



Equality Network

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Equality Network campaigns for lesbian, gay, bisexual and transgender equality in Scotland

The Draft Legislative Programme Consultation
Freepost SCE 7543
Hayes
Middlesex
UB3 1BR

5th August 2008

Dear Ms. Harman,

Draft UK Legislative Programme 2008-9

Thank you for the opportunity to respond to the consultation on the draft UK Legislative Programme for the next year.

I am replying on behalf of the Equality Network, which is a national network of lesbian, gay, bisexual and transgender (LGBT) people and groups working for LGBT equality in Scotland.

Our response is based on wide consultation with LGBT people and groups on their views on what needs to change to deliver true equality for LGBT people.

One of the top concerns for LGBT people is legislation that addresses discrimination and encourages equality, across employment and the provision of goods, facilities and services including public services. Education, health and the justice system are key examples of public services that do not at present deliver equitably for LGBT people.

We therefore very much welcome the inclusion of the Equality Bill in the draft legislative programme.

We submitted a detailed response to the Government's Discrimination Law Review consultation last year. We welcome the publication, last week, of the Government's response to that consultation, including the detailed proposals for the Equality Bill.

In your consultation, you request views on individual bills. Without going into detail, we would like to make the following key points on the Equality Bill proposals (paragraph numbers refer to last month's Government Equalities Office publication: The Equality Bill – Government Response to the Consultation).

Public sector duties

We very much welcome the proposal to extend the public sector equality duties across the equality 'strands', including full coverage of sexual orientation and gender reassignment. We particularly welcome the decision to retain the use of secondary legislation for specific duties, and to maintain the devolution of that secondary legislation to the Scottish Government and Parliament (paragraphs 2.38 and 2.39).

Harmonisation of the law

We are very concerned that the detailed proposals to bring together and simplify equality legislation fail to harmonise the legislation properly across the equality strands. As a consequence, the proposals perpetuate a lower level of protection from discrimination and harassment for LGBT people.

In our view, the principle should be that the legislation be fully harmonised across the strands, and provide the same level and scope of protection for all. Exceptions should only be made where there are particularly strong reasons to diverge from this principle.

In particular:

- The proposal not to provide protection from harassment, by providers of goods, facilities and services, on grounds of sexual orientation and religion/belief (and possibly disability also), is inconsistent with the inclusion of that protection for race, gender, gender reassignment and age. It provides a lower level of protection for lesbian, gay and bisexual people. It also flies in the face of the proposed new EU Directive on goods and services equality, which would require harassment protection for all the strands (paragraphs 13.21 to 13.24).
- The proposal to exempt schools from the ban on discrimination on grounds of gender reassignment is inconsistent with the protection given other strands such as sexual orientation, and ignores the reality

of transphobic discrimination and harassment in schools (paragraphs 9.26 and 9.27).

- The proposal not to protect against discrimination on grounds of perceived transgender identity is inconsistent with the treatment of other strands such as sexual orientation. It would mean that transphobic harassment at work of a person incorrectly assumed to be transsexual (for example, a tall woman with a deep voice) will be lawful, while if the person is actually transsexual, the same behaviour is unlawful. That is not right in our view: the law should protect everyone from transphobic harassment (paragraphs 9.9 to 9.11).
- The restriction of protection from transphobic discrimination and harassment to transsexual people who intend to or have transitioned under medical supervision means that a large number of transgender people get no protection at all. We disagree fundamentally with the Government's depiction of other transgender people as simply making temporary presentational choices – we think the Government have misunderstood the nature of other transgender identities. We disagree with the Government's view that other transgender people therefore do not deserve the same level of protection from transphobia as transsexual people who transition under medical supervision (paragraph 9.42).

We note that the policy positions adopted by the Government on these issues are essentially the same as those proposed before the Discrimination Law Review consultation. We are disappointed that these positions appear to have been retained despite disagreement with each of them by a clear majority of the consultation responses from organisations working in the equality and human rights field.

We hope that the Government will reconsider these points, and will take this opportunity to deliver equality legislation that provides a uniform high level of protection across the strands.

With best wishes,

Tim Hopkins
Equality Network