



The Equality Act (Sexual Orientation) Regulations 2007

Final Regulatory Impact Assessment



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Department for Communities and Local Government
Eland House
Bressenden Place
London
SW1E 5DU
Telephone: 020 7944 4400
Website: www.communities.gov.uk

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Purpose

That individuals are protected from discrimination in the provision of goods, facilities, services, education, the disposal and management of premises and the exercise of public functions on the grounds of sexual orientation and to widen up markets for both suppliers and consumers.¹

Objective

In making these regulations the Government intends to extend the framework of discrimination law in Great Britain, to better reflect the values, challenges and opportunities of modern society.

The Government intends to commence these regulations alongside the provisions in Part 2 of the Equality Act 2006 providing new protection from discrimination in goods, facilities and services, education, the letting and management of premises, and the exercise of public functions, on the grounds of religion or belief. Taken together, these provisions are intended to establish a proportionate, fairer and more equitable legal position in respect of protection from discrimination.

The Current Legislative Framework

Since December 2003 it has been unlawful under the Employment Equality (Sexual Orientation) Regulations 2003 (SI 2003/1661) to discriminate against a person on the grounds of their sexual orientation in employment and vocational training (including further and higher education). The regulations prohibit direct discrimination², indirect discrimination³, victimisation⁴ and harassment⁵ on the grounds of a person's sexual orientation.

Discrimination in the provision of goods, facilities and services, premises and public functions is, or will shortly be, unlawful on the grounds of sex⁶, race⁷, disability⁸ and religion or belief⁹.

The Equality Act attracted several amendments during its passage through Parliament which sought to add substantive provisions to provide protection from discrimination in goods, facilities and services, premises and public functions on the grounds of sexual

¹ The statutory provision for making these regulations is section 81 of the Equality Act, and "sexual orientation" is defined as an individual's sexual orientation towards –

- (a) persons of the same sex as him or her,
- (b) persons of the opposite sex, or
- (c) both.

² In other words where a person, on grounds of sexual orientation, is treated less favourably than other people.

³ In other words where a provision, criterion or practice has the effect of putting people of a particular sexual orientation at a disadvantage which cannot be justified as a proportionate means of achieving a legitimate aim.

⁴ In other words where someone is treated less favourably than others because, for example, they have complained of discrimination or have assisted someone else in a complaint

⁵ In other words where a person engages in unwanted conduct that has the purpose or effect of creating a humiliating, intimidating or offensive environment for another person on the grounds of their sexual orientation.

⁶ Sex Discrimination Act 1975

⁷ Race Relations Act 1976 (as amended).

⁸ Disability Discrimination Act 1995.

⁹ Part 2 of the Equality Act 2006.

orientation. The Government expressed concern that such provisions should not be added without the opportunity for detailed consultation with those who would be affected by the new measures. Section 81 of the Act therefore provides a power for the Secretary of State to make regulations to prohibit discrimination on the grounds of sexual orientation in Great Britain. There is a corresponding power in section 82 in relation to Northern Ireland, which was exercised to make the Equality Act (Sexual Orientation) Regulations (Northern Ireland) 2006 (SR 2006 No 439), which came into force on 1 January 2007.

The Government launched a consultation in March 2006 seeking the views of interested parties on the proposed shape and coverage of regulations to be made under this order-making power. Following an exceptionally strong response to the consultation the Government announced that the regulations would be brought forward in time to be debated in both Houses and – subject to Parliamentary approval – brought into force this April.

Options

There are three broad options for dealing with sexual orientation discrimination in advance of the Single Equality Act. The consultation document described proposals set out in Option (iii).

