

EQUALITY IMPACT ASSESSMENT

Part 1: SCREENING

<p>1 Name of Programme (activity), Project (activity), or Policy</p> <p>EU Article 13 Anti Discrimination Directive</p>	<p>This is:</p> <p><input checked="" type="checkbox"/> New policy/activity</p> <p><input type="checkbox"/> A change to existing policy/activity</p> <p><input type="checkbox"/> Existing policy/activity</p> <p><input type="checkbox"/> A pilot programme or project</p>
--	---

2 Screening undertaken by:	
Director or Deputy Director	Alison Pritchard
Policy Developer/Lead	Jennifer Woolfe
Other people involved in the screening	Charles Ramsden

<p>3 Brief description of programme, project , or policy: including main purpose, aims, objectives, and projected outcomes, and how these fit in with the wider aims of the organisation</p> <p>The proposed EU Article 13 anti-discrimination Directive seeks to introduce a minimum level of protection in Member States by extending 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.¹</p> <p>The Directive proposes to make it unlawful to discriminate against or harass someone on grounds of religion or belief, disability, age or sexual orientation in both the public and private sector in relation to:</p> <ul style="list-style-type: none"> - social protection, including social security and health care; - social advantages; - education; - access to and supply of goods and services which are available to the public, including housing <p>within the limits of the powers conferred upon the European Community.</p>

¹ 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 proposed Directive is broadly compatible with many areas of UK policy and legislation.

However there are some ways in which the UK's legislation differs from the proposed directive, including:

- The UK has not legislated to explicitly prohibit harassment on the grounds of disability, sexual orientation and religion or belief in the fields which are proposed in the draft Directive, though the recently introduced Equality Bill will prohibit harassment on the ground of disability.
- The draft Directive would impose a general anticipatory duty to make modifications and adjustments for disabled people in the provision of housing, which would significantly exceed the obligations which already exist in UK law
- The draft Directive would prohibit discrimination on the grounds of age in the provision of goods, facilities and services. Discrimination and harassment on the grounds of age are already unlawful at work and in vocational training. The Equality Bill, currently before the parliament will outlaw age discrimination against adults in services and public functions.
- The UK currently has a number of balances in relation to religion and belief and sexual orientation and would wish to be able to preserve these – for example exceptions for religious organisations from the prohibition against discrimination on grounds of sexual orientation
- The indirect discrimination model proposed is not the model that we currently have in the UK for disability, though the recently introduced Equality Bill will introduce indirect discrimination on the grounds of disability in Great Britain.

Member state negotiations on the directive are on going and the directive remains at an early stage of negotiation.

4 Relevance to Equality and Diversity Duties

The policy has relevance to the department's single equality scheme:

The GEO has published a draft a single equality scheme and the Full Equality Impact Assessment for this directive will outline the relevance between the two. The draft Single Equality Scheme can be found here:

<http://www.equalities.gov.uk/pdf/13008%20single%20equality%20web.pdf>

Other (departmental or national) equality priorities?

The aims of the EU directive will positively affect GEO's priorities to:

- Provide a simple, modern, effective and accessible framework of discrimination law which provides individual rights and promotes a fairer and more equal society;

- co-ordinate effective equality policy across Government, in particular that all policies – especially in key areas such as education, health, employment and criminal justice – seek to narrow gaps;
- promote in particular gender and sexual orientation equality policy across Government;
- enable strong UK representation on equality matters at European Union (EU) and international level

Additionally, the aims of the EU directive will positively contribute to the following GEO objectives:

- address the disadvantage that individuals experience because of their gender, race, disability, age, sexual orientation, religion or belief
- develop and support the delivery of the Government's equality strategy, including simplifying and strengthening equality law
- narrowing the gaps in the extent to which people perceive that they have choice and control in their lives
- narrowing gaps in civic participation
- narrowing gaps in perceptions of unfair treatment at work, college or school, and when using health services and public transport.

By extending the minimum level of protection outside of the workplace and vocational training for sexual orientation, age, religion and belief and disability, the EU directive will have a positive impact on different equality groups.

Are there any aspects of the policy, including how it is delivered, or accessed, that could contribute to inequalities? This should relate to all areas including Human Rights.

- Yes**
 No

Please explain:

The Directive is compatible with fundamental rights and aims to extend protection against discrimination outside the labour market on grounds of age, disability, religion or belief and sexual orientation. This is to ensure legal certainty for economic operators and potential victims across Member States and to enhance social inclusion and promote the full participation of all groups in society and the economy.

However, current UK legislation is subject to a number of exceptions which have been considered necessary in order to balance the potentially conflicting fundamental rights of different groups. For example, our domestic legislation has been constructed in order to achieve a balance between the ECHR Article 8 rights (the right to respect for private and family life) of gay, lesbian and bi-sexual persons with the Article 9 rights (freedom of thought, conscience and religion) of others, including service providers with a religious ethos, together with the Article 10 rights (freedom of expression) of both groups.

4b If you have indicated there is a negative impact on any group, is that impact:

Legal?

