

EMPLOYMENT EQUALITY BILL CONSULTATION – APRIL 2008

Response Form

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This form may be used to assist in your response. Please use additional pages if necessary.

The form cannot be filled in on line, you will have to save the document to your computer (Click **File** and **Save As**). Place the cursor in the box – click and the boxes will expand as you type.

You may then email your response to sue.strang@gov.im or post to

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3.3 Executive Summary: Questions for consideration (page 6)

a) Do you agree that, in principle, these areas are appropriate to cover in the new legislation? Specific details of the new proposals are covered later in the paper with opportunities to respond in more detail.

Answer: The broad areas seem adequate.

7.5 Common Themes and Scope: Questions for Consideration (page 20)

a) Do you have any comments on the common themes that the legislation would cover?

Answer: Not at this point. Our specific concerns are addressed in the relevant sections.

b) Do you agree with the proposal in 7.1.3 that the current requirement for a comparator in victimisation claims should be removed?

Answer: Yes.

c) Do you have any comments on the proposal that the legislation should contain specific protection against harassment on the protected grounds?

Answer: We believe in a small society, where employers are quite free to destroy the lives of employees who raise fair points and such employees have little other opportunity for employment - particularly because of 'old boy networks' in both public and private sectors - increased protection for complainants is absolutely necessary.

d) Do you have any comments on the general principle of exemptions to the legislation and any comments on specific exemptions (see 7.1.5)?

Answer: This seems reasonable, except that the understanding of 'married couple' should be extended to include those in a civil partnership, regardless of whether the Manx government enters the same century as the rest of the population and introduces facilities for the registering of such partnerships.

e) Do you have any comments on the range of workers who would be covered by the proposed legislation (see 7.2.1)?

Answer: This seems reasonable, though we suspect that local employers are already attempting to employ more people indirectly (e.g. in subcontracts through agencies and use of front companies ultimately controlled by them but not in a way identifiable on public record in other offshore jurisdictions) to avoid such definitions.

f) Do you have any comments on the range of organisations that would be covered other than employers (see 7.2.2) ?

Answer: The range seems adequate.

g) Do you have a preferred option in respect of the level of compensatory award in discrimination cases (see 7.4)?

Answer: There should be a cap, but the cap should probably be set higher than UK equivalents because the complainant will usually have to move off-island in order to take up new employment, therefore the resettlement costs should be considered.

8.4 Race: Questions for Consideration (page 22)

a) Do you have any comments on the Department's proposals specifically in relation to race discrimination?

Answer: We believe they are reasonable attempts to address prejudice which is far more prevalent than in the UK, and takes a simplistic form not often seen in the UK since the 1970's – possibly due to the 'white flight' new resident initiatives encouraged by government policy both here and in the Channel Isles in or around 1990. While it is never possible to address a cultural problem through a legal instrument it is at least a start.

We are concerned at continued anti-semitism which, curiously, has never vanished since the 1930's on the island and the new phenomena which we are loath to label 'Islamophobia' because it does not quite fit the problem – in a nutshell that 'Muslim' is simply the latest convenient 'hate label' for a broad group previously derided as 'Asians', 'Indians' or 'Pakis' even though those guilty of the abuse seem unable to distinguish between any ethnic, racial or religious group broadly from the Indian subcontinent.

The rise in sectarianism is also of concern. We put this down to a large migration from Ireland since the 1980's, particularly of Northern Irish people escaping 'the troubles'. We note that, rather like the experience of British Asian people, this has led to a situation where while, 'back home', people have learnt to resolve difference and abandon old attitudes, people who migrate take those attitudes with them and internalise them as part of the process of creating a new identity in a 'foreign' country.

For all these reasons we believe a certain amount of leeway in recognising culture or religion, rather than simply national origin, under the 'race' category is necessary.

We would suggest that there is some sort of process created whereby the legislation could be revisited – say every ten years – in order to ‘fine tune’ such ‘special cases’.

9.5 Religions or Belief: Questions for consideration (page 24)

a) Do you have any general comments on the Department’s proposals in relation to discrimination on the grounds of religion or belief?

Answer: We believe that in principle the intent of the Department was honest, but that in practice, for reasons outlined below, non-Christians (particularly those seeking work in ‘caring’ professions) will continue to face discrimination in employment and also be unable to benefit from those services involved, while Christians will enjoy continued protection against attempts to curb their ability to control public policy in a discriminatory and undemocratic way. We are extremely worried that there may be deliberate attempts to perpetuate such prejudice as part of a wider attempt by faith-based organisations and their supporters in government to maintain control over such services and the way in which they are delivered.

b) Do you have any comment on the definition of “religious belief” (see 9.2)

Answer: This seems a perfectly reasonable definition to us, and would seem to allow due consideration to individuals typical to our membership who have a firm system of ethical and moral belief but not in a traditional ‘religious’ framework.

c) Do you have any views on the proposal for a specific exception to allow religious organisations to recruit an individual of a particular faith in certain circumstances (see 9.4)?