- (i) **Do nothing.** The Government has committed to providing full rights for gay men, lesbians and bisexual people, including protection from unfair discrimination on the grounds of sexual orientation at the earliest possible opportunity. Sexual orientation, and age, are the only equality strands that have only partial protection (in employment and vocational training). The inclusion of a regulation making power in the Equality Act 2006 has raised expectations that an extension of the protections in this area is imminent and cannot await the Discrimination Law Review which is expected to lead to a Single Equality Act. Doing nothing is not therefore a tenable option;
- (ii) **Extend the protection** on the grounds of sexual orientation to goods, facilities, services, premises and public functions to the full extent of the enabling legislation with no exemptions. This approach, which was proposed by stakeholders during the passage of the Equality Act 2006, would meet the basic objective of protecting individuals from discrimination, but it would also result in inappropriate regulation of some sectors, and would not balance the competing human rights of individuals to hold and manifest a religious belief against the right to live free from discrimination. For example, the Government would not wish to stop the targeting of some public services towards particular groups defined by sexual orientation where such an approach is a key factor in ensuring that such services are widely taken up. The Government also does not wish to prevent religious organisations from maintaining their religious observances and or practices that arise from the basic doctrines of their faith.
- (iii) **Extend the protection** on the grounds of sexual orientation to goods, facilities, services, premises and public functions in respect of direct and indirect discrimination, victimisation, discriminatory advertisements and practice with appropriate and proportionate exemptions. This approach would meet the overall objective of prohibiting unfair discrimination, while ensuring that where appropriate, proportionate exemptions are provided for specific services or activities. For example, these would ensure that activities such as the debate and passage of legislation are exempted in

line with other equality enactments. It will also allow a balanced approach with regard to religious organisations.

The Government's decisions on the shape of the regulations take account of the strong response to the consultation while retaining the overall approach set out in Option (iii).

Consultation

The Government received 2747 responses to consultation, with 507 organisational responses including 211 local churches. A summary of responses accompanies the Government Response to Consultation.

The overwhelming majority of responses accepted the principle of legislating to prohibit unfair discrimination on grounds of sexual orientation in this area (almost 97%). There was an exceptionally strong response concerning the scope of the proposed exemption for religious organisations, with almost every response specifically addressing this question. Overall, roughly two-thirds of all responses sought a wider exemption and roughly one-third either supported the consultation proposal or sought to narrow or remove the exemption.

Proposals following the consultation

The Government has listened to the many points of view offered in response to this consultation. Religion or Belief Organisations, and those acting under their auspices, will be able to discriminate provided:

- they are not operating on a commercial basis;
- they are not providing a service on behalf of and under contract with a public authority; and
- the aim of the discrimination is to avoid conflicting with the strongly held religious beliefs of a significant number of the religion's followers.

In many respects, the regulations will mirror the approach taken in the Northern Ireland regulations, to ensure consistency across the United Kingdom. However, we have taken a different approach in a number of areas to reflect the different equality framework and policy considerations in Great Britain. In particular, the GB Regulations:

- provide for a transition period for faith-based adoption and fostering agencies until the end of 2008. In the interim, any agency wishing to take advantage of the transitional arrangements will have to refer gay, lesbian and bisexual couples to agencies who are able to assist;
- will make clear that married couples and civil partners are in materially the same position when considering whether discrimination has taken place on grounds of sexual orientation;

- will provide targeted exemptions for the Blood Service and insurance companies to allow differential treatment where supported by sound epidemiological and actuarial evidence respectively. It is our intention that the exemption for insurance will not apply beyond the end of 2008;
- will not encompass harassment. As made clear in the consultation of March 2006, this issue will be considered and legislated upon in the context of the Discrimination Law Review.

Other proposals

In tackling discrimination on the grounds of sexual orientation, the government intends to take a similar approach, where appropriate, to that taken in other legislation in the provision of goods, facilities, services, premises and public functions; and in the Employment Equality (Sexual Orientation) Regulations 2003.

The new protections are intended to capture direct discrimination, indirect discrimination and victimisation. In essence, the new legislation will make it unlawful for businesses or public authorities to discriminate against a person in the provision of goods, facilities or services on the grounds of his or her sexual orientation. For instance, it would become unlawful to:

- Refuse a same-sex couple a double room in a hotel because this might cause offence to other customers;
- Refuse to provide a gift registration service for couples planning a civil partnership where such a service was offered to couples planning a wedding;
- Refuse admission to a bar because someone was not gay.

However, certain services and activities provided by organisations currently are targeted at customers or users on the basis of their sexual orientation. For example, in the private sector, there are some gay bars and clubs, travel and financial service companies that design their products for lesbian, gay and bisexual customers. Providing goods or services likely to be of more interest to lesbians, gay men or bisexuals would not be unlawful if these goods or services are also made available to people of any sexual orientation. Those who provide such goods or services would not therefore be obliged to provide new services likely to be of particular interest to heterosexual customers.

