



The Equality Act (Sexual Orientation) Regulations 2007

Equality 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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Printed in the UK on material containing no less than 75% post-consumer waste.

March 2007

Product Code: 06 ELMAT 04456/c

1. Introduction

- 1.1 This Equality Impact Assessment (EIA) addresses regulations made to prohibit discrimination on grounds of sexual orientation in the provision of goods, facilities, services, education, management and disposal of premises and the exercise of public functions. It considers the impact of the proposals in terms of race, age, disability, gender including gender reassignment, sexual orientation and religion or belief.
- 1.2 The aim of this EIA is to ensure that the implications for equality in all the protected grounds (in particular race and disability for which we are obliged to carry out equality impact assessments) are thoroughly assessed as the proposals are developed, so that full account is taken of views expressed, and to provide assurance that changes needed to mitigate any potential adverse impacts have been identified.
- 1.3 The assessment follows the Commission for Racial Equality (CRE) guidance on conducting Equality Impact Assessments. While addressing the impact of proposals on all the protected grounds, it therefore also fulfils our duty, arising from section 71 of the Race Relations (Amendment) Act 2000, to assess and consult on the likely impact of proposed policies on the promotion of race equality and our duty arising from Section 3 of the Disability Discrimination Act 2005, to assess and consult on the likely impact of proposed policies on the promotion of equality for disabled people. It also anticipates the duty regarding the promotion of gender equality that will arise from Part 4 of the Equality Act 2006 on 6 April 2007.

2. The Policy

- 2.1 The Regulations will provide a legal remedy for individuals discriminated against on grounds of their sexual orientation, perceived sexual orientation or association with the sexual orientation of other people, in the provision of goods, facilities, services, education, management and disposal of premises and the exercise of public functions.
- 2.2 The Regulations are complementary to existing legislation. Protection in the field of goods, facilities and services is already afforded to people on the basis of their sex, disability and race. The Government now intends to provide the same protection to people who may experience discrimination on the basis of their sexual orientation, alongside protection on the basis of religion or belief provided for in Part 2 of the Equality Act 2006 which will commence at the same time as these Regulations.

3. Context and drivers for the proposals

- 3.1 Section 81 of the Equality Act 2006 includes a power to make regulations to prohibit discrimination on grounds of sexual orientation in the provisions of goods and services in Great Britain. Sexual orientation is defined in Part 1 of the Equality Act 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.

- 3.2 The Government established the Discrimination Law Review in February 2005 to consider the opportunities for creating a clearer and more streamlined legislation framework, which produces better outcomes for those who experience disadvantage.
- 3.3 A separate Equalities Review, led by Trevor Phillips, looked at the broader issues leading to an unequal society, in particular the reasons why inequalities persist in certain areas and for certain groups and communities, despite forty years of equality legislation. It issued an interim report in March 2006 and the final report to the Prime Minister on 28 February 2007. The Equalities Review recognised that legislation against discrimination is a significant lever in producing changes in social and cultural attitudes and behaviour as regards equality, but that it is by no means the only factor and that social and cultural attitudes can have a significant effect on life chances.
- 3.4 Great Britain has a proud history of legislating against discrimination, from the first race discrimination laws in the 1960s to the most recent pieces of major legislation (the Equality Act 2006 which also establishes the Commission for Equality and Human Rights; and the Employment Equality (Age) Regulations 2006 which outlaw age discrimination in the workplace).
- 3.5 Since 1997, the Government has taken a number of legislative steps that have benefited lesbian, gay and bisexual people, repealing Section 28 of the Local Government Act, legislating in the Adoption and Children Act 2002 to permit adoption by same sex couples, bringing forward the Civil Partnership Act 2004, and prohibiting discrimination in the workplace under the Employment Equality (Sexual Orientation) Regulations 2003. The Government has also recognised the need for protection on religious grounds and introduced new legislation to prohibit discrimination in goods, facilities and services etc. on grounds of religion or belief, and legislation aimed at tackling religious hatred.
- 3.6 The Regulations will extend to England, Scotland and Wales.

4. Methodology

- 4.1 Consultation on issues relevant to this policy has been carried out as part of the formal consultation exercise launched in March 2006 and in relation to preparations for the Discrimination Law Review. We have also taken account of the results of the Equalities Review.
- 4.2 The Government launched a consultation on proposed regulations in March 2006, closing in June. During this period regional stakeholder events were held in Birmingham, Blackpool, Brighton, Edinburgh and London. In total, 2747 responses were received, including 507 organisational responses.