Answer: We regard this as completely unacceptable. In practice our members and others we know of have been prevented from taking up or applying for suitable employment, even where they were qualified and the religious applicant was not. There is also the wider question of government paying faith-based organisations to undertake ‘public sector’ work. We believe that any organisation in the public sector must employ the best people for the job, and not be subject to faith-based ethics - especially if, as we suspect, ‘faith’ is often used as a thin excuse to justify continued personal prejudice such as racism, sexism or homophobia.

We are aware, for example, of a situation where a religious organisation running a public sector service made it a requirement that the job applicant could lead a daily act of worship. This was misleading for two reasons.

Firstly, the organisation involved already had two full time clergy who would, under the normal practice of their organisation, expect to be available to conduct such an act of worship. Secondly (as we know from a separate enquiry to the relevant government department involving two Muslims who were worried they would have to attend the act of Christian worship) the worship was regarded by the department as not compulsory, and should not have involved more than half a dozen voluntary worshippers if properly convened.

Because of the institutional prejudice and policies of local faith-based groups certain public services (e.g. adoption, help with homelessness, drug and alcohol issues, or a place in the local bail hostel) are not available to non-Christians. This is a national disgrace and something which should be partially addressed by this legislation.

With specific regard to church schools, thankfully no children of any of our members are within the relevant catchment areas at present, though we would consider it a severe problem if this were to occur in the future.

Our children, like others, do suffer in schools where certain teachers have strong evangelical beliefs and where those beliefs have been improperly allowed to impinge on 'normal' classroom teaching – never mind 'religious education'.

We are concerned that such prejudice will not be addressed by this legislation because, whatever legislation is put in place, it is also necessary to address the culture which perpetuates the prejudice, and in practice because 'faith based' groups are given the lead in addressing ethical or moral issues in education this cannot happen because they are a dominant force in the culture perpetuating such prejudices.

With regard to that part of the legislation addressing items of religious clothing, time off for worship, etc. it may surprise the local faith community that we prefer more leeway than has been granted in the UK.

However this is because of our worries as outlined in the section addressing race issues. Anti-semitism, sectarianism and racism are more prevalent here than in the surrounding isles, therefore more protection may be needed for newer immigrants as part of a process whereby the general community learns to understand them.

The matter of Christians who don't want to work on Sundays is a different category, and in our experience most employers have been fairly flexible where the employee concerned makes up the time elsewhere or trades shifts with colleagues so further protection does not seem necessary.

The 'trade off', we would also say, should not give, for example, a pharmacist the right to refuse to give out contraception. Where a public service is involved, or must be delivered immediately, it is simply unacceptable for someone to take up that employment if they cannot deliver the service.

10.5 Age: Questions for Consideration (Page 29)

a) Do you have any general comments on the proposals in respect of age discrimination?

Answer: Our members report instances of age discrimination, even in fields where the job applicant is an extremely qualified specialist. We also know that in the finance sector in particular it is absolutely usual that when one company buys out another all employees over, say, 45 find themselves jobless, even when highly qualified senior staff are replaced by school leavers who must be trained from scratch. For these reasons alone some legislation seems necessary.

b) Do you agree that in certain circumstances direct discrimination on the ground of age should be allowed if the discrimination can be justified (see 10.2)?

Answer: We can see limited circumstances in which it might be permissible – e.g. in a job requiring fast reactions to unexpected and dangerous problems, or a youth worker or care worker job which requires the applicant to have both enhanced understanding of and the trust of a particular age group.

c) Do you have a preferred option in respect of dealing with retirement under the proposed legislation (see 10.3)?

Answer: We would prefer to see a compulsory retirement age outlawed, although in practice suspect most employees would prefer to retire at 65 if possible. We would expect that in practice this will be self-regulating, as the best employees move to the most flexible employers, but do have some concerns – e.g. that in an economic slump older people will be forced to take what employment they can get and may not be able to pay off mortgages taken on of necessity later in life.

d) Do you have any comments on the retention of age bands in the Minimum Wage (see 10.4.1)?

Answer: We broadly agree, though suspect that in practice this may lead to certain employers (e.g. supermarkets) being able to continue staffing their premises with school age staff paid way below a normal minimum wage and not employing mature people because the wage band will be higher, or at the other end of the scale various employers employing people close to retirement age for less hours and at a lower wage for similar reasons. We recommend that the situation needs close monitoring and a facility to 'fine tune' legislation as circumstances change.

e) Do you have any comments on how to manage benefits based on length of service (see 10.4.2)?

Answer: We favour the UK model. Five years seems a reasonable amount of time to constitute 'loyalty'.

11.4 Sexual Orientation: Questions for Consideration (page 31)

a) Do you have any general comments on the proposals in respect of sexual orientation discrimination?

Answer: We believe that the case for exemptions on grounds of religious belief are non-existent on the Isle of Man - except in the appointment of full time clergy employed solely by that church and not required to provide any service to the general public (e.g. as prison or hospital chaplains or management roles in public services such as hostels). In practice, unfortunately, it is local churches who are the main sources of homophobia, both historically and in terms of new, equally virulent forms of the disease. Therefore they have a duty to the public to clean up their act.