We are proposing that certain bodies will be exempt from the regulations, consistent with exemptions from other equality legislation. Public authority exceptions are limited to the areas described in the table below.

Activity	Justification
All activities of either House of Parliament, including House authorities	Parliamentary sovereignty
Security Service, Secret Intelligence Service, Government Communications Headquarters (GCHQ), personnel assisting GCHQ as required by the Secretary of State.	To safeguard national security.
Judicial functions (including things done on the instruction of those exercising such functions)	Constitutional independence of judiciary
Legislating (whether Westminster, devolved bodies or Church Synod)	Legislative independence and freedom to debate frankly
Making secondary legislation whether U.K. or Scottish	Executive freedom
Decisions not to prosecute etc.	To ensure that decisions made in relation to individual cases are determined on the basis of the facts of the case alone.

Health Impact

We expect there to be a positive impact on health and an improvement in the level of healthcare and uptake of health services by lesbians, gay men and bisexual people. The consultation has elicited evidence from a range of organisations showing that lesbians, gay men and bisexuals face disproportionate health risks in a number of areas, including mental health, suicide, self-harm, sexual health, eating disorders and alcohol or substance abuse.

A range of organisations involved in healthcare supported the regulations on the basis that they will help address the low take-up of mainstream health or counselling services by lesbians, gay men and bisexuals. One local survey shows 50% of gay men have not disclosed their sexuality to their GP, possibly reducing clinical effectiveness. By deterring discrimination and giving lesbians, gay men and bisexuals increased confidence in accessing mainstream services, the regulations can be expected to result in improved clinical outcomes through earlier diagnosis and treatment.

The regulations will provide a targeted exemption to enable the National Blood Service to maintain policies which exclude donations by certain groups, including gay men. This exemption will be tied to close analysis of the epidemiology of confirmed HIV and Hepatitis B positive tests among blood samples from people donating blood in the UK, and will be subject to regular review.

Rural Impact

We anticipate that the regulations may lead to a small but appreciable improvement in the quality of life for some lesbians, gay men and bisexuals living in rural areas, in terms of improved access to community facilities. The consultation has elicited evidence of lesbians, gay men and bisexuals living in rural areas in Wales and the South-East encountering obstacles accessing community facilities due to discrimination by charities and village halls.

A large number of local churches raised concerns that the regulations would result in a reduction of local community facilities, especially in rural areas, as they would have to stop making their facilities available to the wider community on the assumption the regulations would otherwise require them to provide equal access to lesbians, gay men and bisexuals groups. The exemption for religious organisations will ensure that local churches will be able to retain appropriate discretion in the hire of their facilities to local community groups, and prevent any reduction of local community facilities.

Environmental Impact

There is no anticipated impact of these proposals on the environment.

Costs and benefits

Benefits

The proposed change is designed to make unfair discrimination on the grounds of sexual orientation unlawful. This will generate economic benefits relating both to the increased welfare associated with living in a more equitable society¹⁰ as well as a variety of market based benefits. Greater equality will have a positive effect on pricing, competition, choice and participation.

Unfortunately the difficulty in quantifying equality with respect to goods and services and the lack of authoritative surveys concerning sexual orientation prohibits cogent statistical or econometric analysis. For example, the Census does not collect data on sexual orientation. However, there has been some research carried out. It is estimated that approx. 6% of Great Britain's population are lesbians, gay men and bisexual people, and ONS figures on civil partnerships show that 15,672 civil partnerships were formed in the UK between December 2005 and the end of September 2006, just 9 months after the Civil Partnership Act came into force. Recent surveys¹¹ concluded that the average annual salaries of lesbians and gay men are up to £10K higher than the national average with a greater proportion of salary being spent on disposable items and leisure, including holidays. There is some evidence that discrimination currently leads some gay men and lesbians to reduce their use of some types of service or else to direct their business towards known 'gay friendly' service providers, leading to a lack of choice, diminished competition and higher prices. Even service providers that do not discriminate themselves can lose custom if the perceived risk of discrimination leads potential clients to restrict themselves to designated gay-friendly establishments. With regards to participation, an associated increase in service uptake has clear benefits to the industries involved and to the utility of lesbians, gay men and bisexuals consumers.

