

Equality Bill

Briefing on amendments due for debate 18th June

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The Equality Network is a network of lesbian, gay, bisexual and transgender (LGBT) organisations and individuals in Scotland, working for LGBT equality.

Clause 24 - Harassment

Amendments 231, 232 and 233

The Equality Network very much welcomes these amendments, which would fill many of the gaps in the bill's protections against harassment.

At present, clause 27 (Provision of services) does not protect from harassment related to sexual orientation and religion or belief. Clause 80 (Pupils: admission and treatment) does not protect from harassment in schools related to gender reassignment, religion or belief and sexual orientation. Amendments 232 and 233 would add these missing protected characteristics to the harassment provisions, for public services and schools.

The Equality Network's surveys show that around 20% of lesbian, gay and bisexual adults have experienced homophobic harassment from providers of services. These experiences are distinct from direct discrimination – they are abusive or derogatory language, humiliating 'jokes' and other bullying.

Stonewall's survey of lesbian, gay and bisexual school pupils found that 65% had experienced homophobic bullying and 97% homophobic language, in schools. 30% said that adults in their school were responsible for homophobic incidents.

The Equality Review's research found that 64% of young transgender men, and 44% of young transgender women experienced bullying and harassment at school, some of it by staff.

We do not believe that the direct discrimination provision can be relied on to protect from this harassment. The proof requirements for direct discrimination and harassment are different. If the direct discrimination provision covers harassment, why is a separate harassment provision included for other protected characteristics?

We therefore welcome amendments 232 and 233, but we suggest that amendment 231 should not be necessary. It would narrow the definition of harassment only for the purposes of amendments 232 and 233. That would mean two different definitions of harassment in the bill, which is potentially confusing.

We believe that amendment 231 is not needed to protect free speech, because that is protected by the requirement that a complaint of harassment be reasonable (clause 24(3)(c)), and by the requirement in the Human Rights Act to interpret this reasonableness test consistently with European Convention guarantees of freedom of expression and religious freedom.