



**Liberty's Committee Stage Briefing and
suggested amendments to the Equality
Bill in the House of Commons**

May 2009

About Liberty

Liberty (The National Council for Civil Liberties) is one of the UK's leading civil liberties and human rights organisations. Liberty works to promote human rights and protect civil liberties through a combination of test case litigation, lobbying, campaigning and research.

Liberty Policy

Liberty provides policy responses to Government consultations on all issues which have implications for human rights and civil liberties. We also submit evidence to Select Committees, Inquiries and other policy fora, and undertake independent, funded research.

Liberty's policy papers are available at

<http://www.liberty-human-rights.org.uk/publications/1-policy-papers/index.shtml>

Contact

Isabella Sankey

Director of Policy

Direct Line 020 7378 5254

Email: bellas@liberty-human-rights.org.uk

Anita Coles

Policy Officer

Direct Line: 020 7378 3659

Email: anitac@liberty-human-rights.org.uk

Introduction

Liberty has a long-standing interest in discrimination and equality. We have been involved in many leading discrimination cases¹ and we have recently responded to a number of consultations on the future of discrimination law. There is no doubt that significant steps have been taken towards greater equality in the United Kingdom over the last decade. We greatly welcomed the enactment of the *Civil Partnership Act 2004*, the *Gender Recognition Act 2004*, and the *Equality Act 2006*. Liberty believes the post-war human rights consensus to be an essential part of the equality agenda. As such, we believe that the consolidation and harmonisation of discrimination protection is symbolic; recognising the inalienability and universality of the non-discrimination principle. A single Equality Act presents a significant and historic opportunity for reviewing the principles underpinning our anti-discrimination scheme and for consolidating and extending discrimination protection to categories and strands not currently covered.

This Bill contains many welcome measures, including the extension of equality protections across a number of different strands and the extension of the public sector equality duty. We welcome many of these provisions,² and as such our suggested amendments are necessarily brief. In this briefing we set out Liberty's suggested amendments to the Equality Bill.³

Amendment 1 – clause 26 (age discrimination)

Amendment also proposed by Young Equals:

Clause 26, page 19, leave out line 3.

¹ See for example *S and Marper v UK*; *R (on the application of S) v Chief Constable of South Yorkshire*; *R (on the application of Marper) v Chief Constable of South Yorkshire* [2003] 1 All ER 148; *Grant v United Kingdom* (App. No. 32570/03) [2006] All ER (D) 337; *Goodwin v UK* (App No 28957/95) [2002] All ER (D) 158; *Richards v Secretary of State for Work and Pensions* [2006] 2 CMLR 49; *A v Secretary of State for the Home Department (SSHD)* (No 2) [2005] UKHL 71.

² We refer parliamentarians to our second reading briefing on aspects of the Bill that we welcome.

³ Although not mentioned in this briefing Liberty is in favour of protection from multiple discrimination (discrimination on the basis of two or more protected grounds). The Government has indicated that it is considering introducing a multiple discrimination amendment to this Bill and Liberty will be responding to the consultation on this issue in due course (see the Government Equalities Office discussion document: 'Equality Bill: Assessing the impact of a multiple discrimination provision, available at: <http://www.equalities.gov.uk/pdf/090422%20Multiple%20Discrimination%20Discussion%20Document%20Final%20Text.pdf>).

Effect

This will remove clause 26(1)(a) from the Bill to ensure Part 3 (Services and Public Functions) applies to the protected characteristic of age, regardless of whether the person is below or above the age of 18.

Briefing

Liberty welcomes the extension of protection from age discrimination for over-18s in the provision of services and public functions in Part 3 of this Bill. This will make it unlawful for a person to discriminate against a person on the basis of his or her age in the provision of goods and services. We believe that extending protection from age discrimination in this way sends a powerful equality message. We believe that this extension will have a particular impact for older people many of whom suffer direct and indirect discrimination in so many aspects of their lives.⁴ Indeed, a 2005 *Age Concern* survey found more people have reported suffering age discrimination than any other form of discrimination and that from age 55 onwards, people are nearly twice as likely to have experienced age prejudice than any other form of discrimination.⁵

