

# UK Equality Bill legislative consent memorandum

## Submission to the Equal Opportunities Committee

2<sup>nd</sup> June 2009

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The Equality Network is a network of around one thousand lesbian, gay, bisexual and transgender (LGBT) individuals and organisations in Scotland, working for LGBT equality. Thank you for asking our views on the Legislative Consent Memorandum (LCM) for the UK Equality Bill.

We would like to comment very briefly on two issues.

## Public sector equality duties

We think that paragraph 9 of the LCM is slightly misleading. Under clause 143(1) of the Equality Bill, public authorities are subject to the general public sector equality duty, and public authorities for that purpose are defined by the list in schedule 19 to the bill. However, under clause 143(2), any other person who exercises public functions is also subject to the general duty. The scope of the general duty is therefore wider than implied by the first sentence of paragraph 9 of the LCM, and is similar to, for example, the scope of the existing public sector gender equality duty in section 76A of the Sex Discrimination Act 1975.

However, only the authorities listed in schedule 19 to the Equality Bill can have specific duties imposed on them. Scottish Ministers can by order amend the list of Scottish authorities potentially subject to specific duties, in part 3 of schedule 19, but any such order requires the consent of a Minister of the Crown (clause 146(3)(a)). This is more restrictive than the arrangements for, for example, the existing gender equality duty. There, Scottish Ministers may impose specific duties on any Scotland-only public body with devolved functions, without reference to UK Ministers (section 76C(3), Sex Discrimination Act 1975).

We are concerned that making changes to the Scottish public authorities listed in part 3 of schedule 19 may be a relatively slower process because of the need to obtain the consent of a UK Minister. In effect, a small amount of devolved competence is being taken back to Westminster by this provision of the Equality Bill, compared to the existing public sector gender equality duty. Devolved public bodies are fairly regularly created, abolished or restructured by the Scottish administration, and it would seem to make sense to allow the Scottish Ministers to amend part 3 of schedule 19, which relates only to Scotland-only bodies with devolved functions, without needing the consent of a UK Minister.

## Legal aid for school education disability cases

The bill proposes to transfer disability discrimination cases in school education, from the sheriff court to the Additional Support Needs Tribunals for Scotland (ASNTS). We understand that a side effect of this will be that there will no longer be legal aid available for these cases. The LCM states (paragraph 33) that there may be a saving to the public purse from this change. We believe that legal aid entitlement should be extended to apply to these cases at the ASNTS. Any costs of this would be offset, in terms of the total public purse, by the potential savings identified in the LCM.