

# Keep it simple

## The case for a new Equality Act



### 'It's not fair!'

One of childhood's strongest memories is the powerless indignation we felt when our sense of justice was violated. Equality is an essential component of that concept of fairness. From our earliest days we develop a sophisticated understanding of equality – through interactions with family, friends and our widening world.

But as adults, when it comes to equality we face a paradox. There is a huge mismatch between our clear concept of fairness and the complicated and incomprehensible set of laws which are supposed to ensure equal treatment.

The law should reflect social values and so serve to strengthen them. But incomprehensible legislation is counter-productive. It undermines confidence in the rule of law as a mechanism and will be ignored. So it is important that equality laws are simple to understand and easy to use.

This leaflet looks more closely at the problems of the current law. It argues that a simple unified equality law would be of enormous benefit to society as a whole.

### Why is reform needed?

#### ✗ The law is too complex

The current discrimination laws are notoriously inaccessible and so complex that they would strain a tax lawyer. The law has developed in a piecemeal fashion. The discrimination acts of the 1970s have been added to and amended by a range of subsequent measures. A recent count identified 35 Acts, 52 Statutory Instruments, 13 Codes of Practice, 3 Codes of Guidance and 16 EC Directives and Recommendations that apply to equality law. This makes it hard for employers to keep track of their responsibilities – and even harder for the general public to understand the law.

The position has got even worse since 2000, when a University of Cambridge study concluded:

*The statutes are written in a language and style that renders them largely inaccessible to those whose actions they are intended to influence. Human resource managers, trade union officials, officers of public authorities, and those who represent victims of discrimination find difficulty in picking their way through it all.*

#### ✗ 'Some are more equal than others' – equality law treats people unfairly

Has all this legislation worked to ensure equality of protection? The answer is no – in fact, the opposite is true. Our equality laws set a very poor example since they are themselves unequal. They give more rights to some people than to others.

### ***Unequal treatment – example 1***

It is still legal for suppliers of goods and services to discriminate against people on grounds of their religion, sexual orientation and age. So

- An estate agent can legally refuse to let property to a family because they are Muslim – but they cannot do so to a Jewish or Sikh family because the law treats them as belonging to an ethnic group as well as a religious group.
- A public house or restaurant could refuse to serve a gay man on the grounds that his partner is HIV positive, whereas to refuse to serve a disabled person would be unlawful.

### ***Unequal treatment – example 2***

The current law has too many small exceptions that are different for each type of discrimination. So

- partnerships of less than 6 people can still lawfully discriminate on grounds of nationality – but not on grounds of race or sex.
- in planning applications, race discrimination is prohibited – but sex or disability discrimination are not.

### ***Unequal treatment – example 3***

One of the outcomes of the Stephen Lawrence inquiry was a new ‘positive duty’ for all public authorities. This requires organisations actively to promote equality and diversity in all aspects of their work. The government has proposed similar duties in respect of disability and sex discrimination. But no such duties have been proposed for religion or belief, sexual orientation or age. Yet again, this is unfair.

## **✗ Definitions are inconsistent**

Key terms are defined differently according to which type of discrimination is involved. And the remedies victims receive vary depending on the reason for the discrimination.

- The definition of indirect discrimination on grounds of sex is different from that on grounds of ethnic or racial origin. It is different again if the discrimination is on grounds of nationality.
- The definition of direct discrimination on grounds of race is wide enough to encompass those who are subjected to discrimination because of their connection or perceived connection with race. But a disabled person can only benefit from the discrimination provisions in respect of their own disability.

Not only does this make no sense to people facing discrimination – it confuses employers and business. The only people who benefit are lawyers.

## **✗ Current law is bad for business**

Business needs a clear and simple regulatory framework. The law can provide a level playing field in which responsible employers know that they will not be undercut by those who ignore their legal obligations. Simple and coherent laws meet those needs. Laws that are too complex to implement are no use and lead to frustration.

So there is an urgent need to produce a new code to cover all of the grounds for discrimination, new and old – sex, race, disability, sexual orientation, religion or belief and age.