- Yes**
 No

Please explain:

The UK has specific concerns about the proposal in this Directive to eliminate harassment on the grounds of religion and belief and sexual orientation outside of the workplace. In the UK this proposal was previously considered, and subsequently rejected, as part of the extensive public consultation for the forthcoming Equality Bill. Its potential inclusion was rejected as the consultation did not highlight any substantial evidence that there was a need for such protection.

In fact, the consultation actually highlighted quite extensive concerns about the implications of adopting such harassment provisions due to the effect that the provisions might have with regard to: freedom of speech; academic freedom; the rights of those with a religious motivation to proselytize their faith; and the possible 'chilling' effect the provisions would have on religious groups delivering public services.

5 Evidence Base for Screening

Evidence sources used to make the screening assessment

Age Concern, "How ageist is Britain?" (2005)
Social Exclusion Unit, "A sure start in later life" (2006)
Office of National Statistics (2003): 2001 Census, [National Report]
Independent Equalities Review (can be found at:
<http://archive.cabinetoffice.gov.uk/equalitiesreview/>)
2007 Equality Bill Consultation (can be found at:
<http://www.equalities.gov.uk/pdf/EqBillGovResponse.pdf>)

6 Remembering the requirements of the equality duties:

The proposed EU directive meets and contributes to the requirements of the UK's equalities duties including:

- Giving 'due regard' to the 'elimination' of discrimination and harassment;
- Promoting good community relations
- Promoting positive attitudes towards disabled people
- Encouraging participation of disabled people
- Considering more favourable treatment of disabled people
- Protecting and promoting Human Rights

The written consultation for the EU directive will build on the extensive consultation that was carried out as part of the consultation for the equality bill.

The Government wishes to consult in particular on the impact of the draft Directive in those areas where its proposals are (or might be) at variance with the current and proposed UK law, and on the impact of the proposals on individuals, business, equality stakeholders and others.

- **Are proposed actions necessary and proportionate to the desired outcomes?**

Yes
 No

- **Where appropriate, will there be scope for prompt, independent reviews and appeals against decisions arising from the proposed policy?**

Yes
 No

Once the EU directive has been agreed there will be no scope for appeals, independent reviews or decisions arising from the directive. The purpose of the 12 week consultation of the directive however, is to provide an opportunity for individuals, equality stakeholders, businesses and others to raise these issues before the directive is agreed and those raised issues, where appropriate, will inform the UK's negotiating position on the directive.

- **Does the proposed policy have the ability to be tailored to fit different individual circumstances?**

Once agreed, the specific wording of the EU directive will not be able to be tailored to specific individual circumstances. However, the purpose of the directive is to create agreed minimum standards for all Member States and in doing so create individual protection on the basis of age, sexual orientation, disability and religion and belief outside of employment and vocational training.

- **Where appropriate, can the policy exceed the minimum legal equality and human rights requirements, rather than merely complying with them?**

Yes

key risks (adverse impacts) and opportunities

The EU directive seeks to extend minimum protection of Member States outside of the workplace and vocational training on the basis of age, disability, sexual orientation and religion and belief. The nature of the directive means that it will have

a positive impact on the specific equality areas it seeks to cover. Although the UK already has the majority of this legislation in place. The single risk identified as having a negative impact is discussed at point **4b**

	Risks (Negative)	Opportunities (Positive)
Disability		<p>The proposed directive seeks to extend minimum protection outside of the workplace and vocational training by making discrimination or harassment on the grounds of disability unlawful.</p> <p>The UK currently has protection inside of the workplace for disability on the grounds of harassment and discrimination, however the Equality Bill will extend this to make it unlawful to harass or discriminate against a disabled person, because of their impairment when, for example, providing goods and services to them.</p>
Sexual Orientation and Religion and Belief (conflicting rights)	Please see section 4b.	
Age		<p>The proposed directive seeks to extend minimum protection outside of the workplace and vocational training by making discrimination or harassment on the grounds of age unlawful.</p> <p>Discrimination and harassment on the grounds of age are already unlawful at work and in vocational training. The Equality Bill, currently before the parliament will outlaw age discrimination against adults in services and public functions.</p>
Religion/Belief		The proposed directive seeks to extend minimum protection outside of the workplace and

		<p>vocational training by making discrimination or harassment on the grounds of religion and belief unlawful.</p> <p>Discrimination and harassment on the grounds of religion and belief are already unlawful inside the work place in the UK.</p> <p>Discrimination on grounds of religion and belief is already unlawful outside of the workplace in the UK.</p>
Sexual Orientation		<p>The proposed directive seeks to extend minimum protection outside of the workplace and vocational training by making discrimination or harassment on the grounds of sexual orientation unlawful.</p> <p>Discrimination and harassment on the grounds of Sexual Orientation are already unlawful inside the work place in the UK.</p> <p>Discrimination on grounds of Sexual Orientation is already unlawful outside of the workplace in the UK.</p>

7 Proportionality

Describe the scale and likelihood of these risks and opportunities:

The directive, if agreed will have a definite and positive impact on the grounds outlined above for Member States and UK nationals in Europe. As outlined above the UK already has the majority of this legislation in place.

8 Decision

Due to the nature of the EU directive, directly relating to four equality strands a full equality impact assessment will be necessary.

