The on-going yearly costs for each institution will be:

Hours taken X hourly rate = cost per institution

$$7 \times £36.99 = £258.9$$

The total yearly on-going cost will therefore be:

Cost per institution X number of institutions = total cost

$$£258.9 \times 695 = £179,935.5$$

### **Benefits of chosen option**

For example, in 2007 62.8 per cent of non-Free School Meals pupils achieved five or more A\*-C passes at GCSE. For Free School Meals (FSM)-eligible pupils this figure was 35.5 per cent. Increasing the focus on socio-economically deprived children would be one way of addressing the relatively low achievement of FSM pupils.

### **Administrative Burdens**

This policy solely impacts on the public sector and is not subject to an administrative burdens assessment.

## Annex B - Simplifying and standardising definitions of discrimination and related concepts

<b>Department GEO</b>	<b>Simplifying and standardising definitions of discrimination and related concepts</b>	
<b>Stage: Royal Assent</b>	<b>Version: 5</b>	<b>Date: April 2010</b>
<b>Related Publications:</b> (1) Discrimination Law Review: Proposals for an Equality Bill for Great Britain (June 2007). (2) Proposals to simplify and modernise the law: Initial RIA (June 2007). (3) Framework for a Fairer Future (June 2008) and (4) the Government response to the consultation (July 2008) (5) Equality Bill Impact Assessment (Introduction) 27 April 2009 (6) Equality Bill Impact Assessment (House of Lords Introduction) December 2009		
<b>Available to view or download at:</b> <a href="http://www.equalities.gov.uk">http://www.equalities.gov.uk</a> . <b>Contact for enquiries:</b> Wally Ford <span style="float: right;"><b>Telephone: 0303 444 1204</b></span>		
<b>What is the problem under consideration? Why is government intervention necessary?</b>  The legislation that preceded the Equality Bill provided different levels of protection for different protected characteristics, used differing definitions (for example of direct and indirect discrimination) and provided differing coverage of relevant protections depending on which protected characteristic, or sub-set of a characteristic was in issue. This resulted in a lack of transparency and consistency in the law and in consequence increased the risk of cases of discrimination arising out of ignorance and lack of understanding.		
<b>What were the policy objectives and the intended effects?</b>  The Government considers it appropriate to: <ul style="list-style-type: none"> <li>• (A) have a uniform definition of indirect discrimination across the Act;</li> <li>• (B) aligned the definition of victimisation with that of employment law, by removing the requirement for a comparator; and</li> <li>• (C) extend protection against direct discrimination and harassment based on association with a person with a particular characteristic, where that protection does not already exist; and extend protection against direct discrimination and harassment to cover people wrongly perceived to possess a protected characteristic, where that protection does not already exist.</li> </ul>		
<b>What policy options have been considered? Please justify any preferred option.</b>  <ul style="list-style-type: none"> <li>• Option 1 – Do nothing</li> <li>• Option 2 – Standardise definitions (final proposal).</li> </ul> <p>Failure to standardise definitions across all areas of discrimination law would have left businesses and individuals grappling with grey areas of discrimination law. Our final proposal was therefore option 2 as employers and service providers will benefit by having only one set of definitions to deal with. Potential claimants will benefit because they will be able to argue their case without necessarily having to produce quantitative evidence. Employers or service providers will also be subject to the otherwise standard but slightly more stringent test for assessing whether indirect discrimination is justified, that it should be “a proportionate means of achieving a legitimate aim”. This in turn may improve the success rate of cases, as well as increase the number of cases.</p>		
<b>When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects?</b>  After implementation the Equality and Human Rights Commission will monitor on an ongoing basis. The Government will review after 5 years.		

## Summary: Analysis & Evidence

Policy option: 2

Simplifying and standardising definitions

COSTS	ANNUAL COSTS		Description and scale of <b>key monetised costs</b> by ‘main affected groups’	
	One-off (Transition)	Yrs		
	£ 0	1	<b>Public Sector</b> - £1,410,871 to £ 2,368,175	
			<b>Private Sector</b> - £9,849,084 to £14,640,398	
	<b>Average Annual Cost</b> (excluding one-off)		<b>Individuals</b> – £1,041,803 to £2,186,031	
			<b>Voluntary</b> - £174,206 to £191,146	
£ 12,476,018 to £19,385,750		10	Total Cost (PV)	£ 107,389,649 to £ 166,866,459
Other <b>key non-monetised costs</b> by ‘main affected groups’				

BENEFITS	ANNUAL BENEFITS		Description and scale of <b>key monetised benefits</b> by 'main affected groups'	
	One-off	Yrs		
	£ 0	1		
	£ 2,178,254 to £ 2,389,323	10	Total Benefit (PV)	£18,749,728 to £ 20,566,539
	Other <b>key non-monetised benefits</b> by 'main affected groups'			
<ul style="list-style-type: none"><li>Better understanding of the law should reduce inadvertent non-compliance that leads to claims. However it is uncertain whether this will be offset or even outweighed by increased claims resulting from greater awareness of rights.</li><li>Courts and tribunals should be able to interpret the law more consistently, which may reduce the time and costs of cases and the likelihood of appeal.</li></ul>				

### Key Assumptions/Sensitivities/Risks

Assumes a 2% increase in successful cases; assumes a 2-5% increase in the number of tribunal claims; and assumes an extra 4-6 court cases for race and sex discrimination.

Price Base Yr	Time Period Years	Net Benefit Range (NPV)	NET BENEFIT (NPV Best estimate)
2009	10	-£ 86,823,110 to -£ 148,116,731	-£67,469,921 (mid-point)

What is the geographic coverage of the policy/option?			GB	
On what date will the policy be implemented?			[see table p.9]	
Which organisation(s) will enforce the policy?			[see table p.9]	
What is the total annual cost of enforcement for these organisations?			£0	
Does enforcement comply with Hampton principles?			N/A	
Will implementation go beyond minimum EU requirements?			N/A	
What is the value of the proposed offsetting measure per year?			£ 0	
What is the value of changes in greenhouse gas emissions?			£ 0	
Will the proposal have a significant impact on competition?			No	
Annual cost (£-£) per organisation (excluding one-off)		Micro	Small	Medium
Are any of these organisations exempt?		No	No	N/A

### Impact on Admin Burdens Baseline (2005 Prices)

Increase	£0	Decrease	£0	Net Impact	£0
Annual costs and benefits: Constant Prices			(Net) Present Value		



## **Evidence**

### **What policy options have been considered?**

#### ***A. Indirect discrimination: definition of cause; test for proving indirect discrimination; formulation of objective justification***

The proposal embodied in the Act is to have a uniform definition of indirect discrimination across the Act. This will replace the previous definitions covering:

- Sex in areas other than employment or vocational training for over 18s; and
- Race, in relation to nationality and colour

With that definition which applies across the other protected characteristics.

Simplifying and standardising definitions of discrimination and related concepts will benefit employers and service providers as they will only have one definition to deal with. Potential claimants will benefit because they will be able to argue their case without necessarily having to produce quantitative evidence. Employers or service providers will be subject to the slightly more stringent, otherwise standard, test that an indirectly discriminatory provision criterion or practice should be “*a proportionate means of achieving a legitimate aim*”. This in turn may:

- Increase the number of race and sex discrimination cases relating to provision of goods, facilities and services in the courts;
- Increase the number of race (colour and nationality) discrimination cases going to employment tribunals; and
- Increase the success rate of cases going to courts and therefore the value of compensation awarded.

#### ***B. Victimisation***

In line with the 2007 consultation proposals, the Government has aligned the definition of victimisation with that of employment law, by removing the requirement for a comparator. By defining victimisation in terms of absolute rather than comparative harm, this should make the law easier to understand and operate

#### ***C. Direct discrimination and harassment: perception and association***

The 2007 consultation document did not propose any major changes in the different approaches in relation to the different groups, because the existing approaches were considered to be well-founded, although a commitment was made to extend protection by reason of a person's association with another to cover gender reassignment.

However, in view of the implications of the July 2008 European Court of Justice judgment in *Coleman v Attridge Law*, the Government decided that, as well as fulfilling the terms of the judgment by extending protection against direct discrimination and harassment at work to non-disabled employees who look after (i.e. are associated with) disabled people, it is also appropriate to extend protection against direct discrimination and harassment based on association to certain other areas where it does not already exist<sup>26</sup>, these include direct disability discrimination and

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<sup>26</sup> Protection from direct discrimination and harassment against someone based on their association with another person possessing a protected characteristic already exists in the case of discrimination on grounds of race, religion or belief and sexual orientation, in employment; and on grounds of race in the provision of goods, facilities and services. In the case of harassment based on association, protection also already exists on the ground of sex in employment and the provision of goods, facilities and services.

Protection from direct discrimination and harassment against someone based on their association with another person possessing a protected characteristic already exists in the case of discrimination on grounds of race, religion or belief and sexual orientation, in employment; and on grounds of race in the provision of goods, facilities and services. In the

harassment in the provision of goods, facilities and services; direct age discrimination and harassment in employment and the provision of goods, facilities and services; direct sex discrimination in employment and the provision of goods, facilities and services; and direct gender reassignment discrimination and harassment in employment and the provision of goods, facilities and services.

The Government also considers it appropriate to extend protection against direct discrimination and harassment aimed at people wrongly perceived to possess a protected characteristic, to certain areas where it does not already exist<sup>27</sup>. Those areas are:

- i) direct disability discrimination and harassment in employment and vocational training, based on association and perception;
- ii) direct disability discrimination and harassment in the provision of goods, facilities and services, management and disposal of premises, education, public functions and associations, based on association and perception;
- iii) direct age discrimination and harassment in employment and vocational training, based on association;
- iv) direct age discrimination and harassment in the provision of goods, facilities and services, public functions and associations based on association and perception;
- v) direct sex discrimination and harassment in employment and vocational training, provision of goods, facilities and services, management and disposal of premises, education, public functions and associations based on association and perception; and
- vi) direct gender reassignment discrimination and harassment in employment and vocational training, provision of goods, facilities and services, management and disposal of premises, public functions and associations based on association and perception; and direct gender reassignment discrimination in education based on association and perception.

### **Costs of chosen options**

#### ***(A) Introduce a uniform definition of indirect discrimination across the Act***

##### **Court costs**

The cost an increased number of discrimination cases relating to provision of goods, facilities and services in the courts was calculated by multiplying the average cost of a discrimination case by the additional number of cases that will be heard as a result of this change.

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case of harassment based on association, protection also already exists on the ground of sex in employment and the provision of goods, facilities and services.

<sup>27</sup> Protection from direct discrimination and harassment against someone wrongly perceived to possess a protected characteristic already exists in the case of discrimination on grounds of race, religion or belief and sexual orientation, in employment and the provision of goods, facilities and services; and on grounds of age in employment. In the case of harassment, protection also already exists on the ground of sex in employment and the provision of goods, facilities and services.

<sup>27</sup> Protection from direct discrimination and harassment against someone wrongly perceived to possess a protected characteristic already exists in the case of discrimination on grounds of race, religion or belief and sexual orientation, in employment and the provision of goods, facilities and services; and on grounds of age in employment. In the case of harassment, protection also already exists on the ground of sex in employment and the provision of goods, facilities and services.



	Average cost of a court case	X	Additional number of cases (for race and sex)	=	Cost of proposal
<b>LOW ESTIMATE</b>	£1,011	X	8 (4 for Race and 4 for Sex)	=	<b>£8,088</b>
<b>HIGH ESTIMATE</b>	£1,011	X	12 (6 for Race and 6 for Sex)	=	<b>£12,132</b>

This calculation assumes that simplifying and standardising the definitions of discrimination will result in an increase of between 8-12 court cases.<sup>28</sup>

#### Tribunal costs

The cost of an increased number of race (colour and nationality) discrimination cases heard by employment tribunals was calculated by multiplying the average cost for employers, tax payers and individuals for each case by the percentage increase in the number of cases

	Cost to	Number of Tribunal Cases increased by 2%	-	Number of tribunal cases	=	Increase in number of cases	X	Average cost of a tribunal case	=	Cost of proposal
<b>LOW ESTIMATE</b>	Employer	4004 X 102% = 4084	-	4004	=	80	X	£5393	=	£431,440
	Taxpayer	4004 X 102% = 4084	-	4004	=	80	X	£1,034	=	£82,720
	Individual	4004 X 102% = 4084	-	4004	=	80	X	£1331	=	£106,480
	<b>Total</b>									<b>£620,640</b>

	Cost to	No of Tribunal Cases increased by 5%	-	No of tribunal cases	=	Increase in number of cases	X	Average cost of a tribunal case	=	Cost of proposal
<b>HIGH ESTIMATE</b>	Employer	4004 X 105% = 4205	-	4004	=	201	X	£5393	=	£1,083,993
	Taxpayer	4004 X 105% = 4205	-	4004	=	201	X	£1,034	=	£207,834
	Individual	4004 X 105% = 4205	-	4004	=	201	X	£1331	=	£267,531
	<b>Total</b>									<b>£1,559,358</b>

This calculation assumes that simplifying and standardising the definitions of discrimination will result in an increase of between 2 and 5% of tribunal cases<sup>29</sup>.

<sup>28</sup> This calculation uses data on the average cost of a court case. These data are taken from the ETS Annual Reports 2005-06 to 2007-08. The figure provided is an average of the court costs for those 3 years.

<sup>29</sup> The calculation uses data on the average cost of a tribunal case. These data are taken from the SETA (Survey of Employer Tribunal appeals) 2003. It also uses data on the average number of tribunal cases for race and sex taken from the ETS Annual Reports 2005-06 to 2007-08.

### Compensation costs & benefits

The costs and benefits of the increased success rate of tribunal cases of race and sex discrimination in terms of compensation awards were calculated by multiplying the increase (2%) in employment tribunal cases.

Average number of tribunal cases for race and sex	X	2 %	=	Increase in cases	X	Average Compensation Award	=	Cost/ Benefit of the proposal
27108 (4004 for race and 23103 for sex)	X	2 %	=	542	X	£3,608	=	<b>£1,955,536</b>

The figure of £1,955,536 is the estimated cost to the private/public/voluntary sectors and the benefit to individuals. This calculation is based on the assumption that the proposed change will lead to a 2% increase in the number of successful tribunal cases.<sup>30</sup>

From The Survey of Employment Tribunal Applications 2003, we can estimate the sector composition of employment tribunals. The table below breaks-up compensation awards by this composition to show compensation costs to each sector.

Compensation costs	Low estimate	High estimate
Public Sector	£ 527,995	£ 527,995
Private Sector	£1,310,209	£1,310,209
Voluntary Sector	£ 117,332	£ 117,332
<b>Total</b>	<b>£1,955,536</b>	<b>£1,720,850</b>

### Familiarisation costs and simplification benefits

In addition to the costs and benefits already calculated, introducing this measure will mean that firms in the private sector as well as public sector organisations will need to familiarise themselves with the new law. The familiarisation costs for the whole Act have been calculated above. This will be offset in part by the time savings from using simplified guidance. The benefits of this have also been calculated for the whole Act and are detailed above.

### ***(B) Victimisation***

#### Removing the comparator in victimisation cases

It is against the law to victimise a person, both in employment legislation and discrimination legislation. But in employment legislation, the victim does not have to show they have been treated worse than another. They simply need to show they have been treated badly; whereas in existing discrimination legislation, they must currently show they have been treated worse than another. The Act will simplify this by aligning discrimination law with employment law so that in future a person suffering victimisation will simply have to show they have been treated badly.

#### Victimisation in schools

<sup>30</sup> This calculation uses data on the average number of tribunal cases for race and sex taken from the ETS Annual Reports 2005-06 – 2007-08 and data on the average value of a compensation award DTI Employment Relations Research Series No 33 - <http://www.dti.gov.uk/files/files11455.pdf?pubpdfload=04%2F1071>

The Act will also contain a measure preventing school children from being victimised because of a discrimination complaint made by their parents and/or a sibling. This protection, which already exists for disabled children, will be extended to cover discrimination complaints based on any of the protected characteristics.

Any burdens are likely to be limited to training, updating of guidance manuals and advice to individual teachers, in the rare event that they are the subject of a complaint. Schools will already be familiar with the existing disability discrimination provision.

Overall, there could be a very marginal increase in the number of tribunal cases, either because parents feel more confident in bringing a claim (knowing their child won't suffer as a result) or because of increased victimisation claims where children do suffer as a result of their parent/sibling's action. But unless there is currently a significant hidden problem, this trend should be slight and is not considered to merit reflection in the overall costs figure.

**(C) Direct discrimination and harassment: perception and association**

**(i) Direct disability discrimination and harassment in employment and vocational training, based on association and perception**

The following sets out the anticipated costs and benefits relating to protection against direct discrimination and harassment in employment arising from a person's association with a disabled person or where a person is perceived to be disabled.

Costs of additional tribunal cases (recurring costs)

**Single annual cost - 2008/9**

	Cost to	Increase in number of cases	X	Average cost of a case	=	Cost of proposal
<b>LOW ESTIMATE</b>	Taxpayer	635	X	£1,034	=	£656,590
	Employer	635	X	£5393	=	£3,424,555
	Individual	635	X	£1331	=	£845,185
	<b>Total</b>					<b>£4,926,330</b>

	Cost to	Increase in number of cases	X	Average cost of a case	=	Cost of proposal
<b>HIGH ESTIMATE</b>	Taxpayer	1271	X	£1,034	=	£1,314,214
	Employer	1271	X	£5393	=	£6,854,503
	Individual	1271	X	£1331	=	£1,691,701
	<b>Total</b>					<b>£9,860,418</b>

The source of the data on the average tribunal cost is the Survey of Employment Tribunal Applications (SETA) 2003 and the average value of a compensation award is taken from the (as was) Department of Trade and Industry Employment Relations Research Series No 33.

The number of additional cases has been calculated using the following steps:

1. The total number of people estimated to be associated with a disabled person was calculated by looking at the number of non-disabled people who either live with, or informally care for, a disabled person.
2. The estimated total number of people who could be perceived to be disabled was calculated by looking at all those who have an illness or impairment which is not limiting and thus are not deemed disabled.

3. The sum of these two groups came to around 13.9 million people, of which 6.5 million are economically active and therefore could be discriminated against with regards to employment.<sup>31</sup>
4. The proportion of economically active disabled people who brought an employment tribunal case (around 0.2%) was then applied to those likely to be covered by the extended provisions i.e. the group mentioned above. This produces an estimate of around 13,000 possible cases for non-disabled people in respect of disability.
5. It is assumed that 20% of disability-related employment tribunal cases are due to direct discrimination or harassment and thus will be relevant to this extended group, unlike issues surrounding an employer's failure to make reasonable adjustment. This produces a figure of 2,600.
6. It is assumed for the high estimate that non-disabled people covered under association and perception are half as likely to be discriminated against as disabled people because of disability (without rounding, this figure comes to 1271). For the low estimate this assumption drops to a quarter (again, without rounding this figure comes to 635).

### Compensation

**2008/9**

	Compensation Average award (tribunal)	X	Additional number successful cases	=	Total
<b>LOW ESTIMATE</b>	£3608	X	13	=	<b>£46,904</b>
<b>HIGH ESTIMATE</b>	£3608	X	25	=	<b>£90,200</b>

From The Survey of Employment Tribunal Applications 2003, we can see the sector composition of employment tribunals. The table below shows compensation costs to each sector, based on the proportion of successful cases.

Compensation Costs	Lowest	Highest
<b>Public Sector</b>	£ 12,664	£ 24,354
<b>Private Sector</b>	£ 30,488	£ 58,630
<b>Voluntary Sector</b>	£ 3,752	£ 7,216
<b>Total</b>	<b>£ 46,904</b>	<b>£ 90,200</b>

This is both a cost to the defendant/respondent and a benefit to the claimant/appellant.

Assumptions:

- The average level of compensation has been taken from Employment Tribunal and EAT Statistics 2006/7.
- The additional number of successful cases has been calculated by multiplying the additional number of cases calculated above by 2% which is the average percentage of disability discrimination cases over 2006/7 that were successful.<sup>32</sup>
- It is assumed there is no difference in probability that a non-disabled person has a successful ET case compared to a disabled person. Nor is there a difference in the amount of compensation received by a disabled person and non-disabled person.

<sup>31</sup> Source: Family Resource Survey 2006/7

<sup>32</sup> Employment Tribunal and EAT Statistics 2006/7:

<http://www.employmenttribunals.gov.uk/Documents/Publications/AnnualStatistics0607.pdf>.

**( ii) Direct disability discrimination and harassment in the provision of goods, facilities and services, management and disposal of premises, education, associations and public functions based on association and perception**

The following sets out the anticipated costs and benefits relating to protection against direct discrimination and harassment arising from a person's association with a disabled person, or where a person is perceived to be disabled, in the provision of goods, facilities and services, premises, education, private clubs and public functions.

Compensation awards are deemed to be both a cost (to the defendant/respondent) and a benefit (to the claimant/appellant)

Costs of additional court cases (recurring costs)

	Average cost of a court case	X	Additional number of cases	=	Annual cost of proposal
<b>LOW ESTIMATE</b>	£1,011	X	5	=	<b>£5,055</b>
<b>HIGH ESTIMATE</b>	£1,011	X	10	=	<b>£10,110</b>

Assumptions:

- The number of discrimination cases because of disability in the provision of goods, facilities and services, education, associations and functions of public bodies is 16.<sup>33</sup>
- This applies to all disabled people in the UK which is estimated to be around 10.7 million people<sup>34</sup>. The number of people covered under association and perception is estimated to be around 13.9 million people.<sup>35</sup> Therefore if people covered under association or perception are as likely to be discriminated against as a disabled person then around a further  $(13.9/10.7 \times 16) = 20$  cases could be expected to go to court.
- However, it has been assumed that a high estimate for the likelihood of being discriminated against because of disability for people covered under association and perception compared to disabled people is  $\frac{1}{2}$  and a low estimate is  $\frac{1}{4}$ . Therefore a high estimate for the number of additional cases is  $(20 \times \frac{1}{2}) = 10$  and a low estimate is  $(20 \times \frac{1}{4}) = 5$ .

Compensation (recurring)

	Average level of compensation per court case	X	Additional number of successful cases	=	Annual level of compensation given
<b>LOW ESTIMATE</b>	£3,250	X	5	=	<b>£16,250</b>
<b>HIGH ESTIMATE</b>	£3,250	X	10	=	<b>£32,500</b>

From the Survey of Employment Tribunal Applications 2003, we can estimate the sector composition of employment tribunals. The table below shows compensation costs to each sector:

Compensation costs	Lowest	Highest
<b>Public Sector</b>	£ 4,388	£ 8,775
<b>Private Sector</b>	£ 10,563	£ 21,125
<b>Voluntary Sector</b>	£ 1,300	£ 2,600
<b>Total</b>	<b>£16,251</b>	<b>£32,500</b>

<sup>33</sup> Source: Improving Protection From Disability Discrimination, November 2008, Office for Disability Issues.

<sup>34</sup> Source: Family Resources Survey 06/07

<sup>35</sup> This refers to people who either care for, or live with, a disabled person or have an illness or impairment that is not limiting according to the Family Resources Survey 06/07.

The former Disability Rights Commission noted that nearly all of the cases that it supported in this field were successful. Therefore it has been assumed that all new cases will lead to compensation.<sup>36</sup>

There is no central source of data on the average level of compensation given in cases dealing with goods, facilities and services. However, the Equality and Human Rights Commission noted that a recent case dealing with discrimination because of disability and the provision of goods, facilities and services led to £6,500 of compensation which was the 'highest of its kind'.<sup>37</sup> Therefore this has been taken as a maximum value with a crude average being calculated by halving this figure (£3,250).

This annual level of compensation is deemed to be a cost to the defendant/respondent and a benefit to the claimant/appellant.

### ***(iii) Direct age discrimination and harassment in employment and vocational training based on association***

#### What are the policy objectives and the intended effects?

To protect employees and people undergoing vocational training from unfair age discrimination by association. To provide clarity for employers and providers of vocational training on which practices would be covered by this form of discrimination. It will be important for clear guidance to be available on the use of "objective justification" to justify differential treatment in this area.

#### Existing Government initiatives

Direct age discrimination in employment and vocational training was prohibited in the UK in 2006<sup>38</sup>. The European Court of Justice ruling in the *Coleman* case concluded that 'direct discrimination' also includes discrimination that could be related to the 'protected characteristics' of another person who is associated with an individual. For example a parent may feel in some sense that their employer is discriminating against them because of their association with their child.

The UK had to prohibit 'age discrimination by association'.

As the effect of the European Court of Justice ruling is that it is direct discrimination for an employer to treat an employee less favourably because of the age of an employee's child, there is a potential impact on the provision of facilities, such as childcare, where access is limited by reference to the child's age. For example, an employer may provide a crèche for employees' children aged two and under, or a holiday club open only to employees' children aged between 5 and 9. In each of these examples, an employee whose child does not fall within the specified age group will be treated less favourably than an employee whose child is within that age group.

#### Policy options considered

Option 1 – 'Do nothing' – It is not possible for the UK to avoid implementing the European Court of Justice's ruling as this would result in infraction proceedings and the financial risk of damages. This option is not explored further in this impact assessment.

Option 2: - In the case of childcare assistance, leave employers and providers of vocational training to 'objectively justify' their actions.

Objective justification means that a difference in treatment because of age must satisfy the following conditions:

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<sup>36</sup> Source: Improving Protection From Disability Discrimination, November 2008, Office for Disability Issues.

<sup>37</sup> Source: <http://www.equalityhumanrights.com/en/newsandcomment/Pages/landmarkaccessibilityruling.aspx>

<sup>38</sup> The Employment Equality (Age) Regulations 2006 came into force on October 2006. Amendment Regulations 2008 – SI 2008 No 573 – came into force on 6 April 2008.



- (a) the treatment is objectively and reasonably justified by a legitimate aim and
- (b) the means of achieving that legitimate aim must be appropriate and necessary.

In principle it should be possible for an employer to justify differential age limits for childcare facilities as a proportionate means of achieving a legitimate aim, depending on the circumstances. The provision of childcare facilities can be said to pursue the legitimate aim of integrating employees who are parents or who have childcare responsibilities by enabling such employees better to co-ordinate such responsibilities with their work duties. For example, the younger the child, the greater the degree of supervision needed in the facility and, arguably, the greater the need for the facility to be close to the parent's place of work. Therefore, children below school age will need full day-time care, whereas children at school may only need such care during school holidays.

However, employers and childcare providers may be concerned at the uncertainty of having to justify individual arrangements in this way. This is why we have explored and adopted option 3 which produces a specific exemption for childcare assistance,

### Estimated overall costs

#### *Option 2*

One-off: negligible

Annual: £4.2 million (from external dispute resolution and informal dispute resolution)

Net present value over 10 years: £36.4 million

Key non-monetised costs: potential withdrawal of childcare assistance schemes would be detrimental to employees and trainees who rely on such assistance.

#### *Option 3*

One-off: negligible

Annual: £2.1 million (from external dispute resolution and informal dispute resolution)

Net present value over 10 years: £18.4 million

### Benefits of chosen option

Prohibiting age discrimination by association will provide protection to employees, students and trainees from being unfairly discriminated against on this basis.

Option 3: - A specific exemption for childcare assistance provided by employers and providers of vocational training.

This should include:

- Any childcare facility, provided by the employer or by a childcare provider chosen by the employer;
- Any facility whereby the employer funds or contributes to the funding of childcare for the employee's children, for example childcare vouchers;
- Any facility where the employer gives the employee leave for the purpose of childcare.

We do not think that the exception should apply to other employee benefits which do not have a sufficiently close relationship with the provision of childcare.

### Analysis of options

Option 2 – In the case of childcare assistance, leave employers and providers of vocational training to 'objectively justify' their actions

#### *Costs to employers – resolving disputes*

Under option 2 employers and providers of vocational training would be required to objectively justify their actions, if challenged. We assume that employers and providers of vocational training will in any case as an organisation run through the reasoning behind any scheme that involves an age association element. For example a business may legitimately conclude, after considering the cost of running a nursery, the profile of its employees and likely usage, that it is appropriate to provide a scheme for children up to the age of 9. And hence firms will be running through the logic of the objective justification test even in the absence of any legislative change.

However, additional costs will fall on employers and providers of vocational training if they are challenged by an employee or student because an individual believes they are being discriminated against through association with another because of age. Costs will be incurred for employers and providers of vocational training in resolving the dispute. We assume that disputes can be resolved both informally (internally) and formally through an employment tribunal case.

In the last quarter of 2008 around 1.3%<sup>39</sup> of main jurisdictional employment tribunal complaints fell under the age discrimination heading. A single employment tribunal claim can be brought under more than one heading (for example age and sex discrimination). We assume that 1.3% of the total accepted claims are because of age discrimination being the main factor. In 2007/08 there were in total 189,397 accepted claims of which we assume 2,519 were primarily because of age discrimination. We further assume that the number of accepted claims that will result from the introduction of age discrimination by association will be equivalent to one-third of current accepted claims brought primarily under age discrimination. This equates to an estimated 840 additional accepted claims that result from introducing age discrimination by association. The above assumptions can be thought of as illustrative in that they provide a broad order of magnitude of the potential scale of disputes. The estimated number of employment tribunal claims may also be an overestimate as some claimants may add the age discrimination by association category to another claim that they would have made under another jurisdiction.

Using data from the Survey of Employment Tribunal Applications (SETA)<sup>40</sup> we estimate that on average the cost of an employment tribunal case is £4,980. The total cost of external dispute resolution therefore equates to around £4.2 million (840 x £4,980).

We assume illustratively that an equal number of individuals (840) seek informal resolution to their grievances and this involves 2 hours of a manager's time and 1 hour of an employee's time. The total cost of resolving disputes informally equates to around £46,000<sup>41</sup> (840 x £55.84).

### *Cost to employees and people undergoing vocational training*

Any withdrawal of childcare schemes as a result of employers or training providers being deterred by the need to objectively justify such schemes in the event of a challenge could have a significant effect on employees, students and trainees, and potentially the efficiency and productivity of the business or training institution. We have not sought to quantify this effect.

### *Administrative costs*

We assume that employers and providers of vocational education will carry out some of the 'objective justification test' reasoning when introducing age associated schemes as a necessary consideration when deciding on the level and coverage of such schemes. Hence the additional administrative burden placed on employers and providers of vocational education is assumed to be negligible.

### *Implementation costs*

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<sup>39</sup> In 2008 Q4 there were 69,616 total jurisdictional complaints of which 926 or 1.3% had age discrimination as a main jurisdiction.

<sup>40</sup> Survey of Employment Tribunal Applications 2003

<sup>41</sup> The median gross hourly wage of managers and senior officials (SOC code 1) is £17.77 and £10.61 for all employees (source: Annual Survey of hours and earnings 2008). We add 21% to these hourly wages to account for non-wage labour costs.



Employers and providers of vocational education will need to become familiar with the new law. We assume that on aggregate these costs will be negligible and/or have subsumed in the familiarisation costs for the Act as a whole.

Option 3: - Provide a specific exemption for employers and providers of vocational education in the area of childcare assistance

According to the 2004 Workplace Employers Relations Survey (WERs) three per cent of all workplaces provided a workforce nursery, and 6 per cent of all workplaces gave financial help with childcare. Eight per cent of all workplaces provided one or both of these arrangements. In the public sector, 18 per cent of workplaces provided childcare assistance compared with 5 per cent in the private sector. We assume that these proportions are still valid in 2009. In the absence of further evidence we assume that 18 per cent of institutions that provide vocational training also provide 'childcare assistance'.

In 2007 BERR<sup>42</sup> estimated that there were around 1.2 million UK private sector enterprises which employ at least one employee and hence would be affected by this policy change..

Statistics for the 2006/07 academic year show that in the UK there were 124 universities, 45 other higher education institutions and 459 further education institutions or colleges. For the purposes of this impact assessment a potential pool of 638 institutions are assumed to provide vocational training, of which we assume 18 per cent will provide some form of 'childcare assistance'.

We therefore assume 5 per cent of private sector firms (a total of 60,936) and 18 per cent of providers of vocational training (a total of 115) organisations provide 'childcare assistance'.

#### *Costs to employers – resolving disputes*

We assumed in option 2 that there would be an additional 840 employment tribunal claims as a result of prohibiting age discrimination by association. A specific exemption on childcare assistance would result in fewer accepted employment tribunal claims (as the scope of the law will be narrower). We assume illustratively that the total numbers of accepted employment tribunal claims will halve (compared to option 2) to 420 employment tribunal claims, resulting in a total cost of external dispute resolution of around £2.1 million.

The cost of internal informal dispute resolution is assumed to be the same as under option 2, because an exemption will not prevent challenges from employees or others which would still need to be resolved internally only. For simplicity we use the same assumptions used in option 2 to estimate a cost of around £46,000 to resolve disputes internally and informally.

#### *Administrative costs*

Same as option 2

#### *Implementation costs*

Same as option 2

#### *Benefits*

Prohibiting age discrimination by association will provide protection to employees, students and trainees from being unfairly discriminated against on this basis.

In addition the risk of employers and vocational training providers withdrawing schemes will be minimised if childcare assistance is exempted.

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<sup>42</sup> <http://stats.berr.gov.uk/ed/sme/>

## Risks

Without an exemption for childcare assistance there is a risk that employers and vocational training providers may withdraw completely their schemes if they want to avoid a potential legal challenge.

## Enforcement

The Employment Tribunal Service would be responsible for hearing claims under the jurisdiction of age discrimination by association.

Summary table of costs and benefits			
		Option 2	Option 3
<b>Costs</b>	External dispute resolution (cost to employers)	£4.2m	£2.1m
	Informal dispute resolution (cost to employers)	£46,000	£46,000
	Withdrawal of childcare assistance (cost to employees and users of vocational training)	Not quantified	Not quantified
<b>Benefits</b>			
	For employees and users of vocational training	Prohibition of unfair age discrimination by association	Prohibition of unfair age discrimination by association

(Figures have been rounded and totals may not sum to individual parts due to rounding.)

## Monitoring and evaluation

The number of Employment Tribunal claims can be monitored using statistics from the Tribunal Service.

BERR conducts periodic benchmark surveys such as the Fair Treatment at Work Survey which can be used in the future to monitor employee rights and disputes in this field.

## ***(iv) Direct age discrimination and harassment in the provision of goods, facilities and services, public functions and associations, based on association and perception***

### Costs of chosen option

#### *Familiarisation Costs (one-off cost only occurring in Year 1)*

Overall familiarisation costs have been estimated on page 12. It is not considered that the extension of association protection in this area will add to these costs which will be incurred anyway.

#### *Costs of additional court cases (recurring costs)*

	Average cost of a court case <sup>43</sup>	X	Additional number of cases	=	Cost of proposal
<b>LOW ESTIMATE</b>	£1,011	X	5	=	<b>£5,055</b>
<b>HIGH ESTIMATE</b>	£1,011	X	14	=	<b>£14,154</b>

<sup>43</sup> <http://www.official-documents.co.uk/document/cm65/6565/6565.pdf>

In reaching an assumption regarding the number of additional cases we have taken the number of cases of age discrimination in this area which are assumed for Year 1 (11 to 33) and assume that it will increase by possibly 50% (so 5-14 additional cases), as potentially the number of additional cases may increase as people become more familiar with the new law and their options.

#### *Compensation costs*

	Increase in cases	X	Average Compensation Award	=	Cost/ Benefit of the proposal
<b>LOW ESTIMATE</b>	5	X	£3,608	=	<b>£18,040</b>
<b>HIGH ESTIMATE</b>	14	X	£3,608	=	<b>£50,512</b>

Assumptions:

- The above table assumes all the additional cases will be successful.
- The average compensation award is obtained from BERR Employment Relations Research Series No.33.

It should be noted that the resulting figures are an estimated cost to the service provider and a benefit to individuals.

***(v) Direct sex discrimination and harassment in employment and vocational training, provision of goods, facilities and services, management and disposal of premises, education, public functions and associations, based on association and perception***

#### Benefits of chosen option

The main benefit of this and related measures will be more consistent, simpler law for individuals, practitioners, employers and service providers. The law will also be easier to interpret and administer by courts and tribunals. Protection will be uniform across all the relevant fields. It is difficult to put a monetary value on this, but it is not unreasonable to assume the benefits could balance out the relatively low estimated costs in the medium to long term.

Assumptions:

- The inclusion of association and perception in this area is estimated to lead to between a 0.5% (low) and 1% (high) increase in sex discrimination cases taken to tribunal. This is on the basis that there may be some speculative or test cases in the first year or two but that the marginal impact of this change will settle down to well short of 1% in subsequent years.
- Since the number of court cases involving sex discrimination in provision of goods, facilities or services is in single figures per year, a nil increase has been assumed in that field as a result of these proposals (since 0.5% of 9 is effectively nil). The same applies in education.
- These estimates include harassment cases.
- Familiarisation costs are estimated for the Act as a whole.

#### Costs of chosen option

##### Calculation of tribunal costs

The average number of sex discrimination cases before tribunals (which includes direct and indirect discrimination, harassment and victimisation and often, in the case of direct discrimination and harassment, combined cases) for the 3 years to 2006/07 is 18,043 [Source: Ministry of Justice]. As these are not broken down according to type of claim, we have assumed that 60% relate to direct discrimination and/or harassment claims, 30% to indirect discrimination claims and 10% to

victimisation claims. As only direct discrimination and harassment claims (sex discrimination) will increase as a result of the perception and association changes, this results in 10826 (70%) cases to which calculations have been applied.

So 0.5% of this figure results in 54 cases and 1% produces 108 cases.

Average costs for sex discrimination cases have been based on the figures for race discrimination cases, the assumption being that they broadly equate.

#### Calculation of costs of additional cases

	Cost to	Average cost (£)	X	1% Increase in cases (high)	=	Additional high cost (£)
<b>LOW ESTIMATE</b>	Taxpayer	910	X	54	=	£49,140
	Employer	4,900	X	54	=	£264,600
	Individual	1,171	X	54	=	£63,234
	<b>Total</b>					<b>£376,974</b>

	Cost to	Average cost (£)	X	1% Increase in cases (high)	=	Additional high cost (£)
<b>HIGH ESTIMATE</b>	Taxpayer	910	X	108	=	£98,280
	Employer	4,900	X	108	=	£529,200
	Individual	1,171	X	108	=	£126,468
	<b>Total</b>					<b>£753,948</b>

#### Compensation awards

The Survey of Employment Tribunal Applications 2003, the latest available, shows that 2% of discrimination cases are successful at tribunal, and the average award is £3608. Therefore the annual increase in awards would be:

$$\begin{aligned} &£3608 \times (108 \text{ cases} \times 2\%) = £6305 \text{ (high) or} \\ &£3608 \times (54 \text{ cases} \times 2\%) = £3608 \text{ (low)} \end{aligned}$$

From SETA 2003, we can also estimate the sector composition of employment tribunals. The table below shows compensation costs to each sector, according to the estimated number of successful cases (2% of cases brought):

Compensation costs	Lowest	Highest
<b>Public Sector</b>	£857	£1,715
<b>Private Sector</b>	£2,064	£4,128
<b>Voluntary Sector</b>	£254	£508
<b>TOTAL</b>	<b>£3608</b>	<b>£6350</b>

***(vi) Direct gender reassignment discrimination and harassment in employment and vocational training, provision of goods, facilities and services, management and disposal of***

***premises, public functions and associations, based on association and perception; and direct gender reassignment discrimination in education based on association and perception***

Costs of chosen option

*Court costs*

The cost of an increased number of discrimination cases due to extending gender reassignment protection in the courts was calculated by multiplying the average cost of a discrimination case by the additional number of cases that might be heard as a result of this change.

Very few court cases are envisaged. Gender reassignment protection against discrimination and harassment has existed in goods, facilities, services and premises since April 2008, but no court case is known. The low estimate is one while the high estimate is two. Such cases are likely to be taken early on and will act as precedents.

	Average cost of a court case	X	Additional number of cases (for gender reassignment)	=	Cost of proposal
<b>LOW ESTIMATE</b>	£1,011	X	1	=	<b>£1,011</b>
<b>HIGH ESTIMATE</b>	£1,011	X	2	=	<b>£2,022</b>

*Tribunal Costs*

The average number of sex discrimination cases per year 2005/6-2007/8 was 23,103. The estimated percentage of cases brought on the ground of gender reassignment is 0.07%; resulting in 16 cases per year. Extending protection to perception may increase numbers by an additional 8 (low: +50%) to 49 (high: +300%) per year (this is an estimated increase of 0.03% (low) to 0.21% (high) in overall number of tribunal cases). As indicated above, we are including “association” cases in these estimates, as well as “perception” cases.

		Increase in number of cases	X	Average cost of a tribunal case	=	Cost of proposal
<b>LOW ESTIMATE</b>	Employer	8	X	£5,393	=	£ 43,144
	Taxpayer	8	X	£1,034	=	£ 8,272
	Individual	8	X	£1,331	=	£ 10,648
	<b>Total</b>					<b>£ 62,064</b>

		Increase in number of cases	X	Average cost of a tribunal case	=	Cost of proposal
<b>HIGH ESTIMATE</b>	Employer	49	X	£5,393	=	£ 264,257
	Taxpayer	49	X	£1,034	=	£ 50,666
	Individual	49	X	£1,331	=	£ 65,219
	<b>Total</b>					<b>£ 380,142</b>

*Compensation*

The average award is £3,608. Multiplying by 8 or 49 this results in an overall award level of £28,864 (low) to £176,792 (high)

*Familiarisation costs*

These are subsumed in the overall calculation.

### *Assumptions*

- More people will be protected who are perceived to be undergoing gender assignment. We estimate this pool will be thirty-two times larger than the currently protected transsexual population.
- A review of tribunal and court cases indicated the types of scenarios that could arise – for example, action over dress codes, and exclusion from premises and harassment from simply being ‘other’.
- No ready data are available on the number of cases which could be brought by association. There is no apparent occasion of association being commented on in Employment Tribunal cases. In the nine months when protection has already existed in provision of goods, facilities and services no case has been recorded. Although the likelihood is minimal it is not unknown<sup>44</sup>.
- There is no breakdown of the number of employment cases relating to gender reassignment. As protection was only extended to the provision of goods, facilities and services in April 2008, there is no record of cases yet; so any increase is likely to be minor.
- We estimate the number of transsexual people to be around 6,800; forming 0.014% of the adult GB population. As transsexual people are more likely to be discriminated against compared with the rest of the population (say 5 times more likely), a rate of 0.07% of sex discrimination cases is estimated for this population.
- While the pool of people covered by the extension of perception is much larger than the core group, it is not expected that there will be an equivalent increase in the number of cases. Employers and some providers are likely to err on the side of caution, and there is little evidence of discrimination in these groups (mainly in cases of transvestites accessing goods, facilities and services and coming into conflict with dress codes). An upper estimate of 10%<sup>45</sup> of the expanded population may be affected (giving x3 upper limit). So an estimated increase will be between 50% (low) to 300% (high) of additional cases in respect of gender reassignment.
- The actual incidence of association is estimated to be so small it can be subsumed within the increased costs for perception.
- It has to be emphasized that this is a small population and no robust survey has been carried out to estimate incidence. Consequently assumptions are best guesses.

### *Administrative burdens*

This policy does not create any additional administrative burdens or savings against the department’s administrative burden baseline.

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<sup>44</sup> <http://www.dailymail.co.uk/news/article-513196/Weve-run-pizza-What-staff-Pizza-Hut-allegedly-told-group-gay-men-turned-mini-skirts-high-heels.html>

<sup>45</sup> There are no data available on these groups, we have therefore estimated that the number of androgynous, feminine looking men, transvestites etc in the population is some 32 times larger than the transsexual population. Our upper estimate is that 10% of this increased population may take action - 3 times larger (rounded off 3.2) is 300% additional cases.

## Annex C - Ending age discrimination in the provision of goods, facilities, services and public functions

<b>Department GEO</b>	<b>Ending age discrimination in the provision of goods, facilities, services and public functions</b>	
<b>Stage: Royal Assent</b>	<b>Version: 5</b>	<b>Date: April 2010</b>
<p><b>Related Publications:</b> (1) Discrimination Law Review: Proposals for an Equality Bill for Great Britain (June 2007). (2) Proposals to simplify and modernise the law: Initial RIA (June 2007). (3) Framework for a Fairer Future (June 2008) and (4) the Government response to the consultation (July 2008) (5) Equality Bill Impact Assessment (Introduction) 27 April 2009 (6) Equality Bill Impact Assessment (House of Lords Introduction) December 2009</p>		
<p><b>Available to view or download at:</b>  <a href="http://www.equalities.gov.uk">http://www.equalities.gov.uk</a>  <b>Contact for enquiries:</b> Gill Rendall <span style="float: right;"><b>Telephone: 0303 444 3033</b></span></p>		
<p><b>What was the problem considered? Why was government intervention necessary?</b></p> <p>The current equality legislation relevant to age only protects people against age discrimination in the workplace. By introducing legislation in the provision of services and public functions we will be providing people with the same legal protection that is currently enjoyed by other protected characteristics.</p> <p>There are many examples of age discrimination, which have been identified by respondents to the GEO consultations on equality<sup>464748</sup>. Health and social care and financial services were mentioned most frequently. Age equality groups have cited a survey in which almost 30 per cent of adults questioned said they had been discriminated against because of their age.</p> <p>Government intervention is necessary to prevent unjustified age discrimination in the provision of goods, facilities and services and the exercise of public functions. Justified or beneficial differential age-based treatment will continue to be allowed, where this is objectively justified, or permitted under a cross strand exception which applies to all the protected characteristics or a specific age exception under the proposed secondary legislation.</p>		
<p><b>What were the policy objectives and the intended effects?</b></p> <p><i>Objective</i></p> <ul style="list-style-type: none"> <li>To ensure that all people aged 18 or older are treated fairly because of age, by those providing goods, facilities and services and carrying out public functions.</li> </ul> <p><i>Intended effects</i></p> <ul style="list-style-type: none"> <li>Prevent harmful discrimination for all people aged 18 or over in the provision of goods, facilities and services and carrying out public functions.</li> <li>Allow justified / beneficial age differential treatment, to continue, for example free bus travel and concessions to over 60s.</li> <li>Ensure that any barriers caused by age discrimination outside the workplace are removed, for all age groups, to ensure they are treated fairly, and age discrimination does not prevent them living fulfilling lives, so they are able to play a full part in society.</li> </ul>		

<sup>46</sup> Discrimination Law Review Framework for Fairness - <http://www.communities.gov.uk/documents/corporate/pdf/325332.pdf>

<sup>47</sup> Framework for a Fairer Future – The Equality Bill - <http://www.equalities.gov.uk/PDF/FrameworkforaFairerFuture.pdf>

<sup>48</sup> The Equality Bill – Government response to the consultation - <http://www.equalities.gov.uk/PDF/EqBillGovResponse.pdf>



**What policy options were considered?**

The options considered:

Option 1 – Do not legislate for age discrimination outside the workplace.

Option 2 – A complete ban on all age discrimination against people aged 18 or over.

Option 3 - Prohibit discrimination against people aged 18 or over because of their age, without affecting the differential provision of products or services for people of different ages where this is justified or beneficial.

Preferred option is option 3: This impact assessment justifies our preference for option 3 and discusses the case for where differential age-based treatment should be allowed because it can be reasonably justified or is beneficial.

**When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects?**

The details of the policy will be reviewed following further consultation on draft secondary legislation before the ban on age discrimination in services and public functions is brought into force.



## Summary: Analysis & Evidence

**Policy Option: 3**

**Prohibit all differential treatment of people aged 18 and over by providers of goods, facilities, services and public functions except where it can be objectively justified.**

COSTS	ANNUAL COSTS		Description and scale of <b>key monetised costs</b> by 'main affected groups'	
	One-off (Transition)	Yrs	<ul style="list-style-type: none"><li>- Health and Social Care: service redesign to free up resources to provide better, more equitable care. This legislation is likely to have the effect of producing a different, more equitable distribution of resources for health organisations.</li><li>- Financial Services: The final costs will be dependent on the decisions made by the HM Treasury steering group, and will impact on all organisations in the Finance sector.</li><li>- General Services: It is not possible at this time to quantify these costs, see evidence base.</li></ul>	
	£ See evidence base	1		
	Average Annual Cost (excluding one-off)			
	£ See evidence base	10		
	Total Cost (PV)		£ See evidence base	
Other <b>key non-monetised costs</b> by 'main affected groups'				

BENEFITS

ANNUAL BENEFITS		Description and scale of <b>key monetised benefits</b> by ‘main affected groups’  On the evidence Currently available we estimate benefits as follows:-  - Health and Social Care Organisations: Non-monetised benefits, see evidence base - Financial Services Sector: The current cost of age discrimination in the sector is estimated at nearly £65 million annually. - General Services: It is not possible at this time to quantify these benefits, see evidence base.
One-off	Yrs	
£ See evidence base	1	
Average Annual Benefit (excluding one-off)		
£ See evidence base	10	
Total Benefit (PV)		£ See evidence base
Other <b>key non-monetised benefits</b> by ‘main affected groups’  Eradicating harmful age discrimination will ensure no-one is treated badly because of their age. The new law will ensure we have a fairer and more equal society for people of all ages. It will remove unnecessary barriers for the old and young which prevent people living fulfilling lives, and will allow them to play a full part in society.		

### Key Assumptions/Sensitivities/Risks

- Costs and benefits in health and social care are associated with the effective implementation of already existing policies (e.g. High Quality Care for All), it would be inappropriate to include these costs again when considering the new legislation.
- In financial services the cost and benefits will be dependent on the development of exceptions set out in the draft order.
- In general services the Government will continue to explore the potential costs and benefits.

Price Base Year	Time Period Years 10	<b>Net Benefit Range</b> (NPV) £ See evidence base	<b>NET BENEFIT</b> (NPV Best estimate) £ See evidence base
What is the geographic coverage of the policy/option?			GB
On what date will the policy be implemented?			2012
Which organisation(s) will enforce the policy?			EHRC
What is the total annual cost of enforcement for these organisations?			£ -

Does enforcement comply with Hampton principles?			Yes	
Will implementation go beyond minimum EU requirements?			N/A	
What is the value of the proposed offsetting measure per year?			£ -	
What is the value of changes in greenhouse gas emissions?			£0	
Will the proposal have a significant impact on competition?			No	
Annual cost (£-£) per organisation (excluding one-off)	Micro -	Small -	Medium -	Large -
Are any of these organisations exempt?	No	No	N/A	N/A
<b>Impact on Admin Burdens Baseline</b> (2005 Prices)			(Increase -	
Increase of £ 0	Decrease of £ 0	Net Impact	£ 0	

Key: Annual costs and benefits: Constant (Net) Present

## Evidence

### Ending age discrimination in the provision of services and public functions

The June 2007 Equality Bill consultation called for evidence of unfair age discrimination, sought views on whether legislation would be the best way of tackling such discrimination and on how legislation could be targeted to address the problem. The majority (around 80 per cent) of the nearly 750 responses to the Equality Bill consultation on this issue were in favour of legislation to tackle unjustifiable age based differential treatment in these fields.

The consultation responses provided many examples of age discrimination, which largely reflected the areas of concern which the consultation paper had outlined, with health and social care and financial services the most frequently mentioned.

The consultation responses are available on the Government Equalities Office website<sup>49</sup>. The general feeling of respondents' comments was that it is wrong people are treated in a discriminatory way purely because of their age.

A public consultation on the proposals for exceptions from the age ban was undertaken from 29 June 2009 to 30 September 2009 (Equality Bill making it work - Ending age discrimination in services and public functions<sup>50</sup>) and the Department of Health commissioned a national review on the implementation of the ban for health and social care, which reported in October 2009, followed by a consultation exercise on the Government response to the report.

Respondents for the most part supported the Government's aims and proposals outlined in the age consultation document - backing the principle of eliminating harmful age discrimination and agreeing that there were areas where different treatment based on age was appropriate.

A policy statement was made on 27 January 2010<sup>51</sup>, confirming the direction of the policy as outlined in the consultation document. This stated that there would be further discussions with stakeholders as we prepare the draft secondary legislation which will give effect to the ban, on which we will consult in the autumn 2010, with the aim to implement the ban in 2012.

### Objectives of introducing the age discrimination ban

- Provide legal protection against unjustifiable age-based differential treatment as is currently available for the other equality strands.

<sup>49</sup> <http://www.equalities.gov.uk/PDF/EqBillGovResponse.pdf>

<sup>50</sup> <http://www.equalities.gov.uk/pdf/13511%20GEO%20Consultation%206th.pdf>

<sup>51</sup> [http://www.equalities.gov.uk/pdf/GEO\\_EqualityBillAge\\_acc.pdf](http://www.equalities.gov.uk/pdf/GEO_EqualityBillAge_acc.pdf)

- Provide protection from age discrimination against people aged 18 or over when providing services and exercising public functions.
- Allow the differential provision of products or services for people of different ages where this is justified.
- Provide an individual with the right of redress against unjustifiable age-based differential treatment.
- Reinforce the message that ageism is not acceptable.

### **Further action / consultation**

The Equality Act will prohibit unjustifiable age-based differential treatment in the provision of services and the exercise of public functions and will provide a power to make exceptions.

This impact assessment provides an analysis of the potential impact of prohibiting age discrimination given all available evidence. Further detailed analysis is dependent on the outcome of supplementary work and consultation

We are continuing to work with stakeholders as we prepare the draft secondary legislation which will give effect to the ban. All stakeholders will have an opportunity to consider the details of the draft legislation when we consult on the draft Order in autumn 2010 which will be accompanied by a detailed impact assessment.

This document sets out initial estimates for costs and benefits in three main areas:

- health and social care;
- financial services; and
- general services.

### **Health and Social Care**

#### ***Problem under consideration***

In 2007, the Department of Health commissioned research on demonstrable age discrimination in mental health and social care services, two areas of care which serve large numbers of older people and which, it was suggested by some, were likely to be more challenged than other parts of the system in providing care equitably to all age-groups. The key finding of the two research studies was that there were age differences in service use per individual, even after standardising for need<sup>52</sup>. They estimated that the costs of removing such differences by simply expanding services for older people would be substantial - some £1.75 to £2.25 billion for mental health services and some £2 to £3 billion for social services. These findings related to the estimated cost of addressing age differences by expanding services for older people. They do not constitute the only way of achieving a cost estimate for the removal of age discrimination. In practice there are likely to be other possible solutions to addressing differences in provision, including the redistribution of resources and work to align attitudes and behaviour within the system with the legislation; and these might well yield different estimates.

The research looked, in broad terms, at differential service use adjusted for need as an indication of potential age discrimination. It should be noted that in practice capacity to benefit from services is also taken into account in the allocation of health and social care resources. It should also be noted that these estimates are inevitably subject to various caveats and limitations, arising from the data sources. They relate specifically to mental health and social services for older people. Their findings should not be extrapolated to the whole health and social care sector. The research concentrated on the differences in health and social care resources taken up by different age groups: the available data did not permit any findings about differences in outcomes.

Getting the content of the legislative framework and the timing of its implementation in health and social care right will clearly be vital, and both implementation and the assessment of impact will

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need to be tied in closely with work to set out the values and principles of the health and social care sector and also practical measures already under way to tackle discrimination and to promote equality.

The recently published NHS Constitution set out the right of people not to be unlawfully discriminated against in the provision of NHS services - including because of age when the relevant provisions of the Equality Act are brought into force for the health sector. More broadly, the very first principle in the Constitution is that 'the NHS provides a comprehensive service, available to all irrespective of gender, race, disability, age, sexual orientation, religion or belief'. The first principle also states that the NHS 'has a wider social duty to promote equality through the services it provides and to pay particular attention to groups or sections of society where improvements in health and life expectancy are not keeping pace with the rest of the population'.

The Government is legislating in the Health Bill, now before Parliament, to ensure that all NHS bodies and private and third sector providers supplying NHS services are obliged by law to take account of the Constitution in their decisions and actions.

### ***The health and social care sector and older people***

The health and social care sectors are a major area of central and local Government spending, and a great deal of its activity is concerned with meeting the needs of older people. The budget for the NHS is now £96 billion and around £15 billion was spent on adult social care in 2007/8. The scope of health and social care services is very wide, and includes, among other services, specialised medical and psychiatric interventions in hospital and community settings, intensive short or long term packages of health and social care support for adults, residential care for adults (of all ages but overwhelmingly older people), services for people with complex physical, sensory and learning disabilities as well as support for other adults in particularly vulnerable and challenging circumstances.

To give some specific examples:

- About two-thirds of hospital beds are occupied by people aged 65 years and over.
- In England, 15.4 million people have a long term condition (LTC). Due to an ageing population, it is estimated that by 2025 there will be 42% more people in England aged 65 or over. This will mean that the number of people with at least one LTC will rise by 3 million to 18 million.
- We believe that there are now around 700,000 people in the United Kingdom that have dementia. It is also estimated that about 5 per cent of people over 65 have dementia, rising to about 20 per cent in the population over 80. The total number of people with dementia in the UK is forecast to increase to 940,110 by 2021 and 1,735,087 by 2051 – an increase of 38% over the next 15 years and 154% over the next 45 years.
- At any one time, around 10-15 per cent of the population aged 65 and over will have depression. More severe states of depression are less common, affecting about 3-5 per cent of older people
- Contrary to popular belief, health promotion services are popular amongst older people, with a strong evidence base for effectiveness in producing good health outcomes and reducing pressure on services and families. For example:
  - Number of people aged 60 and over who successfully quit smoking at the four week follow-up (self-reported) rose from 25,461 in 2001/02 to 60,683 in 2006/07 and, proportionally, those over 60 experience more success in giving up smoking than any other age group. (Source: DH / Health and Social Care Information Centre)
  - More people over the age of 60, as a proportion, successfully quit smoking than any other group. The number of people aged 60 and over who successfully quit smoking at the four-week follow up rose from 25,461 in (2001/02) to 60,683 in (2006/07)
- There are increasing numbers of older people accessing treatments and services. In elective care, the number of knee replacements amongst those aged 65 and over rose from 27,242 in 2000/01 to 45,737 in 2006/07 and the number of cataract procedures rose from

### ***Age discrimination and the health and social care system***

The causes of age discrimination and the measures required to address it are varied. Many of those people experiencing age discrimination point to the attitudes and behaviour of individuals and organisations as being at the heart of the problem, and it is therefore likely that providers and commissioners of health and social care will need to look at the training and development of their staff and the processes employed by organisations and services in implementing the age discrimination ban. In addition, implementing the ban has potential implications for the allocation of resources within a cash-limited system. Further work in partnership with the NHS and social care and other stakeholders will work through both the behavioural and organisational issues and the financial implications in more detail.

Legislation on age discrimination in health and social care could, depending on how it is interpreted and implemented, have a substantial impact on resource allocation, and therefore on the way services and interventions are prioritised within a cash-limited system.

The health and social care system is concerned to promote the health and well-being of the population as a whole, adding “years of life and life to years” in the most cost-effective way possible. The allocation of resources therefore takes account of capacity to benefit from interventions and services.