However, just as many older people experience age discrimination, younger people also face daily discrimination on the basis of their age. Liberty would therefore expect that in extending protection from age discrimination in the provision of services, the government would include everybody. Unfortunately, in its current form children under the age of 18 will not be protected against discrimination in the provision of services and the exercise of public functions.⁶ No reason is given as to why children are excluded from this important provision. The Minister for Women and Equality, Harriet Harman, stated in the House of Commons last year that “*there is little evidence of harmful age discrimination against young people. Harmful age*

⁴ We note that this Bill, when enacted, will not affect the compulsory retirement age (which involves clear age discrimination) – Schedule 22 protects anything done pursuant to a requirement of an enactment in respect of age.

⁵ See *Age Concern England*, ‘How Ageist is Britain?’, 2005, available at: <http://www.ageconcern.org.uk/AgeConcern/3DE4E64AB5874330A11C1AB7790587BC.asp>

⁶ Note, age discrimination (for both under 18s and over 18s) does not apply to the disposal, management and occupation of premises (see clause 30) and the provision of education in schools (clause 79).

discrimination is basically against older people".⁷ Yet, in Liberty's view there is substantial evidence of young people facing daily discrimination in respect of the provision of services, and in the exercise by public officials of their public functions.⁸ Most worryingly, research shows that older children (i.e. 16-17 year olds) often receive less favourable treatment from health services, including mental health services and in respect of cancer treatment, and from child protection services.⁹ These are issues of serious concern and could at least be partially addressed by including a prohibition in respect of discrimination against all age strands in Part 3. In particular, clause 27 prohibits discrimination, harassment or victimisation by a service-provider against a person requiring the service or by a person in the exercise of a public function. Expressly excluding children from this requirement (as currently occurs in clause 26) sends a negative message about the attitude that society takes towards children. By including children within this protection, parliamentarians would still be free to frame appropriate exceptions to the general rule that discrimination against children is prohibited. The government should explain why it is considered necessary to exempt children from this protection, instead of including them and expressly excluding that which might be appropriate (e.g. excluding children from nightclubs, casinos or bars). We urge parliamentarians to support the amendment proposed by the coalition group Young Equals (as set out above) and to ensure that children are given the same protection as adults in our discrimination laws.

Amendment 2 – clause 190 (age order-making power)

Clause 190, page 135 – stand part.

Effect

This will remove clause 190 from the Bill.

⁷ See Statement in the House of Commons on 26 June 2008 by Harriet Harman, Minister for Women and Equality, Hansard Column 504.

⁸ See *Making the case: why children should be protected from age discrimination and how it can be done: Proposals for the Equality Bill*, Young Equals, 2009, available at:

<http://www.crae.org.uk/assets/files/Making%20the%20Case.pdf>

⁹ *Ibid*, see pages 8-9 and 10-11.

Briefing

This is suggested as a probing amendment to find out what type of order is envisaged under clause 190. This clause provides that a Minister will be able to amend the Equality Act by an order to provide that specified conduct, or specific arrangements do not contravene the Act in respect of age (except in relation to work or further and higher education). The Explanatory Notes state that this is a new provision “*designed to allow exceptions to be made from the new prohibitions on age discrimination*”.¹⁰ However, this power is not limited to amending the Act in relation to exemptions – it could allow for any amendment in relation to age, including excluding the prohibition on age discrimination altogether. It is not clear why the relevant exemptions cannot be set out on the face of the legislation and then properly debated by parliamentarians. Secondary legislation that can amend primary legislation should be avoided unless absolutely necessary. This is intended as a probing amendment that would require the government to explain why it is not setting out the exemptions, or at the very least the type of grounds for exemption, on the face of the Bill.

Amendment 3 – clause 79 (pregnancy)

Clause 79, page 59, leave out line 37.
--

Effect

This will remove clause 79(c) from the Bill.