## Why is this so important now?

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### The current muddle ...

The government proposes a single commission which will be responsible for all discrimination laws. But it is not proposing a single Equality Act. It proposes to remove some anomalies in the Disability Discrimination Act – but this will not go nearly far enough. And anomalies in the other areas of discrimination will remain.

### ... is about to get even worse

Soon – to comply with EU rules – the government will introduce laws to outlaw age discrimination in the workplace. These must come into force by the end of 2006. Without radical action these new laws will create more anomalies and more complexity – and yet more confusion for business.

### Society is changing and these laws must change with it

We like to see fair play. Increasingly people are concerned about the social and ethical issues. This affects the way that they consume products or use services. Consciousness about the way employers treat their staff increasingly influences consumer choices. Employees too are becoming more demanding about the way that they are treated – with a greater emphasis on flexible working and ‘work-life’ balance. Businesses that address these issues will see real benefits in the reduction of labour turnover and absenteeism.

## What needs to happen next?

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### ✓ A new Equality Act

We need a new Equality Act to bring the main provisions of equality law together in a clear, straightforward and comprehensible way. The new law would eliminate inconsistencies and ensure that each type of discrimination receives the same level of protection. Of course, the key to this is getting the content of any new Act right. It must entail common, clear standards that employers and the public can understand, including consistent definitions of key terms and common and effective remedies. This would not prevent an Equality Act having separate parts to deal with particular problems of any specific ground of discrimination.

The process of updating and simplifying very complex law has been done before. ‘Consolidating Acts’ are frequently passed. In the field of tax law the Inland Revenue set up a Tax Law Rewrite Project in December 1995. Its aim was to make tax law clearer and easier to use. Although equality law is not the same as tax law, there are some useful lessons to be learnt. Elements of the tax law project – the use of shorter sentences, clearer and more consistent definitions, and more up-to-date language – can and should be applied to equality law.

### ✓ Clear statement of the purpose

A clear statement of the way in which equality legislation should be interpreted would assist its application. A modern law should both reflect current thinking and set new standards – by changing hearts and minds without the need for litigation. From today’s

perspective it is clear that both the Race Relations Act 1976 and the Sex Discrimination Act 1975 have been successful in doing this. A similar challenge faces an Equality Act. The title alone is not enough – an Equality Act must be valued for its universal application.

✓ **Common definitions**

It is here that inconsistencies are most significant. Common definitions for the key legal terms must be the starting point for any new equality law. There should be common definitions for direct and indirect discrimination, harassment, and victimisation – unless a clear case for any distinction can be shown.

✓ **Common scope**

Current discrimination law is unequal in its scope:

	<i>Race</i>	<i>Sex</i>	<i>Disability</i>	<i>Religion or Belief</i>	<i>Sexual Orientation</i>	<i>Age</i>
Employment	✓	✓	✓	✓	✓	✓
Goods and services	✓	✓	✓	✗	✗	✗
Public Authority duties	✓	? promised	? promised	✗	✗	✗

A new Equality Act would ensure full protection for all.

✓ **Common exceptions and limitations**

These should be specific and as limited as possible. They should be objectively justified by a legitimate aim that is appropriate and necessary to the achievement of that aim.

## Is there a downside to this?

Some have expressed concern that a new Equality Act would be a burden on business. It's true that any change requires some adjustment. But simplification of equality law would make it immeasurably easier to implement and manage – bringing savings on administrative and legal costs. And the application of a clear equality law will enable businesses to maximise their markets to the mutual benefit of staff, management, shareholders and consumers.

*For more information contact:*

**JUSTICE**  
59 Carter Lane  
London  
EC4V 5AQ

**National AIDS Trust**  
New City Cloisters  
196 Old Street  
London EC1V 9FR

**Equality and Diversity Forum**  
207-221 Pentonville Road  
London  
N1 9UZ

[www.justice.org.uk](http://www.justice.org.uk)

[www.nat.org.uk](http://www.nat.org.uk)

[www.equalitydiversityforum.org.uk](http://www.equalitydiversityforum.org.uk)