Prohibiting age discrimination could be regarded as a way of promoting cost-effective practice. For some services, a relative shift in resources per service user from services for younger adults to services for older people might well result in improved overall outcomes, but it is also possible that such a shift would lead to an overall decline in outcomes. It is difficult to be certain of this in practice in the absence of clear evidence on the most cost-effective allocation of resources between age groups. For other services, there is potentially a tension between maximising “life years” or “quality-adjusted life years” and ensuring equality of access to health and social care resources for different age groups. This could arise for example if there was a shift in resources for life-saving interventions from younger to older people.

These issues will be considered as part of the further work and consultation to be conducted looking at the different factors relevant to implementing the ban on age discrimination including behavioural and organisation change and resource issues. For this reason they are not discussed further in this impact assessment, and the potential impact of any changes in resource allocation are not covered by this impact assessment.

### ***Rationale for intervention***

The Department of Health (DH) recognised that the general requirement to ensure that all people aged 18 or older are treated fairly because of age, by those providing goods, facilities and services and carrying out public functions could pose a particular challenge for publicly commissioned and funded health and social care services. In April 2009, DH asked a review, led by Sir Ian Carruthers and Jan Ormondroyd, to consider the implications of the new requirements on age in the Act for publicly arranged health and social care in England (henceforth, “the Review”). The Review’s report was published on 22 October 2009<sup>53</sup> and supported the ban on age discrimination against adults in the provision of services and exercise of public functions. The Review’s analysis of the nature, extent and variability of age discrimination in the health and social care system showed age discrimination remains an issue for the sector which all organisations need to address.

Responses to the review provided detail on existing age discrimination in the sector and highlighted the need for equality of aspiration in services provided for older people when compared with those given to younger people, some examples are highlighted below::

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<sup>53</sup> [http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH\\_107278](http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH_107278)



- exclusion of older people from mental health services that are available to younger adults;
- very low levels of referrals from GPs to specialist units for older health sufferers
- a general lack of age appropriateness

The Review also found age discrimination was rooted in the behaviour and attitudes of health and care organisations and their staff, and although progress had been made in addressing discrimination it was still wide spread.

The Review made a number of recommendations, some of which deal with what will form secondary legislation, to be made under the Act. Those recommendations are being taken into account in the decisions that the Government Equalities Office (GEO) will announce on the legislation. The majority of the recommendations focus on non-legislative action that DH, the National Health Service (NHS) and social care should take, to prepare for the introduction of the new public sector equality duty and commencement of the ban on age discrimination.

### ***Costs and benefits of chosen option***

As highlighted in the Review and the accompanying consultation, we are in a time of tight financial constraints. The approach of the Review and the consultation is, therefore, that discrimination should be ended through using service redesign to free up resources to provide better, more equitable care. Therefore, this legislation is likely to have the effect of producing a different, more equitable distribution of resources. We think that the legislation has a net positive impact, as the new allocation of resources should be superior to the old allocation. This is because:

- The allocation of a small amount of resource towards training and awareness and the increased emphasis on appropriate attitudes to people of all ages in professional regulation should have a marked effect on the attitudes of staff. This will significantly improve individuals' experiences and sense of well-being as our call for evidence found that staff attitudes were a frequent cause of concern. (27% of responses to the Review's Call for Evidence thought that staff attitudes and behaviour were a problem.)
- A non-discriminatory approach can be more efficient in the long term. Sometimes a discriminatory approach means that someone does not receive appropriate treatment or care and, as a result, there are higher costs of treating or caring for them in the future. This includes the repeated use of assessment and diagnosis.
- In its report, "A Fairer Future: The Equality Bill and other action to make equality a reality", 2009, the GEO indicated that addressing discrimination:
  - Gives everyone the opportunity to fulfil their potential;
  - Assists with a competitive economy, that draws on all the talents and ability; and
  - Creates a more equal society that is more cohesive and at ease with itself.

An important part of the legislation is its allowance of different treatment of individuals where this is a proportionate means of achieving a legitimate aim. This may be brought into effect by the use of specific exceptions. This would give providers scope to treat people differently according to their age if it is demonstrably more appropriate to do so. Hence, we can continue to target preventative measures, such as vaccines, at groups for whom these are most effective, without being required to also provide the vaccine for groups for which these would have little effect relative to their cost. Therefore, the legislation would not require the NHS to start providing treatments that are less cost effective than existing treatments, and so the potential cost of substituting a less cost-effective treatment for a cost effective one does not arise.

### ***Benefits***

The following types of benefit will arise from the legislation:

- Benefit to recipients of health and social care through staff treating them with more respect and listening to them. This benefit would not be easily quantifiable but, based on responses to the call for evidence, is of real significance to people.
- Benefits to recipients of health and social care who have been excluded from care or treatment whose need and ability to benefit is the same as those currently receiving care and treatment. There would be a definable benefit to these people that would be valued at the same amount per head as a person currently receiving care.
- Benefits to recipients of health and social care who have been excluded from care or treatment and as a result have imposed greater cost on the system in the longer term. The benefit from eliminating discrimination to this group is both the benefit to the individual plus the saving to the system.
- Benefit of greater equality. This is both a good thing in itself and something important in relation to the values and reputation of the health and social care system, given the key role played by the idea of “fairness” in underpinning the social care and health system.

## **Costs**

The legislation will be implemented using only existing resources. As far as possible, the new requirements will be met through service redesign and innovation to free up resources. However, some redistribution of resource may be required and we therefore consider these to be opportunity costs. Of course, commissioners of health and social care services are constantly having to make decisions about which services get priority in order to meet the needs of local people and the requirements of a range of legal duties, and so trade-offs will be familiar to the organisations commissioning care.

### Changes in health and social care:

The Review found that the behaviour and attitudes of staff were among the most important causes of age discrimination (see Chapter 6). It made specific recommendations concerning how this problem could be addressed (assessed in Option 3), though other approaches may exist. There are two types of impact from improved behaviour and attitudes:

- 1) Patients, service users and carers feel that they are treated with respect and are therefore happier with the service they receive, and
- 2) Patients, service users and carers may receive different services as a result of the staff member not making assumptions about their needs and wants.

### Changes in social care:

The Review (Chapter 5) identified the following changes that were necessary in resource allocation for compliance with the legislation:

- The Department of Health needs to review the weightings in the social care funding formula in 2010/11, and give explicit consideration to the protected characteristics in future reviews of the whole funding formula;
- Local Authorities need to employ best practice in commissioning, in particular developing robust Joint Strategic Needs Assessments and translating these into services;
- Local Authorities need to ensure that they are providing non-discriminatory packages of care for individuals whether they are using personal budgets or providing the package of care directly;
- The Department of Health needs to ensure that future changes to charges for social care, as set out in Shaping the Future of Care Together and more recent announcements concerning home care, comply with the legislation.

*Funding formula:* The benefit arising from any change in the weighting of the formula will be through it better reflecting the need for Local Authorities to spend on different groups. In practice, this effect is unlikely to be large as Local Authorities are not required to allocate funding to their service areas in line with the formula, and we understand that most do not. The cost of this will be small: it will be the time required for the department to review the formula. The earliest opportunity to do this is for the 2010/11 allocation. Between Local Authorities, there will be some reallocation of money but the total amount of funding would be unchanged.

*Commissioning for populations and individuals:* The Review made it clear that the current financial climate would be taken into consideration for any recommendations. It therefore looks at using resource redistribution to remove age discrimination, rather than the injection of more funding. We therefore expect social care commissioners and providers to reallocate resources to end discrimination. However, recent policies and innovation should reduce the extent of reallocation required.

There is a major programme of social care change underway at present, *Putting People First*<sup>54</sup>. The aim of this programme is to re-shape services so that they fit the needs of individuals. This means that there will be significant change to the services people receive. However, *Putting People First* addresses the needs of all people and, as such, does not have a specific age focus. This means that it does not ask councils and providers to consider age issues explicitly in their re-shaping of services.

To support the transformation required by *Putting People First*, the Social Care Reform Grant worth £520 million over three years (08/09 to 10/11) has been made available for councils to invest in the necessary system and process development. The expectation is that by 2010/11, councils will have made significant steps, with the majority having most of the core components of a personalised system in place.

*Proposed changes to charging for social care:* The Review does not propose changes to charges for social care. There are changes to charges for social care proposed through other initiatives. These are consistent with the legislation, and the legislation can be seen as a building block towards these. The costs and benefits of these changes will be identified as proposals are firmed up.

#### *Impact in health care:*

The Review did not identify any national policies or local processes that needed significant changes. However, it made some recommendations to increase the emphasis on providing appropriate services to all ages, which would assist compliance. It also identified some specific areas that might require action:

- *National policies: Research to challenge and support age-based criteria.* The Review found that it was sometimes appropriate to have age-based criteria to target services where they would be most effective and gave examples of some services where these were justified (Section 4.7). Advisory Committees and the Department of Health review these age-based criteria from time to time. However, the risk of challenge arising from the legislation means that these cut-offs will need to be reviewed more systematically in order to ensure that they remain up to date with developments that affect for the age groups for which a service is considered cost effective.
- The Review considered the approach taken by the National Institute for Health and Clinical Excellence (NICE) in its development of guidance. NICE uses a thorough, evidence-based approach to develop guidance and its own policies mean that age, and co-morbidities that might be correlated with age, are only used in guidance where these are the best way of indicating the effectiveness of a treatment. The Review has recommended that arms-length bodies, such as Executive Non-Departmental Public bodies, should satisfy themselves that any age-based criteria they apply comply with the new legislation (Recommendation 8).

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<sup>54</sup> [http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH\\_081118](http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH_081118)



- **Local policies:** Primary Care Trusts (PCTs) must comply with NICE Technology Appraisal Guidance and the requirements of particular Department of Health programmes, which come under the NHS Act. However, they have scope to introduce local guidance in other areas. In theory, PCTs could introduce local guidance that treated people differently on the basis of their age. The Review explored this with PCTs and undertook a web-based search for such policies in a random sample of PCTs. Some PCTs' policies explicitly adopted NICE recommendations, for example Greenwich PCT's *Treatment Priorities Policy*, which specifies that dilation and curettage should not be performed on women under 40 in line with Effective Healthcare Bulletin 9. Some PCTs are members of priority setting committees, which are a collaboration of PCTs. Many of these have ethical frameworks in place or under development. For example, South Central Strategic health authorities' (SHA) framework states, "the Committees will not discriminate on grounds of personal characteristics, such as age, gender, sexual orientation, gender identity, race, religion, lifestyle, social position, family or financial status, intelligence, disability, physical or cognitive functioning. However, in some circumstances, these factors may be relevant to the clinical effectiveness of an intervention and the capacity of an individual to benefit from the treatment."
- The area where the Review found that PCTs were systematically adopting different age cut-offs to those recommended by NICE was in IVF policies. PCTs are likely to need to review these policies and ensure that these are appropriate and non-discriminatory. Because of this, some PCTs may need to change their policies around IVF provision, which will result in new costs and benefits.
- **Commissioning:** The Review found that good commissioning, which reflected local need through the Joint Strategic Needs Assessment, was essential for providing a non-discriminatory service (see sections 5.14 to 5.19). Discussions with commissioners suggested that de-commissioning and re-commissioning services could take around 18 months, though this timescale varied. There are fixed costs of changing commissioning, particularly staff time.

### Impact in Mental health:

The Review found that within mental health (sections 3.12 to 3.15) there appear to be particular issues around the 60/65 transition point and the services that are available. It recommended that the way to address these would be through greater personalisation and sensitivity to the actual needs of people. This would likely to lead to a different pattern of care than at present. For example, some of those with more serious depression who were moved at the transition point into older people's services. These are often broader or more multi-faceted, but can sometimes offer less intensive mental health interventions. Where age is used less crudely as an indicator for service, the people affected may be likely to get a different service offer. A current initiative, 'New Horizons' provides material on securing agreements across services for working age and older adults to manage transition issues effectively and fairly.

The Review did not find that major structural change to mental health services was required to address this problem. Drawing on a study by the Healthcare Commission (3) the two Trusts (of six that were studied) that did well on age discrimination did so with very different structural solutions, indicating there is no clearly optimal structure that Trusts should be moving to.

As the steps required for ending discrimination in mental health are already being addressed through current policies around personalisation and "New Horizons", it is likely to be less costly for the implementation of the age discrimination ban if providers and commissioners have age explicitly in mind when changing services.

### **Implementation in health and social care**

We have made clear that the prohibition of unjustifiable age based differential treatment would not prevent continuation of justifiably different treatment because of age in these sectors, for example prioritising vaccination and screening programmes by age for certain conditions such as flu or Chlamydia.

We are committed to promoting equality in respect of age and are consequently determined to move as rapidly as possible to implement the provisions in the Equality Act, relating to age in health and social care, in a sustainable and comprehensive manner. In deciding what a reasonable date for commencing the age discrimination provisions for health and social care should be, and whether to use secondary legislation to specify those desirable and objectively justifiable practices and / or forms of differentiation that do not constitute age discrimination, it is clear that issues of practical implementation will be of critical importance.

### ***Wider stakeholder support***

The Department of Health is building upon work in areas such as the National Service Framework for Older People, the Dignity in Care Campaign and extension of individual budgets in adult social care all of which aim to support provision of appropriate care for older people. The Department of Health is looking to identify any 'quick wins' in tackling discrimination and promoting equality as well as considering issues such as training, information for service users, or guidance on best practice in service design. The Department of Health is drawing upon the experience of providers and users of health and social care services, looking to design solutions with rather than for them.

The Department of Health is also working with stakeholders to consider what needs to be in secondary legislation and what other action is needed to address issues of ageism. The group includes representatives of Help the Aged, Age Concern and the British Geriatrics Society as well as NHS managers, the Local Government Association and local authorities. The group's work will help define the challenge health and social care services face in complying with the prohibition on unjustifiable age based differential treatment, and the extent of the transition programme needed to support services in eliminating discriminatory practice ahead of the prohibition coming into force. Decisions on the scope and timing of secondary legislation relating to implementation of the prohibition in the health and social care sectors will need to draw upon the evidence and analysis produced by the advisory group. The Department of Health will also make use of evidence from the responses to the consultation on the European Anti-Discrimination Directive.

The health and social care system will, in the coming years, need to build on existing work to adapt to the challenges of an ageing population which is likely to bring greater need for long-term support and care. The detail of exceptions to allow differential treatment in health and social care will need to be developed in this context. Gathering more evidence through consultation and cost-benefit analysis will be a crucial part of this work.

With the help of the advisory group and drawing on a growing body of research evidence and analysis, the Department of Health is assessing the extent and variation of age discrimination and the experience of NHS and social care providers in tackling discrimination and in promoting equality. This will provide the basis for supporting the NHS and social care in meeting the requirements of the legislation and for decisions about the appropriate pace of implementation to enable the NHS and social care to tackle age discrimination and to promote equality rapidly and sustainably, building on the work already under way.

### ***Risks and assumptions***

We have been unable to quantify the costs of implementation for the following reasons:

- Most of the actions are associated with the effective implementation of already existing policies (e.g. High Quality Care for All, Putting People First) so it would be inappropriate to include these costs again when considering the new legislation. The main policies identified by the Review that will have some effect in reducing age discrimination in the next few years, regardless of the legislation, are as follows. The impacts of these have already been taken into account in previous impact assessments, and for some, qualitative evaluations indicate that they do not create a net cost.
  - Putting people first
  - NHS constitution
  - Dignity in care campaign

- World Class Commissioning
- Dementia Strategy
- Partnerships for Older People's Projects
- New Horizons
- High Quality Care for All
- Shaping the future of care together

Age and age discrimination is not the focus of these policies, but if they are implemented well then age discrimination should be significantly reduced for the services they affect;

- Each Local Authority and local NHS body currently has a very different pattern of service provision and so each will have different levels of change required to meet the new legal requirements. From our engagement with these organisations, it is clear that they are only just beginning to understand the law and are not currently in a position to identify what actions will definitely be required for their organisation;
- The impact of changes in the approaches to resource allocation will have an impact on the financial implications locally, though they are primarily focused on a reallocation of a fixed sum between different groups; and
- We do not know the impact of the key programmes to improve productivity – QIPP covers quality, innovation, productivity and prevention across health and social care but these will be relevant to the implementation of the existing policies in health and social care that, if effectively implemented, can make a major contribution in ending age discrimination.

## Financial Services

### *Problem under consideration*

We made clear in *The Equality Bill - Government Response to the Consultation*<sup>55</sup> that the legislation would not prevent different treatment because of age in the provision of financial services, where this was based on actuarial evidence. Age is a legitimate risk factor in financial service products and a total ban on age discrimination in financial services is not appropriate.

Financial services represent 7.5% of the GDP<sup>56</sup>. There are 22,033 UK authorised financial service firms. There are also 6,291 EEA authorised financial service firms operating in the UK.

Motor insurance is the single largest general insurance type, with gross written premiums of about £8.6 billion (or about 22% of all business written)<sup>57</sup>. Around 60 ABI members serve the motor insurance market<sup>58</sup>, although some providers may be offering policies under several brand names. The largest five companies held around 64% of net written premiums in 2007<sup>59</sup>. The travel insurance market in the UK is significantly smaller, with gross written premiums of £642m in 2007. Around 36 companies offer travel insurance, but given the small size of the market, only few have premiums over £100m<sup>60</sup>.

The personal loan market in the UK forms the largest component of unsecured lending, with £66,956m outstanding in December 2007 (compared with £31,657m of outstanding credit card debt in the same month)<sup>61</sup>, 46 providers were active in the unsecured personal loans market in May 2008, down from 57 in May 2007<sup>62</sup>.

<sup>55</sup> <http://www.equalities.gov.uk/PDF/EqBillGovResponse.pdf>

<sup>56</sup> Pre-Budget Report 2008, pg. 44, [http://www.hm-treasury.gov.uk/d/pbr08\\_completereport\\_1721.pdf](http://www.hm-treasury.gov.uk/d/pbr08_completereport_1721.pdf)

<sup>57</sup> ABI research paper No. 12 2009 – Insurance and age-based differentiation page 21

<sup>58</sup> ABI research paper No. 12 2009 – Insurance and age-based differentiation page 22

<sup>59</sup> [http://www.abi.org.uk/Display/File/524/General\\_Net\\_Rankings\\_2007.xls](http://www.abi.org.uk/Display/File/524/General_Net_Rankings_2007.xls).

<sup>60</sup> ABI research paper No. 12 2009 – Insurance and age-based differentiation page 55

<sup>61</sup> British Bankers Association 2009

<sup>62</sup> Datamonitor 2008

## ***Rationale for intervention***

While financial service products appear to be available for all age groups, older people have reported being turned away because of their age across a number of areas: motor and travel insurance; mortgages; loans; and consumer credit<sup>63</sup>. Restrictions may take the form of eligibility criteria or termination-dates based on age<sup>64</sup>.

Research undertaken by Age UK in January 2010 looked at the travel and motor insurance markets for older people<sup>65</sup>. The results showed for motor insurance half of quotation attempts for people aged 80 and over were unsuccessful and for travel insurance one-third of quotation attempts for people over 80 were unsuccessful. The findings also showed for travel insurance, only half of the companies approached would give a quotation for people aged 80-plus themselves (23 out of 50 calls). In 12 out of 50 cases, companies referred people to a specialist firm.

The Equality Commission for Northern Ireland carried out a similar small scale web based investigation into travel insurance quotes in April 2008. They found the number of quotes more limited at higher ages in travel insurance, with no annual cover available over 75.<sup>66</sup> Other mystery shopping exercises commissioned by Help the Aged and Age Concern have found that almost 20 per cent of attempts to obtain a quotation for car or travel cover by the over-65s are unsuccessful, compared to 3 per cent for the middle aged<sup>67</sup>. It should be noted that age was not necessarily the key factor with all the unsuccessful attempts to obtain insurance and that the mystery shopping exercise did not involve insurance brokers.

Research commissioned by the Government Equalities Office and carried out by Oxera (henceforth, "the Oxera research") examined the use of age-based practices in financial services. The findings showed the price of motor and travel insurance policies differ depending on the age of the customer with older people paying more than any other age group to obtain similar cover. The research also showed providers of motor and travel insurance specialise, targeting specific age groups and refusing to supply other age groups is common practice. Overall the findings showed age was a significant piece of information in determining how prospective customers are treated in the sector, including whether a service is provided at all and at what price.

However, the Oxera research also showed no age group is totally excluded from the market in the sense that no provider at all is willing to supply cover. For example, Oxera found more than 30 separate motor insurance quotes for those aged 80 and over on one price comparison website alone. They also found motor insurance companies generally do not apply age limits to existing customers so policy renewal is not a problem.

Financial services representatives suggest that these markets are competitive and insurance is available for people of all ages, although some consumers can have difficulty finding cover. This claim is supported by the Oxera research which suggested that the smaller provision of services for older age groups can be explained by legitimate business practices reflecting the different costs of supplying services to different age groups. The research concluded that if there are failures in the financial services market they originate in how the market currently matches demand and supply – the evidence showed some consumers have greater difficulty in finding relevant products or providers because of their age.

## ***Current cost of age discrimination***

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<sup>63</sup> Insurance and Age: exploring behaviour, attitudes and discrimination, CM Insight, Andrew Smith Research, 07.

<sup>64</sup> [http://www.ageconcern.org.uk/AgeConcern/Documents/ACE\\_DLR\\_report\\_FINAL\\_PDF.pdf](http://www.ageconcern.org.uk/AgeConcern/Documents/ACE_DLR_report_FINAL_PDF.pdf).

<sup>65</sup> [http://www.ageconcern.org.uk/AgeConcern/Documents/Turned\\_away\\_older\\_people\\_and\\_insurance.pdf](http://www.ageconcern.org.uk/AgeConcern/Documents/Turned_away_older_people_and_insurance.pdf)

<sup>66</sup> Older people's access to financial services: a review, by Barry Fitzpatrick consulting, Simon Bridge & Associates for The Equality Commission for Northern Ireland, June 2008.

<sup>67</sup> Financial Services Experts Working group report, October 2008, page 11, quoting Andrew Smith research, CM Insight for Age Concern and Help the Aged, August 2006

The current cost of age discrimination in the financial service sector is difficult to quantify. The Oxera research made it clear that only a small proportion of consumers are turned down or unable to find insurance products because of their age.<sup>68</sup> The study suggested that discrimination per se is not being carried out in the provision of financial services, with some cover available for all age sections of the market.<sup>69</sup>

However, the age lobby group Age UK has provided information on the areas where they feel older people are discriminated against, the areas of concern to them are travel and motor insurance. Age UK state that discrimination in these areas would encompass feelings of social and financial exclusion that can result from being turned down purely because of age, problems finding insurance, as well as the negative outcomes that may result from less competition by an apparently limited number of providers serving older people. It should be noted that in some cases people could believe that they have been refused a service based on their age when in fact it could be based on another factor such as health.

### Travel insurance

Research by Age Concern and Help the Aged has shown that 6.6 per cent of people over 65 (and 9.4 per cent of those over 75) have, at some point decided against a holiday or a particular trip because they were unable to find travel insurance or gave up looking following initial disappointment.<sup>70</sup>

A separate SAGA Populus survey<sup>71</sup> found that 25 per cent of people aged over 65 had been refused travel insurance because of age<sup>72</sup> and 7 per cent of these were unable to find travel insurance<sup>73</sup>.

The Office for National Statistics estimates in 2009 there were 10,097,766 people aged 65 and over in UK<sup>74</sup>, if we assume 50% of this population demand travel insurance and apply the SAGA results, 88,355 people each year are not be able to find travel insurance. The average value of a holiday in 2009 was around £270<sup>75</sup>, using the principle of willingness to pay; this can be used as a proxy for value. This results in a possible loss for those over 65 who want to go on holiday in the region of £24 million per year<sup>76</sup>.

### Motor insurance

Age Concern and Help the Aged research found that 6 per cent of those over 65 were declined car insurance because of their age. Around 43 per cent of people aged over 65 currently have car insurance<sup>77</sup>, and as motor insurance is compulsory for all UK drivers, we assume this 43 per cent also have access to a vehicle. If 6 per cent of this 43 percent were turned down for car insurance because of age and then stopped looking and gave up driving as a result, 260,522 people over 65 would be unable to drive as a result of their age.

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<sup>68</sup> Oxera : The use of age-based practices in financial services, p52

<sup>69</sup> Oxera : The use of age-based practices in financial services, Executive Summary, p (iv)

<sup>70</sup> Insurance and Age: exploring behaviour, attitudes and discrimination, CM Insight, Andrew Smith Research 2007

<sup>71</sup> 10,6613 individuals aged 50 and over carried out between 8 and 14 August 2008

<sup>72</sup> Question asked – “Some people say they find it difficult to find insurance, others say they have no problems at all. Have you ever been refused insurance because of your age?”

<sup>73</sup> Question asked – “Were you able to find another insurer who would cover you? [Those refused]”.

<sup>74</sup> [http://www.statistics.gov.uk/populationestimates/flash\\_pyramid/default.htm](http://www.statistics.gov.uk/populationestimates/flash_pyramid/default.htm)

<sup>75</sup> Home and Away holiday rentals survey May 2009, estimated that a family holiday for 4 people would be £1,082.03 (made up of travel £545.50, accommodation £461.35 and Airport parking / hotels £75.18)  
<http://www.holiday-rentals.co.uk/info/press/press-releases/press-releases-2009/average-cost-of-a-holiday>

<sup>76</sup>  $10,097,766 \times (0.5 \times 0.25 \times 0.07) \times 270 = \text{£ } 23,855,972$

<sup>77</sup> GfK/NOP 2006 in Insurance and Age: exploring behaviour, attitudes and discrimination, CM Insight, Andrew Smith Research, 2007



The Saga populus survey found that 3 per cent of those who responded aged over 65 had been denied motor insurance because of age<sup>78</sup>, of these 7 per cent were unable to find any motor insurance<sup>79</sup>. This would equate to about 9,118 people over 65 who are unable to drive as a result of their age.

A person of retirement age tends to drive around 8,000 miles a year and drive a smaller car, such as a Ford Fiesta, with a purchase price of approximately £10,000. Estimates by The AA show for people driving 10,000 miles per year, the average cost per year is estimated at £4,014 in 2009.<sup>80</sup> Again using the principle of willingness to pay, this would result in a possible loss to those over 65 who want to drive but cannot of approximately £36.6 million per year<sup>81</sup>.

### Search costs

Age Concern and Help the Aged research found that after two attempts 23 per cent of people aged 65 plus failed to get a travel quotation and 19 per cent failed to get a motor insurance quote. They estimate this would equate to 1.5 million of the 6.5 million older people travelling each year, and 750,000 of the over 4 million drivers aged over 65 failing to get an insurance quote after two attempts. These 2.25 million people may have been able to get cover, but there would have been a cost involved in terms of time and effort. Assuming that each extra search cost £2, a single extra search per person would amount to £4.5 million a year.

### Summary

	<b>Estimated cost of age discrimination</b>
Travel insurance	£23,855,972
Motor insurance	£36,600,787
Search costs	£4,500,000
<b>Total</b>	<b>£64,956,759</b>

### ***Policy objective***

In January 2010 the Government published a policy statement for its proposals for ending age discrimination in services and public functions. For financial services we propose to:

- Create an exception that will allow financial service providers to treat people of different ages differently, in accordance with that exception. Prices would still vary by age, where this was in line with risk or costs and not an arbitrary decision;
- Improve transparency. People need to be confident that age is not being misused. One approach would be to require the industry as a whole to publish aggregate data that everyone could check; and
- Improve access. If a supplier is unable to provide assistance to a person because of their age they will be required to refer people to a supplier who can meet their needs or refer them to a dedicated signposting service. This would improve access and also choice for consumers who have difficulty in obtaining the products they want.

### ***What policy options were considered?***

Three options were considered.

- **Option 1:** Strict implementation of the ban on age discrimination, with no specific exception.
- **Option 2 (recommended):** A tailored specific exception allowing age to be used provided that it is proportionate to risk and costs.

<sup>78</sup> Question asked: "Some people say they find it difficult to find insurance, others say they have no problems at all. Have you ever been refused insurance because of your age?"

<sup>79</sup> Question asked – "Were you able to find another insurer who would cover you? [Those refused]"

<sup>80</sup> The AA, [http://www.theaa.com/allaboutcars/advice/advice\\_costs\\_petrol\\_table.jsp](http://www.theaa.com/allaboutcars/advice/advice_costs_petrol_table.jsp). Costs include: depreciation; cost of capital; insurance; road tax; and running costs

<sup>81</sup>  $10,097,766 \times 0.43 \times 0.03 \times 0.07 \times 4,014 = £36,600,787$

- **Option 3:** A wide specific exception, which would mean that all current practices could continue.

Option 2 is our chosen method for progressing action on age discrimination in financial services. As a result, differential treatment will be allowed to continue where it can be justified by data showing that it fairly reflects the varying risk profiles of different age groups. Lack of reasonably available data, market specialisation, the need to maintain an acceptable risk profile or the need to keep costs down for consumers as a whole will also be reasons for treating customers differently, provided it is done in a fair and reasonable way. For example, age bands that keep costs down for consumers as a whole will be permitted in the pricing of insurance, so long as they are based on appropriate data about risk.

Therefore Option 2 is the recommended option: **A tailored exception to allow age to be used where fair and reasonable**

Although the complete ban on use of age as a risk factor is not one of the policy options considered, it is useful to assess the impact that its removal could have<sup>82</sup>:-

- Prices converge across age groups – this implies redistribution effects between age groups – i.e., some age groups would benefit, whereas others would be worse off.
- Prices increase overall – partly because insurers are not able to estimate the risks as precisely and hence factor uncertainty into prices, and partly because the proportion of high-risk individuals is likely to increase (i.e., as they face lower prices) and the proportion of low-risk individuals to decrease (as they face higher prices). The overall price increase relates to the inefficiencies due to adverse selection and moral hazard.
- Providers would increasingly use substitute variables for age for risk classification and pricing, such as years with driving licence, which may have the effect of individuals still being discriminated on the basis of age.
- Some types of products or firms may be forced out of the market either because it becomes uneconomical to supply the product (e.g. the costs associated with health screening may be too high, especially for smaller firms), or the risk is too large (e.g. the market for annual worldwide travel policies may collapse due to considerable risk associated with offering such insurance to older people).

Not all providers have the expertise or capacity of pricing for all risks. This applies to age-related risk as much as to other kinds of risk, which is why some suppliers specialise. Requiring all providers to supply all ages would not only require changes to the systems in place and costs of building up the required actuarial expertise, it could also result in a reduction in the underwriting quality as providers underwrite risks for which they do not currently have the expertise.

A General Insurance Research Organization (GIRO) working party examined the effect of removing the age variable from car insurance risk models as well as any multi-way interaction effects between driver age and other factors. The implied effect on premiums was determined by comparing the results from the models including and excluding age. The working party found clear re-distributive effects between age groups, since drivers aged 41 -75 would face increases in premiums of up to 24%, whereas those aged 40 or under and those aged 76 or over would see their premiums fall by up to 20%<sup>83</sup>.

In effect, this evidence demonstrates that, on average, if age is not used in the risk classification and pricing models of motor insurers, drivers under 40 would be cross subsidised by drivers over 40 years old. Changes in premiums is also likely to lead to different behaviour by the insured, both in terms of uptake of insurance and potentially in terms of behaviour, for example, road accidents and fatalities could increase as younger people respond to decreased premiums; this will have the effect of more risk in insurers' portfolios and exacerbated premiums for all age groups.

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<sup>82</sup> Oxera research

<sup>83</sup> GIRO Working Party (2007/08), 'Free Market Pricing', section 5

Age is regarded as a relevant indicator of health for holiday insurance purposes. Research commissioned by ABI and conducted by Ipsos MORI found that over-65s are three times more likely to make a travel insurance claim than those aged 35, and people over 85 years old are eight times more likely to claim. Claims made by people over 65 compared to people under 50 are nearly three and a half times more expensive. If age was removed then there would need to be wide introduction of medical checks for all people seeking insurance which would increase the premiums charged to everyone and/or a reduction in quality of cover offered.

The Financial Services Experts' Working Group report contains results of the analysis of removing age from credit-scoring models, conducted by a major UK lender<sup>84</sup>. The analysis shows the removal of age would have an adverse effect on the providers' ability to assess an individual's ability to repay a loan. This is shown to result in either a reduction in the loan offer rate by 1.7% if the proportion of 'bad' loans is kept constant, or an increase in 'bad' loans by 0.1% if the loan offer rate is held constant.

The analysis also illustrates the effect on loan availability, with the loan offer rate increasing by 2.3% for the 18 – 25 age group (i.e. additional 2.3% of the applicants in this age group would be offered loans), whereas the offer rate would decrease by 1.4% for those aged 60 or more. The lender notes that this needs to be interpreted in the context of the young having the highest predicted 'bad' loan rate (4.7%) and the old having the lowest rate (0.4%).

Therefore, removal of age from credit-scoring and loan-decision models is likely to lead to a 'cross-subsidy' from customers over 60 to customers under 25 years old as was also observed in motor insurance. Moreover, the effect of removing age as a risk factor can lead to worse outcomes overall, for example, either more 'bad' loans or less loans being offered.

The use of alternative factors in risk classification was examined by Kelly and Nielson<sup>85</sup>, in risk classification and motor insurance pricing. Overall they concluded that the age variable is capturing real differences in risk of drivers that is not captured by any other of the alternative factors examined. They conclude that age cannot be eliminated from insurance processes without creating undesirable market disruptions and increases in moral hazard.

Any exception for financial services will need to take into account a number of different factors, which are detailed below:

### ***The use of age limits permitted where relevant to cost or risk***

Acceptable evidence and age based pricing: Acceptable evidence should be defined relatively widely, but we need to decide how wide. Age-based pricing without necessitating strict mathematical proportionality, should be permitted so long as age is used appropriately.

Financial services practices are designed to manage risk and are determined by a cost benefit analysis. For example, the likelihood of an insurance claim may increase or decrease with age for certain products. This likelihood can be calculated more accurately with more stringent risk analysis and tighter underwriting, such as requesting medical reports. Where data is inadequate for a particular age group, firms may seek to manage this risk by imposing higher charges, lower benefits or declining applicants. Risk management is an area of competition that requires firms to balance costs, including the opportunity cost of declining customers, against risk savings. Age does not work in exactly the same way for all insurance products. For some products, the premium is calculated more precisely according to the risk posed by the individual. Insurers will look at particular characteristics known as 'rating factors', including age, and use this information to assign an appropriate level of risk.

Legislation should not prevent the use of predictive adjustments to data in financial services. Evidence or data might include public or private empirical, actuarial, statistical or qualitative experience, research or other material or data on risks. It may include evidence of costs, including

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<sup>84</sup> The Experts Working Group Report, October 2008, page 166 - 167

<sup>85</sup> M.Kelly and N.Nielsen (2006), Age as a variable in insurance pricing and risk classification pages 212 - 232



but not limited to administrative or operating costs. It may be from UK or non-UK sources, provided that it is relevant. If actuarial data alone was used it would exclude other relevant material, which would be unacceptable.

There are several reasons why premiums may not be directly proportional to claims costs. These include the use of fixed monetary loadings reflecting the expense of administering a policy, and marketing activity that directly or indirectly results in commercial discounts being offered for different age groups.

Insurance products work by pooling risks. Tailoring each insurance policy to the exact risk characteristics of the individual would eliminate many of the risk reduction benefits that policyholders currently seek in insurance and would significantly add to the costs.

**Commercial factors:** The removal of commercial factors (a decision to specialise in a particular market segment, decisions about risk appetite or portfolio risk distribution, the practical impact of distribution mechanisms, pricing strategy or simply keeping transaction costs low) would have a big impact on providers. Commercial factors can be taken into account as financial services firms are run to make a profit for shareholders / owners, by providing services which people will want to use. In a competitive market, increases in transaction costs are generally passed on to consumers. Companies should be able to provide a viable cost-effective service with reasonable profit margins to allow a sustainable business. This sector is very competitive, so they need to ensure that their services are competitively priced to ensure that they attract sufficient customers.

Currently firms make a commercial decision at which age points they feel able to quote premiums based on their own data, the cost and method of distribution, capital requirements and their business model. If firms could not make a commercial decision as to what part(s) of the market they could specialise in, then they would be exposed to areas of risk which they know little about, as they do not have the supporting data. It is likely that some firms would withdraw from the market whilst others would write business at a loss initially until they have sufficient evidence to support a requirement or their premiums would be expensive as they would need to ensure that they had sufficient capital in case there was an increase in claims.

**Restrictions on age limits and age bands:** If age limits were removed providers would no longer be allowed to provide products for specific parts of the market only, and instead would supply products across all age ranges.

With narrower age bands, providers would no longer be allowed to have a pricing structure with step changes for broader age groups, but instead set prices that more closely reflect the age of consumers (on, for example, an integer basis), although it would still be the case that premiums would change from one day to the next at specific relatively arbitrary dates such as birthdays and this would need to be set out in the legislation.

The economic benefits could be:-

- benefits from consumers obtaining products such as insurance or loans, which they previously had difficulty accessing;
- benefits from easier search by consumers for the products on offer.

The benefits in terms of product access and improved search for older people have been quantified by research commissioned by ABI and carried out by CRA International (henceforth "The ABI Research") on motor and travel insurance:-

	<b>Motor insurance</b>	<b>Travel insurance</b>
Obtaining insurance (and being able to drive/go on holiday)	£3.34 million	£4.82 million
Improved search	£3.09 million	£10.66 million
<b>Total quantified benefits</b>	<b>£6.43 million</b>	<b>£15.48 million</b>

Source: ABI research.

The reported estimates of economic benefits are relatively small<sup>86</sup>.

The benefits arising from better access are not equivalent to the benefits of implementing a particular policy option. For example, it is not clear that a removal of age limits would in fact achieve the desired access benefits—the policy may well result in more products being offered to certain age groups, but it may in fact not improve their product search or ultimate purchase. The economic benefits of the policy options that restrict age-based practices by product providers are likely to be small.

If all providers supplied all age groups it is unlikely to reduce prices in the market. Even if the number of providers in supplying to some age groups in the market is lower than for others, the Oxera research states that there is no evidence of systematic overcharging of these age groups at the lower levels of supply. Instead, rather than having a beneficial effect, there are good economic reasons to expect the removal of age limits to lead to increased prices and to have a negative impact on the competitive dynamics in the market. For example, if all providers cater for all ages, but as a result of economies of scale many of these providers are relatively expensive (justifiably, as their costs are high); the advantage of greater access (and reduced search costs) may be more than off-set by high realised prices.

On the narrowing of age bands in travel insurance, while steep increases in the level of premiums from one year to the next appear unfair as individuals jump from one age band to the next, there are unlikely to be any significant economic benefits of forcing a ‘smoother’ price structure. There are a lot of different models of age banding at present – for example some products have five-year age bands for older customers and others have one band for all people over, for example 50 or 65 years-old. Narrower age bands may appear to be fairer, but could also result in higher overall prices.

Overall, Oxera believe that there would be little *economic* benefit in the removal of age limits or narrowing of age bands.

Any changes to their underwriting process, product offerings and pricing structures would impose additional costs on product providers, which would be passed on to customers.

There is also a risk that, if age limits were removed providers could seek to avoid such changes by simply setting prohibitively high prices to the age groups they do not want to serve, thus complying with the rule by offering the product, but effectively would never sell it. In this case, outcomes in the market (for consumers also) may not change or worsen as consumers inadvertently purchase over-priced products. In practice, such a response may not be possible, not least for commercial reasons— e.g., providers may incur reputation damage from charging uncompetitive high prices (even if they reflect high costs), and there are transaction costs from pricing quotes which are not converted into sales.

Compliance cost estimates for motor and travel insurance providers are available in the ABI Research:

	One-off costs	Average annual costs
<b>Motor insurance</b>		
Remove minimum and maximum age limits	£10.6 million	£2.2 million
Remove maximum age limits	£5.3 million	£1.1 million
<b>Travel insurance</b>		
Remove maximum age limits	£1.3 million	£10.8 million
Remove maximum age limits and age bands	£1.8 million	£10.9 million

Source: ABI research.

<sup>86</sup> The estimates of benefits (or costs to the elderly under the status quo) presented in the Expert Working Group report are significantly higher. However, Oxera considers that—although a willingness-to-pay approach is valid in principle—the estimates presented are not willingness-to-pay estimates. What is relevant is not the expenditure of the foregone holiday or foregone driving, but the willingness to pay for buying insurance to go on holiday or driving. It is the latter that the CRA report for the ABI seeks to measure.

The Financial Services Experts' Working Group report presents somewhat higher compliance cost estimates. The report also indicates the level of compliance costs that would apply in the credit market if lenders were required to change their score cards. These costs would largely be one-off costs. As in the motor and travel insurance market, the ongoing annual costs once the changes to the systems and processes have been made are correspondingly smaller.

Overall, the total compliance costs appear relatively small on aggregate or in relation to the size of the markets, but compared to the economic benefits they may in fact be considered rather large.

The available cost estimates refer to the compliance activities at the level of providers and as such do not cover additional costs incurred by other parts of industry. For example, to the extent that the removal of age bands increases the cost of distribution (e.g., system changes may be required by some distributors), additional costs would apply at distribution level. There is evidence that the additional costs at the underwriting level are indeed small (i.e., based on existing models, it would be easy to fit smooth pricing curve), but the broader bands are considered helpful downstream for distribution purposes. Similarly, in the personal loans market, additional costs may be incurred by credit reference agencies or other service providers if the restrictions on age also required changes to their models and systems.

The unintended negative market impacts that arise, in particular from the removal of age limits, are likely to present the more significant component of costs than compliance costs.

Not all providers have the expertise or capability of pricing for all age groups. This applies to age-related risk as much as to other kinds of risk, which is why there is a degree of specialisation on the supply side. Requiring all providers to supply all ages will require changes to the systems in place and costs of building up the required actuarial expertise; it could also result in a reduction in the underwriting quality as providers underwrite risks for which they do not currently have the expertise.

Specialisation allows insurance companies and lenders to realise economies of scale. To give a simple example, the market for insuring 80-year-olds and over who wish to go on holiday in the USA is simply not big enough for all insurers in the travel market to provide quotes, there would be duplication in the cost of building up the actuarial evidence, in the cost of giving quotes that are ultimately not converted into sales, etc. In addition, where either the transaction itself or the service delivery has economies of scale within age cohorts (e.g., if the transaction involves materially different information from the insured or the intervention they require is materially different), there is a risk of permanent fragmentation of these small markets resulting in permanently higher unit costs.

Specialist providers that underwrite risks for the old-age group (or other segments) would be required to change their business model or exit the market.

Any reduction in the underwriting quality that may be triggered by the requirement to supply the whole age spectrum will result in incorrect actuarial pricing by individual insurers and in the market as a whole. The potential consequences of a less risk-based pricing are clear and well-established (in particular, moral hazard and adverse selection).

The potential consequences will be more limited if providers continue to be allowed to set limits on the basis of criteria that are closely correlated with age, e.g., driving experience, medical record, employment status, time at address, etc. However, the effect of this will be to continue to allow firms to not supply services to largely the same group they do not supply now. The difference will be that they are refused supply not because of their age, but because of some factor correlated with age. The net benefit of this may be small or even negative in terms of the group that is being targeted for help.

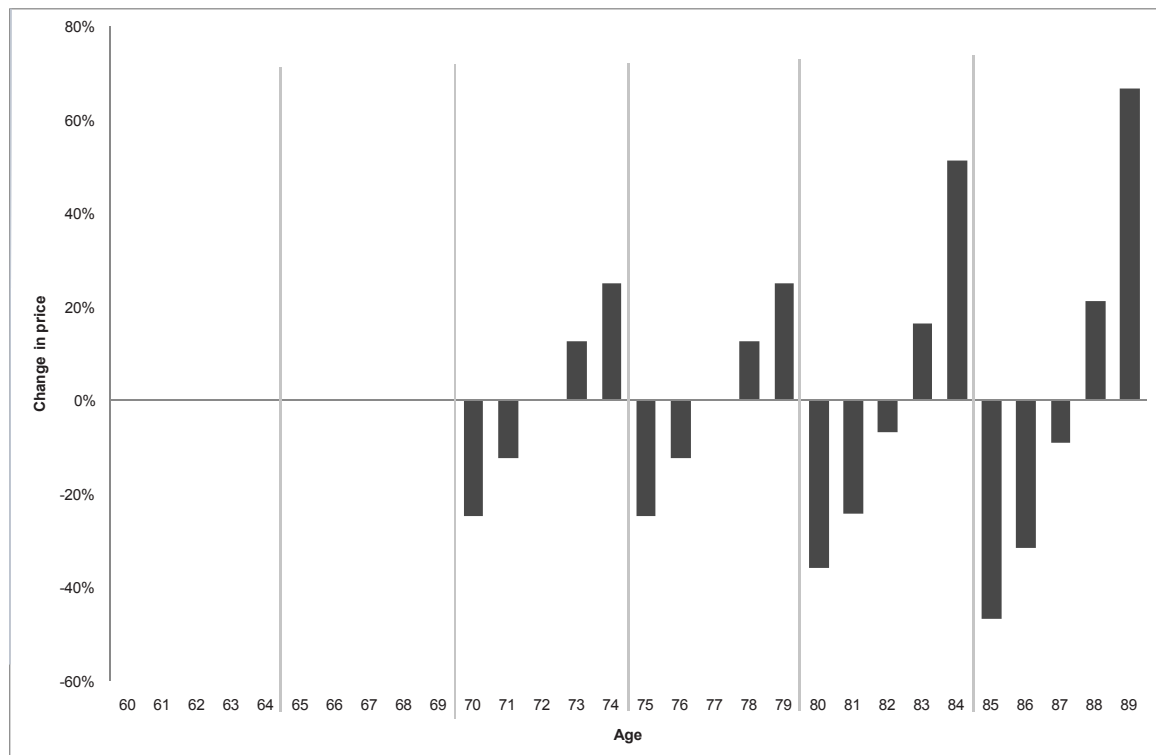
Products that are targeted to certain age groups (e.g., student loans) may no longer be offered. More generally, product characteristics may need to be adjusted (or simplified) to reduce the risk exposure of insurers that would come from the requirement to offer a product to all age groups.

The removal of age limits may result in better access to the relevant products for certain age groups, but the costs of achieving this (compliance costs and pricing inefficiencies) may be borne by consumers in other age groups.

Oxera research states that in travel insurance there could be slight benefits for older people. In motor insurance and personal loans, however, the removal of age limits is likely to reduce the costs of borrowing and of driving most for the young (and to a lesser extent the old). That is, the same policy is likely to have different distributional consequences across age groups (although in all cases it tends to be the ‘middle’ ages that lose out).

On the narrowing of age bands, the replacement of step changes in the pricing structure between broader age bands by a smooth curve where prices vary with integer ages also has redistributive effects. The price within a band is based on the average risk of consumers in that age band (e.g., 70–74 years). If the risk of consumers in the age band is identical, the price charged for consumers of different ages within the band will stay the same. If the 70-year-old has a lower risk than the 74-year-old, however, the move to integer ages would imply that the 70-year-old will now pay less than before and the 74-year-old pays more than before, although the use of age would be fairer. That is, within an age band, there can be a degree of cross-subsidy that is removed as the age bands are narrowed. While this leads to greater risk-based pricing, these may be offset by greater transaction costs.

#### *Hypothetical illustration of the distributional effects of removing age bands*



Note: In this simple example (to be developed using ‘real’ data), risk-reflective pricing is assumed in the status quo (i.e., prices equal to the average risk within an age band) and after abolishing the broader age bands and moving to integer ages (i.e., prices equal to the risk of integer age groups). Risk is assumed to increase at an increased rate with age. The status quo involves age bands with an increment of five years (i.e., 60–64, 65–69, etc), and there are equal proportions of each integer age customers within an age band. It is assumed that the 60–64 and 65–69 age groups have equal within-group risk; hence, there is no change in prices for these age groups when the age bands are removed.

Source: Oxera.

Given that travel insurance risk increases with age it may be the very old (or more generally those hitting the upper end of an age band) that see their travel insurance premiums increase most if age

bands are narrowed. That is, for those concerned about the level of premiums paid by the very old, a narrowing of age bands may not have the desired distributional effects; however, age will be used more fairly and costs more proportionate.

***A requirement to make data available at industry level to support age based differences in premiums***

There needs to be increased transparency to show that age is being used appropriately, this could be achieved by industry level publication of data, which would also help provide a basis of fact against challenges. Publication of data is already required under the Gender Directive for some forms of insurance. The public should have access to a published source of insurance data broken down by age, for example, giving aggregated information on size and frequency of claims for different ages. Data should be compiled using the smallest practicable age ranges and should include information on the frequency of claims.

A concern is that insurance suppliers in particular, insist that their pricing structure is supported by up to date actuarial data, and that publication is an unnecessary burden on business, but they have not given an indication of the scale of these extra costs. Claims data from individual insurers is necessarily confidential and publication on a firm by firm basis would undermine competition and the ability of firms to operate their businesses on a commercial basis. It follows that if such data would thus be published as an aggregated series incorporating information from as many firms as possible, but on an anonymous basis and in a way that sought not to undermine the competitive advantage that specialist insurers gain from their better understanding of the risks of some market sectors.

Putting aggregated insurance data in the public domain illustrating the correlation of age and risk would make it easier for industry and consumers to understand how age impacts on costs of the services provided and provide a basis of fact against challenges of age discrimination. Companies would have a source of data to justify their products against, which would help reduce claims against age discrimination. The consequences if insurers' own data differs from aggregate data would need to be considered carefully.

Industry-wide data might also reduce barriers to entry for new providers, who claim that they cannot offer services to certain age groups, as they do not have sufficient data on the risk they pose.

It would also provide Government with information on the impact of age factors on premiums. This could inform further understanding of the extent to which accessibility and prices are in fact proportionate to risk and a basis from which to take further action to reduce discriminatory behaviour.

We assume that almost all insurers will choose to enter into collective publication arrangements through the Association of British Insurers (ABI) or another agency. The Impact Assessment for the implementation of Gender Directive 2004/113/EC which has a publication requirement, stated one-off set-up costs estimated at £720,000 representing the development of some internal reporting systems (£5,000 for a large firm and £2,000 for a small firm) together with the development of a central collection and publication system (£110,000). Estimated annual running costs were £250,000. This was based on 15 senior managers and 20 administrator hours for a large company and 5 and 10 hours respectively for a small company (£235,000), including associated overheads of 30%; central staff costs (£5,000) and central publication costs (£10,000).

It is likely that any additional costs due to a requirement for a publication scheme, to illustrate the impact of age on insurance will be minimal. It appears that existing data and procedures used for gathering gender data could also be used for age. This issue is currently being considered by an internal steering group with representation from industry stakeholders, consumer groups and HM Treasury; the group will consider the issue and identify the appropriate action in taking forward the development of a publication scheme.



## ***Develop a signposting and referral system for motor and travel insurance***

In insurance signposting / referrals would lead to improved access to products for consumers who currently have difficulties in finding providers or products that cater for their age – it would help them to obtain insurance cover and reduce their search cost for this cover, by better matching demand with the existing supply. By directing customers to specialists in the market, this could result in better quality products for older customers with little unintended consequences for other segments. The ABI research provides examples of the potential costs and benefits, although the actual costs depends on the type of systems which are put into place, which will have to be considered further if it is decided to require signposting / referrals.

### **Travel Insurance**

#### ***- Signposting***

The ABI report stated that 2% of people cannot find insurance and the benefits of signposting depend on the proportion of customers who would actually use the signpost, which has been calculated as 63%<sup>87</sup>.

The efficiency of competition would be expected to increase because of changes to the search process for older customers. At present, around 25% of customers over the age of 65 have been turned down by an insurance company<sup>88</sup> (although it is not clear how much is related purely to age). Although the majority do find insurance, signposting would help eliminate some of this unproductive activity, which could allow more shopping around between providers who offer quotes.

The ABI research states that 65 – 70% of consumers across age groups would be likely to use the information provided by signposting, suggesting a potential reduction in search costs. Customers would use the signposting system to contact 4.9 providers, compared to the current 2.9 average<sup>89</sup>. Signposting is relatively easy to set up and maintain and the cost would be low as detailed below.

	<b>Total scaled up costs</b>	<b>Cost per million premium</b>	<b>Cost per average policy</b>
<b>Additional one-off costs</b>	£0.5 million	£800	£0.03
<b>Additional ongoing costs</b>	£2.8 million	£4,400	£0.13
<b>Average annual costs</b>	£2.9 million	£4,500	£0.14

Source: ABI research. One-off costs have been spread over five years to obtain the average annual costs. An average premium of £31 has been used to calculate the cost per average policy.

#### ***-Referral***

The ABI research stated that 82% of older customers would be willing to consider purchasing insurance through a company they were referred to, so we can assume that there would be an increase in insurance policies sold<sup>90</sup>. If being the company referred to is highly profitable we would expect competition between firms to be 'this company' which would in turn put pressure on pricing. 72% of consumers state that the referral would make them more likely to shop around<sup>91</sup>.

Compliance costs for referrals is more difficult to predict as it would depend on exactly how the referral arrangement worked, however, an example of possible referral costs are detailed below.

	<b>Total scaled up costs</b>	<b>Cost per million premium</b>	<b>Cost per average policy</b>
<b>Additional one-off costs</b>	£0.7 million	£1,200	£0.04
<b>Additional ongoing costs</b>	£2.8 million	£4,400	£0.14

<sup>87</sup> ABI research paper No. 12 2009 – Insurance and age-based differentiation page 83

<sup>88</sup> ABI research paper No. 12 2009 – Insurance and age-based differentiation page 84

<sup>89</sup> ABI research paper No. 12 2009 – Insurance and age-based differentiation page 85

<sup>90</sup> ABI research paper No. 12 2009 – Insurance and age-based differentiation page 87

<sup>91</sup> ABI research paper No. 12 2009 – Insurance and age-based differentiation page 88

<b>Average annual costs</b>	£3.0 million	£4,700	£0.14
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Source: ABI research. One-off costs spread over five years to obtain average annual costs. An average premium of £31 has been used to calculate the cost per average policy.

#### *- Benefits from obtaining travel insurance*

The ABI research demonstrates that there is the potential for increased business if insurance companies were to provide a product to those who could not get cover. Consumers over 65 account for 17% of the travel insurance market. Among them, 25% had difficulty in finding insurance and 7% could not get any cover. Were they able to get cover, the value of premiums would increase to £4.08 million<sup>92</sup>.

The ABI research shows that there would be benefits from improved search due to less time which could be costed as £1.3 million<sup>93</sup>. However, the benefits from improved search on the basis that individuals continue to spend the same amount of time searching but have an increased number of quotes from which to choose, would amount to £9.36 million<sup>94</sup>. As well as benefits arising through obtaining insurance, additional benefits arise because older people can now go on holiday with travel insurance.

#### Motor insurance

#### *- Signposting*

The ABI research states that overall 60% of customers would be likely to use a signpost although this falls from 66% of customers in their late 60s to 55% who are aged 75 and over<sup>95</sup>. Around 55% of those aged 75 and over state that they would use the information provided by a signpost<sup>96</sup>. The ABI research stated that customers would use the signposting system to contact 5.5 providers, compared to the current 3.7 average<sup>97</sup>.

	<b>Total scaled up costs</b>	<b>Cost per million premium</b>	<b>Cost per average policy</b>
<b>Additional one-off costs</b>	£1.3 million	£150	£0.05
<b>Additional ongoing costs</b>	£330 million	£380	£0.13
<b>Average annual costs</b>	£3.5 million	£410	£0.14

Source: ABI research. One-off costs have been spread over five years to obtain the average annual costs. High ongoing costs due to increased call times, although could be cheaper if sent by post instead, although there would be postal and printing costs.

#### *- Referral*

About 71% of respondents to the ABI survey stated that they would consider purchasing from the company that they were referred to<sup>98</sup>.

	<b>Total scaled up costs (£)</b>	<b>£ per million premium</b>	<b>£ per average policy</b>
<b>Additional one-off costs</b>	£1.6 million	£190	£0.06
<b>Additional ongoing costs</b>	£4.1 million	£470	£0.16
<b>Average annual costs</b>	£4.4 million	£510	£0.17

<sup>92</sup> ABI research paper No. 12 2009 – Insurance and age-based differentiation page 90

<sup>93</sup> ABI research paper No. 12 2009 – Insurance and age-based differentiation page 91

<sup>94</sup> ABI research paper No. 12 2009 – Insurance and age-based differentiation page 92

<sup>95</sup> ABI research paper No. 12 2009 – Insurance and age-based differentiation page 44

<sup>96</sup> ABI research paper No. 12 2009 – Insurance and age-based differentiation page 45

<sup>97</sup> ABI research paper No. 12 2009 – Insurance and age-based differentiation page 46

<sup>98</sup> ABI research paper No. 12 2009 – Insurance and age-based differentiation page 47



Source: ABI research. One-off costs have been spread over five years to obtain the average annual costs.

*- Benefits from obtaining car insurance*

The ABI research demonstrates that there is the potential for increased business from those who could not previously get insurance, benefits from continuing to drive and benefits from improved search.

The benefit to those of obtaining insurance, who currently do not, is estimated at £2.99 million<sup>99</sup>. The benefits of continuing to drive are calculated at £0.35 million<sup>100</sup>. The ABI research shows that there would be benefits from improved search due to less time along with benefits from improved search on the basis that individuals continue to spend the same amount of time searching but have an increased number of quotes from which to choose, would amount to £3.09 million<sup>101</sup>.

- **Total net annual benefits**

The ABI report summarises the potential costs and benefits of signposting and referrals.

	<b>Signposting</b>	<b>Referral</b>
Quantity	£3.0 million	£4.0 million
Quality	++	+
Variety	+	+
Efficiency	£5.9 million	£7.7 million
Total quantified benefits	£8.9 million	£11.6 million
Total quantified costs	£2.9 million	£3.0 million
<b>Net quantified benefits</b>	<b>£6.0 million</b>	<b>£8.7 million</b>
Net quantified benefits per policy	£0.29 million	£0.41 million

Source: ABI calculations<sup>102</sup>. + slightly positive; ++ positive

Signposting and referrals impose costs; however, these solutions avoid many of the efficiency costs associated with the other options. They are directed at facilitating the access for those consumers who currently find it difficult to obtain insurance because of their age (rather than requiring wider-reaching changes in underwriting practices, product offerings or pricing structures). As such, signposting and referrals is relatively low cost option and have less redistributive implications.