Therefore, making discrimination on the grounds of sexual orientation unlawful in the provision of services is likely to bring financial benefits to the wider business community due to increased economic activity outside strictly gay-friendly providers. Individuals who are forced to make changes to their economic behaviour as a result of discrimination represents a market distortion resulting in economic inefficiency. Authors have also referred to the impact changed behaviour has on reduced social capital and related productivity¹². As segmentation and barriers to entry diminish markets will integrate

¹⁰ See for example Cordoba and Verdier (2005) "Lucas vs. Lucas: on inequality and growth"

¹¹ Published by "Out Now" marketing consultancy and "Diva Magazine", January 2006.

¹² See Calandrino (1999) 'Sexual Orientation Discrimination in the Labour Market'

generating added trade and revenue. However, some consumers may continue to use known providers and be willing to pay a utility premium in order to do so. This however will reflect preferences rather than discrimination and therefore be economically efficient.

A number of business organisations responded to the consultation and all supported the proposals. The Advertising Association of Great Britain agreed that there should be economic benefits associated with making unfair discrimination unlawful.

Costs

Implementation Costs

Administrative costs

The regulations impose no new administrative burdens or licensing requirements on service providers. Following the implementation of the Civil Partnership Act providers should have already updated their procedures to include reference to civil partners alongside married couples.

Familiarisation costs

The principle of non-discrimination on grounds of sexual orientation will be familiar to all employers through the Employment Equality (Sexual Orientation) Regulations 2003. In addition, all public sector organisations and many commercial, voluntary and charitable organisations will have already reviewed their policies and procedure for compatibility with the Civil Partnership Act. As the regulations follow the definitions and principles of other anti-discrimination legislation in most areas, the burden of familiarisation will be minimal.

It is intended that costs of producing on-going guidance and support for the sexual orientation discrimination regulations will be fully met from within the budget of the new Commission for Equality and Human Rights (CEHR) which will begin operating in October 2007. However, the government intends to produce and distribute introductory guidance covering the sexual orientation discrimination regulations and the new religion and belief protection in the spring of 2007, when the legislation come into effect.

Where appropriate, the intention is that this guidance will be sector specific and build on existing proven mechanisms for reaching certain sorts of organisations, for example by expanding the package of information on equality and diversity issues already provided for small businesses.

The Home Office Regulatory Impact Assessment on the new religion or belief provisions (Part 2 of the Equality Act 2006) provided estimates of the implementation costs for these measures. These estimates were based on the expectation that each service provider that will be affected by the new laws in relation to religion or belief would have access to a leaflet that explains the changes in the law that would take approximately 5-10 minutes to read depending on the size of the organisation in question. The new sexual orientation regulations will apply to the same group of service providers. The sexual orientation regulations will, in most respects, be similar to the religion or belief discrimination measures and both measures will come into force in April 2007. The Government

proposes therefore to publish joint guidance covering both the new areas of law, which, given the two sets of provisions cover similar ground, will reduce the total amount of reading required. The cost estimates in this Regulatory Impact Assessment are based on the assumption that this guidance will be no more than 50% longer than guidance which addressed the new religion or belief provisions alone.

It is estimated that the total cost to Government of production and distribution of guidance that covers the new sexual orientation regulations in addition to the religion or belief measures will be no more than £75K¹³.

There will be costs for businesses and the public sector associated with the assimilation of new guidance. The amount of time spent reading the guidance, and number of providers spending time doing so, is dependent upon the current equal opportunity policies of those businesses and public authorities and the awareness of the managers towards these issues.

It is envisaged that each service provider covered by the new regulations will have access to a leaflet that explains the changes covering both the new protection being introduced in relation to religion or belief and those proposed for sexual orientation.

Providers may be expected to spend an additional 2.5 minutes extra reading and understanding the sexual orientation aspects of the combined guidance. Medium to large employers, those with 50 or more employees, will be expected to take an additional 5 minutes to read and consider the aspects of the combined guidance relating to sexual orientation, as some of them may produce and disseminate guidance for staff. These are assumptions of the average time spent dealing with the guidance.

There are about 4.31 million businesses in Great Britain¹⁴ of which about 3.16 million are small employers or businesses with no employees at all. Just over 37,000 are medium to large employers.

