EXPLANATORY MEMORANDUM TO

THE EQUALITY ACT 2010 (OFFSHORE WORK) ORDER 2010

2010 No. 1835

1. This explanatory memorandum has been prepared by the Government Equalities Office and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 This instrument applies Part 5 of the Equality Act 2010 ("the Act") to offshore work (as defined in section 82 of the Act), prohibiting discrimination, harassment and victimisation of persons working on offshore installations such as oil and gas rigs and wind farms. It maintains the effect of previous instruments applying the legislation being replaced by the Act and specifies the venue and jurisdiction in which claims under Part 5 should be brought.

3. Matters of special interest to the Joint Committee on Statutory Instruments

None.

4. Legislative Context

4.1 The Act replaces and consolidates previous discrimination legislation, such as the Race Relations Act 1976 and the Sex Discrimination Act 1975, all of which contained provisions equivalent to Part 5 of the Act.

Part 5 of the Act prohibits discrimination, harassment and victimisation of workers and ensures equality of terms for employees and office holders. This Order applies Part 5 to persons in offshore work and specifies the venue and jurisdiction in which claims should be brought.

Section 82(3) of the Act outlines the activities that constitute offshore work – work for the purposes of activities in the territorial sea adjacent to the UK, activities such as are mentioned in subsection (2) of section 11 of the Petroleum Act 1998 in waters within subsection (8)(b) or (c) of that section or activities mentioned in paragraphs (a) and (b) of section 87(1) of the Energy Act 2004 in waters to which that section applies. According to section 82(4) of the Act, this includes work done by employees, contract workers, partners, members of Limited Liability Partnerships or personal or public office holders.

5. Territorial Extent and Application

5.1 This instrument applies to Great Britain.

6. European Convention on Human Rights

6.1 As this instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

- ***What is being done and why***

7.1 This Order applies Part 5 of the Act to offshore work in the same manner as it applies to work taking place in Great Britain and specifies the venue and jurisdiction for claims arising under Part 5 of the Act in relation to different types of offshore work.

Offshore work covers activities such as the exploration of the sea bed or subsoil, the exploitation of their natural resources and the offshore storage of carbon dioxide and gas unloading and storage activities. It also covers activities taking place on, under or above a renewable energy installation, such as a wind farm.

It is necessary to make specific provision for the application of Part 5 to persons in offshore work and appropriate to do so by reference to the activities undertaken in specific areas of the sea to ensure that the law applies to such workers despite being located offshore. Although the platforms and rigs, etc. on which much offshore work takes place are usually fixed in a given location whenever workers are at work on them, they may be relocated and the complexities of determining whether and what law applies at sea warrants greater clarification in this context. Those working on a ship going to an oil rig or windfarm, etc. are treated as seafarers, to whom the application of Part 5 is determined by regulations made under section 81 of the Act. This approach is consistent with the application of previous discrimination law to workers on oil and gas rigs and the extension of it to those on windfarms in the Renewable Energy Zone under powers in the Energy Act 2004.

It is appropriate to specify the venue and jurisdiction in which claims should be brought because it may not otherwise be clear in which venue and jurisdiction a claim relating to offshore work should be brought. The judicial arrangements for such workers are, in this context, determined by the offshore jurisdictional boundaries between England and Scotland.

Because both the venue and jurisdiction specified by previous legislation affecting offshore work differed for different types of claims and/or different types of offshore work, it is necessary to maintain the position in this order to minimise the confusion and inconsistency for individuals who are affected. The result is that although the same types of employment claims of workers doing different types of offshore work may be subject to different venues, the

employment claims of any individual in a specific type of offshore work will be subject to the same venue.

Jurisdiction over claims under Part 5 arising in offshore work as defined in section 82(3)(a)-(b) is conferred on employment tribunals. This covers petroleum-related activities such as work on oil/gas rigs, carbon dioxide storage and gas unloading and storage activities and activities in the territorial sea adjacent to the United Kingdom. Conferring jurisdiction on employment tribunals is consistent with the venue for claims arising from such offshore work under the Employment Rights Act 1996 (e.g., unfair dismissal) and the same border is used to determine the jurisdiction of tribunals in England and Wales and Scotland respectively. This means that persons in offshore work within section 82(3)(a)-(b) bring both discrimination and unfair dismissal claims before the same employment tribunal in either England and Wales or Scotland.