- **Costs and benefits for General Insurance**

*- Motor and travel Insurance*

<b>Exception</b>	<b>Costs</b>	<b>Benefits</b>
Allow the continuation of the use of age in General Insurance	Nil additional costs	Saving of on-going cost of £13,000,000 (a)
Requirement to publish data	£250,000(b)	Benefits not quantified in this area
Introduction of signposting in insurance	£2,900,000	£8,900,000
Introduction of referrals in insurance	£3,000,000	£11,600,000
<b>Total</b>	<b>£6,150,000</b>	<b>£33,500,000</b>

<sup>99</sup> ABI research paper No. 12 2009 – Insurance and age-based differentiation page 49

<sup>100</sup> ABI research paper No. 12 2009 – Insurance and age-based differentiation page 50

<sup>101</sup> ABI research paper No. 12 2009 – Insurance and age-based differentiation page 51

<sup>102</sup> ABI research paper No. 12 2009 – Insurance and age-based differentiation page 94

- (a) This is the cost to the motor and travel insurance industry if age limits were to be removed (£2.2m for motor and £10.8m for travel, taken from ABI research).
- (b) This is the estimated annual running cost as outlined in the Gender Directive Impact Assessment.

- **Costs and benefits for Long-term Insurance**

- *Annuities, Pensions, Life assurance, Permanent health insurance and private medical insurance*

Exception	Costs	Benefits
Allow the continuation of the use of age in Long-term Insurance	Nil additional costs	Saving in on-going cost of £105,000,000 (a)

(a) The requirement to remove the use of age would cost £275,000,000, with on-going costs of £105,000,000. These costs are the suggested one-off and on-going costs if age requirements were removed from the long term insurance sector. This does not include costs to the private medical insurance sector. Figures taken from page 42 of the Financial Services Experts Working Group Report.

- **Costs and benefits for Banking and Credit**

Exception	Costs	Benefits
Allow the continuation of the use of age in Banking and Credit	Nil additional costs	Benefits not quantified in this area

- **Summary of known costs**

Exception to allow the continued use of age in financial services	Costs	Benefits
General insurance	£6,150,000	£33,500,000
Long term insurance	Nil additional costs	£105,000,000
Banking and credit	Nil additional costs	Benefits not quantified in this area
<b>Total</b>	<b>£6,150,000</b>	<b>£138,500,000</b>

### ***Risks and assumptions***

Signposting – currently no figures are available, a steering group has been created to identify options. The actual costs will depend on the type of system put into place.

Referrals - Compliance costs for referrals is more difficult to predict as it would depend on exactly how the referral arrangement worked.

Transparency - currently no figures are available, a steering group has been created to identify the action to be taken. The actual costs will depend on the type of system put into place. This is expected to be low as existing data and procedures used for gathering gender data will likely be used.

Costs and benefits for Long-term Insurance - These costs are the suggested one-off and on-going costs if age requirements were removed from the long term insurance sector. This does not include costs to the private medical insurance sector.

### ***Summary of preferred option and implementation plan***

We will introduce a tailored specific exception allowing age to be used where this is fair and reasonable in line with our proposed option above. For example, in the pricing of financial services, price must be a proportionate response to risks or costs associated with age.

We are now working on the development of the exception, which will be in the draft Order. We have been speaking to relevant parties and have set up an internal working group with representation from industry stakeholders, consumer groups and HM Treasury to take forward the development of signposting and the publication scheme. The real costs and benefits in these areas will depend on the decisions of the steering group. All stakeholders will have an opportunity to consider the details of the legislation later this year when we consult on the draft Order accompanied by an outline of the HM Treasury guidance.

## **General Services**

### ***Problem under consideration***

The Equality Act outlaws unjustifiable age discrimination against adults aged 18 and over by those providing goods, facilities, services and exercising public functions. This protection currently exists across all other protected equality strands:

- Sex
- Disability
- Race and ethnicity
- Religion or belief
- Sexual orientation

There are other age-based practices outside financial services and health and social care, which, although far less significant still need to be considered, we have classified these ‘general services’. We would not achieve our aim of creating strengthened and simplified equality legislation if we did not also deal with unjustified age discrimination in the general services sector. The impacts are expected to be on a far smaller scale than those identified in the other two sectors. Nonetheless, it is important that we get this right and ensure that equality legislation can take effect across the whole of society to guarantee that effective, simplified and modernised legislation is in place. There is a risk of inconsistency if the age ban does not cover all sectors of the economy.

The Government has received fewer complaints about harmful age discrimination in sectors outside financial services and health and social care. In general services age criteria are used in a variety of ways, some uses can be considered beneficial, whilst other treatment can be viewed as discriminatory. For example, many different age-based concessions and benefits are offered to specific age groups (including discounts offered by retailers during off-peak hours and age-targeted benefits such as free bus passes for the over 60s); some holiday companies offer group holidays for particular age groups; and most vehicle rental companies apply minimum and maximum age limits to their service.

It is not possible at this time to quantify the amount of age discrimination which occurs across the whole of the general sector. For example, it is not possible to estimate how often the following activities occur:

- A retailer assuming that older people are incapable of signing a contract without a younger person present to explain the details to them.
- A gym refusing membership to an older person because they do not meet with the gym’s “youthful” image.
- An older person not being able to rent a car because the rental company believe they are too old.
- A bar refusing entry to a group of people because some members of the group are older than the typical age group that frequents the establishment and this would not fit in with the bar’s more “youthful” image.

The age discrimination ban therefore needs to apply across all sectors. However, as with financial services and health and social care, age differentiated services should continue where they are justifiable or a specific exception has been granted.

The Government has undertaken significant preliminary work to establish what age-based practices exist in the general sector, taking account of responses to the consultation on the proposals for the Equality Act and the age ban consultation. We have decided to legislate for specific exceptions where these are appropriate to ensure that the legislation will not prevent different treatment where it is beneficial or justified. We propose specific exceptions in the following areas:-

- Age-based concessions and benefits
- Age-related group holidays

Government policy is to allow age based concessions and benefits to continue under the new legislation, the specific exception will provide certainty for service providers who wish to go beyond activities likely to be objectively justifiable, qualified as positive action or have statutory authority. The rationale supporting this exception is outlined below:

- Age-based concessions and benefits allow public authorities to target resources at those most likely to be in need, without the need for resource intensive means testing.
- The vast majority of respondents to the Governments consultation on age saw no disadvantage in allowing public and private sector age-based concessions to continue.
- The lack of strong evidence that people of different ages object to age-based concessions and benefits. A British Market Research Bureau survey of 2,004 adults found that 93% do not object to goods and services being offered at a discount to people of a particular age. A Ban on age-based concessions and benefits would be unpopular with both those who receive them and the organisations which offer them.

The exception would be drafted to ensure no loopholes were created in the ban on age discrimination and would apply where the purpose of the concession is to benefit the age group to which it applies.

The other specific exception is to allow specialist holiday providers to continue providing holidays for people in particular age groups. The Government agrees with the respondents to the consultation on age that those who wish to holiday with people of a similar age do so for positive, not negative reasons. It is also recognised that age-based group holidays represent a very small percentage of the holiday market and their availability does not restrict overall access to the holiday market.

The Government will continue to consider further exceptions for the general services, notably whether to allow vehicle rental companies to use age restrictions and will continue to evaluate the potential costs and benefits for the sector.

### **Administrative burdens**

This policy does not create any additional administrative burdens or savings against the department's administrative burden baseline.

## Annex D - Discrimination arising from disability: indirect disability discrimination

Department: DWP		Proposals to improve protection for disabled people from disability discrimination	
Stage: Royal Assent	Version: 5	Date: April 2010	
Related Publications: 1) House of Lords judgment: Mayor and Burgesses of the London Borough of Lewisham v Malcolm ([2008] UKHL 43). (2) Equality Bill Impact Assessment (House of Lords Introduction) December 2009			
Available to view or download at: <a href="http://www.officefordisability.gov.uk/indirectdiscrimination">http://www.officefordisability.gov.uk/indirectdiscrimination</a>			
Contact for enquiries: Peter Nokes		Telephone: 020 7449 5057	
What was the problem under consideration? Why was government intervention necessary? A consequence of the House of Lords' judgment in the case of the <i>Mayor and Burgesses of the London Borough of Lewisham v Malcolm</i> (Malcolm) was that it was more difficult for a disabled person to establish a case of disability-related discrimination. The Government reviewed how protection from disability-related discrimination operates and whether it should be revised following the Law Lords' judgment and in anticipation of the legislative requirements of a proposed new European anti-discrimination Directive. Details of this case and of an earlier case covering similar grounds are set out in the footnote below <sup>103</sup> .			

<sup>103</sup> Clark v Novacold (1999)

1. Mr Clark sustained a back injury which resulted in his being a disabled person for the purposes of the Disability Discrimination Act. A consequence of the disability was that he would have had to be absent from work for about a year. He was dismissed from his job because of this prognosis.
2. The Court of Appeal had to decide who to compare Mr Clark with in order to determine whether he had been treated less favourably. It identified two possible comparators:
  - (a) someone who did not have a disability but who was likely to be absent from work for about a year for other reasons; or
  - (b) someone who did not have a disability and who would remain in work for that period.
3. The Court of Appeal found that the correct comparator was (b). Thus, the test of less favourable treatment was based on the **reason** for the treatment of the disabled person: the disability-related absence and not the fact that Mr Clark was disabled.
4. The effect of the Novacold judgment was to make it relatively easy for a disabled person to demonstrate that he had been treated less favourably for a reason related to his disability.
5. The Court of Appeal found that the employer would have discriminated against Mr Clark by dismissing him, unless it could show that the less favourable treatment was justified.

### London Borough of Lewisham v Malcolm (2008)

6. Mr Malcolm, a tenant of a flat owned by Lewisham Council, has schizophrenia and is a disabled person for the purposes of the Disability Discrimination Act.
7. When Mr Malcolm sub-let his flat, which was in breach of his tenancy agreement, Lewisham Council commenced proceedings to evict Mr Malcolm.
8. The Disability Discrimination Act precludes a manager of premises from discriminating against a disabled person who occupies the premises by evicting him or subjecting him to any other detriment by, for example, treating the disabled person less favourably for a reason related to their disability, unless that could be justified.
9. Mr Malcolm claimed that the court could not grant a possession order against him as this would be disability-related discrimination: he claimed that, because of the effect of his impairment, he did not understand that he could not sub-let his flat nor did he understand the potential consequences of doing so.
10. The House of Lords declined to follow the approach taken in the case of Novacold regarding the comparator to be used. Instead, the House of Lords ruled that the correct approach, in the Malcolm case, was that the comparator should be someone who had sub-let their flat but who did not have a disability. Since Lewisham Council would have sought possession against anyone who had sub-let their flat, the Law Lords found that Lewisham Council had not treated Mr Malcolm less favourably for a disability-related reason.

**What are the policy objectives and the intended effects?**

To re-establish an appropriate balance between the rights of disabled people and the interests of those with related duties. The chosen option of introducing a new form of discrimination ("discrimination arising from disability" which does not require a comparator) and adopting indirect discrimination for disability establishes this balance. It ensures compatibility with the anticipated requirements of European equal treatment legislation and supports the aim of the Equality Act to harmonise equality legislation, as indirect discrimination is a concept which is applied more generally.

**What policy options were considered? Please justify any preferred option.**

**Option 1. Introduce a new form of protection, not requiring a comparator, from discrimination that occurs because of something arising from the person's disability, in addition to adopting the concept of indirect discrimination (chosen option).**

Option 2. Retain disability-related discrimination, but without the requirement for a comparator, and without the adoption of indirect discrimination.

Option 3. Modify the concept of indirect discrimination to ensure that it operates effectively for disabled people.

**When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects?**

After implementation, and on an ongoing basis, by the Equality and Human Rights Commission. The Government will also review after 5 years.

## Discrimination arising from disability: Analysis & Evidence

Policy Option: 1

**Introduce protection from discrimination arising from disability, in addition to adopting the concept of indirect discrimination**

COSTS	ANNUAL COSTS		Description and scale of <b>key monetised costs</b> by ‘main affected groups’  This provides an additional means of redress above that in Option 2. However, this is unlikely to increase the number of claims as indirect discrimination is unlikely to be pursued individually. Additional costs are likely to arise from familiarisation and added litigation.	
	One-off (Transition)	Yrs		
	£ 0	1		
	Average Annual Cost (excluding one-off)		Total Cost (PV)	£12,050,761 to £24,101,522
	£1,400,000 to £2,800,000	10		
Other <b>key non-monetised costs</b> by ‘main affected groups’				

BENEFITS	ANNUAL BENEFITS		Description and scale of <b>key monetised benefits</b> by ‘main affected groups’	
	One-off	Yrs		
	£ Marginal	1	Benefits for disabled people are unquantifiable but estimated to be marginal as the provision will only have an impact on the very small number of people who currently are unable to enforce their rights. Levels of compensation awards are not expected to alter as a consequence of the proposal.	
	Average Annual Benefit (excluding one-off)			
	£ Marginal	10	Total Benefit (PV)	£ Marginal
Other <b>key non-monetised benefits</b> by ‘main affected groups’				
It would make it relatively easy for a disabled person to demonstrate discrimination arising from disability and allow for demonstration of indirect discrimination. This would benefit the small minority of people who cannot currently enforce their rights under other provisions.				

### Key Assumptions/Sensitivities/Risks

The introduction of a further means of redress may be regarded as retaining complexity, which would be contrary to the aims of the Bill. The introduction of indirect discrimination at this stage may be seen as anticipating, too soon, the requirements of the EU Directive still under negotiation.

Price Base Yr	Time Period Years	Net Benefit Range (NPV)	NET BENEFIT (NPV Best estimate)
2009	10	-£12,050,761 to -£24,101,522	-£18,076,142 (mid-point)

What is the geographic coverage of the policy/option?	GB
On what date will the policy be implemented?	2010
Which organisation(s) will enforce the policy?	Courts and
What is the total annual cost of enforcement for these organisations?	£ 0
Does enforcement comply with Hampton principles?	Yes
Will implementation go beyond minimum EU requirements?	No



What is the value of the proposed offsetting measure per year?			£ 0	
What is the value of changes in greenhouse gas emissions?			£ 0	
Will the proposal have a significant impact on competition?			No	
Annual cost (£-£) per organisation (excluding one-off)	Micro	Small	Medium	Large
Are any of these organisations exempt?	No	No	N/A	N/A

Impact on Admin Burdens Baseline (2005 Prices)				(Increase - Decrease)
Increase of	£0	Decrease of	£0	Net Impact
Key: Annual costs and benefits: Constant Prices				(Net) Present Value

## Evidence

### Disability-related discrimination

The Disability Discrimination Act provided disabled people with protection against discrimination for a disability-related reason i.e. a person, provider of services, public authority, or association discriminated against a disabled person if –

- (a) for a reason which related to the disabled person's disability, they treated him less favourably than they treated, or would have treated, others to whom that reason did not, or would not, apply; and
- (b) they could not show that the treatment in question was justified.

In determining who had been the victim of disability-related less favourable treatment, it was necessary to find an actual or hypothetical comparator – a person to whom the disability-related reason did not, or would not, apply.

The question of who the comparator should be was subject to interpretation by the courts, including the Court of Appeal in the case *Clark v Novacold*. The Court of Appeal took a broad approach to the selection of comparators and the Novacold judgment established a precedent that made it relatively easy for a disabled person to demonstrate that disability-related less favourable treatment had occurred.

However, a House of Lords' judgment in the case of *Lewisham v Malcolm* declined to use the *Clark v Novacold* comparator and took a different approach in establishing who should be the correct comparator.

The consequence of the House of Lords' judgment was that it moved protection away from the Government's policy intention. Whilst the protection remained sufficient to meet obligations arising from the United Nations Convention on the Rights of Persons with Disabilities, the judgment altered the balance which the policy aimed to achieve between the rights of disabled people and the interests of duty holders by making it more difficult for a disabled person to establish a case of disability-related less favourable treatment.

### Chosen option

**Introduce a new provision which protects a disabled person from discrimination that occurs because of something arising in consequence of the disabled person's disability, in addition to adopting standard indirect discrimination for disability. These provisions strengthen protection for disabled people beyond that provided by disability-related discrimination.**

The Government's key policy objective was to re-establish an appropriate balance between the rights of disabled people and the interests of those with duties in a way which is compatible, as far as practicable, with the aim of the Equality Act to simplify and harmonise equality legislation and with the anticipated requirements of proposed new European legislation, whilst also continuing to offer protection to disabled persons from discrimination that arises because of something connected with their disability.

In order to achieve this policy objective, the Government's chosen option was to introduce a new provision which, like disability-related discrimination, protects against discrimination that arises from something consequential on the person's disability, but minus the need for a comparator, whilst adopting the concept of indirect discrimination for disability. This gives disabled people a better level of protection than that which existed in respect of disability-related discrimination as a consequence of the judgment in *Lewisham v Malcolm*. This protection from "discrimination arising from disability" sees legislation return to the original policy intention underlying the principle of disability-related discrimination: it does not require what the House of Lords considered to be a

spurious comparison. The removal of the comparator effectively concretises in legislation the non-comparator which resulted from the *Novacold* judgment. Adopting the concept of indirect discrimination for the disability provisions achieves greater harmonisation across the Equality Act, because that concept was already used in respect of the other protected characteristics such as race, sex, age etc. It also ensures compatibility with anticipated European legislative requirements.

The justification provisions in the Disability Discrimination Act are replaced by an objective justification provision which is also consistent with other elements of the Equality Act as that is also the justification in indirect discrimination.

The fact that a tenant is disabled should not prevent a landlord from taking action. As the Equality Act has, amongst other things, widened the circumstances in which discrimination can be justified, subject to an objective justification defence, we do not consider this leads to any additional costs.

The majority of the Law Lords in the *Malcolm* case took the view that for someone to be liable for discrimination, there should be some actual or imputed knowledge and so, for that reason, the new provision ensures that a person is not liable if he did not know, or could not reasonably have been expected to know, that the person involved had a disability.

### **What policy options were rejected and why?**

The Government decided to adopt its chosen option following consultation. Two further options were considered but the Government considered that neither would achieve the key policy aim. These options are described briefly below.

Introduce a provision based on disability-related discrimination without the need for a comparator and without protection from indirect discrimination. This would have retained the ability for a person to demonstrate relatively easily a case of discrimination that occurs because of something arising as a consequence of the person's disability, as does the chosen option. However, the simple retention of a revised form of disability-related discrimination would not have supported the harmonisation aim of the Equality Act, nor would it have enabled the Government to meet the anticipated requirements of the EU Directive. This would have resulted in protection from indirect disability discrimination needing to be introduced separately at some point in the future. This would have placed a burden of two-stage implementation costs on business and others.

Modify the concept of indirect discrimination to take account of the specific nature of disability. The standard form of indirect discrimination would have required significant modification to ensure that it fully reflected the specific nature of disability and provided a level of protection that is close to the level sought by disabled people. There were unacceptable risks associated with such significant modifications to indirect discrimination which could have destabilised the operation of indirect discrimination as it applied to the other protected characteristics. Given the strong policy reasons for rejecting this proposal, it was not subject to a costed impact assessment.

### **Costs and benefits of chosen option**

The following is an assessment of the costs and benefits of the chosen option.

#### ***Monetised costs and benefits***

Employment Tribunal Service data for the year ended March 2007 show that there were 5,533 employment claims of disability discrimination of which 149 were successful at a tribunal. (Source: Employment Tribunal and Employment Appeal Tribunal Statistics (GB) 1 April 2006 to 31 March 2007.) There are no centrally-held data on cases brought through the courts under the provisions of the Disability Discrimination Act 1995 governing goods, facilities and services, private clubs and functions of public bodies. However, the former Disability Rights Commission's Legal Bulletin Issue 12 (DRC Legal Achievements 2000-2007) shows that the Commission supported an average of 16 cases per year in its first seven years of operation, almost all of which were settled, or were decided in the favour of the disabled person. The Commission previously advised that it was aware of very few cases covering goods and services etc that were pursued without its assistance.

It is not possible to determine how many of the above claims were in respect of direct discrimination (which applies only in relation to employment and vocational training) or a failure to make reasonable adjustments and how many relate to disability-related discrimination.

Given that the judgment was relatively recent, and that the number of disability-related discrimination cases cannot be determined, it is not possible to estimate what impact the House of Lords' judgment in *Malcolm* has had on the number of people who seek to enforce their rights under the disability-related discrimination provisions of the Disability Discrimination Act 1995.

Following the judgment, in the vast majority of instances where a disabled person had been subjected to disability-related discrimination, the person would still have been able to, and we consider would, seek redress using alternative provisions, for example the direct discrimination provisions (for employment and vocational training) or the reasonable adjustment provisions of the new Act. Therefore, it is unlikely that the judgment will have led to any appreciable reduction in enforcement. Being more restrictive it may have resulted in a slight reduction in the number of cases, particularly those involving premises, where the opportunity to use the reasonable adjustment route is more limited.

However, as described in Paragraph 14 above, the overall number of cases involving goods, facilities, services and premises is relatively low. Within these cases, there are likely to be very few (possibly in the tens) which involve situations where the reasonable adjustment provisions will not apply. Overall, therefore, we estimate the effect of the House of Lords' judgment to be marginal in respect of enforcement and therefore on the financial benefits, e.g. compensation awards to disabled people or on the costs to disabled people or duty holders in respect of taking legal action.

The aim of providing protection from discrimination arising from disability, which does not require a comparator, whilst in addition adopting the concept of indirect discrimination, is to again make it relatively easy for a disabled person to demonstrate that they have experienced disability discrimination. We consider that the chosen option achieves that aim. It is expected that the effect of the move to discrimination arising from disability and indirect discrimination on monetised benefits to disabled people will see some increase in costs with regard to litigation given the greater complexity of claims involving indirect discrimination and familiarisation costs.

#### Familiarisation costs and simplification benefits

*These are included in Pages 5-30.*

#### Litigation costs.

Respondents to the consultation indicated that introducing indirect discrimination, as well as a revised form of protection from discrimination that occurs because of something connected with the person's disability, would lead to increased complexity, and therefore costs, of litigation. The following table sets out high and low estimates of the additional costs of this change.

	<b>Annual future court costs</b>	-	<b>Annual current court costs</b>	=	<b>Annual total cost of change</b>
<b>LOW ESTIMATE</b>	£7m	-	£5.6m	=	<b>£1.4m</b>
<b>HIGH ESTIMATE</b>	£8.4m	-	£5.6m	=	<b>£2.8m</b>

The current litigation costs of around £5.6m have been calculated by taking the aggregate number of disability-related discrimination cases of 5549<sup>104</sup> and multiplying it by the average cost of a case - £1,011.<sup>105</sup>

<sup>104</sup> This has been calculated by adding the number of employment tribunals – 5533 (source: <http://www.employmenttribunals.gov.uk/Documents/Publications/AnnualStatistics0607.pdf>) with the number

There are no data which allow an estimate to be made of the proportion of claims for disability discrimination which might involve indirect discrimination. As a consequence, for the purposes of this assessment it is assumed that each claim may involve indirect discrimination either as the main ground, or as an alternative ground, for the claim. The future cost of a litigation case has then been calculated assuming that the added complexity of including indirect discrimination would increase the average cost of a court case by 25%, at a low estimate, and 50%, at a high estimate. Thus the low estimate is equal to around £7m (£1,011 x 1.25 x 5549) with the high estimate equal to around £8.4m (£1,011 x 1.5 x 5549). The additional costs of the measure are therefore estimated at between £1.4m and £2.8m per annum, respectively.

### ***Non-monetised costs and benefits***

Introducing protection from both discrimination arising from disability and indirect discrimination will redress the imbalance caused by the House of Lords' judgment in the case of *Lewisham v Malcolm*, which made it harder for disabled people to successfully challenge disability-related discrimination in employment, education, and access to goods, facilities, services and premises, as well as private clubs and the functions of public authorities.

In the majority of cases, a disabled person would be able to enforce their rights under the direct discrimination provisions or under the duty of reasonable adjustment. However, those may not be applicable in every case. The chosen option is intended to provide disabled people with an appropriate route to enforce their rights where those other provisions would not apply. This is likely to be a small number of cases, though data do not exist to facilitate an accurate estimate. However, there will be benefits for the small number of disabled people who were prevented by the House of Lords' judgment from enforcing their rights under alternative provisions in the Disability Discrimination Act.

### **Enforcement**

As previously for disability-related discrimination, the chosen option would be enforced by the aggrieved individual through an employment tribunal, for cases involving employment and vocational training; a county court (Sheriff court in Scotland) in respect of access to goods, facilities, services, premises, private clubs and the functions of public authorities; or 1<sup>st</sup> Tier Tribunals (Sheriff court in Scotland and Special Educational Needs Tribunal for Wales) in respect of education in schools, and county court (Sheriff court in Scotland) in respect of post-16 education.

### **Impact on operations**

Any increase in legal action to enforce disability rights in comparison to the situation before the House of Lords' judgment, is likely to be marginal. Therefore it is unlikely that the chosen option will have any appreciable impact on the operation of the tribunal and court systems.

### **Competition Assessment**

The chosen option should not affect competitiveness between companies. The Disability Discrimination Act 1995 already placed duties on all employers regardless of size (except the Armed Forces in respect of Service personnel) and on providers of goods, facilities, services and premises. The chosen option will not have an impact on the extent to which the duties under the previous Act are applied through the new Act.

### **Small Firms Impact Test**

The chosen option should not have any undue impact on small firms. Small firms will be subject to the same need as larger firms to familiarise themselves with the new approach for disability.

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of disability discrimination cases with regards to the provision of goods, facilities and services – 16 (source: Improving Protection From Disability Discrimination, November 2008, Office for Disability Issues)

<sup>105</sup> See Annex 1.

Similarly, they should benefit from possible marginal savings arising from harmonisation, because the disability provisions will be more in line with the concept of indirect discrimination as it applies across other equality legislation.

### **Community Legal Services Fund (previously Legal Aid) Impact Test**

Most disabled people who experienced disability-related discrimination under the Disability Discrimination Act would be able to enforce their rights using alternative provisions. Therefore, there is no evidence to suggest that the chosen provisions will result in any significant increase in the number of disabled people enforcing their rights under the legislation. There may be a marginal increase in legal action, for example in cases concerning premises, where the opportunity for disabled people to exercise their rights using the reasonable adjustments provisions of the Disability Discrimination Act were more limited. However, any change is unlikely to increase numbers of cases above the level which existed prior to the House of Lords' judgment. Where cases involve indirect discrimination there may be greater complexity in litigation which could result in greater costs to claimants.

### **Administrative Burdens**

This policy does not create any additional administrative burdens or savings against the department's administrative burden baseline.



## Annex E - Gender reassignment: i) clarifying the definition; and ii) extending protection

Department GEO		Extending protection because of gender reassignment	
Stage: Royal Assent	Version: 5	Date: April 2010	
<b>Related Publications:</b> (1) Discrimination Law Review: Proposals for an Equality Bill for Great Britain (June 2007). (2) Proposals to simplify and modernise the law: Initial RIA (June 2007). (3) Framework for a Fairer Future (June 2008) and (4) the Government response to the consultation (July 2008) (5) Equality Bill Impact Assessment (Introduction) 27 April 2009 (6) Equality Bill Impact Assessment (House of Lords Introduction) December 2009			
Available to view or download at: <a href="http://www.equalities.gov.uk">http://www.equalities.gov.uk</a>			
Contact for enquiries: Kevin Mantle		Telephone: 0303 444 1204	
<b>What was the problem under consideration? Why is government intervention necessary?</b> (i) The definition of gender reassignment in the Sex Discrimination Act 1975 described it as a process undertaken under ‘medical supervision’. It became apparent during consultation that this requirement excluded some transsexual people from protection i.e. people who commit to living in their non-birth gender without being in contact with medical services; and also that many assumed that genital reassignment surgery was required in order to qualify for protection – this was never the intention. To clarify this situation we removed the reference to medical supervision in the Act.  (ii) Protection provided in the Sex Discrimination Act 1975 to those undergoing gender reassignment was piecemeal. People who plan to undergo, are undergoing or have undergone gender reassignment were protected from direct discrimination, harassment and victimisation in employment and vocational training. There was also protection from discrimination in the supply of and access to goods, services and premises, including the provision of services by public authorities. However, protection did not extend to the exercise of public functions and schools; and protection from indirect discrimination did not extend to gender reassignment.			
<b>What were the policy objectives and the intended effects?</b> To clarify the definition and to extend protection to ensure consistency, fairness and standardisation.			
<b>What policy options were considered? Please justify any preferred option.</b>  Option 1 - To retain the existing definition and piecemeal approach; or Option 2 – (Final proposal) – (i) to revise the existing definition by removing the reference to ‘medical supervision; (ii) to prohibit discrimination because of gender reassignment in the exercise of public functions and schools and to prohibit indirect discrimination against those going through gender reassignment.  The final proposal was Option 2. The main benefits of extending protection to cover public functions and schools and indirect discrimination and other areas are consistency and fairness. The obligations of public authorities in relation to those undergoing gender reassignment will be consistent with their existing obligations towards other groups (which were already protected against discrimination in the exercise of public functions). This will lead to a fairer outcome for transsexual people who otherwise would not have the same degree of protection. The consultation feedback shows that the overwhelming majority of respondents on this issue agreed with an extension of protection, including public authorities themselves. We consider that these were strong reasons for extending protection in the way proposed. Revising the definition will also bring greater clarity as to who is protected from discrimination.			
<b>When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects?</b> After implementation and on an ongoing basis, by the Equality and Human Rights Commission. The Government will also undertake a review after 5 years.			



## Extending protection because of gender reassignment : Analysis & Evidence

<b>Policy Option: 2</b>	<b>To clarify the definition; to prohibit discrimination because of gender reassignment in the exercise of public functions and schools and to prohibit indirect discrimination against those undergoing gender reassignment</b>
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COSTS	ANNUAL COSTS		Description and scale of <b>key monetised costs</b> by ‘main affected groups’  Evidence from previous studies suggests that there are around 6,800 transsexual people in GB. Clarifying the definition and extending protection to cover indirect discrimination and the exercise of public functions will have little, if any, impact on business costs. There may be very minor costs of modifying existing equality training. Likewise, it is assumed that any increase in court or tribunal costs as a result of the revised definition or claims regarding indirect discrimination or the exercise of public functions will be minimal.  Familiarisation costs are factored into the overall familiarisation costs for the Act, in pages 5-30.	
	One-off	Yrs		
	£ 0	1		
	Average Annual Cost (excluding one-off)		Total Cost (PV)	£ 293,486 to £1.233.016
	£34,096 to £143,246	10		
Other <b>key non-monetised costs</b> by ‘main affected groups’				

BENEFITS	ANNUAL BENEFITS		Description and scale of <b>key monetised benefits</b> by ‘main affected groups’  Individuals – Compensation awards of between £9,525 and £51,131	
	One-off	Yrs		
	£ 0	1		
	£10,823 to £55,891	10	Total Benefit (PV)	£93,163 to £481,094
	Other <b>key non-monetised benefits</b> by ‘main affected groups’ Aside from improved public service, consistency with protections already available would provide a simpler and more coherent picture of the responsibilities that organisations undertaking functions of a public nature will have under the law.			

### Key Assumptions/Sensitivities/Risks

Given the small number of transsexual people in Great Britain we estimate that there will be only a small increase in cases, between 0.017% and 0.06%/year (3-11) out of 23,103 (average number of tribunal cases/year). Total costs per case are estimated at £5393 (for the employer); £1,034 (taxpayer); £1331 (individual).

Price Base Yr <b>2009</b>	Time Period Years <b>10</b>	<b>Net Benefit Range (NPV)</b> -£1,139,853 to £187,608	<b>NET BENEFIT (NPV Best estimate)</b> -£476,122 (mid-point)
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What is the geographic coverage of the policy/option?	GB
On what date will the policy be implemented?	See page 8
Which organisation(s) will enforce the policy?	Courts & Tribunals

What is the total annual cost of enforcement for these organisations?	£ 0			
Does enforcement comply with Hampton principles?	N/A			
Will implementation go beyond minimum EU requirements?	N/A			
What is the value of the proposed offsetting measure per year?	£			
What is the value of changes in greenhouse gas emissions?	£ 0			
Will the proposal have a significant impact on competition?	No			
Annual cost (£-£) per organisation (excluding one-off)	Micro	Small	Medium	Large
Are any of these organisations exempt?	No	No	N/	N/

Impact on Admin Burdens Baseline (2005 Prices)				
			(Increase - Decrease)	
Increase	£ 0	Decrease	Net	£ 0
Key:	Annual costs and benefits: Constant Prices		(Net) Present Value	

## Evidence

The protected characteristic of gender reassignment was introduced in 1999<sup>106</sup> following case law<sup>107</sup>. Gender reassignment was defined in the Sex Discrimination Act 1975 as “a process which is undertaken under medical supervision for the purpose of reassigning a person’s sex by changing physiological or other characteristics of sex, and includes any part of such a process.”<sup>108</sup>

Broadly speaking, the current protected group are transsexual people – people who want to, or who do, commit to living permanently in the gender opposite to their birth gender<sup>109</sup>. While no nationwide or comprehensive survey has been carried out to determine the size of the transsexual population in Great Britain or the UK, it is generally viewed to be fairly small. Based on studies carried out in the late 1990s<sup>110</sup> we can consider the UK adult transsexual population to be around 6,800 people. This low number is supported by the number of people with Gender Recognition Certificates<sup>111</sup> (GRCs) - since the Gender Recognition Act 2004 came into force in April 2005, some 2, 550 GRCs have been awarded (by February 2010).

Although the size of the transsexual population protected is small, discrimination does occur. Qualitative examples of discrimination against transsexual people can be found in the Equalities Review report ‘Engendered Penalties’<sup>112</sup>.

## What options have been considered?

Option 1: to do nothing – retain the current definition and scope of protection;

<sup>106</sup> The Sex Discrimination (Gender Reassignment) Regulations 1999 (1999/1102)

<sup>107</sup> *P v S and Cornwall County Council* [1996]

<sup>108</sup> Section 82 SDA 1975 (general interpretation provisions):

<sup>109</sup> Transsexual people do not identify with the gender assigned to them at birth, in terms of their social role or their body. Transgender person: a person with gender dysphoria who feels a consistent and overwhelming desire to live their life in the gender that is opposite to that assigned them at birth.

<sup>110</sup> Carried out in Scotland and the Netherlands, Van Kesteren PJ, Gooren LJ, Megans JA, An epidemiological and demographic study of transsexuals in The Netherlands, *Arc Sex Behav.* 1996 Dec;25(6):589-600. Wilson P, Sharp C, Carr S, The prevalence of gender dysphoria in Scotland: a primary care study, *Br J Gen Pract.* 1999Dec;49(449):991-2.

<sup>111</sup> <http://www.grp.gov.uk/aboutus.htm>

<sup>112</sup>

<http://archive.cabinetoffice.gov.uk/equalitiesreview/upload/assets/www.theequalitiesreview.org.uk/transgender.pdf>

Option 2: to clarify the definition and harmonise scope with other areas to provide clarity and simplification (**option chosen**)

Option 1 would have retained the protection in employment, goods, facilities, services and premises and the piecemeal approach in application under the Sex Discrimination Act 1975.

However, it was quite clear from the June 2007 consultation response that there was confusion over the reference to 'medical supervision' in the legal definition and clarification was required.

Also, since the introduction of gender reassignment protection in 1999 expansion of protection on this ground has been incremental and piecemeal. With the opportunity of the Act to harmonise and simplify discrimination law it was clear that protection because of gender reassignment could be expanded in several areas for good reason.

### **Analysis of costs, benefits and risks of chosen option**

The monetised costs and benefits under option 2 will primarily be from tribunal costs and compensation.

It should be noted that due to the relative lack of information on the transsexual population and on related court and tribunal cases these estimates are illustrative. Due to the small number of people affected and even smaller number of estimated court and tribunal cases, numbers and costs are amalgamated at the end of this section.

#### (i) Clarifying the definition of gender reassignment.

Costs – None. This change clarified the definition and does not affect the number of transsexual people who rightly claim protection.

Risks – there was no significant disagreement with this proposal.

#### (ii) Extending the scope of protection against discrimination because of gender reassignment in the exercise of public functions

Extending protection to public functions will ensure that discrimination is unlawful across the full range of activities carried out by public authorities.

Costs – These will fall on public sector organisations and will primarily be incurred by ensuring that policies and activities are non-discriminatory.

Risks - Public authorities (local authorities, health authorities and police) were virtually unanimous in supporting the proposal.

#### (iii) Providing protection against indirect discrimination because of gender reassignment

Benefit - Indirect discrimination can occur for example when organisations have a policy not to amend records to show a person's new name or gender. This can put transsexual people at a particular disadvantage in terms of their right to privacy because it can force them to reveal their personal history. Introducing protection against indirect discrimination because of gender reassignment will eliminate minor barriers for transsexual people in achieving and living in their acquired gender.

Cost – Some minor costs may occur as a result of organisations changing their records. We also assume there will be at least one court case early on.

Risks - The main concern raised was about employers being required to change an individual's records without being able to ask for proof of their transsexual status or a Gender Recognition Certificate (GRC). Religious organisations called for adequate protection for clergy and others, if

protection were extended, to enable them to refuse to alter baptismal and other church registers, if they cannot in conscience accept this.

#### (iv) Extension of gender reassignment protection to schools

Benefits - This will ensure that educational establishments do not discriminate because of gender reassignment in terms of admittance, application, offering benefits, facilities or services.

This measure will reduce the potential distress of children experiencing gender dysphoria and help to ensure that schools do not act in a discriminatory way.

Costs. The number of children with gender dysphoria is very small. The Gender Identity Unit at the Tavistock and Portland, the only unit in the UK which treats children with gender dysphoria, deals with around 60 new cases of gender identity disorder in children per year. Consequently there will be very few cases.

Risks: There may be issues concerning young transsexual people applying to single sex schools, wearing of school uniforms, use of appropriate PE facilities and objection by faith schools. However, clear guidance should prevent this.

#### ***Costs of chosen option***

##### Court costs

The cost of an increased number of discrimination cases due to extending gender reassignment protection was calculated by multiplying the average cost of a discrimination case by the additional number of cases that will be heard as a result of this change.

Very few court cases are envisaged. Gender reassignment protection against discrimination in the provision of and access to goods, facilities, services and premises since April 2008; and no known court case regarding such discrimination has been taken. The low estimate is one, while the high estimate is two. Any case is likely to be brought early on and will act as a precedent.

	<b>Average cost of a court case</b>	<b>X</b>	<b>Additional number of cases (for gender reassignment)</b>	<b>=</b>	<b>Cost of proposal</b>
<b>LOW ESTIMATE</b>	£1,011	X	1	=	£1,011
<b>HIGH ESTIMATE</b>	£1,011	X	2	=	£2,022

##### Tribunal costs

We expect no additional tribunal cases due to the extension of the prohibition to public functions and removal of the 'medical supervision' element. Additional cases are possible due to the extension of indirect discrimination. Discrimination in schools is not covered by tribunals but by the courts (see above).

As a baseline for the number of tribunal cases which have gender reassignment as an element, the average number of sex discrimination claims over the most recent three years for which data is available (2005/6-2007/8) is 23,103 cases per year. As no breakdown is available by element we have to estimate the likely number of cases with gender reassignment as an element. Taking the transsexual population to be 0.014% of the adult GB population this leads to 3 cases per year. As it is considered that transsexual people are more likely to be discriminated against (say five times more likely) as a baseline we will assume there are 15 cases per annum involving gender reassignment.

We assume the low estimate to be a 20% increase in the number of cases as a result of extending protection to indirect discrimination (15 x 20%= three additional cases). The high estimate is assumed to be an additional 75% of cases (15 x 75%= eleven additional cases).

		Increase in number of cases	X	Average cost of a tribunal case	=	Cost of proposal
<b>LOW ESTIMATE</b>	Employer	3	X	£5,393	=	£ 16,179
	Taxpayer	3	X	£1,034	=	£ 3,102
	Individual	3	X	£1,331	=	£ 3,993
	<b>Total</b>					<b>£ 23,274</b>

		Increase in number of cases	X	Average cost of a tribunal case	=	Cost of proposal
<b>HIGH ESTIMATE</b>	Employer	11	X	£5,393	=	£ 59,323
	Taxpayer	11	X	£1,034	=	£ 11,374
	Individual	11	X	£1,331	=	£ 14,641
	<b>Total</b>					<b>£ 99,979</b>

This calculation assumes that simplifying and standardising the definitions of discrimination and extending protection to indirect discrimination because of gender reassignment will result in an increase of between 3 and 11 additional tribunal and court cases.

#### Compensation costs & benefits

The costs and benefits of compensation awards were calculated as follows.

	Increase in cases	X	Average compensation award	=	Cost/ Benefit of the proposal
<b>LOW ESTIMATE</b>	3	X	£3,608	=	£ 10,824
<b>HIGH ESTIMATE</b>	11	X	£3,608	=	£ 39,688

The figure of £10,824 -£39,688 is the estimated cost to the private or public sector and also the benefit to individuals. This calculation is based on the assumption that the proposed change will lead to an increase of between 3 and 11 additional tribunal cases which are all successful.<sup>113</sup>

#### Familiarisation costs and simplification benefits

These have been calculated for the whole Act in pages 12-30.

#### **Non-monetised costs and benefits**

The key non-monetised benefits are consistency in the law and greater protection for the transsexual community.

#### **Administrative burdens**

This policy does not create any additional administrative burdens or savings against the department's administrative burden baseline.

<sup>113</sup> This calculation uses data on the average number of tribunal cases for race and sex taken from the ETS Annual Reports 2005/6 – 2007/8 and data on the average value of a compensation award DTI Employment Relations Research Series No 33 - <http://www.dti.gov.uk/files/files11455.pdf?pubpdfload=04%2F1071>

## Annex F - Extending protection because of pregnancy & maternity

<b>Department GEO</b>	<b>Extending protection against discrimination because of pregnancy &amp; maternity in the exercise of public functions</b>	
<b>Stage: Royal Assent</b>	<b>Version: 5</b>	<b>Date: April 2010</b>
<b>Related Publications:</b> (1) Discrimination Law Review: Proposals for an Equality Bill for Great Britain (June 2007). (2) Proposals to simplify and modernise the law: Initial RIA (June 2007). (3) Framework for a Fairer Future (June 2008) and (4) the Government response to the consultation (July 2008) (5) Equality Bill Impact Assessment (Introduction) 27 April 2009 (6) Equality Bill Impact Assessment (House of Lords Introduction) December 2009		
<b>Available to view or download at:</b> <a href="http://www.equalities.gov.uk">http://www.equalities.gov.uk</a>		
<b>Contact for enquiries:</b> Elizabeth Solowo-Coker		<b>Telephone:</b> 0303 444 1204
<p><b>What is the problem under consideration? Why is government intervention necessary?</b></p> <p>Currently protection against discrimination provided to pregnant women and new mothers is piecemeal and often misinterpreted – some provisions in the Sex Discrimination Act 1975 are explicit and others are implicit. Pregnant women and new mothers are explicitly protected from direct discrimination and victimisation in employment and vocational training. Similarly, express protection because of pregnancy and maternity is provided in the access to and supply of goods, facilities and services and the management and disposal of premises, including the provision of services by public authorities, insofar as they fall within the scope of the Gender Directive. However, there is no <u>explicit</u> protection against direct discrimination because of these characteristics in the exercise of public functions or in education in schools. Providing express protection will increase legal clarity.</p>		
<p><b>What are the policy objectives and the intended effects?</b></p> <p>To make the law as effective and consistent as is appropriate.</p>		
<p><b>What policy options have been considered? Please justify any preferred option.</b></p> <p>Options 1 - To do nothing, i.e. retain the existing piecemeal approach;            Option 2 – (Final proposal) To prohibit discrimination because of pregnancy and maternity in the exercise of public functions and in education in schools;</p> <p>The preferred option is Option 2. This will make it clear to public authorities and responsible bodies of schools that they have obligations towards pregnant women and new mothers in the same way as they have towards other groups protected by discrimination law. This will, eliminate potentially confusing inconsistencies in the legislation and make it easier for public authorities to provide clear and accurate guidance and training for staff. The consultation feedback shows that 97% of respondents on this issue agree that protection for pregnant women and new mothers should be extended to public authorities in the exercise of public functions. During the passage of the Bill we were persuaded that extending this protection to education in schools will provide clarity and certainty in this area. We consider that these are strong reasons for extending protection in the way proposed. Option 1 would retain the existing inconsistency in discrimination law.</p>		
<p><b>When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects?</b></p> <p>After implementation and on an ongoing basis, by the Equality and Human Rights Commission. The Government will also review after 5 years.</p>		



## Extending protection because of pregnancy & maternity : Analysis & Evidence

Policy option: 2

To prohibit discrimination because of pregnancy and maternity in the exercise of public functions

COSTS	ANNUAL COSTS		Description and scale of <b>key monetised costs</b> by ‘main affected groups’	
	One-off (Transition)	Yrs	Any increase in the number of cases will have a recurring cost for the taxpayer of between £23,738 and £49,753; for employers of between £124,036 and £253,339; and for individuals of between £30,604 and £61,208  In this event, employers will pay out more in compensation which will cost up to £8,103  Familiarisation costs are factored into the overall familiarisation costs for the Act, in pages 12-30.	
	£ 0	1		
	Average Annual Cost (excluding one-off)		Total Cost (PV) £1,535,808 to £3,141,363	
	£178,423 to £364,949	10		
Other <b>key non-monetised costs</b> by ‘main affected groups’				

BENEFITS	ANNUAL BENEFITS		Description and scale of <b>key monetised benefits</b> by 'main affected groups'
	One-off	Yrs	
	£ 0	1	Increase in compensation for individuals of up to £8,103
	£ 0 – 8,103	10	
			<b>Total Benefit (PV)</b> £ 0 – 69,748
Other <b>key non-monetised benefits</b> by 'main affected groups'			
The key non-monetised benefits are consistency in the law and greater protection for pregnant women and new mothers.			

### Key Assumptions/Sensitivities/Risks

There will be an increase in cases of between 0.1% and 0.2%.

Price Base Yr 2009	Time Period Years 10	Net Benefit Range (NPV) -£3,141,363 to -£1,466,060	NET BENEFIT (NPV Best estimate) -£2,303,712 (mid-point)
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What is the geographic coverage of the policy/option?	GB
On what date will the policy be implemented?	See page 8
Which organisation(s) will enforce the policy?	Individuals through the courts
What is the total annual cost of enforcement for these organisations?	£ 0
Does enforcement comply with Hampton principles?	N/A
Will implementation go beyond minimum EU requirements?	N/A
What is the value of the proposed offsetting measure per year?	£ 0
What is the value of changes in greenhouse gas emissions?	£ 0
Will the proposal have a significant impact on competition?	No

Annual cost (£-£) per organisation (excluding one-off)	Micro	Small	Medium	Large
Are any of these organisations exempt?	No	No	N/	N/

Impact on Admin Burdens Baseline (2005 Prices)				(Increase - Decrease)	
Increase of	£ 0	Decrease of	£ 0	Net Impact	£ 0

Key: Annual costs and benefits: Constant Prices (Net) Present Value

## Evidence

### Description of chosen option

The Sex Discrimination Act already provides protection where public authorities discriminate on the ground of sex in the exercise of their public functions and schools in the provision of education. This means that pregnant women and new mothers are already implicitly protected. We are not aware of any sex discrimination claims being brought about discrimination in the exercise of public functions since specific protection against pregnancy and maternity discrimination was introduced in April 2007. We consider therefore that any increase in the number of discrimination claims that will arise as a result of extending such protection explicitly to pregnant women and new mothers will be negligible, if any. In schools, it is already Government policy that pregnant schoolgirls should continue to receive their education without discrimination, and we would envisage that legal protection would not be used except in extreme cases.

Data from the Employment Tribunal Service (ETS) Annual Reports 2005/6 to 2007/8 show that the average number of sex discrimination complaints registered per year with the ETS was 23,103. These statistics on sex discrimination claims are not broken down and therefore cover the different forms of sex discrimination, i.e. all claims of direct discrimination (including because of pregnancy and maternity leave), indirect discrimination, harassment and victimisation. The figures below assume an increase of between 0.1% and 0.2% of cases (23 and 46 respectively) being brought as a result of extending protection against pregnancy and maternity discrimination in the exercise of public functions, with a success rate of 2% reflecting the fact that the additional cases would be with a view to testing the law.

### Costs of chosen option

The cost of an increase in the number of discrimination cases heard by courts was calculated by multiplying the average cost for employers, tax payers and individuals for each case by the percentage increase in the number of cases.

		Increase in number of cases	X	Average cost of a case	=	Cost of proposal
<b>LOW ESTIMATE</b>	Employer	23	X	£5393	=	£124,039
	Taxpayer	23	X	£1,034	=	£23,782
	Individual	23	X	£1331	=	£30,613
	Total					£178,434

		Increase in number of cases	X	Average cost of a case	=	Cost of proposal
<b>HIGH ESTIMATE</b>	Employer	46	X	£5393	=	£248,078
	Taxpayer	46	X	£1,034	=	£47,564
	Individual	46	X	£1331	=	£61,226
	Total					£356,868

This calculation is based on tribunal costs rather than county court costs as the latter are not available. The calculation uses data on the average cost of a tribunal case, taken from the SETA (Survey of Employer Tribunal appeals) 2003.

#### Compensation costs & benefits

This is a cost to the private sector and a benefit to individuals. This calculation uses the median amount of compensation awarded by employment tribunals per case in 2004/5, and assumes a success rate of 2%.

	Average compensation awarded	X	Number of additional cases	=	Additional costs
<b>LOW ESTIMATE</b>	£8,103	X	0	=	£0
<b>HIGH ESTIMATE</b>	£8,103	X	1	=	£8,103

From the Survey of Employment Tribunal Applications 2003, we can estimate the sector composition of employment tribunals. The table shows compensation costs to each sector.

Compensation costs	LOW ESTIMATE		HIGH ESTIMATE	
	£	-	£	2,188
<b>Public Sector</b>				
	£	-	£	5,267
<b>Private Sector</b>				
	£	-	£	648
<b>Voluntary Sector</b>				
<b>Total</b>			£	8,103

#### **Non-monetised costs and benefits**

The key non-monetised benefits are consistency in the law and greater protection for pregnant women and new mothers.

#### **Risks**

No identifiable risks. This proposal makes explicit protection that is implicit in existing discrimination law.

#### **Enforcement**

This provision will be enforced through the county or sheriff courts.

#### **Administrative burdens**

This policy does not create any additional administrative burdens or savings against the department's administrative burden baseline.

## Annex G - Simplifying the law relating to disability discrimination

<b>Department: DWP</b>		<b>Simplifying the law relating to disability discrimination</b>	
<b>Stage: Royal Assent</b>		<b>Version: 5</b>	<b>Date: April 2010</b>
<b>Related Publications:</b> (1) Discrimination Law Review: Proposals for an Equality Bill for Great Britain (June 2007). (2) Proposals to simplify and modernise the law: Initial RIA (June 2007). (3) Framework for a Fairer Future (June 2008) and (4) the Government response to the consultation (July 2008) (5) Equality Bill Impact Assessment (Introduction) 27 April 2009 (6) Equality Bill Impact Assessment (House of Lords Introduction) December 2009			
<b>Available to view or download at: <a href="http://www.equalities.gov.uk">http://www.equalities.gov.uk</a></b>			
<b>Contact for enquiries: Peter Nokes</b>		<b>Telephone: 0303 444 1204</b>	
<b>What was the problem under consideration? Why was government intervention necessary?</b> The problems we were trying to solve were: <ul style="list-style-type: none"><li>• Confusion over the purpose of the list of ‘capacities’ within previous disability discrimination law, which was often incorrectly described as a list of normal day-to-day activities. It proved difficult for some people, particularly those with some mental impairments to show how their impairment affected one of the ‘capacities’.</li><li>• The difficulties arising from having two different ‘thresholds’ for making reasonable adjustments according to which field was concerned: employment, goods, facilities and services, or education within disability discrimination law.</li><li>• The complexity arising from the separate definitions of disability discrimination for goods, facilities and services; premises; public authorities and private clubs. This made the legislation complex and difficult to follow.</li><li>• The difficulties associated with having different ‘justifications’ for disability discrimination.</li><li>• The different ways in which less favourable treatment amounting to direct discrimination were handled in relation to disability.</li><li>• The evidence is that the previous disability provisions would benefit from simplification in the new Equality Act.</li></ul>			
<b>What were the policy objectives and the intended effects?</b> The policy objectives were to: <ul style="list-style-type: none"><li>• make it easier for people to understand their rights and responsibilities by introducing streamlined provisions which retain an appropriate balance between those with rights and those with responsibilities.</li><li>• make it easier for individuals with some types of impairments to prove they meet the definition of disability.</li></ul>			
<b>What policy options were considered? Please justify any preferred option.</b> Three options were considered and discussed in the June 2007 consultation: Option 1: do nothing. Option 2: (Final proposal): simplify the provisions and align as appropriate by: <ul style="list-style-type: none"><li>a) removing the list of ‘capacities’ from the definition of disability;</li><li>b) introducing a single threshold as a trigger for reasonable adjustments (the ‘substantial disadvantage’ test);</li><li>c) introducing a single definition of disability discrimination;</li><li>d) replacing the range of justifications with a single ‘Objective Justification’ defence for disability discrimination.</li></ul> Option 3: as Option 2, but omitting the measure to adopt a single ‘objective justification’ defence.  The Equality Act presents a clear opportunity to simplify and improve the current disability provisions. Option 2 was chosen over Option 3 because the latter omits a significant simplification and harmonisation measure (item (d) in Option 2).			

**When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects?**

After implementation, and on an ongoing basis, by the Equality and Human Rights Commission. The Government will also review after 5 years.

## (A) Removing the list of 'capacities' from the definition of disability: Analysis & Evidence

**Policy Option: 2**

**Simplify how the definition of disability operates in relation to "normal day-to-day activities".**

COSTS	ANNUAL COSTS		Description and scale of <b>key monetised costs</b> by ‘main affected groups’	
	One-off (Transition)	Yrs		
	£	1	<b>Employers</b>	
			Cost of increase in the number of cases reaching courts and tribunals = £645,132 - £1,612,839	
			<b>Taxpayer</b>	
			Cost of increase in the number of cases reaching courts and tribunals = £96,769 - £241,924	
		<b>Individuals</b>		
		Cost of increase in the number of cases reaching courts and tribunals = £159,176 - £397,940		
		Familiarisation costs are factored into the overall		
Average Annual Cost (excluding one-off)			Total Cost (PV)	
£ 928,006		10		£7,987,981to
to £ 2,320,014				£19,969,951
Other <b>key non-monetised costs</b> by ‘main affected groups’				

BENEFITS	ANNUAL BENEFITS		Description and scale of <b>key monetised benefits</b> by ‘main affected groups’	
	One-off	Yrs		
	£ 0	1		
	£ 0	10	Total Benefit (PV)	£0
Other <b>key non-monetised benefits</b> by ‘main affected groups’				
This measure will reduce potential for confusion in the operation of the definition of disability and make it easier for individuals with some types of impairments, such as some mental health conditions, to prove they meet the definition of disability. This will result in a fairer and simpler process.				

### Key Assumptions/Sensitivities/Risks

That this measure will lead to an increase in cases of between 2-5%

Price Base Yr <b>2009</b>	Time Period Years <b>10</b>	Net Benefit Range (NPV) <b>-£19,969,951 to -£7,987,981</b>	<b>NET BENEFIT</b> (NPV Best estimate) <b>£13,978,966 (mid-point)</b>
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What is the geographic coverage of the policy/option?	GB
On what date will the policy be implemented?	See page 8
Which organisation(s) will enforce the policy?	Courts



What is the total annual cost of enforcement for these organisations?	£ 0			
Does enforcement comply with Hampton principles?	N/A			
Will implementation go beyond minimum EU requirements?	N/AYes			
What is the value of the proposed offsetting measure per year?	£ 0			
What is the value of changes in greenhouse gas emissions?	£ 0			
Will the proposal have a significant impact on competition?	No			
Annual cost (£-£) per organisation (excluding one-off)	Micro	Small	Medium	Large
Are any of these organisations exempt?	No	No	N/	N/

Impact on Admin Burdens Baseline (2005 Prices)					(Increase - Decrease)
Increase of	£ 0	Decrease of	£ 0	Net Impact	£ 0

Key: Annual costs and benefits: Constant Prices (Net) Present Value

## Evidence

### What policy options were considered?

See description of options earlier in this annex.

The list of 'capacities' was an element of the definition of disability which had been identified as serving little purpose in helping to confirm that a person should have protection against disability discrimination. Moreover, the list had been criticised for needlessly complicating the definition of disability, and there had been claims that people with mental health conditions had found it hard to show how their impairment had affected one of the listed capacities.

### Analysis of costs & benefits of chosen proposal

Simplify the definition of disability - This reduces potential for confusion in the operation of the definition of disability and make it easier for individuals with some types of impairments, such as some mental health conditions, to prove they meet the definition of disability. This results in a fairer and simpler process.

The removal of the capacities list will not increase the number of people with rights but, since it will be easier to show that a person satisfies the definition of disability there is likely be a small increase in the number of cases reaching courts or tribunals. Using a range of 2% and 5% for the increase, the total cost would be £725,983 to £1,814,958. These costs were calculated as follows

#### Low Estimate

	The number of tribunal cases	X	2%	=	Increase in tribunal cases	X	Cost per case	=	Cost of proposal
Employer (Private & Public Sector)	5317	X	2%	=	106	X	£5393	=	£571,658
Taxpayer	5317	X	2%	=	106	X	£1,034	=	£109,604
Individual	5317	X	2%	=	106	X	£1331	=	£141,086
<b>Total</b>									<b>£822,348</b>

#### High Estimate

	The number of tribunal cases	X	5%	=	Increase in tribunal cases	X	Cost per case	=	Cost of proposal
Employer (Private & Public Sector)	5317	X	5%	=	266	X	£5393	=	£1,434,538
Taxpayer	5317	X	5%	=	266	X	£1,034	=	£275,044
Individual	5317	X	5%	=	266	X	£1331	=	£354,046
<b>Total</b>									<b>£2,063,628</b>

#### Familiarisation costs and simplification benefits

See pages 5-30

#### **Non-monetised costs and benefits**

The main impact will be to simplify the law, making it easier to understand and comply with the duties, without detracting from the level of protection for disabled people. Improved understanding on behalf of those with duties should reduce the level of unintentional discrimination.

Where cases go to court or tribunal they should take less time to reach a conclusion. This saving in court and tribunal costs will help balance out the possibility of more cases being taken for the reasons outlined in the costs section above.

#### **Risks**

Many responses to the consultation exercise in June 2007 agreed that the list of capacities complicates the definition of disability, and 80% of responses were in favour of the proposal to remove it. Several responses also argued that the list makes it harder for people with mental health conditions to demonstrate that they meet the definition of disability. If this measure was not adopted, the Government believes that the Equality Act would have maintained an unnecessary provision which created confusion and difficulty for disabled people.

#### **Enforcement**

The definition of disability, of which the list of capacities is currently a part, is enforced by the county/Sheriff court or employment tribunal as appropriate.