The extra costs in the first year for each small business arising from the sexual orientation regulations will be a little over £1.00¹⁵. The total marginal cost for small businesses of spending 2.5 minutes reading and understanding the combined guidance is, therefore, a little under £4.9 million¹⁶. The cost for medium to large business from spending five minutes reading and understanding the guidance on the sexual orientation regulations is about £2.40¹⁷ each. The total marginal cost for medium to large businesses of reading and understanding the guidance is, therefore, about £89,500¹⁸.

¹³ The Home Office RIA for the Religion & Belief provisions estimated that the costs of guidance for these measures would be £50K. It is anticipated that the new additional cost accruing from the addition of guidance on the sexual orientation regulations to this document will bring the total cost to no more than £75K.

¹⁴ There are 4,309,500 small businesses (businesses with less than 50 employees) and a further 37,000 small to large business (businesses with over 50 employees) in GB, Source: Small Business Service Statistic (SBS) 2003.

¹⁵ In smaller firms it is assumed that a general administrator/ manager will be responsible for implementation. Data from the Annual Survey on Hours and Earnings (ASHE) (2005) show that an average gross hourly wage for this occupation (ASHE code 11) is £20.79. When uplifted by 30% to allow for non-wage labour costs, this becomes £27.03 an hour. Two and a half minutes reading and understanding the guidance is, therefore, about £1.13.

¹⁶ The cost for small firms is 4.31m x £1.13 = £4.87m.

¹⁷ In medium and larger firms 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. Using ASHE 2005 data for a personnel manager (ASHE code 1135), average gross wages amount to £22.31 and £29.00 after inclusion of non-wage labour costs. Five minutes reading time would cost about £2.42.

¹⁸ The cost for medium to large firms is 37,000 x £2.42 = £89.5k.

There are approximately 26,000 public authorities¹⁹, of which around 1,500 could be classed as larger authorities (central government, local government authorities, higher and further education authorities, strategic health authorities etc.) Reading time for the guidance will be the same as for the private sector so the total cost to larger public authorities is expected to be about £3.5k and about £28k for the smaller authorities.²⁰ The total anticipated new cost to public authorities as a result of information on the sexual orientation regulations being included in the guidance on the religion or belief provisions would therefore be just over £30k.

The total aggregated costs for awareness-raising and guidance for the sexual orientation regulations in the first year is therefore in the region of £5 million²¹. In the public sector and much of the voluntary and charitable sector there are dedicated equality officers to streamline this effort. These are one-off implementation costs, with no ancillary ongoing costs attached. Even if the business-promoting effects discussed in the previous section applied on a very modest scale it is likely they would outweigh these costs.

Policy costs

We anticipate that only a very few businesses, charities or voluntary organisations will need to change their existing practices or policies in order to comply with the new regulations. In these cases, they requirement to stop discriminating in order to comply with the law is unlikely to be costly – indeed, for commercial providers, no longer refusing to offer their services to potential customers on the grounds of their sexual orientation would be likely to increase rather than decrease business.

Legitimate requirements to discriminate in the voluntary and charitable sector are allowed for by targeted exemptions in the regulations.

Costs to Service Providers

The essence of the protection would be to require providers of goods, facilities, services and premises, not to refuse to provide services or sell their products to customers on the grounds of their sexual orientation. This will not extend to any requirement to consider reasonable accommodation or adjustment, so it is expected that the costs to providers will be negligible.

Costs to police/Crown Prosecution Service (CPS)

The only criminal offences to be included in the sexual orientation regulations will be summary offences, (i) when someone knowingly or recklessly misleads a publisher into placing a discriminatory advert, and (ii) when someone knowingly or recklessly makes a false statement to someone else whose assistance they seek that proposed action is not discriminatory. These offences currently exist in relation to racial and sex discrimination and have rarely, if ever been used. We therefore assess that the costs to the police and CPS will be negligible, if any.

¹⁹ 26,133 public authorities.

²⁰ The cost to smaller authorities would be $£1.13 \times 24,500 = £27.7k$. The cost to larger authorities would be about $£2.42 \times 1,500 = £3.6k$.