It will be of little or no concern to most people if some churches choose to employ homophobic clergy, as they effectively shoot themselves in the foot, lose worshippers and hasten the demise of those places of worship which, effectively, fail to provide any useful service to the modern world.

It would, however, be absolutely unacceptable for any Manx religious organisation or organisation 'with a religious ethos' to 'opt out' of employing gay people if they are paid to provide a public service, as this further perpetuates a ridiculous situation whereby sections of the population are denied services paid for through their taxes.

b) Do you have any comments on the possibility of an exemption that might allow religious organisations to discriminate on the ground of sexual orientation in recruitment for specific posts (see 11.3)?

Answer: As above. On the matter of employment of clergy who provide no service to the general public we have no interest if a church chooses to commit suicide. For all cases where the employee is required to provide a public service such an exemption is totally unacceptable.

12.7 Gender Reassignment: Questions for Consideration (page 34)

a) Do you have general comments on the proposals in respect of discrimination on the ground of gender reassignment?

Answer: We are satisfied with the framework and look forward to an early movement of the Gender Reassignment Bill in order to address current problems.

b) Do you have any comments on the exceptions to the principle of non-discrimination (see 12.4)?

Answer: These seem reasonable, though we would hope employers would find a balance to prevent the prejudice of other employees becoming an excuse to justify employment discrimination.

13.7 Disability: Questions for Consideration (page40)

a) Do you have any general comments on the proposals in respect of discrimination on the grounds of disability?

Answer: The general proposals seem adequate.

b) Do you have any comments on the proposed definition of discrimination and the types of discrimination that would be made unlawful(see 13.3)?

Answer: This seems adequate to us.

c) Do you have any comments on the proposed definition of disability (see 13.4)?

Answer: This seems adequate to us.

d) The Department does not propose an exemption for small employers under any new legislation, do you have any comments on this (see 13.6)?

Answer: We suspect certain employers will, again, rush to be classed as 'small employers' in order to avoid such legislation. However, 'the usual suspects' are already well known to local people as poor employers and poor service providers for numerous reasons. Thus they may not be employers with staff of any quality, capable of survival in a competitive environment. For these reasons alone there is no point in pursuing them if the disabled person has no reasonable chance of long term employment.

14.4 Employment (Sex Discrimination) Act 2000: Questions for consideration (page 43)

a) Do you have any comments on the proposal to incorporate a specific provision in the Employment (Sex Discrimination) Act 2000 to make pregnancy and maternity discrimination unlawful (see 14.1.1 **Error! Reference source not found.**)?

Answer: We strongly support this long overdue provision.

b) Do you have any comments on the insertion of an equality clause in order to clarify the position of women on maternity leave in relation to pay increases and bonuses (see 14.1.1)?

Answer: This seems reasonable to us and we support it.

c) Do you have any comments on KIT days and the question of payment for any such days (see 14.1.3)?

Answer: The proposal seems reasonable and we would support mandatory payment.

d) Do you have any comments on the proposal to remove the protection on the ground of marital status (see 14.2.1)?

Answer: This seems reasonable, as the only employers likely to discriminate in such archaic ways are unlikely to be capable of dealing with the modern business environment.

e) Do you have any comments to make on the proposal to increase the number of years for which arrears of pay may be awarded under the Employment (Sex Discrimination) Act 2000 equal pay provisions from 2 to 6 years (see 14.3.1)?

Answer: We support the proposal.

15.4 Enforcement in respect of individual claims: Questions for consideration (page 48)

a) Do you have any comments on the proposal to give the Employment Tribunal the powers to make general recommendations to an employer to improve employment practice (see 15.1)?

Answer: We support this most useful change and hope it will not only be implemented but that judgements will always be publicised in order to both warn potential employees of a company still to address a problem and to inform other employers of 'best practice'.

b) Do you have any comment on the options for the Isle of Man in respect of i) education and ii) enforcement (see 15.3)?

Answer: We find the general tone of (i) acceptable and strongly support the setting up of an Independent Equality Authority. With regard to the latter, we would hope it can be a body in which members of the general public can play a useful role and that, if so, the government for once will advertise membership and appoint members in such a way as to get a fair cross-section of the public, rather than another committee of self-elected bigots meeting behind closed doors.

16.4 Code of Practice on Bullying: Questions for Consideration (Page 49)

a) Do you have any comments on the proposals for a Code of Practice on Bullying?

Answer: In our experience, bullying in many forms, for many reasons and by many parties, is rife in Manx workplaces and seriously needs to be addressed. Even major employers have got away with ignoring the bullying by individuals or institutional bullying for far too long. We accept that a Code of Practice might be hard to implement, but such is the poor and archaic nature of company management, and the severe individual prejudices of some executives, that it is unlikely a 'practice note' will have much effect without some legal power to stop the worst cases.

b) Do you have any comments on the alternative proposal of extending the existing Code of Practice on Disciplinary and Grievance Procedures?

Answer: Many Manx employers are, quite frankly, not capable of self-regulation and will not address their own prejudices and practices unless absolutely required to by law, with the employees involved given adequate help to do so by disinterested government officers, rather than being blocked by civil servants whose 'default position' is to side with even the worst employers.