<b>(B) Single threshold for making reasonable adjustments: Analysis &amp; Evidence</b>				
<b>Policy Option: 2</b>		<b>Introduce a single threshold as the trigger for making reasonable adjustments.</b>		
<b>COSTS</b>	<b>ANNUAL COSTS</b>		Description and scale of <b>key monetised costs</b> by 'main affected groups'	
			<u>Service providers</u> - Increase of between 1-3% in the number of adjustments made. The total current cost of adjustments is £200m. An increase of between 1% and 3% will therefore cost between £2-6m	
	£ 2,000,000 to £6,000,000	<b>10</b>	<b>Total Cost (PV)</b>	<b>£17,215,373 to £ 51,646,119</b>
	Other <b>key non-monetised costs</b> by 'main affected groups'			
	<b>ANNUAL BENEFITS</b>		Description and scale of <b>key monetised benefits</b> by 'main affected groups'	
<b>BENEFITS</b>	<b>One-off</b>	<b>Yrs</b>		
	<b>£ 0</b>	<b>1</b>		
	<b>£ 0</b>	<b>10</b>	<b>Total Benefit (PV)</b>	<b>£ 0</b>

**Other key non-monetised benefits** by 'main affected groups'

This will result in an increase in the number of reasonable adjustments being made by service providers, giving disabled people the opportunity to access a wider range of facilities and services. Businesses will also benefit in terms of increased custom from disabled people and others. Improved public image could increase business opportunities. Improved access will enable disabled people and others to use services that were previously unavailable to them, or they will be better able to use currently available services, and more safely. The social and personal value of this is impossible to quantify.

<b>Key Assumptions/Sensitivities/Risks</b>			
That measures will lead to an increase in the number of adjustments of between 1-3%			

Price Base Yr <b>2009</b>	Time Period Years <b>10</b>	Net Benefit Range (NPV) <b>£17,215,373 to £ 51,646,119</b>	NET BENEFIT (NPV Best estimate) <b>-£34,430,746 (mid-point)</b>
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What is the geographic coverage of the policy/option?	GB			
On what date will the policy be implemented?	See page 8			
Which organisation(s) will enforce the policy?	N/A			
What is the total annual cost of enforcement for these organisations?	£ 0			
Does enforcement comply with Hampton principles?	N/A			
Will implementation go beyond minimum EU requirements?	N/A			
What is the value of the proposed offsetting measure per year?	£ 0			
What is the value of changes in greenhouse gas emissions?	£ 0			
Will the proposal have a significant impact on competition?	No			
Annual cost (£-£) per organisation (excluding one-off)	Micro	Small	Medium	Large
Are any of these organisations exempt?	No	No	N/	N/

Impact on Admin Burdens Baseline (2005 Prices)					
					(Increase - Decrease)
Increase of	£ 0	Decrease of	£ 0	<b>Net Impact</b>	<b>£ 0</b>
Key:	Annual costs and benefits: Constant Prices		(Net) Present Value		

## Evidence

### A single threshold for making reasonable adjustments

#### What policy options were considered?

There were two different triggers for the duty to make a reasonable adjustment:

- in the provision of goods, facilities and services etc, the duty was activated when a disabled person would find it "impossible or unreasonably difficult" to access the service if an adjustment were not made;
- for employment and education, the threshold was reached when a disabled person would experience "substantial disadvantage" without an adjustment.

We have streamlined the reasonable adjustment provisions by adopting a single trigger for the Equality Act.

#### Analysis of costs & benefits of final proposal

Adopting a single threshold - The cost to service providers of making the adjustments is calculated as follows:

<b>Average amount spent on reasonable adjustments per year</b>	<b>Increase</b>	<b>Costs</b>
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£ 200,000,000	1% Increase	<b>£2,000,000</b>
£ 200,000,000	3% Increase	<b>£6,000,000</b>

This assumes that this change will increase the number of reasonable adjustments by between 1% and 3% and therefore the annual cost will be between £2million and £6million, based on the average cost of adjustments.<sup>114</sup>

### Familiarisation costs and simplification benefits

See pages 5-30.

### **Non-monetised costs and benefits**

The main impact will be to simplify the law, making it easier to understand and comply with the duties, without detracting from the level of protection for disabled people. Improved understanding on behalf of those with duties should reduce the level of unintentional discrimination.

This may mean that fewer cases have to go as far as a court or tribunal hearing and informal dispute resolution mechanisms may be more likely to result in satisfactory outcomes.

### **Risks**

Around 80% of all responses to the consultation exercise were in favour of this proposal, recognising that it would simplify the law, not least for organisations which are service providers as well as employers. Because the new threshold would be lower for service providers, there will be an increased requirement to make adjustments, but this will be substantially mitigated by the fact that these adjustments will continue to be required only where reasonable.

If no change was made the Government believed that the reasonable adjustment provisions would have remained more complicated than necessary.

### **Enforcement**

Enforced by the county/Sheriff court or employment tribunal as appropriate.

### **Introduce a single definition of disability discrimination**

#### **What policy options were considered?**

There were four different definitions of disability discrimination for: goods, facilities and services; public authority functions; private clubs; and premises. This piecemeal approach to the non-employment field attracted criticism for making the law difficult to understand. The Equality Act offered the opportunity to simplify the law by creating a single definition of disability discrimination.

### **Analysis of costs & benefits of final proposal**

Introduce a single definition of discrimination -This measure is intended to simply remove the complexities in the previous legislation whilst retaining coverage against disability discrimination. The costs were considered to be negligible. It is unlikely this change will have an impact on the number of court or tribunal cases as it is a clarification measure and does not extend rights.

The benefit will be that disabled people will have more consistent protection, which will be easier to understand. They will be less likely to be discriminated against because those with duties have not properly understood their duties. Where they do face discrimination, it will be easier to enforce and articulate their rights.

<sup>114</sup> The data are taken from the 'Disability Discrimination Act – Access to Goods, Services and Facilities – Regulatory Impact Assessment', Department for Work and Pensions, 2004.

### Familiarisation costs and simplification benefits

See pages 5-30.

### **Non-monetised costs and benefits**

The main impact will be to simplify the law, making it easier to understand and comply with the duties, without detracting from the level of protection for disabled people. Improved understanding on behalf of those with duties should reduce the level of unintentional discrimination.

### **Risks**

Replicating the previous separate definitions of discrimination in the Equality Act would have done nothing to address the complexity of the law in this area.

### **Enforcement**

Enforced by the county/Sheriff court.

### **(d) Introduce a single ‘objective justification’ defence**

#### **What policy options were considered?**

There were numerous individual justification defences in disability discrimination. This regime was criticised for being too complicated, and the new Equality Act afforded the opportunity to simplify it, and to harmonise with other anti-discrimination law by replacing it with a well-known justification defence.

### **Analysis of costs & benefits of final proposal**

#### Simplifying the law and aligning it with other anti-discrimination legislation

The benefit of aligning the justifications regime for disability discrimination more closely with other anti-discrimination law was that it made it less complex and easier to understand. The need to show ‘proportionality’ is a stricter test than the subjective (‘reasonable opinion’) part of the current justification tests. So a test of objective justification, while widening the circumstances in which discrimination can be justified, also makes it harder to justify discrimination. We therefore consider that this measure will strike the right balance of fairness between those with rights and those with duties and that it will be cost neutral overall.

### Familiarisation costs and simplification benefits

See pages 5-30.

### **Non-monetised costs and benefits**

The main impact will be to simplify the law, making it easier to understand and comply with the duties, without detracting from the level of protection for disabled people. Aligning the justification regime with other anti-discrimination legislation by adopting the familiar concept of objective justification should also help those with duties to understand them and respond appropriately.

This may mean that fewer cases have to go as far as a court or tribunal hearing and informal dispute resolution mechanisms may be more likely to result in satisfactory outcomes.

### **Risks**



If nothing was done to revise the justifications regime, the Government believed that a significant opportunity to simplify and improve this aspect of disability anti-discrimination law would have been missed.

### **Enforcement**

Enforced by the county/Sheriff court or employment tribunal as appropriate

### **Administrative burdens**

This policy does not create any additional administrative burdens or savings against the department's administrative burden baseline.

<b>Annex H - Making adjustments to common parts of let residential premises</b>		
<b>Department DWP</b>	<b>Making adjustments to common parts of let residential premises</b>	
<b>Stage: Royal Assent</b>	<b>Version: 5</b>	<b>Date: April 2010</b>
<b>Related Publications:</b> (1) Discrimination Law Review: Proposals for an Equality Bill for Great Britain (June 2007). (2) Proposals to simplify and modernise the law: Initial RIA (June 2007). (3) Framework for a Fairer Future (June 2008) and (4) the Government response to the consultation (July 2008) (5) Equality Bill Impact Assessment (Introduction) 27 April 2009 (6) Equality Bill Impact Assessment (House of Lords Introduction) December 2009		
<b>Available to view or download at:</b> <a href="http://www.equalities.gov.uk">http://www.equalities.gov.uk</a> <b>Contact for enquiries:</b> Peter Nokes <span style="float: right;"><b>Telephone: 0303 444 1204</b></span>		
<b>What was the problem under consideration? Why was government intervention necessary?</b> <p>There were a range of provisions to make it easier for disabled people to rent and make use of residential, commercial and other premises. These included requiring a landlord or manager of premises not to unreasonably refuse permission for disability-related alterations to the disabled person's home to be carried out. However, there was no similar requirement for disability-related alterations to the physical features of the common parts (e.g. hallways, stairs and communal areas) of residential premises. This meant that some disabled people could only use the common parts of their home with difficulty, when a simple alteration may have given the disabled person a greater level of independence which would allow them to participate more fully in society.</p>		
<b>What are the policy objectives and the intended effects?</b> <p>Where a disabled person is at a substantial disadvantage, compared to a non-disabled person, in the use of the common parts of their residential premises, the landlord should be under a duty to make a disability-related alteration to the common parts, where reasonable, and at the disabled person's expense (including any reasonable maintenance costs). Disabled people will be able to live more independently in their own homes and will not have to rely so much on friends, relatives or other services to be able to interact with society.</p>		
<b>What policy options have been considered? Please justify any preferred option.</b> <p>Option 1: no change</p> <p>Option 2 (chosen): Requires landlords to make adjustments to common parts where reasonable.</p> <p>The Review Group on Common Parts found that there was evidence of good practice by some landlords, but there was also evidence of unmet need for disability-related alterations to common parts of residential premises. They concluded that a problem does exist, but the problem does not affect just disabled people. Landlords and managers of premises, and other lessees do not know what they do, or do not, have to do to accommodate the access needs of disabled people. This can lead to acrimonious and long running disputes, which there is no established equitable format for resolving because the current law does not provide a clear framework.</p> <p>Option 3: improved funding, guidance and conciliation for adjustments to common parts, (no legislative changes).</p>		
<b>When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects?</b> <p>After implementation and on an ongoing basis, by the Equality and Human Rights Commission. The Government will also review after 5 years.</p>		

## Making adjustments to common parts of let residential premises : Analysis & Evidence

**Policy option: 2**

**Requiring landlords to make adjustments to common parts where reasonable**

COSTS	ANNUAL COSTS		Description and scale of key monetised costs by 'main affected groups'	
	One-off (Transition)	Yrs		
	£ 0	1		
	Average Annual Cost (excluding one-off)		Total Cost (PV)	
	Up to £26,970,000	10		£ Up to £232,149,305
Other key non-monetised costs by 'main affected groups'				

BENEFITS	ANNUAL BENEFITS		Description and scale of key monetised benefits by 'main affected groups'	
	One-off	Yrs		
	£ 0	1		
	Average Annual Benefit (excluding one-off)		Total Benefit (PV)	
	£10,000,000-£40,000,000	10		£86,076,865 to £344,307,460

### Other key non-monetised benefits by 'main affected groups'

We estimate that half the 57,000 disabled people facing difficulties because of inaccessible common parts (29,000 people) will make adjustments in the first year following this change. This assumption is based on 50% awareness of disability legislation among disabled people.

More disabled people will be able to move home more easily. Fewer disabled people will be 'prisoners in their own homes'. Fewer will have accidents due to inaccessible common parts. Disabled people generally will enjoy greater ability to participate in society, work and live independently.

### Key Assumptions/Sensitivities/Risks

Adjustments to Common Parts - Assumes half (50%) of those with inaccessible common parts will be aware of the legislation (29,000); assumes half of those who request changes to common parts will request Government Funding (around 14,000); and assumes 40% of applications would not proceed so 8,000 grants paid

Home Care Savings - Assumes that of the total number of disabled people making adjustments to their common parts and also receiving Council funded home care (20% of 29,000) half of those will no longer require home care

Residential Care Savings - Assumes a reduction in the number of people entering residential care of between 1 and 5%

Price Base Yr <b>2009</b>	Time Period Years <b>10</b>	<b>Net Benefit Range (NPV)</b> <b>-£146,072,440 to</b> <b>£344,307,460</b>	<b>NET BENEFIT (NPV Best estimate)</b>  <b>£99,117,510 (mid-point)</b>
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What is the geographic coverage of the policy/option?			GB	
On what date will the policy be implemented?			See page 8	
Which organisation(s) will enforce the policy?			Courts & Tribunals	
What is the total annual cost of enforcement for these organisations?			£ 0	
Does enforcement comply with Hampton principles?			N/A	
Will implementation go beyond minimum EU requirements?			N/A	
What is the value of the proposed offsetting measure per year?			£	
What is the value of changes in greenhouse gas emissions?			£ 0	
Will the proposal have a significant impact on competition?			No	
Annual cost (£-£) per organisation (excluding one-off)	For small businesses	For all businesses	Medium	Large
Are any of these organisations exempt?	No	No	N/	N/

Impact on Admin Burdens Baseline (2005 Prices)				
Increase of	£ 0	Decrease of	£ 0	Net Impact
Key:	Annual costs and benefits: Constant Prices			(Net) Present Value

## Evidence

### What policy options have been considered?

During the Lords' stages of the Disability Discrimination Bill which led to the Disability Discrimination Act 2005 there was strong cross-Party pressure to give disabled people the right to make alterations to the common parts of let residential premises.

The amendments were resisted at the time because of lack of time to resolve the complex legal issues involved. Peers accepted instead that a review should be mounted into the issues and that this review would report, by the end of 2005, to the Minister for Disabled People and the Minister for Housing and Planning. The Review Group on Common Parts was set up for this purpose and included representatives of disability organisations including the former Disability Rights Commission, landlord organisations and officials from the Department for Work and Pensions, the then Office of the Deputy Prime Minister (now Communities and Local Government), Department of Constitutional Affairs (now Ministry of Justice), Department of Health and the Scottish Executive (although the review covers England and Wales only).

The Review Group concluded that a problem does exist and made what amounts to two main recommendations (one non-legislative and one legislative) which they considered should be taken forward together.

- Non-legislative recommendation – that the Government should provide guidance, extra finance and access to conciliation services and other forms of dispute resolution.

- Legislative recommendation – that the Government should establish, through consultation, whether new primary legislation is required and seek views on the Group's specific proposals for England and Wales. These would, for example, require the landlord, where reasonable, to make an adjustment to physical features of the common parts of residential let premises to improve access for a disabled tenant, lessee or occupier when requested to do so by the tenant or lessee and at the tenant's/lessee's expense (unless the landlord chooses to pay). Similar provisions should be developed for common-hold premises.

The non-legislative proposals were addressed by a statement to Parliament on 13 July 2006 by the Minister for Disabled People. The Equality Act will address the legislative recommendation.

A court case, correspondence from landlords and tenants and the response to the consultation document has shown that there are still people who need alterations but are unable to get them under the current system. The Act balances the needs of the disabled person and the needs of the landlord or manager of the premises.

### *Provision in Scotland*

The Review Group on Common Parts recognising the distinct differences in housing law in Scotland recommended that the Scottish Government should consider making similar provisions to allow disability-related alterations to be made to the common parts of residential premises in Scotland. Provision for disabled people in tenanted property in Scotland was made in the Housing (Scotland) Act 2006 but in relation to common parts could cover only the consent required from the person's landlord and not that required from other common owners. The normal arrangement in Scotland is that the consent of all owners of premises in a building is required for any proposed alterations (as distinct from repairs) to the common parts of the building. The Equality Act includes a Regulation-making power for the Scottish Government to legislate to provide for consent to be given to disabled people to enable them to make disability-related alterations to the common parts of residential property.

## **Analysis of costs & benefits of chosen proposal**

### ***Numbers affected***

The Survey of English Housing identifies 270,000 households with disabled people who consider their accommodation to be unsuitable; this figure has been adjusted to get a figure for England and Wales of 285,000. It is assumed that there are some common parts in the case of all flats and maisonettes – 18% of households live in a flat or maisonette. For a small proportion of other households there will also be some common parts (e.g. shared driveways and parking areas) – it is not possible to quantify how many. It has been assumed that 20% of households have common parts. It is therefore estimated that 57,000 disabled people (20% of 285,000) are facing difficulties because of inaccessible common parts.

The actual number of disabled people affected by the change will, however, be much greater. This is because disabled people who had difficulties with access were restricted in their choice of housing, so this measure will increase their ability to purchase property and move home, for more suitable accommodation or to be near work. (Note – figures provided in the costings below may not sum due to rounding. Costs have been rounded to the nearest £ million and the number of adjustments to the nearest 1,000.)

### ***Benefits to disabled people***

We estimate that half the 57,000 disabled people were facing difficulties because of inaccessible common parts (29,000 people) will make adjustments in the first year following the legislative Act. This assumption is based on 50% awareness of disability legislation among disabled people.<sup>115</sup>

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<sup>115</sup> This assumption is from DWP research report 429 on 'Landlords' responses to the DDA' which states: 'that around half of the disabled tenants were aware of the DDA to a greater or lesser extent, but few realised it covered the rights of disabled tenants'.

More disabled people will be able to move home more easily. Fewer disabled people will be 'prisoners in their own homes'. Fewer will have accidents due to inaccessible common parts. Disabled people generally will enjoy greater ability to participate in society, work and live independently.

### ***Costs to Government***

There are a number of funds available for disability-related adjustments. The main source of funding is the Disabled Facilities Grant, depending on the cost of the adjustment and the tenure of the property.

It is assumed that half of those requesting adjustments to common parts will apply for government funding. Local Government Association data show that 40% of applications do not proceed. It is therefore assumed that up to 8,000 grants may be paid in the first year, with a potential value of £27m. This is split between the Disabled Facilities Grant (4,000) and the Integrated Community Equipment Services Grant (4,000). This was calculated as follows: of the 29,000 people making common part adjustments half will apply for funding: 14,500, of which only 60% of applications will proceed, 8700.

#### Disabled Facilities Grant

<b>Estimated number of new grants applied for as a result of the change in policy</b>	<b>X</b>	<b>Cost of an average grant</b>	<b>=</b>	<b>Additional cost</b>
4350	X	£5,700	=	<b>£24,795,000</b>

#### Integrated Community Equipment Services

<b>Estimated number of new grants applied for as a result of the change in policy</b>	<b>X</b>	<b>Cost of an average grant</b>	<b>=</b>	<b>Additional cost</b>
4350	X	£500	=	<b>£2,175,000</b>

#### Total cost

<b>Additional cost of Disabled Facilities Grant</b>	<b>+</b>	<b>Additional cost of Integrated Community Equipment Services</b>	<b>=</b>	<b>Total Additional cost</b>
£24,795,000	+	£2,175,000	=	<b>£26,790,000</b>

Central government grants for funding disability-related adjustments are distributed according to priority rules and budgetary constraints. The Government has increased the funding for Disabled Facilities Grants to £146m in 2008/09 rising to £156m in 2009/10. Such grants are already available for making adjustments to common parts, although evidence suggests that currently few are paid for this purpose. Removing the legal barriers (i.e. the need to get consent of a landlord) will make it easier for disabled people to make such adjustments. Current assumptions are that this could result in grants being made up to £27m, as indicated above. This may result in other lower-priority applications being refused or deferred.

The estimation of a £27 m impact on the Disabled Facilities Grant budget is based on the best information available at the time of the costing. This provides a national figure. The departments of Health, Communities and Local Government and Work and Pensions will carry out further work to understand how the proposed change will impact on different authority types. This figure is therefore being kept under review.

#### Supporting People



Enabling some people to go outside, possibly for the first time in years, may result in a short term need for support with things like shopping. The Communities and Local Government Supporting People scheme provides such support. However, this option should have only a negligible effect on the Supporting People Scheme.

### Housing Benefit

The costs to the person making the adjustment will not be paid through their rent or service charges and therefore will not be eligible for Housing Benefit.

### Benefits to Government

Benefits to Government arise from a reduced need to provide home and residential care to disabled people who have problems accessing their home. There are possible savings to the National Health Service from fewer people going into hospital because of accidents and people being able to return home sooner.

### ***Home care savings***

It is estimated that 20% of the 29,000 disabled people making adjustments to the common parts of their property receive Council funded home care that they would be able to reduce by half with an adjustment to the common parts of their property<sup>116</sup>. This produces an annual saving of up to £15m (and a small saving to individuals in user charges).. This is calculated as follows: The Audit Commission carried out visits to people waiting for funding for adjustments to their home and found that 17% were receiving care, which could have been reduced if the adjustment was made. Data from the Department of Health suggest 25% of disabled people need adapted accommodation while data from the Scottish Executive suggest between 19% and 23% of disabled people need personal care assistance.

Based on these figures it is estimated that 20% of the 29,000 disabled people making adjustments to the common parts of their property receive Council funded home care that they would be able to reduce by half with an adjustment to the common parts of their property.

### ***Residential care***

Improving access to disabled people's homes may reduce the number needing to enter residential care. 15% of the 135,000 people entering residential care each year, i.e. 20,000 people, do so because their home is no longer suitable. If this was reduced by between just 1% and 5%, and allowance was made for need for home care for those not admitted to care homes, the annual estimated savings to councils would be up to £25 million (and a saving to individuals in respect of self funding or user charges).

There is potentially an additional saving from people who have entered long term residential care subsequently being able to return home. It is assumed here that this effect will be negligible.

### ***Hospital admissions***

Some reduction in the number of people admitted to hospital each year would be expected from common parts adjustments. The NHS may also incur savings from being able to send people home earlier when their accommodation is more suitable.

### ***Benefits to carers***

There are estimated to be over 5.2m informal carers in the UK. Informal carers will be able to reduce the number of hours they spend caring. This will improve the quality of their lives allowing them more time for themselves and potentially to enter the labour market. For some, this may have

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<sup>116</sup> Based on research findings from the Audit Commission, Department of Health and Scottish Executive.



the additional effect of allowing the disabled person to live at home rather than entering residential care – for a significant number (38%) of people entering residential care, stress on carers is one of the reasons stated for moving into a residential care home<sup>117</sup>.

### ***Cost to other tenants or lessees***

There will be no monetary cost to other tenants or lessees, as the person requesting the adjustment will be responsible for paying for it.

### ***Benefits to other tenants or lessees***

Other tenants or lessees may also benefit from the adjustments made. Research prepared for the Review Group on Common Parts<sup>118</sup> found that around half of households with common parts reported that adjustments to common parts had already been made. This group expressed a very high level of satisfaction with the adjustments, and no-one expressed dissatisfaction.

### **Costs v benefits**

The costs of funding common parts adjustments are estimated at up to £27m. The savings in formal care costs are estimated to be up to £40m. It is therefore concluded that the monetary benefits outweigh the costs – with possible savings to the Government of £13m in the first year.

There are also significant benefits to the quality of life of the disabled people affected and in many cases their carers. There are additional knock on benefits to their local communities, the economy and the housing market. This combined with findings that other lessees are unlikely to oppose adjustments they do not have to contribute to financially, suggests that there is a net benefit under option 2.

### **Risks**

No identifiable risks

### **Enforcement**

Like all of the premises provisions this duty will be enforced through the courts.

### **Administrative Burdens**

This policy does not create any additional administrative burdens or savings against the department's administrative burden baseline.

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<sup>117</sup> Care home for older people – admission, needs and outcomes, PSSRU, 2001.

<sup>118</sup> Attitudes to making adjustments to the common parts of rented and leased residential premises can be found at <http://www.dwp.gov.uk/asd/asd5/rports2005-2006/rrep317.pdf>

## Annex I - Extending protection against harassment outside the workplace

<b>Department DWP</b>	<b>Making adjustments to common parts of let residential premises</b>	
<b>Stage: Royal Assent</b>	<b>Version: 5</b>	<b>Stage: Royal Assent</b>
<b>Related Publications:</b> (1) Discrimination Law Review: Proposals for an Equality Bill for Great Britain (June 2007). (2) Proposals to simplify and modernise the law: Initial RIA (June 2007). (3) Framework for a Fairer Future (June 2008) and (4) the Government response to the consultation (July 2008) (5) Equality Bill Impact Assessment (Introduction) 27 April 2009 (6) Equality Bill Impact Assessment (House of Lords Introduction) December 2009		
<b>Available to view or download at:</b> <a href="http://www.equalities.gov.uk">http://www.equalities.gov.uk</a> <b>Contact for enquiries:</b> Elizabeth Solowo-Coker <span style="float: right;"><b>Telephone: 0303 444 1204</b></span>		
<b>What is the problem under consideration? Why is government intervention necessary?</b>  Currently, discrimination law makes it unlawful to harass people in employment or vocational training with regard to race, sex, gender reassignment, disability, religion or belief, age or sexual orientation. By contrast, express statutory protection against harassment outside the workplace does not currently apply in respect of religion or belief, sexual orientation, age or disability.		
<b>What are the policy objectives and the intended effects?</b>  To make the law as effective and as consistent as possible so that it is easier for people to know their rights and responsibilities.		
<b>What policy options have been considered? Please justify any preferred option.</b>  <ul style="list-style-type: none"> <li>• Option 1: Full extension of freestanding statutory protection against harassment to all protected characteristics outside the workplace. This would have the effect of providing transparency and clarity in law, making it easier to understand the protections available, and ending any perceived hierarchy of rights.</li> <li>• Option 2: No extension. This would disregard the evidence of those age stakeholder groups which showed a need for such protection. Similar concerns can arise in relation to disabled people.</li> <li>• Option 3: (Final proposal) Extend only to protected characteristics where there is a case for doing so. This is the preferred option, as it will provide redress for people who experience poor treatment where there is no comparator against whom to measure less favourable treatment.</li> </ul>		
<b>When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects?</b>  After implementation, and on an ongoing basis, by the Equality and Human Rights Commission. The Government will also review after 5 years.		

## Harassment outside the workplace: Analysis & Evidence

Policy option: 3

Extending freestanding statutory protection against harassment outside the workplace.

COSTS	ANNUAL COSTS		Description and scale of key monetised costs by 'main affected groups'	
	One-off (Transition)	Yrs		
	£ 0	1		
	Average Annual Cost (excluding one-off)		<p>Court costs resulting from an increase in cases are estimated as between £10,110 and £39,429 per year.</p> <p>The increased number of cases could have a recurring cost for the taxpayer of between £22,638 and £84,132; for employers of between £59,196 and £220,856; and for individuals of between £13,306 and £51,834.</p> <p>Familiarisation costs are factored into the overall familiarisation costs for the Bill, in pages 12-30.</p>	
	£ 95,788 to £ 358,178	10	Total Cost (PV)	£ 824,514 to £ 3,083,084
Other key non-monetised costs by 'main affected groups'				

BENEFITS	ANNUAL BENEFITS		Description and scale of key monetised benefits by 'main affected groups'	
	One-off	Yrs		
	£ 0	1		
	Average Annual Benefit		<p>Increase in compensation for individuals of between £8103 and £16,206</p>	
	£ 8,103 – £16,206	10	Total Benefit (PV)	£ 69,748 to £139,496
<p>Other key non-monetised benefits by 'main affected groups'</p> <p>Extension of protection against harassment outside the workplace to include age and disability would help to ensure that where services are provided for people in particular age ranges and those who are disabled, providers have regard to the dignity of the people whom they serve.</p>				

### Key Assumptions/Sensitivities/Risks

That there will be an increase in the number of cases of between 0.1% and 0.4% of which the success rate will be 5%.

Based on estimates of additional age and disability harassment claims taken to employment tribunals as data for court cases are unavailable.

Data on tribunal costs are used to estimate court costs where data are not available.

Price Base Yr <b>2009</b>	Time Period Years <b>10</b>	Net Benefit Range (NPV) <b>-£3,013,336 to -£685,018</b>	NET BENEFIT (NPV Best estimate) <b>-£1,849,177 (mid-point)</b>
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What is the geographic coverage of the policy/option?

GB

On what date will the policy be implemented?	See page 8			
Which organisation(s) will enforce the policy?	Individuals			
What is the total annual cost of enforcement for these organisations?	£ 0			
Does enforcement comply with Hampton principles?	N/A			
Will implementation go beyond minimum EU requirements?	N/A			
What is the value of the proposed offsetting measure per year?	£ 0			
What is the value of changes in greenhouse gas emissions?	£ 0			
Will the proposal have a significant impact on competition?	No			
Annual cost (£-£) per organisation (excluding one-off)	Micro	Small	Medium	Large
Are any of these organisations exempt?	No	No	N/	N/

Impact on Admin Burdens Baseline (2005 Prices)				
				(Increase - Decrease)
Increase of	£ 0	Decrease of	£ 0	<b>Net Impact</b> £ 0
Key:	Annual costs and benefits: Constant Prices		(Net) Present Value	

## Evidence

### What policy options have been considered?

In considering option 1 (protection from harassment extended to all protected characteristics which are not currently covered outside the workplace), we took into account considerations of whether to do this would be a proportionate response to a real problem.

We rejected option 2 (no extension of protection) because public consultation brought forward evidence of a clear need for protection against harassment related to age in respect of service provision. Option 3, our final proposal, will provide such protection for age and for disability where concerns similar to those on age, can arise.

We also examined non-legislative approaches, including work by other Government Departments on combating problems in services, such as the Department of Health's work improving standards of care in residential care homes.

### Analysis of costs & benefits of chosen option

#### Extend protection against harassment outside the workforce to age and disability only; and not to religion or belief or to sexual orientation

The Care Quality Commission took over the independent regulation of health and adult social care in England in April 2009. Registration requirements have been designed to ensure that they support a human rights approach in relation to the provision of health and social care. The Health and Social Care Act 2008 enables the Care Quality Commission to take account of other enactments, including human rights and equalities legislation, in reaching decisions on registration. It is able to address equality, respect for diversity and other human rights. Therefore, these do not need to be duplicated in providers' registration requirements.

However this framework does not provide individuals with redress for poor treatment. Whilst strengthening the regulatory framework provides assurance as to the safety and quality of services,

a free-standing statutory provision will add an accessible, consistent and robust protection for people against harassment. Extending the harassment provision to cover age has the potential to strengthen protection from degrading treatment, for which there is some evidence from our consultation.

Although consultation responses did not provide a great deal of evidence to support extending protection to disability as well, the sort of situations that justify extending protection to age can apply equally to disability. We have therefore decided that this explicit protection should also extend to disability.

The outcome of the consultation on proposals for the Equality Bill did not justify extending freestanding protection against harassment outside the workplace to cover either sexual orientation or religion or belief. Examples provided of harassment related to these protected characteristics were either outside the scope of discrimination law or are capable of being covered by existing provisions that make discrimination unlawful, which will continue to be the case.

### Costs of chosen option

We are extending explicit protection from harassment outside the workplace to age and disability.

This will almost certainly lead to an increased number of cases. However, we consider it unlikely that the additional number of cases will be significant, for the reasons set out in the following paragraphs.

We are unaware of any claims of racial harassment outside the workplace since 2003 when this was first prohibited, and none in respect of sex, sexual or gender reassignment harassment where protection was introduced in April 2008. Likewise, there have been no cases involving harassment in higher or further education institutions (already prohibited under the provisions covering employment and vocational training in respect of all seven protected characteristics).

In employment tribunal cases, harassment is very often listed as one of two or more judicial complaints in a single claim. Evidence is not readily available of how far this applies in non-employment cases, but it would not be unreasonable to consider that the same principle reads across to such claims.

Given there is currently no age discrimination legislation outside the workplace (though the Act will introduce it), it is difficult to estimate how many cases will arise from extending protection against age harassment. This will be largely dependent on how businesses and service providers choose to react to the legislation and how many individuals seek to test it. It will also depend on the work that the Department of Health is doing to promote dignity and respect for older people in health and social care.

Taking account of the above, the figures below assume an increase of between 0.1-0.4% of cases being brought as a result of extending freestanding statutory protection against harassment outside the workplace to age and disability, with a success rate of 5%<sup>119</sup>.

#### Court costs (outside employment)

	Average court costs	X	Number of additional cases	=	Additional costs
<b>Low Estimate (0.1%)</b>	£1,011	X	10	=	<b>£10,110</b>

<sup>119</sup> These percentages relate to the total number of cases from Employment Tribunal Service data from the ETS Annual Reports 2005/6 to 2007/8 on the average number of tribunal cases for age and disability as statistics on the numbers of court cases are not available.

<b>High Estimate (0.4%)</b>	£1,011	X	39	=	<b>£39,429</b>
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### Cost of employment tribunals

The cost of increasing the number of discrimination cases heard by courts was calculated by multiplying the average cost for employers, tax payers and individuals for each case by the percentage increase in the number of cases.

		<b>Increase in number of cases</b>	<b>X</b>	<b>Average cost of a case</b>	<b>=</b>	<b>Cost of proposal</b>
<b>Low estimate</b>	Employer	10	X	£5393	=	£53,930
	Taxpayer	10	X	£1,034	=	£10,034
	Individual	10	X	£1331	=	£13,331
	<b>Total</b>					<b>£77,295</b>

		<b>Increase in number of cases</b>	<b>X</b>	<b>Average cost of a case</b>	<b>=</b>	<b>Cost of proposal</b>
<b>High estimate</b>	Employer	39	X	£5393	=	£210,327
	Taxpayer	39	X	£1,034	=	£40,326
	Individual	39	X	£1331	=	£51,909
	<b>Total</b>					<b>£302,562</b>

This calculation is based on tribunal costs rather than county court costs as the latter are not available. The calculation uses data on the average cost of a tribunal case. This data is taken from the SETA (Survey of Employment Tribunal Applications) 2003.

### Compensation costs & benefits

We are not aware of any cases having been brought in respect of racial or sexual harassment outside the workplace, but it is probable that some will seek to test the law, so a success rate of 5% is assumed.

	<b>Average compensation awarded</b>	<b>X</b>	<b>Number of additional cases</b>	<b>=</b>	<b>Additional costs</b>
<b>Low estimate</b>	£8,103	X	1	=	£8103
<b>High estimate</b>	£8,103	X	2	=	£16,206

This is a cost to service providers and a benefit to individuals. This calculation is based on the median amount of compensation awarded by employment tribunals per case in 2004/5.

From the Survey of Employment Tribunal Applications 2003, we can estimate the sector composition of employment tribunal cases. The table below shows compensation costs to each sector.

<b>Compensation Costs</b>	<b>Low Estimate</b>	<b>High Estimate</b>
<b>Public Sector</b>	£ 2,188	£ 4,376
<b>Private Sector</b>	£ 5,267	£ 10,534
<b>Voluntary Sector</b>	£ 648	£ 1,296
<b>Total</b>	<b>£ 8,103</b>	<b>£ 16,206</b>

## Familiarisation costs and simplification benefits

See pages 5-30.

### **Non-monetised costs and benefits**

Extension of freestanding protection against harassment outside the workplace to age and disability will in principle benefit all people with those protected characteristics, but is likely to be most valuable in circumstances where lack of a comparator (for example where services are provided only for a particular age group, or only for disabled people) might make it difficult to establish direct discrimination.

### **Risks**

Extension of protection against harassment outside the workplace to age and disability goes a significant way to achieving full harmonisation within discrimination law.

This option could be seen as creating a hierarchy of rights, and could give the impression that harassment of people due to their religion or belief or sexual orientation was acceptable. However, we do not believe that this is a major risk as the Act clarifies that if a person is not specifically protected against harassment, a claim can still be brought if he or she suffers a “detriment”.

### **Enforcement**

Any cases of harassment related to age or disability outside the workplace will be heard in the county or sheriff courts, in line with other cases brought under goods, facilities and services legislation.

### **Administrative Burdens**

This policy does not create any additional administrative burdens or savings against the department’s administrative burden baseline.



## Annex J - Protection against third party harassment

<b>Department GEO</b>	<b>Extension of protection against harassment by third parties in the workplace</b>	
<b>Stage: Royal Assent</b>	<b>Version: 5</b>	<b>Stage: Royal Assent</b>
<b>Related Publications:</b> (1) Discrimination Law Review: Proposals for an Equality Bill for Great Britain (June 2007). (2) Proposals to simplify and modernise the law: Initial RIA (June 2007). (3) Framework for a Fairer Future (June 2008) and (4) the Government response to the consultation (July 2008) (5) Equality Bill Impact Assessment (Introduction) 27 April 2009 (6) Equality Bill Impact Assessment (House of Lords Introduction) December 2009		

Available to view or download at: <http://www.equalities.gov.uk>

<b>Contact for enquiries:</b> Elizabeth Solowo-Coker	<b>Telephone:</b> 0303 444 1204
<b>What is the problem under consideration? Why is government intervention necessary?</b>  Employers are already liable, subject to specific conditions (including the fact that the harassment must be repeated and known to the employer), if a third party such as a customer or supplier subjects an employee to sex harassment, sexual harassment or gender reassignment harassment. But, as this does not apply to other characteristics protected under existing law, there is an inconsistency in the protection currently provided.	
<b>What are the policy objectives and the intended effects?</b>  To make employers liable where employees are subjected to persistent harassment by third parties in the workplace, so that employees have the same level of protection against third party harassment related to race, disability, religion or belief, sexual orientation and age as they currently have against sex, sexual and gender reassignment harassment. To reduce the scope for confusion about employers' obligations and the protection for employees by extending protection from third party harassment in the workplace across all protected characteristics.	
<b>What policy options have been considered? Please justify any preferred option.</b> <ul style="list-style-type: none"> <li>• Option 1: Do nothing. This would perpetuate an inconsistency and leave the Government open to criticism for a failure to harmonise without good reason.</li> <li>• <b>Option 2: (Chosen option) Impose liability where an employer knowingly fails to protect an employee from repeated harassment by a third party over whom the employer has no direct control, e.g. a customer or client, where this is related to race, disability, religion or belief, sexual orientation or age. This will ensure a consistent approach towards the treatment of harassment in the workplace.</b></li> <li>• Option 3: Impose liability as for option 2, but also on a service provider who knowingly fails to protect a third party from repeated harassment by another third party, e.g. customer on customer. We do not believe that the same policy considerations on third party harassment that apply in the workplace apply outside it, as the particular relationship that exists between employer and employee is not generally replicated between a service provider and a customer.</li> </ul>	
<b>When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects?</b>  After implementation, and on an ongoing basis, by the Equality and Human Rights Commission. The Government will also review after 5 years.	

## Protection against third party harassment : Analysis & Evidence

**Policy Option: 2**

Extending to other protected characteristics (race, disability, religion or belief, sexual orientation and age) the liability on employers for knowingly failing to take reasonable steps to prevent persistent harassment of their employees by third parties over whom they have no direct control which is imposed by the Sex Discrimination Act 1975.

COSTS	ANNUAL COSTS		Description and scale of key monetised costs by ‘main affected groups’	
	One-off (Transition)	Yrs		
	£ 0	1	<p>Court costs resulting from an increase in cases are estimated as being between £15,165 and £60,660 per year.</p> <p>The higher number of cases will have a recurring cost for the taxpayer of between £32,863 and £129,265; for employers of between £86,160 and £339,373; and for individuals of between £19,959 and £79,836.</p> <p>Employers will pay out more in compensation which will cost between £8103 and £24,309.</p> <p>Familiarisation costs are factored into the overall familiarisation costs for the Act, in pages 5-30.</p>	
	Average Annual Cost (excluding one-off)			
	£ 139,631 to £ 550,420	10	Total Cost (PV)	£ 1,201,897 to £4,737,841
Other key non-monetised costs by ‘main affected groups’				

BENEFITS	ANNUAL BENEFITS		Description and scale of key monetised benefits by 'main affected groups'
	One-off	Yrs	
	£ 0	1	
	£ 8,103 – £24,309	10	<p>Increase in compensation for individuals of between £8,103 - £24,309</p>
			<p><b>Total Benefit (PV)</b></p> <p><b>£69,748 to £209,244</b></p>
<p><b>Other key non-monetised benefits by 'main affected groups'</b></p> <p>This measure will provide consistency as to the rights of employees and responsibilities of employers across all protected characteristics in the workplace.</p>			

### Key Assumptions/Sensitivities/Risks

That there will be an increase in the number of cases of between 0.1% and 0.4% of which the success rate will be 5%.

Price Base Yr <b>2009</b>	Time Period Years <b>10</b>	<b>Net Benefit Range (NPV)</b> <b>£-4,668,093 to £-992,653</b>	<b>NET BENEFIT (NPV Best estimate)</b> <b>£-2,830,373 (mid-point)</b>
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What is the geographic coverage of the policy/option?

GB

On what date will the policy be implemented?			See page 8	
Which organisation(s) will enforce the policy?			Individuals and tribunals	
What is the total annual cost of enforcement for these organisations?			£ 0	
Does enforcement comply with Hampton principles?			Yes	
Will implementation go beyond minimum EU requirements?			Yes	
What is the value of the proposed offsetting measure per year?			£ 0	
What is the value of changes in greenhouse gas emissions?			£ 0	
Will the proposal have a significant impact on competition?			No	
Annual cost (£-£) per organisation (excluding one-off)	Micro	Small	Medium	Large
Are any of these organisations exempt?	No	No	N/	N/

Impact on Admin Burdens Baseline (2005 Prices)				(Increase - Decrease)	
Increase of	£ 0	Decrease of	£ 0	Net Impact	£ 0

Key: Annual costs and benefits: Constant Prices (Net) Present Value

## Evidence

### What policy options have been considered?

- Option 1 - Do nothing. This would perpetuate an inconsistency and leave the Government open to criticism for a failure to harmonise without good reason.
- Option 2 - Impose liability where an employer knowingly fails to protect an employee from repeated harassment by a third party where this is related to race, disability, religion or belief, sexual orientation or age as is currently the case for sex, sexual and gender reassignment harassment. This preferred option will eliminate confusion as to the responsibilities of employers and corresponding rights of employees that apply to different protected characteristics in respect of third party harassment. It will increase consistency in protection against harassment.
- Option 3 - Impose liability as under Option 2, but also on a service provider who knowingly fails to protect one third party from repeated harassment by another third party. Extending liability for third party harassment outside the workplace would mean that a customer could bring a claim against a service provider should they be harassed by a fellow customer. We do not believe that making a service provider liable in this way for the behaviour of his customers would be desirable. In the employment context, there is a particular ongoing relationship between the employer and employee. In contrast, the relationship between providers and their customers is in many cases much more transitory and does not therefore lend itself to taking such a severe step as to impose liability on providers for harassment of one customer by another.

### Analysis of costs & benefits of chosen option

Option 2 - Impose liability where an employer knowingly fails to protect an employee from repeated harassment by a third party where this is related to race, disability, religion or belief, sexual orientation and age as is currently the case for sex, sexual and gender reassignment harassment.

This proposal will have the effect of making an employer liable should he or she knowingly fail to protect an employee from repetitive harassment by a third party over whom the employer has no

direct control, for example a customer or supplier. This might have the effect of increasing the number of harassment cases brought. This will add to the costs of the legislation, but as indicated in the following paragraph, a degree of protection already exists.

It is already the case that employers who know that an employee is being subjected to harassment by a third party over whom they have no direct control, and which they effectively condone if they do not take reasonable steps to prevent it when it is clearly within their power to do so, could be in breach of the implied duty not to act in such a way which is likely to harm the relationship of trust and confidence between employer and employee. This could lead to the employee claiming a breach of contract which is so serious that it entitles the employee to resign and claim constructive dismissal under employment legislation.

### ***Costs of chosen option***

As there is therefore already some legislative protection under employment law that may apply in such circumstances, we assume that many employers will already have taken or be taking steps to protect their employees from third party harassment that could occur in relation to any of the protected characteristics. For other employers, costs may result from them having to take steps appropriate to the size and type of business they run, such as putting up warning notices saying that abuse of staff members is not acceptable. If employers take a proactive approach towards creating a working environment that is free from harassment, there may also be an overall reduction in harassment claims, even if some individuals decide to bring cases to test the legislation. This could reduce the costs associated with existing legislation.

#### Tribunal costs

The Impact Assessment for the Regulations<sup>120</sup> which introduced both a wider definition of harassment and employer liability for third party harassment in the workplace because of sex, estimated that these provisions might result in a 0.5%-1% increase in harassment claims. On the basis that between 1998 and 2004 there was an average of 10,139 cases where sex discrimination<sup>121</sup> is registered as the main jurisdictional complaint, this would result in between an extra 50 and 100 more cases. We would however attribute only some 0.1% of these additional claims to the introduction of employer liability for third party harassment, with the majority of extra claims being considered to arise because of the wider definition of harassment under these regulations.

Taking a similar approach to estimating costs for this proposal, between 2005/6 and 2007/8 there was an average of 79,350 discrimination complaints registered per year with the Employment Tribunals Service.<sup>122</sup> If one removes the average number of cases where sex discrimination (where this protection already applies) and equal pay (to which this proposal does not apply) are registered as the main jurisdictional complaints, which is 64,432<sup>123</sup>, this leaves an average of 14,918 discrimination cases.

The figures below assume an increase of between 0.1-0.4% of cases being brought as a result of introducing employer liability for third party harassment in the workplace related to race, disability, religion/belief, sexual orientation and age as is currently the case for sex, sexual and gender reassignment harassment, and a 5% success rate for these new cases.

	<b>Average tribunal costs</b>	<b>X</b>	<b>Number of additional cases</b>	<b>=</b>	<b>Additional costs</b>
<b>Low estimate</b>	£1,011	X	15	=	<b>£15,165</b>

<sup>120</sup> Employment Equality (Sex Discrimination) Regulations 2005. SI 2005/2467

<sup>121</sup> The ETS statistics for sex discrimination claims include claims for direct and indirect discrimination, harassment and victimisation on grounds of sex and of gender reassignment. Claims for employer liability for third party harassment will be similarly aggregated under the different grounds of discrimination.

<sup>122</sup> ETS Annual Reports

<sup>123</sup> ETS Annual reports

<b>High estimate</b>	£1,011	X	60	=	<b>£60,660</b>
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Cost of increase in cases

The cost of the increased number of discrimination cases heard by employment tribunals was calculated by multiplying the average cost for employers, tax payers and individuals for each case by the percentage increase in the number of cases

		<b>Increase in number of cases</b>	<b>X</b>	<b>Average cost of a case</b>	<b>=</b>	<b>Cost of proposal</b>
<b>Low estimate</b>	Employer	15	X	£5393	=	<b>£80,895</b>
	Taxpayer	15	X	£1,034	=	<b>£15,510</b>
	Individual	15	X	£1331	=	<b>£19,965</b>
	Total					<b>£116,370</b>

		<b>Increase in number of cases</b>	<b>X</b>	<b>Average cost of a case</b>	<b>=</b>	<b>Cost of proposal</b>
<b>High estimate</b>	Employer	60	X	£5393	=	<b>£323,580</b>
	Taxpayer	60	X	£1,034	=	<b>£62,040</b>
	Individual	60	X	£1331	=	<b>£79,860</b>
	Total					<b>£545,340</b>

#### Compensation costs & benefits

We are not aware of any cases being brought under the April 2008 provisions which introduced into the Sex Discrimination Act 1975 employer liability for harassment by third parties but assume that some will seek to test the law, so a success rate of 5% is assumed.

	<b>Average compensation awarded</b>	<b>X</b>	<b>Number of additional cases</b>	<b>=</b>	<b>Additional costs</b>
<b>Low estimate</b>	£8,103	X	1	=	<b>£8,103</b>
<b>High estimate</b>	£8,103	X	3	=	<b>£24,30</b>

From the Survey of Employment Tribunal Applications 2003, we can estimate the sector composition of employment tribunals. The table below shows compensation costs to each sector.

<b>Compensation Costs</b>	<b>Low Estimate</b>	<b>High Estimate</b>
<b>Public Sector</b>	£ 2,188	£ 6,563
<b>Private Sector</b>	£ 5,267	£ 15,801
<b>Voluntary Sector</b>	£ 648	£ 1,945
<b>Total</b>	<b>£ 8,103</b>	<b>£ 24,309</b>

#### Benefits

In ensuring that workplace claims of third party harassment can be brought, the Act makes clear that the protection that is currently provided for employees in relation to sex and gender reassignment also applies to race, disability, sexual orientation, religion or belief and age. This

eliminates the potential for confusion which can arise now amongst both employers and employees as to their respective responsibilities and rights.

#### Familiarisation costs and simplification benefits

See pages 5-30.

#### **Non-monetised costs and benefits**

In making clear that employers may be liable for claims of third party harassment, we will be providing employees with redress for such treatment, and also encouraging all employers to ensure that their staff are reasonably protected from such treatment.

#### **Risks**

No identifiable risks. We believe that this final proposal introduces for employers and employees a clear and consistent message about what behaviour is and is not permitted in the workplace.

#### **Enforcement**

Extension of employer liability for third party harassment in the workplace does not require changes to the enforcement framework currently in place for employment related harassment claims, whereby individuals bring cases against their employers in employment tribunals.

#### **Administrative burdens**

This policy does not create any additional administrative burdens or savings against the department's administrative burden baseline.



Annex K - Equal Pay		
Department GEO	Simplifying equal pay provisions	
Stage: Royal Assent	Version: 5	Stage: Royal Assent
<b>Related Publications:</b> (1) Discrimination Law Review: Proposals for an Equality Bill for Great Britain (June 2007). (2) Proposals to simplify and modernise the law: Initial RIA (June 2007). (3) Framework for a Fairer Future (June 2008) and (4) the Government response to the consultation (July 2008) (5) Equality Bill Impact Assessment (Introduction) 27 April 2009 (6) Equality Bill Impact Assessment (House of Lords Introduction) December 2009		
<b>Available to view or download at:</b> <a href="http://www.equalities.gov.uk">http://www.equalities.gov.uk</a> <b>Contact for enquiries:</b> David Ware <span style="float: right;"><b>Telephone: 0303 444 1204</b></span>		
<b>What is the problem under consideration? Why is government intervention necessary?</b>  <p>Previously, British law on pay-related discrimination between women and men was covered by two separate Acts which used different concepts and procedures and had different remedies. Claims for equal pay (more specifically, equal pay for work of equal value) can be complex, time-consuming and therefore costly for business and individuals. The mass of domestic and European case law can make it difficult for people to know their rights and responsibilities, and legal expertise and support is usually essential when claims are brought to tribunals. The Government believes there was potential to streamline the law, making it less confusing for employers and employees.</p>		
<b>What are the policy objectives and the intended effects?</b> <ul style="list-style-type: none"> <li>• Remove confusion for employers and individuals with regard to equal pay law;</li> <li>• Ensure the law is clearer and therefore potentially less subject to appeal;</li> <li>• Speed up the resolution of equal pay cases;</li> <li>• Maintain certainty where possible; and</li> <li>• Ensure that the claimant's continuing entitlement to equal pay is legally certain.</li> </ul>		
<b>What policy options have been considered? Please justify any preferred option.</b> <ul style="list-style-type: none"> <li>• Option 1: do nothing</li> <li>• <b>Option 2: incorporate equal pay provisions along with sex discrimination provisions within a single piece of legislation (the Equality Act), replicating the existing contract-based approach of the Equal Pay Act and the tort-based approach of the Sex Discrimination Act but also reflecting key decisions in equal pay case law, and ensuring there is neither gap nor overlap between the provisions (Final proposal).</b></li> <li>• Option 3: deal with equal pay in the Equality Act as a form of sex discrimination, using the tort-based approach of the Sex Discrimination Act.</li> <li>• Option 2 is the preferred option because it will remove confusion for employers and individuals, with associated savings when bringing or defending an equal pay case. Clearer law that is potentially less subject to appeal could speed up resolution of equal pay cases with concomitant cost savings. By reflecting current case law, certainty will be maintained. Maintaining the contract-based approach to equal pay will ensure that the claimant's continuing entitlement to equal pay is legally certain.</li> </ul>		
<b>When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects?</b> <p>After implementation, and on an ongoing basis, by the Equality and Human Rights Commission. The Government will also review after 5 years.</p>		



## Equal Pay - Analysis & Evidence

Policy option : 2

Incorporate equal pay provisions along with sex discrimination provisions within a single piece of legislation (the Equality Act), replicating the existing contract-based approach of the Equal Pay Act and the tort-based approach of the Sex Discrimination Act but also reflecting key decisions in equal pay case law.

COSTS	ANNUAL COSTS		Description and scale of key monetised costs by ‘main affected groups’  Taxpayer  Simplifying the Equal Pay Provisions - One Off Familiarisation Costs as calculated in pages 5-30.	
	One-off (Transition)	Yrs		
	£ Marginal	1		
	Average Annual Cost (excluding one-off)			
	£ Marginal	10		
		Total Cost (PV)	£ Marginal	
Other key non-monetised costs by ‘main affected groups’				
BENEFITS	ANNUAL BENEFITS		Description and scale of key monetised benefits by ‘main affected groups’  <b>Public Sector</b> - Reduction in justiciable events resulting in a saving of £1,370,393  <b>Private Sector</b> - Reduction in justiciable events resulting in a saving of £1,370,393  <b>Individuals</b> - Reduction in justiciable events resulting in a saving of £676,245  <b>Taxpayer</b> - Reduction in justiciable events resulting in a saving of £525,519	
	One-off	Yrs		
	£ 0	1		
	Average Annual Benefit (excluding one-off)			
	£ 3,942,550	10		
		Total Benefit (PV)	£ 33,936,230	
Other key non-monetised benefits by ‘main affected groups’ The mass of domestic and European case law can make it difficult for people to know their rights and responsibilities, and legal expertise and support is usually essential when claims are brought to tribunals. The Government believes there is potential to streamline the law, making it less confusing for employers and employees.				

### Key Assumptions/Sensitivities/Risks

Savings will result from clearer law on Equal Pay – fewer appeals and more speedy resolution of cases (1% saving assumed)

Price Base Yr	Time Period Years	Net Benefit Range (NPV)	NET BENEFIT (NPV Best estimate)
2009	10	Up to £ 33,936,230	£See Range

What is the geographic coverage of the policy/option?	GB
On what date will the policy be implemented?	See page 8

Which organisation(s) will enforce the policy?	Tribunals			
What is the total annual cost of enforcement for these organisations?	£ 0			
Does enforcement comply with Hampton principles?	N/A			
Will implementation go beyond minimum EU requirements?	N/A			
What is the value of the proposed offsetting measure per year?	£			
What is the value of changes in greenhouse gas emissions?	£ 0			
Will the proposal have a significant impact on competition?	No			
Annual cost (£-£) per organisation (excluding one-off)	Micro	Small	Medium	Large
Are any of these organisations exempt?	No	No	N/	N/

Impact on Admin Burdens Baseline (2005 Prices)				
				(Increase - Decrease)
Increase of	£ 0	Decrease of	£ 0	<b>Net Impact</b>
Key:	Annual costs and benefits: Constant Prices		(Net) Present Value	

## Evidence

### What policy options have been considered?

The problem is that the law on gender discrimination is contained in a number of different measures, making it more difficult to understand and comply with. In particular there were specific provisions dealing with discrimination in contractual matters separately and in a different way from other forms of discrimination. The three logical approaches were to leave this situation as it is, to attempt to completely harmonise the provisions, or to find a middle course. The options indicated above, and which we consulted on in 2007, reflect these approaches. The final proposal is outlined below.

### Analysis of costs & benefits of chosen option

Option 2: Incorporate equal pay provisions along with sex discrimination provisions within a single piece of legislation (the Equality Act), replicating the existing contract-based approach of the Equal Pay Act and the tort-based approach of the Sex Discrimination Act but also reflecting key decisions in equal pay case law, and ensuring there is neither gap nor overlap between the provisions.

#### Benefits from a reduction in the number of tribunal cases

It is assumed that there will be a 1% reduction in the number of justiciable events on equal pay. Currently many claimants who believe they have been discriminated against because of gender make both sex discrimination and equal pay claims in parallel, partly as a result of lack of clarity in the existing legislation, and partly to reflect the different facets of discrimination. We believe greater clarity should reduce the need for this, above the general simplification effect of the Bill. In the absence of hard evidence as to the scale of this potential effect we have opted for a low figure. It is not thought that any significant number of new cases will be generated. The benefits of this can be calculated by multiplying the estimated reduction in cases by the cost per case.

	<b>Average number of equal pay tribunal cases per year</b>	<b>X</b>	<b>1%</b>	<b>=</b>	<b>Reduction in tribunal cases</b>	<b>X</b>	<b>Cost per case</b>	<b>=</b>	<b>Benefit of proposal</b>
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Employers	41,329	X	1%	=	413	X	£5393	=	<b>£2,227,309</b>
Taxpayer	41,329	X	1%	=	413	X	£1,034	=	<b>£427,042</b>
Individual	41,329	X	1%	=	413	X	£1331	=	<b>£549,703</b>

This calculation assumes that there will be a reduction of 1% in the number of tribunal cases.<sup>124</sup>

#### Familiarisation costs and simplification benefits

See pages 5-30.

#### **Non-monetised costs and benefits**

Greater clarity and simplification will increase confidence in the law, and resulting increased compliance will increase employee satisfaction.

#### **Enforcement**

Simplification of itself brings no changes to the enforcement regime.

#### **Administrative burdens**

This policy does not create any additional administrative burdens or savings against the department's administrative burden baseline.

