

Summary: Intervention & Options

Department /Agency: GEO	Title: Impact Assessment of draft EC Equal Treatment Directive	
Stage: Initial	Version: v1	Date: 5 May 2009
Related Publications: UK Consultation on the European Commission Proposal for an Equal Treatment Directive		

Available to view or download at:

http://www.http://ec.europa.eu/employment_social/fundamental_rights/org/imass_en.htm

Contact for enquiries:

Telephone:

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

In July 2008 the European Commission proposed a new Article 13 Directive to extend protection in the provision of goods and services to cover disability, age, sexual orientation and religion or belief. Previous Directives have provided comprehensive protection against discrimination in employment and vocational training on grounds of sex, racial or ethnic origin, age, disability, sexual orientation, religion or belief. There is no comprehensive protection on these grounds outside employment and vocational training. Such protection exists only on grounds of sex and racial and ethnic origin.

What are the policy objectives and the intended effects?

The UK has legislated in most, though not all, of the areas that the proposed Directive covers. We have not prohibited discrimination on the grounds of age in the area of provision of goods, facilities and services and the disposal and management of premises. We have however announced our intention to do so in the forthcoming Equality Bill. This is the principle area where the Directive, if implemented as currently drafted, will have an effect.

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

The Government is undertaking a public consultation launched on xx March 2009 which will run for 12 weeks. Copies of the consultation document are available here: www.equalities.gov.uk.

The consultation document and impact assessment seeks views to inform the Government's further consideration of the Directive. It provides an analysis of the effect of the Directive as currently drafted and seeks views. The Government will determine its approach to the Directive in light of responses to this consultation.

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

The policy will next be reviewed following the public consultation.

Ministerial Sign-off For consultation stage Impact Assessments:

I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.

Signed by the responsible Minister:

.....Date:

Summary: Analysis & Evidence

Policy Option:	Description:
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COSTS	ANNUAL COSTS	Description and scale of key monetised costs by 'main affected groups' Left blank due to uncertainty at this point around scope and detail of the Directive.			
	One-off (Transition) Yrs				
	£				
	Average Annual Cost (excluding one-off)				
	£		Total Cost (PV)	£	
Other key non-monetised costs by 'main affected groups'					

BENEFITS	ANNUAL BENEFITS	Description and scale of key monetised benefits by 'main affected groups' Left blank due to uncertainty at this point around scope and detail of the Directive.			
	One-off Yrs				
	£				
	Average Annual Benefit (excluding one-off)				
	£		Total Benefit (PV)	£	
Other key non-monetised benefits by 'main affected groups'					

Key Assumptions/Sensitivities/Risks

Price Base Year	Time Period Years	Net Benefit Range (NPV) £	NET BENEFIT (NPV Best estimate) £
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What is the geographic coverage of the policy/option?			
On what date will the policy be implemented?			
Which organisation(s) will enforce the policy?			
What is the total annual cost of enforcement for these organisations?		£	
Does enforcement comply with Hampton principles?		Yes/No	
Will implementation go beyond minimum EU requirements?		Yes/No	
What is the value of the proposed offsetting measure per year?		£	
What is the value of changes in greenhouse gas emissions?		£	
Will the proposal have a significant impact on competition?		Yes/No	
Annual cost (£-£) per organisation (excluding one-off)	Micro	Small	Medium Large
Are any of these organisations exempt?	Yes/No	Yes/No	N/A N/A

Impact on Admin Burdens Baseline (2005 Prices)			(Increase - Decrease)
Increase of £	Decrease of £	Net Impact	£

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

Evidence Base (for summary sheets)

[Use this space (with a recommended maximum of 30 pages) to set out the evidence, analysis and detailed narrative from which you have generated your policy options or proposal. Ensure that the information is organised in such a way as to explain clearly the summary information on the preceding pages of this form.]

Background

Article 13 of the EC Treaty was introduced in 1997 as part of the reforms made to the European Community Treaty as laid out in the Treaty of Amsterdam.

Article 13 permits the European Council to take appropriate action to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation when acting unanimously on a proposal from the Commission and after consulting the European Parliament.

Previous Directives have provided comprehensive protection against discrimination in employment and vocational training on grounds of sex, racial or ethnic origin, age, disability, sexual orientation, religion or belief. There is no comprehensive protection on these grounds outside employment and vocational training. Such protection exists only on grounds of sex and racial and ethnic origin.