Briefing

This is intended as a probing amendment to seek to understand why clause 79 provides that pregnancy and maternity are not protected characteristics when it comes to education. A woman who is treated less favourably because she is pregnant (or because she has given birth within the previous 26 weeks) is protected to some extent under this Bill (see clauses 4 and 16). However, no reason is given as to why this protection is not extended in respect of schools. Research has

¹⁰ See Explanatory Notes at paragraph 603.

indicated that young mothers experience discrimination and disadvantage at school¹¹ and are less likely to have qualifications than others.¹² We hope that by excluding this characteristic from schools the government is not intending to send a green light to schools to say it is acceptable that pregnant girls be excluded from education merely on grounds of their pregnancy. We hope that, if not provided for in this Bill, an appropriate framework will be brought forward to ensure that pregnant school girls are given appropriate access to education (balanced of course with any medical concerns regarding their health).

Amendment 4 – Schedule 3, paragraph 16 (disability and immigration)

Schedule 3, paragraph 16, page 154, line 11, leave out 'for the public good' and insert 'to protect public health'.

Schedule 3, paragraph 16, page 154, line 13, leave out 'or remain'.

Schedule 3, paragraph 16, page 154, line 14, leave out 'or remain'.

Schedule 3, paragraph 16, page 154, line 15, leave out 'or remain'.

Schedule 3, paragraph 16, page 154, line 16, leave out 'or remain'.

Effect

This will amend Schedule 3, paragraph 16 to provide that the prohibition on discrimination in the provision of services will not apply to immigration decisions when taken 'to protect public health' (rather than the broader 'public good') and removes the ability to apply this to decisions about allowing a person leave to remain in the UK – making it only applicable to decisions about entry into the UK.

Briefing

Schedule 3, paragraph 16 provides that the prohibition on discrimination in the provision of services and in the exercise of a public function does not apply to immigration decisions to refuse entry clearance, or to refuse, cancel or vary leave to enter or remain in the UK, if necessary for the public good. This effectively means that a person will not discriminate against a person by refusing entry into the UK if the person has a disability, or if he or she is required to leave the UK because of a disability. This is a new exception. While it is understandable that some people may

¹¹ See Guidance on the Education of Teenage Parents, 2001, DfESS/0629.

¹² Teenage Pregnancy: Accelerating the strategy to 2010, 2006 DfES.

be refused entry into the UK because it is necessary to protect the health of the general public (for example, because that person has a contagious disease), this provision goes much further and applies to all disabilities simply if it is “*necessary for the public good*”. This could mean that a non-citizen who develops cancer could be expelled from the UK simply because it is in the public good to do so, as the cancer treatment will need to be paid for by the NHS, regardless of how long that person may have been resident in the UK. It could also mean that a family with a child with a disability could be refused entry on the basis that the child will be a cost to the public health system over time. This is a controversial clause that urgently needs proper parliamentary scrutiny. The amendments proposed above should meet the government’s objectives of allowing entry to be refused to protect the health of the general public (the example in the Explanatory Notes is about refusing entry to a person with TB) while limiting it so that people with non-contagious disabilities are not unfairly refused entry. It will also mean that a person who is already resident in the UK should not be forced to leave on developing a disability.

Amendment 5 - Schedule 3, paragraph 18 (religion and immigration)

Schedule 3, paragraph 18, page 155, leave out lines 14 to 26.

Effect

This will remove paragraph 18(2) and (3) from Schedule 3 of the Bill.

Briefing

Paragraph 18(2) and (3) of Schedule 3 provides that the prohibition on discrimination on the ground of religion or belief in the provision of services and in the exercise of a public function does not apply to immigration decisions to refuse entry clearance or to refuse or cancel leave to enter or remain in the UK, if the person’s exclusion is conducive to the public good or to vary such leave if it is undesirable to permit the person to remain in the UK. This effectively means a person can be refused entry or expelled from the UK on the basis of their religion or belief if to do so is considered conducive to the public good. It is clear that there may be occasions on which a person might be excluded from the UK on the basis of the public good, for example where there is evidence that the person may incite people to commit violence.

Exclusion on this basis would not be discriminatory because it would be exclusion because of the person's actual or suspected behaviour. A decision taken to exclude a person on the basis of the public good should be restricted to whether or not that person is suspected of holding extreme and violent views, irrespective of religion. There should therefore be no need for this exception and this should be removed from the Bill.

Anita Coles