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<sup>124</sup> The data on the average number of tribunal cases on equal pay and costs are taken from the ETS Annual Reports 2005/6 to 2007/8

Annex L - Outlawing pay secrecy		
Department GEO GEO/Agency: GEO	Simplifying equal pay provisions	
Stage: Royal Assent	Version: 5	Stage: Royal Assent
<b>Related Publications:</b> (1) Discrimination Law Review: Proposals for an Equality Bill for Great Britain (June 2007). (2) Proposals to simplify and modernise the law: Initial RIA (June 2007). (3) Framework for a Fairer Future (June 2008) and (4) the Government response to the consultation (July 2008) (5) Equality Bill Impact Assessment (Introduction) 27 April 2009 (6) Equality Bill Impact Assessment (House of Lords Introduction) December 2009		
Available to view or download at: <a href="http://www.equalities.gov.uk">http://www.equalities.gov.uk</a>		
Contact for enquiries: David Ware		Telephone: 0303 444 1204
<b>What is the problem under consideration? Why is government intervention necessary?</b>  Some employers impose formal or informal requirements on their employees not to discuss their pay with one another. This acts as a barrier to transparency about pay and reduces the chances for women to know whether they are being paid the full value of their work.		
<b>What are the policy objectives and the intended effects?</b> <ul style="list-style-type: none"> <li>• Increase transparency about pay in the private and public employment sectors</li> <li>• Make it easier for women to find out whether they are being paid what their work is worth</li> <li>• Reduce the difficulty women have in identifying real comparators on which to base an equal pay claim</li> </ul>		
<b>What policy options have been considered? Please justify any preferred option.</b> <ul style="list-style-type: none"> <li>• Option 1: do nothing</li> <li>• Option 2: impose a ban on pay secrecy between colleagues and make action possible by an individual who is subjected to such a ban</li> <li>• <b>Option 3: impose a ban on requiring pay secrecy of employees and make action possible when action is taken against an employee for discussing pay with a view to finding out if they are disadvantaged because of a protected characteristic (final proposal)</b></li> </ul> <p>Option 3 is the final proposal because it will clearly prohibit the practice of banning discussions of pay between colleagues, and will be enforceable effectively at the point where enforcement is needed – when an employee does have such a discussion. Option 1 would leave it open to employers to operate discriminatory pay practices in relative secrecy. Option 2 seemed unlikely to be effective since at the point when an employer purports to impose a ban a male employee may not consider it worthwhile to challenge it.</p>		
<b>When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects?</b>  Immediately, and on an ongoing basis, by the Equality and Human Rights Commission. The Government will also review after 5 years.		

## Outlawing pay secrecy : Analysis & Evidence

Policy option : 3

Impose a ban on pay secrecy between colleagues and make action possible when action is taken against an employee for discussing pay with a colleague

COSTS	ANNUAL COSTS		Description and scale of key monetised costs by 'main affected groups'	
	One-off (Transition)	Yrs		
	£ 0	1		
	Average Annual Cost (excluding one-off)		<p><b>Public Sector</b> – costs up to £342,272</p> <p><b>Private Sector</b> – costs up to £1,537,263</p> <p><b>Voluntary Sector</b> – costs up to £26,150</p> <p><b>Individuals</b> – costs up to £326,872</p> <p>Familiarisation costs are factored into the overall familiarisation costs for the Bill, in pages 12-30.</p>	
	Up to £2,232,557	10	Total Cost (PV)	Up to £19,217,153
Other key non-monetised costs by 'main affected groups'				

BENEFITS	ANNUAL BENEFITS		Description and scale of key monetised benefits by 'main affected groups'	
	One-off	Yrs		
	£ 0	1		
	Average Annual Benefit (excluding one-off)		<p><b>Individuals</b> – benefits up to £326,872</p>	
	£ 326,872	10	Total Benefit (PV)	£2,813,614
<p>Other key non-monetised benefits by 'main affected groups'</p> <p>Private Sector – greater employee satisfaction due to increased perceived openness and fairness, greater attractiveness as employer</p> <p>Taxpayer – greater progress toward elimination of gender discrimination in pay, increased transparency</p> <p>Individual - greater awareness of rewards available for work, better chances to agree reward for work, greater feeling of fairness</p>				

### Key Assumptions/Sensitivities/Risks

Price Base Yr	Time Period Years	Net Benefit Range (NPV)	NET BENEFIT (NPV Best estimate)
2009	10	Up to -£16,403,539	£ See Range

What is the geographic coverage of the policy/option?					GB
On what date will the policy be implemented?					See page 8
Which organisation(s) will enforce the policy?					N/A
What is the total annual cost of enforcement for these organisations?					£ 0
Does enforcement comply with Hampton principles?					N/A
Will implementation go beyond minimum EU requirements?					N/A
What is the value of the proposed offsetting measure per year?					£
What is the value of changes in greenhouse gas emissions?					£ 0
Will the proposal have a significant impact on competition?					No
Annual cost (£-£) per organisation (excluding one-off)	Micro	Small	Medium	Large	
Are any of these organisations exempt?	No	No	N/		
<b>Impact on Admin Burdens Baseline (2005 Prices)</b>					
					(Increase - Decrease)
Increase of	£ 0	Decrease of	£ 0	<b>Net Impact</b>	<b>£ 0</b>
Key: Annual costs and benefits: Constant Prices (Net) Present Value					

## Evidence

### What policy options were rejected?

It is difficult for women to know whether they are being paid equally with male colleagues doing equivalent work. The former Equal Opportunities Commission, in their response to the consultation paper on the Equality Bill, drew attention to a study showing that 22% of employers imposed secrecy of this kind. The EHRC have since found, in 2009, that 19% of employers they surveyed still do so.

- Option 1: Do nothing. This would not increase the ability of women to know their pay situation in relation to others. It would remain difficult for some women to identify comparators, and leave the situation of men who discuss their pay with a female colleague in danger of reprisals. A culture of secrecy would continue to be fostered in some employment sectors.
- Option 2: Ban secrecy requirements and make action by an employee possible when a restriction is imposed. This option has the apparent advantage of immediacy, by making a challenge possible when an employer first asserts that his employees may not discuss their pay with one another. However, it seems unlikely that male employees will readily consider and challenge such an instruction at that point. This may leave a complainant at a later stage vulnerable to assertions that some personal factor has caused him to act as he does, and it is to this that the employer is responding. In addition, allowing actions at this stage may raise the likelihood of unmeritorious claims based on miscommunication or misunderstanding.

## Analysis of costs & benefits of chosen option

Option 3: Ban secrecy requirements and make action possible when action is taken against an employee for having such a discussion. This option responds directly to any disadvantage suffered by an individual who has action taken against them for discussing their pay with a view to establishing whether they have suffered disadvantage as a result of having a protected characteristic. Like option 2, it makes clear at the same time that such a restriction cannot be upheld. It will therefore enable employees, if they choose, to challenge such a restriction informally when first it is imposed or when they first become aware of it, by drawing the law to the attention of the employer. This should also help to reduce the likelihood of tribunal cases arising. Potential costs are set out in the table:

	Average number of tribunal cases per year	X	1%	=	Increase in tribunal cases	X	Cost per case	=	Cost of proposal
Employer (Private & Public Sector)	23,103	X	1%	=	231	X	£5393	=	£1,245,783
Taxpayer	23,103	X	1%	=	231	X	£1,034	=	£238,854
Individual	23,103	X	1%	=	231	X	£1331	=	£307,461

This calculation assumes that there will be an increase of 1% in the number of gender discrimination cases at tribunal – which we consider to be an overestimate. Given clarity in the law it is unlikely that employers will seek to take action against an individual who discloses their pay – whereas at present there may be cases in which such action is taken even in circumstances when the individual could claim victimisation.

From the Survey of Employment Tribunal Applications 2003, we can estimate the sector composition of employment tribunals. The table shows compensation costs to each sector.

Compensation Costs	Estimate
Public Sector	£ 88,255
Private Sector	£ 212,467
Voluntary Sector	£ 26,150
<b>Total</b>	<b>£ 326,872</b>

### Risks

Option 3 presents the minimal level of risk.

### Enforcement

Enforcement will be by action at employment tribunal.

### Administrative burdens

This policy does not create any additional administrative burdens or savings against the department's administrative burden baseline.



## Annex M - Gender pay gap publishing

<b>Department /Agency: GEO</b>		<b>Gender pay gap publishing in the private and voluntary sectors</b>	
<b>Stage: Royal Assent</b>	<b>Version: 5</b>	<b>Stage: Royal Assent</b>	
<b>Related Publications:</b> Equality Bill Impact Assessment (House of Lords Introduction) December 2009			
<b>Available to view or download at: <a href="http://www.equalities.gov.uk">http://www.equalities.gov.uk</a></b>			
<b>Contact for enquiries: Matthew King</b>		<b>Telephone: 0303 444 1204</b>	

### What is the problem under consideration? Why is government intervention necessary?

The Government has national targets to reduce the gender pay gap. But to tackle inequality we must be able to see it. We know that across the country there is an overall pay gap between men and women of 22.0% based on median pay for full and part-time workers. However, we do not know what the picture is by employer or employment sector. Given that 79.1% of the population is employed in the private and voluntary sector<sup>125</sup> it is essential that we work with this sector if we are to reduce these labour market disparities

Government intervention is necessary because, while there has been some improvement in the overall figures in the past decade, the gap began to widen again in 2008 and this was virtually unchanged in 2009. This may indicate a more fundamental continuing problem: occupational segregation remains a key feature of the UK labour market as women tend to be clustered into a narrow range of sectors of the labour market. The impact of this is people being employed below their potential, or out of the labour market altogether. If the UK economy is not fully tapping into the talents and skills of its working age population effectively, this has related, often long-term costs and potentially damages the country's competitiveness. There is a lot of evidence that paid employment is an important route out of poverty and for promoting social mobility. Whichever way viewed, the gender pay gap is holding Britain back.

### What are the policy objectives and the intended effects?

We want larger employers and their staff in the private and voluntary sectors to reap the benefits of reducing their gender pay gap. This outcome first requires improved transparency, which in turn depends on encouraging larger employers to publish, in an accessible way their gender pay gap.

As well as the obvious benefit that transparency will cumulatively bring for those at the wrong end of the pay gap, the impacts for business will also be positive and should more than compensate for any initial outlay in collating and publishing the recommended or required data.

It should bring a new rigour to decision-making on remuneration with a demonstrable framework within which there is a clear linkage between performance and reward.

In turn such improved practice should raise the stock of employers with their own workforce, leading to improved productivity and better retention of talent. Employers who take these responsibilities seriously will see an improvement in their image to key outsiders – to investors, clients and potential employees. We expect business will increasingly regard reporting on their progress on equality as an important part of explaining to investors and others the prospects for the business, which will in turn alter their recruitment practices. Over time we expect this to lead to a cultural change with businesses establishing their own benchmarks to measure progress and remain economically and ethically attractive to investors and potential recruits.

<sup>125</sup> ONS Labour Force Survey Q2 2009

**What policy options have been considered? Please justify any preferred option.**

Option 1 - Do nothing. Despite successive anti-discrimination and equal pay legislation there has been relatively little improvement in the pay gap over the past 10 years, with women and men concentrated in very different employment sectors. Given the limited progress towards closing the gender pay differential the Government is committed to do more, so to do nothing is not an option.

**Option 2 – Introduce gender pay gap publishing for larger employers (preferred option).** By increasing transparency in pay, we are enabling the private and voluntary sectors to set benchmarks for progress without imposing disproportionate costs. Evidence suggests<sup>126</sup> that many leading employers already collect some of the relevant information and they may be prepared to make it public if they were not to be disadvantaged in the market place by doing so. For example CIPD<sup>127</sup>'s 2005 survey found that only 12% of respondents did not have the data to carry out an equal pay review, suggesting the majority of employers would already have the relevant information to set out the overall gender pay gap.

The Government appreciates the Equality and Human Rights Commission's (EHRC) work with stakeholders and their production of a set of measurements of the gender pay gap that private and voluntary sector employers with at least 250 staff can start to use on a voluntary basis from 2010. A public consultation took place over the autumn of 2009 and the Commission has now published its proposals for measuring and publishing gender pay gap information. It is expected that guidance for employers will be issued in April 2010.

The Equality Act contains a power to require publication of the pay gap by such employers, but this will only be used if sufficient progress on voluntary publication is not made by 2013.

Option 3 – Introduce mandatory pay audits. Compel companies or businesses to carry out pay audits to identify issues relating to unequal pay. While we believe pay audits can be a powerful tool there is mixed evidence on their effectiveness. For some companies the related costs may outweigh the benefits. Research commissioned by the Equal Opportunities Commission in 2005 found that the administrative cost of carrying out an equal pay review was typically the equivalent of three to six months of the time of a single member of staff

**When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects?**

The EHRC will regularly report to the Government on voluntary progress by employers in publishing their pay gaps. We will also monitor the costs of so doing and will measure the benefits as they begin to accrue, though this will take time and not all benefits will easily be quantified on a monetary basis.

Similar monitoring is envisaged in the event that the power to require publication is commenced from 2013.

<sup>126</sup> See Nottingham Business School Association of Chartered Certified Accountants report

<sup>127</sup> Chartered Institute of Personnel and Development

# Gender pay gap publishing: Analysis & Evidence

Policy option : 2

Gender pay gap publishing in the private and voluntary sectors

ANNUAL COSTS		Description and scale of <b>key monetised costs</b> by 'main affected groups'  Private and voluntary sector employers in Great Britain that have 250 or more employees
COSTS	One-off (Transition) Yrs	
	£ See example 2	
	Average Annual Cost (excluding one-off)	
	£ See example	
Total Cost (PV)		£ -
Other <b>key non-monetised costs</b> by 'main affected groups'		

ANNUAL BENEFITS		Description and scale of <b>key monetised benefits</b> by 'main affected groups'  Private and voluntary sector employers in Great Britain that have 250 or more employees
BENEFITS	One-off Yrs	
	£ See example 2	
	Average Annual Benefit (excluding one-off)	
	£ See example	
Total Benefit (PV)		£
Other <b>key non-monetised benefits</b> by 'main affected groups'		

Key Assumptions/Sensitivities/Risks

Price Base Year	Time Period Years	Net Benefit Range (NPV) £ -		NET BENEFIT (NPV Best estimate) £	
What is the geographic coverage of the policy/option?				GB	
On what date will the policy be implemented?				See notes p.3	
Which organisation(s) will enforce the policy?				EHRC	
What is the total annual cost of enforcement for these organisations?				£	
Does enforcement comply with Hampton principles?				Yes	
Will implementation go beyond minimum EU requirements?				Yes	
What is the value of the proposed offsetting measure per year?				£	
What is the value of changes in greenhouse gas emissions?				£	
Will the proposal have a significant impact on competition?				No	
Annual cost (£-£) per organisation		Micro	Small	Medium	Large
Are any of these organisations exempt?		Yes/No	Yes/No	N/A	N/A
Impact on Admin Burdens Baseline (2005 Prices) (Increase - Decrease)					
Increase	£ 0	Decreas	£ 0	Net	£ 0
Key:		Annual costs and benefits: Constant Prices			(Net) Present

## Evidence

### Background

The table below demonstrates the relatively slow progress in reducing the gender pay gap over the last 12 years despite existing legislation. In 2009 the gradual downwards trend since 1997 continued after the overall figure rose in 2008 for the first time since 2002; moreover in the current economic climate there is a risk that this downward trend could be reversed.

Year	Overall (FT/PT) median gender pay gap (%)
1997	27.5
1998	27.3
1999	27.0
2000	26.7
2001	26.4
2002	26.9
2003	25.1
2004	24.7
2005	22.7
2006	22.2
2007	21.9
2008	22.5
2009	22.0

Source: ONS Labour Force Survey and Annual Survey of Hours and Earnings

Recent research concluded that self-regulatory initiatives for gender pay disclosure had limited potential for improved accountability and that there was little alternative to regulation if we are to see an improvement in accountability, and to discover where inequality of opportunity lies<sup>128</sup>. Reporting on performance on workplace gender issues among UK companies has improved considerably over the last decade but this is often non-comparable data, which is one of the greatest barriers to improved reporting on this issue; without transparency it remains unclear what action, if any, is needed to ensure equality of opportunity.

Research has also found some businesses have withheld detailed information available internally on gender equality because of concerns that it does not reflect well on the company and also because they have experienced little demand from the public for more information; several also identified that they do not want to be the first in the industry to publish data<sup>129</sup>.

In light of these evidence policy option 1 (do nothing) would not be considered appropriate.

### The benefits of publishing the measured gender pay gap

On a narrow measure, inviting employers to publish by accessible means their gender pay gap will help identify areas of occupational segregation within an organisational structure as well as across sectors and in regions.

Many other benefits would flow, as previously explained. The Equality and Human Rights Commission, together with the CBI and the TUC have argued that recruiting and promoting people on the basis of competence can help a business to find talent in unexpected places, and to retain

<sup>128</sup> *Equal Opportunity for Women in the Workplace: A Study of Corporate Disclosure* by Kate Grosser, Professor Carol Adams & Professor Jeremy Moon

<sup>129</sup> Private Company Reporting of Workforce Diversity Data by IFF Research and prepared for the Government Equalities Office.

those people longer. Finding the right people with the right skills and aptitudes is essential, particularly when companies are facing economic pressures.<sup>130</sup>

### **Who will be encouraged to report on metrics?**

Private and voluntary sector employers in Great Britain that have 250 or more employees should be publishing this information. From 2013 this group could be required to do so. To estimate this target population we have used data from the FAME<sup>131</sup> dataset that estimates there about 16,000 active registered companies with more than 250 employees. (We are using this data to estimate the number of private and voluntary sector organisations with 250 or more employees as we believe the numbers are roughly equivalent.)

### **What the legislation would require**

The publication of information relating to the pay of employees in order to show if there is a gender pay gap. The Government invited the EHRC to work with the CBI, the TUC and others to develop the appropriate 'metrics' for measuring the gender pay gap, which the companies and voluntary sector organisations covered by the power should be encouraged to report on; and options for how these should be published. The EHRC recommended a menu of four options from which employers could choose:

- A measurement of the mean hourly earnings of men and women working in the concern
- Average overall earnings of men and women by job type and grade
- The difference between men's and women's starting salaries
- A narrative to compliment the above options

The Government has also asked the EHRC to report annually on progress towards gender pay transparency. A full impact assessment would be conducted prior to any use, from 2013, of the gender pay publishing power in the Act.

### **Costs of chosen option**

The costs of the voluntary publishing arrangements or any legislation would arise in three main areas:

- A one-off familiarisation cost
- A one-off implementation cost
- An annually recurring cost

It is assumed that "familiarisation", in the great majority of cases and for most employers and individuals, will mean familiarisation with or through guidance and advice provided by the EHRC (Equality and Human Rights Commission) and/or by other advisory bodies such as ACAS (Advisory, Conciliation and Arbitration Service). It is also assumed that "familiarisation" means reaching the point where a manager or relevant employee of a firm is aware of the changes in the law and how they impact on the business.

The one-off implementation cost may involve the set up of new collection and reporting processes to follow the voluntary arrangements or comply with the legislation. The annually recurring cost would involve the ongoing cost associated with voluntary compliance or legislation.

A full quantitative impact assessment for this proposal will be completed when the EHRC has completed and reported on the appropriate 'metrics' for measuring the gender pay gap, and how

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<sup>130</sup> *Talent not Tokenism - the business benefits of workforce diversity* CBI, TUC, EHRC Report, June 2008

<sup>131</sup> FAME (Financial Analysis Made Easy) is a database that provides financial and descriptive information on companies in the UK and Ireland. Published by Bureau van Dijk Electronic Publishing (BvDEP), <http://www.bvdep.com/en/fame.html>

this would be published, but certain indicative assumptions have been made in this assessment for illustrative purposes.

Although the precise details for the voluntary arrangements and any compulsory regime from 2013 may vary slightly, our assumption is that the cost per employer of publishing, for example, a single figure annually under either approach should be similar.

The example below assumes a voluntary arrangement to publish the overall median gender pay gap which compares women's median hourly pay (excluding overtime) as a percentage of men's median hourly pay (excluding overtime). All permanent employees are included, including part-time workers, and there is no weighting of employees related to the number of hours they work. The overall gender pay gap simply compares the relative positions of men and women within the organisation, there is no further granulation.

### **Level of existing data collection**

We know many private sector companies are already collecting the necessary data to calculate their companies' single figure gender pay gap. The 2008 equal pay review survey conducted by IFF Research on behalf of the Equality and Human Rights Commission (EHRC), found that 35% of all private sector companies had a company objective related to closing the gender pay. The proportion was even greater for larger firms, 46% for employers with between 100 and 499 employees, and 56% for employers with 500+ employees.

The research also looked at the incidence of equal pay review activity for the private sector in 2008. An equal pay review is a tool used by employers to ensure that their pay systems deliver equal pay, as defined by the Equal Pay Act. To carry out an equal pay review an employer needs to collect key job and personal characteristics for its employees and specific pay information data. The bare minimum for an employer would be gender, full-time or part-time, job title, basic pay, and standard or normal hours.

The findings showed that 17% of all private sector companies had conducted an equal pay review in 2008, a further 5% were in the process of conducting a review and 17% were planning to complete a review. Again engagement was higher in large companies, of employers with between 100 and 499 employees 21% had completed a review, 6% were in the process, and 21% had plans to conduct a review. The largest companies with 500+ employees had the most engagement with 32% having completed a review, a further 15% in the process, and 27% planning to conduct a review. The findings also found that of those companies that had completed a review in 2008, 85% said they would conduct another review within the next three years.

Other research conducted by IFF Research for the Government Equalities Office looked at the reporting of workforce diversity data in private companies with 250 or more employees. The findings showed that 42% of the companies reviewed collected workforce diversity data. However, only 8% of these companies went on to publish the diversity data; of the diversity data reported gender was by far the most common. The findings showed 7% of companies reviewed were publishing workforce data on gender. Overall the findings showed that over a fifth of companies reviewed were collecting diversity data, and appreciated the value of monitoring workforce diversity.

From the evidence outlined above we can assume a proportion of private sector companies with 250 or more employees are already collecting the necessary data to calculate a gender pay gap. They may be doing this to carry out equal pay reviews or it may be to monitor progress against an objective or simply an engagement with the equality agenda. Certain information is also required by legislation for companies with 250 or more employees to collect. The Companies Act 2006 requires the number of employees and average total wages over the financial year. The Employment Rights Act 1996 also requires companies to collect more detailed information of employees pay alongside hours of work.

Therefore calculations below assume 50% of private sector companies with 250 or more employees will not require implementation costs for reporting a single figure gender pay gap. (The voluntary sector has also been included in this assumption)



## One-off implementation costs

The publication of a single figure gender pay gap will involve a one-off cost to 50% of the employers in scope (8,000) to implement a new process within the organisation. We have assumed the pay data needed to calculate and publish the pay gap is already collected and available under either the Companies Act 2006 or Employment Right Act 1996.

The small one-off implementation cost will arise from the collect of gender data and the creation of a process to calculate the gender pay gap. We have calculated this cost as a full working day of a human resource manager's time<sup>132</sup>.

Per enterprise the cost is therefore: £177

The total cost of implementation is therefore: £1,418,217

## Annually recurring costs

After the first year of one-off implementation and familiarisation costs, we assume the reporting of a single figure gender pay gap will become business as usual and involve minimal continued resource. Once the data collection is in place and the process of calculation is established the continued resource required would simply involve updating the data. We have calculated this cost as a one hour of a human resource manager's time<sup>133</sup>.

Per enterprise the cost is therefore: £25.33

The total annual cost of calculation is therefore: £401,913

## Non-monetised benefits

Employers who promote equality of opportunity among their workforce can draw on a wider pool of talent and experience, to create an environment where employees are valued and supported, whilst appreciating their colleagues' contribution. A climate where unlawful discrimination is fostered, condoned or ignored cannot provide these benefits.

In today's economy an organisation's success and competitiveness can depend upon its ability to embrace diversity and to draw upon the skills, understanding and experience of all people. A recent report from the CBI, TUC and EHRC<sup>134</sup> outlined the following benefits for core business:

- Increased employee satisfaction, which helps attract new applicants and retain current staff, this may lead to reduced recruitment costs and can increase productivity.
- Better understanding of how the company's diverse customers think and what drives their spending habits, or how to access markets they have not previously been able to tap into effectively. Including people who aren't all the same in the workforce and among key decision makers can lead to an even better understanding of how customers think. It can also assist in opening up new markets – and it can be a positive selling point with some customers.
- It is difficult finding workers to fill skills gaps in areas with tight labour markets, and where there are not enough 'obvious candidates' for the vacancies they have. Recruiting and promoting people on the basis of competencies can help a business to find talent in unexpected places, and to hang onto those people longer. Finding the right people with the

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<sup>132</sup> Hourly wage £25.33 taken from the ONS Annual Survey of Hours and Earnings 2009.

<sup>133</sup> Hourly wage £25.33 taken from the ONS Annual Survey of Hours and Earnings 2009.

<sup>134</sup> 'Talent not Tokenism.' This guide provides advice on how to identify, nurture and promote talent. It contains good practice case studies of employers who have created a more diverse workforce and describes the benefits of doing so. Published June 2008



right skills and aptitudes is essential, particularly when companies are facing economic pressures.

Achieving greater gender pay transparency, through employers publishing their gender pay gaps, is an important lever to achieve greater gender diversity in the work place. If you cannot see a problem it is often very hard to tackle it. By shining a light on the issue we can help employers analyse their current position and how it might be improved as part of wider diversification in the workforce.

Gender pay transparency should be seen as a helpful management tool for change and a response to shareholders, consumers and staff who are increasingly demanding even more transparency from the companies and other organisations they have a stake in.

Recent research<sup>135</sup> concluded that self-regulatory initiatives for gender pay disclosure had limited potential for improved accountability and that there was little alternative to regulation if we are to see an improvement in accountability, and to discover where inequality of opportunity lies. Reporting on performance of workplace gender issues among UK companies has improved considerably over the last decade but this is often non-comparable data, which is one of the greatest barriers to improved reporting on this issue; without transparency it remains unclear what action, if any, is needed to ensure equality of opportunity.

### **Evidence on effectiveness of pay reviews (audits)**

Mixed evidence exists for the effectiveness of pay reviews. Systemic discrimination is often hidden, not well understood, and therefore is unlikely to be eradicated if it is simply left to individuals to take cases to employment tribunals. A corporate process can therefore be valuable in making inequalities within the company clear.

However, there is some evidence that equal pay reviews only address that part of the pay gap which arises out of unlawful discrimination in pay systems and may leave other aspects such as occupational segregation, the lack of quality part-time work, skills and training, and supporting mothers in returning to work untouched. Research from the Women and Work Commission showed that many companies that had undertaken equal pay reviews found the process costly and resource intensive, and recommended a light touch approach.

In the Equal Pay and Flexible Working Bill [HL] debate in the House of Lords 23 January 2009 Baroness Prosser said: "I turn now to the question of pay audits... they are unlikely to make much difference. There are very few equal pay cases which succeed at tribunal. Many are settled before reaching court; many more are lost."

Baroness Vadera said: "A study carried out for the Equal Opportunities Commission in 2005 found that a typical audit in the private sector cost the equivalent of three to six-months' of a full-time member's staff time. Nor would it have a significant impact on the gender pay gap. It would have applied to only 125 equal pay cases in 2006-07, the latest year for which figures are available. This equates to only 2 per cent of the total number of equal pay cases in that period. In preparing our Equality Act, the Government have carefully considered the case for all employers to carry out mandatory equal pay audits. We have concluded that while equal pay audits can be useful as a way of exploring unfair pay practices in some circumstances, they can also be expensive, time-consuming and burdensome."

### **Administrative burdens**

The Equality Act contains a power to require publication of the pay gap by employers with 250 or more employees, but this would only be used if sufficient progress on voluntary publication is not made by 2013. If the power was used this policy would create new administrative burdens on large employers, using the example outlined above of reporting on a single figure gender pay gap

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<sup>135</sup> Equal Opportunity for Women in the Workplace: A Study of Corporate Disclosure by Kate Grosser, Professor Carol Adams & Professor Jeremy Moon

annually, the additional administrative burden would be in the region of £401,913 and £25.33 per organisation. The true administrative burden would be assessed if/when the power is used in 2013.

## **Notes:**

### **The Companies Act 2006**

#### **Information that has to be provided by companies with 250+ employees**

- Average number of persons employed by the company in the financial year (Sect 411 (1)(a))
- Aggregate amounts of wages and salaries paid or payable during that financial year (Sect. 411(5)(a))
- The business review must “to the extent necessary for an understanding of the development, performance or position of the company’s business” include information about
  - the company’s employees, (Sect.417 (5)(ii))
  - analysis using Key Performance Indicators including information relating to employee matters (Sect.417 (6)(b))

### **The Employment Right Act 1996**

#### **Information that has to be provided by companies with 250+ employees**

- Statement of initial employment particulars (1) Where an employee begins employment with an employer, the employer shall give to the employee a written statement of particulars of employment. The statement shall contain particulars of-
  - (a) the names of the employer and employee,
  - (b) the date when the employment began, and
  - (c) the date on which the employee’s period of continuous employment began (taking into account any employment with a previous employer which counts towards that period).
- The statement shall also contain
  - (a) the scale or rate of remuneration or the method of calculating remuneration,
  - (b) the intervals at which remuneration is paid (that is, weekly, monthly or other specified intervals),
  - (c) any terms and conditions relating to hours of work (including any terms and conditions relating to normal working hours),
  - (d) any terms and conditions relating to any of the following—
    - (i) entitlement to holidays, including public holidays, and holiday pay (the particulars given being sufficient to enable the employee’s entitlement, including any entitlement to accrued holiday pay on the termination of employment, to be precisely calculated),
    - (ii) incapacity for work due to sickness or injury, including any provision for sick pay, and
    - (iii) pensions and pension schemes,
- An employer must also provide employees with an itemised pay statement at or before the time at which any payment of wages or salary is made. The statement shall contain particulars of-
  - (a) the gross amount of the wages or salary,
  - (b) the amounts of any variable, and (subject to section 9) any fixed, deductions from that gross amount and the purposes for which they are made,
  - (c) the net amount of wages or salary payable, and
  - (d) where different parts of the net amount are paid in different ways, the amount and method of payment of each part-payment.

## Annex N – Associations including private clubs

**Department GEO**

**Extension of protection because of sex, gender reassignment, pregnancy and maternity, age and religion or belief in associations including private clubs and the extension of protection to guests across all strands, as is currently provided because of disability**

**Stage: Royal Assent**

**Version: 5**

**Stage: Royal Assent**

**Related Publications:** (1) Discrimination Law Review: Proposals for an Equality Bill for Great Britain (June 2007). (2) Proposals to simplify and modernise the law: Initial RIA (June 2007). (3) Framework for a Fairer Future (June 2008) and (4) the Government response to the consultation (July 2008) (5) Equality Bill Impact Assessment (Introduction) 27 April 2009 (6) Equality Bill Impact Assessment (House of Lords Introduction) December 2009

**Available to view or download at:** <http://www.equalities.gov.uk>

**Contact for enquiries:** Kate Richardson

**Telephone:** 0303 444 1204

### **What was the problem under consideration? Why was government intervention necessary?**

Some associations such as private clubs with mixed male/female membership do not treat women equally. For example, they do not allow women to vote as full members; and they restrict women's access to the club's facilities. In the past the Government tried to tackle this through voluntary measures but still received representations from people who felt that they had been discriminated against. Similarly protection was not previously provided because of religion or belief, age, gender reassignment and pregnancy and maternity.

The number of associations in Great Britain is not known and cannot be estimated reliably. This is because an association is by its very nature a private organisation which means that it does not always appear in any publicly available data.

### **What are the policy objectives and the intended effects?**

To ensure that private clubs with 25 or more members were not be able to discriminate because of any of the protected characteristics in the Act.

To ensure that such bodies do not discriminate against associates and guests. However, it is still lawful for clubs to admit only members (or guests) with a particular characteristic, for example all-men or all-women clubs.

### **What policy options were considered? Please justify any preferred option.**

Option 1 – Do nothing.

**Option 2 – Extend protection from discrimination by associations to the protected characteristics of sex, religion or belief, age, gender reassignment and pregnancy and maternity, and for all protected characteristics extend protection to cover guests (chosen option).**

**Our final option was option 2.** The Government decided on this option because it did not think it was right for private members' clubs to treat some of their members as second-class citizens. In the past the Government had encouraged clubs to address this issue voluntarily, but people continued to complain that they were experiencing discrimination. The Act therefore makes it unlawful for private clubs to discriminate against either their members or guests because of any of the protected characteristics.

### **When will the policy be reviewed to establish the actual costs and benefits and the**

**achievement of the desired effects?**

After implementation, and on an ongoing basis, by the Equality and Human Rights Commission. The Government will also review after 5 years.

## Associations including private clubs : Analysis & Evidence

Policy option : 2

Extension of protection because of sex, gender reassignment, pregnancy and maternity, age and religion or belief in associations including private clubs. Extension of protection to guests across all strands, as is currently provided because of disability

COSTS	ANNUAL COSTS		Description and scale of key monetised costs by ‘main affected groups’  The costs of this measure are small, but we recognise that there will be adjustment costs particularly for existing mixed male/female clubs (e.g. to provide extra changing facilities). Familiarisation costs are factored into the overall familiarisation costs for the Bill, in pages 12-30.	
	One-off (Transition)	Yrs		
	£	1		
	Average Annual Cost (excluding one-off)			
	£ Negligible	10	Total Cost (PV)	£ Negligible
Other key non-monetised costs by ‘main affected groups’				

BENEFITS	ANNUAL BENEFITS		Description and scale of key monetised benefits by ‘main affected groups’	
	One-off	Yrs		
	£ 0	1		
	£ Negligible	10	Total Benefit (PV)	£ Negligible
	Other key non-monetised benefits by ‘main affected groups’			
<p>Previously, the law stopped discrimination by private clubs on the basis of some protected characteristics but not others. The Government wanted the law to be consistent and as clear and simple as possible.</p> <p>This measure stops some people from being unfairly excluded from some private clubs altogether or being treated as second class members who have fewer rights than other members</p>				

### Key Assumptions/Sensitivities/Risks

Price Base Yr	Time Period Year	Net Benefit Range (NPV)	NET BENEFIT (NPV Best estimate)
2009	10	£ Negligible	£ Negligible

What is the geographic coverage of the policy/option?

GB

On what date will the policy be implemented?	See page 8			
Which organisation(s) will enforce the policy?	N/A			
What is the total annual cost of enforcement for these organisations?	£ 0			
Does enforcement comply with Hampton principles?	N/A			
Will implementation go beyond minimum EU requirements?	N/A			
What is the value of the proposed offsetting measure per year?	£ 0			
What is the value of changes in greenhouse gas emissions?	£ 0			
Will the proposal have a significant impact on competition?	No			
Annual cost (£-£) per organisation (excluding one-off)	Micro	Small	Medium	Large
Are any of these organisations exempt?	No	No	N/	N/

Impact on Admin Burdens Baseline (2005 Prices)					
					(Increase - Decrease)
Increase of	£ 0	Decrease of	£ 0	<b>Net Impact</b>	£ 0
Key: Annual costs and benefits: Constant Prices (Net) Present Value					

## Evidence

### Background

Previously, discrimination by private members' clubs (with 25 or more members) was outlawed because of race, disability and sexual orientation. Discrimination was prohibited against members, prospective members, associates and prospective associates. Discrimination against guests was also outlawed, but *only for disability*.

The June 2007 consultation asked for views on:

- Extending protection against discrimination by private members' clubs to sex (including gender reassignment and pregnancy and maternity), religion or belief and age;
- Prohibiting discrimination against guests because of all the above characteristics (other than disabled guests who were already protected).

The prohibition does not affect private clubs that are restricting membership to people with shared characteristics e.g. clubs for gay men or lesbians, clubs for ethnic minority groups.

Private members' sports clubs will not be forced to allow women to compete alongside men, for example. There was already an exception which allows men and women to be treated differently in "any sport, game or other activity of a competitive nature where the physical strength, stamina or physique of the average woman puts her at a disadvantage to the average man" in previous legislation and that exception has been maintained.

The consultation revealed a relatively high level of interest in the proposals – nearly 200 responses of which the great majority were in favour.

### Costs of chosen option

We expect the costs of these proposals to be small. We do not think that any physical changes will be required to premises as a result of us extending protection because of age and religion or belief. With regard to gender, gender reassignment and pregnancy and maternity, mixed-membership clubs already admit guests of both sexes. All the law requires is that they are treated equally. These private clubs should therefore already have facilities to cater for each gender although we recognise that some alterations may be required to increase the amount of changing facilities etc available.

### **Non-monetised benefits**

Before the Equality Act was introduced it was already unlawful for private clubs to discriminate against someone because they were of a different race, or because they were disabled, or because of their sexual orientation. This extension provides for consistency across the equality strands.

The Government thinks these measures will address a real problem. People were still saying, for example, that some private clubs with mixed male/female membership treat women unfairly. For instance, they did not allow women to vote as full members; or they restricted women's access to the club's facilities. Women golf players wrote to complain about their playing times being restricted or lack of access to the bar. As recently as October 2006, the Club and Institute Union (CIU) stated that some 40% of the 2,500 working men's clubs in the Union denied their female members full rights, including access to the Annual General Meeting where they could vote for equal treatment for women and men.

Extending protection to guests of private member's clubs on the same protected characteristics as members and associates provides consistency and clarity in the law. It is also important to protect guests as to do otherwise may create a hostile environment and discourage individuals from applying for membership which may lead to exclusion.

### **Administrative burdens**

This policy does not create any additional administrative burdens or savings against the department's administrative burden baseline.



<b>Annex O - Improving the handling of discrimination cases in the county and sheriff courts</b>		
<b>Department GEO</b>	<b>Improving the handling of discrimination cases in the county and sheriff courts</b>	
<b>Stage: Royal Assent</b>	<b>Version: 5</b>	<b>Stage: Royal Assent</b>
<b>Related Publications:</b> (1) Discrimination Law Review: Proposals for an Equality Bill for Great Britain (June 2007). (2) Proposals to simplify and modernise the law: Initial RIA (June 2007). (3) Framework for a Fairer Future (June 2008) and (4) the Government response to the consultation (July 2008) (5) Equality Bill Impact Assessment (Introduction) 27 April 2009 (6) Equality Bill Impact Assessment (House of Lords Introduction) December 2009		
<b>Available to view or download at:</b> <a href="http://www.equalities.gov.uk">http://www.equalities.gov.uk</a> <b>Contact for enquiries:</b> Kate Richardson <span style="float: right;"><b>Telephone: 0303 444 1204</b></span>		
<b>What was the problem under consideration? Why was government intervention necessary?</b> <p>There was a concern that the outcomes of discrimination cases involving the provision of goods, facilities and services were unpredictable, partly as a result of the county and sheriff courts' relative unfamiliarity with discrimination law compared to employment tribunals which deal with discrimination cases in greater volumes.</p>		
<b>What are the policy objectives and the intended effects?</b> <p>The overall objective of these measures is to create a more efficient and effective process for dealing with discrimination claims in county and sheriff courts and to improve the consistency of judgments made in discrimination claims.</p>		
<b>What policy options have been considered? Please justify any preferred option.</b> <ul style="list-style-type: none"> <li>• Option 1: do nothing.</li> <li>• <b>Option 2 (Chosen proposal): discrimination cases concerning the provision of goods, facilities and services, etc will be heard by a judge who would be accompanied by an assessor with discrimination expertise.</b></li> <li>• Option 3: discrimination cases concerning the provision of goods, facilities and services, etc would be heard by judges accompanied by two assessors with discrimination expertise.</li> </ul>		
<b>When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects?</b> <p>After implementation, and on an ongoing basis, by the Equality and Human Rights Commission. The Government will also review after 5 years.</p>		

## Improving the handling of discrimination cases in the county and sheriff courts : Analysis & Evidence

Policy option: 2

Improving the handling of discrimination cases in the county and sheriff courts.

COSTS	ANNUAL COSTS		Description and scale of key monetised costs by ‘main affected groups’	
	One-off (Transition)	Yrs		
	£ 0	1		
	Average Annual Cost (excluding one-off)		Fees for Assessors – Calculated as 1 assessor per case (average duration 1 day) plus travelling expenses multiplied by the number of cases per year. These costs take account of the savings resulting from only requiring 1 assessor for race cases instead of 2.  Between £7,623 and £19,728 per year.  Familiarisation costs are factored into the overall familiarisation costs for the Bill, in pages 12-30.	
	£7,623 - 19,728	10		
		Total Cost (PV)	£ 65,616 to £ 169,812	
Other key non-monetised costs by ‘main affected groups’				

BENEFITS	ANNUAL BENEFITS		Description and scale of key monetised benefits by ‘main affected groups’  Taxpayer: More efficient disposal of cases will result in savings for the taxpayer of between £4,958 and £10,103.  Private Sector: More efficient disposal of cases will result in savings of between £28,582 and £58,243  .Individuals: More efficient disposal of cases will result in savings of between £7,052 and £14,371	
	One-off	Yrs		
	£ 0	1		
	Average Annual Benefit (excluding one-off)			
	£ 40,593 to £ 82,716	10	Total Benefit (PV)	£ 349,408 to £ 711,998
Other key non-monetised benefits by ‘main affected groups’  This measure could lead to more consistent judgements and greater legal certainty, which in turn should increase confidence in the courts, and create a better body of case law. It would also be relatively straightforward to implement and could also increase the efficiency of hearings, reducing the amount of time actually spent in court.				

### Key Assumptions/Sensitivities/Risks

Use of data on tribunal costs to estimate county court costs where data are not available. Assumes that the number of goods, facilities and services cases will stay the same. Assumes that changes will mean a 10% (30 minute) reduction in the time spent on each case. Assumes a 10% time saving for individuals and employers. Assumes 1 assessor would be needed for 1 day on average for each case. Assumes a yearly average of between 53 and 108 cases per year across all six strands<sup>136</sup>.

Price Base Yr	Time Period Years	Net Benefit Range (NPV)	NET BENEFIT (NPV Best estimate)
2009	10	£179,596 to £646,381	£412,988 (mid-point)

What is the geographic coverage of the policy/option?			GB	
On what date will the policy be implemented?			See page 8	
Which organisation(s) will enforce the policy?			N/A	
What is the total annual cost of enforcement for these organisations?			£ 0	
Does enforcement comply with Hampton principles?			N/A	
Will implementation go beyond minimum EU requirements?			N/A	
What is the value of the proposed offsetting measure per year?			£	
What is the value of changes in greenhouse gas emissions?			£ 0	
Will the proposal have a significant impact on competition?			No	
Annual cost (£-£) per organisation (excluding one-off)	Micro	Small	Medium	Large
Are any of these organisations exempt?	No	No	N/	N/

### Impact on Admin Burdens Baseline (2005 Prices)

					(Increase - Decrease)
Increase of	£ 0	Decrease of	£	Net Impact	£ 0
Key:	Annual costs and benefits: Constant Prices		(Net) Present Value		

## Evidence

### What policy options have been considered?

- **Option 1:** do nothing.
- **Option 2 (chosen):** Given that we only expect between 53 and 108 goods, facilities and services cases per year, most judges will still hear such cases infrequently. There is therefore a clear benefit in making provision for judges to be accompanied by an assessor who has

<sup>136</sup> The Ministry of Justice are currently reviewing the data they collect on court cases, which may allow better estimates in this area. It is difficult to predict how many age discrimination cases there will be in advance of finalising the list of specific exceptions, including any for health and social care. The estimate of age discrimination cases will be updated as additional information and data become available.

expertise in discrimination law issues. Previously the use of assessors was required in Race Relations Act cases (unless both parties agree otherwise) and was optional in Sex Discrimination Act cases. The former Commission for Racial Equality, which had experience of bringing cases under the Race Relations Act, considered that the use of assessors was beneficial and facilitated more efficient and effective case-handling. As the new Equality Act prohibits discrimination in the provision of goods and services across all the protected characteristics, it was considered beneficial to extend this requirement to use assessors to the other protected characteristics. This will help to enhance discrimination expertise in the county and sheriff courts and ensure that cases are handled as efficiently and effectively as possible.

**We consider that the combination of a county court judge and one expert assessor will be sufficient to ensure that the appropriate level of expertise is available in such cases.**

This is because judges will have gained experience as practitioners prior to appointment and are recruited having demonstrated an ability to understand and deal fairly (with equality issues); and levels of awareness of diversity and discrimination issues are higher than in the 1970s (when legislation was introduced with provisions for two assessors). In addition we have invited the Judicial Studies Board to make special training in discrimination law available to all judges as well as to provide a distance learning module to ensure that they have the appropriate level of expertise to deal with discrimination cases.

- **Option 3:** Judges would have been accompanied by two assessors with discrimination expertise. This was considered to be unnecessary in light of the fact that judges will have access to appropriate training, and levels of awareness of diversity and discrimination issues are higher than in the 1970s.

## Analysis of costs & benefits of chosen option

### Benefits

#### Savings for courts

This measure will increase the efficiency of hearings, potentially reducing the amount of time actually spent in court. We estimated a time saving of approximately 10%, or 30 minutes. The savings from this were calculated as follows:

#### *Low estimate*

	Time spent on a case (minutes)	X	Cost per minute	=	Cost per case	X	Number of cases	=	Total cost
Current approach	325	X	£3.11	=	£1,011	X	53	=	£53,583
Revised approach	295	X	£3.11	=	£917	X	53	=	£48,625

Cost of current approach	-	Cost of revised approach	=	Savings
£53,583	-	£48,625	=	£4,958

### High estimate

	Time spent on a case (minutes)	X	Cost per minute	=	Cost per case	X	Number of cases	=	Total cost
Current approach	325	X	£3.11	=	£1,011	X	108	=	£109,188
Revised approach	295	X	£3.11	=	£917	X	108	=	£99,085

Cost of Current approach	-	Cost of revised approach	=	Savings
£109,188	-	£88,992	=	£10,103

When calculating these savings we assumed that if judges hearing discrimination cases received appropriate training and were accompanied by an assessor. In turn this would reduce the time spent on a case by approximately 10%, or 30 minutes. This is because they will have a greater understanding of the issues which arise in discrimination law cases. This uses data on the average court cost taken from the Judicial Statistics Annual Report by Ministry of Justice, 2004<sup>137</sup>.

### Savings for business and claimants

If cases are heard more efficiently, this will also consequently reduce the money paid by businesses and claimants for advice and representation. There are only limited data on the cost of court cases to business and claimants, particularly discrimination cases. However, SETA (Survey of Employment Tribunals Applications) 2003 provides data on the administrative cost of tribunal cases (including money spent on advice and representation and staff time) to both employees and their employers. In calculating these costs we have therefore assumed that costs will be the same in the courts as with the tribunal service. The savings are calculated below:

### Low estimate

	Current cost per case	X	10%	=	Savings per case	X	No of cases	=	Total savings
Business	£5,393	X	10%	=	£474.6	X	53	=	£25,154
Claimants	£1,331	X	10%	=	£117.1	X	53	=	£6,206

### High estimate

	Current cost per case	X	10%	=	Savings per case	X	No of cases	=	Total savings
Business	£5,393	X	10%	=	£474.6	X	108	=	£51,257
Claimants	£1,331	X	10%	=	£117.1	X	108	=	£12,647

### Costs of Assessors

The fee paid to county court (race, sex and landlord & tenant) assessors is £261<sup>138</sup>. Travel expenses will also be paid but these would not be significant as a larger pool of assessors will be available locally to county courts. Cases in the courts last on average 5 hours and 25 minutes. We estimate that between 53 and 108 goods, facilities and services etc cases would be brought before the courts across all protected characteristics. Requiring the use of one assessor in all discrimination cases heard in the courts would therefore incur costs of between £15,423 and £31,428 per annum. These were calculated as follows:

<sup>137</sup> <http://www.official-documents.co.uk/document/cm65/6565/6565.pdf>

<sup>138</sup> The daily rate for existing race assessors is set by the Lord Chancellor and is often subject to two annual increases. Rates can be obtained via [www.justice.gov.uk](http://www.justice.gov.uk).

	<b>Projected cost of one assessor per day for all discrimination cases</b>	<b>X</b>	<b>No of days</b>	<b>X</b>	<b>No of cases</b>	<b>=</b>	<b>Total projected cost</b>
Low estimate	£291 (£261 fee per assessor plus £30 travel expenses) <sup>139</sup>	X	1	X	53	=	£15,423
High estimate	£291 (£261 fee per assessor plus £30 travel expenses)	X	1	X	108	=	£31,428

These costs will however be offset by the savings resulting from only requiring 1 assessor to be used in race cases as opposed to 2. We estimated that there are between 26 and 39 Race Relations Act cases heard in the courts each year. Therefore the previous cost of assessors for race cases alone was calculated at between £15,600 and £23,400 per annum<sup>140</sup>. The savings of only using one assessor were therefore estimated to be between £7,800 and £11,700 per annum.

	<b>Current costs</b>	<b>/</b>	<b>Only required for one day</b>	<b>Revised cost</b>
Low estimate	£15,600	/	2	£7,800
High estimate	£23,400	/	2	£11,700

The overall estimated costs of this measure are therefore as follows:

	<b>Cost of having 1 assessor for all strands</b>	<b>-</b>	<b>Savings from not having 2 assessors for race cases</b>	<b>=</b>	<b>Total</b>
Low estimate	£15,423	-	£7,800	=	£7,623
High estimate	£31,428	-	£11,700	=	£19,728

### **Administrative costs**

There may also be some minimal additional administrative costs arising from the need for court staff to make arrangements for assessors to attend all discrimination cases. These are considered too small to be quantifiable.

### **Non-monetised benefits**

This measure will increase the levels of expertise and experience brought to bear in discrimination cases. This should lead to greater consistency and predictability of judgments, which in turn should increase confidence in the courts and create a better body of case law.

### **Risks**

The low volume of claims may mean that civil court judges will remain relatively inexperienced in dealing with discrimination claims. Our measure is designed to mitigate this risk.

### **Enforcement**

The use of assessors is a requirement set out in the Equality Act. We are working with the Equality and Human Rights Commission to agree criteria for assessors and to ensure that an up-to-date list is maintained.

<sup>139</sup> The travel expenses are higher for existing race assessors because there is a smaller pool of assessors than of Employment Tribunal side members and assessors frequently have to travel out of their region to attend cases.

<sup>140</sup> This was calculated by multiplying the daily costs of 2 assessors £600 by the estimated number of race cases (26 to 39).

**Administrative burdens**

This policy does not create any additional administrative burdens or savings against the department's administrative burden baseline.



## Annex P - Widening the powers of tribunals so that they can make recommendations that benefit the wider work force

<b>Department GEO</b>	<b>Permitting tribunals to make recommendations in discrimination cases (does not include equal pay)</b>	
<b>Stage: Royal Assent</b>	<b>Version: 5</b>	<b>Stage: Royal Assent</b>
<b>Related Publications:</b> (1) Discrimination Law Review: Proposals for an Equality Bill for Great Britain (June 2007). (2) Proposals to simplify and modernise the law: Initial RIA (June 2007). (3) Framework for a Fairer Future (June 2008) and (4) the Government response to the consultation (July 2008) (5) Equality Bill Impact Assessment (Introduction) 27 April 2009 (6) Equality Bill Impact Assessment (House of Lords Introduction) December 2009		
<b>Available to view or download at:</b> <a href="http://www.equalities.gov.uk">http://www.equalities.gov.uk</a>		
<b>Contact for enquiries:</b> Kate Richardson		<b>Telephone:</b> 0303 444 1204
<p><b>What was the problem under consideration? Why was government intervention necessary?</b></p> <p>Employment tribunals previously had a power to make a recommendation that the respondent “take within a specified period action appearing to the tribunal to be practicable for the purpose of obviating or reducing the adverse effect on the complainant of any act of discrimination to which the complaint relates”. Recommendations were made for the benefit of the individual complainant only, but in fact they often indirectly benefited the wider workforce as well.</p> <p>However, in 72% of cases the claimant no longer works for the employer by the time of the hearing. In these cases no recommendation could be made under the old regime because it could not be said to benefit the individual claimant. Often it was clear to the tribunal that the respondent needed to take certain steps in order to avoid future discrimination against other employees, yet because of the way in which the law was drafted the tribunals were unable to make best use of the evidence they had heard by recommending to the respondent practical steps which should be taken to ensure future compliance with discrimination law.</p>		
<p><b>What were the policy objectives and the intended effects?</b></p> <ul style="list-style-type: none"> <li>• to improve compliance with the law and help respondents to avoid future claims, thereby reducing the number of employment tribunal cases;</li> <li>• to improve the ability of the employment tribunals to tackle discrimination at a systemic level as well as at the level of the individual claimant.</li> </ul>		
<p><b>What policy options were considered? Please justify any preferred option.</b></p> <p>Option 1: Do nothing.</p> <p>Option 2: Improve the advice and guidance available to employers, from organisations such Acas, the Equality and Human Rights Commission and industry bodies.</p> <p>Option 3: (<b>Chosen option</b>) Enables employment tribunals to make recommendations for the benefit of individuals other than the claimant who may also be affected by the discrimination proved in the case. Evidence of compliance / non-compliance with such a recommendation will be capable of being brought into account if a future claim is brought by another employee against the same respondent based on similar facts. Non-compliance with recommendations made to benefit the wider workforce will not result in an increase in compensation to the claimant, because the recommendation would not have been made for their benefit.</p>		
<b>When will the policy be reviewed to establish the actual costs and benefits and the achievement</b>		

**of the desired effects?**

After implementation, and on an ongoing basis, by the Equality and Human Rights Commission. The Government will also review after 5 years.

## Wider recommendations : Analysis & Evidence

**Policy option: 3**

**Enable employment tribunals to make recommendations for the benefit of the wider workforce other than the claimant**

COSTS	ANNUAL COSTS		Description and scale of key monetised costs by ‘main affected groups’	
	One-off (Transition)	Yrs		
	£ 0	1	<p><b>Public Sector</b> – costs of between £18,082 and £28,234</p> <p><b>Private Sector</b> – costs of between £37,506 and £85,899</p> <p>Familiarisation costs are factored into the overall familiarisation costs for the Bill, in pages 5-30.</p>	
	Average Annual Cost (excluding one-off)			
	£ 55,588 to £114,133	10		
		Total Cost (PV)	£478,480 to £982,421	
Other key non-monetised costs by ‘main affected groups’				

BENEFITS	ANNUAL BENEFITS		Description and scale of key monetised benefits by ‘main affected groups’	
	One-off	Yrs		
	£ 0	1	<b>Public Sector</b> – benefits of between £213,011 and £428,089  <b>Private Sector</b> – benefits of between £1,110,932 and £2,232,650  <b>Individuals</b> – benefits of between £274,105 and £550,871	
	<b>Average Annual Benefit</b> (excluding one-off)			
	<b>£1,598,048</b> <b>to £3,211,611</b>	<b>10</b>		
			<b>Total Benefit (PV)</b>	<b>£13,755,495</b> <b>to £27,644,538</b>
<b>Other key non-monetised benefits by ‘main affected groups’</b> <ul style="list-style-type: none"><li>• Respondents will be more likely to learn constructive lessons from an adverse finding if it is accompanied by a recommendation.</li><li>• Increased compliance with discrimination law will bring benefits to both employers and employees by ensuring that discrimination does not hold people back.</li><li>• It will trigger changes to discriminatory policies and practices which would not otherwise have been made, potentially preventing future cases.</li></ul>				

### Key Assumptions/Sensitivities/Risks

- The Government estimates that recommendations were previously made in only about 1-3% of cases and expects that recommendations will be made in around 3-5% of cases because the power has been extended and additional training will be provided to employment tribunal judges.
- In around 50% of cases where recommendations are made, this will prevent future cases from being brought against the respondent.
- Up to 1% of potential respondents may seek to settle to avoid a recommendation being made.
- 30% of respondents who are subject to recommendations under the new power will take steps to amend practice where previously they would not have done.
- It would take these respondents on average one day (7 hours) to review policies and/or practices and to implement the necessary changes.

Price Base Yr	Time Period Years	Net Benefit Range (NPV)	NET BENEFIT (NPV Best estimate)
2009	10	£12,773,074 to £27,166,058	£19,969,566 (mid-point)

What is the geographic coverage of the policy/option?			GB	
On what date will the policy be implemented?			See page 8	
Which organisation(s) will enforce the policy?			N/A	
What is the total annual cost of enforcement for these organisations?			£ 0	
Does enforcement comply with Hampton principles?			N/A	
Will implementation go beyond minimum EU requirements?			N/A	
What is the value of the proposed offsetting measure per year?			£	
What is the value of changes in greenhouse gas emissions?			£ 0	
Will the proposal have a significant impact on competition?			No	
Annual cost (£-£) per organisation (excluding one-off)	Micro	Small	Medium	Large
Are any of these organisations exempt?	No	No	N/	N/

### Impact on Admin Burdens Baseline (2005 Prices)

					(Increase - Decrease)
Increase of	£ 0	Decrease of	£ 0	Net Impact	£ 0

Key: Annual costs and benefits: Constant Prices (Net) Present Value

## Evidence

What policy options have been considered?

The problem identified was that in the majority of employment tribunal cases where the claimant was no longer employed by the respondent (72% of cases<sup>141</sup>), employment tribunals were unable to make a recommendation that the respondent take steps which they reasonably consider will remove or reduce the risk that the discrimination proved in the case will also affect others in the workforce. This is because under the previous power, recommendations had to be made for the benefit of the individual claimant. This meant that tribunals were unable to make best use of the evidence they have heard by recommending to the respondent practical steps which would help to ensure future compliance with discrimination law in the majority of cases.

**Option 1:** Do nothing. Tribunals would only be able to make recommendations for the benefit of the individual claimant. This would have meant that in the majority of cases tribunals would continue to be unable to use the recommendation power. This would reduce the ability of the tribunal to tackle discrimination at a systemic as well as individual level and reduces the opportunity to use the tribunal process to improve levels of compliance.

**Option 2:** Improve the advice and guidance available to employers via organisations such as ACAS, the Equality and Human Rights Commission and industry bodies. However, these bodies would have only have been able to offer tailored guidance to a limited number of organisations. Tribunals made findings of discrimination in 2,157 cases on average over the five years from 2002/3 to 2006/7. They are therefore in an ideal position to supplement the advice and guidance provided by bodies such as ACAS and the EHRC by making specific, tailored recommendations to those organisations found to have discriminated, based on the detailed evidence which is presented in a tribunal hearing.

**Option 3 (chosen):** Enabling employment tribunals to make recommendations for the benefit of individuals other than the claimant whom the tribunal considers may also be affected by the discrimination proved in the case. Evidence of compliance / non-compliance with the recommendations can be heard as evidence if a future claim is brought against the same respondent based on similar facts (non-compliance with a wider recommendation would not result in an increase in compensation to the claimant, because the recommendation would not have been made for the benefit of individual claimant). This measure will improve levels of compliance and the ability of the tribunal to tackle discrimination at a more systemic level.

## Analysis of options

**Option 1:** There would be no additional costs for respondents in as the number of recommendations would be unchanged. However, there would also be no benefits in terms of improving compliance with discrimination law and thereby reducing the number of tribunal cases. There is therefore an opportunity cost of not accruing the benefits set out in Option 3.

**Option 2:** Active steps to update and improve advice and guidance on discrimination law will be taken by bodies such as ACAS, the EHRC and industry bodies in response to the new Equality Act. As such there would be no additional costs, nor any additional benefits. However, as for option 1, there are opportunity costs in not realising the benefits of extending the tribunals' powers to make recommendations, as set out under option 3.

**Option 3 (chosen option):** Change the law to allow tribunals to make recommendations for the benefit of individuals other than the claimant who are also likely to be affected by the discrimination proved in the case.