The Race Directive¹ was transposed into UK law in 2003. The religion or belief and sexual orientation provisions of the Framework Employment Directive² were transposed into UK law in 2003 and the age and disability provisions were transposed into UK law in 2006. The Equal Treatment Amendment Directive³ was transposed in 2005. The Gender Directive⁴ was transposed in April 2008.

The draft Directive would extend protection against discrimination outside employment and vocational training on grounds of age, disability, sexual orientation, religion or belief so that there is comprehensive protection both in and outside of employment.

The European Commission has prepared an Impact assessment which can be down loaded from the GEO website here:

www.equalities.gov.uk/international/eu_directive.aspx

Impact on UK law

The UK has legislated in most, though not all, of the areas that the proposed Directive covers. So we already have comprehensive legislation prohibiting discrimination on the grounds of disability, sexual orientation and religion or belief outside the workplace.

We have not though prohibited discrimination on the grounds of age in the area of provision of goods, facilities and services and the disposal and management of premises. We have however announced our intention to do so in the forthcoming Equality Bill. This is the principle area where the Directive, if implemented as currently drafted, will have an effect. Though because

¹ 2000/43/EC.

² 2000/78/EC.

³ Directive 2002/73/EC, which amended Directive 76/207/EC. These Directives have now been recast into Directive 2006/54/EC

⁴ 2004/113/EC.

we are committed to introducing such protection in advance of the Directive we will seek to ensure that there will be no significant additional costs as a result of the potentially overlapping timetables for the Equality Bill and implementation of an adopted Directive

Normally we would expect to accompany a consultation on a proposal for a Directive with a detailed impact assessment. At this stage there remains considerable uncertainty about what impact the proposed directive would have given the uncertainty around what sectors it would cover and the nature of the exceptions. In these circumstances, and given the absence of objective and robust evidence around age discrimination, it is not possible to provide a credible assessment of the costs and benefits.

GEO, HMT and DH will be continuing, as a key part of our work on developing the detail of the prohibition of adult age discrimination through the forthcoming Equality Bill, to gather evidence and views on the costs and benefits of particular measures. This process will help us establish a view of costs and benefits when the form and scope of the proposed Directive has clarified.

The other area of potential impact is in relation to indirect discrimination for disability. This is not currently provided for in UK law. However the Government has recently consulted on plans to adopt the concept of indirect discrimination for disability as part of the forthcoming Equality Bill. The consultation, which is now closed, and the accompanying impact assessment can be found here <http://www.officefordisability.gov.uk/resources/indirect-discrimination.asp>.

Other than the potential impact on these two areas of our existing anti-discrimination law we do not expect there to be a substantial impact in the UK. We are closely involved with the negotiations in Europe on the Directive and will update this Impact Assessment as this work progresses. The Government does not expect the Directive to come into force before April 2011 at the earliest.

Costs and benefits

For the reasons given above we do not consider that the Directive will have a significant impact in the UK. The two areas where it might have done – age and disability – are being addressed as part of the Equality Bill and are the subject of separate impact assessments. A table showing the potential impacts is below, though it is not possible at this stage to quantify the costs.

Commission Proposal	UK Provisions	Effect
The proposal, as currently drafted, would require prohibition of harassment on grounds of disability, sexual orientation, religion or belief and age.	The UK has not legislated to explicitly prohibit harassment on the grounds of disability, sexual orientation and religion or belief. Harassment on grounds of disability will be prohibited in the Equality Bill	Earlier consultations led by GEO have uncovered no evidence of harassment on grounds of sexual orientation or religion or belief. We therefore anticipate very little impact on service providers.
The proposal, as currently drafted, requires the provision of effective access to housing for disabled people by anticipation.	Current UK legislation imposes duties on landlords to make reasonable adjustments for disabled people with regard to housing at the cost of the disabled person.	Potentially effects private landlords; housing associations; estate agents and managing agents and local authorities providing housing. As there is no information about the accessibility of premises currently, nor any information about any alterations

		that would be required, it is not possible to quantify the cost of this provision. The UK government is seeking further clarification on the Commission's intentions.
The proposal, as currently drafted, would prohibit discrimination on the grounds of age in the provision of goods and services including those under the age of 18.	Current UK legislation does not prohibit discrimination on the grounds of age in the provision of goods and services. The Government though has introduced the Equality Bill which would introduce this, though not to those under the age of 18.	Earlier consultations led by GEO have uncovered no evidence of discrimination against under 18s. We therefore anticipate very little impact on service providers
The proposal, as currently drafted, might have the effect of bringing manufactured goods within scope of the Directive.	Manufactured goods are not covered by DDA though, for example, a shop must ensure that its services are accessible.	It is unclear how, in practice, it is possible to design and manufacture goods that are accessible to all – regardless of impairment or degree of impairment. For this reason it is not possible to quantify the cost of this provision. The UK government is seeking further clarification on the Commission's intentions.