²¹ $£4.87m + £89.5k + £27.7k + £3.6k = £4,990,800$

The Metropolitan Police Service noted that the new regulations will have little, if any, impact on their current policies and procedures.

Cost to the Courts

There may be a cost associated with extra court cases as a result of the proposal. Most cases will be heard in county/sheriff courts but a small number of cases may be heard in the High Court. Our current estimate is that it is very unlikely that there will be more than 10 cases per year which require court action²².

A service provider taken to court by a person alleging discrimination on the grounds of sexual orientation will be expected to meet their own legal costs. However, it is open to a court to make a costs award against the plaintiff and in favour of the respondent if it rules that no discrimination took place. Equally, if the court rules that discrimination did take place, a service provider may be ordered to pay the costs of the victim.

Insurance is available to organisations to cover the costs of legal action.

In many cases, legal proceedings are settled out of court. The CEHR will have powers to make arrangements for a conciliation service for both parties to come to an out of court arrangement.

Costs to the Insurance Sector

Discussions with the insurance industry before and during the consultation process indicate that they do not anticipate that significant additional costs will be imposed on insurance and assurance companies as a result of the sexual orientation regulations. In the past, sexual orientation was sometimes taken into account by insurers when seeking to establish an individual's risk of being, or becoming, HIV positive. The Association of British Insurers (ABI) has issued guidance for insurers on best practice in relation to HIV and insurance with the most recent Statement of Best Practice coming into effect in October 2004. This provides insurers with guidance on what questions can reasonably be asked when assessing insurance applications in order to establish the risk of HIV infection. For example, it makes clear that questions should not be asked about an individual's sexual orientation but may be asked about behaviour that could put an individual at risk of exposure to HIV (for example through having had unsafe sex, intravenous drug abuse, or having had surgery outside the EU).

The ABI has formed an expert working group on HIV and insurance to provide ongoing advice on and the Statement of Best Practice will be reviewed in 2007. At this stage, we anticipate that the new regulations are likely to reinforce the practice recommendations made in the ABI Code of Practice.

Insurers no longer require HIV tests due to a person's sexual orientation. However, insurers do typically set different financial limits at which an HIV test is required for higher levels of cover, regardless of sexual orientation. There are currently different testing levels for single men (regardless of sexual orientation), for married men and for civil partners, due to different risk profiles.

²² As with other discrimination legislation, the regulations will include a provision reserving the right to bring judicial review proceedings in the High Court. Only certain acts of public authorities will be susceptible to judicial review and so only a very small number of cases will require High Court action

There is no single industry standard for testing thresholds for civil partners, due to the limited amount of data available for civil partnerships. The GB regulations will include an exemption that will have the same effect in relation to insurance as provisions in the Sex Discrimination Act and regulations made under the Disability Discrimination Act. It is our intention that this particular exemption will not apply beyond the end of 2008. We will work with the insurance industry and others to ensure that if any exemption is required beyond 2008, it reflects a genuine need in the industry and is in line with industry best practice, and we will legislate accordingly. The latest ABI guidance makes clear that insurers should not ask about sexual orientation or any HIV negative tests, but instead base their assessment of risk on answers provided about actual behaviour, regardless of sexual orientation.

Costs to the hospitality sector

The consultation has provided evidence of some hotels and bed and breakfasts having turned away, or failed to offer like services, to same-sex couples on the grounds of their sexual orientation. However, the British Hospitality Association have confirmed that they do not consider the proposals for the regulations will have a significant effect on the hospitality sector.

The regulations will not prevent providers of accommodation from only offering single beds or twin rooms.

Small Firms' Impact Test

Small to medium sized enterprises are less likely to have procedures relating to provision of services. However, most would recognise that avoiding discrimination in any form is in line with best business practice. We do not anticipate that any action will be needed beyond the familiarisation already identified under costs earlier in this document. Apart from managers reading the awareness raising literature, small businesses are unlikely to provide formal training or guidance for staff as a result of these changes.

We took pre-consultation sounding with small business (Confederation of British Industry, Small Business Forum, Federation of Small Business and the British Hospitality Association) on the impact on small business of the proposed regulations, which have indicated that the proposed regulations will not pose a significant problem. The Small Business Service does not believe these proposals will have a significant adverse effect on small firms.