## Monetised benefits of chosen option

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<sup>141</sup> Findings from the Survey of Employment Tribunal Applicants, BMRB Social Research, Department of Trade & Industry Employment Relations Research Series No. 33, 2003

The number of successful cases from 1 April 2007 – 31 March 2008 was 986<sup>142</sup>. We estimated that recommendations were made in 1-3% of cases, and that informal suggestions were made in 1-3% of cases by employment tribunal judges in those cases where they are unable to use the existing power. We assumed that recommendations would also be made in 1-3% of cases under the extended power and that there would be between 10 and 30 recommendations made each year under the extended recommendations power. However, tribunal judges were strongly supportive of an extended power and the senior Employment Tribunal judiciary committed to provide training to Employment Tribunal judges both to raise awareness of the extended power and to ensure it would be used effectively and appropriately. Therefore, we estimated that the number of recommendations under the new power would increase slightly from the current level. If recommendations were made under the new power in 3-5% of cases where recommendations cannot currently be made, this would equate to an additional 30-49 recommendations each year.

Recommendations will help respondents ensure that they take the necessary steps to avoid future claims being brought against them. Based on Employment Tribunal Service data on Race Relations Act cases, we estimated that over any one 3-5 year period, 15% of respondents who have an adverse finding against them would have another claim brought against them<sup>143</sup>. We believed that there was scope to reduce the incidence of repeat offending by way of recommendations. We assumed that a higher proportion (25%-35%) of respondents who would be subject to recommendations under the extended power were potential repeat offenders, as there was evidence that tribunals did not make recommendations where the respondent has made clear in its evidence that it intends to take steps to redress the discriminatory policies and practices proved in the case. Conversely, tribunals were more likely to make recommendations where the evidence presented by the respondent suggested they were not likely to take steps to amend discriminatory policies and practices. Based on the assumption that 25% to 35% of those respondents who are subject to a recommendation under the extended power were potential repeat offenders, recommendations have the potential to reduce repeat offending in 12-30 cases per year by triggering changes in policies and practices which would not otherwise have occurred. However, a few employers will simply not comply with the recommendation; some of the respondents would have taken action following the adverse finding in any case; and not all the potential future cases would have related to the same or similar facts. We therefore assumed that recommendations would prevent future claims by triggering positive changes in 50% of these cases.

The savings from a reduction in 6-14 cases would be between £28,476 and £66,444 for business, between £7,026 and £16,394 for potential claimants and between £5,460 and £12,740 for the taxpayer (i.e. the tribunal service). In total the savings would be between £40,962 and £95,578 over each 3-5 period.

#### **Low estimate**

	Current cost per case	X		=	Total savings
Business	£5,393	X	6	=	£32,358
Claimants	£1,331	X	6	=	£7,986
Taxpayer	£1,034	X	6	=	£6,204
<b>TOTAL</b>					<b>£46,548</b>

<sup>142</sup> The successful number of tribunal claims in 2006/07 was 747 (463 sex, 102 race, 149 disability, 12 religion and 21 sex-o). This figure is taken from the Employment Tribunal Service and we estimated that there will also be 11 successful age cases in 2006/07 (data was not yet available). This takes the total of successful cases to 758. Based on this we projected the number of successful cases in 2007/08 to be 986 (an increase of 1.3%). We chose to increase by 1.3% as this was the average increase over a 5 year period.

<sup>143</sup> In 2005, the Employment Tribunal Service found 8 respondents had had more than one RRA case brought against them. This equated to 7% of all respondents in RRA cases. However, the ETS believed that the true figure for repeat offenders may actually have been higher because the way cases are recorded causes some difficulties for identifying repeat offenders. The ETS analysis only looked at repeat offenders over the course of one year. We estimate that 15% of respondents will have had another case brought against them in the previous 3-5 years.

### **High estimate**

	Current cost per case	X		=	Total savings
Business	£5,393	X	14	=	£75,502
Claimants	£1,331	X	14	=	£18,634
Taxpayer	£1,034	X	14	=	£14,476
TOTAL					£108,612

Some business bodies have suggested that some potential respondents would seek to settle in order to avoid a recommendation being made against them. However, there is no evidence of this happening as the result of the previous recommendations power and there is also no evidence that the new recommendations power would be used inappropriately, so respondents should have no reason to fear a recommendation being made against them. We therefore considered the effect would be small.

Over the five years from 2002-03 to 2006-07, the average number of discrimination cases heard in the tribunals was 40,000. If 0.5% - 1% of all cases (n=200-400) settled rather than proceeding to a full tribunal hearing the savings in terms of tribunal costs would be between £949,200 and £1,898,400 for business, between £234,200 and £468,400 for individuals and between £182,000 £364,000 for taxpayers. In total the savings would be between £1,365,400 and £2,730,800.

### **Low estimate**

	Current cost per case	X		=	Total savings
Business	£5,393	X	200	=	£1,078,600
Claimants	£1,331	X	200	=	£266,200
Taxpayer	£1,034	X	200	=	£206,800
TOTAL					£1,551,600

### **High estimate**

	Current cost per case	X		=	Total savings
Business	£5,393	X	400	=	£2,157,200
Claimants	£1,331	X	400	=	£532,400
Taxpayer	£1,034	X	400	=	£413,600
TOTAL					£3,103,200

### **Costs of chosen option**

In total, we assumed that between 21 and 43 respondents who are subject to a recommendation under the new power would make changes they would not otherwise have made. Below we estimated the cost of making these changes.

We assumed that respondents would take on average two days (14 hours) to review policies and/or implement changes. This would be carried out by a manager in a small firm and a director/senior official assisted by a personnel manager and a general secretary in a medium to large private firm and public sector organisation.

We assumed an hourly wage rate of £23.18 for small firms, £34.28 for medium firms and £41.01 for large firms and public organisations (the calculations at the bottom indicate how these hourly rates are arrived at).

The estimate of two days took into account that some recommendations would require minimal action (for example ensuring staff are aware of a current equal opportunities policy, is likely to take



less than one day), whilst other recommendations like implementing a new equal opportunities policy and re-training staff will be more time consuming. After studying past examples of likely recommendations we assumed a firm would not be required to re-train all staff and probably just a single department or staff tier.

#### Small firm

Number of recommendations giving rise to new compliance costs	X	Number of hours spent by manager to ensure compliance	X	Hourly wage	=	Total costs
21	X	14	X	£23.18	=	£6,815
43	X	14	X	£23.18	=	£13,954

#### Medium firm

Number of recommendations giving rise to new compliance costs	X	Number of hours spent by manager to ensure compliance	X	Hourly wage	=	Total costs
21	X	14	X	£34.28	=	£10,078
43	X	14	X	£34.28	=	£20,637

#### Large firm/ public sector organisation

Number of recommendations giving rise to new compliance costs	X	Number of hours spent by manager to ensure compliance	X	Hourly wage	=	Total costs
21	X	14	X	£41.01	=	£12,056
43	X	14	X	£41.01	=	£24,688

In addition we assumed an average of 10% of a respondent's firm will need to be re-trained taking a single day (7 hours). We assumed an hourly wage rate of £27.76 to cover both private and public sector respondents of all sizes. We assumed an online training programme costing £10 per head.

Employees attending	X	One person day	+	Online training package	=	Total costs
3	X	£194.32	+	£30	=	£613
5	X	£194.32	+	£50	=	£1022
25	X	£194.32	+	£250	=	£5108
100	X	£194.32	+	£1000	=	£20432

The total costs of implementing changes they would have previously not made is estimated at between £7428 and £14976 for small firms, £11100 and £25745 for medium firms and £17164 and £45120 for large firms and public sector organisations. In total costs to employers are estimated at between £7428 and £45120.

We should also consider the costs of appeals made against recommendations. We assumed 10% of respondents' would think about appealing a recommendation and seek legal advice to this end. We assumed an average legal cost of £1000 (3 hours). We also assumed that 1 -2 appeals a year would go to tribunal at a cost of between £4000 and £8000 each. The total cost of appeals against recommendations was estimated at between £6000 and £20000.

Number of appeals against recommendations	X	Average legal cost	+	Cost of appeals tribunal	=	Total costs
2	X	£1000	+	£4000	=	£6000
4	X	£1000	+	£16000	=	£20000

Low estimate

Implementing recommendation s (small firm)	+	Training costs (small firm)	+	Cost of appeals	=	Total costs
£6547.38	+	£612.96	+	£6000	=	£13160.34

High estimate

Implementing recommendations (large firm)	+	Training costs (large firm)	+	Cost of appeals	=	Total costs
£19902.12	+	£20432.00	+	£20000	=	£60334.12

## Non-monetised costs and benefits

### Costs

Under options 1 and 2 (no legislative change) there would have been no increase in the tribunals' ability to tackle discrimination at a systemic level nor any new opportunities to use the tribunal process to improve levels of compliance.

No non-monetised costs have been identified for option 3.

### Benefits

Retaining the status quo (option 1) or providing advice and guidance solely through bodies such as the EHRC, ACAS and industry bodies (option 2) would mean the role of the tribunals continued to be confined to administering justice to individual claimants, whilst bodies such as the EHRC seek to tackle systemic discrimination. This delineation of roles may be welcomed by some employers and service respondents.

Under option 3, claimants will gain increased levels of satisfaction from knowing that their case will have a wider impact and respondents will be more likely to learn constructive lessons from an adverse finding. Extending the power enables tribunals to assist the EHRC in its work as the EHRC will be notified of all recommendations and can assess each case to decide whether to conduct any follow up work with the respondent to help them improve their processes. Increased compliance with discrimination law will bring benefits to both employers and employees by ensuring that discrimination does not hinder the harnessing of individuals' talents. Whilst we estimated that only a relatively small number of recommendations (4-14 per year) will actually prevent a future case, a larger proportion (21-43 per year) will trigger changes to discriminatory policies and practices which would not otherwise have been made, all of which will improve levels of compliance with discrimination law and reduce discrimination, regardless of whether a future case will be brought (only 12-15% of justiciable events result in a tribunal case).

### Risks

Under **options 1 and 2**, there was a risk that some respondents would not make changes to their policies and practices following a finding of discrimination. Advice and guidance issued by ACAS,

the EHRC and industry bodies may not reach all employers, or may be too generic when compared with a tailored recommendation after an adverse finding.

Under **option 3** there is a small risk that an employment tribunal judge will make inappropriate recommendation. However, this risk will be mitigated by training for judges to ensure they understand when the extended power can be used and the kinds of recommendations which would be appropriate in different circumstances. Furthermore, given that judges hear substantial evidence about HR practices in the course of hearing many, often lengthy, discrimination cases and are accompanied by two side members from the management and TU sides who are both expert in HR issues and assist the judge in deciding whether a recommendation is appropriate, we consider the risk of inappropriate recommendations is extremely low.

In addition, respondents can appeal recommendations which are inappropriate.

There may be a risk that some respondents will adduce additional evidence in an attempt to avoid a recommendation being made and that this will lengthen hearings and increase costs. However, only evidence relevant to the case can be heard and judges have powers to strike out irrelevant evidence.

### **Enforcement**

Where tribunals make recommendations under the extended power, for the benefit of individuals other than the claimant, non-compliance is admissible as evidence if a future claim is brought against the same respondent relating to similar facts. The EHRC is notified of recommendations, enabling claimants or their representatives to check to see if a previous recommendation has been made.

The power is not enforceable by way of a fine or an increased payment.

### **Administrative burdens**

This policy does not create any additional administrative burdens or savings against the department's administrative burden baseline.

## Annex Q - Public sector Equality Duty

<b>Department GEO</b>	<b>Creating an integrated public sector equality duty and providing a powers to regulate procurement by some public authorities</b>	
<b>Stage: Royal Assent</b>	<b>Version: 5</b>	<b>Stage: Royal Assent</b>
<b>Related Publications:</b> (1) Discrimination Law Review: Proposals for an Equality Bill for Great Britain (June 2007). (2) Proposals to simplify and modernise the law: Initial RIA (June 2007). (3) Framework for a Fairer Future (June 2008) and (4) the Government response to the consultation (July 2008) (5) Equality Bill Impact Assessment (Introduction) 27 April 2009 (6) Equality Bill Impact Assessment (House of Lords Introduction) December 2009		
<b>Available to view or download at: <a href="http://www.equalities.gov.uk">http://www.equalities.gov.uk</a></b> <b>Contact for enquiries: Harshbir Sangha</b> <span style="float: right;"><b>Telephone: 0303 444 1204</b></span>		
<p><b>What was the problem under consideration? Why was government intervention necessary?</b></p> <p>The first part of this analysis deals with the creation of an integrated public sector equality duty. The second part deals with the provision of powers to regulate procurement by some public authorities.</p> <p><u>An integrated public sector Equality Duty:</u></p> <p>General Duties:</p> <p>There were previously are currently three separate public sector equality duties (for race, disability and gender), each placing slightly different requirements on public authorities. Having three separate duties resulted in increased burdens on public authorities and made it more difficult for them to effectively identify and tackle discrimination. The race duty in particular was criticised as being overly burdensome and process-driven. We have brought the want to: bring the three existing duties together into a single duty; retain the “due regard” formulation and the power to make supporting specific duties in secondary legislation; and extended the coverage of the duty to age, gender reassignment (in full), sexual orientation and religion or belief. The intention is to commence the new Equality Duty in April 2011.</p> <p>Specific Duties:</p> <p>Specific duties set out in secondary legislation will underpin the general duty and help public bodies in better performance of the general duty. They will place specific requirements on (listed) public bodies. The previous three separate (race, disability and gender) duties adopted a similar approach, but the various requirements and timescales vary for the different duties. For example, the race duty has a number of process requirements which are not required under the disability or gender duty. A single public sector general equality duty will also mean one set of specific duties. In summer 2009, the Government consulted on proposals for the specific duties which were based on the principles of consultation and involvement, use of evidence, transparency and capability. On 25 January 2010, the Government published a policy statement ‘<i>Equality Bill: Making it work, Policy proposals for specific duties, Policy Statement</i>’ in response to the consultation. The next steps are to produce draft regulations setting out the proposed specific duties. The Government intends to consult on them during summer 2010.</p>		

<p>Link to the policy statement:</p> <p><a href="http://www.equalities.gov.uk/pdf/psdresp_GEO_MakingItWork_acc.pdf">http://www.equalities.gov.uk/pdf/psdresp_GEO_MakingItWork_acc.pdf</a></p>
<p><b>What were the policy objectives and the intended effects?</b></p> <ul style="list-style-type: none"> <li>• To shift the focus from the prohibition of discrimination to a more positive approach of promoting equality of opportunity so discrimination is prevented from occurring in the first place.</li> <li>• To ensure that the race, disability and gender equality duties which each had slightly different features were brought together into a single, streamlined approach.</li> <li>• To help public authorities to respond to their equality obligations more efficiently.</li> <li>• To provide a single, effective, strategic lever for addressing discrimination and disadvantage.</li> <li>• To take a proactive approach to addressing discrimination and disadvantage because of age, gender reassignment, sexual orientation and religion or belief (as well as race, gender and disability)</li> <li>• For specific duties - minimise formal procedures and concentrate on outcomes for service users and employees of public authorities, focusing on the necessary and proportionate actions and reporting on their impact (this will be developed further in a separate Impact Assessment covering specific duties, which will be made through secondary legislation).</li> </ul>
<p><b>What policy options were considered? Please justify the chosen option.</b></p> <p>The options considered were:</p> <ul style="list-style-type: none"> <li>• Option 1: do nothing. Retain the existing separate public sector duties but do not extend to the new strands.</li> <li>• Option 2: integrate the three existing separate public sector duties to create a single duty covering race, disability and gender, using the current approach (i.e. general duty supported by specific duties).</li> <li>• <b>Option 3: integrate the three existing (race, disability and gender) public sector duties and extend to cover age, gender reassignment, sexual orientation and religion or belief, using the current approach (i.e. general duty supported by specific duties) (chosen option).</b></li> </ul> <p>Chosen option - Option 3.</p> <p>Option 3 provides a simpler and more efficient framework than three existing separate duties. Extending the duty to cover age, gender reassignment, sexual orientation and religion or belief will ensure that public bodies authorities consider the full breadth of the needs of their communities and employees, and provide a framework under which current activity to eliminate discrimination and promote equality on these protected characteristics can be standardised across the public sector.</p>
<p><b>When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects?</b></p> <p>The EHRC will review the operation of the new Equality Duty on an ongoing basis, following implementation, and will also be responsible for enforcing it. The Government will separately review its operation within five years after implementation.</p>

## Public Sector Equality Duty: Analysis & Evidence

Policy option: 3

Creating an integrated duty on public authorities to have due regard to the need to eliminate discrimination and promote equality across all protected areas of discrimination law (race; gender; gender reassignment; disability; religion or belief; sexual orientation; age) based on the model of the existing duties.

COSTS	ANNUAL COSTS		Description and scale of key monetised costs by 'main affected groups'	
	One-off (Transition)	Yrs		
	£ See evidence base	1		
	Average Annual Cost (excluding one-off)		Total Cost (PV)	
	£ See evidence base	10		
		£ See evidence base		
Other key non-monetised costs by 'main affected groups'				
No costs at this stage. The majority of costs associated with the public sector equality duty will arise from the specific duties. In summer 2009, we consulted on our proposals for the specific duties and on 25 January 2010, we published a policy statement 'Equality Bill: Making it work, Policy proposals for specific duties, Policy Statement' in response to the consultation. The next steps will be to produce draft regulations setting out the proposed specific duties and to consult on them during summer 2010.				

BENEFITS	ANNUAL BENEFITS		Description and scale of key monetised benefits by ‘main affected groups’	
	One-off	Yrs		
	£ See evidence base	1		
	Average Annual Benefit (excluding one-off)		Total Benefit (PV)	£ See evidence base
	£ See evidence base	10		
Other key non-monetised benefits by ‘main affected groups’ The advantages of an integrated, single duty are that: it ensures public bodies consider the different needs of all members of the community, thus addressing disadvantage and proactively tackling the sources of discrimination; it avoids skewing public authority resources and priorities towards meeting a particular legislative obligation when the demands of the local community may require different priorities; it extends protection across all the protected characteristics.				

### Key Assumptions/Sensitivities/Risks

We expect that the new public sector Equality Duty will result in initial set-up costs but these costs will be offset by the efficiency savings of having one (wider consistent) duty rather than the current three separate and different duties.

Price Base Yr <b>2009</b>	Time Period Years <b>10</b>	<b>Net Benefit Range (NPV)</b> <b>£ See evidence base</b>	<b>NET BENEFIT (NPV Best estimate)</b> <b>£ See evidence base</b>
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What is the geographic coverage of the policy/option?			GB	
On what date will the policy be implemented?			To be decided	
Which organisation(s) will enforce the policy?			EHRC	
What is the total annual cost of enforcement for these organisations?			£ 0	
Does enforcement comply with Hampton principles?			N/A	
Will implementation go beyond minimum EU requirements?			N/A	
What is the value of the proposed offsetting measure per year?			£ 0	
What is the value of changes in greenhouse gas emissions?			£ 0	
Will the proposal have a significant impact on competition?			No	
Annual cost (£-£) per organisation (excluding one-off)	Micro	Small	Medium	Large
Are any of these organisations exempt?	No	No	N/	N/

### Impact on Admin Burdens Baseline (2005 Prices)

					(Increase - Decrease)
Increase of	£ 0	Decrease of	£ 0	<b>Net Impact</b>	£ 0

Key: Annual costs and benefits: Constant Prices (Net) Present Value

## Evidence

### Public Sector Equality Duty

#### What policy options were rejected and why?

The only non-legislative option available was to introduce a voluntary approach to promoting age, sexual orientation and/or religion or belief equality. This would have risked inconsistencies depending on the various standards and other frameworks available to different public bodies which include all of the protected characteristics covered by discrimination law e.g. the Local Government Equality Standard.

#### Overall costs and benefits of the integrated duty (chosen option)

The three pre-existing equality duties on race, gender and disability each have different requirements and timetables. For race, public authorities have to have 'due regard' to the need to eliminate unlawful racial discrimination, to promote equality of opportunity for persons of different racial groups, and to promote good race relations. For disability public authorities have to have due regard to the need to eliminate unlawful discrimination, the need to eliminate harassment that is



linked to a disabled person's disabilities, the need to promote positive attitudes towards disabled people and to encourage their participation in public life, and to take steps to take account of disabled people's disabilities. For gender, public authorities have to have due regard to the need to eliminate unlawful discrimination and harassment and to promote equality of opportunity between women and men.

### Benefits

The new equality duty brings together takes as its starting point the pre-existing duties and extends coverage to age, sexual orientation, religion or belief and gender re-assignment. A single duty will be more efficient, since it will impose a single uniform set of requirements, in place of three separate regimes.

### Costs

In June 2007 the Government published an impact assessment giving estimated costs and benefits of a number of approaches to the public sector Equality Duty on which we were consulting. This can be found at <http://www.equalities.gov.uk/PDF/DLRRIBkmmk16.pdf>. Our preferred policy at that time was to create a new model for a single Equality Duty which moved away from the separate concepts of general and specific duties. However, in the light of consultation responses our policy changed and we decided to retain the concepts of general and specific duties in relation to the new expanded single Duty. As a result, those earlier estimates are no longer relevant or useful. This impact assessment covers the familiarisation costs arising from the new expanded general Equality Duty contained in the Act. The Act also contains powers to make specific duties by secondary legislation, with separate powers for the devolved administrations. We consulted on our proposals for the specific duties during summer 2009, and the next steps are to produce draft regulations setting out the proposed specific duties and to consult on them. It is intended that this should happen during summer 2010. The consultation on draft regulations will also be accompanied by a further impact assessment. However, the Government's policy aim in developing the new specific duties is that the new Equality Duty should be cost neutral overall when set against the savings arising from the replacement of the existing race, disability and gender duties.

### **Risks**

The main risks are associated with the specific duties and the draft regulations for the duties will be the subject of a separate consultation.

There is a risk of increasing burdens on the public sector without achieving the policy aim of a more outcome-focused approach if the specific duties are not designed to be flexible, proportionate and light-touch. The ongoing input by the specific duties working group set up by the Government Equalities Office and consisting of relevant stakeholders, together with additional input through further consultation, should help minimise this risk.

### Procurement

#### **A power to impose specific duties on public procurement by some authorities**

Equality is a key social policy objective for government. Up to £220 billion is spent each year by the public sector through contracts with the private sector. There is evidence that there are opportunities to use the power of procurement more effectively to further equality objectives and Government intervention is necessary to encourage and enable public authorities to use their procurement activities more actively in this way. The Act therefore contains a power to impose specific duties on the procurement activities of some public authorities.<sup>144</sup>

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<sup>144</sup> These authorities will be those known as "contracting authorities" for the purpose of the European Public Sector Directive 2004/18/EC of the European Parliament and of the Council of March 2004 on the coordination of procedures of the award of public works contracts, public supply contracts and public service contracts.

## **What are the policy objectives and the intended effects?**

The policy objective is to harness more effectively the power of public procurement to further equality objectives. By taking a power in the Act to prescribe specific duties setting out how certain public bodies should promote equality when exercising their public procurement functions, we are making a very clear link between the role of procurement and the general equality duty. This will serve to avoid doubt about the need to have due regard to equality when undertaking public procurement and thus will begin a cultural shift in how public authorities think and plan about how they pursue equality objectives through their procurement activities.

## **What policy options were considered? Please justify the chosen option.**

In reaching its preferred option, the Government considered the following:

- Option 1: do nothing in legislation and rely on guidance, including the publication of the Office of Government Commerce Pamphlet, "Make Equality Count", out reach and training for procurement professionals, and the development of a toolkit to improve equality outcomes through the various stages of the procurement process. It was considered that any further guidance would benefit from a legislative framework to deliver greatest impact. Option1 was therefore discounted.
- **Option 2: Use primary legislation to avoid doubt about the relationship between public procurement and the public sector Equality Duty.**

Option 2: To make a clear link between public procurement and improved equality through the public sector Equality Duty, thus avoiding doubt and encouraging and enabling public authorities to consider their procurement activities in relation to their performance of the general equality duty. This has been done through a regulation making power that enables specific equality duties to be imposed upon public authorities in relation to their public procurement functions.

It is important to note that the provisions in the Act do not impose any costs in this area, but any specific duties imposed under this power may. The specific details of the duties were subject to cross government and public consultation last summer (June 2009 – September 2009) and these have now been followed by a Policy Statement published in January 2010. The specific duties consultation document included an Impact Assessment for the specific duties including those related to procurement. This legislative approach will help improve how equality considerations are built into the procurement process.

There is a clear rationale for making greater use of the £220bn that the public sector spends every year on procuring goods and services, by making equality a key consideration in the public procurement process. It has been well established that public procurement can and should be used to support wider objectives including social issues and further guidance from the Office Of Government Commerce specifically in relation to equality, stresses that the public sector has an important opportunity to use its purchasing power to promote equality where possible.<sup>145</sup>

## **Costs of chosen option**

In itself, the power in the Act does not impose any additional costs to the public or private sector. Any costs may arise from the specific duties that are imposed upon certain public authorities through the use of this regulation making power.

### Public sector:

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<sup>145</sup> "Make Equality Count", OGC, December 2008

The Office of Government Commerce estimates that there are around 4,000 contracting authorities who conduct procurement above the EU financial threshold that will fall within the remit of the proposed specific duties; i.e. that conduct procurement above the minimum financial threshold required for the EU procurement regulations to come into force.

The cost of the duties is therefore taken to be the time required for relevant bodies to familiarise themselves with them and consider how to implement them within their procurement process. This estimates a one-off cost of around £2.8 million to the public sector and of nearly £3 million to the private sector, and recurring costs to the public sector of around £42,000 and in the region of £41,000 and £273,000 for the private sector.

These figures can be seen in the specific duties consultation document:

<http://www.equalities.gov.uk/pdf/Specific%20Duties%20Consultation%20DocumentWEB.pdf>

#### Enforcement and guidance costs:

Enforcement and guidance will be carried out by the Equality and Human Rights Commission as part of the overall guidance and enforcement of the Equality Act as a whole and the public sector Equality Duty, under which this regulation making power sits.

#### **Benefits of chosen option**

These duties will encourage certain public bodies to use their purchasing activity to further the Government's equality objectives and improve equality outcomes across society.

#### **When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects?**

Immediately and on an ongoing basis, by the Equality and Human Rights Commission. The Government will separately review its operation after five years of implementation.

#### **Risks**

As is the case with the wider public sector Equality Duty there is a risk of increasing burdens on the public sector if the duties are not designed to be flexible and proportionate. The work being done on the specific duties, and through further consultation, will minimise this risk.

#### **Administrative burdens**

The power in the Act does not impose any additional administrative burdens or savings against the department's administrative burden baseline. The specific duties that are imposed upon certain public authorities through the use of this regulation making power may impose administrative burdens. These will be assessed when the Government consults on the draft regulations for the specific duties.

Annex R - Positive action		
Department GEO	Widening the scope of voluntary “positive actions” within existing EU parameters	
Stage: Royal Assent	Version: 5	Stage: Royal Assent
<b>Related Publications:</b> (1) Discrimination Law Review: Proposals for an Equality Bill for Great Britain (June 2007). (2) Proposals to simplify and modernise the law: Initial RIA (June 2007). (3) Framework for a Fairer Future (June 2008) and (4) the Government response to the consultation (July 2008) (5) Equality Bill Impact Assessment (Introduction) 27 April 2009 (6) Equality Bill Impact Assessment (House of Lords Introduction) December 2009		
<b>Available to view or download at:</b> <a href="http://www.equalities.gov.uk">http://www.equalities.gov.uk</a> <b>Contact for enquiries:</b> Steve Porch <span style="float: right;"><b>Telephone: 0303 444 1204</b></span>		
<b>What was the problem under consideration? Why was government intervention necessary?</b>  <p>While in many spheres of society some individuals from groups which have suffered discrimination and disadvantage have made it to the top, generally those groups still remain under-represented. Organisations themselves have expressed frustration at their inability to bring about more rapid change within the current legal framework. And the benefits of a diverse workforce have been indicated by the joint 2008 CBI / TUC/ EHRC publication<sup>146</sup>. Without Government intervention at this stage, these inequalities will persist for far longer than would otherwise be the case.</p>		
<b>What are the policy objectives and the intended effects?</b>  <p>Where progress towards giving everyone an equal chance of participation is still too slow, we wanted to:</p> <ul style="list-style-type: none"> <li>• remove unnecessary barriers to equality of opportunity;</li> <li>• allow proportionate and voluntary action to be taken to address a real problem;</li> <li>• allow positive action to be taken for any group identified by a protected characteristic, so long as they experience disadvantage or under-representation;</li> <li>• explain what we are doing and why, and ensure that the need for action is understood, and commands the widest possible consensus.</li> </ul>		
<b>What policy options have been considered? Please justify any preferred option.</b>  <p>The three options considered were:</p> <p>Option 1: do nothing;</p> <p><b>Option 2 (chosen): extending the range of voluntary positive actions as wide as is permitted under EU legislation, but without discarding the merit principle.</b> This was chosen because it would allow a wider range of actions to be taken to address disadvantage and under-representation, particularly in regard to employment: in particular, employers will be allowed, in choosing between candidates who are as qualified as each other in terms of ability, competence or experience for recruitment or promotion, to take account of any under-representation of people with a protected characteristic (e.g. race, gender, sexual orientation) in their workforce and where proportionate prefer a person with that characteristic over a person without it who is as qualified (but not more qualified). As indicated by the joint 2008 CBI/ TUC/ EHRC report, a more diverse workforce would allow businesses to draw on more talent, increase productivity and widen their</p>		

<sup>146</sup> *Talent not Tokenism; the business benefits of workforce diversity* TUC/CBI/EHRC Published 3 June 2008

market opportunities. As these would be voluntary measures there would be no mandatory additional costs for those organisations that did not want or need to use the new provisions. Organisations could evaluate the likely costs of any positive action measures that they were considering introducing against the likely benefits that they would generate and determine at that stage whether or not it was economically viable for them to do so.

Option 3 – the use of positive discrimination. This option was identified but discounted as it would have been unlawful under both current domestic and European legislation because it would discard the merit principle.

**When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects?**

After implementation, and on an ongoing basis, by the Equality and Human Rights Commission. The Government will also review after 5 years.

## Positive Action: Analysis & Evidence

**Policy option: 2**

**Widening the scope of voluntary “positive actions” within existing EU parameters**

COSTS	ANNUAL COSTS		Description and scale of key monetised costs by ‘main affected groups’	
	One-off (Transition)	Yrs		
	£ 0	1		
	Average Annual Cost (excluding one-off)		Total Cost (PV)	
	£ 0	10		
Other key non-monetised costs by ‘main affected groups’		£ Marginal		

BENEFITS	ANNUAL BENEFITS		Description and scale of key monetised benefits by ‘main affected groups’	
	One-off	Yrs		
	£ 0	1		
	Average Annual Benefit (excluding one-off)		Total Benefit (PV)	
	£0	10		
		£ Marginal		
Other key non-monetised benefits by ‘main affected groups’				
This allows a wider range of actions to address disadvantage and under-representation, especially in the workforce, for the groups concerned.				
Firms and public authorities will be able to maximise the potential of their staff, increase workforce satisfaction, achieve greater productivity through greater efficiency in use of resources				

### Key Assumptions/Sensitivities/Risks

Price Base Yr	Time Period Years	Net Benefit Range (NPV)	NET BENEFIT (NPV Best estimate)
2009	10	£0 - Marginal	£See Range

What is the geographic coverage of the policy/option?	GB			
On what date will the policy be implemented?	To be decided			
Which organisation(s) will enforce the policy?	N/A			
What is the total annual cost of enforcement for these organisations?	£ 0			
Does enforcement comply with Hampton principles?	N/A			
Will implementation go beyond minimum EU requirements?	N/A			
What is the value of the proposed offsetting measure per year?	£ 0			
What is the value of changes in greenhouse gas emissions?	£ 0			
Will the proposal have a significant impact on competition?	No			
Annual cost (£-£) per organisation (excluding one-off)	Micro	Small	Medium	Large
Are any of these organisations exempt?	No	No	N/	N/

Impact on Admin Burdens Baseline (2005 Prices)				
				(Increase - Decrease)
Increase of	£ 0	Decrease of	£ 0	<b>Net Impact</b> £ 0
Key: Annual costs and benefits: Constant Prices (Net) Present Value				

## Evidence

### What policy options have been considered?

Various stakeholders have, over the past few years, called for a widening of the domestic provisions in order to allow them to redress persistent under-representation in a variety of circumstances, notably employment.

- Three options were identified
- Option 1: do nothing;
- Option 2 (final proposal): extend the range of voluntary positive actions as wide as is permitted under EU legislation, but without discarding the merit principle;
- Option 3: introduce positive discrimination measures – this was discounted as it would be unlawful under both current domestic and European legislation.

Options 1 and 2 were included in the June 2007 consultation. Option 3 was discounted as it would be unlawful under both current domestic and European legislation.

### Why is a legislative approach necessary?

The existing domestic legislation is too narrowly drawn to allow the breadth of positive action measures that is permissible under European law. As such, only a legislative approach could create the required changes.

### Analysis of costs & benefits of final proposal

Extending the range of voluntary positive actions as wide as is permitted under EU legislation

#### Benefits



This allows a wider range of actions to address disadvantage and under-representation, especially in the workforce, for the groups concerned. Employers have a freer hand than previously to improve opportunities for under-represented groups, particularly in organisations that wish to make faster progress than is possible at present.

Firms and public authorities will be able to maximise the potential of their staff, increase workforce satisfaction, achieve greater productivity through greater efficiency in use of resources and increase their responsiveness to their customers and communities through employing staff who are more representative of those customers and communities. There could be reputational gains for firms. Individuals in the groups affected should have better employment and promotion opportunities and will benefit from services designed to address their special needs.

### Costs

Since these would be voluntary measures there would be no mandatory additional costs.

### **Risks**

This would extend the range of voluntary positive actions as wide as is permitted under EU legislation. There are no readily identifiable risks associated with this option.

The Equality and Human Rights Commission will issue clear guidance about the new provisions.

### **Enforcement**

Any broader positive action provisions that were introduced would be on a voluntary basis.

Any perceived breaches as a result of the new provisions would be enforced through the domestic courts or tribunals by an individual making a personal claim.

### **Administrative burdens**

This policy does not create any additional administrative burdens or savings against the department's administrative burden baseline.

## Annex S – Disability and transport

<b>Department DFT</b>	<b>(i) Taxi and private hire vehicle accessibility</b> <b>(ii) Public service vehicles</b> <b>(iii) Rail vehicles</b>	
<b>Stage: Royal Assent</b>	<b>Version: 5</b>	<b>Date: April 2010</b>
<b>Related Publications:</b> (1) Consultation on Improving Access to Taxis (February 2009): <a href="http://www.dft.gov.uk/consultations/closed/consulttaxis/">http://www.dft.gov.uk/consultations/closed/consulttaxis/</a> (2) Equality Bill Impact Assessment (House of Lords Introduction) December 2009.		
<b>Available to view or download at: <a href="http://www.equalities.gov.uk">http://www.equalities.gov.uk</a></b> <b>Contact for enquiries:</b> James Rolstone <div style="text-align: right;"><b>Telephone: 0303 444 1204</b></div>		

### What was the problem under consideration? Why was government intervention necessary?

Evidence suggests that drivers of wheelchair accessible taxis and private hire vehicles sometimes refuse to carry wheelchair users, and fail to provide the necessary assistance. Also, many local authorities have limited numbers of wheelchair-accessible taxis operating in their area.

Government intervention was necessary to ensure the drivers of wheelchair-accessible taxis and private hire vehicles agree to carry wheelchair users, providing them with necessary assistance, and that sufficient numbers of wheelchair accessible taxis are in operation.

#### The duties on drivers of wheelchair accessible taxis and private hire vehicles

The DDA 1995 (as amended by the Local Transport Act 2008) placed duties on taxi and private hire vehicle drivers to carry and assist wheelchair users. These duties only applied to drivers of:

- regulated wheelchair-accessible taxis; and
- designated wheelchair-accessible taxis and private hire vehicles, other than regulated taxis, that operate a local bus service.

However, the Government has never made taxi accessibility regulations. As a result the duty has only applied to designated wheelchair-accessible taxis and private hire vehicles operating a local bus service.

Evidence suggests that drivers of wheelchair-accessible taxis and private hire vehicles sometimes refuse to carry wheelchair users, and fail to provide the necessary assistance. Intervention is therefore necessary to ensure wheelchair users can travel in safety and reasonable comfort in wheelchair accessible taxis and private hire vehicles, with the assurance that they will receive the necessary assistance from the driver when entering and exiting the vehicle.

#### Increasing the number of wheelchair accessible taxis

Some licensing authorities continue to maintain a limit on the numbers of taxis in their area and refuse to grant new licences to wheelchair-accessible vehicles even when only a small proportion of, if any, wheelchair-accessible taxis operate in that area.

Government intervention is necessary to qualify the circumstances under which licensing authorities can maintain a limit on the number of taxis operating in their area, so that more wheelchair-accessible vehicles can be licensed.

**What were the policy objectives and the intended effects?**

The main objective was to ensure disabled people who use wheelchairs have greater access to taxi and private hire vehicle services.

Specifically, the Government wants to ensure wheelchair users, when using wheelchair accessible taxis and private hire vehicles, receive the necessary assistance from drivers which will enable them to travel in safety and reasonable comfort.

Also, the Government wants to prevent licensing authorities from refusing to grant taxi licences to wheelchair-accessible vehicles on the grounds of controlling taxi numbers, where the proportion of such vehicles operating in the area is below a prescribed level.

**What policy options were considered? Please justify any preferred option.**

A number of policy options have been considered.

**Do nothing**

A do nothing approach would leave the trade and local licensing authorities to continue to make local decisions on the make-up of the taxi and private hire fleet.

This would be unlikely to result in the necessary measures required to increase disabled peoples confidence that they have proper access to taxi and private hire vehicle services.

**Make taxi accessibility regulations**

The Government could use powers originally contained in the DDA1995, and now contained in the Act, to make taxi accessibility regulations. These regulations would specify technical standards for all taxis to ensure they are accessible to disabled people.

However, this would impose a huge financial burden on the industry, and no vehicle design that would be suitable for all disabled people has been identified so far. It is not therefore the Government's policy to make such regulations.

**Chosen policy options****1. Impose duties on drivers of wheelchair accessible taxis and private hire vehicles**

The Government wants to ensure the drivers of wheelchair-accessible taxis and private hire vehicles - whether they just operate conventionally or also as a local bus service – will:

- Carry a passenger while they remain in their wheelchair without additional charge;
- Carry the wheelchair if the passenger wishes to sit in the front seat;
- Ensure the passenger is carried safely and in reasonable comfort;
- Provide such assistance as is reasonably required.

The Act contains provisions implementing this policy, extending the scope of taxi and private hire vehicle drivers to which the duties - originally contained in the DDA 1995 – apply. Costs and benefits of this policy are provided below.

**2. Increasing the number of wheelchair accessible taxis**

The Government wants to prevent licensing authorities from refusing new licences to wheelchair-accessible vehicles, if the number of such vehicles in that area does not meet a specified level.

The Act achieves this aim by amending section 16 of the Transport Act 1985, qualifying the circumstances under which licensing authorities control taxi numbers. The Act also gives the Secretary of State two regulation making powers. The first is to prescribe the size of wheelchair

that a wheelchair-accessible taxi must be capable of carrying. The second is to prescribe the proportion of wheelchair-accessible taxis that must operate in a licensing authority's area before that licensing authority could refuse to license such a vehicle on the grounds of controlling taxi numbers. Costs and benefits of this policy are provided below.

3. Issue guidance

The Government is planning to carry out demonstration schemes in three local authorities. These schemes will promote taxi accessibility and inform guidance for licensing authorities.

This policy is complimentary to policies 1 and 2 which are legislated for in the Act.

**When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects?**

The Department for Transport consulted on the duties on drivers, during 2009. The consultation is available at:

<http://www.dft.gov.uk/consultations/closed/consulttaxis/>

The Department for Transport intends to introduce regulations under section 161 of the Act, preventing licensing authorities from refusing new licences to wheelchair-accessible vehicles, if the number of such vehicles in that area does not meet a specified level. Draft regulations will be consulted on at the appropriate time.

## Enforcing and extending duties to assist passengers in wheelchairs: Analysis & Evidence

Policy option: 2

Enforcing and extending duties to assist passengers in wheelchairs

COSTS	ANNUAL COSTS		Description and scale of key monetised costs by 'main affected groups'	
	One-off (Transition)	Yrs		
	£ 0	1		
	Average Annual Cost (excluding one-off)		Local authorities will have to publicise the change and then prosecute where necessary. Prosecutions will also involve court costs. The appraisal here is presented over 10 years.	
	£ 201,000	10	Familiarisation costs are factored into the overall familiarisation costs for the Bill, in pages 12-30.	
			Total Cost (PV)	£1,730,145
Other key non-monetised costs by 'main affected groups'				

BENEFITS	ANNUAL BENEFITS		Description and scale of key monetised benefits by 'main affected groups'	
	One-off	Yrs		
	£ Not known			
	Average Annual Benefit (excluding one-off)		Specific research would be required to assess the level of annual benefits.	
	£ Not known			
			Total Benefit (PV)	£ Not known
Other key non-monetised benefits by 'main affected groups'				
Disabled users of taxis will have greater consistency of service while travelling in taxis and private hire vehicles. We envisage that more trips will be undertaken as a result, as disabled users will have more confidence in using taxis and private hire vehicles that afford them a level of protection.				

### Key Assumptions/Sensitivities/Risks

Price Base Yr	Time Period Years	Net Benefit Range (NPV)	NET BENEFIT (NPV Best estimate)
2009	10	-£1,730,145	£See Range

What is the geographic coverage of the policy/option?	GB
On what date will the policy be implemented?	2012

Which organisation(s) will enforce the policy?	Local Authorities			
What is the total annual cost of enforcement for these organisations?	£ 106,000			
Does enforcement comply with Hampton principles?	Yes			
Will implementation go beyond minimum EU requirements?	Yes			
What is the value of the proposed offsetting measure per year?	£			
What is the value of changes in greenhouse gas emissions?	£ 0			
Will the proposal have a significant impact on competition?	No			
Annual cost (£-£) per organisation (excluding one-off)	Micro	Small	Medium	Large
Are any of these organisations exempt?	No	No	N/	N/

Impact on Admin Burdens Baseline (2005 Prices)					
					(Increase - Decrease)
Increase	£ 0	Decrease	£	Net	£ 0

Key: Annual costs and benefits: Constant Prices (Net) Present Value

## Evidence

### Costs of chosen option

The costs of enforcing and extending the duties are estimated to be as follows:

- local authority publicity for the measure – through communiqués with taxi owners and drivers, and private hire cars – assuming a cost of £1.00 per licensed driver = one-off cost of £1.00 x 219,000 drivers = £219,000;
- enforcement costs (no prosecution brought, but letter sent to offending driver – on basis of observation or public complaint) – extent not known, but assumed 1 action per 100 vehicles per year @ £5.00 per action = 2,190 x £5 = £10,950; and
- enforcement costs (prosecution brought) – extent not known, but assumed 1 action per 1,000 vehicles per year. There will be two elements of cost under this heading:

(a) Court costs: The Cost of Criminal Justice (Home Office, 1999/00) indicates an average cost of £550 (£680 in 2007/08 prices) to take proceedings in relation to a motoring offence to a magistrates court with a guilty plea, and £1,700 (£2,100 in 2007/08 prices) for a 'not guilty' plea. Offenders would go to proceedings in a magistrate's court; it is assumed that 65 per cent of offenders will plead guilty (in line with the average for all cases, Crown Prosecution Service Annual Report, 2007/08). This implies an annual cost of £63,686 for cases with 'not guilty' pleas, and £30,977 for cases with guilty pleas (£94,663 in all);

(b) Costs to the prosecuting local authority – likely to be of a similar order of magnitude to the court costs (£95,000 pa).

### Benefits of chosen option

There will be journey time reductions to a proportion of disabled people who would otherwise have to wait until the second passing taxi to pick them up, or make more than one booking with a private hire company. It is envisaged that this measure will allow consistency across the country and enable disabled travellers to be more confident about using taxis, with a resultant increase in journeys undertaken.

**Administrative burdens**

This policy does not create any additional administrative burdens or savings against the department's administrative burden baseline.



## Exceptions to the practice of controlling taxi numbers: Analysis & Evidence

Policy option: 2

Exceptions to the practice of controlling taxi numbers

COSTS	ANNUAL COSTS		Description and scale of key monetised costs by 'main affected groups'	
	One-off (Transition)	Yrs		
	£ 0	1		
	Average Annual Cost (excluding one-off)		<p>Costs for amendment and any subsequent commencement are deemed as negligible.</p> <p>The main cost will fall on those drivers who wish to apply for a licence and will be required to purchase an accessible vehicle. These vehicles cost substantially more than a saloon car, in the region of £18,000 or £2,000 a year.</p>	
	£3,700,000	10	Total Cost (PV)	£31,848,440
Other key non-monetised costs by 'main affected groups'				
None				

BENEFITS	ANNUAL BENEFITS		Description and scale of key monetised benefits by 'main affected groups'	
	One-off	Yrs		
	£ Not known			
	Average Annual Benefit (excluding one-off)		<p>Economic modelling would be required in order to determine the threshold that would be required to be met but we envisage around 50% of the fleet in those areas with a quantity control policy in place.</p> <p>We believe that this policy will bring about benefits to travellers with mobility difficulties and provide consistency throughout England and Wales.</p>	
	£8,200,000	10	Total Benefit (PV)	£ 70,538,029
Other key non-monetised benefits by 'main affected groups'				
<p>Disabled users are the primary beneficiary and will benefit from increased choice in terms of public transport options and equality of opportunity.</p> <p>Disabled users of taxis will have greater consistency of service while travelling in taxis.</p> <p>We envisage that more trips will be undertaken as a result of this policy.</p>				

### Key Assumptions/Sensitivities/Risks

Price Base Yr	Time Period Years	Net Benefit Range (NPV)	NET BENEFIT (NPV Best estimate)
2009	10	Up to £38,734,589	See range

What is the geographic coverage of the policy/option?	England and Wales			
On what date will the policy be implemented?	Not yet known			
Which organisation(s) will enforce the policy?	DfT			
What is the total annual cost of enforcement for these organisations?	£ 0			
Does enforcement comply with Hampton principles?	Yes			
Will implementation go beyond minimum EU requirements?	Yes			
What is the value of the proposed offsetting measure per year?	£ 0			
What is the value of changes in greenhouse gas emissions?	£ 0			
Will the proposal have a significant impact on competition?	No			
Annual cost (£-£) per organisation (excluding one-off)	Micro	Small	Medium	Large
Are any of these organisations exempt?	No	No	N/	N/

Impact on Admin Burdens Baseline (2005 Prices)					
			(Increase - Decrease)		
Increase of	£0	Decrease of	£0	Net Impact	£0
Key:	Annual costs and benefits: Constant Prices			(Net) Present Value	

## Evidence

### (ii) Public service vehicle accessibility

#### What was the problem under consideration? Why was government intervention necessary?

To put all related discrimination law in one place, the Public Service Vehicle accessibility provisions in the Act have been transposed in their entirety from the Disability Discrimination Act ("DDA") 1995. The provisions which they contain are therefore not new and the Public Service Vehicle Accessibility Regulations made under the DDA have been in place for some time.

#### What are the policy objectives and the intended effects?

The original DDA 1995 provisions were necessary to provide a national standard for the accessibility of all public service vehicles to ensure consistency of application and that disabled people could be confident that they would have good access to buses.

The Public Service Vehicle Accessibility Regulations stipulate end dates for compliance. The regulations require all buses and coaches, both old and new, to comply from 2015 (through to 2017) for buses and from 2020 for coaches.

#### What policy options have been considered? Please justify any preferred option.

The provisions of the Act are a transcription of previous measures which were present in the DDA 1995. The Act reflects no change of policy in this respect.

**When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects?**

The Department for Transport will keep the regulations under review in line with research and operational experience.

**Background**

The Public Service Vehicle Accessibility Regulations (PSVAR) were introduced in 2000. Guidance on the provisions of the regulations can be found at:

<http://www.dft.gov.uk/transportforyou/access/buses/pubs/psvar/>

The full text of the regulations can be found at:

<http://www.opsi.gov.uk/si/si2000/20001970.htm>

**(iii) Rail vehicle accessibility**

**What was the problem under consideration? Why was government intervention necessary?**

To put all the related discrimination law in one place, the rail vehicle accessibility provisions in the Act have been transposed in their entirety from the Disability Discrimination Act ("DDA") 1995 and no substantive amendments have been made. The provisions which the Act contains are therefore not new and the accessibility regime has been in place, with some revisions, for over a decade. The introduction of new European standards for passenger rail vehicles in July 2008 has removed heavy rail vehicles (i.e. in practice most passenger trains which operate on the UK main line rail system) from the scope of Part V of the DDA 1995 and the provisions of the Act are therefore only applicable to the accessibility of rail vehicles operated on light rail, metro and underground systems and prescribed guided modes of transport.

**What are the policy objectives and the intended effects?**

The original DDA 1995 provisions were necessary to provide a national standard for the accessibility of all rail vehicles to ensure consistency of application and that disabled people could be confident that they would have the same facilities available regardless of the class, model or service they were using.

A number of amendments were made during the passage of the DDA 2005 including the setting of an end date, of no later than 1 January 2020, by which time all rail vehicles must meet accessibility standards, and the application of accessibility regulations to older rail vehicles when they are refurbished. The setting of the end date in particular is intended to facilitate an accessible transport chain by ensuring that all trains, buses and coaches are accessible by the same date thereby reducing social exclusion.

**What policy options were considered? Please justify any preferred option.**

The provisions of the Act are a transposition of pre-existing measures which were present in the DDA 1995 (including measures not commenced). The Act reflects no change of policy in this respect.

However, following the introduction of the new European standards noted above, the Department for Transport reassessed the domestic light rail accessibility regime and completed a consultation

exercise in 2009 on amendment proposals. The provisions of the Act reflect the outcome of that consultation exercise which indicated that the Government's proposals were widely supported by stakeholders.

Please see [www.dft.gov.uk/consultations](http://www.dft.gov.uk/consultations) for more information.

### **When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects?**

The Department for Transport will continue to ensure future franchise specifications address accessibility, and implementation of the policy will be monitored and evaluated to ensure gradual progression to achieve accessibility by 1 January 2020.

### **Costs of chosen option**

The proportion of accessible vehicles required to provide a basic level of accessibility to disabled persons is yet to be set. For the purposes of this impact assessment it will be assumed at 50% of the fleet in those areas with a quantity control policy.

A typical purchase cost of a second-hand saloon car for use as a taxi is £6,000–8,000 (mid-point of £7,000), while a new purpose-built taxi/ converted multi-purpose vehicle (MPV) would cost between £20,000 and 30,000 (mid-point of £25,000). On this basis, the additional one-off cost of purchasing an accessible vehicle rather than a saloon car is £18,000. Spread over the 10 year life of a vehicle, this would amount to £2,000 a year.

There are 55 local authorities operating a quantity control policy, with less than 50% of the fleet being accessible, and approximately 6296 vehicles operate in these areas. If an extra 1,841 become accessible the annual cost would be £3.7mn.

It's important to note that this assumes that all of the potential new taxi licences available to wheelchair-accessible taxis are issued. For this policy to take effect, it would require vehicle owners to request taxi licences for wheelchair-accessible taxis.

### **Benefits of chosen option**

There will be benefits for disabled people as more accessible vehicles will be available for use. It is envisaged that any subsequent regulations made will allow consistency across the country and enable disabled travellers to be more confident about using taxis, with a resultant increase in journeys undertaken.

In addition, people who wish to become taxi drivers in areas with a quantity control policy in operation will have the opportunity to become licensed rather than being denied that opportunity as is the case now. It is estimated that if the level of accessible vehicles to be made available was set at 50% then approximately 1,841 additional licences would be made available based on current numbers of vehicles operating in quantity controlled areas. Having additional vehicles available would enable more disabled people to undertake journeys.

The average number of taxi trips per person in 2008 (National Travel Survey) was 11 per annum. People with mobility difficulties make three quarters of the number of trips a year that people with no mobility difficulties make. This would suggest that another 3½ trips by taxi would be made if there were sufficient accessible taxis.

Establishing a monetary value for this benefit is difficult, and further research would have to take place to establish these benefits. However, a general assumption is that the additional consumer benefits (the difference between the willingness to pay for the trip, or the overall benefits including those benefits received at the destination, and the fare) is equal to 20% of the fare. This assumes that demand by those with mobility difficulties is very sensitive to the fare. The average taxi fare is roughly £5 a trip and the consumer benefit would be £1 per trip. Given there are 4.7mn people with mobility difficulties in England excluding London, the overall benefit of these trips is £67.8mn over 10 years.

Initial discussions with trade bodies have suggested no substantive opposition to the proposal.

## **Background**

Although there is nothing new within the Act in terms of rail vehicle accessibility, it may be useful for those seeking to understand the implications of the regime to refer to previous impact assessments produced by the Department for Transport that assess the impact of particular aspects of the regime.

Measures included in the DDA 2005:

[www.dwp.gov.uk/publications/dwp/2005/ria/dda-2005-final.pdf](http://www.dwp.gov.uk/publications/dwp/2005/ria/dda-2005-final.pdf)

Setting of the end date for heavy rail vehicles:

[www.dft.gov.uk/consultations/archive/2008/railvehicleaccessibility](http://www.dft.gov.uk/consultations/archive/2008/railvehicleaccessibility)

The Department for Transport completed a consultation exercise on amendments to the light rail vehicle accessibility regime in 2009 which included the setting of an end date for rail vehicles used on light rail, metro and tram systems and prescribed modes of guided transport. Please see [www.dft.gov.uk/consultations](http://www.dft.gov.uk/consultations) for more information.

## **Administrative burdens**

This policy does not create any additional administrative burdens or savings against the Department for Transport's administrative burden baseline.

<b>Annex T - Rationalising exceptions allowing discrimination</b>		
<b>Department GEO</b>	<b>Rationalising exceptions allowing discrimination</b>	
<b>Stage: Royal Assent</b>	<b>Version: 5</b>	<b>Date: April 2010</b>
<b>Related Publications:</b> (1) Discrimination Law Review: Proposals for an Equality Bill for Great Britain (June 2007). (2) Proposals to simplify and modernise the law: Initial RIA (June 2007). (3) Framework for a Fairer Future (June 2008) and (4) the Government response to the consultation (July 2008) (5) Equality Bill Impact Assessment (Introduction) 27 April 2009 (6) Equality Bill Impact Assessment (House of Lords Introduction) December 2009		
<b>Available to view or download at:</b> <a href="http://www.equalities.gov.uk">http://www.equalities.gov.uk</a> <b>Contact for enquiries:</b> Kate Richardson <span style="float: right;"><b>Telephone: 0303 444 1204</b></span>		
<b>What was the problem under consideration? Why was government intervention necessary?</b>  Inconsistency in the way exceptions were treated across the equality strands in previous legislation resulted in unnecessary costs to employers arising from uncertainty (and the need to seek advice) as to whether an act can be classified as justifiably discriminatory.		
<b>What are the policy objectives and the intended effects?</b>  To ensure consistency in the way exceptions are treated across the protected characteristics. This will make it easier for employers to decide whether particular conduct is made unlawful by the Act. This will produce savings for employers by reducing the amount they are required to spend on legal advice, and lead to a slight fall in the number of cases and hence some small savings for employers, taxpayers and individuals alike as indicated below.		
<b>What policy options have been considered? Please justify any preferred option.</b>  <ul style="list-style-type: none"> <li>• Option 1: do nothing</li> <li>• <b>Option 2: apply the genuine occupational requirement test consistently across all strands, keeping specific exceptions where appropriate (chosen option)</b></li> <li>• Option 3: apply the genuine occupational requirement test in all discrimination strands and remove all specific exceptions</li> </ul> <p>The above options were consulted on in June 2007.</p> <p>Our chosen option as adopted in the Act was option 2. Extending the genuine occupational requirement test to sex and race (nationality and colour) enables an employer to justify otherwise discriminatory acts in a different way from what was possible before in those areas. While we might see an initial slight increase in the number of cases, the new test is likely, if anything, to result in greater success for employers. In time, we expect this to lead to a slight fall in the number of cases and hence some small savings as indicated below.</p>		
<b>When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects?</b>  After implementation, and on an ongoing basis, by the Equality and Human Rights Commission. The Government will also review after 5 years.		

## Rationalising exceptions - Analysis & Evidence

Policy option: 2

Rationalising exceptions allowing discrimination. The main measure replaces the previous genuine occupational qualifications in respect of sex and race (nationality and colour) with the genuine occupational requirement test that already previously applied in other equality strands; and to keep specific identified exceptions.

COSTS	ANNUAL COSTS		Description and scale of key monetised costs by 'main affected groups'	
	One-off (Transition)	Yrs		
	£ 0	1	Individuals - Cost of losing more cases = £520,658  Familiarisation costs are factored into the overall familiarisation costs for the Bill, in pages 12-30.	
	Average Annual Cost (excluding one-off)			
	Up to £ 520,658	10	Total Cost (PV)	Up to £ 4,481,664
Other key non-monetised costs by 'main affected groups'				

ANNUAL BENEFITS		Description and scale of key monetised benefits by ‘main affected groups’
One-off	Yrs	
£ 0	1	
Average Annual Benefit (excluding one-off)		
£ 757,886 to £ 836,962	10	
		<p><b>Public Sector</b> - Savings from winning more cases and Savings from reduction in justiciable events = £357,614 - £390,043</p> <p><b>Private Sector</b> - Savings from winning more cases and Savings from reduction in justiciable events = £357,614 - £390,043</p> <p><b>Individuals</b> - Savings from reduction in justiciable events = £24,004 - £ 32,005</p> <p><b>Society</b> - Savings from reduction in justiciable events = £18,654 -£ 24,871</p>
		<p><b>Total Benefit (PV)</b></p> <p>£ 6,523,645 to £ 7,204,305</p>



### Other key non-monetised benefits by 'main affected groups'

Extending the genuine occupational requirement test to sex and race (nationality and colour) enables an employer to justify otherwise discriminatory acts in a different way to what was possible before in those areas. While we might see an initial increase in the number of cases, the new test is likely, if anything, to result in greater success for employers. In time, we expect this to lead to a slight fall in the number of cases and hence some small savings as indicated below.