Jurisdiction over claims under Part 5 arising in offshore work as defined in section 82(3)(c) is conferred on courts. This covers renewable-energy related activities such as work on wind farms. Conferring jurisdiction on courts is consistent with the venue for all other civil claims arising in such offshore work as a result of legislation made under the Energy Act 2004 extending civil law to the Renewable Energy Zone. The jurisdiction of courts in England and Wales and Scotland respectively is determined according to the border established by the Schedule to the Order, which replicates the border used under the Energy Act. This means that persons in offshore work within section 82(3)(c) bring both discrimination and unfair dismissal claims before the same court in either England and Wales or Scotland.

- ***Consolidation***

7.2 This Order consolidates the previous instruments applying anti-discrimination law to offshore work in so far as contained in or made under anti-discrimination legislation.

8. Consultation outcome

8.1 No specific consultation was undertaken on this Order. However, a more general consultation was carried out in 2007 – "A Framework for a Fairer Future: Proposals for a Single Equality Bill for Great Britain", which proposed the harmonisation and simplification of existing equality legislation.

Nearly all respondents agreed with the objective of streamlining equality law and replacing with a new single Equality Act, the current nine major pieces of discrimination legislation and around 100 statutory instruments setting out connected rules and regulations.

9. Guidance

9.1 No guidance has been specifically published alongside this Instrument. Comprehensive guidance for employers and employees is being

prepared for the Equality Act 2010 which may apply in cases covered by this instrument.

10. Impact

10.1 The impact on business, charities or voluntary bodies is minimal. Although the Act changes how the law will work in this context – by no longer providing a statutory test for when work-related provisions will apply in any given case – no significant change in outcomes for affected parties is anticipated.

10.2 The impact on the public sector is minimal, for the reasons given above.

10.3 An Impact Assessment has not been prepared for this instrument. The Impact Assessment for the Act took account of the approach to discrimination at work and the consolidation of the law in Part 5 of the Act and relevant extracts will be published alongside the Explanatory Memorandum on the OPSI website (the figures in which remain accurate).

11. Regulating small business

11.1 This instrument applies to small business.

11.2 No steps have been taken to minimise the impact of the requirements on firms employing up to 20 people because this instrument is largely replicating and consolidating previous law.

11.3 A range of guidance on the Act will be prepared and published by bodies including the Equality and Human Rights Commission, the Arbitration and Conciliation Service and the British Chamber of Commerce, some of which is tailored particularly for small businesses. No guidance is planned to assist small businesses with this particular instrument for the reason given above.

12. Monitoring & review

12.1 As with the 2010 Act, this instrument will be monitored and reviewed on an ongoing basis by the Government and the Equality and Human Rights Commission.

13. Contact

Mr Yemi Atiku at the Government Equalities Office (Tel: 03034443042 or email: yemi.atiku@geo.gsi.gov.uk) can answer any queries regarding this instrument.

Excerpts from Equality Act Impact Assessment Final Version (Royal Assent) April 2010

Familiarisation costs	
Policy Option: 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	**Yrs**		
£ 203,542,779	1	**Private Sector –** Total costs up to £ 192,213,687 for up to 1,193,750 SMEs and 5,905 Large firms. **Public Sector** - Total costs up to £ 11,034,676 would be split between 25,612 public authorities.	
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[1];
- 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 **2009**	Time Period Years **10**	**Net Benefit Range** (NPV) **-£203,542,779**	**NET BENEFIT** (NPV Best estimate) **£ 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			£ [see box	
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	**Net**	**£** 0

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

[1] 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

Policy Option:	Description:
Simplification Benefits for the Equality Act	Simplification of the law will result in simpler guidance and a better understanding of rights and responsibilities

BENEFITS

ANNUAL BENEFITS

One-off	Yrs
£ 0	1

Average Annual Benefit (excluding one-off)

£ 8,768,893	10

Description and scale of key monetised benefits by 'main affected groups'

Private Sector – 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

Public Sector – Annual saving to public bodies of £97,245. Public bodies will also benefit from employees finding it easier to understand their rights and

Total Benefit (PV)	**£ 75,479,882**

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

- 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.
- 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.

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
- That this will benefit all businesses including new businesses
- The number of new businesses – estimate based on previous years

Price Base Yr	Time Period Years	**Net Benefit Range** (NPV)	**NET BENEFIT** (NPV Best estimate)
2009	**10**	**Up to £ 75,479,882**	**£ 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/A	N/A

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

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 9 major pieces of primary and secondary legislation and around 100 pieces of ancillary legislation. The Equality Act provided the opportunity to improve and modernise the law and tackle persistent inequalities. It simplifies 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[2] and its final report[3]. Some parts of the Act 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[4] 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[5] 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

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[2] The Equalities Review was launched and proceeded in parallel with the Discrimination Law Review. The former focused more on identifying the wider social and policy causes of persistent inequalities; the latter focused on the legislative framework.

