

Discrimination Law Review – the biggest lesbian, gay, bisexual and transgender issues

Equality Network, 30 Bernard St, Edinburgh, EH6 6PR
www.equality-network.org en@equality-network.org

This version is dated 23rd July 2007

The UK Government are planning to change Britain's equality and anti-discrimination laws. These are the laws that ban discrimination, for example by employers, or by businesses or public services.

This review of the law is called the **Discrimination Law Review**. In it, the Government's plan is to pass a Single Equality Bill in the next two or three years. This will replace the existing anti-discrimination laws.

Consultation paper

The Government want to know what people think of the planned changes. They have published a consultation paper called **Discrimination Law Review – a Framework for Fairness**. The deadline for responding to the consultation is September 4th 2007.

You can find the consultation paper here:
www.communities.gov.uk/index.asp?id=1511211

Many of the proposed changes in the consultation paper will affect LGBT people. We have described the biggest issues for LGBT people here. We have also said here what the Equality Network's current view is on those issues. There is not enough space here to describe all the proposals that will affect LGBT people, and you can find more details at: www.equality-network.org/YourScotland/Consultations/DLR

We are consulting with LGBT people in Scotland on the proposals, and we will base our response to the Government on that consultation.

Protection against discrimination for transgender people

At the moment, the law bans discrimination and harassment against transsexual people at work, by their employer or by work colleagues. The law also bans discrimination against transsexual students in vocational

training, which includes all further and higher education. Most transsexual people are protected, but other transgender people are not (see below).

The Government propose to extend the law so that it also bans discrimination and harassment by 'providers of goods, facilities and services'. This would make it unlawful for businesses, including for example shops, pubs and hotels, to discriminate against transsexual customers. It would also make discrimination by public services unlawful, including for example the health service.

Most of this discrimination will be banned by December 2007, because this is required by European law (the 'EU Gender Directive'). However, some public services will not be dealt with until the Single Equality Bill in two or three years time, because they are not covered by the EU law.

The Equality Network agrees with the Government proposal to ban discrimination against trans people by providers of goods, facilities and services, including public services.

What about trans pupils at school?

The Government are not proposing to ban discrimination against trans pupils at school. The Government claim that there are hardly any trans pupils in school. We disagree with this.

The Equality Network believes that the law should ban discrimination by schools against transgender pupils, in the same way as the law already bans discrimination against lesbian, gay and bisexual pupils. Many trans people are aware of their trans identity at a young age, and some transsexual people get medical advice and support to start transitioning before the age of 18.

Which trans people are protected from discrimination?

At the moment, the law only protects transgender people who have had, or are planning to have, gender reassignment treatment. This is defined as a process under medical supervision, for the purpose of reassigning sex, by changing physical or other characteristics of sex. In other words, a person is only protected if they have had some kind of medical support related to being transgender, and that support is connected with changing (or planning to change) sex.

Trans people who have not had medical supervision are not protected by the law. And trans people who do not (and do not intend to) change

sex are not protected. This means that most cross-dressing people, transvestites, many intersex people, polygender, bigendered and androgyne people, for example, are not protected from discrimination. Employers, businesses and public services can treat those people worse, simply because they are transgender, without breaking the law.

In the consultation, the Government are not proposing to change who is protected. We disagree with this.

The Equality Network believes that the law should be widened to protect all trans people from discrimination and harassment. People who discriminate against transgender people do not usually recognise a difference between transsexual and other transgender people. They discriminate against people who they think do not look or act 'right' for their gender. Transphobic discrimination is as harmful to the victim, to business and public services, and to society, whoever the victim is.

Are non-trans people protected?

At the moment, the law does not protect non-transgender people who are discriminated against because someone wrongly thinks that they are transgender. This is different from the equality laws about sexual orientation. If someone discriminates against you because they think you are gay, that is just as unlawful whether you are actually gay or not.

In the consultation, the Government are not proposing to extend the protection to people who are wrongly thought to be transgender. We disagree with this.

Transphobic discrimination is wrong whether the victim is transgender or not. The law should make it unlawful to discriminate against or harass people because they are, or are believed to be, transgender.

Harassment of lesbian, gay and bisexual people

The current law bans harassment of people at work, by their employer or by work colleagues, on grounds of sexual orientation.

Sexual orientation harassment is defined as acting in a way that a person does not want, that is related to sexual orientation, and:

- violates that person's dignity; or
- creates an intimidating, hostile, degrading, humiliating or offensive environment for them.

Harassment of transsexual people at work is also unlawful, and from December 2007, harassment of transsexual customers by businesses or by public services will also be unlawful.

The consultation paper asks whether harassment of customers, based on sexual orientation, by businesses and public services, should be unlawful. We think it should be unlawful.

When should discrimination be allowed?

The Government propose to remove the special exception in the law that currently allows insurance companies to discriminate on grounds of sexual orientation. **We agree with this.**

The Government ask whether religious organisations should be allowed to discriminate against transgender people. Religious organisations are allowed to discriminate against lesbian, gay and bisexual people in certain circumstances. **We would want any religious exception relating to transgender identity to be no wider than the current exception relating to sexual orientation.**

The Government propose that single-sex services should be allowed to discriminate against transsexual people. **We are concerned about this, and we certainly think that such services should not be allowed to discriminate against transsexual people who have obtained legal recognition of their gender under the Gender Recognition Act.**

Promotion of equality by public bodies

At the moment, the law requires public bodies, such as the NHS, police and local councils, to promote race, disability, and gender equality. This means that public bodies need to assess the work they do, and take steps to make sure it does not discriminate, and does contribute to greater equality, and good community relations between different people, on grounds of race, disability, and gender.

The Government's consultation asks whether this requirement for public bodies to promote equality should be extended to include promoting equality on grounds of sexual orientation, religion and belief, and age. We believe that it should.

We also think that it should be made clear in the law that the duty on public bodies to promote gender equality includes promoting equality of opportunity for transgender people.