### Key Assumptions/Sensitivities/Risks

That there will be a reduction in the number of tribunal cases brought on sex and race discrimination grounds (between 12 and 16 per annum); and that employers will be successful in an extra 0.5% cases in race discrimination and 0.5% in sex discrimination

Price Base Yr	Time Period Years	Net Benefit Range (NPV)	NET BENEFIT (NPV Best estimate)
2009	10	£ 2,041,980 to £ 2,722,640	£ See Range

What is the geographic coverage of the policy/option?			GB	
On what date will the policy be implemented?			See page 8	
Which organisation(s) will enforce the policy?			Tribunals	
What is the total annual cost of enforcement for these organisations?			£ 0	
Does enforcement comply with Hampton principles?			N/A	
Will implementation go beyond minimum EU requirements?			No	
What is the value of the proposed offsetting measure per year?			£ 0	
What is the value of changes in greenhouse gas emissions?			£ 0	
Will the proposal have a significant impact on competition?			No	
Annual cost (£-£) per organisation (excluding one-off)	Micro	Small	Medium	Large
Are any of these organisations exempt?	No	No	N/	N/

### Impact on Admin Burdens Baseline (2005 Prices)

(Increase - Decrease)				
Increase of	£ 0	Decrease of	£ 0	Net Impact
Key:	Annual costs and benefits: Constant Prices		(Net) Present Value	

## Evidence

### Analysis of costs & benefits of final proposal

#### Option 2: apply the *genuine occupational requirement* test consistently across all strands keeping specific exceptions where appropriate (final proposal)

By extending the (wider) genuine occupational requirement test to sex and race (nationality and colour) we have enabled an employer to justify otherwise discriminatory acts in a different way to what was possible before in those areas.

Discrimination law previously set out specific circumstances (exceptions) where differential treatment was lawful. For example discriminatory acts are not unlawful where they are necessary to safeguard national security. The Act has:

- Adopted a more simple approach to exceptions by introducing a genuine occupational requirement test across all of the protected characteristics
- Removed the existing specified genuine occupational qualification exceptions applying to gender, colour and nationality.
- The new test is likely to result in a slight fall in the number of justiciable events but we don't believe it is likely to make more employers succeed in their case.

#### Benefits from a reduction in the number of justiciable events

		The number of justiciable events	X	0.01%	=	Reduction in justiciable events	X	Cost per case	=	Benefit of proposal
Low estimate	Private Sector	169,422 (144,396 sex and 25,027 race)	X	0.01%	=	17	X	£5393	=	£91,681
	Public Sector	169,422 (144,396 sex and 25,027 race)	X	0.01%	=	17	X	£5393	=	£91,681
	Taxpayer	169,422 (144,396 sex and 25,027 race)	X	0.01%	=	17	X	£1,034	=	£17,578
	Individual	169,422 (144,396 sex and 25,027 race)	X	0.01%	=	17	X	£1331	=	£22,627

		The number of justiciable events	X	0.01%	=	Reduction in justiciable events	X	Cost per case	=	Benefit of proposal
High estimate	Private Sector	225,897 (192,528 sex and 33,369 race)	X	0.01%	=	23	X	£5393	=	£124,039
	Public Sector	225,897 (192,528 sex and 33,369 race)	X	0.01%	=	23	X	£5393	=	£124,039
	Taxpayer	225,897 (192,528 sex and 33,369 race)	X	0.01%	=	23	X	£1,034	=	£23,782
	Individual	225,897 (192,528 sex and 33,369 race)	X	0.01%	=	23	X	£1331	=	£30,613

This calculation assumed that there would be a reduction of 0.01% in the number of justiciable events. The data on the number of justiciable events was based on the average number of cases registered where discrimination is the main jurisdiction.<sup>147</sup>

#### Savings from winning more cases

This was calculated by multiplying the average number of tribunal cases (sex and race) per year by the average amount awarded per case. This was then multiplied by 0.5% which was the savings in the increased number of cases won.

Number of cases	X	Average amount of compensation	=	Total average compensation paid	X	Increase in successful cases (0.5%)	=	Benefit of proposal
21,776 (18043 sex and 3733 race)	X	£3,608	=	£78,567,808	X	0.5%	=	£392,839.

These savings were split between public sector and private sector employers. This would however amount to a loss for individual claimants. The calculation of these savings assumed that there would be a 0.5% increase in the number of successful cases.<sup>148</sup>

#### Familiarisation costs and simplification benefits

Are included in those for the whole Act in pages 5-30.

#### **Enforcement**

Simplification of itself brings no changes to the enforcement regime.

#### **Administrative burdens**

<sup>147</sup> LSR (Legal Research Centre) Periodic Survey findings 2003 and Genn, Paths to Justice Survey 1998

<sup>148</sup> The data on the average number of tribunal cases for race and sex taken from the ETS Annual Reports 2003-04 to 2006-07 and data on the average value of a compensation award DTI Employment Relations Research Series No 33 <http://www.dti.gov.uk/files/files11455.pdf?pubpdfload=04%2F1071>

This policy does not create any additional administrative burdens or savings against the department's administrative burden baseline.

## Annex U – Harmonisation power

Department GEO		Harmonisation power	
Stage: Royal Assent	Version: 5	Date: April 2010	
<b>Related Publications:</b> (1) Discrimination Law Review: Proposals for an Equality Bill for Great Britain (June 2007). (2) Proposals to simplify and modernise the law: Initial RIA (June 2007). (3) Framework for a Fairer Future (June 2008) and (4) the Government response to the consultation (July 2008) (5) Equality Bill Impact Assessment (Introduction) 27 April 2009 (6) Equality Bill Impact Assessment (House of Lords Introduction) December 2009			
<b>Available to view or download at:</b> <a href="http://www.equalities.gov.uk">http://www.equalities.gov.uk</a> <b>Contact for enquiries:</b> Matthew King <div>Telephone: 0303 444 1204</div>			

### What was the problem under consideration? Why was government intervention necessary?

One of the key objectives of the Equality Act is to rationalise, simplify and harmonise existing equality law into a consistent, coherent and easy to understand format. However, it will be necessary to maintain harmonisation in the context of changing European legislation and case law.

The European Communities Act enables the Government to amend domestic legislation to align with European developments, but only to the extent required by the particular Directive or judgment and in relation to matters that are quite closely related to it. Without this section there would be no means, other than fresh primary legislation, that would enable the Government to make any additional changes to domestic law necessary to maintain consistency.

### What were the policy objectives and the intended effects?

The harmonisation power is intended to future-proof the new Act so that changes required by Europe could be extended at the margins to maintain overall consistency in the domestic legislation.

For example, had this power been in place at the time that the United Kingdom was required to implement the Race Directive, it would have been possible to avoid the creation of the existing “two tier” approach where there are different provisions for colour and nationality (not covered by the Directive but already present in domestic law), as compared with provisions on race and ethnicity. The Act will itself remove this two tier approach, but in future the harmonisation power would allow such alignments without the need for primary legislation.

### What policy options have been considered? Please justify any preferred option.

The options were:

- Option 1: Take no harmonisation power
- Option 2: Make any harmonising amendments through new primary legislation
- Option 3: Make any harmonising amendments using the Regulatory Reform Act
- **Option 4: Take a harmonising power in the Equality Act (chosen option)**

If the Government had taken no power, the simplification benefits of the Equality Act could be short lived, since European legislation and case law must be implemented, but the coverage of European law does not extend across the whole coverage of the Act.

Seeking to maintain consistency of provision through primary legislation has not been successful in the past. Legislative opportunities are not common, and even if found it was considered that timing considerations would vitiate much of the benefits: implementation of any changes required by EU law would often need to be implemented ahead of the harmonising domestic changes, thereby defeating the object potentially for significant periods. It would also not be feasible to bring forward new

primary legislation solely for this purpose each time an issue arose.

Using the Regulatory Reform Act route (which requires a mandatory “Super affirmative” procedure) would also be prohibitively time-consuming and would similarly most often preclude regulations made under section 2(2) of the European Communities Act being considered and implemented in parallel with the harmonising regulations.

Use of the harmonisation power will be subject to the affirmative resolution procedure in Parliament and there will be consultation prior its use on each occasion. When any instrument is laid before parliament it will need to be accompanied by an explanatory document setting out among other things the reasons for its use, what representations have been received in the consultation, and any changes that have been made as a result to the proposals. A Minister must also report to Parliament every two years on the power’s use. With these built-in safeguards it was considered the most suitable option by the Government for future proofing the Bill.

The power would only be exercisable in relation to those anti discrimination provisions of the Equality Act that are outside the scope of section 2(2) of the European Communities Act, for example:

- It would not be exercisable in relation to any of the parts of the Act relating to employment and vocational training, other than in respect of nationality<sup>149</sup>.
- It would not be exercisable in relation to goods facilities and services provisions concerning either race (other than nationality) or gender - or, if the new proposed Anti-Discrimination directive is in force, any of the other strands.
- It would not be exercisable in relation to any matters outside the scope of European legislation, for example the provisions of the public sector Equality Duty.
- It would not be exercisable in relation to the provisions on publication of information about political candidates, civil partnerships in churches or dealing with matters of family and property law.

**When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects?**

The provisions contain a requirement on the Equality Minister to report to Parliament on the power’s use every 2 years, which will provide a further opportunity for the Impact Assessment to be reviewed and revised when actual annual costs and benefits have been demonstrated.

<sup>149</sup> Although the current legislation has different provisions covering both colour and nationality, recent case law of the Employment Appeal Tribunal now indicates that the Race Directive covers colour - *Abbey National -v- Chaggar*. Unless this is overturned, then this will be the position.

## Harmonisation : Analysis & Evidence

Policy option: 4

A supplementary power that will help to future-proof the Equality Act, so that it remains coherent, harmonised and easy to understand well after enactment – key objectives for the Bill. It would enable continued consistency between the provisions that implement EU law and those that do not.

COSTS	ANNUAL COSTS		Description and scale of key monetised costs by 'main affected groups'	
	One-off (Transition)	Yrs		
	£ 0	1		
	Average Annual Cost (excluding one-off)		Familiarisation costs are factored into the overall familiarisation costs for the Bill, in pages 12-30.	
	£37,542	10		
			Total Cost (PV)	£323,153
Other key non-monetised costs by 'main affected groups'				
To enable the Government to make those additional changes to the domestic law necessary to maintain consistency with European law.				

BENEFITS	ANNUAL BENEFITS		Description and scale of key monetised benefits by 'main affected groups'	
	One-off	Yrs		
	£ 0	1		
	Average Annual Benefit (excluding one-off)		Benefits are subsumed within the figure benefits of simplification in pages 12-30	
	£ 0	10		
			Total Benefit (PV)	£ 0
Other key non-monetised benefits by 'main affected groups'				

### Key Assumptions/Sensitivities/Risks

That the average annual cost would be analogous to the average costs of Race and Gender Directives, multiplied by a factor of 10%

That the power would be used in a way that impacted on business about once every 7.5 years

Other usages of the power would not impact on business or would do so in a negligible way.



Price Base Yr 2009	Time Period Years 10	<b>Net Benefit Range (NPV)</b>  <b>Up to -£323,153</b>	<b>NET BENEFIT (NPV Best estimate)</b>  <b>£See Range</b>
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What is the geographic coverage of the policy/option?			GB	
On what date will the policy be implemented?			To be decided	
Which organisation(s) will enforce the policy?			N/A	
What is the total annual cost of enforcement for these organisations?			£ 0	
Does enforcement comply with Hampton principles?			N/A	
Will implementation go beyond minimum EU requirements?			N/A	
What is the value of the proposed offsetting measure per year?			£	
What is the value of changes in greenhouse gas emissions?			£ 0	
Will the proposal have a significant impact on competition?			No	
Annual cost (£-£) per organisation (excluding one-off)	Micro	Small	Medium	Large
Are any of these organisations exempt?	No	No	N/	N/

Impact on Admin Burdens Baseline (2005 Prices)				
				(Increase - Decrease)
Increase of	£ 0	Decrease of	£ 0	<b>Net Impact</b>
Key:	Annual costs and benefits: Constant Prices		(Net) Present Value	

## Evidence

### Description of chosen policy option

The Race Directive 2003 provided the main template for our assumptions, being the most recent example of where the power would clearly have been used, but we have averaged its cost (£5.38M) with that of the 2008- implemented Gender Directive (£0.25m) to achieve a more representative figure (£2.815m).

In relation to the Race Directive, extending implementation to colour and nationality as well as national origin, which the power would have enabled the Government to do, would have likely increased annual implementation costs by around 10% (£0.282m). This is on the basis that the absence of nationality and colour from the terms of the Race Directive had a limited impact because people who felt that they had experienced discrimination because of race related to colour and nationality would in many cases still have claimed because of the overlaps in interpretation of national origin and race.

For example, a person from central Africa who suffered discrimination in the UK would probably claim under the Race Relations Act both for colour discrimination and discrimination because of national origins, and could argue both separately. But these claims, if they were indirect discrimination claims, would have been subject to different tests under domestic law because harmonisation had not taken place. Harmonisation ensures that only one test has to be considered whichever ground is argued, while adding relatively few cases that could not already have been brought.

The same arguments read across to why we think some uses of the power would not have any cost impacts for business. Some changes will purely be about ensuring that the legislation remains consistent and easy to understand. It may not increase the number of claims overall, but will make them less speculative because people will have a clear idea on which basis they may want to seek compliance.

To account for inflation we have used the Treasury Gross Domestic Product deflator series which shows that in 2008-09 prices are higher than in 2003-04 by a ratio of 1:15.

Although the exact incidence is difficult to assess, the power would not be used very often. We have assumed once every 7.5 years (this has been used to estimate the average annual cost of £37,500) based on the incidence of previous Directives and court judgments and the frequency of these throwing up anomalies for the domestic legislation, once implemented.

A full Impact Assessment will be completed prior to use of this power along with other safeguards:

The main safeguards comprise:

- a requirement that exercise of the power would be subject to affirmative procedure;
- consultation before any instrument were laid; and
- Ministerial reporting to Parliament every 5 years on how the power has been used.

Consultation prior to use would ensure that all parties with an interest in the proposals would be able to articulate any concerns. Impacts on business would be addressed, giving stakeholders the opportunity to probe and test our assumptions. Since the changes to legislation required by the European legislation or case law would in most cases also need to be consulted on, this could be done in a joint exercise, so that the burden of consultation should not be a significant issue.

Requiring affirmative procedure for any instrument made using the power would mean that where section 2(2) of the European Communities Act is also relied on in the same instrument, the procedure would always be affirmative for the whole instrument, even though section 2(2) can be exercised using the negative procedure. This would increase the level of Parliamentary scrutiny in some cases for the EU elements of any combined instrument.

A Ministerial commitment to report to Parliament on use of the power is an important accountability measure.

### **Administrative burdens**

This policy does not create any additional administrative burdens or savings against the department's administrative burden baseline.

## Annex V – Combined discrimination

<b>Department /Agency:</b> <b>GEO</b>	<b>Prohibiting dual discrimination</b>	
<b>Stage: Royal Assent</b>	<b>Version: 5</b>	<b>Date: April 2010</b>
<b>Related Publications:</b> (1) Discrimination Law Review: Proposals for an Equality Bill for Great Britain. (2) Proposals to simplify and modernise the law: Initial RIA. (3) Framework for a Fairer Future (June 2008) and (4) the Government response to the consultation (July 2008) (5) Equality Bill: Assessing the Impact of a Multiple Discrimination Provision A Discussion Document (April 2009) (6) Equality Bill Impact Assessment (Introduction) 27 April 2009 (7) Equality Bill Impact Assessment (House of Lords Introduction) December 2009		

Available to view or download at:

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### What was the problem under consideration? Why was government intervention necessary?

The domestic anti-discrimination framework was criticised for preventing claims of discrimination because of a combination of characteristics from succeeding because it forced claimants to separate their claims in respect of each protected characteristic and in some circumstances, made it impossible for the claims to be proven when considered separately.

As a result of this, a gap in protection was identified. For example, in the case of a black woman alleging discrimination because of sex and race in applying for a job, requiring comparison with the treatment of a man (for the sex claim) and a person who is not black (for the race claim), the employer could have shown that they employ both men and women within their workforce and that their workforce is racially diverse (warranting the conclusion that the treatment of the claimant was not because of either sex or race). Therefore, he may have evaded liability even if his failure to appoint the claimant was discriminatory (because of her being a black woman, i.e., the combination of sex and race). While the legislative framework provided a remedy for those who experience single strand discrimination, there was a gap for those who experience discrimination because of a combination of characteristics.

### What are the policy objectives and the intended effects?

Our policy objectives are:

- to ensure that the law more accurately reflects the discrimination which people actually experience;
- to ensure that individuals who experience unlawful discrimination because of a combination of protected characteristics can bring a claim and achieve the appropriate remedy;
- to avoid unduly complicating the law or placing undue burdens on employers and services providers by placing limits on the number of protected characteristics and types of claims which can be combined.

**What policy options have been considered? Please justify any preferred option.**

Option 1 – do nothing.

Option 2 – allow claims of discrimination because of a combination of characteristics without any limitations on the type or number of claims and protected characteristics which can be combined.

Option 3 – allow discrimination claims for direct discrimination and victimisation enabling claims of combinations up to a maximum of three characteristics.

**Option 4 – (chosen) allows combined discrimination claims restricted to direct discrimination and for a combination of 2 characteristics only.** If the treatment amounts to victimisation under the Act, it will be dealt with as victimisation and not under this provision. This is the preferred option as it represents the most proportionate response to the problem.

**When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects?**

After implementation, and on an ongoing basis, by the Equality and Human Rights Commission. The Government will also review after 5 years.

## Combined discrimination: Analysis & Evidence

Policy option: 4

Description: Allow combined discrimination dual characteristic claims restricted to direct discrimination and for a combination of two characteristics only.

COSTS	ANNUAL COSTS		Description and scale of <b>key monetised costs</b> by ‘main affected groups’
	One-off (Transition)	Yrs	
	£ 7,801,394	2	
	Average Annual Cost (excluding one-off)		
	£ 4,084,385		
		Public Sector: One Off: £2,545,308, Annual: £1,395,472 Private Sector: One Off: £4,858,972 Annual: £2,424,110 Individuals: One Off: £397,114, Annual: £264,803	
		Total Cost (PV)	£ 42,847,413

Other **key non-monetised costs** by 'main affected groups'

Businesses and employers will need to familiarise themselves with dual discrimination. We have costed familiarisation for businesses and employers but there is concern they may over-comply with the requirements which we have not monetised.

BENEFITS	ANNUAL BENEFITS		Description and scale of <b>key monetised benefits</b> by 'main affected groups'
	One-off	Yrs	
	£ 2,625,748	2	
	Average Annual Benefit (excluding one-off)		
	£ 633,168		
		Individuals: One Off Benefit: £2,625,748 Annual Benefit: £633,168	
		<b>Total Benefit (PV)</b>	<b>£ 8,031,463</b>

Other **key non-monetised benefits** by 'main affected groups'

These provisions will protect those who experience dual discrimination but would otherwise be without an adequate remedy. Benefits in the workplace include increased motivation and improved morale, retention of staff, developing talents and reduction in absence rates.

- We consider the large majority of cases which concern dual discrimination are already being brought as single characteristic claims. We think that 7.5% of discrimination cases involve claims concerning two or more strands, and that 4% would include a dual discrimination claim.
- We expect an increase of 10% in discrimination cases involving more than one protected characteristic following the implementation of dual discrimination provisions until case law has been firmly established. Once there is more certainty as to how courts and tribunals will interpret the provision, we expect this to fall to 5%.
- We do not anticipate an increase in the overall number of cases, beyond the 10% increase, but rather a change in the way that 4% of the existing case load is brought.

Price Base Year	Time Period Years 10	<b>Net Benefit Range (NPV) up to -£34,815,950</b>	<b>NET BENEFIT (NPV Best estimate) See Range</b>
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What is the geographic coverage of the policy/option?	GB
On what date will the policy be implemented?	April 2011

Which organisation(s) will enforce the policy?			Courts and	
What is the total annual cost of enforcement for these organisations?			£ -	
Does enforcement comply with Hampton principles?			N/A	
Will implementation go beyond minimum EU requirements?			N/A	
What is the value of the proposed offsetting measure per year?			£ 0	
What is the value of changes in greenhouse gas emissions?			£ 0	
Will the proposal have a significant impact on competition?			No	
Annual cost (£-£) per organisation (excluding one-off)	Micro -	Small -	Medium -	Large -
Are any of these organisations exempt?	No	No	N/A	N/A
<b>Impact on Admin Burdens Baseline</b> (2005 Prices) (Increase - Decrease)				
Increase      £ 0	Decreases      £ 0	<b>Net</b>	£ 0	

## Evidence Base

### Problem/intervention

Previously, claims of direct discrimination combining characteristics could not be brought and it was likely that most individuals sought a remedy through one or more single strand claims, however, this was often complicated, difficult and sometimes impossible.

### What policy options have been considered?

- **Option 1: Do nothing.**  
This option was discounted because it would mean that individuals who experience discrimination because of a combination of characteristics would continue only to be able to bring claims addressing each protected characteristic separately. The gap in protection would continue to exist.
- **Option 2: Allow claims to be brought for any type of prohibited conduct on any combination of the nine protected characteristics.**  
This option was rejected because it was considered unlikely that a significant proportion of cases involve intersectional discrimination beyond a combination of two protected characteristics, meaning that enabling an unlimited combination of protected characteristics within a claim would be impracticable and a disproportionate response to the actual need. There was also limited evidence that other prohibited conduct, such as indirect discrimination and harassment, already admits a combined approach in order to achieve a remedy.
- **Option 3: Allow combined discrimination claims for a combination of up to 3 characteristics.**  
It was considered that enabling claims combining up to 3 characteristics would prove unduly complex and burdensome for employers and service providers.
- **Option 4: (chosen) Allow combined discrimination claims restricted to direct discrimination and for a combination of 2 characteristics only.**  
This ensures protection against the vast majority of potential incidents of dual discrimination.

Dual discrimination claims will not cover indirect discrimination or harassment as there is no evidence that the existing approach prevents individuals from achieving a remedy in these instances.

If the treatment amounts to victimisation under the Act, it will be dealt with as victimisation and not under this provision.

The proposal excludes pregnancy/maternity from dual discrimination claims as pregnancy and maternity claims do not require a comparator. It is difficult to see how pregnancy and maternity could be included in a dual discrimination claim in combination with another protected characteristic which does require a comparator.

The proposal also excludes marriage and civil partnership from dual discrimination claims because it is considered that such claims are likely to be brought on a sex or sexual orientation basis respectively in any case. There was no evidence presented during the consultation that demonstrated that pregnancy and maternity or marriage and civil partnership, when combined with other characteristics, cause problems in practice.

Claims relating to discrimination arising from disability and the duty to make reasonable adjustments are excluded from this new provision which encompasses direct discrimination because of disability only. This does not preclude claimants from bringing a discrimination arising from disability claim and/or failure to make reasonable adjustments claim alongside a separate claim for dual discrimination.



As there is no existing dual discrimination provision in the UK, there is limited evidence demonstrating impact of discrimination because of a combination of characteristics, for any number of combinations. We have therefore based our assumptions in light of the feedback we received following the publication of our discussion document *Equality Bill: Assessing the impact of a multiple discrimination provision*, research conducted by Citizens Advice and evidence collated from international examples.

We considered this to be the most appropriate and proportionate approach to claims of discrimination because of a combination of characteristics, ensuring that the changes do not unduly complicate the law or place undue burdens on employers and service providers, or the courts and tribunals.

## **Costs and benefits of chosen option**

### Option 4 (chosen)

We received 53 written responses to our discussion document *Equality Bill: Assessing the impact of a multiple discrimination provision*, from a wide range of stakeholders including equality representatives, trade unions, employers and business representatives. We used these responses to inform the cost and benefit analysis of this impact assessment.

In addition, research was commissioned in the form of a study of discrimination cases handled by the Citizens Advice Bureaux (CAB). The purpose of the research was to provide further evidence of those currently experiencing discrimination because of a combination of characteristics and their experience on the processes by which they seek remedy.

We have also drawn on the limited international examples available, in particular claims brought in the Irish Equality Tribunals, to help inform our assessment.

### Sectors affected

Dual discrimination is to be prohibited in all spheres in which discrimination is prohibited. We therefore expect that both the public and private sector will be affected and have factored this into our cost assessment.

### Number of existing cases likely to include dual discrimination

Data on the number of people in the UK who are subject to dual discrimination but are without a remedy in law is not collected because it has not been previously possible for people to bring such claims. In estimating the number of people subject to discrimination because of a combination of characteristics, but who are without a remedy in law, we drew on comparisons with the Irish Equality Tribunals. We used this comparison because while there is no similar dual discrimination provision in operation, there is provision in the Republic of Ireland for claims of additive discrimination to be investigated as a single case.

Based on the average number of tribunal cases, over the last three years to 2008, we estimate that approximately 2612 of the total 34,828 claims could have been brought as dual discrimination claims. As there is currently no dual discrimination provision, these claims were brought as single strand claims.

Evidence provided by the Irish Equality Tribunals shows that over the last 3 years, an average of 7.5% of claims brought before them per year included multiple grounds. Whilst the figure based on the Irish Equality Tribunal provides a useful evidence base to assess the impact of prohibiting dual discrimination, we believe this to be an over-estimation of its impact. The figure from Ireland is based on the total number of claims brought, some of which would have been unsuccessful or concerned additive rather than combined discrimination. The provision in Ireland also includes a number of areas that the prohibition of dual discrimination will not provide for:

- Indirect discrimination and harassment cases,

- Discrimination arising from disability and reasonable adjustment claims;
- Collective agreement cases.

Research conducted by the CAB supports the above figure. The CAB conducted 23 interviews with CAB advisors across the UK. The research examined 1375 discrimination cases and revealed that 7.71% of these discrimination cases involved more than one protected characteristic. This research also showed that while 7.71% of these cases involved more than one protected characteristic, only 4% of these cases concerned the combination of both protected characteristics and involved the characteristics included within the prohibition of dual discrimination. This evidence suggests that around 4% of cases in Great Britain might include a dual discrimination claim.

Given that this is a new provision, we anticipate that there will be a number of claimants who bring two separate direct discrimination claims who then also include a dual discrimination claim, when, in fact, dual discrimination did not occur. For this reason, in the first year following implementation, we estimate that all those who bring two claims for single strand discrimination will also include a dual discrimination claim. This equates to 2616 cases, which is 7.5% of all discrimination cases. Through increasing awareness of the nature of the prohibition of dual discrimination, we anticipate that this figure will fall to 6% (2090 cases) in the second year before settling at 4% thereafter (1393 cases).

These figures also include a number of cases representing those where, previously, a person experiences discrimination because of a combination of two protected characteristics, but cannot bring a dual discrimination claim and does not feel able to pursue two separate single characteristic claims. Previously, these individuals would tend to drop one single characteristic claim, pursuing only one of their potential claims. The CAB research identified that 17% of their clients who presented with a case involving discrimination because of a combination of characteristics eventually dropped one of the characteristics, seeking to proceed to court or tribunal with their strongest single claim. This view is corroborated by the responses to our discussion, and for these claimants this provision enables them to bring a dual discrimination claim alongside their single characteristic claim.

The dual discrimination provision does not restrict the claimant from bringing two single characteristic claims, as previously; however, as that option is unaffected, we have concluded that the potential for including this second strand claim should not be factored into this impact assessment, which is concerned with the impact of the prohibition of dual discrimination.

#### Success rate of cases involving dual discrimination

We estimate a small increase in the success rate for cases including a dual discrimination claim. Previously it has been difficult, complicated and sometimes impossible for some people who experience discrimination because of a combination of characteristics to get a legal remedy. The prohibition of dual discrimination will lead to an increase in the rate of success for these cases. For example, if a black woman has been discriminated against because of her combination of race and sex, the respondent could previously adduce evidence about how they treat black men or white women as proof that they do not discriminate because of race or, separately, sex. The prohibition on dual discrimination means that respondent will now need to adduce evidence (hypothetical or actual) of someone who does not have either of the protected characteristics in the combination of which the claimant alleges was the reason for the less favourable treatment.

The latest available figures provided by The Survey of Employment Tribunal Applications 2003 show that 2% of discrimination cases are successful at tribunal. We anticipate that the prohibition of dual discrimination will mean that dual discrimination cases are more likely to succeed than in the past, when brought as single strand claims. However, any increase in the success rate is likely to be offset by an increase in claims brought, as a result of the new provision, where claimants have not, in fact, suffered dual discrimination, and which will not be successful (unmeritorious or vexatious claims). We therefore expect the success rate to remain at 2%. Applying that percentage, of the estimated 1393 cases we consider will be brought which include a dual discrimination claim, this equates to a further 28 successful claimants per year.

As claims for dual discrimination have not previously been possible, we have been unable to calculate how many of these 1393 cases will be withdrawn before hearing, struck out, dismissed or result in a default judgment. It is important to consider, therefore, that the figure of 1393 that has been calculated is an inflated estimate of the number of cases which will proceed to a hearing or trial. It is also worth noting that of the 28 successful claims, some or most may well have succeeded as single characteristic claims.

#### New dual discrimination cases

In addition to the 1393 pre-existing discrimination cases which will also now include a dual discrimination claim as described above, we also assume an increase in the total number of cases which will be brought. This increase reflects cases which could not have been brought before as there had been no provision to enable this *and* which were not brought as single characteristic claims.

Responses to our discussion in 2009 recognised that, as with any new provision, there is likely to be a surge in claims until there is better understanding as to how courts and tribunals interpret this provision. In light of these responses, we think that there will be an increase of 10% during this period. Our estimate of a 10% increase in cases equates to a further 139 dual discrimination cases per year. We therefore expect 1532 dual discrimination cases per year for 2 years until case law is firmly established. With a success rate of 2%, we therefore expect that there will be 31 successful dual discrimination cases per year until there is more certainty as to how courts and tribunals interpret these provisions.

Once there is a better understanding of the interpretation of these provisions, we think that this figure will drop so that there will be a 5% increase in the total number of cases which will be brought as a result of this new provision. An increase in cases by 5% equates to a further 70 dual discrimination cases per year. We therefore expect 1463 dual discrimination cases per year after the 2 years that courts and tribunals are likely to take to establish firm case law. With a success rate of 2%, we expect 29 successful dual discrimination cases per year.

#### Cost of new compensation awards

We have estimated that 1393 cases previously brought as single strand claims would have included a dual discrimination claim and that 28 of these cases are successful at tribunal. Following the prohibition of dual discrimination, we expect between 1463 - 1532 cases per year to include a dual discrimination claim, of which 29 - 31 cases would be successful. We therefore need to cost the increase in compensation awards for the 1 - 3 additional successful cases per year.

The compensation costs are shown in the table below:

<b>Cost of compensation awards</b>	<b>Currently</b>	<b>First 2yrs including one-off case spike</b>	<b>Estimate after 2yrs</b>
Number of DD cases	1393 (cases)	1532 (cases)	1463 (cases)
Assume 2% success rate	28 (cases)	31 (cases)	29 (cases)
Mean compensation award	£9207	£9207	£9207
Total cost	£257,796	£285,417	£267,003
<b>Net additional cost</b>		<b>£27,621</b>	<b>£9,207</b>

#### Cost of new out of court settlement awards (privately and through the Advisory, Conciliation and Arbitration Service (ACAS))

A number of responses to our discussions have stated that large organisations (250+ employees) will be more likely to try and settle cases which include a dual discrimination claim out of court until

case law has been firmly established. The perception that the complexity of these cases may lead to costs associated with an increased time at court may also mean these organisations are more likely to settle. We therefore estimate that until there is more certainty as to how courts and tribunals will interpret these provisions, there will be a 20% increase in the proportion of cases which will settle as a result of the prohibition of dual discrimination. This will result in 72%<sup>150</sup> of cases overall which will settle out of court. We have also factored the following into the calculation:<sup>151</sup>

- 60% of Employment Tribunal cases are currently settled;
- 90% of settlements involve monies;
- the mean settlement in discrimination cases is £5333.

We know that of the 1393 pre-existing cases, 836 settled out of court. We estimate that the prohibition of dual discrimination will result in between 965 and 1103 cases settling out of court. This will lead to an additional 129 - 267 cases settling out of court.

Out of court settlements	Currently	First 2yrs including one-off case spike	New estimate after 2 years
Number of DD cases	1,393 (cases)	1,532 (cases)	1,463 (cases)
Previously 60% settled	836 (cases)	-	-
New estimate based on 72% and 66% that would settle	-	1,103 (cases)	965 (cases)
90% money settlements	752 (cases)	993 (cases)	869 (cases)
Mean settlement	£5,333	£5,333	£5,333
Total cost	£4,010,416	£5,295,669	£4,634,377
<b>Net additional cost</b>		<b>£1,285,253</b>	<b>£623,961</b>

### Cost summary

We anticipate that enabling individuals to bring dual discrimination claims rather than having to bring claims which relate to a single incident as a number of single strand claims involving different characteristics, each of which must be considered separately, will not lead to a significant increase in time spent at court or tribunal. Responses to our discussion indicated that it is likely that employers will need more time to prepare for dual discrimination cases due to, the analysis of the workforce which may be involved in identifying comparators and the likely use of hypothetical comparators, but that this would not be a significant amount of time.

The Employment Tribunal Service suggested this would not be more than a 50% increase in time. One response provided data to show that the prohibition of dual discrimination may lead to 33% more time on these cases, which could roughly equate to a 33% increase in costs.

We consider this figure to be appropriate because the evidence which will have to be prepared and presented by the respondent and claimant will remain broadly the same – the case is likely to relate to the same single incident and set of facts. The tribunal will be able to consider the evidence in relation to the combination of characteristics rather than each characteristic separately. In addition, the claim will better reflect the actual incident of discrimination, which we anticipate will make consideration of the claim easier for courts, tribunals, businesses and organisations. Evidence which previously needed to be manipulated to fit single strand claims may be, with this provision, presented more easily.

The table below shows calculated **costs** of the extra 70-139 dual discrimination cases, compensation costs for the extra 1-3 successful cases and awards in out of court settlements for the 129-267 cases for the public and private sector and individuals.

<sup>150</sup> This figure incorporates the cases settled via ACAS and settled privately.

<sup>151</sup> All taken from the Survey of Employment Tribunal Applications 2003.

### Cost of new cases

	One-off costs from case spike	Average annual costs
<b>Exchequer</b>		
Increase in tribunal cases	£94,798	£23,870
<b>Public sector employers</b>		
Increase in cases	£137,885	£ 34,719
Compensation awards from successful cases	£ 14,915	£ 2,486
Increase in out of court settlements	£ 694,037	£ 168,469
<b>Private sector employers</b>		
Increase in cases	£ 372,801	£ 93,871
Compensation awards from successful cases	£ 40,327	£ 6,721
Increase in out of court settlements	£ 1,876,469	£ 455,492
<b>Individuals (claimants)</b>		
Increase in cases	£ 50,318	£ 12,670
<b>Total</b>	<b>£ 3,281,550</b>	<b>£ 798,298</b>

The table below shows calculations of the additional costs (with a 33% increase) for the 1393 pre-existing cases which we expect will now include a dual discrimination claim.

### Additional cost for existing cases

	One-off costs	Average annual costs
<b>Exchequer</b>		
Increase in tribunal costs	£653,356	£ 475,013
<b>Public sector employers</b>		
Increase in costs	£ 950,317	£ 690,914
<b>Private sector employers</b>		
Increase in costs	£ 2,569,375	£1,868,027
<b>Individuals (claimants)</b>		
Increase in costs	£ 346,796	£ 252,133
<b>Total</b>	<b>£ 4,519,844</b>	<b>£ 3,286,087</b>

### Familiarisation costs

We have recognised that familiarisation with any new provisions will incur a one-off cost for most employers and service providers. It is assumed that “familiarisation”, as opposed to the dissemination of information and putting the policies into practice, means reaching the point where a manager or relevant employee of an organisation is aware of the changes in the law and how they impact upon their organisation. It is also assumed that this will be achieved through guidance provided by the Equality and Human Rights Commission and/or by other advisory bodies such as ACAS.



There are approximately 1.2 million small and medium enterprises (SMEs). It is assumed that a general manager will be responsible for informing themselves about the change in legislation before disseminating this information. We estimate that this process will take half an hour. Data from the Annual Survey on Hours and Earnings Survey (ASHE) 2008 shows that the average gross hourly wage for this occupation (allowing also for non-wage labour costs) is £23.18. We have multiplied this by the time investment of half an hour, and subsequently multiplied by the number of SMEs likely to need to become familiar with the legislation in any one year.

We therefore estimate that familiarisation costs for SMEs will be about £14 per SME.

There are approximately 5,180 enterprises with 250+ employees (large enterprises). It is assumed that a dedicated personnel manager with the aid of a legal expert will be responsible for informing themselves about the change in legislation before disseminating this information. It is also assumed that large enterprises will, as an indirect cost, produce their own guidance for staff. We estimate that large enterprises will spend one hour on familiarisation. Data from the ASHE 2008 survey indicates that the average gross hourly wage for a personnel manager (allowing also for non-wage labour costs) is £25.33. Similarly for legal professionals, the average gross hourly wage is £29.32 after inclusion of non-wage labour costs. Again, we have multiplied this by the time investment of one hour, and subsequently multiplied by the number of large enterprises likely to need to become familiar with the legislation in any one year.

We therefore estimate that familiarisation costs for large enterprises will be about £32 per large enterprise.

## Benefits

The table below shows how the inclusion of the prohibition of dual discrimination will benefit individuals through an increase in the compensation awarded in respect of the additional 1-3 successful cases and awards in the 129-267 out of court settlements.

Individuals	One-off benefits	Average annual benefits
Compensation from increase in successful cases	£ 55,242	£ 9,207
Increase in out of court settlements	£ 2,570,506	£ 623,961
<b>Total</b>	<b>£ 2,625,748</b>	<b>£ 633,168</b>

In light of the responses to our discussion it is also clear that the benefits in the workplace which come with all equality initiatives will equally to the prohibition of dual discrimination. These include increased motivation and improved morale, retention of staff, developing talents and reduction in absence rates all of which will be beneficial to employers and businesses generally.

## Risks

Allowing dual discrimination claims represents a significant change to the single characteristic model of discrimination law. Therefore, there is a risk of unforeseen consequences. Responses to our discussion suggested that such unintended consequences could be: that individuals may find it harder to prove dual discrimination and identify the cause of action; there could be less self-representation because individuals will need legal advice; alienating employers and overloading human resources with too many changes already and we may be creating a hierarchy of rights because the provision will be limited. However, all these risks have been mitigated as far as possible by considering the implications of the proposed changes with legal practitioners and other experts.

## Enforcement

Enforcement will continue to be through individuals bringing claims to courts or tribunals.

**Administrative burdens**

This policy does not create any additional administrative burdens or savings against the department's administrative burden baseline.



Annex W - Limiting the use of disability-related pre-employment enquiries.		
Department for Work and Pensions	To make it an unlawful act under the Equality Act 2006 to ask job applicants disability and health questions before the offer of a job or selection to a pool of successful candidates except in prescribed circumstances.	
Stage: Royal Assent	Version: 5	Date: April 2010
Related Publications: Equality Bill Impact Assessment (House of Lords Introduction) December 2009		
Available to view or download at:		
Contact for enquiries: Peter Nokes		Telephone: 0303 444 1204
<p><b>What was the problem under consideration? Why was government intervention necessary?</b></p> <p>The Government had received evidence that enabling disability-related enquiries before an offer of work was made could result in opportunities for this information being used to discriminate against disabled people in recruitment. It had also been suggested that making such enquiries acted as a disincentive to some disabled people, particularly those with “hidden” impairments such as mental health conditions or HIV/AIDS, from making applications for work, thus reducing disabled people's opportunities in the labour market.</p>		
<p><b>What are the policy objectives and the intended effects?</b></p> <p>One of the Equality Act's aims is to tackle discrimination against disabled people and to facilitate their participation in society. The measure will restrict opportunities to seek information about an applicant's disability by limiting the questions about an applicant's health that can be asked prior to the point at which the applicant is offered a job, on either an unconditional or a conditional basis, or is selected to a pool of successful candidates. It will do this by making asking such questions an unlawful act under the Equality Act 2006 except in prescribed circumstances. This will benefit disabled people by limiting opportunities for information about their health to be used to directly discriminate against them during recruitment. It will also reduce the deterrent effect that such enquiries can have on disabled people applying for work.</p>		
<p><b>What policy options were considered? Please justify any preferred option.</b></p> <p>Option 1: Permit pre-employment enquires about disability and health that are necessary for:- finding out if a job applicant would be able to participate in an assessment to test their suitability for the work; making reasonable adjustments to enable the disabled person to participate in the recruitment process; finding out whether a job applicant would be able to undertake a function that is intrinsic to the job, with reasonable adjustments in place; supporting monitoring of applications from disabled people; supporting the positive action and occupational requirement provisions of the Equality Act; and undertaking national security vetting.</p> <p>Make asking any other disability and health enquiries prior to an offer of work or acceptance into a pool of candidates an unlawful act under the Equality Act 2006 , a contravention of which can only be enforced by the Equality and Human Rights Commission (EHRC). <b>(Chosen option)</b></p> <p>Option 2: Restict the use of pre- employment enquiries about disability and health until after a job applicant has successfully completed an assessment or interview or is offered a job, unless for the purpose of: making reasonable adjustments to the recruitment process; supporting monitoring of</p>		

<p>applications from disabled people; supporting the positive action and occupational requirement provisions of the Equality Act and undertaking national security vetting.</p> <p>Option 3: Limit pre-employment enquiries about disability and health to those required to support reasonable adjustments in recruitment.</p> <p>Option 4: Do nothing.</p>
<p><b>When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects?</b></p> <p>After implementation, and on an ongoing basis, by the Equality and Human Rights Commission. The Government will also review after 5 years.</p>

## Disability-related pre-employment enquiries: Analysis & Evidence

Policy option: 2

To make it an unlawful act under the Equality Act 2006 to ask job applicants disability and health questions before the offer of a job or selection to a pool of successful candidates except in prescribed circumstances.

COSTS	ANNUAL COSTS		Description and scale of key monetised costs by 'main affected groups'	
	One-off (Transition)	Yrs		
	£798,000 to £1,597,000	1		
	Average Annual Cost (excluding one-off)		One-off familiarisation costs factored into overall familiarisation costs for the Bill. Other one-off costs estimated at £1m - £2m.  Minimal ongoing annual costs involved in reviewing formal recruitment processes, where enquiries are used.	
	£ 0	10	Total Cost (PV)	£798,000 to £1,597,000
Other key non-monetised costs by 'main affected groups'				
None identified				

BENEFITS	ANNUAL BENEFITS		Description and scale of key monetised benefits by 'main affected groups'	
	One-off	Yrs		
	£ Minor	1		
	Average Annual Benefit (excluding one-off)		Minor, but unquantifiable financial savings for employers from greater clarity in the legislation.	
	£ Minor	10	Total Benefit (PV)	£ Minor
Other key non-monetised benefits by 'main affected groups'				
Reduced risk for disabled people of information about their disability being used to discriminate against them during recruitment. Reduction in the deterrent effect of disability and health questions on disabled people's applications for work: thereby promoting labour market participation.				

## Key Assumptions/Sensitivities/Risks

Not all organisations make enquiries about disability and health during the recruitment process. Where they do, there will be a marginal impact on recruitment processes for most organisations. For small firms which generally do not operate formalised, written processes, there will be at most a marginal impact. The proposal will have a neutral effect on discrimination claims.

Price Base Yr <b>2009</b>	Time Period Years <b>10</b>	<b>Net Benefit Range (NPV)</b>  <b>£798,000 to £1,597,000</b>	<b>NET BENEFIT (NPV Best estimate)</b> <b>-£1,197,500 (mid-point)</b>
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What is the geographic coverage of the policy/option?			GB	
On what date will the policy be implemented?			[see table p.9]	
Which organisation(s) will enforce the policy?			[see table p.9]	
What is the total annual cost of enforcement for these organisations?			[see table p.9]	
Does enforcement comply with Hampton principles?			Yes	
Will implementation go beyond minimum EU requirements?			No	
What is the value of the proposed offsetting measure per year?			£ 0	
What is the value of changes in greenhouse gas emissions?			£ 0	
Will the proposal have a significant impact on competition?			No	
Annual cost (£-£) per organisation (excluding one-off)	Micro	Small	Medium	Large
Are any of these organisations exempt?	No	No	N/	N/

### Impact on Admin Burdens Baseline (2005 Prices)

					(Increase - Decrease)
Increase of	£ 0	Decrease of	£ 0	<b>Net Impact</b>	<b>£ 0</b>

Key: Annual costs and benefits: Constant Prices (Net) Present Value

## Evidence

There was no provision in the Equality Act on its introduction to prevent an employer from asking disability-related or health-related questions of applicants for work. Such enquiries were permitted because the Government recognises that disability-related information can enable an employer to decide whether a disabled person would need reasonable adjustments, to a recruitment process and/or in respect of the job that is on offer and so open up opportunities for disabled people's participation in the labour market.

### Why intervention was necessary

The Government received anecdotal evidence from a range of disability organisations that information disabled people were providing in response to pre-employment disability and health enquiries could, and was leading to their being discriminated against in recruitment. This was considered to be particularly the case where candidates had mental health conditions or HIV/AIDS. Research published by the National Aids Trust in August 2009, ("Working with HIV") indicated that nearly a fifth of HIV positive respondents reported that they had specifically been asked about their HIV status in a pre-employment health questionnaire for their current job.

There are little data to indicate the numbers of disabled people who experience discrimination in the recruitment process as a consequence of their having disclosed their disability in a job application. However, the Disability Charities Consortium reported in its written evidence to the Equality Act Public Bill Committee that a snapshot poll by Mind conducted in October 2008 found that 1 in 4 people had had a job offer withdrawn after disclosing a mental health condition. In oral evidence to the Bill Committee, RADAR said that a restriction on the use of pre-employment enquiries "is probably the single biggest difference and improvement that could be made through the Equality Act" in relation to the employment of disabled people. It also pointed out that a restriction would assist, not only in tackling discrimination in the early stages of recruitment, but also in mitigating against the deterrent effect that such enquiries can have on some disabled people making job applications. In "Working with HIV", the National Aids Trust reported that almost three-quarters (72%) of those asked about their HIV status in pre-employment questionnaires reported that it made them feel uncomfortable.

The Government decided that intervention was necessary to restrict the use of disability and health -related pre-employment enquiries and included a new provision to this effect in the Equality Act.

### **Description of chosen option**

To make it an unlawful act under the Equality Act 2006 to ask disability and health questions of job applicants before the offer of a job or selection to a pool of successful candidates except for pre-employment enquiries needed to:

- (a) find out whether a job applicant would be able to participate in an assessment to test their suitability for the work;
- (b) identify the requirement for reasonable adjustments to the recruitment process;
- (c) find out whether a job applicant would be able to undertake a function that is intrinsic to the job, with reasonable adjustments in place as required;
- (d) facilitate monitoring by the employer of diversity in the range of people making job applications;
- (e) deliver positive action for disabled people;
- (f) facilitate recruitment to posts where having a particular disability is an occupational requirement; and
- (g) undertake national security vetting.

A provision based on policy option 2 above was developed following discussions with, and input from, a range of organisations representing disabled people, business organisations and employers: the Disability Charities Consortium, National Aids Trust, Terrence Higgins Trust, Rethink, Royal College of Psychiatrists, the Confederation of British Industry, NHS Employers, the Engineering Employers' Federation, the Federation of Small Businesses, the Equality and Human Rights Commission, the British Chambers of Commerce and the Trades Union Congress. The proposal was further developed following debates on the provisions' introduction at the Equality Bill's Report stage in the House of Commons and discussions with the Disabilities Charities Consortium and EHRC.

### ***Enquiries to establish a whether job applicant is able to participate in an assessment***

Not putting job applicants at risk during the recruitment process is a key consideration. Health questions for the purpose of establishing whether a job applicant would be able to comply with a requirement to undergo an assessment will be permitted. This is intended to capture assessments designed to establish whether the applicant is able to carry out a function that is intrinsic to the work concerned and will ensure that anyone being required to undertake an assessment would not be placed at any risk in doing so because of their health.

### ***Enquiries related to reasonable adjustments to recruitment processes.***

The principle of reasonable adjustment underpins disability discrimination legislation and opens up opportunities for disabled people to participate in the labour market. Therefore, it is important that enquiries that are specifically for the purpose of identifying the need for reasonable adjustments to the recruitment process are allowed. This will include, for example, whether a disabled person requires a reasonable adjustment in relation to an interview venue, or to any pre-recruitment tests. The proposal will permit pre-employment enquiries in such circumstances.

### ***Enquiries about whether a job applicant would be able to undertake a function that is intrinsic to the job***

There are some jobs where it is important to find out whether the job applicant is able to carry out specific activities. For example, a scaffolder needs to be able to climb scaffolding safely. Health questions with the purpose of establishing whether a job applicant would be able to carry out a function that is intrinsic to the work concerned will be permitted. In this context the recruiter will be required to consider whether a reasonable adjustment could be made for a disabled applicant to a function that would be intrinsic to the work.

### ***Enquiries to support diversity monitoring of job applications***

It had been suggested by some disability organisations that pre-employment enquiries should be permitted to facilitate workplace monitoring of job applications particularly from disabled people. There was strong support for this proposal from disability organisations and representatives of larger employers. Diversity monitoring is viewed as an important tool in modern workplace planning as it can inform recruitment policies and methods to improve representation of disabled people. It can potentially open up opportunities for disabled people in the labour market, not least through its capacity to inform decisions on whether to exercise positive action under the Equality Act.

### ***Permitting pre-employment questions to support positive action***

The Equality Act includes a provision allowing an employer to take positive action where a group of people with a protected characteristic is under-represented or disadvantaged in the workforce. Positive action may be exercised in favour of candidates with a particular protected characteristic – including disability. The Government considered whether there was a case for permitting disability-related pre-employment enquiries specifically in relation to positive action. It does not wish to open up unduly the range of circumstances in which disability-related enquiries may be made. However, it considers that the ability to exercise positive action in favour of people with particular disabilities could significantly increase opportunities for their participation in the labour market. It does not wish to inadvertently restrict or discourage employers who wish to exercise positive action by limiting their ability to identify at an early stage in recruitment those candidates who they are targeting. Consequently, the Government has decided to permit disability-related pre-employment enquiries which support positive action. It will also ensure that the legislation should not limit the activity of organisations such as Remploy whose sole or main purpose is to assist disabled people to gain employment.

### ***Permitting pre-employment enquiries related to an occupational requirement***

The Equality Act applies provisions relating to occupational requirements to disability. The Government considered whether it should permit pre-employment enquiries linked to an occupational requirement to enable an employer to satisfy themselves that the candidate meets that requirement. Discussions with disability and business organisations indicated that they had some reservations with this approach. They considered that the occupational requirement provisions in the Act would be little used and that legislating to permit pre-employment enquiries in this additional, and very specific, set of circumstances could lead to confusion for employers.

The Government recognises the concerns of stakeholders, but it is keen to avoid uncertainty for employers or applicants, as to how the applicant could show that they meet the requirements of the post where an occupational requirement applies, without necessarily disclosing their disability. It has concluded, therefore, that it should permit such enquiries as this will avoid nugatory work for an employer, who will be able to identify and exclude ineligible candidates at an early stage in the selection process.

### **Other policy options considered but rejected**

#### ***Deter the use of pre-employment disability and health-related enquiries until after a job applicant has successfully completed an assessment unless specifically prescribed.***

The Government introduced a provision in the House of Commons that restricted the use of health enquiries prior to an applicant for work having successfully completed an assessment or receiving an offer of work. The provision also reversed the burden of proof in favour of the disabled person who brought a claim for direct discrimination after being asked a question that was not permitted and was then not selected for the next stage of the recruitment process. The Government was persuaded that the provision did not address the two-fold mischief of preventing employers from asking questions about a disabled person's disability and using the information to discriminate against the applicant and the deterrent affect that such questions have on disabled people applying for work.

#### ***Limit pre-employment enquiries to those required to support reasonable adjustments in recruitment.***

When developing the proposal, the Government considered whether the use of pre-employment enquiries should be restricted only to those required to identify the need for reasonable adjustments. However, discussions with representatives of employers and disabled people highlighted the value of permitting enquiries for the specific purpose of monitoring job applications from disabled people as part of wider diversity monitoring. Also, for the reasons set out above, the Government was convinced that there would be significant value in permitting pre-employment enquiries to support the exercise of positive action and the operation of occupational requirements in order to improve disabled people's opportunities in the labour market. And in the other specific circumstances described at 5 above.

#### ***Do nothing option***

If the Government had done nothing, some disabled people would have remained exposed to the risk of discrimination in the initial stages of recruitment and would not progress to interview or other selection stages. In addition, allowing unlimited use of pre-employment disability-related questions would have continued to have a deterrent effect on some disabled people making job applications, thus restricting their participation in the labour market. It would have been inappropriate to allow this situation to continue, particularly in the light of recognition among disability and employer organisations that a restriction on the use of pre-employment enquiries would overcome these barriers to disabled people.

### **Potential additional requirements**

Disability organisations, particularly those representing people with mental health impairments or HIV/AIDS, were keen that the legislation should make clear that where pre-employment enquiries are made, the provision of disability-related information should be voluntary. However, the



provision of information by an applicant for a job to an employer is on a voluntary basis, as it is the applicant who decides to apply for the job and provide the information. Consequently including a provision in the Act specifying that providing information is voluntary would be superfluous, particularly as the opportunities for making enquiries are to be restricted to specified and legitimate circumstances.

Some disability organisations had suggested that the Equality Act should also place legal requirements on employers to:

- specify, when making enquiries, the reasons for seeking the information and to provide an assurance that the information will not be used for other purposes;
- anonymise disability-related information, keep it separate from the application form, and confidential from interviewers/recruiters, unless they need this information for the purposes of making reasonable adjustments to the recruitment process, e.g. arrangements for interviews or tests.

However, a legislative requirement that disability-related information should be anonymised and kept confidential from interviewers would be impractical and unenforceable in small organisations which do not have separate human resources departments. Discussions with employers' organisations led the Government to conclude that such provisions would be too detailed and not be appropriate for inclusion in the Equality Act, but might be considered as good practice and be included in guidance and Codes of Practice on the Bill's provisions.

## **Economic impact**

For all organisations involved in recruitment, there will be one-off costs associated with familiarisation with the new provisions, but these have not been considered separately. This impact assessment for the Equality Act incorporates aggregated familiarisation costs for the new legislation.

A duty already exists for an organisation to make reasonable adjustments to its recruitment arrangements where that organisation is aware that a job applicant is disabled. To ascertain the need for any reasonable adjustments to the recruitment process, or in connection with the job itself, many organisations will already include disability-related enquiries in their recruitment documentation or processes, or for the purposes of monitoring diversity among job applicants. Where an organisation seeks disability-related information for reasonable adjustment purposes, the cost of including the questions in application forms, and managing the information, already applies. Therefore, the proposal will incur an initial cost of revising documentation but thereafter will not add costs to those currently incurred.

Where an organisation does not already make disability-related enquiries at the initial stages of recruitment, but does so at the point of job offer – in order to identify the need for reasonable adjustments in relation to the job itself – the proposal will similarly not have any impact on that organisation's costs. This is because the proposal envisages that enquiries would continue to be made once a job offer, conditional or unconditional has been made, or the person has been selected into a pool of successful, candidates, in particular to ascertain what requirement there may be for reasonable adjustments to aspects of the job itself.

The Department has no data on the numbers of companies and organisations that make disability-related enquiries as part of a formal written application process. However, discussions with employer organisations indicate that such formal processes, and particularly monitoring of diversity, are normally only conducted by large employers. Therefore, the proposal is unlikely to have any significant resource implications for small businesses who would not have to adapt formal application forms or procedures. The proposal may involve small revisions to recruitment and/or monitoring processes or documentation, though representatives of larger employers indicated that the costs of such revisions are expected to be minimal.

Some additional costs may be involved where, currently, an employer routinely asks for disability-related information, but does not restrict enquiries to the permitted categories set out above. However, discussions with employer organisations indicated that most additional costs were anticipated to be incidental and one-off. This is because, where recruitment procedures were formalised, they may require some minor adaptation of application forms or processes, to comply with the more restricted use of pre-employment enquiries. Ongoing costs, if any, were again considered by employer organisations to be minimal and incidental.

There are no data on the numbers and types of organisations that routinely make disability-related enquiries at the initial application stage, but for the purposes of this assessment, it is assumed that, generally, it will be larger organisations and public bodies. Low and high estimates that 25 and 50 per cent of large organisations and public bodies make such enquiries have been assumed.

Number of large firms:	5,905	(18.7%)
Number of public bodies:	25,612	(81.3%)
Total:	31,517	

### One off costs of chosen option

Estimate	Number	Time (hours)	Hourly rate	Total	Large firms(18.7%)	Public bodies (81.3%)
Low	25% of 31,517 = 7,879	4	£25.33	£0.798m	£0.149m	£0.649m
High	50% of 31,517 = 15,759	5	£25.33	£1.597m	£0.299m	£1.298m

[Note: Base data for estimates is from Annex AB of the Impact Assessment for the Equality Act as a whole. Hourly rate of £25.33 is for a personnel officer, uplifted to include non-labour costs.]

### Ongoing costs

Minimal, if any.

The impact of the proposal on numbers of Employment Tribunal claims, and therefore on legal and compensation costs is expected to be neutral. There are no data to indicate the proportion of claims that arise from alleged discrimination during the recruitment process. However, anecdotal evidence indicates that very few cases are brought in respect of discrimination during recruitment. The vast majority relate to discrimination that occurs where the disabled person is in employment or occupation. The proposal will reduce opportunities for employers and others recruiting disabled people to gain disability-related information and to discriminate as a consequence of obtaining that information. This should reduce opportunities for claims of discrimination. This effect may be balanced out, however, because the new provisions will place new restrictions on employers asking pre-employment questions, and it may open up some scope for challenge where such enquiries are made in circumstances other than those allowed under the proposal. Thus the overall effect is estimated to be neutral.

### Enforcement

The proposal makes asking a question which is not permitted an unlawful act under the Equality Act 2006 which only the Equality and Human Rights Commission can enforce. This means the EHRC will be able to undertake investigations, issue unlawful act notices, requiring action plans, and enter into agreements etc. The EHRC uses these powers strategically and the vast majority of any costs incurred in exercising these powers will be for the EHRC and would be met from its grant-in-aid. The costs impacting on individual recruiters will be minimal. For example, an organisation subject to an investigation would be required to provide information which would

require staff time, but action plans and agreements would require no more than compliance with the provision and the costs of compliance are rehearsed above.

### **Administrative burdens**

This policy does not create any additional administrative burdens or savings against the department's administrative burden baseline.