Likely scenarios

There are a number of possible outcomes in relation to the Directive.

No agreement is reached on the Directive. In this unlikely scenario the Council of Ministers is unable to agree the contents of the Directive. The text would be withdrawn and the European Commission would decide whether to propose a new Directive with similar or different scope. In this event there will be no costs or benefits.

The Directive requires us to make no changes to UK law. Because the UK has comprehensive anti-discrimination legislation in place or planned it is possible that no implementation will be required. In this event there will be no costs or benefits.

Some changes to UK law are required. In this more likely scenario we will need to make some changes to existing domestic legislation. At this time it is not possible to predict what changes will be required or when. This is because we do not yet know what changes any agreed Directive will require to our domestic legislation or the period that the UK will have to implement the Directive. It is therefore not possible at this time to assess the costs and benefits.

Decision making

The Directive will only come into force once it has been agreed unanimously by all 27 member states, following consultation with the European Parliament.

Comments

We would welcome comments on this impact assessment, and these can be emailed to:

EUDirective@geo.gsi.gov.uk

Comments can also be sent to:

EU Directive Consultation Responses
EU and International section
Government Equalities Office
9th Floor, Eland House
Bressenden Place
London
SW1E 5DU

Specific Impact Tests: Checklist

Use the table below to demonstrate how broadly you have considered the potential impacts of your policy options.

Ensure that the results of any tests that impact on the cost-benefit analysis are contained within the main evidence base; other results may be annexed.

Type of testing undertaken	<i>Results in Evidence Base?</i>	<i>Results annexed?</i>
Competition Assessment	No	Yes
Small Firms Impact Test	No	Yes
Legal Aid	No	No
Sustainable Development	No	No
Carbon Assessment	No	No
Other Environment	No	No
Health Impact Assessment	No	No
Race Equality	Yes/No	Yes/No
Disability Equality	Yes/No	Yes/No
Gender Equality	Yes/No	Yes/No
Human Rights	No	No
Rural Proofing	No	No

Annexes

Annex A - Small firms impact test

The costs and benefits of each proposed measure for small businesses will vary. In general, the impact is unlikely to be substantial on any particular small business. This is because the existing method of enforcing discrimination law is essentially reactive, through claims brought by individuals before employment tribunals or the county courts. There are no proposals to change this basic approach. Enforcement of discrimination law does not involve routine interventionist or invasive mechanisms. The Equality and Human Rights Commission has power to conduct investigations, but this is intended for use on a strategic basis. Under discrimination law there are no inspectorates or agencies with powers to search and seize company documentation or to enter company premises; and there is no mandatory reporting requirement on companies covering, for example, the composition or pay of their workforce. As a result, there are no mandatory administrative burdens on small business arising from form-filling or reporting. The Government is not proposing to change this existing light-touch approach.

On the costs side, there will be some administrative burdens on small firms as a result of the need to familiarise themselves with adjustments to the law, as reflected in new or amended guidance produced by the Equality and Human Rights Commission and others.

Annex B - Competition assessment

A detailed competition assessment is not necessary for any of the proposals put forward in this Impact Assessment. The options presented apply across the board and across all sectors of the economy. They do not favour one sector of employment or business activity over another. The answer is “No” (or, in the case of question 8, “not applicable”) to all nine questions of the competition filter test:

Competition Filter Test	
Question	Answer Yes/No
Q1: In the market(s) affected by the new regulation, does any firm have more than 10% market share?	No
Q2: In the market(s) affected by the new regulation, does any firm have more than 20% market share?	No
Q3: In the market(s) affected by the new regulation, do the largest three firms together have at least 50% market share?	No
Q4: Would the costs of the regulation affect some firms substantially more than others?	No
Q5: Is the regulation likely to affect the market structure, changing the number or size of firms?	No
Q6: Would the regulation lead to higher set-up costs for new or potential firms that existing firms do not have to meet?	No
Q7: Would the regulation lead to higher ongoing costs for new or potential firms that existing firms do not have to meet?	No
Q8: Is the sector characterised by rapid technological change?	N/A
Q9: Would the regulation restrict the ability of firms to choose the price, quality, range or location of their products?	No