[3] Fairness and Freedom: The Final Report of the Equalities Review, February 2007.

[4] *"Shaping a Fairer Future".*

average, women earn £2,875 in bonuses compared with £14,554 for men,[5]. 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 three main objectives:

(i) **To standardise, simplify and consolidate discrimination law where appropriate.** This includes measures to simplify definitions, exceptions, provisions on equal pay and disability-related provisions, including an ability to harmonise the legislation where changes are required as a result of European law;

(ii) **To make the law more effective.** This covers measures to widen the scope for voluntary positive action, establish an outcome-focussed integrated duty on public authorities to have due regard to the need to promote equality (including in their procurement activities) and a duty on some public authorities to consider socio-economic inequalities in their strategic decisions; and to achieve better handling of discrimination cases by the courts;

(iii) **To modernise the law.** This covers measures to extend protection from discrimination on grounds of gender reassignment and pregnancy/maternity; to provide protection against unfair discrimination on grounds of age in the provision of goods, facilities and services and exercise of public functions; to provide a power to require gender pay gap reporting by some private sector employers; to tribunals to make wider recommendations and to extend statutory protection against harassment outside the workplace and dual discrimination.

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 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."

[5] EHRC inquiry into the financial sector, September 2009, http://www.equalityhumanrights.com/uploaded_files/financial_services_inquiry_report.pdf

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 m ultiple discrimination, a summary of responses is available on the GEO website[6]. Two consultations on the Equality Duty[7] and age discrimination[8] ended in September. 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 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:

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

7 http://www.equalities.gov.uk/news/equality duties.aspx

8 http://www.equalities.gov.uk/news/age_consultation.aspx

Summary of Costs

		One Off		Recurring	
	Annex	**Low**	**High**	**Low**	**High**
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	-	-
TOTAL		**£212,653,561**	**£213,452,561**	**£28,278,471**	**£69,989,717**

Summary of Benefits

		One Off		Recurring	
	Annex	**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	-	-	-	-
TOTAL		**£2,625,748**	**£2,625,748**	**£98,970,752**	**£130,994,064**

Costs – Breakdown by affected group

	One Off		Recurring	
	Low	**High**	**Low**	**High**
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	-	-	-	-
TOTAL	**£212,653,561**	**£213,452,561**	**£28,278,471**	**£69,989,717**