Annex X - Provision of auxiliary aids and services in schools		
Department for Children, Schools and Families	Provision of auxiliary aids and services in schools	
Stage: Royal Assent	Version: 5	Date: April 2010
Related Publications:		
Available to view or download at: Contact for enquiries: <b>Nigel Fulton</b> <span style="float: right;">Telephone: 0303 444 1204</span>		
<b>What is the problem under consideration? Why is government intervention necessary?</b>  The Disability Discrimination Act 1995 provided exemptions to schools and local authorities in the provision of auxiliary aids and services. Government amendments were passed in Committee on 19 January to remove these exemptions from the Equality Act.		
<b>What were the policy objectives and the intended effects?</b> <u>Objective</u> <ul style="list-style-type: none"> <li>To ensure that all disabled pupils who require auxiliary aids and services will receive them, where it is reasonable for schools and local authorities to provide them.</li> </ul> <u>Intended effects</u> <ul style="list-style-type: none"> <li>Ensure that disabled children get the support they need to access fully the educational provision made by schools</li> </ul>		
<b>What policy options were considered? Please justify the chosen option.</b> Option 1: Do nothing.  Option 2: Delay amending the legislation until after Ofsted has reported following its review of SEN. The report is due in the summer of 2010.  <b>Option 3: (chosen) Remove the auxiliary aids and services exemption on schools and local authorities.</b> This was in response to a recommendation in the final report of the Lamb Inquiry into parental confidence in the special educational needs (SEN) system which, in turn, followed concern from the Equality and Human Rights Commission and others that some children are not receiving these aids and services through the SEN “statementing” system or through schools’ and local authorities’ duties to plan to increase access to schools and the curriculum. The Government is concerned that no child shall miss out on the provision of auxiliary aids and services, where it is reasonable to provide them.		
<b>When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects?</b>  Three years after implementation of the duty.		

## Provision of auxiliary aids and services in schools: Analysis & Evidence

Policy option: 3

Provision of auxiliary aids and services in schools

COSTS	ANNUAL COSTS		Description and scale of key monetised costs by ‘main affected groups’	
	One-off (Transition)	Yrs		
	£ 61,500	1		
	Average Annual Cost (excluding one-off)		Total Cost (PV)	£4,241,393t o £4,926,993
	£485,600 to £1,171,200.	10		
Other key non-monetised costs by ‘main affected groups’				

BENEFITS	ANNUAL BENEFITS		Description and scale of key monetised benefits by 'main affected groups'	
	One-off	Yrs		
	£ Minor	1		
	Average Annual Benefit (excluding one-off)			
	Minor	10	Total Benefit (PV)	Minor
Other key non-monetised benefits by 'main affected groups'				
The needs of disabled school pupils will be more comprehensively met since any auxiliary aids or services they require to help facilitate a better education will have to be considered by schools and local authorities - as opposed to the existing system under which the needs of disabled pupils are considered more generally under planning duties and possibly through Special Educational Needs duties.				

### Key Assumptions/Sensitivities/Risks

Price Base Yr	Time Period Years	Net Benefit Range (NPV)	NET BENEFIT (NPV Best estimate)
2009	10	£4,241,393t o £4,926,993	-£4,584,193 (mid-point)

What is the geographic coverage of the policy/option?

GB

On what date will the policy be implemented?	[see table p.9]			
Which organisation(s) will enforce the policy?	[see table p.9]			
What is the total annual cost of enforcement for these organisations?	[see table p.9]			
Does enforcement comply with Hampton principles?	Yes			
Will implementation go beyond minimum EU requirements?	No			
What is the value of the proposed offsetting measure per year?	£ 0			
What is the value of changes in greenhouse gas emissions?	£ 0			
Will the proposal have a significant impact on competition?	No			
Annual cost (£-£) per organisation (excluding one-off)	Micro	Small	Medium	Large
Are any of these organisations exempt?	No	No	N/	N/

Impact on Admin Burdens Baseline (2005 Prices)				
				(Increase - Decrease)
Increase of	£ 0	Decrease of	£ 0	<b>Net Impact</b> £ 0
Key:	Annual costs and benefits: Constant Prices		(Net) Present Value	

## Evidence

### Why intervention was necessary

The Disability Discrimination Act (1995), as amended by the Special Educational Needs and Disability Act 2001, provided an exemption for schools and local authorities to the reasonable adjustment requirements for the provision of auxiliary aids and services. The Government's reasoning for these exemptions was that disabled children's need for auxiliary aids and services would be met through the SEN statementing system and through schools' and local authorities' duty to plan to increase access to school premises and the curriculum. The Government still believes that the great majority of children who need auxiliary aids and services are being supplied with them through these routes.

The Disability Rights Commission/Equality and Human Rights Commission and others have become increasingly concerned that there are children missing out on auxiliary aids and services. They point out that there are disabled children, such as those with medical conditions, who do not have special educational needs and that the number of SEN statements has been declining over a number of years and so fewer children have access to aids and services through that route. The final report of the Lamb Inquiry into parental confidence in the SEN system, published on 16 December, reflected this concern and recommended that "the reasonable adjustment duty in the Disability Discrimination Act is amended to remedy the exclusion of schools from the requirement to provide auxiliary aids and services".

### Policy objective

To ensure that all pupils who require auxiliary aids and services are provided with them, where it is reasonable for schools and local authorities to do so.

### Further consultation

There was no definition of auxiliary aids and services in the field of school education. There are powers available to the Secretary of State to make regulations defining what the term auxiliary aids (and services) covers. There will be consultation on draft regulations.

## What policy options have been considered?

- **Option 1:** Do nothing.
- **Option 2:** Delay changing the legislation until after Ofsted has published its review of SEN in the summer of 2010.
- **Option 3 (chosen): Remove the auxiliary aids and services exemption on schools and local authorities.** This was in response to a recommendation in the final report of the Lamb Inquiry into parental confidence in the special educational needs (SEN) system which, in turn, followed concern from the Equality and Human Rights Commission and others that some children are not receiving these aids and services through the SEN statementing system or through schools' and local authorities' duties to plan to increase access to schools and the curriculum. The Government is concerned that no child shall miss out on the provision of auxiliary aids and services, where it is reasonable to provide them.

## Analysis of costs & benefits

The Department believes that relatively few children are missing out on the provision of auxiliary aids and services and this view is supported by Brian Lamb, whose recommendation in his report led to the amendments to the Act, by the Equality and Human Rights Commission (EHRC) and by local authorities the Department has contacted. There were also limits imposed on the cost to schools and local authorities by the nature of the duty. Schools and local authorities will be under a duty to make reasonable adjustments to provide auxiliary aids and services. EHRC is drawing up guidance on education duties under the Equality Act and this will address "reasonableness" in this context but one of the factors to take into consideration as to whether providing an aid or service is reasonable will be the cost. In addition, the Secretary of State has powers to draw up regulations defining what auxiliary aids and services are and so restricting the scope of the term and preventing schools and local authorities being given a duty to provide aids and services which are currently supplied by other agencies.

There is very little data available on which to base an estimate of the costs because there is no record of the number of children who should be receiving auxiliary aids or services but are not already doing so through SEN statements, school provision or through schools and local authorities planning duties under the DDA 1995. At January 2009 there were 1,433,940 pupils with SEN but without statements but it is not known how many of these would be disabled under the definition in the DDA and how many would require auxiliary aids and services.

The EHRC have supplied figures from the former Disability Rights Commission's casework service, which covered England, Wales and Scotland. These show that between January 2004 and March 2005 130 schools cases out of a total of 243 cases were unable to be supported by the DRC as they were out of scope of the DDA. The largest proportion of these were not able to be supported because the issue related to the provision of auxiliary aids and services.

Based on these figures, it can be estimated that there would be 100 cases a year across all schools and local authorities across England, Wales and Scotland. It is not known how many of the cases from the DRC's casework service would have resulted in schools or local authorities having to provide auxiliary aids and services had the exemptions not been in place at the time so 100 could be considered to be a generous figure.

However, it may be that only a proportion of parents whose children were denied access to auxiliary aids and services contacted the DRC's casework service. While DCSF continues to believe that most pupils who currently need auxiliary aids and services are getting them, to take account of this possibility in a second scenario we have assumed that only a third of parents in this situation contacted the DRC this would mean that there would be 300 cases a year.

There are no figures that the Department can find which show what is the average auxiliary aids and services cost for disabled pupils. A local authority has estimated that the average cost would



be in the region of £500. We have estimated differential costs on the basis of £500 and £1,000 per pupil and 100 and 300 cases a year.

100 cases a year at £500 = £50,000 p.a.

300 cases a year at £500 = £150,000 p.a.

100 cases a year at £1,000 = £100,000 p.a.

300 cases a year at £1,000 = £300,000 p.a.

### **Costs of chosen option**

Parents whose requests that schools or local authorities provide auxiliary aids and services for their children were denied could ask for a statutory assessment of their child's SEN with a view to the child being given an SEN statement or they could make a disability discrimination claim to the First-tier Tribunal (SEND) in England, the SEN and Disability Tribunal in Wales and, currently, the Sheriffs Courts and, in future, Additional Support Needs Tribunal in Scotland.

Taking the costs of cases going to the First-tier Tribunal as a guide, the estimated costs to the Tribunal itself of holding a hearing are £1,656 (fees payable to the three tribunal panel members £1,182, Earnings Related National Insurance Contributions £124 and T&S and other expenses £350). The average Tribunals Service staffing costs per appeal amounts to £284 and other administrative overheads average £80.

Costs for hearings at the SEN Tribunal in Wales tend to be higher – more in the region of £3,000. However, the number of DDA claims in Wales is very small - 2 last year and 4 so far this year – and Wales does not expect any significant uplift in claims. The situation is similar in Scotland where DDA claims are currently heard in the Sheriffs' Courts. Only two or three cases are heard at the Courts on average a year. These cases will move to the Additional Support Needs Tribunal for Scotland in the future where costs are estimated to be yet higher, £4725 per hearing. Again Scotland does not see a significant rise in cases and with most or any extra cases following on from the auxiliary aids and services amendments falling to England we have not taken account of the extra costs of hearings in Wales and Scotland.

An estimated typical cost for a local authority or school to defend a case at the Tribunal is £5,000. The Legal Services Commission's estimated costs for helping parents prepare for a Tribunal hearing are £7,500. Although in many cases parents do not take up the offer of Legal Help or do not qualify for this means tested support to prepare a case for a hearing we have assumed that they will do so in each case where the claim goes through to a hearing. These would be annual costs.

The number of disability discrimination claims made to the Tribunal is relatively small. In 2007/08 145 claims were registered with the Tribunal, 37 were withdrawn and 80 were decided. We would not expect many claims being made to the Tribunal on the basis of schools' and local authorities' new duties, but there may be more in the first year or so as schools and local authorities become used to these duties.

On the basis of 100 auxiliary aids and services cases a year and the assumption that 30 of them will result in claims to the Tribunal and all those claims being taken through to a hearing then the additional cost would be: £14,520 (the cumulative total of the costs in the paragraph above) x 30 = £435,600.

On the basis of 300 cases a year and 60 going through to a disability discrimination claim at the Tribunal the costs would be: £14,520 x 60 = £871,200. Again, considering that the Tribunal only registered 145 claims in 2007/08 this is likely to be a generous figure.

The Department, the Welsh Assembly and the Scottish Executive and the Tribunals would also need to publicise the new reasonable adjustment duty to schools and local authorities. DCSF recently published a leaflet for schools on Disability Equality Schemes which cost in the region of £9,500. We would make information available to schools and local authorities via the DCSF website and make the leaflet available from the Department's publication centre. So the costs

would be around £9,500 including storage costs. Assuming similar costs in Wales and Scotland the cumulative cost would be £28,500

The Tribunal publishes a guidance booklet for parents on how to make claims and that would need to be amended. An estimated cost for amending, redesigning, translating and printing is £11,000. Again assuming that the Wales Tribunal and the Additional Support Needs Tribunal for Scotland also wanted to update information they produce the cumulative total would be £33,000

### **Range of costs for option 3**

The range of costs for option 3 is as follows:

Lower, and more likely, figure: 100 cases at £500 = £50,000, plus 30 cases going to the Tribunal at £435,600, = £485,600.

Higher figure: 300 cases at £1,000 = 300,000, plus 60 cases going to the Tribunal at £871,200 = £1,171,200.

One off costs would be: £28,500 for departmental leaflets in England, Wales and Scotland, plus £33,000 for the Tribunals to update their information booklets for parents making claims = £61,500.

### **Possible savings of chosen option**

The possibility is mentioned above that parents who are denied auxiliary aids and services for their children may decide to request SEN statutory assessments in order to get SEN statements for their children and so provide access to the aids and services. The Audit Commission in 2002 estimated that drawing up a statement cost local authorities £2,500 on average. However, we believe that these parents would be balanced out by those who would previously have requested an assessment and been given a statement purely in order to get access to auxiliary aids and services. If these aids and services were available without a statement then there would be no necessity for these parents to request one. We have therefore not accounted for any costs or savings here. There would also be benefits for parents in not having to go through the claims process and the stress that that can place on them and benefits for some children who would be able to access school premises, activities and the curriculum more easily.

### **Administrative burdens**

This policy does not create any additional administrative burdens or savings against the department's administrative burden baseline.

Annex Y - Diversity data reporting by political parties		
Department GEO	Require registered political parties to report on the diversity of their candidate selections.	
Stage: Royal Assent	Version: 5	Date: April 2010
<p><b>Related Publications:</b> (1) Speaker's Conference (on Parliamentary Representation) volume II written evidence 27 May 2009, (2) Speaker's Conference (on Parliamentary Representation) Interim Report (15 July 2009), (3) Speaker's Conference (on Parliamentary Representation) Second Interim Report (25 November 2009), (4) Speaker's Conference (on Parliamentary Representation) Final Report (11 January 2010), all available at <a href="http://www.publications.parliament.uk/pa/spconf/spconf.htm">http://www.publications.parliament.uk/pa/spconf/spconf.htm</a>, (5) Government Response to the Speaker's Conference Report (10 March 2010).</p>		
<p><b>Available to view or download at:</b> <a href="http://www.equalities.gov.uk">http://www.equalities.gov.uk</a></p> <p><b>Contact for enquiries:</b> Rosalind Hook <span style="float: right;"><b>Telephone: 0303 4441204</b></span></p>		
<p><b>What was the problem under consideration? Why was government intervention necessary?</b></p> <p>The Government wished to respond to a recommendation by the Speaker's Conference that registered political parties be required to publish anonymised information on the diversity of their candidate selections.</p> <p>The issue is that the diversity data currently voluntarily collected by the three main parties is patchy as there is no consistency as to the nature of the data collected. Therefore it is difficult to compare across all parties and to show the full picture.</p> <p>The aim was to enable diversity data to be collected in a systematic way at a national level for the first time.</p>		
<p><b>What were the policy objectives and the intended effects?</b></p> <p>Requiring political parties to publish diversity data in relation to their candidate selections is intended to be a means of helping political parties to identify any barriers causing or contributing to any particular under-representation.</p> <p>It would deliver both greater transparency and consistency in what data is published, enabling diversity data to be collected in a systematic way at a national level for the first time.</p> <p>The aim was to provide for future work to inform, amongst other things, what data will be covered and which stages of the selection process will be covered. A regulation-making power would enable these details to be prescribed only after full consultation with political parties. There should be no compulsion on a candidate to disclose information; all disclosure should be purely voluntary. Enforcement should be by the EHRC using its existing powers.</p>		
<p><b>What policy options have been considered? Please justify any preferred option.</b></p> <p>The options were:</p> <p>Option 1: A voluntary approach to publication of diversity data by political parties. The Government has written to the party chairs of the three main parties and to the Scottish National Party and Plaid Cymru asking them to provide diversity data voluntarily on a regular basis. The three main parties also provided this information to the Speaker's Conference in response to their first interim report.</p>		

However, the issue is that the data currently voluntarily collected by the 3 main parties is patchy as there is no consistency as to the nature of the data collected. Therefore it is difficult to compare across all parties and to show the full picture. Hence a voluntary approach would not provide consistency or allow comparisons to be made between parties. This clause is aimed at both greater transparency and consistency of published data.

Option 2: A legislative approach clearly specifying on the face of the Bill which political parties the duty will apply to, which elections the duty to publish will apply to and the nature of the diversity data to be published. While the principle of this approach – that of identifying underrepresented groups from the data collected with a view to identifying barriers causing or contributing to that underrepresentation – enjoys cross-party support, there are a number of concerns relating to the detail of the duty. Therefore putting all the detail on the face of the Act would not allow for a full consultation, either with political parties or other organisations such as the EHRC and the Electoral Commission.

**Option 3: A legislative approach including a power for regulations to be issued - through the affirmative procedure – dealing with amongst other things, which political parties the duty will apply to, which elections the duty to publish will apply to and the nature of the diversity data to be published (chosen option).** Given that much of the detail needs to be worked out alongside political parties and others, it is most appropriate to issue regulations only after full consultation has taken place.

In practice, this might mean for example that depending on the consultation only information on candidates' gender and ethnicity might be published.

In terms of timescales, this means a primary consultation on the principles of the policy and what it should cover (with political parties, EHRC, Electoral Commission and other stakeholders), and a secondary consultation on the regulations themselves. We would aim to lay regulations to come into force April 2013.

#### **When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects?**

There will be a requirement to consult prior to any use of the power. During the consultation we will need to take into account costs of different options.

For example, requiring all registered political parties to report diversity data may create a disproportionate administrative burden on smaller political parties who may lack the resources and infrastructure to collect the data.

Other details covered by the regulations such as how and when a party must publish the data may also have an impact on costs. Consultation prior to use would ensure that all parties with an interest in the proposals would be able to articulate any concerns.

A full Impact Assessment will be completed prior to use of this power along with other safeguards.

## Diversity data reporting by political parties: Analysis & Evidence

Policy option: 3

Description: A legislative approach including a power for regulations to be issued - through the affirmative procedure – dealing with amongst other things, which political parties the duty will apply to, which elections the duty to publish will apply to and the nature of the diversity data to be published

COSTS	ANNUAL COSTS		Description and scale of key monetised costs by ‘main affected groups’	
	One-off (Transition)	Yrs		
	£			
	Average Annual Cost (excluding one-off)		Familiarisation costs are factored into the overall familiarisation costs for the Bill, in pages 5-30.	
	£			
		Total Cost (PV)	£	
Other key non-monetised costs by ‘main affected groups’				

BENEFITS	ANNUAL BENEFITS		Description and scale of key monetised benefits by 'main affected groups'	
	One-off	Yrs		
	£ 0			
	Average Annual Benefit (excluding one-off)		Total Benefit (PV)	£ 0
	£ 0			
Other key non-monetised benefits by 'main affected groups'				

### Key Assumptions/Sensitivities/Risks

Price Base Yr 2009	Time Period Years 10	Net Benefit Range (NPV)	NET BENEFIT (NPV Best estimate)

What is the geographic coverage of the policy/option?

GB

On what date will the policy be implemented?	To be decided			
Which organisation(s) will enforce the policy?	N/A			
What is the total annual cost of enforcement for these organisations?	£ 0			
Does enforcement comply with Hampton principles?	N/A			
Will implementation go beyond minimum EU requirements?	N/A			
What is the value of the proposed offsetting measure per year?	£			
What is the value of changes in greenhouse gas emissions?	£ 0			
Will the proposal have a significant impact on competition?	No			
Annual cost (£-£) per organisation (excluding one-off)	Micro	Small	Medium	Large
Are any of these organisations exempt?	No	No	N/	N/

#### Impact on Admin Burdens Baseline (2005 Prices)

					(Increase - Decrease)
Increase of	£	Decrease of	£	<b>Net Impact</b>	£

Key:

Annual costs and benefits: Constant Prices

(Net) Present Value

## Evidence

There is a shortage of detailed information on the numbers of people from under-represented groups who are putting themselves forward for candidacy. Data about political candidates is not currently collected in any systematic way at a national level. For example, there is currently no data collected on disabled MPs and there is a lack of information about sexual orientation.

The Government submitted a written memorandum “Making a Difference”<sup>152</sup> to the Speaker’s Conference on behalf of our stakeholder groups, which suggested political parties should be required to collect diversity data on all selection processes including looking at those people who have sought nomination, been selected and been elected. Stakeholders argued that lack of information leads to lack of understanding about the relationship between candidacy and eventual selection, meaning it is difficult to appreciate what is happening to under-represented candidates during the selection process.

This is the proposal that the Speaker’s Conference adopted in their second interim report and final report<sup>153</sup>, and which formed the basis of the Government amendment to the Equality Bill.

In their own evidence to the Speaker’s Conference, several stakeholder groups also identified lack of clear data about under-represented groups as an issue.

RADAR<sup>154</sup>, for example, flagged that numbers of disabled MPs are unknown. They propose political parties could monitor the disability profile of prospective candidates, those selected and those selected for safer seats, to provide better data than currently exists on the stages of the process at which barriers are greatest. RADAR stress that collecting this data would enable additional interventions to be made as needed to improve representation of disabled people.

The Fabian Society<sup>155</sup> also highlighted the need to collate better data on ethnic minority representation, suggesting that House of Commons Library reports after General Elections suggest “a reluctance to collate information on ethnic background (perhaps seeing this as “personal”)”. They flag that collating this information in a more systematic and robust way would be useful in enabling an “an evidence-based public debate in this area”.

We believe that there is an under representation in Parliament from the gay, lesbian, bisexual and transgender community. There is currently only one out lesbian, and no out trans person in either of the Houses. Of course, we can’t know this for sure without collecting data, and without this data it is hard to take action to increase the representation of these communities in Parliament and in the democratic process. Stonewall agree that non-mandatory monitoring of sexual orientation in Parliament is important and that with careful safeguards in place to protect people’s identity, believe this is the right step.

The Lesbian and Gay Foundation<sup>156</sup> also highlighted that the lack of official data on numbers of Lesbian Gay Bisexual MPs or Lords means that “while sexual orientation remains hidden at our highest levels of power and public office, real equality can never be achieved.”

These are just some examples of stakeholder groups who have flagged lack of reliable data about political candidates as an issue.

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<sup>152</sup> Speaker’s Conference (on Parliamentary Representation) Session 2008-09 Volume II Written evidence, published 27 May 2009, SC 69, Ev 221

<sup>153</sup> Speaker’s Conference (on Parliamentary Representation) Second Interim Report, 25 November 2009 and Speaker’s Conference (on Parliamentary Representation) Final Report, 11 January 2010

<sup>154</sup> Speaker’s Conference (on Parliamentary Representation) Session 2008-09 Volume II Written evidence, published 27 May 2009, SC3, Ev 7

<sup>155</sup> Ibid, SC43, Ev 116

<sup>156</sup> Ibid, SC31, Ev 79



The provision will enable diversity data to be collected in a systematic way at a national level for the first time thereby making it easier to compare diversity data between political parties. Improved information will show where there is a need for greater representation.

Publishing information about those who put themselves forward for selection and those who are selected will contribute to increased transparency for both the public and political parties.

It may also help to identify any barriers which cause or contribute to any under representation, at which stages of the selection procedure these barriers exist and whether certain groups are only being selected for marginal seats.

It is hoped that that addressing any under-representation within political parties will lead to increased voter participation of under-represented groups. For example, Electoral Commission research from 2002 showed that having more female elected representatives increases participation rates amongst women more generally, and Operation Black Vote published research suggesting that black and minority ethnic voters would be more likely to turn out if there were more black and minority ethnic candidates.

## Annex Z – Civil partnerships in religious premises

Department GEO		Allowing civil partnerships to be registered in religious premises	
Stage: Royal Assent		Version: 5	Date: April 2010
Related Publications: Civil Partnership Act 2004			
Available to view or download at: <a href="http://www.equalities.gov.uk">http://www.equalities.gov.uk</a>			
Contact for enquiries: Emma Reed		Telephone: 0303 444 1204	

### What was the problem under consideration? Why was government intervention necessary?

Section 6(1)(b) of the Civil Partnership Act 2004 provided that civil partnerships may not be registered in religious premises. On 2 March 2010, during the House of Lords Report stage of the Equality Bill, an amendment to the Bill was moved which sought to amend the Civil Partnership Act 2004 to remove the express prohibition preventing civil partnerships from being registered on religious premises. This amendment was pressed to a division, on which the Government had a free vote. The amendment was carried (Contents 95; Not-Contents 21) and so forms part of the Equality Act.

### What were the policy objectives and the intended effects?

The policy objective was to:

- Remove section 6(1)(b) of the Civil Partnership Act 2004, which states that civil partnerships must not be registered in religious premises.
- Amend section 6(A) of the Civil Partnership Act 2004, to enable regulations to set out, in relation to particular denominations, who has the authority to decide whether civil partnerships can be registered on any of their premises. Further, state that different provisions can be applied differently between religious premises and non-religious premises, and can also be applied differently between different types of religious premises.

The intended effect:

- Enable civil partnerships to be registered on approved religious premises.

### What policy options were considered? Please justify any preferred option.

No other options were considered. This provision results from a non-Government amendment to the Equality Bill.

### When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects?

After implementation, and on an ongoing basis, by the Equality and Human Rights Commission. The Government will also review after 5 years.

## Civil partnerships in religious premises: Analysis & Evidence

Policy option: 1

Allowing civil partnerships in religious premises

COSTS	ANNUAL COSTS		Description and scale of key monetised costs by 'main affected groups'	
	One-off (Transition)	Yrs		
	£ 61,808	1		
	Average Annual Cost (excluding one-off)		Total Cost (PV)	
	£0	10		
		£61,808		
Other key non-monetised costs by 'main affected groups'				
<ul style="list-style-type: none"><li>• The owners or trustees of religious premises will need to apply to have their premises approved. This is a cost which will be born by those organisations which seek to host civil partnerships on their premises. As this provision is permissive, there is no requirement for premises to seek registration.</li><li>• Costs incurred by the local authority's registration service for the registration of civil partnerships which are conducted outside of the local authority register office, are cost recovered.</li></ul>				

BENEFITS	ANNUAL BENEFITS		Description and scale of key monetised benefits by 'main affected groups'	
	One-off	Yrs		
	£ Not quantified	1		
	Average Annual Benefit (excluding one-off)			
	£ Not quantified	10	Total Benefit (PV)	£ -
<b>Other key non-monetised benefits by 'main affected groups'</b> <ul style="list-style-type: none"> <li>Couples who wish to register their civil partnership in religious premises approved for that purpose will be able to do so.</li> </ul>				

#### Key Assumptions/Sensitivities/Risks

- The regulations governing the approval of premises for the registration of civil partnerships are the Marriages and Civil Partnerships (Approved Premises) Regulations 2005.
- Following a consultation, the implementation of this section will require amendments to the Approved Premises Regulations.

Price Base Yr 2009	Time Period Years 10	Net Benefit Range (NPV)  -£61.808	NET BENEFIT (NPV Best estimate)  -£61.808
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What is the geographic coverage of the policy/option?		England and Wales		
On what date will the policy be implemented?		To be decided		
Which organisation(s) will enforce the policy?		General Register Office/EHRC		
What is the total annual cost of enforcement for these organisations?		£ 0		
Does enforcement comply with Hampton principles?		N/A		
Will implementation go beyond minimum EU requirements?		Yes		
What is the value of the proposed offsetting measure per year?		£ 0		
What is the value of changes in greenhouse gas emissions?		£ 0		
Will the proposal have a significant impact on competition?		No		
Annual cost (£-£) per organisation (excluding one-off)	Micro 0	Small 0	Medium 0	Large 0

Are any of these organisations exempt?	N/A	N/A	N/A	N/A
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Impact on Admin Burdens Baseline (2005 Prices)					
					(Increase - Decrease)
Increase of	£ 0	Decrease of	£ 0	<b>Net Impact</b>	£ 0
Key: Annual costs and benefits: Constant Prices (Net) Present Value					

## Evidence

Civil partnership is the formal, legally binding relationship between two people of the same sex. It provides lesbian and gay couples with legal recognition of their relationships, giving them vital protections and benefits.

The Civil Partnership Act 2004 replicated the provisions for civil marriage in that it included an express prohibition on civil partnership registrations taking place on religious premises. The regulations determining the approval of premises for the registration of civil partnerships (and civil marriage ceremonies) are the Marriages and Civil Partnerships (Approved Premises) Regulations 2005.

This provision removes section 6(1)(b) of the Civil Partnership Act 2004, which states that civil partnerships must not be registered in religious premises. This section also removes section 6(2) of the Civil Partnership Act 2004 which defines religious premises. This section amends section 6(A) of the Civil Partnership Act 2004 which concerns the making of regulations for the approval of premises. It adds that the regulations concerning the approval of premises for civil partnership registrations may differ to those made for civil marriage.

It enables the regulations to set out, in relation to particular denominations, who has the authority to decide whether civil partnerships can be registered on any of their premises. Further, it states that different provisions can be applied differently between religious premises and non-religious premises, and can also be applied differently between different types of religious premises. In addition, this clause clarifies that nothing in the Civil Partnership Act 2004 places an obligation on any religious organisation to host civil partnerships if they do not wish to do so.

Since the implementation of the Civil Partnership Act 2004, nearly 35,000 couples have been able to formally celebrate and register their relationship, gaining vital legal protection where previously they had none.

This clause was inserted into the Equality Act by a non-Government amendment in the House of Lords.

## Costs of chosen option

There are currently 3,079 civil partnership registrars in England and Wales<sup>157</sup>, there will be a one-off cost to these registrars of familiarising themselves with the new legislation. It is assumed that “familiarisation”, in the great majority of cases, will mean familiarisation with or through guidance provided by the Equality and Human Rights Commission and/or by other advisory bodies. It is also assumed that “familiarisation” means reaching the point where the registrar is aware of the changes in the law and how they impact upon their operation.

<sup>157</sup> The General Register Office

It is assumed the individual registrar will be responsible for their own familiarisation. ONS data from the Annual Survey on Hours and Earnings Survey (ASHE) 2009 estimates that the average gross hourly wage for this occupation is £16.59<sup>158</sup>. When uplifted by 21% to allow for non-wage labour costs, the average gross hourly wage becomes £20.07. We are then able to multiply this cost by the estimated time necessary to become familiar with the new guidance and this gives an opportunity cost for this provision.

For the purposes of this Impact Assessment, we assume that 100% of registrars will familiarise themselves with the new law in year one, we are aware this is likely to be an over estimate with a small number likely to familiarise themselves in following years.

We assume it will take registrars one hour to familiarise themselves with this new provision, which will create a total one-off cost to all registrars in England and Wales of £61,808<sup>159</sup>

It is assumed that this provision will not lead to a significant increase in the number of couples seeking to register their civil partnership. The provision does not alter access to civil partnerships only the location in which they can be held.

The provision will also impact on the owners or trustees of religious premises who will need to apply to have their premises approved. This cost will only be born by those organisations which seek to host civil partnerships on their premises. The provision is permissive meaning there is no requirement for premises to seek registration, and a cost has not been monetised in this analysis.

Any costs incurred by the local authority registrars office for the registration of civil partnerships which are conducted outside of the local authority registry office, are recovered from the parties participating in the civil partnership. .

### **Benefits of chosen option**

At this stage it is not possible to monetise benefits for this provision; however the provision does create non-monetised benefits for couples who wish to register their civil partnership on religious premises who have previously been unable.

### **Administrative burdens**

This policy does not create any additional administrative burdens or savings against the department's administrative burden baseline.

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<sup>158</sup> ASHE 2009 code 2317

<sup>159</sup>  $3079 \times (16.59 \times 1.21) \times 1 = 61,808$

## Annex AA - Power enabling 'caste' to be included within the definition of race

Department /Agency: GEO

Power enabling 'caste' to be included within the definition of race

Stage: Royal Assent

Version: 5

Date: April 2010

Related Publications:

Available to view or download at: <http://www.equalities.gov.uk>

Contact for enquiries: Jay Begum

Telephone: 0303 444 1204

### What is the problem under consideration? Why is government intervention necessary?

In November 2009, existing concerns about whether discrimination law already fully covered caste discrimination (or, if it did not, whether it should be changed to do so specifically) were strengthened by a scoping study by the Anti-Caste Discrimination Alliance (ACDA), which reported anecdotal and personal evidence of caste discrimination in some of the areas covered by GB discrimination law, including employment, education and provision of goods, facilities and services (GFS). The study found, for example, that in employment, 45% of the 101 survey responses said they had been either "treated in a negative way" by co-workers or had comments made about them because of their caste status; 9% claimed they believed they had missed promotion because of caste discrimination; and 9% claimed they had been underpaid because of it<sup>160</sup>. While the numbers are comparatively small, the study does suggest that discrimination because of caste may be occurring in the UK.

The evidence so far suggests that the Hindu and Sikh communities from the Asian Diaspora are the most likely to be affected by caste discrimination (if it does indeed occur). In particular, members of the Dalit community appear to be more likely to be victims of caste discrimination than other South Asian caste communities. The size of the UK Dalit origin population is uncertain but is estimated to be somewhere between 50,000 and 150,000 people<sup>161</sup>.

The Government's response to the alleged problem of caste discrimination has been to take a measured approach. Given that the evidence so far mostly derives from representative groups with a lobbying interest in obtaining legislative measures against caste discrimination in GB, the Government has decided that independent and in-depth research on the issue of caste and caste discrimination in GB is needed before it can decide on appropriate action. This will help the Government to uncover the nature and extent of any problem, as well as to identify the need for, and the most appropriate means of, any Government intervention. In addition, there is a power in the Equality Act to legislate against caste discrimination in the future, should the available evidence indicate the need for such legislative intervention.

Accordingly, in February 2010, the Government Equalities Office (GEO) commissioned the National Institute of Economic and Social Research (NIESR) to undertake this independent research on caste and caste discrimination.

<sup>160</sup> Hidden Apartheid: Voice of the Community, Caste and Caste Discrimination – A Scoping Study, 2009, Anti-Caste Discrimination Alliance

<sup>161</sup> No Escape: Caste Discrimination in the UK, 2006, Dalit Solidarity Network UK



### What are the policy objectives and the intended effects?

In line with our core commitments to simplify and strengthen GB discrimination law, the policy objectives and intended effect of enacting the Equality Act's power to add caste to the definition of "race" at clause 9 are:

- to clarify the law by making specific reference to caste within the "race" definition so that caste is explicitly covered by the law, if this proves to be necessary, which would make the law simpler to understand; and
- to strengthen the law by prohibiting caste-based discrimination.

### What policy options have been considered? Please justify any preferred option.

Option 1: Do nothing – rely on existing race and/or religious protection in the Equality Act for coverage of instances of caste discrimination (where they coincide).

Option 2: Prohibit caste discrimination on the face of the Equality Act.

**Option 3: (chosen option) A power in the Equality Act enabling caste to be included within the "race" definition at clause 9** – this option was chosen because it enables the Government to decide, in the light of the available evidence (including the independent research it has commissioned), whether there is a real need for caste discrimination to be prohibited by the Equality Act, and to amend the Act accordingly by means of secondary legislation. If the power had not been taken, any change later deemed necessary would require primary legislation.

### When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects?

The NIESR study is expected to be completed by August 2010 and the findings will help to inform the need to exercise the power in the Equality Act and help to assess its associated cost-benefit impacts. We would expect any resulting analysis to have been completed by the end of 2010/beginning of 2011.

## Power enabling 'caste' to be included within the definition of race: Analysis & Evidence

Policy option: 3

Power enabling 'caste' to be included within the definition of race

C O S T S	ANNUAL COSTS		Description and scale of <b>key monetised costs</b> by 'main affected groups'	
			<b>Taxpayer</b> Cost of increase in the number of cases reaching courts and tribunals.	
			<b>Employers and Business</b> Costs to employers and GFS providers of increase in the number of cases reaching courts and tribunals, including compensation/out of court settlement costs.	
	One-off (Transition)	Yrs	<b>Individuals</b> Cost of taking cases to courts and tribunals.	
	£		Total Cost (PV)	£
Other <b>key non-monetised costs</b> by 'main affected groups'				

<b>BENEFITS</b>	<b>ANNUAL BENEFITS</b>		Description and scale of <b>key monetised benefits</b> by 'main affected groups'	
	<b>One-off</b>	<b>Yrs</b>	<b>Employers and business</b>	
	£		Improve efficiency for employers because employment patterns based on caste assumptions may be inefficient and/or unnecessarily labour-intensive.	
	<b>Average Annual Benefit</b> (excluding one-off)		<b>Individuals</b>	
	£		Compensation awarded for successful court or tribunal cases	
			<b>Total Benefit (PV)</b>	£
Other <b>key non-monetised benefits</b> by 'main affected groups'				

### Key Assumptions/Sensitivities/Risks

NIESR will identify whether caste discrimination and harassment is occurring in GB, its nature and the severity of its consequences; and, in respect of numbers, whether more than a very small number of people may be being affected.

NIESR will also estimate potential caste discrimination and harassment cases and demands on courts and tribunals. This will help to assess costs to the taxpayer, employers/business and individuals.

NIESR will also develop a typology of caste discrimination and harassment to enable further work to develop a cost-benefit analysis.

Price Base Year	Time Period Years	Net Benefit Range (NPV) £ -		NET BENEFIT (NPV Best estimate) £		
What is the geographic coverage of the policy/option?				GB		
On what date will the policy be implemented?						
Which organisation(s) will enforce the policy?				EHRC		
What is the total annual cost of enforcement for these organisations?				£		
Does enforcement comply with Hampton principles?				Yes		
Will implementation go beyond minimum EU requirements?				Yes		
What is the value of the proposed offsetting measure per year?				£		
What is the value of changes in greenhouse gas emissions?				£		
Will the proposal have a significant impact on competition?				No		
Annual cost (£-£) per organisation			Micro	Small	Medium	Large
Are any of these organisations exempt?			Yes/No	Yes/No	N/A	N/A
Impact on Admin Burdens Baseline (2005 Prices)						(Increase - Decrease)
Increase	£	Decreases	£	Net	£	
Key:				Annual costs and benefits: Constant Prices		(Net) Present

# Evidence

## Background

The term 'caste' denotes a hereditary, endogamous (marrying within the group) community associated with a traditional occupation and ranked accordingly on a perceived scale of ritual purity. Caste is generally associated with South Asia, particularly India, and its Diaspora. The English word 'caste' is used both for the four classes (varnas) of Hindu tradition (the Brahmin, Kshatriya, Vaishya and Shudra communities) and for the thousands of jatis, the smaller, more regionally-based Hindu, Sikh, Christian or Muslim groups that operate within the caste system. Some jatis which are regarded as below the varna hierarchy are known as Dalit. 'Caste' may also refer to biradaris, endogamous groups among South Asian Muslims that are similar to jatis. Markers for caste can include an individual's name, education, occupation, manner of speaking and body language.

The caste system is believed to affect more than 300 million people worldwide - with two thirds of those affected living in India. The practice of discriminating against the lower caste group 'Dalits' (sometimes called 'Scheduled castes', once referred to as 'Untouchables') is outlawed in India, but at present there is no equivalent domestic legislation.

In the UK, any instances of caste prejudice or discrimination are generally thought more likely to impact on the Hindu and Sikh communities (together forming about 1.6% of the UK population), as well as Christians, Buddhists and Muslims from a South Asian background.

It is broadly estimated by the pro-legislation caste lobby that there may be as many as 50,000 – 150,000 Dalits currently living in the UK<sup>162</sup>. However, it is not possible to substantiate this, as 'caste' is not recorded in the Census.

Since publication of the Dalit Solidarity Network UK's report of 2006, there have been intermittent calls to prohibit caste discrimination but the Government considered that there was simply insufficient evidence of caste discrimination in the areas covered by GB discrimination law to justify a ban. ACDA then produced a report in November 2009 containing mostly anecdotal evidence of caste discrimination and harassment, some of which appeared to occur in the areas covered by discrimination law.

The ACDA study asserts that, in employment, 45% of the 101 survey responses said they had been either "treated in a negative way" by co-workers or had comments made about them because of their caste status – but asking someone about their caste would probably not in itself constitute discrimination or harassment. 9% claimed they believed they had missed promotion because of caste discrimination – this would be a valid ground but it is only a small sample, 9 or 10 individuals. 9% claimed they had been underpaid because of their caste status – but again, this is only a small sample. In education, 23% of survey responses said they had been subjected to threatening behaviour or verbal abuse because of caste status but only 10% of those cases (i.e. around 2-3 people) asserted that this had been teacher-on-pupil (pupil-on-pupil bullying is not covered by discrimination legislation). In the area of the provision of GFS, 43 people responded about healthcare; however, most of the complaints appeared to be about people being asked about their caste (probably not discriminatory or harassing in itself), though there were one or two examples of people alleging that they or others had been refused treatment because of their caste. In total, 300 people contributed to what ACDA termed a 'scoping study', either through online surveys or focus groups – and so the percentages of disadvantaged people that the report refers to actually translate to very small numbers, sometimes down to single figures.

On this basis, the Government remains unconvinced that the strength of the evidence so far is enough to justify a direct change to the legislation. The Government has instead decided that a more sensible approach is for a research project to be undertaken on caste discrimination. Research has therefore been commissioned by the GEO.

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<sup>162</sup> Dalit Solidarity Network UK (DSN-UK), No Escape: Caste Discrimination in the UK, 2006

## **NIESR Research**

In February 2010, the NIESR was commissioned by the GEO to investigate the existence, nature and severity of caste prejudice and discrimination in GB and the implications for Government policy. Of particular interest is the existence of caste discrimination and harassment in the areas of employment, education, the provision of GFS (including housing, health and social care), public functions, premises and associations, i.e. in the areas covered by discrimination legislation. The research is being conducted in conjunction with Ipsos-Mori and will report by the end of August 2010.

The study has four objectives:

- i) to critically review evidence on the nature and extent of caste prejudice and discrimination in GB;
- ii) to develop a typology of caste discrimination and prejudice;
- iii) to assess the nature and severity of caste-based discrimination and prejudice through primary research; and,
- iv) to assess the need, in the light of (i) – (iii) above, for a public policy response to caste prejudice and discrimination, and the form this might take.

There is a need for independent and robust research because caste discrimination is a contentious issue within the affected communities and because of the perceived problems, from Government's point of view, with the independence of the research done so far.

This research will examine whether caste discrimination and harassment is happening within the fields covered by discrimination law and, if so, it will examine the scale of the problem. This will enable the Government to form a view on whether the exercise of the power to add caste to the definition of "race" in clause 9 of the Equality Act is an appropriate and proportionate means of tackling it.

NIESR's qualitative approach will identify whether caste discrimination and harassment is occurring, its nature and the severity of the consequences. In respect of the numbers affected, evidence from previous studies on caste and from experts, stakeholders and individuals will enable NIESR to identify whether more than a very small number of people may be being affected. This approach avoids the error of treating perceived/reported discrimination as actual discrimination and should provide a better indicator of the need for policy intervention than a quantitative survey, which may quite substantially over- or under-estimate the extent of discrimination.

There is also policy interest in quantifying potential caste discrimination and harassment cases and potential demands on courts and tribunals, if discrimination legislation were to cover caste as a subset of the protected characteristic "race". It should be possible to estimate this, using the evidence provided by the NIESR research.

### **What policy options have been considered?**

#### ***Option 1: Do nothing***

This option would only have enabled individuals to rely on existing race and/or religious discrimination legislation for protection against caste discrimination (where that coincided). This option was undesirable given the legal uncertainties about whether caste discrimination in itself is prohibited under the race and/or religious discrimination legislation. In the virtual absence of any case law on this issue, it is by no means clear whether and, if so, what proportion of cases based on caste would succeed in the courts and tribunals.

This option was also considered undesirable, particularly if the research we have commissioned later recommends that legislation is the best way forward on the issue – the opportunity for a legislative vehicle to make any substantive change to the law would have been missed and it might then have taken some years to find a suitable legislative vehicle to prohibit caste discrimination in the future.

## ***Option 2: Legislate against caste discrimination on the face of the Equality Act***

While there is certainly anecdotal evidence of caste discrimination and harassment in the areas covered by the Equality Act (employment, GFS etc), the Government was not persuaded that this amounted to enough to justify protecting caste in the Equality Act.

## ***Option 3: (chosen option) Introduction of a power in the Equality Act to add caste to the “race” definition at clause 9***

This proposal provides a power in the Equality Act to add caste in the future as a subset of “race”. There is ongoing legal uncertainty as to whether caste is covered by race (or indeed religion) in existing discrimination law. The power to add caste to the definition of “race” provides the option to create explicit protection against caste discrimination and harassment.

The provision provides an affirmative power to add caste in this way, should the Government ultimately decide that the evidence warrants a substantive change in the law. The power is very narrowly drawn, for the particular purpose of adding caste as a subset of the “race” definition. It could not be used for any wider purposes, for example to add other protected characteristics to the Act.

## **Analysis of options**

### ***Monetised costs and benefits***

#### Option 1: Do nothing

By doing nothing, individuals would have had to rely on existing discrimination legislation for protection, where that was applicable to the facts of the complaint. Given the lack of a test case and legal uncertainty, the cost of processing caste discrimination cases based on race or religion discrimination law may be greater than through a specific statutory route, as it could take longer to process, resulting in increased costs to employers/business, individuals and the courts and tribunals. Where individuals who suffer caste discrimination do not have a valid claim under the existing legislation, they will not be awarded compensation. Equally, employers’ efficiency may suffer if employment patterns are based on caste assumptions that are inefficient or unnecessarily labour-intensive.

#### Option 2: Legislate against caste discrimination on the face of the Equality Act

This option carried a high risk in the absence of any independent research to help determine the extent of caste discrimination and harassment in GB. It is anticipated that the NIESR research will inform the impact assessment and provide a more accurate indication of the numbers affected – making any substantive changes to the law premature in the absence of adequate evidence.

#### Option 3: (chosen option) Introduction of a power in the Equality Act to add caste to the “race” definition at clause 9

#### Numbers affected

The nearest proxy for determining possible caste discrimination case success rates would seem to be race discrimination (this is particularly appropriate since the legislative option provided by the power would make caste a sub-set of “race”). Some 4,983 race claims were accepted by Employment Tribunals for GB in 2008/09 – of these 3,970 were decided on and closed; 1,110 were withdrawn (28%); 1,493 (38%) were settled; and 293 (7%) were struck out. Of the cases that were decided on and closed, 129 (3.2%) claims were successful<sup>163</sup>.

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<sup>163</sup> Employment Tribunal and EAT Statistics, the Tribunal Service, 2008/09,

Caste discrimination is generally considered to impact most on the Hindu and Sikh communities, who make up only 1.6% of the entire UK population<sup>164</sup>. (Some Christians, Muslims and Buddhists from a South Asian background may also be affected but numbers are unlikely to be significant.) There is some indication that there are around 50,000 – 150,000 Dalits currently living in the UK<sup>165</sup>. However, we have no sense of this population's age range, employment status or whether they are affected by caste discrimination in the areas covered by discrimination law. We could not therefore confidently use this data to assess impacts on employers/business, individuals and others.

The NIESR independent research on caste will explore the existence and nature of any caste discrimination and harassment found in GB, which will help to identify the key assumptions/risks which can be quantified to assess impact and the numbers affected.

### Assumptions

The Dalit Solidarity Network UK's estimated number of Dalits in the UK is a broad estimate and is used as a guide as there is no approved means of estimating the number of Dalits in GB.

### Policy impacts

We can assume that, of the estimated 50,000 – 150,000 Dalits, only a proportion are employed, therefore limiting to some extent the possibility of caste discrimination and harassment in the employment context.

[The provision of goods, facilities and services and the exercise of public functions (GFS) may well be in environments where numbers of recipients belong to caste communities, such as GP surgeries whose clients are predominantly from South Asian origins, shops or schools which primarily serve such ethnic groups.

Given the above, we can assume that the extension of discrimination law to cover caste discrimination and harassment may increase the number of complaints made to courts and tribunals in relation to employment, GFS or schools thereby increasing the impact/costs on the taxpayer. There may also be complaints in relation to other areas of discrimination law.

There will also be costs for employers/business and individuals associated with cases being brought to courts and tribunals. Where individuals are successful, they will be awarded compensation.

Given that this is a new area of policy in relation to discrimination law, there will be associated familiarisation costs. As caste would be a subset of the "race" definition in clause 9, familiarisation would be in the form of updating guidance, codes of practice and training for judges on race discrimination.

The addition of caste to the definition of "race" at clause 9 will have other impacts e.g. the public sector Equality Duty on race will expand to cover caste, which would have an effect on public bodies, including government departments.

### **Risks**

There is a risk that, if the NIESR research results are inconclusive, either because they are simply not clear enough to allow policy development, or because they suggest actual but extremely small numbers of potential cases, it could mean that a change in the law is a disproportionate response to tackling caste prejudice or discrimination.

There is also a legal risk that someone with a legal interest in the exercise of the power may bring judicial review proceedings regarding the exercise or lack of exercise of the power. This would be on the basis either that the evidence to justify the exercise of the power was insufficient but

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<sup>164</sup> Department for Communities and Local Government, 2008

<sup>165</sup> Dalit Solidarity Network UK, 2006



Ministers exercised it anyway; or that the evidence to justify the exercise of the power was sufficient but Ministers wrongly did not exercise it.

### **Enforcement**

If caste is added to the definition of “race”, individuals would be able to make complaints of discrimination and harassment to courts or tribunals, which will have the power to order compensation and/or other appropriate remedies. In addition, the Equality and Human Rights Commission will have certain enforcement powers.

### **Administrative burdens**

This policy does not create any additional administrative burdens or savings against the department’s administrative burden baseline.

## **Annex AB – Base data**

### **Number of firms**

Type of firm		Number	Number familiarising themselves in Year 1	Data source
SMEs	Without Employees	3,456,990	N/A	Small Business Statistics 2008
	1-249 Employees	1,193,750	1,193,750	Small Business Statistics 2008
Large firms	250+ employees	5,905	5,905	Small Business Statistics 2008
Public bodies		25,612	25,612	ONS
Landlords		14,000	14,000	ONS

### **Wage Costs**

	Gross hourly wage	21% uplift for non labour costs	Source of data
<b>Small and Medium Enterprises</b>			
General manager	£19.16	£23.18	Annual Survey on Hours and Earnings (ASHE) 2009, Code 11
<b>Large firms</b>			
Dedicated personnel manager	£20.93	£25.33	Annual Survey on Hours and Earnings (ASHE) 2009, Code 1135
Legal professional	£28.14	£29.32	Annual Survey on Hours and Earnings (ASHE) 2009, Code 241
<b>Public bodies</b>			
Dedicated personnel manager	£20.93	£25.33	Annual Survey on Hours and Earnings (ASHE) 2009, Code 1135
<b>Landlords</b>			
Dedicated personnel manager	£20.93	£25.33	Annual Survey on Hours and Earnings (ASHE) 2009, Code 1135
<b>Civil Partnership Registrars</b>	£16.59	£20.07	Annual Survey on Hours and Earnings (ASHE) 2009, Code 2317
<b>Average UK wage</b>	£10.99	£13.30	Average hourly earnings 2009

### Number of employment tribunal cases

Type of discrimination	1998/9	1999/0	2000/1	2001/2	2002/3	2003/4	2004/5	2005/6	2006/7	2007/8	2008/9
<b>Sex</b>	6,203	4,926	17,200	10,092	8,128	14,284	11,726	14,250	28,153	26,907	18,637
<b>Race</b>	2,746	3,246	3,429	3,183	3,039	2,830	3,317	4,103	3,780	4,130	4,983
<b>Equal Pay</b>	5,018	2,391	6,586	5,314	3,077	4,159	8,229	17,268	44,013	62,706	45,748
<b>Age</b>									942	2,949	3,801
<b>Disability</b>	1,430	1,743	2,100	2,624	2,716	2,764	4,942	4,585	5,533	5,833	6,578
<b>Sexual orientation</b>							349	395	470	582	600
<b>Religion or belief</b>							307	486	648	709	832
<b>Total</b>	<b>15,397</b>	<b>12,306</b>	<b>29,315</b>	<b>21,213</b>	<b>16,960</b>	<b>24,037</b>	<b>28,214</b>	<b>40,206</b>	<b>83,539</b>	<b>103,816</b>	<b>81,179</b>
Data Source: Employment Tribunal Service Annual Reports 98/99-08/09											

### Number of county court cases

Type of discrimination	Number of cases in county court involving GFS per annum			Data source
	Low Range	High Range	Mid-point	
Race	26	39	33	258 applications for assistance to CRE in non employment areas. Assumes 10-15% go to court
Sex	4	9	7	EOC received 175 calls assumes 2-5% go to court
Disability	10	20	15	Research conducted by Income Data Services on DDA 1995 - <a href="http://www.dti.gov.uk/files/file26518.pdf">http://www.dti.gov.uk/files/file26518.pdf</a> . 50 cases bought in 4 years = 10-20 a year
Religion or belief	1	4	2	The figures for Sexual orientation, Religion or belief and Age have been estimated on basis of: No. of court cases to date under the Sexual orientation Regulations and Equality Act Part 2 (Religion or belief) Ratio of GFS cases to employment cases for race, gender and disability - assume similar ratio for age, Sexual orientation and Religion or belief - a range of 0.25 - 0.75% of employment cases. Number of GFS cases by strand in Ireland
Sexual orientation	1	3	2	
Age	11	33	22	
<b>TOTAL</b>	<b>53</b>	<b>108</b>	<b>80</b>	

**Tribunal costs**

	Average amount awarded in employment tribunal discrimination cases	Data source
Employer	£5,393	SETA (Survey of Employment Tribunal Applications) 2003 at 2008/9 prices
Taxpayer	£1,034	
Individual	£1,331	

**Tribunal compensation awards**

Median amount awarded per case	Data source
£3,608	DTI Employment Relations Research Series No 33. Table 8.14 at 2008/9 prices

**County court compensation awards**

	Median award 2004	Median award 2005	Average for 2004-5	Data source
Compensation awarded	£ 5,856	£ 10,349	£ 8,103	HMCS 05/06

**County court costs**

Average court cost per day	Data source
£1,011	HMCS Statistics 05/06 at 2008/9 prices

## Annex AC - Specific impact tests

Use the table below to demonstrate how broadly you have considered the potential impacts of your policy options.

**Ensure that the results of any tests that impact on the cost-benefit analysis are contained within the main evidence base; other results may be annexed.**

Type of testing undertaken	<i>Results in Evidence Base?</i>	<i>Results annexed?</i>
Competition Assessment	Yes	Yes
Small Firms Impact Test	Yes	Yes
Legal Aid	No	Yes
Sustainable Development	No	Yes
Carbon Assessment	No	Yes
Other Environment	No	Yes
Health Impact Assessment	No	Yes
Race Equality	Yes	No
Disability Equality	Yes	No
Gender Equality	Yes	No
Human Rights	No	Yes
Rural Proofing	No	Yes

### Community Legal Services Fund (previously Legal Aid) Impact Test

There may be a marginal increase in legal action; but this is unlikely to have a significant impact on Legal Aid costs.

#### Sustainable Development

The Act does not have an impact on sustainable development.

#### Environmental Impact

The Act does not have an impact on the environment.

#### Carbon and Greenhouse Gas Assessment

Any impact of the Act on the environment, in terms of using raw materials for the production of guidance, leaflets and similar materials is likely to be minimal. This is because information about the new legislation will simply replace what would have been produced to explain the legislation it replaces.

#### Social Impact

Please see the Equality Impact Assessment.

### **Health Impact Assessment Test**

The Act will only have an impact on well-being or health inequalities under secondary legislation which will have its own impact assessment.

### **Race Equality**

The Act's measures do not disproportionately affect one ethnic group more than another except where there is promotion of racial equality. See also the accompanying Equality Impact Assessment.

### **Gender Equality**

The Act's measures do not disproportionately affect one gender group more than another except where there is promotion of gender equality. See also the accompanying Equality Impact Assessment.

### **Disability Equality**

The change is intended to promote rights for disabled people. See also the accompanying Equality Impact Assessment.

### **Human Rights**

The changes do not contravene individuals' human rights.

### **Rural Proofing**

The Act will apply equally to people who live in rural areas and urban areas.

## Specific impact tests

### Annex AD - Small firms impact test

The costs and benefits of each measure for small businesses will vary. In general, the impact is unlikely to be substantial on any particular small business. This is because the previous method of enforcing discrimination law is essentially reactive, through claims brought by individuals before employment tribunals or the county courts. The Act will not change this basic approach.

Enforcement of discrimination law does not involve routine interventionist or invasive mechanisms. The Equality and Human Rights Commission has power to conduct investigations, but this is intended for use on a strategic basis. Under discrimination law there are no inspectorates or agencies with powers to search and seize company documentation or to enter company premises; and there is no mandatory reporting requirement on companies covering, for example, the composition or pay of their workforce.

As a result, there are no mandatory administrative burdens on small business arising from form-filling or reporting. The Government will not change this existing light-touch approach.

On the costs side, there will be some administrative burdens on small firms as a result of the need to familiarise themselves with adjustments to the law, as reflected in new or amended guidance produced by the Equality and Human Rights Commission and others. Estimated costs are shown in above and amount to £189 per small business (£43.51m divided by 230,000 small firms).

On the benefits side the main benefits for small business will arise from simplification and standardisation of the law. It is not that small businesses (or even large businesses) regularly or ever look at the law itself – their main experience of the law is likely to be if a case is brought. However, small businesses during the course of the consultation on establishing the Equality and Human Rights Commission made clear that they supported the Commission as a one-stop-shop for advice and guidance. Simplifying and standardising the law will enable the Commission and other individuals and bodies advising small firms to produce simpler and clearer guidance. The general benefits of simplification are indicated above.

Small businesses, like large businesses, should also benefit from being able to draw on a more diverse pool of labour, thereby improving skill matching with vacancies; opening up more diverse customer markets; and from reduced likelihood and more efficient processing of tribunal and court cases.



## Annex AE - Competition assessment

A detailed competition assessment is not necessary for any of the measures put forward in this Impact Assessment. The measures apply across the board and across all sectors of the economy. They do not favour one sector of employment or business activity over another. The answer is “No” (or, in the case of question 8, “not applicable”) to all nine questions of the competition filter test:

**Table 13: Competition Filter Test**

Question	Answer Yes/No
Q1: In the market(s) affected by the new regulation, does any firm have more than 10% market share?	No
Q2: In the market(s) affected by the new regulation, does any firm have more than 20% market share?	No
Q3: In the market(s) affected by the new regulation, do the largest three firms together have at least 50% market share?	No
Q4: Would the costs of the regulation affect some firms substantially more than others?	No
Q5: Is the regulation likely to affect the market structure, changing the number or size of firms?	No
Q6: Would the regulation lead to higher set-up costs for new or potential firms that existing firms do not have to meet?	No
Q7: Would the regulation lead to higher ongoing costs for new or potential firms that existing firms do not have to meet?	No
Q8: Is the sector characterised by rapid technological change?	N/A
Q9: Would the regulation restrict the ability of firms to choose the price, quality, range or location of their products?	No

Nonetheless, as highlighted in the general benefits section, the measures may impact on labour market involvement of disadvantaged groups, improving skills match, filling vacancies, and therefore raising productivity. This can be expected to improve the international competitiveness of the UK more generally.

**Ministerial Sign-off** For Royal Assent Impact Assessment:

***I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.***

Signed by the responsible Minister:

A handwritten signature in black ink, appearing to read 'Vera Baird', is positioned below the text 'Signed by the responsible Minister:'. The signature is written in a cursive, flowing style.

Vera Baird QC, MP

8<sup>th</sup> April 2010



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