5. Impact Assessment of the proposals

- 5.1 This section analyses the likely impact of the Regulations. It provides analysis of the impact on a cross-strand basis and also analysis of the differential impact on particular strands where such an impact has been identified. The questions considered are primarily whether the Regulations affect the equality strands equally or differently and whether the strands are affected in a positive or negative way. For a cost/benefit analysis of the Regulations, see the Regulatory Impact Assessment.
- 5.2 This policy has significant implications for equality of opportunity for lesbian, gay and bisexual people. Lesbian, gay and bisexual people are more likely than heterosexual people to experience sexual orientation discrimination in the provision of goods, facilities and services. The proposals are therefore likely to have positive impacts for lesbian, gay and bisexual people because it will prohibit this type of discrimination.
- 5.3 The policy also has implications for members of certain religious communities. The majority of responses to the consultation from religious organisations expressed concern that the proposals would unduly restrict their activities because of religious teachings on homosexual sexual practice.
- 5.4 There is a general lack of quantitative data on sexual orientation in Great Britain, because of sensitivities around the collection of this information. Consultations on the proposed Regulations, as well as work being carried out through the Discrimination Law Review and Equalities Review, has highlighted the importance of accurate population data.
- 5.5 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, and the Regulatory Impact Assessment for the Civil Partnership Act estimated that approximately 6% of Great Britain's population are lesbians, gay men or bisexual people. Furthermore, ONS figures on civil partnerships show that over 15,000 same-sex couples in Great Britain had sought legal recognition of a same-sex relationship by September 2006, just 9 months after the Civil Partnership Act came into force. It is therefore likely that significant numbers of the population will be affected in a positive way by the implementation of the proposed Regulations.
- 5.6 Because no mechanism for redress currently exists regarding instances of sexual orientation discrimination other than in the field of employment, it is hard to quantify the extent for recourse to these Regulations. However, qualitative testimony from the lesbian, gay and bisexual community in their responses to the consultation, the Equalities Review and the Discrimination Law Review is clear about the types of discrimination lesbian, gay and bisexual people are currently facing when accessing goods, facilities and services. The response to consultation has identified particular issues of concern for lesbian, gay and bisexual people; for example, discrimination experienced by lesbian, gay and bisexual people accessing services in healthcare and other public services, in accessing hotels and the tourism industry, and by children who have gay parents. The Equalities Review has shown that homophobic bullying and hatred are increasingly perceived as problems, particularly amongst younger members of society.

- 5.7 Data and consultation responses received from local churches, representatives of national churches and other religious groups show that a real concern exists that organisations with a religious ethos could be forced by these proposals to act in a way which is contrary to their teaching. This concern extends to social outreach activities of faith groups (such as parent and toddler groups), schools, and commercial organisations run by individuals or groups with strong religious beliefs. We believe that this concern is addressed by the mitigation below.

Assessment of impacts

Race, disability

- 5.8 We have no clear evidence that there is likely to be a differential impact on people within these categories.

Age

- 5.9 There are likely to be multiple-identity issues in relation to the application of these Regulations in the sphere of education for young people and parents or carers within the groups identified as affected generally. There are also possible indirect impacts on children seeking adoption or fostering. These are considered below. Evidence does not indicate that there is likely to be a more general differential impact on people within these categories.

Sexual orientation

- 5.10 Lesbian, gay and bisexual people are more likely than heterosexual people to suffer discrimination on the basis of their sexual orientation in the supply of goods, facilities and services. Responses to the consultation have cited examples of ongoing discrimination in accessing hotels, restaurants, cafes, and private housing, in relation to venues and commercial services for civil partnership registration and celebration, in the delivery of education, and in the public provision of healthcare, social housing and nursing homes.
- 5.11 The Regulations will impact positively on people in the lesbian, gay and bisexual community by providing a route to redress against discrimination. However, it will also have a positive impact on members of the heterosexual community, as they too can seek redress for discrimination where, for example, they are refused access to a pub because they are not gay.

Religious belief

5.12 It is clear from the consultation that many groups and individuals with a strong faith identity are concerned that the extension of goods, facilities and services protection to include sexual orientation will require faith organisations and individual business owners to act in a way that is incompatible with their beliefs. Areas which they fear will be affected are:

- Core religious observance and practice (e.g. marriage, sacraments);
- Wider social and community activities (e.g. parent and toddler group, senior citizens' luncheon club);
- Faith-based charities and voluntary groups (e.g. youth clubs, homeless shelters, adoption and fostering agencies);
- Faith-based schools;
- Commercial activities run by an individual or organisation with a strong faith ethos.

5.13 It is for this reason that an exemption for religious organisations will be included in the Regulations.

Multiple-identity and faith groups

5.14 Some respondents to the consultation noted that lesbian, gay and bisexual people that are also members of a faith community may be differentially affected by the Regulations. Insofar as these lesbian, gay and bisexual people wish to access goods, facilities and services provided by a faith-based organisation to the wider community, they are in the same position as any other lesbian, gay and bisexual person. The difference arises when they wish to access facilities and services associated with core religious observance, such as the sacraments in the Christian tradition. We acknowledge that this is a difficult issue for individuals in this position. There are clearly negative impacts for those involved, with complex human rights implications.