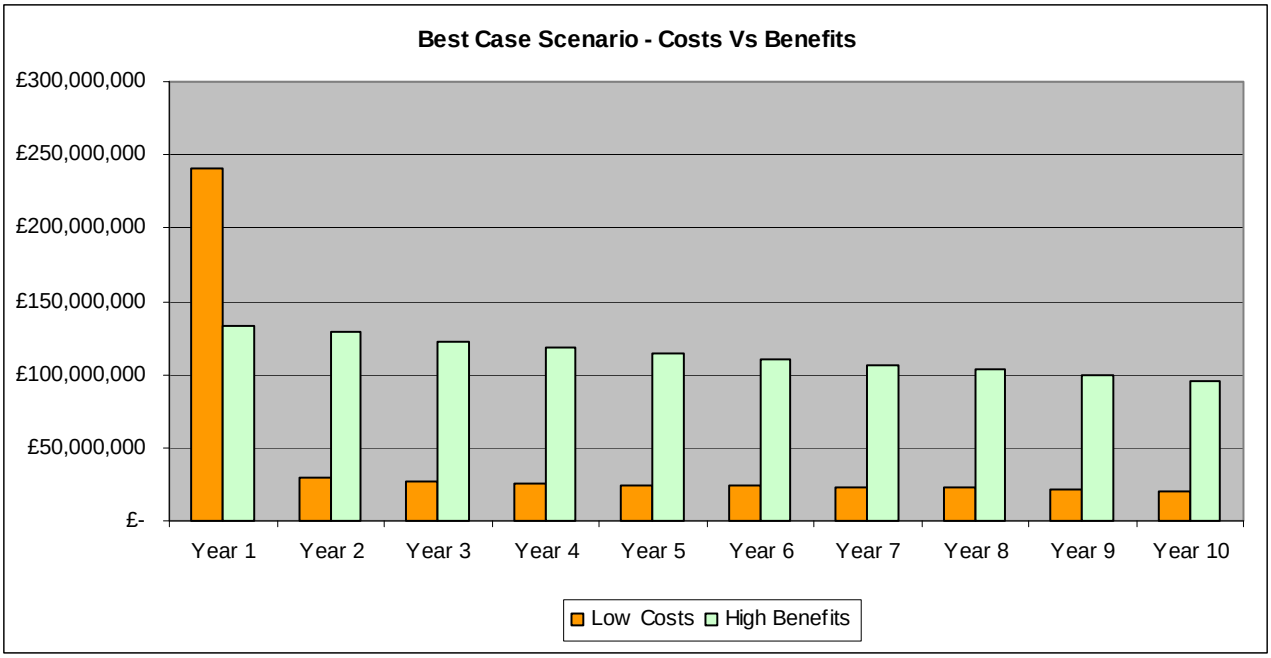
Benefits – Breakdown by affected group

	One Off		Recurring	
	Low	**High**	**Low**	**High**
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
TOTAL	**£2,625,748**	**£2,625,748**	**£98,970,752**	**£130,994,064**

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

Best Case

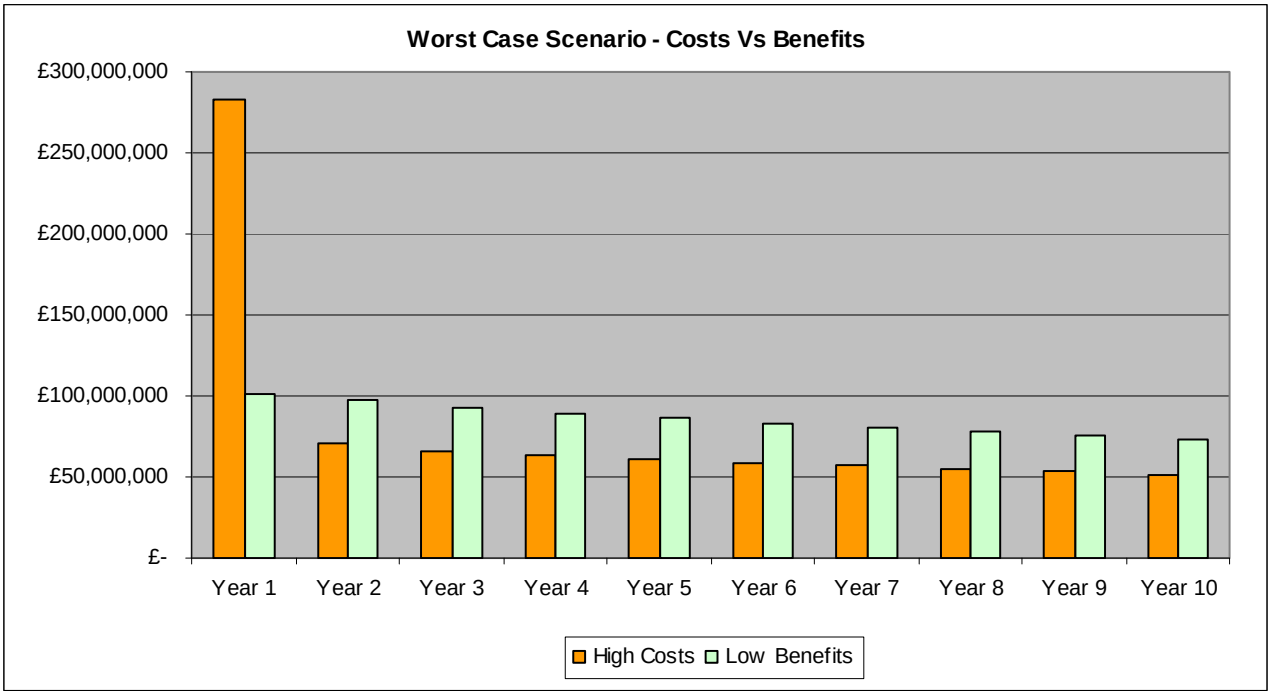
	Low Costs	High Benefits	Net Benefit
Year 1	£ 240,932,031	£ 133,619,812	-£ 107,312,220
Year 2	£ 29,859,149	£ 129,101,267	£ 99,242,119
Year 3	£ 26,398,255	£ 122,284,360	£ 95,886,105
Year 4	£ 25,505,560	£ 118,149,140	£ 92,643,580
Year 5	£ 24,643,054	£ 114,153,759	£ 89,510,705
Year 6	£ 23,809,714	£ 110,293,487	£ 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 precisely quantify 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[9] 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[10].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[11], 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

[9] This is measured by a reduction in consumption inequality by 30 per cent.