Compensatory measures

The regulations are additional to the current body of discrimination law. They will not replace other measures.

However, they will ensure consistency of protection across the equality strands. Race, sex, and disability already enjoy statutory protection from discrimination in the provision goods, facilities, services, premises and public functions. Similar protection is being introduced to outlaw discrimination on the grounds of religion or belief.

Clear and simple guidance will be provided to ensure that the new law is easy to comply with. The Commission for Equality and Human Rights will provide institutional support for the regulations from October 2007.

These regulations will be included in the suite of legislation that is being considered by the Discrimination Law Review to simplify equality legislation.

Equity and Fairness

The Employment Equality (Sexual Orientation) Regulations 2003 and the Employment Equality (Religion or Belief) Regulations 2003 both came into effect in October 2003, affording protection in employment and vocational training from discrimination on the grounds of sexual orientation or religion or belief. The Equality Act 2006 extends this protection to goods, facilities, services, education, disposal and management of premises and the exercise of public functions for religion or belief.

It is fair and equitable to extend similar protections using the power in section 81 of the Equality Act 2006 against discrimination on the grounds of sexual orientation against discrimination on the grounds of sexual orientation.

An Equality Impact Assessment has been completed for these regulations.

Competition Assessment

Due to the minimal effect on the private sector, it is not envisaged that there will be any immediate effect on competition in any one sector. There may be a slow increase in competition generally due increased economic activity outside strictly gay-friendly providers, but we judge that the effect will be negligible for any particular sector.

As noted above, the British Hospitality Association have confirmed that they do not consider the proposals for the regulations will have a significant effect on the hospitality sector.

A competition filter has been performed that indicated a competition assessment is unnecessary.

Enforcement and Sanctions

Enforcement of these regulations will normally be by a victim of unlawful discrimination bringing proceedings through the courts (ie county court or sheriff court). The new Commission for Equality and Human Rights (which will begin operating in October 2007) will be able to support some victims to pursue strategic cases. In addition, the Commission for Equality and Human Rights will have powers to conduct formal investigations – if it suspects that a person has committed an act of unlawful discrimination – and issue unlawful act notices if the investigation finds that discrimination has taken place.

The Commission for Equality and Human Rights will be the only party able to enforce provisions on discriminatory practices and discriminatory advertisements, pressure and instructions to discriminate. These will be brought before an employment tribunal for matters which fall within its jurisdiction and to a county or Sheriff's court for other matters.

The Commission for Equality and Human Rights's overall budget will cover work on promoting equality and diversity, promoting human rights, working with communities, as well as enforcement. Decisions about what proportion of the Commission for Equality and Human Rights' efforts will be dedicated to its various activities will be made in due course.

Monitoring and Review

The new Commission for Equality and Human Rights will have a responsibility to keep the working of discrimination legislation and the Human Rights Act under review, including the sexual orientation regulations. It will need to consider the effectiveness and adequacy of statutes and, if necessary, make recommendations or proposals to the relevant Secretary of State for changes.

The Prime Minister will be commissioning an ongoing independent assessment of the issues faith-based adoption and fostering agencies will need to address in the transition period and the impact the regulations have on adoptions and fostering services. This is intended to prevent any disruption to services currently being provided to adoptive parents and children and to find a way to ensure that much valued and needed services are retained and developed, whilst also ensuring agencies comply with the Regulations.

Summary and recommendation

The government believes that the nature of the protection envisaged will have a minimal impact upon costs for the business, public and voluntary sectors.

The implementation costs of the sexual orientation provisions regulations are familiarisation costs. Prior familiarisation with the Employment Equality (Sexual Orientation) Regulations 2003 and the Civil Partnership Act 2004 will mean that the basic principles are already familiar. Familiarisation will be further eased by the similar approach taken, where appropriate, to other anti-discrimination legislation relating to goods and services.

Over the entire economy the cost of this familiarisation effort is estimated at £5 million in the first year, based on providers spending 7 – 15 minutes reading guidance, with minimal costs thereafter. In the public sector there will be dedicated equality officers to streamline this effort.

While it is not possible to provide a precise estimate of the benefits that are likely to accrue from these regulations in a defined time span, we anticipate that the advantages to both Government and business from increased take-up of services are likely to exceed the costs of implementation.