Multiple-identity and children

5.15 The education provisions will have a greater impact on young people as pupils. There are also possible indirect impacts on young people as children seeking adoption or fostering, through the impact of the Regulations on religious adoption and fostering agencies. There will therefore be multiple identity issues for young people of different sexual orientation and/or religious belief (and, for pupils, by association with the sexual orientation and/or religious beliefs of their parents or carers).

Multiple-identity and transsexual people

5.16 There is a limited cross-strand impact to the extent that transsexual people are more likely to be perceived as having lesbian, gay or bisexual sexual orientations.

6. Measures to mitigate adverse impact and alternative policies which might better achieve equality of opportunity

- 6.1 The Regulations impact on the needs and rights of lesbian, gay and bisexual people and people with strong religious beliefs. Mitigating measures are required to balance the rights of people in these two equality categories (and those who are both, namely lesbian, gay and bisexual people with strong religious beliefs). In the Employment Equality (Sexual Orientation) Regulations 2003, a similar issue was faced. In that case an exemption to the Regulations was applied which allowed employers to apply a sexual orientation requirement (subject to it being reasonable) to prospective employees where their sexual orientation would be a material consideration in complying with doctrinal teaching of a religion or to avoid offence to significant numbers of a religion's followers.
- 6.2 We believe that a similar mitigation would be equitable in relation to these Regulations, and propose an exemption from the Regulations for the provision of goods, facilities and services by certain religious organisations.
- 6.3 It is necessary to define the limits of any exemption, balancing the needs, rights and views of all those who will be affected. The human rights standards in the European Convention on Human Rights, made part of our law by the Human Rights Act 1998, have helped us to do this in an objective way.
- 6.4 Having considered the response to consultation and taken careful account of the human rights implications, we have decided to ensure that the Regulations do not unduly interfere with the right of religious organisations to organise their own affairs in accordance with the deeply held beliefs of their religion, while guaranteeing the rights of the lesbian, gay and bisexual individuals and groups to equality of treatment. We believe that the Regulations provide the best balance between the rights to non-discrimination and to freedom of thought, conscience and religion.
- 6.5 The exemption will be available for those organisations whose purpose is to practice, advance or teach a religion, and/or to enable persons of that religion to receive certain benefits or engage in certain activities within the framework of their religion, as well as those who act under the auspices of such organisations. The exemption will not be available for organisations with a sole or primarily commercial purpose, nor organisations providing a service on behalf of and under contract with a public authority. The exemption means that religious organisations and those acting under their auspices do not have to act in contravention of their core doctrinal beliefs or the strongly held religious beliefs of a significant number of their religion's followers.
- 6.6 To allow individuals to qualify for the exemption other than when acting under the auspices of religious organisations would not balance rights as effectively. It would create a sphere in which homophobia and genuine doctrinal belief would be indistinguishable in law, and in which the rights of lesbian, gay and bisexual people could potentially be compromised. On considering alternative ways to draw this exception either more widely (including exempting primarily commercial organisations), or more narrowly (including not having an exception), therefore, the current proposal is assessed as the best balance. It represents the best possible mitigation of the potential negative impacts on people of different religious belief

while minimising the potential negative impact of the exception on people of different sexual orientation. This view is supported by the conclusions of the Joint Committee on Human Rights (HL Paper 58, HC350) on the corresponding provisions in the Northern Ireland regulations covering this area.

- 6.7 In a letter to the Prime Minister on 23rd January 2007, Cardinal Cormac Murphy-O'Connor made clear that the Regulations as they stood would force the closure of Catholic adoption services, as Catholic teaching about the foundations of family life meant that its adoption agencies would not be able to recruit and consider homosexual couples as potential adoptive parents. During the consultation a number of faith-based organisations indicated that they would withdraw their provision rather than act in contravention of their core doctrinal beliefs in this area, and there are international precedents for such organisations amending or withdrawing their services in similar circumstances. Given the important contribution of faith-based adoption and fostering agencies, there is a credible risk that the Regulations will have an indirect impact on vulnerable children seeking adoption or fostering. To ensure that vital services for children are not disrupted, the Regulations will 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 lesbian, gay and bisexual couples to agencies who are able to assist, to minimise the potential negative impact of the exception on lesbian, gay and bisexual couples.
- 6.8 In relation to education, grant-maintained schools already operate in an environment in which it would be contrary to their statutory duties of care and overarching quality frameworks to refuse access to a school, or any benefit to a pupil on the basis of their own sexual orientation or that of any person associated with them. In the vast majority of situations, therefore, these Regulations will reflect existing practice in grant-maintained schools. Again, on consideration, we feel that this reflects the best balance between the needs, rights and interests of groups of people who may be affected differently.
- 6.9 The Regulations will not remove protections for religious beliefs in existing educational framework. In particular parents have a right to have their children educated in accordance with their religious beliefs, to be consulted on sex education classes, and to withdraw their children from sex or religious education.