[10] 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.

[11] Assumes aversion to inequality of 1.4, using the methodology set out on pages 106-111 of the Equalities Review interim report.

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;
- **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[12].

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[13]. 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 on grounds of age, gender reassignment, pregnancy and maternity. Some businesses can expect extra revenue from the additional trade

[12] Equalities Review interim report, March 2006, Table 1 (page 67): The cost of unemployment.
[13] The Women and Work Commission 'Shaping a Fairer Future', Chapter 1, para 35.

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 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[14]. 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,[15] 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[16] and £25.33 after inclusion of non-wage labour costs. Similarly, for legal professionals the average gross hourly wage is £24.23[17] and £29.32 after inclusion of non-wage labour costs.

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.[18]

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.

[14] ASHE 2009 code 11
[15] Small Business Statistics 2008
[16] ASHE 2009, code 1135
[17] ASHE 2009, code 241
[18] 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:

Policy Area	Annex	Type of Firm	Time (Hours)	No of organisations	Hourly Cost
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
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[19] 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 equality strand 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[20]. 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[21]. 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

[19] 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.

[20] As defined in the HM Treasury Green Book

[21] Figures taken from Small Business Statistics 2008

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.

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[22] 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:

£23.18/hour x 1 Hour x 1.2m SMEs = £27.8m.
£25.33/hour x 1 Hour x 5,905 Large Enterprises = £149,573
£25.33/hour x 1 Hour x 25,612 Public Authority = £648,758

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-fresh 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).

[22] ASHE 2009 code 1135

ii) Employees: For those in group (b) above, it is assumed that one per cent of the population in employment, around 29.0m employees[23] 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)[24] 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:

£12.10/hour x 1 Hour x 217,523 employees = £2.2m/year
£15.67/hour x 1 Hour x 72,508 employees = £0.9m/year

[23] Labour Force Survey – Calendar Quarter Update 2009 Q3
[24] ASHE 2009 Table 13.6a Hourly pay - Excluding overtime (£) - For all employee jobs

Annex W - Limiting the Use of Disability-related Pre-employment Enquiries.		
Department for Work and Pensions	**Permit enquiries relating to reasonable adjustments to recruitment processes and to facilitate diversity monitoring**	
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

What was the problem under consideration? Why was government intervention necessary?

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.

What are the policy objectives and the intended effects?

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.

What policy options were considered? Please justify any preferred 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.

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).

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 applications from disabled people; supporting the positive action and occupational requirement provisions of the Equality Act and undertaking national security vetting. **(Chosen option).**

3) Limit pre-employment enquiries about disability and health to those required to support reasonable adjustments in recruitment.

4) Do nothing.

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.

Summary: Analysis & Evidence

Simplifying and standardising definitions	

COSTS

ANNUAL COSTS		Description and scale of key monetised costs by 'main affected groups'
One-off	**Yrs**	
£798,000 to £1,597,000	1	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.
Average Annual Cost (excluding one-off)		
£ 0	**10**	**Total Cost** (PV) **£798,000 to £1,597,000**

Other key non-monetised costs by 'main affected groups'

None identified

ANNUAL BENEFITS		Description and scale of key monetised benefits by 'main affected groups'
One-off	**Yrs**	
£ Minor	1	Minor, but unquantifiable financial savings for employers from greater clarity in the legislation.
Average Annual Benefit (excluding one-off)		
£ 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 bemarginal 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	Time Period Years	**Net Benefit Range** (NPV)	**NET BENEFIT** (NPV Best estimate)
2009	**10**	**£798,000 to £1,597,000**	**--£1,197,500 (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			[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/A	N/A

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

1. 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

2. 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.

3. 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.

4. 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.

Policy proposal

5. 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; and

(f) facilitate recruitment to posts where having a particular disability is an occupational requirement. and
(g) undertake national security vetting.

6. 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

7. 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.

8. 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 in intrinsic to the job

9. 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

10. 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

11. 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

12. 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.

13. 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 options considered

Deter the use of pre- employment disability and health-related enquiries until after a job applicant has successfully completed an assessment unless specifically prescribed.

14. 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.

15. 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

16. 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

17. 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.

Potential additional requirements

18. 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.

19. 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

20. 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.

21. 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.

22. 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.

23. 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.

24. 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.

25. 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: Revision of processes:

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.

26. 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

27. 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.